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bulletin

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Human rights dilemmas in using collaborators to prevent terrorism: the Israeli–Palestinian case

Since the occupation of the West Bank and Gaza Strip in June 1967, the state of Israel has both openly and covertly recruited and operated collaborators in these areas as part of its security policy. Accurate figures on the number of the recruits are not available, but according to reliable estimations, thousands of Palestinians have worked for various Israeli agencies over the years. Over one thousand alleged collaborators have been killed by Palestinian activists, most of them during three purges: the armed resistance against the Israeli occupation in the Gaza Strip in the early 1970s; the first *intifada* (the Palestinian uprising of 1987–1992) and the last two years of the current conflict. Nevertheless the phenomenon of collaborating persists.

Historically, Israel has had three main objectives for operating collaborators in the Occupied Territories: achieving political influence, acquiring lands for Jewish settlements and implementing counter-terrorism. The use of collaborators for counter-terrorism, in particular, raises some salient ethical questions.

Based on the premise that any state has the right to defend itself from terror attacks by using informers, the ways in which informers are recruited and run should be regulated according to ethnical guidelines. This is similar to the recognised right of a state to detain and interrogate suspects of serious crime or terror activity whilst restricting the means of interrogation (i.e. prohibiting torture). The main

In this special issue on human rights and security . . . Hillel Cohen presents an Israeli–Palestinian case study on the human rights dilemmas in using collaborators to prevent terrorism, Frances Webber examines how the human rights of refugees are being undermined in the current context of the *war against terrorism* and Vivien Stern discusses changes in penal reform in Africa.

ethical dilemmas in operating collaborators can be divided into three arenas: the process of recruitment, the assignments imposed on the informer and the responsibility of the state to a collaborator's wellbeing after being exposed.

Recruiting – whom and how?

One main strategy of Israeli intelligence activity in the Palestinian areas, before and after the establishment of the Palestinian National Authority (PNA), has been a continuous attempt to recruit as many informers as possible. The very nature of the intelligence work is pro-active and preventative, that is to say information has to be acquired before an attack, not afterwards. Therefore, a very common practice of the General Security Service (GSS, the Israeli *Shabak*), has been to pressurise almost every Palestinian, who applies to the Israeli authorities for any basic requirements (i.e. work and travel permits), to collaborate. This is facilitated by the fact that Israel is still the sovereign power in parts of the occupied territories and is responsible for all the border controls of the PNA.

This situation raises the dilemma of the extent to which it is legitimate to use this power. Permitting holiday travel on the condition of collaborating is one thing, but to pressurise collaboration in exchange for a work permit or medical treatment is another. Indeed, there have been cases where Israeli intelligence has used medical predicaments as a means of pressure.

The prevention of medical treatment seems highly problematic and a concrete violation of a person's rights. However, when faced with the prospect of terrorist atrocities, one needs to consider the benefits that can be gained from the quality of information that each individual can provide. In other words, even if one argues that it is not ethical to recruit any person in this way, perhaps a person who has access to information about planned suicide bombings should be considered differently.

There is a similar dilemma in regard to the age of recruits. Should the security services limit the age of recruitment to 18 years of age and above, for example? According to Palestinian sources, Israel has recruited children of 13 or 14 years. Should child recruitment be categorically banned? Or should this also be dependent on the quality of information that the child might provide? Other dilemmas exist including the use of blackmail as a strategy for recruitment or the use of criminals.

Operating – legitimate assignments?

The nature of an informers' work is to intrude on the privacy of other people, and thereby undermine, to some extent, their security and rights. Should the security services have a free hand to orchestrate this, or only in cases where there is a direct and concrete threat to the lives of others? In the case of the Israeli security services, whilst there are legal limitations on the extent to which they can intrude upon the lives of Israeli citizens, this does not apply to Palestinians in the Territories. Another dilemma arises in using collaborators in the context of family relationships. For example, on what basis is it legitimate to demand an informer to report on a family members' whereabouts and activities, knowing that this kind of activity affects family ties and loyalties? Should informers be sent to track their parents or children on a regular basis or should it be restricted to unique cases only, if at all?

