

Penal Reform International

Alternatives to Imprisonment in East Africa: Trends and Challenges

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Acronyms used

- PRI** Penal Reform International
- DFID** Department for International Development
- NGO** Non-Governmental Organisation
- VPO** Volunteer Probation Officer
- JLOS** Justice, Law and Order Sector

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1. Introduction

About Penal Reform International

Penal Reform International (PRI) is an international, non-governmental organisation (NGO) with Consultative Status at the United Nations Economic and Social Council (ECOSOC) and the Council of Europe, and Observer Status with the African Commission on Human and Peoples' Rights. It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims.

About this report

PRI is undertaking a programme of work funded by the UK Department for International Development (DFID) to help to increase safety, security and access to justice in different regions around the world. A key strand of this work is to promote alternatives to imprisonment and the use of non-custodial sanctions in order to give courts a wider range of options for dealing appropriately with the range of cases they encounter. Used appropriately, alternatives to prison can help to reduce the often severe levels of overcrowding which prevent prisons from playing their proper role and complying with international standards.

PRI has a solid history of working in partnership with both governments and NGOs to develop non-custodial measures, particularly in Africa. For example, PRI assisted with the development of community service in Zimbabwe in the early 1990s and subsequently in a number of countries in East Africa.¹

A key component of PRI's agenda for 2012 and beyond is to identify and disseminate models of good practice and to develop training materials which can be used by key stakeholders to strengthen the impact of existing alternatives and, where necessary, to develop new ones. Initially, PRI intends to focus on the promotion of alternatives – and especially probation and community service – to prison

sentences in East Africa, an area which has been neglected in recent years. PRI also aims to contribute to the reduction of pre-trial detention which remains a serious problem for many prison systems, although in contrast to non-custodial sentencing this issue has received greater interest from the international community.²

This report aims to identify the current state of play with respect to the use of alternative sentences in Africa with a particular focus on the following three countries: Kenya, Tanzania and Uganda.

This report is laid out in six sections. The first section provides a brief introduction to the report following which a note on the report's methodology is provided in section 2. Section 3 describes the background and context to the development of alternatives to imprisonment in East Africa and section 4 details recent developments in this area in Kenya, Tanzania and Uganda. A number of important cross-cutting issues relevant to the development of alternatives in all three countries are discussed in section 5 and section 6 provides a list of 16 recommendations.

1 For example see *The Realities of Community Service: PRI's Experience* PRI Newsletter 54 April 2006

2 For example see *Pre-Trial Campaign*; UNODC Legal aid manual

2. Note on methodology

This report draws on a review of relevant literature, a questionnaire-based survey undertaken in July 2011, and information obtained through interviews and field visits during a visit to East Africa in October 2011. Please see Annex I for further information.

3. Background and context

Prison overcrowding is a serious problem on the African continent. According to the International Centre for Prison Studies' World Prison Brief, the number of prisoners exceeds capacity in 28 out of 40 African countries. In nine countries occupancy levels are more than twice capacity. Figures compiled by the International Centre for Prison Studies show the occupancy rate of prisons to be 226% of capacity in Kenya (2010), 214% in Uganda (2011) and 145% in Tanzania (2011).³ A large part of the overcrowding problem is caused by the widespread use of often lengthy pre-trial detention. Pre-trial detainees represent 54% of prisoners in Uganda, 52% in Tanzania and 43% in Kenya.

While data about sentence lengths is not easy to obtain, it is likely that large numbers of those sentenced to prison receive relatively short prison sentences. According to one of the questionnaire respondents, official statistics from Tanzania suggest that about 3,500 offenders are sentenced each year for periods of six months or less. The respondent suggested that typical offences include using abusive language, operating a small business without a valid business licence, reckless driving, possession of illicit 'liquor', entering protected areas, desertion of a child, unlawful departure outside the country, simple theft, intimidation, contempt of court, escaping from lawful custody and abandoning one's family.⁴ A further 2,500 people went to prison for offences such as assault, affray, neglecting to prevent felony, environmental destruction, coining, cheating, shop breaking and stealing, impersonating a public servant, disobedience of lawful order, criminal trespass and unlawful gambling.⁵ It is likely that at least some of these offences could be more effectively and economically dealt with through alternative sentences in the community.

The last 15 years have seen a growing interest in the development of alternative sentences. In September 1996 the International Conference on Prison Conditions in Africa produced a declaration which recommended that community service and

other non-custodial measures should be preferred to imprisonment where possible. The declaration proposed that successful African models of non-custodial measures should be studied and applied in countries where they were not yet being used. In addition, it was proposed that education be provided to the public about the objectives of alternatives and the various ways in which they work.

The following year, an international conference was held on community service in Zimbabwe; community service was introduced there in 1992 with apparent success in replacing a proportion of short custodial sentences.⁶ The Kadoma Conference Declaration not surprisingly included the recommendation that the overcrowding in Africa's prisons required positive action through, inter alia, the more widespread introduction of community service which it described as a positive and cost-effective measure to be preferred whenever possible to a sentence of imprisonment. It also noted community service as being "in conformity with African traditions of dealing with offenders and with healing the damage caused by crime within the community".⁷

The declaration further explained that community service involves a "programme of work where the offender is required to carry out a number of hours of voluntary work for the benefit of the community in his/her own time". Countries that had not already done so were encouraged to develop non-custodial sentencing alternatives and those which already had community service were encouraged to take into account lessons learned from elsewhere and review their own schemes accordingly. Governments, donors and civil society organisations were invited to support research and pilot schemes, promote community support for alternatives through sensitisation campaigns and collect statistics to measure the effectiveness of community service. The conference adopted a plan of action which included proposals to create a network of national committees, set up a directory of services, and issue a regular research newsletter.

³ Data at www.prisonstudies.org

⁴ Response to PRI Questionnaire

⁵ Ibid

⁶ See e.g. Stern (1999) Alternatives to Prison in Developing Countries. International Centre for Prison Studies, Kings College London and Penal Reform International

⁷ Kadoma Declaration on Community Service Orders in Africa <http://www.penalreform.org/publications/kadoma-declaration-community-service-orders-africa-0>

Five years later a follow-up event in Burkina Faso produced the Ouagadougou Declaration, the first recommendation of which was to reduce the prison population.⁸ The associated action plan detailed a strategy for achieving this objective which included diverting people from the criminal justice process, curbing the use of pre-trial detention and reducing the numbers of sentenced prisoners. In order to reduce custodial sentences, states were encouraged to set targets for reducing the prison population, and to consider prison capacity when taking decisions to imprison as well as decisions on the length and terms of imprisonment. The plan also called for the increased use of alternatives proven to be effective, such as community service, and the exploration of other sanctions such as partially or fully suspended sentences, probation and correctional supervision. The plan also pressed for sentences of imprisonment to be imposed only for the most serious offences and when no other sentence is appropriate. More specifically, it called for:

- imprisonment to be imposed as a last resort and for the shortest time possible;
- sentencing practice to be reviewed and monitored to ensure consistency;
- courts to be given powers to review decisions to imprison with a view to substituting community disposals in place of prison; and
- early and conditional release schemes, furloughs and home leaves to be expanded with criteria for early release to include compassionate grounds based on health and age.

⁸ Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa <http://www.penalreform.org/publications/ouagadougou-declaration-accelerating-prison-and-penal-reform-africa-0>

4. Recent developments in East Africa

During the late 1990s and early 2000s, a number of countries took steps to implement at least some of the recommendations made at the abovementioned international meetings and conferences. In this context, PRI assisted with developing community service in Kenya and Uganda in the early 2000s and Tanzania also made progress in this area during this time period.

4.1. Kenya

In the East Africa region, the greatest use of alternative sentences and the best-developed infrastructure for implementation is in Kenya.⁹ There is a large Probation and After-Care Department within the Ministry of Home Affairs which is responsible for the supervision of non-custodial court orders – probation and community service orders. This is one of five key functions undertaken by Kenya’s probation officers. The others are: the preparation of reports including those at the pre-bail, pre-sentence and pre-release stages and victim impact reports; the reintegration of ex-offenders; participation on crime prevention initiatives; and carrying out work with victims, including reconciliation.¹⁰

4.1.1. Legal basis, mandate and organisation

The Probation Service was established during the colonial period with the first probation officers in post in 1946. Community service orders were introduced under the Community Service Orders Act. No 10 of 1998.

The laws governing probation and community service as well as prisons are currently being revised to bring them into line with the new Constitution of Kenya which came into force in 2010. The revisions will give a clearer legislative basis to three areas of work which the Probation Service is looking to develop. These

relate to providing information to courts to help them make decisions at the remand stage of proceedings (so-called bail information), offering after-care support to prisoners on release from prison, and working with the victims of crime.

Both probation and community service are the responsibility of the Office of the Vice President and the Ministry of Home Affairs. They are administered through the Directorate of Probation and After-Care.

The National Community Service Orders Committee, chaired by a High Court judge with a wide range of governmental and community representatives, also plays a key role. According to the Community Service Act of 1998, the committee is mandated to:

- advise the Minister and the Chief Justice on the proper implementation of the provisions of the Act;
- co-ordinate, direct and supervise the work of community service officers; and
- collect and collate data on the operation of the Act for the purpose of improving national policy on community service orders.

Community service order committees are also in place at the district level to oversee the implementation of orders at a local level.

