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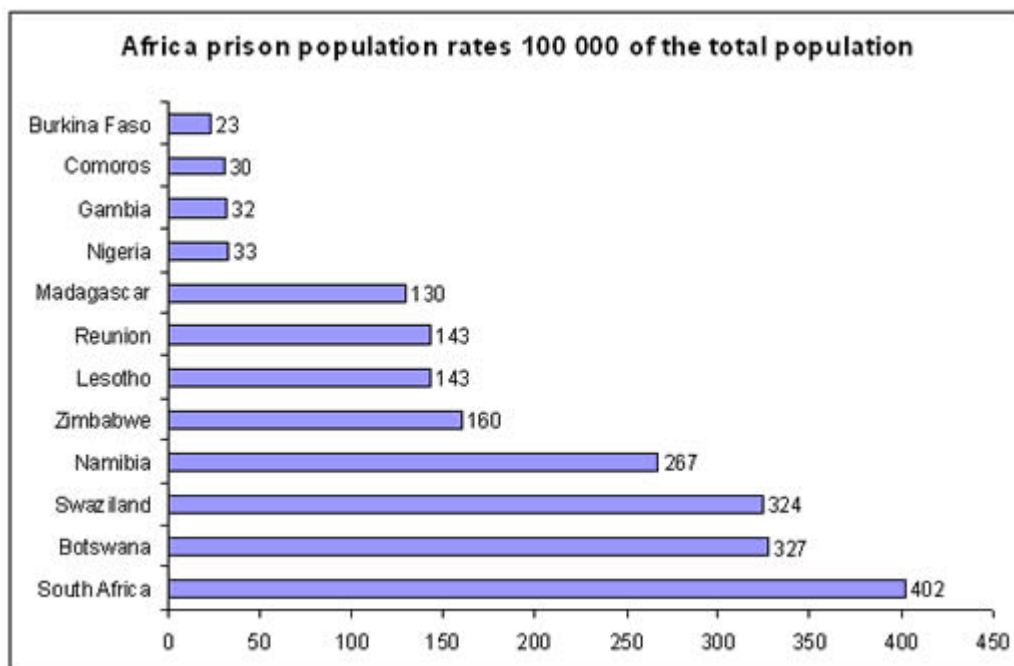
Prison reform in Africa: recent trends

by Makubetse Sekhonyane [1]

[Editors note: This newsletter is a shortened version of a paper presented by the author at the Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA) conference held in Cape Town, 15th – 17th March 2005 at the Vineyard Hotel.]

The worldwide practice and approach towards increased use of imprisonment, as a punishment for offenders, has unfortunately not eluded Africa (see graph 1 below). South Africa is the leading country in Africa when it comes to putting people behind bars. Neighbouring countries Botswana, Swaziland and Lesotho follow close behind. It is also noteworthy that the next top three imprisonment countries in Africa are South Africa’s neighbours.

Graph 1: African prison population rates [2]



Common trends in prisons prevail in many countries in the region. These include overcrowding, old and dilapidated facilities, unavailability of resources for prison reform, poor oversight, and the prevalence of health-related problems and communicable diseases amongst prisoners. Prisoners spending lengthy periods awaiting trial, is not uncommon.

Overcrowding

One reason for overcrowding relates to legislation. In the face of increasing crime levels and the absence of the death penalty, South Africa witnessed a sharp increase in American-style sentences of up 75 years or more [3]. In addition, South Africa’s minimum sentencing legislation [4] has also been regarded as contributing to an increase in the numbers of prisoners sentenced to long terms of imprisonment, and hence overcrowding.

The presence of anachronistic colonial laws in many African countries has also contributed to the soaring prison numbers. In Malawi, for example, the rogue and vagabond laws are responsible for overcrowding. These laws allow police officers to arrest people on the basis that they are poor and cannot afford to maintain themselves.[5] There are other laws criminalizing offences such as loitering, prostitution, failure to pay debts and disobedience to parents[6] found in several African countries and this accounts for the imprisonment of thousands of people.