Using collaborators for enabling assassinations of confirmed terrorists, even if one accepts the Israeli argument that it is legitimate, raises further questions. Is it justifiable to use the dependency (financial or psychological) of collaborators to pressurise them into this kind of activity? In many cases the collaborators are unaware of the implications of their act. A relatively well known case is that of Alan Bani-

Photo: Associated Press

Alan Bani-Odeh is guarded by two Palestinian policemen at his trial on 7 December 2000. He was sentenced to death for his role in the killing of a relative and Hamas leader, Ibrahim Bani-Odeh.

Odeh from the town of Tammun in the northern West Bank. In November 2000, he came to meet his operator from the GSS in a car belonging to his cousin, a Hamas activist. While in a meeting, the GSS placed explosives in the car parked outside. The day after, when his cousin drove the car, it was blown up by remote control, killing his cousin. Is it legitimate to use collaborators as conduits for assassinations when, as in the case of Bani Odeh, they have no intention to kill?

Long-term responsibilities

The case of Alan Bani-Odeh can illuminate the third kind of dilemma, namely, the responsibility of the state to the collaborator after the mission is accomplished. In his case, the Palestinian Authority arrested Bani-Odeh, and in February 7, 2001, he was sentenced to death. Had he been an Israeli solider, the state would have done its best to release him, by negotiations or by force. But the fate of Bani-Odeh, like many other collaborators, was left to the Palestinian Authority to decide.

In many cases Israel helps the collaborators to find accommodation and work inside Israel. However, in many other cases, Israel tends to ignore them, especially when they are seen to be of less value for the security services.

Regulatory framework?

Whilst the defence against terrorist activities makes the use of collaborators necessary, and regardless of the debate of whether the attacks are an outcome of, or cause for, the Israeli occupation, it seems that there is a need to set clear regulations in regard to all of the issues above. These regulations should be publicly available. In addition, there is a need to establish an authority to be in charge of dealing with violations against these regulations, be it the Supreme Court or another institution. Such an apparatus would benefit all the parties involved. The intelligence officers would have moral guidelines helping them to avoid acting illegally and individuals that suffer pressures from the security services would have somewhere for their complaints to be addressed. Thus, a regulatory framework would minimise, though not prevent, the violation of human rights resulting from extensive Israeli intelligence activity.

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Refugees and human rights

The majority of asylum seekers are fleeing from war, civil conflict or political repression, or belong to a minority group suffering persecution. Statistics on the origins of today's asylum seekers confirm that the claims about 'economic migrants' and 'bogus asylum seekers' are exaggerated. In 2001, principal countries of origin were Afghanistan, Iraq, Somalia, Sri Lanka and Turkey. In addition, there is a moral responsibility to asylum seekers. As the Rt Hon Jack Straw MP, Secretary of State for Foreign and Commonwealth Affairs pointed out, (*New Statesman,* London, November 18, 2002) Britain's colonial past in India and Pakistan and in its delineation of borders in Afghanistan and Iraq, is responsible for many contemporary political problems. Also, much of the repression from which today's refugees flee is modelled on colonial ordinances, which are the direct precursors of contemporary national security laws in many countries in Africa and Asia.

Refugee protection – framework threatened

The 1951 Geneva Convention is the foundation of international protection of refugees. A refugee is defined as someone outside their own country unable or unwilling to return owing to a well founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. The Convention gives refugees residence and civil, economic and social rights in the country of refuge.

In terms of security concerns, a person responsible for situations or events which produce refugees – someone who has committed war crimes, serious non-political crimes before arrival, or acts contrary to the purposes and principles of the United Nations – was always excluded from protection under the Convention. In addition, those guilty of particularly serious crimes and therefore deemed a danger to the community, and by implication national security, may be expelled from the country of refuge. At the same time states, under the International Covenant on Civil and Political Rights and, in Europe, under the European Convention on Human Rights, are obliged not to send anyone to a country where they face a real risk of torture, inhuman or degrading treatment.

