

THE KENYAN PENAL SYSTEM -- A

CASE FOR RE-EXAMINATION

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## INTRODUCTION

This dissertation is an attempt to critically investigate the Kenyan Penal System. The Author retains a firm conviction that the Penal System is intended to control crime and deviance using various methods discussed in the dissertation. The first Chapter deals with crime and causation. The intention is to analyse the causes of crime in society.

This gives way to the second Chapter which looks at the current aims of the penal system. The third chapter is a critique of the system based strongly on contrasting the causes of crime and the current corrective machinery. As will appear, the system cries for change and hence the Author found his task would be incomplete without suggesting areas and types of reform.

When the topic was chosen, the writer intended to adopt a more field oriented approach. This, regrettably was made impossible particularly by lack of co-operation from the officials of the prison department. Efforts to interview prisoners or obtain addresses of ex-prisoners were futile in the face of the constant reply to the effect that this was a 'sensitive area'. This left the author with no alternative but to adopt a more concentrated library approach which in his opinion is not the best approach for a subject of this nature. The little material gathered in the field is used exhaustively and it is hoped satisfactorily.

"The designation and Social Isolation of relatively small group of victims permit the guilt of others to be symbolically disposed, the Isolation of the criminal class and its social ostracism permit the reduction of social class hostility by deflecting aggression that could otherwise be directed at those with status, power, reward and property. The designated criminal then must not escape his sacrificial role, and institutional record keeping maintains his identity!"<sup>1</sup>

## CHAPTER ONE

### CRIME - THEORIES OF CAUSATION

The legal definition of crime is an intentional act or omission in violation of law without lawful justification, to which a penalty is attached. This definition of crime does not enable us to identify what particular act or omission constitutes a crime. Lord Atkin commenting on the definition of crime remarks:-

"The domain of criminal jurisprudence can only be ascertained by examining acts declared by the state to be crimes, and the only common nature they may be found to possess is that they are prohibited by the state and that those who commit them are punished."<sup>2</sup>

The contention here is that one may not necessarily find that acts or omissions labelled as crimes bear certain peculiar qualities that can be attributed to them. Roscoe Pound noted the law is always changing, and as it changes certain acts that were previously not crimes became crimes and in certain cases those acts that used to be crimes when committed cease being so. A national parliament can according to what it sees as the needs of society legalise what is illegal and vice versa.<sup>3</sup> The complex relationship between law and morality belongs more to the realms of jurisprudence, suffice it to say that the law and therefore crime generally reflects the minimum standard of societies morality, using it and by threat or punishment, it prescribes *Cond.*  
*Marxists school* regard law as an instrument of the bourgeoisie for the suppression and exploitation of the proletariat. In this chapter I shall confine to the Issue of Crime and its causation.

The question 'what causes crime' has many answers perhaps because crime and deviant behaviour in general are common occurrences among human beings, nearly everyone has his own explanation of causation. All theories of crime causation may be categorized into two main groups. In first group are theories which point to the inside of the individual. These in the first group, are commonly referred to as "theological - biological". While the second group is that of the "socio-cultural." Demonology is an explanation put forward by religious people they hold that man as created by God is 'good', and it is when he is possessed by the Devil that he begins to do bad things. The belief in demonology gave rise, in Europe to subjection of criminal to isolation in confinement so that the criminal could have quiet time to read the Bible and reflect on his evil ways. Thus prayer was the prescribed cure of possession by the devil. The second theological theory revolves round the notion of the original sin - a central element in christian theology. It states simply put that with the fall of Adam from the Grace of God by his disobedience he sinned and as a result, all descendants of Adam became sinners. Thus sin and crime became hereditary traits of all human species. Man is born a sinner (a criminal in this case) and he can only regain his Grace through the blood of Jesus Christ through baptism with not only water but with the holy spirit. It is in this sense that crime deviance and sin become human characteristics, which differentiate man from the rest of the animal kingdom. Salvation by the Grace God is only possible through belief and baptism. But experience has shown that belief and baptism are not enough, for some of the great criminals known all over the world have been born christians. The problem with the original sin explanation of crime is to see how murder, rape, forgery, drug addiction, corruption and so on are related to the eating of the fruit of

the forbidden tree. No present day criminologist considers the concept of original sin as of value in explaining criminal behaviour. Related to the explanation of criminality of terms of the original sin, is the doctrine of the free will. It states that as a result of Adams deviant behaviour, man fell from Gods Grace but God being so merciful, he sent his only son to come and die for man's sins so that the later can regain his divine Grace. God also equipped man with the faculty of rationality, i.e. - he gave man the ability to choose right from wrong man has a will which <sup>he</sup> can use or mis-use. To do evil is to mis-use the God given faculty of free will. The free moral agent theory, the then was only a metaphysical elaboration of the primitive interpretation of diabolical possession. The fallacy with this doctrine is that it does not take into account the role family, the neighbourhood and the community in which one is reared play in moulding the individuals free will. Free will, like personality is both a product of heredity and ecology. Secondly, the doctrine does not help us to explain international crime rates. It cannot be demonstrated that citizens of country, A. with a low crime rate are more properly capable of using their free wills than citizens of country B whose crime rate may trable the rate of country A. Both explanations of the original sin and free will, like that of demonology do not take into consideration the role of cultural values in the violation of criminal and divine laws and general deviation from social norms.

With the rise of modern biology it was natural that more advanced thinkers should give up these theological and metaphysical inter-pretations of the consation of criminal action and come to consider physical causes of crime. This led a distinguished Italian physician and anthropologist Cesare Lombroso (1836 -1909) to work out a theory of the criminal based entirely on physical



criteria. Briefly put, to Lombroso a criminal was a kind of man more primitive and savage than his civilized counterpart. He held that the typical criminal was characterized by certain definite physical stigmata, such as, among others, a low and slanting forehead, long ear or none at all, a large jaw with no chin, heavy supra orbital ridges, either excessive hairness of the body or an abnormal absence of hair and extreme sensitivity or non-sensitivity to pain. He was brought to these conclusions by an observation of the large number of abnormal physical types in the Italian prisons of his day.

This characteristics of the criminal man Lombroso held, were also the physical traits of primitive man, and looked upon the criminal as a biological 'throw-back' to a primitive type. The accuracy of Lombroso's theory is denied almost in total by many present day thinkers. The chief valid criticism of his theory is that, it is hardly an explanation of the entire criminal class it does not account for the presence of a relatively perfect physical specimens in our own prison populations or for the extensive manifestation of his classic stigmata among law-abiding citizens. Lombroso's theory was further disapproved by another physician, an Englishman by the name of Charles Goring who made a comparative study of several thousand non criminals with thousands of criminal and found no significant difference between them.

Along with heredity theories went the theories of race, intelligence and genetic explanations in general. Thus in the United States and Europe, it was held that low intelligence is responsible for deviant and criminal behaviour among black people. Therefore, Afro-Americans in the United States have a big crime rate because of the racial factors relative to low intelligence. This kind of reasoning if it can be called reasoning at all is a obvious blatant racism which some white scholars advance to

explain the black crime problem in that country. They ignore the differences in opportunities, the effects of being a minority in these communities.

