

A Critical Overview of the Kenyan Prisons System: Understanding the Challenges of Correctional Practice

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ABSTRACT: Kenya has been widely criticized for its on-going abuse of human rights and corruption in government administration more specifically the prison system. Moreover, the prison system in Kenya has been termed to be dilapidated since they were adopted from the colonial administration in 1963 after gaining independence. The paper looks at the utilitarian rationale of punishment that supports the prisons as rehabilitation institutions that aim to reform prisoners therefore reforming them towards proper societal norms. This paper critically reviews various studies carried out by other researchers and authors that disparagingly look at and have elaborated the understanding of the prison system in Kenya. Additionally, the paper identified the challenges of the prison system that includes the punitive and dire conditions in prisons since independence, inadequate legal representation, usage of drugs by inmates. Moreover, there is mistreatment of prisoners and lack of the privileges and rights, and eventually, lack of independence oversight of the prison system with regard to prisoners. At the same time, the challenges facing the prison officers or staff as identified in this paper include; inadequacy of skills, poor working conditions/environment and unfavourable scheme of service, inadequate in supply of food and clothing and varied perception by the civil society and corruption within the prison walls. The paper concludes that the correctional services are in dire need of reforms because of the earlier mentioned challenges facing both the prisoners and the prison staff. The paper recommends that reflective policies need to advocate for prison welfare and also securing their rights of prisoners. Furthermore, there is need for stakeholder participation, improved training especially those involved directly in the reforming the prison system.

KEYWORDS: Reforms, Prison Officer, Prisoners, Rights and Privileges, Challenges, Correctional Practice.

1 INTRODUCTION

Accordingly, the pre-penal system in Africa in the traditional form of criminal justice originated from the council of elders who determined the form of punishment for the criminal offenses committed. Furthermore, there was no prisons system at the time, thus the punishment offers was final. The introduction of the penal systems in Africa was largely adopted as a result of colonization, which drew up the legislative framework addressing the form of criminal justice system, the infrastructure that remains unchanged (Dissel, 2001).

Several countries have attempted to improve the prison conditions; by introducing reforms that target the rehabilitation of offenders but in most cases they are still inadequate. In most cases the prisons in Africa are characterized by severe overcrowding. In most cases the prison capacity is very limited and has not been expanded over time. Although the inmate to population ratios may be small, the impact of overcrowding on inmates is nevertheless severe. Coupled with this, many of the facilities are rudimentary in nature, and there are shortages of food, bedding, medical supplies and treatment, and an absence of recreation facilities. Moreover, ill treatment or torture of inmates was also reported for many of the countries (Dissel, 2001).

Accordingly, Kenya inherited the penal system from the British Colonial government on its independence in 1963. At the time of independence, there were 86 prisons accommodating 13,000 prisoners (Amnesty International, 2000, KHRC, 2001). The Penal Code and Kenya's constitution contain fairly liberal laws concerning prisoners. In addition, the country has ratified a number of international instruments protecting the rights of prisoners and detainees, including the African Charter on Human and People's Rights (KHRC, 2001). However, there is a large gap between the legal provisions and the actual conditions in prison.

Moreover, various reports and studies have looked at the prevailing conditions existing in the prison systems in the world and Kenya (KHRC, 2002; Dissel, 2001; Gaes, 1985; Omboto, 2010). Therefore this paper provides a critical review of the prison system in Kenya with a view of understanding the challenges that affect the prison system in Kenya. Furthermore, this paper provides an understanding of the Kenya's prison with regard to the types of prisons that are in Kenya, the organization and finally the prison structure. Furthermore, the paper looks at the challenges faced by both the prisoners and the prison staff with regard to the environmental conditions that exist in the prison system in Kenya.

2 METHODOLOGY

This paper used a desk review to examine the various reviews based on the studies of the correctional practice in Kenya. The paper also analyses the challenges facing the prison system. These challenges impede the promotion of the rights and of the prisoners. At the same time, the prison system in Kenya needs a total revamp since there are challenges facing the prisoners and the prison warders in general.

