



# EAST AFRICA ALTERNATIVES TO IMPRISONMENT CONFERENCE

7-8 November 2013, Dar es Salaam, Tanzania

## 1. Introduction

This is a short report from the East Africa Alternatives to Imprisonment Conference, held on 7 and 8 November 2013 in Tanzania. The report summarises the key issues discussed and conclusions reached. The report supplements the comprehensive information contained in the Probation Departments and civil society organisations' summary papers, presentations and papers, which are available on request.

## 2. Purpose and expected outcomes of the conference

The purpose of the conference was to review work to date on alternatives to imprisonment in East Africa, share good practice and experience, and identify ways forward to further promote and implement alternative measures in the region. The planned outcomes were:

- Alternatives work to date in East Africa by Penal Reform International (PRI), Probation departments and civil society reviewed
- Legal framework for alternatives in East Africa reviewed
- Good practices and lessons learnt on implementation of non-custodial measures shared
- Update on wider stakeholder and donor agendas / work on alternatives shared
- Identification of how all stakeholders can work effectively together to promote and implement alternatives (government, civil society, other agencies and donors)
- Next steps and way forward identified for countries in region

*Annex I: Agenda*

### **3. Participants**

The participants at the conference were:

- 18 senior representatives from Probation and Community Service Departments in Kenya, Lesotho, Malawi, Namibia, South Sudan, Tanzania, Uganda and Zimbabwe.
- 9 representatives from 8 civil society organisations that work on criminal justice/alternatives in Kenya, Rwanda, Tanzania and Uganda.
- 1 representative from the UNODC East Africa office
- 3 representatives from PRI.

*Participant list available on request*

### **4. Hosts and organisers**

PRI co-hosted the conference in partnership with the Tanzanian Ministry of Home Affairs Probation and Community Service Division, and in collaboration with the Government Probation departments in Kenya and Uganda, the Foundation for Human Rights Initiative (FHRI), Uganda, and other local NGO partners in the region. The conference was supported by PRI's grant from UK Aid.

### **5. Opening session**

The hosts welcomed all participants and gave an overview of the purpose of the conference.

### **6. Recap of Africa Alternatives Network meeting**

Mr Paul Kintu, Commissioner, Community Service, Uganda, provided a summary of the Africa Alternatives Network Inaugural meeting which took place on 6-7 November, at the same venue, for the representatives from the Probation and Community Services present. The purpose of that meeting was to discuss establishing and facilitating an African alternatives to imprisonment network.

The establishment and next steps for the network were agreed, an interim committee appointed and the network will now officially be called the '*Africa Network for Probation and Community Services (APC Network)*'.

## 7. Overview of PRI's work to strengthen alternatives to imprisonment in East Africa

Alison Hannah, PRI Executive Director, provided an overview of PRI's work in East Africa to date, to reduce the use of imprisonment as the default setting of the penal system and to support the rehabilitation and reintegration of offenders.

Rob Allen, expert consultant for PRI, gave an update on the PRI report *Alternatives to Imprisonment in East Africa: Trends and Challenges (2012)*<sup>1</sup>. He highlighted the current developments and future challenges to alternatives to imprisonment in East Africa. Three main issues were identified, which provided the framework to the conference discussions:

- The use of alternatives
- Implementation of CSOs and probation orders
- Public attitudes towards alternatives

*Update 'Trends' paper and presentation available on request*

## 8. Use of alternatives in Kenya, Uganda and Tanzania

The Probation and Community Service representatives from Uganda, Kenya and Tanzania made presentations highlighting the current data on prison numbers and non-custodial measures in their respective countries, current numbers, structure and budgets of their probation/correctional services. They also shared best practices and why these work well in their countries, as well as the challenges faced by their departments.

