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**International Law and the Upgrading of the State
Penitentiary System: the Case of Cameroon**

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1. The Objective of the Study

The objective of this study is to carry out research on the various international attempts to improve on the management of prisons and to secure the inalienable rights of inmates as human being despite their being incarcerated. Focus however is placed on those standards or laws advocated internationally that are applicable to the Cameroonian penitentiary system of administration through the expressed act of the Cameroonian government. The study looks at the challenges faced in the implementation of international standards nationally and suggests ways forward for the improvement of the penitentiary services in Cameroon.

2. The Outcome or Impact of the Study

The outcome of this study will be disseminated principally through a presentation at the “Regional Workshop on Capacity Building of Penitentiary Staff on Human Rights and the Improvement of Prison Conditions in Cameroon. Through the information provided by the paper as will be presented, it is expected that the staffs of the penitentiary administration attending this workshop will build their capacity to be able to effectively contribute to the lot of the persons detained and incarcerated within the sub region principally and later within the national territories when and if they are transferred to new duty posts. Thus by building the capacity of the staffs of the state penitentiary to appreciate the rights of inmates, this paper will by proxy improves on the treatments that these inmates will get. With the assistance of FAAFNET and ICENECDEV¹, copies of the paper will also be made available to the participants and to the general public and hopefully further contribute in the improvement of the treatment given to incarcerated persons within the country.

I. General Introduction

The state penitentiary system is vital to the concept of justice. The system principally hosts persons who have committed a crime and whose punishment is the deprivation of their liberty for a given period of time. Therefore, if an inmate’s punishment is five months or one year, the conditions must be put in place for the inmate to serve five months or one year and nothing else. But experience has shown that persons who have been deprived of their liberty as punishment for a crime suffer more and often horrendous things while being incarcerated

¹ Forestry, Agriculture, Animal and Fishery Network (FAAFNET), International Centre for Environmental Education and Community Development (ICENECDEV).

with the outcome that they eventually end up suffering more than the law ever foresaw. For instance due to jail conditions and treatment, a person who is supposed to suffer incarceration for say three months may end up losing his or her life while being incarcerated and this does not further the goal of justice at all. In other words, a three months deprivation of liberty does not mean and must definitely not mean the death sentence for such an inmate. In recognition of this fact states through the mechanism of international law have made rules to improve on the lot of incarcerated persons.

II. International Law and the State Penitentiary System

According to the Statute of the International Court of Justice which is an integral part of the United Nations Charter at article 38 (1) (a) to (d)² the main sources of international law are listed generally. The principal sources which relate directly to the penitentiary system are (a) and (c) that address treaties or conventions and the principles recognized by civilized nations of the world. They address the penitentiary system principally through international humanitarian laws that are of general application or “Lex Generalis” and those that are of specific application to the penitentiary system or “Lex Specialis.”

A. Lex Generalis

These are general human rights or humanitarian laws that apply to all human beings. In particular, mention should be made here of the 1948 Universal Declaration on Human Rights (UDHRs) and the African Charter on Human and Peoples’ Right (ACHPRs). These two main international law instruments also apply to persons who are incarcerated or in detention. The instruments though general in nature set a minimum standard on how incarcerated persons are to be handled generally and in a manner compatible with human dignity.

B. Lex Specialis

These laws on the other hand are specific to the state penitentiary system and aim to secure a certain standard of treatment that is to be conferred to persons who are incarcerated. These laws mainly confer rights to prisoners and duties on the state penitentiary system with regards to their treatment of persons who are incarcerated. The main laws concerned and the rights that they confer are:

1. The International Covenant on Civil and Political Rights (ICCPRs)

The ICCPRs is considered to be a first generation human rights document giving specific rights and protection to incarcerated persons. For instance at article 10.1, it requires that:

² The United Nations Charter of 1945 can be accessed online at www.un.org. The link is to accessing the UN Charter is UN “documents.”

