

KENYA

Prisons: Deaths due to torture and cruel, inhuman and degrading conditions

“Excessive force is used in our prisons....Some authorities believe in inflicting

the highest level of punishment, even for very slight offences.”¹

“Prison conditions in Kenya are worse than in other African Countries.”²

Introduction

The government of Kenya is failing to protect the lives of Kenyans in its custody, allowing scores to die as a result of torture, ill treatment and cruel, inhuman and degrading conditions of detention. Official figures for deaths in prisons are scarce, but in October 1995 a government minister stated that more than 800 prisoners had died in the first nine months of the year. In 1997 at least 630 prisoners reportedly died, the majority from infectious diseases. Information about the conditions in Kenyan prisons is limited because access to prisons is denied or severely restricted. Human rights non-governmental organizations (NGOs), prisoners, doctors

¹ Ali Korane, Nyeri District Commissioner, *Daily Nation* 21 September 2000.

² Justice Samuel Ojuk, National Chairman of the Community Service Orders Committee, *Daily Nation* 1 April 2000. The Committee was set up under the 1999 Community Service Orders Act which allows for non-custodial sentences for minor and first offenders.

and members of the judiciary have all spoken out and called for an end to torture and improvements in prison conditions. Amnesty International is calling on the Kenyan government to honour its international obligations to end all torture in Kenyan prisons and to improve conditions.³

1. Deaths in prisons

Some Kenyan prisoners have been killed while attempting to escape or have died as a result of torture by prison officers. At least 10 prisoners died in prisons as a result of torture this year. In September, six prisoners, Peter Loyara Lomukunyi, Peter Kolini, John Nyoro Njuguna, Julius Mungania, Peter Ngurushanaon and James Irungu Ndugo, on death row at King'ong'o prison, Nyeri, Central Province, died during an escape attempt. The police and the Commissioner of Prisons, (who is in charge of the prison service under the Minister of Home Affairs), both began investigations into these deaths. The initial police report stated that they had been shot by prison officers to prevent their escape. However, prison officers alleged that the prisoners had died as a result of falling from the eight-metre high perimeter fence. A post mortem stated that none of the bodies had bullet wounds and gave the cause of death as falling from a height. Their bodies were then buried, reportedly either without the knowledge of their families or after pressure had been put on the families by the authorities. The Attorney General ordered an inquest. Human rights groups and others alleged that the prisoners had been beaten to death and that the authorities were attempting a cover-up. A second post mortem was carried out for the families, after the bodies were exhumed, with the assistance of medical and human rights organizations,

³ In 1997/1998 less than 1.3 billion shillings (US\$ 16,752,577.00) went towards management of penal institutions. In the period 1998-1999 that amount has increased to 2.4 billion shillings (US\$ 30,927,835.00).

attended by a forensic pathologist representing Amnesty International. Medical evidence obtained indicated that the bodies had been subject to repeated blunt trauma, injuries that were not consistent with a fall. A report by the then Commissioner of Prisons, Edward Lepokoiyot, had not been made public at the time of writing, and no prison officers had been suspended from duty pending investigations.

2. Torture and ill-treatment

Torture and ill-treatment appear to be used indiscriminately in Kenyan prisons to instil discipline. Prisoners are reportedly beaten if they do not obey the orders of prison officers or breach prison rules. A prison officer at Langata Women's Prison stated that "whipping, punching and slapping are often used as disciplinary measures".⁴ In March 2000 Sophia Dolar, Pauline Wanjiru and Ester Wairimu were amongst 11 human rights activists who were arrested, charged with unlawful assembly and held for five days in Nakuru Prison, Rift Valley Province. Upon arrival the women were forced to strip naked in full view of other prisoners and jeering prison guards. When interrogated they were beaten with sticks if they failed to address the prison guards as "madam". The women were held in a large cell that already held 39 women, many of whom were sick and suffering from diarrhoea. Whenever a prison guard entered the overcrowded and dirty cells, the women were made to squat in rows and on one occasion when they refused to eat a meal, because the food had not been cooked properly, they were beaten with canes and forced to eat the food. There have been no reports of an official investigation into their allegations of torture.

On 30 January 2000, the Commissioner of Prisons dismissed as hearsay allegations that prisoners were being tortured in Kenyan prisons.

