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Criminal justice reform and health

14 March 2017

SALC - Prison health and human rights

Introduction

- Legal systems inherited from Europe and the USA (Liberia). Common law and civil law. Also overlaps with Sharia law in some states.
- Post-independence many states drifted into less-than-democratic forms of government
- War/conflict, poverty, political instability (and failed states) have placed serious limitations on the extent to which general reform and criminal justice reform specifically could be implemented. African states are generally conservative in criminal justice reform.
- Police and prison services were inherited from the colonial administrations and there was little appetite to reform these according to developing human rights standards post- WWII.
- The colonial hangover is still reflected in current legislation.
- Law enforcement remained bias against the poor and marginalised.
- Poor prison health is part of and a function of a range of systemic problems, but it is an important and often the only acceptable lever for reform.

State responses

- Most African states are party to the major international human rights instruments including the UNSMR, UNCAT, Bangkok Rules, UNCRC etc. but prison reform has remained extremely limited and very often dependent on foreign aid that is not sustained.
- Prisons also receive extremely small budgets yet a greater focus on self-sufficiency has only been adopted by some states and for sporadic periods.
- Very few African states have implemented a sustained programme of prison infrastructure creation and maintenance with the result that many prisons have simply become unfit for human habitation.
- Progressive law reform has also been limited in developing alternatives to imprisonment. E.g. Zimbabwe on community services orders.
- In many states bail legislation is restrictive and bail is often set at unaffordable amounts, and some states have non-bailable offences.
- Access to legal representation is extremely limited although Mozambique is a success story in this regard (IPAJ)

Profile of PTDs as shaped by law enforcement

- The profile of prison populations are by and large shaped by the nature of policing in Africa - must maintain a certain social order
 - Colonial in history - “patrolling the boundaries of belonging”
 - Enforcement of petty offences
 - Violence and the threat of violence in arrests
 - Corruption
 - Police has negative public profile
- CSPRI study in 3 countries (Kenya, Moz and Zambia) found that the overwhelming majority of PTD are economically active, have a fixed address, 1st time arrested, live in a household with family members; makes an economic contribution to the household or is sole supporter. They do not live on the margins of society as social outcasts.
- People are arrested very often for, in effect, being poor and it is then expected that their families must provide essential goods to them in prison (food, soap, medicine etc. The effect is that the poor is subsidising imprisonment in Africa.

Criminal justice reform

- ACHPR has been rather silent on prison health although the Luanda Guidelines focus on arrest and PTD
- Aligning constitutions and subordinate criminal procedure and prisons law: post 1990 several African states have adopted new Constitutions but this has not necessarily translated into subordinated law reform.
 - Prisoner rights and minimum standards
 - Due process rights
 - Bail
 - Legal representation and para-legals
- Decriminalisation and declassification of certain offences is an important avenue to reduce prison population and the use of pre-trial detention
- Need a focus on socio-economic rights and the wider impact of PTD on families
- Effective oversight over arrest, detention and awaiting trial in prison –n few African states have designated police and prison oversight institutions and this is usually left to NHRI but not many African NHRI have an A-rating
- Empirical research is important to make meaningful policy engagement efforts

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