



Week 5

Yasmine Bouagga



The awful detention conditions in many African countries have made them the symbol of failing, unjust, and violent states. As a result, prison reform is now a primary concern for the transformation of the state, as well as a new site for international aid. Standards have been developed to guarantee inmates' fundamental rights, and international donors and development organisations are now focusing on the prison sector. A new reform market has thus emerged. Human rights associations and groups defending the rights of former political prisoners have also played a role in changing prison.

In order to gain a concrete understanding of the philosophies and practices of reform, we have gathered together the accounts of people directly involved, as actors or as association activists.

Reform projects take place within different political and social contexts and do not all have the same objectives: improving detention conditions, modernising the administration, training guards...

Different meanings of reform can at times come into conflict.

In summary, should transforming prisons be about having fewer inmates or about building better walls?



Week 5.1

**Defining prison 'standards',
between human rights
and security**

Defining prison 'standards', between human rights and security

Marie Morelle

HDR lecturer in geography, University of Paris 1 Pantheon-Sorbonne, Prodig, Ecoppaf programme

Yasmine Bouagga

Doctor of social sciences, research fellow at CNRS, Triangle research unit (UMR 5206)

Defining best practices for prison



Marie: In reformist discourse, there is a lot of talk about getting African prisons up to international standards. Could you explain this?



Yasmine: First of all, we have to point out that the discourse of prison reform is not specific to Africa! Rather, it has accompanied the development of the penal prison in Europe from the eighteenth century to the present day: reformers from different countries were shocked by the conditions of their prisons, and they travelled to other countries to learn from different models. International congresses on prisons regularly took place in Europe in the nineteenth century in order to establish international standards, setting objectives for reforms. This reformism, led by prison actors, judges, and philanthropists, was behind architectural models based on discipline and hygiene.



Marie: Do you have an example?



Yasmine: Yes! For example, the Tunis Civil Prison of 1906 was built to replace detention centres judged to be unsanitary based on the standards developed during international congresses. It was equipped with running water and electricity, and sought to approximate these models. Reformism is also behind the exchange of experiences (such as conditional release) and best practices in the treatment of inmates, such as the separation of prisoners into different categories: minors/adults, pre-trial detainees/convicts, and so on. Here we have a set of standards that will go on to spread on a global scale.



Marie: So, it was these exchanges of best practices that became international standards?

The development of an international legal framework applicable to prisoners



Yasmine: Absolutely! And especially with the development of humanitarian principles. This was what the International Committee of the Red Cross (ICRC) proposed with the first international commitments on prisoners of war during the twentieth century. The Geneva Convention of 1929 set out the principles of detention with regard to these prisoners of war, and subsequently more general principles for all detainees were established with the Universal Declaration of Human Rights of 1948 in particular, including the prohibition of inhuman or degrading treatment or punishment.



Marie: But this was very general!



Yasmine: It was certainly very general, but it served as a basis for the later development of more precise standards during meetings that brought together prison professionals and jurists who discussed practices in order to develop standards that could spread globally regarding the proper management of institutions, or how inmates should be treated.



Marie: So, these are the standard minimum rules for the treatment of prisoners?



Yasmine: Absolutely, rules that were established and adopted in 1957, and which are referred to as the Standard Minimum Rules (SMR): they set principles, for example, with regard to the layout of premises, the fact that individual cells are preferable to collective ones, or principles relating to law, for example access to care, to medical care for inmates.



Marie: I see! Are there other international conventions?



Yasmine: These rules incorporated other principles of international law when they were updated in 2015. What have been termed the 'Mandela Rules' are an update of the standard minimum rules for the treatment of prisoners, which include new principles, in particular with regard to access to activities. In addition, there are other international conventions that have been adopted, and which are primarily aimed at specific populations: for instance, the Beijing Rules of 1985 (concerning minors) or the Bangkok Rules of 2010 (concerning women).



Marie: Is the enforcement of these standards effectively controlled?



Yasmine: This is an issue that is addressed in international law, especially through the OPCAT, the Optional Protocol to the Convention against Torture, which provides for the establishment of a system to monitor detention conditions among signatory states. In practice, this means that states commit to setting up an independent body to oversee prisons, psychiatric hospitals, police custody facilities, and immigration detention centres, and to ensure that national and international legislation on the respect for fundamental rights is effectively enforced in these places. In Tunisia, for example, a national prevention authority was created in accordance with this international convention.

How to internalise international standards?



Marie: So, is there effective oversight?



Yasmine: The effectiveness of this oversight is open to question depending on local contexts. Everything hangs on whether this authority is actually independent. Does it have the means to operate? Are there courts that people can turn to in order to seek conviction for any violations found? In the end, everything depends on local contexts, on the ability of judges to handle complaints. But what we must note is that the fact that the state recognises these principles gives citizens and civil society organisations leverage to demand accountability in the event of violations.



Marie: In general, how do African states internalise these standards?



Yasmine: African states have developed national legislations, but also conventions at the regional level, especially through the African Commission on Human and Peoples' Rights, which has focused on prison, creating the role of a special rapporteur on prisons and adopting declarations in the context of various international conventions. For example, the 1996 Kampala Declaration on Prison Conditions in Africa, which advocates the use of alternative sentences to reduce prison overpopulation. There is also the 2002 Ouagadougou Declaration, which not only provides for principles relating to rehabilitation, but also principles relating to access to medical care in detention.



Marie: All of these declarations owe a great deal to the work of human rights activists!



Yasmine: Indeed, it is undoubtedly this advocacy work by local associations and international human rights NGOs that has made it possible for these declarations to be adopted. We could think about the work by the organisation Penal Reform International, which was founded by a former Tunisian political prisoner, Ahmed Othmani. This organisation has done a great deal to bring together reformers from different African countries and to develop standards for the reform of African prisons on a continent-wide level.



Marie: So, these texts and declarations, they aren't just a smokescreen?



Yasmine: What is remarkable is that international institutions and cooperation agencies have taken up this issue of prisons, in particular to help countries comply with the prison standards they have adopted. The next step is to agree on the practical interpretation of these standards. For example, when building new facilities, everyone refers to the Standard Minimum Rules, which establish that a minimum of four square metres of space is required per detainee. If we take the example of Tunisia, which is currently building new facilities in order to improve its incarceration conditions, we see that the theoretical capacity of facilities allows for four square metres per inmate. But given the chronic overpopulation of these facilities, it is doubtful whether that amount of space will actually be available to inmates. And as for the more philosophical principles of rehabilitation, one may well raise questions about their implementation in countries that have no basic social services at all, and for which even the feeding of inmates is a problem.



Marie: So, there is still an issue of internalisation of standards?



Yasmine: There is an issue of internalisation of standards, and there is an issue in terms of the tangible and material translation of these standards into practical law for individuals. It is a question of knowing whether they translate into national legislation, which may be very progressive, but sometimes without any means of effective implementation.

