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The Improvement of the Real Situation of Overcrowding in Prisons  
in Bangladesh

**A report to Map the Issues facing the  
Bangladesh Prison Service**

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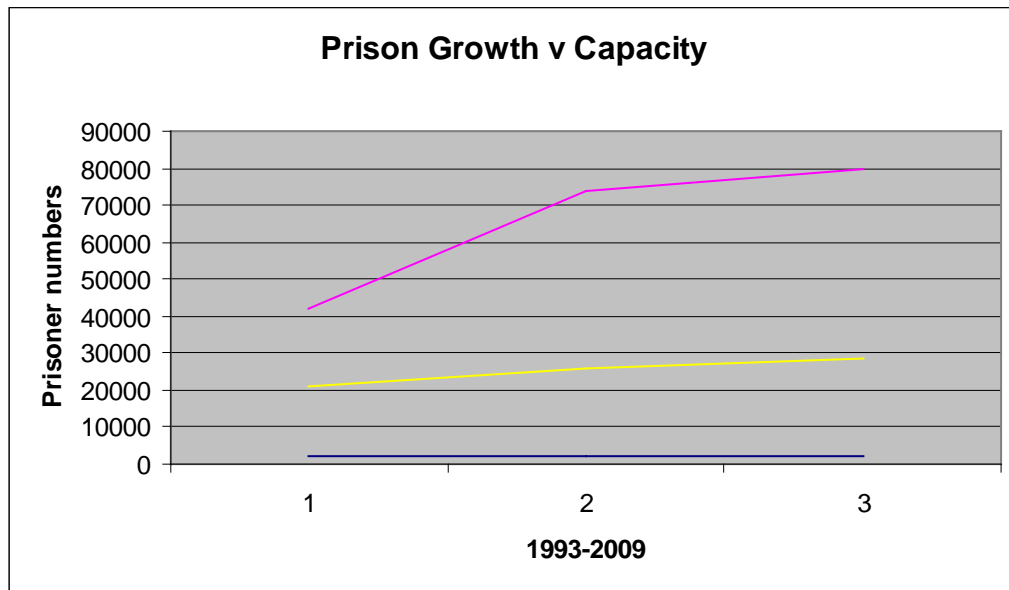
## A Report to Map the Issues facing the Bangladesh Prison Service

*'To change is indeed a difficult process. The lack of education, information and initiative in this field has persistently succeeded in creating inertia, apathy and resistance to any kind of innovations. Admission of past inaction should not destroy new resolve.'*<sup>1</sup>

### Executive Summary

#### Context

1. The criminal justice system in Bangladesh is under immense pressure and is in need of systemic reform of all components at all levels over a period of time if it is to succeed in providing equal access to justice for its citizens. The prisons are no exception.
2. The prison population has inexorably grown from 42,000 in 1993 to 80,000 today. The capacity of prisons to accommodate such numbers has not kept pace. In 1993, there were 21,000 places and 28,000 in 2009. The trend in line with other countries is set to rise, unless concerted measures are taken.<sup>2</sup>



#### GTZ support

3. In 2007, GTZ facilitated a meeting of meeting of key stakeholders in the Radisson Hotel, Dhaka. The message of the then IGP and Additional Secretary was that overcrowding in the prisons had become an urgent priority for the BPS and line Ministry. As a result of this meeting, GTZ formulated an assistance plan

<sup>1</sup> The Jail Commission 'Munim Report' 1980 at para 63

<sup>2</sup> Africa: 61%; Americas: 71%; Asia: 90%; Europe: 66%; Oceania: 69%. Source: World Prison Brief, International Centre for Prison Studies, King's College, London, figures as of 2004

with the BPS and MoHA that was systemic (rather than 'quick fix'), measurable (in terms of outcomes) and sustainable in the long term, relying on partnerships with reputable NGOs with a long-track record in the provision of community legal services.

4. In 2008, teams of paralegals from three NGOs (BRAC, BLAST and Madaripur Legal Aid Association) were approved by the BPS and engaged on a pilot scheme to reduce overcrowding in three prisons (Bogra, Dhaka and Madaripur). This scheme is still subject to formal approval and is predicated on the following approach, guided by an advisory board of senior, key, stakeholders:
  - Conduct census in the three pilot prisons (Dhaka extended to include Kashimpur Central Jail)
  - Action-oriented research following up cases from the census
  - Identify key elements of the problem of overcrowding from the census and applied research
  - Prioritise the issues arising
  - Develop a joint work plan with stakeholders (ie prisons, courts, police and civil society)
  - Paralegals work with stakeholders to reduce levels of overcrowding.
5. This has shown promising early results and is broadly accepted by the justice agencies and members of the Bar. Once approved, it is expected that the project will be able to swiftly build on the ground it has already laid.

#### *Mapping the issues concerning the BPS*

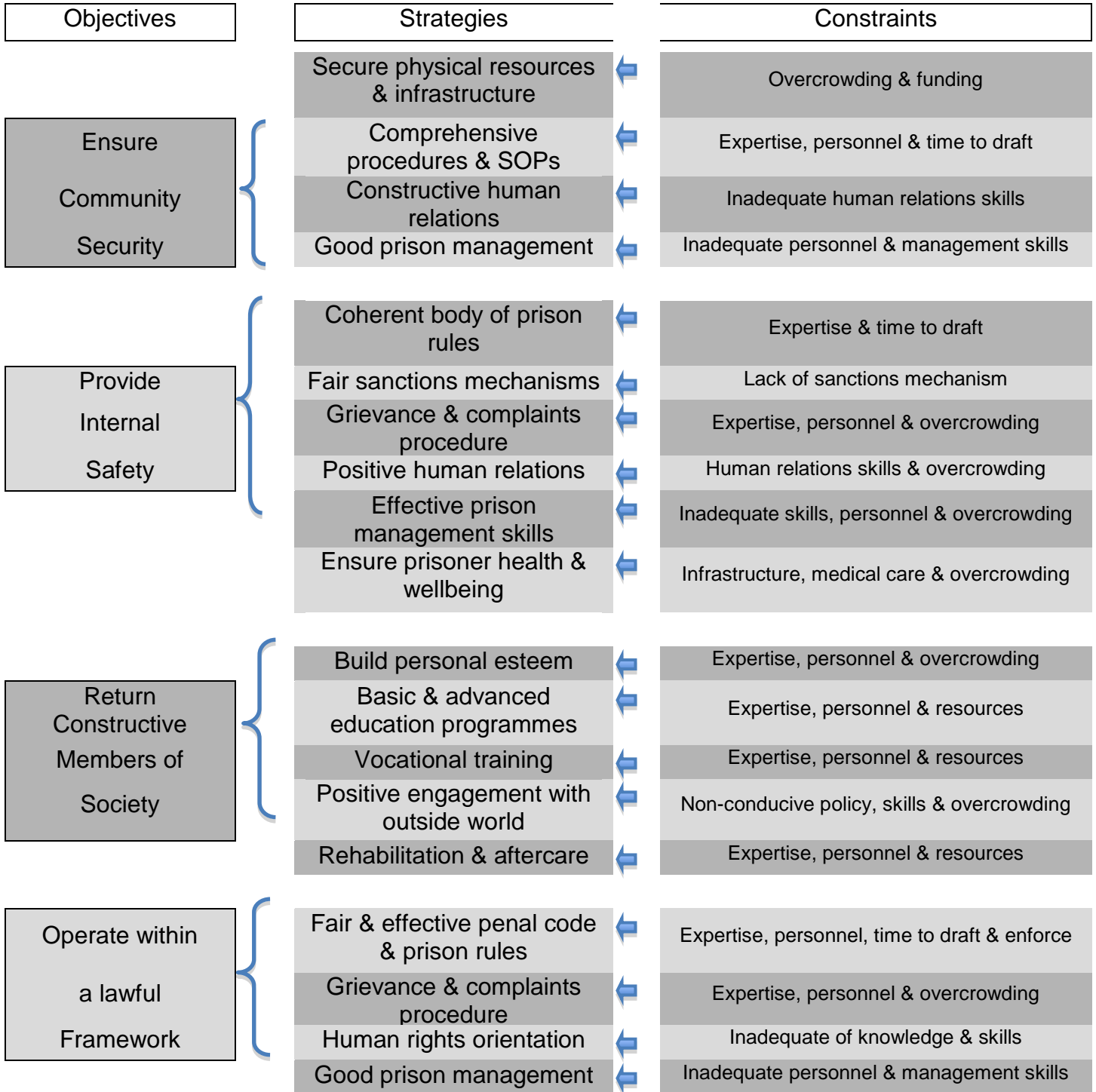
6. The present study took place between 28 September-12 October 2009 and arises from an offer by GTZ to assist the BPS and Ministry of Home Affairs (MoHA) to 'map' or identify the 'issues' concerning the prisons today. During the same period, GTZ provided technical assistance to the BPS to conduct a training needs assessment (TNA) of prison staff, which forms a separate but associated report to this.
7. The first task was to identify the issues facing the prison service in contemporary Bangladesh. This was approached by a literature review (with particular attention to the Jail Code, Jail Commission report 1980 (the 'Munim report') and other reports<sup>3</sup> together with a series of prison visits and structured meetings (or focus group discussions, 'FGDs') conducted with prison officers in Rangpur, Bogra and Madaripur.
8. An 'Issue Tree' is set out over page which identifies four objectives: external security, internal safety, rehabilitation and a clear legal framework. The tree then branches out to the strategies for meeting these objectives and still further to

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<sup>3</sup>Other reports included: a regional conference on penal reform in South Asia held in Dhaka in 2002, a report on the prisons in Bangladesh commissioned by UNDP and conducted by Penal Reform International in 2004, 'Activating the Criminal Justice System in Bangladesh' EC/2005; by the European Union Delegation to Bangladesh in 2005, Census reviews of Bogra and Madaripur prisons compiled by the Paralegal Advisory Service (Bangladesh) in 2009, as well as a range of human rights reports.

examine the constraints that might prevent the effective implementation of these strategies.

*Issue tree: Bangladesh Prison Service*



9. The constraints column highlights the key issues inhibiting the BPS from implementing the strategies to achieve the objective. It will be noted, at a glance, that **overcrowding** and **lack of training** emerge as the two principal issues facing the prisons today.
10. Overcrowding skews the purpose of prison. Sheer weight of numbers reduces the time and space for recreation, vocational training, visiting with relatives, or any semblance of 'normality' to which prisons should aspire in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The requirement of security takes over all other concerns as the best laid plans are overturned. Training and training needs are discussed in a separate report by Mr Hans Wahl.
11. In the next 'tree', the goal of reduced overcrowding is deconstructed to reveal the issues that need to be addressed. Similarly this tree is further discussed below.
12. It may be argued that crowded prisons merely mirror Bangladesh society at large: the country is crowded. There are too many prisoners and too few prisons. The answers are straightforward and simple: build more prisons, or let people out.
13. However there is no evidence that either of these responses solves the problem in the medium to long term. The one is costly and ineffectual – viz the grave problems confronting the prison administrations in the United Kingdom and USA after massive building programmes (prisons, like roads, soon fill up the moment they are completed). As the Jail Commission report 1980, chaired by Justice Munim predicts: 'building of more prisons cannot be expected to reduce the overcrowding inside the prison.'<sup>4</sup>
14. The other may serve to let off steam (through amnesties and pardons) but cause public disquiet, dismay in prisons and do little (without more) other than buy time before the numbers creep back up.
15. The causes are more complex and point to systemic problems affecting the justice process as a whole as we discuss below.
16. The tree sets out four issues in reducing overcrowding. It then explores the options available as concerns each issue and the constraints that impact on each of the options.
17. It is evident at once that the issues of space, inflow, outflow and political will are all interlinked and that any solutions lie in a concerted strategy, sustained over time, by everyone. In the words of the Munim report:

*'Prison administration is a part of the criminal justice system. A major part of the problems with which it is faced is, let this be frankly stated, the result of failures of others which include the Government, the courts and other law-enforcement*

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<sup>4</sup> Munim Report para 80

agencies. To a very great extent the members of the general public are also responsible.<sup>5</sup>

Issue tree: overcrowding

Issue	Options	Constraints
<p>Increase Space</p>	Build more prisons	High costs + questionable solution
	Create more space	No incentive to initiate
	Better risk assessment procedures	No training
	Review prison categories	No policy
<p>Reduce number of Admissions To prison</p>	Restrict use of prison	No ready alternatives
	Emphasis on harm reduction	Policy/social attitudes tend to be punitive
	Better communication between cj actors	Prevalence of bad practices & vested interests
	Decriminalise	Social attitudes, political will, law reforms
	Inform public opinion	Conservative, uninformed, fearful
	Review sentencing laws and practice	No direction, poor oversight, law reforms
<p>Reduce number Of people In prison</p>	Reduce under-trial numbers	Slow process, poor information, access to legal aid
	Review sentencing laws and practise + criminal procedures	No direction, poor oversight, law reforms
	Speed up judicial process	Incentives, procedures, practice, cultures
	Provide early release mechanisms	Policy, law reform, support services
	Effective mechanisms for inspection and monitoring	Independence, costs, law reforms
<p>Raise prisons up the political agenda</p>	Criminal justice policy	Prisons rank low in terms of priorities
	Initiate public debate	Prisons are closed to public view
	Judicial leadership	Conflicting priorities
	Low cost measures	Willingness and budget to pilot

<sup>5</sup> ibid para 611

18. There are a number of reasons why this problem needs to be tackled since prison overcrowding:

- poses potentially dangerous public health hazards (overcrowded accommodation acts as an incubator for infectious diseases such as TB and HIV/AIDS)
- seriously affects the ability of staff to control crime and violence within the prison walls
- creates a dangerous environment for prison staff
- raises the risk of mass disturbances in, and outbreaks from, prison
- makes it impossible to deliver UN defined minimum standards of detention requiring adequate light, air, decency and privacy.
- violates fundamental human rights, such as the right to life and to security of the person and freedom from cruel, inhuman or degrading treatment or punishment.

