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Alternatives to imprisonment in focus on Nelson Mandela International Day

Observed each year on 18 July, Nelson Mandela International Day focuses attention on prisons. A central goal of the Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD) is to reduce prison overcrowding, primarily through widening the use of alternatives to imprisonment. One specific target is to achieve a 30 per cent reduction in the number of pre-trial detainees by 2022.

According to the PLEAD Baseline Survey, the official capacity of prisons in Kenya is 26,687 but the prison population was 52,833 as at 31 August 2018. The steps taken to decongest prisons in response to the pandemic have seen a reduction in the population, stated below as 44,000.

Here are excerpts from the messages issued by Kenya Prisons Service (KPS), United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP) to mark this international day.

Dr Amado Philip de Andrés
Regional Representative for Eastern Africa, UNODC

The current UN Standard Rules, best known as the “Nelson Mandela Rules”, set out the minimum accepted principles and practices in the humane treatment of prisoners and prison management globally. UNODC is the custodian.

During this COVID-19 pandemic, KPS has gone to the next level in implementation of the Nelson Mandela Rules. Among their guidance, the Rules urge countries to reduce prison overcrowding and, as appropriate, to resort to non-custodial measures as alternatives to pretrial detention.

UNODC commends the justice sector for releasing vulnerable, low risk offenders serving prison terms of less than six months and for embracing alternatives to imprisonment to reduce prison congestion, such as plea bargaining and diversion. Yet such steps taken to decongest prisons due to the COVID-19 pandemic must not be seen as a “one-off”. UNODC remains committed to assisting justice agencies to aggressively pursue alternatives to imprisonment.

As it is globally, the unprecedented challenges of COVID-19 have posed unguided challenge to KPS. As we monitor and respond to the situation, I am pleased to note that we have managed to fortify the 44,000 confined vulnerable prisoners against COVID-19 infiltration.

Notwithstanding the protocols by the Service and enhanced by the Ministry of Health, the Nelson Mandela Rules remains buoyancy towards the handling and treatment of prisoners. In effect, the Service has taken all-around effective measures to combat the spread of this virus by establishing quarantine and isolation facilities in all the 129 penal institutions.

To be proactive and preventive, the Service has suspended visits to its penal institutions, Youth Corrective Centers and all Borstal Institutions. Together with our valuable development partners, we will continue adjusting our contingency and preparedness measures to protect the prison

Mr. Wycliffe O. Ogallo,
OGW, EBS, CBS
Commissioner General, Kenya Prisons Service

About PLEAD:
The Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD) is a partnership involving the Government of Kenya, European Union, United Nations and civil society in improving the delivery of justice services, settlement of disputes and use of alternatives to imprisonment. The KSh 4.2 billion programme runs until 2022 and is funded by the European Union.

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On the cover: Graphics by Amina Darani are among those featured in the National Police Service online training. See story p.3
populace which is confined and thus vulnerable against the virus.

Equally, I salute the work of prison staff and the important social service they provide, especially during these testing times of the COVID-19 pandemic. Hail to Nelson Mandela International Day!

Walid Badawi  
Resident Representative  
UNDP in Kenya

The message of Mandela Day – Take action, inspire change – is both timely and apt for every citizen in Kenya and beyond. For development institutions like UNDP, it is a call for collective action that transforms the lives of people in Kenya. Within the context of the global COVID-19 pandemic, the call for us to take individual and collective action as we support national efforts to win the war against the pandemic cannot be overstated. The pandemic has not only impacted on national health systems, it has impaired the effective delivery of important public services, including the delivery of justice.

UNDP, through close collaboration with partners, is currently undertaking different interventions to ensure that legal aid and assistance continues to be available in prisons and jails, despite the COVID-19 circumstances. As innovation is at the heart of our work, UNDP has already invested resources in ensuring that the delivery of justice services continues, this time, through digital means. Through our Accelerator Lab, we are also advising on the development of promising solutions to enhance delivery of justice and provision of legal aid, which include digital applications, vending machines, and hotlines.

Our PLEAD CSO partners in the counties have responded to COVID-19 robustly; through setting up platforms for online paralegal services, creating apps, advocating through radio shows and social media, and notably setting up video-links to facilitate legal aid and assistance in prisons and jails, together we are ensuring that legal aid is available and justice is not delayed, especially during these challenging times. For example, in partnership with Kenya Prison Service and the Legal Resources Foundation (LRF), we have facilitated the attendance of over 550 pre-trial detainees in court proceedings via video link. Lawyers and paralegals have also been able to attend virtual court appearances.