The spreading of security standards, another consideration in prison transformation



Yasmine: Another issue involves understanding the place of legislation and practical standards with regard to security, which contribute to greatly transforming prison in a direction that sometimes differs from that of human rights.



Marie: But also provided that you have the material means to implement them?



Yasmine: Absolutely. For example, we could think about the fact that the US Supermax model, a very high-security unit whose aim is to control inmates (through solitary confinement), has pretty much been spreading all over the world. I am thinking in particular about Europe, North America, and South America. It has spread relatively little in Africa given its very high costs. Nevertheless, it is relatively attractive for security reasons, particularly in countries facing gang- or terrorism-related problems. While its spread is limited, it certainly exists in Africa. One example is Pretoria's C-Max prison in South Africa, which is modelled on this principle of a very sophisticated unit of inmate control.



Marie: What you describe in this circulation of standards is that there is a human rights issue, but also ultimately a security issue?



Yasmine: What we need to grasp is that in the globalisation of these punitive practices there is both a human rights dimension and a security technology dimension, and then we have to see how, on the ground, these international standards in terms of law and security are translated tangibly into local dynamics and in territories with highly contrasting material realities.

Key takeaways

International debates on prison led to the development of more or less restrictive rules, which guaranteed the fundamental rights of prisoners and defined standards of best practice in prison.

International conventions and prison standards vary locally, and have multiple forms of internalisation.

In Africa, several declarations have established guidelines for a transformation of prisons in order to make them more respectful of inmates' rights and more focused on rehabilitation.

These texts, which serve as common points of reference for reform efforts, are rarely entirely effective on the ground, either due to material obstacles (the lack of resources of the penitentiary institution) or political obstacles: authoritarian contexts or, more commonly, security concerns may lead to local interpretations of standards that are very restrictive for prisoners, as seen in the case of high-security prisons.

Reference list

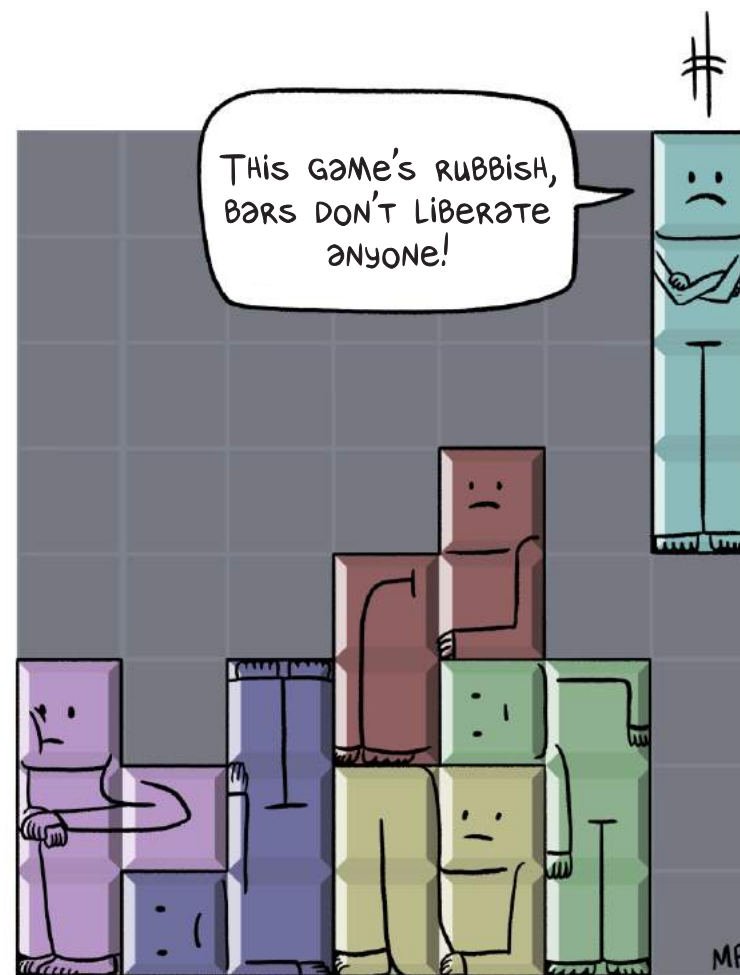
BELAID Habib (1997). 'Lieux de détention et statut du prisonnier politique dans la Tunisie coloniale (1920-1947)'. *Rawafid* 3: 79-104.

OTHMANI Ahmed (2002). *Sortir de la prison. Un combat pour la réforme des systèmes carcéraux dans le monde*. Paris: La Découverte.

Penal Reform International (2008). *Africa's Recommendations for Penal Reform*. London: Penal Reform International.

SCALIA Damien (2015). *Droit international de la détention : des droits des prisonniers aux devoirs des États*. Munich: Helbing Lichtenhahn.

DETENTION STANDARDS: 4 SQUARES PER PERSON





Week 5.2

Reform markets and the circulation of models

Reform markets and the circulation of models

Marie Morelle

HDR lecturer in geography, University of Paris 1 Pantheon-Sorbonne, Prodig, Ecoppaf programme

Yasmine Bouagga

Doctor of social sciences, research fellow at CNRS, Triangle research unit (UMR 5206)

Development aid and prison reform



Marie: There is always talk about development programmes in Africa, but do prisons have a place in these programmes?



Yasmine: Yes, and this is relatively recent. Until the 1990s, development was mostly understood in its socio-economic dimension; since then, international institutions have focused on issues of good governance and the rule of law, and, as a result, programmes in the field of justice and security have proliferated.



Marie: Are these security and justice reforms mostly important when it comes to political transitions?



Yasmine: Absolutely! The challenge of stabilising countries post-crisis means that prison becomes an important field of intervention at such moments in time.



Marie: And who provides funding?



Yasmine: It is international donors, who are mainly the world's wealthiest countries, who develop these programmes through their cooperation agencies, such as the French Development Agency, USAID, or Germany's GIZ. These wealthy states may also fund programmes indirectly through UN agencies or through NGOs. In this case, we are talking about international aid, but we could also talk about the market of prison reform.

Logics of supply and demand



Marie: Why a market?



Yasmine: In the sense that there is supply and demand. There are some states that wish to finance certain reforms, certain transformations, and others that wish to implement some changes at home.



Marie: Where does their interest lie in funding prisons?



Yasmine: Well, there are of course ethical issues in terms of promoting human rights; pragmatic issues relating to the security guaranteed by the stability of neighbouring countries, and the effectiveness of their police and judicial system, which are also very important in advancing economic investments. For the European Union, justice and prison reform programmes are part of strategies to deter migration, by attempting to guarantee the same rights in migrants' countries of origin as those they would enjoy in EU countries.



Marie: So there also logics of influence!



