



HUMAN RIGHTS AND DEPRIVATION OF LIBERTY IN KENYA

AN ANALYSIS OF THE HUMAN
RIGHTS' SITUATION AND GUIDELINES
FOR AN INTERNAL MONITORING SYSTEM



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WORDS BY IJJO CHAIRMAN

The vast African continent faces many challenges, including poverty, malnutrition, and access to basic human rights such as health, food and education. In recent years, an effort has been apparent in this region of the world to improve the situation of human rights. Indeed, most African states have ratified international and regional human rights treaties, guaranteeing the respect of human rights by codifying these principles within their national constitutions. Despite these efforts, a lot of work is still necessary to implement human rights, as there is a lack of effective regional enforcement mechanisms to prevent human rights' violations from occurring.

The International Juvenile Justice Observatory (IJJO) recognises the significance of these improvements and seeks to contribute to the progress of respected human rights and human dignity in the African continent. For this reason, we intend to have a tangible impact in Africa by involving ourselves in concrete projects aiming to further human rights in the continent, as is the case with the present report.

This report is part of the “Strengthening Human Rights in Correctional Facilities in Kenya” project, led by the European Committee for Training and Agriculture (CEFA) and financed by the EU Delegation in Kenya and the European Instrument for Democracy and Human Rights (EIDHR), within the thematic programme “Non State Actors and local authorities in development”. As a partner in this project, the IJJO publishes the present report to contribute to the implementation of the project and to provide tools to reinforce detainees' rights in Kenya. The target audience of this report includes policy makers, institutional actors and practitioners, in order to construct evidence-based strategies and plans of action, as well as to put into place monitoring and reporting systems. Also, the IJJO aims to follow the activities of relevant actors in Africa, more precisely, developments within the African Committee of Experts on the Rights and Welfare of the Child (ACERWC).

The IJJO continues to work for the protection peoples' rights, in particular children and youth in conflict with the law. To this end, it is currently developing the African Council for Juvenile Justice (ACJJ) as a think tank for debate, analysis and conference, with the aim of encouraging development and the promotion of the rights of children and young people in Africa.

Through the ACJJ, the IJJO seeks to bring together professionals with experience in legislation, application, supervision, research and/or intervention in juvenile justice from the judiciary, public administrations, universities and academic centres, and non-governmental organisations. The objective is to accommodate coordinated action between the representatives of these four sections, so as to compile reports, make proposals and develop research projects and strategies to implement human rights in Africa, especially with regard the rights of children and young people in conflict with the law. The ACJJ will be part of a global framework of interconnected regional councils for juvenile justice, namely the Asia-Pacific Council for Juvenile Justice (APCJJ), the European Council for Juvenile Justice (ECJJ), the Latin American Council for Juvenile Justice (LCJJ) and the North American Council for Juvenile Justice (NACJJ).

Following these priorities in the region, the IJJO is pleased to have contributed to the study of the human rights situation within the Kenyan detention system. The IJJO would like to express its deep thanks to the European Union for having supported this research, as well as the European Committee for Training and Agriculture, the Kenya Prison Service and the Probation Department, the Legal Resource Foundation, the Faraja Foundation and FrGrol's Welfare Trust for such valuable contributions.

Dr. Francisco Legaz Cervantes

Chairman, International Juvenile Justice Observatory

FOREWORD

‘On the whole I realise that as far as food and clothing are concerned, I am not too badly off. If and when I get out I will mention that in these two respects, and only these two, the authorities have maintained civilised standards. For the rest, my conditions are barbaric. I feel a fantasy coming on. I am inspecting a prison somewhere in free Africa, speaking to the prison officials. I know you are short of funds for schools and roads and other necessities, I tell them, and you wonder why you should spend money on facilities for anti-social persons. Yet to lock a man up is a very drastic thing. I know because I spent some time in a South African jail. And even if you cannot at first provide good living conditions for prisoners, you can at least ensure that their personal dignity is respected, that their rights and obligations are fully explained to them, that they are never kept in isolation, and that they have some useful activity to help them pass the time.’

These words were written in 1966 in *The Jail Diary of Albie Sachs*, recounting his experience of detention and solitary confinement in 1963. Albie Sachs later had his arm blown off by an apartheid government bomb, and is an articulate advocate for restorative justice. Later still he became a Constitutional Court judge. In the above quote, he prefigures the idea that some countries may have insufficient funds to provide the very best prisons immediately, but as they work towards that goal, there are certain standards that simply must be adhered to. The same idea is captured as a ‘preliminary observation’ of the UN Standard Minimum Rules for the Treatment of Prisoners – the Mandela Rules – which states that, in view of the vast differences between countries not all the rules will be followed equally in all situations – but nevertheless the rules require a ‘constant endeavour’ to overcome practical difficulties to hinder their application because they represent the minimum standards that are acceptable.

Kenya has made a good start by ratifying almost all conventions on Human Rights – including the Mandela Rules, and political will exists to bring the domestic law and practice in line with the instruments. This report shows that despite that, many hurdles remain in the fulfilment of the minimum standards. An interesting aspect of the report is its finding that the problems in prison have their roots in grave flaws in the criminal justice system. In other words, Kenya must urgently seek measures to prevent people going to prison in the first place, and where no alternatives exist due to the seriousness of crimes, to at least keep the length of both pre-trial detention and prison sentences to the shortest duration possible. And the backdrop to crime itself needs attention – people living in criminogenic circumstances such as poverty and illiteracy. So the solutions to the problem are far-reaching. But – as the Mandela Rules urge – the first step is to overcome practical difficulties. The building blocks must be put in place.

This report does not simply chronicle the problems, it also proposes solutions. With regard to children – a separate system for child offenders, decriminalisation of petty crimes, investment in the use of alternative measures such as diversion, and raising the age of criminal responsibilities are long overdue. Indeed, as the Global Study on Children Deprived of Liberty gets underway, Kenya will need to show improvements in the sphere of juvenile justice. More work needs to be done, too, on the issue of children in prison with their mothers. Once again, alternatives to imprisonment need to be adopted, and General Comment no 1 issued by the African Committee on the Rights and Welfare of the Child on this subject (Article 30 of the ACRWC) should be heeded.

Reducing the number of people entering the prisons will immediately allow for the improvement of prison conditions, and the report has several ideas about the achievement of such reform measures. Modernizing the prison system and improving the physical facilities is a crucial first step to restoring dignity. These are the most pressing issues – and the kind of things that Albie Sachs identified as the bare minimum back in the 1960s. An interesting angle that the report includes is the focus on the prison officials themselves. Adequate working conditions and better livelihoods for them can ultimately translate into a more motivated workforce which sees itself as part of the solution.

This Report provides an important evidence-base to support the ongoing advocacy and other efforts being made towards enforcement of standards for Kenyans deprived of their liberty, and towards the general reform of the criminal justice and juvenile justice. Now it is time for action!

Ann Skelton

Director: Centre for Child Law

University of Pretoria

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The International Juvenile Justice Observatory (IJJO) would like to thank the author of this report, Silvia Randazzo, who, as an expert concerning human rights, including children rights in detention facilities, has shared her knowledge and expertise generously with us.

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Their experiences and perspectives from both sides gave a unique and invaluable insight into the specific needs and requirements for lobbying and advocating for the rights of people working and living within the correctional system in Kenya.

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LIST OF ACRONYMS

- **ACRWC:** African Charter on the Rights and Welfare of the Child
- **CAT:** Convention Against Torture
- **CGP:** Commissioner General of Prisons
- **CEFA:** Comitato Europeo per la Formazione e l'Agricoltura (European Committee for Training and Agriculture)
- **DCS:** Department of Children Services
- **DHRC:** Departmental Human Rights Committee
- **EWRM:** Early Warning and Reporting Mechanism
- **HIV/AIDS:** Human immunodeficiency virus infection and acquired immune deficiency syndrome
- **HMI:** Her Majesty's Inspectorate of Prisons
- **HRCM:** Human Rights Committee Meeting
- **HRO:** Human Rights Officer
- **HRD:** Human Rights Desk
- **ICCPR:** International Covenant on Civil and Political Rights
- **ICMT:** Internal Compliance Monitoring Tool
- **ICJ:** International Commission of Jurists
- **IJJO:** International Juvenile Justice Observatory
- **IMLU:** Independent Medical Legal Unit
- **KANU:** Kenya African National Union
- **KNCHR:** Kenya National Commission on Human Rights
- **KPS:** Kenya Prison Service
- **LRF:** Legal Resource Foundation
- **MACR:** Minimum Age of Criminal Responsibility
- **NARC:** National Rainbow Coalition
- **NCAJ:** National Council for the Administration of Justice
- **NGO:** Non-Governmental Organization
- **NPM:** National Preventive Mechanism
- **OIC:** Officer in Charge
- **OPCAT:** Optional Protocol to the Convention against Torture
- **PD:** Probation Department
- **PSOs:** Prison Service Orders
- **PSS:** Psychosocial Support
- **RC:** Regional Commander
- **SAPTA:** Support for Addiction and Prevention in Africa
- **SH:** Section Head
- **SPT:** Sub-Committee on the Prevention of Torture
- **UNCRC:** United Nations Convention on the Rights of the Child
- **UNDHR:** United Nations Universal Declaration of Human Rights
- **UNSMR:** United Nations Standard Minimum Rules for the Treatment of the Prisoners
- **YCTC:** Youth Corrective Training Centre

EXECUTIVE SUMMARY

Kenya is one of the African countries that has domesticated almost all the key international conventions on human rights. Ratification of the International Covenant on civil and political rights in 1972 represents a crucial step in the harmonization process of Kenyan law to international standards, established eventually with the new Constitution in 2010. Concerning specifically human rights in detention facilities, the Kenyan Government committed to the United Nations Standard Minimum Rules for the Treatment of Prisoners and so to their revised version, known as the Mandela Rules.

Despite the existence of quite a comprehensive legislative framework and a political will to improve the system and align it with the international standards – since the beginning of a reform’s process back in the first years of 2000 – the situation of human rights violations in Kenya needs further efforts for the actual implementation of laws and standards and for providing the legislation with the appropriate structures.

Overcrowding is a major problem in prison management and the cause of deteriorating basic conditions in correctional facilities in Kenya, which leads to degrading living conditions for the inmates (in terms of service provision and access, and in terms of higher risks of inmates becoming victims of various forms of abuse by fellow inmates and by prison officials) and to harsh working conditions for prison officers, who often found themselves living in inadequate housing, with inadequate pay and within a tough working environment. One of the main root causes of overcrowding lies in a hardly guaranteed access to fair justice: excessive length of trials, scarce use of alternative measures to pre-trial custody and detention, poverty and illiteracy are still main criminogenic factors which affect people’s ability to pay fines and adequately own the process, and lack of legal representation, also for children and serious offenders.

Hence, being the correctional system at the end of a complex and overwhelmed criminal justice system, the need that emerged with the last reform’s momentum is the crucial importance of an integrated and inter-agencies approach in dealing with the situation of inmates and officers’ human rights. The urge for shared responsibilities and accountability is the main finding of this research: the efforts within the Prison Department in fully implementing the appointment of a Human Rights Officer per each facility and of the new practice of monitoring and reporting human rights’ violations, and in advocating for and spreading a human rights approach across the facilities – cannot go alone.

These efforts need to go hand in hand with a reform of the criminal justice system at large, specifically with: a decriminalization of petty crimes; the raise of the age of criminal responsibility and the development of a separate criminal procedure for children; the investment on new and applicable alternative measures to detention; innovation in sentencing and an actual guarantee of legal representation for all.

Furthermore, for all these interventions to be effective, the essential support of the central Government is needed, with more investments and accountable allocation of funds to the Judiciary – with an increase of the current under-dimensioned staff and resources – and to all the facilities scattered around the country, with particular attention to disadvantaged areas and vulnerable categories of people deprived of their liberty.

Finally, the investment and effort to improve the rights of people in contact with the law and deprived of their liberty cannot in any way be dealt with neglecting the rights of the officers to adequate working conditions and humane housing and living conditions. Even though this inevitably comes with the tackling of structural issues, it also requires adequate thinking and investment to boost officers’ motivation and to guarantee them the right to have their plight listened to, abiding by the Mandela Rules when providing, at Rule 74, that *“the prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used”*.

INTRODUCTION

The International Juvenile Justice Observatory (IJJO), with its headquarters in Brussels, was founded in 2002 with the goal of encouraging a global juvenile justice without borders. Since then it has been gradually taking shape around different distinguishing features and it has enlarged the focus of its research activities to the justice system at its large. The Observatory is conceived as an inter-disciplinary system of information, communication, debates, analysis and proposals concerning different areas which affect the development of justice, particularly juvenile justice, in the world. It manages and participates alongside universities and centres of excellence in research projects, favouring the generation of specialised knowledge in subject matters and factors that affect the justice system and the cycle of juvenile violence, and contribute to improving the effectiveness of public policies. Its aim is in fact to create a permanent international service which functions as a place for meeting, work and reflection for professionals working in the fields of law, psychology, medicine, sociology, teaching, criminology and education.

The present study is part of a development project on the correctional system in Kenya, which IJJO partners in, and led by the European Committee for Training and Agriculture (CEFA), an Italian Non-Governmental Organization, in partnership with other state and non-state actors. The overall objective of the action is to contribute to eradicate all forms of violations of human rights within detention and custodial facilities in Kenya, strengthening Human Rights Defenders and National Security Organs in promoting structural reforms within the detention facilities system for the compliance and enforcement of the Bill of Rights enshrined in the Constitution of Kenya. Hence, this study on human rights in the criminal justice and correctional system in Kenya was carried out to provide evidence based recommendations on human rights' protection and violations' prevention. This is aimed on one side to feed the implementation of the project itself and of future actions, but also to target institutional actors, policy makers and practitioners to build evidence-based plans of action and to establish monitoring and reporting systems.

The purpose of this publication is also to disseminate knowledge about the functioning of the criminal justice and correctional system in Kenya and about the situation of human rights within the system, to pose the basis for new international synergies and sharing of best practices between Kenya and other countries.

In light of these objectives, this publication is divided into seven sections: the first ones being devoted to the presentation of an overview of the criminal justice and correctional system's mechanisms and challenges in Kenya and of the situation of human rights for people living and working in the correctional facilities, while the second part – comprising the last two sections – focuses on the description of a pilot mechanism and instrument of monitoring and reporting human rights' violations within the facilities.

The first and the second section provide the research background, with a description of the research problem, the methodology and instruments used to collect the data, and the definitions of the key concepts. In the third one, the national and international reference legal framework is presented, providing an overview as much as possible exhaustive of the legal instruments at international and regional level regulating human rights for people deprived of their liberty. It then goes into details in regard to the Kenyan framework of laws that regulate the criminal justice system and guarantee protection of human rights for people deprived of their liberty, child offenders and people who work within the custodial and detention facilities.

With the crucial assumption that the correctional system is just at the end of a complex and strained criminal justice system, the following section intends to follow the actual journey that a person accused of a crime in Kenya embarks into. After having provided the reader with a general picture of the system, the fourth section goes in fact into the description of the functioning of the criminal justice system in Kenya, from the moment of the arrest to the sentencing, both for adults and children. It offers an analysis of the main challenges faced by the system and of how these challenges interfere with the full enjoyment of the right to a fair and just access to justice. As in the actual criminal proceeding, the analysis proceeds into the custodial and correctional facilities, providing in the fifth section a description of the correctional system in Kenya and an analysis of the situation of human rights as it has been observed

during the research, through interviews, direct observation, and review of secondary data and relevant literature. The focus is concentrated on the treatment of prisoners and access to services according to the main principles enlistered in the United Nations Standard Minimum Rules for the Treatment of the Prisoners (UNSMR), the specific situation for particularly vulnerable groups and the rights and welfare of the officers.

In order to face these challenges, especially the ones reported within the correctional facilities, a pilot mechanism and instrument has been introduced during this project for monitoring and reporting human rights' violations that occur in the facilities, to provide a prompt feedback and take action. Hence, the sixth and seventh sections of this publication are devoted to the description of the frameworks for Early Warning and Reporting Mechanisms (EWRM), and to the guidelines of this best practice piloted in Kenya. While the sixth section offers the legal framework within which this best practice has been developed and an example of a similar mechanism adopted abroad, specifically in the UK, the last section provides guidelines on the best practice not just to understand how it works but perhaps to replicate it. It describes in details the origin of this mechanism, the process that brought to its implementation, how this mechanism and the tools used work and who the people involved are.

At the closure of the publication, a pool of recommendations is provided, as a consequential summary of the challenges previously reported and, above all, as the resulting ideas, solutions and propositions to tackle these challenges that the researcher had gathered from the direct observation, the interviews to key respondents, the analysis of secondary data and the numerous inputs received throughout the study.



PART I

**HUMAN RIGHTS FOR
PEOPLE DEPRIVED OF
THEIR LIBERTY
NATIONAL REPORT:
KENYA**

SECTION I – HUMAN RIGHTS FOR PEOPLE DEPRIVED OF THEIR LIBERTY

1.1 Background and problem statement

Kenya is one of the African countries that has domesticated almost all the key international conventions on Human Rights. Ratification of the International Covenant on civil and political rights (ICCPR) in 1972 represents a crucial step in the harmonization process of Kenyan law to International standards, established eventually with the new Constitution in 2010. Almost all the provisions of the ICCPR are now part of the Kenyan Constitution, but poor implementation and unclear translation of them in effective mechanisms of enforcement do not always guarantee human rights protection. As it will be shown more in detail in the study, concerning the legal framework specifically on human rights in detention facilities, Kenya ratified the Convention against Torture (CAT), committed to the UN standard minimum rules for the treatment of prisoners and so to their revised version, known as the Mandela Rules. Back in the late 1990s and first years of 2000, a process of prisons' reforms started in Kenya, following probably the lowest point in Kenya's penal history – between 1970 and 1990 – when imprisonment and inhumane conditions in detention were used in themselves as a weapon against political dissidents by the Kenya African National Union (KANU)¹. For the first time in the mid-1990s, the doors of the prisons were opened and the conditions inside started to be monitored by civil society organizations and media. The momentum was reached in 2002-2003, with the introduction of the “Open Door Policy” by the just elected National Rainbow Coalition (NARC), which had included prison reforms in its electoral campaign. The Open Door Policy was meant to ensure greater access to the detention facilities for civil society actors, stakeholders and the public in general, guaranteeing more accountability and bringing some improvements in basic conditions for inmates (food, clothing, and recreational programmes). However, this policy has not been supported by any legal interventions: not being entrenched in the law, an effective prisons' reform was not really possible and the Kenya Prison Service Strategy Plan (2002-2007) poorly implemented². The reforms' process then suffered a setback until 2008, when the new Minister of Home Affairs – Kalonzo Musyoka – set up a high level committee to respond to a prison warders' strike and to look into their complaints and into inmates' grievances as well. The committee, chaired by Hon. Madoka (and so called Madoka Committee) finalised a report in 2010, providing recommendations for change and reforms, drafted from a detailed analysis of the situation and conditions in the system. In response to that report, within the Kenya Prison Service (KPS) an inter-ministerial reform team was set up and a reform work-plan was put in place, which allowed the Government to realize much progress, especially in regard to the basic conditions of living of inmates, the rehabilitation programs, and their treatment and care³.

In the meanwhile, in regard to Juvenile Justice, in 2006 the Department of Children Services (DCS) reviewed its programs towards harmonization and integration through reforms. This brought about the development of the “Reforms Programme Guidelines” (2009) document, aimed at steering changes also within the context of the Juvenile Justice system for effective care, protection, rehabilitation and reintegration of children held in custodial institutions in Kenya.

However, despite the existence of quite a comprehensive legislative framework and a quite recent political will to improve the system and align it with the international standards, the situation of human rights for people deprived of their liberty in Kenya needs further strong efforts for the actual implementation of laws and standards and for providing the legislation with the appropriate structures.

1 KNCHR, *A true measure of society: an account of the status of human rights in Kenyan prisons*, Nairobi, 2010.

2 *Ibidem*

3 Kenya Prisons Service, <http://keen.co.ke/stage/prisons/>

The Madoka report was at that time underlining a situation of structural problems especially regarding the population of prison officers, who often found themselves living in inadequate housing conditions, very low pay and within an environment where corruption and irregularities in prison's operations were endemic. Hostile working conditions, harassment from senior officers, inadequate housing and remuneration, poor sanitary conditions and health facilities, were in fact reported by the officers during the strike in April 2008 that brought to the setup of the Madoka committee⁴. The conditions of the inmates and their access to basic services, together with structural problems of the prison facilities have been reported by civil society during the years: inhuman and degrading treatment of prisoners by prison authorities and widespread violations of human rights, due to food shortages, insufficient medical care, and the systematic use of torture and ill-treatment, corruption, excessive use of force, failed access to justice, abuse of due process and the failure of internal and external (where they exist) accountability mechanisms⁵. This situation was confirmed by the alternative report to human rights committee on the implementation of the provisions of the ICCPR in relation to torture⁶. Hence, the use of torture and other ill-treatment against persons deprived of their liberty has been a subject of major concern up to around 2014 for Kenyan civil society, International observers and, more recently, the current Government⁷.

As the present report will highlight, these conditions of pervasive violations of human rights reported in the recent past, have become object of a complex reform process led by the KPS, which brought to great achievements aiming at ensuring that these issues stop being systemic.

Nevertheless, the prison system in Kenya is affected by a chronic congestion: as per September 2015, Kenya registers 92 male prisons and 22 female prisons, plus 2 Borstal institutions (with another one for girls that opened in the second half of 2016) and 1 Young Corrective Training Centre (YCTC) for boys. They host an average population of about 56.000 inmates, with 32.300 male and 2.818 female convicts; 19.751 male and 1.319 female remand prisoners and other 529 children accompanying their mothers. The official capacity is around 27.000 so the occupancy level estimated is of more than 200%, being the incarcerated population more than the double the holding capacity of the facilities, and the prison population rate 121 (per 100.000 of national population, based on an estimated national population of about 47 million at April 2016)⁸.

Overcrowding is a major problem in prison management and the root cause of deteriorating basic conditions in correctional facilities in Kenya. One of the consequences is the high risk of the inmates to be victims of physical, psychological and sexual mistreatment by fellow inmates and by prison officials, abuses that occur in police stations, pre-trial detention facilities and other correctional facilities. In addition to that, another great challenge in the Kenyan system is a too often denied access to justice, whereas prisoners are often denied the minimum legal protections and legal process' guarantees in the pre-trial phase, at trial and in the post-conviction stage while they serve their sentence.

1.2 Purpose and objectives of the study

In line with these priorities and in response to a lack of comprehensive data, qualitative data has been collected during visits in twenty-five correctional facilities under the Kenya Prisons Service and the Probation Department (PD), and secondary data have been collected on the juvenile justice system which counts twenty-eight child statutory institutions run and managed by the DCS.

4 The Nairobi Chronicle, <https://nairobiChronicle.wordpress.com/2008/07/17/damning-report-on-kenyas-prisons/>

5 KNCHR, *A true measure of society: an account of the status of human rights in Kenyan prisons*, Nairobi, 2010; United States Department of State - Bureau of Democracy, Human Rights and Labour, *Country Reports on Human Rights Practices for 2011*, Nairobi, 2011; LRF, *Human Rights in Prison - A report on the status of penal institutions in Kenya 2003 - 2010*, Nairobi;

6 State of torture and related human rights violations in Kenya, submitted by the Kenyan Section of the International Commission of Jurists (ICJ Kenya), Independent Medico-Legal Unit (IMLU), Kenya Alliance for Advancement of Children (KAALR), Coalition on Violence Against Women (COVAW), World Organization Against Torture (OMCT), 2012

7 Swedish Ambassador Johan Borgstam, Sida's cooperation counselor Anders Rönquist and program officer Lina Palmer visited Kamiti Maximum Security Prison in Nairobi on the 16th October 2013, at <https://goo.gl/p2E7UF>

8 Data from the KNCHR, based on data collected by the KPS, and from World Prison Brief at <http://www.prisonstudies.org/country/kenya>

Inadequate information on the extent and characteristics of the human rights situation for people deprived of their liberty in Kenya has made it difficult for the actors involved and for policy makers to take action and to intervene for the sake of prevention and protection. Hence, this study is meant for dissemination firstly within the system, among the KPS' actors and the same beneficiaries, to inform direct interventions in terms of protection and prevention of human rights' violations; and secondly among the national and international stakeholders and the public, to raise awareness and to inform national programmes and plans of action aimed at prevention and response.

The specific objectives of the study are to:

- Generate information about the legal framework on human rights for people deprived of their liberty in Kenya and the country level of abiding to the international standards.
- Generate information about the service delivery standards and methods used within the criminal justice and correctional system in Kenya.
- Analyse and provide a comprehensive description of the situation of the correctional system in Kenya in reference to human rights awareness and service provision, for the sake of prevention and response.
- Analyse the extent and characteristics of the challenges in regard of human rights for inmates and children held in correctional facilities in Kenya.
- Analyse the extent and characteristics of the challenges in regard of human rights and welfare for officers in correctional facilities in Kenya.
- Identify the extent and type of response needed to prevent violations of human rights against inmates and officers in the criminal justice and correctional system in Kenya.
- Present the findings of the study to the correctional and justice system's agencies and to the public, disseminating the study, focusing on critical gaps in the system and providing recommendations.

1.3 Definitions of key concepts

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity⁹. Human rights are entitlements of all human beings and are based on the respect for the dignity of each person. The fondant pillar and instrument for human rights enshrinement is the United Nations Universal Declaration of Human Rights (UNDHR, 1948), and they have been progressively codified in a series of international and regional instruments adopted by the States, and in national Constitutions and laws to guarantee the respect of basic human dignity and freedoms.

Human rights are universal, inalienable, interrelated, interdependent and indivisible. These principles taken together guarantee that all the human rights have to be protected and promoted for everyone (regardless of where they live, their gender or race, or their religious, cultural or ethnic background) and can never be taken away from people. All the human rights have the same importance and the enjoyment of each right wholly or partly depends from the full enjoyment of the others. They are defended and advocated for by the rule of law and duty-bearers at national level have not just the duty to respect and protect everybody's human rights, but also to take positive actions in order to ensure the realization of these rights, being themselves accountable to international standards.

While the UNDHR is a comprehensive code, the backbone of human rights international law, enlisting the main freedoms and rights which all the human being are entitled too, since then human rights bodies and institutions have developed many different instruments (treaties, guidelines, minimum standards) for different categories of people and minorities.

Hence, being the purpose of this study the analysis of human rights for people deprived of their liberty in Kenya, the concepts explored and used for the development of the data collection tools are the human rights and minimum standards enlisted in the UNSMR – also called Mandela Rules – adopted in 1975 and revised in 2015. The UNSMR are

⁹ United Nations Human Rights – Office of the High Commissioner, *Human Rights Indicators – A guide to measurement and implementation*, 2012, p.10.

in fact the primary source of standards for the treatment of people deprived of their liberty and are used as framework for monitoring and inspecting instruments in assessing the treatment of the prisoners at national level, as well as the main framework instrument for the present study.

Table A – United Nations Standard Minimum Rules for the Treatment of the Prisoners (Mandela Rules)

PRINCIPLE	RULES	EXPLANATION
Protection of dignity and against torture	Rule 1 to 5	All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.
Non discrimination	Rule 2	There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected. Prison administrations shall take account of the individual needs of prisoners. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.
Rehabilitation	Rule 4	The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social, health, and sports-based nature.
Prisoner file management	Rules 6 to 8	There shall be a standardized prisoner file management system in every place where persons are imprisoned. Such a system may be an electronic database of records or a registration book with numbered and signed pages.
Separation of categories	Rule 11	The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus: (a) Men and women; (b) Untried prisoners from convicted prisoners; (c) Persons imprisoned for debt and other civil from persons imprisoned by reason of a criminal offence; (d) Young prisoners from adults.
Accommodation	Rule 12 to 17	Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.
Personal hygiene	Rule 18	Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. Facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly.
Clothing and bedding	Rule 19 – 21	Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the prison to ensure that it shall be clean and fit for use. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.
Food	Rule 22	Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he or she needs it.

