



August 9, 2010

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United States Sentencing Commission
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Attention: Public Affairs – Priorities Comment

The United African American Ministerial Action Council (UAAMAC) is a non-profit, faith-based, 501 (3) (c) tax-exempt organization that was established in 1994. UAAMAC is committed to the construction of a Beloved Community of justice, with equitable access to opportunities in the pursuit of happiness, education, economic development, family stability, health, and peace and prosperity for all people. To this endeavor we invite the participation of all people of good will and their resources to work collectively in making The Beloved Community a reality in the 21st Century.

We strive for the relief of the poor, and work toward systemic change, economic strength and political power, to educate people about the conditions, causes and eradication of poverty, to educate our children to be academically competent and socially and morally responsible. We are engaged in challenge and struggle to create institutional change that will lead to the empowerment of poor people, while assisting them in organizational and leadership development.

We are also engaged in the development of policy initiatives and promote awareness of crucial African American issues. This response to the opportunity to provide public comment on the **Sentencing Guidelines for United States Courts** is a part of our community organizing and advocacy work.

After a careful review of the **Sentencing Commission's Tentative Priorities**, it has become very apparent to us that following the priorities – the role of federal sentencing guidelines; the continuation of its study of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act; implementation of the directive of the Patient Protection and Affordable Act, regarding health care fraud offenses; continuation of its work with Congress and the other parties on cocaine policy;

continuation of the multi-year study and guideline definitions of “crime of violence”, “aggravated felony” and “violent felony”; and the continued study of alternatives to incarceration – constitutes an aggregate of issues whereby African Americans and other communities of color find themselves to be disproportionately incarcerated in federal correctional facilities and/or victims of “legalized discrimination” in the areas of economic development, the public education system, employment, health care delivery, and the current judicial system.

Our public comments on the aforementioned tentative priorities are not intended to cite “applicable sentencing guidelines, statutes, case law or constitutional provisions; we believe legal scholars and those grounded in jurisprudence can best handle those concerns. Our concern is that the **Sentencing Commission** began to take a look at how racial and ethnic discrimination the current judicial system has played a fundamental role in the mass incarceration of Black males and the concomitant deterioration of communal life in many American cities. Furthermore, our concern is that work and function of the **Sentencing Commission** be viewed through a new prism, a prism which begins with Dr. Martin Luther King’s global vision – the Beloved Community – an ethical and moral vision that privileges the people over government-imposed order and restrictive judicial processes:

“In the Beloved Community, poverty, hunger and homelessness will not be tolerated because international standards of human decency will not allow it. Racism and all forms of discrimination, bigotry and prejudice will be replaced by an all-inclusive spirit of sisterhood and brotherhood. In the Beloved Community, international disputes will be resolved by peaceful conflict-resolution and reconciliation of adversaries, instead of military power. Love and trust will triumph over fear and hatred. Peace with justice will prevail over war and military conflict.”¹

“Injustice Anywhere is a Threat to Justice Everywhere”²

The Rev. Martin Luther King, Jr.

We at UAAMAC believe that it is impossible to construct a Beloved Community of justice if we do not begin by accepting the fact that we are a “society that uses race to assign human worth and social status”.³ Moreover, on a sociological level, the society has “racialized crime and criminalized ‘races’ of color, especially Blacks and young Black males”.⁴ No clearer example of this type of criminalization exists as does the cocaine sentencing policy that for many years allowed those caught with 500 grams of powdered cocaine in their possession to be sentenced to probation and/or treatment and those caught in similar situations with 5 grams of crack/rock cocaine to be given mandatory jail time.

Although there have been recent changes in the cocaine sentencing policy (which do not go far enough), many people, families and communities have been devastated by this unjust judicial practice.

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President Barack Obama, in a 2008 campaign speech said the sentencing disparity “has disproportionately filled our prisons with young Black and Latino drug users”. In fact, 80% of those convicted of crack cocaine offenses are African American. ⁵ What can be done to remedy this egregious situation and how can we make those hurt by what we now know was an unjust policy be made whole? At a minimum, those “unjustly” sent to prison on these offenses should be released; their sentences commuted and provided the treatment they need to fight the addiction to this evil drug. These are the types of issues and questions the **Sentencing Commission** needs to consider as they analyze sentencing issues and exert their statutory authority and responsibility.