Yasmine: Absolutely. We see that cooperation activities, regardless of their field of action, carry with them significant diplomatic stakes. That's why French cooperation has close ties with its former colonies, and so much so in the justice sector that the judicial systems are extremely closely related. However, for cooperation agencies, as well as for states, it is also a case of not losing influence to new powers, such as the United States or China.



Marie: Is China involved in prison reform?



Yasmine: Not all programmes are covered by international aid, but we know for instance that China is involved in the construction of dozens of prisons in Algeria; and it is also active in Cameroon. So, is it a reform actor or simply a construction industry actor? Things are not yet altogether clear.

The case of the European Union



Marie: You talked about the European Union, could you come back to that a little?



Yasmine: The European Union is the main funder of prison and justice sector reforms in Africa. The EU funds programmes in Cameroon, Morocco, Chad, Mauritania, and so on. In the case of French-speaking countries, it is often the French who continue to hold a dominant position in such programmes, but not exclusively so. The European Union has brought with it a certain pluralistic logic, by imposing consortia wherein different states are brought together for the same project.



Marie: So the challenge is to contribute different experiences and models?



Yasmine: Yes, that's the goal, even if in practice it is often the same experts moving from one country to the next. This is because the European Union sets criteria, namely skills-based criteria based on years of experience in the justice or prison administration, and on the accumulation of this experience in international programmes. Hence, the number of experts who meet these criteria is relatively small, and you can see the same expert moving from a project in Chad, in Mauritania, then to Algeria, Tunisia, and Morocco, and, in so doing, spreading the same models.

The circulation of models



Marie: Ultimately is it the same model being transferred?



Yasmine: Yes, there are recurring formulae. For example, the development of alternative sentences to reduce the use of incarceration. You see the same experts proposing reforms towards the establishment of probation in the different countries where they are involved. These practical methods are also the product of international recommendations.



Marie: Are the experts themselves the ones who decide on the directions their work takes?



Yasmine: It's not just them, because donors will list their expectations. These expectations will be in accordance with their interests and international recommendations, leading to a range of goals and activities that experts must implement. This is what is referred to as the 'terms of reference'. The terms of reference can be quite general, for example reducing the prison population, improving detention conditions, and promoting rehabilitation. They can also refer to specific activities relating to the training of prison staff or the implementation of a statistical management system for the prison population.



Marie : So it's up to the experts to spell out how to go about it?



Yasmine: Absolutely, but also to deal with the expectations, requirements, and constraints of the recipient authorities.



Marie: Do you mean the authorities directly affected by the reform?



Yasmine: That's right, the countries where the reforms will be implemented. And these authorities, of course, have their say: they express needs, they more or less take up certain proposals or certain demands by international donors. For example, regarding the gender approach, international donors will determine priority populations and reforms based on certain values and recommendations. In the key orientations of development, particular attention is paid to the specific vulnerability of minors and women. Therefore, even though women represent a very small proportion of the prison population, not least in Africa, they are the beneficiaries of programmes specifically designed to improve their detention conditions or their rehabilitation.



Marie: So, in order to get hold of aid, a country should develop at least a whole section on female inmates as part of a wider prison reform project?



Yasmine: Exactly! And this may commit it to take into account, to a certain extent, the specific problems of a neglected part of its prison population. But such recommendations may come into conflict with the way in which a prison problem is framed locally. In short, there is a market, in which the terms of reform will be determined more by the supply side—the supply of international funding—than by the demand side—the needs of the countries concerned.

The actors of the reform market: Consultancy firms, development agencies, NGOs



Yasmine: It must be understood that, within this market, there are also a whole range of intermediaries, who are primarily the public and private operators of these programmes, including consultancy firms, NGOs, and cooperation agencies.



Marie: So, it's a business?



Yasmine: Absolutely. Especially since the sums involved are significant. Some companies have specialised in responding to calls for tenders. We could think of the British firm Adam Smith International or the French firm Sofreco. These firms are at the heart of an international economy of the circulation of expert knowledge, and they can work in consortium with NGOs, meaning that the borders between these for-profit private operators and non-profit operators are sometimes porous.



Marie: What about public-sector cooperation agencies?



Yasmine: These agencies have had to reorganise and transform themselves in order to become competitive in this reform market. This is the case, for instance, for Expertise France or JCI (International Justice Cooperation), which is the operator for the French Ministry of Justice, which has a very important role in the reform of prisons since it is able to call upon skilled people from its administrations, including the courts, prisons, etc., who are able to intervene abroad on account of their experience. As such, the agency is present in different countries of Africa and elsewhere in the world.

The positioning of beneficiary countries



Marie: You talk about international donors, cooperation agencies, and private firms. I would like us to return a little bit to the countries in question and how they position themselves?



Yasmine: We must note that the administrations concerned are not monolithic. They are made up of individuals and professional groups with different stances with regard to reform. Some are more favourable, others are more resistant, and some do not agree with certain solutions put forward. For example, when it comes to combatting prison overpopulation, everyone agrees on the assessment of critical overpopulation and that something urgently needs to be done about it. International donors prefer solutions based on legislative reforms: changing penalties or promoting alternative alternatives. sentences.

However, this requires the effectiveness of the legislator and therefore of the parliamentary process. And for some people in the countries concerned, it's too long a wait for the laws to be changed. And so they would rather new prisons be built in order to respond immediately to these emergencies. This is particularly the case in post-crisis countries, such as Côte d'Ivoire.



Marie: That's somewhat ironic, because a prison reform project is going to be funded, there is going to be an attempt to develop alternative sentences, but what you're saying is that, in the end, they are going to build more prisons?



Yasmine: Yes, this can be a little discouraging; it is a frustrating assessment shared by some people working in these development programmes. But it would be an unfair assessment, since most of these reform projects have not been finished yet. It is a very big thing to change a penal philosophy, it takes a lot of time to change values, scales of punishment, and so on. Meanwhile, everything that has to do with facilities, security, and architecture can be changed much faster. On the other hand, on the ground, we must also note that we are actually seeing changes that are not necessarily part of these large funded projects and that are sometimes developed with more modest ambitions, much more locally, while still being of great importance for inmates. These may involve renovating the kitchens of a prison facility or fitting cells with fans, which can be very important in hot countries. These reforms are sometimes put in place by local philanthropists or by organisations such as the ICRC, and far more discreetly than in the case of large projects financed by international donors.



Marie: So, in short, although the transformation of prison is a market, not all actions aimed at transforming prison are necessarily part of this market.



Yasmine: Precisely, and local contexts always have an impact on shaping prison interventions. It is not always the "big projects" that have the most visible immediate effects.

Key takeaways

Prison reform is now a concern of development aid policies, with a focus on strengthening institutions and supporting the rule of law. Donors finance programmes, and a variety of different actors take up positions in relation to these programmes. These actors include cooperation agencies, consultancy firms, and NGOs.

