

# The Arrested Black Men in Europe: Criminal or Victim?

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## Riassunto

Gli Africani detenuti in Austria sono presi di mira dalla polizia a causa del colore della loro pelle; essi vengono spesso arrestati in modo violento, sono difesi male dai loro avvocati difensori, devono passare più lunghi periodi in prigione rispetto ai cittadini austriaci che hanno commesso lo stesso reato, infine essi hanno meno possibilità di accedere alle misure extragiudiziarie e ai sistemi di libertà dietro cauzione. Una versione modificata del questionario delle Nazioni Unite sulle vittime del crimine è stata somministrata a tutti i prigionieri africani detenuti nell'istituto centrale di detenzione di Vienna. I risultati indicano che gli Africani sono stati non soltanto vittime di violenza (talvolta anche di tortura) e di altri crimini nel loro paese d'origine, ma anche che il 24% di loro ha subito aggressioni, il 16% furti e il 13% sono stati vittime di frodi in Austria - un tasso molto più alto che tra i cittadini dell'Unione Europea. D'altronde, gli Africani sono raramente imputati per rapine, furti con scasso o crimini violenti. Essi sono arrestati principalmente in ragione del possesso o della vendita di droghe (83%) e, in più, per resistenza durante l'arresto (4%). Il motivo di ciò è da cercare principalmente nella mancanza di aiuto finanziario fornito ai richiedenti asilo e nel divieto di lavorare in attesa di ricevere lo status di immigrante. A causa della lunghezza del processo d'appello e dell'impossibilità pratica di espellere certe nazionalità, un tipo di comunità sotterranea si sviluppa, entro cui la semplice possibilità di sopravvivenza determina se si dovranno commettere o no dei crimini non violenti.

## Résumé

Les Africains détenus en Autriche sont visés par la police à cause de la couleur de leur peau; ils sont souvent arrêtés avec violence, sont mal défendus par leurs avocats de défense, doivent passer de plus longues périodes en prison que des citoyens autrichiens ayant commis un crime pareil, et ils ont moins d'accès aux mesures extrajudiciaires et au système de liberté sous caution. Une forme modifiée du questionnaire de victimes de crime des Nations Unies fut administrée à tous les prisonniers africains au Service Central de la Détention de Vienne. Les résultats indiquèrent que les Africains furent non seulement victimes de violence (parfois même de torture) et de crimes dans leur pays d'origine, (assaut - 58%, cambriolage - 32%, fraude - 27%, corruption - 33%) mais également que 24% d'entre eux avaient souffert l'assaut, 16 % le vol, et 13% avaient été victimes de fraude en Autriche – un taux beaucoup plus élevé que parmi les citoyens de l'Union Européenne. D'autre part, les Africains sont rarement chargés de cambriolage, de vol, ou de crimes violents. Ils sont arrêtés principalement à la suite de possession ou de vente de drogues narcotiques (83%) et, en plus, de résistance à l'arrêt (4%). La raison en est principalement le manque d'aide financière fournie aux chercheurs d'asile et l'interdiction à travailler en attendant que leur statut d'immigrant soit déterminé. En raison des longs processus d'appel et de l'impossibilité pratique d'expulser certaines nationalités, un type de communauté souterraine prend racine où la survie simple détermine si l'on devrait commettre ou bien ne pas commettre une offense non-violente.

## Abstract

The Africans detained in Austria have been targeted by police by their skin color, often are arrested with violence, are poorly defended by assigned defense lawyers, given longer sentences than Austrian citizens and have less access to alternatives or bail.

A modified form of the United Nations Crime Victim questionnaire was administered to all the African prisoners at the Vienna's Central Detention Facility. It revealed that the Africans were not only victims of violence (sometimes even torture) and crimes (assault-58%, burglary-32%, fraud-27%, bribery-33%) in their home countries, but also 24 percent had experienced assault, 16% theft, and 13% had been defrauded in Austria-much higher rates than the EU citizen. On the other hand, the Africans are rarely charged with burglary, robbery, or violent crimes. They are primarily arrested for the possession or sale of narcotic drugs (83%) and an additional four percent for resisting arrest. This is primarily the result of insufficient financial support provided to asylum seekers and the prohibition to work pending their determination of immigrant status. Because of the long appeal processes and the practical impossibility of deporting certain nationalities, a type of underground community is taking root where simple survival is the determining factor whether to commit a non-violent offence.

