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### CRIME PREVENTION: CURRENT ISSUES IN CORRECTIONAL TREATMENT AND EFFECTIVE COUNTERMEASURES

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#### I. INTRODUCTION

In the recent past, the correctional services in Kenya have been in the print and electronic media spotlights. They have received critical appraisal that sometimes has been outright negative. They have been as it were stripped and laid out for very close scrutiny:

“Naked inmates shock judges in prison visit” screamed the East African Standard of 4.11.99 front page. “Woman jailed for seven years for stealing husbands cow” - Daily Nation - 4.11.99

The editorial leadership of the print media has also argued against the excess and the rot that is currently to be found in correctional institutions. The concern shown leaves one wondering whether all these shortcomings have been there all along with nobody noticing or it is the old fashion of bashing public institutions with correctional institutions providing an easy target. The following discussion is therefore an attempt to add to the debate by objectively looking at the critical issues in this drama. I have therefore examined the following areas: -

- i) Difficulties in developing effective rehabilitation programmes in prisons.
- ii) The current and cumulative logistical problems faced by correctional administrators.
- iii) Suggested remedial strategies and their limitations.

Ideally a man is born free and the sojourn in life is a social drama in pursuit of enjoyment of that freedom. The social norms from onset reinforce this being “free” status. This is so until the long arm of the law of the land catches up with transgressors and the law breakers and for once the freedom is taken away. The punishment as often is the case - is automatic exclusion and separation from the rest of society and being placed under charge of a correctional institution. Within the institutions are well rehearsed and regimented roles, rules and regulations. The offender of necessity has to adjust to the new status and fit into a new life - life inside the prison walls. This process of fitting into a new life is gradual, thorough and ends up abolishing the individualism and privacy - values that one has long been socialised into.

Prisons by design are places where offenders are sent down as punishment. They are meant to epitomize both the retributive and deterrence principles of sentencing. The architecture and social aloofness further reinforces this feeling of punishment. Also prisons are places where hardships are inevitably occasioned whether by design, deliberate or otherwise. The deprivation of personal liberties, the denials of the basic choices in life, the withholding and withdrawal of basic privileges. All the basic issues that find expression in ordinary life are controlled and sparingly provided.

Prisoners soon learn the art of conforming to the expectations of custody. Prison stay only makes sense depending on ones ability to quickly adjust and

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assimilate the social life in prison. In so conforming, the offender is able to cope with the pains of imprisonment.

Adjustment by offenders translates itself into various social relationships. Decision making on the most basic chores and routines is regimented. Orders are issued out and obedience extracted. Soon enough an offender is institutionalised into a mechanical actor to programmed commands. The more an offender assimilates into the social life in prison, the more he/she becomes dependent on the favours conferred by correctional services.

The institutionalisation bonding on the offender creates dependence complex that negates any long-term rehabilitation efforts. Prisons therefore looked at from the theoretical framework have in built such heavy odds that deny offenders an opportunity or a chance with reasonable probability for rehabilitation. As is often quoted, it is not possible to rehabilitate offenders in situations of captivity.

## II. CURRENT ISSUES IN PRISONS

The issues that have brought prisons into close focus relate to:

- Over-crowding in prisons
- Old and dilapidated prisons

### A. Overcrowding in Prisons

There are 78 prison establishments in Kenya. Their capacity is indeterminable and they are stretched to accommodate anybody convicted to serve a prison term. It is however generally agreed that with between 33,000 to 40,000 daily average prison population; the prisons in Kenya are in some cases 100% - 150% overcrowded.

The prisoners are:

8,000 - 10,000 - in custody

- awaiting trial
- awaiting sentence or
- awaiting repatriation

25,000 - 30,000 - convicted and sentenced prisoners.

The growth of prison population has been rapid and the trend has been upward with no peak in sight. This could partly be accounted for by the actual population growth which reflects that up to 46% of Kenyans are aged 24 years and below.

