THE ADVOCATE

...DEFENDING HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

...ENRICHING OUR DEMOCRACY

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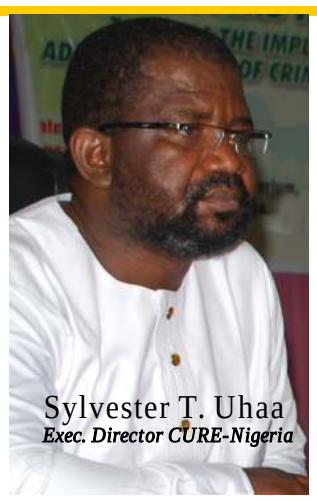

Sylvester T. Uhaa
Exec. Director CURE-Nigeria

CURE-NIGERIA EXTENDS LEGAL AID TO OLD AND NEW KEFFI PRISONS, CONDEMNS LONG COURT ADJOURNMENTS.

CURE-Nigeria, in its efforts to decongest prisons and give detainees access to legal aid as provided for by international and domestic law, has been providing legal defense on *probono* basis for poor detainees in Kuje and Sule Prisons in the FCT, and Old and New Keffi Prisons in Nasarawa States. The Executive Director of CURE-Nigeria, Mr. Sylvester Uhaa told our reporter that the organisation is currently providing legal aid for about 28 detainees in the four prisons. The intervention, which began in 2014, has seen the release of 14 detainees from jail.

He however cited long and unnecessary adjournments by courts, the inability of the prisons to produce detainees in court at every court date due to lack of vehicles, lack of diligent prosecution by prosecutors, and lack of witnesses as some of adjournment the major challenges the organisation is facing in providing this service to the needy.

Commenting on adjournments, Mr. Uhaa described the long and unnecessary adjournment of cases involving poor people, sometimes as long as three months and the short adjournments of cases involving high profile people usually few days, as discriminatory, a miscarriage of justice, and a deliberate attempt to keep rich people out of prison and to keep poor people in prison. “A justice system that discriminates against the poor and imprisons only the poor is not a justice system because it is not just; it should be called another name”, he said.

HANDBOOK ON PRISONER FILE MANAGEMENT

Contd. from last publication

Security and risk management.
An absent or ineffective file management system can have the following consequences:
* Authorities are ill-informed of the risk that prisoners present to themselves or to others whilst in detention and are therefore unable to protect prisoners and staff from harm authorities will be unable to identify the level of security or observation needed for individual prisoners, which may be a particular problem if individual behavior is not subject to regular or ongoing monitoring.

Transfer and release
An absent or ineffective file management system can have the following consequences:
* Prisoner information does not accompany the prisoner as they move from one institution to another; receiving institution does not have information to inform them about the prisoner's needs and thus the appropriate treatment and care. Will not know about medical needs, behavioral history, etc.

Resource planning
An absent or ineffective file management system can have the following consequences:
* Prison authorities are unable to effectively plan the allocation of resources, both in terms of finance and personnel.

Consequences for the justice system
Looking beyond the prison environment, the consequences of poor file management can have wider political ramifications.

Public accountability
Prisoner file management is an essential tool for demonstrating open and transparent institutions, and notably: that arrest and detention are lawful; that the rehabilitative purpose of imprisonment is respected and carried out; that imprisonment is serving to protect the public; and that prisons and detention facilities are not subjecting inmates to abuses such as torture and ill-treatment.

Public confidence in criminal justice and the rule of law
Openness and transparency in turn contributed to public confidence in the police, prison and other detaining authorities, as well as the justice system as a whole and the system of government. Public confidence has direct implications on political stability and public willingness to interact and cooperate with the criminal justice system.

Oversight and professionalism
Increasingly the conditions under which prisoners are held, and the records of their detention, are the subject of oversight from independent national, regional and international bodies.

Cont. on page 5

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Cont. on page 7-8

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS

Contd. from last publication

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

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(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

To be contd.

THE UNITED NATION RULES ON THE TREATMENT OF WOMEN PRISONERS

Contd. from last publication

Mental health (Rule 6 (b))

* On entry screening should include an examination of the prisoner's mental health by a qualified mental health practitioner, to determine her mental health care needs, including for example, the existence of any post-traumatic stress disorder. It may not be practical or advisable for the screening to determine mental health care needs to be undertaken immediately on the day of admission, due to the distress and confusion which a woman is likely to be experiencing on her first day in prison. A nurse may undertake an initial assessment for any urgent needs, including the continuation of any mental health care treatment already being received, and refer patients who need immediate attention to mental health practitioners.