19. Assuming then the issue is urgent and justifies remedial action, a number of suggestions are put forward for the consideration of those concerned. They build on the ground already laid in the three pilot sites under the GTZ project to improve the real situation of prison overcrowding. It is submitted that these sites can act as catalysts for change. They can demonstrate how a concerted strategy can be applied (by improved communication, co-operation and co-ordination between the justice actors) to relieve pressure in the short term and inform policy development and expenditure in the medium to long terms.

### **Recommendations to tackle overcrowding**

i) convene **Case Co-ordination Committees** (CCCs) in each pilot site, guided and supported by an Advisory Committee in Dhaka, to:

- review the case backlog and break it into manageable sizes
- review the list of under-trials in prison and apportion court time to block list pleas and bail applications
- in the absence of court space, consideration may be given to establishing 'camp courts' or jail hearings to screen the under-trial caseload in/at prison
- identify 'blockages' in the process, distinguishing practices that have emerged, from procedures that serve to obstruct caseload and refer a report to the Advisory Committee

ii) **Paralegals** will work to the CCCs and with prisons to:

- list cases that areailable
- conduct courtyard 'paralegal clinics' in/at prison to inform under-trial prisoners on the law and procedure to inform their plea to the charge(s)
- link under-trial prisoners to their legal counsel and take statements preparatory to a plea or trial
- act as secretariat to the CCCs, minuting the meetings and ensuring their distribution

iii) **Panel lawyers** may assist paralegals with their questions, offer them guidance and use their best endeavours to:



- advise their clients on the merits of their case and advise on the evidence accordingly
  - liaise with police prosecutors – with or through paralegals – on the appropriate nature of the charge laid
  - agree a duty roster for attending at prison to hold ‘legal aid days’ to advise groups of under-trials facing serious charges
  - agree a duty roster for conducting block bail applications in court
  - agree a duty roster for conducting sentence hearings, or entering a plea in mitigation (using the statements prepared by the paralegals)
- iv) **Police prosecutors** may work with the CCC, lawyers and paralegals to:
- ensure the charges preferred by police correspond to the evidence disclosed in the case files
  - consider pleas to lesser charges where it is in the public interest
  - consider relaxing any objection to bail where appropriate
  - encourage police officers to consider the use of formal caution (especially as concerns young offenders and first offenders faced with a minor matter)
  - prosecute persons who bring false, mischievous or vexatious allegations against innocent third parties for perverting the course of justice
- v) the **BPS** may allow the paralegals access to the prisons in line with their Code of Conduct to:
- conduct courtyard paralegal clinics, under the supervision of a prison officer
  - work with prison officers to compile lists of under-trial prisoners to be referred to the court and / or CCC; as well as list those vulnerable groups of prisoners (such as young offenders, women, foreign nationals, the mentally ill, terminally ill, those addicted to chemical substances) for remedial action
- vi) the **Advisory Committee** may employ their good offices to inform policy makers generally and offer their guidance and support to the CCCs; and
- consider the action that can be taken in response to the blockages identified in the courts in the three pilot sites by police, courts and prisons
  - request the High Court to issue Practise Directions:
    - a) reminding the lower courts of the presumption of bail;
    - b) providing sentencing guidelines in straightforward cases;
    - c) reminding the lower courts to take the time spent in custody into consideration when passing sentence;
    - d) providing the lower courts with directions to give credit to a defendant who enters an early plea;
    - e) establish a ‘Pleas and Directions’ hearing for under-trial prisoners when the case papers can be reviewed and a plea canvassed with the prosecution to an appropriate charge.

20. While the BPS is engaged in tackling overcrowding, it is further **recommended** that the BPS and MoHA consider:

- elaborating a five year strategic development plan for the BPS;
- drafting a simplified Jail Code (in Bangla) for use by warders and prisoners;  
and
- addressing the need for training and capacity building among all levels of officers and staff.

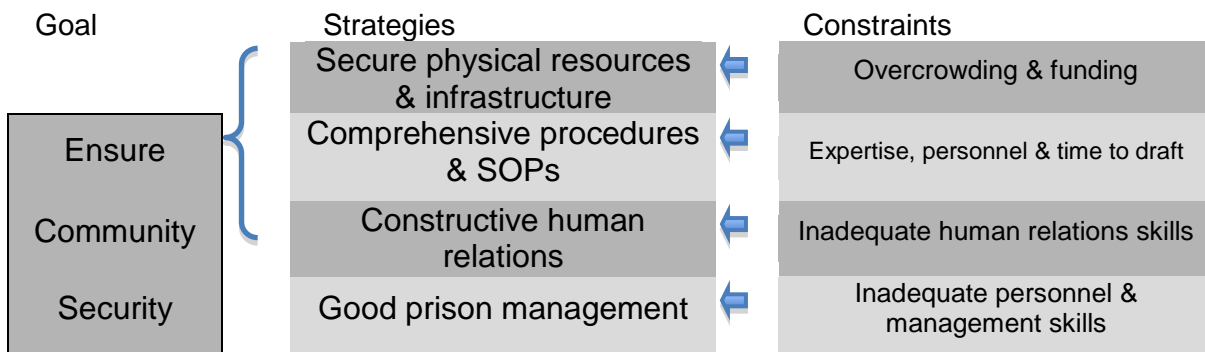
## II. Mapping the Issues

21. The objectives of the BPS can generally be agreed to constitute the following core elements:

- Ensure community security
- Provide internal safety
- Return constructive members of society
- Operate within a lawful framework

22. We explore the strategies that may (in whole or in part) be adopted to achieve these objectives - and the constraints that restrict the realization of these strategies.

23. While each objective is provided with supplementary notes and commentary below, it is emphasized that all four objectives overlap and are inter-dependent – see Annex 1.



### *Secure physical resources and infrastructure*

24. Maintaining 'dangerous' people in secure surroundings is costly in terms of material and human resources. However not all are 'high security' risks. In general this proportion of the prison population will occupy a low percentile.

25. The institution comes under pressure when occupancy rates rise beyond capacity. Pressures mount on staff and tensions arise within the prison population. The risks of mass escape or disturbance also increase.

26. While none of the three prisons visited had recorded any escape in a number of years, nor disturbance, prison officers did not appear complacent.

27. The threat to the security of society also comes from another source: public health. Prisons are key vectors for transmitting disease. Rates of TB and HIV are generally higher in prison than in the community the world over. Unless controlled, prisoners (and staff) expose members of society to health hazards incubated in overcrowded establishments.

28. The FGDs disclosed considerable disaffection with the state of the prisons and lack of space. Many are old and in need of entirely new structures or upgrading of existing ones. Staff complained about the absence of watch towers, old weaponry and the lack of shelters within the prison from where they may watch over those under their care and control, protected from the natural elements.

#### *Comprehensive procedures and SOPs*

29. Prison is a community within a community and one whereby the minority have absolute control over the lives of the majority.
30. The need for clearly laid out rules and procedures cannot be overstated. Both prisoners and prison staff need to know where the lines are drawn and what sanction apply when they are crossed.
31. Firstly, a clear set of rules is required. A new Jail Code will take time to develop. In the meantime, a shortened version may be drafted, distilling from the (soon to be amended) Jail Code those provisions which are most germane to the daily work of the prison officer and staff member. They could also be distributed to prisoners. Many magistrates and judges in other countries are equipped with a 'Bench Book' which provides a quick and ready reference to the daily and most common matters with which a magistrate will be expected to deal, a similar publication can be produced (in Bangla as opposed to English).
32. Secondly, staff at all levels require training in these procedures and the skills to manage prisoners. This too was highlighted in the FGDs.

#### *Constructive human relations*

33. Security may be maintained 'passively' – ie by locking them up and imposing a highly controlled environment, akin to a warehouse – or 'dynamically' where guarding staff act as 'guardians' rather than simply 'guards'.<sup>6</sup>

*'External security (freedom from escapes) and internal safety (freedom from disorder) are best ensured by building positive relationships between prisoners and staff. This is the essence of dynamic security: security depends on good relations within prisons and on positive treatment of prisoners.'*<sup>7</sup>

34. In turn this depends on providing staff at all levels with the skills to develop and maintain such relations.
35. Several groups in the FGDs asked for training in how to treat prisoners and how to 'behave' with prisoners.

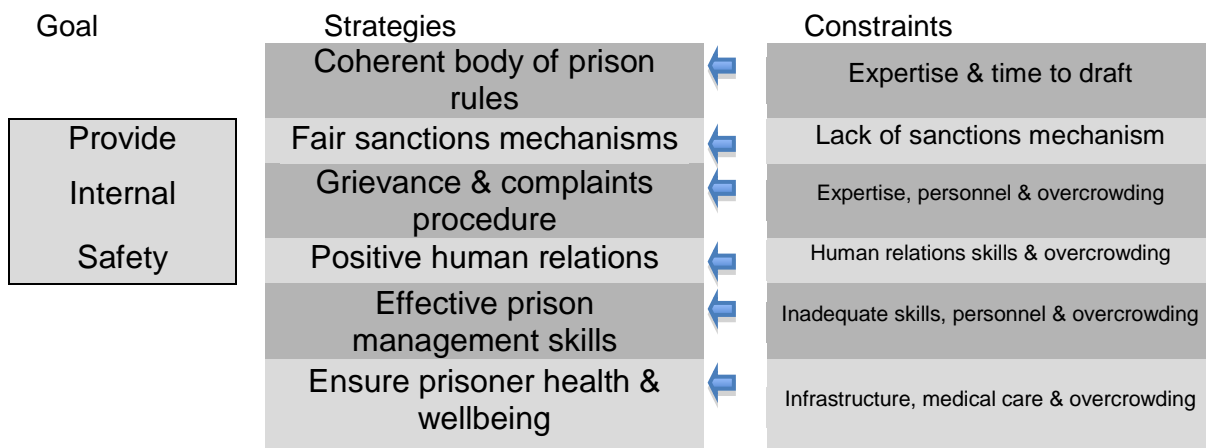
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<sup>6</sup> Coyle, A, 'A Human Rights Approach to Prison Management', International Centre for Prison Studies, second edition, 2009

<sup>7</sup> 'Making Standards Work' PRI, 2000. Section VI. para 6

*Good prison management*

36. The shortage of manpower was the chief complaint of all staff in each of the three prisons visited. It is trite to state that good management depends on adequate numbers of trained staff. It was observed that the last staff review took place in 1983. In Rangpur prison, an internal review commissioned by a former IGP proposed the numbers of staff be increased six-fold.
37. However there are no international guidelines for the ratio of prison officers to prisoner (as there is for police:population for instance), because it depends on so many factors.<sup>8</sup> Good training, sound classification procedures, a rights-based approach to prison management, prisons that are not permitted to exceed capacity – all may compensate for apparent shortages of manpower.
38. The global management of the BPS is directed by the military, administered by the MoHA, managed by (often quite young) superintendents and jailors and guarded by squadrons of warders dressed in paramilitary uniform and carrying swagger sticks or batons. It appears highly centralized when it comes to decision making. The personal initiative of an officer appears to be actively discouraged. All matters are referred up to the prisons directorate.
39. The FGDs disclosed a sense of dismay with this arrangement on two fronts. Firstly, it creates a highly centralized system in which all decisions need to be referred up. This is both inefficient and acts as a disincentive to personal and professional initiative.
40. Secondly it is demoralizing for prison staff as there is a perception that any input (especially from experienced members) is not listened to in high places. Furthermore the relatively short turn around of IGPs from the military and civil servants responsible for prisons in the MoHA, does not lend itself to a more considered consultative process over time. The risk is that quick fixes replace long term planning.