Exercise and sport	Rule 23	<p>Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.</p> <p>Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.</p>
Health care services	Rule 24 to 35	<p>The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status. Health-care services should ensure continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.</p> <p>Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.</p>
Restrictions, discipline and sanctions	Rule 36 to 46	<p>Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life.</p> <p>Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.</p> <p>Prisoners shall be informed, without delay and in a language that they understand, of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defense. Prisoners shall be allowed to defend themselves in person, or through legal assistance.</p> <p>In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement; (c) Placement of a prisoner in a dark or constantly lit cell; (d) Corporal punishment or the reduction of a prisoner's diet or drinking water; (e) Collective punishment.</p> <p>Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.</p> <p>Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.</p>
Instruments of restraint	Rule 47 to 49	<p>The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.</p>
Searches of prisoners and cells	Rule 50 to 53	<p>Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.</p>
Information to and complaints by prisoners	Rule 54 to 57	<p>Upon admission, every prisoner shall be promptly provided with written information about: (a) The prison law and applicable prison regulations; (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints; (c) His or her obligations, including applicable disciplinary sanctions; and (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison. The information shall be available in the most commonly used languages in accordance with the needs of the prison population.</p> <p>Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.</p> <p>Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.</p>

Contacts with the outside world	Rules 58 to 63	<p>Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) By receiving visits.</p> <p>Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.</p> <p>Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.</p> <p>Prisoners should have access to effective legal aid.</p>
Books	Rule 64	<p>Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.</p>
Religion	Rule 65 and 66	<p>If the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.</p> <p>So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life.</p>
Retention of prisoners' property	Rule 67	<p>All money, valuables, clothing and other effects belonging to a prisoner which under the prison regulations he or she is not allowed to retain shall on his or her admission to the prison be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition. On the release of the prisoner, all such articles and money shall be returned to him or her.</p> <p>Any money or effects received for a prisoner from outside shall be treated in the same way.</p>
Notifications	Rule 68 to 70	<p>Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury.</p>
Investigations	Rules 71 and 72	<p>Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases. The prison administration shall fully cooperate with that authority and ensure that all evidence is preserved.</p>
Removal of prisoners	Rule 73	<p>When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form. The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.</p>
Institutional personnel	Rule 74 to 82	<p>The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends. The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.</p>
Internal and external inspections	Rules 83 to 85	<p>There shall be a twofold system for regular inspections of prisons and penal services: (a) Internal or administrative inspections conducted by the central prison administration; (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.</p>

Rules applicable to special categories	Rules 86 to 108	Prisoners under sentence
	Rules 109 and 110	Prisoners with mental disabilities and/or health conditions
	Rules 111 to 120	Prisoners under arrest or awaiting trial
	Rule 121	Civil prisoners
	Rule 122	Persons arrested or detained without charge

1.4 Scope and limitations of the study

The study relies on both primary and secondary data collected from a desk review, duty bearers in the criminal justice and correctional system, experts on human rights for people deprived of their liberty in Kenya, inmates and officers from prisons and juvenile institutions (probation hostels and YCTC).

The geographical scope of the study sample is mainly limited to the project areas – particularly concerning Prisons, Borstal Institutions and Probation Hostels – but also includes a few institutions outside the scope of the project, the juvenile justice system and national perspectives provided by experts in the field.

Table B – Sites of the twenty-five correctional facilities visited during the research

Main Prisons	Homabay	Kamiti maximum	Kangeta	Kingorani	Kitui
	Machakos	Malindi	Murang'a	Meru	Nairobi West
Women Prisons	Homabay	Kisii	Kisumu	Kitui	Meru
	Malindi	Muranga	Nakuru	Shimo La Tewa	
Borstal Institutions	Shikusa	Shimo La Tewa			
Probation Hostels	Eldoret (Jun and Sr)	Nakuru	Shimo La Tewa		
YCTC	Nairobi				

Table C – Children Statutory Institutions sites

Remand Homes	Eldoret	Kakamega	Kericho	Kiambu	Kisumu
	Likoni	Machakos	Malindi	Manga	Muranga
	Nairobi	Nakuru	Nyeri		
Rehabilitation Schools	Dagoretti	Kirigiti	Kabete	Kakamega	Kericho
	Kisumu	Likoni	Othaya	Wamumu	
Reception Centres	Getathuru	Kirigiti			
Rescue Centres	Machakos	Thika	Garissa	Nairobi	

As any other social study, also this study presents some limitations due to the quality of material at our disposal, budget implications and biases inherent in the data collection instruments that have been utilised during the research. Firstly, these limitations include the scarcity of research and references with regard to the correctional system in Kenya, beyond the reports from the main agencies and non-state actors active in this field. Secondly, the scope of the research was limited due to time and budget constraints. In particular, the sample size of institutions included in the data collection is a small proportion of the overall number of correctional facilities around the country and some geographical areas have been left out for logistics and security reasons (in particular Northern and Eastern Kenya). In addition to that, it is important to keep in mind that the interviewees' reports – especially the ones from the beneficiaries of the project, inmates and officers – may not be free of bias, related to their subjective interpretation of the questions, mainly based on age, status and education level, as well as on the sensitive nature of the topics explored and on the way the interviews were carried out.

Access to the institutions was instead guaranteed by the KPS and the PD, and the collaboration provided by the institutions' staff, by the experts and other actors interviewed was maximum.

Despite these limitations, the study still provides quite a comprehensive overview of the criminal justice and the correctional system in Kenya, in regards to data on the population, its characteristics and functioning and – above all – the situation around human rights, and protection and prevention mechanisms in place.

SECTION II – METHODOLOGY OF THE RESEARCH

The study has been designed with the overall objective to provide an overview of the situation of human rights challenges for people deprived of their liberty in Kenya and ways forward. Hence, the design of the study was determined in order to:

- Define human rights, specifically for people held in detention facilities, to clarify the scope of the study and the research questions
- Choose the data collection methods, design the tools and select the sample of population to interview, in order to have reliable estimate at national level

2.1 Data collection methods and tools

The study has been carried out using two types of data collection methods: primary and secondary data. Primary data was collected by the researcher through qualitative instruments, such as direct observation and face to face semi-structured interviews. Secondary data was gathered from desk review of the legal framework, statistics, reports from state and non-state actors who work in the criminal justice system in Kenya, and other relevant literature.

The visits in twenty-five correctional facilities and the interviews to experts from this field, inmates and officers have been carried out from September 2015 to October 2016, and they allowed the author to greatly benefit from the observation and the collection of personal and professional experiences¹⁰. Their direct perspective gave a unique insight for the understanding of the system, the main challenges, the actual situation inside the criminal justice system in Kenya, the mechanisms of rehabilitation and the reintegration programmes. The visits and the semi-structured interviews have been carried out following authorization from the KPS and the PD. They have been designed using the Mandela Rules as the main conceptual framework, and they have been adapted according to the category of respondents (inmates, officers, experts from different backgrounds).

Finally, primary data have been corroborated by the review of the legal framework and the desk review of studies and reports disseminated by the main actors working in Kenya in the field of human rights for people deprived of their liberty. In addition to that, primary data collected through visits to the institutions and secondary data have been used to describe the situation in the juvenile justice system, gathering information from a recently published survey on violence against children in statutory institutions and other relevant literature.

2.2 Research questions

The approach followed by the researcher during the face-to-face interviews was to ask the interviewees about human rights in broad terms, exploring first their awareness about the concept in itself and then breaking down the broad questions listing the categories of minimum standards for people who are not familiar with the expression (especially for the inmates).

Therefore, the research questions aimed at analysing and describing an exhaustive overview of the system in Kenya with regard to:

¹⁰ In particular, the facilities visited by the author are nine women prisons, nine main prisons and seven juvenile facilities (four probation hostels, two Borstal institutions and one YCTC). The officers and inmates interviewed are, respectively, twenty and thirty-one, from thirteen of the twenty-five facilities visited. The experts interviewed are thirteen and come from the KPS, the Judiciary, non-state actors and civil society organizations that have expertise in the field of human rights for people deprived of their liberty.

Exploring human rights awareness

1. What are the levels of awareness and perception about the concept of human rights in inmates and officers in correctional facilities in Kenya?
2. What is the understanding of human rights for inmates and officers in correctional facilities in Kenya?

Measuring the observance of the minimum standards for the treatment of the prisoners

1. Which are the legal and policy instruments for the implementation of the international standards?
2. In which extent the minimum standards for the treatment of the prisoners are respected in the criminal justice and correctional system in Kenya?
3. Which are the main challenges in the application of the UNSMR within the system in Kenya and the most common violations of human rights against inmates and officers?

Identifying systems of monitoring, reporting and response to human rights' complaints and violations

1. Are there specific rules and mechanisms within the detention facilities with the purpose of collecting complaints and guaranteeing fair access to protection services to the inmates and the officers?
2. What are the current practices to prevent and respond to human rights violations across the system?

2.3 Data analysis

Through the direct observation of the researcher and the face-to-face interviews, major information was collected on human rights conditions across the system, through an in-depth analysis of the magnitude of various forms of human rights violations including the level of understanding on human rights by the inmates and the officers, reporting structures for violation of human rights, the presence of Human Rights Desks (HRD) and Human Rights Officers (HRO), and the level of their functionality and challenges, the training needs for human rights defenders and the recommendations from inmates, officers and experts.

These findings have been substantiated by the review of the relevant literature and the legislative framework, while further information about the broader functioning of the system and the situation at national level in regard to human rights has been gathered especially through the experts interviewed, together with recommendations from them and indications about the main challenges and ways forward.

Qualitative data from direct observation and from face-to-face interviews has been gathered in a separate database and analysed thematically.

SECTION III – LEGAL FRAMEWORK ON HUMAN RIGHTS FOR PEOPLE DEPRIVED OF THEIR LIBERTY

This section will review the legal instruments developed at international, regional and national level in the framework of human rights for people deprived of their liberty. The aim is to provide an overview of what is the international background and what is in place in the Kenyan context in terms of recognizing human rights for people held in detention. A special focus will be provided about the rights of children in conflict with the law and deprived of their liberty.

As the study also explored the rights of the officers working within detention facilities in Kenya, this review of the legal framework will also focus on working rights provided in the country for this specific category and the rules and orders that regulate the undertaking of their duties and guarantee their rights.

The legal framework on these matters can be examined through various lenses. Therefore, it will start from the broader perspective of human rights, progressively narrowing the angle to the perspective of human rights for people deprived of their liberty, with a focus on children's rights, going from the international to the local level. To complete this legal overview and give a comprehensive picture of the reference framework, the perspective of the officers and staff working in correctional facilities will be examined.

3.1 International standards on human rights for people deprived of their liberty

As mentioned earlier, the UNDHR adopted by the United Nations in Paris in 1948 is a milestone document in the history of human rights. It had been drafted after the atrocities of the Second World War to finally set out a list of fundamental rights to be universally protected and equally guaranteed for every human being. Translated in hundreds of languages it is the most translated document in the world and after almost 70 years from its adoption it is still the essential pillar for human rights protection and promotion¹¹.

In the years following the adoption of the UNDHR – and even though the rights listed in the UNDHR apply to each and every human being without any distinction – a set of guidelines and conventions have been drafted, to enlist and code the rights which different categories of particularly vulnerable people are entitled to, including people deprived of their liberty and in the administration of justice.

As showed in detail in the previous chapter, the milestone on the matter of prisoners' human rights is the UNSMR, which spells out the human rights of persons deprived of liberty, providing guidance as to how governments may comply with their international legal obligations. The first of the 112 "Mandela Rules" states that prisoners must be treated with respect for their inherent dignity and value as human beings¹². Human rights are inalienable, and therefore prisoners are also entitled to the respect of their fundamental rights and freedoms. If the Mandela Rules are specifically targeting persons deprived of their liberty, many other International instruments are also protecting their rights as human beings.

11 See more at <http://www.un.org/en/universal-declaration-human-rights/> and <http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx>

12 *United Nations Mandela Rules*, 2015, available at <https://goo.gl/O33TJJ>

Here below an overview of the legal landscape on human rights in detention facilities provided by international and regional instruments, with a specific focus on standards provided for children held in custody. The list includes the main principles enshrined for the purpose of this study.

Table D – International instruments on human rights for people deprived of their liberty¹³

HUMAN RIGHTS FOR PEOPLE DEPRIVED OF THEIR LIBERTY	
International and Regional Instrument	Set of standards/principles
Universal Declaration of Human Rights (1948) ^{D1}	Art. 5: Protection against torture, cruel, inhuman and degrading treatment or punishment. Art. 9: Protection against arbitrary arrest and detention. Art. 10: Right to a fair trial. Art. 11: Presumption of innocence.
Mandela Rules (1955, revised 2015) ^{D2}	Standard minimum rules for the treatment of prisoners
International Covenant on Civil and Political Rights (1966) ^{D3}	Art. 6: Death penalty. Art. 7: Protection against torture, cruel, inhuman and degrading treatment or punishment. Art. 9: Protection against arbitrary arrest and detention; Right to be informed. Art. 10: Protection of dignity of people deprived of their liberty. Art. 14: Right to a fair trial; non-discrimination; presumption of innocence. Art. 15: Right to a fair sentence.
African Charter on Human and Peoples Rights (1981) ^{D4}	Art. 6: Protection against arbitrary arrest and detention. Art. 7: Right to be heard; presumption of innocence; right to legal representation.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) ^{D5}	Definition of torture and protection against torture. In particular: Art. 10: education and information regarding the prohibition against torture to be fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) ^{D6}	Principles that apply for the protection of all persons under any form of detention or imprisonment.
Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989) ^{D7}	Art. 2: Protection against arbitrary arrest and detention. Art. 6: Right to be held in officially recognized places of custody and to inform families and lawyers of people in custody. Art. 7: Inspections in places of custody from qualified and independent professionals.
Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) ^{D8}	Art. 15 and 16: Unlawful use of force: law enforcement officials to persons in custody or detention, shall not use firearms.
United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990) ^{D9}	Art. 2: The use of non-custodial measures towards de-penalization and decriminalization. Art. 6: Pre-trial detention as a means of last resort in criminal proceedings; respect of human dignity when pre-trial detention is administered; application of alternatives to pre-trial detention at as early a stage as possible; right for the offender to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

¹³ This may not be an exhaustive legal framework about human rights for people deprived of their liberty from an international and national perspective. The purpose of this analysis is to present the core legal instruments to look at and the rights and principles that are mostly at stake when it comes to the findings about human rights in detention facilities in Kenya.

<p>Declaration on the Protection of All Persons from Enforced Disappearance (1992)^{D10}</p>	<p>Article 10(1): Right to be held in officially recognized places of custody and to be brought before a judicial authority promptly after detention.</p> <p>(2): Right to give prompt and accurate information to families and lawyers of people in custody.</p> <p>(3): Prisoners' files management and centralized registers.</p> <p>Art. 11: Release of the persons deprived of liberty in a manner permitting reliable verification that they have actually been released and, further, that they have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.</p> <p>Art. 12: Protection against arbitrary and unlawful apprehensions, arrests, detentions, custody, transfers and imprisonment.</p>
<p>Declaration on the Elimination of Violence against Women (1993)^{D11}</p>	<p>Art. 4: States should take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women.</p>
<p>UN recommendations on life imprisonment (1994)^{D12}</p>	<p>Art. 15: Questionability of prolonged detention beyond the period that is deemed necessary for reasons of justice, including due consideration to the seriousness of the crime and the victims concerned.</p> <p>UN concludes that life imprisonment is not compatible with human dignity and the goal of Justice which should be restorative.</p>
<p>Kampala Declaration in Prison Conditions in Africa (1996)^{D13}</p>	<p>Principles for the treatment of prisoners; recommendations on prison staff; calling for alternative sentencing; creation of a special rapporteur for prisons in Africa.</p>
<p>Arusha Declaration on Good Prison Practice (1999)</p> <p>Prison Services in Central, Eastern and Southern African (CESCA)^{D14}</p>	<ol style="list-style-type: none"> 1. To adjust domestic laws to international standards. 2. To increase transparency and efficiency within the prison service. 3. To enhance the professionalism of prison staff and improve their working and living conditions. 4. To respect and protect the rights and dignity of prisoners. 5. To provide training programmes to prison staff which will incorporate human rights standards in a way that is meaningful and relevant. 6. To establish a criminal justice mechanism comprising all components within the criminal justice system to co-ordinate activities and to cooperate in the solution of common problems. 7. To invite civil society groups into the prisons to work in partnership with the prison service.
<p>Basic principles on the use of restorative justice programmes in criminal matters (2002)^{D15}</p>	<p>Art. 20: Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities.</p>
<p>Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) (2008)^{D16}</p>	<p>Art. 20: All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty.</p> <p>Among the others, States should:</p> <ul style="list-style-type: none"> - Establish regulations for the treatment of all persons deprived of their liberty guided by international standards; - Prohibit the use of unauthorised places of detention; - Ensure that all arrested and detained persons are informed immediately; - Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel; - Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings; - Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.
<p>United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (2010)^{D17}</p>	<p>Even though the Standard Minimum Rules for the Treatment of Prisoners apply to all prisoners without discrimination, including women, they did not draw appropriate attention to specific women's needs. Hence, the Bangkok Rules complement and supplement the Mandela Rules in connection with the treatment of women prisoners and alternative measures to imprisonment for woman offenders.</p>

African Union Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) (2015) ^{D18}	Adopted by the African Commission on Human and Peoples' Rights (the Commission) during its 55 th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014, on the basis of specific criminal justice-related human rights concerns across Africa, namely, arbitrary arrest and detention, and poor conditions of police custody and pre-trial detention.
Resolution on the Collaboration between the African Commission on Human and Peoples' Rights and Partners on Promoting The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) - ACHPR/Res. 348(LVIII) (2016) ^{D19}	Recommendation to all stakeholders to draw inspiration from the Mandela Rules in order to fill the existing gaps in the applicable laws, policies and practice with the view to enhance a better treatment for detainees.

HUMAN RIGHTS FOR CHILDREN/YOUTHS DEPRIVED OF THEIR LIBERTY

International and Regional Instrument	Set of standards/principles
Universal Declaration of Human Rights (1948)	All the articles of the UNDHR apply to every human being, including children. Hence, the articles above mentioned which address people deprived of their liberty and/or in the criminal justice system also apply to under-age people. In particular: Art. 26: Right to education.
International Covenant on Civil and Political Rights (1966)	As for the UNDHR, all the articles of the ICCPR apply to every human being, including children. In particular: Art. 10: Separation of juvenile accused persons and juveniles in detention from adults. Art. 14: Best interest of the child and privacy; sentencing for juveniles. Art. 24: Right to protection for every child.
United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (1985) ^{D20}	Even though all the articles of the Mandela Rules apply to every prisoners without distinction, including children, these Guidelines have been adopted with the purpose of specifically guaranteeing the well-being and best interest of the child and his/her family even within the Juvenile Justice System, not just in terms of treatment and access to justice but also in terms of delinquency's prevention. In particular, these are the areas regulated by the Beijing Rules: - General principles of: age of criminal responsibility, aims of juvenile justice, scope of discretion, rights of juveniles, protection of privacy; - Investigation and prosecution; - Adjudication and disposition; - Non-institutional treatment; - Institutional treatment.
United Nations Convention on the Rights of the Child (UNCRC) (1989, revised in 2010) ^{D21}	Definition of a child and principles of survival/right to life and development, non-discrimination, best interest of the child and child participation. Art. 12: Right to be heard. Art. 13: Right to be listened to and to express themselves. Art. 19: Protection of children from any forms of violence. Art. 24: Right to health. Art. 28: Right to education. Art. 31: Right to play, leisure and recreational activities. Art. 37: Children deprived of their liberty: right to protection against torture and inhumane treatment, and against arbitrary arrest and detention; separation from adults and contact with their family; access to legal and other needed assistance and right to a fair trial. Art. 39: Right to social reintegration. Art. 40: Rights of children in conflict with the law: presumption of innocence, right to be informed, right to a fair trial and legal assistance; privacy; detention as last resort and promotion of alternative measures; minimum age of criminal responsibility to be clearly set in the national legislations.

<p>United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) (1990)^{D22}</p>	<p>Based on the awareness that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and violations of their rights, and concerned that many systems do not differentiate between adults and juveniles at various stages of the administration of justice, these Rules have been adopted to:</p> <ul style="list-style-type: none"> - Affirm the placement of a juvenile in an institution as a last resort measure and for the minimum necessary period; - Recognize that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty. <p>In particular, these Rules are provided for:</p> <ul style="list-style-type: none"> - Juveniles under arrest and awaiting trial; - The management of juvenile facilities.
<p>United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (1990)^{D23}</p>	<p>The Riyadh Guidelines have been adopted to emphasize the need for and importance of progressive delinquency prevention policies and the recognition of systematic study and elaboration of measures.</p> <p>In particular, they call upon the States to avoid criminalizing and penalizing a child for a behaviour that does not cause serious damage to the development of the child or harm to others. Policies and measures in this direction should involve:</p> <ul style="list-style-type: none"> - The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those at risk and in need of special care and protection; - Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity; - Safeguarding the well-being, development, rights and interests of all young persons; - Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood; - Awareness that, in the predominant opinion of experts, labelling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons. <p>The Guidelines also call upon the development of Community-based services and programmes for the prevention of juvenile delinquency. Formal agencies of social control should only be utilized as a means of last resort.</p>
<p>African Charter on the Rights and Welfare of the Child (ACRWC) (1999)^{D24}</p>	<p>Art. 17: Rights for children in conflict with the law: dignity; protection against torture and inhumane treatment or punishment; separation from adults in detention; presumption of innocence; right to be informed; right to legal assistance; right to a fair trial; privacy; reintegration as first aim of children's treatment; minimum age of criminal responsibility needs to be set.</p> <p>Art. 30: Special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law. In particular: promotion of non-custodial sentences; special alternative institutions for holding such mothers; ensuring that a death sentence shall not be imposed on such mothers; promotion of the reformation and the integration of the mother to the family as the main aim.</p>
<p>Guidelines for Action on Children in the Criminal Justice System (1997)^{D25}</p>	<p>These Guidelines are intended to provide a framework to achieve the following objectives:</p> <ul style="list-style-type: none"> - To implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; - To facilitate the provision of assistance to States parties for the effective implementation of the Convention on the Rights of the Child and related instruments.

D1. Available at <http://www.un.org/en/universal-declaration-human-rights/>

D2. Available at <https://goo.gl/ijvZk9>

D3. Available at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

D4. Available at <http://www.achpr.org/instruments/achpr/>

D5. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

D6. Available at <http://www.un.org/documents/ga/res/43/a43r173.htm>

D7. Available at <http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>

D8. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

D9. Available at <http://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

D10. Available at <http://www.un.org/documents/ga/res/47/a47r133.htm>

D11. Available at <http://www.un.org/documents/ga/res/48/a48r104.htm>

D12. Available at <https://www.penalreform.org/wp-content/uploads/2013/06/UNODC-1994-Lifers.pdf>

- D13. Available at <https://www.penalreform.org/wp-content/uploads/2013/06/rep-1996-kampala-declaration-en.pdf>
- D14. Available at <https://www.penalreform.org/wp-content/uploads/2013/06/rep-1999-arusha-declaration-en.pdf>
- D15. Available at <http://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf>
- D16. Available at http://www.achpr.org/files/instruments/robben-island-guidelines/achpr_instr_guide_rig_2008_eng.pdf
- D17. Available at https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf
- D18. Available at <https://goo.gl/UTAvYZ>
- D19. Available at <http://www.achpr.org/sessions/58th/resolutions/348/>
- D20. Available at <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>
- D21. Available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- D22. Available at <http://www.un.org/documents/ga/res/45/a45r113.htm>
- D23. Available at <http://www.un.org/documents/ga/res/45/a45r112.htm>
- D24. Available at http://www.achpr.org/files/instruments/child/achpr_instr_charterchild_eng.pdf
- D25. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx>

3.2 Domestic laws and standards on the rights of people deprived of their liberty

Kenya is a signatory and has ratified most of the international and regional conventions relating to human rights and to children rights listed above, which have been domesticated through several instruments in the Kenyan legislation, covering human rights and children rights in general and more specifically regulating the administration of justice and the life of people deprived of their liberty.

The core legal instrument is the Revised Constitution of Kenya (2010) and the enshrined Bill of the Rights, which constitutes an integral part of the Constitution and envisages – among the others – the fundamental rights for people in the administration of justice and held in custody.

Narrowing the analysis to specific legislation on the treatment of people deprived of their liberty, there are some instruments through which the Kenya Government has been working in the last years for the domestication of the Mandela Rules and of the minimum standards for the administration of juvenile justice. The most recent one being the Persons Deprived of Liberty Bill, issued in 2014, which gathers the principles and standards provided generically for people held in custody and deprived of their liberty, very much referring to other already existent Kenyan Laws (the Constitution and the Prisons Act).

The main domestic law on these matters is in fact the Prisons Act, issued in 1962, revised in 2009 and currently under revision. It defines the administration system of prisons in Kenya, powers, duties and privileges for prison officers and the Prison Rules. Under this last section – the most substantial of the Act – all the rules and principles for the prison's management are comprised: among others, we find classification of prisons and prisoners, healthcare, accommodation, treatment and discipline of prisoners. The current process of revision of this Act aims at incorporating more substantially the UNSMR, so minimum standards regarding accommodation, health care, non-discrimination (particularly taking into account disabled prisoners and prisoners with mental health issues), and at eradicating discipline measures such as temporally undefined segregation, food rationing and corporal punishment.

The equivalent of the Prisons Act for young people is the Borstal Act, issued in 1991 and which is currently going through the same process of revision. It provides rules and regulations for Borstal Institutions (for young offenders from 15 to 17 years old), while the Children Act (2001) is the core legal instrument in Kenya for provision and protection of children's rights, including the rights of children in conflict with the law and held in Rehabilitation Schools and Remand Homes.

The table below shows an overview of the laws above mentioned.

Table E – Domestic Laws in the framework of the rules and regulation for people deprived of their liberty

HUMAN RIGHTS FOR PEOPLE DEPRIVED OF THEIR LIBERTY	
Domestic Instrument	Set of standards/principles
The Prisons Act (1962, revised 2009, under revision 2016) ^{E1}	Provides the fundamental rules that regulate the prisons, defining powers and duties for officers, and the main aspect of prisoners' life: accommodation, health care, hygiene and sanitation, discipline and general treatment of inmates and management of a prison.
Constitution of Kenya (2010) ^{E2}	<p>Art 29: Every person has the right to freedom and security of the person, which includes the right not to be— (a) deprived of freedom arbitrarily or without just cause; (b) detained without trial, except during a state of emergency; (d) subjected to torture in any manner, whether physical or psychological; e) subjected to corporal punishment; or (f) treated or punished in a cruel, inhuman or degrading manner.</p> <p>Art. 48: Right to a fair trial for everybody.</p> <p>Art 49: The rights of arrested people.</p> <p>Art. 51: A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.</p> <p>(3) Parliament shall enact legislation that— (a) provides for the humane treatment of persons detained, held in custody or imprisoned; and (b) takes into account the relevant international human rights instruments.</p> <p>(7) In the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court. (8) This Article does not prevent the exclusion of the press or other members of the public from any proceedings if the exclusion is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, morality, public order or national security. (9) Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences.</p>
The Kenya National Commission on Human Rights Act (2011) ^{E3}	<p>An Act of Parliament aimed at restructuring the Kenya National Human Rights and Equality Commission and establishing the Kenya National Commission on Human Rights pursuant to Article 59(4) of the Constitution.</p> <p>The main objectives of the Commission are the following:</p> <ul style="list-style-type: none"> - Promote the protection and observance of human rights in public and private institutions; - Monitor, investigate and report on the observance of human rights in all spheres of life in the Republic; - Receive and investigate complaints about alleged abuses of human rights, and take steps to secure appropriate redress where human rights have been violated; - On its own initiative or on the basis of complaints investigate or research matter in respect of human rights, and make recommendations to improve the functioning of State organs; - Act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except; - Formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution.
The Persons Deprived of their Liberty Bill (2014) ^{E4}	This Act of Parliament aimed at giving effect to Articles 29 and 51 of the Constitution, to guarantee protection of their fundamental rights and freedoms to all the people deprived of their liberty.
Legal Aid Bill (2016) ^{E5}	<p>Art. 42 (1): The officer-in-charge of a prison, police station, remand home for children or other place of lawful custody shall – (a) ensure that every person held in custody, is informed, in language that the person understands, of the availability of legal aid on being admitted to custody and is asked whether he or she desires to seek legal aid; (b) maintain a register in which shall be entered the name of every person held there and the response of each such person when asked if he or she desires to seek legal aid; and (c) ensure that a legal aid application form is made by a person in their custody wishing to apply for legal aid and shall inform the Service of the application within twenty-four hours of the making of the application.</p> <p>(2) A person who unlawfully obstructs a person held in lawful custody from applying for legal aid commits an offence.</p>

HUMAN RIGHTS FOR CHILDREN/YOUTHS DEPRIVED OF THEIR LIBERTY

Domestic Instrument	Set of standards/principles
The Borstal Institutions Act (1991, revised 2009) ^{E6}	Provides the fundamental rules that regulate the Borstal Institutions: establishment of such institutions, committal to Borstal Institution, administration, visitations' rules, discharge and after-care, and discipline of inmates.
The Children Act (2001) ^{E7}	It is the core domestic instrument through which the Kenyan Parliament engages in giving effect to the principles and standards provided in the UNCRC and in the ACRWC. All the articles of the Children Act refer to each and every child, including the ones in conflict with the law and deprived of their liberty. In particular, this Act provides: Definition of a child: below 18 years Art. 18: No child should be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty; no child should be subjected to capital punishment or life imprisonment; a child offender shall be separated from adults in custody; a child who is arrested and detained shall be accorded legal and other assistance by the Government as well as contact with the family. Part V: Rehabilitation Schools and Remand Homes Section VI: Children's Courts Section XIII: Child Offenders
Constitution of Kenya (2010)	While all the articles of the Bill of the Rights apply to every Kenyan citizen, including children, the Constitution specifically provides that: Art. 53 (1): Every child has the right to be protected from any forms of violence, including inhumane and degrading treatment or punishment; not to be detained, except as measure of last resort, and when detained to be held: - For the shortest appropriate period of time; - Separate from adults and in conditions that take account of child's age and sex Art. 53 (2): A child's best interest are of paramount importance in every matter concerning the child.
The Persons Deprived of their Liberty Bill (2014)	Art. 23: Rights of children detained or held in prison - Where a child is detained or deprived of liberty in execution of a lawful sentence, the competent authority shall within forty eight hours notify a parent or guardian of the child of such detention or deprivation of liberty; - Where a child arrested or detained in prison is transferred from one institution to another, the Competent Authority effecting the transfer shall within seven days notify a parent or guardian of the child of such transfer; - Where no parent or guardian is traceable the Competent Authority shall notify an administrative officer in the area where the child's home is located; - Where a child is born of a person deprived of liberty, the fact of the birth in a detention facility or prison shall not be entered in the certificate of birth.
Legal Aid Bill (2016)	Art. 43: This Bill provides the obligation to provide legal representation to children who are brought before a Court unrepresented.

