

International CURE

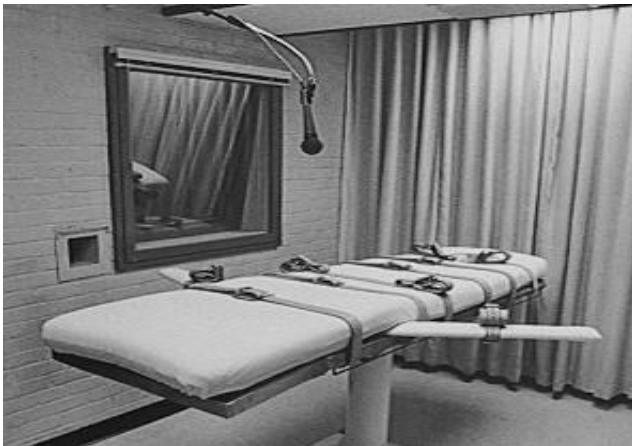
Newsletter Winter 2011

To Reduce Crime and Uplift World-Wide Justice

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Killing The Killer: A Re-Evaluation Of The Death Penalty In Nigeria.

A paper presented at the national humanist convention, held at the Vines Hotel, Durumi, Abuja, Nigeria from 23-24 September, 2011 by Sylvester Terhemem Uhaa, country director, CURE-Nigeria.



Conclusion

The execution of convicted persons under whatever guise, be it deterrence or retribution, has not proved to lower crime rate in any part of the world, and the situation is not any different in Nigeria. Studies conducted by Amnesty International have shown that the death penalty is: destructive and divisive public policy that is not consistent with widely held values. It promotes simplistic response to complex human problems and distracts from effective measures being taken against criminality. It offers a superficial answer to the sufferings of murder victim's family and extends that suffering to the loved ones of condemned prisoners. It diverts resources that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity.

Thus, does the world, especially Nigeria, really need the

death penalty to overcome her security challenges? Is it a more effective security measure to concentrate on punishing offenders rather than on preventing crime by adequately equipping the

security agencies, providing qualitative and affordable education at all levels and creating job or entrepreneurial opportunities for persons of every social and economic background? Is the death penalty to be retained as a form of compensation and healing for the bereaved families of victims of murder? In the real sense, however, death penalty creates more victims and has an impact on families that is far reaching. Governments cannot afford to execute offenders primarily to console grieving families of victims.

The truth remains that a system that is operated by fallible humans is susceptible to mistakes and injustice. Hence, so long as the criminal justice system in Nigeria and anywhere else in the world cannot be exonerated of the charge of fallibility, calls for the abolition of the death penalty by CURE-Nigeria and other civil societies organisations will go on based on the consciousness that:

“The state holds in its hands the power of life and death. It is an awesome power, one that citizens of a democracy must approach in fear and trembling, and in full knowledge that the state's justice system, like everything humanity touches, is fated to fall short of perfection. If we are doomed to err in matters of life and death, it is far better to err on the side of caution. It is far better to err on the side of life. The state cannot impose death – an irrevocable sentence – with absolute certainty in all cases. Therefore, the state should not impose it at all.” (Editorial, *Dallas Morning News*).

The full text of this paper can be found at http://www.curenigeria.org/images/stories/postings/killi ng_the_killer.pdf



Ten-Point Plan to Address Prison Overcrowding

excerpts from PRI E Newsletter October 2011

Introduction

The following plan of Penal Reform International (PRI) focuses on ways of reducing overcrowding in prisons around the world. Overcrowding or congestion, as it is called in some countries, is the biggest single problem facing prison systems with consequences that can at worst be life threatening and at best prevent prisons from fulfilling their proper function.

There is no universally agreed definition of what constitutes overcrowding but data shows that in some 117 countries the number of prisoners exceeds the number of spaces available. Sixteen prison systems hold more than double their capacity and in a further 32 countries there are occupancy rates of between 150 and 200%. Measured this way the highest rate of overcrowding in the Americas is 335% (Haiti), in Africa 307% (Benin), in Asia 259% (Iran), in Oceania 215% (French Polynesia), and in Europe 158% (Serbia). But overcrowding is not limited to countries whose overall prison population exceeds capacity. Particular prisons or sections of prisons can be overcrowded even if the prison system as a whole is not. Moreover, in the absence of precise international standards, it is up to individual countries themselves to determine – and sometimes revise – the capacity of particular prisons. The data is therefore likely to understate the extent of the problem.

