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From Indigenous Justice to Colonial Confinement: The Evolution of the Prison System in Kenya Up to 1915

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Abstract

The aim of this study was to explore the history of prison administration in Kenya, from indigenous justice to colonial confinement, up to 1915. Before colonial rule, Kenyan communities, including the Kamba, Kikuyu, and Meru, practised restorative and reconciliatory justice rooted in tradition and communal accountability, resolving crime through compensation, mediation, and social sanctions aimed at restoring peace rather than punishing offenders. This changed dramatically with the establishment of British colonial rule in the late nineteenth and early twentieth centuries. Following the creation of the East Africa Protectorate in 1895, the colonial administration disrupted indigenous systems and introduced a formal penal structure designed to control African populations, enforce colonial authority, and generate cheap labour. The construction of Kenya's first prison, later known as Fort Jesus, marked a significant milestone in this transformation, offering correctional facilities for those who violated colonial law. The study examines the contrast between pre-colonial restorative practices and the punitive colonial system, arguing that British legal frameworks criminalised behaviours not previously recognised as offences under communal law, thereby undermining traditional authority and social cohesion. It further contends that the extensive incarceration of Africans under biased colonial statutes represented a fundamental breach of indigenous social contracts, shifting power away from community-based reconciliation toward coercive imprisonment. By analysing developments across the pre-colonial, colonial, and early post-colonial periods, this research highlights how the emergence of formal incarceration in Kenya reflected broader transformations in governance, law, and society under British rule, and underscores its lasting impact on African justice systems.

Key words: British colonial rule, colonial confinement, indigenous justice, penal institutions, restorative justice.



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INTRODUCTION

Overview of Kenya's Socio-Political Landscape Before Colonial Rule

Before the imposition of colonial rule, societies throughout the world had developed a variety of systems of governance, law and justice which reflected their social, cultural and economic circumstances. In many African, Asian, European and American societies, justice was primarily dealt with by customs-based institutions that had as their primary purpose the maintenance of social coherence, reconciliation and restoration of harmony within the community. In place of institutionalisation, conflicts were settled by the mediation of central figures in the community, such as Elders, chiefs, religious leaders, and family heads, who also acted in compensation and restitution processes and other avenues of restorative justice. Typically, imprisonment was not the primary punishment. But there were some civilisations with detention centres for temporary custody. But justice was concerned with restoring relationships and maintaining the community's stability (Morris & Rothman, 1995; Johnston, 2000). Modern prisons evolved around the eighteenth and nineteenth centuries in Europe.

European governments, under the influence of the Enlightenment and legal reforms, started to substitute institutional imprisonment for corporal and capital punishment as a way of discipline, deterrence and rehabilitation. Some thinkers, like Foucault, suggested that prisons were just tools used by the states to supervise, discipline and control their populations (Foucault, 1977). These philosophies were exported to the colonies where prisons were crucial institutions for enforcing colonial law, securing labour power, suppressing resistance and consolidating imperial authority (Bernault, 2003). The modern prison is distinctly linked to the eighteenth- and nineteenth-century developments in Europe. During the Enlightenment and the reform of laws, governments in Europe started to replace corporal and capital punishment for crime with institutional imprisonment as a way to discipline, deter and rehabilitate offenders. According to Foucault and other theorists, states started using prisons as a way to monitor, discipline and control their citizens (Foucault, 1977).

In the nineteenth century, as European colonisation grew more intense, these penal philosophies began to be imported to the colonies, where prisons became significant sites of the enforcement of colonial

regulations, the acquisition of labour, the repression of opposition, and the consolidation of imperial rule (Bernault, 2003). Colonial governments set up African prisons, which had little resemblance to indigenous justice. Whereas reconciliation was seen as a policy in colonial prisons, punishment, forced labour and the maintenance of colonial order were promoted. Prizes were used in many territories to collect taxes, to control the African population, and to police the Africans. The colonial penal system thus undermined customary legal institutions and deprived traditional leaders who traditionally could undertake law enforcement in their communities (Bernault, 2003; Dikötter & Brown, 2007).

The British presence in East Africa in the late 19th century set the stage for a significant change in the socio-political landscape of Kenya. Colonial authorities had to create new administrative, judicial and penal systems based on British law principles after the activities of the Imperial British East Africa Company (IBEAC) and the establishment of the British East Africa Protectorate (BEAP) in 1895. The power of the indigenous system of justice came to be marginalised as the police and the courts became the major instruments of law and order.

Prisons by 1915 were an integral part of the colonial way of ruling, not just as places of punishment, but also as a means of colonial policy, mobilisation of labour, and repression of resistance to British rule. Kenya is a country in East Africa; it is well known for its mainstream cultures. They are represented in various scholarly works to say that Kenya as a Nation has over 40 spoken languages representing different tribes in its territories. These cultures play a very significant role in ensuring that Kenya is a multicultural country due to the differences in their parts, cultural heritage and language (Lane, 2013). The most popular communities, or to be more precise, the dominant communities in the Kenyan territories, are the Kikuyu, then there are the Luo, Maasai, Kalenjin, Luhya and finally the Swahili, which can be found on the Kenyan coast.

The prehistorical evidence leads to a community like the Kikuyu, whose traditions are not unknown in deciphering the traditional background of the Kenyan communities. The kinsmen organised a body that could settle their disagreements: this community had one way to settle their disagreements by forming a body of kinsmen to advise the decision-making committees and resolve differences. Before the advent of colonialism, it is important to understand Kenya's socio-political history to

understand the development of the prison system. In addition to signalling a shift to a new way of penalising, the move from indigenous restorative justice practices to colonial confinement signalled a more fundamental change in governance, authority, and social control. The transition should therefore be examined in order to gain insight into the beginnings of the penal system in Kenya and the continued legacy of the colonial system on the administration of justice.

Although considerable research exists on the colonial prison system in Kenya from the perspective of British colonialism, few studies have examined the transformation of indigenous restorative justice systems into formal colonial prisons prior to 1915. Before the advent of colonial rule, Kenyan societies resolved conflicts through community-based mechanisms such as mediation, compensation, and reconciliation, rather than through punitive confinement. It was the British colonial administration that introduced imprisonment as a mechanism of social control. However, existing scholarship has tended to focus on the later colonial period, leaving a gap in understanding the origins and early development of Kenya's prison system. This study addresses the gap by examining the evolution of the prison system up to 1915, with particular attention to the transition from indigenous justice to colonial incarceration and its broader implications for governance and social control.