4.1.2. Staffing and resources

There are a total of 117 community service officers employed nationwide. At December 2010 the Probation Service had a total staff of 794, of whom 605 were probation officers.¹¹ There are five probation hostels with a capacity of approximately 200, with a further hostel for 50 girls under construction.¹²

The revenue budget in 2010–11 was 618,716,201 Kenya Shillings (approximately USD 6.9 million).¹³

9 This report does not cover developments in Rwanda, where a particular type of community service was introduced as part of the programme to respond to the aftermath of the genocide

10 On Reintegration see Office of Vice President and Ministry of Home Affairs (2007) Research Report on the Impediments to Offender Reintegration and Resettlement

11 Feedback Probation Service Table 27

12 Probation hostels are temporary homes for probationers whose home environments are not conducive for their reintegration in the community

13 Feedback Probation Service Table 13

There was also a development or capital budget of approximately USD 2.5 million.

Probation officers are assisted in their work by volunteer probation officers (VPOs) also known as assistant probation officers. These are people of good character and integrity identified from within the community to support the work of probation staff by offering close supervision to offenders. This programme was initiated in 2005 and it is now operational in 22 ASAL districts.¹⁴ VPOs are also used to assist in the preparation of reports of the courts in busy urban areas, verifying information about the addresses and other circumstances of offenders.¹⁵

4.1.3. The Orders

Probation Orders

Probation orders are orders of the court issued in accordance with the provisions of the Probation of Offenders Act (Cap 64). The order consists of the conditional suspension of punishment while the offender is placed by the courts under personal supervision and is given individual guidance or 'treatment' by a probation officer. Failure to comply with the supervision can lead to the order being revoked. The probation officer is expected to supervise and rehabilitate the offender in accordance with the provisions of the Act and other policy instruments. A probation order can be imposed for any period between six months and three years.

Any crime other than a capital offence may be subject to a non-custodial sentence following a recommendation in a probation report. Those who are likely to be considered are first offenders, young offenders, women with children, the elderly, terminally ill and people with mental health problems. Repeat offenders are not, however, excluded from consideration.

In seeking to assist the rehabilitation of the offender, probation officers use a variety of skills depending on the offender's needs and risk factors. Counseling, follow-up and diverse empowerment activities such as skills training, provision of industrial tools,

provision of start-up capital and formal education are utilised in order to ensure positive change on the part of the offender. On the whole, probation officers apply social work methods in dealing with probationers.

Community Service Orders

Eligibility criteria for consideration for a community service order in Kenya are more restricted than the criteria for probation orders. Offenders eligible for a community service order are those that have committed an offence carrying a maximum penalty of three years' imprisonment and below, or an offence that can attract more than three years but which, in a particular instance the court determines would be punishable by three years or less. The order is imposed for a period of months and days and this time period is translated into a number of hours of unpaid work to be undertaken by the offender. The minimum daily period of work is two hours and the maximum is seven hours.

The aims of the community service programme as set out by the Government of Kenya are threefold:

- to keep non-serious offenders out of prison where they would be exposed to serious offenders and cost the taxpayer for their maintenance;
- to punish the offender by compelling him/her to undertake work that directly benefits the community in which he/she resides; and
- to rehabilitate the offender by ensuring that he/she maintains ties with friends and family, and retains existing employment while performing work that benefits the community.

Community service officers carry out enquiries into individual cases to examine their suitability for placement on the programme and submit their findings to the courts. Placement supervisors, who are managers at the public institutions where the offenders are placed, ensure that the offenders comply with the orders made by allocating their work and supervising them on a daily basis until completion.

¹⁴ Arid and Semi Arid Lands which account for 80% of Kenya's land area but 20% of the population. On Volunteer Probation Officers see Strategis Resource Consultants (2009) Report on the Evaluation of the Volunteer Probation Officers Programme in Kenya

¹⁵ Interview with Mr Oloo September 12th 2011

Community Service Placements

The kind of placements undertaken by offenders subject to community service orders include the construction or maintenance of public roads; forestation works; environmental conservation and enhancement works; and projects for water conservation, management, distribution and supply. The law also specifies maintenance work in public schools, hospitals and other public social service amenities, work of any nature in a foster home or orphanage and rendering specialist or professional services in the community and for the benefit of the community.

In 2008–9 the Community Service order national afforestation programme was introduced through which offenders contribute to meeting Kenya’s target of increasing its forest cover from 3% to 10% by 2030. 1.5 million tree seedlings have been planted each year since the programme started. In 2009–10 Community Service flagship projects were launched to equip offenders with skills which will help them to earn a living rather than commit petty crimes. While completing their orders offenders are taught how to raise and keep rabbits, fish, goats and bees and skills such as brick-making. The flagship projects contribute to poverty reduction and job creation and benefit local communities because products are made available at slightly subsidised prices.

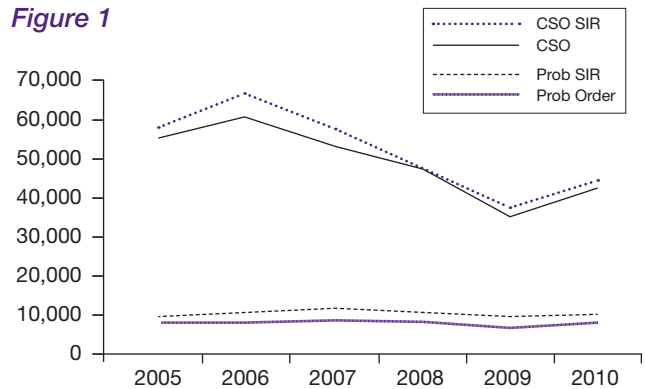
4.1.4. Numbers of Cases

In 2010, 10,516 social inquiry reports were prepared for offenders eligible for a probation order. This constitutes 800 more than in 2009 but 1,400 fewer than the peak year in 2007.¹⁶ In 2010, 44,635 reports were requested for offenders eligible for community service; this is higher than the previous year but substantially lower than the peak year of 2006 when more than 66,000 reports were requested.

The number of probation orders passed by courts in 2010 was 8,770 and the number of community service orders was 43,045. The trends in the numbers of reports requested and orders made between 2005 and 2010 are shown in Figure 1.

In May 2011 there were 14,798 offenders on probation orders and 22,000 offenders serving community service orders.¹⁷

Figure 1



As illustrated in Figure 1, the numbers of probation and community service orders issued peaked in 2006/7 and subsequently fell. One explanation provided by the informants for this report is the so-called ‘purge of the judiciary’ carried out in 2003–4. This ‘purge’ saw the replacement of approximately half of the country’s magistrates including many who received training on community service orders at the time of the programme’s inception. At the time of publication, the new magistrates had yet to receive the specific training undertaken by their predecessors.

In addition, many of the magistrates who did receive training on community service orders are likely to have been promoted after which they would be tasked with dealing with more serious cases.

Members of the Probation Service also offered two further explanations for the decline in issuing community service orders: the legalisation of traditional brewing (subject to licensing) which removed persons brewing the beverage changaa from the ambit of the criminal justice system; and the promulgation of the new Constitution has slowed down police activity with the Bill of Rights striking “a big blow to the police swoops that used to be the order of the day which provided a huge base for the community service caseload”.¹⁸

16 Feedback Probation Service Figure 15

17 Oloo 2011 The Practice of Probation Paper presented at the Commonwealth East African Workshop on Alternative Sentencing and Strategies to Reduce Prison Overcrowding Kigali May 2011

18 Feedback Probation Service P 28

4.1.5. Compliance

Official data demonstrates that the vast majority of offenders complete their orders satisfactorily. According to the Kenya Probation Service between 2005 and 2010 314,013 community service orders were completed of which 304,421 (97%) were completed satisfactorily. In 6,668 cases (2%) the offender absconded and court proceedings were instigated; and in 2,924 cases (1%) the order was partially but not satisfactorily completed. The rate of satisfactory completion was lower for children (under-18s) (75%) although the orders imposed on children represented only 1% of the total number issued in the period 2005–10.

With respect to probation orders, the data shows that 86% of cases in 2010 were satisfactorily completed. The completion rate was 80% for children who represented about 16% of the total number of orders for that year.

4.1.6. Special Initiatives

Decongestion Programme

Probation and community service orders are not routinely used as a measure to enable early release after a prison sentence has been imposed. However, they can be used if the sentence is revised on appeal or is subject to review by a judge. A practice has developed in which judges are informed—by paralegals and prison officers—of cases of prisoners who would have been eligible for community service but for whom the sentence was, for whatever reason, not considered. An assessment is undertaken by the probation service and in suitable cases the offenders can be released to complete their sentences on community service. One High Court judge who is the Chairman of the National Community Service Order Committee Secretariat has in particular been visiting prisons and converting short prison sentences to community service in appropriate cases. During 2010, requests for assessments were made in respect of 939 prisoners serving sentences. Of these 713 reports were prepared and in 292 cases the sentence was in effect commuted to community service.¹⁹

It is planned that up to 25 judges might be able to undertake a similar role in this so-called decongestion programme in the future.

4.2. Tanzania

4.2.1. Legal basis, mandate and organisation

The Probation Service in Tanzania is governed by four pieces of legislation:

- The Community Service Act No. 6/2002;
- The Probation of Offenders Act (Cap.247 R.E. 2002);
- The Extra Mural Penal Employment Schemes (S.72 of the Prison Act No. 34/1967); and
- The Supervision of Offenders released from Prison through Parole (The Parole Boards Act, No. 25/1994).

In practice, the Probation Service works on community service and probation; it does not carry out functions related to parole supervision or extra mural penal employment, both of which are undertaken by the Prison Service.

The Community Service Act No. 6/2002 was passed by the Tanzanian Parliament on the 10 April 2002 to provide a credible alternative to short prison sentences in order to combat prison congestion in the country. The enactment of the Community Service Act was prompted by a report prepared by the Law Reform Commission of Tanzania in 1986 and published in 1994. The Commission investigated the causes of prison congestion in Tanzania which had resulted from the tripling of the prison population in the 30 years since independence.