3 THEORETICAL UNDERSTANDING OF THE CORRECTIONAL PRACTICE

3.1 UTILITARIAN RATIONALE UNDERSTANDING OF CORRECTIONAL PRACTICE

Accordingly, prisons were and are still used for long-term and convicted offenders who are to be simultaneously punished (experience retribution), deterred, and reformed (rehabilitated) while being isolated (incapacitated) from the community and, for most, reintegrated back into that community (Stephan, 2008). A majority agree that subjecting someone to pain is wrong. Nevertheless, punishment, by characterization, involves the inflicting pain on someone (Murphy, 1995). Moreover, logicians especially the philosophers are divided on this issue. One group believes that inflicting pain as punishment is fundamentally different from inflicting pain on innocents, and therefore is not inherently wrong. Another group believes that punishment is a wrong that can be justified only if it results in a "greater good" (Murphy, 1995; Durham, 1994).

This paper used the utilitarian rationale that explains the fact that if there are prisons facilities their aims are to deter, incapacitate, and or rehabilitate prisoners. In addition, the rationale defines punishment as essentially evil, and seeks to justify it by the greater benefits that result. Moreover, the concept of utilitarianism advocates that what is good is that which benefits the majority (Pollock, 2005).

This rationale for punishment originated from the Greek philosophers such as Plato who argued that punishment is a benefit to the person because it improves their souls or characters (Murphy, 1995). Furthermore, thinkers such as Jeremy Bentham (1748–1832), believed that punishment can be used to deter crime. His introduction of the *hedonistic calculus* provided that mankind was essentially rational and hedonistic (pleasure-seeking), and would seek to maximize pleasure and reduce pain in all behaviour decisions. He further indicated that a legal system could accurately determine exactly what measure of punishment was necessary with regard to crime. Thus, if done correctly, the possible pain of punishment would be sufficient to outweigh the potential pleasure or profit from crime, and all people would rationally choose to be law-abiding (Pollock, 2005).

Furthermore, the utilitarian rationale for punishment is supported by the term social contract. The concept of social contract gives society the right to punish, not because of the offender's violation, but rather, to protect all members of society against future harms. The right of society to punish comes from the responsibility of society to protect. Therefore, the utilitarian approach of punishment sees it as a means to an end the end being deterrence (general or specific), incapacitation, or rehabilitation (reform).

This paper specifically looks at rehabilitation as a sub-concept of utilitarianism that aims to reform the performer of crime (prisoner). Accordingly, Pollock (2005) defines the term rehabilitation as internal change that results in a cessation of the targeted negative behaviour. It may be achieved by inflicting pain as a learning tool (behaviour modification) or by other interventions that are not painful at all (for example, self-esteem groups, education, or religion). Therefore, the reform of a prisoner starts from the reforms of the prison system.

4 UNDERSTANDING THE KENYAN PRISONS AND THE FORMATION

The United States of American correctional facilities have greatly transformed. However, that is not the case of Kenyan prisons as this paper will clearly reveal the challenges faced. Accordingly, as the number of prisons expanded, their diversities have increased (Stephan, 2008; Dissel, 2001). The all-purpose maximum and medium security prisons were first built in the United States of America. However, there are state and federal prisons with innumerable security levels, including super maximum, maximum, medium, and minimum. In addition to that, there are prisons for men, for women, for men and women, for children, and for military personnel. Prisons come in the form of regular confinement facilities, but also prison farms, prison hospitals, boot camps, reception centers, community corrections facilities (sometime known as work release or day reporting facilities), and others (Stephan, 2008). In Kenya per se prisons total to 89 and are established by the Kenya Prisons Act (CAP 90) and the Kenya Prisons Standing Orders Chapter 69, which classifies the prisons in Kenya on the basis of the level of the security needs, the age of the inmates and the length of the sentence of offenders and thus classified into the following categories:

- 1) Closed (Maximum security prison for long term offenders for subversion of more serious or violent offences in nature) for example Kamiti Maximum Security and Naivasha maximum prison for men and the Lang’ata Women’s prison among other prisons not mentioned in this paper.
- 2) Semi-closed (Prisoners serving minimum term for less serious offences of subversion or violent offences in nature). These prisons are regional based institutions such as the Kodiaga Prison in Nyanza region, the Ngeria farm prison in Uasin-Gishu region.
- 3) Borstal institutions or youth corrective training centers (below 18 years; 15 years and above). They include those in the Western region (Shikutsa- Kakamega district), Coastal region (Shimo la Tewa) and finally the Kamiti Youth Corrective Training Centre.