<sup>8</sup> Open prison camps in Rajasthan for instance employ two prison officers (as supervisors) to ‘assist’ 130 prisoners living with their families.

41. The internal safety of the prison depends on a number of factors, including clear rules, good leadership, adequate numbers of trained staff and adequate space. The current state of overcrowding in the BPS places enormous strain on the prison infrastructure (sanitation and hygiene), staff (maintaining discipline) and prisoners (combating boredom and cramped accommodation). Manpower is especially acute in the area of health services. Two of the three prisons visited lacked a full time doctor (see Annex 3).
42. The Jail Code requires that prisoners are 'entirely' separated into various classes (civil, undertrial, female, male under 21, male who have not yet reached the age of puberty and others).<sup>9</sup> This classification for all practical purposes appears to stop at male and female.
43. There appears to be no system in place for classifying prisoners according to individual needs or level of security risk posed. Thus, the person who may have stolen an item of food out of need, rubs shoulders with the trickster who makes a living out of cheating out of greed; and the weak and vulnerable sleep next to the strong and violent: all are lumped together.

*'Experience of other countries would show that a considerable number of offenders can also more effectively be dealt with in semi-open or minimum security prisons with fewer staff. Public safety is not endangered by such arrangement.'*<sup>10</sup>

44. Prisoners are further divided into three divisions under the Jail Code. Division I is for habitual offenders. Division II for prisoners 'accustomed to a superior mode of living' (or VIPs) and those not falling into either fall into Division III.<sup>11</sup> Due to pressures on the available space, the prisons visited attempted little in the way of categorization and under-trials are housed with convicted.
45. Grievance and complaints mechanisms for prisoners are the only means by which a prisoner can vent his/her grievance and so satisfy the needs of 'justice inside prison' as described in the Munim report.<sup>12</sup> The Jail Code has extensive provisions governing the daily routine in the prison but appears to be almost silent as to grievance or complaints mechanisms.

*'There are neither any provisions for hearing the complaint or grievance of an inmate which he may have against the authority, nor has any system been built up in practice providing the method of registering and hearing such complaint or grievance, particularly when they are directed against the staff or system itself...The Commission felt at times that whenever grievances were being ventilated before it, it was having some effect such as feelings of annoyance and displeasure if not anger....there should be a formal procedure to provide for redressing offenders' grievances.'*<sup>13</sup>

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<sup>9</sup> s616 Jail Code

<sup>10</sup> Munim report para 135

<sup>11</sup> s617 Jail Code

<sup>12</sup> Chapter VIII, Munim report

<sup>13</sup> ibid para 192

46. The UN Standard Minimum Rules for the Treatment of Prisoners (SMR) also considers this topic since the security and good order of the prison relate directly to the extent to which abuses are checked and prisoners feel their grievances are impartially heard.<sup>14</sup>
47. The present Jail Code allows the Superintendent to determine all prison offences set down in the Code or to refer the matter to the magistrate.<sup>15</sup> The sections in this chapter of the Code provide a good illustration of why it needs to be repealed and replaced with legislation incorporating international human rights standards and good practices in prison management.
48. Recreation consists of 'indoor games' and no sign was seen of any outdoor sporting activity for prisoners.<sup>16</sup>
49. Prisoners are fed three times a day according to the authorities in all prisons.
50. The Munim report records that the Institute of Public Health Nutrition of government calculated that the calorific and nutritive value of the food served provided an 'adequate daily requirement'. Fruit was not in evidence however and it is not known whether the diet in October 2009 is the same as it was in 1980.
51. Diarrhoea is caused by a number of factors, including unsafe drinking water. The conditions in which food is prepared is also a major factor. The kitchen areas are still *in dilapidated condition...and...do not provide for cooking under healthy conditions*.<sup>17</sup>
52. Staff salaries and allowances (for junior staff) are set down in Annex 3. They total some T5,500 in town (and T4,900 in smaller prisons, such as Madaripur). Average monthly outgoings for an average family were given as T20-25,000. Such a drastic short-fall can only lead to debt or alternative methods of 'managing' the deficit.
- 'All attempts at prison reforms are bound to fail if the prison personnel are not adequately motivated and properly trained in order to perform functions which the suggested reforms would involve.'*<sup>18</sup>
53. There is little training after the initial induction of three months (see separate TNA report).
54. Overcrowding further 'skews' the entire prison system and management becomes firefighting.

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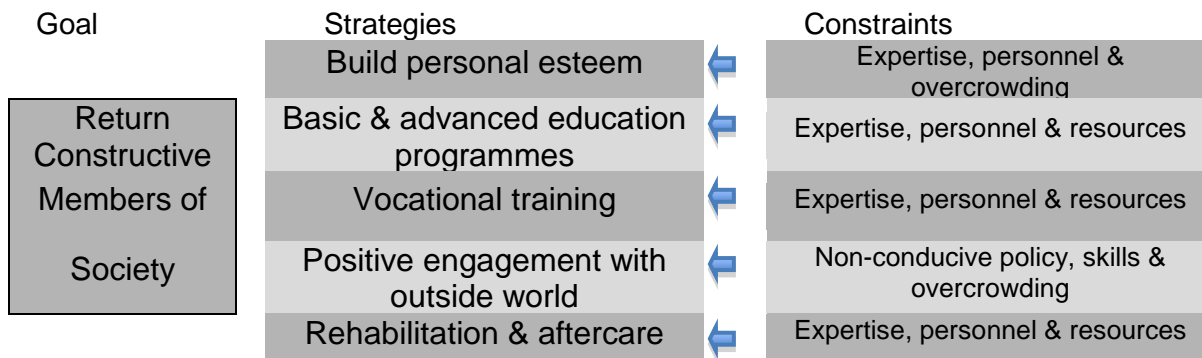
<sup>14</sup> SMR Rules 35, 36

<sup>15</sup> ss706 ff

<sup>16</sup> SMR R21(2) requires that especially young prisoners have access to physical exercise.

<sup>17</sup> Munim Report para 252

<sup>18</sup> Munim report para 64



55. The Munim report notes that

*[prisoners] are not provided with any special facilities which will benefit them in the process of rehabilitation...In fact...no programme on treatment model (sic) existed in any one of the prisons.*<sup>19</sup>

56. The work in cottage industries may be available to the fortunate few but not for the majority or for under-trial prisoners (who may not be required to work but nevertheless should be offered the option if they so wish<sup>20</sup>). In any event they do not form part of a programme of vocational training and income generation for prisoners and the prison service. The practice of remitting all income to a central budget is being increasingly abandoned in other countries. Accounting mechanisms are put in place locally to ensure prisoners can be paid for their work (and assist support their families outside) and individual prisons can use any profit to purchase stock, parts and develop further their industry base.

57. Literacy and other education classes are run by fellow prisoners.

*'Communications between the prisoners and their guardians/relatives need to be strengthened through visits, letters, frequent interviews in the prison and other means to prepare them for their eventual rehabilitation.'*<sup>21</sup>

58. Visits are restricted to once every two months under the Jail Code<sup>22</sup> for a period of 20 minutes<sup>23</sup> for convicted prisoners but is silent on the subject for under-trials save that they shall be granted 'all reasonable facilities at proper times and under proper restrictions.'<sup>24</sup> The practise appears to be weekly.

59. Prisoners are separated from the visitors by approximately one foot with thick wire meshing on either side prohibiting any form of close contact and requiring each to talk in raised voices.

<sup>19</sup> Munim Report para 127

<sup>20</sup> SMR Rule 89

<sup>21</sup> Munim report para 348

<sup>22</sup> s664

<sup>23</sup> s672

<sup>24</sup> s682



60. After care services appear scarce. The agencies usually assigned this task are probation and social services. There is no meaningful probation service in the country, though powers have been delegated to social workers to carry on work as probation officers.

*'The present After-care scheme of our country is very inadequate and highly defective. It needs substantial modification in order to be effective and meaningful.'*<sup>25</sup>

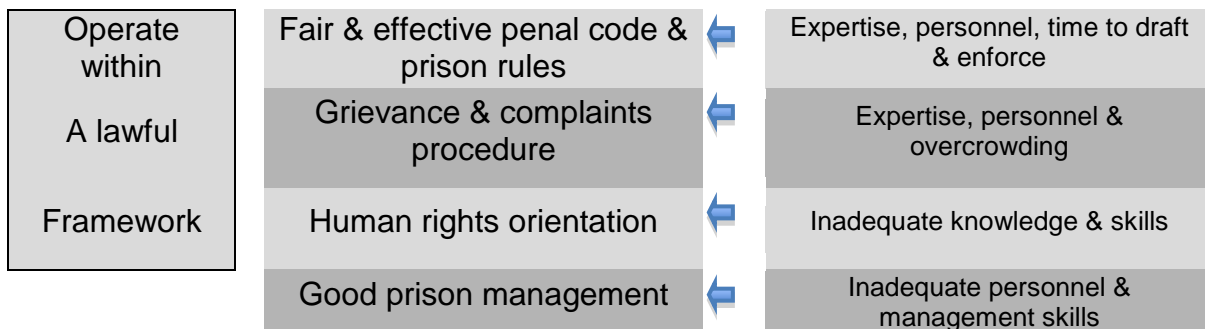
61. There are no half-way homes nor pre-release schemes in operation as Justice Munim describes in his report.<sup>26</sup>

62. Prisoners do not appear to be trained to any national certifiable standard in a given trade or skill; nor are they equipped with tools to enable them to carry on work once released.

63. At present the overcrowding in prisons distorts or undermines any 'treatment' programme the BPS may wish to implement.

64. Action has been taken to address the plight of juveniles in conflict with the law in recent years (there has been concerted action to reduce the number of young persons in adult custody - see Annex 3). However courts, magistrates, and police still need to be '*oriented and trained to use alternatives to imprisonment for most of the suitable juvenile and youthful offenders.*' The Munim report stresses the need for vocational training for young offenders that is '*relevant and meaningful.*'<sup>27</sup>

65. The report is strangely silent on women in prison. It may be that this is because so few women are in prison (see Annex 3).<sup>28</sup> Women are seldom a security threat either to prison staff or to society at large. Alternative accommodation in a less secure environment is both desirable and practical.



66. As already mentioned, the criminal justice system currently functions within a legal framework which is rooted in laws framed over a century ago in a historical and political context that bears no resemblance to present day Bangladesh.

<sup>25</sup> ibid para 351

<sup>26</sup> paras 348 ff

<sup>27</sup> para 360(5)

<sup>28</sup> the figure of 2.6% compares favourably with prisons all over the world

67. A brief review of the chapter on Fundamental Rights in Part III of the Constitution (1972) raises questions whether these penal statutes are in conformity with the rights set down therein. For instance, can it be said that ‘all citizens are equal before law and are entitled to equal protection of the law’ (Art 27) when poor people (ie the majority of citizens) are ‘priced out of the judicial system’<sup>29</sup> because they have to apply to the High Court division of the Supreme Court for protection in case of infringement?

*The major problem in the realization of this fundamental right lies in the high illiteracy rate and lack of legal access. Particularly the financial inability of a big section of citizens to avail themselves of legal services circumscribes their chances to be equally treated before the law.*<sup>30</sup>

68. The right to a ‘speedy ... trial’<sup>31</sup> appears to be contradicted by the significant numbers of under-trial prisoners who have been waiting years to come up for trial.

*‘The volume of backlog of cases, the loopholes and complexity in the procedural laws and case management system and wide-spread corruption and malpractices are among a number of actors which delay and deny access to justice for many. The court machinery is overloaded, slow and not readily accessible to all.’*<sup>32</sup>

69. The prohibition against ‘torture or to cruel, inhuman or degrading punishment or treatment’<sup>33</sup> appears unheeded by police officers in interviewing a suspect. It is a source of considerable concern for prison officers who have no discretion other than to make room for more and more people in already overcrowded conditions that, on any view, constitute ‘inhuman or degrading’ treatment. A concern that is shared by senior members of the judiciary

*‘We all know that one fundamental principle of justice and good governance is to recognize that a person is sent to prison as punishment and not for punishment ... But, unfortunately, our jail systems are being used for inflicting more punishment by denying the minimum standard of living and by treating the prisoners in a manner devoid of human dignity.’*<sup>34</sup>

70. Provisions governing the granting of bail appear liberal on paper but wrongly applied in practice. An anomaly arises – and attested to by several criminal law practitioners – whereby people who ought to be on bail are remanded in custody, while those who ought not to be on bail are granted their liberty. The determining criterion appears to lie outside the law.

