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Role of Independent Penal Monitoring Bodies in Promoting Best Practices in Correctional Institutions within Kisumu County, Kenya

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Abstract

A prisoner's right to complain has long been established under international human rights law, as reflected in the United Nations Standard Minimum Rules for the Treatment of Prisoners of 2015. This research article examines inmates' perspectives and experiences regarding the external complaint mechanisms provided by the Persons Deprived of Liberty Act (2014). Primary data was collected from 362 inmates using a semi-structured questionnaire, interviews with human rights officers and officers in charge, and focus group discussions with family members. A descriptive research design enabled quantitative data to be analyzed to generate tables and figures and qualitative data through content analysis grouping similar data content per the research themes. The study found that inconsistencies in communication and education at admission led to varying levels of inmate awareness about their right to file complaints with independent penal monitoring bodies. Additional challenges were the inability to access writing materials, fear of retaliation, and limited resources, which hindered their full participation in the complaint resolution process. This research recommends intensifying inmates' awareness of their right to lodge complaints externally, consistently providing writing materials, simplifying the complaint appeals process to facilitate inmates' utilization, and strengthening engagement with the Kenya National Commission on Human Rights and the Commission on Administrative Justice, for inmates seeking recourse promoting better inmate care, transparency, respect for human rights, and fostering best practices in correctional institutions.

Keywords: *External Complaints, Kisumu County, Independent Penal Monitoring Bodies, Inmates, Correctional Institutions*

1. Introduction

Prisons worldwide are established and funded by governments to confine sentenced individuals, uphold public safety, and facilitate reintegration (Nabanoba, 2019). The recognition of human dignity for prisoners, prohibiting torture and inhumane treatment, originates from the Universal Declaration of Human Rights (1948), reinforced by the International Covenant on Civil and Political Rights and the Convention against Torture (Lagat, 2018).

Many countries have introduced independent monitoring bodies to prevent torture and ill-treatment in prisons to support international standards (Aizpurua & Rogan, 2021). These



bodies conduct visits, inspect detention conditions, interview prisoners privately, investigate complaints, and collaborate with stakeholders. They also make improvement recommendations and publish reports to foster transparency and accountability (van der Valk & Rogan, 2021).

In Kenya, prison monitoring practices have evolved. Initially, imprisonment and harsh conditions were used against political dissenters. However, in the mid-1990s, civil society organizations and media began to monitor prison conditions. The "Open Door Policy" in 2002-2003 aimed to improve transparency, though challenges remain due to limited legal frameworks (Randazzo, 2016).

Key monitoring bodies in Kenya include the Kenya National Commission on Human Rights (KNCHR) and the Commission on Administrative Justice (CAJ). The KNCHR conducts prison inspections, advocates for inmates' rights, and proposes decongestion measures (KNCHR, 2011), while the CAJ addresses maladministration through complaint handling and alternative dispute resolution (CAJ, 2019). Both institutions have advanced best practices in the correctional system by training prison officials on humane treatment standards (KNCHR, 2018; CAJ, 2019).

Statement of the Problem

In Kenya, prison monitoring practices have evolved from punitive measures against political dissenters to more transparent oversight, particularly with the involvement of civil society organizations and the media since the 1990s. The introduction of the "Open Door Policy" in 2002-2003 aimed to enhance transparency, but challenges persist due to weak legal frameworks and persistent institutional barriers. Key monitoring bodies such as the Kenya National Commission on Human Rights (KNCHR) and the Commission on Administrative Justice (CAJ) have played a pivotal role in advocating for inmates' rights, conducting prison inspections, and promoting humane treatment practices. Despite their efforts, the 2022 Kenya Human Rights Report reveals ongoing issues like inadequate food, poor living conditions, limited access to legal counsel, and corruption, which continue to undermine the effectiveness of prison reforms.

This study explores the perspectives of prisoners, prison officials, and inmates' family members regarding the complaint resolution processes led by these monitoring bodies. By assessing challenges and best practices, it aims to identify areas for improvement to create a more humane correctional environment.

1.1 Research Objectives

- i. To establish the nature of complaints in correctional institutions
- ii. To determine the accessibility of the complaint resolution process in correctional institutions
- iii. To assess the level of satisfaction of inmates with external complaints procedures in correctional institutions



2. Literature Review

The Association for the Prevention of Torture (2015) emphasizes that effective handling of prisoner complaints should adhere to principles such as availability, accessibility, confidentiality, safety from retaliation, effectiveness, and traceability. These principles are essential for ensuring that complaints are managed in a way that is both protective and empowering for prisoners. It also allows interested parties to file complaints on behalf of prisoners. It suggests alternative dispute resolution mechanisms like mediation could address complaints unrelated to severe mistreatment or human rights abuses. However, despite these guidelines, practical application in many prison systems remains inconsistent, notably where resources or robust oversight mechanisms are lacking.