Examining Issues in Restorative Justice

As a part of our work and the collective vocation of building the Beloved Community, UAAMAC has engaged in the struggle to create a system of justice that recognizes the dignity and divinity of all peoples. We believe the current judicial system that essentially based on the notion of government-imposed order, is plagued with the disproportionate profiling of persons of color, disproportionately higher rates of convictions of African American and other poor peoples of color, joined with disproportionate sentencing has created a “trilogy of tragedy” for over 1.6 million adults housed in federal adult corrections in the U.S. and at least 99,000 juveniles who are also housed in correctional institutions.

The inherent flaw of the current judicial system is it is based on two basic premises:

- The important parties are the government and the defendant.
- To achieve public safety it is most important to increase governmental order.

UAAMAC believes that we must begin the radical reform of our current judiciary by adopting the basic principles of **restorative justice**.

Restorative justice is “a theory of justice that emphasizes repairing harm caused or revealed by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders.”

These are the principles that form the foundation for restorative justice:

1. Justice requires that we work to restore those who have been injured.
2. Those most directly involved and affected by crime should have the opportunity to participate fully in the response if they wish.
3. Government’s role is to preserve a just public order, the community’s is to build and maintain a just peace. ⁶

One example a **restorative justice** program would be the implementation of a Neighborhood Court.

The Neighborhood Court would bring together the injured, the offender, and community members to create an opportunity to meet and discuss the crime(s) and its consequences(s). There would be an expectation that offenders would take measures to repair the harm and communal disruption their actions have caused the community. Special emphasis would be placed on seeking ways and means to restore the injured and offender to whole, contributing members of their respective communities and society as a whole. Lastly, this process must provide opportunities for parties with a stake in a specific crime to participate in its resolution.

We understand that with any new policy, practice or program there will be adjustments that have to be made, however, the current "is" as it relates to the disproportionate sentencing is wholly undesirable and there is nothing to lose when we implement "pilot programs" that seek to heal and repair as opposed to those that punish and harm the human spirit.

Drug Laws and Mass Incarceration

Civil rights lawyer-turned-legal scholar Michelle Alexander in her recent book, ***The New Jim Crow: Mass Incarceration in the Age of Colorblindness***, makes the case that current judicial system with its massive funding of and rabid commitment to the so-called "War on Drugs" has laid the basis for the birth of a "new racial caste system – mass incarceration", the New Jim Crow. "The \$30 billion crime bill sent to President Clinton in August 1994 . . . created dozens of new federal capital crimes, mandated life sentences for some three-time offenders, and authorized more than \$16 billion for state prison grants and expansion of state and local police forces". This crucial turning point in the racially-motivated "tough on crime" movement resulted in "the largest increases in federal and state prison inmates of any president in American history".⁸ It is our belief that if "new federal capital crimes" can be created they can be repealed, if found to be discriminatory and new policies must be created to correct the injustice and repair the harm caused by what we see now were politically and racially- motivated measures to keep a whole people on "lockdown".

In her book, Professor Alexander provides a list of correctives which if implemented in a comprehensive and simultaneous manner will begin to address the current crisis unjust sentencing has created in many urban communities. UAAMAC stands in total support of the specific correctives which are listed below:

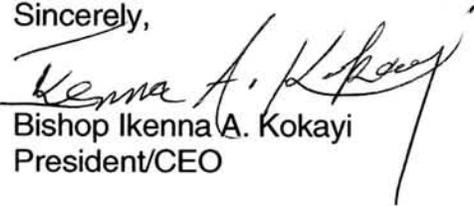
- federal grant money for drug enforcement must end;
- drug forfeiture laws must be stripped from the books;
- racial profiling must be eradicated;
- the concentration of drug busts in poor communities of color must cease;
- the transfer of military equipment and aid to local law enforcement agencies waging the drug war must come to a screeching halt;
- mandatory data collection for police and prosecutors to ensure that selective enforcement is not taking place;
- public defender offices funded at the same level as prosecutors offices;
- mandatory drug sentencing must be rescinded
- legalization of marijuana

- adopt meaningful re-entry programs, with training and education;
- prison workers retrained for careers in social services and other related fields;
- drug treatment on demand
- barriers to re-entry must be eliminated 9

In closing we want to reiterate that we are not attempting to provide comments to the **Sentencing Commission** that are necessarily from a legal standpoint but from a moral and ethical point of view. Our concern is that sentencing guidelines and other legalistic remedies to address crime are informed by a genuine sense of compassion, empathy and consideration for all people, especially the most vulnerable among us.

Thank you for the opportunity to share our concerns.

Sincerely,



Bishop Ikenna A. Kokayi
President/CEO