Penal Reform International (PRI) believes that a prison system that meets international standards is essential for the proper administration of criminal justice. In some countries chronic overcrowding is relieved only by the use of periodic amnesties and pardons which, while producing short-term relief, do not provide a sustainable solution and can erode public confidence. In others, costly prison building programmes are undertaken to meet a growing demand for prison places, which is sometimes stimulated further by private companies who make profits from prison construction and administration.

Given the disadvantages of these approaches PRI is publishing this plan to assist policymakers and practitioners who wish to tackle overcrowding in a systematic and affordable way. The results should help to ensure that imprisonment is used only for alleged and convicted offenders who genuinely need to be locked up and that the conditions of their detention can meet the standards expected by the international community.

1. Collect and use data to inform a rational, humane and cost-effective use of prison

Addressing overcrowding requires an understanding of the extent of the problem and the reasons why it has come about

in a particular prison system. A census of the prison population can identify who is in prison and why and point to priorities for relieving congestion. Timely and accurate information can also enable a more rational debate about the most effective use of prison and assist advocacy on behalf of policies which meet international standards. Information-gathering and analysis should be part of a regular routine and the public should be kept informed about measures which work best to reduce crime.

2. Review and reform the criminal justice process as a whole from arrest to release and invest in crime prevention and reduction

Imprisonment comes at the end of a long chain of decisions involving legislators and policymakers, the police, prosecutors and courts. The extent to which prison is used reflects a range of factors including levels of inequality and investment in social policy as well as levels of crime. Reducing prison numbers is not simply a question of establishing measures which can act as direct alternatives to pre-trial detention or sentences, although these are important. It involves the development and use of a wide range of methods to prevent crime through social and situational measures and of ways to resolve harms and disputes without recourse to criminal law, for example by using informal and restorative justice approaches.

3. Divert minor cases out of the criminal justice system

International standards and norms recommend that resorting to prosecution and incarceration be employed only where this is proportionate to the offence committed and there are no other appropriate options. To ensure that prisons play their proper role, including the role of rehabilitation, it is important that minor offences be processed in different ways. Many countries have systems of diversion, such as police warnings or cautions, restorative justice or mediation options, referral to mental health or drug treatment or prosecutorial fines. Others have centuries-old informal processes of traditional justice which can provide accessible and informal justice. As long as basic human rights are observed, such processes can have an important role to play.

4. Improve access to justice and case management during pre-trial detention

Countries with the highest levels of overcrowding also have prison populations with the highest proportions of pre-trial detainees. In 40 countries more than half of prisoners are held on remand. Efforts to address the problem of lengthy pre-trial detention include:

- increasing legal aid and assistance and supplementing this by making use of paralegals to provide advice to defendants;
- enforcing time limits in criminal proceedings;

- offering bail and other alternatives to pre trial detention;
- holding 'camp courts' inside prisons; and
- reforming criminal procedure so that cases are reviewed regularly and brought to a conclusion more speedily.

5. Develop and implement constructive non-custodial measures and sentences

Too many criminal justice systems, whether non-custodial responses exist in law or not, still use imprisonment as their default setting. This can be because of mistaken beliefs that society's and the victim's interests are best served by a custodial sentence, excessive influence of the police and prosecutors over the criminal justice system, poor training for judges or their fear of being considered corrupt or 'soft' on crime.

Sometimes there is either no organisation available to supervise community sentences or a shortage of resources for implementation of responses to crime which permit the offender to remain in and provide compensation to the community. A range of community-based sentences should be available to courts including discharges, fines and community service and measures should be taken to assist offenders to comply with these.

6. Make special arrangements for children and young offenders

Children differ from adults in their physical and psychological development, and their emotional and educational needs. These differences constitute the basis for the lesser culpability of children in conflict with the law and require different responses to be available. The experience of imprisonment can often strengthen rather than weaken a child's delinquency.

The UN has said that children under 12 should not be liable to prosecution. For those under 18, traditional objectives of criminal justice, such as repression and retribution, must give way to education and restorative measures. The best interests of the child should be a primary consideration in making decisions, and this can be done while still paying attention to effective public safety. Custodial remand and sentences should be used as a last resort, for the shortest time, and used only in exceptional cases. Small, open facilities with minimal security measures should be developed for children serving such sentences.