Culture conflict as a theory of criminality was first formulated by Professor Thorsten ~~Selling~~<sup>6</sup> in late 1930s. The theory of culture conflicts is based on the contradictions or conflict of conduct norms confronting persons in certain situations. Where cultural norms <sup>Conflict</sup> with each other because of cultural mix and contact some of the behavioral patterns may be defined as deviant by the superior cultural group and thus be defined, as crimes. Culture conflict is also a product of social disorganization resulting from rapid social change. New values imposed on old values create conditions under which behaviour can be variously defined. Colonialism, imperialism, conquest and facilitated communication lead to cultural contacts with inherent mix up of values and definitions of social situations. Laws are supposed in general, to reflect the basic social values of the society, conflict in values of different cultures inevitably leads to one set of values, usually the subordinate one, being defined as deviant. This was and still is the situation in colonized <sup>Africa</sup>. Many countries have laws that were made purposely to benefit the colonialists which make no sense in present day independent Africa. It must be remembered that any criminal law that conflicts or appears to conflict with the basic social values of the people will always be violated, improperly investigated and not fully enforced. Cultural expectations and definitions are terribly important in the administration of criminal justice. This is perhaps why bigamy,<sup>7</sup> a crime which has its origins in ecclesiastical law involving the breach of marriage vows which has little of any support from the social values of African people and has remained in the books without being enforced.

Social-Cultural theories put forward to explain crime causation are in my opinion the most persuasive and account for the causes of the largest proportion of crimes. Poverty as a cause of crime is what may be called the economic explanation of criminality. It is true that certain crimes may be committed by certain individuals because of society's failure to provide them with the basic necessities of life but a contention that poverty per se' can be held as an explanation for criminality is fallacious. There are in our society extremely poor people who are law abiding and well-off persons who engage in crime. Thus poverty is not an explanation for criminality, though it tends understandably to be a characteristic of criminals.

In some societies, it has been demonstrated that the poor tend to predominate criminal populations not because they are more criminal than others but because of differential treatment that they receive from the Police, the courts and society. The poor are more likely to be arrested, charged, found guilty and imprisoned than affluent members of the same society'. Because they do not command respectability, they have no friends in the government, or in the legal system who can speak to the responsible officials on their behalf, and also because of their relative economic weakness, they cannot afford to bribe the police or judges or to hire a competent advocate to represent them. The poor it must be remembered are easier to apprehend because of their relative immobility and the relatively low levels of education gets them involved in the kinds of situations which are easy to investigate. A theory closely related to this on poverty as a cause was presented by criminologists Richard Clower and Lloyd Ohlin.<sup>9</sup> They attempted to explain crimes in terms of differential opportunity structure, they state that individuals

may turn to criminal patterns as an alternative when access to most modern societies put a very high premium on material success, the form of education by which education opens the door to these success status symbols; but at the same time the same societies fail to make adequate institutional means for the average person, especially the poor and slum dweller to achieve these goals. These slum dwellers also want Radios, Cameras, Cars, Fridges, Beer and other modern things. What they do is take the alternative route in order to achieve the same goals of success and those alternatives means are criminal because they are illegitimate. This differential opportunity is perhaps most manifest in societies that have produced distinct classes. In Nairobi for example Muthaiga, Kileleshwa, are for the top class, Madaraka, Jamhuri and South 'C' are retained for the middle class while the wretched of the earth, live in Mathare, Eastleigh and Kariokor. It all started with the 'Bwana' but he is long gone by such distinct classes of potential sources of antagonism, time will come when the slum dwellers will develop an anti-society behavioral attitude and when this happens, 'happiness and peace will have jumped out of the window.'<sup>9</sup>

The theories that we have discussed sought to explain crime and its general causation. There are however, certain causes of crime which explain it not as a general societal phenomenon but crime in certain particular cases. This include, mental disorder in which case the offender has committed legally harmful behaviour under circumstances in which he does not know the nature or quality of his act or does not know right from wrong.<sup>10</sup> There are also crimes committed as a result of provocation. Provocation as an explanation of deviant and criminal behaviour is related to cultural values but it can hardly be used as an explanation for the most typical of crimes and deviant behaviour.

Only in situations when emotions are most likely to be aroused can provocation be a partial explanation of such cases. As must be obvious by now, theories of crime causation stretch into long distances of human history. What must be equally obvious is that the criminal is a product of society. What society needs as shall be shown in later chapters are solutions which aim at the root causes of crime in society and not indiscriminate sentences.

CHAPTER ONE:

FOOTNOTES:

1. Proprietary Articles Trade Association - v - AG Canada.  
(1931) A.C. p. 324.
2. Roscoe Pound - Law and Morality.
3. Psalms Chapter 14 verse 1
4. Cesare Lombroso: L'uomo Delinquente (The criminal Man)
5. Thorstein Sellin:- Culture conflict and crime.
6. Section 171 Kenya Penal Code Cap. 63.
7. Marshall Clinnard - Sociology of Defiant Behaviour.
8. Richard Clower Lloyd Ohlin.
9. Tibamanya Mwona Mushanga 'Crime and Deviance' .p. 48.
10. M'c Naghten Rules.

AIMS OF THE PENAL SYSTEM

PUNISHMENT

The subject of punishment, in the sense attaching legal penalties to the violation of legal rules, has always been a troubling moral question. The trouble about it has not been that people disagree as to whether or not punishment is an acceptable institution. Only a few have rejected punishment entirely, which is rather surprising considering all that can be said against it. The difficulty is with the justification<sup>a</sup> of punishment, various arguments have been given for it by moral philosophers, but so far none of them has won any sort of general acceptance, not justification, is without those who detest it. For our purposes we may say that there are two justifications for punishment. What we may call the retributive view is that punishment is justified on the grounds that wrong-doing merits punishment. It is morally fitting that a person who does wrong should suffer in proportion to his wrong doing. That a criminal should be punished follows from his guilt, and the severity of the appropriate punishment depends on the depravity of his act. The state of affairs where a wrong-doer suffers punishment is morally better than the state of affairs where he does not, and it is better irrespective of any consequences of punishing him. What we may call the utilitarian view holds that on the principle that by-gones are by-gones and that only future consequences are material to present decisions, punishment is justifiable only in reference to the probable consequences of maintaining it as one of the devices of social order. Wrong committed in the past are, as such not relevant considerations for deciding what to do. If punishment can be shown to promote effectively the interest of society it is justifiable, otherwise it is not. whatever one may

view as ~~the~~ <sup>positio</sup> ~~of~~ punishment in human society, the truth is society has from time ~~immemorial~~ <sup>immemorial</sup> regulated its affairs with punishment as one of the tutorial methods. We shall now look at the aim of punishment in present day society.

### AIMS OF THE PENAL SYSTEM

Theories of punishment, have as the means of punishment and the laws themselves, changed from age to age. One of the initial developments of penal theory is towards the idea that punishment should fit the crime. Today, however the trend is towards an increasingly individualistic approach to sentencing as distinct from punishment, with the object of arriving at a sentence which is appropriate to the individual. Nowadays sentencing has five <sup>ti</sup> identified aims - i.e.

