

Rights of prisoners in kenya

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Introduction

A prison is a building or complex where people are kept in long-term confinement as punishment for a crime. As of October 2015, the number of prisoners in Kenya was 54, 154. The number of prisoners in the 115 prison facilities is almost triple what the prisons are meant to hold.

This paper looks at laws providing for the rights of prisoners, why we put people behind bars, punishments meted out in prisons and challenges faced by prisoners.

Laws providing for rights of prisoners

Articles 51(a) of the Constitution of Kenya states that persons imprisoned retain all the rights and fundamental freedoms in the Bill of Rights. However, this statement has a qualification: They retain all their rights except to an extent that any particular right or fundamental freedom is clearly incompatible with the fact that the person is imprisoned. This provision does not specify which rights are constitutionally limited. If we are to take the provision as it is, the rights and fundamental freedoms that should be limited include: freedom of association and freedom of movement. Since the Constitution has not provided for the specific limitations, it leaves room for some of their rights to be violated. A good example is the use of corporal punishment for offences committed by prisoners. This provision is inconsistent with the Constitution which provides that every person has the right to freedom and security including the right not to be subjected to corporal punishment. Regardless of the inconsistency, corporal punishment is still practiced.

Another right that is violated is their right to vote. The Constitution stipulates that every adult citizen has the right to be registered as a voter and to vote. However, this has been overlooked by the state and until 2013, prisoners could not vote. In Kituo cha Sheria case, a nongovernmental body took to court the Independent and Electoral Boundaries Commission and the Attorney General for violating prisoners' right to vote. The qualifications for being registered as a voter have been enshrined in the Constitution. Being imprisoned does not bar one from voting. The court ruled that prisoners have a right to be registered as voters and are entitled to vote. The 2017 elections was the first in Kenya where prisoners casted their votes.

Prisoners are entitled to petition for an order of habeas corpus. A habeas corpus is a writ employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal. Being the only right that has been provided for on its own shows its significance. There are international laws and documents that posits on rights of prisoners. Vide article 7 of the International Covenant on Civil and Political Rights, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 10 of the same provides that anyone deprived of his liberty by arrest or detention shall be treated with respect for the inherent dignity of the human person.

Documents under international laws that are relevant to prisoners' rights include: United Nations Standard Minimum Rules for the Treatment of Prisoners, Body of Principles for the Protection of all Persons Under Any Form

of Detention or Imprisonment and Basic Principles for the Treatment of Prisoners.

Why put people behind bars

The four main theories of punishment are: retribution, deterrence, incapacitation and rehabilitation. The punishments in Kenya include: capital punishment, imprisonment or community service, detention, fine, forfeiture, payment of compensation and any other as provided for by the Penal Code.

Imprisonment in Kenya aims at incapacitation: the offender is kept away from society and he is stopped from committing crimes in that period. It is also retributive: the offender is punished for his crime and his guilt is purged. However, it has been argued that Kenyan prisons do not achieve any of their objectives. Prisons are burdened and overcrowded. For example, in Nairobi, a facility meant to occupy 400 has 3000 prisoners.

How can prison officers reform all these people?

At the same time, crimes occur within prison. Thus, putting a person away is not enough to stop him from his criminal tendencies. In addition to that, first time offenders are kept with hardened criminals. They then learn from the hardened offenders. Instead of reforming after prison, they may take up crime as a profession.

Kenyan prisons are in poor conditions. They are not the best place for reforming inmates. The conditions inmates are subjected to harden them. If released, they may engage in more criminal activities. Furthermore, the people entrusted with reforming offenders are not well trained. The officers

are the ones in contact with the prisoners on a daily basis. They are not well trained for the job. Reforming requires an understanding of human behavior, human motivation, human worth and human destiny.[footnoteRef: 29] Our prisons lack this thus, unable to reform offenders.