Prisons are institutions in Kenya established for the purpose of taking custody and care of people who have been convicted of offences by courts of law. There are two categories of prisoners: those who are on remand pending hearing of their cases and those who have been convicted. However, prisoners too have rights and it is possible for organizations to monitor how these rights are respected, especially in view of the manner in which prisons have opened themselves up to public scrutiny in recent times. Prisons in Kenya have three basic functions which include; securing and controlling offenders; to punish offenders and to rehabilitate or reform offenders. The below figure (fig 1) shows the structure showing the various directorates in the Kenya’s prison system.

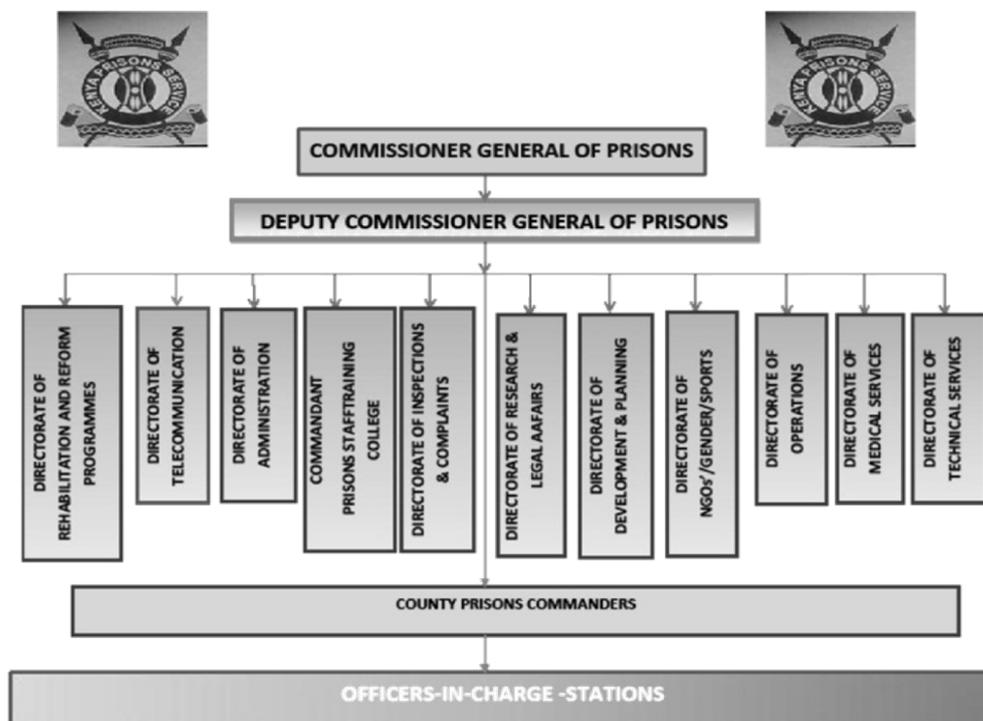


Fig 1: Indicating the structure of the prison command in Kenya (Adopted from & G.O.K (2013) as cited in Olivia L.A, 2014)

5 CHARACTERISTICS OF THE PRISON SYSTEM IN KENYA: CHALLENGES FACING THE PRISONERS IN THE PRISON SYSTEM IN KENYA

Accordingly, one of the identified characteristic of the prison system in Kenya entails the fact that the conditions have been dire and punitive since independence. Omboto (2010) points out that harsh prison conditions in Kenya are mostly characterized by overcrowding and congestion, poor diet, degrading clothing and beddings, lack of clean water, poor sanitation, infectious diseases, and homosexuality among other vices, can be attributed to several factors (Nation, 2001). Studies by other authors have attributed the poor state and maintainance of prisons to the fact that the colonial government in Africa targeted such facilities to the Africans, particularly those who rebelled against their rule and more specifically those who were resistant to the white rule (Dissel, 2001; Dankwa, 2000; Dankwa, 1997). Furthermore, in Kenya, such resistance imposed the declaration of state of emergency in 1952 which led to arrest and incarceration of about 24,000 natives who were confined in crowded camps which served as prison institutions then (KHRC, 2002). This is still the case up to date, since the prisons are still congested. Moreover, a study by Dissel (2001) points out that inmates/prisoners sleep on dirty and damp cement floors. The communal cells are often poorly ventilated and badly lit, and lack adequate washing facilities. Overflowing buckets in one corner of the cell usually serve as the only toilets. Acute water shortages in some prisons have exacerbated the unsanitary conditions. These conditions have been dealt with by the introduction of the prison reforms (Moody Awori reforms) but still the reforms are yet to be realized. Furthermore, there is the depressing factor of overcrowding among inmates/prisoners in the Kenya's prison system. Studies in correctional practice have shown that poor accommodation of the in the prisons presents a case of high assault rates among inmates (Gaes, 1985; Fagan, 2002; Morgan *et al.*, 2002; Dankwa, 1997; Dankwa, 2000). Moreover, studies have shown that overcrowding can itself induce stress for inmates. Overcrowding may act as an intensifier of stressful prison conditions that have been precipitated by other causes with consequences that can at worst be life threatening (Penal Reform International, 2012; Gaes, 1985). This is in the case of the Kenyan prison system due to lack of expansion of the prison system.