- (a) Retribution.
- (b) Individual deterrence }
- (c) General deterrence }
- (d) Protection of the public
- (e) Rehabilitation
- (f) General Cynicism.

### RETRIBUTION

The notion of retribution is to be found in the idea that punishment should fit the crime or that the offender should <sup>get</sup> his just deserts. It is sometimes used in the sense of meaning revenge. Discussing retribution.

Sir Fitzjames Stephens I had this to say,

"The punishment of common crimes, ..... may be justified



on the principles of self protection, and apart from any question as to their moral character. It is not however, to show that these acts are forbidden and subject to punishment not only because they are dangerous to society and so ought to be prevented, but for gratifying the feeling of hatred, call it revenge, resentment or <sup>what</sup> you will, which the contemplation of ~~it~~ it will follow that criminal law is in the nature of a prohibition of the grosser forms of vice, and an emphatic assertion of the principle that the feeling of hatred and desire of vengeance above mentioned are important elements of human nature which ought in such cases to be satisfied in a regular public and legal manner."<sup>1</sup>

But whereas the concept of collective revenge is not one which can be regarded as desirable for civilized society, retribution in the sense of reprobation or denunciation still perhaps has a relevance in modern penology. In this way the sentence permits society represented by the sentencer, to indicate its disapproval of the breaking of its laws or more directly the persistence in conduct which it has prohibited, by a punishment commensurate <sup>a</sup> with the gravity of the offence. The denunciary aspect of his retribution was emphasized by Lord Denning<sup>2</sup> in the expression of his belief that the ultimate justification of any punishment was not that it was deterrent but that it was the emphatic denunciation by the community of the offence. The idea seems to be that it is kind of ritual in which the offender has to be sacrificed - and who better since he is responsible for the offence.

DETERRENCE:- INDIVIDUAL AND GENERAL

Whereas retribution can be said to be mainly concerned with past conduct, deterrence is directed towards future behaviour. Bentham states;<sup>3</sup>

"General prevention ought to be <sup>the</sup> chief end of punishment as it is its real justification. If we could consider an offence which has been committed as an isolated fact, the like of which would never occur punishment would be useless. It would only be adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent but also to all those who have the same motives and opportunities for entering upon it, we perceive that punishment inflicted upon the individual becomes a source of security to all. That punishment which considered in itself appeared base and repugnant to all, <sup>is elevated to the first rank of benefits when</sup> it is regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety.

The object of individual deterrance is to deter the particular offender before the court from offending again and although it is always easy to distinguish it in practise from other theories of sentencing, the principle of individual deterrance can be last observed in sentences which are expressed as being designed to teach the offender a 'short, sharp lesson.' General deterrance is closely connected with the retribution theory of punishment court<sup>5</sup> proceed on the assumption that general deterrance will be achieved by fixing a sentence proportionate to the offenders culpability. The need to deter others is regarded as so pressing that it becomes the dominant consideration and the court passes

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3500

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sentence which is specially exemplary. Thus when a magistrate is faced, for example with an offender convicted for an offence common to the neighbourhood, sentences him to prison and records the reason for sending a first offender to prison as the prevalence of the offence in the area, it is an exercise in general deterrence.

The offender goes away thinking rightly, that he has been punished for what others have done. Sometimes legislation recognizes the prevalence of a particular offence and increases the penalty to increase the general deterrence, thus the penalties for hoarding, smuggling and poaching have increased in recent years.

Judicial attempts at general deterrence are very common. An example can be seen in the English Case of R-v-Barker & Hawkins where two young men under the age of twenty one had attacked police who had gone to restore order after a fight at a dance hall. The Lord Chief Justice dismissing their appeals against sentences of three years, observed. 'These are very serious crimes and it must be remembered in times of this sort that the court is not by any means solely or even mainly concerned with the prisoners themselves, but rather their object is to wipe out or stamp-out, this sort of offence.' It seems clear that the need for deterrent sentences will vary from time to time depending upon the needs of society at any one stage. Whether or not a deterrent sentence is passed will depend on the particular court's decision. It is common that the prosecution will inform the court before it passes sentence whether or not the offence is prevalent. The court will weigh the general interest of the public to reduce crime and the particular offenders interest not to receive a deterrent sentence. The issue will be dealt with in the next but it is obvious that courts have continued to use them in the supposition that they deter.

## PROTECTION OF THE PUBLIC

The objective here is simply to detain the offender and by so doing physically to prevent him from repeating offences. Its success depends upon the powers of the courts to impose adequately long sentences and upon the ability of the institutions themselves to prevent escape. The length of the detention is calculated not according to culpability or gravity or blame or to the individual or general deterrence but according to the need to protect the public and the courts estimates of the duration of this need. A justicial illustration of this theory can be found in R-V-Cave<sup>5</sup> an appeal against a sentence of six years imprisonment by a man who had pleaded guilty to four charges of indencent assault on boys aged nine to eleven, where eleven others were taken into account, was dismissed on the basis that it was too great a risk to allow him remain at liberty.

## REHABILITATION

The object here is to encourage the offender to abstain from criminal behaviour in future by providing him, for example, with social support in the form of probation, or a second chance in the form of an absolute or conditinal discharge. A sign of sane attempt on the part of the offender towards rehabilitation such as an attempt to return or pay for what was stolen or damaged or some other practical sign of repentance has often encouraged court towards leniency. IN R-V- HAMILTON:<sup>6</sup> a man aged 38 caught in the act of breaking into a shop and had fourteen previous convictions for dishonesty had his sentence of three years imprisonment varied to probation. A probation officer had said that he thought that the appelliant had a sincere wish to reform and the court thought that it was worth taking a chance in the hope that he would be diverted from continuing with a life of crime.

GENERAL CYNICISM

This is denunciation one step removed - there is it is pointed out <sup>II</sup> intense satisfaction about witnessing, demanding or contemplating the punishment of a fellow human being. The satisfaction is entirely irrational and psychiatrists are fairly unanimous that it is due to fear that we are prone to commit the same crime ourselves and that it varies proportionately to the ground we may have for this fear. So that men who may suffer from homosexual tendencies, and who suppress, them with difficulty may be the most violent in their demand for the punishment of homosexual conduct. This may oversimplify the cause of mans thirst for vengeance, but the fact <sup>remains that</sup> vengeance plays a part in our thinking and should be recognized. Men while under the influence of revenge feelings will continue to call for the execution of maniacs and if only they had the honesty to admit it many would admit it that what they would really enjoy is the slow burning of a child murderer in a market place. We all tend to think of mental abnormality in terms of 'them' (mad) and 'us' (sane), but unfortunately it is not so simple. This attitude of general cynicism is often in the penal system.

