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Prisons and Freedom Papers:

The Kenyan Experience of the Twentieth Century

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by

Amed Galo Lopez

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ABSTRACT OF THE DISSERTATION

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by

Amed Galo Lopez

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Professor Ghislaine E. Lydon, Chair

In this essay, I will focus on prison systems and inmate experiences in Kenya. Prisons and systems of punishment come in different contexts. Generally speaking, prisons are intended to rehabilitate and transform inmates into better people for themselves and society. However, in retrospect from the historiography of African prison systems and prison writing in Kenya, prisons have moved away from their intended purpose of rehabilitation. The structure of this research project is divided into two parts. In Part I, I will historicize prisons in Africa and the historical context of the injustice of power and dominance in Kenya. Part II of this essay will uncover the truth of Kenya's prison system through inmate experiences in the twentieth century. I argue that prison writings, which I call freedom papers, show that there is a continuity between colonial and postcolonial prisons, and that there were various forms of resistance against

discriminatory and oppressive institutions. However, these forms of resistance depended on who was elite and non-elite.

The thesis of Amed Galo Lopez is approved.

Hollian Wint

Andrew Apter

Ghislaine E. Lydon, Committee Chair

University of California, Los Angeles

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TABLE OF CONTENTS

Abstract	ii
Acknowledgements	vi
Introduction	1
Part I: Historiography of the African Prison System and its Prevalence in Kenya	4
Chapter 1: The Role of Prisons: A Foucauldian Perspective	5
Early Prisons in Europe	5
The Power of Surveillance, Confinement, and Conformity	6
Chapter 2: Punishment in Precolonial and Colonial Africa	9
Criminality and Punishment in Africa	9
How Prisons were Introduced and Maintained in Colonial Africa.....	10
Chapter 3: Historical Background of Kenya’s Judicial System	13
<i>Kadhi</i> Courts in Zanzibar.....	13
British Rule in Kenya’s Courts	14
The Making of Kenya’s Prison System	16
Part II: Writings of Kenyan Inmates in the Twentieth Century	20
Chapter 4: From Prison to President: Jomo Kenyatta	23
His Early Life and Journey to Prison	23
Freedom Papers: Prison Writing on Toilet Paper	25
Chapter 5: Poems of Political Prisoners	30
The Interminable Revolution	30
Persistence and Perseverance.....	31
Chapter 6: Narratives Among Incarcerated LGBTQ+ Women in Kenya	36
Kenya’s Binary System and Gender Inequality	36
Resistance of LGBTQ+ Inmates in Prison	38
Summary and Conclusion	41
Bibliography	45

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Introduction

Prisons and systems of punishment exist in different contexts. Generally speaking, prisons are systems of punishment used to incarcerate and correct convicted criminals. These convicted criminals, once confined in prison, are then labeled as an inmate, or prisoner. Prisons are intended to rehabilitate and transform these inmates into better people for themselves and society. However, in retrospect from the historiography of African prison systems and inmate experiences, prisons have moved away from their intended purpose of rehabilitation. I argue that prison writings, which I call freedom papers, show that there is a continuity between colonial and postcolonial prisons, and that there were various forms of resistance against discriminatory and oppressive institutions. However, these forms of resistance depended on who was elite and non-elite.

My research for this essay initially began as a comparative analysis of the imprisonment of three future presidents of Ghana, Kenya, and South Africa. Through their experiences, I would determine if their countries' prison systems practiced rehabilitative practices, which ultimately, they did not. However, when excavating further history of inmate experiences in Kenya from the twentieth century, I noticed how valuable it was to not only incorporate existing accounts in my essay, but to make them a center case study. Therefore, the structure of this research project will be divided into two parts. While Part I will provide a review of the prison in general to historicize prisons in Africa and the injustice of power and dominance in Kenya, Part II of this essay will uncover the truth of Kenya's prison system through inmate experiences in the twentieth century. Each part will consist of three chapters, for a total of six chapters for this essay. In regard to the historical evidence of my research, I rely on a variety of sources. For Part I of this essay, I use secondary sources about prisons in Africa and Kenya from theorists,

historians, scholars of Islam, and a wide range of Africanists. Since Part II of this essay leans towards inmate experiences, I mainly use primary sources such as autobiographies, poetry and firsthand oral narratives. I refer to existing laws and consequences regarding homosexuality in Kenya. In addition, since it is illegal to be a homosexual, the narratives in the last chapter do not disclose authors' names, dates, or locations in order to protect their identities. The historical approach for this essay is to provide a historical analysis of systems of European prisons and its influence in Africa and Kenya. Furthermore, the evaluation of Kenyan inmate experiences will help determine whether or not the practice of prisons changed between colonial and postcolonial Kenya.

The initial hypothesis of this essay was that the practice of prisons began during colonial rule in Africa, and, with the case study of Kenya, was transformed into an oppressive system to control marginalized people, which remained in the postcolonial period. For the first part of this argument, I found that Europeans made prisons rampant across Africa in their colonial process, but prisons and systems of punishment in Africa have been known to be in existence way beyond the colonial encounter. On a side note, Northern Africa is one example of this historical phenomena, especially within their Muslim communities. However, prison systems as well as Islam in North Africa remain to be studied and taken into perspective for the historiography of African prison systems. Therefore, for this essay, I focus primarily on the prison system in Kenya, and came to the conclusion that colonial rule in Africa only encouraged the practice of prisons. Through the freedom papers of inmates, I found that only the second half of my hypothesis was true. Many Kenyan inmates were not only unfairly imprisoned, but suffered cruel and unusual punishments. Exceptional prisoners were able to escape mental imprisonment with the power of the pen and their ability to freely express their thoughts on whatever paper and

writing materials they could find. Their writing exposed the continuity of government opposition, police brutality, mal-treatment, and legal discrimination of inmates between colonial and postcolonial Kenya.

Part I: Historiography of the African Prison System and its Prevalence in Kenya

Is it surprising that the cellular prison, with its regular chronologies, forced labour, its authorities of surveillance and registration, its experts in normality, who continue and multiply the functions of the judge, should have become the modern instrument of penalty?¹

This is quoted by modern French philosopher Michel Foucault in his 1975 literary work titled *Discipline and Punish*. Prisons were meant to for the common good, but when they are influenced under personal gain or abuse of power, they grow distant from their intended purpose of rehabilitation and become, what Foucault called, the modern prison. For Part I of this essay, I will discuss the historiography of prison systems in Africa and how it pertains to the Kenyan experience. I address how the history of Kenya's court system needs more research and critical analysis.

