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From procedural legitimacy to the prevention of ill-treatment: evidence on how procedural justice and external inspections reduce abuse in the prison context.

From procedural legitimacy to the prevention of ill-treatment: evidence on how procedural justice and external inspections reduce abuse in the prison context

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Summary

Preventing ill-treatment in prisons is a legal and, above all, organizational challenge: abuses tend to persist not only due to "individual deviation," but also due to opaque routines, chronic stress, an adversarial occupational culture, and low accountability. This theoretical-analytical article, based on narrative review and document analysis, argues that the consistent reduction of ill-treatment requires the integration of two complementary axes. The first is procedural legitimacy—procedural justice applied to the daily exercise of authority—expressed in neutrality, respect, opportunity for voice, and reliability, with the potential to reduce conflict, increase cooperation, and decrease dependence on coercion. The second is external inspections and independent monitoring, understood as mechanisms of transparency, deterrence, and correction, capable of reducing "zones of impunity" and inducing improvements in protocols, records, and institutional culture. Based on these axes, a preventive governance model is proposed that articulates: legitimate authority in the micro-daily routine, risk-oriented internal controls, protected complaint channels, and external inspections with follow-up capacity. It can be concluded that preventing abuse is not a regulatory appendix, but a governance requirement: more legitimate and supervised institutions tend to operate with less violence, less crisis, and greater operational predictability.

Keywords: procedural justice; legitimacy; ill-treatment; prevention of torture; external inspection; prison governance.

Abstract

Preventing ill-treatment in prisons is a legal and, crucially, organizational challenge: abuse often persists not only due to individual misconduct but also because of opaque routines, chronic stress, adversarial occupational cultures, and weak accountability. This theoretical-analytical article, grounded in a narrative review and document analysis, argues that sustained reductions in ill-treatment require integrating two complementary axes. The first is procedural legitimacy—procedural justice applied to day-to-day authority—expressed through neutrality, respect, voice, and trustworthiness, which can reduce conflict, increase cooperation, and lower reliance on coercion. The second involves external inspections and independent monitoring, understood as transparency, deterrence, and corrective mechanisms that reduce "impunity zones" and drive improvements in protocols, records, and organizational culture. Building on these axes, the article proposes a preventive governance model combining legitimate authority at the interpersonal level, risk-oriented internal controls, protected complaint channels, and external inspections with follow-up capacity. The central conclusion is that preventing ill-treatment is not a normative add-on but a governance requirement: more legitimate and more supervised prisons tend to operate with less violence, fewer crises, and higher operational predictability.

Keywords: procedural justice; legitimacy; ill-treatment; torture prevention; external inspection; correctional governance.

1. Introduction

The persistence of mistreatment in places of deprivation of liberty defies explanation. easy. If, on the one hand, there is a broad normative consensus — both nationally and internationally — regarding prohibition of torture and cruel, inhuman or degrading treatment, on the other hand, experience The comparison shows that prohibition is not enough when the organization operates with low transparency.

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Radical asymmetry of power and incentives that normalize harshness as a method. In practical terms,

Preventing abuse depends on how authority is exercised and how much the institution...

It is observable and accountable.

This article starts from a simple but demanding hypothesis: **the consistent prevention of bad-**

Agreements emerge when everyday authority becomes more legitimate and when imprisonment ceases to

to be "a closed world," submitting to independent supervision capable of identifying risks,

to demand corrections and monitor results. The first dimension — procedural legitimacy —

It operates at the micro level: in the daily encounter between custodian and detainee, in disciplinary decisions,

in managing routines, communicating rules, and how conflict is handled. The second

— external inspections — operates at the macro-institutional level: reduces zones of impunity, sheds light

In high-risk areas, it produces documentary trails, establishes standards, and creates costs for illegitimate violence.

It is not a matter of two competing agendas ("security" versus "rights"), but of two

components of the same governance design. Institutions that govern arbitrarily and

Humiliation tends to produce hostility, violent subcultures, and recurring crises; institutions that

Governance through recognizable procedures, consistency, and oversight tends to reduce friction.

Daily routines, limiting escalations, and reducing the use of excessive coercion. The literature on justice.

procedural, consolidated in the debate on normative obedience, offers a framework for

to understand why people subjected to authority may cooperate more when they realize

Neutral decisions, respectful treatment, and genuine opportunities to be heard, even when the outcome...

This is not favorable to them (TYLER, 2006). In prisons, this hypothesis gains relevance because the order

Daily life depends on relational governance, not just physical barriers.