CHAPTER TWO

FOOTNOTES:

1. Sir Fitzjames Stephens - Law, Liberty and Morality.
2. 1965 Report of the Royal Commission on Capital punishment.
3. Bentham - Principles of Penal - Law p. 396.
4. 1967 Cr. App. Reports p. 74.
5. 1965 Cr. App Reports p. 448.
6. 1965 Cr. Law Reports p. 447.
7. D.A. Thomas Principles of Sentencing.
8. Keith Devlin: Sentencing Offenders in Magistrate Courts
9. Halmer and Barnes:- The Story of Punishment.
10. Tibamaaya Kwene Mushanga: Crime and Deriance.
11. Clyne: Mental illness and the objective of Punishment.

CHAPTER III

'Whenever any human group perceives a common external threat, the threat serves as unifying force. Thus inmates groups in coercive organizations are highly cohesive, exhibit high levels of solidarity, and possess a normative system that is in diametric opposition to staff values - inmates band together in opposition to the prison and its administration' 1

The issue of the committal narrant and its execution by the convicting magistrate or judge marks the entry into the penal system. In this chapter we set out to investigate whether the current corrective machinery serves the purpose it is intended to - how effective the prison system is as a corrective institution. The aims of the prison system in Kenya were summed up as follows:-

'the Kenya prison Service is devoted to transforming self-willed outcasts into useful citizens, to protecting society and to deterring the weak from the world of crime; with firmness and fairness aimed at rehabilitation and deterrence' <sup>2</sup>

It is therefore the duty and responsibility of the prison service to bring back to society the prisoner as a better person. In prison the offender is deprived of liberty sometimes for years. This is regarded in essence as a deterrent measure but the increasing tendency was noted earlier to shift emphasis on reform and rehabilitation - teaching him a legitimate trade and the habit of steady work, to prepare him for his ultimate return to society as a respectable citizen. <sup>3</sup> However regarded as an attempt at reforming a custodial sentence at the outset presents two inescapable problems. The first is the difficulty, under conditions so unlike those of real life, of telling whether and if so when, reformation has been achieved conformity under the strict regime of a prison is no indication that the prisoner has become law abiding. The second is the unwanted by-products of custody. The inmate loses his job, is separated from his family and is compelled to associate with other offenders. In the last six years, Kenyas prison population was reported as follows:- <sup>4</sup>



CONVICTS	1973	1974	1975	1976	1977	1978
MEN	40,921	45,243	52,454	59,356	57,458	50,496
WOMEN	5,769	6,368	6,927	9,316	8,242	6,728

The report further stated that in 1978 the staff to prisoner ratio stood at 1:5 and that in the same year 141 prisoners died of natural causes! A quotation from Adrew Saikwa former commissioner of prisons will give a good indication of the kind of life that goes on behind prison walls;

'it is a generally accepted principle that an idle mind is the devils workshop' <sup>5</sup>

However even in the best run prisons, prison work is seldom more than a way of reducing the economic burden which prisons represent. The prisoners therefore grow food to reduce expenses and idleness. It is submitted that this does not reduce his criminality. If he is a rapist, sending him to ~~grow~~ grow cabbages will not reduce his sexual drives. This may be partly justifiable in cases of people who had no regular jobs, but what of inmates who are professionals - lawyers, doctors, accountants, businessmen etc. A professional already has his trade and he is not going to be taught another one under the cloak of reform. It is perhaps all too well to say that in order to help the prisoner come to terms with himself he must be interested in something outside himself, this is to give him work, but not everybody needs this work and so it fails this is summed up as follows:

'...acceptance of an inferior role, accumulation of facts concerning the organization of the prison, the development of new habits of eating, working, sleeping, the adoption

of local language, the recognition that nothing is owed to the environment for the supplying of needs and the eventual desire for a good job are aspects of prisonization which are operative for all inmates' <sup>6</sup> (emphasis mine).

Whatever word we use to describe the aim of the system, it is assuming too much when we hope to treat a man who kills another that he finds sleeping with his wife.

According to rule 3 C C) of the Prisons Regulations <sup>7</sup> the treatment handed out should be such as to encourage their self-respect and personal responsibility so as to build their morale, to inculcate in them the habit of good citizenship and hardwork, to encourage them to lead a good and useful life on discharge. Rehabilitation here is based on the premise that there is something wrong in the offender that needs to be corrected and treated like the man who kills his wives' lover, or one who is convicted of assault after fighting over his girlfriend in a dance-hall or someone who burns his fathers house after being disinherited, I should think they already have enough self-respect to make them want to prove it in this way. The prison will not help them cultivate any - it may even kill what they had. This task is not made any easier by the standard of education of the personnel engaged in this task. A research at Langata Prisons Staff Training College revealed that the requirement is a K.J.S.E. and it was raised to this only in 1976 and that in the posting of this personnel after training no regard is paid to one's area of origin. This should be viewed in the light of the following quotation;

'Those engaged in rehabilitation should be people who are always there and thoroughly understand the prisoners, people who understand his background outside and his behaviour inside; people who can talk the same language! <sup>8</sup>

None of these requirements can be answered in the affirmative considering the current standard of personnel in the prisons service. The period of training lasts only for a period of six months to one year and the emphasis as revealed by the syllabus is on physical ability to handle prisoners and not psychological administration.

Another technique used in rehabilitation of the offender is spiritual ministering. A. K. Saikwa says that it is hardly possible to achieve any meaningful rehabilitation without giving spiritual instruction its rightful place. That the essence here is to adjust the mind and soul of the offender. He quotes the new testament;

'For from within the heart of man come evil thoughts, fornication, theft, murder, adultery, deceit...all these come from within and defile man! 9

In recognition of this spiritual need therefore, the Prison Act provides for chaplains and catechists whose main duty is to minister to prisoners.<sup>10</sup> On the success of this method the prison annual report 1974 records that there was peace and calm in the prisons due to the number of offenders who had responded to spiritual administration. The 1978 report records that;

'The protestant chaplains alone held 169 open air meetings and distributed 18,927 Bibles to prisoners. They baptised a total of 1,452 prisoners and confirmed 2,003! 11

The report does not tell us in which language the Bibles were written and whether they could be or were read to the prisoners. One wonders how effective this method is to the criminal with a determined mind and not ready to succumb to escapism which I think the technique is all about. A closer glimpse at the Prison Act Regulations which highlights the internal working of these institutions will enable us to gauge their effectiveness.

Efforts are made to palliate the effects of separating the prisoner from his wife and family by allowing them to visit him. Rule 54 of the prisons rules, even provides for transfer of prisoners to the nearest station to his home in order to enable him to receive visitors. During such visits, Rule 57 provides that an officer shall be within hearing distance and in case it is a language he does not understand, the officer shall have an interpreter with him. Do these visits prevent family and marriage breakages? The obvious answer is no. Why can't a man be afforded the privacy one deserves and which is valued so much? In many instances the prison nearest home is actually not near hence visits are rare and the detachment is more intensive. The prisoner becomes a forgotten man.

The inmate has no choice as to what he eats or does. On entering prison he parts with his civilian clothes which together with any valuable items he might have, are stored in the safe S. 35 and Rule 46 - and he is then dressed in prison uniform. He loses his dignity, position and identity as he is ordered around and required to comply with many prison rules, unlike the world outside. He is no longer identified as a person but as a number. Orders characterise his life which he no longer controls.

