

IMPROVING

**PRISON
Conditions
IN KENYA**

**Proposals and
Recommendations**



**KENYA HUMAN RIGHTS
COMMISSION**

KHRC, 2002

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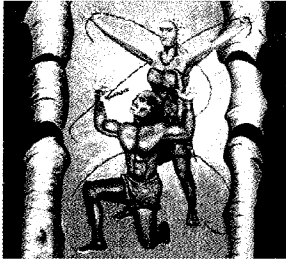
MISSION STATEMENT AND OBJECTIVES

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The Kenya Human Rights Commission (KHRC) is a non-governmental membership organization founded in 1992. It has observer status with the African Commission on Human and Peoples Rights, is a member of the International Federation of Human Rights (FIDH) and is the 1998 winner of the MS International Award.

The mission of the Commission is to promote, protect and enhance the enjoyment of the human rights for all Kenyans.

To achieve this mission, the KHRC carries out activities through its three programs of Research and Monitoring, Advocacy, and Human Rights Education and Outreach. A variety of activities such as production of human rights status reports, campaigns on key human rights issues, community based human rights education and production of a variety of information, education and communication materials are carried out through these Programs. In all its work, the KHRC is committed to mainstreaming gender.

Through its community based human rights approach whose core aim is to strengthen the human rights movement in Kenya, the KHRC currently gives legal cover and institutional support to 12 human rights groups and communities in Isiolo, Mwingi, Meru, Nyahururu, Mombasa, Nairobi, Thika, Siaya, and Tinet. As such groups and projects grow and stand on their own, the KHRC is set on taking others for similar support.

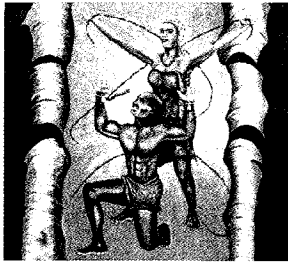
KHRC'S STRATEGIC OBJECTIVES

- Support human rights centred governance
- Hold state, institutions and individuals accountable for human rights violations
- Strengthen the human rights movement in Kenya
- Reduce human rights violations in Kenya
- Develop the human and institutional capacity of KHRC
- Secure the financial stability of KHRC

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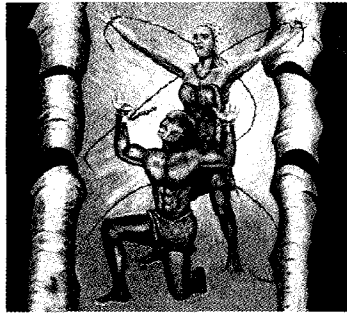
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LIST OF ABBREVIATIONS



AIE	Authority to Incur Expenditure
GOK	Government of Kenya
NGO	Non Governmental Organization
NCO	Non Commissioned Officer

INTRODUCTION AND ACKNOWLEDGMENT



The Kenya Human Rights Commission has been involved in monitoring and advocating for improved prison conditions since 1996. During this period the KHRC has collected data year after year from ex-prisoners, relatives and friends of serving prisoners and secondary sources with a view to publicizing these conditions and getting government to pay attention.¹

Unlike our advocacy of rights on other issues where we are able to involve those affected, advocacy for the improvement of prison conditions suffers the lack of this support and therefore makes it that much more difficult. Consequently the push for action solely depends on the goodwill of government in general and the Prison Department in particular. That little has changed in terms of prison conditions is a reflection of the non-existence of such will.

However, in the past two years, different government agencies and Civil Society Organizations have been increasingly reaching out to each other not only to work on joint initiatives but also to consult on strategies aimed at improving government's delivery of services. The study that led to the ensuing proposals and recommendations was specifically conceived with the aim of drawing out key constituencies that can influence change in Kenya prisons today.

To do this the KHRC organized a public Ex-Prisoners Hearing Forum on March 23rd 2001 to serve both as a primary data collection forum and also as a forum through which prison conditions could be made newsworthy in order to draw public attention. This information was supplemented with secondary data from government and other reports to make proposals that have since been presented to the Parliamentary Committee on Administration of Justice and Legal Affairs.²

¹ See the Kenya Human Rights Commission reports, A Death Sentence: Prison Conditions in Kenya, 1996, Prisoners Rights in Kenya, 1997, Shimoni (Reports on the state of Kenya prison conditions) July-December, 1997, January-June 1998, Damned and Debased: Women in Prisons and Detention Centers in Kenya, 1999 and the Quarterly Human Rights Reports 1999 to date

² See appendix II

In recognition of prison officers' and warders' role in prison reform, and that they also lived in deplorable conditions, the KHRC (through the kind support of Shelter Yetu Counselling Centre, Eldoret) organised a prison-officers training in March 2002, through which officers and warders could freely discuss their problems, challenges and make recommendations for improvement. This training forum's key recommendations are reflected in Appendix Three.

To build a constituency supportive of the proposals and recommendations made by the KHRC, the draft report was shared with representatives of the Standing Committee on Human Rights, The Prison Department, the Treasury, Federation of Women Lawyers (FIDA), Independent Medico-Legal Unit (IMLU) and the Release Political Prisoners lobby group. We got comments from the first three which we have tried to reflect as part of this report.

The KHRC plans to continue lobbying and building support for the adoption and implementation of the proposals contained hereto. We are encouraged that both the Standing Committee on Human Rights and the Prison Department have informed us that they too are committed to addressing some of the issues this report raises. We need to have this commitment move to the level of action!

To our readers we are calling upon you to write to either one of the following:

Minister for Home Affairs, the Commissioner of Prisons, the Parliamentary Committee on Administration of Justice and Legal Affairs, the Attorney General calling upon them to take action against the dehumanizing prison conditions. (See the attached tear-off page for your action).

On behalf of the Kenya Human Rights Commission, I wish to thank Erastus Wamugo and Isaac K. Gituka who were the lead researchers, all those prisoners who freely gave us their views during the February Hearing, the institutions that participated in the report critique forum, the Standing Committee on Human Rights, the Prison Department, the Treasury, the 50 officers and warders of Eldoret G.K Prison and also my colleagues at KHRC whose commitment to prison reform remain unwavering.

Wambui Kimathi

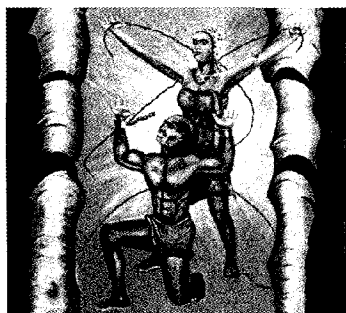
Programs Co-ordinator/Deputy Executive Director

August 14 2002

OBJECTIVES OF THE STUDY

The study had the following broad objectives:

1. To make available information that can be used in advocating for prisons reform in Kenya
2. To assess the extent to which budgeting and resource availability contribute to poor prison conditions
3. To review the legal and institutional framework and assess the extent to which the existing framework contribute to poor prisons conditions in Kenya
4. To develop a document which can be used to:
 - i) Lobby policy makers for prison reform.*
 - ii) Publicise and educate the public*
 - iii) Sensitise prison officials on human rights concerns affecting prisoners*



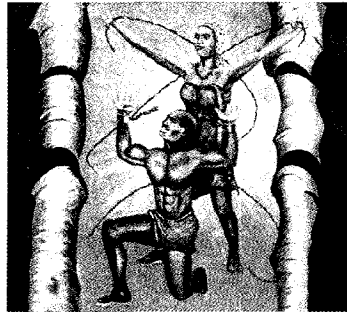
In order to accomplish the objectives of the study, the methodology employed encompassed the following:

- i. Desk review of available literature on prisons.
- ii) Holding informal and unstructured interviews with officers of the Prison Service and the Ministry of Home Affairs Heritage and Sports.
- iii) Attending ex-prisoners' open hearing in Nairobi facilitated by the Kenya Human Rights Commission. Case histories of ex-prisoners were narrated at the hearing attended by members of the public, officers of the prison service, officers of the Standing Committee on Human Rights (Kenya), and members of the clergy.
- iv) Attending a hearing session of the Parliamentary Committee on Administration of Justice and Legal Affairs.

The data was reviewed several times with KHRC Programs Co-ordinator who was advising the project and subjected both to an internal (with KHRC staff) and external critique (key players on matters of prisons).

INTRODUCTION

To carry out its remit, the Department of Prisons states its mission as



" to keep in safe custody prisoners entrusted to it in order to contribute to community protection, stability and development and in so doing rehabilitate them through good examples and leadership and encourage their potential to function as law abiding citizens"

1.1 BRIEF HISTORY OF KENYA PRISONS SERVICE

The history of Prisons in Kenya dates back to 1902 when Kenya was a British protectorate. In that year, the East African Prisons regulations were introduced and Provincial Commissioners and District Commissioners appointed as Superintendents and Assistant Superintendents of Prisons to run Prison Institutions. The general administration of Prisons during this period was under the Police Inspector General.

In 1911, the 'Prisons Board' was formed and made responsible for the management of Prisons. This made Prisons management autonomous and marked the creation of Kenya Prisons Service. In that year, there were 30 Institutions existing as Prisons in Kenya. White Officers designated 'Gaolers' were appointed to administer prisons of the first class, while Provincial Commissioners and District Commissioners administered the rest.

The Prisons Service included the running of Approved Schools and the Probation Services. The Commissioner of Prisons assumed the duties of Chief Inspector of Approved Schools in 1934. The Probation ordinance became effective in 1946 and the commissioner also assumed the title of Principal Probation Officer.