In parallel, the field of torture prevention has been structured, for decades, on an intuition...

Robust institutional framework: **illegitimate violence thrives in opaque environments.** Therefore, instruments

Standards such as the OPCAT and the Mandela Rules emphasize regular and independent inspections.

as a preventive mechanism, not just a reactive one. The focus shifts from the "post-fact" (punishing after the fact).

damage) to reduce the conditions that make damage likely (UNITED NATIONS, 2002;

UNITED NATIONS, 2015).

The aim of this article is to integrate these two axes — procedural legitimacy and inspections. external perspectives — in a theoretical-analytical reading focused on prison governance, paying attention to reality.

Brazilian institutional framework. It is argued that mistreatment decreases when (i) the exercise of power is

(i) it makes it more predictable, justifiable and respectful and (ii) the organization submits to monitoring

An external tool capable of detecting, deterring, and inducing improvements. Finally, an integrated model is proposed.

Prevention with verifiable and risk-oriented components.

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2. Methodological approach and analytical delimitation

This is a theoretical-analytical essay, grounded in narrative review and document analysis. with a selection of publications and documents up to 2023. The narrative review prioritized four sets: (a) core literature on procedural justice and legitimacy; (b) empirical studies in settings prisons correlating procedural justice/legitimacy with discipline, cooperation, conflict and misconduct; (c) literature and technical documents on torture prevention, monitoring independent and prison oversight; and (d) Brazilian regulatory frameworks related to the prohibition of torture and the governance of penal execution.

As a criterion for robustness, priority was given to works and articles with academic circulation. Consolidated, official documents and widely recognized international instruments. An inherent limitation is acknowledged: "clean" causal assessments of the impact of inspections. External cases are rarer due to measurement difficulties (underreporting, lack of counterfactual data). and variability in implementation). For this reason, when the text advances inferences, it does so by Chains of mechanisms supported by literature and governance patterns, avoiding assertions of causality. where there is only association.

3. Procedural Legitimacy in Prison: Why the "How" Matters

Procedural justice has become one of the most useful concepts for understanding obedience. normative in coercive environments. Its core is neither sentimental nor "decorative": it is about how authority decides and interacts, and how this alters the subject's willingness to accept rules and collaborate. In the classic formulation, perceptions of procedural justice tend to increase when... people (i) are treated with respect, (ii) can express their version of the facts (voice), (iii) observe neutrality and consistency and (iv) perceive reliability and integrity in authority (TYLER, 2006).

When applied to prisons, this approach faces a recurring objection: "prison is no place for prison." "of choice; there is only coercion there." The objection is partially true—there is deprivation of liberty and structural asymmetry—but it loses sight of the crucial point: coercion is inevitable; the Arbitrariness, no. And it is arbitrariness that often turns coercion into illegitimate violence. In prisons, where daily discipline depends on thousands of micro-interactions, the way of governing It determines whether the environment is organized by minimal collaboration or by permanent antagonism. When rules change without explanation, when decisions are applied selectively, when the Daily treatment humiliates or dehumanizes, and the institution tends to produce resistance and escalation that, In turn, they increase the use of force and the likelihood of abuse.

Empirical research in prisons, despite its limitations, provides relevant support for this interpretation. Studies suggest that perceptions of procedural justice and legitimacy are associated with lower rates of malfeasance.

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conduct and the best discipline. Reisig and Meško (2009), examining the prison context, indicate

The relationship between perceptions of procedural justice and less involvement in deviant behavior.

Beijersbergen and colleagues (2015), in a longitudinal study, show that procedural justice is

It relates to misconduct and the emotions (such as anger) that can mediate this relationship, reinforcing that the

"Deal" is not a detail: it structures the emotional temperature of the environment and, with that, alters

Probabilities of conflict. A literature review focused on prisons also points to consistency.

reasonable in the association between procedural justice/legitimacy and institutional outcomes, even though

The strength of the effects varies and depends on the organizational design (RYAN; BERGIN, 2022). In another

In this context, Choi (2020) found that procedural justice is associated with less violent misconduct.

suggesting mediating mechanisms related to lifestyles and risky behaviors, which

It reinforces the plausibility of causal chains rather than "magical effects".

The practical importance of this is straightforward. In institutions that operate under chronic stress,

Incidents rarely begin with major events: they start with small, repeated frictions.

trivialized. A poorly explained command, a sanction applied inconsistently, a magazine

Delivered with humiliation, a refusal without the possibility of a voice. Depending on the culture.