Kirs (2021), in a handbook for National Preventive Mechanisms, highlights the value of efficient complaint mechanisms as critical not only for addressing individual grievances but also for exposing systemic issues within the prison environment. Such mechanisms can aid in developing institutional solutions, foster positive relationships between prisoners and staff, and provide inmates a structured outlet for their concerns. Yet, while Kirs notes the theoretical significance of these mechanisms, the literature offers limited insight into the practical barriers prisoners face in accessing these avenues, particularly in systems where literacy or social support may be low and intimidation by staff can deter usage.

Banwell and Tomczak (2022) assert that complaints are among the most accessible avenues for prisoner participation, with institutions like ombudsman offices relying on individual prisoner-initiated cases. However, their study also underscores how prisoners' complaints are profoundly shaped by social and material factors, such as prison conditions and the availability of complaint forms, which may inhibit the effective use of these mechanisms. Their analysis of historical responses, such as Canada's Office of the Correctional Investigator established after prisoner riots and England and Wales Prison and Probation Ombudsman formed following the 1990 Woolf report, illustrates how frustration over inadequate complaint mechanisms can lead to significant unrest and violence. Nevertheless, the literature remains largely silent on how the success of these mechanisms varies across different demographic groups within the prison population or the barriers specific to marginalized inmates.

Kenya's complaint procedures within prisons are governed by the Persons Deprived of Liberty Act (2014), which permits formal complaints to be filed with the Commission on Administrative Justice (CAJ) or the Kenya National Commission on Human Rights (KNCHR). The KNCHR, under the Kenya National Commission on Human Rights Act (2011), receives complaints in both oral and written formats, promising prompt investigation and resolution. Similarly, the CAJ handles complaints against public institutions and offers several submission channels, including electronic platforms and physical locations across Kenya (Commission on Administrative Justice, 2020). However, while these bodies theoretically provide accessible avenues for prisoner complaints, there is limited research examining the ease with which prisoners, particularly those without external support, can navigate these systems. Additionally, few studies have assessed the efficacy of these external mechanisms in mitigating abuses or achieving resolution, which may weaken the trust of prisoners in these processes.

Existing literature highlights the importance of external complaint mechanisms as a safeguard for prisoners' rights, yet it seldom addresses prisoners' real-world experiences with these mechanisms. The emphasis has primarily been on internal complaint procedures, overlooking the role of external bodies in protecting prisoners' dignity. This gap points to a critical need for research examining the practical accessibility,



effectiveness, and responsiveness of external complaint systems from the perspective of prisoners and other stakeholders. Additionally, disparities in the application and accessibility of these external procedures across various prisons and prisoner demographics remain underexplored. These gaps underscore the importance of this study, which seeks to gather insights from prisoners, prison officials, and inmates' family members on their perspectives and experiences with the complaint resolution processes managed by independent penal monitoring bodies, thereby contributing to a more nuanced understanding of how these systems operate in practice.

2.1 Theoretical and Conceptual Framework

This study is anchored in the due process criminal justice model and rational choice theory. Each framework provides a unique analytical lens for examining complaints resolution processes and inmates' experiences within the prison system.

The rational choice theory posits that individuals choose the option that maximizes their benefits while minimizing costs. In the context of prison complaints processes, inmates face significant barriers when deciding to file complaints, including fear of retaliation, bureaucratic hurdles, and limited access to complaint mechanisms. Rational choice theory helps illuminate why prisoners may hesitate to engage with these processes, as they weigh the potential risks against the perceived benefits. This framework is critical in understanding the decision-making behaviors of inmates who may opt not to report abuse or mistreatment due to possible consequences.

Due Process Theory emphasizes procedural fairness and the importance of safeguarding individual rights within the justice system. This theory underscores principles such as the right to a fair and impartial process, access to legal representation, and protection against cruel, inhumane, or degrading treatment. Within the complaints resolution processes in Kenya's prisons, due process theory provides a lens for examining whether inmates are adequately informed about their rights and the available grievance mechanisms. Given the importance of procedural fairness, the study assesses how inmates are made aware of their rights and whether the complaints process ensures fair treatment, reinforcing the need for transparency and accountability in correctional facilities.

