

EFFECTIVE COUNTERMEASURES AGAINST OVERCROWDING OF CORRECTIONAL FACILITIES

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I. INTRODUCTION

Namibia is a signatory to the United Nations Standard Minimum Rules for the Treatment of Prisoners and has adopted a mission statement for the Department of Prisons and Correctional Services which reads: “The Namibian Prison Service, as an integrated part of the Justice System, contributes to the protection of society by providing reasonable, safe, secure and humane custody of offenders in accordance with universally acceptable standards, while assisting them in their rehabilitation and social reintegration as acceptable law abiding citizens”.

The purpose of this paper is therefore to present facts on how the Namibian Prison Service is grappling with the problem of overcrowding and the approach taken to reduce recidivism. The paper is inclusive of high level national progressive initiatives currently being pursued by Government in accordance with the third National Development Plan (NDP 3) 2007/8-2011/12 sub-sector goal 2: Lawful Detention and Reduced Re-offending.

The options are in the form of remission, parole, amnesty, pardon, reprieve, prison population management strategies, community services orders and more importantly, addressing the issues of recidivism and factors in regard to overcrowding of correctional facilities.

II. WHAT DOES OVERCROWDING MEAN?

Overcrowding is interpreted in the current pocket Oxford dictionary as “fill beyond what is usual or comfortable”. This definition is not far away from our context in the prison administration. In prison, overcrowding describes the situation when the total number of inmates in prison is beyond the authorized holding capacity.

III. FACTORS THAT LEAD TO OVERCROWDING

Some individuals think about offenders, and even treat them, as if they are not human. Ideas such as these are harboured by some technocrats in the criminal justice system (Radzinowicz 1991), e.g. police officers, crime investigators, prosecutors, magistrates, and even judges. They perceive imprisonment as a way to isolate those members of society accused and found guilty of committing crimes. This notion impacts severely on correctional services as follows:

- Infrastructural related issues and demography, coupled with the world recession, mean that most of the inherited structures do not provide enough accommodation for the ever-increasing prison population. Plans are at an advanced stage to extend existing prisons, build new ones, introduce unit management, construct halfway houses and construct offices for the Namibian Community Service orders. etc.;
- Magistrate courts, which handle the majority of criminal cases, are backlogged with cases, resulting in prolonged postponements. The investigation of crimes is very slow, to the extent that sometimes no cogent reason is given to presiding officers in court to deny or grant bail. Judicial officers seem to be very slow in processing appeals from convicted inmates to an extent that they even have their

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appeal dates set after they have been released from prison. However, this is expected to change with a new High Court in place in the North where the prison with a high number of admissions is situated.

IV. PRISON POPULATION MANAGEMENT STRATEGIES

Combating prison overcrowding is being discussed in criminal justice circles. In March 1996 for example, the overcrowded prisons were Windhoek Central Prison, Omaruru and Grootfontein. In response, during the First Workshop on Management of Prisons, held at Harmony Seminar Centre in 1996, the then Permanent Secretary in the Ministry of Prisons Services, Mr. Frans Kapofi, had this to say at length: "The situation of overcrowding is very much closely monitored after introducing classification of prisons. The maximum-security prisons of Windhoek Central, Walvisbay, Hardap, and Oluno are responsible for incarceration of long-term prisoners. Once prisoners are received in receiving centres which include Luderitz, Keetmanshoop, Omaruru, Grootfontein and Swakopmund, they are immediately sent to the nearest maximum security prison. Also with open prison farms like Divundu and Elizabeth Nepemba Juvenile Centre, is yet another method of dealing with overcrowding, as selected first offenders from maximum security prisons are transferred to these centres. This move is expected to ease and control congestion in the prisons".

Discussions were held on associated problems and side effects and finally a plan of action to effectively deal with this matter was designed. With the available resources, Farm Scott Open Prison is now operational, training inmates in animal husbandry. The management of the inmate population is effective. Every day, criminals are arrested, sentenced, and placed into the care of correctional services, but they are well managed.

