

## **Review of RWIs 2012-2014 Kenya Programme**

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Review team:

Anneke Osse (team leader)

Glenn Ross

JME Simekha

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## **Executive summary**

This report contains the findings of the review of the programme as it has been carried out by the Raoul Wallenberg Institute in Kenya from 2012 till 2014. It describes the programme's background and design, main activities as they have been conducted in the review period, and then evaluates the programme against a number of given questions. It also gives some lessons learnt and closes off with a number of recommendations.

The programme under review consists of two main components. The first one is about building sustainable capacity in the Kenya Prisons Service, to meet international human rights standards, in particular the Standard Minimum Rules, through targeted interventions with the Kenya Prisons Service Human Rights Office and also the Staff Training College. This should then lead to a demonstrable increase in human rights compliance, in particular the SMR, in the KPS as a whole and some pilot institutions in particular. In order to achieve these objectives RWI developed a training programme, targeting Human Rights Officers, KPS line management, and staff from the Training College. Progress of the activities, whether they do lead to an increase in human rights compliance, is measured by regular audits. The review team found that indeed there were improvements in human rights compliance as measured by the audits, and also that the programme built an increased capacity of KPS staff to work on human rights. However, sustainability of these is uncertain and further efforts are required.

The second component sought to create strategic interventions in order to contribute to a greater role for human rights perspectives in the administration of justice and reform of the justice sector in Kenya. At the request of the Court User Committee and also the National Council for the Administration of Justice RWI organized workshops on bail and bond. Later a Task Force was established tasked to draft guidelines on bail and bond for Kenya judiciary.

The review team noted that the RWI programme is held in extremely high regard by all who have been exposed to it and staff of RWI are likewise valued for the enormous contribution that they have made. It has been successful in promoting and supporting change within KPS; which, together with other efforts of KPS itself, has resulted in enhanced recognition and respect for the human rights of prisoners. Hence, the team wishes to recommend that the programme be continued and, where possible, expanded and hastened for another number of years in order to capitalize on the gains made to date. The review team recommends building more local capacity to carry out programme activities, in order to speed up the process and also to enhance local ownership, and has made a number of recommendations for the programme, the auditing process and the role of the HROs. In addition, in order to further stimulate human rights compliance, the review team wishes to emphasize the importance of having an effective accountability structure, one that combines internal and external oversight and is consequential, and urges RWI to take a role in facilitating this. Also, RWI could provide support to (drafting) the new Prisons Act, new policies and regulations.

Activities under Component 2 are important for various reasons and as they have evolved now can provide great support to the improvement of human rights enjoyment in the prisons. As such they continue to require unequivocal support. It is also for this reason that the review team believes future work on the Kenyan Probation Service is highly relevant.

More in general, the review team thinks that if RWI could be more active in seeking to strengthen partnerships with other actors and stakeholders, which could create further synergies, and wishes to urge RWI to explore opportunities for doing so.

## **1. Introduction**

This report reviews the Raoul Wallenberg Institute (RWI) Kenya programme. The review sought to assess the extent of the achievement of the intended results of the programme activities during the implementation period between 1<sup>st</sup> of January 2012 and 30<sup>th</sup> June 2014. It assessed the role that different stakeholders and partners have played in this regard and sought to clarify underlying factors affecting the situation, and highlighted unintended consequences (positive and negative). The review has also generated lessons learned and recommended actions to improve performance in future programming.

The purpose and objective of the review are spelled out in the TORs (attached in Appendix A), reading: *‘the review will serve the purpose of informing the dialogue between Sida, RWI and concerned partners on possible continued cooperation beyond 2014. The objectives of the review are to generate information on how effective and efficient the Programme has been in achieving results, as well as on the relevance and sustainability of results achieved, identifying, where possible, factors influencing positive results achievement in relation to these factors, and providing suggestions for future relevant, effective and efficient results achievement of sustainable nature as well as potential new areas of cooperation.’*

The TORs specifically list the questions the review should answer and what aspects to include. In answering these review questions and in providing recommendations, the review consultants were required to be sensitive to issues of gender and social marginalisation.

## **2. Review methodology**

The review was limited to the programme implementation period starting January 2012 till June 2014. Being too early to truly assess impact, the review focused on results achieved over the immediate and medium term that can be *‘reasonably attributed’* to the programme, meaning there being a causal relationship between the programme and the result.

In preparation of this report the review team studied relevant programme documentation (including the RWI Kenya Programme proposal and its update, Annual Progress Report 2012 plus appendices, subsequent annual and intermediary progress reports, annual work plans, KPS-RWI joint plans of action, and various audit reports), interviewed key stakeholders and participants, and visited 9 KPS institutions, including all 4 pilot institutions, as well as the KPS Head Quarters. The institutions to be visited and persons to be interviewed were selected in joint consultation with both RWI and KPS. An overview of interviewees and stations visited is provided in appendix B.

The visits encompassed an interview with the Officer-in-Charge or his or her Deputy, and where present the location’s Human Rights Officer. When appropriate the review team also engaged with other staff and inmates<sup>1</sup>. In addition, the field visits encompassed a tour

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<sup>1</sup> Under international human rights law it is important to distinguish prisoners, those that have been convicted, from those in remand, awaiting their trial. During the review period however, it became obvious that interviewees use the terminology loosely, generally either referring to prisoners or inmates in reference to both groups, possibly because in various facilities the groups are being kept together. As a result, it is impossible for the review team to distinguish the two groups. Hence, where this report refers to ‘prisoners’ or ‘inmates’ the terms may very well include remandees.

around the respective facility, in order to get a better understanding of the reality on the ground and the challenges it presents.

Most of the interviews were done in person, though a few had to be conducted over Skype. As much as possible the interviews were carried out by two consultants of the review team, where this was not possible or practical interviews were done by one consultant.

The review team wishes to thank KPS for their cooperation in organizing the field visits and interviews, without which this review would not have been possible.

The review team consisted of Anneke Osse (team leader), Joseph Simekha and Glenn Ross. The review was carried out between 1 August and 15 September 2014. More information on the profiles of the consultants can be found in Appendix C.

### **3. Background and design of the RWI 2012-2014 Kenya Programme**

We will start with a brief assessment of the current context in which the programme operates, followed by a very brief overview of the programme design.

#### **Kenyan context**

In 1911, the Kenya Prison Service (KPS) was established under the then Ministry of Home Affairs, Heritage and Sports and in 1917, the posts of Commissioner of Prisons and Assistant Commissioner of Prisons were created, and the control and management of prisons became the sole responsibility of the Commissioner. The Service currently falls – together with the National Police Service and also the Probation Services – under the Ministry of Interior and National Coordination and employs slightly over 18,000 staff.<sup>2</sup> It is responsible for some 53,000 inmates, more than twice its current capacity, 36% of whom are awaiting their trial (i.e. remandees) and as such non-convicted.<sup>3</sup> KPS runs 106 institutions across the country, most of which are in old (sometimes pre-colonial) facilities. The institutions follow a loosely defined system of either high or medium security, or so-called ‘open prisons’. Approximately 5% of the entire prison population is female, and roughly 0.5% are juveniles for whom the KPS runs 2 Borstal institutions. Over the past 20 years, apart from some peaks in 1996 and 2004, Kenya fairly consistently incarcerates some 120 people per 100,000 of its population.<sup>4</sup> Hence, all things staying equal, in line with the predicted growth of Kenya’s population, the prison population is likely to grow at the rate of 5% per year.

In the early 2000s, after having been heavily criticized for its handling of inmates, the KPS became more aware of its human rights responsibilities. It adopted an ‘open door policy’, allowing stakeholder groups to enter the prisons, such as the Kenya National Commission on Human Rights (KNCHR) and various civil society groups providing legal aid. After a critical report by the KNCHR in 2009, the Commissioner General of the KPS issued an order in March 2010 that all institutions should have a ‘Human Rights Officer’ (HRO). The order however, does not specify what they should do.

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<sup>2</sup> Data provided by KPS.

<sup>3</sup> Data are from 2012 and 2013, and were taken from the website from the ‘International Centre for Prison Studies’. See <http://www.prisonstudies.org/country/kenya> (accessed 6 Sept 2014).

<sup>4</sup> For comparison reasons: In Australia 143, in the Netherlands 75 and in Sweden 60 per 100,000. See: <http://www.prisonstudies.org>.

In August 2010 Kenyans overwhelmingly voted for the new Constitution in a national referendum. The new Constitution has a progressive Chapter specifying the Bill of Rights, which is directly binding for all State organs including the KPS. Following the adoption of the Constitution, Kenya's legal and policy framework needs to be aligned with the new dispensation, affecting all Ministries and State organs, but most notably the criminal justice and security sectors. This process is still ongoing but needs to be finished by August 2015 (5 years after adoption of the new Constitution).

There are many challenges affecting the various criminal justice partners, including that of competing demands for financial resources. Being much less in the limelight than for example the police and the National Intelligence Service, KPS finds itself in the position that while there is pressure to raise standards, budgets are being cut. This is particularly worrying considering the serious level of overcrowding in the Kenyan prisons, negatively impacting on all aspects of prison life: sanitation, sleeping, food, cleanliness, drinking water, officers' welfare, inmate-officer relations, etc. At the same time, the Constitution has enhanced general human rights awareness with the people of Kenya, including those in prisons. Also, the KNCHR has placed boards explaining prisoners' human rights in all the prisons. As a result, prisoners can gain more awareness of their right and are likely to be increasingly assertive in claiming their rights.<sup>5</sup>

The Constitution also amended the governance system in Kenya, from a central government to a devolved structure with national and county governments. Prisons are a national government responsibility, but some aspects of prisons management rely on other governmental functions under county governments. The healthcare system for prisons is a noticeable example where some aspects are the internal responsibility of the KPS (and thus national government), while serious and referral medical cases that the prisons' clinics and health centres can't handle become a responsibility of county governments' medical facilities.

### **Legal framework**

Currently the mandate for controlling prisons derives from the Prisons Act (Chapter 90), the Borstal Institutions Act (Chapter 92) and the Public Service Commission Act. The extant Prisons Act was first passed in 1963 and has undergone a number of amendments since then, the latest being in 2012. The core functions of the Kenya Prisons Service are given as:

1. Contain and keep offenders in safe custody
2. Rehabilitate and reform offenders
3. Facilitate administration of justice
4. Promote prisoners'<sup>6</sup> opportunities for social reintegration<sup>7</sup>

The Act is again being reviewed and it is understood that further changes have been proposed, including name change from Prisons Department to Correctional Services

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<sup>5</sup> It is likely that as awareness of entitlements and human rights becomes increasingly available to prisoners and staff there will be increased potential for litigation through the courts. It seems inevitable that in some instances litigation will prove successful in forcing change and that this will create increased pressure on the government to finance these changes. As such, litigation can be an important catalyst for change.

<sup>6</sup> See footnote 1.

<sup>7</sup> A problem with regards to the mandate of KPS is the inconsistency within Kenya's government policies. While KPS is responsible for the social reintegration of prisoners, at the same time many if not most Government employment opportunities require a clean criminal record. Indeed, a review of other Government policies would be most useful.

Department and the incorporation of the Probations Department to the Prisons Department as the two departments offer closely related services. It is hoped that this law review opportunity will involve a significant re-write to bring about contemporary management practices involving the administration of prisons and prison staff and to introduce a rights based approach to governing the detention of prisoners. The review team was informed that the draft Prisons Bill is ready and will soon be shared with relevant stakeholders for input. It is envisaged that the Bill will be submitted to Parliament by June 2015.

In addition to the Prisons Act, the 'Persons Deprived of Liberty Bill' is currently before Parliament. The Bill is largely based or at least consistent with the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) but, with the possible exception of the Consultative Committee on Persons Deprived of Liberty, does not particularly advance the cause of detained persons or provide a mechanism for such.

#### **RWI in Kenya and its Kenya Programme 2012-2014**

RWI began activities in Kenya in 1992 when the University of Nairobi was included in RWI's literature acquisition project. However, it was not until 1999 that RWI began to work systematically with human rights capacity development in Kenya and then primarily in cooperation with government institutions, including institutions in the field of the administration of justice. At the core of most activities has been the intention to strengthen institutional capacities to work for the further realization of human rights in Kenya.

Over the years, cooperation with KPS gradually developed to become a key component of RWI's programme activities in Kenya. For the current programme period, which started 1 January 2012, this cooperation also came to constitute the main programme component, with a second, related, but much minor in scope component focusing on strengthening human rights perspectives in the coordination between administration of justice actors and stakeholders.

The overall objective of the 2012-2014<sup>8</sup> Kenya Programme is *'to support human rights reforms in implementing the new Constitution of Kenya and operationalizing key policy priorities and strategies, in line with international standards, as concerns in particular the fair, impartial and efficient administration of justice. This so as to contribute to the increased enjoyment of constitutional rights in Kenya and upholding government obligations to respect, protect and fulfil human rights, strengthening the long-term possibilities for Kenya to become a just and cohesive society with social equity in a secure environment'*. The priority of the Programme, as part of its overall objective, is to enhance compliance with international human rights standards in the management of Kenya's correctional system, including through supporting a more coordinated, efficient, effective and consultative approach in administration of justice. It has a strong focus on addressing the capacity gaps as identified within KPS.

The programme's areas of intervention consist of two components<sup>9</sup>:

1. ***Strengthening Human Rights Capacity in the Kenya Prisons Service***

Main objective: Create sustainable capacity within KPS to meet relevant international human rights standards, in particular the UN Standard Minimum Rules

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<sup>8</sup> Originally the programme was conceived as a two year programme (2012-2013), but at a later stage this was extended with one year.

<sup>9</sup> There were three components but Sida declined to fund the third, and as a result this is not part of this review.

for the Treatment of Prisoners (SMR), through targeted interventions with the KPS Human Rights Office (HRO) and the Prisons Staff Training College (PSTC).

2. *Strengthening Human Rights Perspectives in the Coordination between Administration of Justice Actors/ Strategic interventions*

(Due to development in Kenya the name and contents of this component changed over the course of the programme, but the main objective remained the same.<sup>10</sup>)

Main objective: Contribute to enhanced human rights perspectives in efforts for a coordinated, effective and consultative approach in the administration of justice and reform of the justice system in Kenya.

For ease of reference, in appendix D an overview is given of the programme's objectives, outcomes, intermediate outcomes, outputs and activities.

The programme has been designed to cater for two levels of outcome results. Firstly, the implementation of the programme activities and attainment of expected results at output level are expected to lead to achievement of the programme's short-term results at outcome level. These are changes that consequently are directly attributable to the outputs of the programme, and are labelled as intermediate outcomes. Achieving these intermediate outcomes is expected to contribute to the achievement of the programme outcomes. These constitute changes that are expected to logically occur once one or more intermediate outcomes have been achieved. In terms of time frame and level, these are outcomes, which are normally expected to be achieved by the end of the programme period.

