

# TOWARDS METHODS OF IMPROVING PRISON POLICY IN KENYA

**Decongesting the prisons**

improving management in the justice sector

i n t e r a g e n c y   c o l l a b o r a t i o n

**improving conditions in prisons**

o p e n n e s s   a n d   c o l l a b o r a t i o n



# **Roundtable Conference on Prison Policy**

## **TOWARDS METHODS OF IMPROVING PRISON POLICY IN KENYA**

14-16 October 2001  
Mountain Lodge  
Nyeri

Organised by  
The Government of Kenya and Penal Reform International  
With the support of the Foreign and Commonwealth Office of the United Kingdom



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The organisers wish to acknowledge the tireless effort made towards the organisation of the conference by the Permanent Secretary, Office of the Vice President, Ministry of Home Affairs Heritage and Sports, Mrs. Bernadette Musundi; the Commissioner of Prisons, Mr. Abraham Kamakil (MBS); the Director of Probation, Mr. P. Muhoro; National Chairman, Community Service Orders (CSO), Justice Samuel Ojuk and Justice Mutitu Judge of the High Court of Kenya. They would also like to thank the secretarial staff composed of officers from the Home Affairs ministry headquarters, prisons department and probation department for their tireless effort in preparing for the conference.

## **KENYA PRISON SERVICES**

### **Mission Statement**

Our mission is to keep in safe custody prisoners entrusted to us, to be able to contribute to community protection, stability and development and, in doing so, rehabilitate them through good example and leadership by encouraging their potential to function as law abiding citizens.

### **Vision**

Our vision is to provide excellent, efficient and effective service to the community and to those entrusted to our care.

### **Mandate**

Containment, rehabilitation and training of prisoners.

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## **PENAL REFORM INTERNATIONAL**

Penal Reform International (PRI) is an international non-governmental organisation. Founded in London, UK, in 1989, PRI has members in five continents and in over 80 countries.

PRI seeks to achieve penal reform, recognizing diverse cultural contexts, by promoting:

- the development and implementation of international human rights instruments with regard to law enforcement, prison conditions and standards;
- the elimination of unfair and unethical discrimination in all penal measures;
- the abolition of the death penalty;
- the reduction of the use of imprisonment throughout the world;
- the use of constructive non custodial sanctions, which encourage social re-integration while taking into account the interest of the victims.

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# FOREWORD

The development and safety of society is gravely threatened by the increase in, and complexity of, crime. In such circumstances, it is imperative that a country maintains order and safety through effective and efficient criminal justice administration.

The idea of the Roundtable Conference on Prison Policy was mooted during the Policy Makers Seminar on Community Service held in Nairobi, on 3rd November 2000, which was co-organised by the Government of Kenya and Penal Reform International. It was agreed that for Community Service orders to contribute to the improvement of the administration of justice, the conditions in Kenyan prisons needed to be improved. It was then resolved that a roundtable be organised.

The theme of this conference is "Towards Methods of Improving Prison Policy in Kenya".

The objectives of the conference are:

- to assess prison conditions and deficiencies in the penal system;
- to identify needs and priorities;
- to propose a long-term plan of action for penal reform;
- to encourage openness and transparency in the criminal justice system;
- to involve civil society groups, decision makers and donor agencies in the criminal justice process;
- to share experiences and learn from other countries' expertise in the field of penal reform.

As a strategy for addressing some of the challenges faced by the prisons, the department is increasingly opening up to the public, building partnerships in collaborative efforts with other stakeholders.

These are aimed at reforming prison policies as a way of improving the administration of criminal justice.

The conference, therefore, is an important part of the above process, and should bring positive changes to both the criminal justice agencies and the stakeholders.

Ladies and Gentlemen, a lot of support has been received in the planning of this conference. I wish to take this opportunity to thank you all for your support.

It is also our hope that your participation in these deliberations will further activate the process of change and improvements, especially when we embark upon the follow up activities that will be derived from the Plan of Action.

Thank you.

Mrs. Bernadette W. Musundi  
Permanent Secretary, Office of the Vice President and Ministry  
of Home Affairs, Heritage and Sports

# INTRODUCTION BY THE KENYA PRISON SERVICES

**W**hen the current Commissioner of Prisons Mr. Abraham M. Kamakil, was appointed in December 2000, he recognized deficiencies in the penal system and pledged to work towards improving prison conditions in Kenya. This set in motion contacts between the office of the Commissioner of Prisons, and both local and international NGOs, including Penal Reform International (PRI) whose responsibilities centre on the improvement of penal systems and the administration of criminal justice. This move elicited support both from within the government circles and other stakeholders, which consequently created a climate-setting mood. In response to this, the Ministry of Home Affairs, Heritage and Sports created an enabling working environment in the Prisons Department, a factor that increased the frequency of contacts between the Prisons and other stakeholders in the administration of criminal justice. This Roundtable conference was the product of these concerted efforts and a Policy-Makers Seminar on Community Service Orders held on 2nd November 2000, at Safari Park Hotel, Nairobi, whose objective was to create awareness of the Community Service and the improvement of prison conditions as a means to ensuring an improved criminal justice system.

The Commissioner of Prisons main concern was to convene a conference, which would come up with a sound policy to improve the penal system and, chart a plan of action to assist in guiding the operations of the prison system. This would then bring the Kenyan penal system in line with the current global situation in prison management and administration, which is already undergoing a dynamic transformation and which is offender centred. Consequently, the Kenyan penal system, guided by the notion that a person does not lose his humanity by virtue of imprisonment, could not afford to be left behind. This being the case, any effort to improve prison conditions must evolve around

the welfare of prisoners. But improving prison condition is a Herculean task, which cannot be achieved single-handedly. It requires an integrated approach by involving criminal justice agents, NGOs, the media and all other interested parties in the administration of criminal justice system. This is what brought about the convening of the Roundtable Conference on Prison Policy in Kenya.

The conference brought together distinguished and high ranking Kenyan Government officials, Representatives from NGOs, the Private sector and the International Community, to discuss the situation in the prison system in Kenya and to define the main line of penal and prison policy for Kenya. The participants were drawn from Kenya, Uganda, Nigeria, Zimbabwe and United Kingdom. The conference was co-sponsored by the Government of Kenya (GOK) and Penal Reform International (PRI).

# PROGRAMME

## ROUNDTABLE CONFERENCE TOWARDS METHODS OF IMPROVING PRISON POLICY IN KENYA

### Sunday 14<sup>th</sup> October 2001

- 12:00 Lunch at Prisons Headquarters  
13:00 - 15:00 Visit Kamiti Maximum Security Prison  
Arrival and registration  
19:00 Orientation and dinner

### Monday 15<sup>th</sup> October 2001

- 08:00 - 09:00 Introduction by the Commissioner of Prisons, Kenya  
Mr Abraham M. Kamakil, MBS  
09:00 - 09:15 Arrival of Guests of Honour  
09:15 - 09:25 Welcome remarks by Commissioner of Prisons, Kenya  
Mr Abraham M. Kamakil, MBS  
09:25 - 09:45 Welcome remarks by PRI Chairperson  
Mr Ahmed Othmani  
09:45 - 10:30 Permanent Secretary - Mrs Bernadette W. Musundi invites  
HE / keynote address  
10:30 - 11:00 Tea Break

### *Topic one: Prison conditions*

- 11:00 - 11:30 The current situation in prisons in Kenya by the  
Commissioner of Prisons Mr Abraham M. Kamakil, MBS  
11:30 - 11:45 The rights of prisoners and the prison officers to medical  
care, by Dr. Mohamed Saidi, Kenya Medical Association  
Committee on Human Rights  
11:45 - 12:00 PRI programmes to improve prison conditions in Africa,  
by Ms. Cécile Marcel, Penal Reform International  
12:00 - 13:00 Discussion in plenary  
Chairperson - Permanent Secretary Ministry of Home  
Affairs, Mrs. Bernadette W. Musundi  
13:00 - 14:00 Lunch Break

***Topic Two: Prison management, a regional perspective***

- 14:00 - 14:30 Revision of the prison legislation in Uganda, by Mr. Joseph Etima, Chief Commissioner of Prisons, Uganda
- 14:30 - 15:00 The CESSCA Arusha Declaration on Good Prison Management by Mr. Ahmed Othmani and Mr. Joseph Etima
- 15:00 - 15:30 Tea Break
- 15:30 - 16:30 Discussion in plenary  
Chairperson - Chief Commissioner of Prisons Uganda,  
Mr. Joseph Etima

**Tuesday 16<sup>th</sup> October 2001**

***Topic three: Penal reform***

- 08:00 - 08:15 Penal reform in Nigeria, by Prof. Adedokun Adeyemi, University of Lagos, Nigeria
- 08:15 - 08:30 Development of penal reform, the Zimbabwe experience by Justice P. Garwe, High Court of Zimbabwe
- 08:30 - 08:45 Challenges of the Community Service Orders in the administration of Justice, by Justice Oguk, Chairman Kenya NCSOC
- 08:45 - 09:00 The role of parliamentarians in penal reform, by the representative from the National Assembly
- 09:00 - 09:15 Understanding the role of the police in the penal reform process, by Commissioner of Police, Philemon Arodi Abongo, MGH, MBS
- 09:15 - 10:15 Discussion in plenary  
Chairperson - Director of Public Prosecutions, Mrs. Pamela Uniter Kidullah, OGW
- 10:15 - 10:30 Tea Break

***Topic four: Administering justice, a sector wide approach***

- 10:30 - 11:30 Coordination in the administration of criminal justice in Kenya by the Chief Justice, Hon. Justice Bernard Chunga, MBS, EBS (See closing speech)

11:30 - 11:45	Evaluation of current policies for community based rehabilitation programmes by Mr. P.K. Muhoro, Director of Probation and After-Care Services
11:45 - 12:00	The sector-wide approach in Uganda, by Chief Commissioner of Prisons, Mr. Joseph Etima
12:00 - 13:00	Discussion in plenary Chairperson Justice Oguk
13:00 - 14:00	Lunch break

***Topic five: Community involvement in the criminal justice system***

14:00 - 14:15	The role of NGOs and the community in the administration of justice, by Moffat Karambamucho, Prison Fellowship International, Zimbabwe
14:15 - 14:30	The role of NGOs in the rehabilitation process, by Amb. Dennis Afande - Undugu Society of Kenya
14:30 - 14:45	The role of media in the administration of justice, by Mr. Franck Ojiambo
14:45 - 15:00	The role of international community in supporting national/regional programmes of penal reform, by Ahmed Othmani, Chairperson Penal Reform International
15:00 -16:00	Discussion in plenary Chairperson Justice Paddington Garwe
16:00 - 16:15	Tea Break

***Topic six: The way forward***

16:15 - 17:15	Adoption of the Mount Kenya Declaration on Prison Policy in Kenya, by Justice R. Mutitu.
17:15 - 17:30	Remarks by Attorney General Hon. Amos Wako, EGH, ABS, MP
17:30 - 17:45	Official closing by Chief Justice, Hon. Justice Bernard Chunga, MBS, EBS
17:45 - 18:00	Vote of thanks by the Commissioner of Prisons, Mr Abraham M. Kamakil, MBS





# **PART 1: SPEECHES**

Opening Speech delivered by H.E. Hon. Prof. George Saitoti, EGH, MP, Vice President and Minister for Home Affairs

Closing Speech delivered by Hon. Mr. Justice Bernard Chunga, MBS, BS, Chief Justice of the Republic of Kenya



# OPENING SPEECH

## SPEECH DELIVERED BY H.E. HON. PROF. GEORGE SAITOTI, EGH, MP. VICE PRESIDENT AND MINISTER FOR HOME AFFAIRS

Chairman Penal Reform International, Prof. Othmani  
Hon. Judge  
Permanent Secretaries  
Distinguished Guests  
Ladies and Gentlemen

It is my pleasure to join you here this morning at the start of this epoch making Roundtable Conference on prison reform, which is being held under the theme "Towards Methods of Improving Prisons Policy in Kenya".

Let me at the very onset extend my warmest welcome to our Guests who have come to team up with us as we chart the way forward for the prison system in Kenya. I am informed that we have amongst our collaborators, participants from Penal Reform International (PRI) and experts from Nigeria, Uganda and Zimbabwe.

A gathering like this one, which brings together top-ranking Government officials and experts in penological policy, is quite rare. The opportunity must, therefore, be seized to ensure that, at the end of this conference, you will come up with practical recommendations that will be able to assist in reforming the prison system in our country.

I am greatly encouraged that the discussions of this conference will focus on thematic areas like prison conditions, prison management, penal reform, administration of justice, encouraging openness and transparency in the criminal justice system, involving civil society groups, decision makers and donor agencies in the criminal justice process and sharing experiences with other countries. It is my hope that the presentations and expertise on each of these thematic areas should provide an excellent opportunity for detailed exchange of ideas and propose the way forward. For us in Kenya, this is a most welcome initiative, for we face problems on several fronts.

As a result of population increase and escalation of crime, there has been a big increase in the number of offenders, resulting in a major burden on the prison administration system.

Currently Kenya has eighty-seven (87) prisons and two (2) Borstal institutions. The prison population fluctuates between 35,000 and 40,000 per annum. 40% of these inmates are remandees and, once they are in penal institutions awaiting trial, the Government must provide them with basic human necessities of food, clothing, shelter, healthcare and transport to courts. The remaining 60% who are convicted prisoners must, in addition, be given training skills and general education. This, therefore, calls for the enhancement of the skills provided to the prisons staff to enable them handle the unique problems of these institutions. The prisons staff training must be further improved with the inclusion of courses on basic human rights, counselling and public relations.

In order to realize these goals, the Government has done its best by allocating resources for both recurrent and development programmes. However, we have faced some serious constraints as a result of the slow down in economic growth and development, coupled with the implementation of Structural Adjustment Programmes (SAPs) since the mid 1980s. The Structural reforms have taken time to bear fruit and have, therefore, constrained Government efforts to provide adequate funds in order to meet all the requirements. This, unfortunately, has led to delays in both the rehabilitation of existing infrastructure and the construction of new ones.

