

International CURE

Newsletter Summer 2011

To Reduce Crime and Uplift World-Wide Justice

Published by International CURE, Citizens United for the Rehabilitation of Errants, www.internationalcure.org
Po Box 2310, Washington, DC, 20013-2310, cure@internationalcure.org



EXCERPTS REGARDING PRE-TRIAL DETENTION

The problems associated with pre-trial detention call for a range of measures, many of which were addressed in various presentations at the Abuja Conference. Some of the pertinent aspects are extracted here.

THE PROBLEM

Martin Schonteich cites some of the results of pre-trial detention:

- * Detention of innocents
- * Spread of disease
- * Abuse & torture
- * Corruption
- * Aggravation of household poverty

Schonteich also reports that the Proportions of all prisoners who are in the pretrial stage are:

- * Liberia 97%
- * Mali 89%
- * Haiti 84%
- * DRC and India 70%
- * Bangladesh, Peru 68%
- * Nigeria 67%
- * Italy 58%

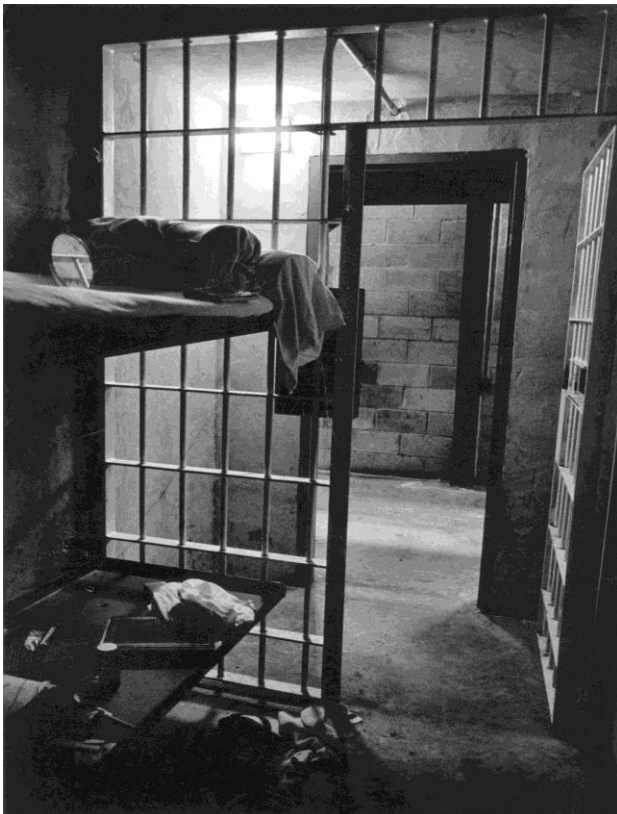
Schonteich's Actions to be taken include:

- * Promoting alternatives to pretrial detention, and reducing its excessive & arbitrary use.
- * Expanding access to legal assistance for indigent criminal defendants.
- * Deploying paralegals & lawyers to intervene early in the criminal justice process.
- * Focusing on period from arrest to beginning of trial

An ongoing Action Project

Based on current experience, Bro. John A. Jideonwo recommended the following:

- Establishment of **time-limits** and "**return dates**" within which any suspect on remand must either be indicted or released. Lagos state has taken the lead in specifying the time limits at 60 days but does not insist on indictment or immediate release. Efforts should be made on a national basis to reduce the maximum initial remand period to 30 DAYS. The time-limit must be enforced and should not be arbitrarily renewed.
- There is need to hold the Magistrates responsible for enforcing the return dates specified in the REMAND ORDER as specified above and any request for extension should be subjected to judicial review by a higher court.
- Prison authorities should be empowered to refuse to hold, keep or otherwise detain any person



all photos in this issue are by Alan Pogue

without prior court order. This would stop a lot of malpractices and abuse of authority by personnel of the Military and State Security Services.

- In an effort to ensure that only those deserving to go to jail actually get there, there is need to step up efforts to eliminate unlawful arrests and arbitrary detention at the level of the Police Station.
- The present system by which the Police can remand before investigating is problematic particularly when the police lack the capacity to investigate. This is what leads to incidents of extortion, torture and extra-judicial killings.