*Summary documents and presentations from these countries are available*

Main points of discussion during the plenary:

- It may be necessary to assess how effective it is for the police to prepare pre-sentence reports. In Uganda, police form 103 is used for these reports and the police prepare the report. In Kenya, court reports are the mainstay of probation, the forms are both electronic as well as hard copies and the process can take up to two weeks. In Tanzania, probation officials prepare the report and interviews are carried out with relatives and neighbours about the offender.
- There is need for civil society to work closely with government especially with providing post prison support, information dissemination, community sensitisation and preventative measures to help with diverting of 'would be criminals' before they get into conflict with the law. The importance of partnership with civil society organisations was emphasised. For example, the work of paralegals and social workers has helped speed up the work/ process.

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<sup>1</sup> <http://www.penalreform.org/resource/alternatives-imprisonment-east-africa-trends-challenges>

- The *Alternatives to Imprisonment in East Africa: Trends and Challenges* paper suggests that compliance rate is very high. In Kenya, there is flexibility which allows for compliance due to the wide discretion of the officer who decides whether to take action on breach after finding out the causes of a breach rather than taking action straight away. Those in cities have higher chances of breach.
- Whether caution as an alternative sanction in Uganda is effective: In Uganda, a caution is an alternative sanction given by the court, which has the discretion to formally enforce caution. Uganda has probation, fines, cautions and community service as alternatives to imprisonment. Caution is provided for in the Penal Code Act.
- If the benchmark is prison as the last resort, there should be a staged approach to using non-custodial steps before prison e.g. use of caution, fines, supervision, and then prison only once the graduated steps have been taken first.

## 9. Visit to community service project

Participants visited a Community Service project in Dar es Salaam and met supervisors and managers of the project. About 8 Community Service clients were sweeping and tidying up a public park in central Dar es Salaam. Offenders carry out 4 hours of Community Service a day for 5 days a week here. The supervisors said that there is a shortage of equipment, which reduces the effectiveness of the work done. In case of injuries, the offender is compensated unless it was as a result of his/her negligence. The process and forms for offenders to be supervised at the placement were shared with participants.

## 10. Legal framework for alternative sentences

Ms Lucy Ladira, Technical Advisor, Criminal Justice, Justice Law and Order Sector, Uganda spoke on the legal and policy framework for alternative sentences in Uganda. She provided background to Community Service in Uganda and the new Sentencing Guidelines (2013). The guidelines were enacted in the face of great public outcry about the wide disparities in sentences passed by judicial officers against convicted persons. The Sentencing Guidelines of Uganda are the first of their kind in East Africa prepared under the instruction of the Chief Justice using his powers under the Constitution. The guidelines provide for 10 offences which include murder, manslaughter, defilement, robbery, corruption, related offences, obtaining money by false pretence, theft, criminal trespass, grievous bodily harm and assault. The Sentencing Guidelines are not intended to override the discretion of the judicial officer. The guidelines will not direct but rather guide the judicial officer to arrive at a fair and just sentence, which is consistent with that being passed by other judicial officers. Further development of the guidelines to include other offences is on-going.

*Presentation available on request*

Discussion:

- The effectiveness of fines as an alternative was discussed. Rwanda has a unit fine system based on the means of the offender and gravity of the offence; there are 6 grades of income level to determine fines and these are effective. In Kenya, there is a provision that fines should not be excessive and they can be paid in installments or delayed. In Uganda, the court takes account of the means of the offender and has ranges of fines in the guidelines.
- It may be useful for Uganda to learn from the experience of other countries regarding concerns about the police preparing pre-sentence reports.
- To what extent do the laws of different countries address the needs of women offenders: In Uganda, there is a progressive provision in the new Sentencing Guidelines that provides for primary caregivers. There are no specific guidelines for countries like Namibia, Zimbabwe and South Sudan. There is need for specific provisions and guidelines for women offenders. The UN Bangkok Rules provide an international standard for this.
- Countries such as South Sudan, which are setting up their systems, should first look at their own constitutional framework critically before adopting structures from other countries.
- Civil society can play an important role with preparation of pre-sentencing reports, identifying community projects and placements, supervision and community engagement and mediation, because of their close interaction with society.
- In Zimbabwe, there is a need to change the people on the standing committee which oversees CSOs, as the members have not changed for the past 15 years.
- In Malawi, Community Service is for a minimum of 14 hours and a maximum of 12 months, it would be preferable if the cut off point would be 36 months and a time limit set on magistrates/ judges sitting on the steering committee. Child-caring responsibilities of offenders should be taken into account before sentencing.
- There is a need to ensure reports are mandatory in relevant cases.
- It would be useful to give feedback to the community from orders made.