Another challenge is related to methods of handling prisoners. In fact, the need to transform methods of handling prisoners, through enhanced training of the prison officers cannot be over-emphasized during this era of openness and accountability. Indeed, there are various international instruments, which have been ratified by many countries in order to improve or standardize the treatment of prisoners.

Key among these international instruments are:

- i) The African Charter on Human and Peoples' Rights,
- ii) The International Covenant on Civil and Political Rights,
- iii) The International Covenant on Economic, Social and Cultural Rights,
- iv) The Convention Against Torture and Other Forms of Inhuman or Degrading Treatment or Punishment.

In addition to these instruments, there have been global attempts at ensuring

good practice in the incarceration of the inmates by establishing certain norms.

Each country should set for itself standard minimum rules for the treatment of offenders, minimum rules for the administration of juvenile justice, principles for the protection of all persons under any form of detention or imprisonment, and a code of conduct for law enforcement officials. If these rules and principles are properly adhered to, they will ensure better conditions for inmates.

Thus, as we strive to modernize our prisons policy, it is necessary to review past performance, take stock of how much has been achieved, the constraints encountered, experiences shared and lessons learnt.

Ladies and Gentlemen, for us here in Kenya the issue of improving prisons policy and systems has not been discussed openly before. This has been due to the connotation that imprisonment is a private issue and, therefore, a delicate matter, whose administration should be shrouded in secrecy. However, given the current changes in the world, there is now an urgent need to address broad modern methods of handling prisoners in order to formulate appropriate policy. Indeed, Kenya is a signatory to the instruments I eluded to earlier and, therefore, we have an obligation to ensure that the provisions of these instruments are implemented.

Ladies and Gentlemen, another challenge that faces many African countries is the question of administering justice with a human face. This calls for careful management of offenders' liberty as the law provides, while also upholding basic human rights.

In this case, it is necessary to pursue efforts aimed at capacity building for prison officers through regular and updated in-service refresher training courses.

It should be mentioned here that the Government has embarked on several measures to reduce congestion in prisons and other correctional institutions in the short and long term.

The Community Service Order that was introduced in November 1999, where petty offenders with less than three year sentences perform supervised community service, is a case in point.

Ladies and Gentlemen, the gathering here today has an onerous task as it will be expected to come up with recommendations for reforms in our prisons. With these few remarks, it is now my great pleasure to declare this Roundtable Conference on Prison Policy in Kenya officially open.

Thank you.



# CLOSING SPEECH

## SPEECH DELIVERED BY HON. MR. JUSTICE BERNARD CHUNGA, MBS, BS, CHIEF JUSTICE OF THE REPUBLIC OF KENYA

My Lords the Honourable Judges of the High Court,  
The Honourable Attorney-General,  
The President of Penal Reform International (PRI),  
The Permanent Secretary, Ministry of Home Affairs, Heritage and Sports as well as the other Permanent Secretaries present,  
The Commissioners of Police and Prisons,  
Distinguished guests from Kenya, Uganda, Zimbabwe, Nigeria and France,  
Ladies and Gentlemen.

I am glad to have been invited to close this important conference comprising of eminent judges, leading Government officials, legal scholars and other distinguished personalities.

For the last two days you have been discussing very important topics under the theme "Towards Methods of Improving Prisons Police in Kenya". I thank the organisers of the conference, as well as Professor Othmani and Penal Reform International, for organising this important conference. I also thank the Government of Kenya and the British High Commission for financing the conference.

The importance of the conference is self-evident, having regard to prevailing prison conditions in our country and, I would say, in other developing countries. This must be considered, not only as matters of general policy, but also in the context of the rights and interests of the prisoner as guaranteed by our constitution.

The main objectives of this conference were:

- To assess prison conditions and deficiencies in the penal system;
- To identify needs and priorities;
- To propose a long term plan of action for penal and prison reform;

- To encourage openness and transparency in the criminal justice system as well as in prison management and administration;
- To involve civil society groups, decision-makers and donor agencies in the criminal justice process;
- To share experience and learn from other countries' expertise as well as from ourselves, on what needs to be done in the penal and after-care reform process.

In furtherance of these objectives, you have discussed issues such as prison conditions, prison management, penal reform, administration of justice and community involvement in criminal justice system. These are all areas that I have time and again, addressed on many public occasions. I repeat, here, as I have done in the past, that without coordinated and concerted efforts by all players and stakeholders, solutions in these key areas will remain elusive for a long time. That then, is the fundamental importance of this conference. To bring as many stakeholders as possible together in sober discussions in search of the way forward. I commend the spirit and I hope it will continue among ourselves.

Though mine was only to close the conference, I wish, nevertheless, to highlight a few important aspects of what, in my perception, coordinated efforts entail in the administration of the criminal justice system.

Efficient administration of Criminal Justice cannot be left to the Judiciary alone. Various stakeholders or agencies must come together in a coordinated and concerted manner in order to achieve the same overall goal, that is to say, fair, speedy, and efficient dispensation of justice to all, irrespective of any distinction.

Though the judiciary is the custodian of justice, there are doubtless, other agencies or players whose roles are not merely supplementary but key in the administration of justice. They include:

- (a) Police
- (b) Prisons
- (c) Prosecutions
- (d) Offenders/suspects
- (e) Complainants
- (f) Defence Counsel namely the Bar
- (g) The public



These agencies have different capacities. Some are constitutional or statutory while others are individual or private entities coming merely when the process of justice is in place.

They also have different roles to play. But the important thing is that their collective role makes up what is known as the Criminal Justice system. Further, the important thing is that none of them can alone, effectively administer criminal justice, without the support, coordination and cooperation from the others.

Each agency must, therefore, according to me, clearly understand its role and play it to the very best of its ability. As I have frequently stated, it is the role that each agency plays and the contribution that they make, which, in the final analysis, will determine the success or failure of our criminal justice system.

The Judiciary, as has been stated, is the key player in the Criminal Justice System and the custodian of justice as a whole. It is the umbrella under which all with disputes must come to find solutions, solace, satisfaction and protection. Its functions, basically, are:

- Interpretation of the law;
- Adjudication of disputes;
- Dispensation of justice and;
- Settlement of disputes.

To discharge these functions and satisfy the public, we need, without doubt, a strong, robust, honest and independent judiciary, backed-up with an equally strong working system of laws and facilities. The Judiciary, like any other public or private institution, will not achieve these tenets without a strong working foundation, a basic working physical infrastructure and, coordinated participation by all the stakeholders and players in criminal justice system.

As custodians of justice, judicial independence is very crucial in any society. The independence of Judges and Magistrates is the cornerstone to the Rule of Law. Without a strong and independent Judiciary, the Rule of Law will easily wither and the foundation of society will begin to crack. We must, therefore, address ways and means of reinforcing the independence of our Judiciary. To make it succeed, there must be institutionalised methods of achieving the objective.

But you must realise that the concept of the independence of the Judiciary is not as narrow as is usually perceived. I say narrow because, in many instances,

it is assumed that the independence of Judiciary means no more than independence from the Executive. The truth of the matter is that the Judiciary must be free of pressures of any kind and from any quarter - the public, the politician, the Civil Servant, the scholar and all else. Pressure from any one of these sources brought to bear upon the Judiciary is just as bad as any other pressure. While genuine concern expressed with reasonable decorum and sensibility, and in temperate language, will do no harm, care must be taken to ensure that the independence of Judiciary is not compromised or otherwise weakened by pressure from any source. Unfair conduct or posturing, unfounded and wild allegations and utterances, from whatever quarters will no doubt, whittle down the independence and strength of the Judiciary.

As Lord Denning once argued, the cornerstone of the rule of law is the independence of judges. Without an independent Judiciary there is no free society or rule of law. Judicial independence simply means the ability of a judge to decide a case free from pressures or inducements.

As Ralph Micham writing "On Federal Judicial Independence" put it:

*"Without a Judiciary that operates independently, yet accountable to the public, the rights of citizens under a Constitution go unchecked, development of the economy flounders."*

And as one American Judge commented:

*"Judicial independence is important not only to the judicial system. The independence of the Judiciary must be credible to those being judged. Therefore, the exercise of judicial powers requires institutional arrangements which will instil confidence that the power is being properly applied."*

Public confidence in the administration of justice in this country has, for many years, been very low, or almost absent. It is my view that time has come for all of us, to work together and to redouble our efforts to restore public confidence. This is a task that rests, not only on the Chief Justice, but also, on the Bar, the public, the politician and all stakeholders and players. It is a task to which all must show true commitment and not mere lip service.

As I have repeatedly stated in the past on public occasions, administration of criminal justice requires the following:

- (a) Skilful and speedy investigation of criminal cases;
- (b) Skilful and speedy prosecution of criminal cases;

- (c) Prompt production of remand prisoners in and before courts from prisons or from police to enable their cases to be heard with dispatch;
- (d) Discouragement and removal of frequent applications for adjournments either by the prosecution or by the accused or by the lawyers defending accused persons;
- (e) In defended criminal cases, advocates to take their instructions from their clients in full and in good time and to come to court prepared to proceed with their cases on behalf of their clients.

In our courts all over the country today blame is placed on judicial officers for backlog of and pending criminal cases. These cases are pending, not for reasons attributable to the courts alone, but largely for reasons attributable to investigators, prosecutors and lawyers in defended cases. There are many murder cases, for example, pending in the subordinate courts awaiting committal to the High Court or otherwise because committal records are not ready. The truth of the matter is that there are instances where such cases have been pending on such excuses for periods even as long as one year. There are, equally, many cases in the subordinate courts which cannot proceed to full trial because the prosecution is not ready for lack of:

- (a) Witnesses.;
- (b) Police files;
- (c) Exhibits and;
- (d) Even for lack of State prosecutors in the High Court in murder cases.

When we point out these matters, it is not criticism but to identify areas of weakness in criminal justice administration system so that remedial action is taken. The prison population is certainly high in our country. It is high because of high population growth, and the high crime rate. To cope with this, weaknesses in the entire systems of justice must be identified and dealt with accordingly.

As I mentioned recently at another function, the courts are the arbiters between the citizenry and the State. The courts must not be looked at as though they have a duty to assist the prosecution to secure convictions. To do so would be a serious violation of the constitutional requirement for a fair trial.

The courts will only act on evidence presented before them by the prosecution or by the parties. Where, as is often the case, such evidence is not enough to

prove a case, the courts are not going to hesitate to say so and to acquit or discharge the accused persons no matter the consequences. I want the investigators and the prosecutors to understand this message quite clearly. I want them to realise that the legal and constitutional duty on them is a heavy one to prove their cases beyond reasonable doubt. The courts are not going to discharge that duty for them. The courts will listen and take evidence dispassionately. But, eventually, the task of proof is on the prosecution and where it is satisfied, the courts will do their work as enjoined by law and by the Constitution.

On adjournments, I have frequently said and I want to repeat it here; there are so many cases adjourned day in and day out at the instance of the prosecution. If the courts were to take a firm stand, as I have directed them to do, more than three-quarters of prosecution cases will be dismissed for want of prosecution. I want the courts to stand quite firmly on this, and to do their work without fear or favour. This way it will be possible to dispose of criminal cases speedily and, thereby, do justice to the offender, the society and reduce prison population. Speedy and fair trial is a constitutional requirement. Frequent adjournments at the instance of prosecution or defence are not in line with that requirement.

I have, in the past and now, called on judges, magistrates and other judicial officers to be honest and to be men and women of impeccable record and to be beyond reproach. In short, I have spoken publicly and strongly against corrupt practices and I have called for every cooperation to assist us in rooting out corrupt elements in our midst. I will continue making this call now and in the future. I would expect those with information and particularly those in positions of leadership to convey that information to me or to the State Law enforcement agencies for appropriate action. Without doing this, we in the Judiciary are left with the impression that certain statements being made by some functionaries are being made for reasons other than a genuine desire to clean our system. Independence of the Judiciary is going to be jealously guarded at all costs and I want this message to be understood clearly and unmistakably. The rights of Kenyans will be protected by the courts and people brought to court will not be convicted merely to appease anybody.

We will welcome healthy, constructive and temperate discussions against our shortcomings. Nearly all public institutions in this country have shortcomings. We are doing what we can to change our legal systems, our rules, our practices and our administrative machinery in order to curb the shortcomings in our

institution. All these activities have been made public, as evidence of our good faith and sincerity in our efforts to help the Government to fight corruption and other evils. We expect other institutions and people in positions of leadership to do the same.

The role of the Prison department is to keep prisoners in safe custody, contribute to community protection, stability, and development and to rehabilitate prisoners. Prisons must ensure speedy and prompt production of prisoners in court whenever they are required. It cannot be gainsaid that, unless the accused is brought to court, his or her case will not be heard. There are many cases held up in our courts today, without hearing and without even mentions because remand prisoners are not produced in court. While we understand the difficult situation of transportation facing the Prisons Department, we, nevertheless urge that solution be found to help the Prisons Department and thereby speed up hearing of cases of remandees. I have written numerous letters in this regard to appropriate offices of the Government and my views are known.

There is need to create an environment of coordinating the activities of the various agencies in the administration of Criminal Justice. This can be done through consultative meetings between the major agencies like the Judiciary, the Prosecution, the Police, the Prisons and the Law Society of Kenya from time to time. A committee could evolve out of such meetings to:

- (a) Reduce delays in the administration of justice;
- (b) Prevent problems for agencies caused by conflicting policy decisions of another agency;
- (c) Improve the transfer and retrieval of information;
- (d) Improve adherence to constitutional standards;
- (e) Decrease overcrowding in prisons;
- (f) Generate common statistics;
- (g) Develop measures for crime prevention and community participation;
- (h) Identify topics for joint training programmes;
- (i) Iron out misunderstandings between stakeholders;
- (j) Create an open and safe environment in which it is possible to discuss each other's performances, strengths and weaknesses.

It is with the foregoing objectives in mind that I launched the Technical Committee on the Implementation of Legal Sector Reform Programme on the 6<sup>th</sup> day of July 2001 under the Chairmanship of Hon. Justice R.S.C. Omolo a Judge of the Court of Appeal. This Committee draws its membership from the Attorney-General's Chambers, the Police, Prisons, Probation, Children's Department and NGOs like Fida and the Public Law Institute.