Punishments meted out in prisons for offences committed by prisoners

Prisoners can be punished by a senior prison officer, a subordinate prison officer or the commissioner. Offences in prisons are either minor or aggravated. A subordinate officer only awards punishments for minor offences. Punishments prescribed for minor offences include one or more of the following: confinement in a separate cell on the prescribed punishment diet, forfeiture of remission, reduction of stage or forfeiture of privilege. With aggravated offences, the punishments under minor offences apply. Corporal punishment is also awarded in aggravated offences. The commissioner has the authority to punish any inmate found guilty of a prison offence after thorough inquiry. Similarly, an officer in charge transfers a case to the commissioner if he is of the opinion that the powers he possess are inadequate to punish a prisoner. However, a commissioner awards the same punishments as an officer in charge. This begs the question: why should a commissioner punish an inmate, when he awards the same punishments as an officer in charge?

What comes to mind is whether the punishments violate or infringe on human rights. As mentioned earlier, administering corporal punishment contradicts both our constitution and international laws. The Prison Rules provide for where one is to be caned. The ICCPR mentions of no person being

subjected to degrading punishment. How then, can we allow corporal punishment in prisons? The punishment diet offered to prisoners while in confinement is also a human right violation. In Kenya, some maximum-security facilities serve what is known as ‘ food-loaf’ or ‘ meal-loaf’. In America, certain jails serve the punishment diet and refer to it as nutraloaf. This product is made up of regular ingredients that have been mashed together, baked in a loaf and served. Although nutritionally adequate, in functioning, it is a punishment.

Challenges facing prisoners in Kenya

The main challenge prisoners face is overcrowding and congestion. Prisons hold almost thrice the capacity of inmates they are meant to hold. A report in 2003 showed that at Kamiti Maximum Prison Remand Block, a 10 by 10 ft cell holds 7-8 prisoners. Studies have shown that the overcrowding can induce stress for inmates.

Another challenge faced by inmates is the poor conditions of the prisons. A study pointed out that inmates sleep on the cement floors, the cells are poorly ventilated and badly lit. A bucket serves as the toilet in the cells and using it has been termed as dehumanizing. Mistreatment of prisoners is rampant in prisons. The Prisons Act gives officers in charge authority to use force as is reasonably necessary thus prisoners are beaten for failing to obey orders. Some inmates have been beaten to death. Administration of corporal punishment also falls under mistreatment. Prisoners also complain of the morning searches where they are forced to strip naked, frog jump or squat as they are searched for forbidden items.

There is also the lack of observances of their freedoms, privileges and rights. In most prisons, inmates have no access to media facilities. There are instances where prisoners are denied remission on unlawful grounds. In the case of David Oloo Onyango, he appealed against the decision of the High Court. He was convicted in 1982. Upon admission to prison, he was to be credited with full remission at the end of his sentence if he lost no remission of sentence. In 1983, the Commissioner wrote to the prison officer in charge that the appellant be denied remission. The appellant argued that this constituted false imprisonment. He had not done anything to be denied remission. The decision was an arbitrary one. The High Court ruled in favor of the respondent. Taking the case to appeal was what overruled the High Court's decision.

Shortage of food and water is also a challenge faced by inmates. Prisoners complain of half cooked meals and water shortages. For instance, at western Kakamega Prison, there had been no running water for five years. These combined with overcrowding makes prisons the ideal place for the spread of diseases such as tuberculosis.

Conclusion

We need to acknowledge that prisoners are human beings too. They have rights, freedoms and deserve to be treated with dignity. Prison officers must accept that offenders are there as a punishment and not for punishment. Prisons should aim to be rehabilitative rather than retributive. After their sentence, offenders have to go back and live with society. They should be

prepared for life after prison. They should not leave prison struggling to adjust to normal life.

The prison facilities need to be reconstructed. Prisons were introduced during the colonial rule. Shimo la Tewa was built in 1953, Isiolo Prison in 1947 and Nairobi Remand and Allocation Prison in 1911. No efforts have been made to improve or expand the facilities since then. We are keeping inmates in facilities built over 60 years ago. How can we bring a change in offenders if we haven't taken care of the place they stay? The courts should take advantage of community service. Offenders who commit a crime that is punishable with imprisonment for three years, with or without the option of fine, can serve their sentence by performing community service. This would reduce overcrowding and congestion that is evident in our prisons.