## 11. Implementation of alternatives to prison

Joshua Wangombe Wairuhi, Deputy National Coordinator of Community Service Orders, Kenya, presented on the implementation of alternatives to imprisonment in Kenya. He focused on the availability and quality of placements, training and role of supervisors, compliance and enforcement, and involvement with other organisations including civil society.

*Presentation available on request*

Discussion:

- How the Kenyan Probation department manages to get resources for the projects and how they are sustained: The projects in Kenya are carried on probation

department land and with other government departments. Offenders are often from poor economic backgrounds and therefore it is important to raise their economic status and job skills.

- The focus of CSOs should not just be about punishment but should also address the economic status of the offender. In Kenya, through the projects, some offenders have directly benefited from the skills acquired in the centers. Communities have also benefited directly from some of the projects.
- In Kenya, a committee has been formed to implement the Bangkok Rules within their systems. The Bangkok Rules are very important as they require a specific approach to women offenders.
- Civil Society could play a role in providing post release support to female offenders.
- It may be necessary for other countries to look into the benefits of using sureties who are relied on in Tanzania and Zimbabwe to prevent non-compliance.

## **12. Role of civil society in promoting and implementing alternatives, public and media attitudes, and engaging the support of government**

In his presentation, Charles Nsanze, Assistant Director of Probation and Community Service Division, Tanzania, focused on the role of civil society in promoting and implementing alternatives; public attitudes to community sentences; advocacy with, and support from central Government for alternatives; and media and public opinion.

*Presentation available on request*

Discussion:

- Civil society in Tanzania may lack knowledge and skills of working with offenders and there is lack of networking and partnership between government and civil society organisations.
- In Tanzania, the work of the local NGO 'Inmate Rehabilitation and Welfare Services Tanzania' (IRaWS-T), focuses on prison de-congestion. They work with the prison service and plan to work with the Probation and Community Service Division in the future on social reintegration.
- The 'Legal Resources Foundation Trust' (LRFT), an NGO in Kenya, implements a paralegal project to provide legal aid to remand prisoners. They also carry out capacity building for probation and prison officers on human rights issues. There is a lack of understanding and acceptance of non-custodial sentences by the public.
- The 'Paralegal Advisory Services' (PAS) in Uganda, which is managed by the NGO 'Foundation for Human Rights Initiative' (FHRI), works closely with government to promote, implement and monitor non-custodial measures. The general public view is that people should serve long prison sentences; this is countered by sensitising people about the need to have alternatives through radio talk shows.

- Public attitudes towards non-custodial measures among the communities are still poor, but at provider level there are a number of issues around capacity for civil society.
- There is a general lack of understanding that civil society work can complement and support government services and as a result many NGOs work in isolation. The Legal Aid Service Providers Network in Kenya has been successful in working with government for this reason.
- Civil society can help with sharing of information and lobbying for policy reform. However, this should not be done in isolation.
- The need to share best practice and information: FHRI and PRI have set up the 'East Africa Criminal Justice Civil Society Network'. The network promotes best practice, information updates and dialogue on criminal justice reform in the region, including specific initiatives on alternatives to imprisonment. Guidance documents, reports and briefings, and updates on international, African and regional standards, legislation, and initiatives related to alternatives to imprisonment are circulated via the East Africa Criminal Justice Civil Society Network e-newsletter, social media and occasional meetings.
- Paralegals in Malawi have been very instrumental and have energised the criminal justice system in Malawi.
- Civil society role is to facilitate and advocate but probation is a government service.
- Engaging wider government: In Kenya, the Probation department has been successful in getting support from government for their budget and from other ministries for CSO work.

