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PRESENTATION



The ninth issue of the *Sur Journal* is dedicated to the commemoration of the sixty years of the Universal Declaration of Human Rights. The articles on this subject were chosen in collaboration with the International Service for Human Rights (ISHR). Two main issues were addressed in the selected articles: the indivisibility and the universality of human rights. These two issues were initially raised sixty years ago by the Universal Declaration of Human Rights as the pillars of international human rights law. In this ninth issue of the *Journal*, they are revisited under an especially critical light.

The issue of indivisibility is analyzed by both Eitan Felner and Fernanda Doz Costa. Felner adopts a pragmatic perspective: how can economic and social rights not only be recognized as human rights, but also be effectively implemented? The author proposes a methodological framework to assess whether or not a State has violated human rights obligations related to this set of rights. He also reveals some of the challenges in identifying violations of economic and social rights. Doz Costa approaches the issue from a conceptual perspective, discussing the possible connections between human rights and poverty.

Anthony Romero, Executive Director of the American Civil Liberties Union (ACLU), in an interview with Conectas Human Rights, sheds light on how important the human rights movement is for the protection of individuals in the currently most powerful country in the world, a country that has “seen a remarkable loss of human rights” in the last eight years. In Romero’s words: “[t]he existence of a global human rights movement is actually, for this very reason, vitally important. Even if one government of one country sets back human rights, there is a movement of leaders and human rights NGOs that can keep the pressure on and keep pushing for advances in human rights.”

Katherine Short’s paper analyzes to which extent the Human Rights Council has been successful in overcoming the over-politicized approach adopted by the former UN Commission on Human Rights. Short highlights, however, that the Council’s effectiveness has been partially “undermined by both its failure to implement mechanisms to prevent its own membership to include acknowledged human rights violators and its continuing inability to harness US support.”

This issue of the *Sur Journal* also includes an analysis of the UN human rights system from an internal perspective: the perspective of Paulo Sergio Pinheiro, former UN Special Rapporteur on the Situation of Human Rights in Myanmar (2001-2008), former UN Independent Expert for the Study on Violence against Children (2003-2006), and former UN Special

Rapporteur on the Situation of Human Rights in Burundi (1995-1999). Pinheiro is currently member of the Inter-American Commission on Human Rights.

This issue of the *Sur Journal* also includes three thought provoking articles by Barbora Bukovská, Jeremy Sarkin and Rebecca Saunders. Bukovská defends an idealistic view of human rights organizations, a view that is not content with mere normative achievements in the field. According to the author, as human rights should always result in concrete protection for victims of violations, Bukovská highlights the need to bridge the gap that frequently exists between international human rights organizations and the actual victims of violations.

Sarkin examines the historical development of African prisons from colonial to modern times, raising two issues: first, he understands that African prisons current conditions are in great part a legacy of colonialism; second, he argues that overcrowding and violence are a widespread problem in prisons all over the world.

Finally, Saunders criticizes the system of transitional justice established in South Africa after Apartheid. In her own words, her article addresses "what is gained and lost when expressions of human suffering are translated into a standardized language of human rights." The author also questions the priority given to national over individual forms of healing.

These three articles invite discussion. We therefore invite readers to respond either with another article or with a three-to-five-page essay. Articles and essays will be subjected to the *Journal's* selection process, and hopefully will encourage further discussion on these key issues.

We would like to thank the following professors and partners for their contribution to the selection of the articles for this issue: Andre Degenszajn, Andrea Pochak, Fabián Sanchez, Flavia Piovesan, Habib Nassar, Inês Lafer, Juan Amaya Castro, Kwame Karikari, Lucia Nader, Magdalena Sepúlveda, Mustapha Al-Sayyed, Olga Espinosa, and Richard Pierre Claude. We would also like to inform that Profesor Upendra Baxi (Warwick University) has accepted our invitation to join the *Sur Journal* Editorial Board.

Finally, we would like to announce that the next edition of the *Sur Journal* will be a special issue on "People on the Move: Migrants and Refugees", to be published in collaboration with the Office of the UN High Commissioner for Refugees (**UNHCR**). The journal will also carry articles on other human rights topics.

The editors.



JEREMY SARKIN

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ABSTRACT

While prisons in Africa are often considered the worst in the world many other prisons systems are worse off in terms of violence, overcrowding and a host of other problems. This is not to argue that African prisons are human rights friendly. Many are in a deficient condition and their practises are at odds with human rights standards. However, prisons in many parts of the world are in crisis. Never before have there been so many problems within penal systems and such large numbers of people in institutions of incarceration.

This article examines the historical development of African prisons from colonial times and considers the legacy that colonialism has left in prisons on the continent. The article also examines a range of issues in prisons throughout Africa including pretrial detention, overcrowding, resources and governance, women and children in prison, and rehabilitation. A substantial amount of space is devoted to the reforms that are occurring across the continent, and recommendations are made with regard to what further reforms are necessary. The role of the African Commission on Human and Peoples' Rights as well as the Special Rapporteur on Prisons and Conditions of Detention in Africa are also considered.

Original in English.

KEYWORDS

Africa - Human rights - Prisons - Colonialism - Pre-trial prisoners - Overcrowding - Women - Children - Governance - Resources - African Commission on Human and People's Rights - Rehabilitation - Reform



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PRISONS IN AFRICA: AN EVALUATION FROM A HUMAN RIGHTS PERSPECTIVE

Jeremy Sarkin

Introduction

Generally speaking, those incarcerated in African prisons face years of confinement in often cramped and dirty quarters, with insufficient food allocations, inadequate hygiene, and little or no clothing or other amenities. While these conditions are not uniform throughout the continent, their prevalence raises concern and needs to be addressed through prison reform and attention to human rights. Moreover, there are also several barriers—including state secrecy, weak civil society, and lack of public interest—that inhibit the collection of reliable data on African prisons.¹ This veil of ignorance as to prison conditions merely fuels the neglect and abuse of Africa's incarcerated. It is nonetheless imperative to investigate African prisons and generate information about the issues affecting the continent's penal system.²

The article outlines several key historical developments in the evolution of African prisons. It examines certain areas in which prisons throughout Africa fail to meet the minimum of human rights requirements. Recognizing that Africa is home to 53 countries of profound diversity, several common themes of human rights abuse nonetheless emerge upon continental examination, including the shortcomings of resources and good prison governance; overcrowding and poor conditions within prisons; the failure to protect the rights of pre-trial detainees, women, and children; the untapped potential of alternative sentencing; and the unfulfilled mandate of rehabilitation. The article then considers several possible sources for oversight and reform, including the African Commission on Human and Peoples' Rights as well as the Special Rapporteur on Prisons and Conditions of Detention in Africa.