By bringing on board all the relevant stakeholders and players in the administration of criminal justice, the above stated objectives will be achieved. The Committee is working tirelessly in consultation with relevant Government offices, and donor agencies. I urge continued support for the Committee so that its recommendations on areas it has identified be implemented.

I believe in action. While I cherish seminars and workshops and conferences as forums for creativity of ideas, I hasten to add, however, that they must go hand in hand with real, tangible developments which will see capacity building in terms of physical infrastructure, manpower development, and revised Rules of Practice and Procedure.

Ladies and Gentlemen, I have noted that you have discussed the following topics: Prisons Conditions and Monitoring in Kenya, Prisons Medical Services, the Rights of Prisoners, the Prison Officer, Medical Care, Good Prison Management, Prison Legislation, Penal Reform as it applies to Prisons, the Administration of Justice both in Kenya and Uganda and Community involvement in the Criminal Justice System. I have learnt that various issues have been identified and the way forward drawn. I trust there shall be some positive improvements in our prisons and in the Criminal Justice system as a result of this important conference. I trust that discussions on these key areas will not be for academic purposes only. Follow up action will indeed be necessary, for that is the way to ensure development of our institutions.

Implementation of some of the resolutions passed here will no doubt, require financial capital. In this regard, I appeal to all concerned, the Government, the well-wishers and, indeed, the so called critics to play their parts generously and positively.

With these few remarks, it is now my pleasant duty to declare this conference officially closed.

## **PART 2: SUMMARY OF PROCEEDINGS\***

- Topic 1: Prison conditions and monitoring
- Topic 2 : Prison management, a regional perspective
- Topic 3 : Penal reform
- Topic 4 : Administering justice: a sector-wide approach
- Topic 5 : Community involvement in the Criminal Justice System

\* This part is a summary of presentations made at the Conference. The detailed presentations are available with the Kenya Prison Services or PRI Paris office.





## TOPIC ONE: PRISON CONDITIONS

Prior to discussing methods of improving prison policy in Kenya, it was felt essential to take a critical look at the current situation in the prisons of the country.

The visit to Kamiti Maximum Security Prison, organised on the eve of the Roundtable Conference, was an eye opener to many of the participants.

Observations made during this visit are echoed in Commissioner Kamakil's presentation on *'The current situation in prisons in Kenya'*: prison conditions fall short of human rights standards, prisons are overcrowded, rehabilitation programmes are insufficient. The situation does not look brighter on the side of prison staff: their terms and conditions are extremely poor and they lack appropriate training and specialisation.

Among problems faced by prison administrations, the issue of health is particularly worrying. The spread of disease within prisons makes the institutions a reservoir of infection, which has implications for public health. The situation is made worse by the lack of medical care. In his presentation regarding *'The rights of prisoners and prison officers to medical care'*, Dr. Mohamed Saidi recalls a number of principles underlying access to health care by prisoners and makes recommendations as regards needed improvements.

But Kenya is no exception. The participants at the Pan African Seminar on Prison Conditions in Africa held in Kampala, Uganda, in 1996, highlighted the plights faced by prison administrations on the continent and asserted the urgency of addressing prison conditions. The Kampala Seminar, however, represented a turning point as, for the first time, participants from different backgrounds and countries discussed ways and means to tackle these issues and made a number of recommendations in that sense. Cécile Marcel, in her presentation on *'PRI programmes to improve prison conditions in Africa'* describes the projects that have been put in

place in a number of countries to apply the recommendations of the Kampala Declaration and improve prison conditions.

# THE CURRENT SITUATION IN PRISONS IN KENYA

Mr Abraham M. Kamakil, MBS, Commissioner of Prisons, Kenya

The Kenya Prisons Services is a Government Department in the Office of the Vice President and Ministry of Home Affairs, Heritage and Sports.

The rapid social and economic development in Kenya, with the related process of urbanization and industrialization, entailed a drastic increase of crime levels. Consequently, this has put a strain on facilities which has not coincided with more prisons being built to accommodate these numbers.

The Department has a total of 13,000 uniformed staff and 316 civilian support staff. The prison population averages between 36,000 to 40,000. There are 89 prisons, two Borstal Institutions for youthful offenders and one Youth Corrective Training Centre, as well as one autonomous women prison and 14 women prisons attached to various District male prisons.

The core functions of Kenya Prisons are as follows:

1. Safe Custody of Prisoners
2. Incapacitation
3. Deterrence
4. Rehabilitation of Offenders

## Analysis of Penal Policies in Kenya

The Kenya Prisons Service was established by the Prisons Act Cap 90. The Borstal Institutions Act Cap 92 makes provision for the establishment of Borstal Institutions for the detention of young offenders. It is charged with the enormous responsibility of rehabilitation and reformation of offenders. The current penological policy and practice is designed to have a relative and positive correctional or rehabilitative effect.

The Prisons Act was enacted in order to regulate the relationship between prisoners and staff and to provide the standard regulations to run prisons. The Act emphasizes humane treatment of offenders. It is enhanced by the UN Standard Minimum Rules of which Kenya is a signatory. However, it was last reviewed in 1977, and some of its rules are clearly outdated, for example, the prisoners earning scheme, which pays prisoners for work done, at the rates of

10cts, 15cts and 20cts. There is, therefore, a clear need for reform, which is an ongoing process.

There are unrealistic expectations that the Prisons and Police Departments are responsible for solving crime problems. The public expects instant results and favour custody as a means of punishment as opposed to non-custodial measures. The community denies responsibility for crime prevention which points to a greater need for public education about prisons.

### **Conditions in Kenya Prisons**

The current prison accommodation wards and cells violate the right to privacy and adequate shelter. Most of these were built during the colonial days when the population was small and criminality was minimal.

Official statistics place the population in prisons at an average of between 36,000 and 40,000 in institutions whose capacity was meant for 14,243. Congestion always produces inequalities in punishment, due to inadequacies in hygiene, sanitary conditions, clothing and beddings, supply of drugs and medical care, recreational facilities, counselling, etc. The prisoner is not even able to do what he likes within the prisons rules, for example, quiet study, reading, letter writing or even thinking quietly. It also greatly inhibits the classification of prisoners, for example, separating young prisoners from adult prisoners.

The legal process and administration of justice is slow, which contributes to overcrowding. The Community Service Order, which was meant to reduce congestion in prisons, is in its early implementation stages. Others factors include, delayed and/or slow police investigations, postponement of cases, slow hearing of appeals, loss of Police and court files, denial of bonds, prolonged court mentions, non appearance of witnesses to the courts, lack of production of exhibits, objection to release of suspects on bonds on the grounds that they would interfere with the investigations.

Building more prisons to correspond with the number of courts and police stations that have come up since independence and improving the available physical facilities are seen as measures to address this issue.

### **The Role of Criminal Justice Agencies in Decongesting Prisons**

In addition to the above suggested measures, the criminal justice agencies working in close relations with the Prisons Department need to take positive steps to alleviate the problem of overcrowding. These include establishing - and

adhering to - maximum periods within which cases or appeals should be heard; better use of bonds, bails, etc. particularly for petty offenders; decriminalisation of certain type of crimes and offences; including time spent on remand as the sentence already served in all types of offences; computerisation of the judicial process, etc.

A better cooperation between the various agencies involved in the criminal process (magistrates, prison officers, police prosecutors and probation offices) is crucial to ensure that they all have the necessary information on the offender and that the cases are dealt with swiftly.

### **Rehabilitation Programmes**

Prison Industries and Farms operate under legal notice No. 314 under the Exchequer and Audit Cap 412. The two funds were established on 1st July, 1987.

Prison Industries is the major basis of correction in most cases of long-term imprisonment. Trade and industrial training as well as professional studies assist the prisoner to acquire a means of self-supporting mode of existence as well as being an important tool in the re-socialization process.

The proceeds of prison labour constitute an important source of income for the Government. However, efforts should be made to improve the Prison Department's self-sufficiency in providing foodstuffs for the prisoner population. To achieve these objectives, donors and welfare organisations need to be involved; the government offices could also contribute by placing their orders for furniture with the Prisons.

The range and quality of education and training possibilities that are offered to prisoners should be improved. Spiritual welfare, counselling and case work, education, provision of improved user items (clothing, food, hygiene, etc.), medical care also contribute to prisoner's rehabilitation. This requires increased resources which can be provided either by the government budget or by external contributors (donors, NGOs). The community should be involved in addressing these problems. Innovative ideas such as the use of biogas can contribute to reducing the cost of keeping prisons.

Special attention should be devoted to children accompanying their mothers to prison. The prison rules do allow a mother to have a child of up to four years.

Young offenders, boys and girls also have specific needs which should be addressed. The two borstal institutions and the Youth Corrective Training Centre cater only for young male offenders and are not sufficient.

### **Prison Staff**

The terms and conditions of prison staff should guarantee decent living and working conditions for them. Housing is currently a problem.

Their initial training and subsequent development or promotion courses should all receive attention; completing the construction of the Prison Staff Training College would cut the Department's training costs substantially.

### **Management of Data in Penal Institutions**

The system that handles violators of law, committed to custody through court orders for a period of time, relies heavily on data. Keeping regularly updated records not only helps facilitate inspection but also to measure, among other things:

- The extent to which the rehabilitation process has been achieved.
- The improvements that need to be done.
- The failures that have led to poor rehabilitation.
- How to rectify these shortfalls.

Data management in prisons is manual and is done in chronological order. Over the years numerous files have accumulated and storage space is scarce. The importance of this data cannot be underestimated as some prisoners are jailed in groups and sometimes they give inaccurate information. If, unfortunately, a prisoner passes away, it becomes very difficult to trace the next of kin. The Department currently has less than 10 working computers. This makes data management a Herculean task.

### **Conclusion**

The difficulties of treatment in a prison setting designed to assist offenders to become law-abiding citizens are very challenging. The Prison Department is committed to playing a leading role in the transformation of penal policy by addressing, as much as possible, the imbalances created by crime. It is open to change as an ongoing process and recognizes the rights of individuals in our country.

This cannot be achieved without a climate of equity and tolerance as well as an enabling environment through community outreach. The prisoner still remains part of the society. Rejection by the society results in commission of more crimes and an increase in recidivism. Problems of increasing criminal behaviour tend to correlate positively with major patterns of social behaviour by society towards the prisoners. This is a fact that we need to acknowledge even as we develop the prisoner within the institutions by recognizing his capability for worth and growth.





# THE RIGHTS OF PRISONERS AND PRISON OFFICERS TO MEDICAL CARE

Dr. Mohamed Saidi, Kenya Medical Association Committee on Human Rights

**T**he Kenya Medical Association (KMA) was formed in 1952, with the objective to safeguard the welfare of the public and the medical profession at large. The Human Rights Committee fights for the rights of all human beings including prisoners and prison officers. The KMA has organised a seminar for criminal justice agencies and workshops on human rights for 350 prison officers from all over the country.

The topic of prisoners and prison officers right to medical care actually includes three categories of protagonists:

## Prisons Medical Officers

The Prison medical officer works under two authorities: the Ministry of Health and the Ministry of Interior (or the Ministry which supervises Prisons). Moreover, he works in a non-therapeutic environment, while retaining his obligations as a medical doctor. The prison doctor's duties worldwide are to care for the health, mental and physical being of the prisoners.

The prisons medical officer though covered by the Official Secrets Act, owes his primary allegiances to the ethics of his profession. He is accountable to the society; therefore, the law should not prevent him from discussing the issues that arise in the prisons, the dilemmas he faces and the problems he has to tackle.

## Prisoners

The prisoners cannot choose their doctors, but have the right to the same medical attention as any other member of the society. Their rights are protected by international human rights instruments and by national Constitutions and laws.

Many improvements should be made regarding the care of prisoners, particularly when they are referred to public hospitals. Creating special wards for prisoners within the hospitals would significantly reduce the risk of escapes.

The prisoner undergoing hunger-strike has the right to have his willingness respected - both by prison officers and doctors. He should not be forcibly fed or intimidated.

Inmates and detainees are often subjected to inadequate nutrition, bad sanitation and other forms of physical and mental abuses. Clinician attending to such prisoners should draw the attention of the prison authorities to any conditions that are detrimental to the health of inmates. The dignity of inmates as human beings should be respected e.g. where possible medical examination should be carried out privately and confidentially. Treatment must be carried out in a humane manner. Clinicians must be vigilant for signs of violence, particularly those resulting from torture or other degrading or inhuman practices; and report any noticed signs to the appropriate authorities. A prisoner must not be used a guinea pig for the experimental development of vaccines to be used in war time or otherwise.

### **Prison Officers**

Prison officers and their families often face the same problems as prisoners when sick. They attend the same understaffed and poorly resourced dispensaries as prisoners.

## PRI'S INTERNATIONAL PROGRAMME TO IMPROVE PRISON CONDITIONS IN AFRICA

Cécile Marcel, programme coordinator, PRI

**P**RI's work in Africa mainly follows the recommendations of the first All Africa Seminar on Prison Conditions in Africa, held in Kampala, Uganda, in September 1996.

In Kampala in 1996, representatives of the judiciary, the prison services, the NGOs and other civil society groups, all together 133 delegates coming from 40 African countries, met to discuss for the first time the plight of prison conditions in Africa.

The principal observation of the Kampala seminar was that, all over Africa, prison conditions were extremely bad: prisons were overcrowded, the health and sanitation infrastructures were inadequate or inexistent, nutrition was insufficient both in quantity and quality, a large majority of prisoners were awaiting trial and, rehabilitation programmes were inexistent.

While all this was not new to the participants at Kampala, they realised for the first time that the problems they faced were the same almost everywhere and that, by getting together, they could start looking for common solutions and set themselves an agenda for prison and penal reform.

Participants at the Kampala seminar adopted the Kampala Declaration on Prison Conditions in Africa, together with a Plan of Action to assist governments, institutions and NGOs to implement the Declaration.