E1. Available at <http://kenyalaw.org/lex//actview.xql?actid=CAP.%2090>

E2. Available at <http://kenyalaw.org/lex//actview.xql?actid=Const2010>

E3. Available at http://www.knchr.org/Portals/0/Reports/KNCHR_Act_201.pdf?ver=2013-02-12-095645-610

E4. Available at <http://kenyalaw.org/kl/fileadmin/pdfdownloads/PersonsDeprivedofLibertyBill2014.pdf>

E5. Available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct_No_6_of_2016.pdf

E6. Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2092>

E7. Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%20141>

3.3 Focus on the rights, rules and regulations for detention facilities' officers

The rights of detention facilities' officers are inextricably linked to the rights of people detained within the same facilities and they have been analysed by this study, through qualitative interviews carried out by the researcher during visits in the facilities and through interviews with experts.

Hence, it is worthy to provide the reader with the main legal instruments which regulate officers' duties and which serve

to guarantee their rights, as individuals and specific category of professionals. Whereas all the rights enshrined in the international, regional and domestic human rights' instruments listed in table 4 apply to every human being, including workers and public officers, here the attention is drawn on specific principles and standards on working conditions and working rights which must be guaranteed to all the workers, including prisons' officers.

These legal instruments and the standards/principles worthy to be noted for the sake of this study are presented in the table below¹⁴.

Table F – International and national legal framework on the rights of detention facilities' officers

INTERNATIONAL AND REGIONAL LAWS AND REGULATIONS	
Legal Instrument	Set of standards/principles
Universal Declaration of Human Rights (1948)	In particular: Art. 23 (1): Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2): Everyone, without any discrimination, has the right to equal pay for equal work. (3): Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4): Everyone has the right to form and to join trade unions for the protection of his interests.
International Covenant on Civil and Political Rights (1966)	In particular: Art. 22: Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.
ILO Declaration on Fundamental Principles and Rights (1998) ^{F1}	It has been adopted in 1998 and declares that all Members, even if they have not ratified the fundamental ILO Conventions, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, the principles concerning the fundamental rights of workers, which are: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.
DOMESTIC LAWS AND REGULATIONS	
Legal Instrument	Set of standards/principles
The Prisons Act (1962, revised 2009, under revision 2015-16)	Part IV - Offences by prison officers Art.20: It shall not be lawful for any prison officer to be or to become a member of a trade union or any body or association affiliated to a trade union; any body or association the objects or one of the objects of which is to control or influence conditions of employment in any trade or profession; or any body or association the objects or one of the objects of which is to control or influence the pay, pensions or conditions of service of the Service, other than a staff association or Prison Council established and regulated by rules made under this Act. Any prison officer who contravenes this section shall be liable to be dismissed from the Service and to forfeit all rights to any pension or gratuity. Part XII - Duties of prison officers Art. 149: All prison officers shall live in (such) quarters as the Commissioner may assign to them; and they shall not sleep out of such quarters without the permission of the officer in charge. No prison officer living within a prison shall permit any person who is not a regular member of his household to remain for the night in his quarters without the permission of the officer in charge.
Employment Act (1997, under revision) ^{F2}	Provides the fundamental rights for employees and defines basic conditions of employment: hours of work, leave, housing, food, water and medical care.

14 This will not be an exhaustive legal framework about workers' rights, both from an international and national perspective. The purpose of this brief analysis is in fact to present the core legal instruments to look at and the rights and principles that are mostly at stake when comes to the findings about officers' rights in detention facilities in Kenya.

Constitution of Kenya (2010)	<p>In particular:</p> <p>Art. 41: Every person has the right to fair labour practices and every worker has the right:</p> <ul style="list-style-type: none"> - to fair remuneration; - to reasonable working conditions; - to form, join or participate in the activities and programmes of a trade union; - to go on strike.
The Public Officer Ethics Act (2003) ^{F3}	It is an act of Parliament to advance the ethics of public officers by providing for a Code of Conduct and Ethics for public officers and requiring financial declarations from certain public officers.
Code of regulations (revision 2006) ^{F4}	<p>The Code of Regulations report the rules and regulations governing public servants in their day to day activities and is a summary of the core and significant regulations. The Code incorporates provisions of all relevant legislations which are applicable on matters of employment and all other Human Resource Management issues.</p> <p>In particular it is provided that:</p> <ul style="list-style-type: none"> - Uniformed Prisons Staff below the rank of Chief Officer Grade II will be provided with rent-free housing in addition to supplementary house allowance and in case the officers entitled to free housing opt to stay outside designated lines, they will be paid the house allowance applicable for their grades.

F1. Available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>; <https://goo.gl/Ka77GL>

F2. Available at http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/EmploymentAct_Cap226-No11of2007_01.pdf

F3. Available at <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PublicOfficerEthicsAct.pdf>

F4. Available at [http://www.health.go.ke/wp-content/uploads/2015/09/REVISED%20CODE%20OF%20REGULATION%202006%20\(2\).pdf](http://www.health.go.ke/wp-content/uploads/2015/09/REVISED%20CODE%20OF%20REGULATION%202006%20(2).pdf)

SECTION IV – HUMAN RIGHTS IN THE CRIMINAL JUSTICE AND CORRECTIONAL SYSTEM IN KENYA: ACCESS TO JUSTICE

In every country, the correctional system is the arriving point of the Criminal Justice System at large, and its enforcement's arm. The characteristics of the first one depend very much on the principles and mechanisms in place in the latter one, and they are inextricably linked to each other in terms of functioning and dis-functioning. It means that if something does not work properly in one of the two systems, and/or if some human rights violations occur in one of the two, usually repercussions are easily traceable also in the other one. Consequently, appropriate interventions to fill gaps in the justice system and to make it as much accessible, people-oriented and up to date as possible, would ease the pressure on the correctional system and possibly improve life conditions for people in conflict with the law and/or deprived of their liberty.

Access to justice and the right to a fair trial are in fact at the same time basic human rights – recognized in all the international and domestic instruments analysed earlier – but also means to protect other universally recognized human rights. When a fair access to justice and a fair trial and sentencing are not guaranteed to people in conflict with the law, marginalized groups are much more vulnerable to abuses and to challenges against a full realization of the all other rights they are entitled to, including within the formal justice system.

Hence, these two fundamental principles include, among others: one's ability to access the courts and legal representation; one's ability to engage fairly with law enforcement officials and to make use of informal, non-state justice mechanisms; the rights to a fairly long trial and to not be discriminated during the trial and for the sentencing on any ground (including the socio-economic one); the presumption of innocence until found guilty, and the consequent fair treatment for people awaiting for a sentence.

The analysis of the legal framework of the Kenyan criminal justice system and its main gaps and challenges in guaranteeing access to justice and the right to a fair trial for everybody is the result of the review of international and national laws and regulations and other relevant literature, together with the review of the findings from the interviews carried out by the researcher to the Judiciary and experts working in the human rights field, as well as to the inmates. Given the numerous provisions and laws in place for the administration of Criminal Justice, this section does not assume to be exhaustive and only provides a snapshot of the legal references, with particular focus on the principles and provisions interesting for the sake of this study.

4.1 The Kenyan Criminal Justice System for adults and children: legal framework

The criminal justice procedures and mechanisms in Kenya are framed into the Penal Code and the Code of Criminal Procedure, beyond the core Kenyan legal instrument, the Constitution. However, the panorama of supplementary laws and acts issued by the Kenyan Parliament to regulate specific aspects and criminal issues is quite wide. For the sake of this study, the main instruments, also mentioned by the experts interviewed, are reported here, being the core norms and standards regulating a trial and leading to sentencing, both in the system for adults and for children. For each one of the legal sources, a brief explanation of what it is about will be provided, with particular focus on matters related to the present study.

Table G – Legal framework for the administration of criminal justice in Kenya

ADMINISTRATION OF CRIMINAL JUSTICE FOR ADULTS	
Law	Set of standards/principles
The Criminal Procedure Code (1930; revised in 2014) ^{G1}	The Criminal Procedure Code gives rules and regulations on the criminal process and procedures of accessing the courts, hence on what happens when somebody enters the justice system, from the moment of the arrest. This is the trial process which relies on the Law of Evidence. The Constitution lays the foundation upon which criminal procedure is premised.
The Probation of Offenders Act (1962) ^{G2}	Where a person is charged with an offence which is triable by a subordinate court and the court thinks that the charge is proved but is of the opinion that, having regard to youth, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may convict the offender and make a probation order; or without proceeding to conviction, make a probation order. The probation order shall last between six months and three years, and can contain a provision to residence in a probation hostel which cannot exceed one year.
The Penal Code (1970, revised in 2012) ^{G3}	It is an Act of Parliament that establishes a code of criminal law. The criminal justice system in Kenya takes the indeterminate sentencing approach. Beyond the offences for which a mandatory death penalty is provided for – treason, murder and robbery with violence – the Penal Code provides only maximum penalties for most of the offences (only two exceptions, art.89 and 308, which provide both minimum and maximum sentence).
Community Service Orders Act (1998) ^{G4}	This Act of the Parliament introduces and regulates community services by offenders. Where any person is convicted of an offence punishable with a) imprisonment for a term not exceeding three years, with or without the option of a fine, or b) imprisonment for a term exceeding three years but for which the court determines a term of imprisonment of three years or less, with or without the option of a fine, to be appropriate, the Court may make a community service order requiring the offender to perform community service.
Sexual Offences Act (2006) ^{G5}	It makes provisions about sexual offences, their definition, prevention and the protection of all persons from harm from unlawful sexual acts. Contrary to the Penal Code, it provides minimum and maximum sentences for the offences.
Constitution of Kenya (2010)	Art. 50: Every accused person has the right to a fair trial, which includes the right— (a) to be presumed innocent until the contrary is proved; (b) to be informed of the charge, with sufficient detail to answer it; (c) to have adequate time and facilities to prepare a defence; (d) to a public trial before a court established under this Constitution; (e) to have the trial begin and conclude without unreasonable delay; (f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed; (g) to choose, and be represented by, an advocate, and to be informed of this right promptly; (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly; (i) to remain silent, and not to testify during the proceedings; (j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence; (k) to adduce and challenge evidence; (l) to refuse to give self-incriminating evidence; (m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial; and (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law. (3) If this Article requires information to be given to a person, the information shall be given in language that the person understands. (4) Evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice. (5) An accused person— (a) charged with an offence, other than an offence that the court may try by summary procedures, is entitled during the trial to a copy of the record of the proceedings of the trial on request; and (b) has the right to a copy of the record of the proceedings within a reasonable period after they are concluded, in return for a reasonable fee as prescribed by law. (6) A person who is convicted of a criminal offence may petition the High Court for a new trial if— (a) the person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and (b) new and compelling evidence has become available. (7) In the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court. (8) This Article does not prevent the exclusion of the press or other members of the public from any proceedings if the exclusion is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, morality, public order or national security. (9) Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences. Art. 133: On the petition of any person, the President may exercise a power of mercy in accordance with the advice of the Advisory Committee established under clause (2), by— (a) granting a free or conditional pardon to a person convicted of an offence; (b) postponing the carrying out of a punishment, either for a specified or indefinite period; (c) substituting a less severe form of punishment; or (d) remitting all or part of a punishment. Chapter 10 of the Constitution deals instead with the Judiciary and all the rules that regulate the judicial authorities and the administration of justice at the Courts.

Power of Mercy Act (2011) ⁶⁶	An Act of Parliament to make further provisions with respect to the power of mercy pursuant to Article 133 of the Constitution; to provide for the appointment, tenure of office of the members and the powers and functions of the Advisory Committee on the Power of Mercy. Any person may, subject to the Constitution and this Act, petition the President, through the Committee, to exercise the power of mercy and grant any relief specified in Article 133(1) of the Constitution.
Judicial Service Act (2011) ⁶⁷	It makes provision for judicial services and administration of the Judiciary; further provision with respect to the membership and structure of the Judicial Service Commission; the appointment and removal of judges and the discipline of other judicial officers and staff; regulation of the Judiciary Fund and the establishment, powers and functions of the National Council on Administration of Justice.
Bail and Bond Guidelines (2015) ⁶⁸	These Guidelines have been developed to respond to the need to establish policy principles that will guide the police and judicial officers as they exercise their powers to grant or deny bond and bail, so that they can ensure that the rights of suspects and accused persons to liberty and to be presumed innocent are balanced with the public interest, including protecting the rights of victims of crime. The exercise of the powers of the police and judicial officers to grant or deny bail and bond impacts in fact on other criminal justice institutions, particularly the prisons. In this respect, it should be noted that pretrial detainees make up almost half of the prison population.
Legal Aid Bill (2016)	It gives effect the Constitution to facilitate access to justice and social justice and to establish the National Legal Aid Service; to provide for legal aid, and for the funding of legal aid. The object of this Act is to establish a legal and institutional framework to promote access to justice by – (a) providing affordable, accessible, sustainable, credible and accountable legal aid services to indigent persons in Kenya; (b) providing a legal aid scheme to assist indigent persons to access legal aid; (c) promoting legal awareness; (d) supporting community legal services by funding justice advisory centers, education, and research; and (e) promoting alternative dispute resolution methods that enhance access to justice in accordance with the Constitution.

ADMINISTRATION OF JUVENILE JUSTICE

Law	Set of standards/principles
Penal Code (1970, revised in 2012)	A person under the age of eight years is not criminally responsible for any act or omission. (2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time.
The Children Act (2001)	Definition of a child: below 18 years. Section V: Rehabilitation Schools and Remand Homes. Section VII: Children's Courts. Section XIII: Child Offenders. The Children Act empowers courts to grant bail to child offenders pending their appearance before a Children's court.
Sexual Offences Act (2006)	It provides protection against sexual abuse on children, child trafficking, child prostitution, child sex tourism, child pornography and defilement. Art. 8: definition of defilement: a person who commits an act which causes penetration with a child is guilty of defilement. The sentence's years vary depending on the age of the child victim. For example, (4) a person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years. This latter instance includes cases of teenagers who have consensual sexual relationships, which are not provided by law: very often the boy is then accused of defilement of the girl and ends up in Borstal Institution, while the girl is deemed the victim. (7) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the Borstal Institutions Act and the Children's Act.
Judicial Service Act (2011)	One of the objectives of the Act is to facilitate the promotion of gender equity in the Judiciary and the protection of vulnerable children in the administration of justice.
Bail and Bond Guidelines (2015)	Where the accused person is a minor, the denial of bail or bond is considered not to be in the best interests of the accused person, who is a minor. In making a bail decision in the case of accused persons who are children and other persons with special needs, the court should consider alternatives to remand such as close supervision or placement with a fit person determined by the court. In such cases, courts should resort to detention only as a last resort, taking into account the nature and circumstances of the offence, and the risks that such persons pose to the public.

A person is eligible to receive legal aid services if that person is indigent, resident in Kenya and is (a) a citizen of Kenya (b) **a child**; (c) a refugee under the Refugees Act; (d) a victim of human trafficking; or (e) an internally displaced person; or (f) a stateless person.

Art. 43 (3): Where a child is brought before a court in proceedings under the Children Act or any other written law, the court may where the child is unrepresented, order the Service to provide legal representation for the child.

G1. Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2075>

G2. Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2064>

G3. Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2063>

G4. Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2093>

G5. Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2062A>

G6. Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2094>

G7. Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%20185B>

G8. Available at http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Bail_and_Bond_Policy_Guidelines.pdf

4.2 The Kenyan Criminal Justice System for adults: mechanisms and procedures

Courts of Kenya are, according to the Constitution, divided between superior courts and subordinate courts. The superior courts are the Supreme Court, the Court of Appeal and the High Court. Subordinate courts are Magistrates' courts (resident magistrates' courts and district magistrates' courts of the 1st, 2nd and 3rd class), Kadhis courts (deal with civil cases on inheritance, succession and divorce for Muslims), court Martial and any other court or local tribunal established by an act of parliament.

Offences described in the penal code are judged by the court mentioned in the Code. If no court is mentioned, penal offences are tried by the High Court or a subordinate court¹⁵.

The basic principle is that a person can be prosecuted only for a crime which is known and provided by the Penal Code. Criminal proceedings are instituted by bringing an arrested person before a magistrate or by making a complaint to a magistrate if it is believed *from reasonable and probable cause* that an offence has been committed. The complainant provides a written statement and produce witnesses and evidence and the magistrate can receive the complaint and issue a summons or a warrant, or reject it if it does not constitute an offence. These are the steps followed on an average process:

1. Complaint
2. Arrest
3. Charges
4. Plea
5. Trial
6. Judgment
7. Sentence

4.2.1 Arrest, bail, bond and plea bargain

Police officers can arrest a person without a warrant if the person is suspected of having committed an offence, committed a breach of peace in the presence of the police, tried to escape, etc. A person arrested without a warrant shall be presented before a magistrate *without unnecessary delay* (art. 33, Criminal Procedure Code).

For offences other than murder, treason and robbery (or attempted robbery) with violence, the Code provides that the person shall be released on bond if it appears impracticable to be brought to court within 24 hours and if the police

¹⁵ The High court can impose any offence authorized by law. Subordinate courts of the First Class (Resident Magistrates' court or District Magistrates' court of the 1st class) can impose sentences of imprisonment of maximum 7 years or fine of maximum 20.000 shillings. Subordinate courts of the Second Class can impose sentences of imprisonment of maximum 2 years or fines of maximum 10.000 shillings.

officer in charge assesses the crime not to be of a serious nature. The bond has to be of a reasonable amount and where the person is retained in custody s/he should be brought before Court as soon as possible. Mostly police give bonds in traffic cases and accused people are told to go to Court on the day provided in the bond order¹⁶.

Hence, the bail or bond can be determined by police officers or magistrate, taking into account previous records of the offender, the serious nature of the offence and the offender's dangerousness.

In case the accused pleads guilty for a felony involving only a fine or imprisonment of less than three months, s/he can be dispensed from appearing in court. If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with, and the fine is not paid within the time prescribed for payment, the magistrate may issue a warrant and commit the person to prison for such term as the magistrate see fit.

Likewise, if the accused does not appear at the time and place appointed in and by the summons, and his/her personal attendance has not been dispensed with, the court may issue a warrant to apprehend him/her to be brought before it. Before the trial, there is another possibility to speed the process and avoid remandees' overcrowding in custodial facilities, which is the plea bargain: if the accused admits the truth of the charges, s/he can enter a plea agreement and if the person accused pleads guilty, s/he will proceed to trial.

A plea agreement is a deal between the prosecutor and the accused, which can result in the reduction or even the withdrawal of charges. The accused person must be informed of his/her rights (to be innocent until proven guilty, to plead not guilty, to remain silent, not to incriminate him/herself, to have a fair trial, to be represented, to cross-examine witnesses), as well as the charges against him/her, and the type of penalty s/he risks. The agreement must be in writing, include all terms of the agreement and signed by both the prosecutor and the accused who must fully agree to it, which means s/he has to be of sound mind.

A court can reject a plea agreement, stating reasons for reject and the accused person can withdraw from the plea as long it has not been validated by the court.

Plea agreements are not applicable for offences under the Sexual Offences Act 2006 and international crimes.

4.2.2 The trial

The main principles that regulate a trial in Kenya are that a suspect person is innocent until proven guilty and the trial proceedings are public, even though the privacy of the victim shall be ensured and protected. A person cannot be tried twice for the same offence, unless the consequences of the offence amount to another act or some acts from the offence are constitutive of another offence.

Hence, it is the prosecution that has the obligation to produce evidence and to prove the suspect guilty beyond reasonable doubt and if the court is of the opinion that the case is not complete enough to require a defence, then it will dismiss the case and acquit the accused.

At trial, all evidence shall be presented in the presence of the accused and translated if necessary in a language that the accused understands (the official language of the High Court is English, the language of subordinate courts is English or Kiswahili). Evidence given by witnesses orally shall be transcribed in writing.

If it is deemed necessary for purposes of evidence, the court can issue a warrant to compel a witness to appear at trial. The court can, at any stage of the proceedings, examine and re-examine witnesses upon oath and the defence must have adequate time to prepare and to cross-examine witnesses.

¹⁶ A bond is an undertaking entered into by an accused person under which s/he binds him or herself to comply with the conditions of the undertaking and if in default of such compliance to pay the amount of bail or other sum fixed in the bond. A bail is an agreement between an accused person and the court that the accused will appear in court when required. If the person fails to do so, the money s/he had deposited will be forfeited by the court.

If a witness refuses to swear or answer questions, the court can adjourn the case for a maximum of eight days and send the witness to prison. If, after eight days, the witness refuses again, the court can again adjourn, and so on until the witness agrees to speak.

The accused person is at liberty to call witnesses and if the defence witnesses do not appear, the court can adjourn the case to compel them to appear.

4.2.3 Judgment and sentencing

After hearing both sides, the court shall convict or acquit according to the law.

A convicted person can be required to pay judicial costs, as the magistrate shall deem reasonable. It cannot amount to more than 20,000 kshs in High Court and not more than 10,000 kshs in a subordinate court.

The court takes into account all the things that have happened before judgment to determine what kind of sentence to award. In Kenya there are those mandatory cases with a death sentence and where the court is sentencing such persons they do not consider any other options¹⁷. But in other cases they have options such as community service, fines, juvenile courts, etc.

In cases which relate to the death sentence – provided for treason, murder and robbery with violence – the person must be informed by the court on the time within which s/he can appeal. If no appeal is made, or if the sentence is confirmed after appeal, the court shall send a report to the President, containing all notes, recommendations and observations from the case. After considering this report, the President shall issue a death warrant, or pardon the person. The other sentences are imprisonment and payment of money (fine, penalty, compensation, costs or expenses). Imprisonment can be applied in default of payment of a fine, if the convicted person fails to pay the fine after 30 days of release.

Appeal cannot be granted if the accused person pleaded guilty. For other cases, appeal shall be entered within 14 days, on grounds of law or facts, or on the sentence. It takes the form of a writing petition and has to be signed by the appellant or his/her advocate. The High Court has power to receive or reject the appeal. If the original sentence is confirmed, the time spent on bail is not computed to the final sentence.

4.3 The Kenyan Juvenile Justice System: mechanisms and procedures

Numerous are the international resolutions, guidelines and conventions developed to guarantee protection to children in conflict with the law. As showed in the previous chapter about the legal framework, the milestone is the UNCRC, which develops around four fundamental principles, applicable to all the children in any circumstances: the right to life and development, the best interest of the child, the non-discrimination principle and child's participation.

In particular, regarding children in conflict with the law, their rights are guaranteed through art.19 (protection against any forms of violence), art. 37 (protection against torture and inhumane treatment, separation from adults in detention and access to legal and other assistance needed) and art. 40 (minimum age of criminal responsibility to be set, detention as last resort and promotion of alternative measures).

The UNCRC and the other international conventions on this matter have been domesticated by the Kenyan Government and the core principles lead the protection and care of children in the country.

¹⁷ However it is worthy to note the recent sentence of the High Court in Kenya that has ruled that the mandatory death sentence in relation to capital offence is unconstitutional, following filed by a petition by a law student serving a death sentence at Kamiti Maximum Prison (Nairobi), and 11 other death row prisoners. See more at <http://www.africanprisons.org/kenyan-court-finds-mandatory-death-sentence-unconstitutional/>

The administration of Juvenile Justice in Kenya is regulated by different instruments, with the Children Act being the core legal reference. There is not a specific section of the Penal Code and of the Criminal Procedure Code for children and young people, so when not otherwise specified in the Children Act and in the Constitution, the regulation for the administration of juvenile offences and justice comes from these two main bodies of law.

4.3.1 The administration of juvenile justice and the Children Act

The Children Act regulates the administration of juvenile justice with regard to the court process, the administration and management of children's institutions, proceedings and jurisdiction for children in need of care and protection, provisions for child offenders, forms of punishment and deprivation of liberty for children. To complete the picture, the Borstal Institutions Act provides norms and rules for the treatment of young offenders held in Borstal Institutions, while it is the Prisons Act to regulate the treatment and management of young people held in YCTC.

Provisions on Children's Courts

The juvenile justice system refers to the administration of justice to children between 8 and 17 years old and deals with two categories of children: in conflict with the law and in need of care and protection (meaning children victims of neglect, abandoned, abused, lost, etc...). With regards to children accused to have infringed the law, the Children Act provides the core principles and standards to be followed in Court and for the sentencing of a child. It is worthy to go through the most important so to highlight the biggest challenges observed in the course of the research on the matters of juvenile justice.

Every child accused of having infringed any law has the right to:

- be informed promptly and directly of the charges against him;
- if he is unable to obtain legal assistance be provided by the Government with assistance in the preparation and presentation of his defense;
- have the matter determined without delay;
- not be compelled to give testimony or to confess guilt;
- have free assistance of an interpreter if the child cannot understand or speak the language used;
- if found guilty, have the decisions and any measures imposed in consequence thereof reviewed by a higher court;
- have his privacy fully respected at all the proceedings;
- if he is disabled, be given special care and be treated with the same dignity as a child with no disability.

Every court in dealing with a child who is brought before it shall have regard to the best interest of the child and shall, in a proper case, take steps for removing him/her from undesirable surroundings and securing proper provisions to be made for his/her maintenance, education and training.

The Children Act provides, among others, that there shall be Children's Courts, constituted with the purpose of conducting civil proceedings on matters set out under the Act, of hearing any charge against a child and hearing a charge against any person accused of an offence under the Act, so involving child victims. A children's court may try a child for any offence except for the offence of murder or an offence with which the child is charged together with a person or persons of or above the age of eighteen years.

The children's courts shall sit in a different building or room or at different times from those courts which deal with adults and other matters, and it shall be closed, nobody being present beyond the members of the court, the parties, the child's parents or guardians, registered representatives of news agencies and other persons strictly allowed by the court. The same applies when in any proceeding involving children as victims or offenders, if a child is called as a witness, the Court can require the room to be cleared and to be present only the court members and the parties. The privacy of children must always be guaranteed and any particular about his/her identity and life shall never be published or revealed. A Children's Court shall have a setting that is friendly to the child offender.

In considering whether or not to make an order with regard to a child, the court shall take into consideration many aspects, from the child's understanding and age, his/her physical, emotional and educational needs and his/her special

needs and disabilities; his/her cultural background and the risk of incurring in further victimization; the ability of the parents or any other persons to whom the court considers the question to be relevant, to provide for and care for the child; the customs and practices of the community to which the child belongs; the child's exposure to, or use of drugs or other psychotropic substances.

Finally, when a child is brought before a court, the court *may*, where the child is unrepresented, order that the child be granted legal representation. Where the child is not represented by an advocate, the court *may also appoint a guardian ad litem* for the purposes of the proceedings in question and to safeguard the interests of the child.

Provisions on deprivation of liberty timeframe and children's institutions

The Children Act provides that matters in the Children Courts must be finalized within 3 months, or six months for serious cases before Courts superior to the Children's Court. After this period of time, if the case is not completed, the child shall be released on bail. Hence, six months for the most serious cases is the maximum length of time a child can spend in a Remand Home, while s/he cannot be committed to a juvenile facility for more than three years.

The Children Act provides for the different children's institutions which are supposed to hold children from these two categories, and they are categorized as Remand Homes and Rehabilitation Schools, Charitable Institutions and Borstal Institutions (mentioned in art. 55 of the Children Act and regulated in the Borstal Institutions Act). Contrary to this categorization and to the provision from the Act according to which children in need of care and protection should be held in separate institutions from the children in conflict with the law, they are often mixed, particularly in Remand Homes and Rehabilitation Schools, being the great majority of these children in need of care and protection (around 75% of children in custody according to the estimates).

4.3.2 Procedures from the arrest to the sentencing

The age of criminal responsibility is set at 8 years old in the Kenyan Penal Code, section 14: "a person under the age of eight years is not criminally responsible" and from eight to twelve years "is not criminally responsible [...] unless it is proved that at the time of committing the act or making the omission he had the capacity to know that he should not commit the act or make the omission".

The procedures from the arrest of a child are regulated by the Kenyan legislative framework on criminal justice, i.e. the Penal Code and the Criminal Procedure Code, which in particular regulate the charges and the kinds of offences provided by the law and the procedures for the arrest.

Once a child is arrested and suspected of having infringed the law, s/he must be brought before the Court as soon as possible. The custody in a police station cannot exceed 24 hours, unless the arrest has been done during a weekend. The child must be informed of the charges as soon as possible, as well as his/her parents, and children must be separated from adults in the police stations.

According to the section of the Children Act devoted to Child Offenders (Part XIII), no child shall be ordered to be placed in a detention camp, no child shall be sentenced to death, no child under the age of 10 shall be committed to a Rehabilitation School and no child offender shall be subjected to corporal punishment.

