

A PROMISSING PERSPECTIVE FOR PRISONS IN AFRICA:

A More Community-based Correctional System

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INTRODUCTION

The perspective emerged out of empirical materials collected in the Democratic Republic of Congo (N. Masamba Sita, 1989); the UNAFRI and the Uganda Prisons Service (UPS) joint project on Social Rehabilitation and Reintegration of Prisoners in their Communities of origin or choice; and from a number of United Nation Instruments. It explores the prospects of getting, whenever possible, local communities' members effectively involved in the Criminal Justice System (CJS) process, at the Pre-trial, Trial and Post-trial levels. The ultimate aim of this perspective is to reduce overcrowding in prisons.

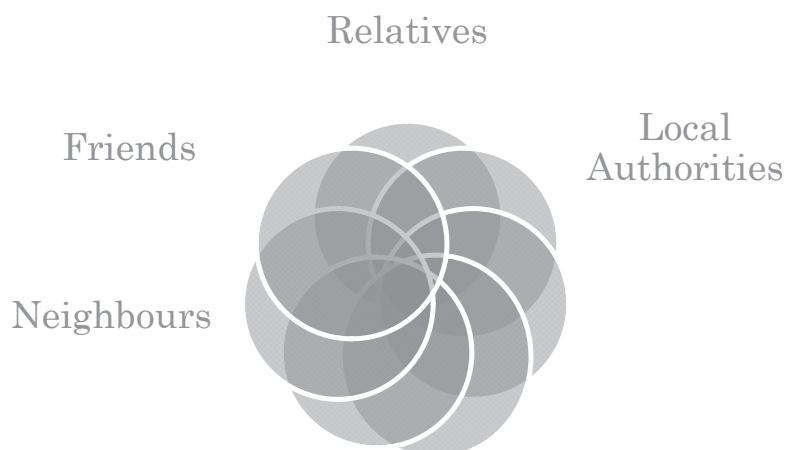
It goes beyond the CJS in exploring the downstream of the CJS, in view of getting the inmates and their local communities be prepared for reunification. This facilitates their effective social rehabilitation and reintegration. The inmate, the social worker or probation officer, members of communities (relatives, neighbours, friends and others), have been identified as key stakeholders. And to be effective, the process requires a shift from the strictly punitive, retributive logic of the penal style to compensatory/conciliatory styles of social control described by A. V. Horwitz (1990:22).

The presentation clarifies the concept of "Local communities" (Section 1), examines briefly some styles of social control (Section 2), proposes a reference framework (Section 3), and in using empirical material, it reveals the types of (human, material, socio-cultural, financial, etc.) resources available within local communities; or of contribution the members of the concerned local communities offer or may offer for the CJS to achieve its mission: the "effective social rehabilitation and reintegration" of the law breakers (Section 4). Due to its exclusive focus on a retributive justice, the CJS is unable to get access to the above resources, which pave way to restorative outcomes. The same explains the failure of alternatives measures.

SECTION 1: LOCAL COMMUNITIES

The concept "Local Communities" or "communities" in general is referred to as a micro-socio-logic level concept, that helps get access to local available (human, material, socio-cultural, financial) resources. It involves, as key social actors, relatives (of the offender and the victim), neighbours, friends, local authorities and other members sometimes difficult to categorise, but quite relevant in the healing process of the community.

DIAGRAM 1: SOCIAL STRUCTURES WITHIN LOCAL COMMUNITIES



Among others, the following has been observed:

- When there is a problem, the quality and the nature of the existing relationship will determine the way the problem will be handled.
- In case of good relationship, the involved actors will often opt for a restorative outcome, through a restorative process.
- Restorative process is mainly about compensation and/or reconciliation.
- Local community members contribute to the process, whose outcome is not only the successful handling of a problem out of the CJS; but also the successful social rehabilitation and reintegration of former prisoners in their communities of origin or choice for the cases that have gone through the CJS. On release of an offender, members of the community are kin to facilitate his/her social rehabilitation and reintegration (mainly when well prepared by a social worker or a probation officer).