There is need for the Nigerian Bar Association (NBA) to take closer interest in these matters and encourage lawyers to regularly visit the Police Stations and prisons to offer legal advice and representation on a *pro-bono* basis.

The Rights Enforcement and Public Law Centre (REPLACE) and the Legal Aid Council of Nigeria (LACON) have both jointly instituted the Police Duty Solicitors Scheme (PDSS) which has yielded some results in Imo, Ondo Kaduna and Sokoto states and is being implemented in Delta, Edo and Kebbi states. The NBA needs to take this project over and see it implemented at the national level.

- **The Administration of Justice Act, 1991** provides for the establishment of Administration of Justice Commission(s) at the Federal and State level with principal responsibility specified as “to ensure that criminal matters are speedily dealt with” and the “effective performance of the functions of all organs charged with the administration of justice” in Nigeria.

There is no reason why this aspect of the law has not been implemented and it is important that the National Judicial Council, the Chief Justice of Nigeria, the State Chief Judges, the Attorneys-General at Federal and State levels should all be sensitized to this gaping gap in the implementation of the law that has become a veritable source of the injustices that we witness every day.

Churches and Mosques and ADR

Fr Enyeribe Oguh, SJ reported that

A “Justice and Peace Commission.” is now replicated in every Catholic diocese and parish. It tries to promote the transformation of society based on the social teachings of the Church and the principles of equality, solidarity, human rights, and human dignity. Once it identifies a situation of injustice, or where human dignity is in chains, it strives to analyze the situation to understand the proximate and root-causes of the injustices, and plans actions or interventions to remedy the social order in the light of faith. Because the Commission has been such a breath of fresh air and a useful conflict management medium to the Church for more than forty years now, I make bold to recommend its model to other churches and mosques around the world.

Several cases ranging from marital problems and domestic violence to land/property disputes as well as youth empowerment and environmental justice matters come before the Commissions. These cases are often treated with dispatch, confidentiality, compassion, and expertise that one does not often get from the adversarial system of the courts. Many of the complainants go home satisfied and even reconciled with their opponents. Simply put, the Commission is another form of Alternative Dispute Resolution method, but done with care and respect to the persons concerned, and often without consultation/service fees.

Similarly, the South African model of the Truth and Reconciliation Commission [TRC] led by Archbishop Desmond Tutu presents itself as a practicable positive intervention in the criminal justice system for use by the churches and mosques. The TRC though not perfect served almost like a healing clinic to both perpetrators and victims following the democratization process in South Africa in the late 90s.

Due to its popularity and apparent success, this model has been replicated in many countries recovering from a divided past, including Rwanda, Sierra Leone, and Liberia. Churches and mosques can establish Justice and Reconciliation commissions or clinics with the objective of addressing instances of injustice and healing the wounds of conflict between their members and the larger society.



As a clinic it would require the services of experts in the areas of law, psychology, and counseling. Local cases of religious violence between Christians and Muslims in northern Nigeria, for example, can be brought before such a clinic and if well handled can bring about reconciliation and even foster friendship in the embattled areas.

Moving Towards Restorative Justice

Nathaniel Awuapila observed/suggested that:

- Incarceration does not appear to prevent or reduce crime. Most criminals come out of prisons or places of detention more hardened than they were before they got there.
- Nigeria, indeed all of Africa, is bedeviled by poverty and want in the midst of affluence: key reasons for unrepentant proclivity toward crime and violence.
- Lunatics should not be in prisons, but in asylums where they can receive appropriate professional medical treatment. Petty thieves and even criminals should be offered other opportunities to serve their terms via restitution, community service, etc, rather than crowding them in prisons without practical use and value-added to society.
- Persons certified to be psychological fundamentalists, popularly referred to as ‘terrorists’ also do not belong to our prisons and if kept there, it will be counterproductive. Persons like that should be confined to mental health centers and given appropriate medical treatment and subjected to psychological reformation programs. If they fail to respond to treatment, several other alternative measures may be tried, but traditional approaches including incarceration and mere torture may also be counterproductive.
- We need better-trained personnel in the prison system and prison facilities should be sufficient in number and adequately maintained as a matter of necessity.