Institutionally, these situations accumulate as a "debt of legitimacy": the organization loses

The ability to command without coercive costs and the need to compensate with force and punishment. In this

In this scenario, mistreatment ceases to be the exception and becomes an informal governing technique.

This interpretation aligns with traditions in prison research that emphasize the institutional climate.

as a key variable. Liebling and Arnold (2004) developed the idea of "moral performance"

(moral performance), showing how practical values — respect, humanity, justice, safety,

order — translates into concrete experience and influences the functioning of the prison. Although

This approach is not identical to procedural justice, but it engages with it: institutions with greater

Moral and relational quality tends to operate with less degradation of daily life and, therefore, with

less cultural ground for abuse.

In summary, procedural justice helps prevent abuse in three ways.

combined. First, it reduces escalation, because conflicts are managed with criteria and

Predictability. Second, it increases cooperation and information flow, which are essential for security and...

for risk anticipation. Third, it denormalizes humiliation as a practice, making it more...

visible as a deviation — and when something is seen as a deviation, it becomes more denounceable and more punishable.

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4. External inspections and independent monitoring: why opacity is the structural enemy.

Even when teams are trained and protocols exist, mistreatment persists if...

The institution remains structurally opaque. The prevention of torture and ill-treatment has been consolidated in international plan, an operational principle: reducing abuse depends on visibility and Accountability. That is the logic of OPCAT, which provides for preventive mechanisms (international and nationals) with the authority to conduct regular visits to places of deprivation of liberty, with the objective to prevent torture and ill-treatment before they occur or are repeated (UNITED NATIONS, 2002). The Mandela Rules reinforce this paradigm by requiring internal and external inspections with capacity to examine the treatment of prisoners and the conditions of custody (UNITED NATIONS, 2015).

The intuition is simple: mistreatment tends to thrive where there is a low probability of...

Detection, few documentary trails, and weak collection capacity. External inspection introduces Costs and risks associated with abuse, not just in terms of "catching culprits," but in terms of altering the environment. Institutional: requires standardization of records, induces corrections in routines, strengthens complaint channels. and creates a horizon of accountability. Technical guides from the UN system describe this. Preventive mechanism clearly defined: independent monitoring works through deterrence and detection. and correction, especially when there is follow-up capability (OHCHR, 2018).

From the perspective of the literature on oversight, the contribution of external inspections is not...

In short, it involves reporting. It consists of establishing an ecosystem of transparency. Deitch (2012), discussing the need for independent oversight, it argues that stable mechanisms of Oversight becomes even more important in scenarios where judicial oversight loses effectiveness. as a driver of reform and transparency. In previous work, the author also distinguishes functions The essentials of effective oversight — visibility, accountability, standards production, response to complaints and institutional learning—which helps to understand why "formal visits" Without autonomy and without consequences, they have low preventive power (DEITCH, 2010).

It is true that empirically measuring the causal impact of inspections is difficult. Still, the Specialized literature provides sufficient support to assert that independent inspections They can change practices and reduce areas of impunity, especially when integrated into an architecture. of public accountability and monitoring. The field of torture prevention, when discussing "what "It works," he emphasizes, adding that prevention depends on a combination of norms, institutions, and practices; and Preventive monitoring is one of the most promising devices, although its effectiveness... vary according to the independence, access and responsiveness of the State (CARVER; HANDLEY, 2016). Qualitative studies on European monitoring indicate that visits and reports may to produce effects not only through denunciation, but also by reorganizing expectations and legitimizing demands.

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Internal changes aim to alter how teams and inmates perceive acceptable standards.

conduct (O'CONNELL; ROGAN, 2023).

There is, therefore, a crucial point: external inspections do not "replace" management; they enhance it. governable. Where there is no effective external inspection, internal controls tend to degrade.

Formalism and complaint channels tend to produce fear of retaliation. Where there is inspection, the institution

Learn that abuse has a cost, that records matter, and that routines will be scrutinized. Prevention

It becomes more likely because the system ceases to depend exclusively on individual virtue and

It becomes dependent on an architecture of accountability.

But inspections only work well under certain conditions. The literature and technical guides They converge on the following requirements: genuine independence; unrestricted access to facilities, documents, and people. prisoners; possibility of confidential interviews; regularity (with relative unpredictability); technical competence to assess the use of force, discipline, health and isolation; and, above all, follow-up with a requirement for an institutional response (APT, 2004; OHCHR, 2018). When these elements In short, inspections can become a ritual: they generate reports, but they don't generate change.