As a result, there is what can truly be described as a reform market, defined by logics of supply and demand, which promote certain specific priorities or certain models.

However, the demands of the administrations of the countries in question transform these models in accordance with local concerns. In practice, we observe the rapid appropriation of security techniques and the adoption of projects for the construction of new prisons.

Despite all of this, reform projects are not disappearing. Rather, they are being led by more discreet actors, such as NGOs or charities working in prisons on a local level.

Reference list

- BOUAGGA Yasmine** (2016). 'Une mondialisation du "bien punir" ? La prison dans les programmes de développement'. *Mouvements* 88, 4: 50–8.
- CHÂTAIGNER Jean-Marc** (2004). 'Aide publique au développement et réformes des systèmes de sécurité : l'improbable rencontre du Dr Jekyll et de Mr Hyde'. *Afrique contemporaine* 209, 1: 39–49.
- COLINEAU Hélène** (2014). 'Interroger la diffusion des normes dans l'aide européenne aux pays en transition'. *Politique européenne* 46, 4: 118–40.





Week 5.3

**How to implement reform
on the ground:
An expert's account**

How to implement reform on the ground: An expert's account

Yasmine Bouagga

Doctor of social sciences, research fellow at CNRS, Triangle research unit (UMR 5206)

Philippe Pottier

Prison expert, former director of the Penitentiary Integration and Probation Department in France, former director of the National School of Prison Administration



Yasmine: Today we will talk about how to undertake reform on the ground by listening to the account of an expert. Philippe Pottier, hello.

Becoming a prison expert



Yasmine: You work as a prison expert on reforms in various African countries. What led you to undertake these missions?



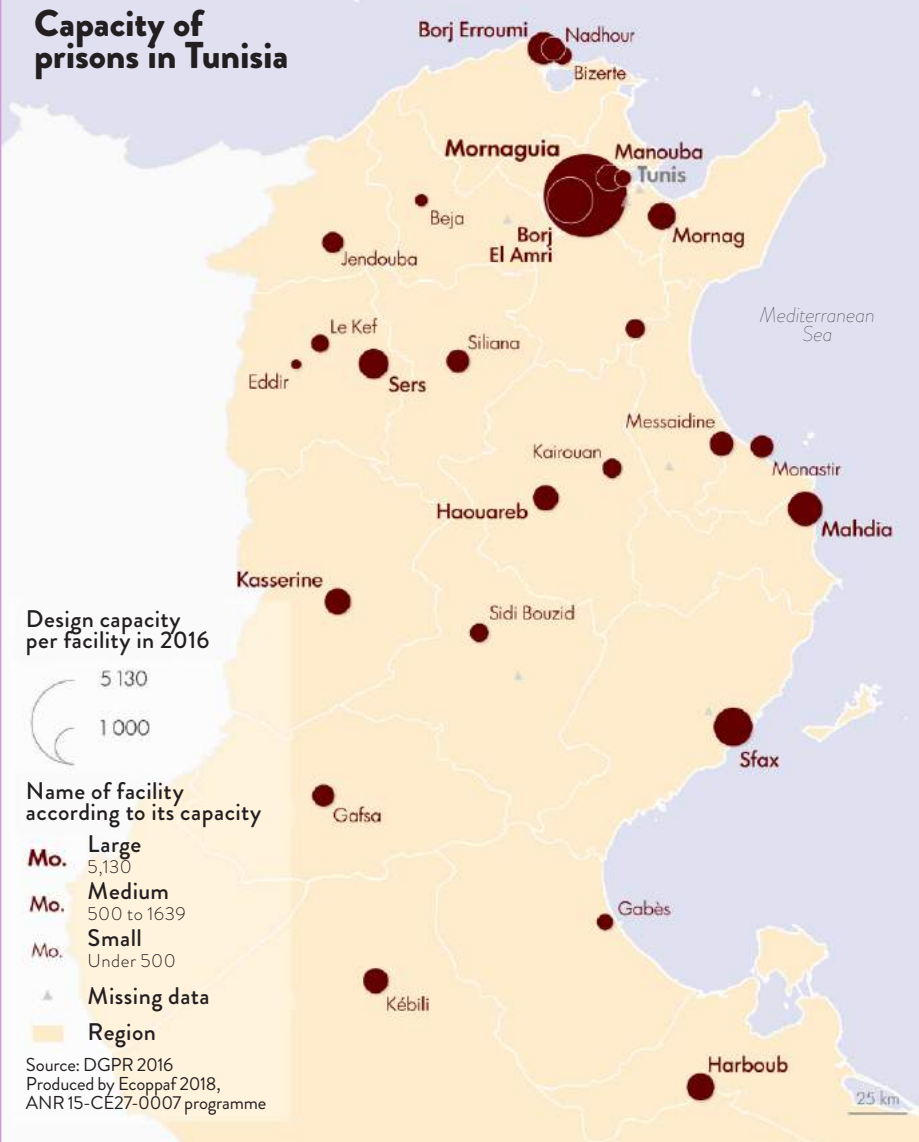
Philippe: What led me was basically my prison experience. I worked for around forty years in the prison administration as an educator in various prisons, in the probation service, and at the ministry as well. I was director of the National School of Prison Administration, and at the time, as director of this school, I rubbed shoulders with many colleagues from other countries, as the school had cooperation agreements with those countries. And that's how I began the more sustained work that I do now, as an international prison expert.

Addressing the problem of prison overpopulation



Yasmine: Currently, you are operating in Tunisia, a country with a very high rate of prison overpopulation. We see the capacity of facilities on the map, a capacity that has exceeded 150–200%, and therefore this overpopulation is a major issue for reforms. What measures are being put forward to address this problem?

Capacity of prisons in Tunisia





Philippe: There are two main lines of work: The first is that of developing alternatives to incarceration and penalty adjustments, which barely exist in Tunisia. These alternatives involve developing other forms of punishment than imprisonment, by punishing people outside of prison walls. Penalty adjustment involves developing forms of punishment complemented by prison sentences. So of course, these strategies should have the effect, if we are able to develop them, of reducing the number of inmates, since judges will be able to hand out other types of sentences and prison will not be the only available sanction. The other line of work involves working on detention conditions and improving daily life in prison—as much as that is possible in these difficult conditions—so that it does not hamper, or hampers as little as possible, the rehabilitation of inmates.

Working with local actors



Yasmine: In concrete terms, how should we work? How do we convince stakeholders at different levels, at decision-making levels and at practical levels, that these changes are possible and desirable, and that they can lead to a better system for everyone?