However, the United Nations (UN) Special Rapporteur on torture stated

⁴ *Daily Nation*, 17 July 2000.

that the use of torture by law enforcement officials in Kenya was widespread and systematic. He recommended that: "The government should ensure that all allegations of torture and similar treatment are promptly, independently and thoroughly investigated by a body capable of prosecuting perpetrators".⁵ Impunity is a major concern in Kenya. The few investigations into allegations of torture, deaths in prisons or possible extrajudicial executions by the security forces appear to be summary and the evidence available from many investigations not sufficient to result in a prosecution. In cases where inquests have been ordered to establish the cause of death these have been delayed over several years.

3. Prison Conditions

Prison conditions in many prisons in Kenya amount to cruel, inhuman and degrading treatment. Hundreds of prisoners die each year, some as a result of torture by prison officers, the majority from infectious diseases resulting from severe overcrowding, insanitary conditions, shortages of food, clean water, clothing, blankets and adequate medical care. In September 2000 the Nyeri District Commissioner, Ali Korane, stated: "Our prisons are in very poor conditions. In all the provinces I have served as an administrator, all the facilities are pathetic. These harsh conditions end up hardening criminals rather than rehabilitating them".⁶ In these conditions, infectious diseases such as diarrhoea, typhoid, tuberculosis and HIV/AIDS spread easily. Prison Reform International reported in June 2000 that 90 prisoners die each month in Kenya.⁷

⁵ Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1999/32. Addendum Visit of the Special Rapporteur to Kenya in September 1999.1 March 2000.

⁶ *East African Standard*, 20 September 2000

⁷ *Daily Nation*, 7 June 2000

A. Overcrowding

Kenyan prisons hold as many as three times the number of inmates they were designed for. There are 78 jails in Kenya which were designed to accommodate 15,000 inmates. The Commissioner of Prisons claims that they now house 35,000 while other reports suggest that the actual number is nearer 50,000. Kodiaga Prison, Nyanza Province, for example, in January 2000 was holding 600 more prisoners than its capacity of 800. Much of the overcrowding is due to the large number of people held on remand, many of whom are unable to raise the money needed to obtain bail, and who often wait up to three years for their case to come to court. Some prisoners on capital charges who do not qualify for bail have reportedly been held for over five years, awaiting trial. The length of time taken to process appeals, particularly for death penalty cases which can be up to seven years, also contributes to overcrowding.

B. Shortages of food, clean water and clothing

There are frequent reports of shortages of food, clean water and adequate clothing. The food in Kenyan prisons is extremely poor. The portions are small, of poor nutritional value and often badly cooked. On 11-12 June 2000 over 200 inmates at Rumuturi Prison, Rift Valley Province, rioted over a food shortage. One prisoner died and scores were injured after prison officers intervened to end the riot. The prisoners were reportedly protesting about being starved by a prison officer. Four inmates suspected to have been leaders were brutally beaten and locked up in secluded cells. One prisoner had died the day before from dysentery. Prisoners complained in October 1999 that food rations were halved to 250 grams per day and three quarters of a pint of porridge in Kodiaga Prison, Nyanza Province in order to cut prison costs.

Water shortages are regularly reported. In February 2000 the Nyeri Water and Sewerage Company disconnected the water to King'ong'o Prison, Central Province because the government had failed to pay their water bill. No running water meant toilets could not be flushed

and nothing could be cleaned. It was disconnected again in September. In October 1999 a magistrate was so concerned about conditions in Kapsabet Prison that he publicly threatened to release all prisoners. Severe overcrowding and the disconnection of the prison's water supply, forcing prisoners to use untreated water from local rivers, had resulted in an outbreak of infectious diseases. In January 2000 the prison was still being described as unfit for humans.

Daily Nation 19.11.99

According to reports, inmates are only provided with one set of uniforms and no extra underwear. The uniforms are generally in a very bad condition and often unsuitable for the climate. In Marsabit Prison, Eastern Province, no jumpers are issued and there are reports that deaths due to pneumonia are common. Judges visiting Kamiti Maximum Security Prison, Nairobi, in February 2000 were shocked to find prisoners almost naked.

C. Medical care

Prisoners have limited access to medication. Most prison medical units have few or no resources and prisoners or their families are reportedly often asked to pay for any medical treatment. When medication is given it is often inadequate, such as temporary painkillers for injuries requiring more intensive treatment. Very few prisons have a doctor and most instead rely on the District Medical Officer, who visits occasionally, and untrained medical orderlies. Private doctors who attempt to treat prisoners frequently report difficulties in gaining access to their patients. The law allows registered medical practitioners to visit their patients. However, the Officer in Charge of the Prison usually insists on a court order to allow the doctor to examine the patient, which can take up to a week to obtain, and even then the doctor may be refused access unless the prison doctor is available which, given there are very few prison doctors, compounds delays.