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<sup>29</sup> UNDP Human Security in Bangladesh 2002

<sup>30</sup> Justice Maimur Reza Chowdhury, Second Regional Conference on Access to Justice and Penal Reform, Dhaka, December 2002, [www.penalreform.org](http://www.penalreform.org)

<sup>31</sup> Art 35(3)

<sup>32</sup> Justice Maimur Reza Chowdhury *supra*

<sup>33</sup> Art 35(5)

<sup>34</sup> Justice Maimur Reza Chowdhury *supra*

71. Progressive provisions such as the application of compounding offences<sup>35</sup> appear to be scarcely used in practice. One practitioner explained that this was due in part to the ignorance of the bench determining the matter, but mainly due to the fact that many cases are vexatious or false and since the complainant's purpose is to secure the incarceration of the accused, there would be no interest in settling the matter by way of the referral mechanism allowed for under the CrPC.
72. The imprisonment of women and young girls in 'safe custody' appears to have no basis in law and is *prima facie* in breach of Articles 27, 28 and 32.
73. The general situation has been well described in other reports on Human Security in Bangladesh. The purpose here is to consider some of the more salient features of the criminal justice system in as much as they directly bear on the prisons.
74. The high number of under-trials in prison attest to the slow process in the courts - due to elaborate procedures or dubious practices; lack of court space, time and the availability of magistrates and judges; lack of effective legal aid services to push cases through the system and inform the accused on the merits of the case; non-use of diversion mechanisms (as per s345 CrPC or simply formal cautions issued by the police); lack of an independent prosecution service to review the facts and prefer the right charge (in light of the reported tendency of police to prefer non-bailable charges where they are not always justified on the facts).
75. The penal laws themselves do little to deter 'false' or mischievous allegations. The literature suggests this to be a real problem in Bangladesh with many cases pending due to the failure of the complainant to come forward at trial.
76. While efforts are under way to improve legal aid and the situation has moved on from 1980 where the Munim report noted that '*no legal services are provided for the indigent and illiterate inmates who are awaiting their trials.*'<sup>36</sup> Nevertheless, cases can and do drag on for years. Under-trial prisoners may have representation but seldom see their lawyer save at the door of court. They remain uninformed as to the status of the case or nature of the charge. The census conducted by the BPS and Paralegal Advisory Service (PAS) disclosed that in Madaripur 93 under-trial prisoners (out of 347 at the time of the census) claimed they did not understand the legal language of the court, while 51 claimed they did not understand the charge against them.
77. While in Bogra, out of 646 under-trial prisoners, 214 claimed they did not understand the language of the court and 274 claimed they did not understand the charge they faced.
78. A feature of the census was the disclosure that only six under-trial prisoners in Bogra indicated they would be entering a guilty plea at court; while three so indicated in Madaripur.

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<sup>35</sup> s345 CrPC

<sup>36</sup> para 194

79. It can be assumed that the majority are not innocent of committing an offence. The question is why they do not enter a plea. There are any number of explanations that may explain this situation.
80. Clearly no one in his or her right mind is going to enter a plea to murder where the sentence is death. However they may enter a plea to manslaughter.
81. Professional criminals (ie dacoits) facing long terms may think they can 'get away with it'. However sentencing guidelines may focus their minds, especially when they have already spent long periods of time under-trial, the time already served is deducted from the sentence and they will get credit for entering a plea of guilt at an early stage.
82. An explanation is suggested above, namely: they do not understand the law. Others suggest police practice of framing a more serious charge to keep them in custody (as non-bailable).
83. Yet another was that lawyers do not review the case papers and advise their clients appropriately. They are content to let the case run its course and pick up small change from numerous adjournments.
84. Inside prison, the absence of a modern Jail Code containing principled and rights based approaches to good prison management is compounded by the closed character of the prison and refusal to admit external monitoring and inspection mechanisms as well as legal and other community-based services.

*'The importance of visits by a group of independent citizens who are interested in the welfare of prisoners cannot be over-emphasised... Unfortunately, the intended system of visits by such persons seems to have fallen into non-use.'*<sup>37</sup>

85. The district magistrate is required to visit each prison within his/her jurisdiction (central or district jails) 'once a week'.<sup>38</sup> Chapter V of the Jail Code sets out the rules governing the Board of Visitors for each prison.
86. From the Munim report and interviews with prison staff, it appears these visiting mechanisms operate irregularly.

### **Priority actions**

87. The purpose of this mapping exercise is to identify the issues with which the authorities are faced and so lay the ground from which a process might flow to develop a strategic plan of action to address these issues in a realistic way, according to the priorities they have identified.
88. Two clear priorities emerge from this general mapping, namely: overcrowding and training. The latter is dealt with in the TNA report. The former we turn to next.

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<sup>37</sup> Munim Report para 519

<sup>38</sup> s48 Jail Code

### III. Tackling overcrowding

89. The causes of overcrowding are many and include:

- perceived crime rate
- political climate
- oppressive or intolerant systems or attitudes
- punitive or restorative approaches
- the number of the accused in pre-trial detention
- the length of pre-trial detention
- the pre-disposal of the courts to pass or suspend custodial sentences
- the length of custodial sentences and how much time is actually served
- the availability of non-custodial sentences.

90. The consequences of prison overcrowding:

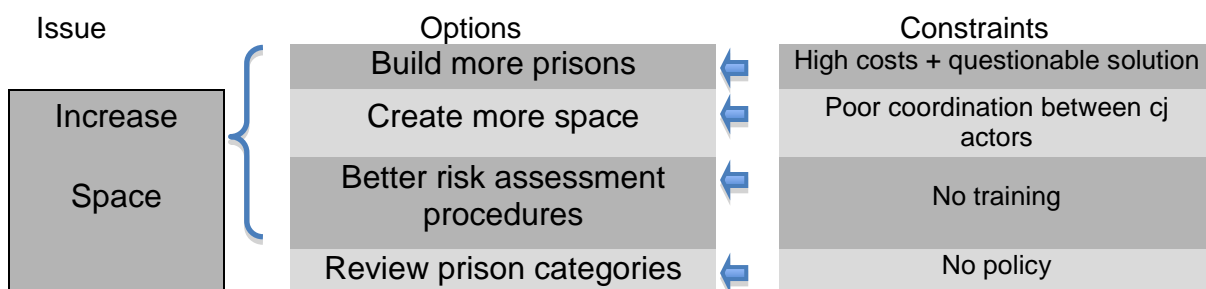
- pose potentially dangerous public health hazards (overcrowded accommodation acts as an incubator for infectious diseases such as TB and HIV/AIDS)
- seriously affect the ability of staff to control crime and violence within the prison walls
- create a dangerous environment for prison staff
- raise the risk of mass disturbances in, and outbreaks from, prison
- make it impossible to deliver UN defined minimum standards of detention requiring adequate light, air, decency and privacy.
- violate fundamental human rights, such as the right to life and to security of the person and freedom from cruel, inhuman or degrading treatment or punishment.

91. The FGDs (Annex 4) supported the general view that overcrowding is the first priority for serving prison officers (seen from their perspective as 'too few staff').

92. The issue tree (see out in full in Annex 2) identifies four broad issues, the options under each and constraints bearing thereon.

93. The four issues are:

- Increase space
- Reduce number of people in prison
- Reduce number of admissions of people to prison
- Raise prisons up the political agenda.



*Building of more prisons cannot be expected to reduce the overcrowding inside the prison.*<sup>39</sup>

94. A glimpse at the rest of world shows that prison populations are rising:

- Africa: 61%
- Americas: 71%
- Asia: 90%
- Europe: 66%;
- Oceania: 69%<sup>40</sup>

95. The UK and USA have both experimented with policies of ‘mass incarceration’ and intensive building programmes. The result has been massive rates of incarceration at great cost to the treasury and done nothing to alleviate the pressure of accommodation in the prisons. By way of passing remark, it has done little to make society safer either.<sup>41</sup>

96. This study does not include crime prevention but the Justice Mapping Center in the USA<sup>42</sup> suggests that perpetrators of crime occupy those parts of urban areas where jobs are few, social services non-existent and early school leaving rates are high. The Center concludes that investment in poor neighbourhoods pays higher returns than in places of incarceration which do little to reduce rates of recidivism. Given the global economic down-turn, this approach is being given more thought.

97. Further thought is also being given to ‘treating’ the high number of drug-related offenders in prison, rather than punishing them through community courts.<sup>43</sup> This appears to be a growing problem in Bangladesh. It is reported that families are bringing their addicted relations to police and so to prison in a desperate attempt to wean them off their addiction. The investment in Village Courts may provide an opportunity to pilot treatment centres to which the courts can refer appropriate cases.

#### *Creating more space*

98. Experienced prison officers in the three prisons visited were of the view that 50-60% of the under-trial population need not be in prison. While they emphasized this was a matter for the courts, their ‘assessment’ of the risk posed by these prisoners was they did not constitute a risk to society.

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<sup>39</sup> Munim Report para 80

<sup>40</sup> World Prison Brief, International Centre for Prison Studies, King’s College, London, figures as of 2004

<sup>41</sup> For further reading see: Rethinking Crime and Punishment, Esmee Fairbairn Foundation, UK; Justice Reinvestment: a New Approach to Crime and Justice, 2007, International Centre for Prison Studies; Unlocking America’s Prisons: Why and How to Reduce America’s Prison Population, Nov 2007, The JFA Institute: [www.jfa-associates.com](http://www.jfa-associates.com)

<sup>42</sup> [www.justicemapping.org](http://www.justicemapping.org)

<sup>43</sup> Community courts operate in New York (Red Hook Community Courts – see: [www.courtinnovation.org](http://www.courtinnovation.org)) and are being piloted in Liverpool, UK.

99. The Jail Commission found that a *'large number of indigent persons'* were unable to gain access to bail because of their poverty. The report observed: *'Excessive bail amount is equivalent to refusal to grant bail.'* It went on to denounce the practice by police and counsel of *'fleecing'* the accused *'even after the order granting bail is made.'*<sup>44</sup> The report states *'Some provisions are required to be made which will enable such unfortunate victims to come out of the prison on bail.'*<sup>45</sup>
100. The problem today appears less an 'excessive bail amount' so much as a) the need to consult a lawyer (and the amounts they charge for a bail application); and b) the 'cumbersome procedures' required to unite the various file records and get the matter before a judge or magistrate for hearing.
101. The bottomline is that poverty and not the risk of further offending, absconding or interfering with witnesses appears to be the determining factor in whether a person is admitted to bail or not.
102. The BPS/PAS census further found that two prisoners in Madaripur and 12 in Bogra had been waiting for trial or the conclusion of their part-heard trial for over five years; and that 117 prisoners in Bogra and 51 prisoners in Madaripur had been under-trial between 1-5 years.
103. A problem cited by the courts and lawyers is that the 'information' on a given case is not being made available (so that the case can be 'moved'). The prisons cite the lack of court time. The prisoners are produced at court but many are not heard and return to prison at the end of the day without being mentioned in court.
- 'The co-ordination of [the] criminal justice system comprising the police, magistrate and support staff can help reduce denial and delay in justice at the pre-trial stage.'*<sup>46</sup>
104. More space can be created by shifting these cases through and out of the system more effectively. One creative mechanism applied in Bihar state was to bring the court to the prison as a 'camp' court to screen the under-trials and 'weed out' those being held unnecessarily.
105. The lines of communication within and between each criminal justice agency (be it prisons, police or courts) appear to be vertical with little or no sharing of information, cutting across all. Put simply, the police deal with arrest and investigation, the courts with remand and trial, the prisons with detention. The three institutions seldom meet at upazilla, zilla or metropolitan levels to discuss the problems common to them all and find through discussion how to co-ordinate their activities in order better to solve these problems at their respective levels.

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<sup>44</sup> para 172

<sup>45</sup> para 194

<sup>46</sup> Justice Maimur Reza Chowdhury *supra*

### *Better risk assessment*

106. When prison officers were asked how many people in his/her prison were dangerous, they indicated that such people constitute a fraction of the overall prison population. The question then follows whether many of those who do not constitute a risk to society may be held in less secure surroundings; or even have their sentences commuted to non-custodial options.
107. Justice Munim observes '*classification leads to better handling of offenders ... and ... would create better understanding between the management and the inmates.*<sup>47</sup>
108. Classification also releases space as low risk prisoners can be housed together in semi-open and open facilities.<sup>48</sup> In turn this relieves pressure on overstretched staff who can then focus more resources on managing high risk prisoners who can be accommodated in secure prison facilities.
109. The introduction of a privilege system also releases space whereby low risk prisoners earn extra visits or week-end leave, home leave and work furloughs.<sup>49</sup>
110. Prisoners approaching the end of their sentences may be released to half-way homes (that may be operated by social services or NGOs) that would prepare them gradually for reintegration back into the community.<sup>50</sup>
111. Any and all of these options depend on thorough training. They also require careful planning.