Being the final recipients, Namibian Prison Services is braced to admit criminals as per international standards and procedures. With the Corrections and Conditional Bill in its final stages, it is expected to bring new strategies to effectively address re-offending attitudes of inmates and reduce overcrowding of correctional facilities. This law will lead to a complete re-engineering of the rehabilitation system to address recidivism. To appreciate crime trends, refer to Tables 1 and 2 in the Appendix.

A. Remission

Remission of sentence is a tool of stabilizing prison discipline and order. It is a deduction from a sentenced prisoner's total sentence and thereby shortens the term of imprisonment. It is a reward to inmates to promote good conduct and co-operation. Section 92(1) subject to subsection (2), (3) and (5) of the Prisons Act, 1998 (Act No. 17 of 1998) stipulates that "a person sentenced to a period or periods of imprisonment may, by reason of meritorious conduct and industry, during such period of imprisonment earn remission of part of such period, equivalent to one third of the total of the period in question."

B. Parole

Parole is an instrument in the hands of the Service to supplement, the testing, outside the prison walls, of genuine signs of recovery. It is a further stage after remission. If the administration through its disciplinary and observation machinery is satisfied that such a prisoner has displayed meritorious conduct, self-discipline, responsibility and industry after a certain period, may qualify for consideration for parole. Such a prisoner must be serving a sentence of three years and above, must have served one third of his or her sentence. Usually, consideration is given to prisoners whom it is believed will not revert to crime. By so doing, the prisoner may benefit as follows:

- He or she enabled to contribute to the support of his or her dependants, also relieving especially juveniles and first offenders who know that punishment entails the stigma of imprisonment, while influencing prisoners by means of certain conditions to lead an honest life, whilst the threat of an unexpired sentence hangs over their heads;
- The authorities can determine whether the effect of imprisonment is such that the prisoner will be able to refrain from committing further crimes during parole and even after.

In support, the Commissioner of Prisons Mr. Evaristus Shikongo stated that: "It is through this belief that we are seriously thinking of strengthening and improving the parole activities. We are intending to appoint the so long missing Release Board which is going to work effectively on issues of parole, remission

and release dates of prisoners. The people involved in the prison, heads of prisons, social workers and heads of sections, should work according to the laid down regulations and submit the necessary inputs to allow the release board to work efficiently”.

C. Amnesty

In terms of the Prisons Service Act, section 93(1), (Act 17 of 1998) it reads “In the exercise of his or her powers to pardon or reprieve offenders under sub-Article (3) (d) of Article 32 of the Namibian Constitution, the President may call upon the Minister to recommend to him or her any offender for such pardon or reprieve, and may invite the comments of the Minister of Justice thereon”.

V. ALTERNATIVES TO IMPRISONMENT

A. Legal Framework

Two aspects of non-custodial sentencing are highlighted, namely, international guidelines and alternative sanctions provided for by national legislation on non-custodial measures.

1. International Guidelines

The need for non-custodial sanctions is recognized at the international level. Relevant here are the Guidelines contained in the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). As a proud member of the civilized international community, the Namibian Prison Services adheres to and respect international obligations, including these standards.

2. Non Custodial Measures

At the national level, the necessity of non-custodial sanctions is highly recognized and provided for by lawmakers. Various pieces of legislation make provision for alternative sentences, including: fines, discharges, compensations, security for keeping the peace, probation, reconciliation, extra-mural labour, and addition or discharge with bound. Part of Section 297 of the Criminal Procedure Act (No. 51 of 1977) on Conditional or Unconditional Postponement or Suspension, and Caution or Reprimand, is worth quoting at length:

“Where a court convicts a person of any offence, other than an offence in respect of which any law prescribes a minimum punishment;

The court may in its discretion – postpone for a period not exceeding five years the passing of sentence and release the person concerned – (i) on one or more conditions whether as to – (aa) compensation; (bb) The rendering to the person aggrieved of some specific benefit or service in lieu of compensation for damage or pecuniary loss; (cc) The rendering of some service for the benefit of the community; (dd) Submission to instruction or treatment; (ee) Submission to the supervision or control (including control over the earning or other income of the person concerned) of a probation officer as defined in the Children’s Act, 1960 (Act 33 of 1960); (ff) The compulsory attendance or residence at some specified Centre for a specific purpose; (gg) Good conduct; (hh) Any other matter; although there are Legal provisions on the statute books, the sanctions are rarely used, preference being given to imprisonment. Etc.”