Philippe: There is a climate of trust that needs to be established, because there are many international experts who do the rounds in these countries. I believe that in the case of experts such as myself, the fact of having worked for a very long time in the prison administration is a positive, because in a sense I am a colleague for my Tunisian counterparts. When I walk into a prison, it's clear that it's not the first time that I'm entering a prison, and that I simply know how it works. So there is a kind of trust that is established, and it is obviously very important, because these should not be reforms that fall from above and that merely come about because we decide to say in a contract that there is a need for reform. In addition, trust needs to be established with the country's authorities, be they political authorities, correctional officers, or judges. This means that we cannot implement such reform projects if the expert is confronted with a lack of desire for reform.

The political context conducive to reform



Yasmine: Is there a political context that is more conducive to reform?



Philippe: Of course, it's clear. This may seem trite, but a context favourable to reform is one in which people in the recipient country—officials in the recipient country—are convinced of the need for reform, and in which this is not simply done in order to appear to be meeting international standards or to keep up appearances. This is not a given in all countries. I have experiences in other countries where, after a while, I have to ask myself: 'In the end, what will the work I'm doing actually achieve, other than being able to say that there were some experts who came and that we worked on a reform?' Currently in Tunisia, given a political context that is open to reforms, and also because of specific people, including the current head of Tunisia's prison administration, you get the feeling that there is a desire for reform and to bring about proper change. What does it mean to bring about proper change? It means ever better treatment of those entrusted to the prison service.

The reference to international standards



Yasmine: As a reform actor, you act according to the requests of a recipient country. Does it sometimes happen that requests are out of step with what a donor wishes to fund? I am thinking, for instance, about measures to strengthen the security system of prisons. Are there discrepancies between visions for the reform in this kind of work?



Philippe: That can happen. As far as I am concerned, I only operate within a European framework. Therefore, all of my actions, and the actions of the experts I work with, are guided by the standards of the Council of Europe or the European Union, as well as United Nations standards; this includes European Prison Rules and European Probation Rules. This whole set of rules is based on human rights

declarations—taken from the Universal Declaration of Human Rights—and on the concept of human rights. So that is a key element that guides the work I do. Contracts are only possible if we place ourselves in this international context of advancing human rights. This inevitably eliminates a number of possible projects. And indeed, the idea is to implement prison reforms that seek to promote rehabilitation and avoid recidivism among persons entrusted to the prison administration. If this framework is fixed, the contract can go ahead, but it is generally well established in what is expected under the contract.

Modalities of support for institutional reform



Yasmine: These different types of contracts fall into different categories. I particularly have in mind the fact that the European Union has different modalities of intervention for international aid: twinning, budget support, grants. Can you tell us about the differences between reform work in these different modes of intervention, and the advantages and limitations of these modes of intervention?



Philippe: Yes, it is indeed quite complex. There are several legal frameworks involved. I will explain a few of them. Twinning is an agreement between countries in the European area and beneficiary countries, under the auspices of the European Union. For instance, the twinning I just completed in Tunisia, on prison and probation issues, was led by France alongside Germany, with Tunisia as the recipient country. In this case, prison officials from the twinned countries were those who took part. This is really a country-to-country, state-to-state relationship. In terms of technical assistance, that's different. The European Union issues a call for tenders, organisations respond, and they send experts, who may be former prison officials, but not necessarily. So it's something that is generally more focused on a particular theme, whereas twinning is much more open-ended, and then there may be disagreements with NGOs and different types of agreement. As for the limitations and advantages of all this, based on my own experience? I find the formula of twinning to be particularly interesting, because it makes it possible

to bring into play professionals on prison matters—as I am involved in such matters—and it promotes the link with local stakeholders, since both sides are prison officials. We are not consultants who just come to do their work and then leave; we have a different motivation because it is our job to constantly work with inmates. I think it's a very appropriate framework. That said, it's a weighty framework—it's not easy to implement, because you need to have a certain number of officials available to intervene. It involves a rather hefty infrastructure. Technical assistance is easier, but its framework is perhaps less impactful.

Can we change the philosophy of punishment?



Yasmine: In these different types of intervention, we observe that some focus more on legislative reform, on changing a legal framework, for example in order to create the possibility of probation, whereas others focus more on local experiments, such as setting up a pilot project. How do these approaches fit together and how might they contribute to changing a country's punitive culture?



Philippe: Changing a country's punitive culture is very difficult. It's difficult in any country. In France, the death penalty has been abolished. But I don't know what the result would be if we were to conduct a referendum right now. So there is work to be done at the level of policy, of law, there are choices that need to be made, which are inevitably political at any given time, so that the requirements for the reforms to take place can be written down in law, so that they have the right legal framework. But clearly a reform cannot just be a law. We have an example of this in Tunisia, where community service was instituted almost twenty years ago. It still hasn't been implemented because, although a law was passed, there was little thinking about how to put it into effect: Who is going to follow it up? Will services be created to implement it? No, and as a result no one talks about it. So, you need to act on both fronts: the law and the practical technical modalities—good professional practices that enable progress to be made. I spoke earlier about international standards; in these standards, there are many things that do not require laws to come into being, which are primarily matters of good professional practices.



Yasmine: From what you have said, it is clear how negotiations of an almost diplomatic nature on the adoption of international standards can fit together with the implementation of this transformation by practitioners on a day-to-day basis within the institution.

Key takeaways

Prison reform experts are people who circulate experiences, models, and standards from one country to another. They work in different institutional and political contexts, in accordance with the demands of the so-called beneficiary institution and the context set by the donor.

This expertise in reform can lead to proposals for organisational or legislative changes, or for staff training. On the other hand, transforming the entire philosophy of punishment is an ambitious enterprise that should be considered in a long-term perspective.





Week 5.4

The role of NGOs and civil society

The role of NGOs and civil society

Marie Morelle

HDR lecturer in geography, University of Paris 1 Pantheon-Sorbonne, Prodig, Ecoppaf programme

Yasmine Bouagga

Doctor of social sciences, research fellow at CNRS, Triangle research unit (UMR 5206)

Sasha Gear

Director of the NGO Just Detention International—South Africa (JDI-SA), specialising in combatting sexual violence in prison in South Africa

Associations acting as whistle-blowers or reform partners



Marie: Prisons appear as the sovereign domain of the state, yet we see NGOs and associations involved in their reform?



Yasmine: This may indeed seem surprising, because the prison world is difficult to access. You need to ask for authorisation to enter, and this is sometimes refused for security reasons, or because the authorities do not want you to see how they exercise power. However, human rights associations have long taken an interest in prison, because it is a place where many violations of fundamental rights occur, and also where people who are repressed by the state are confined. These associations can act as whistle-blowers, thus enabling prison reforms to be triggered.



Marie: Do you have any examples?



Yasmine: Many associations publish public reports on violations in a given type of facility, in a given remote region, or concerning a given population category, and, more generally, they produce studies on the dysfunctions of the justice system that prompt the prison world, the penitentiary system, to be called into question. These associations sometimes operate as part of transnational networks, such as Amnesty International or the International Federation of Human Rights Leagues, and such networks allow prisons to be problematised, while also making them a sector for intervention: for example, to improve detention conditions or to change penalties that are too repressive.