In 2003, the Secretariat of Community Service Programmes was established to supervise and coordinate the implementation of community service which started in six pilot regions of Kilimanjaro, Mwanza, Dodoma, Mbeya, Mtwara and Dar es Salaam. The programme was later extended to other regions of Tanga, Arusha, Iringa, Shinyanga, Mara and Kagera.

The Probation of Offenders Act was also passed in 2002. Probation and community service are only

¹⁹ Feedback Probation Service 2005–10 Kenya Probation service

available in half of the country's mainland regions and not at all in Zanzibar.

In 2008, the Probation and Community Service Department was established in the Ministry of Home Affairs; it replaced the National Secretariat of Community Service.

The objectives of the department are to:

- Decongest prisons in the country;
- Reduce the costs of running prisons in the country;
- Protect offenders' human rights;
- Prevent petty offenders from coming into contact with more serious or persistent offenders;
- Involve the community in the supervision process as well as in the process of rehabilitating offenders in the community;
- Ensure the community benefits directly from the work undertaken by offenders;
- Enable offenders to continue taking care of their families;
- Combat prison stigma by sensitising the public to accept offenders under non-custodial programmes; and
- Re-integrate offenders back into society.²⁰

4.2.2. Staffing and Resources

There are 160 staff members in the Probation and Community Service Department. In addition to the salary costs of the staff, the department has an annual budget of 460,000,000 Tanzania shillings (£177,000) to cover operational and running costs. Since 2010, probation officers have been employed directly by the department; prior to this period they were locally-employed social workers.

The community service model is similar to the model in place in Kenya. A National Committee is chaired

by a High Court judge and in theory 12 regional committees chaired by a resident magistrate and 66 district committees chaired by district magistrates are tasked with overseeing community service at the regional and district levels. However, these committees do not always meet on a regular basis. The committee members are not paid for their participation.

4.2.3. The Orders

Probation orders can be imposed for a fixed period of 1 to 3 years, either before or after conviction. The law specifies that probation orders can be imposed by any court, including the High Court, but not for an offence prescribed under the Minimum Sentences Act 1972. This Act covers a wide variety of offences including the stealing of cattle and robbery with violence. Probation tends to be used for offenders who are under 18, elderly or suffering from ill-health whereas adults who are able to work tend to be recommended for community service orders.

Community service orders can be imposed for a fixed period of up to three years not exceeding the period of time for which the court would have sentenced the offender to prison. Both types of orders tend to be targeted at first offenders with a fixed and permanent place of residence. Eligible offenders are interviewed at court, but there are insufficient numbers of probation staff to interview all of those who are eligible, particularly in larger courts which can comprise up to six chambers. Recommendations put forward in social inquiry reports tend to be accepted by the courts.

As in Kenya, prison officers are able to identify eligible offenders in prison. Lists are produced and suitable cases are reconsidered by magistrates. Large numbers of those on community service come from prison in this manner. A High Court Judge was reported as saying that of convicts who served a community service sentence in the Arusha region between 2008 and 2010, "only three people were convicted directly under the new legislation and that 150 had their earlier sentences changed when they were already serving their sentences under the conventional law."²¹

20 Concept Paper from Tanzania Department of Probation 2011: on file with PRI

21 The Citizen 6th February 2012 <http://thecitizen.co.tz/news/-/19529-many-oppose-community-jail-terms>

There is a separate system of parole which is currently organised by the prison service. National and regional parole boards chaired by judges consider the cases of prisoners serving sentences of more than four years.

4.2.4. Community Service Placements

Community service is undertaken for four hours a day, five days a week. Supervision of the work is undertaken by the placement institution; these are generally government institutions. The nature of the work is similar to that undertaken in Kenya.

4.2.5. Numbers

In October 2011, there were 748 offenders subject to community service orders (653 men and 95 women) and 103 subject to probation orders (75 men and 28 women).

4.2.6. Compliance

According to the Probation Department, more than 90% of the orders are satisfactorily completed.

4.3. Uganda

4.3.1. Legal basis, mandate and organisation

Uganda has a probation system and a system of community service. The Probation Service is administered by the Ministry of Gender, Labour and Social Development. Probation orders can only be issued to children, not to adults.

Community service is administered by the Ministry of Internal Affairs. An Interim Community Service Committee was established in Uganda in 1996 and following a period of consultation the Community Service Act was passed in 2000 with regulations following a year later. Currently there is a National Community Service Committee chaired by a high court judge with representation from all criminal justice administration agencies including the police,

the Department of Public Prosecutions, NGOs, the Law Reform Commission, the Ministry of Gender, and the Ministry of Local Government and Prisons. This committee is replicated at the district level. A Department of Community Service headed by a Commissioner has been created to spearhead implementation of the programme in the country.

In Uganda, community service has a range of objectives including:

- the rehabilitation of petty offenders;
- the decongestion of prisons;
- the reduction of recidivism;
- the promotion of the rights and dignity of petty offenders;
- the reduction of government expenditure on petty offenders in prisons;
- the promotion of social cohesion through the reconciliation of petty offenders, victims and the community; and
- the contribution to international conventions on human rights and good governance.

Community service was piloted in the districts of Mukono, Mpigi, Masaka and Masindi from November 2001. By the end of September 2003, 1,288 petty offenders had been placed on community service and had undertaken a variety of public works in their communities. Following a review of progress in 2004, a decision was taken to extend the programme to all districts of Uganda.

The Community Service Regulations Act of 2001 provides for probation officers to coordinate community service in their respective districts, however, this arrangement causes difficulties as the Community Service Department has limited control over the work of probation officers. Although they are technically court officials, they tend to be more involved in social welfare work than in court work and their brief at courts is strictly related to children in conflict with the law.

The implementation of community service is the responsibility of a Commissioner and a national civil

service committee together with a network of district committees. These are chaired by magistrates and are a replica of the National Community Service Committee, including local officials as well as two members of the public. The extent to which these committees meet varies and inadequate resourcing impacts upon the functioning of these committees. In other areas the meetings are diverted to a range of other matters, with community service relegated to a small part of the agenda.

4.3.2. Staffing and resources

At the time of the roll-out from the pilot programme, Uganda had 56 districts although this number has since doubled with the creation of 56 new districts. The resources available for the Community Service Programme have, however, remained almost the same. The Community Service Department has a total of 17 technical staff to oversee the implementation of community service in 112 districts plus 10 support staff ; implementation of the programme in the newly created districts has not picked up momentum. To compensate for the shortage of personnel, volunteers are being introduced in some districts. Kampala Extra, the region outside the capital, has community service volunteers at all nine courts.

The Department of Community Service had a total budget of approximately 1.1 billion Uganda Shillings in the financial year 2010–11 (approximately £225,000), although this was not fully released. The budget covers salary and running costs, as well as District Community Service Committee operations in selected districts – on average about 25 districts out of 112.

The Ugandan government has calculated how much the unpaid labour provided by offenders has saved placement institutions and the government. It is estimated that the 6,350 community service orders imposed in 2008–9 led to savings of £337,000 for the Government and £75,000 for the placement providers.²²

4.3.3 The Orders

Probation Orders

There is no provision for probation orders for adults in Uganda.

Community Service Orders

Any person over 18 who commits a petty offence punishable by imprisonment of no more than two years may be sentenced to carry-out unpaid work for the community instead of a term of imprisonment. An offender serving a community service order is required to carry-out up to maximum of 980 hours (within six months) of unpaid work in his community of residence. A maximum of eight hours a day can be imposed. The Children’s Act does not provide for community service as a penal sanction for children.

Community service can be imposed by any type of court. At the level of villages, parishes, town divisions and sub-counties, the Local Council Courts Act can impose community service for the infringement of a by-law or Ordinance (Local Council Courts Act 2006 13 (h)). However, there is a lack of knowledge about this legislation in relation to which the Community Service Commissioner noted, “This is a critical area for capacity building.”

Most orders are imposed by magistrates, although some magistrates limit community orders to offenders of specific offences while others use their discretion to broaden the spectrum of eligible offences. There has also been one community service order issued by a high court judge in a case of defilement.

The Community Service Act makes clear that “where a person is convicted of a minor offence, the court may instead of sentencing that person to prison, make a Community Service Order”. However, the term ‘minor’ has led to some confusion with some judges taking the view that all cases dealt with by the High Court cannot be considered minor irrespective of the facts.

Although the legislation stipulates that the assessment of offenders for community service should be undertaken by probation officers, pre-

²² This calculation is based on multiplying the number of community service hours completed by the minimum wage rate for hourly pay–savings for government also include prison costs which would have been incurred

sentence information is in fact provided to the courts by the police. The use of police officers to make social inquiries arose as a result of the heavy workload of probation officers who are usually busy with social welfare work and the thin staffing structure of the community service department.

The police complete Form 103 which is a community service programme pre-sentence report. The form requests the following information about the offender and the offence:

- whether the offender is a first, second or habitual offender;
- information about the background of the offender that is seen as relevant to his/her suitability for community service (for example if he/she is in dispute with his/her family or is a heavy drinker);
- information about whether the offender has a settled place of abode;
- information about whether the offender consents to a community service sentence; and
- information about whether the community supports community service in this particular case.

The form also requires the investigating officer to state whether he/she recommends community service and why or why not. In addition, the form asks for a suggestion of an appropriate placement institution in instances where the recommendation is positive. The form must be completed in all cases where the offences are eligible to be dealt with by community service. According to the Community Service Commissioner the police have not fully embraced their role in this process: "Most files of eligible offenders lack the said information at the time of sentencing"²³ and in these cases magistrates do not impose community service orders.