The concept is in use in some International Instruments such as the *Basic Principles on the use of Restorative Justice Programmes in Criminal Matters (ECOSOC Resolution 2002/12, annex)*. Principle 20 of the Resolution posits:

“Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and the promotion of a culture favourable to the use of restorative justice among law enforcement judicial and social authorities, as well as local communities”.

These Instruments recognise the important role communities have to play for effective crime prevention. Paragraph 16 of the *ECOSOC Resolution 2002/13, annex on Guidelines for the Prevention of Crime* posits:

“In some of the areas listed below, Governments bear the primary responsibility. However, the active participation of communities and other segments of civil society is an essential part of effective crime prevention. Communities, in particular, should play an important part in identifying crime prevention priorities, in implementation and evaluation, and in helping to identify a sustainable resource base”

Our opinion is that the important part played or to be played by local communities, is not taken into consideration by policymakers and traditional stakeholders. Practices observed within local communities reveal that provisions of a number of international instruments are effectively implemented, unfortunately not reported as they do not necessary take place within the Criminal Justice System (CJS). These practices effectively contribute to the achievement of the mission of CJS:

1 This modality of justice is often wrongly referred to as informal, but in the context of those who refer to it as a recognized way of resolving local conflicts in their communities, it is a legitimate option for dispute resolution.

the successful social rehabilitation and reintegration of offenders.

Reference to public should be understood as communities' involvement. Rule 17.1 of *Tokyo Rules* stipulates that:

“Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and the community. It should complement the efforts of the criminal justice administration”.

Therefore, the evaluation of such practices should be seriously envisaged and the training curriculum of correctional officers in particular and of the CJS officials in general, should refer to such innovations for a more community-based Criminal Justice System, as realistic and needed penal reform in particular in Africa whereby local communities members “informally”¹ contribute to the CJS measures. This should facilitate to get the CJS aligned to the observed practices in the local communities as stipulated in a number of international instruments.

SECTION 2: STYLES OF SOCIAL CONTROL

It has been observed that to solve a conflict, and depending on the quality and nature of the existing relationship (relatives, neighbours, friends, etc.), members of a given local community often look at a restorative outcome. This leads us to the Compensatory and Conciliatory Styles of Social Control of Horwitz.

TABLE 1: ELEMENTS OF MAJOR STYLES OF SOCIAL CONTROL (A . V. HORWITZ: 1990:22)

STYLE ELEMENT	PENAL	COMPENSATORY	CONCILIATORY	THERAPEUTIC
1 HARM	VALUE	MATERIAL	RELATIONAL	PERSONALITY
2 LIABILITY	INDIVIDUAL	GROUP	SHARED	NONE
3 GOAL	RETRIBUTION	SETTLEMENT	RECONCILIATION	NORMALITY
4 SOLUTION	PUNISHMENT	PAYMENT	NEGOTIATION	TREATMENT

Under compensatory and conciliatory styles of social control, the liability is respectively on the group or shared. Settlement and/or negotiation are initiated for a restorative outcome. This leads us to state that without an effective involvement of the concerned groups (communities), access to local available resources is compromised and consequently a restorative outcome is doomed to failure or prone to serious challenges.

SECTION 3: A FRAMEWORK OF REFERENCE

The following international instruments serve the purpose:

1. The United Nations Standard Minimum Rules for non-custodial Measures (Tokyo Rules);
2. The Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (ECOSOC Resolution 2002/12, annex);
3. The Kadoma Declaration on Community Service and recommendations (Seminar held in San José, 3-7 Febr4ary, 1997);
4. The Lilongwe Declaration on Accessing Legal Aid in the CJS measures in Africa (ECOSOC Resolution 2007/24).