The general objective of this study is to describe the evolution of the prison system in Kenya, from indigenous justice practices to colonial confinement, up to 1915. In pursuit of this aim, the study is guided by three specific objectives. First, it seeks to examine the nature and characteristics of indigenous justice systems practised by Kenyan communities before the establishment of British colonial rule. Second, it aims to analyse the factors and colonial policies that led to the establishment and development of the prison system in Kenya between 1895 and 1915. Third, it seeks to assess the transformation from indigenous restorative justice to colonial punitive imprisonment, and to evaluate its implications for social control and governance in early colonial Kenya.

Theoretical Framework

This study is guided by Foucauldian Theory, developed by Michel Foucault, which views prisons as institutions of discipline, surveillance, and social control rather than merely places of punishment. The theory explains how

modern prison systems emerged as mechanisms through which states exercise power and regulate populations. In the Kenyan context, it provides a useful framework for understanding the transition from indigenous restorative justice systems based on mediation, compensation, and reconciliation to the colonial prison system introduced by the British after 1895. Colonial prisons became instruments for enforcing colonial laws, controlling African labour, and suppressing resistance. Thus, Foucauldian Theory helps explain how the prison system evolved as a tool of colonial governance and social control, making it an appropriate framework for examining the development of Kenya's prison system up to 1915.

Significance and Justification of the Study

This study is important because it brings to the fore the historical underpinnings of the Kenyan prisons. The study investigates the shift from indigenous justice to colonial imprisonment and offers insights into the impact of colonial policies on systems of governance, law and punishment. It also adds to the pool of knowledge regarding Kenya's legal and penal history, the ongoing deliberations on prison and criminal justice system reforms and the applicability of traditional Kenyan principles of restorative justice in the development of a fair and inclusive criminal justice system. The history of native justice and colonial imprisonment in Kenya is a major and largely overlooked topic in the country's laws and institutions.

While many studies have focused on colonial administration and the prison system in the late colonial period, especially the Mau Mau Emergency, there has been little attention paid to the early history of colonial prisons, up to 1915. This research project seeks to complete this missing picture by examining the transformation of indigenous restorative justice systems to the formal colonial prison system set in place during British times. The study is warranted as it advances the understanding of the ways British colonial policies have helped to redefine traditional modes of justice and social control as prisons of punishment.

The study captures the features of indigenous justice practices and how they were replaced by colonial penitentiaries, thus giving a historical account of the origin of Kenya's current correctional system. Knowing about this transformation is critical to understanding the roots of the criminal justice system in the country. It is hoped that the results of this research will benefit

researchers and scholars in the history, criminology and sociology disciplines, the law and African studies, as it will enhance knowledge of colonial systems of punishment and indigenous justice. The findings of the study will also be of interest to students who are doing research on the history of law, colonial administration and prison reforms in Kenya. Moreover, the results can help inform policy-makers, criminal justice practitioners and the Kenya Prisons Service with a historical perspective that can inform the ongoing reforms in prisons and the implementation of restorative justice principles in the criminal justice system. The study could also help cultural institutions such as the Kenya National Archives as well as museums in preserving and interpreting the history of the development of penal institutions in Kenya.

METHODOLOGY

This study was historical research oriented and focused on the evolution of the prison system in Kenya from indigenous justice to colonial prisonation till 1915. Historical research is suitable since it provides an examination of historical events in a systematic way, based on documentary and archival evidence to gain an understanding of the changes in institutions and the processes of history. The design allows for the reconstruction and interpretation of developments of indigenous justice systems, colonial prisons, and the change of the Kenyan penal administration (Tosh, 2015; Gottschalk, 1950).

The study took the Kenyan perspective and dealt with the period of history from pre-colonial to 1915. The geographical area covered by the map extends to areas under British administration after the founding of the British East Africa Protectorate in 1895. It is the era between the indigenous justice systems and formal colonial penal systems.

The data used in this study was secondary data only, as this study aimed to explore the events that had already happened in history. A wide variety of published and unpublished documentary sources were used to obtain secondary data. These comprised scholarly books on the history of the Kenya prison system, colonial administration, indigenous justice systems and British colonial rule, peer-reviewed journal articles on punishment, social control and colonial governance, as well as government publications and colonial administration reports, theses and dissertations, archival records from the Kenya National Archives and The

National Archives (United Kingdom), and international organisation and other historical records relating to penal administration in colonial Kenya. Secondary sources were used appropriately as they provided important historical evidence and allowed the researchers to compile the history of events from available documentation. Documentary sources also enable the analysis of institutional development and policy changes in the past, and the cross-checking of information from various sources to increase the credibility of historical conclusions (Tosh, 2015; Gottschalk, 1950). The collected data were chosen for their credibility, authenticity, relevance and suitability to the research objectives. Secondary sources are suitable since they are used for historical evidence to help reconstruct events and to consider the institutional development (Tosh, 2015).

A documentary survey was used to collect data. Related literature on the topic was located using library catalogues, online academic databases, archives and institutional repositories. The documents selected for this study were those that were relevant to the study goals, credible, authentic and contributed to understanding the evolution of the prison system in Kenya. Special effort was made to locate sources written about the indigenous justice system, colonial legal policies, and the creation of prisons prior to 1915.

This study was a qualitative and historical analysis, with document analysis and thematic analysis as data analysis techniques. Historical documents were critically analysed to establish authenticity, credibility and relevance. The material gathered was analysed into themes that reflected the themes of the study, such as the indigenous justice systems, colonial prison policies, and shift in punishment. Historical comparison was used for data interpretation to account for continuity and change in Kenya's justice system and the penal system (Tosh, 2015).

The results of this study were presented qualitatively in the form of a narrative. The data were presented under thematic headings, which helped to provide a logical explanation for the development of the prison system in Kenya until 1915, and were arranged in accordance with the study objectives. Themes were indigenous justice systems, the formation of colonial prisons, colonial penal policies and the effects of punitive imprisonment.

A source triangulation method was used to increase the credibility of the findings by comparing and corroborating information from books, journal articles, archival records and government reports. Both internal criticism (content of historical documents) and external criticism (documents' origin and authenticity) were used to determine the authenticity, accuracy and consistency of historical documents according to historical research methods (Gottschalk, 1950).