It is also true that by tradition and due to absence of effective and extensive non-custodial sanctions, imprisonment as a custodial sentence has been extensively utilised by the courts. Unlike any other sentence, custody has a high public profile relative to other sentences. With a relatively young population, it is predictable that potential for more people being sentenced to prison in future is high - very high indeed given the population living below poverty line.

The rapid population growth; a relatively large proportion of youthful population, a poorly performing economy; and the courts preference for custody sentence and we have an ideal recipe for prisons overcrowding. Prisons overcrowding means the facilities meant for few are increasingly stretched to cater for more and more prisoners. It is a common saying that prisons never fill up. What is a fact is that physical utilities in prisons are over-used, over utilised, over-stretched and the consequent wear and tear is fast and evident. Prisoners are therefore left to share minimum of everything - food, clothing, sleeping space, exercise space, and welfare is limited to the bare minimum. Overcrowding generally prevents realisation of any planned utilisation of prisons resources, facilities and leads to otherwise uncalled for restrictions. This is the unending cycle of

overcrowding leading to decrease resources leading to overcrowding in prisons.

### **B. Old and Dilapidated Prisons**

Majority of the prisons institutions in use today were built in 1920's, 1930's and 1940's. They were built during the hey days of colonial authority in Kenya. Today, the same prisons are found in many districts - same architecture, sagging walls and a perimeter barbed wire fences.

Such physical facilities incur heavy maintenance costs, are problematic to maintain in hygienic conditions as demanded by public health act and in most cases are a public eye sore. They are degrading settlements to live in both for the prisoner and prison officer. The obvious solution to these old prison institutions is to embark on building new modern prisons. This however is an expensive venture and does not attract goodwill in times of scarce resources allocation.

Overcrowding in our prisons coupled with old dilapidated prison buildings leads to: -

- i) Unhygienic living conditions which often lead to outbreak of communicable diseases. The incidence of skin diseases, water and air borne diseases is symptomatic of this problem.
- ii) Underfed, malnourished and weakened prisoners who are likely to succumb to illnesses.
- iii) Poorly clothed prisoners.
- iv) High incidences of aggressive tendencies of prisoner to prisoner or prison officer to prisoner.

Given such heavy odds, it is a difficult task for correctional administrators to mount effective rehabilitation programmes. This however does not mean that efforts are not made. Indeed the

picture is not as gloomy as it has been printed so far.

## **III. CURRENT PRISONS PROGRAMMES**

### **A. Prisons Farming Activities**

Kenya is basically an agricultural country. The majority of the population derive their livelihood from agriculture and agricultural related activities. Land as a resource is therefore central to majority of Kenyans social-economic engagements. The prisons service controls a sizeable land estates - some of it in prime agricultural areas. Farming in prisons is therefore potentially a major activity for the prisoners. A lot of efforts are made to produce basic foodstuffs viz; maize, beans, rice, bananas, fruits, vegetables. Livestock farming is also encouraged especially in low rainfall places. A combination of unpaid labour, rent free farmlands and trained prison officers should ideally produce enough to create a surplus for the market place. The results in appropriation in aid realised however reflect dismal returns.

In spite of this, prisons farms have a potential to feed the prisoners and realise surplus for sale. Such proceeds could in turn be ploughed back into welfare activities that could lessen the negatives on prisoners' lives and brighten the dull correctional lifestyle.

### **B. Prisons Training Activities**

Our prisons are reknown for producing top class products. The carpentry workshops, weaving tailoring, masonry, blacksmith, printing are some of the skills taught to prisoners. Indeed some of the products from prison industries compete favourably in the market place. In 1999, prisons stand in Nairobi Agricultural show was awarded first position against stiff competition. From the major prisons, medium and small workshops keep the

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prisoners busy. With unpaid convict labour, qualified instructors and a controlled environment, prisons produce goods whose value would offset any cost, however, prison industries do not generate any sizeable revenue - why is this?