These instruments introduce a new perspective in the CJS, focusing principally on the effective involvement of local communities; considered as key stakeholders, in the implementation of the CJS measures. This approach aligns the CJS to the practices observed within local communities and facilitates, among others, the implementation of the above instruments by Member States. Hereafter are some illustrations.

2 See Diagram 1, p. 2.

1. Tokyo Rules:

Tokyo Rules call for the involvement of the community. For illustration, Rule 13.4 stipulates that:

“The competent authorities may involve the community and social support system in the application of non-custodial measures”.

Let us refer among others to “Community Service Order” as non-custodial and a post-trial measure of the CJS that is mainly meant to facilitate the successful social rehabilitation and reintegration of offenders.

2. Basic Principle on the Use of Restorative Justice Programmes in Criminal Matters:

The actors of the structures identified above² often are directly affected and are parties to the problem. Operative paragraph 1.4 of the Basic Principles defines parties as follows:

“Parties” means the victim, the offenders and any other individuals or community members affected by a crime who may be involved in a restorative process.”

The victim is not necessarily an individual. Other members: relatives, neighbours, friends, etc. are also victims depending on the nature and quality of the relationship as already indicated above. Each involved actor has a status and will act accordingly consistent with his/her status. There are also facilitators. Paragraph 19 singles out a condition being met by local communities and even sometimes observed by CJS officials (e.g. social workers, probation officers), that stipulates:

“Facilitator shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training taking up facilitation duties”.

UNAFRI training course for correctional officers³, as facilitators involved in the process of social rehabilitation and reintegration of prisoners, serves the purpose. The course helps them comply with the requirements mentioned in the instruments, and take advantage of the available local (human, material, socio-cultural, etc.) resource in communities for an effective social rehabilitation and reintegration of prisoners in their communities.

3. The Kadoma Declaration:

The Kadoma Declaration on “Community Service” recognises the value of traditional practices of healing the damage caused by crime as observed in local communities. Its Operative paragraph 3 posits:

“Community service is in conformity with African traditions of dealing with offenders and with healing the damage caused by crime within the community. Furthermore, it is a positive and cost-effective measure to be preferred whenever possible, to a sentence of imprisonment”.

4. The Lilongwe Declaration:

This is also an instrument that recognises traditional and community-based alternatives to formal criminal processes. Paragraph 5 stipulates:

“Traditional and community-based alternatives to formal criminal processes have the potential to resolve disputes without acrimony and to restore social cohesion within the community. These mechanisms also have the potential to reduce reliance upon the police to enforce the law, to reduce congestion in the courts, and to reduce the reliance upon incarceration as a means of resolving conflict based upon alleged criminal activity. All stakeholders should recognise the significance of such diversionary measures to the

3 UNAFRI's specialized course for correctional officers from East African sub-region took place in May 2009 at the Secretariat. The same course is proposed to other sub-regions. Workshops were organized in Kampala (Uganda), Nairobi (Kenya), Lusaka (Zambia) and in Juba (Sudan) in November-December 2008.

administration of a community-based, victim-oriented criminal justice system and should provide support for such mechanisms provided that they conform to human rights norms”.

SECTION 4: LOCAL COMMUNITIES’ MEMBERS CONTRIBUTION

The different instruments referred to above and the perspective they pave, are realistic as it is in support of practices already in use within local communities and sometimes in the CJS. Policy makers and implementers should be sensitized about such studies revealing the field social realities for needed and realistic reforms. Some few quotations hereafter show how, at Pre-trial (with a focus on pre-trial detainees) and Post-trial levels of the CJS, and even after a CJS caretaking, some of the selected instruments are implemented due to the effective involvement of local communities’ members.

1. The Pre-trial Level

Statistics at our disposal (See ICPS Report 2007) led us to consider that overcrowding in the African prisons is the consequence of long illegal detention (long periods awaiting trial, undue delay in commencement of trial). Some statistics from the Washington and Lee University project in Liberia on the implementation of the Lilongwe Declaration reveal the impact of an effective implementation of the Declaration. It is an effective implementation because it involves communities’ members in the exercise.