We will continue to give special attention to the promotion of humane conditions of imprisonment as well as to raise awareness about prisoners being a continuous part of our society. Every day, we are challenged to ensure that those behind bars are treated according to the ‘Nelson Mandela Rules’ – through the PLEAD partnership involving the Government of Kenya, European Union, the United Nations and civil society, we will continue to play our part to ensure legal support and justice are available and accessible to all Kenyans, especially the poor, marginalized and most vulnerable.
Online training a first for the National Police Service

The first ever online training course for Kenya’s National Police Service (NPS) was launched on 29 July.

The training is the result of collaboration between the NPS, EU and UNODC to address the unique challenges police officers are facing in enforcing law and order during the COVID-19 pandemic. Developed through PLEAD, the mandatory course comprises seven e-learning modules that police officers can complete at their own pace on a computer, tablet or smart phone.

Among the topics covered are the use of force and firearms, human rights approaches to crowd control and public order management, police responsibility in handling of sexual and gender-based violence cases, bail and bond, and how to deal with special interest groups such as persons with disabilities and children in conflict with the law. More than 740 police officers accessed the online course in its first week.

“The COVID-19 pandemic has created new challenges for policing in Kenya and we therefore need new response strategies to crime and incidents, and the enforcement of COVID-related regulations,” the Inspector General of NPS, Mr Hilary Mutyambai, said during the virtual launch. “These training modules will go a long way in equipping our officers with relevant information for better service delivery to the public while observing the Rule of Law, their personal safety and that of offenders, and I thank the European Union and UNODC for this initiative,” the Inspector General added.

The course was jointly developed with EU financial support by a special committee appointed by the Inspector General of police, UNODC’s PLEAD team in Kenya and UNODC Global eLearning Programme colleagues in Austria, where it is hosted.

“The Police Service is to be commended for prioritizing the training of its officers to the highest standards so that they can meet the unforeseen policing challenges that have arisen as a consequence of the pandemic and comply with Kenya’s constitutional human rights standards. We hope there’s a positive uptake of the e-learning by officers across the country who stand to gain from this capacity building, in terms of immediate refresher training in relation to the pandemic and for their longer-term professional development,” the EU Ambassador, Mr Simon Mordue, said in congratulating everyone involved.

Each module contains written information, case scenarios with related questions and answers, videos, graphs and illustrations.

“The pandemic has presented a new opportunity
to accelerate the digital transformation of law enforcement and justice institutions, and that includes turning to online training. I appreciate the effort that has gone into ensuring everything is ready for this initiative within the shortest time possible," UNODC Regional Representative, Dr Amado Philip de Andrés, said.

The NPS is benefitting through PLEAD under the auspices of the National Council on the Administration of Justice (NCAJ) which is coordinating the sector’s COVID-19 pandemic response. Also participating in the launch via a video link, the Acting Chief Executive of the NCAJ, Dr Conrad Bosire, expressed his hope that officers will be able to actively engage with the training content and re-adjust their focus in the way of dealing with their clientele, the public. "I believe the rich content which is shared here can make a difference if it is internalized and put into practice" Dr Bosire said.

Members of the Police Reform Working Group also participated in the launch. Mr. Peter Kiama, Executive Director of IMLU and speaking on behalf of the working group, congratulated the IIG and UNODC for this achievement. ‘I am happy to note that the modules happen to address some of the key concerns that ourselves as the Independent Medico Legal Unit but also the larger Police Reforms Working Group within the civil society have had with regard to the way the National Police Service has interacted with this very challenging situation – such as Use of force and firearms and administering of police bail and bond. ☪

Community Legal Aid and Information Centre Launched

PLEAD CSO partner Kenya Community Support Centre (KECOSCE) launched the Tana River County Community Legal Aid and Information Centre on 12 June 2020 in Garsen, Tana River County. In conjunction with UNDP, KECOSCE has trained 9 paralegals as part of its work under PLEAD, and these paralegals will use the centre to provide legal aid and assistance as well as train volunteers to expand their work further.

Operation of the Centre is to be a joint initiative between the Judiciary, the County Government, KECOSCE and other key stakeholders from the community including councils of elders, religious leaders, women’s groups and youth groups. The opening of the Centre follows the launch of the Mombasa County Legal Aid Unit by PLEAD partner Human Rights Agenda (HURIA), as detailed in the last PLEAD newsletter. ☪
Hygiene supplies and office equipment boost justice services

PLEAD implementation has ramped up to support the justice sector’s response to the COVID-19 pandemic. This has included donations of vital hygiene supplies and office equipment funded by the EU and procured by UNODC, consistent with priorities of the National Council on the Administration of Justice (NCAJ).