The programme adopts the following methodologies:

- Partnership, between RWI and KPS and also between stakeholders;
- Ownership and empowerment, utilizing available resources, and seeking to increase these resources, to ensure that the participating institutions and individuals are enabled to develop their potentials, broadening their access to choices and influence for decision-making;
- Institutional capacity-development, through, among others, training and establishing a knowledge base;
- Modelling approach, where some institutions serve as a model for others;
- Alignment and coordination, with Kenya's concerns and priorities and also with Sweden's overall development policy for Kenya;
- Gender, treated as a cross-cutting priority issue in the Programme;
- Corruption, treated as a cross-cutting priority issue in the Programme. Corruption plays a role in various manners, and is also a risk factor for the successful implementation of the programme;

The total programme funding is 8m Swedish Kronor (roughly 1.1million USD). For the extension an additional 5m SEK was released (roughly 750,000 USD).

#### **4. Main activities of the programme**

RWI has diligently reported on all its programme activities to the donor, Sida. This review will not repeat these reports here, but will only give a brief overview of the activities that

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<sup>10</sup> In discussion with the Embassy of Sweden in Nairobi during 2013, it was agreed that Component 2 of the Programme would be modified in 2014 to a Strategic Interventions Component to also support and complement the main cooperation with KPS. Funds under this Component could then be used to address prioritised human rights issues in this respect with Kenyan justice sector actors.



have been undertaken within the framework of the programme, as how the review team has understood them, based on a reading and analysis of the reports and the interviews and field visits.

### **Component 1**

Component 1 of the programme was primarily a training programme, imparting knowledge about the SMR with HROs and also with Officers in Charge (OIC) of prisons. The training philosophy RWI uses is geared towards practical applicability, and such that skills and knowledge transfer is supported, in order to facilitate sustainability. During the inception workshop, organized early 2012, 4 pilot institutions were selected according to mutually agreed upon criteria. Care was taken that both the HRO and the OIC would always have undergone training in these pilot institutions.

The HRO training consisted of three aspects: training in SMR, audit training and TOT ('training of trainers'). This coincides with the functions an HRO is expected to carry out: auditing, training/sensitization, giving advice and guidance. However, not all trained HROs have received all three components of the training, as in 2012 the different aspects were captured in separate training sessions, and also some people have received the audit training but are not HROs.

As was noted before, the decision to have an HRO in each institution was taken in 2010, prior to the commencement of this programme. Part of the RWI programme was to define the terms of reference (TORs) for the HROs, in writing, and have KPS appoint HROs as per these TORs. However, establishing the TORs proved to be more challenging than was envisaged, and in fact the workshop planned for this in 2012 remained inconclusive. Late 2013, RWI brought together a number of successful HROs and asked them what their main duties were. It has to be understood that HROs do not take complaints, and are not involved in disciplinary matters; rather the HRO's role is to create 'systemic change'. During this workshop, the HROs managed to reach agreement on what their main duties are and capture these in draft TORs. In line with the ambition of the programme, the Commissioner General has, in 2014, officially endorsed the TORs and 40 HROs are now said to have been formally appointed as 'full-time HROs' in their respective stations, though in reality a number of these still have to combine the HRO roles with their regular jobs responsibilities.

In addition, the programme included leadership training, for OICs, Regional Commanders and Head Office staff, on the SMR, in a workshop that lasted 2 weeks, in 2012, and a 2-day follow-up in 2013. Another 2-week training for 20 OICs was conducted in March 2014. The importance of training line management in the importance of adherence to human rights, and more generally, in the skills of managing a prison in line with current best practices and professional standards, cannot be stressed enough. It was reiterated by various interviewees that in fact, training the OIC is even more important than the HRO, as it is the OIC who takes decisions, and over time it became ever more clear that the two working in tandem is likely to get the best results.

After their basic training, HROs carry out audits, against the SMR, of human rights compliance in one of the other pilot institutions. These audits are very detailed, considering more than 300 items, lengthy processes that may last up to a week, where the entire audit team assesses the prison facility on all aspects of the SMR. All the pilot institutions were audited, and in addition a number of institutions were audited at the request of the respective OICs and/or regional commander (independently of the programme).

The first audit identifies challenges, after which the audit team discusses these with the respective OIC. A number of actions are formulated in order to correct the challenges. A year or 1.5 years later, a second audit assesses whether the required improvements have indeed been implemented.<sup>11</sup> Audits are always confidential, and only shared with the respective line managers. RWI believes this confidentiality in fact contributes to the success of these audits.

After training the HROs, these are then responsible for conducting training and sensitization of their fellow staff at the respective station where they are based, in order to further spread knowledge and insights regarding human rights and the SMR in particular - in line with the programme's objective to enhance human rights knowledge and understanding amongst KPS staff. Various HROs also mentioned how they attempt to be a role model for their colleagues, and pick up issues as they arise to discuss human rights implications.

RWI also organized 4 'on site' trainings, at the pilot institutions, in 2013, in order to encourage, evaluate and co-facilitate local training activities. And there were some smaller activities undertaken within component 1, such as the 'legal and regulatory review workshop', held in 2012, which however was fairly limited in its impact and its outcomes have not been followed up (the draft Prisons Bill is not yet made available for public review). Also, RWI provided library support to KPS.

In addition to training the HROs and OICs, RWI organized a number of what we shall call 'process related workshops': the inception workshop, assessment workshops at the end of 2012 and also 2013, and also the audit review workshops<sup>12</sup>. All these workshops are hugely important, because it is during these workshops that KPS take ownership of the programme in deciding what it should prioritize, which is important for both the effectiveness and also the sustainability of the programme.

**A brief note on 'stats and numbers'**

It is slightly worrying that it proved to be not easy to get a clear and final answer to the question how many people have now been trained, fully or partially, and how many are actually working as HROs. The review team has found the following numbers.

A total of 68 people attended part of the HRO training, of whom however only 31 have received the 'full package', encompassing both the TOT and also the audit training<sup>13</sup>, and 6 have been trained as auditors only (but did not receive the TOT training). However, do note that at the time of this review the 2014 training programme is still on-going, and by the end of the year 43 are expected to have received the full package.

<sup>11</sup> The review team studied some audit reports. It should be noted that meeting all the standards in full is in fact beyond the remit of KPS, in that it either has no mandate or lacks the resources to change the situation. For example, the level of overcrowding in Kenya's prisons, housing more than twice their official capacity, has a huge, negative, impact on inmates' enjoyment of their human rights, but is a decision taken by the Courts, and is beyond KPS's control. Note that under Component 2 (see below), interventions are being considered to bring down the prison population.

<sup>12</sup> There were two audit review workshops to analyze the key findings of the audits that required national action. Key issues included classification; inmate discipline; and the PSTC. It was decided to prioritize classification as this seems to provide a tool to tackle various issues at the same time. The 'second audit review workshop' was meant for more external partners, like the Ministry, but unfortunately they did not attend.

<sup>13</sup> These include a fair number of trainers at the PTSC who received the TOT.

In total 40 HROs are said to have been appointed as full time HROs, in accordance with the TORs<sup>14</sup>, 18 of these have not yet received the entire training package (but 12 of these are currently being trained). However, the review team established that not all HROs are appointed under the new TORs, even though some of those did receive the RWI training. The review team has not been able to establish why this is so. Also, of those HROs that are appointed as full-time HROs, quite a few seem to be combining this with their previous job. Indeed, many of the HROs the review team met, were serving in a part-time capacity only. Note that there are also HROs serving that have received no RWI training at all, those that were appointed in line with the 2010 order by the Commissioner General. The review has no data on their functioning.

The programme selected 4 pilot institutions, where in principle there would always be a trained OIC and a trained HRO, working in tandem, which is believed to give the best chance to success. However, of the 4 pilot institutions, currently one (Ngeria Farm) is without a trained HRO. It is not clear to the review team why this person has not yet been replaced. On the positive side, ten additional facilities (prisons and also regional commands) currently have a trained OIC/regional commander paired with a trained HRO, and this number is expected to increase to 22 by the end of the year.

In total, at the time of the review the programme trained 28 OICs, 6 regional commanders and 6 other staff from HQ. This means that there are many institutions where either only the OIC or only the HRO is trained, despite the experience that effectiveness is highest when both are trained.

In total, the programme trained 108 people.<sup>15</sup> Some of the people trained have left their positions: they have been promoted, retired or left the Service. A total of 7 HROs have left the Service, of whom 2 were fully trained, and all of which were trained as auditors. An additional 2 have been promoted to OIC. Whether this is an indicator of the quality of the training received is a question that will remain unanswered. One of the managers trained, has now retired.

Note that RWI has taken the initiative to organize a conference later in 2014, bringing together the trained, TOR-appointed, HROs, in order to get answers to some of the questions raised above.

## **Component 2**

Component 2 is a much less focused, more loosely defined, part of the programme. This was reflected in the redefinition of its main objective as 'strategic interventions'. The component's relevance is based on the observation that many of the human rights challenges as they exist in Kenya, including in its prisons, are in fact within the mandate of other players within the criminal justice chain. Based on contacts RWI had established in previous years, it was decided to work with the Court Users Committee (CUC) of the Milimani Law Courts, in which all the criminal justice actors and relevant civil society groups come together, and focus on three activities: Library support, a workshop with CUC on a theme to be identified by them, and a workshop with National Council on the Administration of Justice (NCAJ)<sup>16</sup> on a theme to be identified by them.

But then, as has been reported, activities within the framework of the second component were seriously hampered by the controversy that evolved around the Deputy Chief Justice (CJ) in 2012, leading first to her suspension and then resignation. As she was the person identified as the main entry point for this component, this directly jeopardized all subsequent programme activities.

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<sup>14</sup> This includes the HRO who works at the PSTC.

<sup>15</sup> Though it obviously affected many more people as the programme also encompassed various workshops that did not necessarily entail training. And also, those trained then carried on training others, hence exponentially expanding the reach of the programme.

<sup>16</sup> The NCAJ is a, statutory, policy body that aims to develop and streamline policies affecting the criminal justice sector in Kenya.

As a result, this component suffered many delays, and in fact the only activity that materialized as planned in 2012 was the library support. In 2013, only after the appointment of a new Deputy CJ and the general elections, there was sufficient room to pick up work on this component again. RWI engaged in meetings with the Chair of the CUC of the Milimani Courts, the Chair of the Strategic Committee of the NCAJ, the Coordinator of the NCAJ, and the new Deputy CJ, and it was decided to work on 'bail and bond' issues as this was an area of clear concern, where RWI could provide meaningful support. Though the NCAJ was already working on the issues of bail and bond, as one interviewee mentioned, the engagement with RWI helped to "jumpstart the process".

In October 2013, RWI organized two workshops, one for the CUC and then a second one for the NCAJ. Both were evaluated as being really useful as people now heard each other's perspectives. In 2014 the NCAJ set up a Task Force to develop guidelines for bail and bond, which is Chaired by the Kenya Probation Service. This is a thoroughly meaningful development, one that can really impact on the numbers of people in Kenya that are sent to prisons each day.

## **5. Assessment of the programme's Component 1: Support to KPS**

The purpose of the programme is well thought through. It is invariably positively evaluated by all those involved. The review team was impressed with the quality of the people met, in particular the HROs and some of the OICs who are beneficiaries of RWI training, and their enthusiasm and commitment to human rights. Also, the interaction between prison staff and prisoners in pilot institutions seemed relatively relaxed and free of tension. Compared with previous visits conducted by one member of the review team, in another capacity, there were clear signs of progress with regards to the living circumstances of prisoners.

The TORs for the review specified the questions this review sought to answer, categorized under effectiveness, relevance, efficiency and sustainability. In this chapter, we will provide answers for each of these questions, based on the findings of the review team, for Component 1. In the next Chapter we will turn to Component 2.

### **Effectiveness**

#### ***A1: To what extent has the Programme achieved its expected results at output and outcome (intermediate and Programme outcomes) level?***

The programme outcome, as defined in the programme document is: *'Demonstrable increase in compliance with relevant international human rights standards, in particular the SMR, in the KPS as a whole and a selection of pilot institutions in particular.'* It should be noted that, in so far as the review team has found, the programme mainly focuses on the SMR<sup>17</sup>, and leaves other human rights standards and instruments unmentioned. This having said, based on the information that came out of the audits and corroborating information from interviews with OICs, Deputy OICs, HROs, and other officers, in all the institutions audited there is some form of improvement and/or ongoing deliberate efforts to effect some form of improvement. Concrete examples of human rights improvements include: Better recording of inmates and their belongings on admission; an end to 'instant justice' which is now replaced by following due process in disciplinary cases; decline in corporal

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<sup>17</sup> As noted later in the report, at the women's prison the Bangkok Rules for Women were also considered, and the Havana Rules for Juveniles at the Borstal.

punishment; better beds and mattresses; prisoners are now allowed more physical exercise; establishment of a library, or a recreation officer; a telephone for prisoners to call their families (though sometimes these phones are left without credit); review of visiting facilities.

At the same time it must be noted that the human rights improvements that have been made are (still) fairly small<sup>18</sup>, or proved pending or simply non-existent when tested.<sup>19</sup> Indeed, there still is some way to go. Though the review team acknowledges that some interventions require (considerable) resources, or are outside the remit of KPS, others could be implemented easily, at no cost. Two examples to illustrate this are (1) lock-up time is still around 6pm – for no apparent reason other than the convenience of KPS staff; And (2) family visits still by and large take place in non-contact cubicles through little windows that allow no physical contact. Indeed, the team noted that the excuse of lacking resources was also used when it was in fact irrelevant to the required action. As one KPS interviewee acknowledged: “many of the standards in fact do not require additional funding”.

The review team noted that a large number of KPS officers seem not to have had good access to the legal instruments guiding their work, and procedures have developed based on custom and practice rather than the law, which has served in some instances to entrench poor and even unlawful practices contrary to the Prisons Act. For example, the requirement for open visits (round the table) for inmates was often cited as something officers thought was a special privilege to be granted sparingly by the Officers in Charge only to realize that this is provided for in their Standing Orders. Most officers who have not undergone training still believe that ‘behind the barrier’ visits are what the law and regulations prescribe. It has taken the intervention of RWI to demonstrate the fallacy of these beliefs. The officers who benefited from the programme and those who have been receptive to the HROs advice, briefings and trainings, have taken to carefully reading the Constitution of Kenya, the Prisons Act and the Prisons Standing Orders as well as the SMR. The programme seems to have removed the assumption that prisons officers have always done and should always do what has always been done by prisons officers, and instead officers are seeking to generally understand the international standards, national policy, laws and regulations that guide their work in order to avoid making mistakes born of custom and habit.