The ministerial system was introduced in Kenya in 1954. At that time the Prisons service was placed under the office of the Attorney General and Ministry of Legal Affairs. In 1957 the service was moved to the Ministry of Internal Security and Defence. The Department was again transferred in 1962 to the Ministry of Social Services.

Kenya attained independence in 1963 and in the same year a new Prison Ordinance was enacted. The Prison rules under the new Ordinance also became effective in the same year. The Ordinance embodied the standard minimum rules for treatment of offenders as recommended by the United Nations.

The reforms started in 1963 were aimed at facilitating proper classification of inmates; the introduction of the progressive stage system, the earnings scheme, compulsory supervision, extramural penal employment and a Youth Correction Training Centre. A borstal institution was established in Shikusa in 1963 to accommodate the increasing number of young offenders who were being sentenced to jail, while extramural penal employment pilot schemes were introduced in many parts of Kenya.

To carry out its remit, the Department of Prisons states its mission as

*" to keep in safe custody prisoners entrusted to it in order to contribute to community protection, stability and development and in so doing rehabilitate them through good examples and leadership and encourage their potential to function as law abiding citizens "*³

The rehabilitation function of the mission is supposed to be carried out through the programme of industrial and trades training. Long-term prisoners are expected to be trained in agriculture, building, and cottage industries. By 1970 all institutions accommodating long-term prisoners offered some form of training in trades.

1.2 ORGANISATIONAL STRUCTURE

The Prisons service is headed by a Public Servant designated "The Commissioner of Prisons". There are 8 Provincial commands each headed by an officer designated 'Provincial Prisons Commander'. Provincial Prisons Commanders hold the rank of Senior Assistant Commissioner. Below the Provincial Commanders are 'Officers in Charge of Prisons who are officers of various ranks ranging from Chief Officer II to Assistant Commissioner of Prisons depending on the size of the prison establishment. The Officers in Charge are answerable to the Commissioner through the Provincial Commanders. The Deputy Commissioners are deployed at Prisons Headquarters as Directors of Administrations, Technical Services, Inspection and Operation or as Commandant of Prisons Staff Training College. An organisational chart is annexed to this report.

Civilian members of staff include the Administrative Secretary, Accountants, Personnel Officers, Supplies Officers, Secretaries, Typists, Welfare Officers, and Subordinate Staff. Currently, there are 13,035 uniform staff and 316 civilians working.

³ Provided by J. I. Odongo, Senior Assistant Commissioner of Prisons and Public Relations Officer.

Prisons Department Staff Strength

Position	Males	Females
Commissioner of Prisons	1	-
Senior Deputy Commissioner of Prisons	1	-
Deputy Commissioner of Prisons	3	1
Senior Assistant Commissioner of Prisons	11	2
Assistant Commissioner of Prisons	14	2
Senior Superintendent of Prisons	38	2
Superintendent of Prisons	94	9
Chief Officer I	114	18
Chief Officer II	196	14
Senior Sergeant	517	20
Sergeant	365	26
Corporal	963	100
Warder	11,369	1,401
Civilians		1,037
Total (Males + Females + Civilians)		16,318

*(Prisons Department; Information Management for Better Prisoner Treatment
(Unpublished, September 2000))*

1.3 OBJECTIVES AND MANDATE

The main objective of the Kenya Prisons Services is to carry out rehabilitation programmes aimed at training, counselling and reforming prisoners so that they can be re-integrated back to society after their release as responsible citizens. The department accommodates in safe **(read this to mean safe from escape rather than from insecurity, danger and harm)** custody all categories of prisoners. This is achieved through construction and maintenance of prison facilities.

In order to achieve these objectives, a number of laws have been passed. The primary ones are: the Prisons Act (Cap.90) which deals with the establishment and effective management of the Prisons Service; and the Borstal Institutions Act (Cap. 92) which deals with the establishment, management and administration of Borstal institutions.

1.4 INSTITUTIONAL ARRANGEMENT

The prisons service in Kenya is managed through an institutional arrangement comprising of a prison headquarter service department in Nairobi, provincial prisons command offices and the prisons scattered all over the country. At the headquarters, compartmentalisation is achieved through the following functional sections under the administrative and technical services divisions: Administration, Research and Statistics, Building Section, Telecommunications Section, Personnel Section, Accounts Section, Accounts Section, Transport and Supplies Section, Social Welfare, and Prison Staff Training College.

Administrative Section: The section is charged with the responsibility of overall co-ordination of all other sections and offices of the prisons service. It links all other sections with the ministry headquarters through the commissioner of prisons. Under the section are the provincial formations, all the prisons and the Prisons Staff Training College.

Research and Statistics: The section collects data and information specific to inmates. The data may range from age, gender, income, district of origin, and training undertaken. The provincial offices and prisons avail the data for consolidation and storage at the headquarters. Administrative decisions are based on this data.

Building Section: The section deals with construction of both residential and non-residential construction. Funding activities of the section is done through the development budget of the prison service.

Telecommunications Section: This section is responsible of the provision of telecommunications service throughout the prison service. This is achieved through its telecommunications network across the country.

Personnel Section: The section deals with personnel matters in the service. This entails record keeping on staff compliment, promotions, discipline, retirements, salaries, manpower needs and registry.

Accounts Section: This section allocates funds to prisons, prepares and consolidates the budget, controls expenditure and maintenance of the vote book.

Transport and Supplies: This section deals with general procurement and management of stores, keeping of records of tender boards, storage and distribution of office equipment, maintaining records of motor vehicles establishment, movement of vehicles, accidents and drivers roster.

Social Welfare Section: The section's mandate is to rehabilitate prisoners and co-ordinate staff welfare activities. Most of the activities of this section are undertaken at the prison institutions. At the prison, the section endeavours to make any inmate understand and appreciate the rights of others in and out of prison, to respect the law and social order, and to encourage the inmate to lead a good

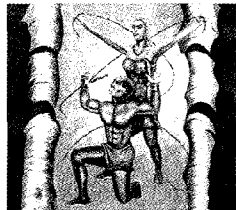
and purposeful life after discharge. This is mostly done through guidance and counselling. The specific activities of the section are:

- a) On admission, welfare undertakes to reclaim property or monies left at police stations, law courts, ex-employers and lawyers
- b) Handling of matters relating to children accompanying their mothers/fathers and looks for alternative homes or orphanages to place them
- c) Links inmates with the outside world through correspondence to lawyers, law courts, former employers, schools or chiefs on matters that affect the inmate family
- d) Arrangement of recreational activities to both the prisoners and staff e.g. radios, TV, playing cards, ball, nets, and soliciting support from donors and well-wishers
- e) Hobbies and handicraft undertaken and organised by the section whereby prisoners and with good conduct can earn some money through manufacture of items
- f) Organising for trade test undertaken by inmates
- g) Facilitation of continuation of inmates education interrupted by imprisonment
- h) Co-ordination of literacy classes
- i) Organising discharge boards
- j) For staff welfare the section deals with recreational activities financial assistance, staff housing, educational facilities for children etc.

Prisons Staff Training College: The college is responsible for training matters of the prisons service. The following courses are offered both on recruitment and during the period of employment:

Initial Training for recruit warders	Nine months
Initial Training for Cadet Chief Officers	Fifteen months
Promotion Development Course for Chief Officers II	Three months
Promotion Development Course for Chief Officers I	Four weeks
Seminar for AIE holders	Two weeks
Development Course for Gatekeepers and Reception clerks	Three weeks
Development course for Security Officers	Three weeks
Promotion development course for NCOs	One month
Development course for Horticulturalist	Two weeks
Development course agricultural production and marketing	Three weeks
Development course for Agriculturists	Two weeks

POLICY, PLANNING AND BUDGETING



The Prisons Department is highly centralised as would be expected of a disciplined command yet it is expected to operate within this strategy that emphasises localised planning

2.1 POLICY AND BUDGETING

The performance of the Prisons service in the discharge of its mandate is subject to the overall government performance. Since 1983, development planning in Kenya has been guided by the District Focus for Rural Development Strategy. The process has however, faced a number of problems. Some of these include; slow development of supportive institutional structures that are capable of effectively handling planning and management at the District level, slow devolution of authority from the centre to the Districts, and ineffective flow of relevant information between the centre and the Districts. The Prisons Department is highly centralised as would be expected of a disciplined command yet it is expected to operate within this strategy that emphasises localised planning.

2.2 LIMITATIONS OF PLANNING BUDGETING AND ACCOUNTING

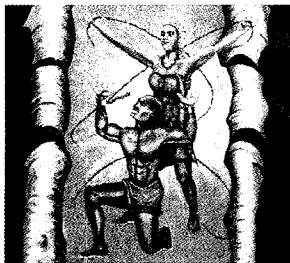
Beyond the planning constraints imposed by the District Focus Strategy, the overall financial system in the Ministry of Home Affairs, Heritage and Sport is ill equipped to provide information relevant for planning and decision-making. In terms of providing vital linkages between planning and decision making on the one hand, and spending on the other, the accounting system is detached.

Some of the factors that inhibit the effectiveness of the financial include overwhelming reliance on manual accounting system for data processing and dissemination. The current accounting system is basically tailored to produce control and audit oriented reports targeted for submission to Treasury. They are thus not well designed to efficiently meet the needs of the planners and managers in the Ministry to monitor and assess the allocation of resources.

