

**ACHPR /RES.64(XXXIV)03: RESOLUTION ON THE ADOPTION OF THE
“OUAGADOUGOU DECLARATION AND PLAN OF ACTION ON
ACCELERATING PRISON AND PENAL REFORM IN AFRICA”**

The African Commission on Human and Peoples’ Rights meeting at its 34th Ordinary Session held in Banjul, The Gambia from 6 - 20 November 2003;

Recalling Article 30 of the African Charter on Human and Peoples’ Rights which mandates it to promote and protect human and peoples’ rights and to ensure their protection in Africa;

Recalling its resolution on prisons in Africa adopted by the African Commission at its 17th Ordinary Session held in Lomé, Togo in 1995;

Recalling further the appointment of the Special Rapporteur on Prisons and Conditions of Detention in Africa at its 20th Ordinary Session held in Grand Bay, Mauritius in 1996;

Considering the adoption of the Kampala Declaration on Prison Conditions in Africa in 1996 and the progress made in raising general prison standards in Africa since then;

Bearing in mind the various international instruments relating to the promotion of the rights of persons deprived of their liberty in general and penal reform in particular;

Reaffirming the necessity to promote and protect the rights of persons deprived of their liberty through penal reform;

Adopts the “Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa”.

Decides to publish as soon as possible the “Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa” and ensure its wide distribution to Member States of the African Union, Civil Society Organisations and decision makers in the field of penal reform and the administration of justice;

Request the Special Rapporteur on Prisons and Conditions of Detention in Africa to report on the implementation of this resolution at its 35th Ordinary Session.

Done in Banjul, 20th November 2003

THE OUAGADOUGOU DECLARATION AND PLAN OF ACTION ON ACCELERATING PRISONS AND PENAL REFORM IN AFRICA

Recognising that there has been progress in raising general prison standards in Africa as recommended by the Kampala Declaration on Prison Conditions 1996

Recognising also the specific standards on alternatives to imprisonment contained in the Kadoma Declaration on Community Service Orders in Africa 1997; and on good prison administration set out in the Arusha Declaration on Good Prison Practice 1999

Noting the recognition given to these African standards by the United Nations as complementary to the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Basic Rights of Prisoners and the United Nations Standard Minimum Rules for non-custodial measures (the 'Tokyo Rules')

Mindful of the key role played by Africans in formulating an agenda for penal reform through the 1999 Egham Conference on 'A New Approach for Penal Reform in a New Century'

Noting with satisfaction the important practical steps that have been taken to implement these standards at an African level through the activities of the African Commission on Human and Peoples' Rights and its Special Rapporteur on Prisons and Conditions of Detention

Commending the practical measures that have been taken by prison authorities in African countries to apply these standards in their national jurisdictions

Recognising that notwithstanding these measures there are still considerable shortcomings in the treatment of prisoners, which are aggravated by shortages of facilities and resources

Welcoming the growing partnerships between Governments, non governmental organizations and civil society in the process of implementing these standards

Emphasising the importance of a criminal justice policy that controls the growth of the prison population and encourages the use of alternatives to imprisonment

The participants at the second pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso between 18-20 September 2002, recommend:

1. Reducing the prison population

Criminal justice agencies should work together more closely to make less use of imprisonment. The prison population can only be reduced by a concerted strategy. It should be based on accurate and widely publicized information on the numbers and kinds of people in prison and on the social and financial impact of imprisonment. Reduction strategies should be ongoing and target both sentenced and unsentenced prisoners

2. Making African prisons more self-sufficient

Further recognition should be given to the reality that resources for imprisonment are severely limited and that therefore African prisons have to be as self sufficient as possible. Governments should recognize, however, that they are ultimately responsible for ensuring that standards are maintained so that prisoners can live in dignity and health.

3. Promoting the reintegration of offenders into society

Greater effort should be made to make positive use of the period of imprisonment or other sanction to develop the potential of offenders and to empower them to lead a crime-free life in the future. This should include rehabilitative programmes focusing on the reintegration of offenders and contributing to their individual and social development.

4. Applying the rule of law to prison administration

There should be a comprehensive law governing prisons and the implementation of punishment. Such law should be clear and unambiguous about the rights and duties of prisoners and prison officials. Officials should be trained to follow proper administrative procedures and to apply this law fairly. Administrative decisions that impact on the rights of prisoners should be subject to review by an independent and impartial judicial body.

5. Encouraging best practice

Further exchange of examples of best penal practice is to be encouraged at national, regional and international levels. This can be enhanced by the establishment of an all-African association of those involved in penal matters. The rich experience available across the continent can best be utilized if proven and effective programmes are progressively implemented in more countries. The Plan of Action to be developed from the proceedings of the Ouagadougou Conference will serve to further such exchange.

6. Promoting an African Charter on Prisoners' Rights

Action should be taken to promote the draft African Charter on Prisoners' Rights as an instrument that is appropriate to the needs of developing countries of the continent and to refer it to the African Commission on Human and Peoples' Rights and the African Union.

7. Looking towards the United Nations Charter on the Basic Rights of Prisoners

The international criminal justice community should look towards developing a United Nations Charter of Basic Rights for Prisoners with a view to strengthening the rule of law in the treatment of offenders. African experience and concerns should be reflected in this Charter, which should be presented to the 11th United Nations Congress on the Prevention of Crime and Criminal Justice in Bangkok, Thailand, 2005.