Once the Court has proven the accused child guilty of the offence charged with, it can decide among the following solutions (section 191 of the Children Act):

- by discharging the offender under section 35 (1) of the Penal Code;
- by discharging the offender on his entering into a recognizance;
- by making a probation order against the offender under the provisions of the Probation of Offenders Act;
- by committing the offender to the care of a fit person, whether a relative or not, or a charitable children's institution willing to undertake his care;

- if the offender is above ten years and under fifteen years of age, by ordering him to be sent to a *rehabilitation school* suitable to his needs and attainments;
- by ordering the offender to pay a fine, compensation or costs, or any or all of them;
- in the case of a child who has attained the age of sixteen years dealing with him, in accordance with any Act which provides for the establishment and regulation of *borstal institutions*;
- by placing the offender under the care of a qualified counselor;
- by ordering him to be placed in an educational institution or a vocational training programme;
- by ordering him to be placed in a *probation hostel* under provisions of the Probation of Offenders Act;
- by making a community service order;
- *or in any other lawful manne.*

The Children Act (art. 55) also provides that for a child already committed to a Rehabilitation School, where the Director is of the opinion that s/he is a persistent absconder, is of difficult character or is exercising inappropriate influence on the other children in the school, he may apply to the children's court having jurisdiction in the place where the school is situate:

- to have the period of committal increased by a period not exceeding six months, if the child is of or below the age of sixteen years; or
- to have the child sent to a Borstal institution, if the child is above the age of sixteen years; or
- to have the child provided with appropriate medical treatment or professional counselling, if the child's conduct is attributable to drug abuse, or if the child is of unsound mind or is suffering from a mental illness.

In addition to that, the Borstal Institutions Act and the Prisons Act provide for the commitment of a young accused who is found guilty to, respectively, a Borstal Institution – in case of more serious offences committed by children between 15 and 17 years old – or a YCTC – in case of first petty offenders between 17 and 21 years old.

4.4 Access to justice in the Kenyan Criminal Justice System: challenges

The legislative framework in Kenya with regard to guarantees for people in conflict with the law and their fundamental rights – both for adults and for children – is quite up to date and in line with international standards and human rights conventions. However, too often the implementation of these principles collides with structural challenges and resources' constraints.

One of the main findings of this research is that failure in having guaranteed access to justice and the right to a fair trial are the biggest and most recurrent violations of human rights for people in conflict with the law in Kenya. What came out from the interviews to the experts and to the detainees, has been corroborated by the desk review and the analysis of secondary data.

Failed fulfillment of the right to be heard and adequately informed, length and undue delays of the trials, failure in guaranteeing legal representation, lack of innovation in investigating methods and sentencing are among the main challenges that people in Kenya face once they enter in conflict with the law.

It is worthy then to differentiate among the various phases of the proceeding and between what happens in the system for adults and in the juvenile one, even though they often overlap, in terms of regulations and also in terms of challenges.

4.4.1 Pre-trial

Adults

Releasing arrested people on bail is a major issue in the Kenyan justice system, which greatly affects overcrowding in the correctional facilities and police stations. Too many people are not released on bail and kept in custody waiting for trial and very often the bail does not take into account that the great majority of people who end up in conflict with the law cannot afford to pay certain amount of money.

Also, the experts interviewed insisted that for petty crimes the police could and should proceed only with a warning and dismissing or alternative dispute resolutions, then proceeding with a police bond. Not doing so, the accused person awaits in custody for the hearing, then goes before the Court and s/he is committed to a fine or to conviction of less than 3 years. In most of the cases they cannot raise the bail in Court and they cannot pay the fine, so they go to prison. This is what happens at this stage according to the National Council on the Administration of Justice: police officers sometimes do not give bail and bond on reasonable terms. In some cases, police officers deny accused persons bail, as a form of punishment. Further, police officers do not usually explain their bail and bond decisions. Second, police officers only grant bail and bond to persons accused of minor offences, and leave bail decision making in serious offences to the Courts. In the latter case, the accused person should be produced in court within 24 hours of arrest. Accordingly, a person accused of serious offences such as murder or robbery with violence is likely to be detained in a police cell, and can only be released on bail once produced before court. Third, police officers tend to detain persons who have committed petty offences, contrary to Article 49(2) of the Constitution. Included in this category are persons accused of committing offences such as loitering, creating a disturbance, being drunk and disorderly, and possessing illicit liquor. Fourth, many accused persons are unable to afford cash bail in amounts as low as Kshs. 1000 due to poverty. Such persons are therefore detained in police custody. Fifth, police officers typically do not inform accused persons that they have a right to be released on bail and in some cases even extort bribes from them. Sixth, because the public does not understand bail, it sometimes sees the payment of cash bail as a bribe or payment of a fine, and consequently perceives police officers as corrupt and at the same time lynches accused persons released on bail. Indeed, police officers often detain some accused persons for their own protection, on the basis that they might be lynched if released on bail. Kenya does not have a bail supervision system at present. As a result, the enforcement of bail conditions is not effective. This partly explains why there is a high rate of absconding among persons granted bail or bond, particularly free bonds and cash bail.¹⁸

In addition to that, for the most serious offences, the law does not allow the use of alternative dispute resolutions and accused persons have to go strictly through the formal ordinary process.

Children

The same issue of the releasing on bail applies to the juvenile justice system, where very often the bails are too high and children and their families – when present and/or traceable – cannot afford them, so the child ends up in remand. In addition to that, diversion measures that could be applied by the Police officers at the first stage of the proceeding are highly neglected and rarely used, making custodial detention the first choice in most of the cases, also for children in need of care and protection (who are the great majority in the justice system as above mentioned).

Diversion should be regulated by a specific legal instrument, whereas it is not yet part of the Kenyan legislation, even though it is already used in practice. Another instrument that should be introduced in the administration of juvenile justice, according to some experts, is the plea bargain, which, again, is not yet regulated by the law but it is already used in practice, especially for petty offences, to fasten the proceeding and guarantee that the child spends the minimum time possible within the formal system.

The first contact with the justice system for the children in conflict with the law and in need of care and protection is the police station, where children can spend more than the 24 hours provided by the law, for example when arrested on a weekend. While separation of children from adults is usually guaranteed in detention facilities, it is instead frequent to find children and adults, males and females, mixed in the cells of police stations, so being children more exposed to psychological, physical and sexual violence¹⁹.

¹⁸ Kenya Judiciary, National Council on the Administration of Justice, Bail and bond policy guidelines, March 2015 http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Bail_and_Bond_Policy_Guidelines.pdf

¹⁹ United States Department of State – Bureau of Democracy, Human Rights and Labour, Country Reports on Human Rights Practices for 2011, Nairobi, 2011; Ottolini, D., Violence Does Not Fall On One Roof Alone. A Baseline Survey on Violence Against Children in The Kenya Juvenile Justice System, Kolbe Press, 2016, Nairobi.

4.4.2 Trial and Courts

Adults

The trial and the collection and appearance of evidence are apparently one of the main causes of undue and prolonged delays in the administration of justice in Kenya, together with staff capacity and resources constraints within the judiciary, being cause and consequence at the same time of a high backlogs of court cases, with many cases undetermined even after decades in court²⁰. These constraints affect both the adults' and juveniles' system of justice.

The main reasons reported as causes of delay are still mostly the same reported in 2012 in a report on the Status of human rights in prisons in Kenya²¹:

- Non-appearance by the accused person on the date of the hearing;
- Non-appearance or failure by the prosecution in availing the witnesses;
- Missing files from the police station;
- Lack of provision of interpreters on time by the court.

As also reported by the interviewees, delays are in fact caused by non-appearance of the accused person due to clerk's negligence in indicating the date on the warrant or because the police or the remand institution where s/he is held does not have means of transport or staff to allocate to that transfer. Another significant challenge causing undue delays is in the files that are from time to time lost, misplaced or simply disappeared. There is not a digitized system of data collection and registration, all the reports and files are hand-written by the police officers and the magistrates themselves, and are then kept in the registries of the different agencies, with no computerised archive.

In addition to that, a lack of innovation in the investigating methods used to gather information and evidence on the criminal cases has been reported as quite a big challenge in the extent in which the main - and often only - instrument of building a case is the use of witnesses. According to the reports from the interviewees, even though one of the core principle of the Kenyan legislation is the presumption of innocence, the common attitude appears to be that the suspect is considered guilty from the beginning, from the investigation through the all trial, with the main objective from the system to be fast and dispose of the huge backlog of files. Testimonies from witnesses, who are often the same people who reported a case, are used without the support of other searches for forensic evidence and without other modern techniques of interrogation and research.

FOCUS ON: Elder people convicted and the disputes for the land

From the discussion with the experts met throughout the research, this came out as a spread phenomenon but not yet deeply analysed and addressed. In disputes for the land, elderly people often end up being accused of serious crimes - especially sexual offences against minors - so that being they framed and jailed, the land passes to the closest relatives. Not precise numbers have been collected, but it seems to be quite a common practice that explains the presence of sometime very old people in prisons around the country. This is connected to the use solely of witnesses in the majority of the criminal justice cases as the main and often only investigation's instrument, even though, in this specific example, the people who accuse the elder and who testify against him, might be the same that has built the case and are framing him

Furthermore, with poverty and illiteracy still being the main root causes of the majority of the offences, a great portion of suspects cannot afford a private lawyer and there is not a system of pro-bono lawyers in Kenya provided and paid by the Government. Legal representation is still one of the biggest challenges in the protection of guarantees and rights for people in conflict with the law.

20 KNCHR, Human Rights Baseline Survey Report, 2016. Available at <https://goo.gl/RKb77d>

21 LRF, Human Rights in prison - A report on the status of penal institutions in Kenya 2003-2010, Nairobi, 2012.

Only the capital offenders – for the crimes of treason, murder and robbery with violence – are entitled to legal representation, even though until the revision of the Constitution in 2010 only the suspects of treason and murder, while robbery with violence was not included despite of being punishable with the death sentence as well. With the revision of the Constitution, it is now provided that “every accused person has the right to a fair trial, which includes the right to have an advocate assigned to the accused person by the State and at State expense, *if substantial injustice would otherwise result*”, which still remains a too discretionary condition.

The enactment of the just issued Legal Aid Bill (2016) and the enforcement of the Legal Aid Fund need to be pushed: it would provide legal assistance to accused people who are indigent citizens of Kenya, children, refugees, stateless people and victims of trafficking.

Children

With regard to children, even though the Children Act provides the possibility for the Court to appoint a legal representative and a guardian for an unrepresented child, the right to be legally represented is largely neglected. As it happens for adults, there is not yet a system of pro-bono lawyers for children, and children’s lawyers usually come from the civil society or associations that voluntarily offer this service. New rules have been aligned with the Legal Aid Bill issued in 2016, but the Treasury has not yet allocated the funds (as at September 2016).

While the considerations about the delays in Court and legal representation made above for the adults apply entirely for the juvenile justice system, further challenges are worthy to be noted about Children’s Courts. The Children Act provides that in all the Court stations there shall be a Children’s magistrate, constituted with the purpose of conducting civil proceedings on children matters and of hearing any charge against a child or involving a child as a victim. What happens due to a scarcity of resources and of magistrates is that in all the Court stations in the country there is a magistrate assigned as Children’s magistrate but in most of the cases s/he doesn’t deal exclusively with children matters, due to understaffing in the Judiciary. On the same note, both judges and prosecutors are not specifically trained on children/juvenile matters and they are appointed by the Chief Magistrate not on the basis of their training, specialization or because they expressed a particular will and passion to perform this duty or specialize on these matters.

In most of the cases, especially outside Nairobi, children’s courts are not separated from the ordinary ones. They are usually not child-friendly structures, professionals are not specialised on children’s matters and conditions for a fair hearing are often not respected, even for child victims and witnesses, where the court rooms are mixed with adults and there are no witnesses rooms (behind the mirror) or counselling room where the child can be heard separately.

As an example of good practice, the Milimani Children’s Court in Nairobi is the biggest in the country and the best equipped, and try to attract all the children cases of Nairobi County, whereas it is the most child-friendly, with a well-equipped waiting areas, and provides the presence of 4 prosecutors who work exclusively on children matters, 6 judges (the Chief magistrate is a judge working exclusively on children matters) and children’s lawyers from charitable associations. However, the ratio of magistrates for children cases is still very low, as well as the availability of children’s officers and probation officers²².

With regards to the children’s court’s jurisdiction, it is also debatable the provision of the Children Act that a children’s court may try a child for any offence except for the offence of murder or an offence with which the child is charged together with a person or persons of or above the age of eighteen years. According to all the international standards and conventions, and also to the Kenyan Children Act and Constitution, a child is any person below the age of 18 years old and s/he should not lose this “status” in any circumstances. Particularly when a child commits a serious crime s/he needs even more assistance and support and, above all, the kind of crime committed should not define the person and should not deprive a vulnerable person of his/her rights as a child. Furthermore and similarly, a child who has committed a crime together with an adult should be treated as a child and judged separately from the adult person.

²² There are 2 probation officers available at Milimani Children Court for all the courts, not just for children but also for adults.

4.4.3 Sentencing

Adults

Sentencing is a crucial stage in the criminal justice process and has a great impact on the administration of justice, on the situation in the correctional system and on crime control. It influences in fact not just the overcrowding of correctional facilities – due also to the prevalence of custodial sentences on non-custodial sentences – and the rate of recidivism (for the same reason), but also the perception of the public towards the judiciary and the justice system *tout court*. In Kenya it has been a very problematic area in the administration of justice and the Kenyan public has strongly criticized the discretionary power of sentencing and the lack of accountability that had led to a spread perception of a corrupted judiciary class²³.

As mentioned earlier, sentencing in Kenya is largely discretionary and indeterminate, due to the fact that, beyond the offences for which the death penalty is compulsorily provided, the sentences for all the offences in the Penal Code are defined just in terms of maximum penalties, without indicating the minimum. Only for Section 89 (possession of firearms) and Section 308 (possession of dangerous or offensive weapons in preparation for the commission of a felony) minimum and maximum sentences are provided, and likewise the Sexual Offences Act provides both the sentencing terms. Even though judicial officers are supposed to base their decisions on certain legal principles provided by the law, the lack of sentencing guidelines has implied wide discretionary powers for the judicial officers. If that might have a positive effect – in the fact that the judicial officers are supposed to assess all the circumstances of the offence and characteristics of the offender – it surely has a negative impact in the perception of justice from the public because of unjustified discrepancies from a court to another one, from a judge to another or in different geographical contexts²⁴. Another challenge related to a discretionary sentencing is the lack of clear indications for judicial officers on when to choose non-custodial sentences instead of custodial ones. That is also linked to public perception that non-custodial sentences are not effective and are, on the contrary, an expression of weakness from the State. However, the use of alternative measures to detention especially for petty crimes and short-term sentences would be crucially important to face overcrowding in correctional facilities, pulling out the crowd of petty offenders and other people who is in jail because could not afford a bail or a fine.

Sentencing policy guidelines for judges and magistrates have been launched in Kenya in January 2016, by a taskforce on sentencing that was informed by these concerns as reflected in its mandate. The taskforce was, among other tasks, required to ‘report on how to reduce unwarranted disparity, increase certainty and uniformity; and promote proportionality in sentencing and ‘create a roll out plan for suggested interventions; including educating and engaging members of the public and other stakeholders on the sentencing system and its effectiveness’²⁵.

As reported in the Guidelines, they provide both general principles as well as more specific considerations that will guide the sentencing process. The various sentencing options available under the law are elaborated on, with specific policy directions on their application. Policy directions have also been provided to guide the sentencing process, including special considerations in respect of special category of offenders. They will enable all concerned actors to proactively participate in the sentencing process from an informed viewpoint. These policy guidelines seek in fact to provide a coherent sentencing structure based on the principles of fairness, justice, proportionality and commitment to public safety. This in turn is expected to curb arbitrariness in sentencing and enhance public confidence in the criminal justice system. These guidelines are in recognition of the fact that while judicial discretion remains crucial, it needs to be guided and applied in alignment with recognized principles of fairness, non-arbitrariness in decision-making, clarity and certainty of decisions. The guidelines are, therefore, an important reference tool for judges and magistrates that will enable them to be more accountable for their sentencing decisions²⁶.

23 Kenya Judiciary, Sentencing Policy Guidelines, Nairobi, 2016, available at http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Sentencing_Policy_Guidelines_Booklet.pdf

24 LRF, Sentencing in Kenya – Practice, trends, perceptions and judicial discretion, Nairobi, 2011

25 Kenya Judiciary, Sentencing Policy Guidelines, Nairobi, 2016

26 *Ibidem*

Another aspect of sentencing that brings significant challenges is the timeframe and delays also in this phase of the proceeding, which contributes to the unreasonable length of justice. One of the crucial reasons is the understaffing of the judiciary, whereas judges and prosecutors are quite few in comparison to the number of cases to deal with²⁷ and there is not a digitalized system of filing cases, which further slows down the process, being the duty of the magistrates to hand-write the hearings and the whole file of each case. As the proportion of cases handled by each magistrate is high, the timeframe dilates, so appropriate access to justice is denied and magistrates are overworked and overwhelmed.

Another crucial aspect of the Kenyan system that needs to be acted upon is certainly the abolition of the death penalty which has not yet been removed by the Codes and the regulations. In 2009, after the commutation of 4,000 death sentences to life imprisonment, the President issued a directive to all the relevant departments to urgently conduct studies on the death penalty and its impact on crime control. These studies have never been conducted and although the death penalty has not been executed anymore since then, it is still in the Penal Code as a compulsory sentence for certain offences and it is still administered by the judges for those offences²⁸. In response to that, last October (2016), President Uhuru Kenyatta commuted 2,747 death sentences into life imprisonment and also signed a pardon warrant and released 102 convicts who were on long terms sentence²⁹. Despite of these crucial presidential interventions, the provision of death penalty in the Kenyan legislation results in the presence of people who have been living in prison for years in the death row, without exactly knowing if and when the death sentence would have been executed, so experimenting a systemic psychological violence and unfair treatment which completely fails in attaining the purpose of rehabilitation³⁰.

Children

One of the first biggest concerns in the juvenile justice system in Kenya is the age of criminal responsibility, which is set in the Penal Code at 8. This is the second lowest age of criminal liability worldwide, with the lowest being seven years in some countries around the world³¹. While the international standards do not specify which the appropriate minimum age of criminal responsibility should be, it is provided that a specific age below which a child cannot be considered legally responsible must be set and it cannot be too low (Beijing Rules). This requirement has often been emphasized by the Committee on the Rights of the Child which also expressed concern about the Kenyan position, being eight years too low³².

With regard to sentencing, the Children Act provides that the death sentence cannot be applied to children.

Except for this last issue, challenges and constraints reported for the adults' justice system again apply to the juvenile justice system, which is affected by the same discretionary and understaffing above emphasized. Also, for children matters, the scarcity of probation officers and children's officers not just dilates the timeframe of the proceeding but also affect the sentencing itself. Where their reports are requested by the magistrate to take a decision in the best interest of the child but each of them has a disproportionate number of cases to deal with, the cases are repeatedly

27 KNCHR, Human Rights Baseline Survey Report, 2016. Available at <https://goo.gl/w0UyOd>

28 KNCHR, Report to the Human Rights Committee to inform its Review of Kenya's Third Periodic Report on implementation of the Provisions of the International Covenant on Civil and Political Rights, 2012, Nairobi. Available at http://www2.ohchr.org/english/bodies/hrc/docs/ngos/KNCHR_Kenya_HRC105.pdf

29 http://www.the-star.co.ke/news/2016/10/24/uhuru-commutes-all-2747-death-row-convictions-pardons-102_c1443266

30 United Nation Human Rights – Office of the Higher Commissioner, Death penalty and the victims, 2016, New York. Available at <http://www.ohchr.org/EN/NewsYorks/Pages/Resources.aspx>

31 Liberia, Malawi, Mauritania, Namibia, Nigeria (some regions), Seychelles, Sudan, Swaziland, Tanzania and Zimbabwe in Africa; Grenada, Trinidad and Tobago and North Carolina (USA) in the Americas; Brunei, India, Jordan, Kuwait, Lebanon, Pakistan, Qatar, Saudi Arabia, Singapore, Thailand, United Arab Emirates and Yemen in Asia; Papua New Guinea and Tonga in Australia. See at: <https://www.crin.org/en/home/ages>

32 General Comment No. 10 (2007) Children's Rights in Juvenile Justice, Committee on the Rights of the Child, Forty-fourth session Geneva, 15 January-2 February 2007

adjourned and delayed and the risks of these reports not to be accurate is high: being overworked, the officers not always have the time to make an appropriate check of the child's background and to collect all the information needed by the magistrate to take a decision.

The discretionary power of the judiciary in sentencing children matters is apparent especially with regard to the choice from the magistrate of the institution where to commit a child, among Rehabilitation Schools, Borstal Institutions and YCTC. While the main criteria is the age – smaller children (below 15) are sent to Rehabilitation Schools, while the older ones to the other two categories (from 15 to 17 years) – and the offence – for more serious offences youths are sent to Borstal while first-offenders are brought to YCTC, it is left to the discretion of the magistrate to make this choice. It is interesting on this regard what is provided in the Children Act (art. 55) with regard to the possibility of transferring a child from a Rehabilitation School to a Borstal Institution: “for a child already committed to a Rehabilitation School, where the Director is of the opinion that s/he is a persistent absconder, is of difficult character or is exercising inappropriate influence on the other children in the school, he may apply to the children's court having jurisdiction in the place where the school is situated, to have the child sent to a Borstal institution, if the child is above the age of sixteen years”. The expression underlined is still very poor specific and vague, and can easily leads to discretionary power of the magistrate and of the manager of the Rehabilitation School in the first place.

FOCUS ON: Young people convicted under the Sexual Offences Act

The age of consent is the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity.

In Kenya the age of consent is 18 years old, so that individuals aged 17 or younger are not legally able to consent to sexual activity, and such activity may result in prosecution for defilement. While the minimum age of criminal responsibility is, on the opposite, 8 years old, and because there is no close-in-age exemption in Kenya, two individuals both under the age of 18 who willingly engage in a sexual intercourse are liable to prosecution for defilement. Similarly, no protections are reserved for sexual relations in which one participant is a 17 years old and the second is 18 or 19 years old.

Hence, the application of the rules results in cases where a boy below 18 who had consensual sexual intercourse with a girl below 18 is charged and liable according to the Sexual Offences Act, even if they were both adolescents and the act was consensual, while the girl is treated as a victim. A discussion about a review of the legislation is needed, to prevent the prosecution of children who engage in consensual sexual activity when both participants are significantly close in age to each other. There should be also a review of the age of consent: the State should consider lowering the age of consent to an age at which most children have attained basic education, make conscious decisions every day affecting their lives, bearing in mind that the age of criminal responsibility – so at which a child is deemed to be able to discern the bad and the right – is set much lower.

Owiti, V.J., The Child in the Criminal Justice Process: Revolutionizing the Kenyan Criminal Justice System to Make it More Child-Sensitive, Nairobi 2016

Nandwa, W.H., The Rights of a Child in Criminal Proceedings for Capital Offences in the Kenyan Juvenile System, Nairobi 2016

SECTION V – HUMAN RIGHTS FOR INMATES AND OFFICERS IN KENYAN CORRECTIONAL FACILITIES

Prisons and other detention facilities play a crucial role in the administration of justice, with the aim of not just containing the offenders but of providing them with a rehabilitation opportunity. The main objective of the prison system around the world should be to prevent recidivism and to make the inmates leave the institution at the end of the sentence with the capability and willingness to contribute to the welfare of the entire community.

The compliance with human rights and international standards within places of detention is key for the fulfilment of these objectives, and it is of crucial importance in ensuring that people held in custody have their dignity and their entitlements as human beings guaranteed, regardless of their particular condition. Being held within the justice and correctional system around the world makes actually this category of people particularly vulnerable, far from public sight and so subject to often discretionary power from state authorities. The way in which this category of people is treated is very much the result of many conditions, such as cultural beliefs around the criminal behaviour, culture of violence, economic status of a country, human rights abidance in all other fields and for all categories of vulnerable people. This is why one of the greatest activists, philanthropists and politicians of modern times, Nelson Mandela, in one of his most famous speeches as President of South Africa, in 1998, said something very significant that sums up this crucial assumption: *“The way that a society treats its prisoners is one of the sharpest reflections of its character”*.

In the correctional system in Kenya, major improvements have been registered in the last 15 years, thanks to the reform process started around 2001 and which, among others, opened the doors of the detention centres to the public and the civil society, and re-address the main aim of the Kenya Prison Department towards rehabilitation and reintegration of the prisoners³³. Since then it has become an issue of concern not just for human rights activists but more importantly for the Kenyan Government. The spirit of the reforms has been to abide by the international standards and by the Constitution revised in 2010, with which also the corporal punishment has been outlawed (art. 29, Bill of Rights).

The current reforms of the main Acts regulating the treatment of prisoners – the Prisons Act and the Borstal Institutions Act – together with the development of a Child Justice Act, are aiming at introducing actual changes in the treatment of prisoners, in the welfare of prisons’ officers and in the budgetary allocation for Kenyan correctional facilities.

The present chapter will serve the purpose of focussing on the characteristics and challenges faced by the correctional system in Kenya with regard to prisoners’ and officers’ human rights, and compliance with the international standards. The information reported here comes from secondary data – with a desk review of the relevant literature – and from primary data, collected through interviews to experts, inmates and officers, and the direct researcher’s observation.

5.1 The Kenyan Correctional System

The classification of Kenyan custodial and detention facilities is provided in the Kenya Prison Standing Orders Chapter 69, which defines prisons as Closed (also known as Maximum Security Prisons), Semi-Closed, Borstal Institutions and YCTC, on the basis of the level of security needed, the age of the inmates and the length of the sentences.

³³ Kenya Prisons Service, Embassy of Switzerland and Institute for Education and Democracy, *Handbook on human rights in Kenyan prisons*, Nairobi, 2007.

In addition to these categories of correctional facilities – regulated by the Prisons Act and the Borstal Institutions Act – there are the Probation Hostels (5 for children and one for adults) and the Children Statutory Institutions which also host child offenders and are differentiated in Remand Homes, Reception Centres and Rehabilitation Schools³⁴.

Table H – Custodial and detention facilities’ classification in Kenya³⁵

Classification	Characteristics/Basis	Legal framework	Timeframe
Closed prisons (maximum-security)	High risk offenders	The Prisons Act - KPS	Long sentences
Semi-closed prisons (medium-security)	Less serious offences	The Prisons Act - KPS	From 6 months to 5 years
Borstal Institutions	Juvenile offenders, 15 years and above (below 18)	The Prisons Act - KPS	Three years
YCTC	First-time juvenile offenders, between 17 and 21 years	The Prisons Act - KPS	Four months
Probation Hostels	Youths and adults under a probation order	Probation of Offenders Act - PD	One year
Children Remand Homes	Child offenders and children in need of care and protection awaiting for the trial ^{H1}	The Children Act - DCS	Three to six months for capital offences
Reception and Assessment Centres ⁴⁶	Child offenders	The Children Act - DCS	Three months
Rehabilitation Schools (low, medium and high risk)	Child offenders and children in need of care and protection	The Children Act - DCS	Three years

H1. On paper Children Remand Homes and Rehabilitation Schools are just for child offenders/children in conflict with the law. In reality, they are mixed up with children in need of care and protection, in Remand Homes when they await for the trial and in Rehabilitation Schools after the trial, because of lack of specific and separate centers for children in conflict with the law and children in need of care and protection.

5.2 Treatment and access to services for prisoners

The focus of the present section will be on Prisons, Borstal Institutions and YCTC, which were also the main targets for the overall project and for the present research and data collection. These categories are in fact strictly correctional facilities which host people in custody, waiting for a trial and people already convicted to a sentence provided in the Penal Code. Information on Probation Hostels and Children Statutory Institutions will be also provided, giving an overview of the overall situation in the juvenile justice system, mainly through secondary data.

5.2.1 Treatment of the prisoners

The KPS was created in March 1911 and made autonomous with effect from 1st April 1911. The control of prisons was vested in a Board known as the Prisons Board, which was answerable to the Inspector General of Police who continued to perform the duties of Inspector General of Prisons.

³⁴ The Children Statutory Institutions include also Children Rescue Centres which however do not host child offenders but only children in need of care and protection.

³⁵ Usually for each main prison there is a women wing, and just in few cases – for example in Nairobi – there are separate facilities for remandees (Remand facilities). In most of the institutions, remandees are detained with convicts, even if in separate dormitories/blocks.

It has grown gradually since its inception: at inception the prisoners' population was at 6,559 with the staff strength of 319. There has been gradual increase to both staff and prisoner population to-date.

As of October 2016, authorized uniformed posts are 17,943 and civilian posts are 661 totalling 18,604 for the staff³⁶, while as at September 2015, the inmates' population was as follows: 32,300 males and 2,818 females convicts; 19,751 male and 1,319 female remand prisoners, for a total of about 56,000 inmates – plus 529 children below four years accompanying their mothers in prisons. This population is distributed in 92 male prisons, 22 female prisons, 2 borstal institutions and 1 YCTC³⁷ and it is against an official capacity of around 27,000, so with an occupancy level of more than 200%, being the incarcerated population more than the double the holding capacity of the facilities³⁸.