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When we think about arrested people, we usually think of the crimes they are charged with and that they deservedly should be punished. Rarely do we consider they might be victims of a biased law enforcement system or of past injustices. Racial discrimination and a 'hard lot' in life do not excuse asocial behaviour. On the other hand, a careful examination of exactly what kind of crimes do the highly visible black African migrants actually commit in Europe and an understanding of their "survival strategies" in countries, which essentially do not want them, are crucial for designing appropriate crime prevention policies and reducing recidivism.

Racial stereotyping and "throw them in prison" policies have become popular in Europe, particularly during election times. However, due to massive unstoppable worldwide migration ("push and pull") phenomena, the simple solution to arrest, imprison, or deport all suspicious

persons will not work. In fact, those who manage to overcome tremendous adversity and the challenges of travelling thousands of kilometres under horrendous conditions and have managed to reach Central Europe through dogged perseverance and incredible ingenuity, are for the most part, very eager to integrate, find legal employment and become law-abiding citizens. Their simple hope to lead a normal life and willingness to undertake any type of job, others would argue, should be taken advantage of and not quashed. Of course, these illegal migrants have their own perspective, as well as ideas of what should be done to reduce crime and make themselves productive members of society. An opportunity to undertake an investigation of the backgrounds and aspirations of all persons of African nationality arrested in July 2006 in Vienna Austria presented itself through a fortuitous set of circumstances.



**Figure 1:** *Austrian Federal Detention Centre in Josefstadt, central Vienna- aerial view.*

A survey of African arrested persons was conducted in the Vienna Federal Detention Facility, which is attached to the Vienna Provincial Court – Josefstadt Justizanstalt- in July/ August 2006 by Dr. Michael Platzer. The questionnaire was developed in cooperation with the Institute for Criminal Law and Criminology at the University of Vienna. The survey was approved by the Federal Ministry of Justice and the Director of the Facility, Col. Peter Prechtl. Excellent cooperation was obtained from the Social Services Department as well as the individual correctional officers of the Institution, in particular the liaison officer, Mrs Hafner. The study was facilitated by Dr Christian Kuhn and supported by the International Commission of Catholic Pastoral Care. Dr. Judith Stummer-Kolonovits and Professor Christian Grafl have assisted in the evaluation of the data.<sup>1</sup>

All interviewees participated voluntarily in the study. 127 persons from sub-Saharan Africa were questioned (as well as 10 detainees from the Maghreb). The interviewer expresses his deepest appreciation for their candidness and willingness to go over often very unpleasant experiences. It is hoped that their honesty and openness will improve the situation for others. Recommendations have been attached at the end of these findings.

<sup>1</sup> Judith Stumme-Kolonovits - Ottenstein.

## Where they come from...



- Angola - 3
- Burkina Faso - 1
- Cameroon - 2
- Chad - 1
- Cote D'Ivoire - 2
- Gambia - 18
- Guinea - 6
- Guinea Bissau - 10
- Kenya - 1
- Liberia - 9
- Mali - 1
- Mauretania - 2
- **Nigeria - 101**
- Republic of Congo - 1
- Ruanda - 2
- Sierra Leone - 8
- Somalia - 1
- Sudan - 5
- Tanzania - 1
- Togo - 1
- Uganda - 2
- Zimbabwe - 1

**Figure 2:** *The crisis countries of West Africa.*

The Justizanstalt Josefstadt receives all arrested persons awaiting a hearing or trial in the city of Vienna. It is a renovated (1980-1995) facility, housing up to 1200 persons ranging from youthful offenders (67 boys and 2 girls) to older persons charged with serious offences. It has medical facilities and houses approximately 70 female offenders (and their babies), suspected psychiatric cases and drug swallows. It is considered a well managed facility and there have been no major disturbances or riots in the facility. The European Committee for the Prevention of Torture has inspected the institution and made minor recommendations.

The population of the prison varies on a daily basis but on 27 July 2006 was 1174, of which 666 were foreigners or stateless. On some floors the

percentage of foreigners can reach 78%. The largest numbers are Nigerians (101), Serbs (69), Yugoslavs (50), Georgian (48), Rumanians (40) and Turks (32). 175 Africans from 21 countries are detained in the Josefstadt prison.