Marie: So, in this case, are they against the state?



Yasmine: To a certain extent, yes, because they speak critically of the state, but they can also become partners of the state in order to lead it to reform its practices and bring them in line with its own laws. This is particularly the case of Prison Reform International, Prisonniers Sans Frontières, and Just Detention International-SA, which operates in South Africa. Sasha Gear works for this organisation, and she explains how his NGO came to be involved in prisons in South Africa, which has the highest incarceration rate on the continent.

Combatting sexual violence in South African prisons



Sasha: During apartheid, prisons were among the main institutions of black oppression, and they were part of the state apparatus. With the advent of democracy and the end of apartheid, transforming the nature of our prisons seemed vital to everyone. So it was mainly a debate about what our prisons should look like, and the purpose they should fulfil.

Some of the most discriminatory laws were removed, and that was very positive... Our criminal justice policies became very progressive in a way. But at the same time, the reality of prison for those behind bars continues to be absolutely terrifying. Prisons do not serve any positive purpose; in reality, they are of no use in rehabilitation, contrary to what we had hoped. And many people continue to suffer violence in detention. We have a situation where, contrary to our dreams, we are confronted with a very damaging prison system post-apartheid. But what has also happened, after apartheid, is that

there has been a real openness towards civil society, and civil society organisations have been strongly involved in the development of legislation and of new policies. In the early 2000s, there were three officials working in the pre-trial detention section of Pollsmoor Prison in Cape Town, which is one of our largest prisons, and among the most notorious due its violence. These officials were shocked by the sexual violence they witnessed, so they sought out organisations that could help them find out how to solve this problem of sexual violence. So they did a Google search and they found our parent organisation, which at the time was called 'Stop Prisoner Rape', which is now called Just Detention International (JDI): they invited the organisation to come to South Africa, to study the problem and see how they could help solve it.

At the time there was a very open and progressive director of correctional services, and he was very concerned about the problem of sexual violence. He invited JDI and another organisation, the Centre for the Study of Violence and Reconciliation, to help the administration develop a policy to combat sexual violence. As in other countries across the world, sexual violence in prison is something that people have heard about, but it is considered part of prison life, something that you can't do anything about, and people often joke about it. There is a lot of prejudice and stigma attached to it. Now, at JDI-SA, we are working to help the government implement this policy, which is about developing tools to examine where an inmate will be held when he arrives at a facility. This is a really important decision. Is he particularly vulnerable or not? Does he present the risk of being an aggressor or not?

In addition to these tools, we provide prison staff with training to help them recognise situations where someone may have been the victim of assault, because, given the stigma involved, it is very difficult for someone to come forward and report what they have experienced. It is crucial that guards are sensitive to the dynamics surrounding assault and that they are able to notice these dynamics, as well as the various risks or signals that indicate that an inmate may be in difficulty. So we carry out this work with the government, and we also do a lot of work with the victims.

Changing the image of prisoners in society



Marie: What we can learn from this account is the very important role of NGOs in changing the image of prisoners in society?



Yasmine: Indeed, they play a key role in working on representations of prisoners and of prison. They can help to combat prejudices and promote greater awareness of injustices. Associations, in this regard, enhance awareness of prisoners' rights both inside and outside the institution. The commitment of civil society is thus key to changing prisons.



Marie: Yes, but what is 'civil society'?



Yasmine: It's true that the term 'civil society' is a catch-all term; it's vague and unclear. What it refers to is a heterogeneous set of non-state actors, which are both human rights associations—run by lawyers, for example—and international organisations. But we must not forget the role of the media, which acts as a major opinion former. And we can think of other actors, such as artists, whose work, and whose perspective, can lead to changing the representations of prisoners.



Marie: What I get from what you're saying is that, in order to change prisons, you have to be able to change representations...



Yasmine: Absolutely, because, ultimately, prison is just the end of the chain! And to change what happens there, we must first change the way the justice system works. To have effective leverage on prisons, we must act on how the justice system, the courts, and the judicial system work, and we must also change representations in society of what is just, what order means, and what is fair.

To this effect, we must act more broadly on how people conceive of these notions. There are certain moments that are more or less opportune for raising these questions, and moments of political transition in particular make it possible to question the role of the state and the definition of democracy and of the justice system more generally. But as we saw from Sasha Gear's account, these moments can also be times of instability that lead to feelings of insecurity and a wider use of incarceration. And that's why it's very important to work on the image of prisons and prisoners, because this is what will enable a wider questioning of the meaning of punishment in society, and to think of a way of delivering fairer security for all of its members.

Bibliographie

AESCHLIMANN Alain (2005). 'Protection of detainees: ICRC action behind bars'. *International Review of the Red Cross* 87, 857: 83–122

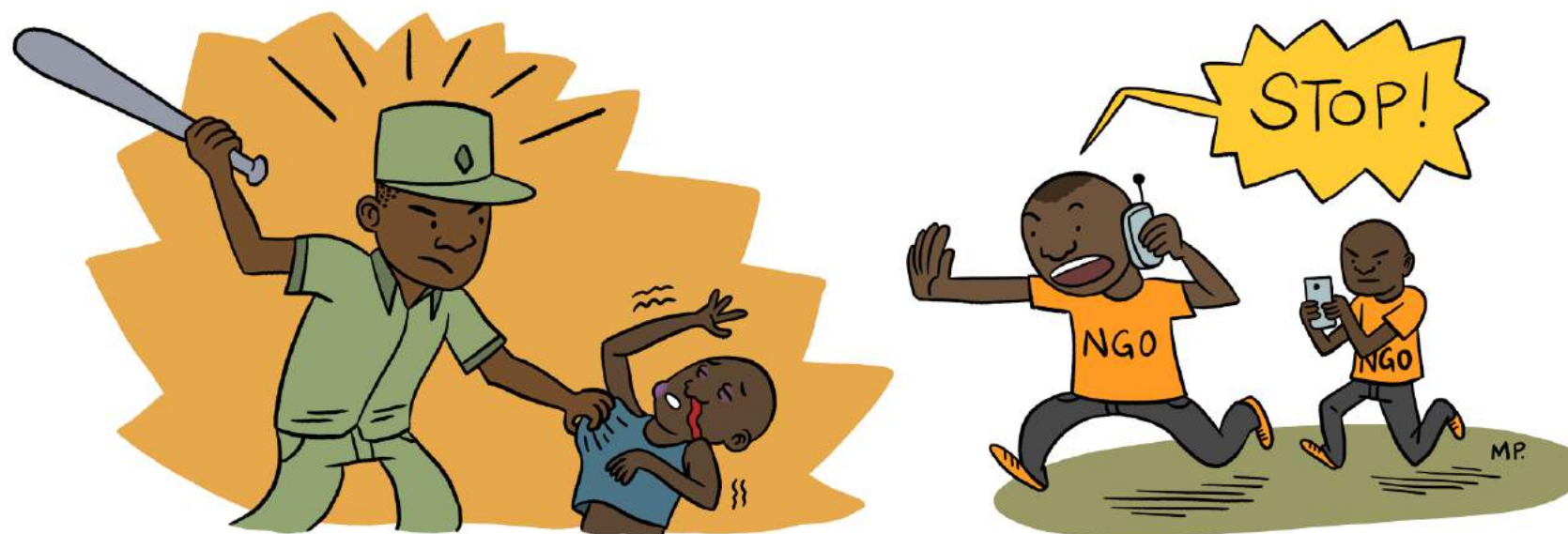
Human Rights Watch (2013). 'Cracks in the system. Conditions of pre-charge detainees in Tunisia'. HRW