It should be noted that it is not easy to assess whether these (and other) examples of an increased compliance with the SMR, were the direct result of this RWI programme alone, or whether a positive result has been achieved because the RWI programme reinforced other processes that were already under way. Indeed, the RWI programme has clearly managed to seize the opportunity that was presented following the new Constitution leading to greater human rights awareness, and other processes. For example, during the programme period, Kamiti Main Prison has brought back its prison population from more than 3,000 to 1,900, which directly resulted in an improved situation for those that remained. This reduction was done in response to a prison riot that clearly illustrated the need to decongest the facility. However, had there been no human rights programme, the prison management might very well have taken quite different measures to solve the tensions that existed. The respective OIC clearly stated how the audit had provided him with further equipment to carry out some changes. But at the same time the Government initiated a Rapid Results Initiative, expecting positive change within 100 days, which also facilitated the decision to bring down the prison population. All in all it is not possible to distinguish, using a logical cause-effect relationship

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<sup>18</sup> An example that was mentioned in more or less all interviews with HROs was ‘numbering the pages in record books’.

<sup>19</sup> The review team, at various occasions, was told about certain initiatives that were taken to enhance human rights, yet found no proof when probing deeper.

analysis, what led to the changes. There were various processes taking place simultaneously, which -together with the new Constitution- created more space. And indeed, the RWI programme effectively seized these opportunities as they presented themselves.

Finally, in the inception report the review team has formulated a number of concerns regarding the design of the programme, which will not be repeated here. However, we do wish to state that the design has a number of logical inconsistencies which have affected the review. The programme outcomes and indicators for these, especially for Component 1, are only loosely related to the Component's main objective, its intermediate outcomes and outputs and the relevant indicators. More concretely: if there is a demonstrable increase in human rights compliance, as measured by more SMR that are complied with (than before), this does not automatically mean that it can be assumed such an increase is caused by the specific programme activities, that led to a better understanding of human rights principles amongst the KPS, and having built 'sustainable capacity', in particular the HROs. Phrased the other way around: the programme rests on the – untested – assumption that having more and better trained KPS staff, in particular the HROs, will lead to more human rights compliance, which will be noticeable for the inmates. This however cannot be taken for granted, as indeed is found by the review team. Though RWI has repeatedly stated that working with the HROs, in particular in combination with a trained OIC, leads to best results, it must be noted that though this may lead to some improvement on the instrument that is used by RWI (i.e. the audit), this does not mean it leads to meaningful change for the inmates. RWI considers any change on the SMR valid (as one interviewee mentioned: "any achievement is one"), whereas the review team thinks that some are definitely more valid than others.<sup>20</sup> Secondly, the programme is built on the assumption that the programme will lead to better human rights compliance, as measured by the audits, which is the key tool that is being used to measure progress (or the lack thereof). But as there is no consequence attached to non-improvement, or inaction, it cannot be taken for granted that the station manager will indeed do so.

The Component's main objective is: *'Create sustainable capacity within KPS to meet relevant international human rights standards, in particular the UN SMR, through targeted interventions with the KPS Human Rights Office (HRO) and Prisons Staff Training College (PSTC).'* The three results at intermediate outcome level, for component 1, as defined in the programme document are:

- *A core body of Human Rights Officers, at national, provincial and institutional levels, with the ability to independently conduct human rights assessments, deliver human rights trainings, and facilitate the development of human rights action plans*

The review team found that indeed a 'core body of Human Rights Officers, at national, provincial and institutional levels', has been established – though all interviewees agreed this was not yet sufficient and that no critical mass had been achieved.<sup>21</sup> Also, as it focuses on training young and bright HROs, its effects are likely to last long, as some of them, over time, will move up the ranks and find themselves in senior leadership positions in due time. The review team noted that selection of HROs was very diverse and fairly at random at times and various HROs mentioned they did not know why they were selected to become a HRO. However, selection got more systematized over the course of the programme.

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<sup>20</sup> This is somewhat recognized in the audit to some extent, for example for some standards it is either 'yes' or 'no' whereas for others the measure in which the institution complies can be taken into account.

<sup>21</sup> The question really is how to define 'a core body'. There is a number of well trained HROs, but surely not yet of sufficient numbers to take the programme's objectives independently forward.

- *Relevant instructors at the Prisons Staff Training College able to independently deliver high-quality Human Rights in Correctional Services courses to trainees*

During the course of the programme the cooperation with PSTC did not develop as it was hoped for. Though the programme trained 5 trainers in auditing<sup>22</sup>, and did a TOT for 14 trainers, it turned out that the current training philosophy at PSTC is incompatible with that of the RWI programme.<sup>23</sup> To date, the PSTC has been operating on a quasi-military boot camp style with an emphasis on marching, drill, and physical fitness – variously estimated as 80% of the 9 month programme. This training methodology is inconsistent with the type of interaction required of prison staff in their relationships with prisoners.

The review team has not been able to assess whether relevant instructors at the Prisons Staff Training College are now able to ‘independently deliver high-quality Human Rights in Correctional Services courses to trainees’. However, developments are underway that will involve considerable change for PSTC, its curriculum as well as its training methodology.<sup>24</sup> This new training programme and use of the PSTC may lead to a revised view of the Training Centre such that it can be used as a training venue for practical, applied, SMR training. It is understood that a major driver of this change has been an officer at the PSTC who has been heavily influenced from participating in the RWI training and subsequent on-going involvement.

- *Increased awareness of the new human rights paradigm throughout the correctional system and independent activities to achieve compliance with international standards in non-pilot institutions*

The review team concluded that as the programme has not carried out a baseline survey against which progress can be assessed, it is unable to say for sure whether awareness has increased (increased compared to what?). This having been said, all interviewees from KPS mentioned they were more aware of human rights and also that they believed this to be true for their colleagues, and some have argued there is a process of attitude change ongoing, that will ultimately change the organizational culture of KPS, and that a significant percentage of KPS staff now has a more positive, respectful relationship with inmates.<sup>25</sup> Many were the references (by KPS respondents) to the given that the subject of human rights is not something that is readily welcome in prisons management. Prisons officers have always felt that they have already been pre-judged and condemned as human rights abusers and therefore the subject of human rights is treated as something that is against them. This is also because –respondents argued– other programmes emphasized the rights of the inmates, as opposed to the rights of KPS staff. The RWI approach has won crucial confidence of the KPS officers as it is not judgmental and does not apportion blame but responsibility, and also it addresses human rights for staff and prisoners alike. The programme approach seems to have been effective in persuading KPS officers that embracing human rights is actually what their work is all about. It has been possible for officers to see and appreciate the direct relevance of practical basic human rights issues raised by the programme in trainings and audits, to work of prisons officers, their career prospects, to their welfare and

<sup>22</sup> Of which 1 has since left the Service.

<sup>23</sup> Selection of participants also was suboptimal, some of whom were not able to use what they learnt in their teaching practice.

<sup>24</sup> One interviewee explained how plans are said to be underway to give 50% of the 9 month training to Kenyatta University; 35% of the 9 month training for PSTC class room activities; and only the remaining 15% to be retained for drill and security type training.

<sup>25</sup> Despite this, a number of interviewees admitted that a negative perception of human rights is still a problem. One interviewee suggested: ‘maybe we should be called SMR officers, rather than Human Rights Officers.’

to the welfare of their families. The programme's approach has succeeded in making those who have been trained feel privileged and proud of their work because of their realization that a human rights approach to their work is not an extra burden that favours inmates but an approach that humanizes their work.<sup>26</sup> KPS seems to have gained confidence in dealing with human rights issues, such as reporting to the relevant oversight organs. Another key benefit of the RWI use of the SMR as the vehicle for introducing human rights is that it has developed a shared language by those who have been the recipients of training, and provides a structure to discuss what is happening inside the prisons, without having to express a personal opinion.

It is impossible to attribute an increase of human rights awareness directly to the programme, as –as was mentioned before– there were other developments taking place that are likely to have contributed to such an increased awareness, including the adoption of the new Constitution. However, the review team feels it is fair to say that the programme has greatly contributed towards a more positive attitude towards human rights.

Whether the above has led to 'independent activities to achieve compliance with international standards in non-pilot institutions', is difficult to assess as the review team has visited only 5 non-pilot institutions, but in these we have indeed come across such activities. The review team was told that in some institutions the respective OIC has requested for an audit, independent of the programme (though in line with the programme's standards). There are also examples of various initiatives that have been taken in various institutions that have a positive impact on human rights enjoyment and more generally prisoners welfare, including the 'remote family parenting' days, and initiatives to raise funds to improve prisoners dresses, bedding and mattresses. These activities seemed to take place independent of the RWI programme and it is not possible whether there is any relationship between these initiatives and the programme.

The results at output level, for component 1, as defined in the programme document were:

- Increased commitment and understanding among the KPS leadership for the project
- Improved knowledge and understanding of human rights and prison management principles among KPS HQ staff and staff at pilot institutions and provincial offices
- Enhanced skills of Human Rights Officers at KPS HQ, and pilot institutions and provincial offices relating to training and teaching methodologies
- Enhanced skills of Human Rights Officers at KPS HQ, and pilot institutions and provincial offices to assess fulfilment of human rights standards in prisons and facilitate the development of related action plans
- Enhanced skills of PSTC instructors relating to human rights in correctional services training and teaching methodologies
- Context sensitive training materials on human rights and prison management principles available and used in prison training activities
- Increased opportunities for staff at the HRO and PSTC to access and share relevant human rights information

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<sup>26</sup> The training of both OICs and the HROs has given these prisons officers a lot of self esteem and enhanced their own pride in their work, hence increased job satisfaction. As several remarked during interviews, "before this we wouldn't talk about our profession in public away from the prisons environment, now we can proudly talk about our work as a career of choice". The review team also noted that having participated in the RWI programme can have a positive impact on someone's career, and indeed it might be worth exploring possibilities to develop a career development path that includes knowledge of and compliance with human rights standards.



- Increased availability of human rights reference material with PSTC and HRO resource centres
- Increased awareness among KPS legal and regulatory drafters of relevant international human rights standards

Again, as the programme did not include a baseline, it is not possible to say whether any of the above has indeed occurred, or to attribute it to the programme.<sup>27</sup> Also, the review team cannot assess whether the HROs have a correct understanding of human rights, or more specifically the SMR, or whether they have a correct understanding of prison management principles, as that would require testing them on the same. It can be assumed that those that have participated in audit and TOT trainings now have better skills than they had before, but we cannot independently verify this.

The review team wishes to underline that the output indicators, as they have been included in the programme document, only marginally measure whether the programme achieved the outputs listed above. The review team has noted that KPS leadership did support the activities, released staff and provided training locations where required or requested for. In that sense they contributed to the programme implementing, as did the HROs and others that participated in the activities, but we cannot say whether this is indeed proof of 'commitment and understanding' for the project let alone whether this has increased. On a similar note, all training and other activities as organized and facilitated by RWI were invariably evaluated positively, but unfortunately this is no proof that participants' skills have indeed been enhanced. With regard to the other indicators: The review team is not able to assess the quality of the individual action plans, as it has not seen them, nor can it assess the number and quality of trainings and workshops delivered, the existence of modules and materials for training courses.

With regard to the library support, the activity reports indicate that there was progress with regard to planned support to KPS. Beyond the positive performance assessment in the RWI progress reports, the review team was not able to obtain any further information on this aspect of the programme as it did not manage to talk to the heads of Library at RWI, KPS and the Judiciary. It is indicative however that in all the review interviews, no respondent made mention of libraries/resource centre materials and their value addition, as all respondents readily did with regard to meetings with RWI, training events, workshops, and audits.

As per the TORs for this review, in answering the review questions and in providing recommendations, the consultants were asked to be sensitive to issues of gender and social marginalization. However, the team found that it had little information to do so. The original programme document mentioned how attention for vulnerable groups would be integrated throughout the programme. This was based on the assumption that, when auditing an institution using the SMR, attention to how it treats vulnerable groups would automatically be addressed. Yet, it needs to be remembered that the SMR, on which the RWI programme is based, were written in 1957 and hence don't give much focus to vulnerable groups. The review team found that attention for vulnerable groups under the programme in practice was somewhat diluted, and didn't find much evidence that suggests that there is specific and/or systematic attention to consideration to the unique needs of vulnerable groups in the application of the knowledge and skills gained from the programme. It is understood

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<sup>27</sup> RWI has explained how they understand the first audit to provide baseline data. However, as these first audits were part of the programme activities, that were undertaken way into programme implementation, this would invalidate all possible effects of programme activities undertaken before the audits, including the trainings.

from the RWI team that in the training package there is a strong emphasis on vulnerable groups: LGBT, old age people, children, disabled, sick, foreigners and women. The HROs have also referred to how they are now more aware of, firstly, the notion that some people are more vulnerable than others, and secondly, how to deal with vulnerability issues. But whether this results in a significant improvement for the vulnerable groups in prison is yet to be seen. The review team was given some examples, such as that of elderly prisoners now being placed together. Yet, whether this indeed is an improvement is not entirely sure, as indeed it may be counter-productive and put them at greater risk. Even though it is understood that the principle of 'do no harm' is addressed during the training activities, the review team is worried that the programme seems rather passive in monitoring for potential negative side-effects of its interventions, in general, and in particular also how they may affect vulnerable groups.

This having said, in so far as women and juveniles are concerned, audits in specialized institutions, such as the women's prison and the borstal, did take into account the principles that specifically apply to these groups (the Bangkok Rules and the Havana Rules). Also, KPS and RWI have made sure women were always represented in its training and audit activities.

On a similar note, the programme document mentioned it would be sensitive to issues of corruption. Though corruption issues are covered in the SMR, they were not systematically reported on by RWI, so in practice the review team has not been able to verify this. In so far as the programme's financial management is concerned, the review team was informed that RWI has many systems in place to ensure money is spent appropriately (see below).

***A2: Which are the main factors that have affected positive results achievement and which have affected non-achievement of results?***

The main factors that have affected positive results achievement include:

- Adoption of the new Constitution has greatly contributed to human rights awareness in Kenya and has created an environment where change was possible.
- The good and long-term working relationships between the KPS and RWI, which was helped in that the Commissioner General has held office for a number of years and has therefore had previous exposure to and involvement with RWI.
- It is clear that the Commissioner General was cognisant of his responsibilities under the Constitution to look to the human rights of prisoners and this resulted in him:
  - Creating the Directorate of Legal Affairs and Human Rights, which provided a coordinating body or at least a basis for subsequent RWI activities.
  - Establishing the position of Human Rights Officer in each of the 106 prisons on which the RWI largely built its programme
  - Authorizing this programme, and -inherent to this- the audit methodology.
  - Signing off the TORs, in 2014, which will guide the work of the HROs. Yet, as the TORs have only recently been formalized and endorsed by the Commissioner General the effect of this on prison practice is yet to be seen.
- The RWI programme in Kenya is headed by a very committed Head of Office who has experience of prison reform programmes elsewhere. The capabilities of this individual are in no short measure responsible for the success of the programme.
- By all accounts the selection of particular consultants to assist in aspects of training and programme delivery has been very successful. The consultants used have been described favourably by all involved.
- Related to the above: The RWI programme is practically based and solution focussed – RWI is viewed as an 'insider'. This compares favourably with other human rights programmes which are seen as activist/advocating in nature.