Notes to this text start on page 46.

It is clear that African prisons face a host of challenges, including deficits of good governance, funding, and other resources. Such shortcomings have resulted in overcrowded and otherwise abusive prison conditions. Yet it is also clear that several governments and organizations have committed themselves to improving the lot of Africa's incarcerated by promoting prisoners' rights. As a result, Africa is home to several innovative instruments and institutions aimed at protecting the rights of those behind bars. What is needed now is the political will and resources to translate these pronouncements into practice.

The African prison: another legacy of colonialism

Prior to undertaking any analysis of the current state of African prisons, it is essential to cast an eye toward the past and consider the development of penal institutions throughout the continent. For the prison is not an institution indigenous to Africa. Rather, like so many elements of African bureaucracy today, it is a holdover from colonial times, a European import designed to isolate and punish political opponents, exercise racial superiority, and administer capital and corporal punishment.

0Incarceration as punishment was unknown to Africa when the first Europeans arrived. While pretrial detention was common, wrongdoing was rectified by restitution rather than punishment. Local justice systems were victim-rather than perpetrator-centered with the end goal being compensation instead of incarceration. Even in centralized states that did establish prisons, the goal of incarceration remained to secure compensation for victims rather than to punish offenders.³ Imprisonment and capital punishment were viewed as last resorts within African justice systems, to be used only when perpetrators such as repeat offenders and witches posed discreet risks to local communities.⁴

While imprisonment-as-punishment did not take root in Africa until the late 1800s,⁵ there were two exceptions to this characterization. First, prisons were used in connection with the Atlantic Slave Trade.⁶ Second, Southern African nations began to rely upon imprisonment much earlier than the rest of the continent, in some cases as early as the beginning of the 19th century.

Even when the colonial powers arrived in Europe, they utilized imprisonment not as a means by which to punish the commission of common crimes but rather to control and exploit potentially rebellious local populations. Therefore, Africa's earliest experience with formal prisons was not with an eye toward the rehabilitation or reintegration of criminals but rather the economic, political, and social subjugation of indigenous peoples. It was in these early prisons that even minor offenders were subjected to brutal confinement and conscripted as sources of cheap labor.

Africa's late 19th century prisons were not merely catchbasins for the victims of colonial oppression, they were also manifestations of European racial superiority. European settlers and conquerors looked upon African people as subhuman, savages who were unable to be "civilized."⁷ For example, white

prisoners—unlike their black counterparts—enjoyed higher quality clothing, food, and shelter, as well as vocational training aimed at preparing them for release, rehabilitation, and reintegration.⁸ Additionally, while European prisons phased out torture in the late 1800s, colonial prisons increasingly relied upon the practice as a means of suppressing indigenous peoples and reinforcing racist dogma. Torture and capital punishment were legitimized among Europeans by the characterization of Africans as uncivilized, infantile, and savage.⁹

Yet, despite the connection of prison brutality to the racist and colonial policies of the late 1800s, penal oppression persists at an alarming rate and appalling depth in postcolonial Africa. Moreover, attendant issues such as underdevelopment, dependence on foreign aid, political oppression, and human degradation continue to plague the continent despite the decades-old withdrawal of colonial powers. Within prisons, overcrowding, failing infrastructure, corporal and capital punishment, corruption, extended pretrial detention, gang culture, and inadequate attention to women and youth evince a startling lack of reversal notwithstanding the departure of Africa's penal architects over 40 years ago.

As the history of the African prison makes clear, incarceration was brought to the continent from Europe as a means by which to subjugate and punish those who resisted colonial authority. The employment of corporal and capital punishment to stifle political oppression was the central aim of Africa's first prisons. In light of this genesis then, it is hardly a surprise that present-day African prisons fail to meet their stated goals of rehabilitation and indeed persist in fulfilling the aims and committing the abuses set in motion centuries ago.

Pre-trial detention

Before analyzing the plight of African prisoners, it is worth exploring the circumstances of African detainees. The reason for this diversion is that a large proportion of the prison population in African states is comprised of individuals awaiting trial and conviction. For example, two-thirds of the 18,000 inmates in Uganda have yet to be tried.¹⁰ In South Africa's Johannesburg Prison, some inmates have not seen a judge in as many as seven years.¹¹ Such delays lead to the consolidation of the prison and detention populations and result in the phenomenon of overcrowding, which will be explored later.

Despite the claim of having some of the world's most overcrowded prisons, African prisons hover near to global average for pretrial detainees. The average of prisoners awaiting trial in Africa is 45 per 100,000 while the global rate is 44 per 100,000.¹² Whereas the global awaiting trial detention rate averages 29 percent, Africa's is 36 percent.¹³ In some Latin American countries, such as Paraguay and Honduras, the rate is as high as 90 percent.¹⁴

Pretrial detention in and of itself does not constitute a violation of human rights, provided that it takes place under the proper conditions, for a short time, and as a last resort. While statistics on the duration of pretrial detention in

Africa are difficult to obtain, evidence suggests that waits are longest in Central and West African nations and that such detention is usually arbitrary, extensive, and under terrible conditions. Most importantly, the poor are disproportionately detained vis-à-vis their wealthy counterparts because they cannot afford the counsel or bribes necessary to secure early release. Moreover, it is not only the detained that suffer as a result of extensive pretrial detention; prisons themselves feel the burden of high detention rates. For example, nearly the highest rate of pre-trial prisoners in prison in the world is found in Liberia (97, 3 percent), second highest in the world is Mali with 88,7 percent, Benin is 4th with 79, 6 percent and Niger 5th with 76 percent.¹⁵ Undoubtedly the overcrowding of such prison systems could be alleviated by reform of the detention process.

