

# STRATEGIES AND BEST PRACTICES AGAINST OVERCROWDING IN CORRECTIONAL FACILITIES

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## I. Introduction

1. Strategies for the reduction of prison populations spans a range of efforts from stemming the flow of cases into the justice system; efforts towards improving the efficiency and effectiveness of the justice system for purposes of reducing delays and bottlenecks at the stages from arrest and pre-trial detention; through to trial, sentencing, appellate proceedings and innovations of reducing the physical stay of prisoners on custodial sentences in detention facilities. This paper however focuses on strategies and good practices at the stages of stemming the flow of cases into the justice system and the pre-trial stage.

2. Prison overcrowding results from high prisons admissions and few releases/discharges coupled with delays in the trial processes in the formal justice system and the award of long prison sentences with limited use of parole. It could also be a result of limited use of alternatives to custodial sentences such as fines, community service orders, confiscation orders and suspended sentences.

## II. Strategies and best practices against overcrowding - the case of Uganda

3. Interventions to reduce overcrowding in prisons have included both government and civil society as complementary duty bearers as well as building of strategic partnerships of between government and civil society organizations. Furthermore, the use of multidisciplinary teams in the provision of legal aid services has proved vital in offering comprehensive and effective services. Specific strategies and practices that have contributed to the reduction of prison overcrowding include;

- a. Prevention of cases getting into the formal justice system through use of alternative dispute resolution including traditional justice mechanisms - these are restorative in nature and promote reconciliation and settlement of disputes outside the formal justice processes; Local Council Courts - Community based semi- formal institutions to handle disputes without arrest and detention powers; family members including clan leaders and religious leaders also resolve disputes for purposes of stemming the flow of cases into the formal justice system. It should however be noted that these are relevant for minor and often domestic related cases that are not capital offences.
- b. Weeding out non-founded cases from the formal justice system such as formal withdrawal of cases through the Directorate of Public Prosecutions, mediation and reconciliation. Paralegals working in the criminal justice institutions identify and document deserving cases or those that are erroneously forgotten in the system and bring them to the attention of judicial officers. In cases where complainants report to have lost interest in pursuing the matter through court or where they are not willing to testify in court to help court complete the trial process, Paralegals arrange for both parties together with police to write additional statements in liaison with the Prosecution department to formally withdraw the case hence securing releases from prison.
- c. Legislative and policy amendments such as lowering the jurisdiction of cases from High Court to lower courts such as the Chief Magistrates' courts. High court sessions handle criminal matters at an average rate of twice a year in a magisterial area. High Court was previously

responsible for trial of all defilement cases. This created a huge backlog of cases due to the limited number of High Court Judges and resource constraints. The legislation on defilement was revised to separate simple defilement - involving a minor victims fourteen years and above to be tried at the Chief Magistrates' Court while aggravated defilement - involving a minor victims below the age of fourteen was left in the jurisdiction of High Court. This led to a reduction in prison populations because Chief Magistrates' courts are in session through out the year. The campaign against death penalty has also yielded results including the review of inmates on death sentences which has led to overturning some death sentences and consequent releases.

- d. Institutionalization of pro bono services to encourage faster case disposal through representation in court especially for the indigent. The initiative relates to advocates in private practice and non governmental organizations as well as services of Paralegals. Pro bono services supplement government efforts in provision of legal aid through advocates to represent prisoners. The initiative also improves legal awareness of prisoners to enable them become active participants through effective demand for justice.
- e. Within the legal and policy framework, there are provisions in the formal justice system that encourage out of court settlement of disputes at various stages. Examples include;
  - The Family and Child Protection Unit at Police which handles domestic disputes aiming at prevention of petty/minor cases from progression into the formal justice system. This reduces the possibility of ending up in incarceration.
  - Magistrates Court Act Cap 16 Section 160 provides that in criminal cases, a Magistrate's Court may promote reconciliation, and encourage and facilitate the settlement in an amicable way, of proceedings for assault or for any other offence of a personal or private nature, not amounting to felony and not aggravating degree, in terms of payment of compensation or other terms as approved by the court.
  - In civil cases a magistrates court shall not deprive any person of the benefit of any civil customary law which may be applicable that is not repugnant to justice, equity or good conscience or incompatible with any other law - Section10 Magistrate Courts Act Cap16
  - Most legislation promotes the principle of using incarceration as a last resort in pretrial. Examples include, provisions minimizing detention of juveniles and reduction of statutory remand periods 60 days for non Capital offenders and 180 days for capital offenders. These were revised from 180 days and 360 days for petty and capital cases respectively.
  - Willingness to try out and adopt new innovations to address overcrowding in places of detention such as the Paralegal Advisory Services programme.

### **III. Paralegal Advisory Services Programme**

4. The Paralegal Advisory Services Programme provides basic legal aid services aimed at improving access to justice for poor persons caught up in the criminal justice system. It addresses the problems of overcrowding in police cells and prisons as well as delays in the criminal justice system.