The main ideas underlying the Declaration and Plan of Action are the following:

- 1) Imprisonment should only be imposed as a last resort, when there is no other appropriate sentence;
- 2) Emphasis should be placed on providing education, skills-based training and a work programme that is in the interest of the rehabilitation of the offender, while incorporating elements of self-sufficiency in the prison system;
- 3) Practical alternatives to imprisonment should be developed, including by looking at customary and traditional practices;

- 4) Measures should be adopted to improve conditions for vulnerable groups in prisons and other places of detention;
- 5) Prison staff should be recognised for the importance of their role and given adequate resources and training in the accomplishment of their mission;
- 6) The role of NGOs should be recognised and facilitated by governments;
- 7) Networking and exchange of experiences, initiatives and good practices should be enhanced through regional seminars, cooperation and the provision, whenever possible, of technical assistance;
- 8) Eventually, participants made a special recommendation to the African Commission on Human and Peoples' Rights that it should appoint a Special Rapporteur on Prisons and Conditions of Detention in Africa.

Since then PRI has worked towards strengthening and supporting the implementation of this agenda. In particular, PRI focused its work on the following activities.

### **Support to the Special Rapporteur on Prisons and Conditions of Detention in Africa**

On the occasion of its 20<sup>th</sup> ordinary session, in October 1996, the African Commission on Human and Peoples' Rights appointed a Special Rapporteur on Prisons and Conditions of Detention in Africa. With an administrative and financial support from PRI, the Special Rapporteur has visited a number of African countries, published reports and made recommendations for the improvement of prison conditions in these countries.

### **Reform of Prison Rules**

Many prison legislations are obsolete. A growing number of countries on the continent are proceeding to review their prison rules and regulations, in order to take into consideration the new role and mandate assigned to their prison services.

### **Training of Prison Staff**

Prison administrations are becoming increasingly aware of the human dimension of their work and the necessity to have trained and specialised staff to deal with

a soaring prison population. Very often, prison staff are seconded from other departments (army, police, etc.).

Most African countries are in the process of creating a new specialised prison staff to remedy this situation. They need support in the training of these staff and the establishment of structures and working mechanisms.

### **Reduction of Remand Detention**

Around 70% of the prison population in Africa is made up of remand prisoners.

A number of countries address this problem through the establishment of para-legal aid clinics in prisons. The establishment of these clinics aim at drawing attention to cases of prisoners whose delays in detention are unreasonable, or whose detention is illegal, at informing prisoners on their rights and at strengthening the collaboration between the police, the prisons and the courts at local level.

### **Self Sufficiency of Prisons and Skills Training for Prisoners**

Often, prison services face a critical lack of resources. As much as possible, PRI and its partners work on programmes that aim at reinforcing the self-sufficiency of prisons. In programmes like prison farms in Malawi, the prison diet is improved without putting an additional pressure on the government's budget and, at the same time, prisoners receive training and the opportunity to work outside the prison walls.

### **Promotion of Community Service as an Alternative to Imprisonment**

Given the prison conditions described above, imprisonment can not play its role in the rehabilitation of the offender. Prisons are often described as 'schools of crime' while a majority of prisoners are in fact non serious petty offenders. On the model of Zimbabwe, a growing number of countries, like Kenya, have introduced Community Service as an alternative to custody. Throughout the years, the Community Service schemes have proven their efficiency: benefit to communities through the work done is enormous, rehabilitation is favoured, recidivism is almost inexistent, and government expenditures are reduced.



## TOPIC TWO: PRISON MANAGEMENT, A REGIONAL PERSPECTIVE

If prisons conditions are bad, it is often because they are linked to obsolete practices and management policies. In his presentation about the 'Revision of the prison legislation in Uganda', Commissioner Etima explains how Uganda, among others, was forced to realise that its prison system was facing a crisis. He recalls the international standards regarding management of prisons and the notion that offenders should be sent to prison 'as punishment and not to be punished'. Hence the necessity for prison administrations to reform and integrate these standards. Uganda has recently reviewed its Prison Act, rules and standing orders so as to reflect this new management policy. Commissioner Etima recalls the core values behind this policy.

This concern is echoed in the work of CESCA (The Conference of Eastern, Southern and Central Africa Heads of Correctional Services). At a workshop organised in February 1999, in a concerted effort to look for solutions into bad prison management, CESCA members agreed the Arusha Declaration on Good Prison Management. Commissioner Etima, assisted by PRI chairperson, Mr. Othmani, who co-organised this workshop, highlight the main recommendations made at this occasion.





# REVISION OF THE PRISON LEGISLATION IN UGANDA

Mr. Joseph Etima, Chief Commissioner of Prisons, Uganda

## The Crisis in the Prison System

The main objective of the criminal law is to inculcate in offenders and potential offenders the sense that they should behave themselves, the former being asked to mend their ways, the latter to desist from crime. A prison sentence can supposedly service this end in one of four different ways:

- First, it may deter the offender on whom the sentence is passed from repeating his offence, what we call individual deterrence.
- Second, the sentence may seek to be reformatory. In conformity with our expectations, there is the pious hope in the sentencer that the prisoner may come out of prison a morally better man than when he went in.
- Third, there is the social defence approach. Even if the offender cannot morally improve by imprisonment, or be made more socially compliant by the threat of further punishment, incarceration will at least provide a neutralising interlude in his criminal activities.
- Fourth, the sentence may hopefully deter other people from offending, for fear that if they do a similar punishment inevitably awaits them. This is the general deterrence, to which the judiciary attaches much importance.

It is common in the world today that the public would want offenders to be imprisoned for the smallest offence not knowing the effects of imprisonment. First of all prisons may not be the best places for rehabilitation. Secondly, they are costly. There is no evidence to suggest that long sentences are any more effective than shorter ones in making the public, or even the individual offender behave. Even if longer sentences were marginally more effective, they would not be worth the additional cost, either in terms of money or in human suffering. Great numbers of prisoners will not offend again, however short the sentences passed on them. Others will not be deterred from crime, however long their sentences may be. At best they are removed from circulation.

In the developing world today, the phenomenon of overcrowding is the song of the day particularly in Africa. Bad living conditions for prisoners are common and prisons place an unnecessary and unproductive burden on already strained State budgets.

There is now a mountain of research showing that prisons serve a minimal rehabilitative purpose. If we free resources from the prisons there is far more we could do in crime prevention and in providing for the innocent victims of crime, for whom we reserve our greatest sympathy.

In our endeavours we should aim to promote the constructive treatment of offenders; to promote the education of the public and to further knowledge of the penal system; to promote research into the penal system; and finally, to promote the above objectives by the use of the media, publications, lectures and research projects.

Clearly these aims are not independent of each other, for we believe that one of the major stumbling blocks to a more rational prison system has been the fear by politicians and officials alike of a backlash from public opinion.

### **Human Rights and the Management of Prisons**

The subject of Management of Prison and Human Rights is dealt with in the United Nation International Covenant on Civil and Political Rights (1966).

The perception that, because of the crime they have committed, detainees are no longer fit to live with society, and thus, are not guaranteed the rights afforded to other individuals in society, is still pervasive in most societies. This is less often the official approach of a government and it is so the stand of the Republic of Uganda.

This is best summed up by the statement "Prisoners go to prison as a punishment, and not to be punished", underscored during the Second Meeting for Chiefs of Prisons in African Countries. The right to human dignity is a standard which we may refer to when expressing concern about particular instances or types of treatment, and one through which more specific recommendations and views can be interpreted. Uganda's compliance with a specific measure must be viewed not only in the light of whether or not the letter of the treatment meets the requirement, but also whether the spirit and ends of the treatment are consistent with preserving the right to human dignity.

Our questions and concerns are thus directed at what action is taken to ensure prisoners are treated with respect for their human dignity. Such questioning naturally leads to a discussion of specific issues of treatment.

The Standard Minimum Rules for the Treatment of Prisoners are a set of specific rules regarding the treatment of prisoners which are "... generally accepted as being good principles and practice in the treatment of prisoners and the management of institutions." The Standard Minimum Rules deal with a range of specific issues including, accommodation, personal hygiene, clothing and bedding, food, medical services, discipline and punishment, instruments of restraint, complaint procedures, contact with the outside world, religion, personal property, staff selection and training, and inspection. The Standard Minimum Rules also address the issues of different treatment for different classes of prisoners such as prisoners under sentence, mentally ill prisoners, prisoners under pre-trial imprisonment, and civil prisoners.

The value of the Standard Minimum Rules is that they very specifically lay out requirements which will help ensure prisoners are treated in a humane manner, and with respect for their human dignity. As most countries claim to apply the Rules, the problem is not one of recognition, but one of actual application and enforcement. For successful implementation, the Standard Minimum Rules need to be actualised at three levels. First, is the application by the administration of the prison. Second, is the application by the actual staff of the prison. And last, is the awareness of the prisoners themselves of these minimum rights of treatment. Without an educated staff, and even an education of prison population, the application of the Rules will be ineffective.

We may ask whether the Standard Minimum Rules are applied by Uganda. The following are questions one may ask: Are the prison legislation, rules and regulations compatible with the Standard Minimum Rules? And if so, are they complied with? Are the Standard Minimum Rules applied in alternative prisons and juvenile rehabilitation centres? Are the Standard Minimum Rules and especially the Code of Conduct for Law Enforcement Officials applied by the military and other security forces?

Concerning the dissemination of the Standard Minimum Rules among police and prison staff, we should be concerned if such individuals are aware of their existence, and of their duties under the Standard Minimum Rules.

As to the dissemination of the Standard Minimum Rules among the prison population, we should inquire: Are prisoners familiar with the Standard Minimum Rules? Uganda Prisons Standing Orders require that relevant sections of the laws and standing orders which affect the prisoner directly should be published in English and Swahili. They should be explained to those who understand their vernacular.

Uganda Prison Administration is based on the Minimum Standard Rules and the various conventions mentioned above. One would, therefore, note that the Prisons Act, the Prisons Rules and its standing orders are almost a replica of the Standard Minimum Rules and other document relating to the treatment of offenders.

Uganda Prisons has from time to time defined its policy approach to the treatment and rehabilitation of prisoners under its custody.

Some of the core values policy statements are stated below:

1. Justice as the core value.
2. Fundamental to an effective corrections and justice system is a firm commitment to the belief that offenders are responsible for their own behaviour and have the potential to live as law-abiding citizens.
3. The majority of offenders can be dealt with effectively in the community by means of non-custodial correctional programs; imprisonment should be used with restraint.
4. In the interest of public protection, decisions about offenders must be based on informed risk assessment and risk management.
5. Effective corrections are dependent on close co-operation with criminal justice partners and the community in order to contribute to a more just, humane and safe society.
6. Carefully recruited, properly trained and well-informed staff members are essential to an effective correctional system.
7. The public has a right to know what is done in prisons and should be given the opportunity to participate in the criminal justice system.
8. The effectiveness of corrections depends on the degree to which correctional systems are capable of responding to change and shaping the future.

9. Remand prisoners are presumed to be innocent and shall be treated as such. They shall be kept separate from convicted prisoners.
10. Men and women shall as far as possible be detained in separate institutions; in an institution which receives both men and women, the section of the premises allocated to women shall be entirely separate.
11. Imprisonment shall always be regarded as a means of last resort, following unlawful behaviour.



## THE CESCA ARUSHA DECLARATION ON GOOD PRISON MANAGEMENT

Ahmed Othmani, Chairperson PRI and Joseph Etima, Commissioner of Prisons Uganda

The Conference of the Eastern, Southern and Central African Heads of Correctional Services (CESCA) originated during the pre-independence era in East and Central Africa, in the years between 1947 and 1953. During this period, the Commissioners of Prisons from a number of East-African countries met on a regular basis. The main objectives of these gatherings were twofold: the conference afforded the Commissioners a forum for exchanging ideas on matters related to the administration of penal institutions in member countries and, in the same time, the conference was an instrument for fostering relations between the Commissioners and their respective prison services.

Following a long period of inactivity after 1953, the South African Correctional Summit took the initiative in 1993, to reintroduce similar gatherings. This was done in response to the increasing level of crime in the sub-region, which made it necessary to provide a forum where SADC countries could discuss common issues and share experiences of penal law administration. As result, the organisation now known as CESCA was officially established during the first gathering in Krugersdorp, South Africa, in 1993.

The objectives of CESCA are the following:

- The promotion of cultural contact;
- The exchange of expertise, knowledge, skills and research results;
- The reform of penal legislations;
- The promotion of Correctional Services in the criminal justice system;
- Technical assistance and cooperation;
- The promotion of human resource development in correctional services;
- The development of international communication within correctional services;
- The implementation of human rights and international norms.

Since 1993, the CESCA members have been meeting on a two-year basis, therefore, contributing to the strengthening of cooperation amongst member countries, the exchange of experiences, knowledge, skills and research results, the reinforcement of international trends in correctional services, and the agreement on common operational matters for discussion and action.

On 23 February 1999, Penal Reform International and CESCA organised a workshop on good prison practice at the occasion of the Fourth CESCA meeting.

Participants at this meeting made a number of recommendations related to prison management practices and training of prison officials. They recommended inter alia:

- The development of open systems, involving the community and donors;
- The setting up of planning mechanisms by prison and correctional systems;
- The strengthening of collaboration between criminal justice agencies;
- The development of a human rights culture within the criminal justice system;
- That the problem of poor working conditions of staff be addressed;
- The revision of various acts, but also standing orders and laws, which govern practice in prisons;
- The revision of course content for prison staff;
- The development of adapted resources for the training of prison staff;
- The need to share resources and expertise within the region.

All these principles were embedded in the Arusha Declaration on Good Prison Practices, which was adopted by participants and annexed to the Draft Resolution for the 8th Session of the UN Commission on Crime Prevention.



## TOPIC THREE: PENAL REFORM

While searching for methods of improving prison policy in Kenya, one should keep in mind the necessity to look beyond the prisons. Today, a large majority of prisoners are non-serious, petty offenders, who could be dealt with outside the prison system.

Testimonies from Nigeria and Zimbabwe come in support of this allegation. Talking about 'Penal reform in Nigeria', Prof. Adedokun Adeyemi demonstrates that imprisonment failed to address the problem of crime in that country. He insists on the importance for criminal justice systems to look for alternatives within the formal justice system, but also within the non-formal justice system.