B. Community Service Orders

This project began after a national seminar on Community Service Orders was held at Safari Court Hotel in Windhoek in 2001. In attendance were relevant Ministers, Regional Governors, NGOs, Community and spiritual leaders. Thereafter, the Minister of the then Prisons and Correctional Services conducted consultative meetings with Regional Leaders to reach consensus on how to implement this very important programme, relevant to rehabilitating offenders within the community. In the ensuing consultations, district committees were formed followed by the launching of the pilot project in 2005. In that same year, three significant seminars on Community Service awareness were conducted for members of Parliament, Members of the Press and Members of Law Societies.

1. Road Map for the Implementation of Community Services

The project was piloted at five Magistrate Districts Courts in four Regions: Katima Mulilo, Opuwo, Ondangwa and Rundu. Guidelines were set and adopted in 2008 as follows:

- Review, monitor, budget, train, develop guidelines, design programmes, set up a National Steering Committee to influence decision makers, introduce the project to policy makers, revise existing models through exposure visits to neighbouring states and create public awareness campaigns.

Stakeholders were convinced that Community Service Orders were needed for selected first-time offenders who have committed non-serious crimes, to perform unpaid work for communities as part of their rehabilitation. Not every one can pay a fine and therefore many persons are sent to jail.

2. Current Progress

Another National Conference was held in Windhoek in August 2008 to counteract crime with the following aim:

- To examine progress achieved, critically examine challenges, address them for better results, consolidate support for the amendment of the Criminal Procedure Act, enact new enabling legislation, seek a mandate for continuation, and resolve the plight of remand prisoners, etc.

3. Actual Challenges

The law has provisions for alternatives to imprisonment (non-custodial sentences.) The main issue is that those provisions are rarely utilized. In this section, the non-utilization of those provisions is explained; constraints and limitations likely to be encountered in the introduction of community service nationwide.

Combating crime and criminal justice administration are sensitive areas involving multiple stakeholders. Like all sensitive areas, it is very difficult to secure agreement, be it on matters of policy or strategy. In the past, criminal justice had many shortcomings as powerful stakeholders dominated weaker ones during final decisions. That dominance has been found obsolete, hence collaborative strategies, including community service.

4. Limitations and Constraints

- There are established views and perceptions about crime and severity of punishment. Some people think community service is a soft option; some stakeholders, victims of crime, communities and some members of law enforcement agencies are reluctant to use it, feeling that community service rewards crime;
- There is misconception and misunderstanding of the scheme, associated with prevailing economic conditions. There is a public perception that in the light of levels of massive unemployment, jobs for law-abiding citizens may be lost due to the availability of free labour provided by criminals;
- Political will is essential for the success of community service. Policy and opinion makers must be able to appreciate the limits of inherent dangers in imprisonment as well as to understand the benefits that accrue from community service. There should be willingness at the political level to sensitize communities in the constituencies;
- Mobilization of human and financial resources needs to be carefully planned and the resources made available, especially in the start-up phase;
- Planning, organizing and co-ordination of community service activities need to be thoroughly explained and rigorously checked to reduce margins of error;
- The success of the programme is dependent upon supervision of Community Service Orders; supervisors need to be carefully selected and properly trained;
- Beneficiaries of Community Service Orders should be carefully selected and monitored.

VI. CORRECTIONAL PROGRAMMES TO PREVENT RE-OFFENDING

A. Raison d`etre

The rationale of rehabilitation, values and beliefs are the re-integration into society of offenders as law-abiding citizens capable of leading honest and industrious lives after imprisonment, having fully developed self-respect and sense of responsibility. Therefore, Namibian Prison Services' main aim is to provide services of which the public can be proud. This is regarded as a standard of excellence locally and at international level, as per the Mission statement. Currently there are positive indications that the fight against recidivism is fast gaining momentum, as explained hereunder.