In Zambia, as in many African countries, the slow pace of the criminal justice system, insufficient personnel and lack of resources have resulted in delays in remand cases that in turn leads to increased prison populations. [7]

Poor facilities

"Lesotho prisons 'worse than pigsties'" - SABC news November 25, 2004

"Nigerian prisons are horrible", This Day, Lagos, February 1, 2005

In many African states, budget allocations for prisons are smaller than those granted to the police and courts. Maintenance of buildings is slow and in some instances non-existent. In Lesotho for example, the commissioner of prisoners identified at least four prisons that he believes should be demolished.[8] During 2003, 73 prisoners escaped from Bizana prison in the Eastern Cape when fire broke-out.[9] The breakout was blamed on the old structural defects that have taken time to be fixed. In Zambia, no new prisons have been built since independence, more than 40 years ago. Tumbling walls and broken fences characterise other facilities in the region.

Health and communicable diseases

Although the prevalence of HIV/AIDS in South African prisons is unknown, it is believed that prison conditions, sexual violence, poor nutrition, lack of exercise and poor health conditions are likely to speed progression of an offender from HIV to AIDS [10]. This, coupled with lack of medical personnel, exacerbates conditions in prisons. This situation is not unique to South Africa. During June 2001, the Special Rapporteur (SR) on Prisons and Conditions of Detention in Africa visited Malawi. The SR noted that prison doctors in Malawi were not recruited into full time positions and that the skills of existing paramedical personnel needed to be strengthened [11]. The spread of communicable diseases and declining health conditions are also linked to overcrowding. When prison cells are overcrowded, water and other supplies are depleted at a faster rate. Toilets, showers and washing facilities are often not in proper working condition. When toilets are blocked or not running, and inmates are forced to live and eat in an unhealthy environment, diseases are likely to spread. According to the report by the South African Office of the Inspecting Judge, Independent Prison Visitors (IPVs) received 19 329 complaints about health from prisoners. Health complaints are the second highest category of complaints[12].

Recent trends in prison reform in Africa

Major prison reform initiatives in Africa took shape around the mid-1990s. In 1996, the first Pan-African seminar on prison conditions was held in Kampala, Uganda, and was attended by more than 130 participants from different countries. The seminar adopted what became to be known as the Kampala Declaration on Prison Conditions in Africa. The Declaration among other things, compelled the African Commission to prioritise:

- Improving prison conditions
- Nominate a special Rapporteur on Prison Conditions in Africa
- Sensitise AU (formerly OAU) members to respect international standards pertaining to prisons
- Set-up a framework for co-operation with NGOs and other relevant stakeholders to ensure a follow up on the declaration.

Following the Kampala declaration in 1996, the first Special Rapporteur (SR) was appointed. The SR was established in terms of article 45 of the African Charter on Human and People's Rights (ACHPR). The mandate of the SR is to monitor prison conditions in Africa, identifying major problems, and make recommendations on how prisons and conditions of detention can be improved[13].

During September 2002, in Ouagadougou (Burkina Faso), 123 delegates from 34 African countries attended a follow-up session on the Kampala Declaration. The objectives of the meetings were to assess progress made since 1996 and further identify new African models for dealing with crime. The 34th session of the African Commission held in Banjul, The Gambia, in November 2003, adopted the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa (2002), and the Ouagadougou plan of action. This Declaration focuses on:

- Reducing the prison population
- Making African prisons more self-reliant
- Promoting the reintegration of ex-offenders into society
- Encouraging best penal practice

In terms of the Ouagadougou plan, key recommendations on reducing prison populations included: the use of diversion for young offenders, restorative justice processes, using traditional justice, improving referral mechanisms, decriminalization of some offences.

Furthermore, the plan encouraged the promotion of the Kampala Declaration (1996), the Kadoma Declaration on Community Service in Africa (1997), the Ouagadougou Declaration (2002), and the reports of the Special Rapporteur^[14].

It is clear that Africa has put in place mechanisms and systems that will help improve prison conditions on the continent. There is a useful body of international law relating to prisons, which most African countries have ratified. Examples include the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention Against Torture, the UN and African Conventions on the Rights of the Child, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the^[15] UN Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, and the UN Standard Minimum Rules for the Administration of Juvenile Justice.