5. Integration of the axes: a model for preventive governance against mistreatment.

The central argument of this article is that procedural legitimacy and external inspections are complementary. A prison can, in theory, invest in relational and communication training.

The institution has rules, but remains opaque, tolerating "parallel practices" in gray areas.

Formal inspections may also occur, but without a procedural culture, the system responds with...

Superficial conformity: fulfills roles, but preserves daily humiliation as a method. A

Consistent prevention requires integration.

Therefore, a preventive governance model organized into four components is proposed, formulated to be verifiable and auditable.

The first component is legitimate authority in everyday life. Here, the focus is not...

Rhetorical: these are routines that translate procedural justice into practice. Rules communicated with criteria; justified disciplinary decisions; professional language; real possibility of "voice" in internal procedures; and supervision of interaction patterns in critical sectors (magazines, escorts) (Internal, disciplinary cells, restraints). This component does not eliminate coercion, but limits it. Arbitrariness and humiliation — and, in doing so, reduces escalation.

The second component is risk-oriented internal controls. Mistreatment rarely occurs.

They appear as "system averages"; they tend to focus on units, shifts, sectors, and routines.

Specific. Risk-oriented controls require a minimum capacity to detect signals: peaks of Injuries, increased use of force, repeated complaints by sector, disciplinary isolation above Standards, high staff turnover, recurring incidents without explanation. Without this, the

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The organization operates "in the dark" and learns too late — after the crisis.

The third component is effective and protected complaint channels. Comparative experience

This indicates that underreporting is structural when there is fear of retaliation and distrust in the response.

Institutional. Effective channels need to be accessible, understandable, timely, and auditable. They

They don't replace inspections; they provide information for them. And, when they work, they reduce the...

The likelihood of mistreatment becoming the informal norm.

The fourth component is independent external inspection with follow-up. The inspection needs to...

To be able to enter, see, hear, document, recommend, and return. Without a return visit, recommendations are lost.

Forces become entrenched in bureaucracy. With feedback, inspection creates continuity and fosters learning.

Institutional: the organization begins to operate with the expectation that it will be observed and that it will need to...

to respond.

The integration of these components produces an effect that is often overlooked in the debate.

Public: operational predictability. Preventing abuse is not just about fulfilling legal obligations; it is

Reduce crisis costs. Mistreatment leads to rebellions, litigation, staff absences, and a decline in performance.

Moral problems, conflicts with the community, delegitimization of the system, and increased risk for everyone.

Preventive governance, on the other hand, organizes custody to operate with less friction and less...

need for additional coercion.

6. Implications for prison governance in Brazil: norm, institution and practice

Brazilian reality adds a specific layer to the problem: the distance between

Standards and implementation in environments of structural pressure (overcrowding, deficits, precariousness)

(material in some units, federal fragmentation and decisional instability). This makes it even more...

Most importantly, a model that doesn't rely solely on "good intentions," but on mechanisms of...

governance.

From a normative point of view, Brazil has relevant milestones: the classification of the crime of

torture (Law No. 9,455/1997), the parameters of penal execution (Law No. 7,210/1984) and the creation of

National System for the Prevention and Combat of Torture, with the National Mechanism (Law No.

12.847/2013), among other provisions. These instruments are crucial because they qualify the

prevention as a duty and structure, at least formally, an institutional path of

monitoring.

The practical challenge, however, is transforming this framework into everyday governance. And this is where...

The integration proposed in this article gains utility: it allows prevention to cease being a "topic of

The term "report" should be changed to "management issue." Procedural justice can be incorporated as a standard.

supervision and evaluation of the treatment; external inspections can be seen as part of the cycle of

improvement, not as a political threat; risk-oriented controls can transform dispersed data.

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in prevention indicators; complaint channels can be reorganized with protection and response.

None of this eliminates the conflicts inherent in prison, but it repositions the problem: mistreatment.

They cease to be treated as "exceptional events" and begin to be treated as systemic failures.

Preventable, with known mechanisms. In terms of public policy, this displacement is fundamental. Systems that only react after the damage is done operate in a permanent state of crisis. Systems that Those who govern risk, through procedural legitimacy and real oversight, tend to reduce the frequency and severity of incidents.

7. Final considerations

Preventing mistreatment in prisons requires abandoning dichotomies that impoverish the... debate. It's not about choosing between "security" and "rights," but about recognizing that prisons Perceived as illegitimate and lacking transparency, they tend, as a rule, to be less secure, more unstable and more costly. This article argued that a consistent reduction in abuses depends on articulation of two complementary axes: procedural legitimacy, in the daily exercise of authority, and independent external inspections.