A reasonable guess is: -

- demotivated prisoners
- lack of marketing skills by prison authorities for their products
- wastage occasioned by training

Majority of the prisoners have left custody with improved skills on various trades. It is however doubtful whether they engage in the same trades once out of prison. One reason is that majority of prisoners learn these trades and perfect their skills through force of circumstances and not through their voluntary individual choice. The interest is therefore sustained as long as they are in prison.

### **C. Prisons Spiritual Guidance and Counseling**

The Kenya Prisons spiritual guidance and counseling services are now recognised as having positive inputs. Based on the religious crusade of reclaiming lost souls of the sinners/offenders, all the major religious denominations have set up base in prisons and do provide religious teaching, guidance and counseling services to prisoners. In some instances the prisoners do have character change from criminality at least as they confess while in prison. Whether they maintain the same positive characters after their sentences are over is another issue.

It is true, one dimension of any person's culture is the religious believes and values attached to it. Without even compounding rehabilitation, it is possible to appeal to the prisoner's soft spot and if systematically

reinforced genuine character change is possible. Such spiritual appeal to be effective has to be launched, managed and run by existing community religious groups rather than being tied to the regimented, correctional programme.

### **D. Prisons Welfare Service**

The Prisons welfare services were established to create a linkage between the prisoner and the outside world. The welfare officers are meant to keep bridges between the prisoners and their families or any other relations. Hence the welfare services is staged and run by civilian staff. The scope, effectiveness and efficiency of welfare units in prisons are doubtful. Often times, the greatest problem is lack of funds to sustain welfare activities that are meaningful and of benefit to the prisoners.

There is also the old issue of welfare officers who are advocates of generic social work practice, principles and ethics of social work being relegated to work within the limits of prison walls. Whatever the good intentions there remains conflict of interests. For example the principle of confidentiality is difficult to keep. What information is one duty bound to disclose to prison authorities?

It would be better perhaps for the welfare units to operate from outside the confines of prison walls i.e. creating rapport of the community so that the eventual prisoners resettlement is easy and smooth.

These and many other issues continue to hamper the welfare services in prisons.

### **IV. OTHER SENTENCING OPTIONS**

Any discussion of the merits or demerits of custodial sentences, the pros and cons of imprisonment and advantages or disadvantages end up looking at the available alternatives.

These alternatives are;

- Diversion strategies during the pre-trial stage.
- Non-custodial sentencing options during the pre-sentence stage.

### **A. Diversion**

Criminal justice process starts from arrest of suspect, through arraignment in court, trial conviction or otherwise, sentencing and punishment. Diversion refers to deliberate intervention mechanisms put in place to offload suspected offenders from reaching the final stage of conviction and sentence. The diversion could be facilitated by the police-arresting arm of the Government, the prosecutors or the trial court. At any stage during the process, the preferred charge can be terminated and the suspect let off with a warning, caution or an order to keep peace over a given time. The objective of any diversion is to stem off categories of petty persistent offenders, youthful offenders, misdemeanour range of offenders and other nuisance offenders from clogging the criminal justice administration. All these categories when aggregated amounts to quite a sizeable number who would otherwise be tried with a possibility of conviction and most likely imprisonment.

Diversion is therefore a useful strategy if properly implemented. So far however, the statistics available reflect a negligible practice. It is therefore not uncommon for juvenile offenders to be overcrowded in approved schools, borstal institutions and other remand centres. This would not be the case if diversion was used to a significant level.

