

# *International* **CURE**

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## **Prison and Justice Assessments in Africa**

by International CURE, *Citizens United for the Rehabilitation of Errants*, [www.internationalcure.org](http://www.internationalcure.org)  
PO Box 102, Katonah, NY 10536 cureny@bestweb.net,

Dear Jane Browning,

Below is a fifth country-report, another installment in International CURE's project of Prison and Justice Assessments, in African countries. These reports provide light and insights on prisons and criminal justice in many countries, which will help to guide on-going promotions of criminal justice reform. Additional country-reports are forthcoming, and we encourage you to save the entire series.

We here present a report on:

### *Ethiopia Assessment*<sup>[1] [2] 3</sup>

#### **1. FAIR JUSTICE**

##### **1.1 Judicial system capability.**

Delays in criminal procedure are immense due to the backlogs in the offices of the prosecutor and in the courts. Few remand prisoners know when their case will be heard in court. Often the period spent in remand exceeds the final sentence. Sentenced prisoners are not told by the authorities whether or when they are eligible for parole.<sup>1</sup>

Although the civil courts operated with independence, the criminal courts remained weak, overburdened, and subject to significant political intervention and influence. Constitutional interpretation remains solely with the upper house of parliament, exclusively comprised of ruling party members, which also handles judicial appointments and reviews judicial conduct. Judicial practice allows the court unilaterally to convict defendants on charges not raised by the prosecution at any point preceding the court's decision on guilt. This practice effectively impedes defendants from presenting an adequate defense as they may not be aware of the potential charges they face.<sup>3</sup>

##### **1.2 Legal assistance to persons living in poverty.**

Authorities regularly detained persons without warrants and denied access to counsel and family members, particularly in outlying regions. Although the law requires detainees to be brought to court and charged within 48 hours, this generally was not respected in practice. While there was a functioning bail system, it was not available in murder, treason, and corruption cases. In most cases authorities set bail between 500 and 10,000 birr (\$494-975), which was too costly for most citizens. Police officials did not always respect court orders to release suspects on bail. With court approval, persons suspected of serious offenses can be detained for 14 days and for additional 14-day periods if an investigation continues. The law prohibits detention in any facilities other than an official detention center; however, there were dozens of unofficial local detention centers used by local government militia and other formal and informal law enforcement entities. The government provided public defenders for detainees unable to afford private legal counsel but only when their cases went to court. While in pretrial detention, authorities allowed such detainees little or no contact with legal counsel.<sup>3</sup>

One of the reasons remand prisoners have to wait such a long time before their case is heard in court

and one of the reasons detainees eligible for parole are not discharged at the earliest moment possible is the almost total absence of affordable legal aid. Almost no (remand) prisoner can afford to pay a defence-lawyer, which means they are virtually absent in the Ethiopian criminal procedure. Only 'Dergue' prisoners are being assisted by government-paid lawyers. As a consequence the Ethiopian criminal procedure is not really contradictory: there is no real check by defence lawyers on the doings of the police, the prosecution, courts and prison system. This circumstance represents a major flaw in the Ethiopian judicial system. The 'rule of law' only can flourish in a judicial system with a critical and independent bar association that is able and willing to provide (free) legal aid to defendants and convicts.<sup>2</sup> The present *bail system* is not very effective in the battle against the overcrowding of police jails and prisons. Only a few suspects are able to find the required sureties. It should be considered to introduce the possibility to *suspend remand conditionally*. The militia in the kebele where the suspect lives could be entrusted with the control over the conditionally remanded suspect. If he re-offends before his case is handled by the court, he will be put into remand custody.<sup>2</sup>

### **1.3 Justice for women and juveniles.**

Women and girls experience gender-based violence daily, but it is underreported due to shame, fear, or a victim's ignorance of legal protections. In the context of gender-based violence, significant gender gaps in the justice system remained due to poor documentation, inadequate investigation, and lack of special handling of cases involving women and children.<sup>3</sup>