Key takeaways

Although prison appears to be the sovereign domain of the state, associations, NGOs, and civil society more broadly can nonetheless play an important role, both as whistle-blowers, drawing attention to potential violations of prisoners' rights, and as partners for improving detention conditions and discussing the meaning of punishment.

The South African case demonstrates an instance in which prison staff—hoping to resolve the problem of sexual violence in prisons—called on the help of an NGO to develop training and awareness programmes.

The work of these NGOs and associations is also important in changing how prison and prisoners are viewed: in this sense, artists and the media can also play a role in supporting prison reforms by questioning representations of incarceration and criminality.





Week 5.5

**The experience of reform from
the perspective of a former prisoner:
Pierre Claver Mbonimpa**

The experience of reform from the perspective of a former prisoner: Pierre Claver Mbonimpa

Yasmine Bouagga

Doctor of social sciences, research fellow at CNRS, Triangle research unit (UMR 5206)

Pierre-Claver Mbonimpa

President of the Association for the Protection of Human Rights and Incarcerated Persons (APRODH), Burundi

The involvement of associations in prison reform



Yasmine: When we talk about detention reforms, we often forget that they may have their origins in individuals' personal experiences of imprisonment. Pierre Claver Mbonimpa, you are a politically committed activist, and you yourself have experienced prison, as a result of which you have become specifically committed to defending the rights of prisoners, creating an association to this end. You talk about this experience in your book, *Still Standing*, which gives a first-hand account of this experience and the origins of this commitment. Could you tell us what led you to become a committed advocate of prison reform in Burundi?



Pierre-Claver Mbonimpa: Yes, I am a committed human rights activist. I became involved in the protection of the rights of individuals and inmates in general, and human rights in particular. I was incarcerated and I saw what happens in prison. And personally, I was abused, I was tortured, and after seeing what had happened to me, I told myself that others must be protected so that the awful things that happened to me do not happen to others. That's why I often say 'do not do unto others that which you would not have them do unto you'. That's the wink that I often give the authorities, because I know that prison... it isn't good, but it's a necessary evil. You don't know if tomorrow you will be the one going to prison, because there is no formula to going to prison. So that's why, seeing how I had an awful time in prison, seeing how my fellow inmates were abused, I told myself that I needed to set up an association defending the rights of prisoners. Later on, I broadened the scope of action and created an association that defends human rights in general, and the rights of prisoners in particular.



Yasmine: So, initially, you created an association in support of prisoners' rights while you were still in prison. How were you able to do that?



Pierre-Claver Mbonimpa: I had the idea when I was in prison, but I put it into practice upon my release. And, if I remember correctly, it was in April 1997.



Yasmine: And the aim of this organisation was to improve prisoners' detention conditions. You say that you have created libraries in prison, for example?



Pierre-Claver Mbonimpa: I did exactly one year and eight months without being brought before a judge. The other inmates used to come to me and tell me that they had just done three years, four years, five years, without being tried. That frustrated me, that hurt me. I told myself that we had to help these prisoners, these people who are left to their own fate. That's why I thought of helping them, through the organisation that defends prisoners' rights.



Yasmine: You just mentioned people detained without trial. One of the first victories of your organisation was to produce a report for the Ministry of Justice that showed the extent of this detention without trial, where people could go to eight years without being brought before a judge. And you tell us that the minister himself was very surprised to learn about this, and that he decided to release many people.



Pierre-Claver Mbonimpa: Yes, I approached the Minister of Justice and I told him that there were inmates who had spent many years in prison without being tried. The minister didn't know why that was the case, so he observed, he analysed, and he found out that there were judicial police officers who put people in prison and did not pass on the files. So the minister carried out an inspection of all of the country's prisons and found that there was a large number of prisoners who had gone a long time without being tried. He decided to release them. There you go, I thought, this is our victory. If I remember correctly, they released over 700 prisoners who were being held without having been tried.



Yasmine: So your association has truly managed to create a partnership with the authorities in order to improve the functioning of the judicial and penitentiary system?



Pierre-Claver Mbonimpa: Indeed, when I created this association, my idea was to work in partnership with the authorities, especially with the Ministry of Justice, with the Department of Prison Affairs. Fortunately, they gradually got to understand me, which is why our goal was achieved, because we found later on that the inmates had been humanised. That's really something I'm delighted with. I told you earlier that I was personally tortured. Now, torture is awful, it's damaging. So when I looked at my fellow prisoners, many of them had been tortured in custody, particularly by the police, but the perpetrators were not prosecuted. Afterwards, I had the chance to learn about the Convention Against Torture, which I applied in Burundi. We held seminars, we organised meetings with prison authorities, with judicial authorities, with authorities from the justice system, in order to combat torture. Fortunately, I was successful, as torture was later criminalised.



Yasmine: And in what you are saying, international law has a very important role in supporting prison reform. Have international organisations and other associations been able to help develop partnerships to change prison in Burundi?



Pierre-Claver Mbonimpa: Yes, indeed, the experience I have, where did I get it from? From international organisations. I could mention, for example, Penal Reform International, the ICRC, Amnesty International, Human Rights Watch. All of these organisations helped me to make positive progress in the field of prisoners' rights, in human rights. I remember that when Penal Reform International organised an international conference on detention in Africa, I was invited as an expert on places of detention to explain to other countries how I managed to set up an association that defends human rights, and also how I managed to convince the government, the authorities, to accept that there was an association that defended prisoners' rights, despite the fact that many of those in power were saying that defending the rights of prisoners equates to defending the rights of wrongdoers.



Yasmine: It is true that it is difficult to have this external perspective accepted, and you mentioned Penal Reform International, which was also created by a former political prisoner, Ahmed Othmani, who was imprisoned in Tunisia before creating this organisation in exile. And as for you, you showed in Burundi that it was possible to bring to bear the perspective of civil society in order to bring about prison reform. In your book, you also speak about an important visit by Nelson Mandela to Burundi's prisons, which came as a real shock to the country's prison administration.