### **B. Non-Custodial Options**

Non-custodial sentences range from fines and other monetary penalties,

conditional and unconditional suspended sentences, probation orders, community service orders; each of which is outlined hereunder:

#### **i) Fines:**

The use of monetary penalties is now recognised as expedient and processes a large proportion of offenders in any given court. The monetary penalty as a penal sanction assumes among other things that:

“an offender is penalised proportional to his/her earning capacity”

Often however, the fines are dispensed by magistrates and are dependent on subjective discretionary considerations. There are not set guidelines to standardise levels of the fines awarded and therefore avoid excesses. As mentioned earlier, majority of the population are living below the poverty line. Add another lot who are in economically precarious position and the proportion who cannot afford to pay fines increases. To compound the fine as a viable option is the fact that is given as an alternative to imprisonment thus:

“So much to be paid or in default so many days/months/years to be served in prisons”

Majority of such offenders are unable to redeem themselves and end up in prison. Fines as a sentence remains the most misapplied and inconsistent in penal intention. A common offence of stealing for example attracts a fine whose range and variation is so wide that it is unjust. It is however the case that fines account for the largest proportion of courts sentences - over 70% in some cases in any given year. Assuming an effective and efficient fines collection and management, more offenders could be cleared using this option than is presently the case.

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ii) Conditional and Unconditional Discharges

The courts even after declaring a guilty verdict have the option of awarding conditional or unconditional discharge depending on each case. The courts have wide discretionary powers in deciding conditional or unconditional options. This is an opportunity the courts could use to discharge all those found guilty but who have proof of ill health or terminal illnesses. Rather than load prisons with sickly prisoners; the courts could use their discretionary powers to allow such people to be taken care of by their relatives and suspend all such cases with other orders as each merits. More importantly, the courts could demystify conditional and unconditional discharges by offering reasons behind such decisions in an open court to stem off speculative concerns by the public.

As it is the case, unconditional and conditional orders of the courts are sparingly utilised and the overall impact is not significant. The contention here is that these orders can meaningfully be used especially if for all such cases there is an accompanying pre-sentence social report.

iii) Probation Orders

Probation orders are empowered under the Probation of Offenders Act, Chapter 64 - Laws of Kenya. This act was passed on 12th December 1943 and probation services were formally in use from 1946. Since then, the courts have utilised probation orders as an alternative to custodial sentencing. Overtime the proportion of probation orders relative to custody has stayed as a ratio of "one probation order for every four to five prison sentences".

The structure put in place to implement this non-custodial court order covers the whole range of offence spectrum and is established in the whole country with a

probation office existing alongside a court establishment. This arrangement ensures that the court orders requiring information are expediently attended to.

The Probation services has been providing this information as reflected in the following statistics: -

Year	Enquiries Conducted	Order Made	Percentage
1995	10,507	7,624	75.6
1996	10,497	7,804	74.3
1997	9,652	7,204	74.6
1998	9,903	7,274	73.5

Provision of information to courts is a core function and a major pre-occupation of probation officers. Expenditure incurred gathering information accounts for up to one third of the time and other resources available to the Department.

For any social report submitted to court, it is entirely left to the discretion of the court to make a probation order or any other sentence. To release or not to release is once more the discretion of the courts. The concurrence level between the recommendations made in reports and eventual sentence given is 60% - 75%. This is an indication that the social reports do have a bearing on sentencing.

The cases awarded probation orders undergo compulsory, mandatory supervision period of six months to three years depending on the circumstances of each offender. This supervision period confers necessary contact between the probation officer and the probationer. Coupled with the conditions listed in the order, probation officer is able to use subtle social work skills to extract conformity and correct behaviour.

The contact period is therefore the basis of social work arrangements that are

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deemed useful and beneficial to the probationer. Probation orders as practised have the following advantages going for them:

- Probationers remain based in the community during the duration of the order.
- Probationers stand to benefit from any rehabilitation efforts designed to help overcome wrong behaviour.
- Average cost of supervising probationers in the community per client is very low compared with custody.
- Probationers are prevented from contamination with criminals and the stigma associated with imprisonment.
- Probation orders are made in respect of any offender regardless of sex, age or religion.
- Presently, the Department is handling a total workload of:

Men	Boys	Women	Girls	Total
7,931	2,097	2,016	400	12,444

With a workforce of 300 probation officers, this translates into a ration of 40-70 probationers per probation officer. Comparatively therefore probation orders are easier to manage, relatively cheaper in terms of cost-effect and gain social acceptance readily when the community is properly sensitised.