Politicians argue that the Geneva Convention is an anachronism - not designed for present security conditions or to handle the increased numbers of refugees. Even prior to 11 September, British and European Home Ministers called for its replacement by temporary regional protection regimes. Meanwhile they narrowed the definition for asylum and widened the grounds for exception, making it increasingly difficult for political refugees to get protection. In the United Kingdom, this was partly in response to diplomatic and trading pressure from states, with a record of torture including Algeria, India, Saudi Arabia, Sri Lanka, and Turkey, trying to prevent the UK from harbouring their dissidents.

The Criminal Justice (Terrorism and Conspiracy) Act, 1998, made it a criminal offence to conspire in Britain to commit offences abroad. This dealt an immediate and potentially fatal blow to *exile politics,* which consists of working out how to topple repressive regimes abroad. In practice, it is the Kurdish and Algerian exiles who have been most closely watched.

The Terrorism Act 2000 broadened the definition of terrorism immeasurably by including within its remit threats of, as well as actual violence, and damage to both property and electronic systems. The definition blurs the

distinction drawn in extradition cases from the 1870s onwards, between legitimate political activity and the sort of political violence which is so indiscriminate or disproportionate to its aim that it rightly forfeits the protection accorded to 'political crime'. If acts of 'terrorism' can result in the removal of refugee protection, it is vital that the definition is narrowly drawn, so as not to place 'ordinary' political protesters or those engaged in direct action together with indicted war criminals. Yet the Terrorism Act draws the definition so broadly as to make 'terrorists' or at least 'terrorist supporters' of significant numbers of both citizens and asylum seekers.

Banned organisations – persecuted civilians punished

The Proscribed Organisations Order under the 2000 Terrorism Act outlawed 21 organisations, including movements such as the Kurdish Workers' Party of Turkey, PKK and the Liberation Tigers of Tamil Eelam, LTTE. Both the PKK and the LTTE, as the only organisations fighting for the rights of their oppressed minorities, command the support of many Kurds and Tamils respectively. The fact that members of these organisations have been involved in brutal actions must not be allowed to justify the criminalisation of all those who support separatism or national liberation. In relation to banned organisations it is an offence to invite support, fail to report suspicions of fundraising, or wear or display anything that could arouse suspicion of involvement. Membership results in a ten-year prison sentence. The Home Office has set up a special unit to deal with asylum claims based on support for organisations banned in the UK, and it is believed that all such claims are referred to the Special Branch of the Metropolitan Police. This clearly has a profound deterrent effect on would-be asylum claimants from, for example, Algeria, Egypt, India, Sri Lanka, or Turkey whose claims are based on their membership of, or support for, one of the named organisations. If they do not mention their organisational association - a fact that is central to their claim - it is bound to be refused. If they do, they risk possible arrest, criminal investigation and, since the Anti-Terrorism, Crime and Security Act, 2001, indefinite internment and exclusion from the Convention.

In the aftermath of 11 September, when dissidence is often perceived as support for terrorism, it has become extremely difficult to obtain political asylum for anyone supporting a dissident political or military group seeking self-determination. Now, in addition to some of the harsh reasoning for refusing asylum, including the twisted logic that survival itself proves the absence of risk, it is argued that authorities in the countries of origin are entitled to investigate and prosecute members of banned organisations. So, asylum seekers are accused of fleeing from the fear of prosecution, not persecution. Frequently, beatings, *falaka* (beatings of the feet) or *Palestinian hanging*, all recognised forms of torture, are overlooked as unfortunate disciplinary lapses for which the authorities of the country concerned cannot be held responsible. Thus, 'low-level' supporters are denied asylum.

Prominent members can be excluded from refugee status altogether. The Anti-Terrorism, Crime and Security Act, 2001, permits 'suspected international terrorists' to be excluded from the procedure to determine refugee status and ultimately deported, or, if they can't be extradited because of the likelihood of torture, to be interned indefinitely in the UK. Neither the detainees nor their legal representatives have access to the intelligence material on which their assessment is based. Access to case intelligence is granted to 'special advocates' appointed to represent detainees in their absence but they are hindered by their inability to ask the detain-

ees to comment on the security services' account of events.