Community Service is one of the options courts may resort to to punish petty offenders. As an alternative to imprisonment, it has proven its efficiency in a scheme introduced in Zimbabwe in the early 90s'. Justice Paddington Garwe, talking about 'The Zimbabwe experience', explains how this sentence has been introduced in Zimbabwe and points out conditions for its successful implementation.

The Zimbabwe programme has served as a model for Kenya. Justice S. Ojuk, in a presentation on 'Challenges of the Community Service Orders in the administration of justice' informs on progress made in the country to implement the CS sentence and efforts that are still needed for the Community Service Orders Programme to be fully operational and beneficial to society.

But in order for penal reforms to be successful, they must involve all stakeholders. Hon. A.K. Kimeto and Mr. Kimanthi talk respectively about 'The role of parliamentarians in Penal Reform' and 'Understanding the role of the police in the penal reform process', thereby paving the way to the discussion of topic four on 'Administering justice, a sector-wide approach'.



# PENAL REFORM IN NIGERIA

Chief Adedokun A. Adeyemi, Professor of Law and Criminology,  
University of Lagos, Nigeria

## Introduction

The Nigerian penal system lacks both deterrent and reformative value, it has become very costly to the economy, it is physiologically, psychologically and emotionally destructive, it is socially damaging, it is culturally abhorrent, and it is penologically disastrous. Imprisonment was given prominence by the Nigerian courts, despite the fact that traditional African criminal justice system despised imprisonment and resorted preferably to measures such as compensation, restitution, corporal punishment, public ridicule and fines and compensatory fines.

## Use of Imprisonment in Nigeria

Imprisonment since 1962, has become the most frequently used disposition measure by the Nigerian courts. It seems today that the courts have developed a tremendous amount of faith in imprisonment. So far, they do not seem to have realized that imprisonment has not exhibited any greater degree of efficacy as a deterrent or as a reformative machinery than probation or fine.

The over-reliance on imprisonment by the Nigerian courts, at the pre-trial, trial and sentencing stages, has led to high remand and congestion rates.

Yet, according to the Draft Prisons Regulations -

5. The purpose of training and treatment of convicted prisoners shall be to inculcate in them the will to lead a good and useful life on discharge, and to fit them to do so.
6. "(c) at all times the treatment of convicted prisoners shall be such as to encourage their self-respect and sense of personal responsibility so as to -
  - i. rebuild their morale;
  - ii. inculcate in them habits of good citizenship and hard-work,  
and
  - iii. encourage them to lead a good and useful life on discharge  
and fit them to do so.

The major factor militating against the achievement of the objectives has been that of over congestion of the prisons. In the face of this overwhelming congestion of Nigerian prisons, it had become clear that categorized accommodation of prisoners, with the aim of individualizing treatment of inmates in Nigerian prisons, would continue to be impossible as long as the congestion lasted. The resultant effect of the conditions has been a continuation of human deterioration at its squalid worst, and human degradation in varying degrees.

### **Reform Activities in Nigeria**

Faced with the penal problems enumerated above, all stakeholders in criminal justice and penal policies are agreed that there has been an urgent need for serious reform of the Nigerian penal policy. However, government has so far failed to implement the reform proposals put forward on various occasions during national or international conferences since 1968.

But government interest is again now been rekindled, due to the combined efforts of NGOs - such as Prisoners Rehabilitation and Welfare Action (PRAWA), National Human Rights Commission, Penal Reform International (PRI); donors - like the Department for International Development of the British Government (DFID), the United States Agency for International Development (USAID), the European Union; the Body of Attorneys-General of Nigeria, and individual experts and Scholars in the field.

The PRI/PRAWA effort, which culminated in the holding of a National Conference on Alternatives to Imprisonment: Giving Balance to the Justice System, Victims, Offenders and the Society, held at Abuja, 8-10 February 2001, resulted in the adoption of the Abuja Declaration on Alternatives to Imprisonment on 10 February 2000.

The major problems of the criminal justice system have long been identified along the following broad lines:

- The criminal justice system is comprised of agencies that work without coordination.
- Changes need to be made in the role of the police in the criminal justice system.
- The court machinery is over-loaded with cases, slow and not readily accessible to all.
- Prisons are a low-priority in Nigeria, as in many other African countries; and where three quarters of the prison population is

comprised of poor and powerless people, prisons are seen as not being worth the time, energy or resources needed to improve them.

- Imprisonment is all too readily used even for small offences, as a punishment of first instance rather than of last resort.

The Abuja Declaration, therefore, proceeded to unfold recommendations for reform under the following heads:

- Improvement of the formal judicial machinery.
- Alternatives within the formal justice system.
- Alternatives within the non-formal justice system
- Strategies for implementation.

The proposed policy reforms involved here from decriminalisation of many offences, restraint in the exercise of police powers of arrest, reform of trial procedures to make them simpler, more intelligible to the common man, and more efficient, ensuring that the right to bail translates into reality for the ordinary citizen and its enforcement accords with constitutional provisions, and the entrenchment of the spirit of cooperation and coordination among the criminal justice agencies, which will eliminate the problem of congestion at all stages of the criminal justice system. Thus, for example, the police need to constrain their powers of arrest, whilst the judiciary needs to improve its efficiency and its attitude to the use of remand for offenders under trial.

Further, recommendations also address the need to improve prison conditions, to encourage the media to bring to public attention prison conditions and criminal justice situation, to train and sensitise prison staff regularly and with uniformity in relation to the best practices for carrying out their duties, aided with data collection and utilisation, and to include civil society groups in prison reform work and in other stages of the criminal justice process.

### **Non Custodial Measures Currently Available to the Nigerian Formal Criminal Justice Systems**

The Nigerian criminal justice systems have various non-custodial measures available to them. These range from corporal punishment to those of fines, orders of deportation, probation, discharges (absolute and conditional), binding over, restitution of movables and restoration of immovables, compensation, destruction and confiscation forfeiture.

## **Institutional Framework for Victim Remedy in Nigeria**

There is no real institutional scheme for enhancing victim remedy and the traditional sentiment of reconciliation in the disputes settlement procedures in Nigerian criminal justice system. Hostility is generated by the process of arrest and interrogation. This is reinforced by the adversary system of trial which is adopted for the most part of the criminal proceedings. The situation is further confounded by the emphasis of the penal system on the punishment of the offender, rather than concern for providing remedy to the victim. These matters should no longer be left to the whims and caprices of individual magistrates and judges, but should be institutionalised and streamlined. However, this must be viewed from the traditional tripartite approach of justice for the victim, justice for the offender and preservation of the interests of the society.

Drawing upon the traditional acceptance of reconciliation as the aim of the traditional criminal justice system, it becomes imperative that the victim must become a party in the criminal process and he must be a full participant at both the pre-trial, trial and the sentencing stages of the criminal process.

## **Conclusion**

The problems of imprisonment and the need to find alternatives to it have been highlighted. Thus, a significant reduction in the use of imprisonment, both for remand and conviction and sentence purposes, must be undertaken by the courts, which should now undertake to employ alternatives to imprisonment more diligently. Thus, procedures which will result in restitution and compensation, should be strengthened and employed. Additionally, such other measures as fine, conditional and absolute discharges, and Community Service, via conditional discharge should be undertaken now, even though the last measure should be undertaken on experimental basis until appropriate legislation for it is passed. Other non-institutional measures should continue to be applied.

## DEVELOPMENT OF PENAL REFORM, THE ZIMBABWE EXPERIENCE

Justice Paddington Garwe, Chair of the Zimbabwe National Committee on Community Service, High Court of Zimbabwe

**T**he Zimbabwe prison and penal system faces the usual conditions in developing countries: poor conditions, limited resources, limited dispositional options, etc. The existing legal frame soon appeared inadequate and the need to reconsider the whole issue of imprisonment became obvious.

The first real change to the law came in 1992, when the law was amended to empower the courts to suspended sentences on certain conditions. The law was very simply stated and gave the courts the ability to come up with workable programmes. These included community service and the performance of a service for the benefit of the victim of offence. The approach to community service has always been that it is an alternative to imprisonment. Cases that warrant the imposition of fines should not be made the subject of a community service order except where the convicted person is genuinely unable to pay which might mean they have to serve the term of imprisonment imposed in the alternative.

### **Notable Features**

The scheme emphasizes the involvement of all stakeholders, including society at large as well as the Judiciary. The contribution by stakeholders is on a voluntary basis.

Following the promulgation of the law, a National Committee comprising all relevant stakeholders and government departments was constituted. A decision was taken not to emulate the expensive schemes found in the West and to involve all stakeholders and to replicate similar committees at the provincial and district levels. Since the scheme relied on existing resources, it required very few additional resources.

The Judiciary play a pivotal role in the scheme. This is important because it is the Judiciary who decide at the end of the day who goes to prison and who does not. The public and NGOs also play a crucial role. Therefore, public education and sensitisation workshops are a key element for success.

## **Indicators of Success**

Over the years, the scheme has recorded a 90% success rate and a very negligible recidivism rate. Through community service, overcrowding in prison has largely been reduced and the population stabilized despite an obvious increase in crime. There has been successful re-integration of offenders; the scheme continues to enjoy public and judicial support.

The scheme has been successful largely because of:

- The political will
- The involvement and cooperation of all relevant Government departments and civil society who have acquired ownership in the scheme
- The voluntary nature of the scheme
- The carefully targeted education and sensitisation.

## **Other Developments in Penal Reform**

Following the successful launch of the scheme, it became clear that there was need to introduce other options to complement the scheme. In particular, it became clear that the interests of victims were not adequately catered for in the existing justice system. Juvenile justice was also largely accorded low status.

The National Committee drafted guidelines on the rendering of a service for the benefit of the victim. This was welcomed by the courts as it was an innovative approach, the intention of which was to redress more directly the effect of an offence on the victim and to ensure that the accused person made good the prejudice, with the victim's consent.

Almost immediately after the introduction of community service, the need for counselling became obvious. Counselling guidelines have been drafted. Heads of institutions are currently receiving training on basic counselling skills. In practice a person can be sentenced to perform community service and to undergo counselling at a specified institution on such conditions as the court may specify.

A pilot scheme of open prisons has been successfully launched. A number of serving prisoners who do not pose a danger to society are identified and referred to an open prison where they operate in a less restricted atmosphere and are enabled to maintain contact with family and the friends and to even go out of the prison. This is to prepare them for final release back into society. It is intended to extend this to other prisons in the country.



# CHALLENGES OF THE COMMUNITY SERVICE ORDERS IN THE ADMINISTRATION OF JUSTICE

Justice Oguk, Chairman Kenya National Community Service Orders Committee

## Introduction

Community Service Orders Act, No.10 of 1998, entered into force on 23 July, 1999, thus becoming part of the Law of this country. The National Committee was appointed on the 20th of December, 1999. Since then, Community Service Orders Act has been adopted by the Courts as one of the alternative sentencing option to imprisonment of offenders.

In passing the Community Service Orders Act, the Government recognized the importance of introducing an alternative sentencing option which does not require the imposition of custodial sentence so as to reduce the levels of prisoners in prison institutions, while at the same time, engaging offenders in a service beneficial to the community. The law is thus in line with the current international efforts towards the improvement of criminal justice systems in various countries all over the world.

## Community Service as a Sentencing Option

Community Service Orders can be defined as a court sanction which requires an offender to perform unpaid public work within the community for a specified period of time. It is an alternative to custodial sentence and other sentences and the offender renders unpaid services in our Kenyan context while staying at home.

In a nutshell, Community Service presents a shift from the more traditional methods of dealing with crime and the offender, towards a more restorative form of justice that takes into account the interest of both the society, and the victim of the offence. The introduction of this non-custodial sentencing option was the result of realization that the problem of crime cannot be solved by incarceration alone.

This form of sentence has obvious advantages to the community in that it is much cheaper to maintain prisoners within the society instead of sending them

to prison. The community is able to see the offender doing something useful to repay it for the wrong done while at the same time the community also benefits from the work done. Instead of sentencing a person to immediate imprisonment, the court suspends the sentence on condition that the offender performs a certain number of hours of unpaid community work. If unemployed the offender may be ordered to perform work during working hours. In Kenya, the offender performs a minimum of 2 hours per day and a maximum of 7 hours per day.

In Kenya as well as in Uganda, Community Service Programme is judicially driven. At the District level, the Magistrate is the Chairman of the District Committee. The National Chairman is a Judge of the High Court while the National Co-ordinator is a Chief Magistrate.

Breach of Community Service Orders is strictly enforced under section 5 of the Act. The police officers upon notification of the breach, are required to swiftly move and arrest the defaulters and take them back to court for breach proceedings. No credit is given for any period served on Community Service once the court is satisfied that such breach was intentional. In that case, the offender should be punished separately for the breach in addition to any other sentence imposed for the original offence.

So far over 65,000 non serious offenders have served in this programme since its inception.

## **Objectives of Community Service**

The objectives of Community Service may be summed up as follows:

- To keep non-serious offenders out of prison where they would be exposed to hardened criminals.
- To Reduce prison population thereby making it possible for the Government to properly cater for those serious offenders or hard core offenders who must be there.
- To punish the offender by doing work within the community where he resides.
- To benefit the community by unpaid public work.
- To reduce inflow of offenders into prison thereby reducing the cost to the tax payer of maintaining such offenders. This is cost saving measure for the Government.

- To rehabilitate the offender by ensuring that he maintains ties with both friends and family and retains his job whilst performing work that benefits the community.
- To right the wrong done by the offender.

### **Offenders not Suitable for Community Service**

Community Service is a sentence that lies in the discretion of the court like any other sentence. It has not taken away the discretion of the court and it is not a mandatory sentence. The court still has to consider the facts and circumstances of the offence and the offender. It is merely an alternative sentence and the court still has to decide when it is best to use it having regard to the facts and circumstances of each case. Some categories of offenders are not eligible for Community Service. Any offence carrying a sentence of over three years imprisonment can not be considered for Community Service. The personal circumstances of the offenders are also considered.

