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Living below the minimum standards for prisoners - the state of Uganda's prisons

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Author : Harriet Nakandi*

*"Living conditions are one of the major factors which determine a prisoner's state of mind, self esteem and dignity. How and where the person eats, sleeps and uses the toilet have an enormous effect on mental and physical well being. Not only do poor conditions violate the rights to dignity, but they may also amount to cruel, inhuman and degrading treatment."*¹

Introduction

Prisons, as a threat and reality, have for the last two centuries been used as a tool to remove offenders from society as a means of attempting to ensure societal norms are adhered to.² In theory, prison regimes are intended to guarantee justice, promote rehabilitation and re-integration into society and safeguard individuals' rights and safety. However, prisons may also be used by state authorities to perpetrate high-handed and tyrannical practices like torture, arbitrary killings, and other forms of ill treatment. It must be emphasised that people are taken to prisons as a punishment and not to be punished.³ Subjecting them to abhorrent conditions and other forms of ill treatment are violations of their rights and freedoms far and above the denial of the right to liberty which is the only right that is lawfully taken away by imprisonment. On this former Chief Justice of Zimbabwe, Gubbay CJ authoritatively stated: "*The view is no longer firm in this jurisdiction and in many others that by reason of his crime a prisoner sheds all basic rights at the prison gate. Rather he retains all the rights of a free citizen save for those withdrawn from him by law, expressly or by implication, or those inconsistent with the legitimate penological objectives of the correctional system*".⁴

The prison system in Uganda - a historical perspective

Suffice to say there were no formal prisons in Africa before the advent of colonialism. Following the 1894 declaration of Uganda as a British protectorate, the 1901 Order in Council was passed which incorporated all English laws, including laws on prisons, into Uganda's legal system. It was only in 1958 that the first comprehensive legislation on prisons came into existence with the passing of the Prisons Ordinance of 1958 which sought to consolidate and amend the laws relating to prisons. It also provided for their organization and the powers and duties of prison officers. It is important to note that most of the provisions of this ordinance were adopted from the United Nations Standard Minimum Rules for Treatment of Prisoners (UNSMR).⁵

By 1964, the Prison Service operated thirty prisons throughout the country, many of which were industrial or agricultural facilities intended to rehabilitate prisoners by means of subjecting them to physical labour.⁶ In the same year the first African Commissioner of Prisons was appointed which was a turning point for the Uganda Prisons Service.⁷

During the 1970s, prisoner abuse became increasingly commonplace as civilian and military prison conditions deteriorated beyond imagination. This persisted throughout the 1980s. In 1987, President Yoweri Museveni allowed the International Committee of the Red Cross (ICRC) to observe the conditions of prisoners in civil prisons. This undertaking initiated a process of slow but steady prison reform in

Uganda.

Since then there has been significant progress in relation to the reformation of the prison system to bring it into line with internationally accepted standards. A very important development has been the passing of the Prisons Act (17 of 2006). The Prisons Act emphasises prisoners' rights and is aligned to the 1995 Constitution of Uganda and the international and regional human rights instruments ratified by Uganda.

The law governing prisons in Uganda

The Prisons Act constitutes a fundamental departure from the previous prison legislation as it seeks to promote the letter and spirit of the 1995 Constitution as well as a host of international and regional human rights instruments, including the UNSMR.

Article 23 of the 1995 Constitution of Uganda, guarantees the right to liberty and sets out the limited circumstances under which a person's right to liberty can be curtailed, for example detention at a lawful detention centre and being produced in a court of law or being released on police bond within 48 hours for all suspects.

In addition, the Prisons Act entrenches the fundamental rights of prisoners into Uganda's domestic law and gives effect to the core obligation of fostering human rights as required by the UNSMR.⁸ The Act also unifies the prison system by abolishing local administration prisons and sets up and operationalises different structures such as the Prisons Authority (a body responsible for administrative decisions concerning Senior Prisons Officers); the Prisons Council (which is responsible for making administrative decisions concerning Junior Prisons Officers); the Regional Prison Committees (which comprise of Regional Prison Commanders who make administrative decisions for a region); and the District Prison Committees which are responsible for making administrative decisions for a district. The effect of these provisions is meant to improve conditions in prisons and give effect to prisoners' rights and dignity.