2.3 STAFF HOUSING

The prison service like the police department has inadequate housing both in quantity and quality. The sharing of residential accommodation among officers is evidence of house shortage. It is widely reported particularly through the print media that the congestion in shared accommodation for police and prisons compromise the basic tenets of decency and self esteem. The quality of housing (formally referred to as basic housing) is low. Basic housing may comprise of small huts made of corrugated iron sheets; temporary mud houses with grass thatching; or tents. Housing has been a source of great demotivation for prison officers and warders.

RESOURCE ALLOCATION AND MANAGEMENT



The Ministry of Home Affairs Heritage and Sports (MOHA) is among 15 Ministries of the Kenya Government created for purposes for efficient public service delivery. The Prisons service receives 60 to 70% of the Ministry's total voted money.

3.1 KENYA PRISON BUDGET

The budget for prisons is reflected in the voted provisions for the Ministry of Home Affairs Heritage and Sports (MOHA). The MOHA is among 15 Ministries of the Kenya Government created for purposes for efficient public service delivery. The Ministry has eight (8) departments namely Prisons, Probation, Children, Betting Control and Licensing, Social Services, Culture, Kenya National Archives and Sports. The Ministry runs three statutory bodies namely: the National Museums of Kenya, The NGO Bureau and Kenya National Library Service. The Prisons service receives 60 to 70% of the Ministry's total voted money.

Table 3.1- Gross Recurrent Expenditure Estimates in Kshs

SUB VOTE	1998/99	1999/2000	2000/2001
050 General Administration & Planning	95,008,140	102,500,720	139,229,883
051 Department of Social services	143,958,920	142,478,960	35,044,003
052 Archives Museums & Historic Monuments	244,342,480	277,076,840	296,494,145
053 Department of Prisons Services	1,997,390,860	2,075,894,640	2,241,260,207
054 Department of Children's Services	151,880,520	158,379,880	228,545,053
055 Probation and After Care Services	108,436,440	141,595,800	211,911,228
056 Department of Culture	48,509,380	46,113,300	219,810,755
057 Betting Control and Licensing Board	34,741,580	44,452,300	44,997,503
058 Kenya National Library Services	157,162,000	190,000,000	215,213,544
058 Department of Adult Education	312,219,460	328,827,000	-
059 Department of Sport	121,487,880	117,959,760	147,528,733
TOTAL	3,415,137,660	3,625,279,200	3,780,035,054

(Printed Estimates 1998/1999/2000 (GoK) All the Tables in this Report are from this source)

During the period under review, the overall recurrent budget for the Ministry increased from Kshs.3, 415,137,660 in 1998/99 to 3,780,035,054 in 2000/2001. This was an increase of 10.68%. In 2000/2001 the proportion of the ministry's budget going to the prisons is Kshs. 2,241,260,207 which is 59.3%.

Despite the general economic slump being experienced by the country, the role of the of prisons department, which is basically security, remains paramount for the country's development.

3.2 PRISON DEPARTMENT ALLOCATIONS

Table 3.2

ITEM	NAME	1998/99	1999/2000	2000/2001
000 – 099	Personnel Related Expenses	1,355,916,060	1,394,365,600	1,389,858,447
080 – 270	Operations & Maintenance	641,474,800	681,529,040	851,401,760
	Total	1,997,390,860	2,075,894,640	2,241,260,207

The allocation for Personnel Related Expenses increased by 2.5% between 1998/99 and 2000/2001 while that for operations and Maintenance increased by 33% during the same period. In 2000/2001 the provision for personnel related expenses is Kshs.1, 389,858,447 which represents 62% of the overall budget allocation for the department. This means that only 38% is available to cater for the 41,000 prisoners in terms of their needs and for maintaining the prisons infrastructure.

3.3 PRISONS ALLOCATIONS FOR SELECTED ITEMS FOR STAFF

Table 3.3

ITEM	NAME	1998/99	1999/2000	2000/2001
170	Purchase of Consumable Stores	1,300,000	1,332,000	2,432,000
172	Purchase of uniform and Clothing (Staff)	337,700	344,000	14,274,000
174	Purchase of Stationery	1,640,000	1,668,000	3,258,000
250	Maintenance of Plant & Equipment	897,600	1,004,000	1,238,000
260	Maintenance of Buildings & Stations	1,000,000	1,790,000	3,053,800
	Total	5,175,300	6,138,000	24,255,800

Other non-controllable item relates to staff requirements and these includes, purchase of consumable stores, purchase of uniform and clothing, purchase of stationery, maintenance of plant and equipment and maintenance of buildings and stations. The allocation for these items increased from Kshs.5, 175,300 to 24,255,800 in 1998/99 and 200/2001 respectively. This is an increase of 368%. The major expenditure item responsible for this big increase was purchase of uniform & clothing, which increased from Kshs. 337,700 to Kshs.14, 274,000 in 1998/99 and 2000/2001 respectively. This was an increase of 4,126%. The proportion of the Prisons budget going to staff requirement related items, as a percentage of the operation and maintenance provision is 2%. This may explain the low morale of prison staff the norm in the Kenyan civil service.

3.4 PRISON ALLOCATIONS FOR SELECTED ITEMS FOR PRISONERS

Table 3.4

ITEM	1998/99	1999/2000	2000/2001
143 Fuel/Gas Expenses	28,300,000	30,300,000	42,300,000
160 Purchase of Food & ration	359,200,000	359,568,000	409,718,000
177 Purchase of Uniform & Clothing (Inmates)	20,080,000	16,084,000	18,584,000
178 Purchase of Bedding (Inmates)	18,360,000	14,376,000	14,376,000
179 Purchase of Clothes & Equipment (Inmates)	400,000	416,000	400,000
191 Drugs & Dressings	556,800	668,000	2,268,000
192 Medical Expenses	980,000	1,070,000	2,827,600
251 Prisoners' Earning Scheme	160,000	170,000	170,000
252 Women Prisoners' Expenses	200,000	400,000	400,000
Total	428,236,800	423,052,000	491,043,600

Women prisoners' expenses refer to items of expenditure specific to women including sanitary towels. The amount allocated for this purpose in the current financial year is Kshs 400,000. Using the figure of female population of 1,756 prisoners as at 30th September 2000 as a guide, (see Table 4.1) this means that every female prisoner has been allocated Kshs 227.70 for the year or Kshs 18.90 per month. This of course assumes that no money is misappropriated and children imprisoned with their mothers are not assisted with any of this money.

3.5 INTERNAL RESOURCE MOBILISATION

According to the Prisons Act Section 86 Sub-Section (1)

" Every convicted Criminal Prisoner shall be required to engage in useful work... "

Further, the Officer In-charge is required to allot to each prisoner the labour for which such a prisoner is best suited. The first consideration being to give each prisoner the best training given his or her sentence, his or her capacity, and the resources of the prison.

- a) In fulfilment of this section of the law and the wider consideration for rehabilitation, the Prison farms and industries were set up

3.5.1 Historical Background

Prison Industries were initiated in Nairobi in 1950s mainly as a vocational training for inmates. Over the years, the number of inmates increased considerably. This necessitated expansion of Industrial Training Programmes.

The service formulated new strategies to dispose of the increased products through sale initially to Government Departments, and later to the wider public. With this new strategy, industrial establishments were started in most of the prisons in the country and by 1970s, every prison institution had an industry of sorts in operation.

3.5.2 Types of Trades Training

To following training programmes are offered in 64 prisons: Garment Production, Carpentry, Furniture Production, Building, Quarrying, Shoe Making, Rope and String production, Metal work, Basket making, Matting production, Motor vehicle repairs, Motor Vehicle Body Building, and Brick and Tile Making. The current training programme is based on acquisition of artisan skills.

During the Ex-prisoners' hearing, it was reported that most of the equipment had broken down and little training takes place. Moreover, prisoners serving a sentence of less than 12 months are not eligible for training. This cuts out a large number of prisoners. The Kenyan economy has undergone tremendous changes since the inception of prison industries. Increasingly communication skills modelled around information technology are the building blocks for any meaningful career. Training in marketable skills such as information technology, marketing, entertainment, etc should be emphasised over these traditional areas.

WE RECOMMEND THAT IN ADDITION TO ARTISANSHIP, TRAINING SHOULD BE BROADENED TO INCLUDE ACQUISITION OF SKILLS THAT ARE MARKETABLE IN THE CURRENT ECONOMIC ENVIRONMENT. BASIC LITERACY SHOULD BE IMPARTED AND WHERE RELEVANT EDUCATION SHOULD BE CARRIED OUT THROUGH CORRESPONDENCE COURSES. IN ADDITION, THE TRAINING BUDGET SHOULD BE PROVIDED FOR SPECIFICALLY IN THE PRISONS DEPARTMENT BUDGET AND ITS UTILISATION REPORTED ON ANNUALLY.

3.5.3 Prison Farms and Industries Fund

The Prison Farms Fund was started in 1990 and sanctioned through legal notice No. 87 of 8th April 1993. Over the years the fund has been unable to meet its revenue targets as table 4.4 shows.

Table 3.5

YEAR	EXPENDITURE	TARGET REVENUE	RECEIVED REVENUE
95/96	11,419,024	20,600,000	18,753,505
96/97	10,543,216	24,000,000	17,295,207
97/98	10,721,893	29,950,000	13,881,270
98/99	14,022,878	30,000,000	10,719,554
99/2000	14,874,726	30,000,000	16,247,703

High cost of farm inputs, outdated technology, and gross under-capitalisation have been cited as factors that have contributed to poor performance of the farms and industries over the years. The revenues realised from the sale of prison products and from services provided by the farms and industries are in theory ploughed back to the farms and industries. The set targets are never met.