S. 21 prohibits communication of officers with relatives of the prisoners. This is unfair especially when it could be in relation to a prisoners' health or where he is stationed. Rule 58 prohibits visits from ex-prisoners. This can only be a clear indication that claims to rehabilitate the offenders, does not trust its result. Otherwise why should ex-prisoners be barred from the prison. If the rehabilitation ideal works, then for all practical purposes, the ex-prisoners should be treated as any other citizens without a prison record.

S. 28 provides for the segregation of men and women prisoners. One wonders whether this is necessary. The offenders are being rehabilitated for a society of both men and women and not one of segregation - so why not let them mix?

After being exposed to this kind of life in prison, no doubt, the offenders initiative is crushed. He has his life managed without his opinion being sought. When he comes out, he feels like an outcast. He is altogether a stranger. There is such a big gap that cannot be ignored. To all, he is an "ex-convict" hence interference with his job and self respect. Instead of gaining any respect in the prison, he lost what he had. The following quotation puts it more aptly

'...in prison men are trained in more sophisticated crimes at the states' expense..... the prison environment itself has a downgrading effect on human beings; initiative is crushed, men become embittered and filled with hatred of society!'<sup>12</sup>

The society he returns to does not believe he has been 'cured' to them he is unfit for life outside an institution. With a prison record behind his name, he is a good for nothing fellow. Nobody is ready to trust him.

In the end, the high sounding ideal of rehabilitation did not work and it need never hope to. The main reason being that the offender is treated outside the free society, under conditions of captivity. He ends up the victim of an expensive and no good system.

'If you send someone to prison, the prison does what it can and then the man comes out and we start again outside' - Marlin Davies. 'Prisoners of Society!'

In Kenya the Kenya Prisoners Aid Association is the sole voluntary organization which specifically deals with the after-care of prisoners when they leave prison on release. The K.P.A.A. recognizes the need for extensive after-care work especially for the persistent offender who becomes less and less able to manage outside life after repeated terms of imprisonment.

This society (The K.P.A.A.) according to its 1978 Report faces financial handicap. In 1974, it received a grant from the government of only £2,000 to supplement its annual £50,000 annual overhead expenditure. It is the wish of its executive secretary that it is the time that the state should take over the welfare of ex-prisoners if the rate of recidivism is to be reduced in the light of declining public interest. The executive secretary needs to be told that society will not allocate its scarce resources to this aspect of correction unless there are demonstrated results in terms of quantitative improvements in employment and reductions in recidivism. As yet, the conceptual benefits of income maintenance during post release have not been demonstrated. The prisoner remains a victim of a service that cannot defend itself and finds no justification by way of useful result.

## CONCLUSION AND RECOMMENDATIONS

An examination of the preceding critique leaves the reader with no doubt that the writer does not regard the existing corrective machinery as satisfactory. It is his considered opinion that it leaves a lot to be desired - that all the money, the material and human resources that government are spending on "treatment" of offenders are wasted for to think of treating an offender when the conditions that led him to the commission of crime remain as they were is to engage in futile work.

The English proverb 'prevention is better than cure' endears itself as the central theme of my recommendations. In societies like ours where the explanation of cause was arrived at elsewhere and the preventive and treatment programmes devised there and then transplanted elsewhere, we expect very little hope in the direction of crime reduction. In countries where criminals are seen as people who are mentally sick, the programme is individualized treatment with strong emphasis on psychiatric therapy. In other societies where the explanation is that relating crime to the fall of man, that man is a sinner through Adam, meditation and Bible reading are the prescribed methods of mediation, prayers and all that relate to religious life. Where crime is thought to be deliberate, self-willed behaviour, beating, flogging and general brutality become the general character of treatment. In societies where a criminal is seen as no more different than the none criminal, where the cause is sought in the social conditions from which the criminal came, the mode of treatment changes drastically. The offenders are seen as victims of social conditions over most of which the individual offenders have no control. Social conditions have been stressed in deviant and delinquent behaviour. There is no way to explain differing rates between two groups of people such as tribes, districts, races or nations other than to look at the social, economic, educational and political systems operating in the two groups. It is sad but true that at the moment there is little being done in the direction of crime prevention - vaccinations go around the country giving protection against measles small-pox, cholera etc but little is even done to protect growing up children from the world of crime.

In urban areas, it is well known that the bulk of all theft and the majority of rapes and homicides take place in slums which accommodate the wretched of the earth - the unemployed, the under-employed, the underfed, the uneducated and generally, those who have little to be proud of and happy in life - it follows therefore that if we have to deal with the crime problems in the cities, it is to the slums and peri-urban areas that we must focus our attention. It must be made clear that it is not the general poverty that characterizes slum dwellers that is the cause of crime, it is poverty, substandard housing, overcrowding, sexual promiscuity, alcoholism, broken marriage, lack of facilities for recreation lack or absence of good education, unemployment, congestion, neglect, and culture conflict all working together on the same individual lead to alienation and criminal behaviour. It is therefore wishful thinking to think and convince ourselves that we are treating the offenders by pulling out a four and putting them in prison for treatment and for reformation when the conditions that led to their criminality remain as there were. We are all products of our respective societies. In a predominantly catholic society, the new member stands a greater chance of being a catholic, not because of his free will but because of group process. This is the same thing with crime. In a society where violence is the common method of resolving conflict, the individual member has no chance of considering alternative conditions. One cannot be born among the Masai and decide to behave like a Chagga or Indian.

The first <sup>Step</sup> towards prevention of crime would therefore necessarily involve wide and intensive research - we need to know why certain types of social structures are conducive to certain types of crime. We need to know why for example <sup>why</sup> bestiality is said to be none common among some groups of people in Western Kenya, - why homosexuality is reported to be more rampant among semi-arabs and along the coast generally, - why the Kisii of Kenya are said to have extra ordinary high rates of criminal behaviour. Research of the same extent should be carried on into the effectiveness of the criminal law currently in force with a view to determining whether any parts of it should be repealed or amended (eg bigamy, piracy etc). We need to find out how language barriers, illiteracy and poor communication, court deliberations are related to the possible miscarriage of justice. Empirical research is urgently needed in the whole field of law enforcement to determine the extent to which



the whole system helps to curb crime, otherwise it will remain, as Daniel Glaser put it, like business without book keeping, in blissful ignorance of the extent of their profits or losses.

Attempt could be made at applying a system of creative restitution, this is restitution without punitive implications. The objective here is to direct the offender towards social responsibility and towards gaining other constructive attitudes through making amends to those he has wronged by his crime. There is no element of suffering in creative restitution, the offender is encouraged to strive and make sure that he improves the crime situation in the herdsboy who lets his cows destroy the neighbours crop is made to replant the garden. With proper administration creative restitution should be another alternative to imprisonment.