Prison conditions in Uganda - the practical realities

Although the Constitution of Uganda, the Prisons Act and the UNSMR all set out the minimum conditions under which prisoners must be detained, the situation at ground level is often far from desirable. The Uganda Human Rights Commission (UHRC), in its 2007 annual report, noted various improvements in prison conditions but also noted with regret a number of areas of grave concern in the prison system.⁹ The UHRC Annual Report confirmed the findings of the Foundation for Human Rights Initiative (FHRI) which also highlighted, amongst others, the glaring needs in the areas of prison accommodation, medical care, bedding and nutrition.¹⁰

The right to food

Section 69 of the Prisons Act provides that "a prisoner shall be provided with food of nutritious value adequate for health and strength by the prison administration, at the usual hours and the food shall be of wholesome quality, well prepared and served. And that drinking water shall be available to every prisoner whenever he/she needs it". This provision is a restatement of Rule 20 of the UNSMR.

However, most places of detention visited by civil society organisations fell below this standard in many regards. First, it was found that meals are served irregularly due to the ever-increasing number of prisoners, the lack of food and inadequate cooking and eating utensils. At Kigo Prison, for example, prisoners had a two-in-one meal of yellow maize grinded into flour which is mixed with hot water and served at approximately 15h00 as both lunch and supper. The same practice was found at Masaka Central Prison with the only improvement being a breakfast of porridge served at 07h00. In some prisons, like Kabula, it was found that prisoners received two meals per day being lunch and supper. However, in all the prisons visited there were no special diets for sick prisoners.

The food provided to inmates is not only insufficient in quantity but also of low nutritional value. Consequently some prisoners, especially those in rural areas, appear malnourished. Food for prisoners is usually produced by prisoners on prison farms. However, it is alarming to find that in police cells in Uganda there is no mechanism for feeding detainees and most of them went without food or depended on meals brought by their relatives. Nutrition in places of detention remains a serious problem and needs urgent attention.

Accommodation

Rule 10 of the UNSMR provides that "all accommodation provided for the use of prisoners, and in particular all sleeping accommodation must meet all requirements of good health. This includes due regard to climatic conditions, cubic content of air, minimum floor space, lightning, heating and ventilation". Even though the Prisons Act makes no direct provision for standards in respect of clothing, bedding and accommodation, these are indirectly referred to in the provision for the development of regulations. Section 124 of the Act mandates the Minister to develop regulations: "The minister may in consultation with the commissioner general, by statutory instrument, make regulations for the effective management and government of prisons and prisoners whether in, about or beyond the limits of the prison, and generally for the better carrying out of the provisions and purposes of this Act." More specifically, the Regulations need to address: " 2(e) the safe custody, management, organisation, hours, mode and kind of labour and employment, clothing, maintenance, instruction, discipline, treatment, restraint, correction and discharge of prisoners".

Rule 10 of the UNSMR is far from being adhered to as most prison facilities were found to be in a deplorable state. For example, at Kabula Prison, prisoners were detained in an old building with cracking walls. At Arua Prison the roof of one of the sections had been blown off during a storm and had not been repaired. Most of the structures visited were dilapidated and posed a risk of collapsing on the prisoners.

It's clear from the above findings that most of the prison buildings are in a poor state. Poor hygiene and sanitation in and around the prisons is also cause for alarm. It was found that most of the water sources in the prisons are unsafe and water supply infrastructure dilapidated.

Clothing and bedding

Bedding, as is the case with nutrition, does not meet the minimum requirements of humane detention. Research findings, emanating from routine visits by the Centre for Justice for Accused Persons (CJAP) staff to prisons, found various examples in this regard. At Kabula Prison inmates sleep on papyrus mats while others make use of thin mattresses brought by their relatives. At Lyantonde police station there were no mattresses found and detainees slept on the bare floor. At Nyendo prison there was only one mattress shared by a group of eight prisoners. At Patongo prison there was no bedding provided.

