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**OPINION AND REPORT**

PRISON, CONFIDENTIALITY  
OPINION AND REPORT ON MEDICAL SITUATIONS IN  
THE PRISON ENVIRONMENT FOR WHICH  
CONFIDENTIALITY CANNOT BE ABSOLUTELY  
GUARANTEED

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## OPINION

The National AIDS Council's recommendations fall into three broad categories : first, actions aimed at promoting confidentiality by continuing the efforts already under way to make prisons more humane places ; secondly, training and information programmes directed at reminding those in the prison system of the necessity and purpose of preserving confidentiality ; and thirdly, a general measure whose goal is to simplify and improve medical practice in prisons.

### A) CONFIDENTIALITY AND HUMANIZATION

The humanization of prisons and the preservation of confidentiality are related. Both call for improvement of prison living and working conditions, for prisoners and staff in penal facilities and generally all actors in the prison system. The breaches of confidentiality that the National AIDS Council has identified arise in most cases from the chronic lack of resources typical of prison medical services and, in many regards, all of prison life. Denunciations of chronic overcrowding in French prisons – as of May 16, 1992, there were 54,307 prisoners for 44,782 places in French prisons (Le Monde, May 16, 1992) – has become commonplace : but it is clear that this is a situation that makes the preservation of confidentiality very difficult.

There must therefore be an increase in the resources, in terms of staff and equipment, allocated to French prisons by the Government.

The National AIDS Council makes the following proposals :

#### FIVE PROPOSALS REGARDING HIV INFECTION :

- The strong correlation between HIV infection and drug addiction in prison makes imperative an in-depth study of the issue. Despite the impossibility for the Prisons Department of officially recognizing the fact, it is clearly the case that drugs are available in prisons. To avoid further cases of infection, the National AIDS Council wishes the Prisons Department to take official note of this possibility and, to proceed, as is done in certain foreign countries, with the distribution of free sterilisation products (diluted chloride bleach, for example).
- Likewise, the National AIDS Council considers that the official position of the Prisons Department, which tends toward denial of actual sexual activity in prison, may lead to risks of adding new cases of infection. The present situation is characterized by uncertainty : the survey by the Prisons Department for 1991 shows that there are still very few establishments in which condoms are made available to prisoners in the infirmary, and that, in a quarter of the establishments, condoms are not available at all. The Council wishes condoms to be made systematically available to prisoners who want them (for temporary releases on parole, final release from detention and also for use in prison), and that, in addition, a toilet kit with personal hygiene articles (toothbrush, toothpaste, etc...) and condoms should be given to prisoners free of charge.
- Because drug addiction and sexuality in prison cannot be dealt with simply by distributing condoms and diluted chloride bleach, the National AIDS Councils wishes close consideration to be given to these issues by the various actors in the prison system.
- The foreseeable rise in the number of HIV-positive and ill prisoners in coming years means that we must raise as of now the issue of the strengthening of psychiatric reception facilities. AIDS will increase the demand, for which we must plan, and for which the present organization of regional medical and psychological services (SMPR) is not adequate.

- The National AIDS Council solemnly draws the attention of the authorities with oversight in these matters to the fate of foreign prisoners subject to banning orders : when they are released, they are either expelled from France and deported to other countries where they will not be able to obtain proper treatment, or they remain in France as illegal immigrants, without the benefit of a acceptable medical and psychological follow-up (if they are already under treatment with AZT, they may be subject to a compulsory residence order in the French territory). In both cases, they are subject to "double punishment" which does no credit at all to France : prison is the only place in which care can be provided to them. The Council wishes consideration to begin to be given to the arrangements for the provision of care for the population of HIV-positive and ill prisoners who are released, without distinction as to social status or nationality.