The coordination role of NCAJ is proving pivotal in the current context. In June, the National Police Service received a consignment of 60,000 gloves, 17,000 face masks and 108,065 litres of hand sanitizer, facilitated by NCAJ.


Also in June, 60,000 protective gloves, 251,250 litres of hand sanitizer and 18,000 face masks funded through PLEAD were among the commodities presented to the Kenya Prisons Service (KPS) to safeguard the health of prisoners and staff. “We’re privileged to be able to assist KPS to maintain safe hygiene standards within its institutions, knowing that despite the restrictions placed on custodial environments to contain COVID-19, the Nelson Mandela Rules for the treatment of prisoners still apply,” the Head of UNODC’s Crime Prevention and Criminal Justice pillar in Eastern Africa, Ms Kagwi-Ndungu said during a handover ceremony at KPS headquarters with the Commissioner General of Prisons, Mr Wycliffe Ogallo, and NCAJ’s Dr Bosire.
To enable wide participation in virtual court proceedings, 38 PLEAD-funded laptops were handed over in May by European Union Ambassador Mr Simon Mordue and UNODC Regional Representative for Eastern Africa, Dr Amado Philip de Andrés, for immediate use by the Kenya Prisons Service (18), the Judiciary (5), National Police Service (5), Probation and After Care Service (5) and Office of the Director of Public Prosecutions (5).

“This crisis is unfolding now, so I’m pleased we’re able to deliver this first consignment of laptops, with more equipment on the way,” Ambassador Mordue said.

To transition towards virtual rather than in-person monitoring for the safety of all.
Whereas legal aid plays an important role in ensuring that the most vulnerable can access justice, provision of legal aid in Nairobi is heavily reliant on external support, so finds the State of Legal Aid in Nairobi County 2020 Report from PLEAD civil society grantee the Legal Resources Foundation (LRF). Launched in Nairobi on 18 June 2020 in the presence of representatives from the Government of Kenya, United Nations and civil society, the LRF Report explores a number of key themes related to access to justice and was produced with technical support from UNDP through the Amkeni Wakenya project.

The finding that there is high dependency on donor funding and technical capacity to undertake legal aid is determined to be a barrier to the long-term sustainability of legal aid in Nairobi County. Other key findings of the Report include: justice centres built by non-state actors are temporary and there is difficulty in sustaining these; COVID-19 has exposed many justice institutions’ lack of basic IT to enable effective virtual litigation; a lot of legal aid work being carried out in courts, police stations and prisons is largely undocumented; and, there is need for a standardized framework to guide what constitutes legal aid.

Speaking at the launch, Hon. Lady Justice Grace Ngenye, Chair of the Committee on Criminal Justice Reforms (NCCJR), emphasized the need to prioritize legal aid for special interest groups like children, among others. Flora Bidali, Acting Director of the National Legal Aid Service (NLAS), delivered a speech on behalf of Hon. Attorney General Kihara Kariuki. Ms. Bidali emphasized that the fundamental principle of justice should be fair and balanced regardless of cost, and only when access to justice is available to all notwithstanding ability to pay will equitable justice truly be realized.

Dr. Dan Juma, Team Leader of the Governance and Inclusive Growth Unit of UNDP Kenya, thanked partners from the Government of Kenya and civil society for their collaboration in working towards equitable justice for all in Kenya, and highlighted the potential positive impacts of decentralization (including through legal aid) on improving inclusivity in this regard.

A number of recommendations towards improving the enabling environment and operation of legal aid in Nairobi County and Kenya more widely are made in the Report, including:

- Continuing the development and use of information management systems to ensure that NLAS can coordinate and identify indigent populations in need of legal aid
- Supporting institutional service providers, which will enhance delivery of legal aid without inviting competition
- Fast-track full operationalization of the Legal Aid Act 2016 and the Small Claims Courts Act 2016
- Development and implementation of a clear guide for determination of financial eligibility for legal aid in civil matters.

Since the onset of the COVID-19 pandemic, UNDP have been working with LRF to undertake interventions to ensure continuity of justice services, including setting up video links between jail and the courts, which has resulted in several bond reviews and successful cash bail reductions. Currently UNDP engages over 40 civil society organizations (CSOs), including LRF, providing grants and technical support towards the provision of legal aid and assistance towards the aims of PLEAD.
PLEAD Partner Voices: deepening ADR accountability in Garissa County

Due to the absence of formal courts in many parts of Kenya, including Garissa County, it’s often the case that networks of elders work with local chiefs to solve disputes amongst their communities. Known by many names locally, this practice is formally referred to as Alternative Dispute Resolution (ADR).