Such reform has been proposed by the African Commission on Human and Peoples' Rights, which has issued several documents containing guidelines for effective pretrial hearings. In addition the Commission has adopted several instruments to emphasize these recommendations, including the 1997 Resolution on the Right to Recourse Procedure and Fair Trial, the Kampala Declaration on Prison Conditions in Africa, the 2002 Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, the 2002 Ouagadougou Plan of Action, and the 2003 Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa. While such documents hold the promise of "good practices" to come, much more needs to be done to alleviate the arbitrary, disparate, and inhumane treatment of pretrial detainees in Africa.¹⁶

African prisons conditions: overcrowded and under-resourced

Overcrowding is perhaps the single most pressing concern facing African prisons. African nations such as Cameroon, Zambia, Burundi, Kenya, and Rwanda comprise the majority of the world's most overcrowded prisons.¹⁷ Like many of the challenges facing African prisons today, overcrowding has its roots in the continent's colonial past. African prisons have been at or above capacity nearly since their inception. Given the many challenges facing postcolonial Africa, it is little wonder that prisons have been left off the endless development to-do lists of many postcolonial governments.

Prior to examining the size of the prison population in Africa, a word must be said about the physical conditions in which such populations are maintained. It should come as no surprise that prisons throughout Africa languish in disrepair. The buildings are old, poorly ventilated, with inadequate sewage systems. Such conditions are ripe for the transmission of communicable diseases. Prisoners often lack space to sleep or sit, hygiene is poor, and food and clothing are inadequate.¹⁸ Amid such decay and deprivation, overburdened prison staff has found it difficult to supervise prisoners or provide higher standards of sanitation and nutrition.

Overcrowding: the causes

In Africa, resource scarcity at several levels of the justice system results in prison overcrowding. For example, while African prisons may not house as many prisoners as their counterparts in other parts of the world, the shortage of police and judges has been credited with the surging prison population.¹⁹ These personnel shortages have led to the increase in pre-trial detainees and remand prisoners who, as illustrated above, comprise the vast majority of many African nations' prison populations.²⁰

Overcrowding: the consequences

African prisons at times house "crowded cells where inmates sleep in shifts; (...) warders who 'sell' juvenile offenders for sex with other cons; and (...) guards who smuggle weapons, drugs and alcohol to paramilitary inmate gangs".²¹ HIV/AIDS-related deaths in prison have risen exponentially in the past decade.²² Confined and crowded living quarters also lead to sexual assault and suicide. While many African prisons do not suffer from such extreme violence and health problems, the presence of these trends in any prisons raises concern.²³

In condemning the conditions of African prisons, journalist Michael Wines argued in 2004 that:

*[t]he inhumanity of African prisons is a shame that hides in plain sight. Black Beach Prison in Equatorial Guinea is notorious for torture. Food is so scarce in Zambia's jails that gangs wield it as an instrument of power. Congo's prisons have housed children as young as 8. Kenyan prisoners perish from easily curable disease like gastroenteritis.*²⁴

Approximately one in 60 inmates in Malawi's Maula prison dies while serving his or her sentence as compared to one in 330 in the United States.²⁵ In addition, rape among a largely HIV-positive population is common and a suspected method of gang control within prisons.²⁶

While there is no excuse for the inhumane conditions in which African prisoners dwell, it bears mention that such circumstances must be placed in context of the overall deprivation present throughout the continent. With poverty being the norm for far too many Africans, it is unsurprising that poor living conditions continue behind prison walls. Yet the African Commission on Human and Peoples' Rights persists in its condemnation of the state of African prisons:

*The conditions of prisons and prisoners in many African countries are afflicted by severe inadequacies including high congestion, poor physical, health, and sanitary conditions, inadequate recreational, vocational and rehabilitation programmes, restricted contact with the outside world, and large percentages of persons awaiting trial, among others.*²⁷

While health data from African prisons is not as readily available as it is in the United States, evidence suggests that the trends are similar. Research by scholars and NGOs indicates that disease is more prevalent among African prison populations as opposed to free populations.²⁸ For example, some estimates from South Africa place the HIV infection rate amongst its prisoners at two times that of the general population.²⁹ Even the HIV prevalence rate among Ghanaian prison guards has been found to be higher than that of the population at large.³⁰

In addition to disease, African prisoners also suffer disproportionately from abnormal deaths. In 2002, for example, at least 100 Ghanaian prisoners died of malnutrition and diseases resulting from lack of sanitation and overcrowding.³¹ Similarly, hundreds of prisoners in Kenya, Nigeria, and Ethiopia have died as a result of similar conditions.³²

Overcrowding: the dolutions

Notwithstanding the threats to security and safety posed by overcrowding, African courts have been slow to enforce prisoners' rights to sufficient space. Instead, courts focus upon the time inmates spend behind bars, the level of ventilation in cells, the amount of exercise and sunlight afforded to prisoners, the quality of nutrition provided, opportunities for recreation and training, the general climate, as well as any existing work conditions.³³ In the absence of judicial response, "enforceable accommodations standards" should be established by "setting specific standards that can be challenged in court if necessary".³⁴ For example, a South African court's ruling that:

the 'usual' remedies, such as the declarator, the prohibitory interdict, the mandamus and awards of damages may not be capable of remedying (...) systematic failures or the inadequate compliance with constitutional obligations, particularly if one is dealing with the protection, promotion or fulfilment of rights of a programmatic nature.

It reveals courts' limited capacity for adjudicating overcrowding issues.³⁵ The court's order of a "structural interdict, a remedy that orders an organ of state to perform its constitutional obligations and report [to the court] on its progress in doing so from time to time;"³⁶ however, suggests that African courts can be more proactive and play a larger role in mitigating poor prison conditions.

In addition to the lack of judicial recourse for abuses resulting from overcrowding, there has been an absence of policy response to the problem. Despite the grave consequences of overcrowding in African prisons, prison capacity has not increased nor have prisons been renovated or privatized as they have in North America and Europe.