Mismanagement of the Fund resources is a key contributor to the poor performance. This is according to the Annual Reports of the Controller and Auditor General. In the 1996/7 financial year for instance, the Fund failed to account for Kshs 3,877,760. This amount comprised Kshs 2,449,500 which was not reflected in the Balance Sheet; Kshs 47,460 which was an unexplained difference

between the Paymaster General's Balance and the Statement of Assets and Liabilities for Deposits; and Kshs 1,380, 800 which was an amount owed by debtors from the previous year but which surprisingly, was missing from the books without having been paid to the Fund. In addition the amount of Kshs 22, 502,180 was stated as share capital over and above the amount authorised by Parliament. This additional amount was not separately disclosed in the Balance Sheet. Accordingly the Fund could not properly account for the sum of Kshs 26,379,940. This is more than the money allocated in the current financial year, for food, clothing, bedding, equipment, drugs, dressings, prisoners' earning scheme, and women's items all put together.

In the next financial year, that is 1997/8 the record of waste and mismanagement escalated. In total, the Prison Industries Fund and the Prison Farms Revolving Fund could not properly account for Kshs 78,918,620. In two financial years, prison farms and industries had lost or could not account for the sum of Kshs 105,298,560. This amount is almost one and a half times the cumulative amount (76,897,239) which was reported as revenue in a period of five years between 1995 and 2000.

In addition, the management of the prison farms and industries is inefficient. Sourcing of raw materials is centralised, slow and expensive; showrooms for the finished products are set inside the intimidating environment of prisons; technical oversight is done by warders who are ill-trained; while the costing method for the finished products is insensitive to prevailing market prices. These are all areas in need of improvement.

WE RECOMMEND THAT AN INDEPENDENT AUDIT OF THE TWO FUNDS BE CARRIED OUT AS THE FIRST STEP IN RATIONALISING THE MANAGEMENT OF THE FUNDS. ANY PERSON WHO IS FOUND TO HAVE MISAPPROPRIATED RESOURCES OF THESE FUNDS SHOULD BE PROSECUTED AND WHEREVER POSSIBLE SUCH RESOURCES SHOULD BE RECOVERED.

WE ALSO RECOMMEND THAT THE MANDATE, ESTABLISHMENT AND OPERATION OF PRISON FARMS AND INDUSTRIES BE REVIEWED WITH THE AIM OF ALIGNING THESE FACILITIES WITH THE NEEDS OF MODERN INSTITUTIONAL MANAGEMENT PRINCIPLES.

Further we recommend that income from the fund be solely applied to improve prison conditions in areas such as prisoners welfare, plant and equipment, and training. Each prison should be entitled to use its farm produce to supplement its rations. This would diversify the nutritional base of prison diet. The current practice involves harvesting and selling off produce in the market. Government contractors appointed by the supplies branch of the government then supply the rations.

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3.5.4 Resource Management

Resources allocated to the Prisons Department for the expansion or construction of prisons are not utilised optimally. Two illustration from the Annual Report of the Auditor and Controller General for the Financial Year 1996/7 will suffice.

In 1989, a project to construct a new medium security prison in Garissa was mooted. The project was expected to be completed by March 1993. Private consultants and a construction firm were hired. By 1997- and eight years later- a total amount of Kshs 26,827,340 had been paid out as consultancy and construction fees even though the project had yet to take off the ground.

In September 1990, another project to construct a medium security prison in Busia was mooted. By January 1998- and eight years later- an amount of Kshs 18,185,940 had been paid out to consultants. In addition, a sum of Kshs 3,106,700 was paid to a construction firm under the Busia project, for work allegedly done at the Nairobi Remand and Allocation Prison. In total, an amount of Kshs 21,292,640 was paid out irregularly before the project was shelved.

WE RECOMMEND THAT ACCOUNTING AND AUDITING MEASURES APPLIED WITHIN PRISONS MANAGEMENT IS REVIEWED AND IF NECESSARY OVERHAULED. IN ADDITION, PERSONS WHO HAVE MISAPPROPRIATED PRISONS RESOURCES SHOULD BE PROSECUTED AND WHERE APPROPRIATE SUCH RESOURCES SHOULD BE RECOVERED.

3.5.5 Management

The management of prison institutions should be based on proven management models such as those in the private sector. Prisons should utilise new and innovative management tools some of which the country, and the world, is experiencing through changes in technology, science and communication.

For example, the Prisons service should establish key performance indicators, which should be used as the basis of evaluating the performance of each prison every year. These key performance indicators should cover items such as the number of deaths of prisoners, escapes, assaults, state of accommodation, clothing, education and employment. The indicators should be measured against costs. A league table comparing the performance of all the prisons should be published annually.

WE RECOMMEND THAT THE MANAGEMENT OF PRISONS BE
BASED ON PRIVATE SECTOR STANDARDS AND REGULAR
PERFORMANCE AUDITS BE CARRIED OUT IN THE PROMOTION,
EFFICIENT AND EFFECTIVE DELIVERY OF SERVICES.

3.5.6 Prisoners' wages and working conditions

Imprisonment is not servitude. As a result prisoners are given an amount of money in appreciation of their contribution to prison earnings. The present Prisons Act gives discretion to the Minister to set a prisoner's earnings. The current earning rate has been set at 10 cents a day or Kshs 12.50 per month. This figure does not reflect the profound changes that have taken place in the country's economy. The value of the shilling has gone down while inflation has maintained an upward pressure. In addition, the money earned by a prisoner is supposed to assist that prisoner in his or her re-integration into society upon release. The money may be used in the purchase of tools of trade acquired in prison, for the payment of rent, and for the meeting of personal needs in the period after release when the ex-prisoner is still finding his or her bearings in society. These earnings should therefore be pegged to a realistic indicator such as the national minimum wage. Since a prisoner is not in private employment, he or she should not expect to be paid the national minimum wage. A sensible balance has to be made in reconciling these different considerations.

WE THEREFORE RECOMMEND THE PRISONER'S MONTHLY
EARNINGS BE RAISED TO THE EQUIVALENT OF 10% OF THE
NATIONAL MINIMUM WAGE.

As far as possible, the working conditions of prisoners should be equivalent to those of workers elsewhere. In particular, the provisions of the Factories Act as they relate to occupational safety and health should be applied to the working conditions of prisoners.

WE RECOMMEND THAT THE PROVISIONS OF THE FACTORIES
ACT AND OTHER LAWS REGULATING HEALTH AND SAFETY AT
THE WORK PLACE BE APPLIED TO PRISONS.

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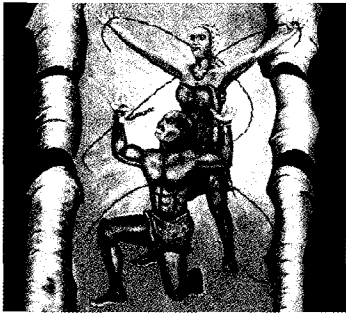
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RISING PRISON POPULATION



“Accommodation in prison is over stretched. Before going to sleep prisoners must be arranged in tight interlocking rows. While asleep, one must be attentive listen to the order to turn. The whole dormitory must turn in a synchronised manner otherwise chaos and fights might result. If one leaves their place to go to the toilet the squeezed bodies of the other prisoners easily occupy it.” **David Nyambok Ex-prisoner, Kamiti Medium Security Prison**

Prison institutions in Kenya are heavily congested. With a capacity to hold 18,953, the institutions were reported having a population of 41,211 Kenyans behind bars on 30th September 2000. This means that that prisons in Kenya hold three and half times the number they were originally designed to hold. This number does go higher given that Prison population in Kenya changes on a daily basis. Table 4.1 below shows the level of congestion per province on 30th September 2000.

4.1 CONGESTION IN KENYA PRISONS

Current Prison Population by Province⁴

Province	Males	Females	Capacity
Nairobi	7632	388	3798
Central	5349	141	2475
Eastern	3786	254	1295
North Eastern	310	15	242
Nyanza	3845	149	1890
Western	2819	121	1623
Rift Valley	9808	480	5422
Coast	5906	208	2208
Total	39455	1756	41211

⁴ See appendix (1) for a prison by prison breakdown.

The effects of congestion in any prison institution are numerous and deleterious. It often leads to deterioration of relationship between the prisoners and members of staff. It increases the likelihood of riots, outbreaks and other disturbances and by reverse order, it leads to understaffing and generates conditions of insecurity.

With regard to the welfare of prisoners, congestion places a strain on all resources including food and water, clothing and bedding, health facilities and accommodation. Time for constructive work or education is also wasted as prisoners queue to use limited training equipment and resources. This view was voiced by ex-prisoners during an open forum organised in Nairobi by the Kenya Human Rights Commission, on 23rd March 2000.

The overall goal of rehabilitating prisoners is singularly undermined by congestion consequently de-congesting prisons lie at the heart of any strategy aimed at prison reforms in Kenya.