Accordingly, inadequate legal representation can be seen as another challenge facing most of the prisoners are not able to seek legal representation because they cannot afford the costs. In most cases, prisoners are not aware of their rights because they are '*wrong*' before the law. Some of the criminal offenders who have no adequate knowledge may be forced to abide by the outcome of the court proceedings. Criminal offenders lack the vast knowledge in advocating for their rights, thus there are no mechanisms to address the rights of the prisoners. However, with the government commitment in introducing the reforms, the reforms are yet to capture the rights and freedoms of the prisoners. The challenge of legal representation and understanding the court process and procedures among the inmates is still seen to be prevailing.

Evidently, drug usage by inmates has been established as a major challenge facing the prison system in Kenya. A study by Omboto (2010) found that inmates still access drugs which are prohibited in the prison. The main of these prisons is to rehabilitate the prisoners or criminal offenders as suggested by the utilitarian rationale. Furthermore, he established that psychotropic substances resulted in a majority of the prisoners rioting and engaging in a more violent behaviour. The help of the dishonest prison officials enable the smuggling of drugs in the prison facilities. This clearly shows the addictive nature of the criminal who seem not to reform. Studies by Omboto (2013) clearly show that the prison system is in dire need to eradicate such depravities that derail the aim of the correctional or prison facilities to rehabilitate and reform offenders.

Accordingly, there is still the prevailing feature of mistreatment of prisoners and lack of the observed freedoms, privileges and rights. A report by Amnesty international (2000) indicated that torture and ill treatment are widespread and are used to discipline prisoners as well as taking place through indiscriminate attacks. Prisoners are beaten for failing to obey orders. One ex-prisoner expressed the fear that warders are spreading HIV/AIDS by using hippo hide whips consecutively to punish prisoners. Corporal punishment is allowed, up to twelve strokes for adult prisoners, and prisoners may also be punished by restricted (penal) diet and confinement of up to 30 days in a separate cell. This form of retributive punishment goes against the utilitarian rationale for punishing offenders. The Kenyan prison system is obliged to observe the prisoners' rights as stipulated by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

Inadequacy in terms of food and clothing can be termed as a key characteristic and a challenge facing the prison system in Kenya. Accordingly, food and clothing is also inadequate in most prisons. The fiscal difficulties and inadequacy of resources which the Kenyan government is experiencing are having serious impact on prisons for instance, in Nyeri, where it is reported that prisoners were starving as the treasury had failed to provide money for supplies (Dissel, 2001). Furthermore, Dissel (2001) points out that the problem was worsened by their inability to get food from outside of prison. Prisoners reported last year that rations at Kodiaga prison were reduced by 50 percent, and special meals that were ordered on medical grounds had been scrapped completely. They alleged that many inmates were starving as they could not afford to bribe the warders for

their meagre rations. This in most cases resulted to riots as a consequence of the rationing meals. However, the prison farms have established prison farms such as the Ngeria prison in Rift-Valley province (now referred to as Uasin-Gishu County), but this still remains a challenge. A report by Amnesty International (2000) further indicates that these conditions are responsible for the deaths of hundreds of prisoners in Kenyan prisons each year. Statistics are inaccurate, but six hundred and fifty are reported to have died in 1997. Infectious diseases such as diarrhoea, typhoid, tuberculosis and HIV/Aids spread easily, and are inadequately treated. This may in many cases result to epidemics.