While privatisation has yet to reach Africa, other means of reform are being discussed. For example in January 2006, Nigeria released 25,000 prisoners, some of whom had been awaiting trial for a decade. The government also established boards—comprised of human rights advocates and law enforcement

representatives—in each of the country’s 227 prisons. In addition, the government also created and staffed a new position, a chief inspector of prisons, which will report to the President. Such measures were undertaken, according to former Justice Minister Bayo Ojo, because “conditions of the prisons are just too terrible. The conditions negate the essence of prison, which is to reform”.³⁷ The President of Tanzania, Jakaya Mrisho Kikwete, has also vowed to improve conditions in his country’s prisons. “The situation is terrible”, he said as he called for an investigation into prison overcrowding. “There is a lot to be done to see to it that inmates are treated like human beings.”³⁸

At the regional level, in 1996 and 2002 the Kampala Declaration on Prison Conditions in Africa and the Ouagadougou Declaration on Accelerating Penal and Prison Reform in Africa were both adopted respectively. Both instruments strive to improve the conditions of African prisons. At the international level, the Council of Europe adopted the European Prison Rules in 2006. While the rules do not bind African states, they provide useful guidance in developing transparent and consistent prison policy. However, even if the African Union were to adopt similar guidelines, insufficient resources and instability plague the implementation of any proposed reform.

The failure to protect the vulnerable: women and children in African prisons

The plight of women and children in African prisons has largely been ignored by academics as well as penal policymakers. As a result, these vulnerable populations are particularly marginalized within an already substandard living environment. While some inroads are being made within the European, North American, and Australian penal systems to better accommodate women and children, the issue receives little to no attention in Africa where, as elsewhere, prison administration remains a decidedly male- and adult-dominated milieu.

Women

Africa lies in the middle of the global average of women prisoners as a percentage of the total prison population, with between 1 and 6 percent of African prison populations being comprised of women.³⁹ Even though the continental average is lower than elsewhere in the world, national averages vary from rates as high as 4.5 percent in North Africa, 5 percent in West (Cape Verde) and Southern Africa (Botswana), 3.3 percent in Central Africa (Angola) and 6.3 percent in East Africa (Mozambique), to 1.7 percent in North Africa (Sudan), 1 percent in West (Burkina Faso) and Central Africa (São Tomé e Príncipe), 1.2 percent in East Africa (Malawi), and 1.8 percent in Southern Africa (Namibia).⁴⁰

Before examining the conditions in which African women are incarcerated, it is worth noting how women come to be in African prisons in the first instance. Women in African prisons are overwhelmingly poor and uneducated. They are

frequently incarcerated for crimes such as murder and attempted murder, infanticide, abortion, and theft. Sexism is apparent in the criminalization and sentencing of certain conducts. For example, in many countries abortion—which only women can obtain—is punished via life sentence.⁴¹

Once in prison, discrimination against women persists. They are often denied access to vocational and recreational programs. Prisons often lack appropriate supplies to accommodate menstruating women. Where women are incarcerated with men, they remain vulnerable to physical and psychological abuse from male prisoners, which meager prison staff cannot prevent and indeed, sometimes join.

While some prison systems provide separate facilities for the incarceration of women, in most countries, women are imprisoned in the same facilities as men.⁴² Even in cases where women are incarcerated separately, these facilities experience violence and abuse akin to that found in male facilities.⁴³ Moreover, women prisoners are particularly vulnerable to sexual abuse by prison guards whether in female or mixed prisons.

Fortunately, the plight of female prisoners is being addressed in the move for regional penal reform. For example, the Kampala Declaration calls for improving the situation of women in African prisons. However, the declaration merely calls for “particular attention” and “proper treatment” of women’s “special needs”. Such vague aspirations—to say nothing of the wholesale omission of pregnant women—reflects a lack of political will and gender awareness towards the reform of African prisons for all of those behind bars.

Children

While there are far less children in prison in Africa than women, certain individual facilities house particularly high youth populations. In addition, many penal systems deliberately underreport their youth populations to avoid closer scrutiny and critique of their policies. According to available data, children comprise anywhere from .5 to 2.5 percent of the general prison population, with the majority of those children awaiting trial for months or even years. South African prisons accommodate the highest number of child prisoners in Africa at 3,600. Namibian prisons house the largest percentage of children, at 5.5 percent of the country’s total prison population.⁴⁴

Children arrive in prison by two distinct routes in Africa: they are either born to incarcerated women or they have been sentenced on account of their own allegedly criminal conduct.⁴⁵ Often their crimes include such minor and petty offenses as vagrancy, not carrying proper identification, loitering, truancy, begging, and being beyond a parent’s control. For these slight infractions, children can be detained pending trial during the most formative years of their development.

As is true for women, most African prison systems—aside from those in South Africa, Côte d’Ivoire, Mali, and Angola—lack the resources to house

children separately from the adult male population. The commingling of children with the general prison population can lead to disastrous consequences. First, children imprisoned with the general population must compete with adults for scarce resources such as food. Second, given that African prisons fail to meet even the most basic minimum standards for adults, it should come as no surprise that they fall far short of meeting international standards for juvenile detention. For example, overcrowding compromises child prisoners' health and hygiene and exposes them to increased risk of sexual abuse. Juvenile detainees' educational, developmental, health, and nutritional needs are left unattended.

While some progress is being made, particularly in the countries noted above, to separate child prisoners from their adult counterparts, more needs to be done. Examples can be derived from countries such as Egypt, which is experimenting with diversion and restorative justice programs as alternatives to imprisonment of youth.⁴⁶ Pre-release programs, as well as rehabilitation and reintegration policies can also reach child offenders before they lose their precious developmental years to prison.

Rehabilitation: the elusive end

Among the many aims of incarceration—retribution, deterrence, public disapproval, incapacitation, rehabilitation, and reintegration—the last two goals remain some of the most elusive and controversial, particularly in Africa.

Rehabilitation is a difficult end point for many African prisons to achieve, in large part, due to lack of resources. Overcrowding and under-funding hamper the implementation of effective rehabilitation schemes. While rehabilitation remains the goal of many penal policymakers in Africa, lack of political will impedes its ultimate realization. This is particularly unfortunate given that, what little research is available on the subject indicates that recidivism rates in Africa drop in the presence of effective and supported rehabilitation programs.⁴⁷ This could be in part due to the links forged by prisoners and their families or other community members; links that help support prisoners during their reintegration processes and avoid lapses into recidivism.