Part I will introduce the prison system in theory and practice. Chapter 1 will begin with an analysis of prisons and punishment from the perspective of Michel Foucault. His book *Discipline and Punish* explains the initial goal of prisons and its contradictive practices of surveillance and confinement. These European institutions were eventually brought to Africa during imperialism following the Berlin Conference of 1884. In Chapter 2, I will transition to how criminality and punishment was practiced Africa before European colonialism. I will then discuss how this changed after Europeans enforced direct and indirect rule over their colonial subjects. Finally, in Chapter 3, I will turn to Kenya, my main case study. This chapter will provide a history of how British indirect rule negatively impacted Kenya's court system and how Foucault's modern prison thrived off the mass imprisonment and forced labor of victimized Kenyans.

¹ Michel Foucault, "Panopticism," in *Discipline and Punish: The Birth of the Prison* (New York, NY: Vintage Books, 2012), 227.

Chapter 1: The Role of Prisons: A Foucauldian Perspective

Early Prisons in Europe: Michel Foucault argued that the roots of confinement systems through new forms of punishment and policing ensured a modern state's control over its subjects. The modern state, specifically the imperialistic countries of Europe, redefined penal justice from the second half of the eighteenth century and built facilities of confinement during the early nineteenth century. The French cities of Brest and Toulon established one of the first formal platforms for incarceration in 1837. In this system, prisoners' days were regimented, consisting of morning preparation, short breaks for meal rations, short periods spent for education, inspections of various used rooms, gatherings for prayer, and long periods of arduous labor throughout the day.² After they completed their tasks, they would return to their black painted cells until the next morning.³ This new discipline of confinement replaced previous forms of punishment in Europe.

According to Foucault, punishment was intended not only to bring justice, but to warn the public that the act of crime came with a cost. In addition, David Rothman, professor of social medicine and history, argued that public torture and execution served two goals: to assert the king's power and ability to control the fate of their subjects, and to cause a deterrent for potential crimes.⁴ Corporal punishment was intended to instigate fear amongst subjects so that they would abide by the law. However, corporal punishment did not meet the desired effect in eighteenth

² Foucault, "The body of the condemned," *Discipline and Punish: The Birth of the Prison* (New York, NY: Vintage Books, 2012), 7.

³ *Ibid*, 9.

⁴ David J. Rothman, "Introduction," *The Discovery of the Asylum* (Piscataway, NJ: Transaction Publishers, 1971), xxiii.

century Europe. Although many of the king's subjects in France and England were fearful, corporal punishment or other forms of torture were often cruel and did not result in rehabilitation. Foucault asserted that punishment involving physical torture was thought to be equivalent to savagery, if not worse, and not equal to the crime.⁵ He argued that punishments such as the guillotine as used in France or public hanging in Great Britain were an example of this savagery. Torture was quick in harming the body, but was ineffective in striking the soul.⁶ Foucault found that effective punishment in nineteenth-century modern prisons relied on psychological penalties and surveillance.

The Power of Surveillance, Confinement, and Conformity: Foucault explored the evolution of power and punishment that existed since the Middle Ages and argued that the modern state has moved away from implementing its authority physically, but rather moved forward to enforcing it psychologically. Initially, the art of punishment rested on the quantitative art of pain, whether that be physical pain or mental pain. Mental pain proved to be more scarring and effective.⁷ The establishment of prisons revolutionized the nature and form of punishment with a more psychological approach. Modern disciplinary techniques, including surveillance and confinement, have shown how penalties imposed on inmates' control not only their physical well-being, but their mind and actions.⁸ Foucault mentioned British social reformer Jeremy

⁵ Foucault, "The body of the condemned," 9.

⁶ Ibid, 16.

⁷ Foucault, "The spectacle of the scaffold," *Discipline and Punish: The Birth of the Prison* (New York, NY: Vintage Books, 2012), 34.

⁸ Foucault, "The means of correct training," *Discipline and Punish: The Birth of the Prison* (New York, NY: Vintage Books, 2012), 170.

Bentham, who created a new type of imprisonment called the Panopticon, which was a circular prison that included cells around its walls and a watch tower in its center. The intention of the Panopticon was to create a state of conscious and permanent surveillance over the inmate in order to ensure automatic authority.⁹ The theory of this prison was that inmates would believe they were being constantly watched and as a result, would practice good behavior and act accordingly to the law. As they surveilled each other, they would ultimately surveil themselves. In the long run, Foucault argued that there would be no need for prison guards in the future as inmates would be held within a mental prison. According to him, the theory of modern power relied on self-surveillance and this strategy would eventually be used in prisons.

Foucault argued that surveillance was an important instrument for dominating groups through control and governance. Although surveillance techniques were used to maintain societal laws and ensure that they were being followed, Foucault claimed that having the awareness of being watched restrained individuality and led to conformity.¹⁰ Inmates would eventually act, think, and live the same way as each other out of fear of being caught and punished for standing out. According to Foucault, systems of confinement and forced conformity were common even before the establishment of prisons. Many prison systems have imitated the discipline and domination factors that already existed in institutions such as hospitals, schools, factories, or even barracks.¹¹ Foucault argued that these institutions have the same characteristics as prisons.

⁹ Foucault, "Panopticism," 201.

¹⁰ Foucault, "The means of correct training," 183.

¹¹ Foucault, "Complete and austere institutions," *Discipline and Punish: The Birth of the Prison* (New York, NY: Vintage Books, 2012), 233.

Prisons are intended to reduce crime through temporary sentences. However, the majority of prisons fail to meet this goal, tending to favor more surveillance and control of their inmate population. Foucault calls this a practice of disciplinary society, which creates orderly populations through a prison's assertion of power.¹² Because this society focuses on the control of individuals rather than their improvement, crimes within prisons rise. Furthermore, long sentences for inmates make it more difficult for them to be rehabilitated and released. Rothman stated that people who are confined for long periods of time lose their souls. Their liberties for constructing their own time becomes a rarity as schedules within prisons are rigorously organized and obligatory.¹³ Thus prisons, through their institutional domination over the individuality of their prisoners, become static and lose their legitimacy in reducing crime.

Throughout his research, Foucault demonstrated the development and motives for prisons while also denoting its limitations. In addition, Rothman expanded on his views and elaborated on reasonings for punishment and the introduction of prisons in Europe. Overall, prisons play a role in controlling a confined population. While prison systems were predominantly used in Europe as mental punishment, Europeans spread these prison systems across the globe, but revised them in order to bring back physical punishment. A continent that was greatly influenced and affected with prisons was Africa. However, Africa did not have modern forms of prisons until the arrival of Europeans. In Chapter 2, I will explain how Africa instead had different ways of dealing with crime and practiced their own form of punishments that were unique from other penal systems.