The increasing number of foreigners represents a great challenge to the prison staff since most of these detainees speak very little German. Some of the prison officers speak a rudimentary English however almost no one speaks Russian, French, Portuguese, Turkish, or any of the other national languages (or dialects). Very few of these foreigners are eligible for bail because of the presumed flight risk. Some are kept for a year or longer without sentencing for a variety of reasons. The police in Austria are facing major challenges with respect to the criminality undertaken by

foreigners. Partly because of the communication problems, police have been accused of using excessive force. The public has also come to fear “Ausländer Kriminalität” (foreign criminals) while the general unhappiness with the increasing number of foreigners in Austria frequently becomes an election issue. Recently, Austria as well as other European countries have made entry into “fortress Europe” more difficult which is reflected in the declining numbers of admitted Asylum seekers. This study does not concern itself with the conditions in the detention and deportation centres of Austria, which have been criticized by the CPT and the Helsinki Federation, Amnesty, Caritas and other local NGO’s.

The waves of African refugees reflect the recent crises in Africa – civil wars, *coups d’état*, dictatorships, massive human rights violations, natural catastrophes, and starvation. The Josefstadt facility houses people from Angola (Civil War 1974-2002, 500,000 killed), Congo, Cote d’Ivoire (Civil War since 2002), Gambia (Coups 1994, alleged coup uncovered March 2006), Guinea-Bissau (1998 conflict between President and military Junta), Guinea-Conakry (June 26 student demonstrations), Liberia (1999-2003 civil war- 200,000 killed), Mauritania (intercommunal tensions since 1989), Nigeria (1966-999 coups and counter-coups), Somalia (lawlessness and civil war since 1977), Sudan (civil war 1983-2003- 2.2 million dead), and Uganda (corruption and ethnic conflict).

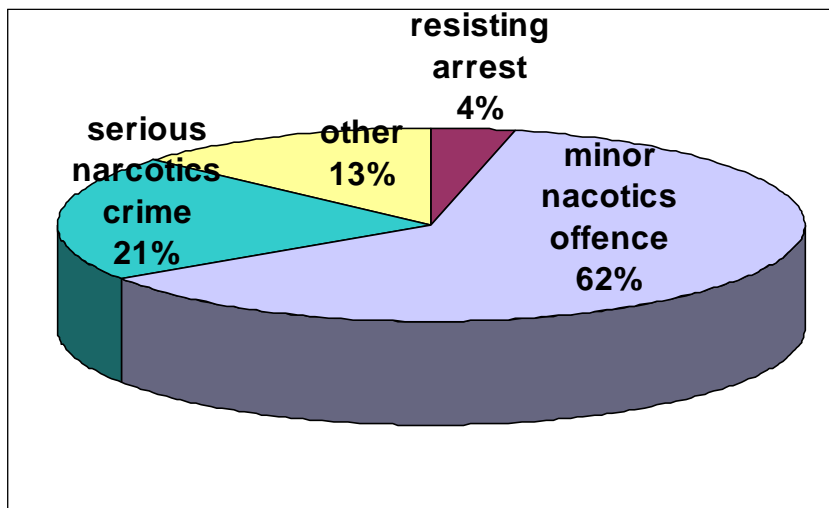
*The horror stories related to the interviewer included being tortured by the police in Tanzania, Uganda, Liberia, and Nigeria. Others said their homes were burned and close relatives killed in*

*Gambia, Sudan, and Nigeria. A boy said he was kept as a slave in Mauritania while others claimed they were kidnapped and forced to fight as child soldiers in Sierra Leone and Liberia. Relatives were killed in the Muslim-Christian conflicts and civil wars in Guinea-Bissau, Sudan, Sierra Leone, Liberia, Gambia, and Nigeria and the youth maintain they barely escaped with their lives. One boy was beaten by the border guards and girl friend gang raped. Many showed the interviewer their wounds, as evidence of the violence they had endured.*

The Africans in Austria find it difficult to survive. The subsistence provided while their asylum petition is being processed is minimal (46 Euros). They are not officially permitted to work. Even in the informal economy, Austrians are reluctant to hire “Black people”. In order to survive and to meet housing and existential requirements or emergencies, Africans see no other alternative than going into the “African business” – distribution of small quantities (“balls”) of drugs – marijuana, cocaine, and sometimes heroin. Usually, they only earn 5-10 euros per ball. They complain the police regularly target Blacks. Even when do not have drugs they are allegedly asked to procure them for the undercover police or asked to identify sources or face deportation. The arrested Africans do not understand that if a transaction is observed by the police, the white boy who now possesses the drugs goes free while the black boy who now only has the 20 euros is charged and this money confiscated. Police usually accept the testimony of addicts rather than black youth. Sentences imposed on black dealers are often much harsher than for whites. Rarely are

Africans charged with burglary, robbery, or violent crimes. The prison officials estimate that 90% of the Africans in the Vienna Prison are there

for possession or sale of drugs. Almost none are addicted to drugs.