- The development of TORs for the HROs, and the Commissioner General's agreement to sign-off on these, was significant as this served to entrench these positions within the structure of prisons and established their legitimacy.
- The programme was flexible to adapt to changing circumstances and lessons learnt. For example, over the period of the programme there has been a refined approach to the identification and selection of HROs.
- Not using the HROs as adjudication officers in disciplinary matters and investigations of complaints has aided in their acceptance by prisoners and staff alike.
- Whereas it might have been expected that RWI would have undertaken greater awareness raising and provision of information to prisoners, by not doing so RWI has drawn a distinction between itself and other NGOs and this has resulted in more acceptance by, and possibly effective engagement with, prison staff.
- Aside from the funding of the programme, the genuine interest and involvement played by Sida, as shown for example in being present at various programme activities, and also in 'lobbying' at ministerial level, has been an important component of success.

Factors that have hampered positive results include:

- It is understood that during the period under review there has been no improvement in the financing of prisons and this has meant that a large number of improvements necessary to gain compliance with the SMR have not been possible.
- Overcrowding remains a serious concern in Kenyan Prisons.
- The programme would benefit if both the Commissioner General and the respective Ministry could make their commitment and support to the programme more visible. KPS respondents made it clear that uniformed officers in a disciplined service read a lot into what their senior-most commanders do on a day to day basis beyond the instructions and orders they give, and also put a lot of premium on what their leaders show personal interest in. The programme activities would be more effective if the KPS leadership were to be seen to be playing active roles in the programme.
- Indeed, despite the fact that all training activities as organized by RWI have invariably been evaluated very positively, this does not guarantee behavioural change in practice. For training to be an effective instrument of change, it needs to be enforced in practice, embedded in a broader policy framework, and receive visible full support by the management as reflected in standing orders and in day-to-day instructions, but all these aspects, aspects that would in fact anchor and institutionalize real change, are left largely unaddressed by the programme.<sup>28</sup>
- Of note, the funding of the health services has changed from a centralised funding model to funding and management by the counties. Depending on individual county priorities this may have improved or lessened the availability of health funding and quality of management for facilities that prisons rely on.
- Negative perceptions held about the PSTC resulted in it not being a venue of choice for programme activities. This negativity is due to its association with a militarized training methodology, which does not endear trainees and graduating officers to being receptive to human rights concepts, language and approaches. The officers' treatment of inmates tends to be influenced a lot by how the officers are treated at the PSTC. Also, as was discussed before, programme activities targeting trainers of the Staff College, lacked evidence of results achievement.

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<sup>28</sup> Note that lack of 'transfer of knowledge to the gain of the entire institution', is identified as a risk in the original programme document, but then it is (too) easily dismissed as being unlikely as 'institutions and individuals have generally expressed need and demand for Programme activities' (original programme document, annex 2).

- Although KPS is undertaking a legislative review of the Prisons Act, there has not been any policy review nor have standing orders been aligned with human rights principles.
- There has been a deteriorating security environment in Kenya throughout the period under review, including due to the rise of terrorist threats. This has served to focus attention away from human rights, and this has undoubtedly involved a hardening of attitudes towards offenders in general, which has likely affected security related agencies including KPS.

***A3: Which factors should be in place to positively contribute to future results achievement, and which main factors would likely prevent or substantially challenge achieving further results?***

Factors that should be in place to positively contribute to future results achievement, include those that are listed as the positive factors above; the absence of which would jeopardize results achievement. The RWI programme consists of two persons on a permanent basis aided by consultants on an as needs basis. Together with the limited funding for this programme, this low level of staffing means that it has only been possible to provide modest amounts of training in SMR and auditing.

Continuity of consultant involvement would be viewed positively as they are held in high regard by KPS prison staff and their expertise is widely acknowledged. In addition, systematic development of local (training) capacity would positively contribute to future results achievement.

The review team wishes to note the risk that the programme might contribute to an erosion of the concept of human rights – providing management with human rights language, enabling them to pay lip service without effectuating meaningful change. Yet the review team is aware that this risk is inherent to any programme like this. Still, KPS leadership will have to show that it is truly committed to human rights, such as through allocating resources accordingly and providing relevant incentives such as promotions to those that are human rights compliant, to ensure these improvements are sustainable.

**Relevance**

***B1: To what extent are the objectives of the Programme still valid, taking into account particularly developments during the review period in relation to both specific Programme partners and the broader Kenyan context?***

Though there has been initial improvement, especially in the pilot institutions, it certainly cannot be assumed that there is now a critical mass for a ‘sustainable capacity within KPS’ that can carry on pursuing the objectives of the programme. The review team would like to bring in mind that various studies of Kenya’s criminal justice system by the Kenya National Commission on Human Rights and others have confirmed that Kenya’s criminal justice system, and particularly conditions in prisons for both inmates and officers, require reform to come closer to acceptable standards. It has been noted that there is a lot of emphasis on custodial punishment for criminals and criminal suspects in Kenya. Indeed, the KPS is still very much a ‘Prisons Service’, as opposed to a ‘Corrections Service’. To the extent that this RWI programme is partly responding to self-acknowledged challenges in Kenya’s criminal justice system, particularly with regard to bringing Kenyan prisons closer to complying with international standards of management of prisons, its relevance is not in question and the relevance of SMR to the human rights of prisoners is undeniable. The SMR are the primary international mechanism for assisting KPS in adhering to international human rights

standards. Auditing institutions against the SMR has proven to be a useful and highly practical, concrete, instrument that provides much insight and understanding of what goes on inside the prisons.

The review team agrees that the areas selected for further work during 2014 are highly appropriate. Particular mention is made of the classification research project<sup>29</sup> and the suggestion/recommendation of supporting the review of the legal and regulatory framework. KPS does not have the in-house expertise to undertake these efforts and the role RWI is providing in making this expertise available is an effective use of resources and well targeted.

***B2: Are the results the Programme has achieved consistent with its overall objective and component main objectives and the attainment of these objectives?***

The overall objective of the programme is: *‘to support human rights reforms in implementing the new Constitution of Kenya and operationalising key policy priorities and strategies, in line with international standards, as concerns in particular the fair, impartial and efficient administration of justice.’* The results achieved with the programme are consistent with this objective, in that they support human rights reforms, yet mainly at a practical level (and only related to the Kenyan prisons). It is not clear how far they have, to date, helped to operationalize ‘key policy priorities and strategies’.

The improvements in human rights compliance that have been reported tend to be very operational and concrete, and are limited to the particular institution that was audited. The review team is not aware of any changes in policies, to be implemented throughout the Service, other than the recent adoption of the TORs for the HROs.<sup>30</sup> Action plans that came out of the audits, seem not to have always been implemented. For example, though several audit report the facilities for visiting families, and reference is made that such visits should be ‘contact visits’ where the visitor can actually sit together with the prisoner, the review team has not been able to verify that this change has indeed been implemented. This seems to be a missed opportunity as some of these changes/ improvements are in fact quick and easy wins. Despite this, the review team is of the opinion that there has been a very discernible improvement in many aspects of prison and prisoner management and there are many indications that the RWI programme has played a central role in such changes.

The main objective of Component 1 is: *‘Create sustainable capacity within KPS to meet relevant international human rights standards, in particular the UN SMR, through targeted interventions with the KPS Human Rights Office (HRO) and Prisons Staff Training College (PSTC).’* As was mentioned before, the review team is of the opinion that though there definitely has been created capacity within the KPS to work on human rights, this has not yet reached the threshold of being sustainable.

Several interviewees commented along the lines that some KPS staff maintain the belief that prisoners in police or prison custody should be treated harshly and that this was the expectation by the community as well. What contributed to this belief was a lack of any

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<sup>29</sup> Many inmates in Kenya are now kept on a ‘high security’ regime, even though there is no (proven) need for this. Releasing these prisoners to a lower security level would facilitate their access to the outside world, including family visits, and at the same time would save resources for KPS. Supported by RWI, KPS initiated a research process that is currently under way. This project however falls outside the scope of this review.

<sup>30</sup> RWI confessed that it did not expect such change in the short time span of the programme, and as a result may not have sought such change, even where this might have been achievable.

other methods for managing prisoners. This is where the SMR and the RWI programme have been beneficial – in demonstrating that there is an alternative way to managing prisoners. In addition to the undeniable benefits to prisoners in being managed in a HR compliant manner, HROs interviewed volunteered that adopting a HR approach to their work has made their job safer, less stressful and more fulfilling.

***B3: Are the results the Programme has achieved consistent with its intended impact?***

In the programme document the intended impact of the programme has been described as: *‘to contribute to the increased enjoyment of constitutional rights in Kenya and upholding government obligations to respect, protect and fulfil human rights, strengthening the long-term possibilities for Kenya to become a just and cohesive society with social equity in a secure environment.’* It goes without saying that the programme has indeed contributed to increased enjoyment of constitutional rights and upholding government obligations within the time period under review. Although we note that this is anticipatory, based on the assessment of achievements at outcome levels as assessment of impact was not part of the mandate of this review. The review team is of the opinion that achievements in this respect are likely to grow exponentially if the programme were to be extended for some more years so that a true critical mass can be built.

***B4: Are the results the Programme has achieved relevant to the needs and situation of the intended beneficiaries and Programme partners (i.e. justice sector institutions, their staff and clients)?***

The results the programme has achieved are indeed still relevant to the needs and situation of the intended beneficiaries and Programme partners (i.e. justice sector institutions, their staff and clients), as there still are many gains to be made in human rights compliance in Kenya’s prisons.

It needs to be remembered that prisoners in detention are amongst the most vulnerable persons in society and have little capacity to look to satisfying their own requirements. In this sense they are almost totally reliant on prison officers for satisfaction of their needs. Indeed it was said that “there is nothing that impacts on the quality of life of prisoners so much as the quality of the prison officers they are required to interact with”.

**Efficiency, incl programme management**

***C1: Have results been achieved to an extent reasonably proportionate to the amount of funding available and used?***

The review team believes the level of results achieved to be proportionate to the funding provided. Overall, the programme seems well managed. The team in the RWI Nairobi office goes to great lengths to spend only what it must on execution of programme activities. However, it was mentioned that RWI, in general, charges too much for overhead expenses (in relation to what goes directly to programme activity costs).<sup>31</sup> Still, the overall cost of the programme is small and the results achieved constitute good value for money, and this will only increase with a reduced overhead component.

***C2: Could funds available have been used in alternative ways to achieve expected results to a greater extent?***

Alternatives that could be considered, include:

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<sup>31</sup> The percentage is set by a global agreement with Sida which is now under review.

- Strengthening the top leadership of the KPS in their knowledge and understanding of human rights. This way the focus on human rights would directly be integrated in the management processes as they are in use, including their reporting structures;
- Strengthening the human rights capacity at the PSTC, either integrated in the various topics of the curriculum, or by establishing a separate human rights unit, and informing approaches to training to more reflect building of basic competencies for correctional officers;
- Supporting the drafting of the legal and policy framework for KPS to conform to the Constitution of Kenya, particularly with regard to the Bill of Rights.

Indeed, RWI has attempted to combine these different approaches, but over the course of the programme both KPS and RWI found that the approach that focuses on capacity-building around the HRO was the most effective, especially when paired with a trained OIC, and hence decided to focus their efforts on doing just that. RWI's decision to focus on building a separate pillar in KPS that is there for the sole purpose of monitoring and enhancing human rights compliance, may have been informed by this being easier to achieve (easier than integrating a human rights compliant attitude throughout the Service), that is not too controversial, and has the additional benefit of being 'measurable', thus facilitating accountability to the donor. However, it should be noted that this HRO-focused approach runs the risk of becoming an isolated, rather than integrated, part of corrections work. In that sense, the reality that most HROs are not fulltime, but rather combine their work with another function, is in fact a 'blessing in disguise'. Secondly, despite the challenges, the review team believes including the PSTC in the programme to be an important intervention that will help to enhance sustainability, as it is here where new recruits are trained and serving staff come back for their refresher courses.

Consideration has been given as to whether RWI could 'job share' with like-minded NGOs or CSOs but given the different style of approach this suggestion has been discounted. RWI have developed a non-threatening partnership model that eschews prisoner advocacy or activism, and which to a large extent accounts for the acceptability of RWI involvement. This having said, the review team does believe there is scope for more cooperation and partnership with other partners, including civil society, that are currently left unexplored.

***C3: Has the Programme been managed with reasonable regard for efficiency; what measures have been taken during planning and implementation to ensure that resources are efficiently used to achieve expected results?***

There is no indication that the programme has not been managed with a keen eye in regard to efficiency. The RWI team planned carefully with the KPS to ensure that as much as possible programme funding goes directly to programme activities and no sweeteners are loaded on to the programme budget. The RWI/KPS partnership also ensured that KPS takes up part of the programme implementation costs mainly through officers' time devoted to the programme. The programme benefits to KPS did not involve any direct financial resources, but instead focused on facilitating capacity building.

To deal with the inevitable costs of using international experts of the type that is rare to come by, programme activities that involved external facilitation and resource person input were planned in such a way that they were undertaken back to back, thus minimizing the costs associated with travel and hosting of the experts.

As most of the capacity-building activities of the programme were either in form of training or workshops, the choices of venues and conference facilities were such that only the

minimum necessary would be spent. This is part of RWI “no cost – low cost” training approach that keeps facilities like training aids and equipment to the bare minimum. In many cases it was just the trainers with their notes and the officers with their own note pads at a low cost venue. The RWI programme administrative assistant went to great lengths to secure the best possible bargains for activity venues.

The review team noted that in spite of some slight review in the programme design necessitated by factors external to RWI, there wasn’t any exceeding of the planned budgets; instead there were savings that were applied to extra programme activities.

The programme has evolved over time, is flexible and can adapt to chances and opportunities as they arise. There is regular interaction between KPS and RWI to evaluate and assess how to move on. In addition, it was appreciated that RWI also engaged with other criminal justice actors (under Component 2), and the wider region (the EA programme).

**Some remarks specifically regarding programme management:**

During the review it was very clear how much the programme is reliant on the person of the programme manager, who is extremely positively evaluated by all interviewees capable of making that assessment. As one interviewee remarked: “he gets things done”, and another commented: “he is very orderly”. Reporting was done timely and the programme identified high quality consultants that greatly contributed to the success of it. Indeed, the programme manager is a critical success factor, which then automatically also presents a risk to the programme and especially its continuity were he to leave. RWI recognizes this risk and steps have been taken to involve new staff from the RWI Head Office in Sweden.

There is another risk, and that is that participants in the programme seem to ‘lean’ on the programme manager, and also the main consultant. The review team heard utterances like: “the audit done by Josh and Jeff”, or “Josh told us we had to make changes to how we record things”, or “and then I asked Josh to come up with an action plan for improvement”, which reveal a great level of confidence in RWI’s team and the quality of their input, but can also be taken as to indicate of lack of ownership by KPS.

It must be noted that in addition to the programme manager, Sida has been very supportive and actually attended some activities, and also RWI Head Office in Sweden was involved and committed.