In the first axis, the literature indicates that perceptions of procedural justice and legitimacy They are associated with greater cooperation, less misconduct, and less conflict, through plausible mechanisms of de-escalation and reduction of dependence on coercion. In the second axis, international standards and Studies on inspection and monitoring indicate that external oversight can reduce opacity. and to combat impunity, encourage organizational corrections and strengthen prevention when it ensures Independence, effective access, and follow-up on recommendations.

By proposing an integrated prevention model, the text sought to offer an applicable interpretation. To the prison administration: mistreatment is not only a violation of rights; it is also a failure. Institutional factors that weaken the predictability of routines and increase the risk of crises. (Imprisonment) Legality demands more than just bars: it requires authority exercised with criteria and respect. Internal controls focused on risk factors, reliable complaint channels, and external inspection. independent. When these elements combine, prevention ceases to be an intention. declared and becomes a sustained institutional practice.

References

ANDREWS, DA; GOOD, JAMES. *The psychology of criminal conduct*. 5. ed. New Providence: LexisNexis, 2010.

ASSOCIATION FOR THE PREVENTION OF TORTURE. *Monitoring places of detention: a practical guide*. Geneva: APT, 2004.

BEIJERSBERGEN, KARIN A.; DIRKZWAGER, ANJA JE; EICHELSHEIM, VERONI I.; VAN

Year III, v.1 2023 | Submission: 01/25/2023 | Accepted: 01/27/2023 | Publication: 01/29/2023

DER LAAN, PETER H.; NIEUWBEERTA, PAUL. *Procedural justice, anger, and prisoners' misconduct: a longitudinal study*. *Criminal Justice and Behavior*, vol. 42, no. 2, p. 196–218, 2015.

BRAZIL. *Law No. 7,210, of July 11, 1984*. Establishes the Penal Execution Law. *Official Gazette of the Union*, Brasília, DF, 1984.

BRAZIL. *Law No. 9,455, of April 7, 1997*. Defines the crimes of torture and provides other measures. *Official Gazette of the Union*, Brasília, DF, 1997.

BRAZIL. *Law No. 12,847, of August 2, 2013*. Establishes the National System for the Prevention and Combat of Torture. *Official Gazette of the Union*, Brasília, DF, 2013.

CARVER, RICHARD; HANDLEY, LISA (ed.). *Does torture prevention work?* Liverpool: Liverpool University Press, 2016.

CHOI, JAE. *Using structural equations to model the relationships between procedural justice, risky lifestyles, and violent inmate misconduct*. *International Journal of Environmental Research and Public Health*, vol. 17, no. 21, p. 7927, 2020.

DEITCH, MICHELE. *Distinguishing the various functions of effective prison oversight*. *Pace Law Review*, vol. 30, no. 5, p. 1438–1473, 2010.

DEITCH, MICHELE. *The need for independent prison oversight in a post-PLRA world*. *Federal Sentencing Reporter*, vol. 24, no. 4, p. 236–244, 2012.

LIEBLING, ALISON; ARNOLD, HELEN. *Prisons and their moral performance: a study of values, quality, and prison life*. Oxford: Oxford University Press, 2004.

O'CONNELL, REBECCA; ROGAN, MARY. *Monitoring prisons in Europe: understanding perspectives of people in prison and prison staff*. *Law & Social Inquiry*, vol. 48, n. 1, p. 205–235, 2023.

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS. *Preventing torture: the role of national preventive mechanisms: a practical guide*. New York; Geneva: United Nations, 2018.

REISIG, MICHAEL D.; MEŠKO, GORAZD. *Procedural justice, legitimacy and prisoner misconduct*. *Psychology, Crime & Law*, vol. 15, no. 1, p. 41–59, 2009.

RYAN, CATHAL; BERGIN, MICHAEL. *Procedural justice and legitimacy in prisons: a review of extant empirical literature*. *Criminal Justice and Behavior*, vol. 49, p. 143–163, 2022.

TYLER, TOM R. *Why people obey the law*. 2nd ed. Princeton: Princeton University Press, 2006.

UNITED NATIONS. *Optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. New York: United Nations, 2002.

UNITED NATIONS. *United Nations standard minimum rules for the treatment of prisoners (the Nelson Mandela Rules)*. New York: United Nations, 2015.