**Figure 3:** *Reasons for Africans in Austria being arrested.*

In a few cases, resisting arrest is also charged. Most claim they were simply fleeing. Others allege police brutality and severe beatings (grabbed by the throat, beaten in the face, ribs broken, hand fractured, handcuffs painfully twisted, knocked to the ground, kneed). Wounds, scars, and missing teeth are evident among some of detainees. Many maintain some Austrian police are racist and use abusive language – “Go back to your monkey countries”, “you look like a monkey”, “learn German”, “Arschloch”, “Sheiss Neger”. More seriously, it is said some police lie, manufacture evidence, and set up persons. However, interestingly, most of the detainees find that, in general the Austrian police do a good job and the Africans feel very safe in Vienna. Only a small minority feel harassed.

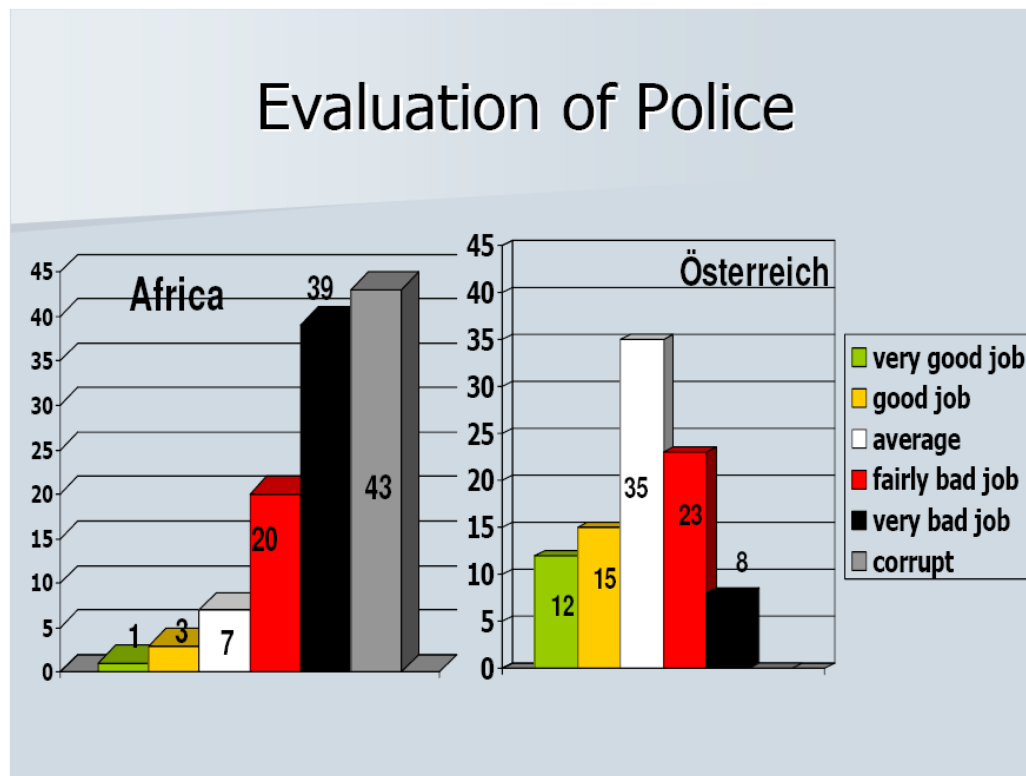
#### **1. Evaluation of the police. Effectiveness of Austrian Police in fighting crime. Feeling of Security in Vienna.**

In prison, there were less than a half dozen allegations of mistreatment. In fact, most of the African detainees explicitly stated that they were treated well. There was more criticism about defense attorneys or the lack of contact with their court appointed lawyers. It was said that they never came to see their clients and one never even appeared in court.