¹² Foucault, "Panopticism," 218.

¹³ Rothman, "The Well-Ordered Asylum," *The Discovery of the Asylum* (Piscataway, NJ: Transaction Publishers, 1971), 225.

Chapter 2: Punishment in Precolonial and Colonial Africa

Criminality and Punishment in Africa: Before the modern prison became prevalent in Africa through colonialism, punishment was either paid physically or monetarily. Kenyan philosopher Henry Odera Oruka argued that the idea and practice of prisons and fines did not exist in Africa until Europeans imported them during their conquest. He asserted that early African societies at times inflicted physical pain upon African murderers or witches; however, the majority of punishment centralized on restitution or compensation.¹⁴ The death penalty was only followed through if the murderer or witch continued their practices, posing a threat to the safety of the community. However, since these cases were considered minor offenses, monetary punishments were often favored. This compensation, according to Oruka, was completed when a representative of the offender, whether that be from their family or clan, gave goods in the form of food, jewelry, clothing, or other property to another representative of the person who was offended.¹⁵ He claimed that these forms of compensation did not intend to inflict suffering or physical pain upon the offender, but rather to acknowledge their wrong doing and seek redemption. Similarly, thieves, if caught, were expected to return or restore what was lost of the victims.¹⁶ In Western prisons, the offender would be responsible for not only compensating the offended, but also paying a large fine to the government for their failure to follow laws. Most times, according to Oruka, European offenders were also imprisoned for a long period of time until judicial officials deemed that justice, or at least the fine given to the state, had been

¹⁴ Henry Odera Oruka, "Punishment in Traditional Africa," *Punishment and Terrorism in Africa* (Nairobi, Kenya: East African Literature Bureau, 1976), 50.

¹⁵ Ibid, 50.

¹⁶ Ibid, 51.

restored. However, traditional African penal systems worked differently as the community chiefs only involved themselves depending on the severity of the crime.

Crimes in Africa had economic and psychological motives that, at times, rationalized the offender. Oruka brought up the idea of “free will” playing a role in crime; however, he argued against it. The concepts serve to convey that people possess the freedom to make their own decisions and are always liable for their actions. However, if they are deemed insane, then their decisions are not fully controlled and they are not necessarily responsible for the outcome of their actions. Oruka detested this idea and claimed that crime does not originate from the person committing it, but rather from their social environment.¹⁷ Therefore, crimes committed are just mal-reflections of society when society fails to provide guidance to people struggling to make good decisions. He argued that the majority of crimes committed are impulses in hopes of either satisfying a financial or psychological need. These impulses, which Oruka called criminal forces, originate from experiences of struggle in family life, discrimination, educational barriers, suppression, mental or physical disability, or most commonly, economic status.¹⁸ These experiences of struggle only worsened during colonial rule as Europeans sought racial and economic superiority over Africans.

How Prisons were Introduced and Maintained in Colonial Africa: Colonizers used crime in Africa as a gateway to impose their laws and penal systems. Historian David Killingray stated that “the rise of crime,” which was perceived by Europeans, convinced Europeans that

¹⁷ Oruka, “Crimes and Their Causes,” *Punishment and Terrorism in Africa* (Nairobi, Kenya: East African Literature Bureau, 1976), 15.

¹⁸ *Ibid*, 18.

they needed to act on this problem. They believed that it was their “civilizing mission” to go to Africa and help Africans seek redemption from their wrongful actions. Killingway argued that colonial administrators regarded their ways of punishment as ineffective and primitive.¹⁹ The laws and governmental influence would guarantee the return of peace and balance to Africa. In order to restore light to the “darkness” of Africa, a new penal system needed to be established in their soon to be colonies. Paramilitary police forces and forms of European prisons were then introduced to Africans as a way to bring this light.

European prisons emerged in Africa through colonialism and began with their upbringing of new laws. African historian Florence Bernault argued that colonizers used prisons not only to subjugate Africans, but to maintain control over them. Following Oruka’s argument, he noted that prisons in colonial Africa began as penitentiaries and did not develop on their own. Bernault asserted that these penitentiary systems were imported and fairly new to Africans. As soon as Europeans set foot on African soil, they inflicted their own laws and disciplinary techniques upon Africans.²⁰ These techniques were used as tools for early colonization and highlighted colonizers as the main source of law enforcement. For the most part, colonial prisons did not differ from each other in their ambitions of conquest. According to Bernault, French, Belgian, and Portuguese colonies between 1910–1920 practiced direct rule over their African subjects and manipulated traditional criminal justice in communities that would favor the colonizer.²¹ Chiefs

¹⁹ David Killingray, “Punishment to Fit the Crime?: Penal Policy and Practice in British Colonial Africa”, in *A History of Prison and Confinement in Africa*, ed. Florence Bernault (Portsmouth, NH: Heinemann, 2003), 97.

²⁰ Florence Bernault, “The Politics of Enclosure in Colonial and Post-Colonial Africa”, in *A History of Prison and Confinement in Africa*, ed. Florence Bernault (Portsmouth, NH: Heinemann, 2003), 3.

²¹ *Ibid*, 11.

who were traditionally in charge of court systems were replaced with European administrators who intertwined their country's laws with traditional communal laws.

Similar to the effects of direct rule, British colonies practiced indirect rule through court systems. In order to inflict their own styles of laws and punishments, local chiefs and their native councils were forced to discontinue their penal systems and conform to new judicial institutions of Europeans. In British colonies, court systems were led under the jurisdiction of African natives who were delegated with representative power to punish anyone who did not follow British laws. Nwando Achebe, an American-Nigerian scholar, argued that in Nigeria, the British appointed a warrant chief to act as president of the native courts, which was originally under the leadership of community elders. She asserted that in order for the British to ensure their control over court systems, they made it illegal for any "native" to run court cases without their approval or appointment.²² Imposing indirect rule was the first step in completely changing traditional African penal systems. An example of this indirect rule can be exemplified in Kenya's long history of colonialism. In the next chapter, I will explain how the British manipulated Kenya's court systems during the nineteenth century and onward.

²² Nwando Achebe, *The Female King of Colonial Nigeria: Ahebi Ugbabe* (Bloomington IN: Indiana University Press, 2011), 108.