4.2 DE-CONGESTING PRISONS

To reverse the present circumstances of congestion, changes in five policy areas are required. These areas are: -

- Criminal law
- Trial process
- Sentencing policy
- Prison term review
- Resource management

4.2.1 Criminal law

In 1997, the IPPG package went some distance in removing from our criminal statute offences such as vagrancy. As a follow up measure, criminal law should be combed through to weed out minor offences that lead to unnecessary incarceration. These offences include crimes related to drunkenness, loitering, petty thievery and trespass. In addition, where civil law suitably addresses a problem especially in relation to contract, people should be encouraged to use civil rather than criminal law. A tendency has emerged for example where unpaid creditors pursue debt collection through criminal law usually by alleging that the debtor has committed the offence of obtaining goods by false pretences.

WE RECOMMEND THAT CRIMINAL LAW BE STUDIED WITH
A VIEW TO REMOVING FROM THE STATUTE BOOK PETTY
OFFENCES AND FINDING ALTERNATIVE MEANS OF
ADDRESSING SUCH OFFENCES

4.2.2 Trial Process

The holding of suspects or accused persons in remand homes while awaiting trial and the long delays associated with trials significantly contribute to congestion. Under the law, accused persons are presumed innocent until they plead guilty or are proved guilty. Infringing upon their liberty through detention in remand should be a matter of last resort and a matter taken recourse to sparingly. Persons in remand are locked up for long hours without recreation or work opportunities. The endless idleness is punishing and inhumane. To de-congest remand homes two issues need to be addressed.

First, the constitutional right to bail should be enforced more meaningfully. At present, although a large number of accused persons are granted bail, the amounts regularly required to free one on bail

of Address _____

call upon the Minister/AG, Commission of Prisons/Parliamentary Committee on Administration of Justice and Legal Affairs to consider the proposals and recommendations hereto and effect them to improve prison conditions.

Signed _____ this day _____

Send this back to Kenya Human Rights Commission,
PO Box 41079-00100 Nairobi, GPO Kenya.

assist magistrates and judges in the efficient disposal of cases.

We recommend that the judiciary adopt better and widespread use of information technology.

Third, temporary magistrates should be hired to address case backlogs. At present Commissioners of Assize are hired to assist the High Court mainly in dealing with civil matters. This practice should be extended to cover the lower magistracy where the bulk of criminal cases are handled.

As a temporary measure we recommend that Commissioners of Assize be recruited to address backlogs in criminal courts.

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First, the constitutional right to bail should be enforced more meaningfully. At present, although a large number of accused persons are granted bail, the amounts regularly required to free one on bail are usually too large. These amounts range from thousands of shillings for minor offences, to millions of shillings for serious felonies. The accused person may deposit in court, security documents of value, such as title deeds, motor vehicle log books, insurance benefit policies, and company share certificates or in the alternative, he or she may deposit cash with the court. Courts should not attach conditions to bail that effectively make the right illusory. Innovative mechanisms that enable the community to take responsibility for the appearance in court of an accused person for trial should be designed. Community leaders, religious leaders, employers and professionals should be able to guarantee the appearance in court of accused persons without being required to deposit cash or security instruments.

WE RECOMMEND THAT THE CONSTITUTIONAL RIGHT TO BAIL
BE IMPLEMENTED BY TRIAL COURTS THROUGH MECHANISMS
THAT ARE SENSITIVE TO THE ECONOMIC CONDITIONS OF
ACCUSED PERSONS.

Opportunities should be explored at the pre trial stage to settle cases through a bargain between the prosecution and the accused person. In exchange for a lenient sentence an accused person should plead guilty thereby shortening the period of trial and of incarceration.

WE RECOMMEND THAT THE CRIMINAL PROCEDURE CODE BE
AMENDED TO INTRODUCE PLEA-BARGAINING AS A MECHANISM
FOR SPEEDING UP TRIALS.

Second, better case management through the use of information technology should be employed to assist magistrates and judges in the efficient disposal of cases.

We recommend that the judiciary adopt better and widespread use of information technology.

Third, temporary magistrates should be hired to address case backlogs. At present Commissioners of Assize are hired to assist the High Court mainly in dealing with civil matters. This practice should be extended to cover the lower magistracy where the bulk of criminal cases are handled.

As a temporary measure we recommend that Commissioners of Assize be recruited to address backlogs in criminal courts.

4.2.3 Sentencing policy

The courts should have a broad menu of options to consider while sentencing an offender based on the circumstances of the offence and the degree of responsibility of the offender. These should include Community Service Orders, probation, suspended sentences, split sentences, and home sentences.

The recently enacted Community Services Orders Act came into operation on 23rd July 1999. This is a positive measure. The Orders cover the entire criminal justice system in its operations. They rely heavily on volunteer support and community participation. By the end of September 2000, a total of 16,000 Kenyans were serving under the Orders. In addition probation with supervision is still available as a non- custodial sentence.

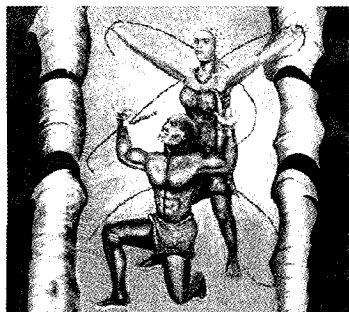
WE RECOMMEND THAT ALTERNATIVE SENTENCING MEASURES
BE CONSIDERED FOR INTRODUCTION IN KENYA'S CRIMINAL
JUSTICE SYSTEM. SUCH MEASURES COULD INCLUDE SOME OR
ALL OF THE FOLLOWING:

- Suspended sentence with conditions such as keep peace to submit to medical treatment, to undergo training. Suspended sentences should be the first line of sentencing for drug addicts and mentally ill patients to facilitate their treatment.
- Split sentences where a prison term is broken into instalments to ensure that the prisoner is not dislocated from society should also be considered. Prisoners who have opportunities in work, business, education as training of a seasoned nature should be able to utilise such opportunities under split sentences. Compelling family matters should also be a ground for consideration for a split sentence.
- Home sentences for critically ill or other compassionate consideration should form part of the sentencing policy. This would involve the placing of a restriction order on the movement of a prisoner. The restriction order would specify the area in which a prisoner is confined. Local administration such as the assistant chiefs, probation officers and the police would be responsible for the enforcement of the order.

4.2.4 Prison Term Review

Once sentenced prisoners should have their sentences reviewed by an independent body. At present remission of sentences and granting of pardons are exercised by the Commissioner of prisons and the Head of State as discretionary and prerogative powers respectively. The Prisons Act establishes a Board of Review that makes non-binding recommendations to the President. Discretionary power is arbitrary, non-transparent and prone to abuse. Moreover the President is a busy person called to attend to serious affairs of state and has little time to direct his or her constant attention to the conduct of individual prisoners. An independent prison sentence review Board should be established and prisoners should appeal to the board to have their sentences reviewed. The review should be based on good conduct. Decisions of the board should be subject to judicial review.

HUMANE TREATMENT OF PRISONERS



Generally, prison conditions in Kenya are harsh and harmful to the physical and mental wellbeing of prisoners. There is hardly an ex-prisoner who does not have a harrowing story to tell about his or her experience.

5.1 HEALTH

"It is the prison warders who make decisions on who is to see a doctor. Prisoners claiming to be sick are often beaten to determine whether they are sick or merely malingering. As a result most sick prisoners prefer not to seek medical help until they lapse into critical condition. Skin diseases, diarrhoea, vomiting are constant and daily occurrences. The only time when medical attention is properly provided is when an outbreak occurs or when a number of people die. Nobody cares. Even doctors ask for bribes from your relatives so as to attend to you. That is prison." John Namwaya Ex-prisoner, Shimo la Tewa Prison

Provision of health services in prison institutions is the responsibility of the Ministry of Health. The quality of the medical care given in prison has been the subject of persistent complaints by ex-prisoners. Specifically, prison staff are accused of routinely dismissing health complaints as being frivolous. Medicines are insufficient and medical personnel spend little time with prisoners. The allocation for medical expenses in the financial year 2000/2001 is Kshs 5,095,000. (See Table 3.4) Using the available figure of 41,211 as the prison population, then the medical allocation translate into Kshs 123.60 per prisoner per year. To put it differently, each prisoner in Kenya, has in this year been allocated 30 cents per day for his or her medical needs. This under-allocation affects women most because in addition to having special needs, women are often accompanied by their young children to prison.

Extortion of money for medical services is also alleged. Overall, the accusations point at an inadequate oversight of medical personnel working in prison institutions and inadequate health facilities.

WE RECOMMEND THAT THE KENYA DENTISTS AND MEDICAL PRACTITIONERS BOARD TOGETHER WITH THE KENYA MEDICAL ASSOCIATION SHOULD PROVIDE A MECHANISM FOR EFFECTIVE REGULATION OF MEDICAL PROFESSIONALS SERVING PRISONERS.

HIV/AIDS

I saw young boys being made the wives of other older men. They are lured with food and cigarettes. At a fee prison warders organise opportunities for sexual activities. This involves leaving the prisoners concerned behind in the dormitories while the rest go to work." Shaban Omari Ex-prisoner, Kodiaga Prison

Prison population is part of the Kenyan society and it is therefore affected by the HIV/AIDS pandemic. In Kenya, the main cause of transmission of HIV is sexual activity. Inside prisons transmission is through homosexual activity.

Homosexual activity takes place in prisons as it does outside. However, prison conditions create an environment that promotes it. These include: -

- a) Use of dormitories rather than single cells thereby encouraging close bodily contact.
- b) Limited contact with outside world
- c) Inadequate food provisions leading to sex-for-food trade.
- d) Ban on addictive drugs and cigarettes that lead to a trade of these items for sex.
- e) Sodomy and other forms of sexual assault.