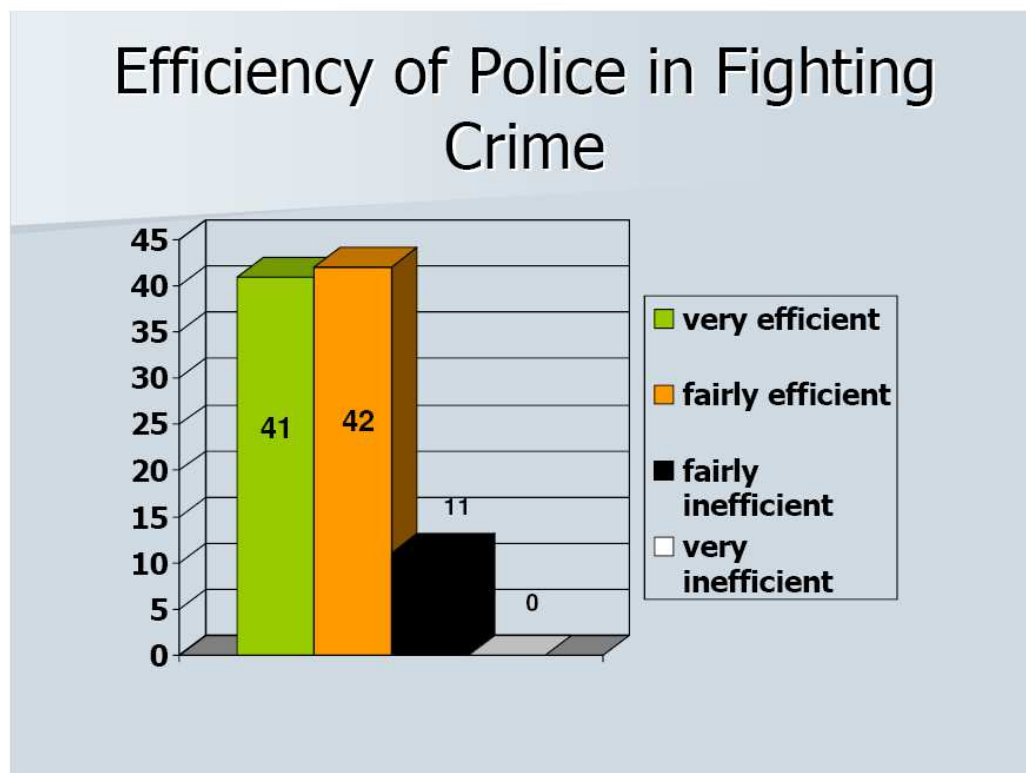
The prison officers stated that the Africans were among the easiest groups to manage. They were cooperative and caused the least trouble. The Prison Director does not believe that there was an organized “mafia” among them. Statistically, there are fewer disciplinary cases or investigations about the Africans than among other groups such as the Georgians. In the period from January to July 2006 only four Africans were subject to disciplinary measures. Although there are twice as many Nigerians as Georgians in the facility, Georgians were six times more likely to be subject to a disciplinary hearing (8 out of 48).

Not all the prison officers were familiar with the personal histories of the human rights violations and the difficulties their “clients” had experienced before coming to Austria. The language barrier and lack of time to have personal exchanges with

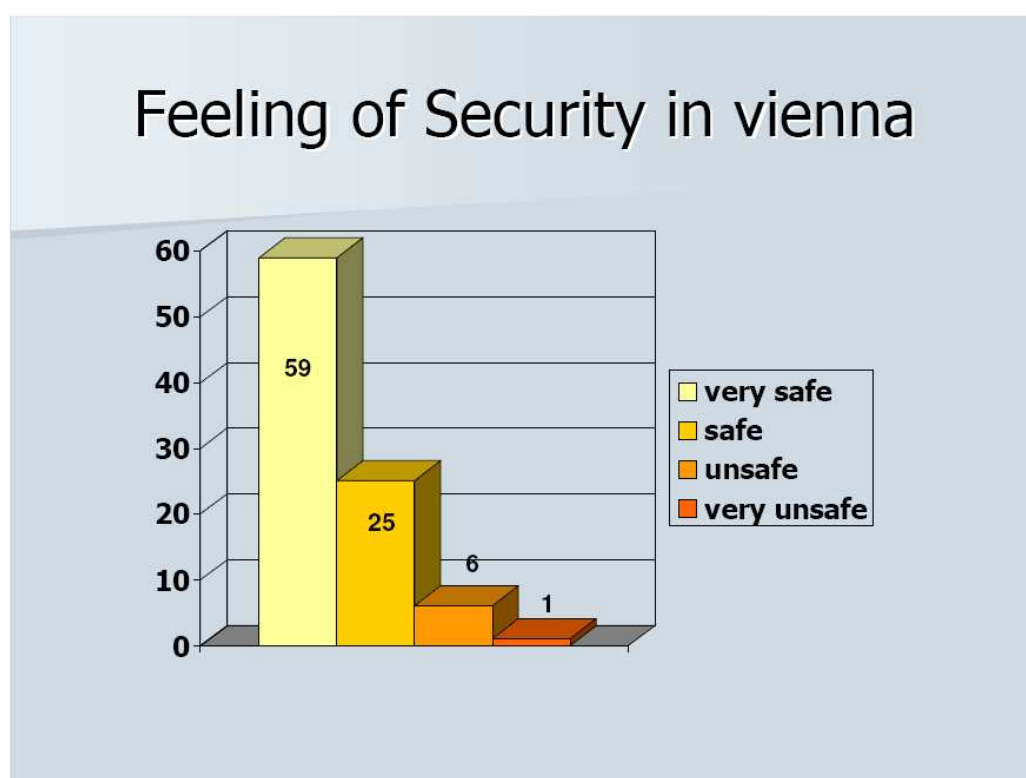
the prisoners prevented deeper understanding of their problems. Nonetheless, several officers indicated an interest in receiving the results of the study. A presentation of the study was made in June 2007 to the correctional officers.