3. Methodology

This study adopted a descriptive research design in planning, collecting, measuring, and analyzing the data. The target population encompassed three stakeholder groups: 6,737 inmates, 1,253 prison staff, and 735 family members of inmates from Kisumu and Kibos Maximum and Medium Prisons in Kisumu County, Kenya. These diverse stakeholders offer unique insights: inmates provide first-hand experience and hidden issues within correctional facilities, prison staff contribute operational insights, and family members highlight the broader impact on incarcerated individuals and their loved ones. The total study population was 3,850 respondents. Purposive sampling was used to select four officers in charge of prisons, four human rights officers from prison institutions, and 10 inmates' families. The inmate sample size was calculated using a formula by Israel (2009) $n = N / (1 + N(e * e))$ to derive a sample size of 362 inmates.

Data was collected using three instruments: a semi structured questionnaire, an interview schedule, and a focus group discussion guide. The researcher administered



the questionnaire to the inmates while key informants participated in the study through interviews and focused group discussions.

To ensure the reliability of the research instrument, the researcher carried out a pilot test on a selected sample of 37 inmates from Kakamega Main Prison, which was 10% of the total population sample, as advised by Creswell (2017). Clear and detailed instructions were provided to the participants to ensure a standardized approach to completing the research instruments. Furthermore, the researcher employed Cronbach's alpha to ensure internal consistency and assess the reliability of the research instruments.

Quantitative data were analyzed to generate percentages and frequency distributions. Qualitative data were examined through content analysis, grouping similar data according to research themes. Findings were summarized, conclusions drawn, and recommendations provided.

The researcher obtained informed consent from each respondent, informing them of their voluntary participation in the study. To ensure confidentiality, the researcher did not collect names or personal identifiers that could compromise privacy. The Masinde Muliro Directorate of Postgraduate Studies approved the research, and the National Commission for Science, Technology, and Innovation issued a research permit. Additionally, the researcher sought permission to access prison institutions from the Regional Commander of Prisons office in Kisumu

4. Results

The majority of inmates in the study were young, with 61.32% aged 35 or younger, and 41.26% had served less than five years, indicating many were petty offenders. Most inmates had low education levels, with 47.85% having only completed primary school. In terms of prison work, 42.69% worked on the prison farm, and 57.88% had no special assignments, although some held roles such as assistant instructors, teachers, pastors, and trustees. Statistical analyses revealed significant associations between age, education level, and engagement with monitoring bodies. Younger inmates (26–35 years) were more proactive in filing complaints, while those with higher education showed greater awareness of their rights. Furthermore, inmates with special assignments were more engaged with monitoring bodies, likely due to increased exposure and confidence in using available complaint mechanisms. These findings suggest that age, education, and specific prison roles influence inmates' likelihood to engage with complaints and monitoring bodies.

A majority of respondents (62%) agreed or strongly agreed that complaints can be filed with the Commission on Administrative Justice (CAJ) and the Kenya National Commission on Human Rights (KNCHR), though 16% disagreed, and 21% were neutral, suggesting some uncertainty about the process. While 58% acknowledged their right to file complaints, 22% disagreed, indicating a gap in awareness of their rights. Most respondents (59%) believed they could submit complaints in writing, but 22% disagreed, and 19% were unsure. Over half (53%) were aware that complaints could be written on their behalf, but 23% disagreed. Access to writing materials was limited, as only 30% agreed that pens and materials were provided, with 46% neutral and 24% disagreeing. Additionally, while 52% agreed that complaints could be written in English or Kiswahili, 26% disagreed, highlighting potential language barriers or misunderstandings.



Qualitative responses highlighted the crucial role of paralegals in correctional institutions, who help bridge the gap for illiterate inmates by assisting with the documentation of appeals and guiding them in writing complaints. Many inmates, however, preferred to make complaints orally. Responses also emphasized the importance of being able to contact independent monitoring bodies, with inmates expressing that awareness of their right to complain encouraged participation in the resolution process. However, the study revealed a significant resource gap, with inmates facing challenges in accessing the tools necessary to document and submit complaints. This lack of resources hindered their ability to engage effectively in the complaint resolution process, creating inequalities among inmates.