### *Review prison categories*

112. It follows therefore that a policy that addresses these issues coupled with a strategic plan for phasing them in would be of great assistance.
113. This is of particular concern when one considers the high numbers of under-trial and convicted prisoners facing long prison terms.
114. On the face of the prison figures in Bogra and Madaripur, +/- 40% of those in Bogra and almost 50% of those in Madaripur are charged with 'miscellaneous offences'. The remainder are charged with a range of serious offences from murder, dacoity, women oppression, arms, acid throwing, narcotics and offences under Special Powers provisions.
115. These may or may not be representative of the global prison profile of offenders. Those charged with murder constitute the majority of these (it was noted that none are charged with manslaughter).

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<sup>47</sup> Munim report para 123

<sup>48</sup> *ibid* para 135

<sup>49</sup> *ibid* paras 348 ff

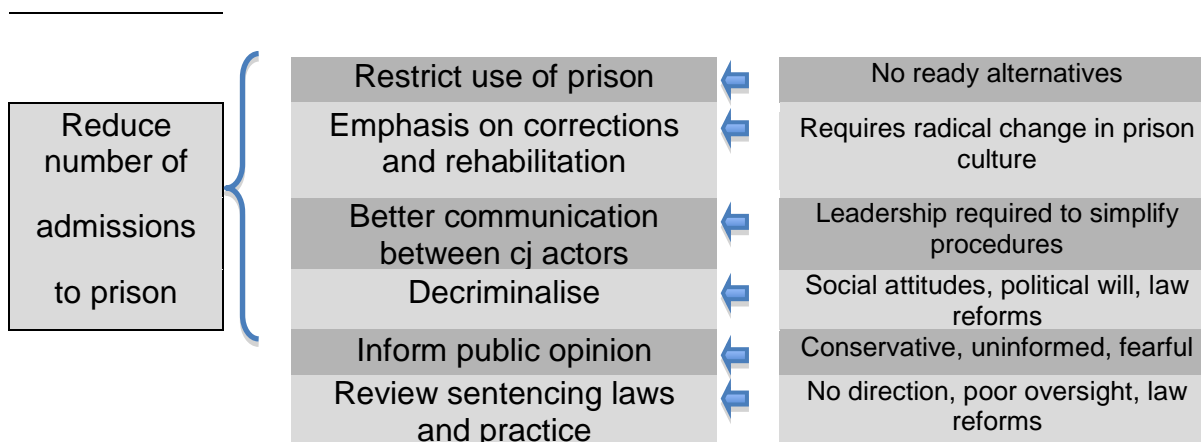
<sup>50</sup> *ibid* para 349



116. The international trend is increasingly towards abolition of the death penalty, or at least a moratorium on executions. The reliance of police on confession-based evidence, the absence of legal advice and assistance at police stations, delays in trial or trials spread over a period of time (in interview with one under-trial prisoner facing murder in Rangpur, he stated - and his prison file confirmed - that his trial had started in 2004 and had to-date heard 10 of the 15 witnesses) – all cast doubt on the fairness of the trial process in Bangladesh and, foreseeably, increasing numbers of cases may be commuted to life terms, as has happened elsewhere.

117. Many long term prisoners do not pose a long term risk and can be released into more open prisons. Open prison camps in Rajasthan have been in operation for more than four decades. They bear study and examination, especially in view of the proposed amendments to the Jail Code to allow for use of Open prisons and Prison camps in Bangladesh. These camps are established for long term prisoners who have been assessed to pose low risk to society and are housed in open accommodation while they complete their sentences.

118. Space is one issue. We next turn to the question of reducing admissions into prison and the engagement of all criminal justice ('cj') agencies and individual actors.



*'Prison administration is a part of the criminal justice system. A major part of the problems with which it is faced is, let this be frankly stated, the result of failures of others which include the Government, the courts and other law-enforcement agencies. To a very great extent the members of the general public are also responsible.'*<sup>51</sup>

119. The BPS does not decide who enters their prisons. The criminal justice process starts with the police and arrest of the accused. The courts determine whether the accused awaits trial on bail or in custody and determines the sentence on a finding of guilt.

<sup>51</sup> ibid para 611

120. According to the Jail Commission report *'fines, bail, binding over, restitution are found in our criminal justice system, while others such as community service, conditional discharge, suspended sentence are, by and large, unknown.'* The provisions relating to probation, he goes on, *'earned notoriety in their non-application and use.'*<sup>52</sup>
121. In effect, a term of imprisonment – that should be a sentence of last resort – becomes by default the option of first, because it is the only viable, resort.
122. Prisons may be intended to 'rehabilitate' the offender, but in few countries can this be proven. An English judge once laconically observed: 'prisons are an expensive way of making bad people worse.'
123. In the absence of a policy statement and the resources in support to provide vocational training and external support to ex-offenders, prisons will continue to be a 'revolving door' seeing the same people return again and again. It emerged in the course of the FGDs that those with drug addictions were (predictably) highly prone since prison cannot 'treat' the problem, only provide a 'cold turkey' option. As a result, many on release look for their next 'fix' and the means with which to purchase it.
124. The current prison culture, as already observed, is militaristic in bearing. Conceived under the British colonial model, this is no surprise. However it is questionable whether this approach is appropriate in the context of 'corrections' and an approach that moves beyond merely 'passive' security.
125. The GTZ pilot scheme operating in Dhaka, Bogra and Madaripur plans to introduce 'Case Co-ordination Committees' (CCCs). The purpose here is to provide a forum at the local level for those responsible for the administration of criminal justice to come together to review the situation in their district and come up with local solutions.
126. Poor communication, cooperation and coordination between the justice agencies and individual actors are not unique to Bangladesh. However experiences from elsewhere suggest that a joined up approach confers considerable social benefits and at little cost.<sup>53</sup> These forums have been successful in reducing case backlogs and enabling the process to flow more efficiently and fairly.
127. In reviewing their penal laws, many countries are starting to decriminalize such 'offences' as vagrancy, prostitution, simple possession of controlled substances and the like.
128. These and other options mentioned require a campaign to educate and inform public opinion. Where the alternatives provided prove to be effective, public opinion will swing behind them. A good instance is community service as

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<sup>52</sup> Munim Report para 78

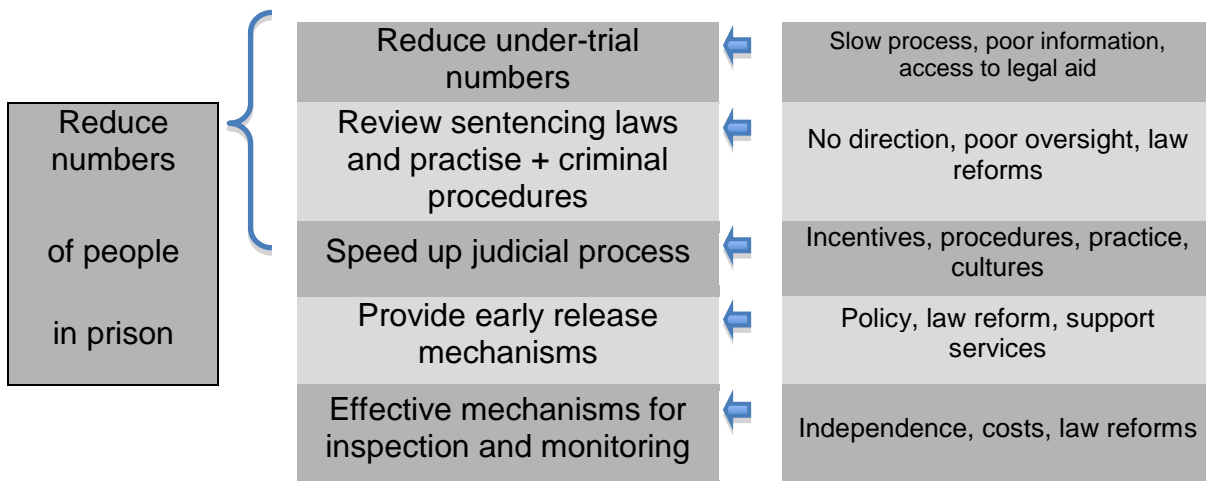
<sup>53</sup> See the Community Courts referred to supra at footnote 44 and the role of 'Court User Committees' in Kenya and Malawi and 'Case Management Committees' in Uganda and Tanzania – Index of Good Practices in Reducing Pre-trial Detention, PRI: [www.penalreform.org](http://www.penalreform.org) .

an alternative to prison. When the public are able to see the tangible benefits that result, the experience in East Africa at least is that they soon swing from initial skepticism to full endorsement.

129. Courts may make greater use of existing procedures to divert people away from a term of imprisonment. A number of other offences listed in the Penal Code may be ‘compounded’ by the injured party.<sup>54</sup>

130. Alternative dispute resolution (ADR) is not restricted to civil matters and may be allowed for in the criminal law in appropriate cases. And yet this provision is rarely invoked by the parties concerned. In part it has been explained by ignorance and in part by false allegations. It is likely that, with the advent of the Village Courts greater use can be made by the courts of this provision in the criminal procedure which would serve to reduce the caseload and so persons who might otherwise be sentenced to a term of imprisonment.

131. As Justice Maimur Reza Chowdhury argues ‘Offences like assault and battery, neighbourhood disputes, offences relating to moveable property, family disputes, dowry demands need to be resolved through mediation and conciliation.’<sup>55</sup> In other words, that the courts should refer these matters back to the community for local settlement as being the most appropriate forum for resolution of these types of dispute rather than the court.



132. As mentioned above, the piloting of the PAS in three prisons in Bangladesh began with a census of prisoners. Data from Bogra and Madaripur (the census in Dhaka is ongoing) show in Madaripur that the prison population was 400% over capacity on the date of the census (March 2009) when there were 440 prisoners against a capacity of 110. A team of six paralegals have been working with the prison authorities, courts and lawyers to move cases in the

<sup>54</sup> s345 CrPC

<sup>55</sup> Second Regional Conference on Access to Justice and Penal Reform *supra*

prison and the current population (October 2009) stands at: 368, ie a reduction of just under 20%.

133. In Bogra, the prison population was just under 200% over capacity on the date of the census (February 2009) with 1357 prisoners against a capacity of 708. Currently the population is even higher at 1440 with 72% under-trial. This notwithstanding the work of paralegals to facilitate the release (through the courts) of 59 undertrials whether on bail or discharge, and providing 82 'on call' prisoners with fixed dates for their next hearing.

134. The District Judge in Bogra has taken a leading role in facilitating the role of the paralegals and the lawyers have demonstrated their co-operation both in Bogra and Madaripur. Yet cases are moving slowly. The Jail Commission offers some insight:

*'Foremost among the obstacles that hinder reforms is the complex pattern of the existing system itself. Over years, it has created attitudes, values and traditions which would resist any attempt to change. Unless those values, attitudes and traditions are replaced by new ones, no meaningful achievement is possible.'*<sup>56</sup>

135. It is as if the justice process is one 'Gordian knot' which entangles anyone who comes into conflict with it, unless they have the means to seek relief in the High Court in Dhaka. Lawyers in Bogra complain of problems with marrying up under-trial prisoners and the right case number. Different justice actors in Rangpur describe a 'syndicate' operated by lawyers in cahoots with the lower judiciary whereby under-trial prisoners will not obtain bail unless they can afford to pay lawyers fees between T20-50,000. And doubtless, there are other anecdotes of this kind. In the meantime, the under-trial population in the prisons continues to rise.

136. Sentencing and procedural reforms may divert people away from prison, they can also inform the pleas of those inside prison. Sentencing guidelines enable those awaiting trial to weigh their options. Where a conviction following a trial of the issue will incur a sentence of 15 years and a plea result in a third less then, taken with the time already spent under-trial and possible remission of sentence later on, this will enable the defendant to make some rapid calculations and inform his/her decision (assuming s/he is guilty).

137. Listing cases for plea provides an opportunity for the defence and prosecution to discuss lesser charges.

138. The slow pace of the judicial process has been remarked on elsewhere. The pressure on the courts and personnel are considerable. As with prisons and space, one option is to build more courts and recruit more personnel. Another, less costly, is to make more efficient and strategic use of what already exists, by diverting minor cases and creating space for the prompt and speedy hearing of serious and complex matters.