**Figure 4:** *Evaluation of police in Africa and Austria by detainees.*



**Figure 5:** *Evaluation of police efficiency by detainees.*



**Figure**

**6:** *Detainees' perception of their security in Vienna.*

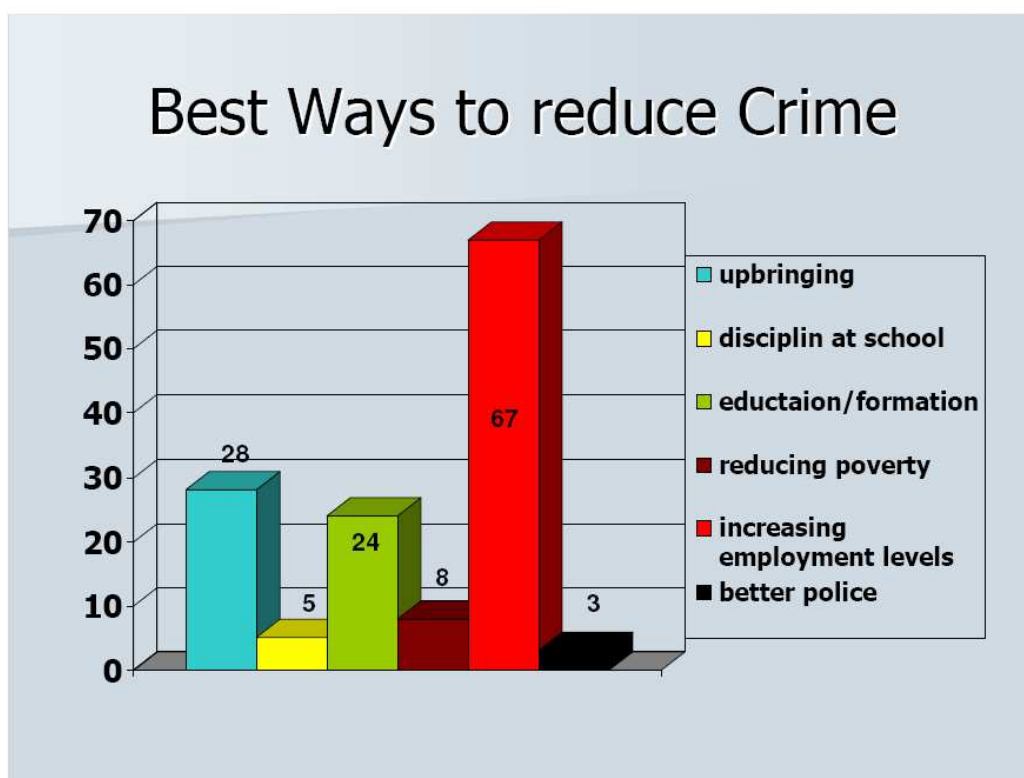


The Africans have good understanding of their own situation. Their dreams are, for the most part, modest – any kind of job, a “normal life”. The majority would like to remain in Austria and most have tried learning German. They do not like the enforced idleness required by the Austrian immigration laws and would prefer “something doing” – cleaning the streets, gardening, going to school. In response to the question of what to do with a young offender convicted of burglary or caught with a small quantity of drugs, they selected community service. In their explanation of what sentence to give they gave a very well reasoned analysis and understanding of offender behaviour.

## 2. Best ways of reducing crime.

They appreciate well the situation they have left in Africa – violence, corruption, lawlessness. They are in fact “security” refugees more than “economic” refugees.

Human security lay at the heart of their decision to leave Africa. The stories of how they managed to reach Europe are varied and bespeak great ingenuity, hardship, endurance and determination. It does not appear they came in groups but as individuals. One can only marvel how a fishing boy who speaks no European language managed to make it to Central Europe. The vivid and personal accounts of ethnic conflict, civil war, human rights violations, police brutality, torture, and killing of relatives are often so detailed and horrific to defy invention.