These instruments also require governments to put enabling legislation in place to give effect to them. In addition, governments are required to report periodically on the progress made in addressing the human rights situations in their countries, including rights of prisoners. In many African countries, prisons have since the mid 1990's become more open to civil society. Some countries, such as Ghana, have in recent times initiated open prison visits. Once a year members of the public are invited to visit prisons and witness for themselves conditions under which offenders are kept. In addition, these visits also ensure that communities become aware that prison sentences are not the ultimate solution to crime. Another advantage of these visits is that they generate public debate on penal reform and erode the clandestine nature of prison management. Judicial inspectorates of prisons have been established in some countries, such as South Africa and Malawi. Further, the creation of National Human Rights Commissions in many African countries, with a clear mandate to address human rights abuses, have been beneficial for the prisons sector. The Commissions afford an avenue for complaints to be raised and remedial action to be taken.

A further positive development has been the proliferation of projects to implement community service orders as an alternative to prison sentences under the guidance of Penal Reform International (PRI), an international NGO. Community service was started in Zimbabwe in 1994. In November 1997, the International Conference on Community Service Orders in Africa was held in Kadoma, Zimbabwe. The Conference produced the Kadoma Declaration and Plan of Action on Community Service. The success of the Zimbabwe project led to implementation of community service projects in Kenya (1999), Malawi (1999) and Burkina Faso (1999), Congo-Brazzaville, the Central African Republic and Mozambique. Uganda adopted legislation to give effect to this form of sentence in 2000, and in 2002, Senegal, Tanzania and Namibia also adopted community service legislation^[16].

However, many governments in Africa are still battling to comply with international standards due to the lack of adequate legislation, poor resources, training, lack of personnel, and insufficient budgets. For example, the Prison Acts in Malawi and Mozambique need to be updated so that they conform to international standards, and certain laws in Kenya, Uganda, and Malawi need to be abolished such as the rogue and vagabond laws. Dilapidated prisons need to be revamped or new ones built in countries like Lesotho, and resources need to be beefed up in Zambia.

Conclusion

For nearly half a century prison systems in Africa were trapped between a colonial heritage of inappropriate and anachronistic legislation on the one hand, and, on the other hand, African countries were going through traumatic transition periods in which prison reform was not (and still is not) regarded as a priority. In many African countries the institutions required for a strong and vibrant democracy were absent or weak, and coupled with limited resources, those behind bars were placed in an extremely vulnerable position.

Prison reform in Africa need to remain focused on a limited number of key objectives.

Strengthened oversight: Effective oversight on a national and international level is crucial for facilitating reform. Encouraging openness and transparency in an environment of constructive, critical debate are key building blocks for effecting prison reform.

Reducing prison populations through local, efficient and effective solutions: The community service orders projects that have been launched in a number of African countries have shown in

a relative short period what can be achieved if there is political will supporting a workable solution. At the heart of this lies the fact that Africa requires criminal justice solutions that are effective and efficient in an African context. It is especially American notions of mass imprisonment as a response to crime that is particularly unworkable. Most African economies cannot sustain large prison populations nor large prison construction programmes to house hundreds of thousands of offenders. There are far more pressing needs in most African societies.

Introducing reform measures according to a long-term plan: The preceding overview illustrates the wide range of challenges facing African prisons. Prison reform can be achieved, however, if it happens according to a plan that is clear in terms of policy and budget. Resources are too limited to chase quick-fix solutions and flavour-of-the-day policy shifts. We have to acknowledge that sustainable solutions take time to develop and implement – that is the nature of true transformation.

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The quantitative impact of *Min of Home Affairs v NICRO*

by Lukas Muntingh

In the April 2003 issue of this newsletter we reported on the Constitutional Court case *Min of Home Affairs v NICRO* in which the Electoral Laws Amendment Act was declared unconstitutional. The case was of critical importance as it could have been argued that if the right to vote is compromised, it opens the door for other rights related to prisoners to be limited. CSPRI therefore welcomed the decision by the Constitutional Court.

One of the consequences of the decision was that the Independent Electoral Commission (IEC) had to return to all prisons and register those prisoners who then became eligible to participate in the 2004 elections. The Constitutional Court in fact prepared the IEC for this second registration drive when it asked the Commission to estimate the time and resources that would be involved in registering additional prisoners, prior to handing down judgment.

CSPRI enquired from the IEC as to the results of the second registration drive and furthermore how many prisoners did in fact participate in the elections. The results are presented in the table below.