Plan of Action

The participants recommend the following measures as forming part of a plan of action to implement the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa. The document is addressed to governments and criminal justice institutions as well as to non-governmental organisations and associations working in this field. It is meant to be a source of inspiration for concrete actions.

1. Reducing the prison population

Strategies for preventing people from coming into the prison system include:

- Use of alternatives to penal prosecution such as diversion in cases of minor offences with particular attention to young offenders and people with mental health or addiction problems.
- Recognition of restorative justice approaches to restore harmony within the community as opposed to punishment by the formal justice system - including wider use of family group conferencing, victim offender mediation and sentencing circles.
- Use of traditional justice as a way of dealing with crime in line with constitutional guarantees and human rights standards.
- Improving referral mechanisms between the formal (State) justice system and the informal

(non State) justice system.

- Decriminalisation of some offences such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents.

Strategies for reducing the numbers of unsentenced prisoners include:

- Co-operation between the police, the prison services and the courts to ensure trials are speedily processed and reduce the delays of remand detention through: regular meetings of caseload management committees including all criminal justice agents at the district, regional and national levels; making of costs orders against lawyers for unnecessary adjournments; targeting cases of vulnerable groups.
- Detention of persons awaiting trial only as a last resort and for the shortest time possible, including: increased use of cautioning; improved access to bail through widening police powers of bail and involving community representatives in the bail process; restricting the time in police custody to 48 hours; setting time limits for people on remand in prison.
- Good management of case files and regular review of the status of remand prisoners.
- Greater use of paralegals in the criminal process to provide legal literacy, assistance and advice at a first aid level.

Strategies for reducing the numbers of sentenced prisoners include:

- Setting a target for reducing the prison population.
- Increased use of proven effective alternatives, such as community service and exploring other sanctions such as partially or fully suspended sentence, probation and correctional supervision.
- Imposition of sentences of imprisonment only for the most serious offences and when no other sentence is appropriate, i.e. as a last resort and for the shortest time possible.
- Consideration of prison capacity when determining decisions to imprison and the length and terms of imprisonment.
- Review and monitoring of sentencing practice to ensure consistency.
- Powers to courts to review decisions to imprison, with a view to substituting community disposals in place of prison.
- Early and conditional release schemes, furloughs and home leave - criteria for early release should include compassionate grounds based on health and age.

2. Making African prisons more self-sufficient

- Foster prison agriculture, workshops and other enterprises for the good of prisoners and staff.
- Develop appropriate technology to reduce costs (e.g.: use of biogas for cooking, more effective wood burning stoves).
- Promote transparent management of prisons.
- Encourage training courses and study visits for staff on best practices in prison management.
- Involvement of staff and prisoners in agricultural production and prison industries through the establishment of management committees.

3. Promoting the reintegration into society of alleged and convicted offenders

- Promote rehabilitation and development programmes during the period of imprisonment or non-custodial sentence schemes.
- Ensure that unsentenced prisoners have access to these programmes.
- Emphasise literacy and skills training linked to employment opportunities.

- Promote vocational training programmes certificated to national standards.
- Emphasise development of existing skills.
- Provide civic and social education.
- Provide social and psychological support with adequate professionals.
- Promote contact with the family and community by: encouraging civil society groups to visit the prison and work with offenders; improve the environment for visitors so that physical contact is permissible; provide facilities for conjugal visits; setting up a privilege system including day, week-end and holiday leave subject to satisfying appropriate criteria.
- Sensitize families and community in preparation for the reintegration of the person back into society and involve them in rehabilitation and development programmes.
- Develop half way houses and other pre-release schemes in partnership with civil society groups.
- Extend the use of open prisons in appropriate circumstances.

4. Applying the rule of law to prison administration

- Ensure that prisons are governed by prison rules that are publicised and made known to prisoners and staff.
- Review prison legislation in line with national constitutional guarantees and international human rights law.
- Encourage independent inspection mechanisms, including the national media and civil society groups.
- Ensure staff are trained in the application of the relevant laws and international principles and rules governing the management of prisons and the prisoners' rights.

5. Encouraging best practice

- Publicise the Kampala Declaration on Prison Conditions in Africa 1996, the Kadoma Declaration on Community Service Orders in Africa 1997, the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002; the reports of the Special Rapporteur on Prisons and Conditions of Detention in Africa; the reports and statements of the heads of Correctional Services Conference of Central, Eastern and Southern Africa (CESCA).
- Develop and promote models for replication throughout the continent, such as the Community Service scheme developed in Zimbabwe, the diversion scheme in Namibia and South Africa, the sector-wide approach in Uganda, the prison farm and paralegal models developed in Malawi or the use of biogas technique developed in Rwanda.
- Emphasise primary health care, hygiene education, nutrition and sanitation promotion in the prisons and link health care of prisoners with the Ministry of Health.
- Develop approaches to HIV/AIDS based on international standards, including sensitization and prevention campaigns for staff, prisoners and families, as well as provision of condoms inside the prisons. Include the issue of AIDS/HIV in prison in campaigns of sensitization for the community.
- Apply UN safeguards guaranteeing protection of the rights of those facing the death penalty where not yet abolished.
- Promote specific juvenile justice laws and systematic use of alternatives to imprisonment to deal with young offenders.
- Encourage the establishment of a pan-African penal reform network.

6. Promoting regional and international charters on prisoners' rights

- Publicise the draft African Charter on Prisoners' Rights to be finalised and further adopted by the African Commission on Human and Peoples' Rights (ACHPR).
- Contribute to finalising and promoting the United Nations Charter on the Rights of Prisoners.