Community Service Placements

The work undertaken by offenders is provided by placement institutions which are public or community-based organisations like churches or mosques. Generating a list of placements

is the responsibility of the District Community Service Committees. Areas of work have included construction and environmental conservation; work in schools and health facilities; the planting of trees and the establishment of nursery beds; the de-silting of choked drains; solid waste collection and disposal in urban areas; the sinking of pit-latrines; brick-making and-laying; and the maintenance of feeder roads and community utilities. In some cases offenders' professional skills have been matched with their punishments and they have been placed as carpenters, cooks and teachers within the community. In such circumstances an offender can sometimes play a role in providing information about a suitable placement. Where suitable placements are not available, work can sometimes be provided at police stations or courthouses.

The Community Service Department has a small budget to support placement institutions by providing tools such as wheelbarrows and seeds for planting. Responsibility for supervising the placements is undertaken by officials or others in addition to their main job. The community service placement at Kasangati outside of Kampala is in a market run by the Catholic Church with supervision provided by the market master. These supervisors are in turn monitored by staff from the Community Service Department or by volunteers (of whom there are currently 19 with a target of 122). The department has 4 regional offices and 10 officers at regional level and is able to make spot checks.

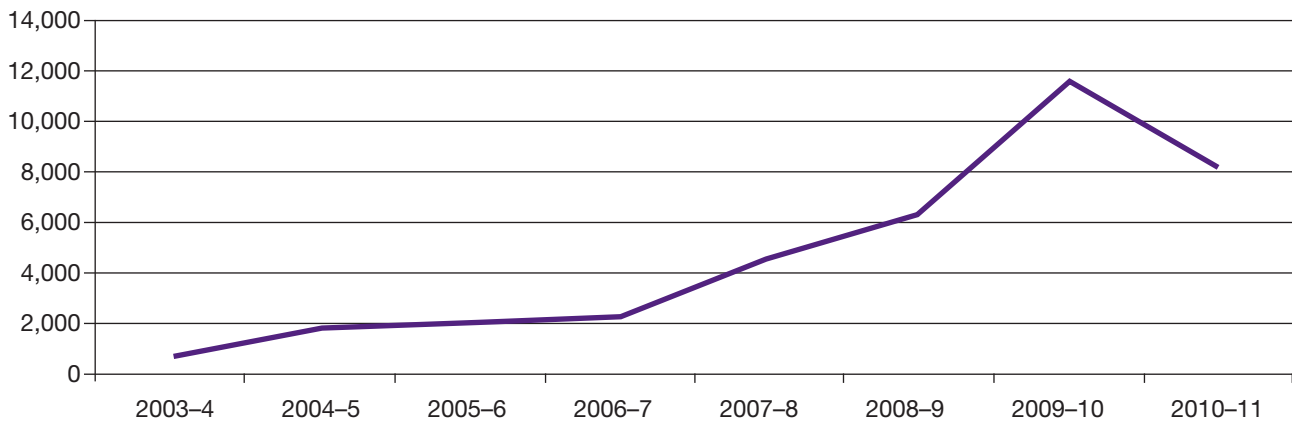
4.3.4. Numbers of cases

The number of community service orders imposed by the courts grew rapidly from 2003/4 until 2009/10 as illustrated in Figure 2 below.

Of the almost 26,000 community service orders imposed in the three years from 2008–11, 5,755 were imposed for theft, 3,940 for 'being a rogue and vagabond', 3,551 for assault, and 1,747 for being 'idle and disorderly'. The next most common offences for which community service was imposed were criminal trespass (1,098), threatening violence (939) and traffic offences (654). The remaining top ten offences were possession of narcotics (654), stealing cattle (646) and malicious damage to property (522).²⁴

²³ Paper from CS Commissioner 2011 on file with PRI

Figure 2: Number of Community Service Orders Imposed in Uganda 2003 – 2011



The fall in the number of orders between 2009/10 and 2010/11 is attributed in part to the distraction caused by the elections which were held in 2011. There has also been a focus in the Community Service Department on improving the quality of orders served and on increasing compliance rather than simply expanding the numbers. The Community Service Department calculates that the 33,000 offenders made subject to community service since 2001 represent less than a fifth of the eligible offenders incarcerated over the same period.

4.3.5. Compliance

The official data about the extent to which offenders comply with alternative sentences is positive. Of the 6,350 people made subject to community service orders in 2008-9, 254 are reported to have absconded which is a rate of 4%.²⁵ Discussions with stakeholders in October 2011 suggested that the real figure is likely to be much higher. Some estimates were in the region of 15-20% , others higher still but this may, however, refer to partial completion rather than a total failure to comply.

4.3.6. Special Initiatives

An initiative has been started to identify defendants on remand in prison who might be eligible for community service. Community service staff, accompanied by magistrates, talk to prisoners to find out why they are being detained. If they are first or second offenders who are willing to admit their guilt and whose offence is not too serious, their names can be forwarded to court and their cases dealt with on a fast-track procedure. Community service officers therefore make regular visits to prisons to sensitise the inmates on community service and identify those who are eligible. Plea bargains are used and mini-court sessions organised to dispose of those who are willing to conduct community service. Sensitisation is also carried-out at police suspect parades and where the identification of eligible offenders also takes place. However, the above exercise is constrained by inadequate staff numbers as well as insufficient resources to facilitate the mobility of those involved.

A number of other initiatives have been introduced to strengthen the use of alternatives including the 'chain-linked initiative'²⁶ and a 'case backlog quick-win clearance programme.' While the remit of these initiatives goes well beyond the issue of the use of alternative sentences, a 'Task Force on Sentencing Guidelines' has recently been established under the chairmanship of the Principal Judge. The Community Service Department is represented on the Task Force and community service is one of the key areas being considered.

24 Paper from Community Service Commissioner 2011

25 Data from Community Service Department at http://www.mia.go.ug/community.php?1=what_nat_comm&&2=National%20Community%20Service

26 See PRI: Index of Good Practices in Reducing Pre-Trial Detention (2005)

Challenges and key issues

5.1. Are alternatives diverting offenders from prison?

The effectiveness of alternative sentences in reducing the use of prison depends in large part upon how they are used and in particular whether they are imposed upon defendants who would otherwise have gone to prison. The phenomenon of “net-widening” has been observed in certain countries. This describes the process in which alternatives do not have the effect of replacing sentences of imprisonment but are imposed instead upon offenders who might otherwise have received less restrictive measures such as discharges and fines. It is particularly important to avoid this when failure to comply with a community-based sentence automatically leads to imprisonment. Respondents to our questionnaire indicated that this happens in Tanzania and Uganda, although not Kenya; the law in all three countries gives courts discretion on how to deal with breaches.

An evaluation of community service in Kenya carried out in 2003 found that prison overcrowding had not improved since the introduction of community service. There were almost 600 convicted prisoners in Nairobi Central Prison serving sentences of less than six months but “magistrates do not trust their capacity to commit to community service”.²⁷ The evaluation also suggested that the amount of paperwork involved in the imposition of community service might act as a disincentive to magistrates. Other research found that a very large majority of the offences for which the offenders subject to community service were charged were very minor offences such as brewing illegally, drinking illegal brew and public disorder. A study of substance-misusing offenders in the district of Meru North reported that in 2006 more than 320 offenders subject to community service were convicted of alcohol and drug crimes.²⁸ These findings raise the question of

whether community service has diverted offenders from custody or simply added to the net of control.

In Uganda, evidence from the initial pilot areas suggests some successful diversion from custody. The number of petty offenders serving a detention sentence in Mukono went from more than 100 to 30, in Mpigi from 520 to 310 and in Masindi from 180–190 to 50.²⁹ It is not clear that such high rates of diversion from custody have been maintained. Data suggests that there are significant numbers of prisoners who could be diverted into alternative sentences. A 2007 survey of 48 central prisons in Uganda found 30% of remand prisoners (3,288 individuals) were “petty offenders”³⁰ and the numbers in former local administration prisons are likely to be higher still.³¹ It has been suggested that Local Council Courts should be given the authority to handle more in the way of petty crimes and impose community service, thereby avoiding the need for the defendant to appear before magistrates with its consequent delay.³²

Recent figures for Uganda show that relatively large numbers of what appear to be minor crimes result in community service orders; for example in 2010–11 more than one in five orders was imposed for ‘being a rogue and vagabond,’ ‘idle and disorderly’ or for street trading. It is possible that what appear to be minor offences could nonetheless have led to imprisonment in the absence of an alternative sentencing option.

During an assessment visit to Tanzania, all of the 16 offenders undertaking a community service placement in a Dar es Salaam park had breached city bylaws, 12 by parking their wheelbarrows in the wrong zone and the remaining four by touting for custom on their buses. All 16 had spent two weeks on remand in prison and may well have received a custodial sentence in the absence of community service. Thus if imprisonment is being used for relatively minor crimes, alternatives will necessarily

27 Rumin (2003) Report on the Independent Assessment of the Community Service Programme and Zambia, Kenya and Uganda 2003

28 Wakhu S Can Probation and After Care Services reduce crime in our society in the face of drug abuse and addiction? http://www.knapokenya.com/index.php?option=com_phocadownload&view=category&id=1:general&Itemid=29

29 Rumin (2003) p30

30 JLOS Census of Prisoners in 48 Central Government Prisons 30th September 2007

31 The Prisons Act of 2006 transferred the functions and administration of 170 locally administered prisons to Uganda Prison Service, to create one nationwide system

32 Royal (2009) Community Service as an Alternative to Imprisonment in African Journal of Crime and Criminal Justice Vol 1 The Local Council Courts act 2006 does allow the Courts in the case of infringement of a bye-law or Ordinance, “to impose a fine, community service or any other penalty authorised by that bye-law or Ordinance” (S13)

follow suit. It is not possible to say that alternative sentences are being used too low down the tariff when imprisonment is being used as widely as it is in East Africa. It could be argued therefore that what is needed to reduce prison overcrowding is to raise the threshold for custody so that such infractions or violations which in many countries might well not lead to prosecution let alone custody, should be dealt with in some other way.

