

**Legislative references of the discipline which regulates the phase of the enforcement of the sentence in Kenya (especially the penitentiary treatment of prisoners and the application of the alternatives to the custody).**

Once a person has been convicted under Section 63 of the Laws of Kenya (The Penal Code) or under any other law that creates an offence and provides for punishment, then the Prisons Chapter 90 of the Laws of Kenya shall apply relating to prisons, youth corrective training centres, extra mural penal employment, discipline, powers and duties of prison officers; and for matters incidental thereto and connected therewith.

Section 24 of the Prisons Act empowers the Minister for the time being in charge of prisons, to declare any building, enclosure or place, or any part thereof, to be a prison for purposes of this Act, and likewise declare it not to be a prison.

This of course creates a possibility where the buildings declared to be prisons may not actually be fit to be prisons. Indeed, the current prison in Kenya are holding more than three times their expected capacity, and deaths have accordingly been experienced in Kenyan prisons due to congestion.

Official statistics indicate that there are over 50,000 inmates in the country's 92 prisons, which are only supposed to house 16,000.

Most of the prison facilities date back to colonial times, with a few built soon after independence when the population of Kenya was less than 10 million.

Congestion in jails has also been attributed to the high number of pending court cases, with some 60 percent of prisoners being on remand.

Section 25 empowers the Commissioner of Prisons to move prisoners to a temporary prison where he/she feels that the current number of prisoners in any particular prison is too high, or due to any other reason such as disease.

Section 28 provides that wherever there is a woman prisoner, there shall be a woman prison officer who shall have care and superintendence over women prisoners including their discipline.

Section 29 provides that there shall be a medical officer in each prison who shall be responsible for the health of the prisoners in that prison.

Often times however, it has been noted that there are insufficient medical facilities within prisons.

Indeed, many prisoners have died in our prisons due to illness.

Meru Prison facility was visited last month by journalists who found 73 prisoners crammed in a cell meant for 20.

This situation was repeated in other cells. The jail was built to accommodate a maximum of 500 inmates, but now houses 1,600.

In the absence of proper sanitation, buckets of waste had been hung on the cell walls and doors. Unhygienic conditions and overcrowding have made outbreaks of disease common at the prison, where inmates also had open sores on their legs and hands.

In 2004, five Meru inmates were found dead in their cell. Another prisoner died on the way to hospital, while 23 others were admitted to Meru District Hospital in a critical condition.

Prison officials blamed the deaths on suffocation; but, a police report indicated that some of the bodies bore signs of injury. A later investigation by an independent body revealed that most of the deceased had died from head and chest injuries, others from strangulation.

Prisoners later indicated that those who died had refused orders to share a small cell which was already occupied by other inmates. The prisoners said this had enraged the warders, who beat those who disobeyed to death.

It is likely that because of the larger number of inmates vis-à-vis that of personnel, security at the prisons is being compromised. The warders and other personnel feel over-stretched, and violence may occur.

In Kenya, prison reforms must address retraining of prison officers. The training they have is one that was inherited from the colonial masters. It is dehumanising; it is one that allows guards to clobber inmates, to make them squat, and strip them naked.

Prison reforms, championed by the vice president, have been underway since 2003. Inmates are now allowed television sets, mattresses and new uniforms as well as buses for transportation. Previously, they were transported in caged lorries.

Under Section 30 of the Act, an infant child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessaries at public expense. However, such child shall only be permitted to remain in prison until it attains the age of four years or until arrangements for its proper care outside prison are concluded, whichever shall be the earlier.

Under Section 43 of the Act, 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.

Under Section 46 of the Act, criminal prisoners sentenced to imprisonment, whether by one sentence or consecutive sentences, for a period exceeding one month, may by industry and good conduct earn a remission of one-third of their sentence or sentences.

Section 49 of the Act empowers the Commissioner to release a person serving a sentence of four or more years, on parole, within three months of the date such a person serving such sentence is due to be released.

Section 52 of the Act empowers the Commissioner to punish any prisoner who he finds guilty of a prison offence by confinement in a separate cell, subjection to a punishment diet, forfeiture of remission and forfeiture of any earnings.

Section 55 of the Act prohibits corporal punishment to be given against a female prisoner, or a upon a prisoner under a sentence of death, or upon any civil prisoner.

Section 66 of the Act empowers the Minister to declare any building, enclosure or place to be a youth corrective training centre.

Under Section 68 (IA) of the Act, the Commissioner is empowered to order a prisoner whose remaining sentence does not exceed six months to report to an authorised officer of the district in which his home is situated in order to conduct public service for the duration of the remainder of the sentence.

Under Section 72(4) of the Act, a visiting justice may inspect a prison and therein the wards, cells, yards, punishment cells, test the quality and quantity of prisoners food, hear complaints, question the prisoners and prison officers, ascertain whether the prison standing rules are being complied with, and call the attention of the officer in charge to any irregularities.

Finally, some comments on the Kenyan criminal code.

This is codified in the Criminal Procedure Code Chapter 75 of the Laws of Kenya which is very extensive.

The interesting highlights are that evidence, whether legally or illegally obtained, is admissible; a person is presumed to be innocent unless proven otherwise; the standard of proof is beyond all reasonable doubt and a person may be arrested with or without a warrant

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Submitted by the National Centre for Research on White Collar Crime, Nairobi (NCRWCC) [ncrwcc@gmail.com](mailto:ncrwcc@gmail.com) in collaboration with Dott. Luisa Ravagnani University of Law - Criminology-Brescia, Italy.