Once restorative justice is accepted as the ideal and mediation as well as appropriate ADR approaches are adopted by the state as important justice dispensation processes, then incarcerated persons will have opportunities to confess/be reconciled with the persons and communities they have grievously offended, which will significantly reduce the stigma on prisoners as *never-changing criminal elements*.

That is to say, that with the introduction of restorative justice, mediation and ADR, the humanity of offenders will be better appreciated, they may cease to be regarded as pure-criminals, but precisely as offenders, that they can indeed change for the better, that they can be better persons in the future and so never to foreclose their potentials upon the incidence of one or few offences committed.

MONITORING POLICE LOCKUPS

Charles Hounmenou concluded:

The existence of standards for monitoring human rights of persons in police lockups is not enough to prevent police abuse of persons in custody. With the demanding aspect of such work, bringing in community-based organizations will be of great importance.

Volunteer organizations appear more independent to conduct objective visits and reports about conditions in police lockups. Their capacity of recruiting people for visits and observations of police lockups cannot be matched by any official structure. Their independence from public resources and from political authority is a great asset that can make them a relevant partner of both the police and the civilian review agencies in the ultimate and common responsibility of increasing the community trust in the police's treatment of people in custody.

Six Ways Forward re Overcrowding & Alternatives

For this area, the Platform of International CURE includes six planks relevant to pretrial detention:

7. Prison Ops. & Alternatives, General

- Expand alternatives to incarceration. Avoid excessive sentences.
- Enforce standards on overcrowding of prisons; and provide standard sanitary facilities in all correctional institutions.
- Promote a culture of mutual respect among those incarcerated and prison staff.

- CURE 3rd International Conference recommendations, March 16, 2008, to the Inter-American Human Rights Commission:

8. Employ restorative justice approaches to restore harmony within the community as opposed to punishment by the formal justice system.

- Employ wider use of family group conferencing, victim / offender mediation and sentencing circles.

- The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa (2002) (38 countries).

9. Determine, for restorative justice:

What can be done
to compensate the victim,
to reduce the harm, and
to hold offenders accountable?
What are the root causes?

What can be done to prevent a recurrence?

CURE 4th International Conference

10. Petty offences should be dealt with by mediation and should be resolved between the parties involved without recourse to the criminal justice system.

11. Civil reparation or financial recompense should be applied, taking into account the financial capability of the offender or of his or her parents.

-The Kampala Declaration on Prison Conditions in Africa (1996),

12. Use community service in conformity with African traditions of dealing with offenders and with healing the damage caused by crime within the community.

It is a cost-effective measure to be preferred, whenever possible, to a sentence of imprisonment.

- Kadoma Declaration On Community Service, 1997; (23 Countries); Noted In ECOSOC Resolution 1998/23.

13. Encourage NGOs, CBOs and faith-based groups to train local leaders

- on the law and the constitution,
- on the rights of women & children,
- and in mediation and other alternative dispute resolution (ADR) procedures.
- The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004), (26 countries); noted in ECOSOC resolution 2007/24

State Support of Alternatives

The interview with Robert Maccarone, by Jack Arnecke, that was included in the CURE Blog, gave still more concrete experience.

- Keeping a convict in prison costs New York taxpayers roughly \$33,000 a year, but keeping that

offender on probation costs about \$4,000 a year. Already you can see the cost benefit analysis here.

- They'll fund programs including pretrial services or release on own recognizance, community service programs, drug and alcohol treatment programs and the like that will seek to divert people from local jails.

So we have a relatively low recidivism rate and that's because our probation officers work intensively with offenders, seeing that they get drug or alcohol treatment, seeing that they have jobs, that where there's a need for treatment for mental illness that the person is engaged in a program that provides those services as well. So our job in probation is very clear, it's to reduce recidivism.

- And the truth is about 10% of our probationer population are what is known as violent felony offenders, defined under the penal law. And those are more serious offenses, not murders. Homicides, a majority of homicides are in prison. But we have people convicted of robbery and sexual assault and rape and aggravated assault.

So yes we have some pretty serious offenders on probation as well and we pay a lot of attention to them with regular office visits and home visits and collateral visits with their employers and we really try to work with them in helping them restructure their lives and helping them change their offender behavior because that's our goal. Our goal really is to help them change their lives so we reduce recidivism in New York State and make our communities safer.