Uniforms are scarce and only 37% of all prisoners possess a uniform. The personal clothes of prisoners had also been reduced to tatters due to the manual work they perform on the prison farms and neighbouring homes, schools and hospitals which hire their labour.¹¹

Similar findings are reflected in the UHRC report which expresses concern about the absence of mattresses and blankets in nearly all of the prisons visited. According to the Uganda Prisons Service these shortcomings are the result of inadequate funds allocated to the Prison Service.¹²

Access to Medical care

The right to health care is a fundamental right for all human beings and prisoners are no exception to this. For all prisoners adequate health care begins at the time of admission into custody and prisoners have to be examined within 24 hours of admission to establish their health status. Section 57 (f) of the Prisons Act provides for the rights of prisoners which include the right to have access to the health services available in the country without discrimination due to their legal situation. This provision is supplemented by section 75 which provides for transferring a prisoner to hospital if he or she can no longer remain in prison. However, it's a great concern that these provisions are not yet functional in many prisons.¹³

CJAP research, through routine visits to prisons, has fortunately, observed some improvements in this regard. A patient referral system whereby sick inmates are transferred to better medical facilities for treatment has been established. Importantly, at the end of 2007 the Uganda Prison Services had secured approval from the Ministry of Public Service to recruit 111 health workers.

Further progress is that HIV-positive inmates with AIDS continue to receive antiretroviral drugs (ARVs) and 800 prisoners are on this therapy. This improved access to medical services has, according to

the Commissioner General of Prisons, Dr. Johnson Byabashaija, reduced the mortality rate, especially in the Kampala Extra region, by 66%.¹⁴

There is, however, a persistent shortage of the required drugs as well as qualified medical personnel at most prisons. Consequently, sick prisoners are taken to nearby health centres for all ailments ranging from the common cold and flu to diarrhoea and malaria. At Kyamulibwa Prison prisoners complained that they are always given Panadol¹⁵ regardless of their ailment and were never taken to any medical centre. At Patongo Prison it was reported that the prison and prisoners were entirely dependent on humanitarian medical services from Médecins Sans Frontières (MSF).¹⁶

In respect of HIV and AIDS it was observed that most prisons in urban centres had medical facilities and had attempted to facilitate access to ARVs but this was not always successful. At Kigo Prison the supply of ARVs and other drugs were found to be irregular. At the time of the visit, the prison had 27 HIV-positive prisoners of whom two had been recommended by medical personnel for ARVs but the drugs had not yet been delivered.

In summary, it must be acknowledged that access to medical care has improved greatly but there remain a number of serious and persistent challenges.

Prison overcrowding

Prison overcrowding is one of the most pressing challenges facing the Uganda Prison Service with most cells having twice, thrice or even fivefold the number of inmates in excess of capacity. The total available prison capacity at the end of 2007 was 9428, but Ugandan prisons provided accommodation to 19 289 prisoners; more than double the specified capacity. For example, Nakasongola Prison, with a capacity of 31 had 207 inmates at the time of the visit by the CJAP team on 16 February 2008 translating into an occupancy rate of 668% and Masaka Central Prison had 675 inmates in a space meant for 206.¹⁷

The UHRC also encountered the same problem in all the prisons they visited finding that among others, Luzira Prison had 2318 inmates but capacity for 668, Lira Prison held 475 prisoners but capacity for 129, and Isimba in Masindi district held 414 prisoners but capacity for 224.

The problem of overcrowding, as is the case elsewhere in Africa, can be attributed to the fact that most prisons were built in the 1940s and although the population of Uganda has increased dramatically since then, the prison facilities have remained the same. Other factors include the unpopularity of non-custodial sentences such as community service and a back-log of cases in the courts resulting in lengthy remand periods.¹⁸

Freedom from torture

Article 24 of the 1995 Constitution of Uganda provides for an absolute prohibition of torture¹⁹ in line with Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR) which provides that persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the person. The respect for dignity must be guaranteed under the same conditions as for that of free persons.²⁰ Uganda acceded to the UN Convention against Torture in 1986 and the ICCPR in 1995.

Our findings show that it is still commonplace for suspects to be beaten to the extent of sustaining serious injuries by prison warders or the katikiros.²¹ Such cases were reported in Kiburara, Lwamagwa, Ssembabule, Amuria and Soroti Central prisons. Torture remains regrettably a major problem in Uganda's prisons.

