



Policy Brief

Head Office
Block D, Brooklyn Court,
Veale Street, New Muckleneuk,
Pretoria 0181,
South Africa
Tel +27 12 346 9500
Fax +27 12 346 9570
E-mail iss@issafrica.org
www.issafrica.org

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Improving Africa's Prisons

Prison policy in Sierra Leone, Tanzania and Zambia

Simon Robins
addisababa@issafrica.org

INTRODUCTION

Many African states are confronted with criminal justice systems that are the legacy of the colonial era and prison systems justified by a retributive philosophy that is at odds with rights-based approaches emphasising rehabilitation and reform. Many of these states, including Tanzania and Zambia, are in transition from one-party authoritarianism, attempting to consolidate multiparty democracy and wanting to be seen to observe international human rights standards, while Sierra Leone is recovering from a decade of conflict that devastated both the infrastructure and culture of the justice system, including that of the prison service.

Despite substantially increasing populations and crime rates in recent decades, the capacity of prison systems has barely changed. Whilst governments claim reform and rehabilitation as the aim of criminal justice, in practice prison systems fail to deliver this. Prison systems investigated here are in crisis, burdened with overcrowding and an inability to satisfy basic human rights standards, despite states' ratification of regional and international protocols and conventions. Addressing this crisis demands action not only in better resourcing and support of prison systems but in challenging practices throughout the justice system - such as inappropriate sentencing policies - that are responsible for high rates of imprisonment.

TOWARDS RIGHTS-BASED APPROACHES TO PRISONS

All three states have attempted to put rights-based approaches at the heart of their prison systems, but have

failed either to comply consistently with international standards or to domesticate into national legislation the provisions of the relevant regional and international conventions that they have ratified. As populations have risen, investment in prison systems has failed to keep pace with increasing detainee numbers. Systematic underfunding of prison services has resulted in overcrowding and a compromising of conditions and treatment: this has led directly to the violation of prisoners' rights.

Sierra Leone has recognised the objectives of the prison service as the reform and rehabilitation of detainees, but these are not being met due to inadequate human and institutional capacities within prisons and lack of cooperation among stakeholders in the justice sector; the net result is the violation of the fundamental rights of prisoners. With the support of the United Nations and the Justice Sector Development Project, new prisons have been built and others renovated and enlarged. Gradual but noticeable compliance with a few of the international protocols and conventions can now be detected, especially concerning security, discipline and good order, and the use of force and firearms. The Prisons Service however lacks the human resources, logistics and funding to satisfy its obligations to detainees. Prisoners suffer serious illness due to a lack of exercise, women are not properly segregated from male detainees, and the needs of female prisoners are neglected. Corporal punishment remains legal, and has even been used as an alternative to detention of minors, despite this violating the rights of children.

Tanzanian law endeavours to establish a prison regime in which the living conditions of prisoners are consistent with human rights standards and international best

practice. The rehabilitative potential of prisons has been questioned and attempts made to reduce prison congestion by encouraging courts to utilise non-custodial sentencing and community service, as well as extending parole. Despite these efforts policy goals remain unmet as a result of gaps in the law and inadequate capacities of many of the institutions of the criminal justice system, including prisons themselves. Prison congestion, combined with inadequate resources, has led to poor sanitation and inadequate nutrition of prisoners. The continued application of a law that authorises corporal punishment also undermines Tanzania's compliance with human rights standards.

In Zambia, since 2004 efforts have been made to shift the focus of the prison system to rehabilitation, including the construction of open air prisons. A programme to provide alternatives to prison for juveniles has also been initiated, and an offender management unit has successfully reduced recidivism. The Prison Service continues to face major challenges arising from a lack of accommodation, a shortage of manpower, insufficient food, health and transport facilities and a lack of training for staff. All are at least partially the result of consistently low levels of funding over many years. Beating and ill-treatment of prisoners continue and a lack of facilities for women and juveniles creates problems, including the abuse of the young by older inmates.

OVERCROWDING AND UNDERFUNDING: CREATING OTHER PROBLEMS

At the root of the challenges faced by all three prison systems is the issue of overcrowding. Prison congestion puts pressure not only on accommodation facilities but also on the ability to ensure appropriate nutrition, sanitation, exercise and medical care; it puts greater demands on prison staff who are often too few, poorly trained and badly paid.