B. Public-Private Partnership

Addressing the offending attitude of inmates is a correct way of combating crime. Repeat offenders are known to be a problem. Some of them commit very serious crimes while on bail or awaiting trial. In this way they become even more dangerous to public safety. In a bid to involve Non-Governmental Organizations, a public-private partnership commenced in August 2003, between the Namibian Prison Services and Bank Windhoek on Entrepreneurial Skills training programme for inmates at Windhoek Central Prison.

The programme was executed by Development Consultants for Southern Africa (DECOSA). A total number of 88 participants were trained. For the sake of long sustainability without external assistance, three long-term inmates were trained to run the course with limited assistance.

Research is being conducted on the result of rehabilitation programmes. It indicates that for the last four years, 38.2% of the released offenders have successfully started their own businesses. They have employed thirty-one employees and a number of part-time staff. Bank Windhoek further processed loans to two companies owned by released offenders to the amount of N\$219,000.00. The benefits which accrued to ex-offenders are:

- Practice oriented training;
- Knowledge gained convinced family members that ex-offenders want to run their own businesses and cannot wait for funds after release;
- Creation of new enterprises in that 54% of them are registered entities;
- Participants gained self knowledge to survive, fight competition, identify business ideas, opportunities, flexibility, reliability, increase knowledge in marketing, customer care, negotiation skills, costing, pricing, procurement, stock keeping and knowledge in preparing business plans;
- Research shows that 32.3% of the participants are currently employed in different sectors, whereas 14.7% are doing further studies at Polytechnic of Namibia and Windhoek Vocational Training Centre, while five are still resettling.

Furthermore, all sentenced inmates are eligible for training with due cognizance of their qualifications, previous experience, aptitude, abilities, psychological and physical condition. The aim of training inmates is to equip them in such manner that they can lead an honourable, independent and decent life after their release. Here is a package of the rehabilitation programmes being offered to inmates by the Namibian Prison Services:

- (i) Vocational Training: a prisoner can obtain a Diploma or Certificate which enjoys National recognition. Refer to Table 4.
- (ii) Specialized Training: This is all training in which a period of at least one month's intensive training precedes production in that training area.
- (iii) Constructive Unskilled Labour: (CUL): this is all work which does not fall under any of the abovementioned categories.

On 24 February 2009, the Minister of Safety and Security, the Honourable Dr. Nickey Iyambo, stated that: "In the same process of reducing recidivism, reduction of overcrowding should also enjoy a special emphasis. You cannot offer rehabilitation programmes effectively if the institutions are overcrowded. Therefore, programmes aimed at easing overcrowding should be intensified." This high level instruction is being worked on and the results are already showing.

VII. HUMAN RESOURCE DEVELOPMENT

Namibian Prison Services require competent staff capable of carrying out their day-to-day duties with zeal and commitment. Members are carefully selected based on qualification and suitability. In the same vein, promotions are based on integrity, honesty and other competencies associated with capabilities to effectively render the administration of justice to offenders.

In this regard, qualifying applicants are recruited and trained to supplement the existing number of serving members. Professionals and specialists such as teachers, nurses, social workers and trade instructors have been appointed after going through a tough interview session.

Through proper adherence to the Commissioner's Directives, the code of conduct, Prisons Act, (Act 17 of 1998), prison regulations and other administrative circulars, the system is perfecting its respect of the fundamental human rights of offenders.

The Namibian Prison Service has over the past years invested heavily in recruiting and training its personnel to reduce the shortage of manpower. As of 2009, the staff to prisoner ratio stands at 3:0. The Prison training curriculum is being retailored to suit the purpose of the Corrections and Conditional Bill currently under debate in parliament.