In September 2001, the House of Lords ruled in *Rehman* that the courts were not entitled to contradict the opinion of the Home Secretary on the question of whether the promotion of terrorism overseas by a United Kingdom resident would be contrary to the interests of Britain's national security. Thus, the Home Secretary has been essentially granted a free hand in deciding which foreigners are a danger to Britain's national security and, short of returning them to a torturing country, how to deal with them. This shift in power is highly dangerous when placed in the context of previous security service errors in detaining, and on occasion deporting, innocent people e.g. during the 1991 Gulf War. And, given that significant amounts of security service information comes from police forces of torturing countries, there is a danger that refugees are detained on the basis of false information. The Nationality, Immigration and Asylum Act 2002 goes even further, in that it can remove British citizenship from those believed to prejudice Britain's interests – and once again it is the beliefs of the Home Secretary that count.

The internment provisions of the 2001 Act required the UK government to derogate from its international obligations to avoid arbitrary deprivation of liberty. Derogation requires a country to be in a state of 'war or other public emergency threatening the life of the nation'. The derogation order was presented to parliament in November 2001. In July 2002 the Special Immigration Appeals Commission (the Tribunal set up to deal with national security cases) ruled that the internment provision was justified but discriminatory, because it applied to foreign nationals only. The Court of Appeal overruled the Commission, holding that such discrimination was lawful because foreign nationals have no legal right to be in the country.

UK is the only European state to have derogated from the Convention, in Germany the authorities used racial and religious profiling to identify suspected 'Islamic terrorists'. In addition, the German proposals for European Union (EU) security measures include a central database on all foreigners, to be made available to the secret services and investigating authorities. The EU is setting up teams of counter-terrorist specialists for which the Member States are invited to appoint liaison officers from police and intelligence services' anti-terrorist unit, 'without prejudice to the legislation by which they are governed.' However, these teams lack the necessary structures for accountability. In Britain, the level of information exchange

The Information Centre about Asylum and Refugees (ICAR) is an independent centre set up in 2001 to promote understanding of asylum and refugees in the UK context. In pursuit of this overall aim, its purpose is to raise the level of public debate about asylum and refugees in the UK; to encourage understanding based on the best available information; and to help assemble evidence to promote evidence-based policy-making. It is based in the International Policy Institute, King's College London.

ICAR responds to the need for authoritative, independently generated information on which to base democratic discussion about asylum and refugees in the UK. This complex and multi-faceted subject is a permanent feature of UK life, and the issues which it generates need to be examined and elucidated. ICAR is only an advocacy organisation to the extent that it presses for further research, better data and more comprehensive and illuminating statistics on asylum and refugee issues in order to raise the level of public debate.

For more information visit www.icar.org.uk

between security services, police and immigration services has increased under the 2002 Act. Landlords, banks and employers are obliged to provide information. Thus, the security services and police will have a central role in visa, asylum, and residence, applications and be granted privileged access to confidential immigration information. The direct links between UK security services and their counterparts in other countries cause grave concern for those who are trying to ensure that the rights of refugees are protected.

Other EU security measures include the replacement of extradition procedures by EU-wide arrest warrants, which remove safeguards against re-extradition to countries of persecution, for example. In a European Commission working document on the relationship between safeguarding internal security and complying with international protection obligations, it was suggested that in the security interest of a state, the absolute ban on returning people to countries where torture was likely to occur might need to be reconsidered. In November 2001, the UN Human Rights Commissioner, Mary Robinson, felt it necessary to call on governments to refrain from excessive measures that would violate fundamental freedoms and undermine legitimate political dissent.

Physical exclusion – drawing the lines of defence?

The Australian Prime Minister, John Howard, was quick to use 'terrorism' as a justification for refusing landing to the Norwegian vessel, MV Tampa, which had stopped to pick up over 400 refugees from an Indonesian vessel in distress, in September 2001. Coincidentally, on 11 September 2001 a High Court judge ordered Australian ministers to have the refugees brought ashore, but the Full Court of Appeal overturned this ruling on 17 September. Retrospectively, the government changed the law to validate its action and to provide for the 'excision' of locations where refugees landed, such as Christmas Island, from the Commonwealth of Australia. Refugees could, therefore, be removed without having their asylum claims dealt with at all.