The consequences of overcrowding are exacerbated by the inadequacy of the facilities in terms of infrastructures. While most of them date back to the colonial period and have not or have been poorly refurbished since then, particularly in some of the facilities visited. The conditions of the dormitories are often very poor, with dirty and rough floors, poor ventilation and bad lighting, often infested by lice/vermin and lacking adequate washing facilities³⁹. The kitchens are obsolete, using charcoal for cooking and often with no adequate ventilation systems, and there is not usually a space big enough to host all the prisoners during meals. Hence, in some facilities they have to eat in shifts, standing or sitting outside on the floor or inside the dormitories.

The toilets are usually allocated inside each dormitory, but in some of the facilities visited the overcrowding is such that one of the two toilets inside the dormitories needs to be closed during the night and the toilet's floor used to accommodate people while sleeping, with the result of just one toilet for around a hundred inmates.

Congestion in Kenya prisons is endemic and inevitably led to various violations of human rights, because of the poor resources the prisons are provided with and an unmanageable number of detainees. It comes together with the observation that according to the sources interviewed and the literature reviewed, the great majority of people in prison is convicted for petty crimes and offences related to poverty and illiteracy, also reflecting a global trend⁴⁰. Prisons are often packed with petty offenders who cannot afford to pay a bail or bond, or who cannot pay the fine provided by the law in alternative to detention.

Another challenging cause of overcrowding is the delay of justice and the absence of measures of pre-trial custody alternative to detention. As from the data reported above and from the ones collected institution by institution, remandees – i.e. non-convicted inmates in custody awaiting for their sentence – are about half of the prisons' population, being 2/3 in some stations. For petty offenders the time spent in custody waiting for the trial can amount to more than the time of the sentence provided by the law for that specific crime⁴¹. On the other hand, capital remandees⁴² who have been in custody waiting for a sentence even for almost a decade have been interviewed by the researcher. This situation is exacerbated by the fact that, according to the law, Kenyan remandees have to provide by themselves to clothing and sanitary products, not wearing uniforms and theoretically being just suspects so not at the expenses of the State. What happens in reality is that most of the remandees cannot afford clothing and other personal belongings⁴³.

36 Data from the KPS at <http://keen.co.ke/stage/prisons/>

37 At the time of the drafting of this report, September 2016, the number of facilities has increased, even though precise information about the number of new facilities is not available.

38 Data from the KNCHR, based on data collected by the KPS, and from World Prison Brief at <http://www.prisonstudies.org/country/kenya>

39 These information collected during the research are corroborated by other sources, such as KNCHR, 2010 and 2016; LRF 2012; Omboto, J.O., The challenges facing rehabilitation of prisoners in Kenya and the mitigation strategies, Nairobi, 2013; Jasper, E.N., and Njeri, M.N., A Critical Overview of the Kenyan Prisons System: Understanding the Challenges of Correctional Practice, Nakuru (Kenya), 2014

40 Penal Reform International, Global Prisons Trends 2016, London, 2016.

41 People charged with a crime punishable with a fine or with six months sentence who cannot afford to pay the fine or the bail, most likely will end up staying in custody for more than six months awaiting for the trial.

42 People accused of capital offences, which are murder, robbery with violence and treason.

43 Because of mere indigence or because their families cannot afford to bring them regularly, given the big distances that can separate the prison to the inmate's home place and the costs of transports that the families are very often not able or not keen to face.

and, even though the Prisons Act provides that *“If a civil prisoner or an un-convicted person does not provide himself with food or clothing, or if such food or clothing is in the opinion of the officer in charge unsatisfactory, such prisoner or person shall receive the prescribed food and clothing”*, the resources of the prisons are so scarce that the remandees are the ones who live with the least provision of basics, creating the greatest paradox of the Kenyan justice system.

The research observes that male prisons are the most congested, operating in some cases at three times the holding capacity, while the women wings are usually much less populated and operate at their holding capacity if not less. Hence, the male prisons, particularly the ones in the rural areas and outside the capital Nairobi, still struggle to meet the minimum standards internationally and nationally set up for the treatment of the prisoners, often lacking to meet the basic accommodation, food and water provision, clothing, hygiene and sanitation requirements. With two or three times the population that they could hold, some of the facilities are at stake, and in the most populated ones bedding is not sufficient for all the inmates, who share mattresses and, in the worst cases, sleep on the floor, squeezed on their sides or even in shifts because of the physical lack of enough space for everybody. In these conditions of overcrowding, also the provision of sanitary products cannot be guaranteed for everybody, as well as the provision of blankets, mosquito nets and ventilation systems, depending on the interested area⁴⁴. It can also be easily inferred the high risk that such a situation generates in terms of physical and sexual violence against the most vulnerable inmates.

Even though the regular provision of food seems to be guaranteed for all the inmates, the quality and the variety of the diet, as well as the differentiated diet for sick inmates, is quite scarce, due to lack of resources. In some stations placed in arid or semi-arid areas, also the supply of drinking and washing water can be scarce and delayed.

Overcrowding and congestion certainly leads to other problems, including outbreaks of diseases (especially skin diseases, Tuberculosis and other diseases of the respiratory system), fighting and riots among inmates, higher risk of abuses among inmates and from officers towards inmates to handle numbers much higher than the manageable ones, and so strain for the limited number of warders and officers available in each station. According to a survey conducted in 2014 by KNCHR, the officer to inmate ratio was established to be at 1:3, including all the staff at the headquarters, regional offices, station offices, clerical staff, sportsmen/women instructors at PSTC and officers with disabilities. The officer to inmate ratio who are in direct contact with the inmates was slightly higher⁴⁵, even though it significantly varies from a station to another.

Reported cases of physical violence are quite few according to the sources consulted for the research, while the use of abusive language is considered to be the norm. However, according to the same sources, forms of disciplinary measures through the caning are still used, even though it has been clearly banned by national laws and policies. Regardless of being illegal now, according to some of the interviewees it is still a practice within the system and more effort still needs to be done to eradicate it. Also the lack of alternative discipline measures and the overwhelming congestion make the use of physical responses to the violation of a rule still too common.

FOCUS ON: Overcrowding – Testimonies from remandees

Peter and Steven (they are not the real names) are two remandees met in the two most populated prisons visited during the research. They are both suspects of murder and respectively awaiting for a sentence for the last 4 and 3 years. They dress with their own clothes, whose conditions are clearly much worse than the uniform provided to the convicts, as well as their hygiene conditions. They should in fact provide by themselves to their clothing and sanitary products, and only when the resources allow to do so they receive these supplies from the prison's administration. Even though they both have been assigned a pro-bono lawyer at the beginning of their proceedings, being capital remandees, they still report the slowness of the process, due to high number of cases compared to the few magistrates available. Peter and the other capital remandees in his prison are allocated in a separated area, while Steven sleeps in a dormitory with more than 150 other remandees, sharing a mattress in three and stepping on each other to reach the only toilet available during the night. They don't do much during the day, idling most of the time and not having access to vocational training and other rehabilitation programmes, especially due to congestion.

⁴⁴ Some areas in Central and Western Kenya can be very cold during the winter and rainy seasons, while the opposite happens in the arid regions of North and East Kenya, or on the coastal area, where the heat needs to be addressed, together with the spread of malaria.

⁴⁵ KNCHR, 2016

Regarding instead the contact with the outside world, as earlier mentioned, there have been tremendous improvements in the last decade. Since the reforms has started, the KPS has opened the doors of the prisons, allowing more and more easily the civil society to enter, to meet with inmates and officers, to visit the prisons. This shift in the approach with the external world has been reported by many of the experts interviewed and it is undoubtedly a sign of the urge to make actual changes and to promote inter-agency interventions. The KPS' role in reforming the system is in fact essential but it would not be vaguely enough without taking on responsibility and action from all the other government agencies and actors directly influencing and determining the situation within the prisons' system.

On the side of the prisoners, the access to visits and phone calls to their families and contacts outside the prison is generally provided, even though scarcity of resources can in some cases also weakens the exercise of this right. In particular, prisoners can be committed to prisons very distant from their home, making it extremely difficult for the families to go and visit them, due to transport's costs and distances. The prison's infrastructure can also in itself make difficult for the prisoners to see this right guaranteed: while for convicted prisoners there is, in most of the facilities, a space/room where to receive their relatives, this is not the case for remandees. Given the fact that remandees can receive visits every day, in many facilities there is not a space big enough to guarantee privacy and individual visits to all of them, so they often meet with their relatives/contacts all together, in an open space, standing and interacting each other through the wires and regardless of weather conditions.

FOCUS ON: Probation Hostels

Young offenders under the age of 18 can be committed to a Probation Hostel under the Probation of Offenders Act, which provides that "where a person is charged with an offence which is triable by a subordinate court and the court thinks that the charge is proved but is of the opinion that, having regard to youth, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may convict the offender and make a probation order; or without proceeding to conviction, make a probation order". The probation order shall last between six months and three years, and can contain a provision to residence in a probation hostel which cannot exceed one year.

There are five Probation Hostels in Kenya, regulated by the PD: only one is for girls, the other ones are for boys and the hostel in Eldoret (Western Kenya) contains also a senior section for people of 18 years and above. The offenders committed to a Probation order and then to a Hostel are first offenders charged with a petty crime, or with a serious crime when the Court decides that, for the reasons and circumstances listed in the article above, that detention is not the best solution and it is not in his/her best interest, especially when talking about children. Usually children committed to a Probation Hostel are also young petty offenders whose family environment is not conducive and come from dysfunctional families, so it is in their best interest to reside in an institution that at least will allow them to attend school.

Probation Hostels are facilities completely different from prisons and other correctional institutions. People committed there have much more freedom of movement, especially they attend the ordinary schools outside the hostel and the contact with the communities is deemed to be one of the main conditions for a successful process of rehabilitation and reintegration. The structures visited are not characterized by the overcrowding issue of the prisons, they host limited numbers of people (an average of 40, always below the holding capacity) so to offer as much as possible a more individualized treatment. In some of them there is also the offer of vocational training and counselling, provided by the staff or by external professionals.

The main challenges reported and observed during the study are related to the lack of specialized staff, particularly in locations distant from the capital and particularly in relation to counselling and human rights skills. There is not a HRO's provision in the hostels, but recently the staff have started to be trained on human rights and a system of monitoring and reporting human rights' violation has been piloted also in probation hostel, with the close and proactive collaboration of the PD.

Other challenges come directly from a lack of resources and from the outside world. Most of the children come from poor, illiterate and dysfunctional families, making the reintegration process sometimes at risk of failure, especially when the funds allocated for reintegration are very scarce. Furthermore, there is still a great risk of stigmatization of these children in school, both from other children and from teachers. This is also why one of the main concerns of the managers met during the research is to invest resources in sensitization and awareness campaigns within the communities, and in directly interacting with the teachers and the schools to make the two "worlds" meet and work in synergy for the best interest of these children.

5.2.2 Access to services

According to the international standards, prisoners should be guaranteed basic access to health care equivalent to the one provided to the wider community. Despite the congestion and lack of resources, and thanks to the reform's process in place in the last decade, the health provision within the Kenyan prison's system has seen great improvements in comparison to the past. KPS developed a plan to modernize, upgrade and equip health facilities in the prisons and has started by 2010 employing medical personnel within the prisons, not to entirely rely upon external personnel from the Ministry of Health⁴⁶. In spite of the poor health conditions registered in the prisons, basic health care is provided and more serious cases are referred to the closest General Hospitals. The main issue on this regard is still linked to the lack of resources, whereas very often the cost of transport for transferring inmates to distant hospitals is a significant burden for the finances of the prison and, depending on the station, the stocks of medicines are often not enough for the whole population of inmates and officers.

Also regarding the provision of recreational, rehabilitation and reintegration programmes and services, the situation has seen great improvements and efforts in comparison to the past before the reform's process started. As earlier emphasised, the core of this process was in fact the focus on the rehabilitative nature of the correctional system and on the rehabilitation and reintegration as main objectives of the prisons' system. In the light of this change of direction, inmates are offered formal education and vocational training, among other rehabilitation programmes. The variety and effectiveness of these programmes, however, still greatly vary according to the availability of resources – in terms of finances, infrastructures and staff – and morale and motivation of the officers in charge and staff. This is particularly evident when looking at the prisons in rural areas of Western Kenya or in the coastal region, compared to the prisons in Nairobi: being concentrated in the capital most of the 'alternative' sources of funds (civil society, charitable organizations, etc.), the facilities in Nairobi offer quite a variety of services and opportunities to the inmates that cannot be guaranteed to inmates somewhere else. Even when vocational training and the possibility to work are offered to the inmates, one of the main issues is the fact that the lack of resources from the Government does not allow the prisoners to be paid for the work produced, with not just denying dignity to the work in itself, but also with a great impact on the meaning of the rehabilitation programmes and the prisoners' opportunity to effectively be reintegrated back into their community at the end of their sentences.

FOCUS ON: Kamiti Maximum Prison, an example of rehabilitation programmes

Despite the challenges faced as all the other prisons in Kenya and mentioned in the text, Kamiti Maximum Prison in Nairobi can be mentioned as a good example of practice of management and investment of resources. The vocational training programme and formal education is functioning and it has reached big proportions, both in terms of infrastructures available and of inmates participating. There are industries of carpentry, masonry, metal work, tailoring and polishing. The inmates who work there produce industrial amounts of products which are sold to the public, as well this, in Kamiti, there is an industry for cars and motorbikes' plates which supplies all the country. Formal education is also offered, with primary, secondary, college and a law school section. The industries receive around 400 inmates, while the Academy around 200.

The inmates interviewed also showed an apparently efficient internal management system, led by inmates themselves: the prison is divided into blocks and each block in several wards/rooms, and the ones visited host a reasonable number of inmates. For each block there is an inmate-in-charge, who deals with making sure that the spaces are clean and in order, that the rules are respected and that the newcomers receive all the necessary information. The management of the block is also in the hands of a panel of elders (one elder for each ward) and a trustees' committee, where the trustees are the inmates who have gained the highest status within the prison because of the time spent there, their discipline and active participation.

One of the inmates interviewed is a remandee, in prison for the last three years and he is studying at the law school in Kamiti. Some of them are well aware of their rights and of the limitations that they experience as prisoners. In particular, the interviewees emphasize the denied and/or delayed access to justice for suspects that are very often illiterate and cannot afford personal lawyers; the failure of the current application of the death sentence in terms of rehabilitation; the lack of proper counselling for all and of specific treatment for prisoners with mental health issues, who are segregated in a separate block and do not participate to ad hoc programmes.

46 KNCHR, 2010

Among the rehabilitation programmes, counselling is still the least spread, especially in terms of professional counselling. While other forms of so-called advice and spiritual nourishment are frequently provided, together with a scattered provision of external counselling services⁴⁷, professional counselling is not yet an established internal practice within the prison's system, because of lack of trained officers and of lack of infrastructures, whereas the presence of a counselling room or an appropriate space to ensure confidentiality is necessary at this purpose⁴⁸.

Beyond rehabilitation and reintegration programmes, recreational activities should be guaranteed to prisoners according to international standards. The main recreational activity that Kenyan inmates experience is sport, in particular football, followed by watching TV and playing cards and games. However, it again varies very much from a station to another, and it is largely limited because of lack of equipment, materials and space. Some institutions do not have a playground or simply the physical space to contain high number of people at the same time, and most of them do not have the equipment necessary to guarantee inmates' physical exercise. Even when the equipment is available and the space is enough, another issue may lay in the presence of a low number of staff per the inmates' population, with the consequence that to ensure the required supervision, prisoners can enjoy physical outdoor activities in shifts, not regularly and for a limited period during the day. Remandees are usually the ones who have reduced access to rehabilitation programmes and recreational activities, not having the *status* of convict prisoners that allows the acquisition of certain *privileges*. Where the overcrowding is overwhelming in proportion to the infrastructures and the staff population, remandees are usually the ones that spend almost all day in the dormitories, idling and not having access to work even when they spend years awaiting for a trial. On the same note, also prisoners under sentence of death cannot be involved in work activities, have to be kept separated from all the other detainees and receive special supervision during days and nights⁴⁹.

5.2.3 Vulnerable groups

In terms of vulnerable groups, the KNCHR reports that great improvements have been registered in the last decade, especially with regard to elder people, inmates with disabilities and people living with HIV-AIDS. The latter ones usually receive the medical treatment they need and, when the resources allow to do so, a special diet. Elder inmates are instead exempted from hard work, while inmates with disabilities receive assistance from officers and other fellow inmates. However, there are not specific treatment programmes or services for people with physical and/or mental disabilities. Even though a prison should not receive these categories of inmates, especially people with mental issues – who are supposed to be held in specific facilities which have the capacity to hold and handle them – there is only one psychiatric hospital in Kenya which has a section for offenders, the Mathari Psychiatric Hospital in Nairobi. Thus, accused or convicted people with mental/psychiatric issues might end up in a correctional facility, even if just for a limited period of time to conduct a medical assessment upon admission. Even if for short periods of time – not taking into account the delays in a proper medical assessment – the staff of a prison do not have the training to handle these people, who usually end up confined in cells/blocks, separated from all the others, and not treated but just contained. Specific programmes for inmates with specific issues to be dealt with, like drug or alcohol abusers and sexual offenders, are very rare and scattered in more central and served facilities – like the ones in Nairobi – that attract more funds and resources. More attention is however pointed now by the Rehabilitation Department of the KPS at specialised counselling and the need to develop special programmes (anger management, therapeutic treatment for sexual offenders, therapeutic treatment for drug and alcohol abusers) to address particular behavioural needs, to prevent recidivism and guarantee an effective reintegration.

47 Again very much depending on the availability of resources at each station.

48 On this regard, the project led by CEFA which frames this research has had, among the main activities, capacity building for officers on psychosocial support (PSS), the development of a manual on PSS and sensitizing for the crucial need to introduce counselling as an established practice in all the facilities around the country.

49 The Prisons Act, Part VIII – Treatment of special classes of prisoners

FOCUS ON: Children of imprisoned mothers

In the African setting, where a child is unable to stay with its nuclear family, then the extended family takes over the care giver role. Kinship care therefore becomes the opted alternative care for children 'released' from prison and children who are not able to accompany their mothers to prison. It is expected that being under kinship care, these category of children will be secure and protected. However, this is not always the case. With large African households and other children with needs to meet, children of imprisoned mothers are highly at risk of being discriminated against, by virtue of them being children of law offenders, and further risk of being neglected or abused, thus necessitating to categorize them as a highly vulnerable group of children in need of care.

A study presented at Daystar University by Patricia Lukamba Waliaula offers suggestions and recommendations to deal with this delicate and neglected issue. The Judicial System should take into account rights and needs of children when sentencing their mothers and, whenever possible, non-custodial sentences should be considered for women with young children. Furthermore, child protection players and children serving entities should lobby at the county level for development of a policy/law to determine follow up mechanisms and monitoring of children of imprisoned mothers including a requirement for creation of a database, guaranteeing that they go to school, stay in school and access basic needs while their mothers are in prison. Finally, the County Governments should support and encourage the child's ongoing contact with his/her biological mother except where it is not in the best interest of the child, and should assist released mothers start income generating activities.

Lukamba, P.W., Children of the State: the role of the County Governments in providing alternative care for children of imprisoned mothers, Nairobi, 2016

Women and their children are separated from the male prisoners, and the entire system has been sensitised towards gender mainstreaming and the need to recognize women specific needs. Female prisons are headed by female officers, and male officers cannot enter a female facility without been accompanied by a female officer. Prisons provide expectant mothers with pre and post natal care, and, as provided by the Prisons Act, women can be accompanied in prison by their infant children until they attain the age of four years. In all the female prisons there should be a day-care centre where children are held while their mothers – if convicted – go to work or are involved in other rehabilitation programmes. These children are usually held by remandees, who are not allowed to participate to work or other programmes, by elder prisoners and/or prison's officers. Nonetheless, the presence of a day-care is far from being a reality in all the facilities, because of lack of resources and/or poor infrastructures. Furthermore, the availability of equipment to make these day-care centres as much as possible child-friendly and the availability of clothing, specific food and all the necessary products needed to take care of children of this small age, greatly varies depending on the resources available at station's level. Even though the provision for mothers held in prisons of keeping the child until four years old is meant to ensure the best interest of the child – not depriving them of their strongest attachment and also guaranteeing breast-feeding and maternal care until it is possible – these children necessarily experience from the birth or very small age a highly militarized and tough environment, living confined as their mothers with all the developmental risks that this generates, especially if their integration or re-integration back into the community is not well prepared and cared for (particularly when the mother has to serve a long sentence).

Concerning children in conflict with the law, convicted children are held in separate institutions than adults, as per table 8 on Correctional facilities' classification in Kenya. The issue of overcrowding does not concern these institutions, with exception of some Children Remand Homes in remote rural areas, which sometimes host double the official capacity, mixing children of different age groups and charged with serious and petty offences. Nevertheless, children held in statutory institutions are particularly vulnerable to be victims of violence and to experience violations of their rights, as a recent survey on violence against children in the Kenyan juvenile justice system reports⁵⁰. In addition to that, Borstal Institutions and YCTC do not experience overcrowding but some of the issues previously reported for adults' prisons have been observed similarly in these juvenile facilities: this particularly applies to the use of banned disciplinary measures, and to the lack of specific rehabilitation programmes for children with special needs and other vulnerable categories of children/youths (with mental disabilities or with drug/alcohol related issues).

50 Ottolini, D., Violence Does Not Fall On One Roof Alone. A Baseline Survey on Violence Against Children in The Kenya Juvenile Justice System, Kolbe Press, 2016, Nairobi.

FOCUS ON: Langata Women Prison

Langata Women Prison can be mentioned as a best practice in Kenya in the management of female inmates and holding their kids.

It is the only Maximum Security prison for women in the country, and comprises a Remand section for inmates awaiting for trial, and a Main section for convicts. Despite of the fact that it is a Maximum prison, it holds also ordinary offenders especially coming from Nairobi County, while the serious and capital offenders usually are from all over the country.

Even though the average of prisoners held in the facility is double the official holding capacity, it is a big structure, with some modernized cells and sections, and above all, being located in the capital city, it attracts conspicuous financing from civil society and charity programmes of various kinds. In addition to the availability of funds, the approach of the current OIC is very much focused on the reintegration of the inmates, opposite to the idea of mere punishment, and on the main scope of humanizing the prison and making sure that there is a helping community outside. With this purpose, women in Langata prison are also encouraged and supported to keep taking care of themselves as well as of their physical aspect, to preserve their self-esteem and morale.

All the actors are called to hold hands and prepare a conducive environment for these women once they are rehabilitated and reintegrated. In the light of a proper reintegration, great importance is given by the OIC to the functioning of the Discharge Board: it is composed not just by the key people within the prison but, most importantly, by stakeholders from outside, partners from the civil society and even inmates' relatives and community members, whereby the scope of this Board is to create the conducive environment mentioned above, and to prepare and plan the inmate's reintegration when her exit is approaching.

Once a woman is admitted to this prison, she goes through a Reception Board, composed by the Section Heads and the key persons who will be in charge of her wellbeing: she is then informed about the prison's regulations and her rights, and after a medical and risk assessment is conducted, she is introduced to intensive counselling before being placed in one of the rehabilitation programmes offered.

The classification of the inmates based on their status – remandees, convicts and condemned – and on their risk level – low, medium and high – seems to be guaranteed, whereas the Remand section is a separated facility and the dormitories are divided between short sentences, long sentences, life sentences and death sentence.

The rehabilitation programmes offered are various: tailoring, crocheting, beads making, bakery and hair dressing among the others. In particular, the handmade production of bags and the beads making, together with the bakery have reached professional levels and the products are sold outside the prison, with a percentage of the income going back to the inmates who designed the items and made them.

Inmates are also encouraged to engage in more than one programme at the time, and to participate to outing activities. This is also the reason why Langata prison has gained in the last few years a very good reputation among the media and the public.

Another best practice that comes from Langata prison is certainly the Day Care section that holds the children who accompany their mothers in prison. It has been funded by Faraja Foundation and with its outside playground (with slide and swings), its modern, clear and colorful structure with rooms for playing, sleeping and dining, and with trained inmates and officers who take care of the children of the inmates that are engaged in work activities during the day, undoubtedly seems to guarantee a very child-friendly environment. Once the children reach around 3 years they start going to the nursery school outside the prison (within the same compound) and when they get close to 4 years the prison's management start liaising with the mother, the community members and the DCS to prepare the child for his/her reintegration.

The OIC of Langat'a prison, together the prison's fully trained HRO, are also strongly advocating for lowering the age until which a child can stay in prison with his/her mother, in the view of the fact that the older is the child the more will be his/her awareness of the harshness of a prison's environment and the more traumatic his/her stay. Their main assumption, shared by her staff, is indeed that these children are not criminals, they have not done anything wrong, and their best interest is the only thing that needs to be upheld.

Furthermore, the Children Remand Homes in Kenya are not enough to host all the children who enter in contact with the justice system, so most children in conflict with the law are remanded in separate sections of adults' prisons and sometimes mixed up with adults, due to lack of space and overcrowding⁵¹. Moreover, the delays in the administration of justice analysed in the previous section, are also cause of prolonged stay of children in custody awaiting for a trial⁵². According to that survey, the same happens in Police Stations and during their transport from the Police to the Court, where the risk for children to be

51 As an example, in Nairobi children charged with capital offences or sexual offences are remanded to Nairobi Remand, which is both for adults and for children. Only recently, in 2016, a Remand Section which hosts only children committed for more serious offences – separate from the adults' one – has been opened in Nairobi, within the Kamiti Command.

52 It can happen to find children in Remand that have been stayed there for the last one or two years, especially if charged for serious offences.

victims of physical and sexual violence is higher, they are often mixed up with adults, females and males⁵³.

Finally, the matter of children mistakenly admitted in adults' facilities have been reported by some experts as a crucial raising issue for the guarantee of the best interest of the child. The main cause is the absence of identification documents or any documents that give an indication of their age when the children end up at the Court. In these cases, the Court may order a test for the age assessment, which must be as much reliable as possible and be ordered in the complete awareness that it poses in itself a great threat to the best interest principle. As prosecutor Mtai highlights, the risks of incurring in grave injustices as consequence of the misuse and inappropriateness of an age assessment test are significantly high: in reliance on the test, a child could be charged as an adult, an adult could be tried as a juvenile, and also the victim in a sexual offence case could be declared an adult. This leads to the need to deepen the study of age assessment tools to make them reliable and credible, accompany them with other procedures (not relying only on the tests) and advocate for a legislation and precise guidelines on the use of the age assessment⁵⁴.

FOCUS ON: YCTC and St. Joseph Cafasso Consolation House in Nairobi

The YCTC in Nairobi is a juvenile facility, regulated under the Prisons Act, which hosts young people – from 17 to 21 years old, but the majority of inmates are usually underage – charged for the first time and for petty crimes. Inmates in the YCTC are committed for no more than four months and mainly for offences related to marijuana consumption/trafficking, alcohol abuse and stealing. Being committed in the YCTC for only four months, these young offenders do not attend school or vocational training, but are engaged in life-skills and behavioural modifications training, and manual work, such as rabbits rearing and farming*. Even though the population held is never very high, especially given the turn-over, so they do not suffer the consequences of overcrowding, the main challenges faced in this kind of institution are related to the lack of sensitization and training on human rights for all the staff and the inmates, who are often not aware of the rights that they and the others are entitled to. In particular, being the rehabilitation process very short and condensed, more emphasis should be put on the importance of the officers being good role models for the young inmates and on the use of educative disciplinary measures, alternative to the traditional ones.

A very effective and strong synergy has been built between the YCTC and St. Joseph Cafasso Consolation House, a structure located in the same Kamiti Command compound, which hosts young ex-offenders who after their sentence at YCTC voluntary decide to join a residential rehabilitation programme for a period that goes from a minimum of six months to about two years or more**. The Cafasso House, managed by the Consolata Sisters on behalf of the Bishops Council, and supported through a project led by CEFA, "Give them a second chance", provides a good example of community work with ex-offenders that intervenes on their rehabilitation and their reintegration within the community. The boys hosted here are an average of twenty, supervised by social workers. They attend school – sometimes sponsored through private people's donations – and learn how to work in the farm, breeding and milking cows, raising rabbits, chickens and goats, and cultivating vegetables in the green-house.

The aim of this farm is to increase the production and to sell the agricultural products to the Kamiti market, through giving a new chance these boys, without the stigma of being prisoners. In Cafasso they may learn to better manage stress and emotions by living closed to nature and animals, and learn how to interact and live with different people, from different cultures and backgrounds, sharing and peacefully deal with daily issues.

During the first six months they go through basic life-skills training, counselling and manual work, and it is during the first six months that the staff in Cafasso start to seem and establish contacts with these boy's families, beginning a process of reintegration that in some cases take long time.

The stories told by the boys interviewed both in the YCTC and in Cafasso during the study are exemplar and can apply to the majority of boys and girls who enter the juvenile justice system: children who come from poor and very often dysfunctional families; drop-out from school because their families cannot afford it; start using marijuana or mira at a very young age; engage in anti-social behaviours and/or petty stealing and end up in the police station, then the Remand Home and finally the YCTC or other facilities. And, after all, their life dreams are very simple for boys of their age, and at the same time very significant: going back to school, finish their education, learn, get a good job and, why not, build a family. Or, as Messhack said "just be a good guy, this is what I want for my life".