*“all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”*³

Also, at article 10.3, the ICCPRs require that:

“the penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation.”

The above two provisions provide a comprehensive idea of the standard of treatment to be given to incarcerated persons by the ICCPRs.

2. The International Covenant on Economic, Social and Cultural Rights (ICESCRs)

This document and the rights it confers on to prisoners does not exist in isolation but is meant to complement the provisions of the ICCPRs. The rights are considered to be second generation human rights and include the obligation on states to:

“recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

The above two covenants or laws are supplemented by recognized international law principles which also apply to provide protection to persons incarcerated as will be indicated below.

3. The International Covenant on the Protection of all Persons from Enforced Disappearance

Article 17.2 (d) guarantees that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice subject only to the conditions established by law or if he or she is a foreigner, to communicate with his or her consular authorities in accordance with applicable international law. This provision relates closely with article 36 on the Vienna Convention on Consular Relations which guarantees access to the prison system to consular missions in cases where foreigners have been incarcerated. This no doubt secure certain privileges to persons incarcerated thereby promoting their better treatment by the state penitentiary system.

4. The United Nations Basic Principles for the Treatment of Prisoners

This document states at principle 4 that the responsibility of persons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a state’s other social objectives and its fundamental responsibilities for promoting the well being and development of all members of society.⁴ The document went further to state at principle 5 that except for those limitations that are demonstrably necessitated by the fact of

³ Additional information can be viewed at (http://www.unhchr.ch/html/menu3/b/h_comp36.htm) (Jan. 2013).

⁴ Helen Namondo Linonge, the Dynamics of Prison Administration and Prison Reform in Cameroon, CJDHR Vol. 4, No. 1, June 2010.

incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights and where the state concerned is a party, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the Optional Protocol thereto as well as such other rights as are set out in other United Nations Covenants.

5. The United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment

This document lists some very important issues that are supposed to be dealt with by the state penitentiary system in dealing with prisoners. For instance principle 1 which states that all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person. Principle 6 requires that no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment. These provisions are complemented by principle 7 which states that officials who have reason to believe that a violation of this body of principles⁵ has occurred or is about to occur shall report the matter to their superior authorities and where necessary to other appropriate authorities or organs vested with reviewing or remedial powers.

6. The Other Relevant International Instruments

A good example is the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. For instance principle XII states that persons deprived of liberty shall have adequate floor space, daily exposure to natural sunlight, appropriate ventilation and heating according to the climatic conditions of their place of deprivation of liberty. They shall be provided with a separate bed, suitable bed, clothing and all other conditions that are indispensable for nocturnal rest. The installations shall take into account the special needs of the sick, persons with disabilities, children, pregnant women or breast feeding mothers and the elderly amongst others. The other regulations that impact on the standard of treatment that persons in detention gets relates to the European Prison Rules and the Code of Conduct for Law Enforcement Officials. The Code of Conduct for Law Enforcement Officials is applicable when they are dealing with detained or jailed persons and it specifically require them not to inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment nor may any law enforcement official invoke superior orders or

⁵ These principles are generally considered to be soft law and can only enjoy direct applicability when it becomes a treaty instrument or is enacted as part of applicable national laws.

exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel inhuman or degrading treatment or punishment. These standards stated above do not exist in compartments but are complementary. They collectively make a very complex and fine nexus for the protection of persons in prisons and in detention.

III. The African Approach to Improving the Standard of Treatment for Prisoners in the State Penitentiary System

Both Anglophone and Francophone African countries have been meeting in forums within Africa to make declarations, principles and program of action to promote better treatment standards for persons incarcerated. For instance the 1996 Kampala Declaration on Prison Conditions in Africa, the Fourth Conference of the Central, Eastern and Southern African Head of Correctional Services, the Arusha Declaration of Good Prison Management, the Ouagadougou Plan of Action all of which are meant to better or improve the standard of treatment accorded to persons in detention or prison.