Even though this study was based on secondary information, the ethical principles were taken care of by giving proper citation and reference of all the resources used. Accurate interpretation of historical evidence has been done, and there has been no plagiarism, bias, or misrepresentation of historical events.

FINDINGS AND DISCUSSION

Traditional Practices: Description of Pre-Colonial Justice Systems Among Various Kenyan Ethnic Groups

The Kenyan history, as far as the justice system is concerned, may be said to be influenced by customary laws. Most scholars noted that prior to the colonial period in Kenya, there was a range of communities within the territories, and that the pre-colonial justice system was a justice system that had elements of restoration (Pkalya et al, 2004). The reason behind the existence of guidelines in the setting up of the communal laws and regulations was to ensure that the society was established on a moral basis. This witnessed the development of laws that rectified one against injuring others, resulting in respect in the form of principles that prioritised reconciliation, harmony in the community, restitution and reintegration into the society rather than punishment or imprisonment (Mbuba, 2011). One of the typical examples of tracing the traditional laws is the largest Kikuyu community in Kenya, which had a system of administrative hierarchy called the Kiama in the pre-colonial period. The Kiama was a council of elders and had a chief among them, whose primary duty was to serve the community in a just manner and to ensure that wisdom and knowledge of the customs were applied in solving disputes under sacred places such as below Mugumo trees, where cases were called and revealed (Kariuki, 2007).

Prior to colonialism, the area that is now Kenya had many communities, such as Agikuyu, Luo, Kalenjin, Luhya, Kamba, Maasai, Mijikenda, Somali and more, with established systems of governance and justice. These societies were not all politically organised, but

they typically had social control over their members based on traditional law and the guidance of a council of elders, clan leaders and other local and respected leaders. Issues of theft, assault, land ownership, marriage, and animal ownership were frequently settled by mediation, compensation, reconciliation, taking an oath, and community sanctions. The main aim of such mechanisms was to re-establish peace and social harmony, not to isolate the offenders by putting them in prison (Kenyatta, 1938; Wanjohi, 2011). The traditional justice system amongst the Kikuyu had a number of elements, including oath-taking and even consultation with spiritual leaders, to ensure that justice was served in all aspects, so that both parties left satisfied with the system of justice. (1938). They added the possibility of fines being paid if found guilty, ostracism, shaming or banishment from the city; a few times, this would be effective if it was proven that they were wrong at the end of the case hearing and the ruling was made (Spear, 1997).

On the other hand, there are communities just like that of the Maasai where they also had a similar arrangement as the Kikuyu culture. Among the Maasai, they used to refer to their elders as Ilpayian and even Oloiboni, and they were chiefs with vast experience of problems that arose affecting the community and had knowledge of how to settle disputes during the custom hearing (enkiguen). These elders helped the community keep harmony amongst its members since everyone abided by the rules laid down by the community, which were rules of discipline to ensure there were no feuds (Tarayia, G. N., 2004). The other notable tribe in Kenya that had engaged in a system of law that ensured justice in their midst was the Luo (Juma, 2001).

In Kenya, these societies had their leaders known as Doho or Buch Piny, who would ensure critical scrutiny of mediation and who would avoid issues that went "off the boil" through the application of traditional means such as Chira or other customary applications such as Jabilo or Ajuoga, which invoke truth (Ojwang, J. B., and J. N. K. Mugambi (eds), 1989). Hence, it was a clear indication that the pre-colonial justice system in Kenya was traditionally established in a fashion that encouraged governance in a structural manner to culminate in case resolution that culminated in social cohesion enhancement even in the absence of formal prisons, in the manner of handling the community welfare issues (Sutton, 1978). In the Kikuyu traditional structure, this had to be ensured by the Kiama to establish a system of governance to administer justice to its people, of a

hierarchical nature involving chiefs and elder councils (Lane, 2013).

This was also repeated in other communities, such as the Maasai community, and other chiefs in the community would ensure that community aims were implemented in a non-chaotic manner (Kettel, D. W. W., 1975). This assisted in establishing sanity in the larger community so that the population that lived within the laws would be able to keep themselves in an economically stable situation based on the organised social positions and duties that fell within the spectrums of various communities, such as fines, compensation, community service, or even banishment when one was assisted in a legal suit (Ambrose, 1998). One could add the coastal people of Kenya-Swahilis, predominantly connected with Indian, Arab and Persian trade (Kaya), to the above-mentioned communities, which are members of larger social cohesion communities. The European powers came to Kenya as explorers and missionaries, and these coastal communities acted as the gateway to the British, who aimed at bringing education to the Kenyan community. This clashed with the cultural values and ideals of the locals, promoting westernisation of different groups and creating conflict due to their growing involvement in colonialism, which impacted the traditional set-up of the Kenyans.

Establishment of British Protectorate and Introduction of British Legal Frameworks

The pre-historic narration of the Kenyan sphere of justice system was largely identified as upholding the principle which enabled restorative philosophies (Maxon, Robert M. 1994). These were regarded as the major turning points in the area of justice before the British invasion that fostered the westernised agenda which reinforced the concept of individual punishment by incarceration (Mackenzie, 2000). The research identifies the traditional regime of justice in the Kenyan structure to be mainly customary, and it was mostly elders who were involved in the formulation of the laws. For example, decentralising a system based on these principalities and creating an avenue that helps in a mediation-based system would nurture hierarchy. This proved to be effective because of the feeling of being touched at the ground, where the societies felt that they were heard and justice was done, so that they created a healthy social relation through social bond repair and conflict resolution. This was not the way that the British needed because they opposed the social structure that reinforced harmony but instead disbanded it through the

conventional practices into punitive confinements. (Anderson, 2005).

The change that was brought into the justice system in Kenya was radical due to the influence of the British during colonial times. The new system was a new arrangement, which had its own set of regulations, which were not the same as the regular routine to which Kenyans were used. A different set of laws would have to apply in the whole country under the British, and that meant having to supplant the existing laws with ones that would promote the updates to the punitive system that they had fostered (Bernault, 2007). This foundation established by the British colonialists continued to produce the first prison in Mombasa dating from 1895, which revealed that the rules had become non-traditional ways to rule and not socially healing-oriented prisons (Channock, M., 1991). Historians also point out that by the year 1915, the sector of prison systems had changed a lot, as there were some changes being witnessed, especially on grounds such as criminalisation of Kenyan cultures, especially the indigenous lifestyles. Thus, by assigning a greater area, which becomes a refuge for institutionalisation of prison, the institutionalisation of traditional power formations takes place as a way of remedial processes to serve Western economic and legal interests.