Addressing overcrowding requires an understanding of the extent of the problem and the reasons why it has come about in a particular prison system. A census of the prison population can identify who is in prison and why and point to priorities for relieving congestion. Timely and accurate information can also enable a more rational debate about the most effective use of prison and assist advocacy on behalf of policies which meet international standards. Information gathering and analysis should be ongoing.

Recommendation:

There is a need in all three countries to collect and use data to inform a rational, humane and cost effective use of prison

There is growing international acceptance that the use of prison should be a last resort. For example in 2011, the UN Special Rapporteur on Extreme Poverty and Human Rights argued that “States must only have recourse to detention and incarceration when it is necessary to meet a pressing societal need, and in a manner proportionate to that need. States must ensure that arrest or detention does not disproportionately affect those living in poverty.”³³

In all three countries, detention and incarceration policies and legislation should be reviewed, in order to identify and remove discriminatory laws and practices which disproportionately disadvantage persons living in poverty. Measures should be put in place to enable the police, the courts and public officials to adequately assess the potential effects of detention or incarceration in the light of each individual’s circumstances.

Restricting the use of custody for apparently minor crimes is not as straightforward as it seems, however. Kenya’s new Constitution takes steps in this direction by providing that “A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months”³⁴. A number of observers have expressed the view that paradoxically this could reduce the numbers of candidates for community service who, according to one newspaper are: “people patronising busaa dens, idlers at marketing centres and bus termini.”³⁵

The reason is that at least some of these minor offenders, automatically released on bail, may fail to appear in court and therefore prove themselves unsuitable for a community sentence. The unintended consequence may therefore be that such offenders will be more likely to face a custodial sentence, although less likely to face a custodial remand.

The Probation Service has responded to this possibility by pioneering bail information schemes which enable courts to obtain a clearer picture of the offender’s circumstances than they otherwise might. The information can at least be entered on the court record but whether this will help to keep people out of prison remains to be seen. A representative of a civil society organisation interviewed for this report expressed the concern that unless careful preparations are made for the introduction of the Constitutional restriction, there is a danger that people may take the law into their own hands if they do not feel that the law is responding effectively to wrongdoing.

In Uganda, it was suggested by a magistrate that one of the reasons that the police are often not keen on community service is that they see their role to take offenders off the streets. Even those who are charged with relatively minor offences, such as being ‘idle and disorderly,’ can cause a nuisance in communities and imprisonment takes them out of circulation, at least temporarily. If such offenders remain in the community, even undertaking unpaid public work, there is a risk that they will be seen to have escaped justice. The Tanzania Human Rights Report for 2010

33 The Special Rapporteur’s report to the sixty-sixth session of the General Assembly (October 2011) A/66/265

34 49(2)

35 Community service Under Threat All Africa.com 22 September 2010. Busaa Dens are illegal drinking establishments

notes that “mob violence is still very rampant in the country, especially in big cities, lake zones and southern regions”³⁶ although the Commissioner of Community Service in Uganda noted that “since inception there hasn’t been any reported case of mob justice inflicted on an offender on community service.”³⁷ Ways of avoiding this risk by educating the public about alternatives are discussed below. It is, however, important to note that efforts to ensure that probation and community service are sufficiently high tariff options to replace prison sentences need to be sensitive to public attitudes about crime.

It may well be that in some areas, traditional forms of justice and the agreements that emerge from them have an important role to play alongside alternative sentences imposed by the formal justice system. The Constitution of Kenya requires the promotion of alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. There is an important proviso that such measures should not be inconsistent with the Constitution, nor should any written law contravene the Bill of Rights or result in outcomes that are repugnant to justice or morality.

Recommendation:

The role of traditional justice mechanisms, where these comply with international human rights law, should be further developed in dealing with minor offences.

As for the formal system of alternatives, there are a number of issues that need attention to ensure that they are having an optimum impact.

5.1.1. Limiting legal restrictions on the use of alternatives

The laws governing alternative sentences place some restrictions on their use. In Kenya any crime other than a capital offence can be made subject to a non-custodial order, although community service is limited to offences that would receive up to three years’ imprisonment. As a matter of law and policy, some offences have been classified as unsuitable for community service orders. These include: murder,

rape, defilement, robbery with violence, possession of a firearm, motor vehicle theft, corruption involving public officers and serious fraud. The three-year limit also applies in Tanzania but a large number of offences carry a mandatory minimum prison sentence and are ineligible. For example under the Minimum Sentences Act 1972 “where any person is convicted of stealing cattle, the court shall sentence him to imprisonment for a term of not less than five years.” This is an offence for which in Uganda about 200 offenders a year receive community service orders.

Recommendation:

Consideration should be given to revising the range of offences which carry minimum sentences in Tanzania so that alternatives can be imposed in appropriate cases.

In Uganda community service is limited to offences that would receive up to two years in prison. There is some lack of clarity about whether the High Court is entitled to impose community service orders because they are designed for minor offences and some (but not all) judges consider that cases in the High Court cannot by definition be classed as minor. There does not appear to be any such confusion in Kenya or Tanzania.

Recommendation:

Consideration should be given to how best it can be made clear that the Uganda High Court can impose community service orders, in sentencing guidelines or otherwise.

In Tanzania we were told that alternative sentences basically applied to offenders who committed non-serious offences and priority is for first offenders. However, in certain circumstances if the offender demonstrates remorse for the offence and to the victim of the crime, he/she may be considered for alternative sentence. It appears in all three countries that alternative sentences are limited to first and sometimes second-time offenders, although in Kenya previous convictions do not necessarily restrict eligibility for a probation order.

³⁶ Legal and Human Rights Centre (2010) Tanzania Human Rights Report 2010 P51

³⁷ Paper on CS September 2011 on File with PRI

Recommendation:

Consideration should be given to whether alternative sentences could be considered for offenders with a wider range of criminal records, particularly where these involve minor crimes. Community service should, for example, be available as an alternative to an unpaid fine irrespective of the number of previous convictions.

5.2.1. Training Magistrates and Judges

Respondents from Kenya explained that although alternatives were used frequently, judges and magistrates use non-custodial measures on a 50–50 basis while 80% of prosecutors are opposed in the main to non-custodial measures.³⁸ This suggests that large numbers of sentencers and a larger number of prosecutors do not have confidence in alternatives. It has also been suggested that insufficient attention is given to alternatives to prison in the training which is given to judges and magistrates.

This may be a particularly relevant factor in Kenya because, according to the Probation Service, in recent years the country has lost most of the magistrates that had been trained previously through initial PRI funding after the 'purge' that was carried out to clean-up the judiciary in 2003. "Most of the new judicial officers who came afterwards have never been sensitised on community service orders".³⁹

One respondent in Tanzania told us that "many magistrates claim to know little about community service and probation. Also many magistrates and public prosecutors still have negative attitudes on the use of these alternative sentences". The respondent acknowledged that there are however mixed views among these stakeholders. "Some prefer to use alternative sentences by believing that those who are not serious offenders and who have committed minor offences deserve alternative punishments and some are too conservative to use them by claiming

that such sentences are not effective and cannot deter offenders from committing further crimes. A number of magistrates and public prosecutors still think alternative sentences are soft options and do not punish offenders enough, so as a result they keep sending petty offenders to prisons. Here we need to educate these stakeholders to change their attitudes."

Respondents from Uganda suggested that around 60% of magistrates remain reluctant to use community service as an alternative to prison. Unlike in Kenya, where younger magistrates are seen to be the most punitive, in Uganda it is the younger generation of magistrates who are more willing to use community service. While some view it as a soft option, others are reluctant to use it because they rarely get feedback on the orders they issue due to inadequacies in monitoring and follow-up. We were told that "most judicial officers and even society do not consider alternatives sufficient punishment." One Ugandan respondent explained that "because most victims frown upon the alternatives, courts hesitate to impose them". The view is that it is a soft option and may lead to a community backlash. Alternatives are not used, we were told, because they are inappropriate for accused persons who are habitual offenders, many accused persons lack fixed places of abode for supervision and there are few supervisors. There is a fear of reoffending which means that courts are reluctant to take the risk.⁴⁰

The Commissioner of Community Service stated to Human Rights Watch that the success of his programme depended heavily on "the personality of the magistrate" and his or her willingness to use it as a sentencing option.⁴¹ A research study carried out in two of the areas where community service was piloted found that the Chief Magistrate of Mukono noted, "When passing a community service order, I do it reluctantly with a lot of reservation. I still regard this as a soft punishment".⁴²

More information is needed on the nature and extent of judicial reluctance to use alternatives and how best

³⁸ An evaluation carried out for Penal Reform international in 2003 also found that about half of magistrates in Kenya used CS and half not (Rumin 2003)

³⁹ Paper from Probation Department 2011 on File with PRI

⁴⁰ Response to PRI Questionnaire

⁴¹ Human Rights Watch (2011) *Even Dead Bodies Must Work: Health, Hard Labor, and Abuse in Ugandan Prisons*

⁴² Birungi C (2005) *Community Service in Uganda as an Alternative to Imprisonment*

to address this. The approach is likely to be different with different courts. In Uganda sentencers include magistrates (who are at three different grades), state attorneys and local council courts.

For some sentencers the negative attitude may reflect a basic view that all those in conflict with the law have to be incarcerated. But for others there are three types of more specific concern.