**Figure**

**6:** *Detainees' opinions on best ways of reducing crime.*

Offense	Africans in Africa (5 years)	Africans in Austria (5 years)	ICVS Survey 1996 in Austria
Assault	58%	24%	5,4% (5 yrs)
Robbery	18%	8%	0,9% (5 yrs)
Theft	18%	16%	12,5% (5 yrs)
Burglary	32%	4%	2,6% (5 yrs)
Fraud	27%	13%	10,5% (1 year)
Bribery	33%	1%	0,7% (1 year)

**Table 1:** *Experience of victimization.*

It was expected that the Africans would have greater experience of crime in Africa, as they see Vienna as a very safe place to live. Thirty times more likely to have bribe someone in Africa; eight times more likely to have their home broken into (or destroyed), twice as often to be robbed,

defrauded and assaulted. What was not expected that they would more often be a victim of crime than an Austrian citizen. They are ten times more likely to be robbed, five times more assaulted, and twice as likely to burgled than the Austrian citizen.

	yes	no	N/A
Victimized by the police in Austria	20	72	8
Victimized by the correctional officers in Austria	8	82	10
Victimized by the police in Africa	19	62	19
Victimized in prison in Africa	3	61	36

**Table 2:** *Victimization by the police.*

## Something doing

Idle Man is the Devil's Workshop. Being hungry makes you desperate; if you come out of prison you still need Something Doing. Will never do drugs again, will eat sand, will do anything; hard for black man to get job. Cannot live without money, sleeping place, somewhere to eat. No papers to work, 40 Euros not enough, need Something Doing. I am a human being - What can I do? Have nobody, have no work, no house, no school. If you want a job, need to learn German; everyone needs food and place to sleep. You meet Mafia criminals in prison. If come out of prison, no house, no job, cannot survive without a source of money. Government should create training center. Life in prison terrible go back to crime if no job; give a little job. Prison does not solve the problem; recommend community service so not idle. If community service is hard, the offender will not do it again; make provision for a system of labor; if not employed treat sympathetically. Allow asylum seekers to do casual labor, any type of job, 5 Euros per day. Africans are hard working; know how to work. Increasing sentences does not help, need more skills training, when working no time to do mischief. Prison should be last alternative. Practical education, ask young people what they need. Bad friends, poor upbringing, lack of anything to concentrate on wakeup in the morning, need Something Doing. Introduce priest/ advisor to change life style, tell him about life, create job opportunity. Weight training, Kick boxing; German courses.....

**Figure 7:** *Ways of reducing crime in detainees' own words.*

Almost one in five Africans arrested report excessive force being used by the police in Austria. They report being knocked to the ground (often kicked) before handcuffs are applied. This is the same rate as in Africa. Only 8 percent say they have been badly treated in prison- 82% claim they have been well treated (although it must be remembered the survey was being carried out in prison- albeit privately and anonymously). The serious cases of violence reported by the prisoners were conveyed to the Human Rights Council of Austria, with the agreement of the claimant.

It was the hope of this study to reveal the humanity of these individuals. Rather than being seen as criminals, they should be viewed as victims. Even in their desperate situation, they almost never resort to stealing, burglary, or violent acts. They express great reluctance in being forced to become involved in the selling of small quantities of drugs (they earn 5-10 Euros for selling a small ball of cocaine). The Austrians, however, see them as “drug dealers” – because of

the lack of viable alternatives, this stereotyping becomes true. The author has heard stories of Austrians running after Africans pleading with them to sell them drugs or find someone who can, for “surely they know somebody.” This researcher believes that most of those arrested for drug dealing would gladly find legitimate employment. At least, they should be given this option once.

A pilot program of community service is recommended both as a preventive measure and post conviction alternative. A change in legislation may be necessary but perhaps, as an experiment a non-governmental organization might offer such services under judicial supervision.

The legal services available to Africans are haphazard. Even the best attorneys have little time to investigate the background of the defendant or the cause of his detention. Consideration might be given to a system of legal assistants to interview their clients and conduct research.

The United Nations Recommendations on the treatment of foreign prisoners<sup>2</sup> state that they should have the same access as national prisoners to education, work, and vocational training. Moreover, foreign prisoners should be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals. Foreign prisoners should be informed of the rules and regulations of the prison in a language they can understand as well as about filing complaints, special diets, contacts with consular authorities and religious representatives, medical treatment and counselling, and contact opportunities with family members. Aside from rudimentary English spoken by some of the correctional officers, practically no French, Portuguese, Arabic or African languages are spoken by the staff. Basic information is provided in written form in other languages, however most prisoners are functionally illiterate. Limited access by African clergy and non-governmental organizations is permitted.