There is still the lacking independence of an oversight authority with regard to the prison system in Kenya. Accordingly, Dissel (2001) cites in her work that independent oversight of Kenya's prisons is completely lacking. Prisons are closed institutions that do not allow visits from non-governmental organizations, and international organizations have also been prohibited access. She further stated that the UN Special Rapporteur on Torture was refused access to one prison in September 1999. Furthermore, members of parliament were prohibited from visiting their constituents in prison without permission from the authorities. Although Parliament appointed a Standing Committee on Human Rights, this was characterized by weak responses to human rights violations. For, example, the Committee did not respond publicly to the King'ong'o deaths. However, with the introduction of the prison reforms (Moody Awori Reforms) and the constitution 2010 passed gives a glimmer of hope that the prison system will be transparent and more specifically, open to scrutiny by the public so as to transform the country's prison system. At the same time, the media has been given a chance to explore the happenings inside the prison, for instance, KTN's Case files an investigative series by Dennis Onsarigo among other media reports have partially addressed the challenges faced by the prisoners in the prison.

6 CHALLENGES FACED BY THE PRISON OFFICERS AND THE PRISON FACILITIES SYSTEMS IN KENYA

Accordingly, one of the chief challenges facing the prison officials/warders entails the fact that they lack inadequate skills and expertise. Moreover, the prison system lacks various skills with regard to penology and corrections. Training in most cases is the core function of reformation and rehabilitation that require prison officers to accept that prisoners are incarcerated as a punishment and not for punishment, and they must have the ability to facilitate behaviour and attitude change (Omboto, 2013). The lacking skills are varied from sociologists, psychiatrists, psychologists, professional counsellors, social workers, penologists especially those from security studies. These skills are crucial in the rehabilitation effort of offenders and reintegration back to the society. Lacking such skills may result to inadequacy in the reformation process of the offenders.

Accordingly, there has been established poor working conditions/environment, more specifically the unfavourable scheme of service. The state of prisons in Kenya is in dire need of refurbishment. The poor working conditions of the prisons staff especially those of the lower cadre lowers morale of the lower and thus are unable to fully dedicate themselves to working in such unbearable conditions. It is ironical that the same prison officers, who are supposed to rehabilitate the prisoners, suffer the same consequences as the prisoners. However, the introduction of the reforms have slightly improved their remuneration and improved transportation facilities (formally referred to as *mariamu*). Nonetheless, studies by Omboto (2010) point out that housing still remains problem, thus the prison officers who cannot rent houses outside are forced to stay with their families in the dilapidated structures that are not comfortable in the varied seasons. He further indicates that in rural prisons; there are grass thatched mud walled houses; these very structures are in most cases shared by at least two families. Moreover, other problems that face several prison institutions, include poor drainage and sanitation, and water shortage also hamper the work of prison officers. Added to the unfavourable scheme of service, that do not give clear career progression path; such as the automatic movement from one job group to another, and the requirements for such movements that is not dependent on the whims of the senior officers; claims that some prisoners e.g. the trustees (the special stage prisoners) are happy and comfortable in prisons than the prison warders cannot be dismissed (Omboto, 2013). In most cases, if there is no job evaluation and satisfaction then the prison officers have no motivation to perform. Furthermore, the stressing conditions make it more difficult for the prison warders to perform their duty of reforming the prisoners. Studies by Muntingh (2009) as cited in Moyo *et al.*, (2014) argues that prison understaffing and overcrowding have a depressing impacts on prison staff manifested by high staff turnover, excessive leave, high rates of sick leave and absenteeism. These factors have potential to prevent prisons from implementing and fulfilling their operational functions. Cheek and Miller (1983) further point out that stress among correctional officers is partly caused by overcrowding. The inside of the prison system in Kenya is associated with physical 'dangers' associated with potential harm by inmates that may cause stress among prison officers. This is partly due to the correctional facility environment which is considered a 'tough', 'dangerous' place of employment dominated by machismo attitudes among offenders (Morgan *et al.*, 2002).