Some sentencers may be concerned that there are inadequate staff to implement the orders effectively and be concerned that they receive no feedback on orders, other than in cases of non-compliance. In Uganda we heard that “lack of communicated evidence of work such as copies of work record sheets discourages sentencers from issuing more orders as they think that the offenders could have just gone home without doing satisfactory work.”⁴³

Some sentencers may be unaware of the law or interpret the law in a particular way. We heard that in Uganda “Some magistrates limit community service orders to specific offenders while others use their discretion and broaden the spectrum of eligible offences. Local council courts, which are the courts of first instance where petty offenders actually fall, are ignorant of the law that empowers them to issue community service orders.”

Finally there is the question of corruption, which may act in a number of ways to inhibit the use of alternatives. In a number of countries it was suggested that some sentencers may be reluctant to impose community service because it will be assumed that they have received a gift of some kind. The Kenya Probation Service suggests that “elements of corruption” are among the weaknesses facing the department but do not specify in what way.

Recommendation:

Newly-appointed magistrates and judges and relevant courts and tribunals need to receive training on alternative sentences. There is also a need for continuous training which involves magistrates visiting community service sites and sharing experiences and best practices. Training and sensitisation on community service needs to be integrated in

the training curriculum for key stakeholder departments and all the other stakeholders are encouraged to integrate it in their programmes.

5.1.3. Identifying and assessing suitable candidates for alternatives

Those magistrates and judges who are aware of the law and at least willing to consider an alternative are only likely to impose one if there is a positive recommendation that they should do so. In Kenya the decision to request a pre-sentence report from the Probation Service is one which is made by the courts themselves. The recommendations about sentences which are made in the reports seem generally to be accepted but it seems likely that reports are not being commissioned on some offenders who might be both eligible and suitable for an alternative sentence. The Probation Service would prefer a system in which reports are either mandatory in certain types of case or a situation in which they, the Probation Service, would take the decision to compile a report in particular cases.

In Uganda the reports are prepared by the police. It is a statutory requirement that all files of petty offenders being produced in court should contain information on the eligibility of the offender for community service and there is a simple form for recording this. Police Form 103 contains space for offender bio-data, background, antecedents of the offence, availability of placement institution, work, supervisor and recommendations for community service suitability among others. However we were told that in practice most files of eligible offenders lack the information at the time of sentencing and so magistrates cannot “risk” giving such offenders community service.

The problem is compounded by the fact that where a report is available it has to be presented by the prosecution, which in most cases is looking for a tough sentence to act as a deterrent—community service is not viewed as particularly tough.

The Uganda Community Service Department itself lacks the staff to systematically identify and advocate for eligible offenders or to ensure that pre-sentence information is available, and the necessary

arrangements are made. Staff at the courts have a variety of different core mandates and give little time to community service, which is “no-one’s business in particular.”⁴⁴ Some of this work is undertaken by paralegals who work at the police stations to sensitise the police, at the courts and in the prisons. But many offenders who may be eligible for community service are slipping through the net.

In Tanzania too there are not enough staff to assess all of the eligible offenders.

More up-to-date information is needed about whether there are prisoners who could be diverted to alternatives (including those who cannot pay fines) and if so what is needed to make this happen.

Recommendation:

Greater efforts should be made to identify eligible and potentially suitable offenders with training provided to police and prosecutors as well as magistrates, so that assessments can be undertaken in a greater number of appropriate cases.

5.1.4. Developing Innovative Mechanisms

Formally community service is not currently available in Kenya or Uganda as a mechanism for early release. But in each of the three countries, initiatives have been developed to compensate for the problem of missing eligible candidates at court by identifying them in prison either at the remand stage (Uganda) or after they have received a sentence (Kenya and Tanzania). Some questions have been raised about whether this system works as well as it could. Research carried out between 2001 and 2004 found that it was suggested that prison authorities discouraged prisoners from opting for community service because they themselves benefitted from hiring out prison labour.⁴⁵ This practice is still commonplace according to Human Rights Watch who, in 2011, recommended that the Government issue “direct orders to stop the use of forced prison labour for private landowners or prison staff.”⁴⁶ There are also questions in the Ugandan

scheme of ensuring that detainees are not unduly influenced to admit offences they had not committed simply to qualify for community service. This is something which is emphasised in the training of community service staff. In Tanzania it was suggested that the process of drawing up lists of eligible prisoners may be open to corruption. Some prison staff may expect a reward for placing a prisoner’s name on the list.

Recommendation:

There are innovative programmes which are definitely contributing to decongestion. These should be expanded with appropriate safeguards to ensure that all eligible prisoners are fairly considered for commutation of sentence.

5.2. How well are alternatives implemented and enforced?

However alternatives sentences are imposed, it is important that once an order is made it is implemented promptly and efficiently. We have seen above that concerns about the effectiveness of implementation are likely to impact on sentencers’ decision-making about individual cases. Lack of supervisors was one reason given by respondents to our survey as to why alternatives are not used more. Local communities and particularly victims of crime are likely to be unimpressed if offenders do not comply with their orders and the message that they can offend with relative impunity is a damaging one for offenders themselves.

Of the three East African countries, the biggest single issue with respect to implementation is in Tanzania, where community service is available in only 12 out of 25 regions. However the establishment of Probation and Community Service Departments to take responsibility for managing the implementation of non-custodial sanctions in the country suggests that in the regions where it is available the arrangements

44 Ibid

45 KA Royal Community Service as an Alternative to Imprisonment: A Community Perspective in African Journal of Crime and Criminal Justice Vol 1 2009

46 Human Rights Watch 2011 “Even Dead Bodies Must Work “Health, Hard Labor, and Abuse in Ugandan Prisons

47 Response to PRI Questionnaire

and coordination have been improved since problems were identified in a research report.⁴⁷

Recommendation:

A costed plan for making probation and community service available across the United Republic of Tanzania should be drawn up as a matter of priority.

The other two countries lack the necessary funds to operate alternatives as they would wish. The Kenyan government acknowledges a number of challenges facing community service, the most important of which is a lack of adequate funding for the programme to be fully operational countrywide. For example, a lack of adequate vehicles in most field stations hinders the implementation of the programme. The Probation Service had 91 cars and 67 motorcycles at the end of 2010. Field officers are not always able to reach their clients in the villages which produces delays in proceedings which can in turn lead to overcrowding of prisons.

Resource constraints have also limited the amount of training that has been provided to supervisors, chiefs and other stakeholders on how to handle offenders. The 2003 PRI evaluation found that community service involved a variety of placements with supervision undertaken by the placement providers. This was seen to be of variable quality.

Kenya reports that more than 3,500 supervisors have received training in the period 2005–10,⁴⁸ but the official in charge of community service in Kenya in 2011 has said that “through frequent transfers and retirements there is a high turnover of trained supervisors who are mostly public officers and training of new ones is unable to keep up with the same pace due to dwindling training funds. Consequently, we have a substantial number of new supervisors that have not been trained and this is affecting the programme as evidenced by lack of tangible work being assigned to offenders; lack of proper record-keeping; allowing people to work for others and not reporting those that abscond.”

Kenya publishes data showing very high rates of compliance with orders but accepts that there are problems. The Probation Service Strategic Plan for 2008–12 looks to “improve the level of supervision of offenders to forestall re-offending and absconding”.⁴⁹

A similar picture was obtained in Uganda, where supervision is a matter for public officials, who may not be willing or able to give the task the time and attention it needs.

Recommendation:

A ‘training of trainers’ package should be developed in all three countries and delivered to departments and agencies responsible for work placements with a requirement that placement supervisors be properly trained before they can take on the supervisory task.

In Uganda, a study of the early development of community service found that “the financial contributions made are insufficient to sustain the activities of the programme as well as to cater for salaries of the personnel employed. This contributed greatly to the slow and poor implementation of the project in the case study areas when the pilot phase that was financed by donors came to an end.”⁵⁰ While community service has recovered in recent years, there are some serious questions about the effectiveness of implementation on the ground.

Official data suggests that the number of orders grew very quickly up to 2009–10 and official data for 2008–9 at any rate shows high rates of compliance with orders – only 4% of offenders absconded. There is reason to believe that whether or not this figure was accurate for that year, it is unlikely to be an accurate reflection of compliance in the following year which saw the numbers of orders almost double.

Research in the early pilot period in Uganda found that “with the increase in the numbers of offenders, supervision and monitoring became lax; consequently some of the offenders did not do the work well.”⁵¹ The same research identified problems when local elected

48 Feedback Probation service Table 6

49 Office of Vice President & Minister of Home Affairs (2008) Probation Service Strategic Plan 2008–12

50 Birungi C (2005) :Community Service in Uganda as an Alternative to Imprisonment

51 Ibid

leaders are involved in the supervision of community service, since they may fear losing the electoral support of the families of offenders and more straightforward issues of corruption by which supervisors of all kinds could sometimes be bribed by offenders who would then hire someone else to do the work.⁵²

Two of the interviewees in our assessment visit in October 2011 suggested that similar problems may be at play currently with the rate of absconding much higher than the official figures suggest. They considered that there is a lack of reliable supervisors and offenders may complete their first day's work and then disappear, safe in the knowledge that they will not be followed up.

The lack of ID cards means offenders can move to a new area and change their names, leaving people feeling embittered about their impunity. The police do not see it as a high priority to arrest absconders.

In order to address the problem courts are imposing short sentences of five hours or one day to ensure that the order is complied with. But although this increases compliance, it locates community service at the lowest end of the sentencing tariff.

A number of initiatives are underway in Uganda to improve compliance. The Commissioner of Community Service has prioritised the improvement of quality of placements rather than simply increasing numbers. Memoranda of understanding are being sought with civil society groups who can help with supervision. A greater priority is being given to enforcement.