* A comprehensive screening may be undertaken within a week of admission after the woman has settled into her new environment.

* Those with mental health problems should be channeled into the least restrictive housing and receive appropriate individualized treatment from the outset of their imprisonment. (see Rule 12 and 13)

* Risk of suicide and self-harm should form an essential element of the assessments on admission, undertaken by a qualified mental health practitioner, and suitable support, counseling and treatment should be provided to women at risk. (see Rule 16)

* In cases where women are diagnosed to have severe mental health problems, such women should be diverted to specialized, suitable and acceptable community health care services, wherever possible, and legislation should be reviewed and revised to enable this process, as necessary.

* In all cases the women themselves should be fully informed of the treatment offered, expected outcomes and any risks involved. The women should participate in decision-making regarding their treatment plan and the treatment should only be initiated following the patient's informed consent. Measures should be taken to provide access by persons with mental disabilities to the support they may require in exercising their legal capacity, as required by the Convention on the Rights of Persons with Disabilities (CRPD). All measures that relate to the exercise of legal capacity should provide for appropriate and effective safeguards to prevent abuses in accordance with international human rights law. As noted by UNODC, "admittedly, the implementation of supported decision-making processes is challenging in prisons, and especially where resources are scare. On the other hand, there is particular risk of abuse in custodial settings, so adequate safeguards to protect prisoners with mental disabilities against treatment without free and informed consent are all the more vital. These realities represent additional strong arguments against imprisoning persons with mental disabilities, unless absolutely necessary.

* The medical examination offered on entry should include a screening of women's reproductive health history, including recent pregnancies, childbirth, abortions and any related reproductive health complications, and ensure that appropriate treatment and care is provided from the outset of imprisonment, based on an individualized health care plan.

* As has already been mentioned, the prisoner's informed consent is required for all medical examinations. Women should not be forced to provide information about their reproductive health history, for example, recent pregnancies or abortions, in line with the underlying principles of medical confidentially, which is reiterated in Rule 8.

* Where a woman has undergone an illegal abortion she should never be forced to provide information about the person who conducted the abortion as a condition for providing medical treatment. The policies of prison health care services should incorporate the needs of this group of women prisoners and provide the physical and psychological care such women need, on an impartial and non-discriminatory basis. Where necessary such women should be transferred to community hospitals for treatment.

Substance dependence (Rule 6(b)

* Women being admitted to prison should be screened for substance dependency by qualified health specialists to ensure that appropriate treatment and care is provided to women with substance dependencies.

* The purpose and possible consequences of the screening, including the treatment and services available for drugs dependency in the prison and the extent to which such treatment can remain confidential, should be explained to the women, whose informed consent to the screening should be sought before any examination is undertaken. If the woman decides not to undergo screening or disclose any dependencies, this should be noted in her medical file.

* Women who are found to be drug dependent should not be penalized. Their drug dependence should be treated as a health care problem and they should receive appropriate, voluntary treatment, from qualified health care practitioners to help them overcome their dependence and live positive and self-supporting lives following release. (see Rule 15)

Torture and ill-treatment, including sexual violence (Rule 6(e)

Legislative measures:

* Domestic legislation should be reviewed and, where necessary, revised to ensure that torture is a criminal offence and that it includes explicitly custodial rape as a form of torture. In line with definitions of rape and sexual violence adopted by the International Criminal Court and International Criminal Tribunals for Rwanda and Former Yugoslavia, referred to earlier, the definition of rape should note limited to vaginal or anal penetration by the sexual organ, and other forms of sexual abuse in places of detention should be included in legislation as forms of ill-treatment or torture, depending on their nature and severity.

* States should put in place measures to ensure that prisoners who become victims of sexual violence have access to an independent Judicial assessment of their cases, and that they are provided with free legal assistance during this process.

Practical measures:

* Prison authorities and health care services should ensure that all medical examinations on admission include an examination for signs for any abuse or ill-treatment.

* Prison administrations should issue guidelines to prison staff on the steps to be taken when a woman complains of having been ill-treated or tortured when she is admitted to prison.