Rehabilitation is part of many regional instruments aimed at improving prison conditions throughout Africa. For example, The 2002 Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa calls for the promotion of rehabilitation and reintegration of former offenders. The Declaration's accompanying Plan of Action also specified measures that governments and NGOs could take to increase the effectiveness of rehabilitation of offenders and pretrial detainees. Legislation in several African nations—including Gambia, Cameroon, and São Tomé e Príncipe—has also sought to promote the human rights of prisoners.⁴⁸ However, these measures fail to address rehabilitation in lieu of focusing on overcrowding, lack of personnel and training, and minimum standards for prisons.

Fortunately, countries such as South Africa, Uganda, and Botswana have taken steps to improve their rehabilitation programs. Even though these countries face challenges in implementing their rehabilitation and reintegration programs, they strive to adhere to the Plan of Action. Their programs focus on educational and vocational training, psychological support, promotion of familial contact beyond prison, access to religious services, and integration of civil society in order to rehabilitate prisoners and reintegrate them into the community.

The achievement of such efforts is difficult to measure for lack of consensus regarding the standards and measurements for gauging success. However, practice to date has revealed some key commonalities among successful programs, such as: a focus on addressing employment related skills, sufficient flexibility to cater to individually identified needs, integrated multi-dimensional services that address a wide range of factors, ongoing monitoring and follow-up, a balance between quality and quantity, collaboration with families and communities, restorative justice components where offenders accept responsibility, and minimum durations of nine to 12 months. While rehabilitation and reintegration programs are new to Africa, positive developments to date evince some success meriting increased support to such initiatives.

Prison resources and governance

The conditions described above result in part of a scarcity of resources and good governance. Indeed, resource scarcity is one of the most significant challenges facing African prisons today. On a continent of so many social needs, protection of prisoners is far from the top of many priority lists. Moreover, the consensus of opinion is that prison is a locus for detention, punishment, and deterrence as opposed to rehabilitation and reintegration.⁴⁹ As a result, African prisons experience a high rate of recidivism, which further strains the social and financial resources of already-impoverished nations.⁵⁰ In addition, resource scarcity leads to deprivation of prisoners.

Good prison governance is difficult to define and measure, partly because there has been very little research on identifying good practice in Africa, particularly in the areas of administration, management, and proper function. Several international instruments outline international consensus on topics such as acceptable objectives, conditions, and treatment of criminals in prisons.⁵¹ In addition, the rise of crime in Africa, the drop in resources, and the belief that imprisonment is a form of discipline have all conspired to render prison conditions outright atrocious in some nations.

The shortage of well-trained staff also hinders the governance of African prisons. Staff shortages can inflame already stressed prison staff, leading to additional challenges within problem-laden systems. Incompetent staff can worsen existing states of affairs for prison administrators. When prisons lack sufficient staff, prisoners must be confined to their cells, thus exacerbating the

problems associated with the overcrowding described above. Inadequate staff also hampers the design and delivery of rehabilitation programs, thereby adding to the challenge of overcrowding and recidivism. Finally, good governance is essential to maintaining public health baselines within African prisons. Increased staff and more efficient methods are needed to ensure waste disposal, better food, increased rations, and adequate measures to fight the spread of disease, especially HIV/AIDS. Public health educators are needed to teach prisoners how to avoid contracting HIV, condoms must be provided, and HIV-positive prisoners must receive adequate health care.

These challenges can be mitigated by implementing adequate training programs; recruiting additional staff; building intra-staff camaraderie; increasing staff pay and benefits; adequately supervising, directing, and disciplining staff; and incentivizing staff with upwardly mobile career paths. These measures will not only alleviate staffing problems and foster better prison governance but build a climate of respect for prisoners' rights as well.

Despite this dire situation of prison governance and resource scarcity in African prisons, some positive inroads have been made over the past decade to better the lives of Africa's incarcerated. For example, donors have contributed money and technical assistance to assist African penal systems.⁵² The majority of African governments have illustrated their commitment to prisoners' rights via the adoption of regional instruments, events, and institutions such as the Kampala Declaration on Prison Conditions in Africa; the Fourth Conference of the Central, Eastern and Southern African Heads of Correctional Services; the Arusha Declaration on Good Prison Practice; and the Ouagadougou Plan of Action.

The above instruments stress the importance of effective prison administration and competent prison leadership. Prison leadership colors the entire prison system while efficient management is crucial to ensuring a smoothly-run facility. Effective staff recruiting, training, and education also improve prison governance. Unfortunately, many African prison administrations are subordinated to the police or military, which can engender authoritarian structures and harsh disciplinary policies. Decentralized prison management can also compromise prison management, particularly in the absence of a national prison authority.

Restoring dignity in African prisons: routes to reform

Since the mid-1990s, prison reform's profile has risen thanks to the efforts of nongovernmental and governmental organizations that have cast the abuses resulting from overcrowding in African prisons against a human rights framework. Several strategies towards protecting prisoners' rights have been deployed throughout the continent including national trends towards alternative sentencing, regional attempts at oversight, and policy commitments to reform. Several of these initiatives are highlighted below.

Alternative sentencing: a safety valve for overcrowding?

One means by which overcrowding can be avoided—and hence human rights respected in African prisons—is through alternative sentencing. Several African penal systems have already begun experimenting with the practice and, while it is early to generalize from a few isolated positive experiences under particular conditions, early indications suggest that the practice warrants further application and study.

The most common form of alternative sentencing is one in which those guilty of minor offenses are sentenced to terms of community service rather than prison. Obviously, this practice would reduce the overcrowding of African prisons. Yet, alternative sentencing still requires oversight and administration, costs that resource-poor African nations cannot yet meet. As a result, fines and compensation have also been proposed as alternative sentences to incarceration.

Lack of funding is not the only obstacle to the pursuit of alternative sentencing in Africa. Several administrative hurdles remain in the implementation and integration of such a program, including the harmonization of various interests among groups such as the media, political parties, victims, criminals, and the population at large, particularly when sentences forego jail time. Clear definition of crimes and their corresponding alternative sentences can help gauge the political viability of employing alternative sentences to alleviate prison overcrowding.