Access to hospital treatment is restricted by prison officers who reportedly either refuse to take very sick inmates to hospital or do so, so late, that the inmates are often extremely ill or dying by the time they arrive. The persistent coughing of a defendant during a hearing in the Mombasa High court in December 2000 caused a judge to raise concerns about the health of prisoners in Shimo la Tewa prison. The prisoner had been refused hospital treatment by prison officers on security grounds. Prisoners at Shimo la Tewa prison complained of a lack of essential drugs at the prison and said that most prisoners who needed hospital treatment end up dying at the prison's dispensary which was unable to treat chronic diseases.⁸ Once in hospital, the prisoners are chained to the bed. Hospital doctors note that prisoners usually come to hospital to die. In May 2000 two members of the *Mungiki* religious sect on remand were forcibly removed by prison officers from Nyeri Provincial General hospital, Central Province, after they had been admitted by the duty doctor

⁸ *Daily Nation*, 6 December 2000.

because of the seriousness of their injuries. They were taken to the dispensary in King'ong'o Prison which reportedly had no drugs or facilities to treat their injuries.

D. Access to prisons and prisoners

Kenyan human rights NGOs are not allowed to visit prisons, despite the fact that the law does not prohibit access by members of civil society. International NGOs have also been refused access to prisons and in September 1999 the UN Special Rapporteur on torture was refused permission to visit Kamiti Maximum Security Prison, Nairobi, despite his formal request, which had been accepted by the Commissioner of Prisons. Magistrates are supposed to visit prisons regularly, but rarely do so. The Special Rapporteur noted in his report that, according to official records, magistrates had visited Nakuru Prison, Rift Valley Province twice in four years, on 23 October 1995 and 3 December 1998.

Lawyers, doctors and relatives of prisoners have all reported problems in gaining access to prisoners, which is heavily regulated. In January 2000 a team of doctors from the Kenya Medical Association (KMA) were barred from entering Kodiaga Prison by armed riot police. The doctors were responding to reports by prisoners of deaths, torture, outbreaks of diseases, hunger, lack of medical attention and deliberate infection of HIV/AIDS. The doctors were planning to examine prisoners, assess the medical conditions and distribute medical supplies. Dr Buteyo, the then chair of KMA, stated that "We will continue to press for independent inspection of prison facilities all over the country by health professionals without necessarily having to book long appointments".⁹ The District Commissioner denied that conditions in Kodiaga Prison were poor. There are also reports of prison guards demanding money in exchange for legitimate visitation rights. On 6 July 2000 the Rift Valley Prisons Commander publicly acknowledged the problem and urged people who were having problems visiting prisons to report to him the corrupt prison officers.¹⁰

E. The conditions of prison officers

⁹*Daily Nation*, 23 January 2000.

¹⁰The UN Special Rapporteur on torture, in his reports, recommends that: "A general opening up of the prison system is required, in a way that would welcome rather than deter access by civil society. In particular, impediments to access by lawyers, doctors and family members should be removed. Civil society should be brought in as partners to help humanize an under-resourced and overpopulated system".

The conditions of prison officers are also very poor.¹¹ Their salaries are low, their accommodation is often cramped with little privacy, if the prison water supply is cut off they have to use contaminated water, too and the food they have to eat is little better than the prisoners'. There are reports that prison officers sell soap, cigarettes, blankets and water to prisoners to augment their salaries.

4. Government action

In response to national and international pressure the government introduced the Community Service Orders Programme in July 1999 in an attempt to reduce overcrowding . Since then over 20,000 minor offenders have reportedly been given non-custodial sentences. A workshop was organized in May 2000 by the Ministry of Home Affairs, and the KMA Standing Committee on Human Rights, for members of the justice and criminal agencies, doctors and human rights activists, after discussions with the KMA following the refusal of entry to Kodiaga prison in the beginning of this year. On 1 October 2000 the government introduced a Bill to set up a Kenya National Committee on Human Rights. The Committee would have the right to visit prisons and other places of detention. However, Commissioners nominated by Parliament, will be appointed by the President which will limit their independence. In November 2000 an Assistant Minister announced in Parliament that the government was supplying beds to prisoners and that they had already been given mattresses. This statement was met with derision by Members of Parliament who noted that the reality in prisons was very different.