The implementation of alternatives reflects the systems of governance in the three countries. The quality of the service in Uganda is perhaps not helped by the Probation and Community Service Departments being located in different ministries. A training workshop conducted by UNAFRI in 2007 reported that "these services should be under one ministry to be more effective".⁵³

Recommendation:

Consideration should be given to giving responsibility for the Probation Service in Uganda

to the Ministry of Internal Affairs so that it can work more closely with Community Service.

The system in Uganda is also highly devolved, with probation staff employed at district level. The issue of devolution is present in Kenya too. The Director of Probation in Kenya has expressed the view that probation should remain as a national service and the route towards devolution to local government—which he saw as having largely failed in Uganda – "must be avoided if we are to succeed".⁵⁴

In Tanzania, it was suggested to us that there are officials working in local government—ward executive officers—who could play a greater role in supervising community service placements. It was suggested in Uganda also that a more effective model of arranging placements was needed. For example, a successful community service placement site is a food market in Kasangati. The 'market master' provides the supervision and finds the workers essential to keeping the market area from getting overgrown. It is conceivable that market masters could be encouraged to act as supervisors more widely.

There is always a balance to be struck between centrally-driven and locally-responsive modes of governance in any form of public administration. The patchy functioning of the local committees that are supposed to generate and oversee appropriate placements has not helped either in Uganda or Tanzania. It was suggested that the chairs of the committees do not always take their responsibilities seriously.

These committees seem key to the effective functioning of community service at the local level.

Recommendation:

A programme of work to remind the committees of their key tasks and to provide technical assistance where possible should be drawn up by the National Community Service Order Committee and the Probation and Community Service Departments in each of the three countries.

⁵² Ibid

⁵³ UNAFRI 2008 The Practice of Parole and Probation in Criminal Justice Administration

⁵⁴ From the Director in PROBATION Biannual Newsletter June 2001

There are two examples of good practice which deserve wider replication. The first is Kenya's flagship community service projects in which offenders are equipped with the skills to leave crime behind them. It is a model which combines community reparation and community re-integration, rewarding offenders who successfully complete their orders with some assistance to earn their living – through agriculture, animal husbandry or small scale manufacturing.

Recommendation:

The flagship community service projects should be introduced in Uganda and Tanzania and expanded where possible in Kenya.

The second encouraging example of good practice is the use of volunteers to assist in the work of probation officers and community service officers in both Kenya and Uganda. Inspired by the example of Japan where volunteer probation officers outnumber professionals by a ratio of 5:1, Kenya has recruited and trained more than 300 volunteers since 2005. A training manual, code of conduct and practice guidelines have been produced. The volunteers, referred to as Assistant Probation Officers (APOs), have increased the reach of the probation service, reportedly reduced absconding and helped to speed up the writing of reports for courts.

In Uganda in the light of the staffing inadequacies the Community Service Department has engaged volunteers at various courts to fill the gap. Fifty-six volunteers will be identified in the financial year 2011/12 with local leaders also being encouraged to monitor the placement institutions.

Recommendation:

The further use of volunteers should be explored to enhance the capacity of the probation and community service officers in all three countries with exchanges of experience and practice to assist development.

Capacity should also be enhanced to ensure suitable opportunities are provided to offenders with specific needs including women and where appropriate children.

5.3. How well are alternatives promoted to the public?

Both the day-to-day operation and the long-term sustainability of alternative sentences require a reasonable level of public confidence. Without this, courts will be reluctant to impose sentences, implementing authorities will be unable to find placements for offenders and governments will be unwilling to spend the necessary resources to maintain, let alone expand, the programmes, notwithstanding the savings that would accrue in the medium term.

Kenya reports a lack of sensitisation among the public on the Community Service Order Programme. The Government considers that more publicity of the programme will enable the public to appreciate the socio-economic benefits such as the savings realised by the work agencies and social benefits accrued by the offenders' families and the community. Respondents said that public attitudes towards alternatives are relatively negative with alternatives seen as lenient. The media are ill-informed on alternative sanctions and normally portray them as "let-offs". This contrasts with the findings from the 2003 evaluation, in which it was reported that the population accepted alternatives and noted that prison officials were keen, presumably because of the promise which community service held for reducing congestion.

In Tanzania we were told that "there are mixed attitudes: people who have been sensitised on the use of alternative sentences in most cases do accept them and cooperate, but those who are not sensitised on the implementation of non-custodial sentences have negative attitudes—they think alternative sentences do not punish offenders enough. The media have been helpful with "those who own TV and radio stations providing opportunities for probation officers to hold a dialogue or discuss matters pertaining to the use of non-custodial sentences. Similarly, newspapers occasionally have documented issues pertaining to the implementation of alternative sanctions in the country."⁵⁵ A High Court Judge was reported in February 2012 as claiming that many of the public, particularly victims of crime do not support community sentences. Lady Justice Nyerere said opposition to the new system was because the crime

victims do not consider the 'soft' sentences as key in fighting the escalating crime and instead view it only as the government's attempt to reduce expenditure.⁵⁶

The Probation Department itself has almost nothing in the way of publicity material about its work.

In Uganda the Justice, Law, and Order Sector – the organisations and agencies involved in the criminal justice system – reported last year that “[t]he public now support community service as punishment and appreciate its impact in reducing the rates of recidivism,⁵⁷” but respondents to our questionnaire were less reassuring.

One of the respondents said that the public is hostile because they are not adequately sensitised and little is written in the media about alternatives to prison. Another agreed that the public think of alternatives as soft and their punitive attitudes lead them to prefer longer and tougher penalties. The second respondent considered the media to be supportive and to lead in publicising these initiatives. But although they are aware of alternatives, they recommend a cautious approach to their use. There is a recognition on the part of the Community Service Department that they have not done enough to engage the media because of resource constraints. The Department thought that community service is still viewed as a soft option but that the public seem to have accepted it on the basis that there has not been any reported case of mob justice inflicted on an offender on community service since the programme began.

Recommendation:

A programme of community outreach and sensitisation should be developed by the Departments and National Committees to ensure that the community is aware of what community service entails.

A detailed study of the perceptions of 120 community members was carried out in Mukono District during

the period 2001 to 2004.⁵⁸ Over three quarters of respondents had heard of community service, particularly men, many of whom had heard about it from the radio; few respondents had seen community service in action or knew how it operated. The crimes for which respondents thought community service was suitable included petty theft, assault, tax defaulting, and drug abuse, all of which qualified for civil service under the law. Most respondents were supportive of community service with the majority saying that the shame of being punished in the community would deter ex-offenders and the fear of having to do unpaid work would deter potential offenders; on the other hand the community thought that community service was not punitive enough to deter more persistent offenders. Community service might help reduce mob violence, would spare an offender's family prison-related expenses and could facilitate reconciliation with victims, although public support would weaken if there was evidence of corruption, non-compliance or re-offending. Public support might be enhanced if ordinary members of the community had a greater say in choosing the kind of work to be undertaken by offenders.

The question of the type of work that is best undertaken by community service offenders has been debated. It has been argued that “The success of the community service programme in Malawi is entirely attributed to the way it has been organised and run. In Malawi, offenders are made to work on permanent projects like building schools and local government buildings, which makes their contribution more tangible and beneficial to the community. This is unlike any other African country, for example Uganda, where in most cases offenders are sentenced by courts to sweep market places or clearing overgrown school compounds. The effect of such types of punishments is that once the offenders are done with the sentence, it is hard to tell after a while that work was done there. Such work easily fades away, showing almost no impact.”⁵⁹ However what research evidence there is suggests that community members are generally pleased to have free labour at their disposal.⁶⁰

56 The Citizen 6th February 2012 <http://thecitizen.co.tz/news/-/19529-many-oppose-community-jail-terms>

57 JLOS “Annual Performance Report, 2009–2010 quoted in Human Rights Watch 2011 “Even Dead Bodies Must Work” Health, Hard Labor, and Abuse in Ugandan Prisons

58 KA Royal Community Service as an Alternative to Imprisonment: A Community Perspective in African Journal of Crime and Criminal Justice

59 Birungi op cit

60 Ibid

The involvement of the Kenya Community Service Department in the national afforestation programme has served to raise the profile of community service within national government while offering benefits to the local areas where the planting takes place.

In Uganda offenders do their community service wearing orange or yellow bibs. This initiative, designed to increase the visibility of and confidence in the public work being undertaken, was imported from England and Wales. It is not applied in Kenya or Tanzania. Showing to the community the benefits of the unpaid work undertaken by community service offenders forms an important part of a sensitisation strategy, although it is important that this is not achieved at the expense of the stigmatisation of the offenders.

The publication of data showing the value of the work undertaken by community service offenders is a less controversial method of building public support.

Recommendation:

The public and media should be encouraged to propose work that offenders should do and be made aware of the work completed by offenders through open days, forums and the use of local radio. The value of such work should be calculated and disseminated.