Conclusion

It must be acknowledged that Uganda has made important strides in the improvement of prison conditions. This can be seen in the passing of the Prisons Act, setting a human rights-based legislative framework recognizing the full range of prisoners' rights. However, there is still a long way to go in combating the challenges of prison overcrowding, torture, inadequate nutrition, accommodation and poor hygiene. The Prisons Act is a superb piece of legislation which if implemented would turn Uganda's prisons into some of the best prisons in Africa. Inadequate budget allocations and lack of political will remain

significant challenges towards a prison system meeting the minimum requirements of humane detention.

Endnotes

*Harriet Nakandi is Programmes Manager of the Centre for Justice for Accused Persons (CJAP) in Kampala, Uganda. The CJAP is an independent non-governmental, non partisan and not-for-profit human rights organisation. It was established to serve the community by offering free legal services to indigent people charged with criminal offences. CJAP seeks to contribute to the existing initiatives by the government of Uganda and the judiciary to advocate for observance of international human rights standards and the rule of law. For more information on the CJAP, please e-mail Harriet Nakandi at japaid@gmail.com.

1. Dissel A (1996) Prison conditions and human rights, Paper delivered at Pan-African Seminar, Kampala, Uganda, 19 -21 September 1996 , p 39.
2. Katureebe B (1996) Prisons are for everybody, Address by Uganda's then Minister of Justice and Attorney General at the Pan African Seminar on Prisons Conditions in Africa, Kampala, Uganda 19- 21st September 1996.
3. This is also the view expressed by W. J Karuragyire (1996) The Prisons Act 2006, and the rights of inmates Presentation at Stakeholders' Roundtable on prison conditions in Uganda, 10h October 2008, held at the Uganda Human Rights Commission offices.
4. Cited in P. Biribwonwoha (2006) "Challenges in the implementation of the Prisons Act 17 2006" Paper delivered at the National Prisons Reform Conference 16th-18th March 2008 at the Ridar Hotel, Kampala.
5. The United Nations Standard Minimum Rules for the Treatment of Prisoners were adopted by the 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 on 31 July 1957.
6. Extracted from "Uganda prison system"; Available at <http://www.country-data.com/cgi-bin/query/r-14175.html> Accessed 7 May 2009.
7. The Uganda Prison Service was established by the Prison Act Chapter 313 of the Laws of Uganda 1964 Edition Volume 8.
8. Section 57 of the Act expressly recognizes various rights of prisoners including freedom of worship, the right to gainful employment, right to treatment with dignity, access to health services available in the country and the right to participate in cultural activities.
9. Uganda Human Rights Commission (2007) Annual Report: A decade of Human Rights reporting in Uganda, 10th Annual Report, Uganda Human Rights Commission, Kampala, p.30.
10. Foundation for Human Rights Initiative (2007) The Rights status report on deprivation of the right to liberty, FHRI, Kampala, p. 37.
11. Uganda Human Rights Commission (2007) Annual Report: A decade of Human Rights reporting in Uganda, 10th Annual Report, Uganda Human Rights Commission, Kampala, p.33.
12. Uganda Human Rights Commission (2007) Annual Report: A decade of Human Rights reporting in Uganda, 10th Annual Report, Uganda Human Rights Commission, Kampala p. 36.
13. The Prisons Act 2006 came into force on the 14th July 2006 but almost three years later there are still glaring flaws in its implementation.
14. In a speech delivered during Annual Report consultative meeting held at Ridar Hotel, Seeta (Mukono), on 22 February 2008.
15. Panadol is the brand name of the pharmaceutical paracetamol.
16. Uganda Human Rights Commission (2007) Annual Report: A decade of Human Rights reporting in Uganda, 10th Annual Report, Uganda Human Rights Commission, Kampala p.36
17. Foundation for Human Rights Initiative (2007) The Rights status report on deprivation of the right to liberty, FHRI, Kampala, p. 40.
18. For example according to the FHRI report (p. 40) out of the 675 inmates 552 were on remand and only 123 were convicts, Luzira prison. The same reports narrates abridged versions of interviews with inmates who had been on remand for two to four years.
19. Article 44 buttresses it by making the right to freedom from torture absolute. See the case of *Attorney General v. Susan Kigula and 416 others*, Supreme Court Constitutional Appeal No. 3 of 2006 (Judgment of 21 January 2009, unreported) to see how Article 44 is interplayed with Article 24(1)- especially in the dissenting judgment of Egonda-Ntende Ag. JSC.
20. UNHRC General Comment No 21.
21. These are leaders among prisoners.

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