## FOUR GENERAL PROPOSALS :

- Since, for many prisoners, prison turns out to be the first place where they receive healthcare and, in cases of reappearance of tuberculosis, it is especially important to equip medical services with adequate resources in terms of medical and nursing staff.
- To avoid breaches of confidentiality caused by the absence of medical secretarial services in prison infirmaries, funds should be allocated for medical secretarial staff. In the event that those positions cannot be filled due to a lack of applicants, it would be desirable to develop the training provided for warders wishing to occupy such posts, while underlining their duty to preserve medical confidentiality to prevent conflicts engendered by divided loyalties (to the prison administration and healthcare).
- Similarly, since we ask prisons to socialize many prisoners where society is incapable of doing so, it is important to provide prisons with the means for this, which entails most notably the provision of extra welfare and education personnel.
- Provision of care and follow-up for prisoners upon their release appears essential. As the Council of Europe observed in a recent report, " It is important to guarantee for prisoners, after their return to normal life, a continuation of prevention and health treatment initiated in prison" (Council of Europe, L'impact de l'épidémie du sida sur les services de santé et leur planification en Europe, Strasbourg, 1992 p.30 [The impact of the AIDS epidemic on the provision and planning of health services in Europe]. All too often, release is no more than a short episode between two prison terms. While not underestimating the difficulties of following up prisoners in the outside world, and of preparing for their release, the Council wishes specific actions to be undertaken to prepare for prisoners' release from detention. In a broader sense, there is a need to continue the studies already set in train by the competent bodies on the imprisonment of drug addicts, which, while their drug problem remains unresolved, is a heavy burden on the budget of the Prisons Department.

## B) TRAINING AND INFORMATION

The National AIDS Council recommends the continuation, where it already exists, of the general provision of training for the various actors in the prison system.

The National AIDS Council makes the following proposals :

### JUDGES AND LAWYERS

- The National AIDS Council recommends that the Garde des Sceaux, the Minister of Justice, should remind the judiciary of the importance of preserving confidentiality regarding the HIV status of prisoners and convicted individuals. The Council wishes in particular that investigating judges should be instructed not to indicate individuals' HIV status on their documents. The Council also recommends that the Presidents of Bar Associations should remind their colleagues of the necessity of preserving confidentiality where HIV infection is concerned, unless their clients expressly wish otherwise.

### PRISON STAFF

- Where prison staff are concerned, it is especially necessary that HIV training programmes with both a medical and an ethical bias should be put in place and developed. Programmes have been started in this direction, both within the framework of the national school run by the Prisons Department at Fleury-Mérogis, and within the framework of ongoing in-job training for staff. However, a survey conducted in March 1991 (by the Aquitaine regional health education centre) indicated that 71 % of prison staff favour the confinement of HIV-positive prisoners in special units and 66 % in special facilities when they are hospitalized (Le Quotidien du Médecin, March 12, 1991). This negative attitude serves to underline the necessity of continuing, and stepping up, such training and information programmes : the tangible result to be achieved thereby is to change the mindsets of staff members, who may then go on to play an indispensable role as channels for correct views .

## PRISONERS

- The National AIDS Council wishes training and information programmes for prisoners be continued and further developed. They provide the best means for curbing discrimination against, and the stigmatization of, HIV-positive and ill prisoners on the part of other detainees.

## HEALTHCARE PERSONNEL

- The National AIDS Council recommends that the Minister of Health and the National Council of the French Medical Association should emphasize the importance of preserving confidentiality for physicians involved in providing healthcare in prison under agreements between detention facilities and hospital management bodies. The Council also wishes the Garde des Sceaux, the Minister of Justice, to remind the managers of establishments of the importance of medical confidentiality.

## **C) A MEASURE OF GENERAL INTEREST**

The National AIDS Council considers it both urgent and necessary, in order to facilitate the work of healthcare personnel and eliminate ambiguities surrounding the execution of their duties, for the authorities to complete the process of transferring prison medical services and healthcare personnel to the Ministry of Health's sole administrative and financial control.

# REPORT

See French version