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INTERNATIONAL LEGAL STANDARDS OF PROBATION IN THE AFRICAN REGIONAL HUMAN RIGHTS PROTECTION SYSTEM

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International legal standards of probation are reflected both at the universal and regional levels within human rights protection systems (notably in the European, American, and African systems). Among these, the African regional human rights protection system remains the least explored from a legal standpoint, despite containing provisions relevant to the penal enforcement system, including the application of probation measures.

General provisions can be found in the **African Charter on Human and Peoples’ Rights (the Banjul Charter, 1981)**, which stipulates that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of their legal status. It is worth noting that in 1998, the **African Court on Human and Peoples’ Rights** was established in Addis Ababa by a Protocol of the OAU Council of Ministers, providing a judicial avenue for addressing violations of the aforementioned fundamental human rights.

The African regional system pays particular attention to the legal regulation of the rights and freedoms of youth and women. The **African Youth Charter (2006)** requires State Parties to ensure, inter alia: the separation of accused juveniles from convicted persons and the provision of treatment appropriate to their status; the establishment of rehabilitation centers for accused minors and incarcerated youth; and the implementation

of induction programs for imprisoned youth aimed at correction, social rehabilitation, and reintegration into family life.

Furthermore, the **African Charter on the Rights and Welfare of the Child (1990)** obliges State Parties to provide special treatment to pregnant women and mothers of infants and young children. In particular, Article 30(f) stipulates that the primary aim of the penitentiary system must be the correction, reintegration of the mother into the family, and her social rehabilitation.

The implementation of international legal standards of probation in the African regional context is an evolving process, reflecting both a desire for harmonization with universal norms and the necessity to adapt them to the local socio-legal context. Several African countries have established probation services as a response to prison overcrowding and as a means of promoting rehabilitation. Notably, Kenya, South Africa, Tanzania, Uganda, Rwanda, and Nigeria have introduced such systems.

The colonial legacy in Africa played a role in the transplantation of certain probation practices, which were inherited by newly independent states. A notable example is the **Republic of South Africa**, where the **Cape Colony** was subject to the Anglo-Saxon legal tradition in the early 20th century, particularly concerning the institution of probation. Today, South Africa has its own normative legal framework. In South Africa, probation officers are typically social workers engaged in areas such as crime prevention, treatment of drug addiction, care and counseling of victims from specific communities [1, p. 35].

Kenya is considered one of the most developed countries in terms of implementing probation measures due to its institutional capacity. However, even Kenya faces several challenges, as noted by K. Okecha, including: difficulties in supervising the "rehabilitative environment"; the widespread availability of illicit alcohol and drugs; rising youth unemployment; and barriers to employment for formerly convicted individuals [2, p. 13].

It is important to note that not all African states have independent probation services, unlike most European countries where such practices are common. This can be attributed to underdeveloped normative and institutional systems for enforcing sentences, lack of sufficient funding, and the predominance of punitive over rehabilitative approaches, deeply rooted in the customs and traditions of the region's legal culture.

Nevertheless, some African countries demonstrate progressive steps toward the humanization of criminal justice systems even in the absence of standalone probation services. For instance, **Namibia** adopted a **Risk Management Strategy for Offenders** in 2008 through its Correctional Service, which was tailored to the population's needs and involved

specialized personnel, including psychologists, social workers, teachers, clergy, artisans, and others [3]. Namibia has also implemented an **electronic offender management system** to monitor individuals released on parole.

J. Jumbe Gabagambi argues that colonial powers implemented criminal justice systems on the African continent with complete disregard for the indigenous cultures and legal orders of the peoples they conquered. The immediate and long-term effect was the suppression and erosion of African customary law and legal systems [4]. It can be hypothesized that the lack of robust probation standards is linked to the nature of African legal traditions, which are based on customary law and the post-colonial reconstruction of autonomous justice systems. This, in turn, contributes to the limited cooperation among African states in developing regional international legal standards for probation.

Nonetheless, it must be acknowledged that the African legal system has undertaken significant regional initiatives aimed at humanizing the treatment of incarcerated individuals. For instance, in 2003, the **African Commission on Human and Peoples' Rights** adopted the **Robben Island Guidelines**, addressing the prohibition of torture and ill-treatment, followed by the **Luanda Guidelines** in 2014, which set standards for the treatment of persons deprived of liberty. These instruments were developed in response to the pervasive issue of prison overcrowding across the region.

Equally important is the **mandate of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa**, who consistently addresses issues such as torture and other cruel, inhuman, or degrading treatment or punishment in his reports [5], particularly concerning inadequate detention conditions and the lack of social reintegration mechanisms. In this context, the **2023 Resolution of the African Commission on Human and Peoples' Rights** to conduct a study on prison conditions across Africa is especially notable. The final report is expected in 2027 and aims to provide a deeper analysis of correctional systems in the region.

In conclusion, while the African regional human rights protection system holds significant potential for the development of probation standards, such progress requires the establishment of a stable normative and institutional framework within individual countries. This framework must consider the particularities of traditional legal systems while fostering international cooperation. Continued research into the international legal standards of probation at the regional level remains pertinent, especially in light of evolving legislative and enforcement practices in this field.

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