### **Conclusion**

Although Community Service Programme in Kenya is still in its infancy, it has made tremendous strides by reducing prison population. At least there is no single Magistrate in Kenya today who is not aware of this new sentencing option. However, a lot still needs to be done to win the confidence of Magistrates, members of the public and other stakeholders that this is a programme that really works and is not in practice a soft option. Issues that have arisen which require serious consideration: Training of Service Providers - the Magistrates, Community Service Officers and Supervisors; effectiveness of supervision of offenders placed on the programme; lack of adequate transport, funding, and staffing of Community Service Officers. There are other logistical problems which the National Committee and the Ministry of Home Affairs, which is vested with the implementation of the Programme, are looking into.

### **Recommendation**

Increased use of Community Service Programme and Probation as a sentencing option by the courts, presents the way forward for reduction of the ever increasing prison population. As we look for ways of improving prison conditions for those prisoners who out of necessity must be there, we should also focus, strengthen and equip the Community Service Programme and Probation Department in the Ministry of Home Affairs.



## THE ROLE OF PARLIAMENTARIANS IN PENAL REFORM

Hon. A.K. Kimeto, Chairman, Administration, National Security and Local Authorities

Parliament enacts laws that are consistent with the tenets of a democratic and civil society, and it continues reviewing laws, repealing or amending those that have outlived their purposes. Parliamentarians actively organize and participate in workshops and seminars at district and provincial levels. They discuss and understand people's problems, which may not come out in politically charged public rallies where senior government officials are. It is also the role of parliamentarians to urge their Government to be aware of the problems besetting the poor.

Parliamentarians have sensitised the people that criminal justice begins with a report to the police that a crime has been committed. They also have the duty of creating well informed citizens.

At the national level, Parliamentarians in their individual or corporate role have played an important role between the various Government departments at articulating policies to uplift the living standards of the citizens and hope for a better future.

Human rights of each and every person in a society is the sacred duty of any authority. The active and consistent promotion of human rights for every citizen is the backbone of every Government. Parliamentarians, as the elected representative of the people, should be in vanguard of guarding people rights against arbitrary, unwarranted and unjust intrusion by Government agencies.

Parliamentarians are bold enough to be actively involved in investigating allegations or claims of human rights abuse in and outside prisons. Parliamentarians cannot abdicate their role as the resurgence of democratic culture and the form of governance across the world has sharply put in focus the workings of a democratic system.



## UNDERSTANDING THE ROLE OF THE POLICE IN THE PENAL REFORM PROCESS

Mr. P.M. Kimanthi (MBS), Senior Assistant Commissioner of Police

The Kenya Police Force is employed throughout the country to perform the following functions:

- (i) Maintenance of law and order;
- (ii) Preservation of peace;
- (iii) Protection of life and property;
- (iv) Prevention and detection of crime;
- (v) Apprehension of offenders and the enforcement of all laws and regulations with which it is charged.

Police, by law, do not have punitive powers over suspects. As a conduit in the process of the administration of justice, the police are required to produce the suspect before a court of law as soon as possible. When presenting the suspect before a Magistrate, the police are expected to have put together all evidence relevant to the case. The manner in which a suspect is handled by the police during these first stages of the application of criminal justice is crucial as it tells the suspect what kind of justice to expect.

Police sometimes have to keep remand prisoners in their custody, under determined circumstances. It also happens that they have to detain juveniles, for which the facilities are not adequate and do not allow respect of regulations (segregation from adults and attending to their specific needs).

In the course of fulfilment of the above functions, the work of the police is impeded by shortage of transport facilities, inadequate professional investigators/prosecutors, insufficient training and lack of counselling skills to assist prisoners who are placed on police supervision orders.

In order to improve administration of justice in Kenya, the police department needs to do the following:

- Establish closer liaison between the police and the prisons authorities in matters concerning care and custody of prisoners.

- Improve facilities at police stations to match the recommended international standards for detention of suspects.
- Training police officers in human rights and counselling is a matter of priority.
- Provide facilities for all children and young persons held in police custody at all police stations.



## TOPIC FOUR: ADMINISTERING JUSTICE, A SECTOR WIDE APPROACH

Penal reform cannot proceed without changes to the criminal justice system as a whole and should be an all embracing and consultative process.

To achieve these changes, it is necessary that all criminal justice agencies work hand in hand and towards the same goal: the fair administration of justice for all.

Within the chain of the criminal justice system, the Probation Services are an important link, which efficiency reflect the level of cooperation between agencies. In a presentation on the 'Evaluation of Current Policies for Community Based Offenders Rehabilitation Programs', Mr. Muhoro, Director of Probation and After-Care Services, presents his department and efforts that are still needed by justice actors to strengthen its work.

Mr. Etima explains in 'The Uganda Sector Wide Approach: Justice, Law and Order Sector' how Uganda attempted to adopt a holistic approach to the administration of justice by creating a Justice, Law and Order Sector.



# EVALUATION OF CURRENT POLICIES FOR COMMUNITY BASED OFFENDERS REHABILITATION PROGRAMS

Mr. P.K. Muhoro, Director of Probation and After-Care Services

**T**he Probation and Aftercare Services is one of the agencies in the administration of criminal justice. The mission of Probation and Aftercare Department is crime prevention and treatment of offenders in the community.

The Probation and Aftercare Department has three programs. These are:

## *Probation Service*

On presentation of a report by a probation officer, the offender may be released by Court under the supervision of the probation officer for a period of not more than three years and not less than six months. Counselling is the key factor for a majority of offenders subject of probation orders. Under the probation program, the Department also has four hostels. These hostels cater for the offenders under supervision, who are found to be at risk if returned to the community while probation sentence is preferred.

## *Aftercare Service*

The Aftercare program caters for criminal offenders, who have served institutional sentence. These offenders may either be adults or juveniles.

## *Community Service*

This is the most recent non-custodial sentence managed by the Department. It is a judicially driven program. The offenders in this program perform unpaid community work in reparation for their wrong-doing. Community Service Orders are eligible for offenders with offences of less than three years imprisonment.

The policy of encouraging use of non-custodial sentences for majority of petty, non-serious offences has often been considered.

The scope of practice is, however, still limited.

- (i) This is sometimes due to lack of inter-agency understanding of roles.

- (ii) Statutes that require re-looking into so as to bring them up to the current expectations.
- (iii) Limited use of community resources to assist in offenders rehabilitation. Example: very few community members are willing to come forward and help as volunteer probation officers.
- (iv) Limited financial resources.
- (v) Lack of ownership of the law, so that the law is seen to belong to the State and not to the public.

It is recommended that increased inter-agency co-operation be encouraged especially at the district level. Non-custodial sanctions should be increasingly used by the courts, especially for non-serious and petty offences.

# THE UGANDA SECTOR WIDE APPROACH - JUSTICE LAW AND ORDER SECTOR

Mr Joseph A. Etima, Commissioner of Prisons, Uganda

**U**ganda's Justice, Law and Order Sector (J/LOS) Reform Programme is a significant innovation for developing countries as the first attempt to adopt a holistic approach to the administration of justice.

After years of planning and research, the J/LOS Strategic Investment Plan establishes the government's firm commitment to a coordinated sector-wide reform policy, and acknowledges the importance of appropriate and sustainable resource levels to achieve personal safety for individuals, security of property and maintenance of the rule of law and due process. The J/LOS Strategic Investment Plan further represents an assessment of the problems and challenges facing Uganda's justice system.

The J/LOS programme is ultimately to contribute to the eradication of poverty. This will be achieved through accountable, efficient and equitable justice services and institutions, supported by appropriate legal education and reforms, that are accessible to the people of Uganda, especially the poor and vulnerable.

## **Background**

The primary objective of any justice system is to uphold and administer the laws of the country in an effective, equitable, timely and transparent manner.

The justice system of Uganda is constructed from a distinctive combination of laws, practices and institutions of diverse origin that reflect the historical experience of the country. Enacted statutory and common-law principles derived from English law are applied alongside customary and Islamic laws and there are parallel divisions in the judicial system. Although some progress was made with the integration of the various court systems after Independence, formal duality was reintroduced in 1988 with the granting of judicial powers on customary and minor legislation and bylaws to the Local Council Courts. These powers were further expanded under the Children's Statute of 1996.

The context, within which the justice system in Uganda must be addressed, is dominated by two factors: the extent of poverty and the impact of decades of civil

unrest. Public confidence in public institutions and in particular the criminal justice system, intended to uphold the law and provide for the safety and security for all citizens, has been all but eroded. Investigations by police are slow and often incomplete, sentences imposed by the courts are perceived as too lenient and too slow and both are susceptible to, and plagued by, corruption. Where justice does not appear to be meted out the public has, in many instances, taken the law into their own hands in the form of lynching and other violent means. Furthermore, there is a reasonable expectation of ineffective prosecution resulting in few guilty pleas by offenders who prefer to take a chance on the high probability of acquittal. This, combined with lengthy court delays, a high backlog of cases and an ineffectual bail system, results in a disproportionate number of remand prisoners comprising the majority of those incarcerated in Uganda prisons.

In order to respond to these limitations the government gave its support to the formulation of a sector programme to promote greater policy coherence, accountability coordination and efficiency across the Justice, Law and Order institutions. The sector programme has been discussed widely with primary and secondary stakeholders at a range of events including workshops, committee meetings, visits to local districts and through consultancy studies and support. The main studies covered the individual J/LOS institutions but also reviewed the position with regard to cross cutting critical sector issues such as criminal trial procedures, and juvenile justice. This collaborative process has thus contributed to the formulation of a J/LOS Strategic Investment Programme.

## **Objectives**

The Justice Law and Order Sector seeks to ensure personal safety, security, rule of law and due process. The reform policy for the Sector is build upon the principles, policy objectives and inherent rights and freedoms laid out in the Ugandan 1995 Constitution.

The sector ensures the security of all Ugandans and those residing therein through prevention of crime and investigation and prosecution of criminal activity.

It also ensures adherence to the rule of law through enforcement, promotion of civic education and local community participation and feedback as well as establishment of institutions such as a police force, prison service, law reform commission and courts to carry out these tasks.

Due process, which is a Constitutional imperative, is achieved through provision of formal courts, local courts and centres of arbitration designed to provide access to justice, fair and speedy trials. Due process is also ensured through enacting of laws that uphold the Constitutional ideals such as the right to a fair and speedy trial and the presumption of innocence.

The Justice Law and Order Sector is composed of the:

- Ministry of Justice and Constitutional Affairs
- Ministry of Internal Affairs
- The Judiciary
- The Uganda Prisons Service
- The Uganda Police Force
- The Directorate of Public Prosecutions
- The Judicial Services Commission
- The Uganda Law Reform Commission
- Ministry of Gender Labour and Social Development - Probation Services
- Ministry of Local Government - Local Council Courts

### **Structural Constraints**

The Sector is faced with chronic systemic constraints that hamper improved access to justice. Corrupt practices, case backlogs, inefficiencies and lack of effective procedural guidelines also hamper the justice system.

The J/LOS is also constrained by antiquated methods and tools of investigation and prosecution, the high cost of justice and lack of proximity to the courts by end-users and significant gender discrimination.

These constraints are compounded by the absence of a clear policy framework and strategic plan for the sector, limited capital and infrastructure investment and decreasing funding levels from the government. Lack of accountability across the sector, corrupt practices and limited information exchange contribute to serious problems, e.g. the management of suspects from arrest to discharge.

### **Developing Partnerships**

The Government of the Republic of Uganda has neither adequate financial/capital nor the human resource capacity to fully actualise the Sector mission.

Consequently, civil society organisations are viewed as valuable stakeholders in the sectoral functions and obligations.

Thus, civil society organisations, particularly those that seek to increase access to justice for vulnerable groups, and the protection of human rights and freedoms, are viewed as part of the Sector reform process. To this end effective partnership is sought with civil society organisations that address access to justice for the poor, legal education, gender equality, strengthening of the commercial enabling environment and support to the legal profession.

The Justice Law and Order Sector also addresses crosscutting issues that include the Health, Education and Water and Sanitation sectors. The health and well being of those who are incarcerated, and education as part of the rehabilitation process are such examples. The J/LOS thus seeks to increase inter-sectoral linkages to ensure that Sector objectives are included in the objectives of other sectors, where relevant.

The Justice Law and Order Sector has also entered into partnership with development partners to plan and implement sectoral reform in aid of achieving the Sector objectives.

## **Implementation Structures**

A National Council for Justice, Law and Order is the oversight body for the J/LOS programme. It provides political support and policy guidance across the sector and ensures coordination, accountability, efficiency and equity of access across the J/LOS institutions. The NCJLO is also responsible for presenting the annual report to Cabinet and Parliament.

A J/LOS Steering Committee is responsible for guiding implementation of the programme. Responsibility for implementation of the J/LOS programme lies with an overall Technical Committee. The Technical Committee delegates specific responsibility for the Criminal Justice Reform Programme to its Criminal Justice sub-committee.

The Criminal Justice sub-committee comprises representatives from government institutions involved in the implementation of the programme, the Ministry of Finance and Economic Planning and Development Partners.

The Ministry of Justice and Constitutional Affairs Policy and Planning Unit is the resource base for implementation of the J/LOS programme.



A National Forum on Justice Law and Order is planned annually in order to bring together primary and secondary stakeholders to debate J/LOS issues and concerns providing an important link between the government and civil society.

Programme evaluation and monitoring tools are further designed to measure progress and assess the impact of the programme.



## TOPIC FIVE: COMMUNITY INVOLVEMENT IN THE CRIMINAL JUSTICE SYSTEM

Treatment of crime is not only the affair of criminal justice agencies. Offenders stem from society and go back to society. Communities and civil society groups should, therefore, play an essential role in their rehabilitation. In discussing 'The role of NGOs and the community in the administration of justice', Mr. Moffat Karambamucho gives concrete examples of areas where involvement of civil society can be both useful and beneficial.

Besides, in developing countries where prison departments drastically lack the adequate resources, civil society groups and NGOs can play an important role in partially compensating for the shortcomings of the institutions. Amb. Dennis Afande in 'The role of NGOs in the Rehabilitation process' urges NGOs to play a bigger role in support to prison administrations.