*Summaries of the work of the civil society organisations present at the meeting, their programmes, successes and challenges on alternatives to imprisonment are available on request.*

### **13. Trends and agendas of other stakeholders and donors in the region**

The priorities of other stakeholders and donors in the region who would be interested and involved in alternatives to imprisonment were discussed. Stakeholders included JLOS (Uganda), government departments, donors and civil society. Representatives from civil society highlighted which donors support their activities. Joint proposals could be submitted between government and civil society organisations. Some bi-lateral donors provide sector-wider budgetary support direct to governments, others provide grants to local civil society. International organisations e.g. UNODC, OSF and other INGOs can provide technical support, resources and funding.

## 14. National working groups on priorities and action plans for future development

Participants drafted action plans to carry forward how all stakeholders can work more effectively together to promote and implement alternatives (government, civil society, other agencies and donors).

### Kenya

- Socio-economic empowerment of ex-offenders
- Entrenching human rights principles in community service orders
- Increasing restorative justice procedures – civil society can help train mediators
- Strengthening volunteer probation officers programme; supporting hostels, daycare centres and providing equipment
- Advocacy for policy change and fundraising
- Promote alternatives
- Restorative justice, reconciliation
- Publicity, awareness
- Capacity – equipment, training, supervision

### Tanzania

- Engage NGOs and civil society in training, rehabilitation, sensitisation
- Engage volunteers: pre-sentence reports / SIR; supervision
- Engage paralegals; legal aid
- Engage mass media: sensitisation, chat shows; training mass media; involving them in events
- Find funds from donors, shift reliance from central government budget

### Uganda

- Enhance networking and partnerships between non-state actors and government
- Data capture
- Information sharing
- Training of various stakeholders
- Explore opportunities for further engagement beyond what currently exists.
- Many non-state actors can be involved in identification of placements and supervision.
- Assist with pre-sentencing reports and mitigation of sentences
- Explore opportunities for funding of network to support above.

### Other countries: Malawi, Namibia, Zimbabwe, Lesotho

- Develop Terms of Reference
- Closer arrangements and collaborations



- Revise community service acts
- Introduce social reintegration approach
- Create SADC network of CS.
- Formulate strategic alliances with NGOs
- Enhance partnership between the government and non-state actors.
- Present recommendations to policy formulators on CS/ alternatives
- South Sudan to come up with Probation Act
- Recommend Government of South Sudan to consider introduction of CSOs.
- Sentencing guidelines to eliminate disparity
- Create probation institution in Rwanda
- Promoting wider use of alternatives to imprisonment.

## 15. Closing session

Rob Allen from PRI expressed optimism that the commitment expressed during the Conference from both government and civil society to work together will be carried forward and will strengthen initiatives for successful alternatives to imprisonment and community service orders.

PRI will follow up with participants in 4-6 months to assess what progress has been made with the next steps identified by the participants. PRI will continue to facilitate the sharing of good practice and resources and provide support.

He thanked the participants and organisers of the event.

*Information, a blog and media coverage of the Conference can be found on PRI's website:*

[www.penalreform.org/news/successful-alternatives-conference-sees-launch-african-network-probation/](http://www.penalreform.org/news/successful-alternatives-conference-sees-launch-african-network-probation/)

*Annex II: Summary of participants' feedback*

Following the closing of the Conference, there was an additional session:

## 16. Launch of the new UN Legal Aid and Principles Handbook

The UNODC's new handbook: *Early access to legal aid in criminal investigations and proceedings: a handbook and training curriculum for policy makers and practitioners* was officially launched by Alison Hannah on behalf of the UNODC. She gave a preview of the new handbook, which sets out the international standards for early access to legal aid; the benefits and challenges of this; and shows how legal aid can be provided through different mechanisms and models, depending on the country situation and resources. The role of lawyers, paralegals, police, prosecutors and judges are described in detail to show

how each has an important part to play in ensuring that suspects' rights are respected and that cases are not prepared on the basis of false confessions.  
Hard copies of the Handbook will be available shortly