Further challenges to the implementation of alternative sentencing include the lack of transparent governance and corruption present in many African states. The success of these sentencing schemes—indeed of any sentencing scheme—lies in part amid the criminal justice system's transparency and integrity. Unfortunately, many African criminal justice systems are riddled by corruption, though steps are being taken to address this problem.

To be sure, alternative sentencing is no continental-cure all to the woes that beset African prisons. However, with the contributions of international organizations, NGOs, governments, and individuals, barriers to the practice can be overcome and alternative sentencing might become an important part in mitigating prison overcrowding.

The African Commission on Human and Peoples' Rights: potential for protection

The African Commission on Human and Peoples' Rights, which since 2002 has operated under the auspices of the African Union, has played a significant role in improving prison conditions throughout Africa. One method by which the Commission has contributed to the betterment of prisoners' lives has been through the investigation and adjudication of rights violations. The Commission has also investigated African prison conditions through the appointment of various special rapporteurs, the establishment of working

groups, and the adjudication of individual cases. The Commission also queries governments and drafts resolutions on prison conditions throughout the continent.

Several of the Commission's special rapporteur and working group appointments hold significance for the area of prison reform in Africa. For example, the Commission has appointed a Special Rapporteur on the Rights of Women in Africa, a Working Group on the Death Penalty, a Working Group on Specific Issues Relating to the Work of the African Commission on Human and Peoples' Rights, a Working Group on Indigenous Populations/Communities in Africa, a Special Rapporteur on Human Rights Defenders in Africa, a Special Rapporteur on Freedom of Expression in Africa, and a Special Rapporteur on Prisons and Conditions of Detention.⁵³ The work of the Special Rapporteur on Prisons and Conditions of Detention in Africa will be discussed in more detail below.

International and regional human rights instruments play a large role in the work of the Commission and its subsidiary organs in the course of their work on African prison conditions. For example, the Commission has made use of the UN Standard Minimum Rules for the Treatment of Prisoners, the International Covenant on Civil and Political Rights, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the African Charter on the Rights and Welfare of the Child, and the Protocol on the Rights of Women.⁵⁴ Furthermore, in 1995 the Commission adopted the Resolution on Prisons in Africa, which extended the rights and protections set forth in the African Charter on Human and Peoples' Rights to prisoners and detainees.

The Commission strives to emphasize individual state accountability to care for prisoners and guarantee the minimal standard of prisoners' rights. However, the Commission has not yet established coherent standards by way of guidelines as to degrees or even elements of violations of prisoners' rights. In its cases, the Commission usually hears a complainant's evidence and evaluates a government's response. In the absence of a governmental response, the Commission simply finds in favor of the complainant.⁵⁵

The Commission has, however, adopted several resolutions on the standards of prisons in Africa, including the Resolution on the Adoption of the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa. Both of these instruments contain recommendations on reducing overcrowding, making prisons in Africa more self sufficient, promoting rehabilitation and reintegration programs, making prison administrations more accountable for their actions, encouraging best practices, promoting the African Charter on Human and Peoples' Rights, and supporting the development of a Charter on the Basic Rights of Prisoners from the UN.

There are several methods by which African nations can meet the standards set forth in the Commission's resolutions. For example, alternative sentencing, restorative and traditional justice, and connections between the customary

and formal criminal justice systems would help solve the problem of overcrowding in African prisons. Overcrowding can also be alleviated by decriminalizing some minor offenses, making attempts to accelerate trials, making cost orders against lawyers to punish for delays, and restricting time in police custody to 48 hours. Prisons could become more self sufficient if, as the Plan of Action suggests, staff were better trained. The goals of rehabilitation and reintegration might be better achieved if prisoners were involved in industries, their employment prospects enhanced through education, and their interaction with their families and communities increased. Finally, as the Plan of Action advises, prison administrators should be made accountable for their abuse of prisoners through the adoption of national legislation that is consistent with international human rights obligations and independent prison inspections.

An additional instrument, the Robben Island Guidelines, adopted by the Commission in 2002, encourages African nations to adopt minimum international standards on prison conditions and give detailed instructions on how to achieve them. The guidelines also include specific recommendations for combating many of the challenges outlined in this article, including physical conditions of prisons, the use of alternative sentencing to mitigate overcrowding, the role of NGOs, judicial independence, increasing awareness and training of staff, and the separation of such vulnerable groups as women and children. Finally, the Guidelines established an important follow-up committee to distribute information about the Guidelines within Africa.

Moreover, the Commission need not be the only institution to undertake prison monitoring and reform in Africa. For example, several countries have established national human rights institutions, which though of varying efficacy, can monitor prison conditions on the national level. The challenge facing many of these issues is one of breadth. Many national human rights institutions are charged with overseeing all human rights monitoring, not just prisons. For example, even though South Africa has appointed an Inspecting Judge of Prisons to receive and investigate prisoner complaints and an Independent Complaints Directorate to investigate allegations against police holding pretrial detainees, over 500 people have died in police custody in the country since 1994. At times, this figure has been as high as 700 pretrial detainees.⁵⁶ Thus, there is a need for continued and heightened oversight of prisons and other detention facilities.

The African Commission on Human and Peoples' Rights has adopted a multifaceted approach—involving special rapporteurs, cases, and resolutions—to solving the problems facing African prisons today. However, the lack of structure detracts from the Commission's overall effectiveness. More coordination among the strategies and centralization of reform efforts is needed before African prisons are to see improved conditions. The Commission has laid the foundations for the respect of prisoners' rights, they simply must be deployed more efficiently.

Special Rapporteur on Prisons and Conditions of Detention in Africa

As mentioned earlier, the African Commission on Human and Peoples' Rights has appointed several special rapporteurs whose work touches upon the rights of prisoners—none more so than the Special Rapporteur on Prisons and Conditions of Detention (SRP), who was appointed in 1996. This appointment was made pursuant to Article 45(1)(a) of the African Charter of Human and Peoples' Rights, which permits the Commission to investigate and promote human rights on the continent. The Commission can fulfill this mandate under any appropriate method according to Article 46 of the Charter. The benefit of appointing the SRP pursuant to Article 45(1)(a) is that this article is associated with the Commission's promotion function, which is conducted in public.