**Sustainability**

***D1: To what extent is it likely that the results and benefits of the Programme will remain/continue/be maintained at an appropriate level for a reasonably long period of time after the withdrawal of external support/the end of the Programme?***

Prisons are not an environment that necessarily embraces change and continuity of effort and perseverance are essential elements of any change programme. No person interviewed expressed any confidence that the programme benefits were sustainable in the absence of continued involvement of RWI. At present the SMR, and more broadly a human rights approach to prisoner management, have not been sufficiently inculcated into the operation of prisons such that there is confidence that reform would continue in the absence of RWI involvement. No critical mass has yet been achieved and the programme as currently conceived relies strongly on RWI in terms of expertise, resources and good will. Numerous were the references to the usefulness of having RWI present to ensure certain decisions were indeed taken and implemented (for example the adoption of the TORs of the HRO). Indeed as one interviewee remarked: “Running a marathon can be lonely - and it is best to have a running buddy who can encourage you towards the finish-line.”



The programme is largely confined to four pilot prisons, it is as yet not clear how this will be scaled up to include all, or a critical number of, institutions. Given the small permanent RWI establishment and the strong competing interests they may be spread too thin.

The programme has spread from a small number of passionate HRO officers to now embrace a larger contingent. It is possible that the improved identification and selection of HROs together with the cachet attached to RWI training will make the position of HRO highly desirable as a de facto promotional programme.

***D2: What are the major factors which influence the achievement or non-achievement of sustainability of the Programme?***

Factors that are likely to contribute to sustainability of the programme include:

- With clear commitment from top leadership, once a critical mass has been achieved (maybe once 70% of HROs and OICs are trained), the achievements of the programme are likely to be sustainable locally (without RWI support). There was mentioning that KPS intends to continue training 20 HRO and 20 OICs annually, but the review team would like to argue for scaling up of the numbers in the first one or two years as to attain this critical mass sooner (and also to replace those that leave the Service after training).
- The continuing funding by Sida – the sole donor – is fundamental to sustainability of the programme.
- Continuous engagement by RWI (and Sida) with senior management and KPS top leadership is key to the sustainability of the programme's objectives.
- The use of experienced trainers, preferably with a background in corrections, who are able to operationalise theoretical human rights concepts into practice based solutions is key to the success of the SMR trainings.
- There is a current review of the Prisons Act underway and it is foreseeable that the resultant Bill will be an opportunity to cement change. The audits, and more generally the HRO and trained OICs, are 'tools' to enhance human rights compliance. If these were to be anchored in the law, this would greatly help.
- The audit report and the accompanying action plan arising have been used to great effect at Kamiti prison following the February riot/incident. This use has been discussed positively with other OICs and this has served to increase the willingness, or even desire, to become the next pilot site.

Factors that jeopardize sustainability include:

- The programme's chances of sustainability would be greatly enhanced if the KPS and the Ministry of Interior and National Coordination were to demonstrate more support at policy level by allocating specific resources and leadership responsibilities to the priorities identified under this programme.
- Related to this: If KPS is unable to pick up on the costs for human rights related activities, improvements, and implementation of actions plans, this would impede the programme's sustainability.
- Transfers: where HROs are transferred to other jobs, without being replaced by others, the gains of the programme are greatly reduced.<sup>32</sup> Though measures have been taken to prevent this, i.e. HROs are staff of the Legal Affairs Directorate and as

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<sup>32</sup> Of course, they can still be 'ambassadors' of human rights in whichever new capacity they may serve.

a result cannot be transferred without the approval of the Directorate, it is not clear this directive has indeed been implemented and is adhered to in practice.

- The audit cycle seems not well integrated in the management cycle, and the requirement on OICs and regional commanders to report back on their human rights compliance levels seems not strongly embedded. As such the audit results can still be non-consequential.
- Audits have not yet led to any change in policy, Standing Order or regulations at national level. Indeed, changes made are limited to the institutional level.
- The bigger issues require a national approach where lies a challenge.
- Having only one HRO per prison is a limiting factor – both due to the size of some institutions and due to vacancies that result from transfers and resignations.

***D3: To what extent is there a sense of local ownership of the Programme, and in what ways have Programme working methodologies contributed to sustainability in this respect?***

The HROs have strong ownership, which is attributable to RWI acting as ‘insiders’ rather than outsiders. Also, trained OICs were keen and proud to point out some of the initiatives they have introduced, such as the changed approach to complaints management (including registers); and assistance for prisoners wishing to lodge appeals. In addition, RWIs process interventions, such as the inception and assessment workshops involving key KPS leadership, has supported taking ownership.

What also has greatly contributed to the acceptance of the human rights paradigm by the KPS is the fact that the RWIs training approach is very practical, and focused on what human rights mean for corrections officers and how they can be complied with *in practice*. All interviewees remarked that this was a great step away from other human rights training programmes they had attended to, which tended to be theoretical. As one interviewee said: “now we understand it, now we’ve been empowered. We always thought HR is about not beating inmates. Now we understand it is about safety, our rights, attitudes.”<sup>33</sup>

During its interviews the review team has found, at all levels of the KPS organisation, examples of individuals who are committed to continue with the reforms as they see this as an important contribution to implementing the Constitution.

It is possible that the RWI training has or will become a de facto promotional course. OICs seem to be selecting bright personable officers with the ability to influence change, learn new concepts and provide leadership to undertake RWI training and to be HROs. These are the same qualities that are looked for, when promotions are in prospect. This will only further serve to entrench the importance and relevance of RWI training. Indeed, it is worth exploring, under the guidance of the Human Resources Department, possibilities to integrate aspects of the programme in the KPS career development path (for example, to make it compulsory to become an OIC to have participated in at least 3 audits).

**Summary of conclusions for Component 1**

All in all the review team is of the opinion that the programme is effective, especially considering the relatively short time span of its activities. It has created an initial capacity within KPS, trained both HROs and OICs, and has created a more positive attitude towards

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<sup>33</sup> Note that this focus on the rights of the staff is also a risk, as it may divert the attention from the inmates to the staff.

human rights, and likely greater human rights awareness, at least in the pilot institutions. There was improvement on human rights compliance as measured by the audits, though it cannot always be attributed unambiguously to the programme's activities. However, the review team is of the opinion that effectiveness can be enhanced, especially in the next phase, now that RWI has gained entry to the KPS and is accepted to be a reliable partner. The review team believes that more results can be achieved and also that more meaningful improvements are possible. The relevance of the programme's objective is certainly still there.

In the review team's overall assessment, the programme has been managed efficiently, with investment being carefully directed to aspects of the programme with potential to yield the most benefits in the context of the programme design. The audit team has concerns however, about the sustainability of the programme. The two main reasons for this are that it cannot be taken for granted that the KPS leadership will take ownership to actively implement the programme's achievements and raise them to the level of policy. And secondly, the programme still seems quite dependent on the programme manager and the main consultant.

## **6. Assessment of the programme's Component 2: Coordination of justice actors**

Though small in the sense of activities, resources and people involved, this component has been quite effective and can have substantial impact in the future. In line with the objective, joint strategies have been established and there seems to be increased participation and collaborative exchanges that were facilitated in the workshops organized by RWI. There is enhanced understanding, communication and cooperation amongst criminal justice actors. It is not clear whether there is also a better understanding of human rights in general, as this seems not to have been the main purpose of the interventions that were organized – these were much more specific in nature, focusing on the issues of bond and bail.

### **Effectiveness**

#### ***A1: To what extent has the Programme achieved its expected results at output and outcome (intermediate and Programme outcomes) level?***

The programme outcome, as defined in the programme document, for Component 2, is: *'More informed reform initiatives, policies, programmes and curricula in terms of responsiveness to human rights, stakeholder needs and context within and between academia and justice sector institutions.'* It is not possible for the review team to determine whether the reform initiatives, such as the initiative to work on bail and bond and develop guidelines for these, are more informed than would have been otherwise.

The results at intermediate outcome level, for component 2, as defined in the programme document were:

- *Joint strategies and good practices established among justice sector actors and stakeholders represented at the National Council on the Administration of Justice and Court User Committees to address human rights concerns in relevant areas of their work.*

It is too early to assess whether this has indeed been achieved, but the establishment of the Task Force is a good first step. Though it must be said that the decision to start working on bail and bond was already taken (prior to RWI's involvement), one interviewee clearly stressed how RWI helped to actually start the process and get it going. It is another example

of how RWI manages to seize the opportunity, properly reads what are the relevant developments on the ground, and attempts to facilitate, strengthen and support these with its expertise.

- *Increased participation and input of as well as collaborative exchanges and initiatives between concerned justice sector actors and targeted stakeholders in their respective activities.*

It has been stated by several interviewees that it is no small achievement of RWI to bring together the various actors involved in the administration of justice, in a workshop, allowing them to share their views and perspectives, which had not happened before. Interviewees mentioned how the start of the workshop was tense, but that after participants could speak out and share perspectives “it quickly became clear we all want the same: adherence to the rule of law”. Indeed, an important effect of these workshops is that people start valuing the importance of using existing coordination structures, which is of huge importance to get to the root causes of some, if not many, of the human rights problems as they present themselves in the administration of justice in Kenya today.

The results at output level, for component 2, as defined in the programme document were:

- *Increased understanding among targeted actors represented at the National Council on the Administration of Justice and Court User Committees of human rights challenges faced in their respective areas of work and jointly*

See before, there indeed seems to be better understanding of each others positions.

- *Improved knowledge among targeted actors and represented on the National Council on the Administration of Justice and Court User of Committees of the practical implications of international, regional and national human rights standards in relation to their work.*

As has been noted before, in the absence of baseline data, the review team cannot assess whether their knowledge has improved.

- *Enhanced communication and cooperation channels and networking between actors represented on the National Council on the Administration of Justice and Court User Committees.*

See before, the review team cannot verify whether communication channels and networking have been enhanced, though it did find that the workshop helped to improve relations. Whether this has been sustained beyond the workshops is not known.

- *Increased availability of human rights reference material with High Court*

In so far as the library support is concerned, similar to the observation that was made regarding the KPS, no interviewee made reference to it.

Similar to Component 1, the review team would like to state that some of the output indicators measure the outputs only to a small extent. The participants of the workshops organized by RWI evaluated these positively, but it is not clear if and how they have improved understanding in relation to international regional and national instruments and human rights challenges.

***A2: Which are the main factors that have affected positive results achievement and which have affected non-achievement of results?***

What has contributed positively to the achievements is that RWI made use of existing structures (CUC and NCAJ), was able to respond to the request as it was presented (rather than pushing through its own agenda), and delivered high quality consultants that were regarded as such by the participants. Possibly RWI could have been more ambitious on this component, for example expand to more CUCs, address more issues, and simply taking a

more active role in the process. Indeed, due to its strong focus on component 1, which is much more concrete and also leads to concrete and measurable results, component 2, which is more process-oriented, which tends to be a much slower, more opaque, process that can be frustrating at times, may have been somewhat neglected at times. In fact, from the start, RWI had no high expectations of this component, which may have created a self-fulfilling prophecy, even though many interviewees agreed that component 2 is where significant substantial change was possible, in the sense of seriously bringing the prisons population down, work on sentencing and also to build better network and relations with other actors in criminal justice sector.

***A3: Which factors should be in place to positively contribute to future results achievement, and which main factors would likely prevent or substantially challenge achieving further results?***

Factors that would facilitate future results achievements are not necessarily about having a well-defined idea where to go with component 2. In fact, the very fact that this Component was loosely defined allowed it to be responsive to the needs as they arise. Yet this should not interfere with the level of ambition RWI may have with this component. Indeed, being much more process-oriented, this component will not usurp many (human or financial) resources, but its impact can be substantial and should not be underestimated.

**Relevance**

***B1: To what extent are the objectives of the Programme still valid, taking into account particularly developments during the review period in relation to both specific Programme partners and the broader Kenyan context?***

Regarding relevance, the remarks made in the previous Chapter equally apply to this Component. In view of the developments as they have evolved in Kenya over the programme period, which have been listed in the previous Chapter, the objectives of the programme are still very valid, especially as now they have been redefined as ‘strategic interventions’, allowing for even more flexibility.

***B2: Are the results the Programme has achieved consistent with its overall objective and component main objectives and the attainment of these objectives?***

The overall objective of the programme is: ‘to support human rights reforms in implementing the new Constitution of Kenya and operationalising key policy priorities and strategies, in line with international standards, as concerns in particular the fair, impartial and efficient administration of justice.’ The results achieved with the programme are consistent with this objective, in that they support human rights reforms through the operationalization of policy and guidelines regarding bail and bond.

The objective with Component 2 was formulated as: ‘Contribute to enhanced human rights perspectives in efforts for a coordinated, effective and consultative approach in the administration of justice and reform of the justice system in Kenya.’ This indeed seems to have materialized, though the review team -lacking baseline data- cannot make a conclusive statement about this.

***B3: Are the results the Programme has achieved consistent with its intended impact?***

The intended impact of the programme has been described as: ‘to contribute to the increased enjoyment of constitutional rights in Kenya and upholding government obligations to respect, protect and fulfil human rights, strengthening the long-term possibilities for Kenya to become a just and cohesive society with social equity in a secure environment.’ As

the new guidelines for bail and bond have not yet been finalized, the component has not yet contributed to more human rights enjoyment, but this is likely to be the final result once they have been adopted and implemented.

***B4: Are the results the Programme has achieved relevant to the needs and situation of the intended beneficiaries and Programme partners (i.e. justice sector institutions, their staff and clients)?***

Most certainly, yes. It is clear that the improved relations between the partners present during the workshops, will help to achieve the results, provided they will sustain.

### **Efficiency**

***C1: Have results been achieved to an extent reasonably proportionate to the amount of funding available and used?***

Note there have only been three activities, i.e. the two workshops and the library support. For these three activities, the review team spending is proportionate to the results achieved.

***C2: Could funds available have been used in alternative ways to achieve expected results to a greater extent?***

The review team is of the opinion that RWI made proper use of the situation as it developed.

***C3: Has the Programme been managed with reasonable regard for efficiency; what measures have been taken during planning and implementation to ensure that resources are efficiently used to achieve expected results?***

This component was run with the same regard for efficiency as was noted under Component 1.

### **Sustainability**

***D1: To what extent is it likely that the results and benefits of the Programme will remain/continue/be maintained at an appropriate level for a reasonably long period of time after the withdrawal of external support/the end of the Programme?***

Due to the nature of the intervention of the RWI, which were two one-off events (one for the CUC and one for the National Council) to support a process that was already initiated, it is very likely that it will continue, even if RWI would entirely step out. The National Council has adopted the issue of bail and bond, set up a Task Force that clearly takes ownership, and when it will present its findings this process is quite likely to further unfold until it is implemented throughout the Judiciary. This is not to say RWI can have no added value, on the contrary. With its access to highly regarded experts, RWI can support the process and contribute to its outcomes.