The law criminalizes rape, calling for five to 20 years of imprisonment depending on the severity of the case. The law does not include spousal rape. The government did not fully enforce the law, partially due to widespread underreporting. The Addis Ababa 2006 annual police report listed 736 rape cases out of an estimated population of five million persons. Statistics on the number of abusers prosecuted, convicted, or punished were not available at year's end.<sup>3</sup>

Domestic violence, including spousal abuse, was a pervasive social problem. The 2005 Health Survey found that 81 percent of women believed a husband had a right to beat his wife. A 2005 World Health Organization (WHO) study found that in two rural districts, Meskan and Mareko, 71 percent of women were subject to physical or sexual violence, or both, by an intimate partner during their lifetime. While women had recourse to the police and the courts, societal norms and limited infrastructure prevented many women from seeking legal redress, particularly in rural areas.<sup>3</sup>

The law prohibits trafficking in persons; however, there were reports that persons were trafficked from and within the country. The law prescribes five to 20 years imprisonment for such crimes. The country is a source country for men, women, and children trafficked primarily for the purpose of forced labor and, to a lesser extent, for commercial sexual exploitation. High unemployment, extreme poverty, and the chance at better opportunities abroad drive migration. Local NGOs estimated 30,000 to 35,000 persons were trafficked internationally between March 2007 and March 2008. More females than males were trafficked. Young women, particularly those ages 16-30, were the most commonly trafficked group, while a small number of children were also reportedly trafficked internationally.<sup>3</sup>

Rural children and adults are trafficked to urban areas for domestic servitude and, less frequently, commercial sexual exploitation and other forced labor, such as street vending, begging, traditional weaving, or agriculture; situations of debt bondage were reported. Women are trafficked transnationally for domestic servitude, primarily to Lebanon, Saudi Arabia, and the United Arab Emirates, but also to Bahrain, Djibouti, Kuwait, Sudan, Syria, and Yemen. Some of

these women are trafficked into the sex trade after arriving at their destinations, while others have been trafficked onward from Lebanon to Turkey, Italy, and Greece.<sup>3</sup>

Internationally funded centers in Addis Ababa provided shelter, medical care, counseling, and reintegration assistance to girls victimized by trafficking. Other international NGOs provided assistance to children engaged in commercial sexual exploitation, including such services as a drop-in center, shelter, educational services, skills training, guidance, assistance with income-generating and employment activities, and family reunification.<sup>3</sup>

## **1.5 Arbitrary or severe penalties.**

Article 112 opens the possibility to grant prisoners parole after having served 2/3 of their sentence. Those who serve a life sentence are eligible for parole after 20 years only.<sup>1</sup>

## **1. PRISON SYSTEMS BASICS.**

### **2.1 Structures and alternatives.**

The country has three federal prisons, 117 regional prisons, and many unofficial prisons. Prison and pretrial detention center conditions remained harsh and life threatening.<sup>[3]</sup>

A special phenomenon in all prisons is the presence of *prisoners' committees* that operate very professionally and rather autonomously. They run – with the full consent of the governor - a kind of shadow-administration. Every zone of a prison elects its own committee. All zones elect members of a central prisoners' committee. The commander of the prison police can reject elected candidates however. The central prisoners' committee in Addis Ababa runs its own office, where an administrative function is kept. Every member of the committee has a specific task (education; welfare; health; financial matters; the management of prison shops, etc.). One member of the committee keeps records on the eligibility of fellow-prisoners for parole. In short: where prison management fails to provide services, prisoners committees try to handle matters by themselves. Zonal prisoners' committees are empowered to elect fellow prisoners for remunerated jobs. They have certain disciplinary power too and can 'sentence' fellow prisoners to sanctions like collecting garbage, carrying loads or clean the premises. These zonal committees determine which prisoners are recommended to the central committee for entering the procedure for parole. If the central committee accepts a nomination for parole it will send the file to the prison governor who will refer the case to the proper court of justice.<sup>1</sup>

Prison governors are very happy with these prisoners' committees and regard these as very useful instruments for maintaining good order in their institutions, which they cannot manage properly themselves, for want of sufficient trained personnel.<sup>1</sup>

