Lawyering for Change 2022 Conference

SUMMARY

Breaking the prison deadlock, moving towards grounded public policies

Workshop session - Wednesday October 12th 3.40 PM - 5.00 PM

Speakers:

- **Sarah Grandfils** – Researcher and member of the Central Supervisory Board of Prisons (Belgium)

- **Carole Berrih** – Researcher and consultant specialsed in detention (France)

- **Sana Ben Achour** - Professor of public law and militant, president of Beity (Tunisia)

- **Romain Ravet** – Regional Director in Eastern Africa, Avocats Sans Frontières (Uganda)

Moderation by **Bruno Langhendries** – Head of strategic support, Avocats Sans Frontières (Belgium)

1. Evolution of the prison institution

Prison, understood as a place of detention for people sentenced to a more or less prolonged period of detention, depending the act committed, is a quite recent invention in Europe and in Africa.

There has been before, some measures of preventive confinement and confinement as a sentence in some continents and at different levels but those were not systematic and were not applied to everyone.

In **Europe**, prison and its particular architecture, its mechanisms of monitoring, management of individuals and discipline, has been developed at the end of the 18th century and during the 19th century.

In **Africa**, before the 20th century, prison institutions were quite rare. There were some confinement mechanisms which were only used for serious acts such as those who harmed the community and also for people waiting for their sentence. The most serious sentences led to a warning, exile which were considered as a severe sentence because it could mean a definitive break of the social link and rarely, there was the death penalty. The penitential model was extended during the colonization followed by the development of a legal and regulatory apparatus that allowed the improvement of prisons organisations. Those institutions made possible the economical exploitation of newly conquered territories around the use of forced labor: by example, the construction of roads and railroads. During the period, the statu quo seemed in place and even though the pre-colonial African societies did not know jail sentence, they have maintained this principle after their independence. At the end of the 80s and until today, with discourse of democratisation in the continent, prison is on the agenda of programmes of reform and consolidation of rule of law. In this process, prison became a public issue.

We can see an institutionalisation of the jail sentence and prison system all over the world and with it, issues with the overuse of detention.

Today, **115 countries in the world are experiencing long-term prison overcrowding**. In 90% of countries in the world, detention conditions violating human rights are reported. 11 countries have a preventive detention rate higher than 70%. At the moment, we can count more than 10.000.000 of individuals in preventive detention.

In the African continent, we can see an incarceration rate quite low compared to its overall population. But behind this rate, there are disparities between countries and even within the same country. Thus, if we look at a country like Niger, there are significant difference between Nigerien prisons. In half of them, there a at least 100% of imprisonment but three of them have an occupation rate of over 400%. There are lacking food, hygiene, bed and infrastructure. In this country, 22 of the 40 facilities have been built during the colonial period. In addition, the rate of pre-trial detention is high.

2. The place of prison in public policies

There are many explanations for this phenomenon and justice is one of them. The latter can be characterized by an absence of criminal session, a difficult access to lawyers, magistrates placing the defendant in preventive detention but do not judge them, etc. The justice sector also have a very low budget and this budget is even lower for the prison sector.

International cooperation, via North funding, provides palliative funding which supports the standardized model of judicial and penitentiary organisation. Prison have been included into social and public development programs to fight against instability in South countries since the 90s. In Sub-saharan Africa, the prison must be seen as a product of the era in which it was developed, i.e. as a colonial legacy during which populations were seen as a threat. This is hardly considered when setting up programmes to help the judicial and penitentiary sectors. We are faced with programs characterized by a general profile, producing standardized systems and do not have much consideration for the context and local dynamics. Building new prisons is almost always considered but is not necessarily a good idea. Those new prisons will have the same issues as the previous one (lack of maintenance, overcrowding, etc.) and will not resolve the structural problems. This is why we should consider the development of alternative programs to detention.

Likewise, our work is too downstream in the prison system and we do not question enough the role of the police and repressive dynamics.

Regarding the different public policies, we must, first and foremost, ask ourselves those questions: **What is the meaning of prison? Why do we arrest people? Why do we imprison? Who is in detention? What is the place of prisons in our societies and in the public policies? What is our objective?**

3. Bringing about change in the judicial and penitentiary institutions

In the workshop, several key elements were identified: **the paradox between the improvement of detention conditions and the fundamental criticism of the prison institution**, the importance of **institution advocacy** and the **mobilization of the civil society**. Regarding the **paradox**, there is no denial that actors within the prison sector are part of permanent power relations between actors. They are acting in order to reconfigure themselves around the different evolutions. These power relations and evolutions must be considered notably by human rights activists.

Also, the **institutional advocacy** is developed through external collaboration with other independent institutions supposed to promote change in human rights or to fight against all forms of discrimination. Also, this advocacy must be set up with a **mobilization of the active forces of civil society**.