However, this goal will only be achieved by changing the perception of prisons and prisons services by the public. The media have been the mirror of the suspicion that can exist in society towards prison administrations. Ms. Wanja Njugua-Githinjui, in her presentation of the 'Role of Media in the administration of justice' analyses the relations between the press and the prisons in recent history and draws attention to the fact that changes will only be achieved through transparency and openness.

At a time of globalization, what applies at the national level is often relevant as well at an international level. Ahmed Othmani presents 'The role of the international community in supporting penal reform' and highlights the fact that, in addition to governments, the judiciary and civil societies, the international community is now a key partner on the way to reforms.



## THE ROLE OF NGOS AND THE COMMUNITY IN ADMINISTRATION OF JUSTICE

Moffat Karambamuchero, Africa Director Prison Fellowship International, Zimbabwe

The advent of colonization created a veil of secrecy around the justice system in general and, in particular, criminal justice. The languages used and the practice and procedures in the administration of justice ostracized its subjects. It was intended to vindicate the authority of the State/Government. Long after colonization, successive governments have continued to maintain the status quo for political gain. Access to the halls of justice has become the domain of the rich and the powerful, while the poor and the marginalized are denied access.

Criminologist, psychologists, social workers and a host of other professionals now agree that crime is a community problem. It is in the communities that crime takes place and it is from the communities that prisoners come from and it will be into the communities that prisoners return after their sentence. Efforts to rehabilitate offenders are in vain when we do this in isolation from the very same communities in which the offenders are to go and live as law-abiding citizens.

Prisons are known to be a security area and in Kenya it could never be different. Not everybody that wishes to come into the institutions will be allowed but those who have fulfilled a certain criteria. In some countries this takes the form of government registration of a local NGO/welfare organization. These welfare organizations/local NGO's represent an organized local community response to perceived shortcoming of the public sector approach towards addressing some community needs. Their efforts are usually aimed at complementing/supplementing government efforts.

Their involvement can start at the stage of Police investigations and arrests. There can be no arguments that, to a very large degree, police rely on the community for information leading to the arrest of the offenders. Organized communities must be encouraged and allowed to take responsibilities in dealing with crime and crime prevention activities.

It continues at the level of prosecutions and courts. The issuing of pre-sentence reports to the courts can be delegated to the relevant NGOs or community representatives.

With the exception of the security aspects of the prison there are virtually no activities that cannot be delegated to the civil society and NGOs. Reference is made to a few activities, to illustrate the fact:

- (a) Rehabilitation of offenders by way of skills training;
- (b) Counselling and guidance including addressing the spiritual needs of the offenders;
- (c) Contributing to medical care of prisoners.

## THE ROLE OF NGOS IN THE REHABILITATION PROCESS

Amb. Dennis Afande, Undugu Society of Kenya

**W**hereas people are punished or imprisoned in order to correct them, the perception that prisons are simple places of punishing criminal offenders, rather than being rehabilitation centres whose purpose is to transform the offender so that he/she leaves prison a better individual than he/she went in and is law-abiding citizen, is undermining efforts to view a prison as a rehabilitation centre.

Unfortunately, this wrong perception of prisons is shared by some prison officers and NGOs. Prison officers should be sensitised to better understand this aspect of the role of prisons.

Whereas many NGOs express strong concerns about poor conditions in prisons, they do not offer support which could enhance the abilities of prisons to improve those conditions and the rehabilitation of prisoners. The private sector and the donor community also behave the same way.

The argument that prisons are closed areas in which NGOs are not welcomed is often used as a justification to this lack of involvement. And in fact, it is crucial that prison authorities encourage and give more support to those organizations willing to contribute to the rehabilitation of prisoners. NGOs should reciprocate by assisting in the mobilisation of resources for the welfare and rehabilitation of prisoners and ex-prisoners.

It is important to have programmes for social interaction with prisoners as alternative avenues of dialogue other than prison authorities and "outsiders" can also play an intermediary role. After care services after prison term are also important.





## ROLE OF MEDIA IN ADMINISTRATION OF JUSTICE

Ms. Wanja Njugua-Githinji, Media Representative

**R**elations between the media and Prisons Department have been long strained. The opening-up of Kenya Prisons Department since December 2000, is, therefore, a very welcomed move forward.

The media in Kenya has become extremely diversified; there are electronic and print media, mainstream newspapers and the "alternative press".

Since the media's role is simply to report, entertain and educate, when it comes to justice, their role falls on reporting not only the injustices committed in the society by various organs of the society such as the Police and Prisons and various companies but also highlight the good that the same mentioned do. After highlighting both the injustices and justices, the media do not stop there - they make suggestions on how the issues can be resolved.

The relationship between the Prisons Department, the media and the society has been one of suspicion, hatred and all things negative. The bad relationship between the Media and the Prisons is due to the following reasons:

- First, the shroud of secrecy that surrounds the Department. This leaves a lot of room for speculation and misinformation.
- The lack of responsible and knowledgeable designated spokespeople to verify something or to enquire about. Public Relations (PR) is a major investment - it requires well trained people to work with the media and other publics for the good of not only the prisons but also the community where the inmates come from and will go back to after incarceration.
- If a PR person does not know how the media operates and is not adequately trained, he or she will not know how to respond to a problem.
- Suspicion between the Prisons and the media has often hampered good communication between the two.
- Due to the fact that there has been no openness to issues in the prison system, even when there are problems that can be resolved through publicity, the media will not know.

- Lack of official response to issues brought to the media is another hindrance to good communication between the Prisons and the media. This creates room for rumours which as we all know have a higher percentage of lies than truth.
- Prisons remain closed to external scrutiny, be it the media or the community. Having "open days" and allowing journalists to visit prisons and talk with prisoners and staff would improve their understanding of what is happening inside.
- Two media vehicles that can help the department to be accessible not only to the media but to the society and to have regular exchanges are a Website and a Journal.

The image and good name of an institution such as Prisons is priceless. Adequate attention and resources should be devoted to ensuring the media - and thus the public - is provided with opened and balanced information.

# THE ROLE OF THE INTERNATIONAL COMMUNITY IN SUPPORTING NATIONAL AND REGIONAL PROGRAMMES OF PENAL REFORM

By Ahmed Othmani, Chairperson Reform International

**P**enal reform can only be achieved through close cooperation between governments, the judiciary, civil societies and the international community.

The international community comprises of international and regional inter-governmental organisations, international NGOs, diplomatic representation and development agencies.

At the time of globalisation, the international community plays a growing role in development policies and institutional reforms. It also represents a forum for the promotion and circulation of good practices and experiences. As an example, the successful programme of Community Service that was initially introduced in Zimbabwe in 1992, has become a model in the sub-region through the assistance of international NGOs, the holding of international conferences<sup>1</sup> and the support of donor agencies. As a result, this scheme is now being replicated in a number of countries and a network on Community Service has been developed between these countries.

The international community also represents an influential audience and loudspeaker to the concerns and proposals of reformers and for the promotion of human rights principles in the adoption of reforms. The work done by participants at gatherings like the *Kampala Seminar on Prison Conditions in Africa* and the *Kadoma Conference on Community Service Orders in Africa* has been successful in influencing international norms and standards as both the Kampala and the Kadoma Declarations were further adopted by the Economic and Social Council of the United Nations, and publicised as official UN documents. Similarly, the PRI publication entitled 'Making Standards Work - An International Handbook on Good Prison Practice' was recommended by the UN to its member states as a reference material.

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1. In particular the International Conference on Community Service Orders in Africa held in Kadoma, Zimbabwe, on 24-28 November 1997.

In other cases, the international community and institutions can be at the forefront and play a leading role in bringing out reforms. The contribution of regional mechanisms devoted to the promotion and protection of human rights can be decisive. In 1996, for example, the African Commission on Human and Peoples' Rights appointed a Special Rapporteur on Prisons and Conditions of Detention in Africa with the task of monitoring prison conditions and recommending improvements. The work of the Special Rapporteur has been essential in prompting the debate on prison reform and placing it on the agenda of policy makers.

Last but not least, the international community is expected to support financially the initiatives taken by national governments in order to reform their systems. International NGOs can serve as intermediary between government, local NGOs and donors for initiation and funding of prison and penal reform projects. They can also influence donors policy.

**PART 3:  
MOUNT KENYA  
DECLARATION  
ON PRISON  
POLICY IN KENYA**

Recommendations arising from discussions  
at the Roundtable Conference on Prisons  
Policy held at Mountain Lodge, Nyeri, on  
14<sup>th</sup> - 16<sup>th</sup> October, 2001



# MOUNT KENYA DECLARATION ON PRISON POLICY IN KENYA

RECOMMENDATIONS ARISING FROM DISCUSSIONS AT THE ROUNDTABLE CONFERENCE ON PRISONS POLICY HELD AT MOUNTAIN LODGE - NYERI ON 14<sup>TH</sup> - 16<sup>TH</sup> OCTOBER, 2001

## Preamble

**B**earing in mind the international norms and standards on the administration of justice and the treatment of offenders, and in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955, the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985;

Bearing in mind the African Charter on Human and Peoples' Rights and its reaffirmation of the dignity inherent in a human being and the prohibition of inhuman and degrading treatment;

Considering the Kampala Declaration on Prison Conditions in Africa and the Arusha Declaration on Good Prison Practices;

Considering that deterioration in prison conditions in Kenya has reached an alarming dimension;

Concerned with congestion in prisons, inadequate bedding and clothing, the poor diet for prisoners, the limited access to health care, the lack of adequate rehabilitative programmes, the lack of adequate transport, the lack of proper accommodation for prisoners and prison staff, and poor conditions of service for prisons staff;

Bearing in mind that some groups of prisoners, including juveniles, women, the old, the mentally and physically ill, are especially vulnerable and require particular attention;

Recognising the following principles relating to the rights of the prisoners and penal reform:

- The management of prisons is a social service hence the need to promote transparency and accountability in the management of prisons and prisoners to keep the public informed about review of prison service.
- A person is sent to prison as punishment and not for punishment.
- A prisoner is entitled to all human rights within the limitations of incarceration.

Noting, with appreciation, the wish of the Government of Kenya and the Prison Services to improve prison conditions and to reform prison policy in Kenya;

Acknowledging that an important step has been made in that sense with the introduction in 1999 of the Community Service Scheme;

Considering that other countries in Africa fall short of the minimum standards but have now embarked upon penal and prison reform programmes and are eager to share their experiences;

We, the participants at the International Roundtable Conference on the theme "Towards Methods of Improving Prison Policy in Kenya" held at the Mountain Lodge, Nyeri (on the slopes of Mount Kenya), between the 15<sup>th</sup> and 16<sup>th</sup> October, 2001, recommend as follows:

### **1) Towards Decongesting the Prisons**

Delays in administration of justice, emphasis on custody as a sentencing option, the prevailing legislation and changing crime rates have led to congestion in prisons.

The participants at the conference make the following recommendations to decongest the prisons.

#### ***Short Term Measures***

Amnesty, periodical and medical reviews should be used regularly as provided for by the law.

#### ***Speeding Up the Administration of Justice***

- a) The criminal justice agencies, should be strengthened for efficient and effective delivery of services, so as to decongest the prison institutions.



- b) Expeditious, speedy and skilful dispensation of investigation of cases by the police is a necessary measure to decongest the prisons.
- c) Prison visits by judges, magistrates and other visiting justices should be intensified and made regular.
- d) Introduction of mobile and circuit courts to deal with cases on the ground is called for in order to reduce delays in the delivery of justice.
- e) There should be modernization of the criminal justice agencies through the introduction of information technology for speedy processing of cases.
- f) The court processes should be simplified - both for the accused and the complainant so that they are not just spectators in the show. They should be involved in the whole legal process.

#### ***Alternatives to Custody***

- a) Emphasis should be given to alternative sentencing options such as Community Service Orders, probation, affordable fines, suspended sentences and conditional discharges.
- b) Change of attitude by the judicial officers is called for through training in order to encourage the frequent use of non-custodial options.
- c) Courts should give offenders adequate time to settle fines by instalments.
- d) The Commissioner of Prisons should use his powers as provided for under section 49 of the Prisons Act. Prisoners having a balance of up to six (6) months instead of the current three months should be included for parole.
- e) Out of court settlement of disputes should be encouraged to reduce congestion with emphasis being given to traditional dispute resolution mechanisms.

#### ***Need for a Re-examination of the Existing Legislations***

- a) Revision of laws - crimes such as loitering with immoral purposes, as well as other petty offences in the Penal Code (Cap. 63 of the Laws of Kenya) should be decriminalized.

- b) A National Sentencing Committee chaired by a Judge should be put in place to look into sentencing trends. Such a committee should oversee any disparities in the sentencing process.
- c) The state should formulate a compensation scheme for people confined in prisons for long, and who are eventually acquitted for lack of evidence. This scheme will ensure that the Police speed-up their investigations. The Police also need sensitisation to the fact that they are not immune to prosecution for torture of crime suspects.

## **2) Towards Improving Conditions in Prisons**

The Prison authority with the assistance of the Government should address the following issues to alleviate the current plight of prison staff and prisoners as a matter of urgency:

### ***Prisoners Diet***

Prisoners diet should be improved by:

- a) Provision of more funds to support the gazetted diet to meet the ever increasing prisoners population;
- b) Promoting self-sufficiency and sustainability by improving management of the prison farms.

External contribution from reputable NGOs and the community should also be encouraged.

### ***Bedding and Clothing***

Bedding (beds, mattresses and blankets) and clothing are largely inadequate.

More funding and adequate equipment e.g. sewing machines should be provided and prison labour maximised to make the new prisoners' uniforms and other facilities for prisoners.

### ***Health Facilities***

The prisoners and staff health service which is currently in poor condition should be revitalised by establishment of a Prisons Medical Service that is autonomous from the Ministry of Health and construction of modern medical infrastructure in prisons.

Short term measures to be undertaken include the improvement of health standards, prevention of communicable diseases and awareness campaigns for

diseases such as HIV/AIDS pandemic.

Secondment of more staff from the Ministry of Health and free medical check-ups, through involvement of medical associations, should be encouraged.

#### ***Recreational Facilities***

Recreational facilities for both prisoners and staff should be expanded by attracting external support to provide sports equipment, books and indoor games among others.