* Prison staff and prison health care should receive specific training on facilitating women who have been subjected to ill-treatment and tortue, including sexual violence, to come forward and talk about their experience, as well as on responding to women who complain of ill-treatment and tortue, in a sensitive and professional manner.

* If a woman complains of having been ill-treated, including by having been subjected to sexual violence, she should be examined as a priority. In such cases medical examinations should be undertaken immediately on admission to prison…

* Any woman complaining of ill-treatment and torture, including rape or other forms of sexual violence, should have the right to be examined by an independent health professional, due to the particular need for trust on the part of the victim and impartiality on the part of the doctor.

* The doctor should explain to the victim all possible medical and forensic options and should act in accordance with the victim's wishes. The duties of the physician include obtaining voluntary informed consent for the examination, recording of all medical findings of abuse and obtaining samples for forensic examination.

* Whenever possible, the examination should be performed by an expert in documenting sexual assault. Otherwise, the examining physician should speak to an expert or consult a standard text on clinical forensic medicine. Ideally , there should be adequate physical and technical facilities for appropriate examination of survivors of sexual violation by a team of experienced psychiatrists, psychologists, gynecologists' and nurses, who are trained in the treatment of survivors of sexual torture.

* Where the alleged assault occurred more than a week earlier and there are no signs of bruises or lacerations, there is less immediately in conducting a pelvic examination. Time can be taken to try to find the most qualified person to document findings and the best environment in which to interview the individual. However, it may still be beneficial to properly photograph residual lesions , if this is possible.

An additional purpose of the consultation after sexual assault is to offer support, advice and, if appropriate, reassurance. This should cover issues such as sexually transmitted infections, HIV, physical damage; see also Rule 25 (2) for further guidance.

To be contd.

UNITED NATION STANDARD MINIMUM FOR ADMINISTRATION OF JUVENILE JUSTICE

Contd .from last publication

13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2(b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, inter alia , should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

Part three

ADJUDICATION AND DISPOSITION

14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile-a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

16. Social inquiry reports

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the

gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the

Cont. on page 6

HANDBOOK ON PRISONER FILE MANAGEMENT

Contd .from page 1

The compulsory system of inspection by national and international bodies established under the Optional Protocol to the United Nations Convention against Torture (OPCAT) is described on pages 10 to 11. Other United Nations procedures may be invited by the government and given access to places of detention. Some regional systems, notably the European Committee for the Prevention of Torture, carry out on –site inspections. Many States are now appointing lay inspection bodies that visit by appointment or, in some cases, when they wish.

All these oversight mechanisms will need to inspect the files of prisoners. The completeness and accuracy of the files will tell the inspection body a great deal about the professionalism of the detaining authority and the commitment of that State to international human rights.

If States do not treat prisoners humanely and fairly, and in a lawful manner, this may have detrimental consequences for international cooperation. Law enforcement officials, for example, may find that other states are not willing to assist in investigations that go beyond their borders. States may equally be unwilling to enter into extradition agreements.

4. Requirements to Comply with International law and standards

The following requirements are consistent with international standards referenced throughout this Handbook. The requirements illustrated below only stipulate the creation of a file, and the minimum content requirement for that file in accordance with these standards.

Some requirements need the force of national law, while others can be as effectively introduced as regulation, policy or local procedure. Law is necessary when the intent is to hold the detaining authority to account, policy is generally a means used to define what is expected, and procedure is normally a means to define how something will be done.

On initial detention

The following file requirements need the force of national law, and must be applicable to any agency that has the legal authority to detain any person;

* The detention of any person must be immediately followed by the entry of the person's name into an official registry, and the creation of an official file.

* The file must identify the person using a means that is defined acceptable in the state. A photograph must be taken as soon as possible. Fingerprint identification is an often expected international standard. The date of birth, age, marital status including identity of spouse, next of kin, number and identity of children must also be recorded in the file.

* Children, juvenile persons and women must be identified as such in the registry, and in the file that is created.

* The file must identify the specific reason that the person has been detained, the date and time of detention and the specific location of their detention.

* The file must document contact by the detained person with family or counsel

* Contact with family or counsel must occur at least within a specified period after initial detention. This must be recorded.

* The file must document any physical or mental health concerns reported or observed, and if there are none, this also must be documented.

* The identified family, next of kin, or legal counsel must be advised of any movement. of the person from one point of detention to another point of detention, together with the reason for the movement.