**Until few years ago, the YCTC was a boot camp, an institution regulated by the philosophy of the "Short, Sharp Shock": it referred to a facility where the young offenders were supposed to be rehabilitated for a very short period of time – four months – through very strong, severe and militaristic forms of discipline*

***Usually a staff member from Cafasso House goes regularly to the YCTC (once or twice a week) to inform the boys about the programme, advise them and work with them and with the YCTC staff to help them decide whether they are really willing to start the rehabilitation programme*

53 Ibidem

54 Mtai, C., Age assessment tests as a tool for identifying children in the Justice System and its impact on application of the best interest principle, Nairobi, 2016.

5.2.4 Awareness and perception on human rights

The concept of human rights is somehow recent for the Kenyan prisons' system, introduced with the revision of the Constitution in 2010 and reinforced with the development of the HRDs in prison, still in 2010, as a substantial effort to comply with the UNSMR. In the last decade, awareness on human rights from the inmates themselves has more and more increased, also thanks to the easier access into the correctional facilities, among others, of civil society organizations, paralegals and lawyers' charitable associations. Usually inmates are informed of the rules and regulations of the facilities and of their rights upon admission in the prison, and they progressively get to know more through fellow inmates and through the HRO in the facilities where s/he is already trained and appointed. Furthermore, while in some facilities the UN Mandela Rules start to appear and to be hung in the dormitories and/or in the dining rooms, in the best equipped prisons the inmates can study law, read books so to get the necessary knowledge to represent themselves in Court and even to advocate for their rights and the rights of their fellow inmates.

Thanks also to the awareness raising activities carried out in the last years in the framework of this project, also with the introduction of the International Prisoner's Justice Day and the Human Rights Day celebration in Kenya, inmates appear to be more and more aware of the rights they are entitled to and the ones they feel they are deprived of while in detention.

The picture that the inmates interviewed during the research give about the prison's system and the conditions within the prisons regarding human rights is very clear headed, and reflects very much what has been reported by other different sources and has been highlighted so far. They in fact emphasize the struggle caused by congestion and overcrowding in the facilities where they live, when they have to share mattresses or sleep on the floor, in dormitories infested by lice and with high risks of diseases' outbreak. The scarcity of resources for the provision of sanitary products, blankets and other necessities is also perceived by the inmates interviewed as one of the main issues they have to deal with in their daily life, together with the limited possibility for inmates to participate to work and rehabilitation programmes. However, and in relation to the latter point, the right upon which there is a shared perception of being the most violated, is access to justice. Both convicts and remandees have gone or are going through long trials, in the majority of the cases without any legal representation. Only the capital offenders – for the crimes of treason, murder and robbery with violence – are entitled to legal representation, even though until the revision of the Constitution in 2010 only the suspects of treason and murder were guaranteed with legal representation, while robbery with violence was not included despite of being punishable with the death sentence. With the revision of the Constitution, it is now provided that “every accused person has the right to a fair trial, which includes the right to have an advocate assigned to the accused person by the State and at State expense, *if substantial injustice would otherwise result*”, which still remains a too discretionary condition. As a consequence of that, the great majority of remandees in prison represent themselves in Court, and inmates who have been charged and gone to trial before the revision of the Constitution are still serving a life sentence (many cases of a death penalty commuted in life sentence) without having ever been represented by a lawyer.

5.3 Officers' rights and welfare

The treatment of the prisoners and the welfare and working conditions of the officers are two sides of the same coin. There is an inextricable connection between them or, as the Officer in Charge (OIC) in Kangeta main prison properly highlighted: “*inside a prison there is an unbreakable marriage between inmates and officers. They cannot divorce, they have to live together and so their rights have to be guaranteed at the same time and extent; it is just not possible to treat just one of the two categories neglecting the other one*”.

This strong connection is also recognized by the Mandela Rules from 74 to 82, on the Institutional personnel, which provide the need to guarantee good working conditions for the prisons' staff, to select only professionals who possess appropriate standard of education and training and who should be able *to influence the prisoners for good by their example and to command their respect*. On top of that, correctional facilities' officers are of course entitled to all the human rights and freedom provided in international and national instruments – first of all the Kenyan Constitution – and, as any other category of workers, to the provisions of the ILO International Declaration on Fundamental Principles and Rights. The fact that they have a role of social service of great importance and that they work in a particularly tough environment just

makes it even more crucial to advocate and promote their rights⁵⁵.

For these reasons, the present research aimed at exploring the conditions of prisons' officers parallel to the treatment of the prisoners, using the same sources as previously mentioned: interviews to officers (OIC, HROs, welfare officers and documentation officers), to experts and review of the relevant literature.

FOCUS ON: Testimony from an Officer in Charge

The OIC of one of the most overcrowded facilities visited during the research offered a very lucid and clear analysis of the situation of his prison that can be easily extended to the Kenyan correctional system. He has more than 25 years of experience and was then able to see the improvements made, step by step, by the reforms' process of the Prison Department and inside his own institution. They go from structural improvements, whereas the efforts are not enough to tackle the overwhelming congestion because of lack of resources and the limits given by the structure itself, to a progressive work on human rights' awareness among inmates and officers. The perception of human rights was in fact, at the beginning, quite negative especially for the officers, who used to see it as referred exclusively to inmates and as something that would have made their job harder. With the training and the awareness raised progressively, it has become clearer and clearer that human rights are meant for everybody and that the interconnection between inmates' and officers' rights is crucial.

He emphasised the need of inter-agencies and inter-departmental collaboration, and the need to collaborate with other partners to introduce rehabilitation programmes (such as programmes for anger management, drug/alcohol abusers and sexual offenders) and to invest more on the admission process for the newcomers. It is in fact crucial to immediately make a risk-assessment, explore the causes and roots of their offences and identify their specific needs, even psychological, in order to act appropriately from the very beginning (on this regard he brought the example of homosexual and transgender inmates that need to be classified as a high vulnerable category and protected for this).

5.3.1 Housing and working conditions

The reforms' process in the Kenyan prisons' system has basically been triggered by a prisons' officers' strike in 2008, which led to the formation of the Madoka task force with the aim of investigating on the conditions of the prisons and so the causes of the strike, and then come out with some recommendations. According to the literature on this regard and to the interviews, for many years the prison officers have lived in very bad conditions, with no great differences in comparison to the inmates' situation but with less attention from the public, the media and all the stakeholders and civil society working in the system⁵⁶. Even though the plight of the officers has been raised and the KPS has lately been working on reforms, raising the average salary and working to improve the training's provision, the current living and working conditions of prison officers tend to be poor and unfavourable, especially depending on each station's availability of resources, geographical position and overcrowding.

The main challenges that the prison officers face are related to housing and working conditions.

According to a government report in 2008, 80% of prison guards had no homes, where the KPS had failed to use millions of shillings allocated to it to build better housing and sanitation facilities⁵⁷. Despite the fact that in the last few years new houses have been built and investments has been done to improve the officers' living conditions, the current situation still sees the most junior officers been housed in shared accommodations, halls shared sometimes with more than two families, and which often resemble slum huts, as well as prison wardens, who are not allowed to rent houses outside the prison's compound, for security reasons. Prison staff who live outside the prison's compound complain instead about the inadequate salary, compared to the increased cost of living, and the inadequate house allowances: in most of the cases they end up in the same living conditions as their colleagues within the compound, with very poor

55 See Section III, paragraph 3.3, table 6.

56 KNCHR 2010; LRF 2012; Omboto, 2013; Jasper, Njeri 2014.

57 KNCHR 2010; LRF 2012; Omboto, 2013; Jasper, Njeri 2014.

housing and with the additional burden of transport and sometimes big distances between home and the duty station. Other problems related to poor housing that the officers often face are shortage of water and electricity, poor drainage and poor sanitation – especially for the ones who live in the prison’s compound so experiencing the same challenges faced by inmates in several prison institutions –, and inadequate access to health service because of the little money allocated for their medical insurance.

As previously reported, the ratio of officers per inmates has been calculated as 1:3, counting all the staff at the headquarters, so it raises on the ground and in some stations the overcrowding can lead to a dramatic understaffing in comparison to the overwhelming numbers of inmates⁵⁸. In turn, this leads to security issues, high levels of stress for the officers, tensions between inmates and officers that can more easily bring to excessive use of force or restraint measures to manage fights or complaints⁵⁹.

Another crucial challenge for prison officers risen during the research, is the fact that they are not allowed by the law to join or form a trade union. Even though the KPS authorized the formation of a Kenya Prisons Service Representatives Association to promote officers’ rights and welfare and to represent them before the Prison Council, this association is still not adequately functional and operative. This leaves then the prison officers without an adequate mean of representation and deprives them of a satisfactory fulfilment of their right to associate, demonstrate and advocate for their working conditions’ improvement.

5.3.2 Awareness and training on human rights

The level of awareness about human rights among the officers has significantly increased in the last decade, especially after 2005 when the matter has been included in their college curriculum. As emphasized by the officers and by the experts interviewed, correctional facilities’ staff are more and more aware about their own rights and freedom, but also about the rights that inmates are entitled to and the necessary limitations in the exercise of their duties in order to guarantee these rights. It is however a complex process which requires time and more resources’ investment in terms of widespread distribution of training opportunities, proper recruitment and interventions to boost officers’ motivation and commitment. It is in fact quite inevitable that officers living in deplorable housing conditions and not being gratified by incentives (with retribution, career’s progress and reward of best practices and best performances in terms of promotion and protection of human rights in the facility) report to feel low motivation to do more effort that strictly required and to actually promote and defend inmates’ rights when the daily violations of theirs are not given proper attention and adequate solutions.

FOCUS ON: Testimony from a Human Rights Officer

A good example in terms of awareness and human rights protection’s mechanisms comes again from a prison in Nairobi, Nairobi West, described by the HRO interviewed by the researcher. It is a medium security prison, which hosts short-sentenced prisoners and only convicts. They do not experience overcrowding, discouraging the transfers as soon as they get close to a critical population number. According to the interviewee, there is quite a strong awareness on human rights both among officers and inmates, the latter ones going through an induction process to teach them their rights and what they will be going through. As soon as he was appointed as a HRO he in fact started providing training to officers across all the ranks, sensitizing inmates, advising officers and inmates, auditing and assessing the sections and keeping a direct contact with the OIC. There is also a complaint officer who receives the complaints from officers and inmates, and there are three suggestion boxes in the facility, one for the inmates, one for the officers and one for the public. Complaints are collected anonymously and the complaint officer opens the boxes weekly, collects documentation and reports to the OIC.

Despite the situation, some challenges related to lack of resources are reported. In particular, in regard to the officers’ welfare and access to services, housing is confirmed to be an outstanding issue to be tackled, with related aspects such as shortage of water provisions. To also make the HRO tasks more effective, additional resources are needed to guarantee the necessary equipment (even the stationary) and to provide continuous and spread training to all the staff and inmates. The issue of the rank needs also crucial attention: while the Nairobi West HRO is a constable (the lowest rank) but he receives strong support from the OIC, it is important to establish structured mechanisms that would avoid ostracism or at least lack of collaboration from senior officers in receiving advice and directions from a lower rank.

58 In the stations visited it is rarely below 1:5, without overcrowding.

59 In one the most populated prison visited during the research, for a population of about 1,170 inmates there was a staff of 264 officers, who work on shifts, making the ratio of officers during each shift per inmates very low.

While the new recruits have been trained and will be trained on human rights before reaching their duty stations, a further effort needs to be done to make this concept acceptable and fully owned by the vast population of the officers around the country who work on the ground and who, having been there for many years, have never been trained on human rights. As found out during the research, the concept of human rights has not been automatically and easily embraced in the last years, especially because of the negative meaning that it brought attached: at the beginning, a significant skepticism spread among the officers who were not familiar with it and were not so keen in accepting an idea coming from the external world – from abroad, mainly as a Western concept, associated to colonialism –, focusing on the inmates’ rights and asking them for greater efforts without guaranteeing them the basic entitlements. This initial idea has progressively been addressed through more training provided by the KPS and stakeholders from the civil society, and thanks to the great effort and commitment of some knowledgeable and enlightened OICs. Their role resulted in fact to be absolutely crucial in raising awareness about human rights (both for inmates and officers) in their duty stations, influencing the staff for good with their example, providing positive leadership and adequately managing the available resources in order to avoid waste, improve living conditions for all and fuel the staff with motivation and positive drive.

Training has also resulted as a crucial component not just necessarily in raising the awareness about human rights, but also in giving the staff motivation to better perform and to improve their relationship with the inmates. It is a common and strong belief among the officers and the experts interviewed that further and continuous training is essential in the system’s effort to comply with the UN Mandela Rules and to improve the prisons’ conditions. A great emphasis is also put on the need to address this training to everybody and everywhere: all the duty stations need to be reached by this process and need to receive well-trained officers. The training that so far has mainly involved senior officers and new recruits urgently needs to cascade on the juniors and on all the staff that actually work on the ground, have daily contact with the inmates and daily struggle with tough living and working conditions.

5.4 Human Rights Desk and Human Rights Officer

The first steps in the direction of a more accountable system and towards a substantial effort for the compliance with the UN Mandela Rules, have been made by the Kenyan Government in the last few years, not just with a tremendous improvement towards detention facilities’ contact with the outside world – which let in more and more actors and stakeholders from civil society – but also with the introduction of the so-called HRD and HROs in the correctional facilities. HRD were established in 2010 by the KPS through a Directive of the Commissioner. In 2012, specific Terms of Reference were developed for the HROs to be put in operation in each and every correctional facility. According to their ToR, these are the functions of the HROs:

- Formulation of KPS human rights office policy;
- Training on human rights for inmates and officers;
- Auditing;
- Advising/Guiding/Supporting/Assisting Staff;
- Recording and Reporting;
- Miscellaneous, such as networking and liaising with stakeholders on human rights in prisons and undertaking studies when funds are available.

A Departmental Human Rights Committee (DHRC) has also been established in 2014-2015, composed by senior directors and representatives of the prisons. A manual for the HROs has been developed and they undergo five weeks of training provided by the KPS, during which they go through basic introduction to international standards and human rights compliance, and they conduct two weeks-audit in a prison: during the first week they collect data to assess the compliance with the UNSMR and in the second week their role is to come up, together with the sections’ heads of that prison, with an action plan to intervene where non-compliance is proved.

At the moment of this research, in Kenya there were 8 Regional HROs and only about 50 fully trained HROs (against 117 correctional facilities plus 5 probation hostels). In the institutions where a HRO is not yet available, the OIC is trained on human rights and selects an officer among his/her staff to cover the HRO’s functions, beyond his/her duties. Hence, before the beginning of the present project there was not a proper structured mechanism of monitoring and

reporting complaints and human rights violations within the institutions, being – especially the monitoring aspect – something left to undefined procedures, with no standardised tools and with no clear follow-up actions to be taken. According to the interviews conducted to inmates, officers and experts, very often the inmates are not aware of the all spectrum of human rights they are entitled to while in detention, making any form of complaint mechanism which directly comes from the individuals less effective. The channel that inmates and officers use within the institution to complain is the following: they report to the Complaint Officer, who has the specific role to collect complaints, register them, regularly open the suggestion box and go through the complaints; report to the OIC who takes action or directs for action. When the Complaint Officer is not present, they report to any officer on duty, who reports to the OIC. On the other hand, the officers follow the rank order: if they have to report a complaint, they go to the immediate higher rank officer who reports to the OIC.

Suggestion boxes are also present almost in all the stations but what emerges from the study is that they are not very much used neither by inmates or officers: it might depend on the lack of privacy (where the suggestion box is situated in the middle of the facility), on the illiteracy of the majority of inmates and on the lack of trust in having a feedback through this mean. Finally, in some institutions – especially women prisons, because of the much lower numbers of inmates – the HRO⁶⁰ or the Welfare Officer collects complaints from the inmates once or twice a day during their shifts, it is not a sustainable method, especially in overcrowded stations, and it is not accompanied by a proper procedure of data collection and registration. In addition to that, it is not specifically the role of a HRO to take up or advocate for inmates or staff issues. This function was removed from the ToR based on a finding that this complaints role would interfere with the overall objective that the HRO tries to fulfil within the prison in the manner in which s/he is trained to do. This role also needed to be distinguished by the separate and wholly dedicated directorate of complaints that was already there back when the HRD was formed, even though the complaint officers' role was not clearly defined and it was not clear whom they report to. This brings to the lack of a functional, reliable and known complaints handling mechanism, and to the need of providing the complaints officers who've been appointed with a clear TOR and reporting structure.

The introduction of a HRD and HRO should particularly ease the process of prevention and monitoring purposes and make the overall complaint process more efficient and accountable for. It has in fact been found that a specific role of collecting complaints also removes the trust and respect of the HRO to fellow staff, who might see this person as a protagonist fighting for inmates' rights, thus preventing him/her to deliver on their mandate.

Some other issues still need to be addressed in the management of this role and functions, as suggested by the officers and experts interviewed. Mainly, the fact that in the stations where the HRO has been appointed by the OIC – awaiting for the fully trained figures – s/he covers other duties at the same time, together with the rank issue, poses challenges to the efficiency, impact and accountability of this figure. These factors in fact make the HRO's work more difficult and less effective for the following reasons. Firstly, whereas s/he responds to other duties as any other uniformed officer, not only s/he will not have the time to properly carry out all the tasks provided as a HRO, but s/he will not be perceived by the inmates and other officers as an independent and *super partes* figure. Secondly, the issue of the rank is very much relevant in the view of the highly hierarchical and bureaucratic system in Kenya: when the HRO is a low cadre, the effectiveness of his/her work will be put to the test, particularly when advocating for inmates' rights and training senior staff members. In this case, the OIC's role will be even more crucial than it already is, and it will be essential for the HRO to receive him/her full support, in raising awareness among all the staff about the universality and inalienability of human rights, and about the accountability for whoever violates these rights, regardless for the status and the position in the rank.

60 Either s/he is fully trained or appointed by the OIC awaiting for the training.



PART II

**GUIDELINES ON A
BEST PRACTICE ON
MONITORING AND
REPORTING HUMAN
RIGHTS' VIOLATIONS IN
KENYAN CORRECTIONAL
FACILITIES**

SECTION VI – MONITORING AND REPORTING HUMAN RIGHTS’ VIOLATIONS IN CORRECTIONAL FACILITIES

International instruments are clear: an efficient preventive monitoring within detention facilities is an *external* mechanism. It allows an independent oversight, minimizing the risk of partiality, and ensuring effective detection of abuses through the system of unannounced visits. This concept is recommended by Human Rights NGOs like Penal Reform International⁶¹, and by international treaties. For example, the African Union, in its Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, is asking states to “*ensure access to detainees and places of detention for independent monitoring bodies or other neutral independent humanitarian organisations authorised to visit them*”⁶². The Optional Protocol to the Convention against Torture (OPCAT)⁶³ has been further in setting up a system of independent monitoring over torture and ill-treatment.

The OPCAT mechanisms are very different from the mechanism put in place in Kenya with the present project. However, in some cases, they led to a better internal management of prisons and the use of internal monitoring systems, like in the United Kingdom’s system which will be presented in this chapter.

It will be brought to attention just as an example of National Preventive Mechanisms (NPM), close to the Kenyan monitoring system, after having given a brief overview of the legal framework that specifically refers to mechanisms of monitoring and reporting human rights violations in correctional facilities.

6.1 International and national legal framework

International requirements concerning the monitoring of human rights standards in detention facilities are rare and most international agreements over the treatment of prisoners are soft law. As analysed earlier, the legal milestone on this issue are the UNSMR⁶⁴, even though they are only *guidelines* for states to follow in their policies on penal institutions.

The only international convention giving a proper framework around the monitoring of human rights issues inside detention facilities is the OPCAT. However, if it requires action from the states, it does not envisage any sanction in case of failure to comply with its requirements.

The OPCAT is the little brother of the CAT⁶⁵, which aims at preventing torture, cruel, inhuman or degrading treatment or punishment by state authorities. The case of detention facilities is particularly relevant in the fight against torture, as prisoners are more at risk of abuses than the rest of the population, being away from oversight.

This is why the Optional Protocol on the CAT has provided for oversight and monitoring mechanisms: the Sub-Committee on the Prevention of Torture (SPT) and the NPM. Both shall have access to places of detention to visit

61 <http://www.penalreform.org/priorities/torture-prevention/preventive-monitoring/>

62 *African Union Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, 2015, Article 42

63 *Optional Protocol on the Convention against Torture*, 2002, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

64 See Table 1, p.12

65 *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

and control where persons are deprived of their liberty. “*These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment*”⁶⁶.

The SPT, created under the CAT)⁶⁷, created under article 11 of the Optional Protocol, has powers to visit places of detention, make recommendation to states, to advise and assist them in the establishment, maintenance, evaluation of needs and strengthening of NPMs⁶⁸.

However, the essential creation of the Optional Protocol is the NPM, which allows for external monitoring visits within detention facilities. Article 3 of the OPCAT requires state parties to “*set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment*”⁶⁹. These bodies shall have the power to regularly examine the treatment of the persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment; to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment; and to submit proposals and observations concerning existing or draft legislation⁷⁰.

States are required to allow the bodies created under the NPM to fulfil their mandate. To achieve this purpose, States must first of all make all information concerning places of detention available and accessible, including information about the treatment of prisoners. Secondly, States must ensure total access to the places of detentions for these national bodies, which includes the opportunity for them to hold interviews of persons deprived of their liberty without witnesses and the freedom to choose which places they want to visit. Finally, the right to contact the SPT and send information shall be protected⁷¹.

For the purpose of Article 3, most States parties have set up a national body with the mandate of visiting places of detention⁷², or given the mandate of NPM to existing bodies. In some countries, it takes the form of a national commission, in some others it is under the office of an Ombudsman.

Even though Kenya is not a signatory of the OPCAT, the Kenya National Commission for Human Rights (KNCHR), created under the Constitution of 2010 and whose mission is regulated by the KNCHR Act (2011), has mandate to make unannounced visits to detention facilities and recommendations, as it will be explained more in details in the next section⁷³.

6.2 International experience: the example of the United Kingdom

The United Kingdom has developed two mechanisms to monitor and prevent human rights abuses within its detention facilities. One is an external mechanism which allows an independent body to visit prisons, make recommendations and follow-up on these recommendations, as prescribed by the OPCAT. The other one is an internal compliance monitoring tool, similar to the one just piloted in Kenya, and run within the prisons by the prison staff as a self-audit.

66 *Ibidem*, article 4

67 *Ibidem*, article 2

68 *Ibidem*, article 11

69 *Ibidem*, article 3

70 *Ibidem*, article 19

71 *Ibidem*, article 20

72 OPCAT, National Preventive Mechanisms, <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>

73 Available at <https://goo.gl/vSpLcl>

6.2.1 External mechanism

After the ratification of the Optional Protocol, the UK has given mandate to its independent national body for the inspections of prisons, Her Majesty’s Inspectorate of Prisons (HMI)⁷⁴, to carry out the functions of the NPM⁷⁵.

To carry out its work, HMI is using “expectations” as inspection criteria, based on international human rights standards⁷⁶. They are divided into four sections: safety, respect, purposeful activity and resettlement. Each section is divided into several areas, within which indicators allow evaluating the “health” of the prison.

As an example, the table below show what the first section, “Safety”, covers, with a focus on which are the expectations are for the area of “Court, escorts and transfers”.

Table I – Example: areas covered within the section “Safety” – External monitoring mechanism in the UK

SAFETY	Courts, escorts and transfers	Courts, escorts and transfers: <ul style="list-style-type: none"> - Prisoners travel in decent conditions during escort and are treated with respect. - Prisoners are safe at all times while under escort, and individual needs are recognised and given proper attention. - Prisoners understand where they are going and what to expect when they arrive.
	Early days in custody	
	Bullying and violence reduction	
	Self-harm and suicide prevention	
	Safeguarding (protection of adults at risk)	
	Security	
	Incentives and earned privileges	
	Disciplinary procedures	
	Substance misuse	

To ensure each expectation is reached, indicators based on international instruments such as the CAT or the European Convention on Human Rights are looked at.

For example, looking at expectation 1, *Prisoners travel in decent conditions during escort and are treated with respect*, indicators are:

- Prisoners are held in cellular vehicles for the minimum possible period of time;
- Prisoners are escorted in vehicles that are safe, secure, clean and comfortable, with adequate storage for prisoners’ property and with suitable emergency supplies and hygiene packs for women;
- Prisoners are given adequate comfort breaks and meals/ drinks before transfer, which are suitable for the length of journey;
- Prisoners are transferred as quickly as possible to minimise waiting times and the length of time at court;
- Prisoners are not held in vans outside reception;
- Private property and cash accompanies un-sentenced prisoners to court and sentenced prisoners who are being transferred;

74 <http://www.justiceinspectorates.gov.uk/hmiprison/>

75 http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/UKs_NPM.pdf

76 <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/adult-expectations-2012.pdf>

- Prisoners are treated with respect by escort staff throughout the duration of their journey/transfer.

Another relevant example regards Section II, “Respect”, under which an area is focusing on prisoners’ complaints. The expectations are:

- Prisoners have confidence in complaints procedures, which are effective, timely and well understood;
- Prisoners feel safe from repercussions when using complaints procedures and are aware of an appeal procedure.

The following are some of the indicators under the first expectation *Prisoners have confidence in complaints procedures, which are effective, timely and well understood*:

- All complaints, whether formal or informal, are dealt with fairly and responded to promptly, with either a resolution or comprehensive explanation of future action;
- Prisoners receive responses to their complaints that are respectful, easy to understand and address the issues raised;
- Prisoners feel and are able to ask for help in completing their complaint and in copying relevant documentation;
- An effective monitoring system is in place to analyse complaints (both upheld and refused) each month, by all protected characteristics and more widely (by location, prisoner type, etc) to identify patterns and make any appropriate changes;
- Information about complaints, including how to access the Independent Monitoring Board (IMB) and the Prisons and Probation Ombudsman (PPO), is reinforced through notices and posters displayed prominently across the prison in a range of formats and languages;
- All prisoners know how to contact members of the IMB and the PPO, and can do so in confidence;
- There is an effective and thorough quality assurance system in place and the complaints procedure has been impact assessed.

After the HMI has visited the prisons and collects data under each indicator of the above-mentioned sections, it publishes a report⁷⁷.

6.2.2 Internal audit

In addition to the external scrutiny of the NPM, the UK has developed a system of internal audit run by prison officers, similar to the one just piloted in Kenya.

The British Ministry of Justice developed Prison Service Orders (PSOs), as “rules, regulations and guidelines by which prisons are run”⁷⁸. In addition to that, the prison administration (Her Majesty’s Prison Service) refers to the Prison Service Performance Standards Manual in running self-audits on prison conditions⁷⁹. The desired outcome is in fact to have an improved compliance with standards, leading to a continuous performance improvement.

For each standard, the prison staff will run an audit on compliance, and under each standard, baselines/indicators allow to evaluate the level of compliance. For example, Standard 61 is on the use of force – “Force is used only when necessary and not more than necessary is applied”⁸⁰ – and the first indicator is: “All staff are aware that force can only be used when it is reasonable in the circumstances, necessary, no more than is necessary, proportionate to the seriousness of the circumstances”.

⁷⁷ Appendix I reports a few examples of their findings concerning the expectations regarding “Complaints”.

⁷⁸ <http://www.justice.gov.uk/offenders/psos>

⁷⁹ <http://www.justice.gov.uk/publications/corporate-reports/hmps/performance-standards>

⁸⁰ <https://goo.gl/V7a7VD>

Process of self-audit

The first part of the process is to designate a member of the staff to be the Audit Manager who will be in charge of the audit process and reporting. The second step is the risk assessment: the audits will focus and give priority to standards for which the risk resulting from non-compliance is higher. After these preliminary actions, the audit itself is carried out. The self-auditor will examine each baseline/indicator and check relevant evidence to see if the process described is in place. S/he will then summarize that evidence and give a compliance mark (see table below). The quality of the audit will be checked by the Audit Manager.

Tools for internal audit

The first tool used for the internal audit in British prisons is the table for marking self-audits.

Table J – Tool for the internal audit in British prisons

Definition	Mark
Current arrangements do not comply with the baseline. (zero compliance)	0
Substantial remedial action is required to ensure full compliance with the baseline (more than 30% non-compliance)	1
Some remedial action is required to ensure full compliance with the baseline (between 11 and 30% non-compliance)	2
Minor remedial action is required to ensure full compliance with the baseline (up to 10% non-compliance)	3
Full compliance with the baseline. (100% compliance)	4
Baseline not audited - This may be because the baseline is not applicable to the type of prison, e.g. some baselines are only applicable to Young Offender/Juvenile Prisons. Or it may be because there is no activity to measure, i.e. no relevant cases have occurred during the period subject to audit.	X

Once each baseline is marked, the mark has to be multiplied with the “weighting”. Weightings are agreed between policy leads and Standards Audit and are fixed.

Table K – Example of compliance score with the weighting

Baseline	Weighting (a)	Compliance Mark (b)	Actual Score	Maximum Possible Score (Mark = 4)
1	3	1	3 (a x b)	12
2	1	3	3	4
3	2	0	0	8
4	3	4	12	12
5	1	X	X	X
6	2	2	4	8
7	3	4	12	12
8	3	X	X	X
9	1	3	3	4
10	1	3	3	4
11	1	0	0	4
12	2	1	2	8
		<i>TOTAL</i>	42	76

The compliance score for the above example would be 42 divided by 76 x 100

i.e. $\frac{42}{76} \times 100 = 55\%$

Once self-audit is completed, the Governor has to agree within 28 days on dates by which the action to rectify non-compliance must be taken, and a follow-up self-audit of non-compliance baselines has to be carried out within one month of the date for rectification.