As the understanding grows that severity is not the best method of controlling crime probation and parole should be encouraged. The reason why they are not presently popular is that they are hardly regarded as punishment at all. If it has to succeed, it must be presented to the offender as a punishment which permits him to remain free from prison, but one which also makes demand on his future behaviour. The probationer should be made clear about the certainty of imprisonment if the demand imposed by the probation sentence are not met.

A combination of any on all of the above suggestions will go a long way in improving the present penal system which as noted earlier, urgently cries for change.

### CHAPTER III

#### FOOTNOTES

1. The Sociology of corrections: Leiger & Stration
2. Prison Reform: Mwene Hushanga
3. Sentencing in a Rational Society: Nigel Walker p.98
4. Ministry of Home Affairs: Annual Report on the Administration of Prisons in Kenya 1977/78
5. Andrew Saikwa - Magistrates Conference of 1976
6. Rehabilitation and Devian of Philip Baear
7. See Appendix
8. Op Cit at p. 131
9. Mark Chapter 7 verss 21 - 23
10. Chapter 90 Lans of Kenya s.62
11. Supra at p. 14
12. Sociology of Deviant Behaviour - Prof. M. Clinnard.

APPENDIX

(Subsidiary)

19. (1) Prisoners eligible under these Rules to participate in the earnings scheme shall be classified in the following grades -

Earnings scheme.

Grade A - prisoners who in the opinion of the Commissioner are of exemplary conduct and are skilled in their trade, and all special stage prisoners;

Grade B - prisoners who in the opinion of the officer in charge are of good conduct and are semi-skilled in their trade;

Grade C - all prisoners eligible to participate in the earnings scheme who are not Grade A or Grade B.

(2) Promotions to Grade A shall be made by the Commissioner and promotions to Grade B shall be made by the officer in charge.

(3) Prisoners engaged in collective work shall be graded in Grade C but may receive additional payment for work completed in excess of fixed task:

Provided that no such prisoner shall earn more than a Grade A prisoner.

20. The rate of earnings in each grade shall be fixed by the Minister.

Rate of earnings.

21. (1) A prisoner on the earnings scheme, other than a prisoner in the first or second stage, may spend up to two-thirds of the total of his monthly earnings upon the purchase of tobacco and such other goods as may be allowed by the officer in charge on the instructions of the Commissioner; and the balance of the earnings shall be placed to the credit of the prisoner and the total credit shall be paid to him on release.

Use of earnings.

(2) A prisoner in the first or second stage may not spend any of his earnings, and the whole of his earnings shall be paid to him on release.

### PART III - MEDICAL OFFICERS AND THE HEALTH OF PRISONERS

22. In every prison an infirmary or proper place for the care and reception of sick prisoners shall be provided.

Prison infirmaries.

(Subsidiary)

23. Subject to the directions of the Director of Medical Services, a medical officer may depute any of his functions or duties under this Part to any person whom he considers is suitably qualified to carry out such functions or duties.

Power of medical officer to delegate.

24. The medical officer shall attend at the prison for which he is responsible either daily or at regular intervals.

Medical officer to attend regularly

25. (1) The medical officer shall examine a prisoner on each of the following occasions -

Examination of prisoners

- (a) on the prisoner's admission to prison;
- (b) before the prisoner is required to undergo any class of labour of a more strenuous nature than labour that he has been certified fit to undertake, and shall certify whether the prisoner is to undergo the labour;

(Subsidiary)

(c) before the prisoner undergoes corporal punishment or any other punishment likely to affect his health, and shall certify whether the prisoner is fit to undergo the punishment;

(d) during the course of infliction of corporal punishment;

(e) before the prisoner is discharged from prison;

(f) before the prisoner is transferred to another prison.

(2) A prisoner due for discharge who is suffering from any acute or dangerous illness or who is so recommended by the medical officer shall be transferred to a hospital.

(3) If a prisoner is found to be suffering from any infectious or contagious disease, or to be in a verminous condition, steps shall at once be taken to treat the condition, and to prevent it from spreading to other prisoners.

Frequency of  
medical  
examinations  
and inspections

26. (1) The medical officer shall -

(a) See every prisoner at least once every month; and

(b) see every prisoner held on a capital charge or sentenced to death or in close confinement every day; and

(c) inspect the prisoners at work from time to time; and

(d) at least once every month inspect the whole prison, paying particular attention to the cooking and sanitary equipment in the prison.

(2) As a result of his examinations and inspections, a medical officer may recommend modifications in labour, diet or punishment, either generally or in relation to a class of prisoner or in relation to a particular prisoner.

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Medical  
Officer to  
advise on  
removal of  
prisoners

27. (1) The medical officer shall advise the officer in charge as to any prisoners that should be transferred from the prison which they are in to a hospital, mental hospital or leper settlement.

(2) The medical officer shall advise the officer in charge as to any prisoner who should be released by reason of his health being likely to be endangered by his remaining in prison, or his being unlikely to survive his sentence or being permanently unfit for prison discipline.

Mental  
condition  
of prisoners

28 (1) The medical officer shall keep observation on the mental health of all prisoners held on a capital charge or sentenced to death and on all convicted criminal prisoners serving a period of imprisonment for three years or more.

(2) The medical officer shall report to the officer in charge any case where he considers a prisoner is mentally disordered.

(3) The medical officer shall submit to the officer in charge in respect of every prisoner held on a capital charge a full report on the mental state of the prisoner as soon after admission as possible, and again after conviction, and again after the result of any appeal against sentence is made known.

(4) All reports made under paragraph (3) of this rule shall be in such form and shall be forwarded to such authorities as may be from time to time directed by the Commissioner.

(Subsidiary)

29. The medical officer shall take all measures necessary to prevent the spread of infectious or contagious diseases.

Spread of disease.

30. The medical officer shall keep the following books and records -

- (a) a case book showing the name, disease and treatment of every sick prisoner;
- (b) a journal containing his comments and the state of the prison and prisoners;
- (c) a case book giving full details of the medical history, cause of death and treatment of every prisoner who dies in the prison otherwise than by judicial execution; and
- (d) report from time to time on the nature and quality of the food of the prisoners both before and after cooking.

31. If the medical officer considers it necessary for the health of any particular prisoner or prisoners, or for the health of other prisoners or members of the public he may arrange for the vaccination or inoculation of any prisoner or prisoners.

Vaccination.

#### PART IV - ACCOMMODATION IN AND GENERAL MANAGEMENT OF PRISONS

32. (1) Prisoners shall sleep in communal wards or in separate cells, as the officer in charge directs in the case of each prisoner,

Sleeping accommodation.

- (2) (a) Male and female prisoners shall be kept absolutely separate from each other and shall be confined in different buildings.
- (b) The wards, cells and yards where women prisoners are confined shall be secured by locks different from those securing the wards, cells and yards allotted to male prisoners.
- (c) Women prisoners shall in all cases be attended by women officers.
- (d) A male prison officer shall not enter a prison or part of a prison appropriated to women prisoners, except on duty, accompanied by a woman prison officer.



(Subsidiary)

(3) Prisoners appearing to be under seventeen years of age, whether male or female, shall be kept apart as far as practicable from adults, and confined in separate buildings or a separate part of the prison.