The following tables ably demonstrate the above conclusion:

a) Costs:

Staff Strength	No. in Establishment	Percentage
Ministry	22,451	100%
Prisons	15,283	68.1%
Probation	760	3.4%
Others	6,403	28.5%

b) Holding Capacity:

Daily average - Prisoners - 30,000-40,000

Daily average - Probationers - 12,500-15,000

Ratio:

One probation officer for 40-70 probationers

One prison officer for 3-7 prisoners

c) Daily average costs:

About Kshs. 130/ per prisoner per day

About Kshs. 35/ per probationer per day

d) Budget allocation per annum:

Prisons - 65%-68%

Probation - 4.5%-5.5%

iv) Community Service Orders

The Community Service Order Act No. 10 of 1998 became law on December 31, 1998. The Minister proclaimed it operational on July 23, 1999 and it was formally inaugurated on December 29, 1999.

The basic features of the new act are that:

- It is a non-custodial sentence of the court.
- It will normally attract the less serious offences that lead to offenders being imprisoned.
- Offenders will submit to provide unpaid labour in the community.
- The supervising officer will be a volunteer member of the community.
- The sentence will be judicial driven.
- The probation officer will be the linkman between the courts, the offenders, and the volunteer.

This programme is new and its impact

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as an alternative to custody is potentially promising as the initial statistics indicate. Today over 4,000 offenders have gone through this programme and presently there are 1,500 CSO on supervision and performing unpaid work.

v) Aftercare Services

The aftercare work with offenders is technically difficult. It involves trying to resettle offenders who have already been in prison. These ex-prisoners are released earlier by quasi-judicial recommendations made by various discharge boards.

The aftercare categories are:

1. Borstal inmates discharged for one or two years supervision.
2. Psychiatric criminal offenders released but subject to supervision.
3. Long term prisoners released but subject to supervision.

These three categories account for 600-1,000 daily average per annum. Probation Service therefore constitutes a key role in non-custody management. The data available shows that the workload stands at:

1. Probation orders on supervision	12,444
2. Community service orders on supervision	1,500
3. Aftercare supervises	800
Total on supervision (average)	14,744
Ratio of officer per supervisee is greater than	50

The capacity to hold more supervisees is already stretched to the limits and any more added workload would entail injection

of more personnel and more resources especially reliable transport and office accommodation.

**V. SUGGESTED WAY FORWARD**

The administrative structure for an effective and efficient administration of justice already exists. The process is well laid out and has been rehearsed often enough to provide confidence in the public and trusted working arrangement. It is however the case that the justice that is supposed to reassure the victim and the villain ends up being suspect and cause for public dissatisfaction. This has led to unwarranted over use of prisons and the consequent overcrowding.

The following suggestions could remedy the situation if applied with utmost good faith by all stakeholders: -

- a) There is need for more use of non-custodial combination orders so as to reverse the monopoly currently enjoyed by custody orders.
- b) There is need to devise a proportional and pre-determined fines tariff with consideration for ability to pay.
- c) There is need to separate the run on the mill petty persistent offenders who engage most of the resources. This will redirect efforts to combating serious crime.
- d) There is need to use more diversion strategies for the untried suspects and other low rated offences. Attention and resources to be given to combating crimes such as pollution of environment, drugs offences, frauds, white-collar crimes and other felonies.
- e) There is need to use more community strategies in crime prevention and treatment of offenders. Probation orders, community service orders, combination orders, fines would be

- effectively utilised in this direction.
- f) The courts to be sensitised to use more pre-trial and pre-sentence social reports as provided by probation officers and others. The reports serve to inform the courts on any given offender appearing before the magistrate.
  - g) There is need for accelerate use of early release programmes and hence cut back on the overall length of sentence served in prison.

Non-custodial options have elsewhere been demonstrated to work given the right approach by stakeholders. There is need therefore to have the priorities right in the area of criminal justice administration.

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