The study findings indicate that most complaint categories, including "Complaints of abuse from prison officials," "Bullying by other inmates," and "Poor diet," show mean values around 20, suggesting a balanced distribution of responses with moderate agreement or neutrality. Issues such as "Unsanitary conditions," "Visitation," and "Lack of rehabilitation programs" had slightly higher mean values (around 20.2), indicating increased concern in these areas. However, categories like "Education" and "Inadequate Uniform" showed greater variability in responses, with higher standard deviations, suggesting diverse opinions among inmates. There was more consensus on issues like "Complaints of abuse" and "Poor diet," with lower standard deviations, reflecting widespread agreement on these problems. The cumulative percentages revealed that 56% of respondents agreed or strongly agreed with complaints of abuse, and 54% expressed concern about bullying. Other issues, like unsanitary conditions and food quality, had significant concern, with 77% and 78% of respondents showing either agreement or neutrality. Concerns about access to justice and disciplinary procedures were also notable, with 57% and 53% expressing agreement. In contrast, lower percentages of respondents (around 30%) expressed concern about visitation, education, and rehabilitation programs, suggesting these were less pressing issues compared to others.

A majority of inmates (58.19%) expressed dissatisfaction with how their complaints were handled by monitoring bodies, while 41.81% were satisfied, indicating a desire for more effective handling of their issues. Inmates who were satisfied noted the positive outcomes when independent monitoring bodies took on their cases. However, 60.19% of those dissatisfied cited slow response times, and 18.45% were still waiting for action on their complaints. Factors such as delays in addressing complaints and the quality of interactions with monitoring body staff impacted satisfaction. Some inmates highlighted their frustration with the slow pace of response and shared experiences of unaddressed complaints. To improve satisfaction, it is recommended that clear guidelines, protocols for gathering evidence, and better communication between inmates and monitoring body staff be established to enhance the complaints process.

5. Discussions

The findings of this study reveal significant insights into the characteristics of the inmate population and their engagement with complaint mechanisms. Most respondents were relatively young, with a majority aged 35 or younger, and had served less than five years



in prison, suggesting that many were likely to be involved in minor offenses. Educational attainment among the inmates was low, with nearly half having only completed primary school. This educational gap likely contributes to varying levels of awareness regarding inmates' rights and the complaint process. Additionally, the study found that inmates working in specialized roles, such as teaching or pastoral duties, showed higher engagement with complaint mechanisms, possibly due to increased access to resources and confidence in utilizing complaint channels. This highlights the need for targeted educational programs to improve inmates' understanding of their rights and complaint processes, as well as the importance of enhancing opportunities for engagement for all inmates, regardless of their specific roles.

In terms of complaint avenues, the majority of inmates were aware of the possibility of filing complaints to independent bodies like the Commission on Administrative Justice (CAJ) and the Kenya National Commission on Human Rights (KNCHR). However, issues such as the availability of writing materials and language barriers remained significant obstacles to effective participation in the complaint process. The importance of paralegals within the prison system was underscored, as they helped bridge the gap for illiterate inmates by providing documentation and guidance for filing complaints. Despite this support, the findings also revealed substantial dissatisfaction with the complaint resolution process. Many inmates expressed frustration with the slow response times from monitoring bodies, with some still awaiting resolution of their complaints. This calls for the establishment of clear protocols and improved communication between inmates and monitoring bodies to enhance the effectiveness of the complaint process and ensure timely resolutions, ultimately improving inmates' satisfaction and trust in the system.

6. Conclusions and Recommendations

6.1 Conclusions

The study concludes that inmates were generally dissatisfied with the complaint resolution mechanism and revealed mixed awareness levels regarding their right to lodge complaints with independent penal monitoring bodies. Inconsistent communication and education regarding inmates' rights upon admission were observed, and challenges related to access to writing materials, fear of retaliation, and limited resources hindered their full participation in the complaint resolution process. The findings contribute to the existing literature on human rights and rational choice theories, emphasizing the need for a rights-based approach addressing structural and situational factors that hinder inmates' participation in the complaint resolution process and determining priority areas for prison reforms.

6.2 Research Recommendations

The study recommends that correctional institutions and independent monitoring bodies strengthen collaboration to increase inmates' awareness of their right to file complaints by implementing targeted educational programs and distributing informative materials on external grievance mechanisms. The prison department may consistently provide writing materials and simplify the complaint appeals process to facilitate inmates' utilization. Strengthening engagement with the Kenya National Commission on Human Rights and the Commission on Administrative Justice can encourage inmates to seek recourse



through these channels and promote better inmate care, transparency, and respect for human rights, ultimately fostering best practices in correctional institutions.

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