5. Conclusions

Amnesty International recognizes that the Kenyan authorities have a duty to protect the public against violent crime. Amnesty International also recognizes the very real budgetary limitations on the resources in Kenya. However, the organization also notes the failure of the Kenyan government to acknowledge and put an end to the continuing torture, ill-treatment and cruel, inhuman and degrading conditions in Kenyan prisons. The government has a responsibility to protect the lives of all Kenyans, particularly those who are in custody, as they and their health and well-being is entirely in the control of agents of the state, and to ensure prison conditions meet international human rights standards. Without adequate post-mortems, prompt, thorough and impartial investigations and the bringing to justice of those responsible in every case, torture and deaths in prisons will continue. All prison personnel must be made aware that they cannot violate human rights with impunity. The failure to tackle conditions in Kenyan prisons is perpetuating grave human rights violations, affecting the lives of thousands of Kenyans.

6. Recommendations

1.The government should ensure that domestic law and practice conform fully with international human rights treaties ratified by Kenya as well as international human rights standards, in particular, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Standard Minimum Rules for the

¹¹ The UN Special Rapporteur on torture *said poverty contributed to the practice of torture... many law enforcement officials were underpaid, which eroded sympathy for their charges. United Nations press release, 26 October 00.*

treatment of Prisoners.

2. Any prison officers implicated in acts of torture or ill-treatment against prisoners should immediately be suspended from duty pending a full inquiry. Staff members found responsible for torture or ill-treatment should be brought to justice.

3. Immediate steps should be taken to address overcrowding and poor hygiene. All prisons should be equipped to provide adequate medical care and, when necessary, sick prisoners should be transferred to hospital without undue delay.

4. All detention centres and prisons should be opened to allow access for civil society. In particular, impediments against access by lawyers, doctors and family members should be removed. National and international human rights and medical groups should be allowed to visit and inspect prisons. Inspectors should have unrestricted access to all relevant records and be authorized to receive and deal with detainees' complaints. The inspection body should prepare detailed reports of each visit, particularly about overcrowding and the health of the detainees, and should ensure that appropriate action is taken to remedy all shortcomings relating to the treatment of detainees and prisoners. The inspection body should make recommendations for improving conditions of detention in accordance with the UN Standard Minimum Rules for the

Treatment of Prisoners. These should be acted upon within a reasonable period.

WHAT YOU CAN DO TO STOP TORTURE IN KENYAN PRISONS:

1. Write to:

President, Daniel arap Moi; the Minister of Home Affairs, Mr Noah Katana Ngala; the Attorney General, Mr Amos Wako; and the Commissioner of Prisons, Mr Abraham Mariach Kimakil:

- ◆ expressing concern about deaths in prison as a result of torture and cruel, inhuman and degrading conditions;
- ◆ calling for immediate, independent, impartial and thorough investigations into allegations of torture and ill-treatment in prisons and other places of detention, urging that those responsible are brought to justice;
- ◆ urging that national and international human rights and medical groups be allowed access to Kenyan prisons.

Addresses to write to:

President Daniel arap Moi, PO Box 30510, Nairobi, Kenya, fax:+254 2 210 150.

Mr Noah Katana Ngala, Minister of Home Affairs, *PO Box 30520, Nairobi, Kenya*, fax:+254 22 18 811.

Mr Amos Wako, Attorney General, PO Box 40112, Nairobi, *Kenya*, fax:+254 2 211 082.

Mr, Abraham Mariach Kimakil, Commissioner of Prisons, PO Box 30175, Nairobi, *Kenya*.

2. Send a copy of your letters to the Kenyan press:

Mr Wangethi Mwangi, the Editor, The Daily Nation, PO Box 49010, Nairobi, *Kenya*,
fax:+254 213 946.

Mr Wachira Waruru, the Editor, The Standard, PO Box 30080, Nairobi, *Kenya*,
fax:+254 2 337 697.

KEYWORDS: PRISON CONDITIONS¹/ TORTURE/ILL-TREATMENT¹ / DEATH
IN CUSTODY / POST MORTEM¹ / MEDICAL TREATMENT / PRISON STAFF /
RECOMMENDED ACTIONS