*Presentation available on request*

# Annex I: Agenda

East Africa Alternatives to Imprisonment Conference  
7-8 November 2013

## Agenda

Time	Item	Chair/Facilitator
<b>Thursday 7 November</b>		
14:00-14:15	Welcome, introductions. Purpose of meeting	Fidelis Mboya, Director Tanzania Probation; Alison Hannah, Executive Director, PRI
14:15 -14:30	Recap of Africa Alternatives Network meeting	Paul Kintu, Commissioner Community Service, Uganda
14:30 – 15:00	Overview of PRI's work to strengthen alternatives to prison in East Africa 2011-13 Update on Alternatives: Trends and Challenges East Africa - paper	Alison Hannah, Rob Allen, PRI
15:00-16:00	Use of alternatives in Kenya, Uganda, Tanzania – presentations	Jerim Oloo, Director Probation Kenya; Fidelis Mboya, Tanzania; Paul Kintu, Uganda
16:00-16:15	<i>Tea/coffee break</i>	
16:15 –17:30	Discussion and input from other countries	PRI Chair. All input
17:30-17:45	Summary of day	Jerim Oloo, Kenya
<b>Friday 8 November</b>		
08:00-9:45	Visit to Community Service project	All / Tanzania
10:00-11:30	Legal framework for alternative sentences: <ul style="list-style-type: none"> <li>- Adequacy of legal provisions</li> <li>- Awareness and training of judicial officers</li> <li>- Sentencing guidelines</li> </ul>	Lead presentation from Uganda on challenges and initiatives  Input from all other participants

11:30-11:45	<i>Tea/coffee break</i>	
11:45-13:30	Implementation of alternatives to prison: <ul style="list-style-type: none"> <li>- Availability and quality of placements</li> <li>- Training and role of supervisors</li> <li>- Compliance and enforcement</li> <li>- Other organisations / civil society involved</li> </ul>	Lead presentation from Kenya on challenges and initiatives  Input from all other participants
13:30-14:30	<i>Lunch</i>	
14:30-16:00	Role of civil society in promoting and implementing alternatives  Public attitudes to community sentences  Advocacy with, and support from central Government for alternatives  Media and public opinion	Lead presentation from Tanzania on challenges and initiatives  Input from all other participants
16:00-16:15	<i>Tea/coffee break</i>	
16:15-16:30	Trends and agendas of other stakeholders and donors in region	Diva Mukisa, FHRI; PRI
16:30-17:15	National working groups on priorities and action plans for future development	Group work (PRI to facilitate)
17:15-17:45	Presentations of action plans	All
17:45-18:00	Summary and close	PRI; Tanzania
18:00–18:30	Launch of the new <i>UN Legal Aid and Principles Handbook</i>	Matteo Pasquali, Head of the Criminal Justice Programme, UNODC

## Annex II: Summary of Participants' Feedback

17 participants completed feedback forms. Of these:

- Participants said that the most useful sessions and areas discussed were: legal frameworks (53% of participants); information on the new Africa Network (53%); implementation of alternatives (47%); and the role of civil society (47%).
- 94% of participants said that they would be changing an aspect of their work as a result of the conference.
- Asked what the conference achieved, 74% said it enabled a useful sharing of experience and expertise and 65% said it enabled a deeper discussion of the issues and moved the debate forward.

Comments included:

- Trends from various African countries were shared and this has increased understanding of the practise of alternative sentences. There were lessons learned.
- Role of civil society is important. Alternative to imprisonment is not only the responsibility of the government but also the role of society through the civil society organisations.
- The discussion on legal framework helped me consider some areas in my own country's framework on CSOs that may require revision.
- It is more clear on which areas and which civil societies can work with us on alternatives
- I learnt a lot and got ideas of aspects of our programme that may need to be revised as a result of others' experiences