***D2: What are the major factors which influence the achievement or non-achievement of sustainability of the Programme?***

What contributes to sustainability is obviously that RWI made use of existing structures that are independent of the Institute. Unlike Component 1, where KPS created a separate pillar within an existing institution, to work on human rights issues, for component 2, the structure integrates human rights issues in its other priorities.

***D3: To what extent is there a sense of local ownership of the Programme, and in what ways have Programme working methodologies contributed to sustainability in this respect?***

Coincidentally, two members of the review team met with some members of the Task Force during one of their visits. During the engagement it became very clear how dedicated the Task Force members are, in carrying out their assignment. RWI's role would be that to support the process only, but there seems no need whatsoever to manage it.

**Summary of conclusions for Component 2**

The review team finds that, even though Component 2 is small in required resources, both human and financial, it can have substantial impact on the ground and as such can be very effective. It has been noted that RWI did not cause the initiatives taken (the setting up of the Task Force to work on bail and bond guidelines for the judiciary), but even though they cannot be attributed to RWI (the CUC and NCAJ structures already existed) the structures did seem to require RWI to actually 'get going'. In that sense RWI clearly seized the opportunity when it presented itself, and managed to reinforce and accelerate on-going processes such that they actually materialized in the setting up of a Task Force. By using existing structures sustainability is more or less guaranteed. With the current numbers of remandees on the prisons of Kenya its relevance is without question.

**7. Lessons learnt**

Some lessons learnt include:

- It is inevitable that the design of a programme like the one under review affects results, especially because implementers are guided by the programme document with the definition of results along the chain from goal to high level objective, to outcomes, down to outputs. Since definition of results of any program creates expectations and indeed forms part of the main frame for any kind of review of such a program, the review team thinks it would be useful for RWI to revise the definition of results and have the 'program outcomes' as the highest level of results that this program is aiming at achieving. The continued reflection of the high level objectives in the program documents inevitably invites an observer (whether active participant as implementer or an external observer) to consider the significance of the lower level results (outputs and outcomes) in relation to their potential to contribute towards the stated higher level objectives, and thus judge their significance accordingly.
- Due to the programme, people are now much better equipped to deal with human rights queries, and are also able to better contribute to -for example- the UPR process. This is not to say this automatically leads to the intention to be more transparent and accountable, as one HRO remarked: "Now, with this training, I have the skills to counter-attack [the KNCHR], we now have a level playing ground." There is always the risk it leads to adoption of human rights language, rather than actions, which requires proper (external) oversight to prevent this from happening (see also the second recommendation below).
- The review team noticed that RWI sometimes seems to be struggling to open up, and find ways to share and partner with others – which would facilitate sustainability and may lead to greater leverage. Several interviewees mentioned this need for RWI to be more open to partnership and to engage others. RWI is seen to insulate their activities and contacts. RWI frequently refers to its non-monitoring mandate (and not being a

funder). However, despite not being a monitor or a lobbyist, this does not exclude RWI engaging with those that are. Indeed, the review team is of the opinion that the programme is likely to achieve more when engaging more actively with (strategic and other) partners (which would also benefit those other partners, it would be a win-win situation). For example, Sida indicated that they could support KPS in their meetings with the Minister, and KNCHR indicated how they could use their mandate to lobby the Government to avail more funds to KPS.

- An important lesson obviously is that care must be taken in choosing your entry point for change, and preferably should not be restricted to one person – as was clearly illustrated with the developments around the former Deputy CJ which greatly delayed the activities on Component 2.

## **8. Recommendations**

### 1. Continuation of the programme

The review team has invariably heard that the programme is not finished, that no critical mass has yet been achieved, and that KPS needs further support. Together with the extremely positive evaluations of the activities undertaken within the framework of this programme as well as of the consultants and RWI staff involved, it only seems logical to continue. The review team is of the opinion that in the next phase the speed of achievements are likely to be accelerated as initial hick-ups have now been solved, and once more and more people are trained the level of knowledge and understanding will grow and a joint vocabulary take further root. A word of caution is needed however, and that is related to ownership and, hence, sustainability. It is paramount that the responsibility for human rights compliance is, and remains, with the KPS, both its leadership and its staff.

In order to enhance ownership by KPS, it should be considered to gradually have KPS staff, in particular trained HROs, co-train and gradually take over the training.<sup>34</sup> This would simultaneously lead to several positive results. First, it would greatly increase the capacity to train OICs and HROs, leading to reaching a critical mass much faster, which will accelerate the developments on own initiative. As was mentioned before, KPS intends to continue training 20 HRO and 20 OICs annually, but the review team would like to argue for scaling up these numbers in the first one or two years, also in order to replace those that leave the Service after training. Secondly, it would facilitate the transfer of skills locally, and become less reliant on foreign experts, which would also lead to the training becoming less costly – also because then activities no longer need to be held centrally. Thirdly, next to enhancing KPS ownership of the programme, it would make the programme less reliant on the persons of the programme manager and consultant.

### The review team wishes to make a number of suggestions how to increase the effectiveness of the programme:

- ❖ The review team recommends that the leadership of the RWI programme cultivate a closer practical working relationship with the top KPS leadership to ensure that the officers at the top demonstrate more enthusiasm in supporting programme activities and what the programme seeks to achieve for the KPS. This would be taking the reform agenda in KPS beyond positive rhetoric and demonstrating to all

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<sup>34</sup> There is a risk that there will be a divide between those that have been RWI-trained and those that have been KPS-trained, for which mitigating interventions need to be developed (such as a process where RWI certifies the candidates upon a successful audit, for example).



- officers that the Commissioner of Prisons and his leadership team consider human rights reforms as a priority critical to their leadership success and legacy at the helm.
- ❖ The review team thinks human rights compliance needs to be embedded in the entire line of command within KPS, and as such priority should be given to training OICs and regional commanders as well as other senior managers. Also, RWI could make more effort to ensure both the OIC and HRO are trained in tandem. Such leadership training should focus on principles of good prison management, which automatically includes respect for human rights.
  - ❖ It is worth exploring, together with the line managers, how human rights compliance can be better anchored in the management cycle to guarantee that human rights compliance moves beyond the good will of individual line managers, but indeed, becomes an organizational feature. For this, the Management Information System, that was developed in the Leadership Training, but seems to have never been really implemented, may prove to be a good starting point.
  - ❖ Related to this, it is recommended to find ways to scale up the findings of the audits, to the KPS Management Team, as is done in the audit review workshops, and from there identify what areas require to be addressed at national level and identify the appropriate owner of the problem.
  - ❖ In addition, the review team recommends expanding the group of officers targeted for human rights training to include Deputy OICs and Senior Sergeants in charge of discipline in order to increase the span of trained officers' influence on human rights issues in prisons facilities.
  - ❖ The review team wishes to urge RWI to re-engage with PTSC, especially in view of the new developments related to the College. It is hoped that RWI will have the opportunity for involvement in the development of the revised PSTC training, possibly in cooperation with the Kenyatta University.
  - ❖ The review team noted that the programme has a number of (unintended) side-effects, which may have negatively impacted on the full enjoyment of human rights by prisoners. For example, the decision to transfer prisoners from Kamiti Main to other facilities has helped to decongest the prison, which undoubtedly leads to an improved situation for both staff and prisoners that have remained. However, it is not clear how prisoners that have been transferred were selected, and it seems likely that some are now further away from their families and loved ones, which would deteriorate their sense of well-being. Another example comes from Shimo la Tewa Women's Prison, where, after having been taught that remandees should be kept separate from convicted prisoners, KPS staff now intervenes when members of the two groups communicate – even though they share the same exercise area and other facilities. It seems in this instance KPS staff adheres to the letter of the rule as taught, possibly without fully comprehending the rationale behind it (the 'spirit' of the rule). The review team already noted the importance to adhere to the principle to 'do no harm', and wishes to reiterate the need to monitor for negative (unintended) consequences which can result from interventions, so that mitigating action can be taken where required.

#### Recommendations with regards to the auditing process:

- ❖ The review team is somewhat concerned about the methodology of the audits, which does not allow for any direct, structured input from inmates (though they do engage with inmates informally). RWI argues this is for two reasons: first RWI wants to protect inmates, as there might be reprisals for giving negative feedback, and also RWI does not want to jeopardize its working relationship with KPS. Hence, all information in the audits is based on interviews with staff, combined with direct

verification, of prison facilities, record books and the like, as acquired during the audit, under the assumption this contains sufficient detail. As such, it does not capture whether inmates *notice* any improvement in their enjoyment of human rights, nor whether they *perceive*, for example, a change in attitude with KPS staff. Such information could also come from third sources (for example the report based on the visits by KNCHR), which could be used to corroborate the audit findings. However, this does not fit in the audit methodology. The review team considers this a missed opportunity and is also worried about the integrity of the audits in the future, when auditors may become less diligent and use the audits for self-praise rather than self-critique. The review team is of the opinion that a thorough audit cannot take place without input from the inmates. Not only is this for reasons of validation and verification (as indeed, this can be done otherwise as well), but mainly as a matter of principle. It is a basic notion underlying human rights that people are to be heard, and a programme that seeks to improve respect for human rights but does not give a direct voice to rights holders (other than indirectly) misses a great opportunity for empowerment and improving relations between staff and prisoners.

- ❖ The current reporting arrangements for audit results see them provided to the OIC, regional Commander and to the Director Legal Services and Human Rights, indeed creating a separate 'human rights pillar' within the Service. However, the elements of the audit include SMR related to welfare and rehabilitation, health services and building services. As such it would be appropriate for audit reports to be provided to the respective Directors for their involvement and attention. Similarly, it is likely that the inclusion of officers with expertise in rehabilitation, health, and constructions in the audit teams would have benefit. It would be helpful if a modified, limited training programme in the respective relevant SMR could be developed and made available to the respective officers. As a side note, more generally would it be helpful to provide human rights training, on the relevant SMR, to the various disciplines involved in corrections. For example, a health representative mentioned how it would be helpful to have more training on the rights of prisoners suffering from mental health issues.
- ❖ The audits have a direct positive impact: some improvements occur immediately, which is very effective. Though the review team understands and agrees on the importance not to give a score to the audits, as to avoid competition leading to implementing the 'easy' standards while avoiding the more difficult ones, it could be considered to add priorities to certain standards, as some are more important than others (for example access to drinking water) and some can help to prevent other human rights violations (for example access to complaints mechanism).
- ❖ It is worth exploring how audits and accompanying actions plans can be shared with other prisons, so that the effect is multiplied, reaches more inmates, and also that there is a bigger chance that it will lead to institutional change.
- ❖ The audits target individual institutions, but not the KPS as a whole (which is why some SMR are left out of the audit). However, these SMR seem to encompass exactly those issues that are at the heart of what kind of agency KPS wants to be: A Prisons Service or a Corrections Service, and could open the opportunity to re-discuss the vision and mission of the KPS, and hence have a more systemic impact than is currently achieved. It is thus, worth considering developing an audit mechanism for the KPS as a whole.

Recommendations with regards to the (position of the) HROs:

- ❖ There have been made several references to the usefulness of having HROs of a certain rank, which would make it easier to have their recommendations implemented. On the other hand, recommendations need to be endorsed by the OIC anyway, and as such the rank of the HRO in case, is not that relevant. What clearly is important is the personality of the HRO, as obviously some are more active, energetic and committed than others. It is clear that the process of selecting the right HRO is important: rather than training people to adopt the right attitude, it seems more effective to make sure to have the right people on the job in the first place. While interviewing KPS staff, the review team has come across staff not trained by RWI, but very dedicated to human rights. RWI may wish to explore opportunities to work with the KPS Human Resources Department to identify criteria to select the right people. Also, it is worth considering how to make a linkage to career development in the KPS, for example to make it compulsory for future OICs to have carried out at least three audits.
- ❖ All HROs underlined the importance of having a trained OIC who understands human rights. The review team recommends training the OIC first, before training the accompanying HRO.
- ❖ HROs can create awareness, push for change, feed policy makers with information. However, to do so effectively, they require better advocacy/influencing skills, to be able to manage the process of organizational change. This is an area RWI may wish to include in its training programme.
- ❖ HROs are very much bound to the institution in which they work. This is good as they know the institution and know what they can achieve there, but at the same time it makes their reach pretty limited. The regional HRO could be the linking pin, connecting the dots between institutions in one region, but this seems to be challenging in practice and more RWI support may be required. Also, it is important to have a format allowing HROs to report back to the region and also the national level, so that their achievements can be analyzed and made accessible to others. Currently RWI is working to develop such a tool, but this has not yet materialized.
- ❖ One HRO per institution is vulnerable, it is worth considering adding a second one.
- ❖ Provision of a designated training budget, by KPS, for HROs to implement local training would be a positive initiative.

## 2. Anchor the programme in a more effective and inclusive accountability structure

Apart from training and imparting knowledge about the SMR, the RWI programme is about enhancing internal accountability. Audits are done by KPS staff only, and their results are passed on to the OIC and the Legal Affairs Directorate, but are not accessible for external scrutiny. RWI is of the opinion that this has greatly enhanced the acceptability of the programme. Though this no doubt is true, the review team wishes to bring in mind that, in order for accountability to be truly effective, it needs to be consequential, and for that to be realized internal accountability needs to be backed up by external oversight. The two go hand in hand: external accountability without internal backing is likely to remain toothless, but the opposite is true as well. As such, the review team is of the opinion that the audit cycle could be made more effective, in the sense of creating real (organizational) change.

There are various ways to achieve this: KPS can invite outsiders in their audit teams, or can share audit reports with external parties. In fact, KPS adopted an open door policy some ten years ago, and may now wish to extend this to its auditing process. Of course these decisions are not for RWI to take, but RWI can be supportive in the establishment of a more inclusive and effective accountability structure that will also enhance the benefits of its programme.

This is related to the relationship KPS seems to have developed with the Kenya National Commission on Human Rights. Though KPS welcomes the Commission and facilitates their access to the prisons, numerous were the references to the Commission not being neutral, perceived to be choosing sides with the prisoners. The review team noted that RWI has not helped to close this gap, and may even –unintentionally– have helped to widen it (as now RWI is seen as part of the ‘good human rights people’, and the Commission is not). The review team thinks it wise, and instrumental to the programme’s objectives, if RWI would use its position of trust to work on enhancing trust between KPS and KNCHR. This would also be beneficial as KNCHR, being an advocacy body, can support KPS for example in lobbying the Government to release more financial resources so that the Service can indeed meet its human rights obligations. See also recommendation 6 below.

### 3. Re-establish efforts related to component 2

The prison system is grossly overcrowded and a major contributor to the overcrowding is the 36% of the prisoner population who are on remand (awaiting trial). This figure is unacceptably high by international standards and the review team recommends that this programme scales up what was conceived as component 2 in order to assist the Kenya government in reducing the numbers of, in particular the remand, prisoners held in prison. This does not have to require involvement of the KPS. Indeed, as one interviewee mentioned: “To work on the Kenya prisons does not always require to work with KPS.”