#### ***Sanitation***

Sanitation should be improved by the drilling of boreholes to alleviate water problems.

The current treatment works already in place should be expanded and the maintenance of hygienic conditions should be ensured by all prison staff and prisoners.

#### ***Young Children Accompanying Their Mothers to Prisons***

The welfare of young children accompanying their mothers to prison should be addressed by creation of separate facilities which emphasize on a home environment.

Foster and family care through links with the immediate family are necessary as well as soliciting for external support from the civil societies and NGOs.

#### ***Juveniles***

Juveniles should be separated from adult offenders through:

- Creation of borstal institutions for youthful female offenders
- Expansion of the current borstal institutions for boys

Prison staff dealing with juveniles should be provided with adequate training.

Pre-trial and post-trial diversion should be encouraged.

The PRI 10 point plan for juvenile justice should be implemented immediately.

### **3) Towards Improving Management in the Justice Sector**

#### ***Review of Prison Laws***

Cap. 90 and 92 (Prisons Act and Borstal Institutions Act) should be reviewed in order to amend outdated practices e.g. prisoners earning scheme. The review

process should in as much as possible accommodate the U.N. Standard Minimum Rules and the Kampala and Arusha Declarations.

### ***Terms and Conditions for Law Enforcement Officers***

Terms and conditions of law enforcement officers - the Prisons, Police, Probation, Children's and Judicial Officers should be improved.

This includes the upward mobility of law enforcement officers which should be based on merit to encourage hard work and honesty. Adequate Criminal Justice officials should be recruited.

There should be proper mechanism put in place to remove corruption and other malpractices among the criminal justice agencies.

Lawyers should be employed in the police force to assist in the investigation and prosecution of cases.

### ***Prison Staff Accommodation***

Poor prison staff accommodation should be addressed by maximizing the use of prison labour and locally available raw materials e.g. brick making. Funding from the community should be encouraged through the Harambee effort.

### ***Recruitment and Training of Prison Staff***

The existing curriculum needs to be reviewed.

The Prisons Department should be allowed to recruit specialized staff e.g. psychologists, psychiatrists, doctors, medical staff, lawyers and criminologists.

Refresher courses should be conducted regularly.

Training of Criminal Justice Agencies as a whole should embrace the current developments towards penal reform in the world. Information should be disseminated to all officers/staff so that they feel responsible for the process of changes within their own department.

There is need for joint-training for the criminal justice agencies from time to time.

### ***Research and Statistics***

- a) The research and statistics unit should be strengthened by increasing staffing and equipping them with the necessary facilities, e.g. providing IT education and computers. Without an effective unit

for research and data collection efforts for strategic planning would be meaningless.

- b) Officers in the department should be encouraged to write project proposals and prioritise the projects. They should be knowledgeable in acquisition of finances to undertake these projects.
- b) Establish linkages with other departments research units to enhance networking and sharing of information.
- c) A process of effective monitoring and evaluation of the projects should be developed.

### ***Computerization***

The co-ordinating unit for computerization at Treasury should be fully utilised by the Prisons Department as they work towards improving their policy.

### ***Model Prison***

Creation of a model prison in every Provinces is called for.

### ***Transport***

There is need for adequate transport for the Prisons Department.

All Departments involved in Criminal Justice should share the available transport resources equitably to ensure prisoners are produced in court, and other authorised places they are required to be, in time.

## **4) Towards Improving Inter-Agency Collaboration**

- a) A mechanism should be put in place to coordinate and monitor Criminal Justice Agencies. A committee chaired by the Chief Justice comprising of the Commissioner of Police, Commissioner of Prisons, Directors of Probation and Children's Department should be established at the National level to monitor backlogs and other problems which lead to congestion. Similar committees should be established at the provincial and District level headed by the Judicial Officers.
- b) Monthly returns to the Registrar of the High Court should be enhanced so as to reduce delay in disposing cases in court and to reduce congestion in Prisons.

- c) There should be involvement and cooperation of all relevant Government departments and civil society groups in the Prison reform programmes.
- d) Parliament should play its role effectively in protecting people against abuse by the criminal justice agencies

## **5) Towards Improving Openness and Collaboration**

### ***Encouraging Openness and Transparency in Criminal Justice System***

Introduce legal representation for all capital offences - such as murder, robbery with violence and treason.

Public education, to create awareness of the laws of the land and to promote loyalty, should be introduced from the primary school level in order to cultivate the culture of respect for law and order.

### ***Community Participation in Rehabilitation***

The rehabilitation process should be enhanced through opening up of Prisons for external scrutiny and the use of other non custodial programmes such as Probation and Community Services.

Community participation in prison affairs should be encouraged through public debate. This will pave the way towards an integrated approach towards rehabilitation of prisoners through resocialisation of the offender and fulfilling the public right to know.

Creation of public awareness that prisons are open institutions should be enhanced.

### ***Non Governmental Organisations***

Currently there are no legal provisions barring to the involvement of NGOs in the participation of Prison Programmes so long as the same registered with the NGO Registration Bureau.

The Commissioner of Prisons should form a body to vet the NGOs with membership drawn from OOP, Ministry of Home Affairs and the NGO Bureau.

A Memorandum of Understanding should be developed with clearly defined guidelines on the activities of the NGOs in their day to day relationship with Prisons.

The Commissioner should have powers to make standing orders regarding the NGOs operations.

Within the principles of openness and maintenance of links with the community, physical facilities in prisons should be improved in order to create conducive environment for prison visits by relatives.

Stakeholders should be encouraged to participate on a voluntary basis.

Counselling and training should be provided to offenders.

## **6) Other Recommendations**

Penal reform should be viewed as a poverty reduction strategy because most of the inmates are the poor and vulnerable members of society.

There is need to share experiences with other countries to learn what is happening on similar issues.

There should be coordination meetings with the donor community, criminal justice agencies, the public and media.

A task force should be appointed to explore the most urgent ways of implementing these recommendations.





## **PART 4: APPENDICES**

Prisoners' Memorandum

Abbreviations and Acronyms

List of Participants

List of International Instruments



## PRISONERS' MEMORANDUM

This is a Memorandum read by a prisoner of Kamiti Maximum Security Prison at the occasion of the visit of the prison by participants at the Roundtable Conference

Dear Sir,

RE: PITY, MERCY, COMPASSION, RELEASE AND FORGIVE

May God bless you and your households - you who may consider my call.

I did neither participate in this incident nor the first report of the robbery I am accused of. The complainant did not know their assailant (thus say the reportees).

"We reported that robbers had attacked us" - "did you mention my name?" I asked them "No, they testified".

None of the complainants were assaulted to death or grievously harmed. They are all alive, but as for me now I am in danger of death sentence - 15 years in Prison since I was arrested on 5th January, 1987. I call for mercy release, pity and forgiveness - In the name of Jesus whom God has enabled me to receive as my Saviour. I pray and I thank God to help me live.

15 years in Prison, eating one diet only. I ask for help, no fruits, milk, fish and orange for 15 years. Congestion, suffocation, torture, harassment, hunger, famine, thirst and lack of medicine - unpunctual, merciless and uncompassionate Judges.

### *Prison Conditions*

First and foremost I take this opportunity to express our heartfelt gratitude on behalf of Kamiti Remand Prison and the prison at large.

To be very brief I will mention a few points that address the immediate problems of Kamiti Remandees and finish with long term problems which must be addressed eventually. Distinguished guest, as you are well aware there exists an increased arrest of suspects in the past years. These suspects are indeed innocent until proven guilty but they are forced to be subjected to the following inhumanity before their cases are determined:

1. Extreme congestion forcing the prison authority to house nine people even ten in a single cell 7x9ft. designed for three people

back in the colonial era. The discomfort and threat of disease is absolute. It should be noted that after evening lock-up we must endure without lavatories. The human rights abuse especially on one's privacy is understandable to persons of your mental capacity.

2. Inadequate medical care; Kamiti inmates depend on a small unequipped and prefabricated hospital. A qualified medical doctor appears once in a week or not at all. People are dying at an alarming rate for easily treatable ailments. Accessibility to proper treatment at that hospital is limited simply due to the fact that it is understaffed. I am certain you are able to conclude the result of inadequate personnel faced with multitudes of sick remandees. The few who get the treatment are lucky if they do so without a compromise of sorts. Transport to Kenyatta National Hospital is the other issue that must be addressed urgently. The lack of transport leaves many patients you have seen in the wards to die awaiting a chance to get transport to reach Kenyatta National Hospital and have their cases reviewed.

Please note that indeed most remandees are acquitted after being found innocent and it is not understandable why lives of such citizens' should not be saved like those of any other innocent Kenyan citizen. Even those found guilty should be punished in accordance with the law and not through losing lives due to the state of negligence. Food rations to prevent sickness rather care should be established and adhered to, to protect all prisoners and create a sense of calm and positive thinking.

3. Transport and escorts:  
It is true that the Government and even donors can make arrangements for a few more lorries. Kamiti Maximum Prison Authorities are faced daily with crisis management in delivering remands and prisoners to Nairobi, Kibera, Kiambu, Makadara, Thika and Kikuyu courts and ultimately Kenyatta National Hospital. They have three lorries and of late only two are operating. This causes unnecessary adjournment of cases and traffic perils due to overloading and deaths as described in point two. This problem must be addressed as it will soon get out of hand despite the prison authorities hard work to manage on non-existent resources.

4. My fourth point is I must express fear that the management and running of penal institutions in Kenya have been overtaken by time. Some of these buildings were built by the Mzungu and others in the 1960s. Surely they must have been adequate at the time in view of the population then but today their inadequacy cannot be less apparent. The colonial attitude and psychological approach on the part of a few warders is another indication. An effective prison must be rehabilitative not punitive and better understanding of human rights of each individual including prisoner must be observed. On this event there has been thorny incidents embarrassing to the senior administration on the part of a few diehard warders and if any success is to be achieved this should be dealt with through modern training and attitudes. The facilitation of adequate visiting of prisoners as well as remands could be improved with more spare for those visitors to allow some communication time. The rights of prisoners to have ample time to consult lawyers, business associates and relatives should be safe-guarded by allowing such opportunity without undue harassment and baseless suspicion. After all there are adequate trained security personnel and equipment to control such visits.
5. Suggested approach to this problem.  
This single day of opportunity cannot be enough to express all our problems and we do appreciate there are other problems each of you is tackling in his/her capacity. We who find ourselves in this circumstance believe that the Ministry of Home Affairs should create a liaison body among the Attorney Generals office, the Judiciary and the Police investigative teams to address the issue of innocent people being charged and having to endure years in remand for cases which would not have needed court if the state/A.G's office put more attention on the consent to prosecute. In fact if most of the robbery 296/2 cases in Kamiti were put under scrutiny within one month over half of the people you see here today would either be free or bonded in accordance with the law of Kenya.

That would greatly reduce the number of remand prisoners. Let somebody be charged with handling or assault if that is what he has been caught and been suspected with not non-existence capital robberies. Again we thank you and

make a prayer that the spirit of communication shall continue and bear fruit.  
May God bless us all.

## ABBREVIATIONS AND ACRONYMES

A.I.D.S.	-	Acquired Immune Deficiency Syndrome
A.G.	-	Attorney General
CAP	-	Chapter
CESCA	-	Conference of Eastern, Southern and Central Africa Heads of Correctional Services
C.J.	-	Chief Justice
C.S.O.	-	Community Service Order
C.S.S.	-	Community Service Scheme
C.R. APP	-	Criminal Appeal
E.B.S.	-	Elder of the Burning Spear
E.G.H.	-	Elder of the Golden Hear
FIDA	-	Federation of Women Lawyers
G.O.K.	-	Government of Kenya
HIV	-	Human Immunodeficiency virus
HON	-	Honourable
IMDA	-	International Medical and Dental Association
IT	-	Information Technology
KCSS	-	Kenya Community Service Scheme
MBS	-	Moran of the Burning Spear
MP	-	Member of Parliament
NGO	-	Non-Governmental Organisation
NSC	-	National Sentencing Committee
OAS	-	Organisation of American States
PLI	-	Public Law Institute
PRI	-	Penal Reform International
RMS	-	Regional Minimum Standards
SAPS	-	Structural Adjustment Programme
TC	-	Technical Committee
UN	-	United Nations
V.P.	-	Vice President





## LIST OF PARTICIPANTS

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### **International observers**

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*Political Section, British High Commission, Nairobi*

# INTERNATIONAL INSTRUMENTS AND DECLARATIONS

## Prison Conditions

- Basic Principles for the Treatment of Prisoners, adopted and proclaimed by the General Assembly of the United Nations, Resolution 45/111 of 14 December 1990;
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted by the General Assembly of the United Nations, Resolution 43/173 of 9 December 1988;
- Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977;
- Kampala Declaration on Prison Conditions in Africa, adopted by the participants at the First Pan African Seminar on Prison Conditions in Africa held in Kampala, Uganda, on 19-21 September 1996 and adopted by the Social and Economic Council of the United Nations, Resolution 1997/36 - 21 July 1999, ECOSOC.

## Juvenile Justice and Treatment of Juvenile Prisoners

- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly of the UN, Resolution 45/113 of 14 December 1990;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by the General Assembly of the UN, Resolution 40/133 of 29 November 1985.

## Law Enforcement Personnel

- Code of Conduct for Law Enforcement Officials, adopted by the General Assembly of the UN, Resolution 34/169 of 17 December 1979;
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations

Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990;

- Arusha Declaration on Good Prison Practice, adopted at the Fourth CESCA Conference, 27 February 1999, Arusha, Tanzania.

### **Penal Reform and Alternatives to Custody**

- United Nations Standard Minimum Rules for Non-custodial Measures, (The Tokyo Rules), adopted by the General Assembly of the UN, Resolution 4511 10 of 14 December 1990;
- Kadoma Declaration on Community Service Orders in Africa, noted in a Resolution adopted at the April 1998 session of the UN Commission on Crime Prevention and Criminal Justice (Ref. E/CN.15/1998/L.2, 22 April 1998, ECOSOC);
- A New Agenda for Penal Reform, adopted at the "International Conference on Penal Reform, A New Approach for a New Century", 1999, Egham, UK.

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