In Tanzania there is an acute shortage of accommodation for prisoners: the city of Dar es Salaam, with a population of 3,5 million and 20 courts, including the High Court, has only three prisons. Congestion in the largely colonial-era prisons is a permanent problem, giving rise to poor sanitation and nutrition and the spread of infectious diseases. Zambian prisons are dangerously overcrowded: in 2007, 14 894 inmates were held in facilities designed for 4 000 (370 per cent of capacity). Of these, 59 per cent were held on remand with only a minority convicted. Remandees are held together with convicted criminals under inhumane conditions. Despite a threefold increase in the prison population since independence in 1964, this has not been matched by extensions to prison facilities

and the staff complement remains almost unchanged. This translates into a staff to prisoner ratio of one to eight. In Sierra Leone over-crowding in prisons and the resulting poor conditions continue to be a problem: at the time of the research, the prison system was functioning at 112 per cent of capacity, with some facilities much more crowded and the maximum prison in Freetown operating at 400 per cent capacity.

Congestion has been accompanied by a chronic lack of funding to prison systems. The effects of overcrowding and the accompanying lack of resources are dramatic, and impact directly on a failure to guarantee prisoners' rights. In Zambia, lack of sleep as a result of overcrowding has emerged as one of the biggest problems facing prisoners, with some prisoners sleeping while standing. Bedding in the form of mattresses and blankets are still in short supply in most prisons and food is inadequate both in quality and quantity. However, it was found that the government has initiated measures to address problems relating to food and to provide prisoners with blankets.

In almost all prisons in Sierra Leone health problems were observed, including swollen legs due to lack of exercise that is directly attributable to overcrowding. Prisoners are undernourished and in poor health due to inadequate food, the unavailability of pure water in many prisons, inadequate medical facilities and poor hygiene and sanitation. Zambian prison clinics lacked drugs and in some prisons there were no medical facilities to dispense medication or provide treatment.

Old facilities and overcrowding also lead to inadequate segregation of detainees. In Sierra Leone, the two sexes were kept in separate cells, but they often tended to mix in a manner that is unacceptable in recreational and exercise areas. Most prisons in Zambia were built for males and have no separate facilities for females; incidents have been reported where juvenile prisoners have been kept in the same cells as adults leading to sexual and other assaults on juveniles.

Like in the general population, HIV/AIDS is also present in prisons. It appears to be transmitted in prisons through homosexual acts and sharing of syringes and razors. Despite this, in Sierra Leone all prisons denied hosting HIV-infected prisoners. Only Zambia has a well-elaborated policy aimed at containing HIV in prisons.

ADDRESSING OVERCROWDING

In spite of the many problems caused by overcrowding, imprisonment remains the most commonly used

form of punishment, particularly for serious offences. As well as being a direct result of sentencing policy, congestion arises from the slowness at which criminal justice systems operate, giving rise to a large population of remand prisoners. In Sierra Leone some prisoners were found to have been awaiting trial for more than five years. In Tanzania pre-trial detention can extend to 240 days, and in many cases expired warrants lead to a failure to maintain judicial guarantees. Bail allows those awaiting trial to leave prison and while rather few offences are non-bailable, policies remain inconsistent with the stated detention philosophy. For example, in Zambia motor vehicle theft remains non-bailable. In all contexts stiff bail conditions serve to maintain high prison populations of remandees.

Whilst an extension of prison facilities is required in all three states, prison reforms without a concomitant improvement in legal systems will be futile. In Tanzania minimum sentences are mandated by law, constraining the freedom of courts to impose shorter sentences. In Zambia, there is evidence that sentences are becoming harsher, despite official policy. Community service provisions seek to divert offenders to non-custodial sentences and are available in Zambia and Tanzania, but not yet in Sierra Leone. Parole also serves to lower the prison population, and in Tanzania a national parole board facilitates this, but practice remains restrictive, reducing the breadth with which parole can be applied.

The need for new detention facilities has been acknowledged, most obviously in Sierra Leone, where four new prisons have been built and eight renovated following the end of the conflict. In Zambia, the Prisons Needs Assessment Report of April 2004 identified prison overcrowding as one of the most serious and critical challenges facing the Prison Service.

RECOMMENDATIONS: AN AGENDA FOR REFORM

To address the crisis in the prison systems of the states examined here, action is required to increase both the capacity of detention facilities and funding of prison systems. Additionally, legal and sentencing issues must be addressed to reduce the numbers being detained and put rehabilitation at the centre of justice systems. The myriad delays in judicial process that keep prisoners in prison before they can be tried must be reduced and policies on bail and parole liberalised. Training is required to ensure the minimum human rights standards to which governments have committed themselves.