Recommendations

1. There is a need in all three countries to collect and use data to inform a rational, humane and cost effective use of prison.
 2. The role of traditional justice mechanisms, where they conform to international human rights standards, should be further developed in dealing with minor offences.
 3. Consideration should be given to revising the range of offences which carry minimum sentences in Tanzania so that alternatives can be imposed in appropriate cases.
 4. Consideration should be given to how best it can be made clear that the Uganda High Court can impose community service orders, in sentencing guidelines or otherwise.
 5. Consideration should be given as to whether alternative sentences could be considered for offenders with a wider range of criminal records, particularly where these involve minor crimes. Community service should for example be available as an alternative to an unpaid fine, irrespective of the number of previous convictions.
 6. Newly-appointed magistrates and judges and other relevant courts and tribunals need to receive training on alternative sentences. There is also a need for continuous training which involves magistrates visiting community service sites and sharing experiences and best practices. Training and sensitisation on community service needs to be integrated in the training curriculum for key stakeholder departments and all the other stakeholders are encouraged to integrate it in their programmes.
 7. Greater efforts should be made to identify eligible and potentially suitable offenders with training provided to police and prosecutors as well as magistrates, so that assessments can be undertaken in a greater number of appropriate cases.
 8. There are innovative programmes which are definitely contributing to decongestion. These should be expanded with appropriate safeguards to ensure that all eligible prisoners are fairly considered for commutation of sentence.
 9. A costed plan for making probation and community service available across the United Republic of Tanzania should be drawn up as a matter of priority.
 10. A 'training the trainers' package should be developed in all three countries and delivered to departments and agencies responsible for work placements with a requirement that placement supervisors be properly trained before they can take on the supervisory task.
 11. Consideration should be given to giving responsibility for the Probation Service in Uganda to the Ministry of Internal Affairs so that it can work more closely with community service.
 12. A programme of work to remind the committees of their key tasks and to provide technical assistance where possible should be drawn up by the National Community Service Orders Committee and the Probation and Community Service Departments in each of the three countries.
 13. The flagship community service projects should be introduced in Uganda and Tanzania and expanded where possible in Kenya.
 14. The further use of volunteers should be explored to enhance the capacity of the probation and community service officers in all three countries with exchanges of experience and practice to assist development. Capacity should also be enhanced to ensure suitable opportunities are provided to offenders with special needs including women and where appropriate juveniles.
 15. A programme of community outreach and sensitisation should be developed by the departments and national committees to ensure that the community is aware of what is entailed in community service.
 16. The public and media should be encouraged to propose work that offenders should do and be made aware of the work completed by offenders through open days, forums and the use of local radio. The value of such work should be calculated and disseminated.
-

Annex I

Sources

The sources for the report fall into three categories: a literature review, a questionnaire survey and interviews with officials and experts.

Literature Review

The following sources were consulted:

Kenya

Constitution of Kenya 2010
 Probation of Offenders Act (Cap 64)
 Community Services Act 1998
 Governance Justice, Law and Order Sector (GJLOS) Reform Programme Progress Reports
 Feedback Probation Service 2005–10
 Probation Service Strategic Plan 2008–12
 Probation Bi-Annual Newsletter 2011

Tanzania

The Probation of Offenders Act (Cap247 R.E2002)
 The Community Service Act, No 6 of 2002 and Regulations
 Concept Paper from Tanzania Department of Probation 2011
 Legal and Human Rights Centre Tanzania Human Rights Report 2010

Uganda

The Community Service Act and Regulations 2001
 The Local Council Courts Act 2006
 Justice Law and Order Sector Criminal Justice Baseline Survey Summary 2002

<http://www.commonlii.org/ug/other/UGJLOS/report/R1/1.pdf>

Paper prepared by Community Service Department 2011

Supplementary Paper prepared by Community Service Department 2011

The Reformer (undated) Newsletter for Community Service Programme

CS Report January to March 2010

National Community Service Programme of Uganda (2009): Semi-Annual Progress Report on Implementation of Community service in Uganda

Research Reports and Papers

Birungi C (2005) :Community Service in Uganda as an Alternative to

Imprisonment A Case Study of Masaka and Mukono Districts

Mini-thesis, Institute for Social Development, Faculty of Arts, University of the Western Cape, South Africa (unpublished)

http://etd.uwc.ac.za/usrfiles/modules/etd/docs/etd_init_3844_1177065474.pdf

Nsanze C (2011) Alternative Sentencing and Strategies to Reduce Overcrowding in Tanzania Paper presented at the Commonwealth East African Workshop Alternative Sentencing and Strategies to Reduce Prison Overcrowding

Nyamu-Musembi C (2003) Review of Experience in Dealing with Non-state Justice Systems in East Africa

Obondi Christine Achieng' Okoth (2010) Effective Resettlement of Offenders by Strengthening Community Reintegration Factors : Kenya's experience

http://www.unafei.or.jp/english/pdf/PDF_rms/no82/No82index.pdf

Office of Vice President and Minister for Home Affairs (2011): Perceptions of Service Providers regarding Special Needs Offenders in Kenya

Oloo J (2011): The Practice of Probation. Paper presented at the Commonwealth East African Workshop Alternative Sentencing and Strategies to Reduce Prison Overcrowding

PRI (2006): The Realities of Community Service: PRI's Experience. PRI Newsletter April

Royal KA (2009): Community Service as an Alternative to Imprisonment in African Journal of Crime and Criminal Justice Vol 1

Rumin S (2003): Report on the Independent Assessment of the Community Service Programme and Zambia, Kenya and Uganda 2003

Strategis (2009) Report on Volunteer Probation Officers Programme

Strategic Public Relations and Research (2007): Impediments to Offender Reintegration and Resettlement

UNAFRI (2008): The Practice of Parole and Probation in Criminal Justice Administration

UNODC (2005): Crime and Development in Africa

USAID (2009): Africa Regional Rule of Law Status Report

Wakhu S (2007) Can Probation and after-care services reduce crime in our society in the face of drug abuse and addiction? <http://www.knapokenya.com/aftercare1.html>

Questionnaire Survey

A questionnaire at Annex II was completed by two respondents in Kenya, three respondents in Uganda and one respondent in Tanzania.

A number of interviews and site visits were undertaken during October 2011. These included:

Kenya

Meetings with Probation Director, Head of Community Service and staff. Discussions with Legal Resources Foundation, magistracy and civil servants

Visits to two Probation and community service sites and two prisons

Participation in Conference on Special Needs Offenders

Tanzania

Meetings with senior staff on Probation department, Ministry of Home Affairs, Prison Service, Legal and Human Rights Centre

Site visit to community service site in Dar es Salam

Uganda

Meetings with Commissioner of CS and Senior staff, Principal Judge, Foundation for Human Rights Initiative, DFID.

Annex II Questionnaire

Alternatives to Prison in Kenya / Tanzania / Uganda

[more space available at end of questionnaire if needed]

Please return by 29 July 2011 to Laura Bevan

Email: LBevan@penalreform.org

Or Fax to: +44 20 7377 8711

Or mail in hard copy to PRI (address above)

Your details	
Name	Position
Organisation / address	

- 1 What alternative sanctions and measures are currently available at the sentencing stage, and what is the length of prison sentence for which each of these can be used as an alternative?

Alternative measure	Available?	Alt. length of prison sentence
Fines	<input type="checkbox"/>	
Community service	<input type="checkbox"/>	
Suspended Sentence	<input type="checkbox"/>	
Probation	<input type="checkbox"/>	
House Arrest	<input type="checkbox"/>	
Other (Please list)	<input type="checkbox"/>	

2. What criteria do courts use in selecting whether each measure is appropriate (e.g. the nature and gravity of the offence; the personality, attitude and background of the offender; the purposes of sentencing; the rights of the victim)

--

3. What information is available to the sentencing judge in determining the appropriate sentence – e.g. social inquiry report?

--

4. Can these alternatives be used as a method of early release after a prison sentence has been imposed?

--

5. In practice, are alternatives to imprisonment used:

How often?	Tick if used	Which measure(s)?	Why?
frequently	<input type="checkbox"/>		n/a
sometimes	<input type="checkbox"/>		
rarely	<input type="checkbox"/>		

5b. Why are other alternatives not used, if applicable?

6. What is the profile of offenders sentenced to alternatives in terms of the seriousness of their crime and previous convictions?

7. What are the views of judges, prosecutors and magistrates on alternative sanctions?

8a. Does the failure of a non-custodial measure automatically lead to the imposition of a custodial measure?
Yes No

8b. Does failure normally consist of:
non-compliance with community sanction rules Yes No or re-offending? Yes No

9. What are the numbers of prisoners who receive sentences each year of the following lengths, and for which types of crime are these sentences given?

Length of sentence	No. of prisoners	Type(s) of crime
a) < 6 months		
b) 6 months – 1 year		
c) 1–2 years		
d) 2–3 years		

10. Who is responsible for supervising alternative sentences?

11. Is there an existing probation service? Yes No [if no, go to 12]

If yes,

a) what are its duties?

b) how many staff are involved? _____

c) what is its annual budget? _____ specify currency _____

d) how is it organised? _____

12. Are there files for each offender/probationer sentenced to a community sanction or measure?

Yes No [if no, go to 13]

If yes, where are these files held? _____

Is there an effective filing system? Yes No

Are files kept up-to-date? Yes No

Are files computerised? Yes No

13a. Which government ministry is responsible for the management of the probation or similar supervision/ monitoring system –

at national level? _____

at local levels? _____

13b. Is this a separate ministry from the one that is responsible for managing the prison system?

14. Is there any other national body (e.g. National Committee or Working Group) responsible for policy formulation, planning, implementation, research and evaluation relating to alternatives to imprisonment?

15. Has research been carried out on the use of alternative sentences and related questions? [If no, go to 16]

If yes,

a) what were the outcomes?

b) what steps were taken to address any problems?

16. Are NGOs involved in the implementation of community sanctions and measures? Yes No
 [if no, go to 17]

If yes, what is the role of these NGOs?

17. What is the attitude towards alternatives to imprisonment from:

- a) the public?
- b) the media?

18. Are there any reports, documents or other information about alternatives that you would be willing to share with us? [please attach, or name them here]

19. Are there any other issues relating to alternatives to prison that you think we should know about?

Extra space – please specify question answered

We are very grateful for your time in completing this questionnaire, which will assist PRI in providing the most relevant assistance.

THANK YOU

For more information on PRI's work in the area of alternatives to prison please contact:

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