* The file must document any personal items that are taken away from the person when they are detained.

* The file must document any transfer of authority to another agency.

* All files may be accessed by an identified external oversight authority.

* Files audits must be conducted at identified periods by an identified oversight authority.

* Files must be retained indefinitely,

On admission to a correctional facility

The following file requirements need the force of national law, and must be applicable to any correctional institution that accepts untried or convicted prisoners, or both

1. The name of the person must be entered into an official registry for the correctional facility, and an official file must be opened recording the date and time of admission.

2. The file must identify the person using a means that is defined acceptable in the state. A photograph must be taken as soon as possible.

3. The file must contain a lawful warrant authorizing admission. The transfer to correctional institution authority must be a formalized and documented procedure. Admitting staff must be as certain as possible of the identity of the person being admitted.

4. Admitting documentation must include contact information for next of kin, and the prisoner's initial contact of next of kin or legal counsel must be recorded. Where no such contact occurs, the offer of opportunity for contact must be recorded.

5. Admitting documentation must include a medical examination, and must note the condition of the person, with particular attention to any mental or physical health concerns, having due regard to the possibility of medication requirements and of abuse at the hands of the original detaining authority.

6. The file must contain detailed identification of personal effects either allowed into the institution, or taken from the person to be held by the institution.

7. The file of a sentenced prisoner must include a sentence calculation that is completed within a specified period, and a copy must be provided to the prisoner.

8. The file of a sentenced prisoner must identify the cell number or bed number to which they are assigned.

9. The file of a sentenced prisoner must contain their classification which has been completed using methods defined in policy and procedure.

10. All of the foregoing requirements also apply to the detained person, with the exception of No. 9, and No. 10.

11. The file must document all disciplinary charges against the person, and it must document the results of any disciplinary processes undertaken.

12. The file must document all transfers and the lawful reasons for those releases.

13. All file must document all releases and the lawful reasons for those releases.

14. All files may be accessed by an identified external oversight authority that is defined. The external authority can be administrative or judicial, but in all cases must report to a higher authority than the head of the correctional system.

15. File audits are required at identified periods by an external oversight authority.

16. File must be retained indefinitely.

To be contd.

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possible minimum;
(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.
17.2 Capital punishment shall not be imposed for any crime committed by juveniles.
17.3 Juveniles shall not be subject to corporal punishment.
17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary
The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:
(a) Rehabilitation versus just desert;
(b) Assistance versus repression and punishment;
(c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
(d) General deterrence versus individual incapacitation.
The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.
It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.
Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.
In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed,11 bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.
Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.
The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6,
paragraph 5, of the International Covenant on Civil and Political Rights.
The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.
The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

18. Various disposition measures
18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:
(a) Care, guidance and supervision orders;
(b) Probation;
(c) Community service orders;
(d) Financial penalties, compensation and restitution;
(e) Intermediate treatment and other treatment orders;
(f) Orders to participate in group counselling and similar activities;
(g) Orders concerning foster care, living communities or other educational settings;
(h) Other relevant orders.
18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary
Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.
The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph l, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

19. Least possible use of institutionalization
19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary
Progressive criminology advocates the use of non-institutional over institutional treatment.
Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences.
Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.
Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

Cont. on page 9

Cont. from page 1

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1.All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

especially designated by the competent authority.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Cont. from page 7

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

To be contd.

Cont. from page 6

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties.

Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders.

Thus, professional on-the job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

Part four

NON-INSTITUTIONAL TREATMENT

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

To be contd.

UNITED NATIONS PRINCIPLES & GUIDELINES ON ACCESS TO LEGAL AID

Contd. from last publication

61. To this end, States could take measures:

(a) To establish a legal aid fund to finance legal aid schemes, including public defender schemes, to support legal aid provision by legal or bar associations; to support university law clinics; and to sponsor nongovernmental organizations and other organizations, including paralegal organizations, in providing legal aid services throughout the country, especially in rural and economically and socially disadvantaged areas;

(b) To identify fiscal mechanisms for channelling funds to legal aid, such as:

(i) Allocating a percentage of the State's criminal justice budget to legal aid services that are commensurate with the needs of effective legal aid provision;

(ii) Using funds recovered from criminal activities through seizures or fines to cover legal aid for victims;

(c) To identify and put in place incentives for lawyers to work in rural areas and economically and socially disadvantaged areas (e.g., tax exemptions or reductions, student loan payment reductions);

(d) To ensure fair and proportional distribution of funds between prosecution and legal aid agencies.