First Prisons: Creation of Initial Prison Facilities and Their Primary Purposes (1895-1900s)

It is important to know that the first correctional facilities were proclaimed after the establishment of the East Africa Protectorate in a search to know how the first correctional facilities were established in Kenya. It was certainly in 1895, during Britain's colonisation of the indigenous people, and the development of its system of rule over its subjects. They ignored the existing systems that were community-based and which adopted the traditional methods of handling conflicts and disputes, and established a prison system that formed the current penal system in Kenya. The first thing which ought to be taken into account in analysing these problems is the transformation which was observed in the year 1898 when the EAP led to the promulgation of the first regional penal code, which came to be known as the Indian Penal Code. It was an innovative method of practising the law that saw a change in the way rules and regulations were to be followed.

In addition, this system resulted in provisions that provided the statutory justification of punitive

incarceration. The result of this was that it stimulated the general culture of Westernism against the local traditions of ruling; the emergence of prisons, in both Mombasa and Nairobi, was also facilitated as a means of punishing those who defied British rule as being savage in the colonial era. Another thing that needs to be thought about when learning about the initial prisons is that the protectorate buildings were extended. This expansion occurred during the 20th century from 1902 to 1915 and was appropriate when British strategies embraced the understanding that they also had the mechanisms to cope with the Africans who were steeped in tradition. This implied that they would be forced to employ policies that would enable them to scale higher, such as having a prison system weaponised as an economic and political weapon. The policy that was dominant was effective in that it had a kind of bias towards making their goals of reaching more likely to be accomplished, especially via land and labour.

Moreover, there was also another aspect of influence that occurred due to the need of the British to have complete dominance of the regions they were colonising. For instance, their methods of arrest and prosecution of the leaders of armed disobedience groups were designed with this purpose in mind: they wanted to achieve change and civilisation through the means of arresting the local resistance and maintaining peace and order in the administration. Therefore, one could easily see that the westernised beliefs were imposed on the community to break its bond with the existing system of community justice and correctional system, thus heading towards enlightening the modern-day Kenya of justice and correctional system.

The Construction of the Uganda Railway from 1896 to 1901

When the British arrived in the Kenyan territories, they needed a transportation channel to facilitate the transportation of raw materials. As a result of this recognition, they had to engage in the outsourcing of labour so that they could build a railway line (Ruchman, 2017). History from 1896 to 1901 illustrates that this was a construction period in the Kenyan territories when the British colonisers desired to have access to the Kenyan interior territories through the port of Mombasa to the part of Uganda. This was one of the major reasons why the British considered it expedient to construct the railway in their wish to streamline various aspects that would benefit their presence on the continent, including trade, migration and military supply. In addition, it is

important to realise that the Kenya-Uganda Railway was constructed to the requirements that were demanded by the British.

For this reason, they wanted to put in place a major alternative plan which could help them in the easy control of the interior of East Africa by the British. This was, however, faced with various challenges, particularly those in the terrain of the African countries where there exist landscapes that are usually interwoven with thick forests, steep mountains and river crossings. Moreover, most of the British men, as well as women, also succumbed to various diseases that are usually known as tropical diseases, such as Malaria and sleeping sickness, which were caused by the extreme weather conditions.

The locals did not take too kindly to the construction of the railway lines and, in many cases, had to deal with local opposition, which led to an acute shortage of local labour in many instances (Durrani, 2018). It was the time when the birth of the prison labourers took its place as one of the evident alternatives over which they were ready to act as supplements to the opposition forces. The British authority believed that this was sufficient; in the short term, the prisoners would supply labour at a minimal cost, and in the long term, with other considerations, such as the source of cheap labour, also taken into account.

This is the alternative that the prison system in Kenya came into being because the scholars' evidence suggests that the British knew that their system was working, as the majority of their evidence indicates that the British knew that most people could be jailed because of their minor or petty offence, and they could easily recruit them to work on the railway construction. The result of this issue was the construction of large prisons in Mombasa, Nairobi, and Kisumu, a factor that also saw the proliferation of the penal system within the Kenyan space, which was used to make sure that labourers were arrested and political prisoners prosecuted. It is worth mentioning that the prisons that were being built during the construction of the railway era had different functions.

Part of the reason why they were built was that they were to enable the prioritisation of the extraction and containment of labour compared to rehabilitation, hence causing severe overcrowding and abysmal conditions. The arrested were also facing issues during the colonial times, especially health-related issues, due to poor

sanitation, malnutrition, lack of medical facilities and cruel treatment. A number of consequences were also directly felt as a result of these Uganda Railways, as seen through the lens that they enabled the British imperial goal and ensured they imposed a system of coercive labour and punishment in Kenya. Since then, it was subject to vast transformations in the form of the prison systems that achieved a great deal of control, economic extraction and suppression of resistance locally and across the Kenyan territories as a carceral system.

Growth of the Prison System, Including the Establishment of New Facilities(Early 1900s-1915)

The British colonial administration settled in Kenya, and the need for administration and punishment in the prisons increased. The period was associated with great development in the penal system. Prior to the introduction of the modern prison in Africa by colonialism, punishment was paid either in terms of money or by physical means. Kenyan philosopher Henry Odera Oruka contended that the concept and the actuality of prisons and fines were nonexistent in Africa until European colonists brought them along when they moved to invade Africa.

Although sometimes the African murderers or witches were physically tortured, he claimed that in early African societies most of the punishment was based on the principle of restitution or compensation (Oruka, 1976). By the early 1900s, the colonial government had to build additional prisons in the EAP due to the increasing number of prisoners. Key facilities included: Kisumu Prison (1900) was built in the west of Kenya to accommodate prisoners in the Lake Victoria area and to help the colonial administration. Kericho Prison was established in the highlands to cater for the settlers and colonial administrators in the agricultural area (1908). Nakuru Prison (1910) was one of the colonial infrastructure developments to serve the increasingly large settler population and administrative needs in the central highlands.