The SRP position is filled by a member of the Commission for a two-year term. Commissioner Victor Dankwa of Ghana was the first SRP, followed by Commissioner Vera Chirwa of Malawi, and now Commissioner Mumba Malila of Zambia.

The role of the SRP is to inspect and report on prison conditions in order to protect the rights of those held therein. The SRP researches prison conditions, communicates with African governments regarding the state of their penal systems, entertains individual complaints about prison conditions, and reports to the Commission on a yearly basis. The SRP also proposes solutions to challenges facing African prisons. Lastly, the SRP also trains law enforcement personnel, police, prison guards and administrators, and lawyers to improve prison conditions.

The Special Rapporteur carries out his work by visiting countries, inspecting their prisons, and reporting on conditions found therein. Sometimes he also conducts follow-up visits. To date, the SRP has conducted 16 visits to 13 countries at a rate of two per year. All visits adhere to a similar agenda. The SRP first meets with government leaders and holds a press conference prior to visiting various prisons, police holding cells, and reform schools for approximately 10 days. At each site, he meets with administrators, tours the grounds, and meets with inmates both in and beyond the presence of prison officials. Once the SRP has concluded his visits, he again meets with government officials to make recommendations on pressing issues. After his visit, the SRP drafts a report to which the government may respond. A final draft of the report, complete with government responses, is then prepared and, while once available to the public, no longer is made widely available. This should be changed.⁵⁷

Even though reports have varied from country to country, the SRP's reports have overwhelmingly called for additional resources to be dedicated to prisons. In addition, the Special Rapporteur has often called for improved training of prison officials in the area of human rights. Lastly, SRP reports often highlight the need for improved intra-prisoner relations as a means of human rights protection.⁵⁸

In addition to examining prison facilities, the SRP is also charged with analyzing national penal legislation to ensure its compliance with international and African law. A report of this examination is then forwarded to the Commission, though it too, should be made public.

In theory, the SRP is a useful tool for protecting prisoners' rights. However, a number of barriers have hindered its scope and practical import. First, the SRP is strapped by virtue of under-funding and double-billing as a Commissioner. As a result, the SRP has only managed to visit a fraction of African states. Secondly, the SRP is also constrained in the number of visits because such trips require the consent of the receiving state. Admittedly, receiving the SRP requires a level of commitment that includes following the subsequent recommendations. However, if the SRP is going to reach its full potential as a human rights institution, more African states need to accommodate requests for visits.⁵⁹

Despite these challenges, the SRP has achieved some success in its short existence. First, its mere creation has raised the profile of prisoners' rights in the Commission's agenda. Thus, while progress is slow, the matter remains on the Commission's agenda and will be followed for years to come. Secondly, even though the number of the SRP's visits has not been as large as possible, approximately 250 places of detention have been examined in the last decade. This is a start on the road to more visits. Thirdly, the SRP has shed light on previously-ignored issues. For example, during her term as SRP, Vera Chirwa opposed capital punishment. The current SRP, Mumba Malila has spoken out against corporal punishment.⁶⁰

Still, the SRP can be strengthened by undertaking several measures, such as increasing financial resources, increasing communication between NGOs and other international organizations, increasing communication between the SRP and visited countries, better integrating the SRP into the Commission, and improving the structure and legality of the SRP's mandate.

Reforming African Prisons

Fortunately, the move to reform prisons and expand prisoners' rights has received increased attention throughout Africa. Unlike in the past, when prison reform was not on the agendas of African nations, today many NGOs and governments have been actively trying to improve conditions.⁶¹ However, as mentioned earlier, African states face a panoply of population-wide challenges such as disease, insufficient education, inadequate housing, unemployment, and political instability. The financial pressures posed by such conditions make it politically challenging for states to prioritize prison reform.

Nonetheless, positive gains have been made to achieve change in Africa's penal and criminal justice systems. This has been partly facilitated by international aid. In 2002 alone, donors provided US \$ 110 million to African countries to conduct justice sector reform.⁶² As a result of this prioritization and funding, several African states have made some strides in alleviating overcrowding.

For example, South Africa has reduced the prison sentences of thousands to a mere six months. Kenya is experimenting with alternative sentencing by committing petty offenders to community service, fines, and probation rather than incarceration.⁶³ Kenyan prisons have also undertaken early release initiatives to mitigate overcrowding and are expanding health clinics to improve prisoner health.⁶⁴ Uganda's Community Service Act permits the use of community service in lieu of incarceration for certain offenses⁶⁵ as has similar legislation in Malawi. Parallel legislation is pending in Mali and Niger. Angola recently opened a women's unit in one prison.

Reform has been slower to arrive in North Africa though the UN Human Rights Committee noted several positive steps, including those in Morocco.⁶⁶ In addition, the UN Committee on Torture singled out the Moroccan government's provision of human rights training of prison officials there.⁶⁷ The government also reformed its Prison Code in 1999 and Penal and Criminal Procedure Codes in 2003. Concerns remain however, about high rates of death, overcrowding, and violence in Moroccan prisons.⁶⁸ Amnesty International and Human Rights Watch were recently permitted to enter Libya to examine prisons after a 15-year ban. The Libyan Ministry of Justice also accepted the assistance of the International Centre for Prison Studies in the United Kingdom in improving prison management and prisoners' rights protection. In addition, the handbook, *A Human Rights Approach to Prison Management*, was translated into Arabic in order to assist prison officials to become more aware of human rights.⁶⁹ In 2001, Tunisia passed a prison reform law and, a year later established a commission to examine national prisons.