- I think it is safe to say we see a person with many needs - housing needs, employment needs, needs for chemical dependency. Some are estranged from their families coming to probation and that presents some unique challenges to probation. I think to the extent that other systems have broken down, they find their way into probation and that's a unique challenge for our probation in New York State. But clearly probation is developing a specialty with respect to these populations. DWI's, we supervise 26,000 DWI offenders across the state as well.

- In an effort to reduce the unnecessary reliance on jail incarceration because jails, building jails, staffing jails are an enormous cost to local governments throughout New York State. So our agency works with those counties in putting together annual alternatives to incarceration service plans.

They'll fund programs including pretrial services or release on own recognizance, community service programs, drug and alcohol treatment programs and the like that will seek to divert people from local jails. In exchange, counties that submit an annual

plan and all of them do each year for our approval. We approve their plans, help finance those programs each year.

And there are 200 programs across the state and then in addition they benefit from a reduced classification in their own jail facilities. Which means that they have to use less staff to staff their jails and it saves counties money. So that's an important incentive for counties as well.



Four Ways Forward re Judicial Operations

For this area, the Platform of International CURE includes four planks relevant to pretrial detention:

1. Provide legal and/or paralegal services;

- Include a wide range of stakeholders, such as NGOs, community-based organizations, charitable organizations, professional bodies, and academic institutions.

- *The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004); (26 countries); in ECOSOC resolution 2007/24.*

3. Enforce a Speedy Trial Act with rules whereby failure to hold trial within a reasonable time (through no fault of the defendant) results in freedom for the defendant.

- *CURE 4th International. Conference*

5. Arrest Leeway

Police officers should have some official leeway in the decision to detain or to employ sources of support and guidance for the accused.

There should be clear guidelines on the extent of discretionary powers, and training in alternative responses.

- *Penal Reform International, "Making Law and Policy that Work."*



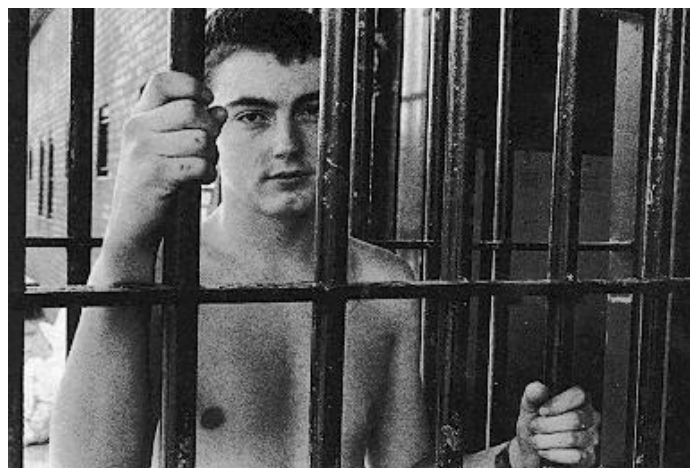
Mrs. Perpetua Uhaa and Mr. Sylvester Uhaa

6. Judicial Operations, General

Provide competent legal defense assistance for indigents.

- Improve the capacity and efficiency of judicial systems. Have good information management systems that can provide current, accessible information.
- Eliminate confinement of political prisoners.

-*CURE 3rd International Conference recommendations, March 16, 2008, to the Inter-American Human Rights Commission:*



WHERE DO WE GO FROM HERE?

It's hoped that these excerpts remind us all of the possibilities for radical transformation of justice and prison system – from primarily retribution to primarily restoration, rehabilitation, and reintegration. The ways forward have been explored and charted.

What's the next step in each country?

Social Development in Detention Centers, Slums, and Prisons

Statement submitted to the U.N. Commission for Social Development by Citizens United for Rehabilitation of Errants, a non-governmental organization in special consultative status with the Economic and Social Council.

The trauma throughout the world is graphically evidenced in the flight from rural areas to foreign cities, and the subsequent growth of immigrant-detention camps, city-slums, and prisons. Wars, economic crises, and corruption combine to drive millions into the lowest levels of physical, mental, and psychological insecurity.