The construction of Eldoret Prison in 1912 was to house prisoners in the growing settler and agricultural lands of the Rift Valley (Peterson, 2004; Branch, 2009; Kenya Prisons Service, 2024). There were certain camps that were created keeping political prisoners or persons involved in the resistance in mind. These were safer and more remote places to avoid escapes and control high-profile prisoners. The colonial administration introduced a better administrative system of running prisons. This

included appointments to wardens, officers and administrative staff to run the day-to-day operations. The attack on the penal system was repeated in the institutionalisation of the penal system with the codification of rules and procedures that regulate prisons. This consisted of discipline, labour and rules governing inmates. The British presented a detailed penal code detailing a number of crimes and possible penalties. This code provided a uniform legal system in dealing with crimes and running prisons. The incarceration rate grew in order to offer labour in the colonial works such as construction of infrastructure, farming production amongst other economic activities.

In addition, there was hard labour, where prisoners were typically engaged in hard labour. Prison labour was also likely significant in developing the colonial infrastructure, including roads, railways and agriculture (Hale, 1982). There was also the issue of overcrowding in prisons because of the expansion of the prison system. The new facilities used to be overpopulated within a short time, and the conditions worsened. The overcrowding of the prisons made the sanitary and health facilities inadequate. In many prisons, various problems of poorly developed medical care, inadequate living conditions and food were found. As the prison system expanded, it was used to quieten the political opposition and to control the opposition to colonial rule. The expansion allowed for more political activists and opponents to be detained. Traditional social structures and practices of justice were also disturbed once more due to the expansion of the prison system. Colonial law systems and punishment practices were part of the social conflicts and opposition.

The practice of colonialism in Kenya upset the traditional justice system by installing courts and the use of British law courts. However, many situations existed in which customary law was practised in conjunction with the formal law. (Zezeza et al., 2003). It resulted in the traditional justice practices being altered, sometimes with the traditional leaders being recruited by the colonial administration to administer the colonial law. The colonial prison system had an impact on the development of the post-Independent prison system in Kenya. The new socio-political environment required changes to correct the injustices and inefficiencies of the colonial system, and to adapt to the changed environment. Along with the development of the prison conditions, the modernisation process continued, and changes in the

issues and demands on the Kenyan prison system also occurred during the 20th century.

Use of Prison Labour for Colonial Projects and Public Works

During the British colonial rule in Kenya, prisoners would be exploited by being put to work in prisons to fund colonial economic and infrastructure projects. This mistreatment of prisoners was a cornerstone of the colonial administration's policy of getting the most out of their economic production and organising mass work. In addition, prison labour was another form of colonialism, expanding the work of the colonial industry with local resources and labour to serve its interests. Longer sentences were found very profitable to the prisons. In the prison, convict labour was utilised as an alternative, marking a shift from slave labour (Bernault, 2007). Even the non-prisonary Africans were involved in this forced labour system, and the workplaces began to engage both the prisoners and free people.

All types of populations were being targeted as a potential source of labour and were taken to prisons in order to satisfy the need. The colonies were settled to provide labour to the European agricultural economy by the use of prisoners to provide labour in settler farms. Included in this was the planting, growing and maintaining of crops. Prison labour was also used in large plantations which produced cash crops such as tea and coffee to cut down on the production cost so as to make more profit. In 1901, Kenya did not have a valuable natural resource that she could go after to recover the investment in the railway, so she said settler farming would then be encouraged (Cone, 1972).

The unused land which the railway company left behind would then be in the service of the company to pay for the European settlers' investment. He was the Commissioner of the East Africa Protectorate 1900-1904; for this reason, he was instrumental in the design of the early colonial regime and development of the prison system. Early settlers, primarily European farmers and entrepreneurs, were given large tracts of land by the British colonial government. The settlers needed a stable and low-cost labour force to work on their farms and plantations, and hence the necessity of mechanisms to dominate and manipulate the local labour.

The settlers went so far as to declare colonial policies illegal in order to eliminate many practices and actions that threatened to undermine the colonists' economic

enterprise. Laws were also instituted to deal with such problems as vagrancy, evading tax and opposition to forced labour. Large numbers of Africans were arrested and jailed on minor or non-compliant offences, and thus any act of resistance was criminalised, with a source of labour provided. Labour and order were essential, and prisons were established and developed in the protectorate. Prisons were opened at strategic points to contain the people who opposed colonial rule or those considered to be criminals according to the new laws (Tauri, & Porou, 2014).

Prison labour was often used in the construction and maintenance of buildings and facilities of the colonial government. This was for administrative offices, police stations and other amenities for the people. The construction and upkeep of utilities such as water supply and sanitation facilities were done using inmates (Hallett, 2004). Most of the prisoners had poor working conditions. They were subjected to many hours of work, insufficient food and minimal medical care. Poor living conditions in the prisons were another factor that made the gruelling labour even worse.

Corporal punishment and strict disciplinary action were used to instil discipline. This served to put the prisoners under control and increase productivity. The colonial government came up with rules which controlled the application of prison labour. These rules provided the kind of work that prisoners were allowed to do, but the implementation was usually lax, and this resulted in large-scale exploitation. The policies were designed to maximise profit and productivity of the prison labour while minimising its cost. This was in the form of elaborate labour schedules and quotas. Settlers had a litany of lamentations that African workers were lazy, clumsy, incapable of learning to use simple tools, unable to understand the elementary commands, and unimaginative; they reported to work late and attempted to leave early.

These accusations, of course, are similar to the ones of the individuals all around the world who have to work with the unsatisfied Africans. When asked by the Native Labour Commission (1912-13), it was said that there were a number of settlers who believed that violence was part and parcel of labour relations. It was common for these settler farms to be overseen by Europeans, who beat their African labour (Chief Ogola Kisumu native local council in Shadle, 2012). The prisoners had poor health and well-being due to the harsh labour conditions.

High rates of sickness and mortality were caused by too much work, substandard nutrition and care in hospitals.

The severe treatment and the inexorable work also had a significant psychological impact on prisoners, which led to post-traumatic stress and suffering in the long term. The use of prison labour was a major contributor to the success of colonial projects in particular. It also provided cheap labour for the big business enterprises of infrastructure and agriculture. Local people resisted and rebelled against prison labour conditions. The prisoners and their families were usually subjected to extreme suffering, resulting in a rise in tensions and conflicts with the colonial administration.