Chapter 3: Historical Background of Kenya's Judicial System

Kadhi Courts in Zanzibar: The experience of Zanzibar had a significant bearing on Kenyan history, since part of the Kenya coast was once ruled by the Sultan of Zanzibar and later, by the British. Beginning in 1832, Sayyid Said bin Sultan relocated the sultanate of al-Busaidi from Oman to the Island of Zanzibar. This resettlement not only declared Sayyid Said the last ruler of the united Omani Empire, but brought strict Shari'a law along the coast to Kipini as well as Wanga (which is now the modern-day coast of Kenya).²³ According to Kenyan sociologist and historian Kevin Odimbe Wanyonyi, the sultanate applied both executive and judicial powers in these coastal territories through a system of courts. These courts, based on Islamic tradition, were operated by three kinds of governmental officials: *liwali* (local administrator), *mudir* (directorate) and *kadhi* (judge).²⁴ After the death of Sayyid Said in 1856, Sayyid Majid bin Said became the first official Sultan of Zanzibar and helped his late predecessor appoint two official court *kadhis*. African historian Randall L. Pouwels states that the two appointed *kadhis* included one Ibadi, who represented the Omani subjects, and one Shafi'i, who represented the Swahili majority.²⁵ When Barghash bin Said ruled as the second sultan from 1870-1888, *khadis* gained even more prominence in the Swahili Islamic tradition. *Kadhis* were appointed judges of the sultan; those who were appointed had to be local male elders whose knowledge derived from Sunni texts and the Ibadhi School of thought. Professor of Islamic Studies Hassan Mwakimako

²³ Kevin Wanyonyi, "The Kadhis' Courts in Kenya: Towards Enhancing Access to Justice for Muslim Women." (Lund, SE: Lund University Press, 2016), 13.

²⁴ Ibid, 13.

²⁵ Randall Pouwels, "The East African Coast, c. 780 to 1900 C.E.," in *The History of Islam in Africa*, Nehemia Levtzion, ed. (Athens, OH: Ohio University Press, 2000), 262.

argues that during pre-colonial Kenya, *kadhīs* implemented the same procedures of Shari'a Law. In addition, aside from their discretionary judgments, *kadhīs* received guidance from the authority of *ulama* in order to determine court rulings.²⁶ However, the appointment and role of the *kadhi* changed when the sultan was forced to seek British support. Ultimately, the British prolonged their visit and began settling along the coast. Following their enactment of the Imperial British East Africa Company (IBEAC) of 1888, the British began imposing indirect rule on Kenyan people. Eventually, the authority of *ulama* diminished and the role of the *kadhi* devolved into a colonially controlled judicial position.

British Rule in Kenya's Courts: By 1893, the British had declared protectorate over Zanzibar, but their influence over Swahili lands only intensified as they reached the twentieth century. Since the British preferred indirect rule, local customs and judicial systems were preserved under the authorization of British officials. Mwakimako asserts that "colonial officials maintained the position of Shaykh-al-Islam and its later form as Chief Kadhi as a means to appease Swahili Muslims."²⁷ However, the British, after failing to abolish the *kadhi* court system, began to administer their own court systems that overlapped and weakened the power of Islamic courts. Before British rule, *kadhīs* dealt with a variety of court disputes between Swahili people, but after colonial intervention, *kadhīs* were prevented from dealing with criminal cases. Pouwels asserts that *kadhīs* gradually shifted to cases solely on matters of domestic and family

²⁶ Hassan Mwakimako, "Conflicts and Tensions in the Appointment of Chief Kadhi in Colonial Kenya: 1898-1960s", in *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, Shamil Jeppie, Ebrahim Moosa, and Richard L. Roberts, eds. (Amsterdam, NL: Amsterdam University Press, 2010), 110.

²⁷ *Ibid*, 111.

law, while criminal matters were dealt under the administration of secular officials, including *mudirs*, who were appointed by colonial authorities with the sultan's approval, or vice versa.²⁸ Depending on the severity of the crime, they would potentially be dealt in hybrid court systems, which consisted of both Muslim and British judges. According to Beverly B. Brown, professor of anthropology, British jurists held the upper hand in these mixed courts. Since British court officials did not implement Shari'a law because they deemed it as "uncivilized," *kadhis* were forced to abide to Anglo-Indian laws and procedures rather than their own traditional Muslim practices.²⁹ In addition, British judges oversaw all appointments of *kadhis*, rejected customary laws that employed archaic forms of justice and immorality, and applied Roman law as a means of modernization. Undoubtedly, the British continually overstepped their boundaries of the protectorate and constantly pushed for absolute colonial court systems. Abdulkadir Hashim, professor of Islamic Studies, asserts that as British power increased, especially after seizing full control over the finances of the sultanate, their indirect rule transformed into direct rule.³⁰ In 1920, the coast of Kenya officially became a British colony, which led to more restrictions on Shari'a Law and extreme ramifications of their courts based on the experience in Zanzibar.

In colonial Kenya, the British executed policies based on their principles of common law. Despite Kenya now having a dual court system of both English and *kadhi* courts, their English antagonist held superiority in the judiciary. Similar to Brown's claim, Hashim argues that the

²⁸ Pouwels, "The East African Coast, c. 780 to 1900 C.E.," 262.

²⁹ Beverly B. Brown, "Islamic law, Qadhis' courts and Muslim women's legal status: the case of Kenya." (London, UK: Institute of Muslim Minority Affairs, 1993), 95.

³⁰ Abdulkadir Hashim, "Colonial Policy Towards Muslim Personal Law in Kenya and Post-Colonial Court Practice", in *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, Shamil Jeppie, Ebrahim Moosa, and Richard L. Roberts, eds. (Amsterdam, NL: Amsterdam University Press, 2010), 228.

British viewed Islamic law as repugnant and cruel. He states that Islamic laws were often rejected because they did not exemplify “natural justice, equity and good conscience.”³¹ Consequently, all aspects of Islamic law were marginalized and even disregarded in the courtroom. With the establishment of the 1929 Native Courts Ordinance, the *kadhi* was “re-categorized” as a “native subordinate court”³² Furthermore, Islamic laws of evidence were eradicated and replaced with new British laws of evidence. The ordinance even dissolved *ndemi* principles of democratic government in the Gikuyu highlands and replaced it with an autocratic government that monopolized thought and judgement.³³ Ultimately, British rule redefined Kenya’s court systems and governments, which only worsened in the postcolonial period.

The Making of Kenya’s Prison System: Through colonialism, former penal practices were abandoned and eventually, early forms of prisons were introduced to Kenya alongside the significant changes of judicial law. After their laws were gradually being implemented in the courts, European colonizers experimented with different ways of confinement and control. Unlike Western prisons, colonial prisons, according to Bernault, disregarded the rehabilitation of inmates and treated Black Africans with inferiority. While Western penitentiaries viewed individuals as legal subjects with equality, colonial prisons connoted Black Africans as objects

³¹ Ibid, 239.

³² Ibid, 229.