Reversing these environmental conditions is essential in addressing HIV/AIDS in prisons. More specifically, the following recommendations are made:

- i) Education programmes for staff and prisoners should be undertaken. Partnerships with non-governmental organisations and other bodies dealing with HIV/AIDS should be forged for this purpose.
- ii) Compulsory testing should NOT be employed. However, voluntary and anonymous testing should be encouraged as a basis for informing the management of prisoners' health needs. Counselling services should be provided and confidentiality maintained.
- iii) Prisoners who are diagnosed to have HIV/AIDS should not be segregated or denied facilities available to others unless this is necessary for their wellbeing or for the health of others.
- iv) Prison institutions should seek to create a climate of tolerance, understanding and respect for the rights of others through education and support. This should be a core objective of prison warders' training.
- vi) In addition adequate provision of food should reduce sex trade.
- v) Condoms should be made freely available to prisoners. Conjugal visits should be introduced especially for prisoners of conduct who are about to complete their sentences.

WE RECOMMEND THAT THE PRISONS ACT BE AMENDED TO
ACCOMMODATE THE MEASURES OUTLINED ABOVE

5.2 BULLYING, ASSAULT AND CORPORAL PUNISHMENT

You are beaten from the time you enter prison. No one teaches the prison rules the warder's truncheon does. Evans Luseno Ex-prisoner Trans Nzoia Prison

Physical assault on a prisoner either by a fellow prisoner or by a member staff is illegal. Its prevalence however is widespread. The effect of these assaults is deaths and injuries. They contribute to a climate of fear and tension. They waste constructive time and undermine rehabilitation by hardening prisoners and disregarding a culture of respect for the rights of others.

WE RECOMMEND AS FOLLOWS:

- a) Corporal punishment, which acts as the legal model for assault, should be banned. This is in line with the stated Government objective of banning the punishment as a penal measure, and its outlaw as a disciplinary tool in institutions of learning.
- b) Any member of the prison staff who assaults a prisoner should be held personally liable.
- c) Physical environment that is unsafe should be closely supervised and where necessary close circuit televisions should be used.
- d) Prisoners who bully other prisoners should be punished and support given to victims.

5.3 STRIPPING AND SEARCHES

"When you enter prison you are ordered to strip naked in front of other prisoners and prison warders. You are then ordered to jump up and down like a frog. All your body orifices are then searched for contraband items such as money and cigarettes. You later realise that this routine is to be performed several times every day for the rest of your prison life. It does not matter whether your children are present or not. In prison there is no taboo." **Hesbon Mwangi Ng'ang'a Ex-prisoner, Naivasha Prison**

All ex prisoners interviewed at the Ex-Prisoners Forum organised by the KHRC, complained of a degrading treatment where prisoners are forced to strip naked and are searched through body orifices for banned substances and materials. The stripping is done in public and often on a daily basis. There is no security justification for these public stripping and degrading searches.

WE RECOMMEND THAT PUBLIC STRIPPING AND THE OUTLINED
SEARCHES BE ABOLISHED. ALL SECURITY SEARCHES SHOULD
BE CONDUCTED HUMANELY WITHOUT INFRACTING THE DIGNITY
OF A PRISONER OR OF A PRISON OFFICER.

5.4 CONTACT WITH THE OUTSIDE WORLD

Prisoners are entitled to limited visits on a monthly basis. Limited mail is also permitted. Opportunities of contact with the outside world should be increased. Telephone services should be introduced. The number of letters a prisoner may receive should be unlimited. It is critical that a prisoner maintains and develops links with the outside world. Family, social and other ties should not unduly suffer because of imprisonment. Properly maintained, such ties in the end ease the constraints of re-integration.

WE RECOMMEND THAT SUPERVISED COMMUNICATION WITH
THE OUTSIDE WORLD THROUGH PERSONAL VISITS, MAIL,
TELEPHONE AND OTHER MEANS BE INCREASED.

5.5 VOTING RIGHTS

Prisoners in Kenya are disenfranchised. The right of prisoners to vote should be restored. Voting is both a right and a civic responsibility. Encouraging prisoners to vote is an integral part of their rehabilitation since it maintains their interest in the wider society into which they are finally released. Moreover, if prisoners had a vote they would attract the interest of politicians and policy makers and thereby get to voice their concerns.

WE RECOMMEND THAT PRISONERS SHOULD HAVE THEIR
RIGHT TO VOTE RESTORED.

5.6 ISOLATION CELLS

The use of isolation or segregation as a punishment in prisons should be abolished. This punishment is accompanied with the denial of food. Denial of physical and verbal contact to any person leads to emotional and psychological abuse. Once isolated, a prisoner is susceptible to torture and sexual abuse. In isolation a prisoner is deprived of constructive work and education. Isolation constitutes cruel and inhuman treatment, which is prohibited by the Constitution and international human rights law.

WE RECOMMEND THAT THE USE OF ISOLATION OR
SEGREGATION AS A PUNISHMENT BE ABOLISHED.

5.7 PRISON OMBUDSMAN

The position of a prison ombudsman should be created. Alternatively, the functions of an ombudsman should be integrated in an existing body. Currently the Standing Committee on Human Rights exercises these functions. However, that Committee has a limited mandate, minimal authority and a doubtful legal foundation. Efforts to correct these weaknesses are being undertaken through new legislation.

With regard to prisons, the ombudsman should inspect the treatment of prisoners and condition of prisons and publish reports that are then transmitted to relevant departments of the government and committees of parliament for deliberation.

The ombudsman should also entertain complaints made by prisoners on individual cases and take out appropriate action.

The ombudsman should have the power to issue visitors' permits to the media, researchers, NGOs and members of the public interested in visiting any prison. It is important that prisons open their doors to the wider society if reforms are to take root.

WE RECOMMEND THAT THE OFFICE OF PRISONS OMBUDSMAN
TO EXERCISE SOME OR ALL OF THE OUTLINED FUNCTIONS BE
ESTABLISHED.

5.8 PRIVILEGE SYSTEM

The Prisons Act creates a system of privileges intended as an incentive for good behaviour among prisoners. Under the system a prisoner moves up a stage system from the first stage to the fourth and finally special stage based on good behaviour and time served. The privileges include placement on the earning scheme, receiving library books, relaxed security, and recreational facilities. The system based on conferment or denial of privilege at the discretion of the Officer-in-Charge is susceptible to abuse. An incentive scheme is not necessarily bad by itself. However, it needs to be operated fairly, openly and consistently.

WE RECOMMEND THAT THE CURRENT INCENTIVE SCHEMES
OPERATED IN PRISONS BE REVIEWED WITH THE AIM OF
MAKING THEM FAIR AND EQUITABLE.

5.9 ACCESS TO LEGAL AID

The present prison arrangement where prisoners are cut off from wider society makes it difficult for prisoners to enforce their rights through the court process.

The constitution and common law are adequate sources of defining rights and providing remedial measures to any person including prisoners. Prisoners should have access to legal aid available from voluntary organisations or Government. NGOs that provide legal aid should have unhindered access to prisoners and the prisons department should facilitate educational clinics on rights.

WE RECOMMEND THAT OPPORTUNITIES FOR LEGAL AID
SHOULD BE MADE AVAILABLE TO PRISONERS IN THE MANNER
THAT SUCH OPPORTUNITIES ARE AVAILABLE TO NON-
PRISONERS.

Appendix One

NAIROBI AREA	MALES	FEMALES	CAPACITY
1. Kamiti Main	2,691	Nil	1,952
2. Kamiti Medium	1,557	-	374
3. Nairobi Remand	2,625	-	575
4. Nairobi West	392	-	222
5. Langata Women	-	388	336
6. Nairobi S. S.	312	-	140
7. Kamiti YCTC	55	-	199
Total	7,632	388	3,798

CENTRAL PROVINCE	MALES	FEMALES	CAPACITY
8. Nyeri Main	1,395	-	303
9. Nyeri Medium	207	-	176
10. Nyeri Women	-	59	36
11. Thika Main	668	-	309
12. Thika Women	-	28	30
13. Muranga	683	31	139
14. Thomson Falls	456	23	144
15. Maranjau	266	-	120
16. Kerugoya	454	-	59
17. Mwea	704	-	780
18. Kiambu	161	-	95
19. Ruiru	355	-	284
Total	5,349	141	2,475

EASTERN PROVINCE	MALES	FEMALES	CAPACITY
20. Embu Main	828	-	127
21. Embu Women	-	74	37
22. Machakos Main	688	-	241
23. Machakos Women	-	46	30
24. Kitui	508	19	319
25. Meru Main	932	-	133
26. Meru Women	-	63	15
27. Uruku S. S.	241	-	120
28. Isiolo	362	47	175
29. Marsabit	60	5	35
30. Kangeta	120	-	30
31. Moyale	47	-	33
Total	3,786	254	1,295

NORTH EASTERN PROVINCE	MALES	FEMALES	CAPACITY
32. Mandera	52	1	68
33. Wajir	48	-	98
34. Garissa	210	14	76
Total	310	15	242