Analysis of Living Conditions, Including Overcrowding, Sanitation, and Medical Care

The colonial prisons in Kenya were, in general, very basic and primitive, their equipment and facilities in some cases being very limited and inadequate. The inmates were put in overcrowded cells/dormitories with few furnishings. In most cases, there was inadequate bedding and room in prisons. The cells had a dingy and small feeling; they were usually stuffy, uncomfortable and less hygienic in nature. As the prisons grew, and prison labour was introduced, overcrowding in most prisons was enormous. Resources were strained by the number of prisoners, both political and common criminals. Crowding was added to the existing problems that included: Large population density contributed to the spread of communicable diseases and limited access to medical services. A lack of space meant that there was not enough room for the prisoners to live in, which affected their mental and physical well-being.

There was a shortage of space and privacy, which often fanned tensions and conflict among the inmates. The facilities for sanitation in early colonial prisons were not always adequate. Many prisons did not have adequate toilets, and in some cases, the inmates would be asked to use shared or simple latrines. Sanitation was poor, resulting in unhygienic environments, inappropriate waste disposal and cleaning habits. This has helped in the proliferation of diseases and health complications. Although there was some attempt to solve the sanitation problem, such as regular cleaning and repair, these were usually ineffective considering the magnitude of overcrowding and scarcity of resources. Lacking in colonial prisons was severe regarding medical care. Healthcare facilities and staff could not be adequate to

cater to the prisoner population. In most cases, medical care was basic when it was available.

Inmates could access basic treatments for common health conditions, although more serious health conditions were left unattended. The unsanitary conditions and overcrowding were a source of frequent outbreaks of diseases like tuberculosis, malaria and dysentery. The consequences of such outbreaks were usually very detrimental to the health of inmates. Corporal punishment such as beating and flogging was a common aspect of punishment in colonial prisons. These were the practices that were used to discipline and control prisoners. Punishment was ensured by tough conditions and punishment. These practices led to physical and psychological strain for prisoners. The effects of overcrowding, poor health care and hygiene had a negative impact on the physical health of prisoners. They were lacking in food, health and general poor health for the majority. Harsher conditions of life and a punitive environment caused psychological distress and mental disorders among prisoners. Inadequate privacy, maltreatment and constant stress had an impact on their mental health.

Punishment and Discipline: Methods of Punishment and Discipline used in Colonial Prisons

Punishment and discipline were the tools in colonial prisons which were used to keep order, to make people obey and not to rebel. The methods followed were those of the repressive character of the colonial regime, and the emphasis on control and discipline. Physical beating of prisoners was a commonplace method of discipline. This included flogging with whips/canes that were supposed to cause pain and control. Corporal punishment was primarily by caning, and was used for any offence, to teach discipline to prisoners. In other instances, public floggings were done to discourage other prisoners and the general public. This was to demonstrate the consequences of the sin of disobedience.

The Indian Penal Code [IPC] that was implemented in East Africa as early as 1897 had extensive provisions on corporal punishment. The first time the power of corporal punishment was granted to the courts was in the Native Courts Regulations of 1897, section 72. This law now looks cold and indifferent; punishment of 40 and over was not uncommon, and multiple punishments were given to each convict. In the Chief Native Court, punishment of 100 lashes was approved. At that time, there was no proper prison regime, and the kiboko

(hippo-potamus hide; a whip) was regarded as the most natural corrective to be used in most cases where the delinquent was a native (Anderson, 2011). In case of serious offences or disciplinary problems, inmates might be put under solitary confinement. This approach separated people from the mass population, which led to psychological pressure and social isolation. Inmates can be transferred to other, inhumane facilities with little contact with other inmates as punishment. Forced labour was also a part of the punishment of prisoners. This meant hard labour with colonial infrastructure projects or farming (or other labour-intensive activity).

Discipline can involve increased quantities of labour, or increased levels of labour allocation as punishment (Foucault, 1975). The inmates may be refused basic rights such as access to books or the right to visit, recreational facilities and more. This was a type of punishment that was used to deny inmates their comfort and social life. Prisoners in certain instances received a smaller food ration as a disciplinary action, making the already difficult living conditions more difficult. Prisons were controlled by rules or regulations of behaviour, and any violation of the rule meant the offender would be disciplined. Rules were related to behaviour, working, and dealing with other inmates. The prison was regularly inspected and patrolled by the prison officials to enforce discipline and adherence to the rules. Prison officers and guards were to keep watch on the inmates' behaviour and inform others about any wrongdoings. This type of surveillance system contributed to the administration and order in the prison. The disciplinary measures (such as corporal punishment and isolation) were very psychologically influential among prisoners. Many were traumatised in the long term, anxious and psychologically distressed as a result of their treatment. Punishment, as was used, was harsh and conspicuous as it was meant to discourage dissent and uphold order (Ogot, B. A., 2005).

Introduction of Formal Regulations and Management Practices

Regulations were drawn up on the nature of punishment and disciplinary action which would be allowed in colonial prisons. Nevertheless, there was a lack of enforcement and compliance towards these rules, and abuse was not a rare occurrence. There is a degree of oversight, but it is not extensive, and it did not adequately address the abuse/mistreatment issue. Colonial powers were more concerned with control and order rather than fair treatment. The colonial government

had an intention to get a legal and administrative system which would facilitate the exercise of its control over the land. The other significant feature of this strategy was the adoption of the prison system.

The Imperial British East Africa Company (IBEAC) is a key player in the evolution and development of the Kenyan Prison System. As a commercial organisation, with administrative powers granted by the British government, the activities and policies of IBEAC set the precedent for the formal colonial government that was in the process of becoming. The IBEAC initiated the primitive forms of judiciary which would settle disputes and provide justice. This also included the installation of magistrates and the establishment of courts to punish the offenders by sending them to jails. Judicial practice of the company was based on British law, but in most cases was adapted to local conditions, and included the use of imprisonment as a punishment. The customs and organisation that IBEAC had built up were a forerunner of the formal prison system which was to be built up in the near future under the direct control of the British. In 1895, the direct British government administration followed on the path of the Imperial British East Africa Company (IBEAC), founded by the company, and the foundation set up was formalised and expanded (Kenny, 2022).