Forty practical recommendations have been put forward after a two year study of all the prison systems in the European Union regarding the treatment of foreigners<sup>3</sup>. Austria was critiqued by Professor Arno Pilgram and Veronika Hofinger<sup>4</sup>. These recommendations lay particular emphasis on the staff who should be educated to address the

specific needs and language deficits of foreign detainees. Staff at reception should receive special language training and learn about cultural diversity. The prison staff should be carefully selected, properly trained, paid as professionals, and work under adequate conditions. In addition to language training, staff should be subsidized for university level training on 'Intercultural Understanding' and 'Diversity and Dialogue', as is done in Sweden.

The European recommendations also stress special programmes in order to compensate for the disadvantages that foreigners experience in daily prison life. Being engaged in useful and paid work is essential for foreign prisoners because they often do not receive financial support from outside. Prison authorities should have a multi-faith room for the use of prisoners of various religions, libraries with books and newspapers in various foreign languages and stock prison shops with cultural specific products. Prison authorities should take into consideration that foreign prisoners often have to make long distance calls and sometimes at odd hours, due to different time zones, in order to notify their families about their detention. More flexible visiting schemes should be permitted for family members visiting from abroad. Prison authorities should make sure that representatives of the most common religions have regular access to foreign prisoners for individual meetings and to hold regular religious meetings. Language classes are important as are special training and vocational programmes that help the integration in the future home country. Rehabilitation/re-integration should be the principal aim for all prisoners (No.102.1 European Prison Rules).

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<sup>2</sup> UN Recommendations on the Treatment of foreign prisoners, approved by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, United Nations Office on Drugs and Crime, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, p 192.

<sup>3</sup> Kalmthout A.M., Hofstee-van der Meulen F. & Duenkel F. (eds), *Foreigners in European Prisons*, Published by Wolf Legal Publishers, 2007.

<sup>4</sup> Ibidem, Chapter 2 Austria, p.91.

Community welfare organisations should be encouraged to pay social visits to foreign prisoners in order to reduce their social isolation. Spanish non-governmental organisations, for example provide free telephone cards and communicate between the prisoner and their families. The European recommendations also suggest that social welfare organizations can play an important role in the resettlement of foreign prisoners, by providing shelter and dormitories in order to make prison leave possible for foreign prisoners. Probation and welfare services should include foreign ex-offenders in their reintegration programmes, like in Portugal and England.

Lastly, prisons should facilitate that foreigners obtain their legal rights. Foreign prisoners often do not receive sufficient (written) information about their legal rights in a language they can understand. In England, foreign prisoners receive a “Foreign National Prisoners Information Pack” in 20 languages containing information about Prison rules, prisoners’ rights and duties, complaint procedures, how to contact the embassy, how to apply for a transfer, etc. In Belgium some penitentiary institutions organize ‘foreign prisoners’ information sessions’ for lawyers. In the Czech Republic, Hungary and Malta non-governmental organizations, provide free legal help to foreign prisoners. The European recommendations encourage voluntary repatriation because re-integration is easiest with the appropriate support and an early decision about a person will be allowed to stay.

In May 2007, a Conference about Foreigners in Prison took place at the University of Linz, at which similar conclusions were reached and very

specific recommendations were made.<sup>5</sup> Alternatives to imprisonment – community service, monetary penalties, electronic monitoring, conditional release – as well as early release for persons willing to be repatriated should be used more frequently. Open prisons, day releases, more vocational training, computer courses, literacy classes, better cooperation with non-governmental organizations, as well as special sensitization, language and management classes for the correctional staff should be organized. Easier access to data would enable a better understanding of the current foreigners in prison and develop more effective programmes to rehabilitate, supervise, and re-integrate them. Moreover statistics would enable greater transparency and better management as well as control over the prison system. One preventive measure, aside from allowing access to employment, would be to legalize the status of those persons, who for all practical purposes can not be deported.

To avoid expanding the underground world, the European nations must confront the reality that Africans and other refugees from desperate poverty and unsafe living conditions will be among us for the years to come. Xenophobia, exclusion, repression and criminalization will only create more desperate people and greater problems. As the study of the Africans arrested in Vienna shows they are not violent criminals but are rather exploited, and more often victimized than the average Austrian citizen.

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<sup>5</sup> TagungsBund. Universitare Strafvollzugstage

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