NYANZA PROVINCE	MALES	FEMALES	CAPACITY
35. Kisumu Main	1,206	-	652
36. Kisumu Women	-	87	80
37. Kisumu Annexe	392	-	224
38. Kibos Main	647	-	197
39. Kibos Annexe	348	62	240
40. Kisii Main	833	-	179
41. Kisii Women	-	-	56
42. Homa Bay	294	-	172
43. Siaya	71	-	60
44. Migori	54	-	30
Total	3,845	149	1,890

WESTERN PROVINCE	MALES	FEMALES	CAPACITY
45. Kakamega Main	957	-	575
46. Kakamega Women	-	121	96
47. Shikusa S. S.	616	-	453
48. Shikusa B. I.	290	-	208
49. Bungoma	849	-	221
50. Busia	107	-	70
Total	2,819	121	1,623

RIFT VALLEY PROVINCE	MALES	FEMALES	CAPACITY
51. Naivasha Main	1,383	Nil	1,440
52. Naivasha Annexe	676	16	203
53. Nakuru Main	1,521	-	768
54. Nakuru Women	-	147	202
55. Eldoret Main	1,196	-	346
56. Eldoret Women	-	160	55
57. Kitale Main	1,091	-	600
58. Kitale Remand	264	-	93
59. Kitale Women	-	49	20
60. Kitale Annexe	122	-	105
61. Narok	276	8	86
62. Kapsabet	250	5	43
63. Kapenguria	277	2	162

64. Lodwar	252	9	200
65. Kericho	385	47	63
66. Athi River	640	-	530
67. Maralal	135	20	67
68. Rumuruti	261	-	55
69. Ngeria Farm	256	-	180
70. Kajiado	105	-	34
71. Nanyuki	333	17	46
72. Tambach	65	-	14
73. E/Ravine	70	-	23
74. Bomet	65	-	14
75. Kabarnet	79	-	23
76. Kericho Annexe	106	-	45
Total	9,808	480	5,422

COAST PROVINCE	MALES	FEMALES	CAPACITY
77. Shimo Main	2,377	-	708
78. Shimo Women	-	166	38
79. Shimo Annexe	734	-	264
80. Shimo B. I.	219	-	84
81. Kwale	317	-	29
82. Hola	84	6	153
83. Malindi	609	15	95
84. Wundanyi	202	18	55
85. Hindi	154	3	80
86. Kilifi	487	-	36
87. Voi	106	-	20
88. Taveta Remand	99	-	20
89. Manyani	518	-	626
Total	5,906	208	2,208
GRAND TOTAL	39,455	1,756	41,211
TOTAL CAPACITY -	18,953		

PROPOSED CHANGES TO THE PRISONS ACT

Section 11 of the Prisons Act which it is proposed to be ammended:-

11. (1) Any prison officer may examine anything within, or being brought into or out of a prison, and may stop and search any vehicle or person within a prison, or going into or out of a prison or, whether within a without a prison, any person who, or any vehicle which, is without authority close to a prisoner or prisoners if he has reason to suspect that such person or vehicle is carrying a prohibited article or any property belonging to the Government in use in a prison.
- (2) The senior officer on duty in a prison may refuse admission to the prison to any person who is not willing to be searched.
- (3) The senior officer on duty in a prison may order any person within a prison who refuses to be searched to leave the prison and, if such person refuses to leave, may cause him to be removed from the prison, and for that purpose may use such force as may be necessary.
- (4) If on stopping and searching any vehicle or person under subsection (1) of this section a prison officer finds any prohibited article or any property belonging to the Government in use in a prison he may arrest that person or the person on the vehicle who appears to have charge of the article or property and shall as soon as practicable cause any such person to be made over to a police officer or, in the absence of a police officer, to be taken to the nearest police station.
- (5) Any search of a woman under this section shall be made by another woman with due regard to decency.

Section 29 of the Prisons Act which it is proposed to be ammended:-

29. (1) There shall be a medical officer stationed in or responsible for every prison.
- (2) The medial officer shall be responsible for the health of all prisoners in a prison and shall cause all prisoners to be medically examined at such times as shall be prescribed.
- (3) A medical officer may, whether or not a prisoner consents thereto, take or cause or direct to be taken such action (including the forcible feeding, inoculation, vaccination and any other treatment of the prisoner, whether of the like nature or otherwise) as he may consider necessary to safeguard or restore the health of the prisoner or to prevent the spread of disease.
- (4) All actions of a medical officer, prison officer, medical orderly, or other person acting under subsection (3) of this section, or in pursuance of directions given thereunder, shall be lawful.

Section 43 of the Prisons Act which it is proposed to be ammended:-

43. (1) Every prisoner under sentence of imprisonment with hard labour may be kept to labour, within or without the precincts of any prison, in such type of employment as the Commissioner may direct.
- (2) Every prisoner under sentence of imprisonment may be required to engage in such type of employment approved by the Commissioner as the officer in charge may direct.
- (3) A medical officer may order that a prisoner shall be required to perform any labour, or any labour other than light labour, as the case may be, for such period as the physical and mental condition of the prisoner may require.

Section 48 of the Prisons Act which it is proposed to be ammended:-

48. (1) The President shall appoint a Board of Review, which shall at prescribed intervals, or at such lesser intervals as circumstances may require, review the sentences of all prisoners serving sentences of or exceeding seven years, including prisoners sentenced to imprisonment for life or to be detained during the President's pleasure, and in each case shall tender advice to the President on the exercise of the prerogative of mercy.
- (2) The Commissioner shall submit each month to the Board of Review a report on the general condition and conduct of every prisoner referred to in subsection who has during the previous month completed such period of his sentence as may be prescribed.

Section 51 of the Prisons Act which it is proposed to be ammended:-

51. (1) An officer in charge, if he is a senior prison officer or an administrative officer, may punish any prisoner found after due inquiry by him to be guilty of a minor offence by awarding him one or more of the following punishment –
- (a) confinement in a separate cell on the prescribed punishment diet for a term not exceeding such period as may be prescribed.
- (b) Forfeiture of remission not exceeding such amount as may be prescribed;
- (c) Reduction in stage, or forfeiture of privileges, or postponement of promotion in stage, or forfeiture of all or part of earnings, or removal from any earnings, or removal from any earnings scheme, or reduction in earnings grade, for such period as may be prescribed.
- (2) An officer in charge, if a subordinate prison officer, may punish any prisoner found after due inquiry by him to be guilty of a minor prison offence by awarding him one or more of the following punishments –
- (a) Confinement in a separate cell on the prescribed punishment diet for a term not exceeding such period as may be prescribed.

- (b) Reduction in stage, or forfeiture of all privileges, or postponement of promotion in stage, or forfeiture of all or part of earnings, or removal from any earnings scheme, or reduction in earnings grade, for such period as may be prescribed.
- (3) An officer in charge, if a senior prison officer or an administrative officer, may punish any prisoner found after due inquiry by him to be guilty of an aggravated prison offence by awarding him one or more of the following punishments-
- (a) Corporal punishment with a cane not exceeding such amount as may be prescribed.
 - (b) Confinement in a separate cell on the prescribed punishment diet for a term not exceeding such period as may be prescribed
 - (c) Forfeiture of remission not exceeding such amount as may be prescribed;
 - (d) Reduction in stage, or forfeiture of privileges, or postponement of promotion in stage, or forfeiture of all or part of earnings, or removal from any earnings scheme, or reduction in earnings grade, for such period as may be prescribed.

Section 52 of the Prisons Act which it is proposed to be amended:-

52. (1) The Commissioner may punish any prisoner found after due inquiry by him to be guilty of a prison offence.
- (2) An officer in charge on finding a prisoner guilty of an aggravated prison offence may, if he is of the opinion that in the circumstances of the case or because of the prisoner's character the powers of punishment he possesses are inadequate, transfer the case to the Commissioner for punishment.
- (3) An officer in charge, if he transfers a case to the Commissioner under subsection (2) of this section, shall forward to the Commissioner –
- (a) a copy of the charge;
 - (b) the record of all the evidence he has taken, including the evidence of the prisoner;
 - (c) the reasons why he has found the prisoner guilty; and
 - (d) any representations the prisoner wishes to make to the Commissioner in regard to punishment.
- (4) The Commissioner on receipt of a record forwarded to him under subsection (3) of this section may -
- (a) punish the prisoner; or
 - (b) reverse the finding of the officer in charge and find the prisoner not guilty or;
 - (c) require the officer in charge to take further evidence and submit it to him prior to his making a decision.
- (5) The Commissioner may award a prisoner one or more of the following punishments –
- (a) corporal punishment not exceeding such amount as may be prescribed;

- (b) confinement in a separate cell on the prescribed diet for such period as may be prescribed
 - (c) Forfeiture of remission not exceeding such amount as may be prescribed.
 - (d) Reduction in stage, or forfeiture of privileges, or postponement of promotion in stage, or forfeiture of all or part of earnings, or removal from any earnings scheme, or reduction in earnings grade, for such period as may be prescribed.
- (6) In this section and in section 51 of this Act, "reduction in stage" and "postponement of promotion in stage" mean the removal of a prisoner to a lower stage and the postponement of promotion to a higher stage, respectively, in the prescribed progressive stage system.

Section 54 of the Prisons Act which it is proposed to be repealed:-

54. (1) No prisoner shall be subjected to punishment diet or corporal punishment until certified as medically fit to undergo it by a medical officer or other person appointed for such purpose by the medical officer.
- (2) Punishment diet shall not be combined with labour.