In addition to law reform and monitoring, some countries have increased prisoner support. For example, prisons in Sierra Leone have seen improved conditions as a result of a reconstruction and rehabilitation program funded by the UN Development Program. The country's prisons are also permitting family visits to inmates. In addition, NGOs such as Penal Reform International have been assisting African prison systems in areas such as public education. In addition to its monitoring role, the International Committee of the Red Cross has also provided supplies such as soap to Congolese inmates; upgraded water, sanitation, kitchens and other aspects of prisons in Guinea; and aided prisons in over 40 other African countries in various ways.⁷⁰

African correctional ministers recently demonstrated their commitment to alleviating prison overcrowding by forming the Conference of Eastern, Southern, and Central African heads of correctional services (CESCA). The Conference was formed as the result of a meeting between the ministers, heads of prisons, and other high-level officials of 13 African states in South Africa in September 2006.⁷¹ The mission of CESCA is to promote good prison practices that comply with such international standards as humane treatment of prisoners and respecting and protecting prisoner rights and dignity.⁷² The Conference will work on several areas critical to African prison improvement by focusing on specific areas such as "governance frameworks, technical assistance, human resource development,

education and training, research and data collection, learning and knowledge exchange and awards of excellence in correctional services”.⁷³ Of course, CESCO will also address overcrowding.

In 2007, a Strategic and Technical Working Group, comprised of officials from Namibia, South Africa, Tanzania, Kenya, and Swaziland, was established to implement CESCO. According to the South African minister of correctional services:

*African countries cannot continue to be bashed internationally for their inability to transform their prisons services, in tandem with international standards, if they are not supported and encouraged to do so by any coordinating structure at international and continental level where their views and interests could be heard, represented and pursued.*⁷⁴

Thus, CESCO seeks to fill a gap in coordination and cooperation between Africa prison systems. Such cooperation is exemplified by the May 2006 agreement between South Africa and Zambia to “promote and institutionalize cooperation in various areas of management of prisons including good governance, human resources development, sharing of information and experiences, prison and agricultural industries and partnerships in addressing multi-lateral issues of common interest”.⁷⁵

As evidenced above, there are a number of international, regional, and national initiatives underway to improve prison conditions and protect prisoners’ rights throughout Africa. Yet, these efforts require additional funding, support, and political will if they are to truly alleviate the abuse currently being dealt to Africa’s prisoners.

Conclusion

Media thrives on dwelling on Africa’s challenges. A 2000 article in *The Economist* went so far as to label the continent “hopeless”.⁷⁶ In the area of prisoners’ rights however, the ground seems to be shifting, albeit in a slow and isolated manner. Yet, it is ironic that, in a global atmosphere of prisoner abuse, the “Hopeless Continent” is in some ways taking the lead in protecting and promoting prisoners’ rights.

Such progress is not to suggest that the problems that Africa’s prisons face are not dire. They certainly are. For example, thousands of political detainees languish in cells throughout the continent. In Algeria, “detainees are beaten, subjected to electric shocks and forced to drink dirty water, urine or chemicals”⁷⁷ Moreover, the gains that Africa has made in quelling prison abuse are threatened by globalization. The worldwide trend towards harsher criminal penalties, spurred on in part by the US-led War on Terror, may turn back the clock on what little reform African prison systems have adopted.

In addition, overcrowding has yet to be effectively tackled in any African

prison system. African prisoners continue to suffer violence, disease, death, and humiliation as a result of being heaped into cells with no regard to capacity. Increasing rates of imprisonment and lengths of sentences only exacerbate this phenomenon. Overcrowding threatens not only prisoners but the public at large and, as a result, the issue must be addressed more urgently and thoroughly than it has been to date.

Yet, in the face of insurmountable challenges such as resource scarcity, several African nations persist in the movement to reform their prison systems by reducing prison populations and promoting prisoners' rights. Indeed, a mindset of reform and rights is sweeping African prison systems. Good intentions alone however, will not suffice. Immediate change is needed on the ground level. The only question that remains is how to implement the policies that have thus far been pronounced.

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RESUMO

Embora as prisões na África sejam consideradas as piores do mundo, muitos outros sistemas carcerários são ainda piores no que concerne à violência, superlotação e vários outros problemas. Com isso, não se pretende afirmar que as prisões africanas sejam exemplos de direitos humanos. Muitas estão em condições deficientes e suas práticas estão em conflito com os padrões de direitos humanos. No entanto, as prisões em diferentes partes do mundo estão em crise. Nunca antes houve tantos problemas nos sistemas penais e uma população tão grande nas instituições carcerárias.

Este artigo analisa o desenvolvimento histórico das prisões africanas desde os tempos coloniais e avalia o legado que o colonialismo deixou nas prisões do continente. Analisa também um conjunto de questões referentes à situação das prisões na África, como detenções preventivas, superlotação, recursos e governança, aprisionamento de mulheres e crianças, e reabilitação. Um espaço substancial é dedicado às reformas que estão ocorrendo em todo o continente, e a recomendações em relação à necessidade de mais reformas. Examinam-se também os papéis da Comissão Africana de Direitos Humanos e dos Povos e do Relator Especial sobre Prisões e Condições de Detenção na África.

PALAVRAS-CHAVE

África - Direitos humanos – Prisões – Colonialismo - Prisão preventiva – Superlotação – Mulheres – Crianças – Governança – Recursos - Comissão Africana de Direitos Humanos e dos Povos – Reabilitação - Reforma

RESUMEN

Sarkin afirma que las cárceles están en crisis en diversas partes del mundo y que nunca antes han habido tantos problemas en los lugares de encierro ni tanta gente privada de su libertad. En este contexto, el artículo examina el desarrollo histórico de las cárceles de África desde la época colonial y considera el legado del colonialismo en las prisiones del continente. También examina una gama de problemas en estas cárceles, que incluyen la privación de libertad sin juicio previo, el hacinamiento, la escasez de recursos y la deficiente gestión de los asuntos carcelarios, la situación de las mujeres y los niños en las cárceles, y la cuestión de la rehabilitación. Este trabajo dedica un espacio substancial a las reformas que se están impulsando en todo el continente, y enuncia también recomendaciones sobre otras reformas necesarias. Analiza el papel de la Comisión Africana de Derechos Humanos y de los Pueblos, así como del Relator Especial sobre las Cárceles y Condiciones de Detención en África.

PALABRAS CLAVES

África - Derechos humanos – Cárceles – Colonialismo - Presos sin juicio previo – Superpoblación – Mujeres – Niños - Gestión de asuntos carcelarios – Recursos - Comisión Africana de Derechos Humanos y de los Pueblos – Rehabilitación - Reforma carcelaria

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