The IBEAC prerequisites were followed by the Prisons Ordinance of 1895, which created a more organised prison system. In 1897, the Indian Penal Code was introduced in Kenya. This code, which was already applied to British India, provided the legal framework for prisons and the punishment of criminals. The code greatly contributed to the evolution of the justice system in the colonies in Kenya. One of the pillars of the regulatory system, when the British penal code was introduced, was the penal system of the prison system. This code was a complex system of laws that outlined various offences, penalties, and legal processes. The penalty handed out was approved, which consisted of fines and corporal punishment (imprisonment and forced labour). Kenya was colonised by the British, and British colonisation started by the end of the 19th century. British colonial rulers placed certain rules and regulations which dictated how prisons would operate. These rules included: Treatment and discipline of prisoners; Classification of prisoners. Routines around routine activities – work placement, lunch and leisure time. Rules on taking care of hygiene and health in the prison facilities.

Prisons Ordinance was drawn up in 1902, which explained the set-up and administration of the prisons, classification of inmates and tasks of prison officials. The British had one of their earliest pieces of legislation to regulate the Kenyan prison system in 1902, known as the Prisons Ordinance. The ordinance allowed for the construction of more formal prison buildings, and established rules for the operations of those buildings (Ghai, 1970). Several acts and ordinances were passed to make the prison system formal in terms of structure and functions. These were: an established legal framework for running the prisons, responsibilities of prison authorities, rights of inmates, and guidelines on sanitation and health care in the prisons to address issues of overcrowding and inadequate facilities.

In 1907, the Legislative Council was established, which served as the legislature of the British East Africa Protectorate. The council was made up of nominated European officers and a limited number of nominated representatives of the settler community with no representation of the indigenous African people. The LegCo had one of the main roles to draft, debate, and pass legislation which would subsequently be administered by the colonial administration. Later in 1907, the council was involved in legislative activity; the ordinances they passed in the penal system were: administration, running and control of prisons. The Legislative Council used to enact and revise the prison ordinances, which outlined the structure of running prisons. These ordinances covered most facets of prison administration, like the terms of confinement, the treatment of prisoners, functions, and responsibilities of prison staff and the utilisation of prisoner labour.

The Prisons (Amendment) Ordinance of 1911 was intended to modify factors like administrative issues and the necessity to control them strictly. Critical analysis of the introduced changes, including changes in prisoner work, treatment of various classes of prisoners and the administrative processes. It was also intended to conduct an evaluation of the impact of the changes on management and conditions in the prisons (Berman, 1980). Thus, the British colonial rule established an official administration system of running prisons comprising the following: Appointed officials who were responsible for the prison's day-to-day administration and maintained discipline in the main prison. Employees who controlled inmates and were in charge of the rules and security. Healthcare officials such as doctors and nurses

were stationed to provide health care and address health issues for the prisoners.

Disciplinary measures were adopted in order to keep order and control the behaviour of the inmates. This included: The procedures for administering sanctions (confinement, deprivation of the right to participate and corporal punishment). Appeals and grievance procedures for inmates. One of the major issues in the system of regulation was the regulation of prison labour. The latter included: Distribution of labour (in all the colonial work such as farm labour and road construction). Labour conditions regulations (time, safety and wages). Routine checks and audits were made to make sure that the regulations and standards were being met. This was: Authorities mandated to inspect the prison conditions, practices in running the prison and legal adherence. Inspection reports were done to determine problems, suggest better use, and ensure accountability. Legal institutions and courts participated in the supervision of the implementation of regulations in the prison and legal issues related to the prison system. This included looking at cases involving conflict over conditions in prisons, treatment of prisoners and their legal rights. There were constant changes in laws – designed to address gaps and to reflect new needs.

In the year 1914, the foundation of the native courts was made formal under the Native Courts Ordinance, and the native courts were in operation as well as the colonial courts. This ordinance was meant to unite traditional laws with the colonial statute, but this was normally used to augment colonial authority. The system of prisons also took a hit towards the start of World War 1 in 1914, when the British colonial system was able to assert itself over the people and prevent any future discontent during the war. They put them in prison to try to reduce the number of people who appeared to be a threat to the war on colonialism (Parsons, 1999). By 1915, the prison system in Kenya was one of the ways of colonial control, reflecting the imperial end goal. Although the system of formal law has dominated, the traditional systems of justice are still applicable, especially in the rural regions where few people have access to the formal courts. Such systems have also proved successful in settling disputes in a timely fashion and in maintaining social harmony. The Kenyan Constitution of 2010 has also been able to acknowledge the importance of traditional justice systems, provided that they do not breach the national legislation and human rights (Chesoni, 2016).

The Impact of the British Colonial Justice System on Traditional Legal Systems in Kenya up to 1915

In studies done by Osogo (1966), he observes that the arrival of the British colonialists brought with them their way of doing things that can be considered as westernisation. By the term westernisation, it implies that they made their own government that had been successful in their country, and were attempting to civilise Africans by severing them from their usual lifestyle. This brought calamity upon the various cultures that were present in the 19th century that were in a rush towards the goals that drastically changed the indigenous law and governance. For instance, in this era of scholarship, the author finds that in Kenya, the system of justice was established based on the premise of justice by installing the council of elders, who served the people to formulate a social and harmonious society.

Kenya has various tribes which are also subject to varied cultures and traditions; the ethnicities encompass such people as the Maasai, Kikuyu, Kisii, Luo, Luhya, etc. They had all their pre-colonial existence with lifestyles, a practice that is considered an advanced customary institution that they have created to enable them to remain in touch with the communal rules. These rules were significant because they ensured the communities were upright in their moral and ethical practices, such that it led to collective responsibility, consensus building and restorative justice that helped them restore social harmony and not just punish.

Since the declaration of the East Africa Protectorate, with the introduction of the British systems of justice, there were huge changes in this respect of the customary laws. As an example, the British restructured the African traditions in the sense that they aimed at marginalising them and making them their subordinates by introducing the new colonial institutions. This was followed later in the years when a system accommodating a post of the district commissioners, whose personnel was placed in power to act as a DC and the magistrate, whose primary mandates were to create sanity in the highest judicial posts to benefit the White man.

The other roles that emerged resulted in the making of orders like the appointment of chiefs, and they would never perform the same responsibilities as they did during the pre-colonial period, but now they would collect taxes, impose duties of labour, and oversee the native tribunals. This is the merit of the transformation, as the British ensured that the African chiefs were co-

conspirators and could play their part as agents in the representative role of colonial rule instead of as representatives of tradition. Research shows that the pace was hastened to restructure everything to be in line with the British system, even though improvements were realigned. For instance, the dual court was introduced; this was a major factor contributing to the reorganisation of the justice delivery system, where all the courts and staff were of European origin and only English was the main language of communication.