VIII. CONCLUSION

The Namibian Prison Service is genuinely concerned about imprisonment trends. It is for this reason that the call is always made to other government agencies and stakeholders to appreciate these concerns, and to seriously start thinking about how to implement appropriate measures. The total occupancy rate in Namibian prisons is only 4,315 as of 11 May 2009, against the total national carrying capacity of 4,347.

This is good news, even though warning signs in terms of crime increase are already apparent. A policy decision is being taken to introduce non-custodial measures in the form of community service as one of the options that can help alleviate problems associated with the rehabilitation of short-term prisoners.

Criminals come from and belong to society. Therefore society has an important role to play in their treatment. Non-custodial measures provide an opportunity for criminals to reconcile with communities from where they come, as observed by Dr. Andrew Coyle (1993:315), the governor of Brixton Prison, London.

As the world moves towards setting effective counter measures against overcrowding of correctional facilities, making sure that people can establish crime free lives, helping those who have been in prison to lead law abiding lives on release, then support mechanisms can only be sought in the community to eradicate the fear of miscarriage of justice. It is quite apt that people are very much less likely to commit crime if they have somewhere to live, if they have means of earning a living, if they have a personal support system. Refer to Table 3.

APPENDIX

Table 1: Namibia Prisons: Capacity and Total Inmates admitted per Year

Prison	Capacity	Number of inmates					
		2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Windhoek	912	882	1047	1047	1337	696	815
Hardap	941	276	258	214	180	251	102
Oluno	557	1242	1414	1256	1054	829	1038
Walvis bay	300	218	245	208	253	175	200
Omaruru	59	416	371	573	380	331	327
Grootfontein	70	21	34	43	147	292	376
Swakopmund	88	251	178	271	305	294	333
Keetmanshoop	110	683	707	597	395	433	423
Luderitz	290	150	105	95	58	77	78
Gobabis	220	392	289	504	318	322	362
Divundu	480	-	-	-	-	-	-
E/Nepemba	320	-	-	6	-	-	-
Farm Scott	-	-	-	-	-	-	-
Total Admitted	4347	4531	4440	4576	4427	3700	3723

Table 2: Namibia: Imprisoned Inmates Population according to Duration of Sentence

	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Up to 6 months	2088	2043	1830	1768	1564	1502
Over 6 months-2 years	1456	1382	1701	1371	1116	1228
Over 2-3 years	180	284	312	312	247	221
Over 3-5 years	159	151	200	174	139	144
Over 5-10 years	111	76	99	112	96	89
Over 10 years	108	50	65	117	54	115
Habitual	4	3	-	-	3	1
Lifers	-	-	1	1	1	1
Total	4106	3990	4208	3855	3220	3301

Table 3: Community Services Workers in 2008

Region	Total combined hours	No. Of offende	Average hours
Caprivi (Katima Mulilo)	11,100	29	383
Oshana (Ondangwa)	2,610	12	218
Kunene (Opuwo)	1,620	11	147
Total	15330	52	295

Table 4: Education Report for Oluno Rehabilitation Centre 2006 – 2009

Education Level	2006	2007	2008	2009
Tertiary Diplomas/Degrees	1	1	1	1
Senior Secondary Certificates	7	10	9	30
Junior Certificate	6	4	10	19
Literacy	71	109	146	185
Number of Rooms used and capacity	85	85	85	85

Source: nps january to march 2009 report

Table 5: Inmates and Members Ratio per Institution

Stations	Inmates	Members	Ratio
Windhoek Prison	1247	401	3.1
Oluno Rehabilitation Centre	872	164	5.3
Hardap Prison	728	186	3.9
Walvisbay Prison	359	131	2.7
Grootfontien Prison	133	48	2.8
Swakopmund Prison	98	41	2.4
Keetmanshoop Prison	111	48	2.3
Luderitz Prison	52	53	0.98
Gobabis Prison	134	30	4.5
Omaruru Prison	82	42	1.9
Divundu Rehabilitation Centre	338	108	3.1
E. Nepemba Juvenile Centre	79	79	1
Farm Scott	82	93	0.9
Total	4315	1424	3.0

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