62. The budget for legal aid should cover the full range of services to be provided to persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence, and to victims. Adequate special funding should be dedicated to defence expenses such as expenses for copying relevant files and documents and collection of evidence, expenses related to expert witnesses, forensic experts and social workers, and travel expenses. Payments should be timely.

Guideline 13. Human resources

63. States should, where appropriate, make adequate and specific provisions for staffing the nationwide legal aid system that are commensurate with their needs.

64. States should ensure that professionals working for the national legal aid system possess qualifications and training appropriate for the services they provide.

65. Where there is a shortage of qualified lawyers, the provision of legal aid services may also include non-lawyers or paralegals. At the same time, States should promote the growth of the legal profession and remove financial barriers to legal education.

66. States should also encourage wide access to the legal profession, including affirmative action measures to ensure access for women, minorities and economically disadvantaged groups.

Guideline 14. Paralegals

67. States should, in accordance with their national law and where appropriate, recognize the role played by paralegals or similar service providers in providing legal aid services where access to lawyers is limited.

68. For this purpose, States should, in consultation with civil society and justice agencies and professional associations, introduce measures:

(a) To develop, where appropriate, a nationwide scheme of paralegal services with standardized training curricula and accreditation schemes, including appropriate screening and vetting;

(b) To ensure that quality standards for paralegal services are set and that paralegals receive adequate training and operate under the supervision of qualified lawyers;

(c) To ensure the availability of monitoring and evaluation mechanisms to guarantee the quality of the services provided by paralegals;

(d) To promote, in consultation with civil society and justice agencies, the development of a code of conduct that is binding for all paralegals working in the criminal justice system;

(e) To specify the types of legal services that can be provided by paralegals and the types of services that must be provided exclusively by lawyers, unless such determination is within the competence of the courts or bar associations;

(f) To ensure access for accredited paralegals who are assigned to provide legal aid to police stations and prisons, facilities of detention or pretrial detention centres, and so forth;

(g) To allow, in accordance with national law and regulations, court accredited and duly trained paralegals to participate in court proceedings and advise the accused when there are no lawyers

available to do so.

Guideline 15. Regulation and oversight of legal aid providers

69. In adherence to principle 12, and subject to existing national legislation ensuring transparency and accountability, States, in cooperation with professional associations, should:

(a) Ensure that criteria are set for the accreditation of legal aid providers;

(b) Ensure that legal aid providers are subject to applicable professional codes of conduct, with appropriate sanctions for infractions;

(c) Establish rules to ensure that legal aid providers are not allowed to request any payment from the beneficiaries of legal aid, except when authorized to do so;

(d) Ensure that disciplinary complaints against legal aid providers are reviewed by impartial bodies;

(e) Establish appropriate oversight mechanisms for legal aid providers, in particular with a view to preventing corruption.

Guideline 16. Partnerships with non-State legal aid service providers and universities

70. States should, where appropriate, engage in partnerships with non-State legal aid service providers, including non-governmental organizations and other service providers.

71. To this end, States should take measures, in consultation with civil society and justice agencies and professional associations:

(a) To recognize in their legal systems the role to be played by non-State actors in providing legal aid services to meet the needs of the population;

(b) To set quality standards for legal aid services and support the development of standardized training programmes for non-State legal aid service providers;

(c) To establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular those provided at no cost;

(d) To work with all legal aid service providers to increase outreach, quality and impact and facilitate access to legal aid in all parts of the country and in all communities, especially in rural and economically and socially disadvantaged areas and among minority groups;

(e) To diversify legal aid service providers by adopting a comprehensive approach, for example, by encouraging the establishment of centres to provide legal aid services that are staffed by lawyers and paralegals and by entering into agreements with law societies and bar associations, university law clinics and non-governmental and other organizations to provide legal aid services.