One prison is divided into 6 zones, each of which has its own Prisoners Committee. The zonal Prisoners Committees are elected by the prisoners. The head of the prison police may reject candidates for these committees. This Central Prisoners' Committee consists of: a chairperson, a secretary and members responsible for: the social department (health, education, training, work); the financial management of the central shop, the small shops, the tearoom, the profits of which are used to support the prisoners; the inspection of the shops and the economical-planning of the shops. One committee-member runs the department of Safety and Justice, which (among other things) keeps track of the dates of release (parole) of prisoners. This is necessary because the prison administration is not failsafe in this respect. It also tries to speed up procedures, which is necessary because the criminal courts are coping with a huge backlog.<sup>2</sup>

The prisoners' committees are empowered to assign jobs and to mete out disciplinary punishments. To this end every zonal prisoner's committee disposes of its own 'judges', each of which is responsible for one cell. Disciplinary sanctions are: 1) physical exercise; 2) garbage disposal; 3) transporting materials; and/or 4) cleaning of the zonal compound.<sup>2</sup>

Serious infractions of prison discipline are dealt with by the prison administration. In emergency cases the zonal committee can make use of instruments of restraint like manacles. Internal regulations regulate the power of the prisoners' committees.<sup>[4]</sup> Cases of alleged abuse of power by members of the prisoners' committees are reported to the unit cell-heads and handled by the zonal and if necessary by the central prisoners' committee. If this proves to be not sufficient the case can be transferred to the prison director.<sup>2</sup>

The prisoners' committees are entrusted with the first screening regarding the eligibility of prisoners for *parole*. The above-mentioned 'judges' keep records of all prisoners belonging to his cell. He checks whether the candidate-parolee has posed disciplinary problems and if he deems someone fit for parole he advises such to the zonal prisoners' committee, which sends its advice to the prison administration.<sup>2</sup>

## **2.2 Physical space and separations.**

Severe overcrowding was a problem. In September 2007 it was reported that there were 52,000 persons in prison. Earlier in the year, prison populations decreased by 10,000 due to pardons but reportedly again increased due to increases in ethnic conflict and economic crimes. Prisoners often had less than 22 square feet of sleeping space in a room that could contain up to 200 persons, and sleeping in rotations was not uncommon in regional prisons.<sup>3</sup>

In all prisons visited, during the night some 70-150 persons were squeezed together in rooms of about 200 m<sup>2</sup> floor space. Bedding is of very poor quality: most people have to lie on old, filthy rags, if any. No beds, mattresses or blankets were to be seen.<sup>1</sup>

The commissioner of the Addis Ababa police reported that on the 10<sup>th</sup> of July 2003 1,254 people were being held in custody in the 29 cells of the 28 police districts of Addis Ababa.<sup>2</sup>

To get a grip on the problem of prison *overcrowding* alternatives for imprisonment, like community service orders and educational orders should be introduced in the *Penal Code*. The implementation of these kinds of '*alternative*' *penal sanctions* certainly is expensive when it is entrusted to a kind of probation service, like is the case in several Western-European countries. The administrative structure of Ethiopia with the *kebele* as basis may offer a unique opportunity to entrust the execution of the alternative penal sanctions to the *kebele* administration under the supervision of the social courts.<sup>2</sup>

Article 36 of the Constitution requires that juveniles be kept segregated from adult prisoners. In this respect the Penal Code is more specific, stating that persons between the ages of nine and fifteen years may not be detained together with adults.<sup>1, [5]</sup>

The Penal Code also requires that remand and sentenced prisoners be kept separated from each other, that only sentenced prisoners are obliged to work<sup>[6]</sup> and shall receive remuneration for that.<sup>2</sup>

## **3. PROTECTION OF INCARCERATED PERSONS**

### **3.1 Grievances.**

The Prisons Proclamation is to be replaced by a new 'Federal Prisons Commission Establishment Proclamation', drafted in 2003. Conspicuous omissions are: the right of prisoners to lodge complaints

and external independent supervision.<sup>2</sup>

### **3.2 Abuse of incarcerated persons.**

Article 18 of the Constitution prohibits cruel, inhuman or degrading treatment of anyone.<sup>1</sup>