Who are those so confined and imprisoned, and what are their needs? They are, for the most part: persons living in poverty, often with poor education and poor job training, making their economic survival difficult.

Many, as a result of precarious living, may also suffer from addictions to alcohol or drugs. Instability may further result in family dysfunction, neglect and/or abuse, mental illness, depression, and socially disabling diseases like AIDS.

Concentrations of those thus “*Socially Disabled*” are high in some detention camps, higher in many slums & ghettos, and very high in most prisons. Prisons and slums, moreover, are both breeding grounds for unrest, violence, and crime, and feed each other in these matters. Magnitudes of persons in these centers are estimated to be 9.8 million prisoners worldwide, hundreds of millions in our slums, supplying the prisons, and more millions in detention camps.

World social-health & security can be significantly enhanced by the social development and social re-integration of many of the millions of excluded, abandoned, and ostracized persons in immigration camps, slums, and prisons around the world, providing rehabilitation and successful reentry rather than making these places of detention into places of social degeneration.

One important focus now is on improving the small farm agriculture process. Migration from rural areas

has swelled the immigration camps and the slums of major cities, and hence contributed to the growth of our prisons. Yet, many countries are dependent on the production from small farms. This has often been relatively inefficient, but can be substantially increased by modest training in good farming practice and supportive agribusiness.

Agricultural training centers can provide experienced consultations and opportunities for interns to learn by doing. Subjects can include good seed, fertilizer, harvesting, water supply and water usage, and agribusiness practices like produce storage, distribution, and marketing. The crisis in our detention centers, slums and prisons can therefore be eased by giving migrants from farms and others a new path to productive employment and dignity.

Agricultural training centers can be an important part of prisons where inmates can learn how to reintegrate into society. Produce from these training centers can help the destitute and lessen the costs of prisons and food-aid-centers. Agricultural training centers can also be established near slums of big cities, so as to attract not only current farmers but also the very poor in detention centers and slums, who would return to their farm environment if they had the promise of a good income. Decent work, such as farm production that is profitable and sustainable, can be key to trauma reduction and decent living.

Agricultural training centers should be an important part of a broader plan for education and vocational training for decent work and decent living. Good wages should be paid for meaningful service, and jobs should not be simply field work. Newer, low-cost technologies, such as DVDs and training via the internet can supplement that education process.

Spreading restorative justice and dignity, through the social development and social integration of many millions of excluded and ostracized persons in the world’s detention centers, slums and prisons can result in easing the food crisis, and contribute to better social health and more national productivity.

It can reduce unrest and crime, and lower total costs for police, judiciary, detention centers, jails, prisons, and welfare.

Our Partners in Reform

Few persons have a real understanding of what it means to “transform justice and prison systems from primarily retribution to primarily restoration, rehabilitation and reintegration.” Among those who do know are many who run our prisons. They experience problems and know what could fix them. But without adequate resources, and opposed by a poorly informed public and misguided legislators, they often struggle with a nearly impossible job.

Every so often we get some good news, like the letter below from one of the national prison directors to whom we sent a copy of the “48 Ways Forward” booklet. We include it here to encourage all of us to continue our support of those who try.

Dear Mr. Sullivan:

This is to acknowledge, with grateful appreciation, receipt of your letter dated 05 March 2011 together with a booklet. "Ways-Forward to Transform Justice and Prison Systems".

We find it insightful, relevant and timely. Perusal of the key problem-areas of the 14 African and 35 western countries you mentioned, e.g. Judicial Systems, Over incarceration vs. Alternatives, Abuse, Healthcare, Rehabilitation and Re-entry plus the recommended ways forward, reveals that the majority of these areas have either been put in place / implemented by this Agency or are under contemplation for submission to legislative sponsorship.

I would also wish to point out that the policy and program direction of this Administration has long been shifted to restoration rather than retribution or punishment, focusing mainly on rehabilitation and reintegration, in keeping with the worldwide trends.

Nevertheless, we thank you for sharing with us your thoughts and concern on the matter.

We are one with you in your quest for a meaningful and genuine justice and prison system transformation.



Mr. Abraham I. Akpe, OFR, mni former Controller-General of Nigerian Prison Service



Prof. J. N. Aduba