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<sup>56</sup> Munim report para 63

139. In Rangpur, Bogra and Madaripur we came across under-trials whose trials had been going on over a number of years and constantly adjourned 'part-heard'. This raises real questions over the quality of justice that is being administered. The defendant in Rangpur whose trial started in 2004 (see above para 116), responded that he had had three lawyers representing him in this time and that the most recent delay (over 12 months) was caused by the trial judge himself being absent.
140. Many cases are said to be 'fictitious and false'<sup>57</sup> and needlessly 'clogging up' the criminal justice system. They need to be identified and dismissed. Those who abuse and pervert the course of justice need to be prosecuted.
141. The case-load will also contain many cases that are old. These also need to be reviewed and dismissed (or discharged) where appropriate. Custody time limits would assist focus the minds of the investigators and encourage the police to close the investigation more swiftly. They would also provide some 'leverage' for magistrates who seek to push the process along more quickly.
142. Early release mechanisms not only serve to reduce prison numbers but also serve to prepare the offender for release. It is sound justice policy and prison management. This is not about pardons or amnesties – ad hoc measures that enable a prison system to let off some of the pressure – but measures that target appropriate people in prison whether by way of a reward for good behaviour or based on an assessment over a number of years of their likely conduct upon release.
143. As already noted, after-care services are virtually non-existent in Bangladesh and creative solutions will be required in consultation with civil society organizations and faith-based groups to fill this considerable gap.
144. Over and beyond these options lies the need for independent and effective monitoring and inspection mechanisms.
145. The internal oversight mechanisms that exist within the BPS at present constitute the Inspector General, Deputy Inspector Generals, Doctors and BPS internal audit teams. External mechanisms comprise the district magistrate and board of visitors – 'gentlemen and ladies of position' in local society who visit the jail each week and enter their remarks in the visitor's book.<sup>58</sup>
146. Many countries have constitutional or judicial bodies that inspect places of detention (police stations as well as prisons); others have full time prison inspectors; still others create committees or commissioners (within the national Human Rights Commission for instance) mandated to enquire into conditions of detention; yet others appoint a senior judge to visit places of detention – all report to their parliaments and national assemblies each year and their reports are made publicly available.

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<sup>57</sup> Justice Maimur Reza Chowdhury supra

<sup>58</sup> ss55, 56 and 58, Jail Code

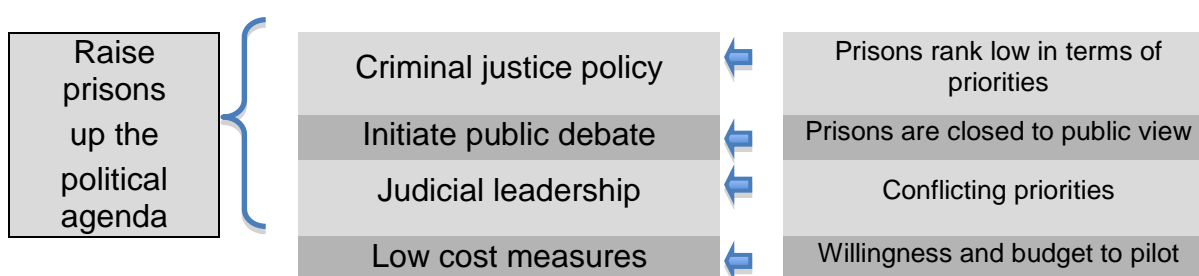
147. Currently, Bangladesh appears to have no such mechanism and it is hoped with Justice Maimur Reza Chowdhury that the Bangladesh Human Rights Commission will incorporate prisons inspection in their workplan.

148. As the Munim report notes:

*'The general apathy and lack of public concern towards the prison administration and the prisoners has been caused no less by the walled surroundings and prohibitive look of the prison architecture than the unwelcome attitude of the prison staff.'*<sup>59</sup>

149. Inspection reports should be in the public domain and awaken public debate of what is happening behind these 'walled surroundings'. They should also indicate blockages in the system and causes of overcrowding that will inform policy development.

150. This raises the last issue, how to ensure prisons do not fall off the political radar screen.



151. There are no votes in prison reform. And when it comes to the allocation of scarce resources, prisons come near the bottom of the list. In the government's national strategy for accelerated poverty reduction (FY2009-2011) 'Steps towards Change'<sup>60</sup> no mention is made of the country's prisons. In fairness, few national developed plans or poverty reduction strategies make mention of prisons.

152. In the absence of riot in, or escape from, prisons, they tend to be ignored. Prisons need to do more to help themselves by opening their doors to the media to show the conditions and excite public concern; and exploring co-operation with responsible civil society organizations (to assist with vocational training, literacy programmes, recreational pursuits, sporting contests and the like). The FGDs demonstrated that prison officers were not averse to exploring such relationships (eg in marketing goods produced in prison workshops, assisting with after care programmes, even employing ex-offenders).

153. Where prison officers do not engage in torturous practices and have nothing to hide from outside scrutiny, an 'open-door' policy has ushered in

<sup>59</sup> para 66

<sup>60</sup> August 2009

- numerous benefits and defrayed considerable cost to the government. It has also served to promote so far as possible the 'normalisation' of the prison and bring it closer to the community.
154. Prisons can also link up better with the courts to draw attention to their prevailing conditions. Judicial inspectors of prisons have been discussed above. However magistrates and judges also have access to prisons and can raise their concerns with the authorities, the Public Works Department (PWD) and other agencies to provide assistance.
155. NGOs may also play a role in bringing public interest litigation to improve conditions for staff as well as prisoners.
156. Money is not the determining factor in improving conditions in prison. Much depends on the quality of the leadership in the prison which influences the manner in which an establishment is run and how junior staff treat those under their care and control.
157. A range of measures that have no cost implications would go a long way to improving the environment within prison and so the conditions – such as abolishing the practice of using irons or handcuffs as punishment;<sup>61</sup> establishing effective complaint mechanisms;<sup>62</sup> improving visiting times and facilities;<sup>63</sup> opening prisons to outside inspection.<sup>64</sup> These measures would have a measurable impact both on prisoners and staff without compromising the security of the institution.
158. Where space is available, prisons should consider the employment of prisoners *'from a more positive angle'*<sup>65</sup> and employ prisoners more productively in a range of industries that, in the first instance, could provide clothing and materials (ie to the army and police as well as furniture for prisons, public schools and government offices).
159. The Munim report is emphatic in this regard:
- 'It is highly desirable that the prison population be converted into a productive force since participation of inmates in the daily work routine in itself will immensely help them in resuming normal life after release...Emphasis on work habit is also a must for maintaining discipline within the prison walls. It should also be remembered that no reformative measure will succeed unless the prisoners, after release, are able to find suitable employment.'*<sup>66</sup>
160. Many of these issues mapped have policy implications and to this we turn next.

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<sup>61</sup> SMR R33 and Munim Report para 209

<sup>62</sup> SMR R 32 and Munim Report recommendation 3 at p 43

<sup>63</sup> SMR Rules 37-39 and Munim Report paras 305-306

<sup>64</sup> SMR R55 and Munim Report para 519

<sup>65</sup> Munim Report para 376

<sup>66</sup> para 376

#### IV. Policy implications

161. The government's most recent general policy statement is currently in draft form and contained in the National Strategy for Accelerated Poverty Reduction II (FY2009-11) entitled 'Steps Towards Change'.
162. In this document, GoB commits to 'improving legal and judicial systems' and to review the existing legal aid mechanism and increase its effectiveness, as well as introducing alternative dispute resolution mechanisms. The agenda is spelled out: 'ensure quick and low cost access to justice' (p204).
163. The draft National Strategy goes on to target the reduction of case backlogs by 25% by simplifying procedural laws, encouraging ADR and taking measures to enable women and poor people to access the legal aid fund.
164. While it appears to be silent specifically on the topic of prisons, the GTZ project to improve the real situation of overcrowding appears to sit four-square within the new government policy framework as it aims through the Case Coordinating Committees to break down the case backlogs in the three pilot sites (at court and in prison) into manageable 'chunks' and processing them more systematically. It also aims through the work of the Paralegal Advisory Service to ensure 'quick and low cost access to justice'.
165. A number of the issues raised and recommendations made in this paper concerning reducing prison overcrowding raise wider policy issues for the GoB and judiciary to consider. Set down below is a brief discussion of some of these.

##### ***Open door policy***

166. It is a matter for the BPS how far the Service is prepared to go in opening the prison doors to what Justice Munim describes as '*a change in values, attitudes, traditions by staff and acceptance of innovations.*<sup>67</sup> It is equally a matter for the GoB to what extent it is prepared to go in leading '*a change in outlook*<sup>68</sup> by society as a whole.
167. It is respectfully submitted that no real reforms can take place if the prevailing atmosphere remains closed and secretive. Where there is nothing to hide there can be no basis for remaining closed.

##### ***Holistic and participatory approach to criminal justice***

168. The penultimate recommendation of the Munim report states:

*'To effect prison reforms in future, there is a need for formulation of comprehensive policies and principles. Such formulation should not merely embrace the prison department but also the entire criminal justice system which includes the agencies for prosecuting the criminal and the courts.'*<sup>69</sup>

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<sup>67</sup> para 63

<sup>68</sup> *ibid* para 613

<sup>69</sup> recommendation 1 at p 155



169. As shown above, the reduction of overcrowding requires a joined-up and concerted strategy requiring the police to review its arrest procedure and consider diversion in appropriate cases; the courts to review procedures, sentencing policy and practise; and the Bar to amend wayward practises. It requires, in short, a criminal justice policy that looks more closely at the ‘demand’ side of the problem (ie: what services do people want/need and what are the ‘blockages’ to obtaining these services).

170. Both Justice Munim and his brother judges in the High Court today highlight the need to introduce alternatives to prison as a policy that makes *‘increasingly wider use of ...alternatives to imprisonment’*<sup>70</sup> will contribute to *‘a deliberate and quick improvement of the prison conditions.’*<sup>71</sup> This is not only a matter of pragmatism, but also of principle

*‘If rehabilitation is one of the goals of criminal justice, courts in Bangladesh must be empowered to control criminal conduct by the adoption or application of various methods which are more constructive and less severe...’*<sup>72</sup>

171. This has clear implications for a review of sentencing policy and practise in Bangladesh. While the task is not under-estimated, it is submitted that it needs to be addressed as a matter of some urgency. Bangladesh can take some solace from the fact that it is not alone and that good practices have emerged from elsewhere which may repay some study and consideration.<sup>73</sup>

172. This has further cost implications as treatment centres will be required for those with chemical addictions, or afflicted with mental illness (both categories are set to increase in the coming years).

### ***Preparing Public opinion***

173. Public opinion needs to be informed. Research from around the world suggests that where the public is engaged and the benefits explained, the desire for punishment mellows into a more constructive approach to crime.

174. The Munim Commission constantly warns those charged with implementing reform that *‘Social disapprobation of criminality and denunciation of the criminals must not blind the society to find newer solutions to the problems created by such phenomenon.’*<sup>74</sup>

175. The Commission members recognized that innovation may meet with *‘initial resistance’*<sup>75</sup> and that *‘murmurs will be heard’*<sup>76</sup>. They caution that reform

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<sup>70</sup> Munim report para 335

<sup>71</sup> *ibid* para 336

<sup>72</sup> Munim report para 79

<sup>73</sup> A recent publication on this subject is available from the UN Office on Drugs and Crime: [www.unodc.org](http://www.unodc.org) and their ‘Handbook on Alternatives to Imprisonment’.

<sup>74</sup> para 79

<sup>75</sup> para 82

<sup>76</sup> para 65

should proceed gradually and emphasize that *'Participation of citizens, organizations and the union councils will be needed to make such measures effective and successful'*<sup>77</sup> and stress that *'No reforms are possible unless public support can be obtained.'*<sup>78</sup>

176. It is submitted that this is the right approach. Reform is a process over a long period of time and cannot be rushed. Having said that it needs to start and develop a momentum of its own if it is to have any impact. The three pilot districts selected here provide a useful 'nursery' to discreetly field test a number of the recommendations set down herein.

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<sup>77</sup> para 90

<sup>78</sup> para 103

## V. Conclusion and recommendations

177. It is timely therefore that the BPS takes stock of where it is at present and where it intends being in, say, five years time. As the agency charged with an important (and under-acknowledged) social service, the BPS needs to be given greater ownership of the direction in which it wishes the Service to go.

178. In this process, the BPS may articulate a vision and set of values underpinning a strategic plan over the next five years. Prison services across the world are adopting this approach so that budgetary needs can be predicted in advance, measures of accountability can be introduced, conditions improved, and the purpose of prison achieved in line with social expectations.

*It is recommended as concerns the BPS*

1. GoB and the BPS start a process of strategic planning that will produce a five year comprehensive plan for the further development of the BPS that is prioritized, practicable and in line with constitutional guarantees and international norms and standards.
2. A simplified Jail Code is produced (in Bangla) while a new Jail Code is drafted.
3. The training needs of all levels of officers and staff are progressively addressed.