### **3.4 Correctional Officers.**

The guards are trained in a special training centre in the village of Aleltu, some 30 kilometres outside this city. Training of prison personnel is militaristic and hardly welfare oriented. Very little time is spent on prisoner's rights and treatment programmes for offenders.<sup>1</sup>

One of the main challenges of prison reform will be to change a militaristic and punitive approach of management and other staff into a prisoner-oriented attitude, with a strong focus on their reintegration into free society. This calls for a reorientation of the training of personnel on all levels. Training schedules should include courses in human rights and rehabilitative treatment of offenders. Prison guards need to be transformed into penitentiary workers, and should shift their professional focus from mere maintaining order to helping prisoners to become law abiding citizens. Prison personnel should no longer be part of the police service, but should be transformed into a special service of prison personnel with its own training centres, its own set of values and guidelines and its own uniforms - even if it would mean a loss of status in the eyes of some.<sup>2</sup>

## **4. HEALTH SERVICES FOR INCARCERATED PERSONS**

### **4.1 Health Care.**

The daily meal budget was approximately 5 birr (50 cents) per prisoner. Many prisoners supplemented this with daily food deliveries from family members or by purchasing food from local vendors. Prison conditions were unsanitary and there was no budget for prison maintenance. Medical care was unreliable in federal prisons and almost nonexistent in regional prisons.<sup>3</sup>

Sanitary provisions like (open) toilets and douches usually are in a deplorable condition. The annual budgets of the prisons are not sufficient to feed the prisoners three times a day. Only with the help of visitors bringing food is it possible for them to survive. Prisoners lacking the support of their family must work in prison shops in order to earn some money for food or have to render services to fellow prisoners.<sup>1</sup>

## **5.0 RESTORATIVE PRACTICES**

### **5.1 Rehabilitation Programs.**

Art. 110 of the Penal Code limits the obligation to work to prisoners serving a sentence with deprivation of liberty and stipulates that such work shall be in accordance with the prisoners' ability and shall be of such a nature as to reform and educate him and to be conducive to his rehabilitation. Working prisoners are entitled to 'commensurate remuneration' for their work.<sup>2</sup>

Perhaps the biggest challenge for prison reformers will be to convince the courts, prison administrators, politicians and the general public that it is really worthwhile to offer prisoners programs that facilitate their rehabilitation. This means that on all levels people become aware of the fact that mere 'warehousing' prisoners in 'universities of crime' does not diminish recidivism at all. The new Penal Code should emphasise the importance of *rehabilitation and reintegration* as most important justifications for imprisonment. Given the opportunity to acquire some vocational skills and/or some basic education during their time in prison, to learn something useful, combined with the support of a rehabilitation or

probation service after release, can give ex-convicts the chance to live a crime-free life and will enhance the safety of the public. Mere imprisonment doesn't solve anything, not for the convict, his victim, nor society. Most people are aware of this, but for many this will require a radical change in thinking about crime and criminals and how to deal with them. <sup>2</sup>

It will be necessary but not sufficient to embed the concept of rehabilitation in criminal and penitentiary law. The general public and the officials concerned (first and foremost the prison administrators and prison police) have to get used to viewing prisoners as fellow-citizens, who after their detention have the right (and the duty) to reintegrate into free society. <sup>2</sup>

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<sup>[1]</sup> Gerard de Jorge, "The Ethiopian Penitentiary System

<sup>[2]</sup> Gerard de Jonge, report on the visits to Ethiopia from 7-21 July 2003. And from 20-25 October 2003 , University of Maastricht -the Netherlands. Acting for the Dutch Centre for International Legal Co-operation (CILC).

<sup>[3]</sup> U.S. Human Rights 2008 Country Reports, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119001.htm>

<sup>[4]</sup> The Head of the A.A. federal prison provided the author with a set of the regulations in the Amharic language.

<sup>[5]</sup> In Ethiopia criminal liability starts at the age of nine.

<sup>[6]</sup> In this sense the Penal Code is more specific than the Constitution