The point in the refugee's journey at which international obligations to refugees begin, has been debated since the mid- to late 1980s when carrier sanctions began in Europe in a bid to prevent 'disorderly movements' of ad hoc refugees travelling to Europe. Carrier sanctions, consisting of fines for carrying undocumented or falsely documented travellers, have now become obligatory for all EU member states and, by virtue of a directive adopted in 2002, ten Accession-States of Central and Eastern Europe. There are now EU-liaison officers at airports throughout the world helping airline staff to check documents and ensure that travellers with false or inappropriate documents can be refused boarding. UK immigration officers control passengers travelling from Paris to Calais on Eurostar trains and the US-developed Advance Passenger Information System is to be shortly implemented in Europe. This obliges airline or shipping companies to prevent any passengers from boarding vessels if the immigration authorities in the country of their destination say so.

However, according to the Home Office Immigration officers abroad are 'not empowered' to consider asylum claims.

'The UK is not obliged under the 1951 Convention to consider any application for asylum made outside the territory or to facilitate the travel to the UK of anyone wishing to make a claim … any person seeking to travel to the UK for asylum is being refused entry'.

The combined effect of visa regimes and carrier sanctions has led to thousands of deaths among asylum seekers who, to reach safety, are forced to travel illegally and often dangerously - in unsea-worthy boats, unventilated ship or lorry

containers, or stowed away in the wheel arch of a jet aircraft. There are no legal options for asylum seekers to reach Britain or other European countries. While this has been the case for nearly two decades, the technological advances in border controls have forced desperate people into ever more hazardous forms of travel. For example, the introduction of the Integrated System of External Vigilance, SIVE, devised to detect and prevent the small precarious boats, *pateras,* loaded with illegal refugees from crossing the Strait of Gibraltar, has resulted in *pateras* taking the longer and more dangerous journey to the Canary Isles. Inevitably, this has led to an increase in the numbers of passengers drowned. Even the British government has proposed warship patrols in the eastern Mediterranean and coastguards off Dover to detect the boat people before they arrive at UK shores.

Deterring those who bring asylum seekers to the West has become one of the highest priorities. *Anti-trafficking* measures are to be compulsory throughout Europe, and are used against those trying to help asylum seekers. Whilst the UN makes a distinction between people *trafficking* – for purposes of exploitation, for example the sex trade and *smuggling* – for, often, humanitarian motives, this distinction has been blurred.

Now, a clause in the 2002 Act allows the government to develop the policy of dealing with asylum claims prior to their arrival in the UK. Already, other western countries including Australia, Canada and the US take an annual quota of refugees processed by the United Nations High Commissioner for Refugees (UNHCR) in regional camps like those on the border between Turkey and Iran, where thousands of refugees wait for months for status determination and resettlement. The concern is that there will be no right of appeal against refusal by the UNHCR abroad and that, in time, this will be the only legitimate route. Therefore, asylum seekers arriving to the UK other than through the UNHCR could be excluded from refugee protection altogether, although this would require amendment to the Geneva Convention.

Inhumanity – the cost of security?

The measures described above are part of the new 'national security culture' permeating decision-making. The breadth of the definition of 'terrorism', the creation of offences based on association with 'proscribed organisations' rather than on actual involvement in illegitimate political violence, and the failure to distinguish between terrorism and non-violent political activity all contribute to the erosion of refugee protection. Increased use of unaccountable policing methods, including increased cooperation between the security services of host countries and refugee-producing countries enhance the risk that genuine refugees will be excluded from mechanisms of protection. Policing and deterrence, rather than respect for human rights, are the hallmarks of our treatment of asylum seekers now. To exacerbate the situation, repeated public statements by politicians justify the inhuman treatment of asylum seekers, which are picked up and amplified in vicious tabloid campaigns. These in turn inflame popular racism and lead to waves of racist attacks on asylum seekers, some of which are fatal. Kosovan Fetah Marku was stabbed 29 times and had his skull fractured by a racist gang in Edgware, March 2000; Turkish asylum seeker Firsat Dag was killed in Glasgow's Sighthill estate, August 2001; and Peiman Bahmani, a 28-year-old Iranian, was murdered in Sunderland, August 2002. The most fundamental right of all, the right to life was denied to these men - in part because of the continual links being drawn between refugees and the threat of terrorism.