Though well-established, there are rarely accountability mechanisms put in place to address grievances from the community on how the elders administer justice in this way, nor has the Government of Kenya formulated guidelines on how appointments to ADR committees should be done. In Lagdera, Garissa County, ADR committee members are clan representatives with relationships stemming from this: hence, to whom they are accountable is not always clear-cut.

When we at the Supreme Council of Kenya Muslims (SUPKEM) and our partner UNDP introduced an EU-supported project titled ‘Promoting access to justice through increased demand of legal aid and assistance by the poor and marginalized’, a platform was created where the elders in the ADR committees could interrogate their own performance in passing judgement, as well as that of their peers. We were also able to train ADR committees on best practices.

In Modagashe, Garissa County, women in a local ADR committee told us how they had noted biases in the elders, who would favour their relatives and are influenced by external forces. Mama Sambur of Modogashe peace committee noted how in a particular case one of the elders’ sons, who was alleged to be a thief, was favoured in a case against a poor woman. Further, an Assistant County Commissioner (ACC) in Modogashe also confirmed to us that some ADR committee members were known to exhibit clan biases. Since the elders are representative of different clans, there were afraid to talk about each other, he said, and there are limited ways to formally prevent favouritism shown.

In one notable case in which SUPKEM intervened, Mama Halima from Maalin village, Garissa County, attended a SUPKEM legal education session where she was able to talk to Project Officer Jamila Farah about a case she had previously raised that the local chief had failed to act on for some time. Mama Halima was divorced by her husband and evicted from their plot, which is used as a kiosk, depriving her of a home and of income. Ms. Farah contacted the local chief and the case of Mama Halima was revisited by the elders: ultimately, Mama Halima was offered KSH 3000 per month as an upkeep for her children by the husband.

Additionally, the ADR providers were able to benefit from capacity building training held by SUPKEM on human rights principles. Whereas previously most of the chiefs have not been recording the cases they have handled, Mr. Abdirahman Gure, Chief of Modogashe, showed the other chiefs present all the documentation of the cases him and his team solved in 2020. At this event, the other chiefs were challenged by the ACC that they should imitate the same spirits and that they should document cases that have reached in their offices.

There is a long way to go to improve accountability, and the Government, chiefs, elders and civil society organizations like SUPKEM all have a role to play so that communities can have confidence in their ADR systems.

Contributed by: Aden Awle of the Supreme Council of Kenya Muslims (SUPKEM) [Edited for brevity/clarity]
Kituo cha Sheria Legal Advice Centre, Mombasa County

Zedekiah Adika, Kituo Project Officer, speaks at a PLEAD partners learning workshop in July 2019

Kituo cha Sheria Legal Advice Centre (Kituo) is a CSO operating in a number of counties which offers legal aid and assistance to over 10,000 poor and marginalized Kenyans each year. Through the EU-supported PLEAD partnership, UNDP has engaged Kituo in Mombasa County, where they have a particular focus on promoting equitable access to justice for prisoners. In April 2020, UNDP Amkeni Wakenya’s Akyar Maalim spoke with Zedekiah Adika, Project Officer at Kituo, about his work and the challenges that Kituo is facing.

AM: Good afternoon Zedekiah. Please outline the key challenges your project is addressing

ZA: The project Njia za Haki seeks to address challenges facing access to justice among the vulnerable and marginalized in Mombasa County. This is both in community and prisons centers, especially Shimo La Tewa Men and Women prisons.

AM: What are some of the main approaches you are taking to address these challenges?

ZA: The key approaches used included a sensitization on different laws through different fora like media, direct contact forums. Training and refresher training of paralegals to cascade knowledge to those marginalized. Advocating for institutional reforms, strengthening of institutions like Legal Aid Act services by sensitizing citizens on their role to ensure vigilance and push for their comprehensive functionality. Providing legal aid services to communities, including representation of clients.

AM: How have UNDP and the EU supported your work and your interventions through PLEAD.

ZA: PLEAD has enabled us to provide a platform for advocating for institutional reforms. Sourcing of resources to conduct activities implementing the objectives, institutional enhancement of capacity building for staff to perform well under the program. Development of monitoring tools for assessing progress and improving partnership with other civil society organizations to do the work.