5. The programme promotes the interventions of Social Workers and Paralegals working in all the criminal justice institutions on a daily basis as a link on behalf of the suspects and prisoners. They provide first legal aid through general advice and education to persons in conflict with the law and their relatives in consultation with the officials of the criminal justice institutions i.e. Police, Prosecution department, Courts, Prisons and Remand Homes. Although the Paralegals' and Social Workers' interventions target suspects and prisoners, they also assist the victims as well as improve communication and coordination among the justice institutions.

6. Objectives of the Paralegal Advisory Programme relating to the reduction of congestion in prisons include the following;

- a. To contribute to the process of physical and case file decongestion in the Criminal Justice system through;
  - Stemming the flow of non founded cases into the criminal justice system - at police and courts as well as following up and identifying cases in prison.
  - Reducing the proportion of petty offenders on remand
  - Diverting the petty cases from the criminal justice system to Alternative Dispute Resolution and traditional systems
- b. To link the demand and supply sides of the Criminal Justice System through;
  - Training suspects and prisoners in self representation to allow for reduction of wastage of court time
  - Facilitation of quality sureties to help suspects and prisoners on pre-trial access police bond and court bail respectively
  - Linking suspects to communities to allow for settlement of disputes out of the formal justice system as well as standing as sureties to access police bond and court bail
- c. To change practices within the Criminal Justice chain through advocacy and civic engagement

Congestion in prisons also results from loop holes in legislation and practices or non adherence to standard procedures and guidelines. The PAS programme engages in;

- Practice Advocacy to ensure that there is issuance of practice directions to reduce bottlenecks in the administration of justice
- Modification of practices where necessary through civic engagement with the stakeholders in the administration of justice. This is achieved through identifying and proposing alternative practices to fill practice gaps
- Encouraging enforcement of enabling legislation and practice standards.

#### **IV. Challenges of Reducing Prison Populations**

7. Challenges of reducing prison populations relate to poor enforcement of standards, inherent challenges in the strategies and practices as well as the limited use of modern technology for improving access to justice.

- a. Failure to enforce enabling legislation and programmes such as the pro bono services and low adherence to standard guidelines. This stems from resource constraints including; human, infrastructural, and financial constraints.
- b. Challenges of sustainability of innovations such as the Paralegal Advisory Services. Most innovations are initiated and managed by civil society organizations which depend on funds from international development partners.
- c. Chronic delays in the administration of justice. These stem from systemic and technical inconsistencies.
- d. Limited acceptance of non- lawyers in the administration of justice. The concept of using multidisciplinary teams in the access to justice arena is still relatively new on the African continent. Interventions to improve access to justice have largely been relegated to the law profession.

- e. Absence of a national legal aid policy to allow for equitable access to justice especially for the indigent. This in most cases leads to the limited commitment of government as the major duty bearer of legal aid service provision.
- f. Lack of sufficient preparation of the communities to receive persons out of prisons on pretrial and lack of public acceptance for suspects and prisoners on pretrial such as those on police bond, court bail, and parole. The suspects and prisoners are harassed, alienated and stigmatized. This in most cases leads to re-offending manifesting as recidivism and at worst it has resulted into mob justice.
- g. Most discussions and decisions do not reach the lower levels of staff in the justice systems that have direct interaction with the prisoners. Whereas initiatives such as the Chain Linked Initiatives, stakeholder conferences improve coordination and cooperation in the justice system, the participants are often at management levels and information does not adequately trickle down to the officers who would implement decisions.
- h. Incomplete support systems for the integration of prisoners into communities. There are instances when prisoners are released but due to lack of transport to their home areas, they are left stranded in the localities where they were incarcerated so they end up re-offending in the process of trying to fend for themselves or finding transport to take the back home.
- i. Whereas Community service has proved to be an effective alternative to custodial sentences, the challenge of follow up to ensure compliance has been a major set back. This is in part due to the lack of tracking changes in addresses especially in urban slum areas of Africa where many offenders reside.

## **V. Conclusion**

8. There is recognition that even when there is enabling legislation, adherence to minimum standards, effective and functional justice system, there could be some practices especially relating to following due processes that are counter productive and could be contributing to delays in the administration of justice leading to prison overcrowding.

9. In recognition of the challenges for Africa in the use of technology such as surveillance and electronic tagging devices, diversionary measures such as house arrest, suspended sentences and curfews are difficult to use hence the need to develop tailor- made community strategies based on the traditional justice mechanisms to follow up prisoners on early release from prison.

10. Most of Africa's prison management are grappling with the basic challenges related to overcrowding such as feeding, sanitation, security of prisoners that they do not have adequate financial and human resources to address specific needs of prisoners such as the mentally challenged, drug-related or terminally ill and elderly prisoners.

11. Recidivism remains a major contributor to prison overcrowding. In most of the African countries with no national identification systems in place coupled with inaccessibility and use of modern technology and tracking mechanisms, the rates of recidivism could be much higher than recorded because prisoners change identities which are not detected hence passing as first time entrants into prisons.

12. Whereas caution should be exercised in building of more prisons as a strategy for reducing prison overcrowding, consideration of the growing national populations and the escalation of crime coupled with depreciation of physical infrastructures should not be disregarded.