It is reported that the Central Prison in Monrovia, Liberia, was built to take in 300 inmates and prior to the implementation of the Lilongwe Declaration, there were 2000 inmates, as a result of the factors referred to above. About 400 participants including lawyers, magistrates, communities’ advocates, law enforcement agents, tribal and religious authorities were trained. These trainees had also trained a countless number of other people. After a year of the implementation of the project: August 2008 to April 2009, only 700 remained in the Central Prison. The project has been extended to other areas (S. Nkouli, 2009).

2. The Post-trial Level

Quotations hereafter reveal what the contribution of the members of a local community may be. In order to get access to these local available resources, social workers or probation officers should be trained to shift from exclusively penal style to compensatory and or conciliatory styles of Social control. This helps them, inter alia, to identify the local available resources within local communities. The statements here below reveal the types of contributions or assistance a neighbor, a friend and a local authority may offer for an effective implementation of the CJS measure.

1. Neighbours’ contribution:

A young woman with children, sentenced to a Community Service Order in Kadoma, Zimbabwe (···), had to serve her sentence in a hospital. When asked who was taking care of her children every time she was at the hospital. She answered that:

“I have very good neighbours. When I am here, they take care of my children. I am lucky having them”.

2. A friend’s contribution:

The second illustration is in line with the mission of the CJS: “the social rehabilitation and reintegration of prisoners”. It reveals the type of support a friend was able to offer to a former prisoner. A friend facilitated a former prisoner to get a job giving him the opportunity to practice the skills learnt in prison (N. Masamba Sita et al., 2005:27). During the social worker visit to AS (initials of the name of the former prisoner), one of his friends reported to the social worker the following:

“Truly I convinced AS to come to stay with me. He brought all his family this way. We are going to start a project with him. I have a school down here, it is a Muslim school. As is an expert in tailoring, so I would like him to teach the children tailoring ...”.

3. A Local Authority's Contribution:

This is about a "Local Council 1 Official (LC 1), the lowest administration unit in Uganda, who has connected KM, a former prisoner, to his employer who gave him the job of driver. The social worker reported the following:

"I asked him whether he was the one who had secured a job for KM. He said that since he knew that KM was a driver, he had a friend who was looking for one; so, it was easy to connect KM to him. Luckily enough he started working straight away, and informed me that everything had been a success for him and his family ever since he started working".

IN CONCLUSION

Cases referred to above reveal that the perspective sketched in the selected instruments is realistic. The exclusive focus on the traditional operation of the CJS, leaves unreported useful and innovative practices, accounting for the key role local communities have to play in support to the Correctional System in particular and to CJS mission in general.

UNAFRI calls upon Members States to internalise in their legislations the related instruments as they pave a realistic and a needed penal reform that leads to: "a more Community-based Criminal Justice System" in Africa and wherever it is appropriate. This perspective gives access to local available (human, material, socio-cultural, etc.) and crucial resources for an effective implementation of the CJS measures; and consequently facilitates restorative outcomes.

UNAFRI also calls upon its partners to reinforce their collaboration in order to offer Member States the needed technical assistance in the fields such as: action-oriented and/or evaluative research; capacity development of the CJS personnel, whose attitude generally is punitive, retributive, and reveals a conflict of caretaking logics: punitive/ retributive versus compensatory and conciliatory caretaking logics that lead to effective implementation of alternative measures for a restorative outcome.

This will definitely help to make this perspective fully operational. Such a perspective may help involve local communities even in the peace-keeping processes, in preparing both those who have been responsible for atrocities and the members of their communities of origin or of their choice, for an effective social rehabilitation and reintegration after release. The mission of the CJS, even during a post-conflict situation, does not change.