72. States should, where appropriate, also take measures:

(a) To encourage and support the establishment of legal aid clinics in law departments within universities to promote clinical and public interest law programmes among faculty members and the student body, including in the accredited curriculum of universities;

(b) To encourage and provide incentives to law students to participate, under proper supervision and in accordance with national law or practice, in a legal aid clinic or other legal aid community scheme, as part of their academic curriculum or professional development;

(c) To develop, where they do not already exist, student practice rules that allow students to practise in the courts under the supervision of qualified lawyers or faculty staff, provided that such rules are developed in consultation with and accepted by the competent courts or bodies that regulate the practice of law before the courts;

(d) To develop, in jurisdictions requiring law students to undertake legal internships, rules for them to be allowed to practise in the courts under the supervision of qualified lawyers.

Guideline 17. Research and data

73. States should ensure that mechanisms to track, monitor and evaluate legal aid are established and should continually strive to improve the provision of legal aid.

74. For this purpose, States could introduce measures:

(a) To conduct regular research and collection of data disaggregated by the gender, age, socioeconomic status and geographical distribution of legal aid recipients and to publish the findings of such research;

(b) To share good practices in the provision of legal aid;

(c) To monitor the efficient and effective delivery of legal aid in accordance with international human rights standards;

(d) To provide cross-cultural, culturally appropriate, gender-sensitive and age-appropriate training to legal aid providers;

(e) To improve communication, coordination and cooperation between all justice agencies, especially at the local level, to identify local problems and to agree on solutions to improve the provision of legal aid.

Guideline 18. Technical assistance

75. Technical assistance based on needs and priorities identified by requesting States should be provided by relevant intergovernmental organizations, such as the United Nations, bilateral donors and competent non-governmental organizations, as well as by States in the framework of bilateral and multilateral cooperation, with a view to building and enhancing the national capacities and institutions for the development and implementation of legal aid systems and criminal justice reforms, where appropriate.

PENSION AGONIES IN NIGERIA

By Promise Izugbara

Some pensioners waiting for Ahmed Isah of Brekete Family at Unity Fountain, Abuja. Photo by Promise Izugbara

Verification exercise for pensioners has been forgive the one of the most painful experiences pensioners go through. Many pensioners have slumped and died, while many have urinated or defecated on themselves at verification centers. As a result, a lot of pensioners let go their sweat to evade suffering. I know a pensioner who worked in Abuja but now lives in Lagos. She is close to eighty, but still comes to Abuja for verification; she travels by road. She is just one among many pensioners who have to travel long distances for these verifications.

When a pensioner has to travel a long distance to Abuja without having someone with whom he or she could stay with, he / she lives in the open air till the exercise is over. And these exercises never end in one day. I have seen situations where some arrived on the date they were told to come, just to be told they have to wait for their turn in five days time. And one wonders why they are not given the correct information, and why the Pension Board does not communicate directly to each of them regarding verification dates.

How Nigerian Government could Tackle Pension Agonies

1. Using banks for verification exercises. The banks will report back to government, ministry or appropriate bodies in charge of the pension with captured faces, fingers, voices where needful. So, every pensioner goes to the nearest designated bank to him or her. Banks can also send their staff to the homes of ailing pensioners with machines for capturing. This will cut cost of traveling and introduce sanity into the system.

2. Government should provide liaison offices in at least three major towns in each State or one verification Centre in each local government, where pensioners can do their verification. Like the banks, liaison offices should send their personnel to the homes of ailing pensioners for capturing. This will create jobs for many unemployed Nigerians.

3. Direct use of home service providers. The government can use contractors to do this. No senior citizen needs go any where as the service is brought to him or her wherever he or she lives.

4. Traditional rulers. Traditional rulers have an acknowledged role in maintaining peace and order at the very grass root. Government can use their elevated office for verification of pensioners within their territories.

Birth and Death Registration Offices: There should be offices in all local government areas in Nigeria to register every birth and death of persons within that domain. These offices should undertake the verification of pensioners and report the deaths to appropriate authorities.

HEAD TEACHER LAMENTS SHORTAGE OF TEACHERS AS EXECUTIVE DIRECTOR CALLS FOR INVESTMENT IN EDUCATION

Academic activities are below expectations at the L.E.A Primary School Jahi, Kado-Kuchi in the nations' capital. Like many head teachers in other primary schools in the FCT and around the country, the head teacher, Hajiya Sefinat Danga blames the deteriorating quality of education in her school on lack of teachers and other infrastructure, and called on the FCT to come to the aid of the school. Also, she called on the F.C.T Water Board to provide the school with water, as there is no borehole within the reach of the school.