(4) The medical officer shall certify the number of prisoners that may sleep in one ward or cell.

33. The prison and every room and part thereof shall be kept clean, and every prisoner shall keep his cell, ward, utensils, books and other articles issued for his use, and his clothing and bedding, clean and neatly arranged, as may be ordered, and shall clean and sweep the yards, passages and other parts of the prison as he may be ordered.

Cleanliness  
of prisons.

34. In every prison, cells shall from time to time be set aside for the confinement of prisoners undergoing punishment for prison offences; every such cell shall be certified as fit to be used for such purpose by the medical officer.

(Subsidiary)

Search on  
admission.

35. Every prisoner shall be searched when taken into custody by a prison officer, on admission into prison and at such subsequent times at the officer in charge directs, and all unauthorized articles shall be taken from him.

Manner of  
search.

36. (1) The searching of a prisoner shall be conducted in as seemly a manner as is consistent with the necessity for discovering concealed articles.

(2) A prisoner shall be searched only by officers of the same sex as the prisoner.

Prisoner's  
property.  
L.N. 166/1968.

37. (1) Subject to the provisions of paragraph (2) of this rule, all money, clothing or other effects belonging to a prisoner which he is not allowed to retain shall be placed in the custody of the officer in charge, who shall keep an inventory thereof, which shall be signed by the prisoner.

(2) All articles of a perishable nature and all articles infected with vermin or otherwise likely to spread disease in a prison, which are in the possession of a prisoner on admission into prison shall be destroyed.

(3) In any case where the clothes of a prisoner are so old, worn out or dirty as to be useless, the officer in charge shall order them to be destroyed, and, in such case, on the release of the prisoner the officer in charge shall give the prisoner clothing of a suitable kind.

(4) Articles which in the opinion of the officer in charge are too bulky for storage shall not be accepted into the prison.

(5) On the discharge of a prisoner, all articles of clothing and property shall be returned to him unless they have been destroyed in accordance with this rule.

(6) If any prisoner is discharged or escapes from prison and fails to claim his property within six months from his discharge or escape, or if any prisoner dies in prison and his personal representatives or relatives do not claim his property within six months of his death, the officer in charge may, if in his opinion such property is of no value, destroy it, or if he considers it possible to sell it he shall sell it and devote the proceeds to the welfare of the prisoners in the prison generally.

(Subsidiary)

(7) The provisions as to unclaimed prisoners' property contained in paragraph (6) of this rule shall apply to any unclaimed property within a prison at the commencement of these Rules and such property may be destroyed or sold, as the case may be, at the end of six months after the commencement of these Rules if by such time it has not been claimed.

Recording  
of particulars.

38. The name, race and tribe, age, weight, and particular marks, and such other measurements and particulars as may be required in regard to a prisoner, shall upon his admission, and from time to time, be recorded in such manner as the Commissioner directs.

Fingerprints.

39. On admission into prison, every prisoner shall have his fingerprints taken.

Photographs.

40. A long sentence prisoner shall be photographed on admission and subsequently, as required by the officer in charge, but no copy of the photograph shall be given to a person who is not authorized to receive it.

Baths.

41. Every prisoner shall, unless exempted by the officer in charge or the medical officer, take a bath or shower on admission and thereafter as ordered by the officer in charge.

Medical  
examination  
on admission.

42. Every prisoner shall, on the day of his admission or as soon as possible after his admission, be separately examined by the medical officer, who shall record the state of health of the prisoner and such other particulars as may be directed:

Provided that when a prisoner is received too late to be examined on the same day he shall be examined as soon as possible on the next day, and in any case within twenty-four hours of his admission.

Information  
for prisoners  
to be provided  
in cells or  
wards.

43. Every prisoner on admission to prison shall be provided in his cell or ward with such information as to the rules concerning the disciplinary requirements of the prison, to earnings and privileges and to the proper methods of submitting petitions to the Governor-General and of making complaints as to food, clothing, bedding and other necessaries.

(Subsidiary)

44. (1) The officer in charge shall, personally or through such officer as he may appoint, ensure as soon as possible after admission into prison, and in any case within twenty-four hours, that every prisoner who can read has read the information so provided.

Officer in charge to ensure that information is understood.

(2) Where a prisoner cannot read or has difficulty in understanding the information so provided, it shall be so explained to him that he may understand his rights and obligations.

(3) A prisoner committed to prison in default of paying a sum of money or for want of surety shall on admission be informed of the means whereby he may obtain his release.

#### PART V - TREATMENT OF PRISONERS

45. (1) No prison officer shall punish any prisoner unless authorized to do so under the Act or these Rules.

Use of force.

(2) No prison officer shall deliberately act in a manner calculated to provoke a prisoner.

(3) If a prison officer strikes or uses force against a prisoner, he shall have the prisoner as soon as possible examined by the medical officer, and shall immediately report the incident to the officer in charge.

46. (1) Subject to section 35 of the Act, every prisoner shall be supplied with and shall wear such prison clothing as may be directed.

Clothing

(2) Additional or alternative clothing may be supplied to a prisoner on the recommendation of the medical officer, or by order of the officer in charge.

47. (1) Every prisoner shall be supplied with bedding adequate for warmth and health.

Bedding.

(2) Additional or alternative bedding may be supplied to a prisoner on the recommendation of the medical officer.

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(Subsidiary)

Cleanliness of clothes and bedding.

48. (1) The clothes of a prisoner shall be changed and washed at least weekly, and bedclothes shall be washed and aired as often as the officer in charge may direct.

(2) The prison clothing and bedding discarded by a prisoner on discharge shall be thoroughly washed, dried and disinfected before being returned to store or reissued.

Food.

49. (1) Subject to the provisions of section 35 of the Act, every prisoner shall be entitled to a sufficient quantity of plain, wholesome food, in accordance with Scale "A" in the First Schedule to these Rules:

Provided that regard shall be had to the mode and standard of life of a prisoner before he was admitted into prison and if the officer in charge after consultation with the medical officer is satisfied that a prisoner is not accustomed to the type of diet laid down in Scale "A" he may order that the prisoner shall be given a diet in accordance with Scale "B", Scale "C" or Scale "D" in such Schedule.

(2) A copy of the diet scales shall be displayed in some conspicuous part of the prison.

(3) The diet of a prisoner who persistently wastes his food may be reduced by the officer in charge after obtaining the written advice of the medical officer.

(4) A prisoner ordered penal diet shall have substituted for his ordinary diet the penal diet set out in the First Schedule to these Rules unless the medical officer otherwise recommends.

Restrictions on alcohol and tobacco.

50. (1) No prisoner shall under any pretence whatever be allowed any spirits, wine, beer or other intoxicating or stupefying drink, drug or matter, except such and in such quantities, as may be directed in particular cases by the medical officer by order in writing.

(2) Subject to these Rules, no prisoner shall be allowed to smoke or have in his possession any tobacco except in accordance with rule 21 of these Rules and such orders as may be given by the officer in charge with the approval of the Commissioner.