The Area Managers must in fact complete a form (Non-Compliance Record), when baselines/indicators are found to be non-compliance following a self-audit.

There is also another tool, called Temporary Non Compliance Form, used when an agreement is found between the Area Manager and the Governor that compliance with a baseline/indicator cannot be achieved for a specific period of time. Finally, an alternative procedure can be used as a method to achieve the outcome required of a baseline, and it is identified through the use of a third form, the Notification of Alternative Procedure Form.⁸¹

81 The three forms are reported in Appendix I.

SECTION VII – GUIDELINES ON A KENYAN BEST PRACTICE ON INTERNAL MONITORING TOOLS

The prison statutes and policy documents demonstrate the existence of a petition and complaint mechanism and there are government agencies tasked with the role of oversight on matters interconnected with human rights in correctional facilities. The draft of the amended Prisons Act also provides for a system of internal and external audits fashioned along the lines of the British system and in concurrence with the guidelines provided in the Mandela Rules. Nonetheless, there is not a structured – internal and external – mechanism of monitoring and reporting violations of human rights in correctional facilities in Kenya, which is organized, accountable, with standardised data collection tools, which guarantees a fair and rapid response to individual complaints, and which leads to the development of action plans to improve the conditions in each institution. Such a mechanism has been piloted during the project “*Strengthening human rights in correctional facilities in Kenya*”, which frames the present publication, with the long-term aim of becoming a component of the prisons’ performance and an effective instrument for monitoring human rights’ violations and thus for preventing them.

In this section, after a brief overview of the already in place complaint’s mechanism within the correctional facilities, a description of this best practice on monitoring and reporting human rights’ violations will be provided, with the focus on the process that led to its development, the actors involved, its pillars and the functioning of the main tool.

7.1 Complaints mechanisms in place in correctional facilities in Kenya

The government agencies tasked with the role of playing oversight on matters interconnected with human rights in correctional facilities include the KNCHR and the Commission on the Administration of Justice (Office of the Ombudsman) as mandated by the Constitution. The Kenya National Commission for Human Rights (KNCHR) – created by art.59 of the Constitution and whose mission is regulated by the KNCHR Act (2011) – has mandate to make unannounced visits to detention facilities and recommendations. The KNCHR is “the principal body in ensuring State compliance with its international and regional human rights obligations” and has, among its objectives, the collection of data from detention facilities and the reporting of the actual situation.⁸² Even though it is an independent body and it has been reached great achievements in Kenya in lobbying and evidence-based advocacy on human rights, it is still a government arm and it is funded both by the Government and private actors. It also leads to the fact that the frequency of the inspections into the prisons is not defined and it depends on the availability of resources, especially taking into account the high number of prisons in Kenya and their scattered locations all around the country.

There are also several non-state actors performing a kind of monitoring and reporting role of human rights’ violations within correctional facilities, but little is often known of the recommendations contained in their internal reports⁸³.

The first steps in the direction of a more accountable system and towards a substantial effort for the compliance with the UN Mandela Rules, have been made by the Kenyan Government in the last few years, not just with a tremendous improvement towards detention facilities’ contact with the outside world – which let in more and more actors and stakeholders from civil society – but also with the introduction of the so-called HRD and HRO in the correctional facilities. HRD were established in 2010 by the KPS through a Directive of the Commissioner. In 2012, specific Terms of Reference were developed for the HROs to be put in operation in each and every correctional facility. As earlier

82 Available at <http://www.knchr.org/OurWork/Compliancewithinternationalobligation.aspx>.

83 These organizations include Legal Resources Foundation, Kenya Human Rights Commission and the Independent Medical Legal Unit

mentioned, these are the functions of the HROs:

- Formulation of KPS human rights office policy;
- Training on human rights for inmates and officers;
- Auditing;
- Advising/Guiding/Supporting/Assisting Staff;
- Recording and Reporting;
- Miscellaneous, such as networking and liaising with stakeholders on human rights in prisons and undertaking studies when funds are available.

A Departmental Human Rights Committee (DHRC) has also been established in 2014-2015, composed by senior directors and representatives of the prisons. A manual for the HROs has been developed and they undergo five weeks of training provided by the KPS, during which they go through basic introduction to international standards and human rights compliance, and they conduct two weeks-audit in a prison: during the first week they collect data to assess the compliance with the UNSMR and in the second week their role is to come up, together with the sections' heads of that prison, with an action plan to intervene where non-compliance is proved.

At the moment of this research, in Kenya there were 8 Regional HROs and only about 50 fully trained HROs (against 117 correctional facilities plus 5 probation hostels). In the institutions where a HRO is not yet available, the OIC is trained on human rights and selects an officer among his/her staff to cover the HRO's functions, beyond his/her duties.

Hence, before the beginning of the present project there was not a proper structured mechanism of monitoring and reporting complaints and human rights violations within the institutions, being – especially the monitoring aspect – something left to undefined procedures, with no standardised tools and with no clear follow-up actions to be taken. According to the interviews conducted to inmates, officers and experts, very often the inmates are not aware of the all spectrum of human rights they are entitled to while in detention, making any form of complaint mechanism which directly comes from the individuals less effective.

The channel that inmates and officers use within the institution to complain is the following: they report to the Complaint Officer, who has the specific role to collect complaints, register them, regularly open the suggestion box and go through the complaints; report to the OIC who takes action or directs for action. When the Complaint Officer is not present, they report to any officer on duty, who reports to the OIC. On the other hand, the officers follow the rank order: if they have to report a complaint, they go to the immediate higher rank officer who reports to the OIC.

Suggestion boxes are also present almost in all the stations but what emerges from the study is that they are not very much used neither by inmates or officers: it might depend on the lack of privacy (where the suggestion box is situated in the middle of the facility), on the illiteracy of the majority of inmates and on the lack of trust in having a feedback through this mean. Finally, in some institutions – especially women prisons, because of the much lower numbers of inmates – the HRO or the Welfare Officer collects complaints from the inmates once or twice a day during their shifts, it is not a sustainable method, especially in overcrowded stations, and it is not accompanied by a proper procedure of data collection and registration. In addition to that, it is not specifically the role of a HRO to take up or advocate for inmates or staff issues. This function was removed from the ToR based on a finding that this complaints role would interfere with the overall objective that the HRO tries to fulfil within the prison in the manner in which s/he is trained to do. This role also needed to be distinguished by the separate and wholly dedicated directorate of complaints that was already there back when the HRD was formed, even though the complaint officers' role was not clearly defined and it was not clear whom they report to. This brings to the lack of a functional, reliable and known complaints handling mechanism, and to the need of providing the complaints officers who've been appointed with a clear TOR and reporting structure.

The introduction of a HRD and HRO should particularly ease the process of prevention and monitoring, and make the overall complaint process more efficient and accountable for. It has in fact been found that a specific role of collecting complaints also removes the trust and respect of the HRO to fellow staff, who might see this person as a protagonist fighting for inmates' rights, thus preventing him/her to deliver on their mandate.

7.2 Origin and definition of the best practice on internal monitoring

As reported by Dr. Steve Ouma, the expert who has been dealing, along the course of the project, with the process of establishment of this best practice, the adoption of an internal monitoring mechanism in Kenya prisons comes from long history of encounters and contestations between the human rights institutions and the Kenya prisons. For many years, correctional facilities in Kenya were contested because of their lack of accountability. Reports by civil society organizations and by the state funded KNCHR all pointed at the great variance that existed between the conditions in the prisons and Borstal Institutions and the compliance with international standards.

There is agreement among those interviewed – experts, long-experienced officers and inmates who have already spent decades in prison – that this focus has produced terrific progress and results, especially in regard to the openness of the institutions to the outside world, allowing more and more civil society organizations to enter, promoting reforms and sharing responsibilities among all the actors of the criminal justice system. There has been more and more awareness not just among the inmates and officers on the rights they are entitled to, but also among the prisons authorities and key stakeholders on the crucial importance of reforming the system, to make it more accountable and so more effective (financially, not just from a human rights point of view).

Even though the introduction of HROs, at the prisons headquarters and in the various stations, has been a crucial step in this direction, this is what was observed at the beginning of the project to be still missing:

- Overall accountability of all the sections operating within an institution, that are equally contributing to the compliance to international standards and so to the welfare of the prisoners;
- Systematization of a monitoring tool and mechanism;
- Development of a standardized reporting tool;
- Development of a consistent and accountable mechanism of following-up, with a structured effective action plan.

From the observation of these gaps and a comprehensive consultative process with KPS and the main stakeholders involved, the idea and urge of an ‘early warning’ system came.

*Systematically providing the right information to the right people at the right time*⁸⁴: early warning system is a risk management system. It can be defined as a mechanism of timely surveillance and collection of meaningful information in order to prevent at-risk population from suffering harm. It can be used in cases such as contagious diseases⁸⁵, natural disasters⁸⁶, but also conflicts⁸⁷.

Prisoners are at-risk individuals, as the deprivation of their liberty makes them more vulnerable to violations of their rights and dignity. However, as provided for in the Mandela Rules, prisoners retain all the rights entitled to them as human beings. Therefore, they must have access to a mechanism to report violations that is effective and safe, without a risk of reprisals.

In introducing the project “*Strengthening Human Rights in Correctional Facilities in Kenya*”, the partners and stakeholders have in fact noticed that the main causes of violence and human rights violations are the lack of effective warning and reporting system within prisons, the lack of awareness on human rights by prison staff, and poor prison management with practices such as arbitrary coercive control.

The idea is thus to prevent human rights violations rather than to redress them, and to introduce a culture of human rights in the management of the prison.

84 European Union External Action Service, *Factsheet on Conflict Early Warning System*, 2014

85 <http://www.who.int/csr/labepidemiology/projects/earlywarnsystem/en/>

86 <http://www.unisdr.org/2006/ppew/info-resources/archive.htm>

87 *Ibidem*

This is done by monitoring human rights situations inside each correctional facility with the use of an Internal Compliance Monitoring Tool (ICMT), allowing prison officers to check their section's compliance with Mandela Rules.

7.3 Inception process in the developing of an early warning and reporting mechanism⁸⁸

The development and implementation of an EWRM, through the final tool of the ICMT, has been carried out by a task-force of experts, guided by Dr. Ouma and comprising the project's partners and stakeholders, mainly the Prison Department and the PD.

The project's partners started from the cognizance that the Kenya Prisons Service through the Legal and Human Rights Directorate and with the support of stakeholders had set up HRDs within several prisons. While the key role of the HRD and the HROs, under the guidance and support of the respective OIC, is to ingrain the knowledge, respect and adherence of human rights, these desks can be instrumental in the adoption of an effective EW & RM. This is so as the HRDs are also charged with the task of auditing the institutional and general departmental compliance of constitutional and international human rights provisions, and particularly the UN Mandela Rules.

In spite of the existing challenges, there are a few opportunities that the project decided to explore further to attain significant success together with the sustainability of the warning and reporting systems. These opportunities have been identified and pursued along the course of the project, guaranteeing the successful implementation of this best practice:

- Capacity building of the officers manning the HRD and inducting them to EWRM;
- Offering trainings to correctional staff geared towards an appreciation of human rights and how human rights are not an impediment but an important element of correctional work;
- Conducting multiagency workshops on EW & RM and thereafter produce a publication and disseminating the same;
- Establishing and pursuing healthy working relationships with members of the National Commission on the Administration of Justice (NCAJ) on the issue of EW & RM at the national level;
- Establishment of Early Warning & Reporting Mechanism Committees within each correctional institution under the project;
- Conducting periodical meetings/forums (say on a monthly basis) for the ERWM at each penal institution for monitoring and evaluation of the human rights situation as well as the progressive implementation and compliance with the Mandela Rules.

7.4 The actors involved

The EWRM starts from the prison and goes all the way to the top command of KPS. In its flowing from the ground to the top, it requires the involvement of many actors, starting from the prisons/stations and going to the headquarters:

- **HROs**

HROs have a paramount role to play in the mechanism. They are the first actors on the ground for the detection of human rights abuses and data collection. As previously reported, these officers have been introduced with the establishment of the HRDs by KPS in 2010. Their mandate covers different activities including training officers on human rights, guiding and assisting prisoners in their complaints, auditing other institutions. Assisting Section Heads (SHs) in filling up the tool, implementing the action plan and guiding all prison staff in the different steps of the EWRM

⁸⁸ This information comes from reports from Dr. Ouma (CEFA) and Dennis Mungo, from the Directorate of Legal, Human rights research and statistics of the KPS, who were leading the task force for the development of this best practice and produced periodical informing reports.

is now part of their mandate. They are essential in bringing a culture of human rights management in the prison.

However, these officers face many challenges as they need proper training and resources to carry out their work. There are not HROs in all Kenyan prisons, only around 50 prisons (out of 117) have a trained HRO. Some stations lack space and resources to have a proper human rights office and put them under the welfare office. Some Welfare officers have to assume the role of HROs on top of their existing functions.

- **SHs**

Section Heads are fundamental actors as they are the ones in contact with the Internal Compliance Tool. They are the ones in charge of ensuring that all activities within their sections are in compliance with Mandela Rules and are auditing themselves in that regard. If an action plan has been decided, they must ensure that it is implemented. They are also the ones to gather data on human rights violations by filling up the ICMT.

- **OIC**

The OIC plays a role in convening and chairing the Human Rights Committee meeting (HRCM), which is held quarterly to analyse the results of the tool and decide on the action to take. The OIC is also in charge of reporting monthly to the Regional Commander (RC) on the human rights' situation within his/her institution.

- **RC**

The Kenyan prison administration is divided in 8 regions: Central, Coast, Western, Nyanza, North-eastern, Eastern, Rift Valley and Nairobi. Each of them is under the administration of a RC. On the EWRM, their role consists of compiling OICs' reports and come up with a regional report for the DRHC.

- **DHRC**

The DHRC has a broad mandate on human rights that includes advising the Commissioner General of Prisons (CGP) on human rights matters and coordinating human rights activities in prisons through the human rights offices. The DHRC also has to monitor the compliance with Mandela Rules and carry out assessments and audits. The Committee indirectly contributes to national policies as one of its members is also a member of the National Council for the Administration of Justice (NCAJ). With the introduction of the EWRM reporting framework, the DHRC will also have to compile a national human rights report for the CGP.

- **NCAJ**

The NCAJ is the policy making and resource mobilizing body concerning the administration of Justice. Reaching the NCAJ or its technical committee in charge of research, data collection and other operational mandates would be of great influence on policies concerning conditions in prisons.

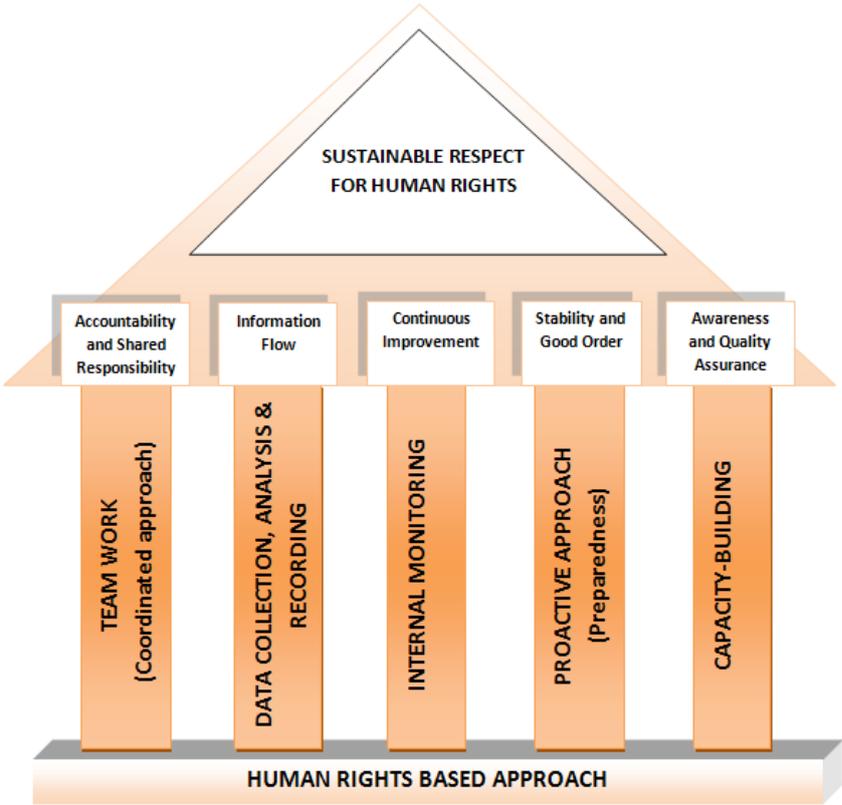
- **The CGP**

The Commissioner General of Prisons is a member of NCAJ main council. He can thus influence policies after receiving reports from various institutions.

7.5 Pillars of the best practice

The idea of EWRM is to have a dynamic approach instead of the usual "static security": the security within the prison is not only the result of walls and security equipment, but also of the relationships between prison officers and inmates. The capacity of prison officers to detect prisoners' discontent is a pro-active manner to avoid conflict and mutiny, but it is also a tool for improvement of the criminal justice system with a better collection of data and an effective use of these data to change policies. Most of all, EWRM is a way to build capacity of prison officers by giving them the opportunity to assess themselves and thus be accountable and tend to a more humane and human rights-based work.

Figure 1 – Pillars of the Early Warning and Reporting Mechanism



As shown earlier, the mechanism is subject to the work of different actors from the field to the top command. It is a cycle mechanism, starting with the self-audit of each section and ending with a follow-up meeting. On top of this, a reporting framework allows information to flow from one actor to another. The cycle and the reporting framework will be explained in the next paragraphs.

7.6 The EWRM Cycle and the Internal Compliance Monitoring Tool

Originally the project, through the leading agency CEFA, had proposed to KPS the introduction of an EWRM based on some precise passages that follow this order:

- A monthly internal audit of each section by filling the ICMT;
- A monthly EWRM meeting between all SHs, the HRO and the OIC;
- A reporting system to RCs and Prison Headquarters.

The ICMT, based on Mandela Rules, allows the regular internal audit of the institution, whereas the already existing external audit system could not be more than bi-annual. The tool was developed by CEFA, then presented and launched in December 2015 during the Human Rights Day celebration.

However, the tool needed to be workable for officers, so it was presented during a workshop in April 2016 which involved regional HROs and other officers from the ground, to improve it and make sure it was in conformity with the realities on the field. It was thus decided that internal audits and EWRM meetings would be quarterly instead of monthly. The reason for this is that the internal compliance audit should be aligned to OICs Performance Contracting, divided into quarterly targets running along the government financial year.

Furthermore, with the proactive involvement of KPS, the concept evolved to be renamed Human Rights Committees, to be in line with the national DHRC. The concept of Early Warning and the mechanism remains the same, apart from HRC meetings which will be held quarterly.

7.6.1 Aim and functioning of the tool

The ICMT has several goals. First of all, it is a support for KPS to strengthen its internal audit with a station-based tool that is easy to use. Secondly, it will help to develop a data base on compliance with international standards from station to Prison Headquarters. Thirdly, it can influence policies thanks to the coordinated approach that allows issues to filter to top management. Finally, it establishes early warning and prevention within correctional facilities.

The tool is divided into nine sections matching the nine sections of the prison. Every quarter, the sections' heads audit their own section and fill in the tool according to the compliance of each indicator with the Mandela Rules. For example, under the Health section, one of the requirements from Mandela Rules is to have access to medical care for prisoners in the same conditions as for free citizens. The SH can tick if this requirement is either met, partly met, or not met.

Figure 2 – Example of the ICMT tool for Health Care Section

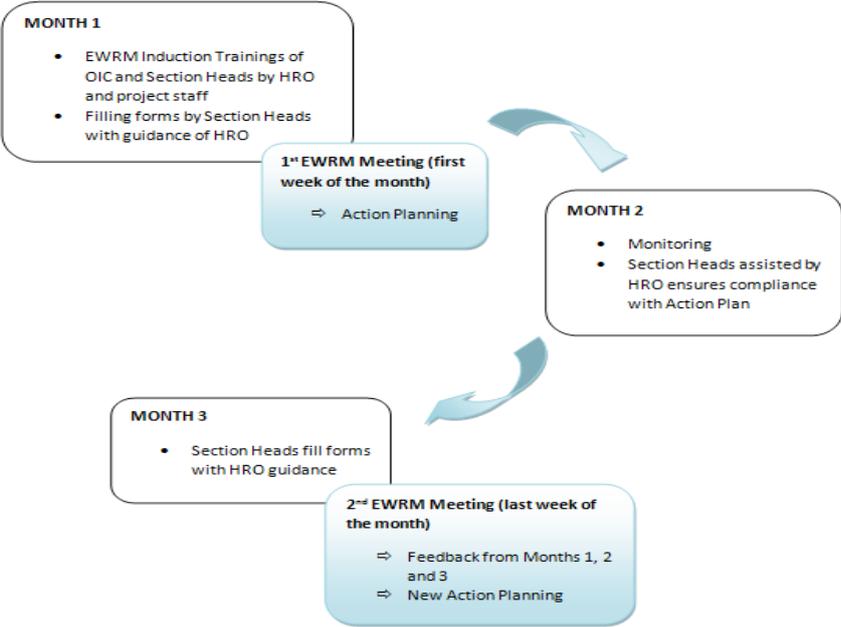
SECTIONAL AUDIT AND ACTION PLANS FOR THE IMPLEMENTATION OF THE MANDELA RULES (Also known as the UNSMR - United Nations Standard Minimum Rules for the Treatment of Prisoners)									
NAME OF PRISON									
NAME OF SECTION	HEALTH CARE								
HEAD OF SECTION									
NAME OF HRO									
MONTH IN FOCUS					DATE OF AUDIT:				
UNSMR AREA	ELEMENTS	RESULT (TICK AS APPROPRIATE)			EARLY WARNING INDICATOR (PARTLY MET AND NOT MET)	CAUSE OF NON COMPLIANCE	ACTION PLAN (PARTLY MET AND NOT MET)	RESPONSIBLE PERSON	COMPLIANCE DEADLINE
		MET	PARTLY MET	NOT MET					
HEALTH CARE SERVICES	(i) Do all prisoners have access to medical care in the same conditions than free citizens ?								

7.7 The Human Rights Committee Meetings

When the ICMT is filled by all the sections, the OIC convenes a meeting bringing together all the sections heads and the HRO, during which they analyze the results coming from of the tool: these meetings are a crucial moment in the EWRM process and they are called Human Rights Committee Meetings. After they have identified which issues can be dealt with at a local level, they draw an action plan to address the non-compliance: they also set a deadline for compliance and a person responsible. The rest of the quarter is dedicated to monitoring the compliance and filling new forms at the end of the cycle. The new cycle starts with a HRC meeting where sections' heads give feedback on the compliance and a new action plan is drawn.

These meetings are chaired by the OIC or her/his deputy, the HRO is the secretary and all sections' heads are invited to attend and participate. Paralegals and other stakeholders can also be present, and some institutions even invite prisoners' representatives.

Figure 3 – Format of the Human Rights Committee Meetings



7.8 Reporting framework

Within the framework of the continuing monitoring process, the goal of this mechanism is also to influence national policies. To do so, a reporting system has to be in place so that the Regional Commander and the Headquarters are thoroughly informed of human rights violations happening in local institutions. Some issues can only be addressed at a national level, for example the development of an earning scheme for a fair remuneration of prisoners.

Again, the role of the HRO is essential. Every month, the HRO reports on the human rights situation and on her/his activities within the institution. The OIC sends the report to the RC by the 15th of each month. The RC receives and compiles all reports and submits the regional summary to the DHRC by the 7th of the following month. The DHRC compiles regional reports and submits a National Human Rights report to the CGP. The CGP receives the report by the 20th of the second month and gives feedback either to the NCAJ, to the RC or directly to the OIC.

This system allows to have an institutionalized mechanism and data at all levels on human rights violations.

Figure 4 – Quarterly reporting framework

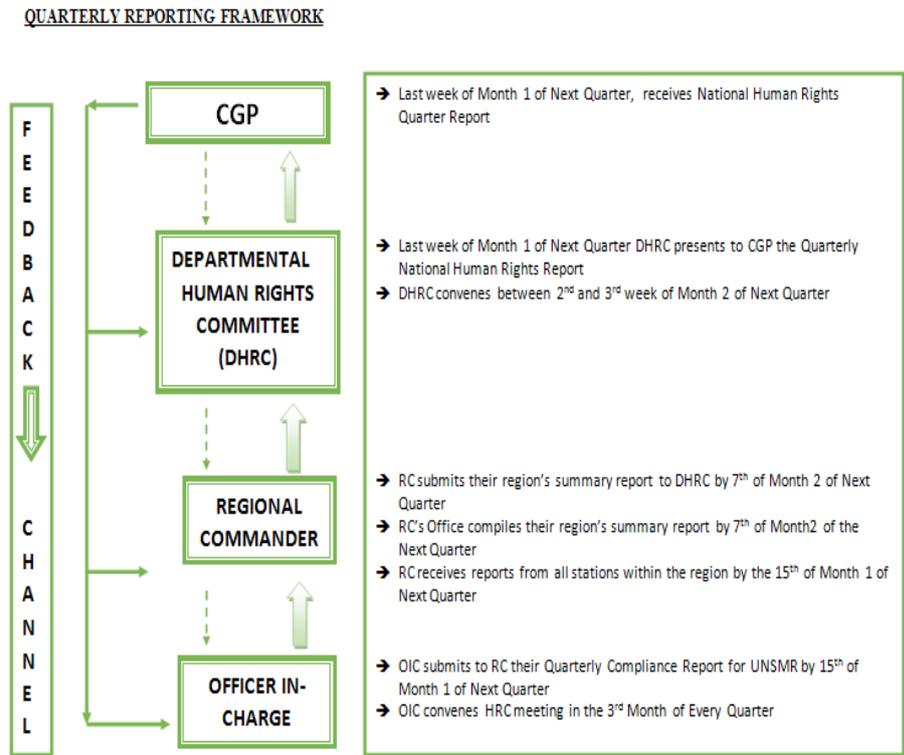
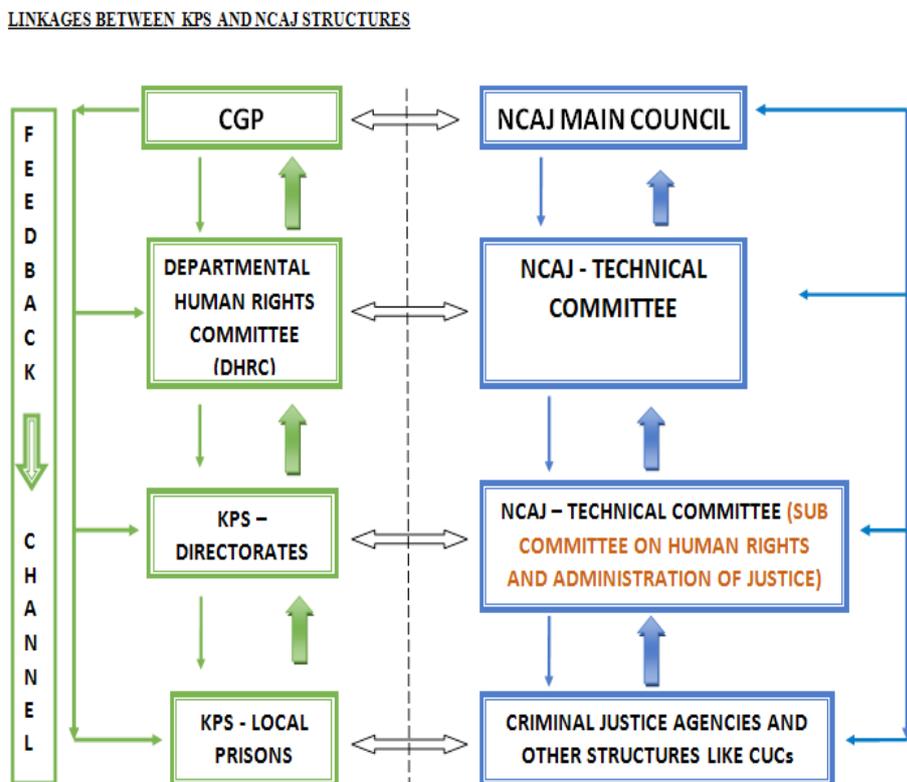


Figure 5 – Linkages between KPS and NCAJ structures



CONCLUSIONS AND RECOMMENDATIONS

The project, whose title is “Strengthening Human Rights in Correctional Facilities in Kenya”, seeks to contribute to the eradication of all forms of violations of human rights within custodial facilities in Kenya, through strengthening and supporting National Bodies and Agencies in promoting structural reforms in the correctional system to comply with the Bill of the Rights enshrined in the Constitution of Kenya and with the Mandela Rules.

The function of the publication at hand is to provide a comprehensive overview of the current human rights landscape in the criminal justice and correctional system in Kenya. Subsequently, the report aims to bring to the attention of the main stakeholders and actors involved, the recommendations that have come from the observation and from the interviews of experts, inmates and officers, for overcoming the central challenges that the Kenyan criminal justice system in its different arms is facing.