³³ Jomo Kenyatta, “System of Government” in *Facing Mount Kenya: the traditional life of the Gikuyu* (Nairobi, KE: East African Educational Publishers, 2015), 197.

that can be manipulated for the interest of the colonizer.³⁴ Colonial penitentiaries instigated discrimination, violence, and forced labor upon Africans who were imprisoned. Colonial prisons showed the realities of Foucault's claim that authorities in prisons chose to ignore their goals and sought more ways to dominate marginal populations. Colonizers were corrupt with power as they used their prisons for their own benefit rather than the benefit of the inmate. Specifically, forced labor played a significant role in revealing this corruption in Kenya's prison system.

As colonial systems reconstructed economies, they used prisons as a form of cheap labor. In British colonial Kenya, forced labor was never legalized, yet still used to assist the colony's development and labor shortage. Labor shortage was the cause of low wages and lack of worker rights; however, colonizers made an effort to convince Africans that the solution for this shortage was forced labor. According to Bernault, prison camps in Kenya during the 1930s were built in order to force African prisoners to complete agricultural and public tasks.³⁵ The success of these camps led to longer sentences for offenders and the practice of convict labor made it more difficult for them to be dismissed from imprisonment. Relating back to Foucault, prisons began revealing that longer sentences were beneficial for profit. Bernault asserted that convict labor in prisons served as a substitution and modified form of slave labor.³⁶ This mandatory labor system even reached out to Africans outside of prisons, and work environments began including both prisoners and free people. Populations of all kinds were being targeted as potential sources of labor and were brought to prisons to fulfill that need.

³⁴ Bernault, "The Shadow of Rule: Colonial Power and Modern Punishment in Africa", in *Cultures of Confinement: A history of the Prison in Africa, Asia and Latin America*, ed. Frank Dhotter & Ian Brown (Ithaca, NY: Cornell University Press, 2007), 55.

³⁵ Ibid, 72.

³⁶ Ibid, 73.

Apart from forced labor, discrimination became part of the prison environment. While Western prisons promoted moral punishments and rationalized social concerns, colonial prisons in Kenya did not act on racial tensions that arose, but rather encouraged them in order to preserve social hierarchies. Bernault argued that colonizers maintained their white rule through social and political segregations between them and Black Africans.³⁷ Kenyans not only endured segregation within prison systems, but also experienced poor living conditions and struggled to maintain individuality. The lack of individuality within Kenyan prisons emphasized Foucault's theory that prisoners become robotic as they are forced to follow fixed schedules. In addition, as more Black Africans were imprisoned and sentenced to forced labor, their chambers were overcrowded. Bernault asserted that discrimination presented itself within these prisons as there was a low percentage of white prisoners who lived in far more comfortable conditions than Black Kenyans.³⁸ She claimed that as segregation increased racial tensions, violence followed.

Colonial prisons in Kenya showed how Foucault's theory of the modern prison was placed into reality. Kenya's prison system definitely confirms Foucault's arguments, and instead, based on the limited scholarly works, expanded his theory of crime, policing, and punishment within prison regimes. However, with this in mind, the harsh treatment that Kenyans endured cannot be explained in its entirety solely based on the scholarship of colonial Kenya. The only way these realities of continual violence can be explained and more emphasized are through the postcolonial prison writings of surveillance, police brutality, and resistance. Part II of this essay will bring exposure to Kenya's prison system and not only share the hardships many imprisoned

³⁷ Ibid, 73.

³⁸ Ibid, 74.

Kenyans experienced, but how they used writing to participate in acts of defiance, expression, and individuality.

Part II: Writings of Kenyan Inmates in the Twentieth Century

You are made of steel
Decorate the prison wall with
Words of truth
Words of heroism...
You and I
Will draft the socialist manifesto
For the new society.³⁹

This poem is titled “The Power of Writing” and was written in 1986 by Kenyan historian Maina wa Kinyatti from Kamiti Maximum Security Prison, the largest prison in Nairobi, Kenya. As stated in Part I, colonialism negatively impacted the role of prisons in Kenya and showed that the goal of prisons has been distorted with greed, brutality, and dominance over marginalized people. During decolonization and post-colonialism in Kenya, these practices remained in the prison system. For Part II of this essay, I will reveal more of the cruel and unusual punishments in Kenyan prisons, and will do this by examining the variety of writings penned by Kenyan inmates. I believe that the only way prisons can be fully analyzed and realized is through the primary sources of inmate experiences and their freedom papers. Through writing, inmates are able to unlock their spatial entitlement of communication, awareness, and individuality.

During confinement, according to former anti-apartheid inmate Breyten Breytenbach, an inmate can lose their sense of time and memory, therefore causing dissociation from the physical world. Whether the inmate’s trauma comes from physical torture, or simply prolonged confinement, they begin to lose their sense of self. However, Austrian poet Rainer Maria Rilke argues that no matter how much physical anguish the inmate endures, the one, and possibly last,

³⁹ Maina wa Kinyatti, “The Power of Writing,” in *A Season of Blood: Poems from Kenyan prisons* (London, UK: Vita Books, 1995), 119.

body part that perseveres is the “tongue.”⁴⁰ With the power of voice through words and writing, the body may perish, but the mind prevails.

These last three chapters will explore personal accounts from Kenyan inmates during the second half of the twentieth century and discuss their experiences through various forms of writing, including autobiographies, poetry, and narratives. Chapter 4 will begin with a biography of President Jomo Kenyatta, who is one of the many political prisoners of the Mau Mau Rebellion during decolonization in Kenya. In his autobiography, which was partially written on toilet paper during his imprisonment, he shared his experiences of resistance, political strategy, time keeping, and the overall injustices of mal-treatment, police brutality, and arduous labor in prison. However, since Kenyatta was still considered a privileged inmate because of his higher-class status, his accounts will serve as merely a foundation to prison writing for this essay. Chapter 5 will then bring light to other political prisoners who used poetry as their form of writing. In this chapter, I will argue that although political prisoners suffered sexual humiliation and physical violence, they continued to show perseverance and advocacy for the revolution against governmental corruption. Aside from the lives of political prisoners, I will finally provide narratives in Chapter 6 that introduces one of the most discriminated groups in Kenyan prisons. In this final chapter, I will explore the experiences and activism of incarcerated LGBT+ people of color and argue how writing played a significant role in raising and preserving the voices of inmates, especially in revealing their injustices of gender discrimination and mal-treatment. Despite that colonial prison systems inflicted physical and psychological violence,

⁴⁰ Helize Van Vuuren, ““Labyrinth of loneliness”: Breyten Breytenbach’s prison poetry (1976–1985),” in *Tydskrif vir Letterkunde* 46, no. 2 (2009), 52.

freedom papers show that there were multitude forms of resistance and reclaim to power through the voice of writing.