(Subsidiary)

- (b) second stage prisoners shall be entitled to write and receive one letter every four weeks, and to receive a visit of twenty minutes' duration every four weeks or to write and to receive one letter in lieu;
- (c) third stage prisoners shall be entitled to write and receive one letter every three weeks, and to receive a visit of twenty minutes' duration every four weeks or to write and to receive one letter in lieu;
- (d) fourth stage prisoners shall be entitled to write and receive one letter every two weeks and to receive a visit of thirty minutes' duration every four weeks or to write and to receive one letter in lieu;
- (e) a special stage prisoner shall be entitled to receive letters without restriction, and to write one letter every week, and to receive a visit of thirty minutes' duration every two weeks or to write one letter in lieu.

(3) On admission, a prisoner shall be entitled to write and receive a "reception letter" and to receive a visit of fifteen minutes' duration, and on transfer to another prison a prisoner shall be entitled to write and receive a "transfer letter".

(4) The Commissioner may, as a privilege for any prisoner or class of prisoner, allow such additional letters and visits as he may determine.

(5) The officer in charge may allow a prisoner to write a special letter and to receive a reply or to receive a special visit in any of the following circumstances:-

- (a) The death or serious illness of a near relative;
- (b) Business or family affairs of an urgent nature; or
- (c) The arrangement of employment or assistance on release.

(Subsidiary)

Transfer of prisoner to enable him to be visited.

54. Where a prisoner has served for a period of three years and, owing to the distance from his home, has not received any visits from relatives or friends during such imprisonment, the Commissioner may in his discretion order the temporary transfer of such long sentence prisoner to the prison nearest his home and permit such prisoner to be visited by friends or relatives, not exceeding three in number at any one time, for such period as the Commissioner may direct, provided the work, conduct and progress of the prisoner merit such privilege.

Postponement of privileges of letters and visits.

55. (1) The privilege of writing and receiving letters and receiving visits may, at the discretion of the officer in charge, be postponed at any time in case of misconduct, but shall not be subject to forfeiture.

(2) When a prisoner who becomes entitled to a letter or visit is at the time undergoing punishment, the officer in charge shall defer the privilege to a suitable time.

Visits to sick prisoners.

56. (1) If a prisoner dangerously ill desires to be visited by a near relative or friend, the officer in charge may give an order in writing for the admission of that relative or friend.

Conditions relating to visits.

57. (1) Not more than three persons shall be allowed to visit a prisoner at one time.

(2) All visits to prisoners shall take place during the normal working hours of the prison and between such hours as the officer in charge may direct.

(3) A prison officer of a rank detailed by the officer in charge, together with an interpreter in the case where the prison officer does not understand the language spoken, shall be within sight and hearing during the whole of every visit, unless the officer in charge by an order in writing otherwise directs.

(4) The prison officer detailed to supervise visits shall demand the name and address of every visitor to a prisoner and, when he has any grounds for suspicion, he may search or cause to be searched male visitors and may direct a female officer to search female visitors but such search shall not be in the presence of any prisoner or of another visitor; and, in case of any visitor refusing to be searched, such visitor shall be ordered to leave the prison.

(5) Any prison officer ordering a visitor to leave a prison shall make a record thereof in

(6) No ex-prisoner shall be allowed to visit a prisoner, except with the written permission of the officer in charge.

Letters to  
be read.

58. (1) Every letter to or from a prisoner shall be read by the officer in charge or by a responsible officer deputed by him and it shall be within the discretion of the officer in charge or the deputed officer to stop any letter on the grounds that its contents are objectionable or that it is of inordinate length; and in the case of an outgoing letter, the prisoner shall be informed and given the opportunity to rewrite the letter.

(2) No prisoner shall be permitted to write a letter to or receive a letter from a prisoner or an ex-prisoner without the permission in writing of the officer in charge.



(Subsidiary)

59. (1) A prisoner who, after conviction, has given notice of appeal shall be given reasonable facilities to see his advocate concerning the appeal in the sight, but not in the hearing, of a prison officer.

Visits by  
advocates and  
diplomatic  
representatives

(2) A prisoner who has been ordered to be repatriated to a place outside Kenya shall be given all reasonable facilities to see his advocate and a representative of his country concerning the order for repatriation in the sight, but not in the hearing, of a prison officer.

(3) Reasonable facilities shall be accorded to the advocate of a prisoner who is conducting any litigation, civil or criminal, to which the prisoner is a party to see the prisoner with reference to such proceedings in the sight, but not in the hearing, of a prison officer.

(4) The advocate of any prisoner may, with the permission of the officer in charge, see a prisoner concerning any other legal business, but shall see him in the sight and hearing of a prison officer.

(5) The advocate of a prisoner may be accompanied by another person under his direct and immediate control for the purposes of interpretation or the making of a note.

(6) For the purpose of this rule, "advocate of a prisoner" means either the prisoner's advocate himself or the advocate's clerk.

60. The provisions of these Rules relating to visits and letters shall apply

Visits and  
letters of  
debtors.

Provided that:-

- (i) an officer in charge may in his discretion allow an unconvicted prisoner to see relatives and friends and to receive and read letters as often as he considers desirable; and
- (ii) A prisoner committed to prison in default of the payment of a sum in pursuance of any conviction order he is required to pay, shall be allowed to have an interview with his friends on any weekday during working hours of the prison, or to communicate by letter with them for the purpose of providing for a payment which would

procure his release from prison, and every such prisoner shall on his admission be informed of this rule.

61. (1) On production of an order from a magistrate, the Commissioner of Police, or a gazetted officer as defined in the Police Act, a police officer may, at any reasonable time, visit a prison and interview any prisoner for any of the following purposes:-

- (a) identifying offenders;
- (b) taking statements considered necessary for any investigation;
- (c) any other purpose authorized in writing by the Commissioner.

(2) The officer in charge shall direct whether a visit by a police officer to a prisoner shall take place in or out of the hearing or sight of a prison officer.

Visits by  
police  
officers  
and  
process  
servers.  
Cap. 84.

(Subsidiary)

## PART VI - DISCIPLINE OF PRISONERS

66. Any prisoner who -

Minor  
prison  
offences.

- (a) disobeys any order of the officer in charge or of any other prison officer or any prison rule; or
- (b) treats with disrespect any officer or any person authorized to visit the prison; or
- (c) is idle, careless, or negligent at work, or refuses to work; or
- (d) uses any abusive, insolent, threatening or other improper language; or
- (e) is indecent in language, act or gesture; or
- (f) commits any assault; or
- (g) communicates with another prisoner, or any other person, without authority; or
- (h) leaves his cell or ward or place of work or other appointed place without permission; or
- (i) wilfully disfigures or damages any part of the prison or any property which is not his own; or
- (k) has in his cell, ward, or in his possession any unauthorized article, or attempts to obtain such an article; or
- (l) gives to or receives from any person any unauthorized article; or
- (m) makes repeated and groundless complaints; or
- (n) in any way offends against good order and discipline; or
- (o) attempts to do any of the foregoing things; or
- (p) aids or abets the doing of any of the foregoing things,

shall be guilty of a minor prison offence.