One of the main findings of this research is that failure to guarantee access to justice, and the right to a fair trial, are the biggest and most recurrent violations of human rights for people in conflict with the law in Kenya. Failed fulfillment of the right to be heard and adequately informed, length and undue delays of the trials, failure in guaranteeing legal representation, lack of innovation in investigating methods and sentencing are among the main challenges that people in Kenya face once they enter in conflict with the law. These challenges bring along a strained correctional system, characterized by endemic overcrowding, poor infrastructural conditions of the facilities, scarcity of resources in the provision of basic needs for the inmates, poor housing for the officers and inadequate remuneration, and lack of a variety of rehabilitation programmes across the country and especially for the most vulnerable categories of inmates. With these being the main issues observed throughout the study, some recommendations have already come out throughout the course of the presentation of this overview and they are systematically presented here as its logical conclusion. The weaknesses of the system, reported by the people interviewed and emerged from the research, can be translated into recommendations to the Kenyan Government and to all the agencies and actors variously involved and who actually work on the ground for the promotion and protection of human rights of people deprived of their liberty. As repeatedly emphasised throughout the whole publication, the challenges within the correctional system cannot be observed and tackled without a holistic view, and an integrated approach, overlooking the challenges faced by the criminal justice system at large. For this reason, the recommendations will follow this kind of approach, trying to be comprehensive and to include the strategies and efforts suggested by the research to reform the legislation, to strengthen the Judiciary and law enforcement, and to improve the human rights’ conditions for inmates and officers in correctional facilities.

Legislative Framework

- Reform of the Prisons Act and the Borstal Institutions Act: the revision of the two Acts is ongoing and it needs to be pursued towards provisions of full compliance with the Mandela Rules.
- Enactment of a Child Justice Bill: a draft of the Child Justice Bill has been developed by a designated task-force that is submitting the amendments to the Attorney General. This Bill is of crucial importance, to have a unique body of laws that deals with child offenders, collecting all the principles now scattered between the Children Act, the Borstal Institutions Act, the Probation of Offenders Act and the Prisons Act, providing specific rules of procedure and evidence, and sentences different from the ones provided for the adults (particularly for capital offences and sexual offences).
- Revision of the Sexual Offences Act: young people below 18 years old are subjected to the same sentences as the adults, regardless of their age. In particular, the application of the rules results in cases where a boy below 18 who had a sexual intercourse with a girl below 18 is charged and liable according to the Sexual Offences Act, while the girl is treated as a victim, even if they were both adolescents and the act was consensual. This Act also sets both maximum

and minimum sentence for each offence, so making difficult for a magistrate to take a decision in cases involving children fully considering their best interest in the sentencing. Hence, as highlighted by professionals in the field, a discussion about a review of the legislation is needed, to prevent the prosecution of children who engage in consensual sexual activity when both participants are significantly close in age to each other. There should be also a review of the age of consent: the State should consider lowering the age of consent to an age at which most children have attained basic education, make conscious decisions every day affecting their lives, bearing in mind that the age of criminal responsibility – so at which a child is deemed to be able to discern the bad and the right – is set much lower.⁸⁹

- Increase the age of criminal liability: even though children below the age of 10 cannot be committed to Rehabilitation School, and below 12 their ability to discern needs to be proved, the current age of criminal responsibility of eight is one of the lowest in Africa and around the world. This had led the Committee of the Rights of the Child to express its concern and invite the Kenyan Country to raise it, stating that “*a minimum age of criminal responsibility [MACR] below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level*”.⁹⁰

- Abolition of the death penalty: it is not just a degrading and inhumane sentence *per se*, but it consists of a degrading treatment when one is condemned to death, living their whole life in prison without knowing if and when the death sentence will be executed. No death sentence has in fact been carried out since 1988 in Kenya, and since 2003 the President has on several occasions commuted death sentence in life imprisonment; however, the death sentence still remains in the Penal Code as compulsory sentence for capital offences (murder, robbery with violence and treason). As the recently published report from states, “*another 13 countries [Kenya is among them] currently retain the mandatory death penalty but are regarded by the United Nations as “abolitionist de facto”, having not executed anyone for at least 10 years. It is important to recognise that in these countries the imposition of the mandatory death penalty still has many negative consequences for those on whom it is imposed, in particular their confinement in separate and inferior penal conditions, uncertain as to the future policy of government regarding their fate.*”⁹¹

- De-criminalization of petty crimes and the creation of alternative dispute resolutions/alternative measures to detention, to decongest correctional facilities: even though some alternative dispute resolutions are already provided by the law, there is the need to amend the Penal Code and include the option of a non-custodial sentence in default of payment of a fine for petty crimes. There is also a need, to start the process, to simplify and lighten the Penal Code, especially in regard to some controversial provisions, which criminalize unclearly defined behaviours with quite harsh sentences.⁹²

- Diversion: it is already a practice used in the system, to divert petty offenders and child offenders to alternative measures to detention, but a specific legal framework for it is still missing and is highly necessary, to give precise directions and to be more binding for the law enforcement agencies.

Law Enforcement and Criminal Justice Sector

- Enforcement of the Legal Aid Bill: this bill, which aims at guaranteeing legal representation to all the people in conflict with the law, has just been issued and its enforcement needs then to be pushed, since – with the institution of a Legal Aid Fund – it would provide legal assistance to accused people who are indigent citizens of Kenya, children, refugees, stateless people and victims of trafficking.

- Enforcement of the Bail and Bond Policy Guidelines and enforcement of the Sentencing Policy Guidelines: both

⁸⁹ Nandwa, W.H., *The Rights of a Child in Criminal Proceedings for Capital Offences in the Kenyan Juvenile System*, Nairobi 2016; Owiti, V.J., *The Child in the Criminal Justice Process: Revolutionizing the Kenyan Criminal Justice System to Make it More Child-Sensitive*, Nairobi 2016.

⁹⁰ General Comment No. 10 (2007) Children’s Rights in Juvenile Justice, Committee on the rights of the child, Forty-fourth session Geneva, 15 January-2 February 2007

⁹¹ United Nation Human Rights – Office of the Higher Commissioner, *Death penalty and the victims*, 2016, New York New York. Available at <http://www.ohchr.org/EN/NewYork/Pages/Resources.aspx>

⁹² An example among others: sections 162, 163 and 165, which punish “unnatural offences” and “indecent practices between males”, are not just debatable in the contents, but also use too vague and undefined expressions, leading to too much discretion in the interpretation and so in the application of the sentences (from five to twenty-years imprisonment).

these documents have recently been developed by the Judiciary and launched respectively in 2015 and 2016, with the purpose of giving precise directions to the Police and the Judiciary in the application of bail, bond and in the commitment of sentences. Hence, it is of crucial importance to push for the actual enforcement of these guidelines, in the view of pursuing their main objective: avoid discretion in the attribution of bail and bond, and in the sentencing for all the offences provided in the Penal Code for which the minimum sentence is not provided. It will help decongesting the correctional facilities – resolving to the payment of a reasonable bail/bond instead of custody and to the use of non-custodial measures and sentences – and in improving the perception that the public in Kenya has about the Judiciary, making it more accountable, reliable and therefore more friendly.⁹³

- Increase of resources and staff: staff capacity and resource constraints within the judiciary are among the main causes of undue and prolonged delays in the administration of justice in Kenya. This problem is both the cause and consequence of a high backlog of court cases, many of which are undetermined even after decades in court⁹⁴. A further investment in the recruitment of magistrates and prosecutors is quite essential.

- Information management: from the Police to the Court, throughout the whole proceeding. To allow the magistrates to take appropriate and fair decisions requires that all the information about the offender and the circumstances of the offence flow easily and are accessible and complete for an accurate analysis by the investigators and the magistrates. The reports from the Police, from Probation officers and from the Children Officers – in cases involving children – are of crucial importance and they need to be accurate and informative, in order to best equip the judicial officer for the sentencing. It also implies that the resources and the number of police officers, probation and children officers shall be adequate to the load of cases and information accessible and available for the officials involved in a case.

- Information technology system: linked to the previous point, an effective system of archiving files would avoid delays and cases of misplacement or disappearance of cases' files. At the moment, all the reports and files are hand-written by the police officers and by the magistrates, and are kept in the registries of the different agencies, with no computerised archive, representing another significant challenge and cause of undue delays for files that are, from time to time, lost, misplaced or that simply disappearing.

- Innovation in investigating methods: a lack of innovation in the investigating methods used to gather information and evidence on the criminal cases has been reported as quite a big challenge in the extent in which the main – and often only – instrument of building a case is the use of witnesses. Testimonies from witnesses, who are often the same people who reported a case and made the complaint, are used without the support of other searches for forensic evidence and without other modern techniques of interrogation and research, with the risk of unfair trials and also further delays due to the non-appearance of the witnesses to the hearing and the postponement of the hearings until the witnesses appear.

- Judicial training and specialization on children matters for children's magistrates: continuous training should be provided to judicial officers and should include a comprehensive course on the sentencing guidelines and process. In addition to that, magistrates, prosecutors and advocates who deal with children's issues should receive specific training on children's matters and ideally should deal only with children's matters, separate from the staff who instead deal with adults.

- Child friendly Courts: even though the Children Act provides that Children's Courts should be structures or rooms separate from the Ordinary Courts, it does not always happens, due to resourceful and infrastructural constraints. Interventions in the view of making the Courts where children are listened to and heard more child-friendly shall be done, to guarantee the principle of the best interest of the child and to make his/her experience in the criminal justice system the least traumatic possible.

- Age assessment: the matter of children mistakenly admitted in adults' facilities have been reported by some experts as a crucial raising issue for the guarantee of the best interest of the child. The main cause is the absence of identification documents or any documents that give an indication of their age when the children end up at the Court. In these cases, the Court may order a test for the age assessment, which must be done as reliably as possible and be ordered in the complete awareness that it poses, in itself, a great threat to the best interest principle. The risk of incurring a grave injustice as consequence of the misuse and inappropriateness of an age assessment test is in fact significantly high: in reliance on the test, a child could be charged as an adult, an adult could be tried as a juvenile, and also the victim in a

93 Kenya Judiciary, *Sentencing Policy Guidelines*, Nairobi, 2016

94 KNCHR, *Human Rights Baseline Survey Report*, 2016. Available at <https://goo.gl/qtFubo>

sexual offence case could be declared an adult. This leads onto the need to deepen the study of age assessment tools, to make them reliable and credible, accompany them with other procedures (not relying only on the tests) and advocate for legislation and precise guidelines on the use of the age assessment.⁹⁵

- Welfare of magistrates and advocates: it is a matter that needs to be taken care of, as well as the welfare of the people judged by these magistrates, and it actually guarantees a level of motivation and accuracy from the judicial officers that are essential in taking decisions and fairly fulfilling their duties. As a children's advocate who is researching on this matter has interestingly pointed out, magistrates – mostly the ones dealing with children issues – are particularly vulnerable to the risk of burn out (also called compassion fatigue). It has been referred to as secondary trauma, being the cumulative physical/emotional/psychological effect of continual exposure to traumatic or distressing stories/events, and of continually hearing about and dealing with cases where litigants have been physically and emotionally injured, sometimes deeply. Raising awareness about it and providing support to the officials who daily deal with criminal justice cases respond not just to the protection of their own rights and welfare, but also to the safeguard of the rights of the children and the people whose cases are managed by these officials: an ignored burn-out syndrome may hinder them from the adequate fulfilment of their extremely delicate duties.⁹⁶

Correctional facilities

- Administrative reforms: treasury allocation seems to be inadequate to meet the needs of the Prisons, Remands, the Borstal Institutions and YCTC, and the scarcity of resources is made more problematic by frequent delayed disbursement. The reviewed legislation should fully exploit opportunities for Prisons and Borstal Institutions to generate income that can complement treasury allocation, through farms and industries. Furthermore, an adequate allocation of funds should be provide for, in guaranteeing adequate food, bedding and clothing, clean water provision, and provision of adequate medical care all over the country.

- Expansion of the institutions where necessary and enhancement of the sanitary facilities: to address the main challenge of overcrowding, together with the suggested reform and intervention in terms of sentencing and legislation, an expansion of the existent facilities and the guarantee of adequate sanitary provisions within the facilities is direly needed.

- Specific support and rehabilitation programmes for vulnerable categories of prisoners and prisoners with special needs. In particular: the plight of children who accompany mothers to prisons needs to be taken care of with appropriate child friendly day-care units and adequate provision of clothing, bedding, sanitary products and necessities for the kids in all the women facilities around the country; people with physical disabilities have to have guaranteed access to their rights and friendly facilities; people with mental disabilities need to receive specific treatment or to be host in specific facilities; access to treatment and rehabilitation programmes for elder people, people with drug/alcohol abuse issues, HIV/AIDS positive, transgender inmates and those with special needs, needs to be addressed.

- Access to legal representation, rehabilitation programmes, counselling and quality education for all the prisoners and increasing the paralegal coverage from civil society.

- Proper classification of prisoners based on an accurate risk and needs assessment should be spread and carried out in all the facilities around the country, which should then be provided with the adequate resources and training for the staff.

- Actual application of the ban and prohibition of corporal punishment, a ban that is guaranteed by the Constitution and that has been included in the Prisons Act and in the main policies and regulations that guide officers all over the country. As this ban has become more and more entrenched in the legislation and the application of alternative measures of discipline more and more advocated for by the KPS, an extra effort should be done to avoid any transgression to this rule and to ensure that any violation is prosecuted.

- Guarantee of the right to be informed and to be listened to, both for inmates and officers: through the provision of equipped libraries, available resources and through the establishment of a structured and reliable complaints' system.

95 Mtai, C., *Age assessment tests as a tool for identifying children in the Justice System and its impact on application of the best interest principle*, Nairobi, 2016.

96 Dulo, E.A., *Compassion fatigue: the physical/emotional killer?*, Nairobi, 2016.

The role of a civil society organization can be very strong here, helping and supporting the KPS with structures and resources to spread information tools in all the facilities across the country.⁹⁷

- Advocacy and promotion of officers' rights and welfare: this can be done by improving housing, better remuneration and allowances, introducing incentives to boost officers' motivation and to improve their performances, and guaranteeing balanced staff relations especially between senior and junior staff.
- Provision of continuous training on human rights and on legal aid, both to inmates and officers. Also, in this case, the role of civil society organizations and non-state actors is crucial. While a tremendous effort has already been done in the recent years, both by the KPS and the civil society organizations, in providing training and paralegal and legal support to officers and inmates, this effort needs to be continuous and guarantee so that the training reaches all the officers and that paralegal and legal support are provided to all the needy inmates around the country.
- Enactment of an effective monitoring and reporting system, with the implementation of the best practice on internal compliance monitoring mechanism and tool, and its scaling up in all the custodial and detention facilities.
- Provision of clearly defined ToR and reporting structure for complaint officers, to make the monitoring and reporting system functional, reliable and known.

Human Rights Desk and Human Rights Officer

Finally, quite some recommendations came from the experts, inmates and officers interviewed specifically about the HRD and HRO, introduced for the first time in Kenyan correctional facilities in 2010.

The matters on which an HRO should focus go through almost the whole range of human rights enlisted in the UNSMR: from access to justice to a fair and human treatment within the facility. Great importance is also given to reintegration services, facilitating the inmates who are close to being released in their going back to the family/community, and to children rights, especially with regard to the Borstal Institutions, YCTC and Women Prisons. The HRO has to be clearly known by the inmates, easily accessible and, quite importantly, s/he is recommended to be not a uniformed figure or at least to be exempted by other duties than the ones related to human rights' training, monitoring and advocacy. As per these recommendations, one of the main functions of the HRO has to be training to the inmates and to all the other officers, to create awareness and sensitize everybody to the matter of human rights. Regarding the specific action of a HRO, as the crucial element of a monitoring and reporting system, the interviewees also recommend s/he gives rapid follow-up and provides them with solutions.

By the officers, the importance of advocating, not only for the inmates rights, but also for the officers' rights, was also strongly emphasized.

In the table below this last category of recommendations is reported, divided into who should be the HRO, how s/he should accomplish his/her functions and what s/he should specifically take care of.

⁹⁷ Various stakeholders, mainly the KNCHR, have already been working on this regard, making available boards, leaflets and books with the UNSMR and legal advices for the prisoners. This effort needs to be enhanced, with a collaborative intervention from different actors, in order to make this dissemination of material reaching all the facilities and all the inmates and officers.

Table L – Recommendations for Human Rights Desk and Human Rights Officer’s improvement

Who?	How?	What?
<p>HRD and at least one HRO in each station</p> <p>Civilian and not uniformed staff</p>	<p>Being clearly known and accessible always and to everybody</p> <p>Performing only HR related duties</p> <p>Being impartial and fair, and open to all the staff and the inmates, regardless of rank and status</p> <p>Keeping confidentiality</p> <p>Providing feedback and following-up reported HR issues</p> <p>Training all the other officers and the inmates on HR</p> <p>Sensitizing and creating awareness on HR, empowering inmates and staff</p> <p>Providing advice to other officers on HR issues</p> <p>Addressing directly the Officer in Charge</p> <p>Disposing of more resources form the Government (human resources, materials, stationery, office)</p>	<p>Access to justice (support in legal cases, appeals, etc.)</p> <p>Basic needs: food provision, beddings, water and sanitation, hygiene, clothing</p> <p>Health care</p> <p>Education for inmates</p> <p>Congestion</p> <p>Contact with families and external world</p> <p>Human Rights awareness creation</p> <p>Human Rights violations monitoring</p>

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APPENDIX I – THE BRITISH EXAMPLE OF MONITORING AND REPORTING IN CORRECTIONAL FACILITIES

Here are a few examples of findings concerning the expectations regarding “Complaints”, in the British mechanism of internal audit of the correctional facilities.

Report on HMP Stafford Prison, February 2016⁹⁸

Complaint boxes and forms were available on all wings, although some boxes were located in front of staff offices. During the previous six months, 755 complaints had been submitted, which was lower than at similar prisons. The quality of replies varied: many were polite, timely and focused, and offered apologies where appropriate, while others were dismissive and perfunctory. One particularly unhelpful reply concluded by telling the prisoner that if he had not been sent to prison in the first place he would have no cause to complain. However, 22% of complaints had been upheld. The senior management team analysed rudimentary monthly complaints reports but did not monitor complaints by protected characteristic. The deputy governor quality assured a sample of replies each month and addressed issues that consistently caused complaints.

Recommendations: Complaint boxes should be located away from staff offices to enable prisoners to submit complaints discreetly. All replies to complaints should be respectful and focused.

Report on HMP Forest Bank February 2016⁹⁹

In our survey, fewer respondents than at comparator prisons and that at the time of the previous inspection said that it was easy to make a complaint. The number of complaints submitted was similar to that at comparator prisons, and we found that access to complaint forms was good, with the full range of forms readily available on all wings. With the exception of health-related complaints, there was good monitoring of trends in complaints and a high level of managerial oversight to ensure quality control and to take action to address repeated issues. Complaints against staff had been investigated fully and disciplinary action taken when appropriate. Responses to complaints were timely, and the sample we reviewed had been courteous and addressed the issues raised.

Report HMP Moorland February 2016¹⁰⁰

There had been 904 complaints in the previous six months, which was half the number when we last inspected. Too many responses to complaints were late. Prisoners in our groups had little confidence in the complaints system, and in our survey, fewer prisoners than the comparator said that complaints were dealt with fairly or quickly. Some responses to complaints were good, but the majority we looked at, while courteous, lacked sufficient detail to explain the reasons for the response, and so build confidence in the system. While responses indicated that the complaint had been upheld, this was rarely stated explicitly, and apologies were often not offered when due. The prison did not publish statistics for upheld complaints, which might also have helped build confidence in the system. A 10% sample of complaints was quality checked by the business hub manager. There was some evidence that deficiencies were addressed, but this had not improved systemic problems.

98 <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2016/06/Stafford-Web-2016.pdf>

99 <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2016/06/Forest-Bank-Web-2016.pdf>

100 <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2016/06/Moorland-Web-2016.pdf>

NON-COMPLIANCE RECORD

(For completion by Area Manager's Office)

Area

HMP/YOI/RC/HQ Group:
(Delete as necessary)

Local Reference Number:

STANDARD:

Key audit baseline that is being notified as non-compliant:

Explanation of failure to rectify non-compliance (after second re-audit):

Summary of consequences / risks of non-compliance:

Action planned to resolve non-compliance:

Area Manager's signature:

Date submitted to Director:

This form must be copied to the Head of Audit and Corporate Assurance and the relevant prison. The prison must retain the copy.

The tool below is a form for Temporary Non Compliance. It is used when an agreement is found between the Area Manager and the Governor that compliance with a baseline cannot be achieved for a specific period of time.

NOTIFICATION OF TEMPORARY NON-COMPLIANCE

HMP/YOI/RC/HQ Group:
(Delete as necessary)

Local Reference Number:

STANDARD:
Key audit baseline that is the subject of the Temporary Non-Compliance:
Reason: Describe why the baseline requirements cannot be met
Risk assessment: As a result of this non-compliance what are the possible risks to: a. individuals b. the establishment/group c. the organisation as a whole

ANNEX B (4)

<p>Other actions:</p> <p>Outline compensatory actions to mitigate the risk of non-compliance</p>
<p>Date that temporary non-compliance will revert to full compliance:</p> <p>[Redacted]</p> <p>(No longer than 12 months from date of approval)</p> <p>GOVERNOR'S/HOG's SIGNATURE [Redacted]</p> <p>DATE [Redacted]</p>
<p>This Temporary Non-Compliance is</p> <p>[Redacted APPROVED] [Redacted NOT APPROVED]</p> <p>by the Area Manager / Director:</p> <p>REASON FOR APPROVAL / NON APPROVAL:</p> <p>NAME:</p> <p>SIGNATURE:</p> <p>DATE:</p>
<p><i>When complete and approved by the Area Manager/Director, this form must be copied to:</i></p> <p>The Head of Audit and Corporate Assurance, Room 313, Cleland House, London SW1P 2LN</p>

Finally, an alternative procedure can be used as a method to achieve the outcome required of a baseline.

NOTIFICATION OF ALTERNATIVE PROCEDURE

HMP/YOI/RC/HQ Group:
(Delete as necessary)

Local Reference Number:

STANDARD
1. Key audit baseline that is the subject of the alternative procedure:
2. Reason for alternative procedure:
3. Alternative procedure: Describe the alternative procedure and how it delivers the required outcome and/or manages the risk
4. Governor's/HOG's signature Date
5. This Alternative Procedure is supported by the Area Manager / Director Name: Signature: Date:

6. Comments on Alternative Procedure by policy lead:

Do you recommend that this Alternative Procedure should be approved?

YES

NO

Name:

Signature:

Policy Group:

Date

7. This Alternative Procedure is:

by the Area Manager / Director:

REASON FOR APPROVAL / NON APPROVAL:

Name:

Signature:

Date:

When complete and approved by the Area Manager/Director, this form must be copied to:

1. STANDARD POLICY HOLDER
2. The Head of Audit and Corporate Assurance, Room 313, Cleland House, London SW1P 2LN

APPENDIX II – THE INTERNAL COMPLIANCE MONITORING TOOL FOR PRISONS

EXAMPLE OF THE ICMT FOR THE WELFARE AND REHABILITATION SECTION

WELFARE AND REHABILITATION SECTION HIGHLIGHTS OF THE TEXT OF THE RELEVANT MANDELA RULES

Treatment

Rule 91

The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

Rule 92

1. To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.
2. For every prisoner with a sentence of suitable length, the prison director shall receive, as soon as possible after his or her admission, full reports on all the matters referred to in paragraph 1 of this rule. Such reports shall always include a report by the physician or other qualified health-care professionals on the physical and mental condition of the prisoner.
3. The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Rule 54

Upon admission, every prisoner shall be promptly provided with written information about:

- (a) The prison law and applicable prison regulations;
- (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
- (c) His or her obligations, including applicable disciplinary sanctions; and
- (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.

Rule 55

1. The information referred to in rule 54 shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided.
2. If a prisoner is illiterate, the information shall be conveyed to him or her orally. Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs.
3. The prison administration shall prominently display summaries of the information in common areas of the prison.

Rule 56

1. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.
2. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present.
3. Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power.
4. The rights under paragraphs 1 to 3 of this rule shall extend to the legal adviser of the prisoner. In those cases where neither the prisoner nor his or her legal adviser has the possibility to exercise such rights, a member of the prisoner's family or any other person who has knowledge of the case may do so.

Rule 57

1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.
2. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner.

A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.

3. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.

Contact with the outside world**Rule 58**

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:
 - (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
 - (b) By receiving visits.
2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

Rule 59

Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.

Rule 60

1. Admission of visitors to the prison facility is contingent upon the visitor's consent to being searched. The visitor may withdraw his or her consent at any time in which case the prison administration may refuse access.
 2. Search and entry procedures for visitors shall not be degrading and shall be governed by principles at least as protective as those outlined in rules 50 to 52.
- Body cavity searches should be avoided and should not be applied to children.

Rule 61

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law.
- Consultations may be within sight, but not within hearing, of prison staff.
2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.
 3. Prisoners should have access to effective legal aid.

Rule 62

1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

Rule 63

Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the prison administration.

Books**Rule 64**

Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Notifications**Rule 68**

Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. The sharing of prisoners' personal information shall be subject to domestic legislation.

Rule 69

In the event of a prisoner's death, the prison director shall at once inform the prisoner's next of kin or emergency contact. Individuals designated by a prisoner to receive his or her health information shall be notified by the director of

the prisoner's serious illness, injury or transfer to a health institution. The explicit request of a prisoner not to have his or her spouse or nearest relative notified in the event of illness or injury shall be respected.

Rule 70

The prison administration shall inform a prisoner at once of the serious illness or death of a near relative or any significant other. Whenever circumstances allow, the prisoner should be authorized to go, either under escort or alone, to the bedside of a near relative or significant other

Education and recreation

Rule 104

1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterate prisoners and of young prisoners shall be compulsory and special attention shall be paid to it by the prison administration.
2. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

Rule 105

Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners.

Social relations and aftercare

Rule 106

Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

Rule 107

From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.

Rule 108

1. Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.
2. The approved representatives of such agencies shall have all necessary access to the prison and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his or her sentence.
3. It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

Exercise and sport

Rule 23

1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.

APPENDIX III – The Internal Compliance Monitoring Tool for Probation Hostels¹⁰¹

Example of the ICMT for the Rehabilitation and Reintegration Programmes

INTERNAL COMPLIANCE MONITORING TOOL - PROBATION HOSTELS								
HEALTH								
AREA	ELEMENTS	RESULT			CAUSE OF NON-COMPLIANCE	ACTION PLAN	RESPONSIBLE PERSON	DEADLINE
		MET	PARTLY MET	NOT MET				
HEALTH CARE	Are all probationers receiving adequate medical care, both preventive and remedial?				PARTLY MET	NOT MET		
	Does it include dental, ophthalmological and mental health care?							
	Are there appropriate health facilities within the hostel with pharmaceutical products?							
	Are all probationers examined by a physician after admission, who identifies physical and mental conditions requiring medical attention?							
	Does the hostel have immediate access to medical facilities in case of emergency?							

101 As at November 2016, the ICMT for Probation Hostels is a draft and is being under discussion and revision by the Probation Department and the Project's partners, under the lead of CEFA.

	Is every probationer who is ill or complains or shows physical or mental difficulty promptly examined by a medical officer?						
	Are probationers suffering from mental illnesses transferred to specialized institutions?						
	Are medicines administered only for purpose of necessary treatment with the consent of the probationer?						
	Are medicines never used as a mean of coercion or punishment?						
	Are probationers never used as medical experiment?						
NOTIFICATION OF ILLNESS, INJURY AND DEATH	Is the family or guardian of the probationer immediately informed of the state of the health and of any injury or death?						
	In case of death, is the nearest relative allowed to inspect the death certificate, see the body and decide of the method of disposal of the body?						
	In case of death, is there an independent inquiry carried out inside the hostel?						
	Are probationers informed at the earliest possible time of the death, serious illness or injury of any relative and given the opportunity to attend funeral or to see a critically ill relative?						

This publication is part of the research project “Strengthening Human Rights in Correctional Facilities in Kenya”. The project is led by the European Committee for Training and Agriculture (CEFA), an Italian non-governmental organization, in partnership with other states and other stakeholders. The overall objective is to contribute to the eradication of all forms of human rights violations within detention and custodial facilities in Kenya, strengthening human rights defenders and national security institutions in promoting structural reforms within the detention facilities system, for the compliance and enforcement of the Bill of Rights enshrined in the Constitution of Kenya.

Hence, this report is carried out to provide evidence based recommendations on human rights’ protection and violations’ prevention and to provide facts to develop strategies, action plans, as well as monitoring and reporting systems. The main target audience includes policy makers, institutional actors, NGOs and practitioners. This study seeks to contribute to the implementation of human rights standards within the correctional system in Kenya. Being active in the African continent, the International Juvenile Justice Observatory (IJJO) publishes this report with the aim of sharing its findings and knowledge about the functioning of the criminal justice and correctional system in Kenya as well as presenting the situation of human rights within the system, as basis for developing best practices and new international synergies.



EUROPEAN UNION

With financial support from the EU Delegation in Kenya,
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