January 2004 registration drive	March 2004 registration drive	Total prisoners registered	Voter turnout
9 930	27 350	37 280	33 133

The Constitutional Court decision resulted in an additional 27 350 prisoners registering for the April 2004 elections and this should be regarded as significant, given the time constraints under which this happened. On the down side, it should also be noted that only 33 133 prisoners of a total of roughly 180 000 participated in the election. The value of *Min of Home Affairs v NICRO* does, however, not lie in the numbers of prisoners who participated but in the principle confirmed by the Constitutional Court, namely that every citizen counts- and that includes those in prison.

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SA Prisons at a Glance

CATEGORY	Feb-04	Nov 04	Increase/ decrease
Prisons	240	228	-5.0
Functioning prisons	233	225	-3.4
Closed prisons	7	3	-57.1
Total prisoners	187 065	186 085	894.8
Sentenced prisoners	132 315	137 601	4.0
Un-sentenced prisoners	54750	48452	-11.5
Males	182 892	181 935	-0.5
Females	4173	4118	-1.3
Children	3973	3365	-15.3
Sentenced children	1698	1661	-2.2

Un-sentenced children	2275	1704	-25.1
Total capacity	113 551	113 825	0.2
Overcrowding percentage	164.7	163.5	-0.7
Most overcrowded	Durban Med C 387.60%	Jo'burg Med B 370.20%	
Least overcrowded	Vryheid 25.30%	Vryheid 26.5	
Awaiting trial 3 months +	23033	21330	-7.4
Infants in prison with mothers	196	189	-3.6

[1] He is Senior Researcher in the Crime and justice Programme at the Institute for Security Studies

[2] International Centre for Prison Studies, 2004

[3] Prof S S Terblanche, a presentation on sentences during a conference in Gordon's Bay, February 2005.

[4] The Criminal Law Amendment Act 105 of 1997 introduced minimum sentences of 5, 7, 10, 15, 20, 25 years and life sentences for a range of offences including categories of theft, corruption, drug dealing, assault, rape and murder. It obliged a magistrate and judge to impose not less than the prescribed minimum sentences unless substantial and compelling circumstances justified a lesser sentence. See also Judge H Fagan, Curb Vengeance, Laws on minimum sentencing and parole spell worsening prison conditions, South African Crime Quarterly no 10, December 2004, p 2.

[5] Interview with Kettie Nthara, the Chief Magistrate based at National Statistics Office, March 2004, Malawi.

[6] Ouagadougou Plan of Action, See www.penalreform.org/english/pana_plan.htm

[7] M Mukelabai, former Director of National Director of Public Prosecutions for Zambia and currently senior Researcher at the Institute for Security Studies, 15 February 2005.

[8] SABC news, 25 November 2004

[9] < http://www.theherald.co.za/herald/2003/12/09/news/n12_09122003.htm >

[10] KC Goyer, HIV/Aids in Prison, Problems, Policies and Potential, ISS Monograph No 79, Pretoria, February 2003, p 33-34.

[11] Visits Report by the Special Rapporteur on Prisons and Conditions of Detention in Africa, Malawi, June 2001.

[12] Judicial Inspectorate of Prisons, Office of the Inspecting Judge, Annual Report 2003/4, p 15.

[13] The first SR was E.V.O Dankwa, a Ghanaian who was also elected as the Chairperson of the ACHPR. In 2000, the second Special Rapporteur, Dr Vera Chirwa, was appointed.

[14] The SR has visited and compiled report on a number of countries including Zimbabwe (1997), Mali (1997 and 1998), Mozambique (1997 and 2001), Madagascar (1998), The Gambia (1999), Benin (1999) Central African Republic (2000), Malawi (2001, Namibia (2001) and Uganda (2002). South Africa was visited in 2003.

[15] Standard Minimum Rules (SMR) were approved by the United Nations in July 1957.

Some of the fundamental principles of the SMR include:

* Prisons shall be well-ordered communities: where there is no danger to life, health or personal integrity.

* No discrimination shall be shown in the treatment of prisoners.

* Prison conditions shall not impose or constitute a punishment additional to the deprivation of liberty imposed by the imprisonment, nor should they aggravate the suffering caused by the imprisonment.

* Activities should aim towards assisting the prisoner to resettle in the community by providing opportunities for the prisoners to develop skills.

* Prison conditions should be compatible with human dignity and acceptable standards in the community.

[16] http://www.penalreform.org/english/region_africa.htm

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