7. Consider alternative arrangements for parents with dependent children, particularly mothers with babies

It is increasingly understood that the best interests of the child should also be taken into consideration in deciding whether or not to detain a parent. This does not have to mean the exploitation of children in order for parents to avoid appropriate punishment. It does require that sentencing courts have enough information to enable them to balance society's and the child's interests, and for them to consider (and have

available to them) community-based options. The recently adopted Bangkok Rules emphasise that, when sentencing or deciding on pretrial measures for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent.

8. Identify the mentally ill and drug addicts and divert them to appropriate medical or other care

Many people enter prisons when they should have been diverted into mental health or social care from police stations or courts because they suffer from mental illness or learning disabilities. Prisons are ill-equipped to meet their needs and overcrowding can have a particularly adverse effect. Despite this it is still the case that in some countries prisons, rather than hospitals, are even used to house the community's mentally ill as a matter of policy. Many people in prison around the world have alcohol or drug addiction problems. Specialist facilities to treat such dependence as an alternative to imprisonment, whether or not the offence was related to addiction, can reduce prison overcrowding and improve outcomes in terms of re-offending.

9. Reduce sentence lengths and ensure consistent sentencing practice

Prison sentences should be kept as short as possible consistent with justice being done. In some countries legislators restrict judges' flexibility by setting mandatory or minimum sentences higher than is required by the state's need to respond appropriately and proportionally to particular offences. In others, administrations fail to monitor and respond to sentencing practices that do not meet the requirement of predictability and consistency. Appropriate guidance is needed to inform judges' independent decision-making.

10. Develop opportunities for parole or other forms of early release and assist prisoners on release to prevent return to prison

Parole systems and earned remission provide an incentive for prisoners to behave well in prison and to be rewarded by early release after a programme of rehabilitation. Sentences which are served partly in custody and partly in the community under supervision can also reduce pressure on prison places, although it is important that decisions to release prisoners, particularly those convicted of serious crimes, are not made or seen to be made simply to free up prison space.

Open prisons, halfway houses, hostels and other supervised accommodation can provide an effective placement for prisoners approaching and after release and should form part of the reintegration help provided to prisoners during and after imprisonment, to prevent them from returning to swell prison numbers.

Poverty, Violence, and Social Development

Statement prepared and submitted by: International CURE, a non-governmental organization in special consultative status with the Economic and Social Council of the United Nations.

The world is beset by major conflicts and violence: wars, riots, crime, and general disorder. Terrorism adds a nuclear threat. Some roots of all this can be found in extreme poverty. Respect for human rights, and the provision of associated social-development, are often powerful antidotes of such disorders, contributing to the health of society and real security.

It is no accident that the majority of persons in the world's prisons are persons who had been living in poverty. Frustration, anger, and desperation, stimulated by living in extreme poverty, motivate violent and unlawful actions.

We note that security is enhanced when former warriors and former offenders are given the benefits of social-development. Thus, cooperative social-development programs that empower those living in poverty can both help to prevent violence and to restore society to health following violence. It offers the possibility of a win-win solution to conflict.

Some of the key social-development antidotes to extreme poverty are: a social protection floor, decent work, and social services that facilitate them. Needed social-services include quality programs in health, education, and criminal-justice. Programs to enable all people to have a voice to participate in the social, economic, environmental and political life of the neighborhood, local government, and national government are imperative.

Social Protection Floor

Everyone should be able to access at least basic health, primary education, housing, water, sanitation and other essential services. The Social Protection Floor, sponsored by the International Labor Organization and the World Health Organization, is a key vehicle.

Health

This includes combating diseases such as AIDS, malaria, and tuberculosis that particularly affect those living in poverty, by implementing the necessary immunization, education and other programmes, and by training health practitioners to identify and treat such illnesses.

Often neglected, is the provision of treatments for drug addiction and for those who are mentally ill, which can be major problems among those living in poverty.

Education

Since the most important factor in improving basic education and literacy levels is ensuring that the teachers are

properly trained, motivated, and supervised, care for the training and compensation of teachers are of first importance.

Job training aimed at decent work in productive areas that are known to need skilled workers should be a high priority. Training in small business management and microfinance are valuable additions to empower new business capability.