There has always been the negative perception by the civil society about Kenya's prison system. The perception of the civil society towards the prisons in Kenya is seen to be critical. Kenya's prisons, labelled as 'death chambers', are overcrowded and unhygienic. For instance, in Nakuru prison, 450 convicted inmates and 780 remand prisoners were held in 14 cells. Prisoners sleep on dirty and damp cement floors. The communal cells are often poorly ventilated and badly lit, and lack adequate washing facilities. Overflowing buckets in one corner of the cell usually serve as the only toilets. Acute water shortages in some prisons have exacerbated the unsanitary conditions. King'ong'o prison had its water supply disconnected for failing to pay its water account in September 2000, and a water shortage in Nakuru prison led to an outbreak of cholera (Nation, 2001; Nation, 2000 a ; Nation, 2000 b; Dissel, 2001). Omboto (2013) points out that the problems that face several prison institutions include poor drainage and sanitation, and water shortage also impede the work of prison officers.

Corruption still remains the main challenge facing the prison system in Kenya. Consequently, in the public knowledge corruption exists in the outside world, especially in the institution of police. This is not the case as Omboto (2010) indicates that there is some dishonesty among officers who are bribed so as to favour inmates in the obtaining drugs which are prohibited. These prohibited substance tend deter the main aim of the facilities in punishing the prisoners and at the same time rehabilitating the prisoners towards reforming them. At the same time, (Omboto, 2013) the use of mobile phones by the prisoners seems to be the new crime referred to as the '*mobi-crime*' whereby the offenders solicit money from the public and at the same time threatening the public. They have been reported to have defrauded the public of millions. In most cases, the corruption by the officers may be as a result of the government not paying the prison officers better remuneration. This includes house allowances and risk allowances. According to Omboto (2013) this may have resulted in the prison officers engaging in corrupt practices in order to sustain themselves and improving their impoverished conditions.

7 CONCLUSION

Accordingly from the reviewed literature and other studies, the paper has identified that the prison system is in dire need of reforms and as such there persistent challenges that have made the prison facilities be in the same state since the post-colonial era. Moreover, the prisoner's rights seem to be neglected by the prison officials yet the United Nations Congress on the Prevention of Crime and the Treatment of Offenders of 1955 establishes the rules and regulations of safeguarding prisoners' rights. The Government of Kenya critically needs to evaluate its stance with regard to correctional practice, thus the government needs to put pen into paper by safeguarding prisoner rights and ensuring that prison officers have proper facilities that enable them reform the convicted offenders. Other non-governmental agencies should come in towards the promoting education and training of offenders as seen by the K.I.M (Kenya Institute of Management). A reformed prison system is a gain to the prisoner who in turn when reformed is a gain for the society at large.

8 RECOMMENDATIONS FOR THE REFORMS IN THE KENYA'S PRISON SYSTEM

The recommendations put forward include the following;

Firstly, there should be total reforms targeting the prison system. As Omboto (2010, 2013) puts it, there is need for improved prison staff welfare since they are participants in the criminal justice system. This can be done by improving housing, better remuneration, and increase in allowances. This will lead to them reforming prisoners without fear or favour.

Secondly, it is recommended that there is need in providing opportunity for prison officers/staff with a platform to share and at the same time explore new skills and ideas towards correctional practice in Kenya. This can be done by offering sponsorships and scholarships to the prison officers by undertaking education and training. This can be done through collaborating with institutions for higher learning, for instance, Moi University among other institutions of higher learning have started offering courses on penology and correctional practice courses. This will gear the prison staff in the right direction towards understanding more about correctional practice. This may also expand their horizon in dealing with the prevailing challenges facing the prison system/institution. Exchange programmes should also be encouraged, for instance visits to other developed countries so as to learn and thereby counter the current challenges they face.

Thirdly, it is recommended in this paper that the government should improve the prison infrastructure through expansion of the existing prison facilities. At the same time the government needs to provide a blue print for new prison establishment or in some cases the government can partially privatize these institutions so as to provide more expansive and inclusive prison system in Kenya.

Fourthly, prisoner rights need be observed because the aim of the prison facilities and system is transforming the lives of the prisoners by reforming them into better persons. It is therefore recommended that there should be stringent security measures to counter the use of illegal paraphernalia by providing proper technology to the prison staff members. This should be in line with the prison reforms.

Lastly, a report by Kenya Human Rights Commission (1997) has indicated the need for urgent address for the dire conditions in the prison system. Therefore, it is recommended that funding the prison facilities should be the most considered factor in improving these facilities and thus this will improve the prevailing conditions being faced in these prisons. Funding should also cater for the proper sanitation and improved hygiene to avoid manifestation of infectious diseases such as typhoid and diarrhoea.

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