Section 55 of the Prisons Act which it is proposed to be repealed:-

55. (1) Where corporal punishment is awarded the number of strokes shall be limited to a maximum of ten strokes in the case of persons of or under the apparent age of sixteen years, and in all other cases to eighteen strokes, and shall be inflicted with such type of cane as may be prescribed.
- (2) Every sentence of corporal punishment imposed upon a prisoner by an officer in charge shall be subject to confirmation by the Commissioner, who may increase or reduce the number of strokes ordered to be inflicted, or may substitute any other punishment or punishments he is authorised by this Act to award.
- (3) No sentence of corporal punishment shall be carried out until a period of twenty-four hours has elapsed from the time of the order thereof nor until a medical officer has certified that the offender is physically fit to undergo such punishment.
- (4) A medical officer may give such orders for the prevention of injury to the health of the offender ordered to receive corporal punishment as he may deem necessary, and such orders shall be carried out before the punishment is inflicted; and if, during the course of the infliction of such punishment, the medical officer shall order it to be discontinued, it shall be discontinued accordingly.
- (5) Corporal punishment shall not be inflicted upon any female prisoner, nor upon male prisoners under sentence of death, nor upon any civil prisoner.

Section 72 of the Prisons Act which it is proposed to be ammended:-

72. (1) The Minister* shall, from time to time, appoint by notice in the Gazette fit and proper persons to be visiting justices for each prison.
- (2) The District Commissioner, the resident magistrate and all administrative officers in any district in which a prison is situate shall be ex officio visiting justices of that prison.
- (3) A visiting justice may at any time visit a prison in respect of which he is a visiting justice.
- (4) A visiting justice may inspect the several wards, cells, yards, punishment cells and other apartments and divisions of the prison, inspect and test the quality and quantity of the prisoners' food, hear the complaint, if any, of any prisoner, and question any prisoner or prison officer, and shall ascertain so far as possible whether this Act, and the rules made thereunder, and the prison standing orders, are adhered to, and shall call the attention of the officer in charge to any irregularity that may be observed in the working of the prison or in the treatment of any prisoner confirmed therein, and shall exercise and perform such other duties as may be prescribed.
- (5) The visiting justices to any prison may appoint a chairman and may act as a Board of Visiting Justices and may, at the end of each year or at any other convenient time, render a report to the Minister on the state of the prison to which they are visiting justices.

Section 73 of the Prisons Act which it is proposed to be ammended:-

73. (1) A Minister or a judge may at any time visit any prison and exercise all or any of the powers of a visiting justice, and may enter any observations he thinks fit to make in reference to the condition of the prison and the prisoners, in a visitors' book to be kept for the purpose by the officer in charge; the office in charge shall inform the Commissioner of any observations so entered in the visitors' book.
- (2) Every justice of the peace shall have the same powers as a Minister or a judge in respect of any prison within the area of his jurisdiction.
-

Appendix Three

TRAINING FORUM'S KEY RECOMMENDATIONS

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August 14, 2002

Commissioner Kamakil
Commissioner of Prisons
Magereza House
NAIROBI

Dear Commissioner Kamakil

RE: Prison Officials Human Rights Training Workshop Report

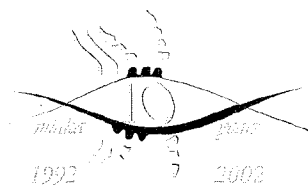
The Kenya Human Rights Commission is delighted to submit for your information and study, the report we compiled following a workshop we facilitated in March at Eldoret. In attendance were 50 officers and wardens from the Eldoret GK Prison.

The four-day workshop provided a uniquely invaluable opportunity for Kenya Human Rights Commission to interact freely, for the first time, with prison officials. This engagement was extremely productive and served to clarify misunderstandings that both KHRC and prison officials have had about each other.

To make the product of the workshop utilitarian, we largely employed the techniques of problem solving, case studies, and simulation/role playing and practical exercises. This way, the workshop came up with practical recommendations in areas that were identified as critical for the improvement of both the prison officials' rights and those of prisoners.

I have taken the liberty of highlighting just a few of those in the belief that these can be addressed in the short-term at the institutional level while the others need more actors, and/or policy/legislative changes and resources to be acted upon.

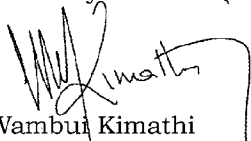
It is our hope that you will find the report useful. The Kenya Human Rights Commission would be delighted to take up on recommendations that call for training and advocacy and together with your officers develop concrete interventions. I will be following up with a call to request a meeting for this purpose.



Finally, let me reiterate that we are encouraged that you are welcoming groups such as ours to work with you and we happily note that you recently issued a circular reminding prison officials that violations of prisoners' rights is a criminal offence and that those found to have violated or compromised the rights of prisoners or offenders will be subjected to criminal proceedings. This is a step in the right direction.

On behalf of the KHRC, I wish you all the best as you embark on the arduous task of opening up prisons and improving both the officers' and prisoners' rights. We assure you of our support.

Sincerely



Wambui Kimathi

Programs Coordinator/Deputy Executive Director

A BRIEF OF THE PRISON OFFICIALS HUMAN RIGHTS TRAINING WORKSHOP, MARCH 18TH -22ND AT ST JOHN THE BAPTIST CENTER, ELDORET.

The workshop was hosted by Shelter Yetu and facilitated by Kenya Human Rights Commission. Fifty (50) officers and wardens from the Eldoret GK Prison participated.

Though the KHRC has had a prisons project since 1996, this was the first time it was engaging constructively with prison officials outside the Prison Headquarters. It was therefore an invaluable opportunity to meet on-the-ground officers who do the difficult job of running the resource strapped prisons.

From the first instance, the prison officials expressed disappointment that for a long time human rights groups have focused all attention on prisoners neglecting the fact that prison officials have rights too and that they worked in difficult circumstances. The KHRC acknowledged that hitherto most of their work has been prisoner-focused but only because there has been no/little engagement with officials to enable the organization to take up the latter's issues in a programmatic way.

It was therefore clear that this was going to be a forum in which the two bodies would be seeking to deepen the understanding of how each worked, the challenges each faced in their work and exploring whether the two could work together to address areas of mutual concern and benefit.

The key reference materials were the Prisons Act, The Standard Minimum Rules for the Treatment of Prisoners, the Kampala Declaration on Prison Conditions in Africa (1996) and other best practices and principles.

The ensuing brief identifies a few areas for the Commissioner's attention chiefly because they are of an institutional nature and can be addressed internally i.e. without inviting other actors or change of policy/legislation.

1. **Officers housing:** Currently most housing facilities are in dire conditions of disrepair and are overcrowded. Recommendation: that prison labour be used to rehabilitate these houses as longer-term solutions are sought.
2. **Promotions:** That academic qualifications and competence be the key considerations for any promotions. This will encourage the entry of more qualified Kenyans to the Department while also dealing with the problems associated with promotions based on nepotism, ethnic preferences etc.

3. **Working Hours:** That working hours for prison wardens be worked out in such a way as allow each officer time off if they work on night duty. They strongly recommended adopting the practice used by medical practitioners.
4. **Counseling:** That this service be availed to officers. They expressed the concern that given their 'confinement' within a prison environment and their constant interaction with prisoners, they are predisposed to unique forms of stress that counseling could help deal with.
5. **Protective Gear:** That each prison facility should immediately acquire modern body search gadgets to avoid having officers conduct body search with their bare hands. They said that this not only undermines their dignity but also does the same to the prisoner.
6. **Prisons Act:** As a matter of priority, the department spearheads an effort to review the Prisons Act in order to make recommendations to the next parliament to do away with discriminatory clauses within it and also with archaic rules and regulations that it stipulates.
7. **Internal governance:** That participation and self-expression by junior officers should be encouraged. Forums in which such officers can make contributions and participate in making proposals about general running of the prison facilities in which they work should be made mandatory. Their exclusion breeds dissatisfaction.
8. **The Charter: To monitor and evaluate the usefulness of such training, the participants developed a charter, which they undertook to uphold. Four items were agreed to:**
 - That the beneficiaries of this training should be honest and work as required by law.
 - That they will respect, protect and promote human rights by avoiding the use of abusive language when dealing with prisoners and fellow officers. That they will report violations to the responsible authority, and will expose violators during staff meetings and other collective forums.
 - That they will uphold human dignity by promoting own respect, listening to the views of others be they fellow officers or prisoners.
 - That those in positions of authority will encourage prisoners and staff to be hardworking and will ensure their recognition by e.g. recommending them for promotion in the case of staff or allowing more leisure time in the case of prisoners etc.

On its part, KHRC undertook to do the following:

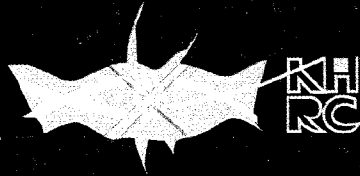
1. Send the workshop report to all participants
2. Use the information gathered to lobby for change in the prison department
3. Not to avail the workshop proceedings to the press until this the report has been shared with Magereza House
4. To assist officers whenever they sought information from KHRC

We have also attached, for your information and study, the full report. We would be happy to have a session with your officers to discuss this report and the way forward.

Kenya Human Rights Commission
August 2002

"A prison is a different Kenya. Another Kenya. When inside, you just see the sun move across the sky not knowing where it has come from nor where it is going. A single day feels like 10 Years. I ask you, what kind of country do you think is like that?"

***Hesbon Mwangi Ng'ang'a
Ex-prisoner, Naivasha Prison***



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