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Penal reform in Africa

Traditionally, reform of the justice system has not been seen as a key component of economic and social development. However, as our understanding of the links between insecurity and poverty improve, justice reform has become a more central part of development. In 2000, the UK Department for International Development (DFID) published a new policy statement 'Justice and Poverty Reduction.' It cites evidence from a study conducted by the World Bank on the views of poor people about their poverty, indicating that safety, security and access to justice were as important to poor people as 'hunger, unemployment and lack of safe drinking water'. The DFID statement also notes that poor people suffer disproportionately from crime. The loss of a bicycle could be a minor annoyance for a rich person but a catastrophe for a poor one. The poor suffer the most from police corruption, from courts that are unfamiliar or physically distant from their homeland, from proceedings conducted in a foreign language or where bribery of officials is expected in order to administer justice. Furthermore, the poor are more likely to be imprisoned, to wait years for their trial to take place and are less likely to survive in prison.

The DFID policy document advocates both prison reform and the introduction of alternatives to prison terms. It also notes that in developing countries traditional or customary legal systems deal with 80% of all cases. These systems are an integrated part of the community and more concerned with a satisfactory outcome for all parties including the victims, rather than with simply imposing punishment on the perpetrators. These traditional systems should be taken into account when implementing justice reform. If brought up to date on, for example, human rights and due process, these customary systems can play their part in a reformed justice system.

Colonial legacy

These conclusions are particularly relevant to Sub-Saharan Africa where justice systems are frequently based on those of former colonial powers. The superimposition of legal systems from very different socio-economic and cultural environments has resulted in a legacy of inappropriate criminal justice systems for many African countries. In the context of a developing country these systems are relatively complicated, costly, over centralised and require high levels of literacy to operate. The police often lack the equipment and transport to carry out the most basic tasks. Both police and prison staff are often underpaid and are subject to very poor working conditions. In these circumstances corruption thrives. Court proceedings take months, or sometimes years, and basic administrative processes often collapse. Suspects can usually not afford a lawyer and paralegal and other legal aid services are not widely available. The legal framework sometimes dates back to the end of the 19th century and has not been revised.

The consequences of these difficulties within the justice system and their implications for security are serious. The criminal justice system does not provide an adequate response to law breaking and justice is not seen as being successfully administered. The process is arbitrary - where those who are guilty can bribe their way out of paying the price for their offences and those who are innocent may die whilst awaiting trial. Poignantly, the frustrations unleashed with the breakdown of the justice system can resort in violent mob justice, often leading to gross injustice. In many African countries a prison sentence is used as the punishment for most convicted offenders, as there are few alternatives available. Many people awaiting trial

are also detained in prison, even if the crime of which they are accused of is very minor. Fines are available in many countries as a penalty but convicted offenders are often too poor to pay. Consequently, they serve time in prison instead. Only a small minority of prisoners is charged with or convicted of serious crimes.

Developing a different approach

Generally prisons in developing countries are beset with problems. Resources are frequently not available to provide the necessary accommodation, health care, food or activities for prisoners. Staff are often poorly paid and not well trained. In some countries the rate of deaths in custody is very high. In a number of prisons, the proportion of pre-trial prisoners is substantial and some prisoners spend a longer time in prison prior to their trial, than the maximum sentence available for the offence with which they have been charged. In many countries juveniles are sent to prison and held in the same accommodation as adults. Mentally disturbed people are often detained in prison rather than placed in a hospital.

Yet Africa may be fertile ground for penal reform because of a different cultural approach to justice. The Nigerian criminologist Adedokun Adeyemi describes this approach, stating that,

(An African's) first reaction to a violation of a person's rights is to seek redress by conciliatory means … Reconciliation is the central pivot of our criminal justice system. (Zvekic, U., 1990, p. 182.)

Research conducted by Joanna Stephens, from Penal Reform International (2000), indicates several differences between African approaches to criminal justice compared with that of the West. First, the crime or dispute is viewed as a problem belonging to the whole community. Secondly, the emphasis is on reconciliation and the restoration of social harmony. The task of the traditional court is to reach a conclusion that is acceptable to the community as a whole and therefore the process involves a high degree of public participation. It is not only those directly involved with the dispute who must be satisfied but also the wider public who are allowed to voice their opinions. Third, the penalties imposed in this traditional system usually involve restitution. The compensatory penalty is enforced by social and group pressure.