AM: Please tell us about the context of the communities you serve, including in the local area and in the prisons. What are the challenges and opportunities facing these Kenyans?

ZA: We serve an urban population. Our main clients are urban poor and those in prison. The prisons we are focused to are Shimo La Tewa Prisons - Men and women. In the latest trend, COVID-19 regulations have led to locking out any one from Prison facilities. So many do not know how to relate with Prisons. The advent of online court attendance is still a challenge and needs sensitization to be involved.

AM: What has the impact of COVID-19 been on your work and on the communities you serve?

ZA: COVID - 19 has affected number of participants we can engage in every event. Judiciary is also difficult to access. We also have to plan more activities and take fewer hours. Some of our target participants do not have access to phone.

AM: How have you adapted your work to the operating conditions during the COVID-19 pandemic?

ZA: We are working with state actors to learn and sensitize communities on emerging modalities for operations, like e filing at court and attendance. The challenge of access to prisons is another.

AM: What are the greatest emerging challenges which Kituo sees?

ZA: Access to justice in the emerging circumstances have doubled courtesy of COVID-19. This is specifically a challenge for clients without an advocate. At Kituo, we note that some donors are also affected. This has led to fears that we may need to cut down on staff who are under the support of those programs.
An essential aspect of the justice sector’s pandemic response is ‘social distancing’ at courts and other sites, consistent with Government of Kenya guidelines.

Using the NCAJ common tagline ‘delivering justice safely’, the sensitization efforts of partner institutions are being supported through PLEAD. A total of 28,525 stickers and posters promoting social distancing have been produced for the Judiciary, Witness Protection Agency, Office of the Director of Public Prosecutions and NCAJ.

Ahead of the launch of the Alternative Justice System (AJS) Policy, the Taskforce on Traditional, Informal and Other Mechanisms for Dispute Resolution in Kenya has been promoting a national conversation to further engage justice stakeholders and Kenyans from all walks of life in the policy’s content and implications.

The taskforce staged a series of webinars in July and August on such topics as AJS and gender justice, academia, youth, and land and natural resources, in conjunction with a range of partners, including the Judiciary, Lawyers Hub Kenya, Pamoja Trust, UNODC and UNDP. Gertrude Angote, UNDP ‘Amkeni Wakenya’ CSO facility Project Specialist, was among the speakers in the 30 July webinar on Civil Society Organizations in AJS, during which she spoke of the involvement of civil society in PLEAD.

Video testimonials produced for the taskforce by UNODC are also contributing to the national conversation. Among those featured are the taskforce Chair and Judge, Nakuru High Court, Justice Joel Ngugi; Chairperson of Samburu Elders Council, Mrs Joyce Nairesie; Senior Resident Magistrate, Othaya Law Courts, Hon Monica Munyendo; and Principal Magistrate, Thika Law Courts, Hon Ben Mark.

An art competition with a difference is under way. Entitled ‘Probation: A New Beginning’, the competition is open to children who are on probation, under the supervision of Kenya’s Probation and After Care Service (PACS). The competition is a joint initiative of PACS, the European Union and UNODC through PLEAD, and will culminate with awarding of prizes and an exhibition. Eligible young probationers can take part by creating paintings, drawings or collages through which they can express their feelings and emotions about what it is like to go through the criminal justice system. The entrants can choose from these sub-themes:

1. **Change**: Change is one of the key outcomes of a successful supervision and rehabilitation process. Entrants can express how they want to change their lives.
2. **Lessons learnt**: Entrants can convey lessons learnt from crimes committed, the arrest process, experience in remand or court, and from Probation Officers.
3. **Vision in the future**: Art describing entrants’ dreams of the future.
4. **COVID-19**: Entrants can express how the pandemic is affecting them.

“We hope this art project will empower children and youth who are on probation to have their voices heard and provide an outlet for creative expression. This competition is also intended to improve understanding of what the Probation and After Care Service does and of the importance of giving young offenders a second chance,” the Head of UNODC’s regional Criminal Justice Pillar, Ms Charity Kagwi-Ndungu, said.

After entries are submitted by 30 September, the judging will take place.

### Key dates

**AUG–OCT 2020**

August

11 9th anniversary of NCAJ

27 10th anniversary of the promulgation of the Constitution of Kenya 2010 and scheduled launch of the Alternative Justice System Policy for Kenya

18–19 New PLEAD grantees induction workshop, Machakos County

September

Judging of ‘Probation: A New Beginning’ Art Project

### Useful links

**PLEAD government partners**

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