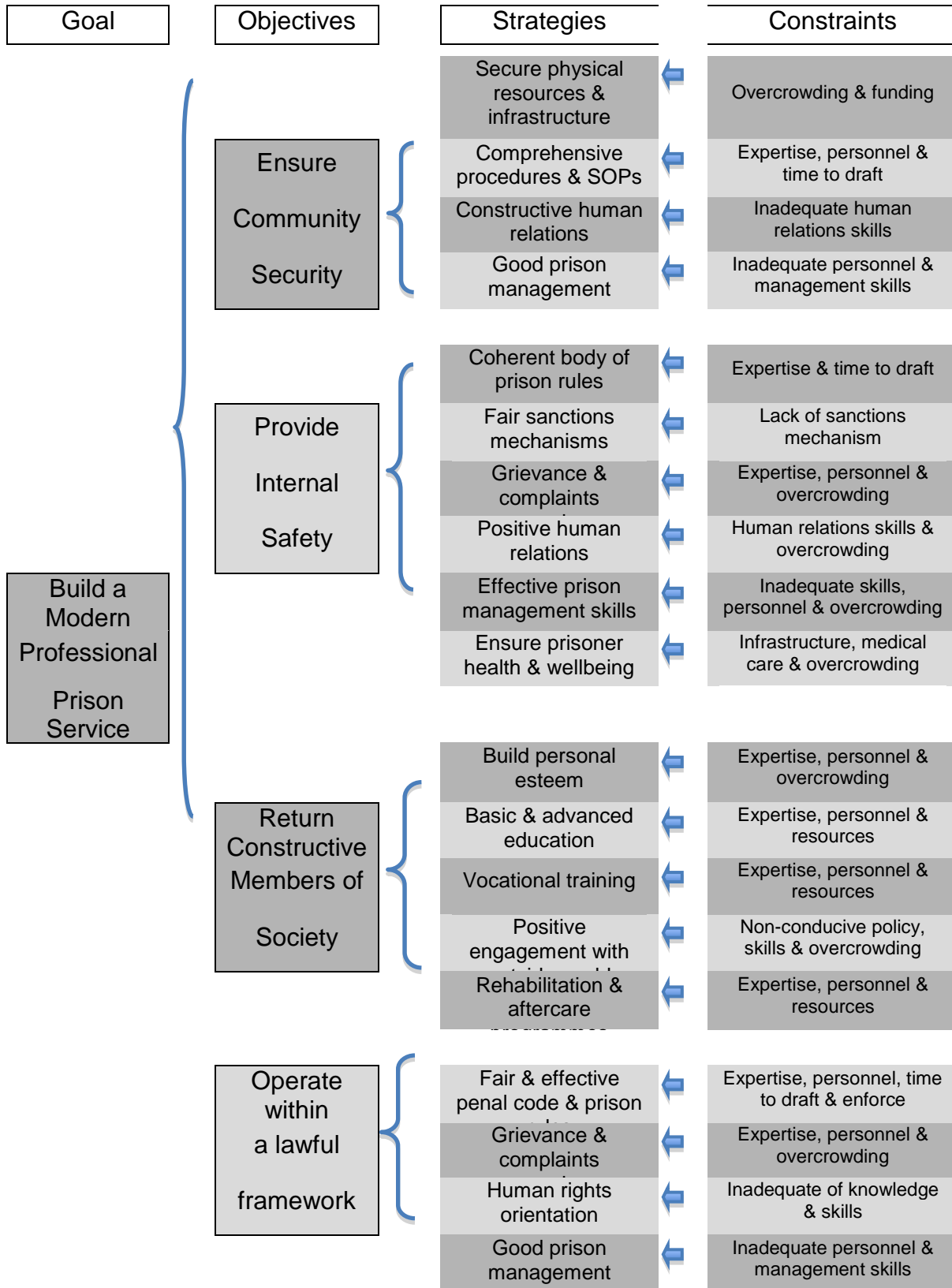
*It is further recommended as concerns reducing overcrowding*

4. To convene **Case Co-ordination Committees** (CCCs) in each pilot site, guided and supported by an Advisory Committee in Dhaka, to:
  - a. review the case backlog and break it down into manageable sizes
  - b. review the list of under-trials in prison and apportion court time to block list pleas and bail applications
  - c. in the absence of court space, consideration may be given to establishing 'camp courts' or jail hearings to screen the under-trial caseload in/at prison
  - d. identify 'blockages' in the process, distinguishing practices that have emerged, from procedures that serve to obstruct caseflow and refer a report to the Advisory Committee.
5. That **paralegals** will work to the CCCs and with prisons to:
  - list cases that areailable
  - conduct courtyard 'paralegal clinics' in/at prison to inform under-trial prisoners on the law and procedure to inform their plea to the charge(s)
  - link under-trial prisoners to their legal counsel and take statements preparatory to a plea or trial
  - act as secretariat to the CCCs, minuting the meetings and ensuring their distribution.

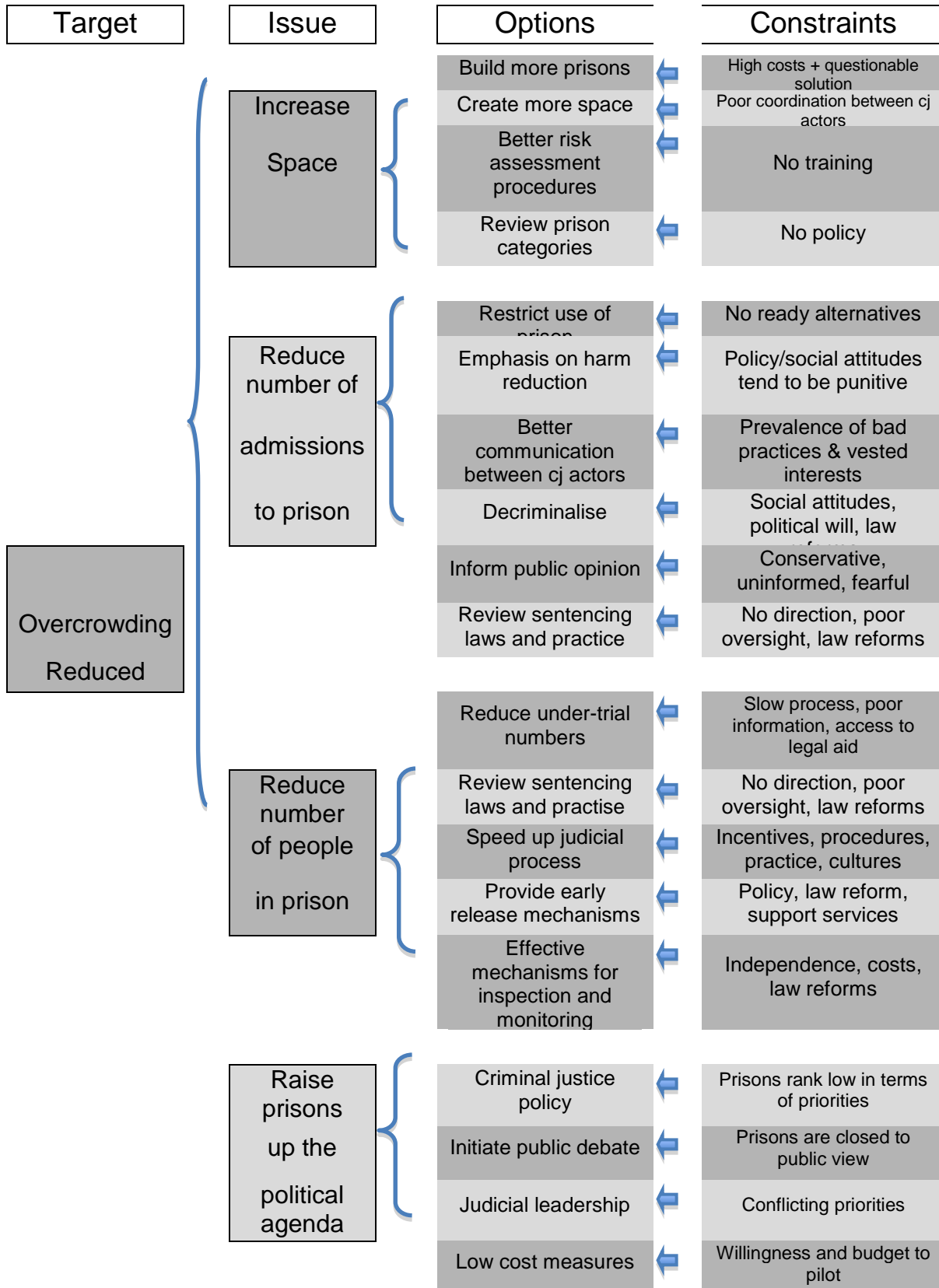
6. That **panel lawyers** may assist paralegals with their questions, offer them guidance and use their best endeavours to:
  - advise their clients on the merits of their case and advise on the evidence accordingly
  - liaise with police prosecutors – with or through paralegals – on the appropriate nature of the charge laid
  - agree a duty roster for attending at prison to hold ‘legal aid days’ to advise groups of under-trials facing serious charges
  - agree a duty roster for conducting block bail applications in court
  - agree a duty roster for conducting sentence hearings, or entering a plea in mitigation (using the statements prepared by the paralegals).
  
7. That **police prosecutors** may work with the CCC, lawyers and paralegals to:
  - ensure the charges preferred by police correspond to the evidence disclosed in the case files
  - consider pleas to lesser charges where it is in the public interest
  - consider relaxing any objection to bail where appropriate
  - encourage police officers to consider the use of formal caution (especially as concerns young offenders and first offenders faced with a minor matter)
  - prosecute persons who bring false, mischievous or vexatious allegations against innocent third parties for perverting the course of justice.
  
8. The **BPS** may allow the paralegals access to the prisons in line with their Code of Conduct to:
  - conduct courtyard paralegal clinics, under the supervision of a prison officer
  - work with prison officers to compile lists of under-trial prisoners to be referred to the court and / or CCC; as well as list those vulnerable groups of prisoners (such as young offenders, women, foreign nationals, the mentally ill, terminally ill, those addicted to chemical substances) for remedial action.
  
9. the **Advisory Committee** may employ their good offices to inform policy makers generally and offer their guidance and support to the CCCs; and
  - consider the action that can be taken in response to the blockages identified in the courts in the three pilot sites by police, courts and prisons
  - request the High Court to issue Practise Directions:
    - a) reminding the lower courts of the presumption of bail;
    - b) providing sentencing guidelines in straightforward cases;
    - c) reminding the lower courts to take the time spent in custody into consideration when passing sentence;
    - d) providing the lower courts with directions to give credit to a defendant who enters an early plea;

e) establish a 'Pleas and Directions' hearing for under-trial prisoners when the case papers can be reviewed and a plea canvassed with the prosecution to an appropriate charge.

## Annex 1: Mapping the Issues concerning the Bangladesh Prison Service



## Annex 2: Mapping the Issues concerning Overcrowding



## Annex 3

### Table of Basic Facts on the BPS

Population:	125-130 millions		
Districts:	64		
Central jails:	11		
District jails:	55		
<b>Legal Framework</b>			
Prison Act IX:	1894		(A) 2008, CTG. Special Prisons Committee establishing, <i>inter alia</i> , Open prisons, prison camps and parole.
Constitution:	1972		to-date 14 Amendments
Ministry:	Ministry of Home Affairs		
<b>Prison population</b>			
Prison total:	79,916*		approx. ratio of 60:100,000
Capacity:	28,420		over 10 years <b>80%</b> increase in population vs <b>20%</b> increase in capacity
	1993: 42,000 vs capacity: 21,000		
	2004: 74,000 vs capacity: 26,000		
	2009: 80,000 vs capacity of 28,000		Overcrowding at over 300% of authorized capacity. Individual prisons, congestion is higher.
<b>Disaggregated</b>			
Under-trials	57,217		or <b>65%</b> of the population
Women	2,151		or <b>less than 3%</b>
Minors (under 16)	86		down from <b>1,173</b> in 2004
Condemned prisoners:	1020		including 28 women
<b>Legal Aid</b>			
No of lawyers	30,000+		
<b>Prison staff</b>			
Authorized: occupied	9,000: 8460		
Prisons HQ	183:83		
Salary: junior warder	T5,500		+ ration subsidy valued at T2,500 pcm
Av monthly outgoings	T10-15,000		couple
	T20-25,000		warder + av family
<b>Health</b>			
Medical staff:	authorized	occupied	vacant
Jr consultant	1	1	0
Doctors	77	14	63
Pathologist	9	0	9
Nurse	72	62	10
Male nurse	6	2	4
Lab technician	9	8	1

\*9 September 2009



## **Annex 4: SWOT analysis of the BPS conducted in Rangpur, Bogra and Madaripur Jails**

### *Approach*

In mapping the issues concerning prisons, structured meetings were conducted with staff of all ranks in Rangpur, Bogra and Madaripur prisons. A feature of the study was the open co-operation and support encountered at each prison.

These structured meetings (also known as ‘focus group discussions’ – FGDs) were remarkable for their consistency. Prison staff want, in a word, to ‘modernise’.