Criminal Justice

We recommend that States expand justice systems, including mediation and other non-formal dispute resolution mechanisms, in accordance with human rights standards. We further recommend use of restorative justice approaches and community service to restore harmony within the community as opposed to incarceration as punishment by the justice system.

The family is the core unit of society; hence violence within the family is particularly destructive. The legal rights of women and children must be clear and unambiguous. Laws against domestic violence must be fully enforced, bearing in mind that restorative practices, education, and counseling are appropriate in these cases.

Particular attention is needed to reduce the numbers of persons held in pre-trial detention. We recommend legislation to limit such detention that is without an appropriate hearing, to less than one month.

We recommend adoption by the General Assembly and adherence by all Member Nations, of the Standard Minimum Rules for the Treatment of Prisoners, augmented by the addition of rules for the treatment of women prisoners.

We recommend that justice and prison systems further organize and support, as a primary and priority function, programs to rehabilitate and reintegrate offenders as contributing members of society.

In poetic form by CEC:

Violence Breeds Violence

**Our prisons reflect our ethical level
and our neglect of human rights.
They reflect values of retribution and retaliation.
An ethical and non violent world
should have ethical prisons.
Changing human behavior in prison situations
would be the start to making
a significant change in community values
that could eventually transform the world.**

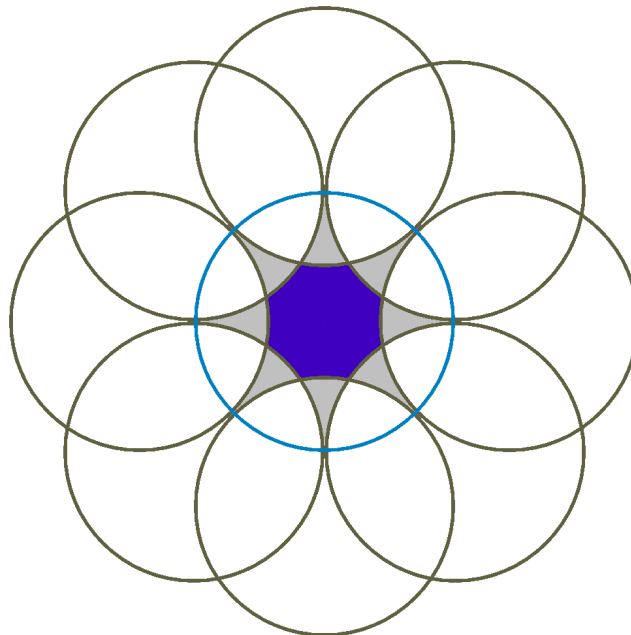
Personal Computers in Prison

*Excerpts from CURE National (USA)
Email Newsletter 8/31/2011*

Corrections Victoria may allow prisoners to have a personal computer in their cell. If a prisoner needs to prepare for a legal case, is participating in an education program or can show that a computer would benefit their sentence plan or rehabilitation, they can apply for permission to purchase a computer.

Access to a computer in the cells of prisoners is a privilege, not a right, for all prisoners. Prisoners who can demonstrate a need for a computer must make an application to purchase a computer, be able to pay for the purchase of an approved computer and software, and abide by the rules regarding computer use and restrictions on software and games.

In addition, the prisoner must maintain good conduct and obey prison rules. If a prisoner is found guilty of an offence in prison, access to the computer may be withdrawn for up to 12 months, involving five types of assessment criteria.



Who can apply for a computer?

Corrections Victoria will consider applications for an 'in-cell' computer for three main reasons:

- Legal – if a prisoner will be involved in a legal case, an outstanding matter or an appeal, and can demonstrate that they need a computer in order to help them prepare for their defence;
- Educational and Training – if a prisoner has approval to take part in an approved educational program for which they need access to an 'in-cell' computer;

- Integration needs – if a prisoner has special needs and could be assisted by using a computer, for instance difficulty in writing legibly, then their application will be considered. An application for a computer to assist a prisoner in rehabilitation and integration back into the community at the end of their sentence will also be considered.

What is the process?

Prisoners apply in writing to prison management to request permission for a personal computer. Recommendations regarding the application are made by a committee, with input from prison staff, and advice from program or education staff, or legal representatives depending on why the prisoner has applied for a computer.

The prisoner's behaviour and work record are considered. The type of accommodation in which the computer would be housed is also taken into account, where it may affect safety and security of the prison or the public.