Another challenge facing the school is intrusion by the public, as the school is not fenced, making it easy for motorists and bike riders to drive through the school even during school hours, posing security and safety concerns.

Reacting to the situation in this school, the Executive Director of CURE-Nigeria, Mr. Sylvester Uhaa, who is a researcher at the University of Oxford in the UK on the right to education in Nigeria, has called on the Federal Government to reverse its proposed plan to feed primary school pupils. According to him, " the plan to feed pupils is noble, but it is wrongly timed". "To feed pupils in schools where there are no teachers, no toilets, no desks, no chairs, no libraries, and where the roofs leak does not make sense", he added. He said the money budgeted for this should be used to revive the decayed infrastructure in primary schools across the nation, recruit qualified teachers and provide teaching aids and ensure that all services in primary school are free in line with the UBE Act 2004. He warned that the planned feeding of pupils will trigger a very high school enrolment, which will put more pressure on the already fragile infrastructure and further dilute the already poor quality of education in primary schools and create other problems in the system. In addition, the planned budget will soon become insufficient and government will be forced to either increase it or abandon the programme. He described the programme as bogus and unsustainable. Mr. Uhaa concludes that, while he appreciates the Federal Government's efforts to improve children's welfare, he argues that spending such an amount of money on feeding will have a very small impact on education compared to improving infrastructure and will be counter-productive to government's commitment to improving education.

Justice and Prisoner's Families

by Anna Kotova, University of Oxford.

Contd. from last Edition.

It should also be pointed out that those who support prisoners are usually women – wives, girlfriends, mothers and sisters (Condry, 2007, see also Christian, 2005 for the US context). Thinking about social justice in this context should incorporate this gender aspect of the issue as well, since women, often face domination and oppression. Society often takes women's care-work for prisoners (and care work in general) for granted as a 'natural' female role or duty (Aungles, 1993), rarely recognising that this work may be financially, emotionally and socially burdensome. We need to engage with and challenge the prevailing conception of women as natural caregivers and homemakers, a conception that permeates our society in general and criminal justice in particular. For example, it is startling that women in the UK may easily lose their social housing if their sons, and/or male partners act antisocially, even when these women have done nothing wrong themselves (Hunter and Nixon, 2001). The underlying rationale seems to be that it is a woman's duty to control 'her' men and the domestic domain (see Hunter and Nixon, 2001).

In the context of prisoners' families, it is worth noting that the experiences of prisoners' families may be mediated by their gender: women are more likely to have a financial Justice and prisoners' families and social status that is dependent upon their imprisoned male relatives' status, which facilitates the transfer of stigma from the incarcerated male to his female relative (Hannem, 2008). Whereas male relatives may also suffer significantly if their loved one is imprisoned, their social status is not usually dependent on that of their imprisoned relatives' (Hannem, 2008). Since women's social statuses are linked to those of 'their' men, it is easier for women's identities to be corrupted or tainted when these men are imprisoned. For example, wives of sex offenders are often blamed for their husbands' offending, and vilified themselves, as happened to Laurie Fine, the wife of a sports coach accused of molesting young boys, who was herself accused (by ESPN, a TV channel) of facilitating and condoning her husband's actions (O'Brien, 2012).

Relatedly, research indicates that it is primarily female relatives of prisoners who shoulder the burden of supporting both male and female prisoners (see Condry, 2007, Comfort, 2008). This often includes spending significant amounts of time and money to send parcels to prisoners, write letters, visit, and supply money (Condry 2007, Comfort,2008). Yet this care-work is unrecognised and unsupported at any level – in fact, families may be stigmatised precisely because they are maintaining their relationship with a prisoner and supporting him or her (see Condry, 2007). Young (2011) talks about cultural imperialism, the processes whereby minority groups are invisible and markedout and stereotyped

simultaneously. Although Young (2011) primarily talks of racial and sexual minorities, this issue is also relevant to prisoners' families in general, and prisoners' female relatives in particular. The difficulties they face as a result of imprisonment are invisible, yet at the same time they experience courtesy stigma and are 'othered' (see above). It should be noted that the above injustices are complex and interrelated. A punitive socio-cultural climate, for example, makes it easier to see the collateral consequences of imprisonment for prisoners' families as 'natural'. Ethnic minorities are also more likely to be economically disadvantaged (see Comfort, 2008). The invisibility of prisoners' families is fed by, and feeds into, stigma and feelings of worthlessness and shame. In discussing social injustices in the context of prisoners' families, it is important to bear these interrelations in mind.