One of the areas of RWI engagement in 2013 has been that of reviewing the current Bail/Bond arrangements, and the review team wishes to urge RWI to stay actively involved in that review process. It is important to note that this does not require huge inputs of financial or human resources, on the contrary, as the process is already under way and involves existing administrative structures such as the National Council on the Administration of Justice. Hence, RWI’s role would be that of providing expertise and advise, and more generally support to the review process.<sup>35</sup>

### 4. Support the drafting of new legislation & policies

It would be of considerable benefit if RWI had the opportunity to offer its expertise and to provide input into the drafting process of the new legislation, and subsequent translation into regulations and Standing Orders. The legal and regulatory review workshop that was held in 2012 may be revived as this seems an area where substantial gains can be made that would affect the entire Service rather than individual institutions. Information from the audits can serve to identify areas that need prioritization.

In addition, it is the opinion of the review team that the next phase of the programme should include policy review and implementation as many existing guidelines are not in alignment with the SMR. It was also mentioned that RWI could provide expertise on the craft of policy-writing.

### 5. Expand programme to include probation

The Swedish Prisons and Probation Service is open to initiate cooperation with the Kenya Probation Service, as an entry point to decongest Kenya’s prisons (for example through professionalizing probation services). Being complimentary to RWI, having the professional

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<sup>35</sup> Potentially the Bail/Bond Review could make recommendations in regard to such matters as: 1. Improved case management processes to expedite the hearing of cases; 2. Enhanced arrangements for setting and reviewing bail and assisting remandees to identify sources for the payment of bails and the lodging of securities; and 3. Case review strategies to identify collapsed or weakened cases that warrant the application of a *nolle prosequi* withdrawal of charges and the release of remandees.

background and expertise, it can help to make RWIs programme less dependent on external consultants, while RWI can continue to provide country specific and human rights expertise. Such cooperation can support also other activities in relation to classification work, developing a parole scheme, and at the same time can be useful in the programme's engagement with the PSTC. A workshop is planned for October 2014, to actually design the project in consultation with stakeholders.

#### 6. Strengthen partnerships

Share information and engage other partners, both from civil society as within the criminal justice chain, to identify where challenges remain and how these are to be addressed and create synergy. This can help to facilitate adherence to human rights, each from its own role. Some civil society actors may be more vocal in their calls upon the KPS leadership while others may take a more engaging approach. Yet it should be kept in mind that all work for the same end goal.

#### 7. The design & reporting of the programme

The review team recommends that the programme be rewritten with better anchoring of a Results Based Management approach, defining desired results from the highest to the lowest point of the results chain in order to make clear to all implementers the various cause-effect relationships. A comprehensive monitoring, evaluation and reporting system should be designed at this early stage to enable implementers in KPS to track and collect performance data over time, and use these to report on results for themselves and to RWI.

Indeed, the review team feels the programme's reporting can be improved. Beyond some mention of outputs of training activities and meetings, the reports hardly touch on results caused by the process that is initiated through the programme activities over time, like the various prisons' OICs' and human rights officers' own initiatives following on their participation in programme activities. Indeed, despite the many pages of progress-reporting, the actual substance of the reports is rather meager and does not capture all that's been achieved. A lot of achievements were shared by respondents in anecdotal form, shading some light on what the activities reported on actually resulted into. A monitoring, evaluation and reporting system at the programme design stage would perhaps have enabled the programme implementers to keep track of what they are implementing and whether and what it is achieving over reporting time intervals, and thus the results of this programme and the various reasons that may explain such results would have been captured better in progress reports and ultimately would have been understood better by the implementers. The review team recommends that at the programme design stage, a monitoring, evaluation and reporting system, in form of a simple Performance Management Plan with indicators, also be designed to enable implementers at all levels to systematically collect performance data across the results chain from activities, to outputs to outcomes. This will be the standard data that they convert into reports, enabling them not only to report on activities but on outputs and outcomes as well.

## **Appendix A: Terms of Reference for the review**

### **1. Background**

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) began activities in Kenya in 1992 when the University of Nairobi was included in RWI's literature acquisition project. In 1999, RWI began to work more systematically with human rights capacity development in Kenya and then primarily in cooperation with government institutions, including institutions in field of the administration of justice. At the core of most activities has been to strengthen institutional capacities to work for the further realisation of human rights in Kenya.

Over the years, cooperation with the Kenya Prisons Service (KPS) gradually developed to become a key component of RWI's programme activities in Kenya. For the current programme period, which started 1 January 2012, this cooperation also came to constitute the main programme component, with a second, related, but much minor in scope, component focusing on strengthening human rights perspectives in the coordination between administration of justice actors and stakeholders. RWI's current bilateral cooperation programme in Kenya is funded by Swedish Development Cooperation, in accordance with an agreement signed between RWI and the Swedish International Development Cooperation Agency (Sida). The Programme was initially designed as a two-year programme, for the period 2012-2013, but in agreement with Sida it was extended for a third year of programme implementation.

Through partnerships with, and focusing on the human rights capacity development of, Kenyan justice sector institutions, in particular KPS, the Programme has the following overall objective:

*To support human rights reforms in implementing the new [2010] Constitution of Kenya and operationalising key policy priorities and strategies, in line with international standards, as concerns in particular the fair, impartial and efficient administration of justice*

In turn, this is envisaged to contribute to the increased enjoyment of constitutional rights in Kenya and upholding government obligations to respect, protect and fulfil human rights, strengthening the long-term possibilities for Kenya to become a just and cohesive society with social equity in a secure environment.<sup>36</sup>

As per the original Programme document, and as also stipulated in the 2014 Programme work plan, the Programme will, in 2014, be subject to a review to assess the operation of the Programme as a whole, and to provide a basis for decision-making on future best alternatives by looking at lessons learnt. As such, the review is expected to be an important part of RWI's and Sida's respective assessments of possible continued cooperation.

The main stakeholders of the review are Sida, RWI and the Programme's justice sector partners.

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<sup>36</sup> For further general information on the RWI Kenya Programme, please see <http://rwi.lu.se/where-we-work/regions/sub-saharan-africa/kenya/>.

## **2. Purpose and Objectives of the Review**

The review will serve the purpose of informing the dialogue between Sida, RWI and concerned partners on possible continued cooperation beyond 2014. The objectives of the review are to generate information on how effective and efficient the Programme has been in achieving results, as well as on the relevance and sustainability of results achieved, identifying, where possible, factors influencing positive results achievement in relation to these factors, and providing suggestions for future relevant, effective and efficient results achievement of sustainable nature as well as potential new areas of cooperation.

## **3. Scope and Limitations**

The scope of the review comprises:

- Assessing results achievement related to the activities carried out according to the 2012 and 2013 respective Programme work plans, and in relation to the activities that have taken place prior to July 2014 as per the 2014 Programme work plan. It shall additionally be considered how efficiently resources during this time period have been converted into results and the relevance and sustainability of the results; and
- Providing suggestions, in terms of lessons learned from Programme performance during the time period of review, for furthering future relevant effective and efficient results achievement of sustainable nature, including in areas beyond the immediate scope of the current Programme.

Considering that the review will take place during the third quarter of 2014 it is not possible to assess activities implemented, and their results, after the second quarter of 2014, which accordingly do not fall within the scope of the review. The review will also take due account of agreed modifications to work plans over the course of the Programme in response to the developing situation in Kenya and the resultant challenges identified in annual reporting and other relevant Programme documentation.

## **4. Organisation, Management and Stakeholders**

RWI is responsible for commissioning the review, and as such a principal stakeholder. Also, RWI's justice sector partners in Kenya are principal stakeholders as additional objects of the review. RWI and its justice sector partners will cooperate in the performance of all phases of the review. Sida and RWI are the primary users of the overall conclusions of the review, while RWI, and also its justice sector partners, additionally are (potential) implementers of possible recommendations.

The review will be conducted by a team composed of 3 persons (the consultants):

- Anneke Osse (Team Leader)
- JME Simekha (Review/Evaluation Expert and Context Analyst)
- Glenn Ross (Prisons Expert)

The Team Leader shall be RWI's main contact for the carrying out of the review and shall be overall responsible for all stakeholder contacts. The Team Leader shall moreover be responsible for the division of labour between the consultants, which shall ensure the successful delivery of services and be regulated in writing on a contractual basis. The Team

Leader shall be responsible for ensuring the delivery of services in accordance with these Terms of Reference and as per the agreed division of labour between the consultants.

The consultants shall exercise reasonable skill, care and diligence in the performance of services and shall carry out responsibilities in accordance with recognised professional standards.

The consultants must at all times remain independent of the reviewed activities and take no stake in the outcome of the review.

In the performance of the review, the consultants shall at all times remain in close contact and consult with RWI for purposes of relaying the work done and receiving feedback and input on the ongoing work. The RWI staff member responsible for the implementation of the review, and main point of contact for the consultants, is Mr. Josh Ounsted, Head of RWI Kenya Office.

The review shall contribute to learning on the part of the principal stakeholders through on-going discussion regarding the review of the Programme, to which the stakeholders are expected to provide important contributions, including in relation to tentative findings. Additionally, the results of the review shall benefit the stakeholders in terms of information for future effective justice delivery and results achievement as well as lessons learned in this respect from Programme implementation during the time period of review.

## **5. Review Questions and Criteria**

The review shall generate information on the extent to which the RWI Kenya Programme has been successful in attaining its expected results, the way in which available resources have been used to achieve results, and the relevance of the results, including to beneficiaries. The review shall moreover consider the likelihood that the results will be sustained with the implication that benefits of the Programme will continue after the Programme has ended. The review should also provide suggestions as to how these aspects potentially could be enhanced in the future.

The review shall accordingly address questions related to the effectiveness, efficiency, sustainability and relevance of the RWI Programme. In addition, it shall endeavour to formulate recommendations in order to enhance the Programme in the future, if it is continued as such, or for generally achieving results the Programme seeks to promote in the future.

With regard to effectiveness, the review shall address the following questions:

A1: To what extent has the Programme achieved its expected results at output and outcome (intermediate and Programme outcomes) level?

A2: Which are the main factors that have affected positive results achievement and which have affected non-achievement of results?

A3: Which factors should be in place to positively contribute to future results achievement, and which main factors would likely prevent or substantially challenge achieving further results?



With regard to relevance, the following questions shall be addressed:

B1: To what extent are the objectives of the Programme still valid, taking into account particularly developments during the review period in relation to both specific Programme partners and the broader Kenyan context?

B2: Are the results the Programme has achieved consistent with its overall objective and component main objectives and the attainment of these objectives?

B3: Are the results the Programme has achieved consistent with its intended impact?

B4: Are the results the Programme has achieved relevant to the needs and situation of the intended beneficiaries and Programme partners (i.e. justice sector institutions, their staff and clients)?

With regard to efficiency, the review shall address the following questions:

C1: Have results been achieved to an extent reasonably proportionate to the amount of funding available and used?

C2: Could funds available have been used in alternative ways to achieve expected results to a greater extent?

C2: Has the Programme been managed with reasonable regard for efficiency; what measures have been taken during planning and implementation to ensure that resources are efficiently used to achieve expected results?

With regard to sustainability, the review shall address the following questions:

D1: To what extent is it likely that the results and benefits of the Programme will remain/continue/be maintained at an appropriate level for a reasonably long period of time after the withdrawal of external support/the end of the Programme?

D2: What are the major factors which influence the achievement or non-achievement of sustainability of the Programme?

D3: To what extent is there a sense of local ownership of the Programme, and in what ways have Programme working methodologies contributed to sustainability in this respect?

Finally, the consultants shall provide recommendations as to how the Programme may be developed in order to enhance its relevance, effectiveness, efficiency and sustainability, and, when possible, suggest potential new areas of cooperation for generally achieving results the Programme seeks to promote.

In answering the review questions and in providing recommendations, the consultants are asked to be sensitive to issues of gender and social marginalisation.

Impact as such of the Programme will not be subject to review, in the sense of assessing achievement of the Programme's expected impact which constitutes the long-term vision for the Programme and guides Programme implementation overall, and it is not considered

as a measurable result during the Programme period, but rather the highest-level change that can be reasonably attributed to the Programme in a causal manner representing societal level change.

## **6. Conclusions, Recommendation and Lessons Learned**

Well-informed and reliable conclusions shall be provided as a result of the review in relation to the review questions. The conclusions shall enable a dialogue between Sida and RWI on continued cooperation together with suggestions, in terms of lessons learned from Programme results achievement during the time period of review, also enabling RWI and its partners to act accordingly on any such suggestions/recommendations. This presumes close consultation on behalf of the consultants with RWI and its partners as to the rationale and feasibility of any such suggestions made.

## **7. Approach and Methodology**

The review shall be carried out according to an inclusive and participatory approach, thus drawing on and mobilising the knowledge and experiences of the Programme implementing partners, and ensuring, for the review conclusions, a shared understanding among the review stakeholders and the consultants as to what generally affects and constitutes effective results achievement within the scope of the Programme and the context within which it operates.

The review shall depart from an overview of the contexts in which the RWI Programme operates, the extent of state commitment to human rights, and the primary reasons for human rights deficits in the country, especially as relates to the administration of justice. Such an overview shall form a background for subsequently addressing the objectives of the review and the review questions.

For information and data collection concerning the Programme and its implementation, and so as to address the review questions, the consultants shall conduct interviews with stakeholders and review existing Programme documentation (including: the Programme document and subsequent updates to it; RWI annual work plans and budgets; activity reports and other relevant activity documentation; key steering and other documents of partners; relevant Sida strategies and policies; and Programme progress reports). For the purpose of stakeholder interviews, the consultants shall conduct field visits to up to three relevant provinces in Kenya to meet with a selection of representatives from the intended beneficiaries, including at locations identified as pilots within the different components of the Programme and concerning both institutions and individuals. In addition, concerned Sida and RWI staff respectively shall be met with at their respective locations, to the extent possible.

In addressing the review questions, focus should be kept on the time period of review. The review must be stakeholder inclusive in order to make an informed assessment in relation to the review questions. Such an assessment can only take place if the review recognises and takes into account the unique methodologies, experiences and related capacity development strategies that the Programme is based on.

In addressing the questions regarding results of Programme activity, focus should be on general effects as well as the details of individual activities, and also take account of intended consequences and other potential effects of the Programme. The established results shall be clearly and thoroughly argued, and contain a critical discussion of both arguments for and against believing that such results have taken place. Even when results may not yet have been attained, or may be impossible to definitely separate from effects of more general trends, the consultants shall endeavour to discuss the likelihood of them occurring as a result of the Programme. The discussion shall also take into account and relate the RWI Programme and its activities to the overall constitutional and justice sector reform programmes currently ongoing in Kenya.

In describing the results, efficiency, sustainability and relevance of the Programme, examples may be used both for illustration and for proof. However, if they choose to use such material, the consultants shall also present a view on how representative such examples are of the Programme in general.