Pierre-Claver Mbonimpa: Yes, I had the good fortune of meeting Ahmed Othmani of Penal Reform International. That's why I told you I had been invited as an expert on places of detention; it was thanks to Ahmed Othmani of Penal Reform International. I also had the good fortune of Mandela visiting Burundi's prisons, and I myself visited the prison where Mandela was detained; I saw where he had been detained. The message he sent to the Burundian authorities when he visited Burundi's prisons gave me a great deal of comfort, because it made it possible to change things for the better, when Mandela said: 'Are there really people in Burundi who believe in God while abusing prisoners in this way?' And that truly delighted us because it allowed us to achieve our goal.



Yasmine: What was your goal? Could you summarise the goals of the association?



Pierre-Claver Mbonimpa: First of all, with regard to prisoners, our goal was that prisoners' rights be respected. Even if you are a prisoner, you have rights just as you have duties. That's why, as a human rights advocate, I took that path. A prisoner should learn that he has rights as well as duties. There were prisoners who were being arbitrarily detained without trial, before being released by the Minister of Justice. Torture was criminalised, in 2006 I believe, and, as a result, the Penal Code of Burundi, which criminalised torture, became a very powerful weapon for us in combatting torture. I can safely say that, up until 2015, torture was no longer something we saw in Burundi. Even for judicial police officers; before, it had been their work tool, but, up until 2015, torture was no longer seen! That was another one of our victories. But, unfortunately, since 2015, torture has resurfaced. Abuse has resurfaced. Our country is sick after all. Prison overcrowding had been relieved. But today, if we look at the number of prisoners, which amounts to over 11,000, this is the first time we have reached a figure this high. Why? Because of poor political conditions, because of poor governance, because of the absence of civil society, and because, in Burundi today, there are no longer any civil society organisations that are allowed to visit prisons or jails—none. This is why we have a great many problems today with regard to respect for human rights.



Yasmine: You have shown that you achieved important victories that were brutally undermined in 2015 due to the political crisis, but, in your opinion, how might it be possible to firmly establish a sustainable prison reform, in such a way that it cannot be undermined by the prevarications of the authorities?



Pierre-Claver Mbonimpa: And that's what hurts for me. I spent years doing this work, and it was destroyed in less than a month, I would say. So now, I would say that we are back to square one, when torture was permitted. Today, we are trying to see how we can return to reason, how to respect the law. That's why we released the book, *Still Standing*. What does it mean? It means still standing up for human rights, still standing up for justice, still standing up for peace, still standing up for security. That's what its title means—'Standing up'! For me today, frankly, I have trouble understanding how Burundians live in fear, in misery, when we, we had done everything to advance human rights.



Yasmine: Pierre Claver Mbonimpa, thank you very much for sharing your experience with us. Today, we have seen how reforms can be put in place thanks to the commitment of civil society, how victories can be achieved in partnership with the authorities. But equally, we have seen how these victories can be fragile and undermined with the onset of political crises.

Key takeaways

Some prison reforms originate in the associative work of people who have personally experienced incarceration, as in the case of Pierre Claver Mbonimpa. Having observed the very high proportion of people incarcerated without trial in Burundi, he decided to create an association dedicated to the defence of human rights, which has worked in partnership with both international organisations and public authorities in order to find solutions to the serious dysfunctions of the justice system. This work enabled the release of hundreds of people who had been incarcerated without trial. It also led to the condemnation of torture, which was made an offence punishable by the penal code. However, these advances in prison reform are fragile and could still be undermined by changes in the political situation.

Bibliographie

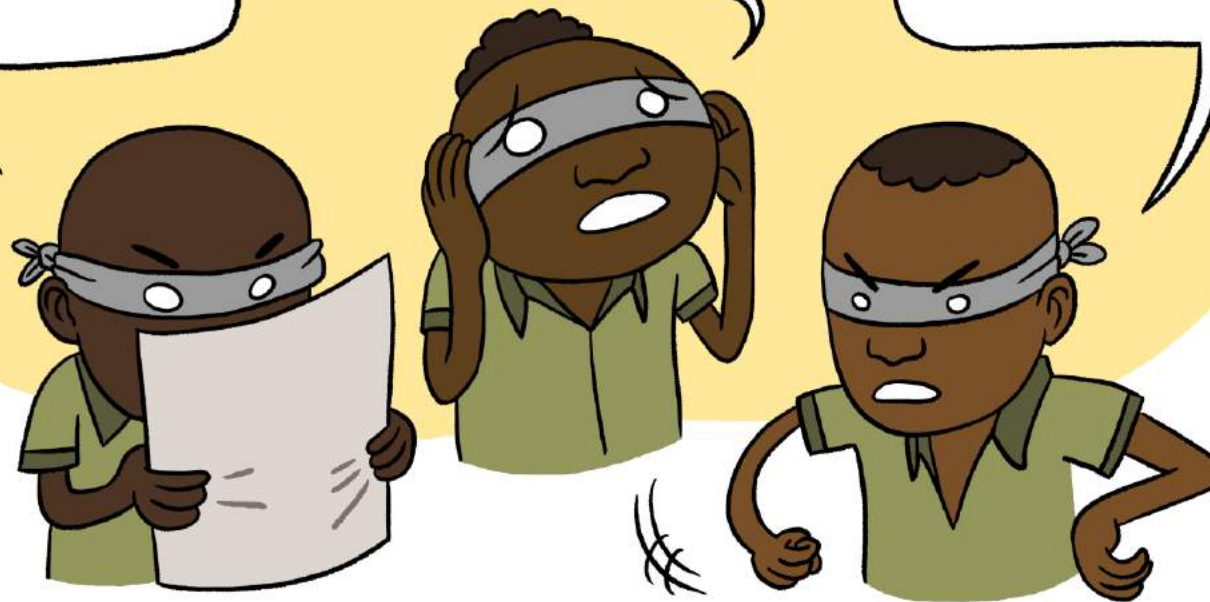
MBONIMPA Pierre Claver (2019) [1st ed. in French in 2017]. *Still Standing*. Bujumbura, Burundi: Iwacu.
OTHMANI Ahmed (2002). *Sortir de la prison. Un combat pour la réforme des systèmes carcéraux dans le monde*. Paris: La Découverte.

CONFERENCE of TORTURERS

My dear colleagues,
this reform will put
us all out of a job...

OH NOOOOOOOOOOOO!

This is all
MR MBONIMPƏ'S FAULT...
We can't let
this happen!



We would like to thank the production team of the MOOC,
William Perez, Catherine Heyvaerts, Philippe 'Clint' Crave, Hugo Mathey, Corentin Masson,
Benoit Roques from the Digital Technology Service of Université Paris 1 Panthéon Sorbonne,
as well as the public and anonymous actors who contributed to it.



Translated by Cadenza Academic Translations
Graphic design and illustration: Morgane Parisi | www.StudioBrou.com