Chapter 4: From Prison to President: Jomo Kenyatta

His Early Life and Journey to Prison: Kamau wa Moigoi, later and most publicly known as Jomo Kenyatta, was Kenya's first president. His road to presidency can be credited to his opposition against British rule as a politician and prisoner, but his long battle for Gikuyu activism began at an earlier age. Moigoi was born and raised in the Gikuyu country located along the East African highlands southwest of Mount Kenya. Considering that the Gikuyu did not keep birth records, but instead kept track of *kehiomwere* (age groups), much was not known of the exact day he was born.⁴¹ However, Kenyan historians have determined that his birth took place around the 1890s; this was of course during the time when the British declared protectorate over Kenya.⁴² Following his father's death and becoming ill himself, Moigoi ran away from his grandparents' home to live with missionaries. Although being baptized a Christian and changing his name to Johnston Kamau, he still maintained his tribal roots with the Gikuyu and eventually became fully initiated into his tribe as a teenager. This was also the same time he was referred to as Kenyatta amongst his peers. In addition, Kenyatta states that through his growing involvement with the tribe, he became more aware of the British atrocities committed against Kenyan people.⁴³ He not only felt compelled to help his tribe reclaim their lands from European colonists, but in 1920, after the British declared Kenya a colony, Kenyatta began participating in Gikuyu activism.

⁴¹ Kenyatta, "Preface" in *Facing Mount Kenya: the traditional life of the Gikuyu* (Nairobi, KE: East African Educational Publishers, 2015), xix.

⁴² Eric Masinde Aseka, "Education" in *Jomo Kenyatta: A Biography*, Vol. 1 (Nairobi, KE: East African Educational Publishers, 1992), 6.

⁴³ Kenyatta, "The Gikuyu System of Land Tenure" in *Facing Mount Kenya: the traditional life of the Gikuyu* (Nairobi, KE: East African Educational Publishers, 2015), 23.

Throughout the second decade of the twentieth century, Kenyatta became involved in various African nationalist movements. He was mainly involved in the Gikuyu Central Association (GCA), an organization that raised opposition towards the British for their seizure of tribal lands.⁴⁴ After being appointed General Secretary of the GCA in 1928, he helped coordinate countless protests in London on colonial policy the following year. While these protests were unsuccessful, Kenyatta decided to remain in Europe in the 1930s in order to receive a formal education. During his enrollment in the London School of Economics, he took courses with Polish Anthropologist Bronisław Malinowski, where he was trained to be a Western anthropologist. Kenyatta believed that his Western education not only gave him an advantage to communicate with colonial officials, but made him more determined to overthrow the British government in Kenya.⁴⁵ His influence from Western scholarship and tribal doctrine also inspired him to write and publish his book *Facing Mount Kenya* in 1938, where he provides an anthropological analysis of Gikuyu culture and politics, and presents his semi-contempt towards the British with his call for independence. By the time he returned to Kenya in 1946, he had gained prominence from the public for his Western political ideology, which was unorthodox compared to other African politicians. The next year, he became president of a newly established organization called the Kenya African Union (KAU), which made him a key figure for Kenya's road to independence.

Following the 1952 Mau Mau Rebellion, Kenyatta was accused of leading the Gikuyu extremists in guerilla war with the British government despite his minimal participation and

⁴⁴ Ibid, xix.

⁴⁵ Ibid, viii.

overall disagreement with the insurgency.⁴⁶ In addition, Kenyatta was placed on trial and was found guilty; he was then sentenced to seven years in prison, but only spent six years in Lokitaung prison, which was known for holding many Mau Mau prisoners.

Freedom Papers: Prison Writing on Toilet Paper: Although Kenyatta wrote his autobiography *Suffering Without Bitterness: The Founding of the Kenya Nation* nine years after his imprisonment, he provides an account of his prison sentence, especially in his chapter titled “Prison in the Wilderness.” In this chapter, he mentioned the minimal access to paper, and despite the occasional exchange of information between inmates and the outside world, any form of writing or writing material along with its acquired knowledge was prohibited. However, Kenyatta explained that throughout his imprisonment, he made an effort of writing letters and speaking to private audiences to maintain communication with the Mau Mau resistance (of course with heavy restriction from the authorities). This effort of communication was a difficult process, especially for political prisoners. Much of the voices from Kenya’s inmates were unheard since the British government had rejected claims of the injustices made from them and their allies. According to a 1958 Ministerial statement in the House from its Chief Secretary, regarding treatment of criminals in Lokitaung:

Allegations regarding conditions in a prison in the Northern Province which accommodates a few Mau Mau convicts have been given fairly widespread publicity. The allegations related to lack of adequate water supplies, visits from relatives, censorship of mail, rations and medical facilities. As a result of the investigation which has been completed, the Government is satisfied that the allegations are unfounded. In making these allegations, the convicts concerned described themselves as political prisoners. That is quite incorrect. All of them are

⁴⁶ Ibid, 70.

serving sentences following convictions in Courts for criminal offences. They include some of the most dangerous leaders of the Mau Mau organization.⁴⁷

This secretarial delivered statement not only denied the mal-treatment of inadequate food necessities, dehydration, implied diseases from insufficient medical aid, and censorship, but referred to political prisoners as simply criminals. This reiterates the constant attempts of the British government maintaining dominance over Kenyans and, illustrating Foucault's concept of a disciplinary society. A political prisoner in Africa to the eyes of their supporters was seen as heroic and hopeful, as exemplified with Kenyatta and his supporters; but in the perspective of the oppressive government, political prisoners were nothing more than criminals who broke the law, or more realistically, defied their way of ruling. The perspective of the latter can be related to the experiences many other political prisoners faced with the later government of post-independence Kenya, which will be discussed in Chapter 5.