IV. The Transposition of International Treatment Standards within the Cameroonian State Penitentiary System

Cameroon is a member of the United Nations and the United Nations Charter, the Statute of the International Court of Justice and the United Nations Universal Declaration on Human Rights are all applicable within Cameroon. By virtue of article 65⁶ of the Cameroonian Constitution of 1996, the government duly recognizes all international laws, treaties, norms and principles that it has formally acquiesce to, to be binding on the country. Cameroon is also a member of the African Union and the African Union mechanisms on Human Rights as well as all the declarations and principles originating from the African forums promoting the better treatment of prisoners are also binding on the Cameroonian government. In other words, the careful and effective applications of these standards as secured within international treaties, norms and principles are supposed to create a very good condition for persons incarcerated or imprisoned within the Cameroonian judicial system to serve their terms of sentence. However, this is not the case.

⁶ This provision of the Cameroonian National Constitution of 1996 should be read alongside the preamble of the same constitution.

V. International Standards of Care and the Reality within Cameroon's State Penitentiaries

The stories and reports associated with the standard of treatment accorded prisoners within Cameroon's state penitentiaries are despicable. The reason for this is principally because the prisons are very old and are incapable of meeting up with the new challenges face by the Cameroonian criminal justice system. The government lacks sufficient funds and has failed to allocate enough funds to cater for the needs and challenges of the penitentiary system. The majority of them are overcrowded and this breeds other ills especially health problems, sanitation problem, poor nutrition and the problem of understaffing. All of these challenges have bred discontentment and latent conflicts within the prison system leading to the loss of the lives of inmates. For instance in 2008 at the Kumba Central prison,⁷ violent conflict arose between some warders and some inmates who were advocating better treatment standards for themselves and their colleagues. In an attempt to forcefully subdue them, three inmates suffered serious body injuries from which they later died. In 2010, Germain Cyrille Ngota, the editor of the Cameroon Express died at the Kondengui central prison⁸ in Yaounde' as a result of the very harsh realities associated with the prison system. For these unfortunate souls, serving time within the penitentiary system meant death sentences and if our prison system had met the international standards elucidated above, then these could have been avoided. These are instances of cases reported and made known to the general public. Many other cases are not reported or made known to the public.

As far back as 2002, the Special Rapporteur of Prisons and Conditions of Detention in Africa⁹ visited some Cameroonian prisons in the Central, North, Adamaoua, West and North West Regions and their report to the Cameroonian government amply indicated that the international standards for the treatment of persons in detention was not being met.

The Cameroonian state on the other hand faces serious developmental challenges and has to prioritize its development initiatives vis-a-vis its scarce resources and hardly ever are the conditions of condemned inmates given a priority as opposed to the demands posed by socio-economic development issues. Consequently, exposing these issues as far as the treatment standard accorded inmates is concerned may not bring in any noticeable result. In other words, it is advisable to take a path to upgrading the treatment standards accorded inmates within Cameroon's state penitentiary that the Cameroonian government can condone.

⁷ Global Conscience Initiative, the Forgotten Rights of the Kumba Prisons Population, September 2009.

⁸ Additional information on this case can be viewed at (http://www.unhchr.ch/html/menu3/b/h_comp36.htm) (Feb. 2013).

⁹ Prisons in Cameroon Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, ACHPR/37/OS/11/437, (Feb. 2013).

VI. The Way Forward

Before the government can raise the necessary resources to better the lot of inmates within Cameroonian prisons and thereby secure their enjoyment of basic human rights it needs to continue working with non state actors to improve on the plights of inmates.

The workers of the state penitentiary system, especially the warders should understand the intricacy and sensitivity of prisoners rights and must endeavor to handle and deal with prisoners in a manner befitting human dignity.

Thus it is the goal of this paper that after exposing effectively the rights accruing to prisoners that they are not currently enjoying, the warders can appreciate them and begin to implement them from today. In other words, the capacity of warders to promote the standard of care and treatment given to prisoners will be improved.

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