A desire for reform

Against this background, a wide-ranging reform movement is underway. The commitment of African governments to implement criminal justice systems in line with human rights standards and with minimal use of imprisonment was demonstrated at a major seminar attended by representatives from 40 African countries held in Kampala, Uganda in 1996. At the seminar the representatives of the African Commission on Human and Peoples' Rights, the regional human rights body, took a pro-reform position and the final Kampala Declaration was unanimously accepted.

The Kampala Declaration sets out an extensive penal reform agenda covering both prison conditions and prison usage and calls for wide-ranging prison reforms based on a respect for prisoners' rights. It recommends that levels of security should be kept at the minimum necessary to ensure public safety. It calls for fewer remands in custody and for the development of alternatives to prison. Noting 'the limited effectiveness of imprisonment, especially for those serving short sentences and the cost of imprisonment to the whole of society', it recommends that, as long as the involvement is voluntary, petty offences should be dealt with by customary practices as described previously. The Kampala Declaration was subsequently noted by the United Nations Commission on Crime Prevention and Criminal Justice and annexed to one of its resolutions. In November

2002, six years on, a follow-up seminar in Ouagadougou, Burkina Faso, reaffirmed the commitment of African leaders to penal reform.

Reform success

Reform is affecting a number of areas. Of major significance is the work of the 'Special Rapporteur on Prison and Conditions of Detention in Africa' under the aegis of the African Commission on Human and People's Rights.

Major reform programmes with funding from the French Ministry for Development Cooperation, DFID, the European Union and other donors are underway in Benin, Burkina Faso, Burundi, Ghana, Kenya, Malawi, Rwanda, Uganda and South Africa. In February 2000, a national conference on penal reform in Nigeria was organised and produced the 'Abuja Declaration on Alternatives to Imprisonment'. Penal Reform International (PRI), in particular, has been developing models that have attracted attention throughout the region. To reduce is the large number of pre-trial prisoners, PRI has piloted a paralegal service in the prisons of Malawi. Since 2000, the paralegal advisory service has facilitated the release of over 1000 prisoners (through bail, discharge or release on compassionate grounds). It has also encouraged magistrates to hold prison-based 'camp courts' and organise training sessions on the law to help prisoners understand the legal processes their case will undergo and to ensure that they know, and are able to demand, their rights in situations where they are likely to be denied.

As previously mentioned, feeding prisoners adequately and providing basic necessities is a widespread problem and programmes are underway to develop the productive capacity of the prisons themselves. Increased productivity benefit the prisoners and prison staff and these activities provide lifelong training for the prisoners that can be applied on release. For example the 'Prison Farms Rehabilitation' project in Malawi has introduced rabbit meat into the prisoners' diet. The rabbit selection and breeding programme is run in conjunction with a plan for semi-intensive fruit and vegetable production.

Since 1996, the movement to create new alternatives in Africa has spread to many African states. The model and the inspiration for these schemes, has been the initiative taken in Zimbabwe where community service as an alternative to prison was introduced in 1993. The Zimbabwe model has been very influential and has formed the basis of the development of alternatives to prison as far away as Latvia. In the year 2000, steps to establish community service as an alternative to prison were taken in Burkina Faso and Congo-Brazzaville. Work to develop community service was also undertaken in Rwanda. In Kenya, a scheme to allow courts to impose community service orders instead of imprisonment eventually started in December 1999 and in 2002 more than 80,000 offenders were sentenced to a 'Community Service Order'. Community Service is also being introduced in Uganda and Malawi.

It is worth noting that whilst Western Europe and most of the English-speaking world is moving towards harsher penal measures (an increase in the use of imprisonment and criminal law) as a solution to social problems, a number of countries in Africa are moving in an entirely different direction. It would be premature to proclaim widespread success but at least criminal policy is being seen within a human rights framework and the social implications of a punitive penal policy are being addressed.

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