In regard to Kenyatta's prison writing, he provided few details on the subject. However, the experiences of another political prisoner, Kenyan writer Ngũgĩ wa Thiong'o, who served a year in 1977, offered some insights into the challenges faced by inmates. In his autobiography *Detained: A writer's prison diary*, can be used to create a hypothetical of how Kenya's former president wrote in prison. Although Thiong'o was imprisoned during Kenya's post-independence in Kamiti Maximum Prison (eighteen years after Kenyatta's release in 1959), he argues that writing for any Kenyan political prisoner, whether they were incarcerated in the colonial or postcolonial period, was their voice in prison. More significantly, Thiong'o argued that "paper, any paper, is about the most precious article for a political prisoner... These prisoners have

⁴⁷ Kenyatta, "Prison in the Wilderness," in *Suffering without bitterness: the founding of the Kenya Nation* (Nairobi, KE: East African Publishing House, 1968), 74.

mostly written on toilet paper.”⁴⁸ For Kenyatta, it can be inferred that what he wrote in prison could be his prison accounts recorded in his autobiography. In consideration to Thiong’o, Kenyatta’s accounts may have used toilet paper to write his experiences. In one of these accounts, Kenyatta tackled his psychological torment in prison. He stated:

But there are more subtle ways of breaking a widely-travelled man whose life had been rich, and dedicated, and full of promise: the psychology of nothingness, the impeccable correctness of discipline and nomenclature, like a slap of contempt, the absence of human contact, slow passage of remorseless days of torridity and dust and meaningless surroundings. There was nothing green, nothing cool, nothing creative, nothing demanding, nothing at all.⁴⁹

Kenyatta asserted that being a political prisoner in Lokitaung was nothing more than a long pause in life. Because he suffered from eczema and was declared unfit to partake in strenuous labor, he was positioned as the facility’s cook. However, he still spent hours throughout the day in the hot, dry sun cooking and gathering firewood, and was flogged when he did not comply.⁵⁰ The scorching heat also added to the psychological and physical torment of wanton negligence and torture that Kenyatta and many other inmates faced in prison. The hope that kept Kenyatta motivated was the hope that one day his cause for independence would be sought as just and become a reality for Kenyans.⁵¹ This mindset maintained his sanity all throughout arduous labor and brutal punishment in Kenya’s prison system. During his presidency, he reminisced with his country about his experiences of being physically chained

⁴⁸ Ngugi wa Thiong’O, “Chapter 1” in *Detained: A writer's prison diary* (Portsmouth, NH: Heinemann, 1981), 6.

⁴⁹ Kenyatta, “Prison in the Wilderness,” 68.

⁵⁰ *Ibid*, 67.

⁵¹ *Ibid*, 68.

and seized from his freedom. In a speech given in a mass rally in Nairobi, October 20, 1967, he stated:

I remember one day when we were called out at Lokitaung prison. I myself was ordered: "J.2 come here!" We did not even have names, and had even been told that: "As from today, you should know that you have no names, but numbers." Mine was J.2... After we were told that we had no names, but only numbers, I went forward (to protest) but was ordered: "Kenyatta, sit down!"... (Mzee then demonstrated the difficulty of complying with this, due to the manner in which the prisoners were chained)... You will realise that if a man wanted to go to the toilet, he had to pull down his trousers. So when we say that we broke the colonialists' chains, don't think that we are just talking (metaphorically)... Many of us were heavily chained in detention camps and prisons. Try and imagine some of my colleagues having to draw water (from) about two miles away, carrying it in tins on their heads... (Mzee again demonstrated in mime how this was done)... Of course some (people) were fortunate and did not experience these things. I do not want to say much today (about it all), but I am just letting you know that people were chained, and that in time all those chains were broken... But I want to emphasise that freedom could not have been brought by one person, or by a single group of people. Freedom came (to us) through AFRICAN UNITY.⁵²

According to Kenyatta, he and many other inmates were nothing but mere units of labor. Once imprisoned, they were stripped from their identity and essentially, their humanity as they were numerically categorized. In addition, they did not have easy access to participate in the simplest acts, including the act of using the restroom. Every form of torture he endured, meal he was rationed, water he was quenched, and various amounts of work he completed for his oppressors, Kenyatta was in physically and mentally enchained. This speech grasps the reality of what Kenyatta and many political prisoners lost, which was freedom, but also gained, which was also freedom. This gain describes the opportunity of communal understanding that many Kenyan and other African respondents experienced during their struggle against prison guards and governmental officials. Towards the end of this speech, he stated that Kenya's independence was

⁵² Kenyatta, "Kenyatta Day – 1967," in *Suffering without bitterness: the founding of the Kenya Nation* (Nairobi, KE: East African Publishing House, 1968), 341.

not only from his campaign or the efforts from his peers, but from the collective strength of all those who recognized the problem of oppression.

Despite his endurance of brutal punishment in prison, the story of Kenyatta is unique, yet complicated. His autobiography exemplified the power of inmate voices through writing and gave the public the ability to visualize and empathize the terrible reality of colonization and its prison system. Kenyatta served a sentence of six years and witnessed how the police committed atrocities not only towards him, but on his fellow imprisoned peers. However, his experience in prison cannot epitomize the overall treatment of inmates, especially when taking into account the many inmates who did not have the same prominent profile as him. Considering his political background, colonial education, and higher-class status, the experiences of Kenyatta in prison only presented how an elite prisoner was treated. It is also important to note that Kenyatta received one year off his prison sentence because of his support from anti-colonial organizations, especially the Nairobi People's Convention Party who demanded his release in 1959.⁵³ I argue that his story is an example of an elite inmate experience, or what I call the "Imprisoned Graduate," when compared to the experiences of inmates who did not have that same status or fame in media and politics. Therefore, in the next chapter, I will turn to the writings of other political prisoners who share their different experiences in prison and disdain towards elites. This chapter will discuss the power of poetry, which has given these political prisoners their voice against the injustices of surveillance and police brutality.

⁵³ Kenyatta, "Prison in the Wilderness," 79.

Chapter 5: Poems of Political Prisoners

The Interminable Revolution: Many political prisoners continued to face increased surveillance and political oppression in postcolonial prison systems under the “leadership” of their autocratic presidents Jomo Kenyatta and Daniel arap Moi. For the political prisoner, the revolution did not end with Kenya’s independence and Jomo Kenyatta’s presidency. According to Kenyan Africanist Kennedy Walibora Waliaula, the country’s independence from colonial rule did not translate into freedom, but rather the beginning of autocracy and more surveillance. He stated that “Kenya under Kenyatta was not any different in forging an atmosphere of repression that led to the imprisonment of dissidents, and the subsequent birth of post-independence prison writing in general and prison poetry in particular.”⁵⁴ What this means is that Kenyatta’s prolonged presidency, which lasted until 1978, revealed the contingency of government corruption and systemic violence. This contingency proceeded Kenyatta’s death in 1978 with his former vice president and successor Daniel arap Moi, who stayed in power for the next twenty-four years. The effects of this unfortunate reality of despotism were defiance and activism, which ultimately led to imprisonment. However, prison writing, and more specifically, poetry, remained to record the voice for the unheard; for this chapter, prison poetry was another form of freedom papers, which became the voice for the political prisoner.