Conclusion

Thinking about social justice will certainly draw attention to the four injustices described above. Although beyond the scope of this paper, it is worth noting that the next step would be to begin thinking carefully about what can be done to address these injustices. It is far from clear that the state is best placed to directly engage with prisoners' families – there is a potential that direct engagement could result in further stigmatisation. Arditti (2012) suggests that the state could do much in terms of harm reduction (reducing the harm caused by imprisonment) and promoting human development. Neither, however, need to take the form of direct state–prisoners' families engagement. Harm reduction could be promoted via a movement towards using less imprisonment (see Arditti, 2012) and better funding for charities working with prisoners' families, as well as government schemes to combat poverty and gender and race inequality in general. Promoting human development as envisaged by Arditti (2012) refers to applied developmental science for welfare improvements among prisoners' families. Programmes and policies that seek to empower would fall within this category, key features of which can include viewing the clientele as active agents, and grass-roots projects – something the state could promote via funding research and implementation of well-thought out community programs for prisoners' families (see Arditti, 2012).

Families of prisoners often experience a range of injustices – many are financially disadvantaged and stigmatised, and women's care-work in this context is often taken for granted by policymakers and society alike. If social justice is about the elimination of domination and oppression, then this is certainly a group whose needs ought to be recognised and engaged with. Yet the current punitive socio-cultural climate means that these injustices are either invisible or seen as natural consequences of imprisonment –imprisonment that we, as a society, have consciously chosen as a method of punishment (see Lacey, 2013). We should, therefore, take responsibly for that choice and for its collateral consequences.

Annex: Re-Imagining Penal Policy

- This paper has argued that to do justice for prisoners' families, we need to rethink what justice means within criminal justice. A dialogue about social justice, both in the academy and among policymakers, needs to happen.

- Thinking about social justice is likely to help us move away from the current punitive, deserts-focused conception of justice.

- It will also highlight the numerous social injustices experienced by prisoners' families – the invisibility of the highly negative impact of imprisonment on these families, as well as racial, gender and economic injustices.

- Social justice is a concept that could help us re-imagine penal policy by exposing the collateral consequences of imprisonment on prisoners' families and the broader injustices which currently mark the criminal justice system. Exposing and debating these injustices could provide the impetus for positive policy change.

- Finally, gender, racial and economic injustices, as well as the punitive and exclusionary nature of the current criminal justice system, are all issues that go beyond the context of prisoners' families. These are complex issues that penal policy needs to address in general.
  Source: www.Howardleague.org/what-is-justice/

When I Was in Prison...'

February 29, 2016 Issue

Editors

Martin Acosta, a Salvadoran imprisoned at a private contract prison in Reeves, Tex., for his illegal re-entry into the United States, complained of abdominal pain in the summer of 2010. In 20 visits to the infirmary he had seen a doctor only once. By the time he saw one in December, he could no longer eat. In the hospital they found a massive tumor in his abdomen. He died in January.

Jesus Enrique Zavala Montes, 28, serving five months for illegal entry, arrived at Taft prison in California with a record of attempted suicide. He was sent to solitary confinement for "protective custody," awaiting a psychiatrist, who did not come. He hanged himself. These stories, recounted in Seth Freed Wessler's "Separate, Unequal, and Deadly" (The Nation, 2/15), are about only two of the 137 immigrants who died in 11 for-profit prisons between 1998 and 2014. These prisons, which are distinct from immigration detention centers, were built as more undocumented immigrants were charged with serious crimes, mostly drug-related. They now house approximately 23,000 people.

Federal rules for government-run prisons require educational programs, addiction treatment, health care and rehabilitative services. When a retired doctor volunteered at a contract prison, he discovered that to raise profits they skimped on services, kept sloppy records, failed to provide doctors or well-trained nurses and refused his requests to transfer patients to hospitals that might save them.

The problems with for-profit prisons are well documented—a lack of oversight, a commitment to shareholders rather than the public good. In "Wardens From Wall Street: Prison Privatization" (2000), the Catholic Bishops of the South called for "the end of all for-profit prisons." How many deaths will it take for us to see the wisdom of their recommendation?

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