Contrastingly, though, there was the set-up that accommodated the native tribunals; these were influential in a sense that they would be associated with activities that facilitated addressing African issues, but on the other hand, they were expected to be accountable to the district commissioner. This later became accelerated into the establishment of a police force system that was linked to functions that offered enforcement. The British also devised systems that were effective in a manner to make sure that there were enough means with which they could conduct their tasks, such as written records, adversarial processes, oaths based on Christianity and punitive punishment alien to the African norms and archaic to the traditional ones.

Apparently, Native Tribunals had a practice, but the French colonial rule broke down what was deemed as uncivilised. The British did not abolish custom law, but only "regulated and reformed" it. Custom was not legally binding unless it "fell in with" British ideas of justice and morality, so that, for example, trials by ordeal or collective indemnity for crime were forbidden. Authorities formalised and institutionalised the traditions selectively, turning dynamic, community-based norms into hard and written norms, often with colonial connotations, but not true developing traditions. Pre-colonial justice focused on the reconciliation between the parties and restoration of harmony; colonial law transformed crimes into crimes against the state and gave priority to punishment and deterrence. This change brought into the societies much greater imprisonment (not found in traditional societies), labour, corporal punishment, and personal responsibility instead of the collective responsibility of the clan. The emphasis was directed towards the healing of the social divisions through the imposition of order and coercion, and the ruling turned out to be the instrument of colonial stability over the balance of the community.

The colonial laws were not limited in their scope, but included as well the possibility of restructuring the society and its control. Laws such as the Crown Lands Ordinances of 1902 and 1915 proclaimed large areas of land as Crown land, which authorised the settlement of Europeans and the dispossession of a large number of Africans. There were complementary actions that enhanced economic reliance: hut and poll taxes kept men in wage slavery, pass laws restricted mobility, and forced labour crimes were made punishable by law. By doing so, law served as an instrument of territorial domination, extraction and subjugation of resources. Although these are radical changes, traditional systems proved to be resilient. The people in these areas continued to go to elders to solve problems of family conflict, marriage, and inheritance, even though the colonial government had no involvement. In the supervised Native Tribunals, decisions were often made that mixed traditional with colonial reasoning, and decisions that upheld values of the culture under pressure were made. It also highlighted the resourcefulness of Africa when it comes to working around and subtly changing the structures imposed upon them.

By 1915, the British colonial justice had radically changed the legal environment in Kenya: the power of the elders had vanished, institutions alien to Kenya had established themselves, customary law had become strictly regulated and codified, and restorative justice had been ousted by punitive justice. These changes not only destroyed the autonomy of indigenous populations but also incorporated the exploitation of the indigenous economy and political domination into the law system via land alienation, forced labour, and limiting mobility. Traditional practices persisted, however, and began to evolve and establish a pluralistic legal landscape, consisting of repressive colonial law and customary indigenous law. This initial hybrid system preconditioned further tensions and adjustments and the subsequent urge towards independence, showing the role of law as a method of dispute resolution and a powerful tool of social engineering and imperialism.

CONCLUSION AND RECOMMENDATIONS

Conclusion: The study reviewed the history of the Kenyan prison system from the pre-colonial period to the early colonial period (1915). It demonstrates that in pre-colonial Kenya, the Kenyan communities had their own justice systems that served to achieve a restorative approach to justice, including mediation, reconciliation, compensation, and restoration of social harmony. They

fostered a sense of community and accountability over social norms, instead of retributive acts.

The traditional systems were, however, changed as a result of the arrival of British colonial rule, when Western legal codes, formal courts and punitive penal institutions were introduced. The motives behind the colonial laws were mainly to facilitate administrative control, access to resources and resistance thereto. This change resulted in the introduction of prisons as devices of imprisonment and punishment instead of many native mechanisms for settling disputes. The research reveals that traditional restorative practices and cultural forms of justice were decentered by colonial prison systems. It concludes that it is crucial to delve into the understanding of this historical shift to develop an appreciation of the evolution of the Kenyan prison system and inform current discussions on prison reform, restorative justice and the use of indigenous practices in contemporary prison practice.

Recommendations: Indigenous Justice Systems are recognised. Indigenous Justice Systems are recognised. Criminal justice systems and the Government of Kenya must acknowledge and incorporate relevant traditional restorative processes in the modern justice system. Alternative dispute resolution (ADR) techniques like mediation, reconciliation, and compensation can be used in addition to the formal legal process, especially when dealing with less serious issues and striving for social cohesion.

The preservation of historical records: The government, especially the Kenya National Archives, universities and research institutions, should improve the preservation of archival records, their digitisation, and access to archival records on Kenya's prison history. Access to historical documents will help scholars and improve the public knowledge of the history and evolution of the country's prison system.

Improvement of Correctional Policies: The Kenya Prisons Service and other criminal justice-related actors should keep on pursuing correctional policies that focus on rehabilitation, reintegration, restorative justice and respect for human rights, instead of punitive incarceration. Such changes must recognise the history of colonial prisons, and ensure that correctional practices are brought into compliance with international standards.

Promotion of Historical and Penal Research. Promotion of Historical and Penal research is being done. There is a need to promote more historical studies on the Kenya Prison System, especially the period after 1915, the development of prisons in various parts of the country, prison labour and people's experiences within the prisons during the colonial era, at institutions of higher learning. The studies will help to enrich the overall knowledge of Kenya's penal history.

The study provided the following recommendations for further research: The study covered the process of change in the prison system in Kenya from indigenous justice to colonial confinement up to 1915. Although discussions

were limited to the early colonial period, additional research is warranted in the following areas: A study of the evolution of the Kenya prison system from 1915 to 1963 with a particular focus on the growth of colonial prisons and their significance during the Emergency (Mau Mau) years. Research that evaluates the impact of the colonial prison system on the current Kenyan correctional system, including prison reforms, rehabilitation programs, and restorative justice practices. Comparative historical studies of prison systems in East Africa, particularly focusing on Kenya, Uganda and Tanzania, to find patterns and characteristics in the development of prisons under British colonialism.

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