When considering an application for a computer, Corrections Victoria staff assess whether there is any conflict between computer use and the prisoner addressing their offending behaviour. For instance if the prisoner used a

computer in the commission of a crime, then the risks involved in providing that prisoner with a computer in their cell would have to be evaluated.

Generally, once the education course or legal proceeding for which the prisoner needed the computer is finished, the computer will be stored with the prisoner's property, or can be forwarded out of the prison. However, if the prisoner continues to abide by the conditions set for computer access and general prison rules, then continued access to the computer may be granted. It is noted that when a computer is considered for approval, 'necessary' is not to be taken to mean 'desirable'.

Further information on this topic can be found at <http://www.prisonpc.com/>

I Am, though Born in Prison

by Mary Murphy

Many States around the world acknowledge the need to improve the way women are handled in the criminal justice system, not least because of the impact which their treatment can have on dependant children. In 2010 this acknowledgement took on a practical form, with the adoption, by unanimous vote of all States, of United Nations (UN) guidelines 'For the treatment of Women Prisoners and Non-Custodial Measures for Women Offenders', known as the Bangkok Rules (*your network members might find it useful to have a link to the rules and their commentaries inserted here; you can find them on www.penalreform.org*). This has stimulated NGOs and State authorities alike to revisit their national practices and shed light on neglected issues.

One such issue is the birth registration of children born to mothers either during their incarceration, or shortly before their arrival in prison. It seems that in many instances, while legislation stipulates the requirement for all children to be registered at birth, and existing international standards require that birth certificates do not mention the fact of imprisonment, regulation fails clearly to assign responsibility for ensuring that registration happens at all when the mother is a prisoner. As a result, whether or not such children are registered may remain a lottery, and a number of children - dependant on the goodwill of hard pressed prison staff and struggling family members - face risks to their safety, disenfranchisement and many unnecessary additional barriers in life, all through no fault of their own.

Here is what UNICEF, the United Nations Children's Fund, has to say about birth registration:

Birth registration, the official recording of a child's birth by the government, establishes the existence of the child under law and provides the foundation for safeguarding many of the child's civil, political, economic, social and cultural rights. [Article 7 of the Convention on the Rights of the Child](#) specifies that every child has the right to be registered at birth without any discrimination.

Apart from being the first legal acknowledgement of a child's existence, birth registration is central to ensuring that children are counted, have access to basic services such as health, social security and education. Knowing the age of a child is central to protecting them from child labour, being arrested and treated as adults in the justice system, forcible conscription in armed forces, child marriage, trafficking and sexual exploitation. A birth certificate as proof of birth can support the traceability of unaccompanied and separated children and promote safe migration. In effect, birth registration is their 'passport to protection.' Universal birth

registration is one of the most powerful instruments to ensuring equity over a broad scope of services and interventions for children.

Being an integral part of civil registration systems, the demographic information provided by birth registration is imperative for governments to create and monitor national population statistics. Improved birth registration records contribute to statistical data that are crucial for planning, decision making and monitoring actions and policies aimed at protecting children.

UNICEF strategic actions are geared towards strengthening national child protection systems in order to reduce the obstacles of registering every child at birth. Actions in support of birth registration include legal and policy reform; civil registry strategic planning, capacity building and awareness-raising; the integration of birth registration into other services, such as health and education; community-based registration and social mobilization campaigns. Innovative approaches are also used, including SMS technology and support to governments to develop online birth registration information systems.

Additionally, the Quaker UN Office publication 'Orphans of Justice' (they have conducted a lot of work on the issue of children of imprisoned parents) picks up the issue of non-discrimination in this regard, subject of treaties (ICCPR and ICESCR) which are binding on the US, as follows:

Article 2 of the CRC provides that States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment. Article 2(2) obliges States to ensure that no child is discriminated against on the basis of the actions of his or her parents. As (South African) Justice Sachs noted, a child "cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them ... the sins and traumas of fathers and mothers should not be visited on their children"

CURE is collecting data on this topic with a view to encouraging its members around the world to address their national/federal and/or state authorities with a request, wherever the situation requires it, that procedures and resources be provided or improved so that all babies born to imprisoned mothers, or arriving with them in prison unregistered, receive prompt birth registration.

Readers are encouraged to contact Mary Murphy (maryangelamurphy@hotmail.com) in furtherance of this move.