Prison capacity must be increased through the construction of new facilities, particularly in Zambia, where dedicated facilities for women and juveniles are required, and in Sierra Leone, where additional remand homes are needed. Women and juveniles must be segregated and remand prisoners held separately from the convicted. In all states financial and budgetary allocations to the prison services must be increased and administrative processes improved to make it possible to purchase required materials, recruit adequate manpower, and ensure that living conditions of prisoners are improved.

The other route to addressing overcrowding is by modifying sentencing policy through policies of rehabilitation to both reduce crime and decongest prisons. This will include the encouragement of the imposition of non-custodial sentences for petty and non-violent offences and for juveniles, such as fines, probation and community service. Sierra Leone is the only state of the three without community service provisions, and these should be adopted. Trials must be expedited to reduce numbers held on remand and incentives provided to permit magistrates and judges to handle case loads more efficiently. Liberal bail and parole regimes need to be instituted in all states, including the establishment of a National Parole Board in Zambia, as exists in Tanzania.

To ensure that the human rights standards to which states claim adherence are met, additional training and resources are required. In Zambia:

- Training programmes should be launched to improve the skills of personnel involved in the delivery of criminal justice in general and in gender, juvenile and human rights issues in particular
- The Prisons High Command should set up a legal department to monitor the observance of human rights and oversee training in human rights by the relevant staff

In Sierra Leone a training and capacity-building programme should be instituted, covering:

- The Prison Ordinance and the Prison Rules
- The approach to prison management as covered in international protocols on human rights
- Prison administration for middle and senior managers

To ensure compliance with minimum international standards, laws must be changed to abolish corporal punishment in Sierra Leone and Tanzania; and in Sierra

Addis Ababa Office
First Floor, Ki-ab Building,
Alexander Pushkin Street,
Pushkin Square Addis Ababa,
Ethiopia
Tel +251 11 372 1154/5/6
Fax +251 11 372 59 54
E-mail addisababa@issafrica.org

Cape Town Office
67 Roeland Square,
Drury Lane Gardens,
Cape Town 8001,
South Africa
Tel +27 21 461 7211
Fax +27 21 461 7213
E-mail capetown@issafrica.org

Nairobi Office
5th Floor, Landmark Plaza,
Argwings Kodhek Road,
Nairobi,
Kenya
Tel +254 20 300 5726/8
Fax +254 20 271 2902
E-mail nairobi@issafrica.org

Pretoria Office
Block C, Brooklyn Court,
Veale Street, New Muckleneuk,
Pretoria 0181,
South Africa
Tel +27 12 346 9500
Fax +27 12 460 0997/8
E-mail pretoria@issafrica.org

Leone, to ensure that wages are paid when prisoners work and to eliminate solitary confinement

States should be encouraged to ratify and domesticate into national legislation the many regional and international treaties, protocols and conventions to which they are purportedly a party.

CONCLUSIONS

The crisis in prison systems in Sierra Leone, Tanzania and Zambia leads to the daily violation of the fundamental rights of prisoners. Prisoners' health and welfare are compromised by overcrowding and under-funding. Ensuring that the human rights standards to which all three states have committed themselves are observed demands that investment be made in prison facilities to replace colonial era institutions and increase capacity. Criminal justice systems need to be reoriented to truly reflect a commitment to reform and rehabilitation of offenders. This demands a greater emphasis on non-custodial sentences, on sentencing policy generally, and on ensuring effective bail and parole systems. Beyond this, the speed at which justice operates in all three states must be accelerated to reducing the substantial population of remandees.

The governments of all three states have declared their judicial and penal systems to be based on global human rights standards and to be built upon the concepts of reform and rehabilitation. To ensure these commitments are met demands that prison systems be given a greater share of national resources and that criminal justice systems are oriented towards making prison truly reformative.

NOTE

This brief is derived from the country reviews conducted by the AHSI in Zambia, Sierra Leone, Mali, Benin, and Tanzania. See the following ISS monographs: The Criminal Justice system in Zambia, No 159; Sierra Leone: A country review of crime and criminal justice, No 160; Mali: Criminalité et Justice Criminelle, No 162; Benin: Revue de la Justice Criminelle, No 163. The monograph on Tanzania is forthcoming.