When asked what the BPS aimed to do, again the responses were consistent. In summary, their ‘vision’ was of a prison service that

- a) keeps society secure
- b) prisoners safe
- c) ‘rectifies’ the conduct of prisoners so that on leaving prison they are able to re-enter society as constructive members able to play their part; and
- d) operates within a clear legal framework.

The FGDs followed a SWOT format (Strengths-Weaknesses-Opportunities-Threats) in exploring what the prisons currently did well or less well within the prisons (ie strengths and weaknesses); and what assistance could be provided outside the prisons (opportunities), or what events could take place outside the prison to undermine their core mission (threats).

There were 17 groups in all (three in Rangpur; 11 in Bogra and four in Madaripur). The total number of staff consulted amounted to 93. We have grouped the responses from the three prisons and set them out in bar chart format below.

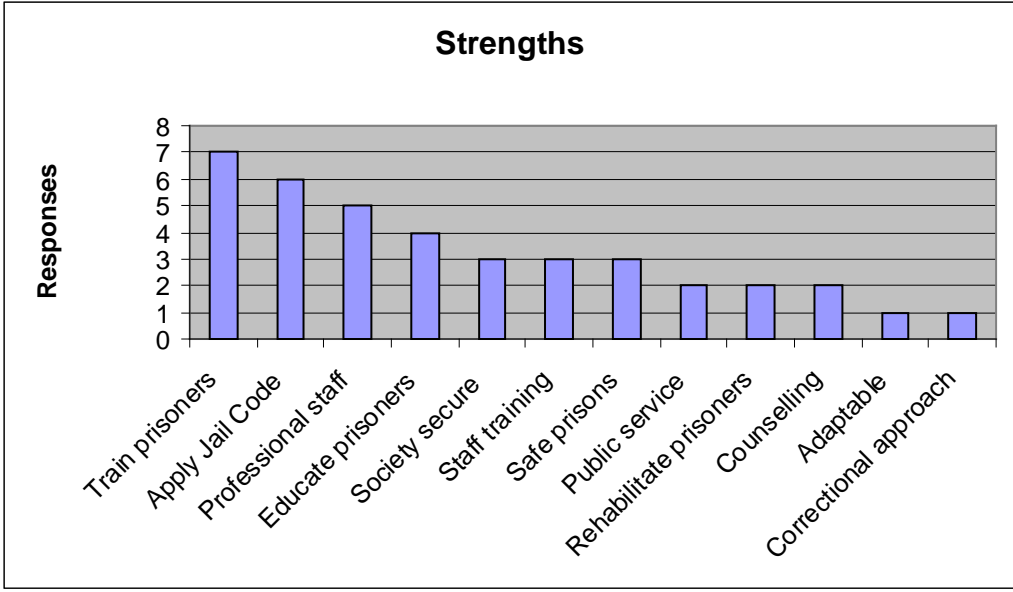
In the first instance, as mentioned the participants agreed the elements that would constitute a ‘vision’ or ‘mission’ statement for the BPS.

We then examined the positive and negative aspects of the BPS seen from within the prison system that advance or inhibit the achievement of this mission.

### ***Strengths***

The question framed was: what are the strengths of the BPS? And then paraphrased as: what is it you do well?

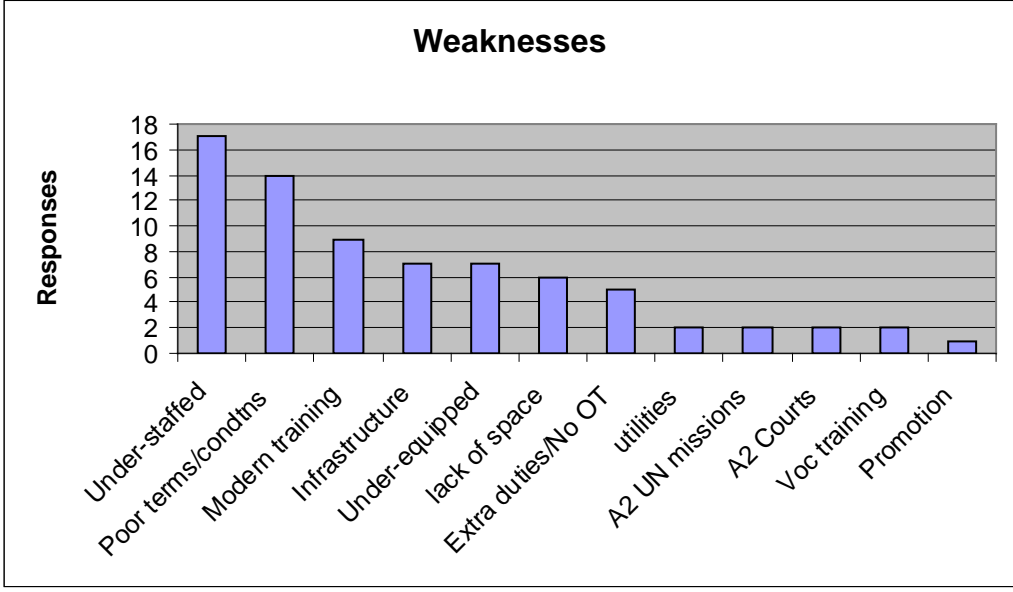
There was a broad range of responses and little agreement on any one particular area. Less than 50% of the views canvassed responded that the training offered prisoners was a strength. However on examination, it was apparent that in many prisons few prisoners can access any work or training (less than 10% of convicted prisoners was cited as the number of prisoners working in the cottage industries in operation in Bogra and Rangpur – there was no space in Madaripur).



Several cited staff training as a strength though it will be seen below that this is also seen as a major failing of the BPS. There were a number of single vague offerings concerning 'counselling' an 'adaptable' or 'correctional' approach.

**Weaknesses**

The question posed was: what are the weaknesses in the BPS? The responses showed closer agreement. All groups were unanimous on the need for more staff. The sense was that at all levels, they were over-stretched.



There was near unanimity on the need for improvements to their terms and conditions of service. This phrase includes: pay, accommodation, health care, education for children, adequate ration, recreational facilities, leave and substitute payments in lieu, high transfer rate (one senior officer observed he had been in 7 prisons in 10 years).

On pay scales, prison officers sought parity with other law enforcement officers (ie police and army) – which is consistent with trends elsewhere. Of interest was the gap between income and average expenditure in a month as suggested in the table above. The comments made were:

‘We are managing our lives with this money’

‘We need three items of clothing, we buy one. We need four eggs, we buy one. We cannot afford fruit.’

‘We cannot maintain our parents on the income, we can just maintain our family.’

Staff and prisoner accommodation was another major concern. Visits to the barracks and family houses for staff showed cramped and sub-standard accommodation (especially in family quarters). Many warders in the barracks had family elsewhere but there was no available space to accommodate them within the prison area (and rental outside was unaffordable). The continuous turn-over of staff in any event led many to settle their families in one place and visit them every 2-3 months for 4-7 days, subject to the availability of leave.

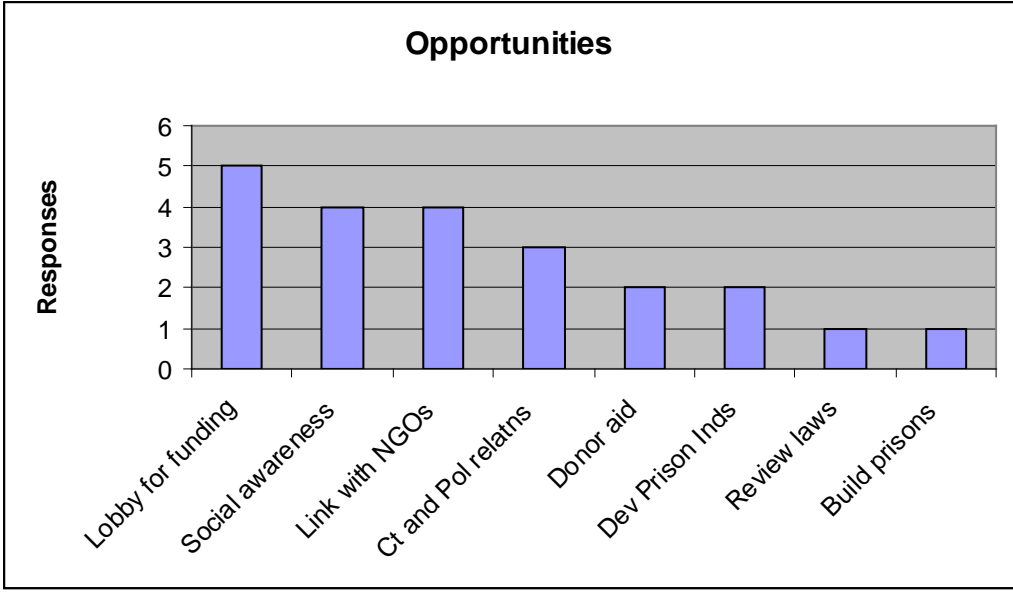
Over half called for more modern training. While most had received basic training (see the TNA report), they had over the years received little else to develop or refresh their level of skills. A few called for ‘modern’ weapons training; but most wanted training in the Jail Code and civilian skills, such as: computers, vocational training, ‘how to treat/behave with prisoners’, or ‘how to develop relations between staff and prisoners’.

Infrastructure includes: watch towers, buildings and protection from natural hazards inside prison (sheltered seating etc). On this last point there was a general complaint from the warders that they had to stand throughout their shift at fixed points within the compound without any protection from the elements.

## **Opportunities**

We posed the question: what could be done by people, agencies, departments, organisations outside the prison service to assist you achieve your mission? This produced a degree of confusion as it was clear that many (especially older warders and officers) were not used to thinking in this way.

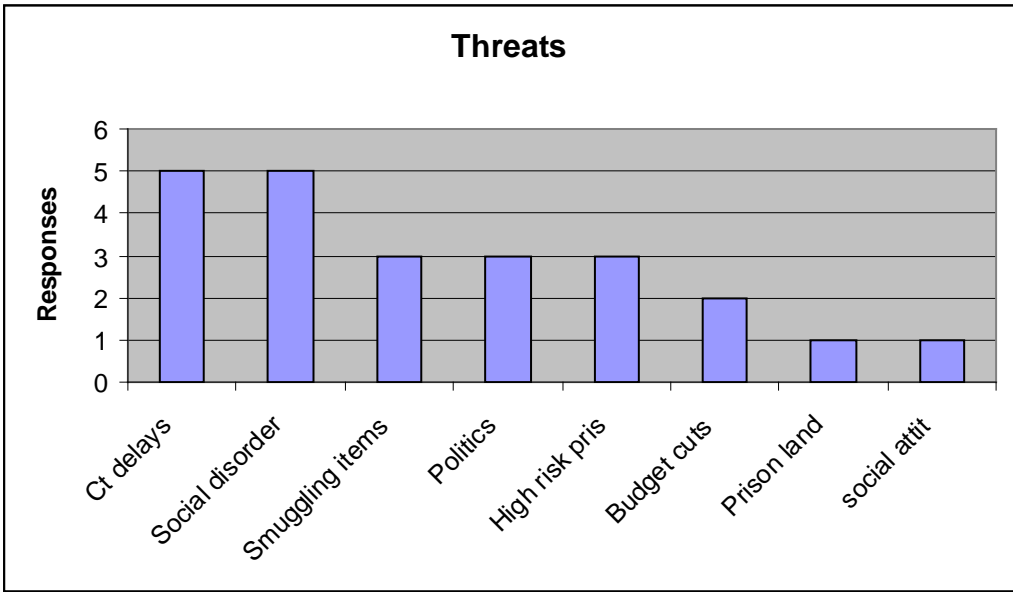
It produced a wide range of responses, some of which were not relevant and are not captured here. Just under 30% thought government should be lobbied to provide extra funds, while several made the link with the donor community.



A surprising number (almost 25%) thought there was scope for closer interaction with the media and civil society to raise social awareness. The same percentage advanced links with NGOs to provide a range of services, including: legal aid, health care, religious instruction, light industries, vocational training, education, after care and employment of ex-offenders.

**Threats**

We posed the question: what is happening, or might happen, outside the prison to undermine your mission and purpose? Similarly this produced a wide range of responses.



The delays in the court process were mentioned by almost 30% of those responding while a similar percentage were concerned with wider social disorder and threats from terrorism cells (JNB was widely cited). Politically inspired police swoops of large numbers of people registered next by over 25% along with the risk posed to internal security by contraband articles (such as weapons or narcotics). There were a number of single threats that ranged from encroachment on prison land and increasingly punitive social attitudes to the failure of the government to ban smoking inside prison.

Time did not allow for the process to continue and to prioritise the issues raised in any of the three prisons. Instead, all staff were asked what three issues they would address as their first priorities. There was complete unanimity on all three, they called for more staff, more space (for themselves and prisoners) and more training.