On the basis of the above-mentioned, the consultants are expected to elaborate on the proposed methodology in the inception report, including further specifying how quality assurance will be handled by them, by drawing on the participation in the review of the principal stakeholders and their contributions in this respect. The choice of locations for field studies shall be argued in the inception report.

The review shall, in all relevant parts, conform to OECD/DAC's quality standards.

## **8. Time Schedule and Review Process**

The review process comprises the following steps:

Step 1: Initial review of available Programme documentation (including writing of inception report)

Step 2: Inception report to RWI

Step 3: Data collection process, including field visit

Step 4: Data processing and analysis (including writing of draft report)

Step 5: Submission and discussion of draft report to RWI

Step 6: Subsequent to comments from RWI and its partners, submission of final report

The estimated total duration of the assignment is seven weeks, to be divided among the members of the review team, and it is expected to comprise a maximum of 45 working days. The review should commence 7 August 2014 and be finalised before 30 September 2014.

## **9. Reporting and Communication**

The consultants are expected to deliver an inception report. The inception period shall include an initial review of available Programme documentation as well as a dialogue between RWI and the consultants regarding the approach and methodology to be used, in accordance with these Terms of Reference. In the inception report, the consultants shall, in addition to what has already been stated in these Terms of Reference, list the risks that may be faced during the review process and the assumptions which may have an impact on the review process, and propose alternatives for facing those risks.

The inception report shall be submitted to RWI for stakeholder comments, and, subsequently, RWI's approval.

Following data collection, processing and analysis, a draft review report shall be prepared and submitted to RWI. The aim is to make it possible for RWI and its partners to comment on any factual errors and misunderstandings, and for them to assess if the draft has reached an acceptable standard in relation to the Terms of Reference and accurately addresses the review questions. Comments shall be submitted to the consultants within one week, whereupon the final report shall be submitted to RWI within five days.

During the course of the performance of the review, the consultants shall at all times remain in close contact and consult with RWI for purposes of relaying the work done and receiving feedback and input on the ongoing work. The consultants shall at all times quickly respond and relate to comments made by stakeholders regarding the process and findings of the review. For reporting purposes, close consultation with RWI and its partners as to the rationale and feasibility of any such suggestions made is required.

The consultants shall, in relevant parts and unless otherwise agreed, adhere to the terminology of the OECD/DAC Glossary on Evaluation and Results-Based Management, unless otherwise agreed with RWI.

The consultants shall at all times fully respect and adhere to the mandate of RWI regarding monitoring and reporting on aspects of human rights compliance. Particularly as relates to the cooperation with the Kenya Prisons Service, the methodologies employed are strictly internal to the partnership between KPS and RWI, which is an absolute requirement for this kind of programming work. Therefore, the consultants shall ensure that any data collected in relation to human rights compliance remains strictly confidential both during and after the review process, with inclusion of such data in the final report subject to approval by RWI and relevant partners.

The methodology used must be described and explained in the final report. The scope and limitations of the review indicated in section 3 shall be made explicit and shall be clearly reflected in the report.

English should be the language of all written communication including, e-mails, drafts and final versions of the review report.

Expected deliverables in English language accordingly include:

- Inception Report (no later than 14 August)
- Draft Review Report (no later than 14 September)
- Final Review Report (no later than 26 September, and maximum 30 pages, excluding annexes)

Annexes, at minimum, should include:

- Terms of Reference;
- Data gathering instruments (observation guides, interview questionnaires, etc.);
- Names and contact information of stakeholders met/interviewed (to the extent it does not violate considerations of confidentiality).

## **Appendix B: List of Interviewees and Visited stations**

<i>Name</i>	<i>Position</i>	<i>Date (2014)</i>
* Dennis Mungo	Human Rights Officer at KPS HQ	21 Aug
* Charity Irungu, Sam, Moses Ngunjiri, Tom Musyoki, Justus Naderia and John (group interview)	Nairobi Region Human Rights Officers	21 Aug
* Jeff Christian	Consultant to RWI for the programme	21 Aug
* Milly Odongo	Consultant to RWI for the programme	22 Aug
* Josh Ounsted	RWI, Head of Kenya Office	25 Aug
* Titus Karani	Director of Legal Affairs and Human Rights (rtd)	26 Aug
* Anne Ljung	Sida/Swedish Embassy	26 Aug
* Johannes Eile	RWI, Head of International Dept	26 Aug
* Henry Kisingu	OIC, Kamiti Main Prison	27 Aug
* Fairbain Ombeva	OIC, Youth Correctional Training Centre	27 Aug
* James Cathanga	OIC, Nairobi West Prison	29 Aug
* Justus Naderia	HRO Nairobi West Prison	29 Aug
* Barnaba Keino	OIC, Ngeria Farm prison	1 Sept
* Horace Chacha	OIC Shikusa Borstal	1 Sept
* Maurice D Odhiambo	HRO Shikusa Borstal	1 Sept
* Dickson Ominde	HRO Kakamega Prison	1 Sept
* Jonathan Koech	2IC Kakamega Prison	1 Sept
* Dan Haya	HRO Western Region Command	1 Sept
* Philemon Too	2IC Kisumu Main Prison	2 Sept
* John Makokha	HRO Kisumu Main Prison	2 Sept
* Betty Chepkosgei	2IC /HRO, Shimo la Tewa Women Prison	2 Sept
* Terry Sawatsky	Consultant to RWI for the programme	2 Sept
* James K'Odiiny	Regional Commander, Coastal Region	3 Sept
* Michael Chege	Regional HRO, Coast	3 Sept
* John Iguna	HRO, Shimo la Tewa Main Prison	3 Sept
* N. Wambui Ng'ang'a	Legal Officer, PSTC	3 Sept
* Wanini Kereri	Regional Commander, Nairobi	4 Sept
* James Too	2IC Nairobi Remand and Allocation Centre	4 Sept
* Lucy Mbugua	Dep. Chief Magistrate, Milimani Courts	4 Sept
* Mary Khaemba	Director of Welfare, KPS HQ	4 Sept
* Dr Charles Isiaho	Deputy Director Prison Health Services	5 Sept
* Joshua Tendei	Principal Nurse, Prison Health Services	5 Sept
* Benjamin Njoga	Dir of Legal Affairs and Human Rights, KPS HQ	5 Sept
* Charles Isiaho	Deputy Director of Health, KPS HQ	5 Sept
* Edna Nyaloti	KNCHR	5 Sept
* Karol Nowak	Consultant to RWI for the programme	5 Sept
* Anette Dahlström	Former Swedish Probation Service, Int'l Dept	10 Sept
* Clement Okech	Ass Dir. Probation Court Services, Prob. Serv.	11 Sept

### *Field Visits to:*

- Kamiti Main (27 Aug)
- Youth Training Centre (27 Aug)
- Nairobi West Prison (28 Aug)
- Ngeria Farm (1 Sept)
- Shikusa Borstal (1 Sept)

- Kakamega Prison (1 Sept)
- Kodiaga Prison, Kisumu (2 Sept)
- Shimo la Tewa Women's Prison (2 and 3 Sept)
- Nairobi Regional Remand and Allocation Centre (4 Sept)

*Unfortunately the review team has been unable to meet with:*

- \* Lenson Njogu, LRF
- \* Lena Olsson, RWI, Sweden (on the library support)
- \* A representative from the Ministry of Interior and National Coordination

## **Appendix C: The review team**

The review team consisted of the following three consultants:

Anneke Osse (**Team Leader**) (1968, Netherlands) is based in Nairobi, Kenya. After having worked first for the police and then for a major human rights organization, she set up her own consultancy firm in the Netherlands in 2007, and works as a fulltime independent consultant since 2010. She has done consultancy work for a range of organizations, including the UN, (international) NGOs as well as for the police, mainly in the field of enhancing police accountability and police and human rights. In addition, she provides management consultancy for management teams and individuals, including on strategy development and internal team dynamics. Since early 2011 she has been living and working in Kenya. From 2011-2013 she has worked on police reform in the country.

Glenn Ross (**prisons expert**) (1956, Australia) has extensive experience working in prisons with male and female offenders, in maximum, medium and minimum security facilities, in both public prisons and contract managed prisons and in senior positions in prison management, operations and prisoner rehabilitation across several jurisdictions. Glenn has experience in prison work in developing countries in the Sub-continent, Middle East, South America and East Africa including in Kenya itself. In Kenya his work with UNODC, commencing in 2009, involved undertaking prison assessments, delivering training programmes and supporting infrastructure developments. As such, Glenn has experience of the KPS prior to the 2010 Constitution, the establishment of HROs and the implementation of this RWI programme, and his perspectives and insight provided valuable context and a frame of reference for considering the current state of human rights adherence within KPS.

Simekha JME (**Review/Evaluation expert and context analyst**) (1970, Kenya) is an accomplished governance, public policy and organizational development consultant with two Bachelors degrees in Public Policy and Leadership and Management, and a Masters degree in Public Administration. He has more than 15 years working in the Kenyan civil society sector on governance, human rights and public policy issues and has been consulting on full time basis on organizational development, organizational governance, project cycle management, strategic planning and public policy since 2005. He is a co-director and team leader at Projects and Allied Consultants Limited, a Nairobi based consulting firm at which he has handled numerous institutional and programme review assignments in the Eastern, Horn and Southern Africa regions. He is a member of the Kenya Institute of Management.

## **Appendix D: RWI Kenya Programme Design**

The **overall objective** of the Kenya Programme is to support human rights reforms in implementing the new Constitution of Kenya and operationalising key policy priorities and strategies, in line with international standards, as concerns in particular the fair, impartial and efficient administration of justice.

This so as to contribute to the increased enjoyment of constitutional rights in Kenya and upholding government obligations to respect, protect and fulfil human rights, strengthening the long-term possibilities for Kenya to become a just and cohesive society with social equity in a secure environment (**impact**).

The priority of the Programme, as part of its overall objective, to enhance compliance with international human rights standards in the management of Kenya's correctional system, including through supporting a more coordinated, efficient, effective and consultative approach in administration of justice.

### **Programme outcomes:**

*Demonstrable increase in compliance with relevant international human rights standards, in particular the SMR, in the KPS as a whole and a selection of pilot institutions in particular.*

As measured by the **Programme indicators**

- Elements of the Standard Minimum Rules that were previously not fulfilled are now met in whole or in part.
- Elements of the Standard Minimum Rules that were previously partly fulfilled are now met in full.

*More informed reform initiatives, policies, programmes and curricula in terms of responsiveness to human rights, stakeholder needs and context within and between academia and justice sector institutions.*

As measured by the **Programme indicator:**

- Number and quality of reform initiatives, policies, programmes, and curricula developed and implemented by justice sector institutions and key Programme stakeholders in their respective activities and jointly, which demonstrate contextual responsiveness to human rights and needs of key stakeholders

The programme consists of two components.

### **Component 1: Strengthening Human Rights Capacity in the Kenya Prisons Service**

**Main objective:** Create sustainable capacity within KPS to meet relevant international human rights standards, in particular the UN SMR, through targeted interventions with the KPS Human Rights Office (HRO) and Prisons Staff Training College (PSTC).

#### **Intermediate outcomes:**

- A core body of Human Rights Officers, at national, provincial and institutional levels, with the ability to independently conduct human rights assessments, deliver human rights trainings, and facilitate the development of human rights action plans
- Relevant instructors at the Prisons Staff Training College able to independently deliver high-quality Human Rights in Correctional Services courses to trainees



- Increased awareness of the new human rights paradigm throughout the correctional system and independent activities to achieve compliance with international standards in non-pilot institutions

**Indicators:**

- Extent and quality of human rights assessments, training courses, and institutional action plans
- Number of instructors and Human Rights Officers having the desired abilities
- Level of awareness in KPS of new human rights paradigm

**Expected outputs:**

- Increased commitment and understanding among the KPS leadership for the project
- Improved knowledge and understanding of human rights and prison management principles among KPS HQ staff and staff at pilot institutions and provincial offices
- Enhanced skills of Human Rights Officers at KPS HQ, and pilot institutions and provincial offices relating to training and teaching methodologies
- Enhanced skills of Human Rights Officers at KPS HQ, and pilot institutions and provincial offices to assess fulfilment of human rights standards in prisons and facilitate the development of related action plans
- Enhanced skills of PSTC instructors relating to human rights in correctional services training and teaching methodologies
- Context sensitive training materials on human rights and prison management principles available and used in prison training activities
- Increased opportunities for staff at the HRO and PSTC to access and share relevant human rights information
- Increased availability of human rights reference material with PSTC and HRO resource centres
- Increased awareness among KPS legal and regulatory drafters of relevant international human rights standards

**Output indicators:**

- Support and human and financial resources given by KPS to HRO and other programme relevant areas
- Degree to which KPS contributes to project implementation and reporting
- Favourable assessment by activity participants, organisers and experts of skills and knowledge imparted
- Quality of individual action plans
- Number and quality of trainings and workshops delivered
- Existence of modules and materials for training courses
- Existence of relevant output documents from programme activities
- Amount of relevant literature and other material support supplied to resource centres
- Level of compliance with international human rights standards in the pilot institutions

**Key activities:**

- Human rights and leadership training
- Training HRO officers, getting agreement about their TORs, conducting audits
- Training PTSC trainers
- Literature support/library
- Assessment workshop

## **Component 2: Strengthening Human Rights Perspectives in the Coordination between Administration of Justice Actors/ Strategic interventions**

**Main objective** (*remained the same*): Contribute to enhanced human rights perspectives in efforts for a coordinated, effective and consultative approach in the administration of justice and reform of the justice system in Kenya.

### **Intermediate outcomes:**

- Joint strategies and good practices established among justice sector actors and stakeholders represented at the National Council on the Administration of Justice and Court User Committees to address human rights concerns in relevant areas of their work.
- Increased participation and input of as well as collaborative exchanges and initiatives between concerned justice sector actors and targeted stakeholders in their respective activities.

### **Indicators:**

- Extent and quality of strategies and good practices established among targeted justice sector actors and stakeholders addressing relevant human rights concerns.

### **Expected outputs:**

- Increased understanding among targeted actors represented at the National Council on the Administration of Justice and Court User Committees of human rights challenges faced in their respective areas of work and jointly
- Improved knowledge among targeted actors and represented on the National Council on the Administration of Justice and Court User Committees of the practical implications of international, regional and national human rights standards in relation to their work
- Enhanced communication and cooperation channels and networking between actors represented on the National Council on the Administration of Justice and Court User Committees
- Increased availability of human rights reference material with High Court

### **Output indicators:**

- Favourable assessment by activity participants, organisers and experts of skills and knowledge imparted
- Extent to which workshops (are perceived by participants/experts to) have improved understanding in relation to international regional and national instruments and human rights challenges
- Extent and nature of communication and cooperation channels and networking between concerned justice sector actors and targeted stakeholders
- Number and quality of human rights publications and materials available at the High Court

### **Key activities:** *[these too have changed]*

- Workshop with CUC
- Workshop with NJAC
- Library support to High Court