Two Kenyans that were imprisoned for their defiance against the government were Abdilatif Abdalla and Maina wa Kinyatti. While these writers were imprisoned for sedition, thus

⁵⁴ Ken Walibora Waliaula, “Prison, Poetry, and Polyphony in Abdilatif Abdalla’s *Sauti ya Dhiki*,” in *Research in African Literatures*, Vol. 40, No. 3 (Bloomington, IN: Indiana University Press, 2009), 130.

categorizing them as political prisoners, their protest continued through their poetry about their country's corrupt leadership and the overall violence they experienced in prison.

Persistence and Perseverance: Abdalla was a writer and activist who served three years of solitary confinement in prison from 1969 to 1972. He was imprisoned in Kamiti Maximum Security Prison for his pamphlet titled *Kenya Twendapi?* (Kenya: Where Are We Headed?) during Kenyatta's regime. During his imprisonment, he wrote poems that criticized Kenyatta and other incumbent elitists who wanted to stay in power. In his poem "Mamba," which translates to crocodile, he wrote:

In the river there is a crocodile, highly conceited
He brags, and regards himself as invincible
He claims, he will be forever...
Let him know, no one knows about tomorrow
He will not last forever, even if he uses threats
As what has a beginning, must also have an end.⁵⁵

The crocodile in this poem metaphorically represents Kenyatta's arrogance and false sense of protection for his country. After the end of British rule, many Kenyans believed that their country would finally have legitimate representation and democratic leadership. Abdalla argued that Kenyatta was thought amongst Kenyans to be this protector of legitimate power.⁵⁶ However, Kenyatta's autocracy was instead a continuation of government corruption and control over Kenyan citizens. Through poetry, Abdalla emphasized Kenyatta's true self and contradicted what he stood for before his presidency. His poem also reminded Kenyatta that mortality would be his presidential demise. This same demise was also directed to any leader, including

⁵⁵ Ibid, 140.

⁵⁶ Ibid, 140.

incumbents such as Moi, who thought that their reign was inevitable. This form of freedom papers gave political prisoners the freedom to express how they felt towards postcolonial governments.

In another poem directed to the government, Abdalla argued for the right to freedom of expression. His disdain towards the regime was the sole reason for his imprisonment, but he promised to himself that he would prevail no matter the anguish and punishment that the government or guards had for him. In his poem “N’shishiyelo ni Lilo (I Am Unshakeable),” he wrote:

However much they punish me, punishing me in whichever way
Whatever hardship I undergo, in daytime and nighttime
I will not be dissuaded, I cling to my utterances
Whenever I see the truth, I will speak [it], I will not keep mum.
Even if their torture, is heart-wrenching
It would not be the antidote, for stopping me from speaking
They are wasting their time, [as] I am immovable
I am not the sort that retreats, where the truth is.⁵⁷

In this poem, Abdalla made it clear that he would not give in to torture and claimed himself as the defender of truth. His fight for social justice would persevere through his writing, especially since the government’s plan was to keep him silent and conformed.⁵⁸ This poem not only demonstrated resistance, but encouraged this form of resistance amongst other Kenyans who were stuck living in government repression. In addition, Abdalla hinted the longevity of his punishment in prison, but does not disclose any information of this punishment. Other poems from political prisoners elaborate on this aspect of Kenya’s prison system.

⁵⁷ Ibid, 137.

⁵⁸ Ibid, 138.

Kinyatti was a historian who was sentenced to more than six years in prison from 1982 to 1988. He was imprisoned for his research on the Mau Mau and served his sentence in three different prisons (Nairobi Remand Prison, Naivasha Maximum Security Prison, and Kamiti Maximum Security Prison) during Moi's dictatorship. While in prison, he wrote poems about a variety of topics including resistance, nationalism, the importance of writing, and his torture. The latter topic, though explicit, showed the bitter truth of how political prisoners were treated in prison. In his poem "The Midnight Poem," he wrote:

The hearts of many
Have experienced
The electric shocks
The merciless beatings
The screams of maimed and dying
The days and nights in the dark wet cages
Chained like wild dogs
Unable to stand up or lie down
Unable to groan or cry.⁵⁹

Kinyatti wrote this poem to explain the physical violence he and others suffered in Kamiti Prison. He wrote that prisoners would be constantly chained like animals, given electric shock, placed in solitary confinement, and at times beaten to death. Since his body was numb from all the beatings, there was no way to express pain, to call for help, or to escape from this state of paralysis. Prisoners were beaten until the guards were satisfied. Kinyatti's experience highlighted the corruption of Kenyan prisons, their inadequacy to rehabilitate, and their immorality of law enforcement towards inmates. In regard to the latter, immorality from Kenyan guards had no limits. Many guards had no shame in the acts they inflicted towards inmates.

⁵⁹ Kinyatti, "The Midnight Poem," in *A Season of Blood: Poems from Kenyan prisons* (London, UK: Vita Books, 1995), 51.

Kinyatti even shared poems of how guards would sexually abuse him. To make him admit to his seditious publications, they would rape him in front of other inmates. In a poem titled “Cold Terror,” he wrote:

Brutal fingers
Feeling the buttocklips
Probing the rectum
Separating and squeezing the testicles
Feeling and pulling the penis
For weapons, money, newspapers, smuggled letters, political documents
The victim stands
Naked
Legs apart
Facing the silent grey wall
Sweat of humiliation flowing
Down his body in streams.⁶⁰

I reiterate that guards had no limits to their infliction of pain and felt no remorse for their cruelty. Because guards were free to act as they please, Kinyatti was utterly humiliated and stripped of his dignity. It is important to note that he also mentioned the consequences for keeping an “weapons, money, newspapers, smuggled letters, political documents.” If his poems or any form of writing was found, they would be confiscated, and he would be punished and interrogated. He stated that after this interrogation, guards would refuse to feed him, give him clothing, and unchain him.⁶¹ Instead, they would leave him on the cold floor with bruises and cuts. Eventually, a few guards who disagreed with the acts of their colleagues, would help him up, but this was not always common.⁶²

⁶⁰ Ibid, 56.

⁶¹ Kinyatti, “Preface,” in *A Season of Blood: Poems from Kenyan prisons* (London, UK: Vita Books, 1995), xii.

⁶² Ibid, xii.

Kinyatti, Abdalla, and other political prisoners knew the risk of governmental opposition and prison writing, but this did not stop them from sharing and recording freely their experiences and opinions. Prison writing, specifically poetry became their unbreakable voice. As I state in the beginning of Part II, with the power of voice through words and writing, the body may perish, but the mind prevails. This again reveals itself to be true in Chapter 6. This next and final chapter will not only share more experiences of police brutality and discrimination through narrative writing, but will introduce one of the most mal-treated and discriminated groups of inmates in Kenyan prisons of the twentieth century.

Chapter 6: Narratives Among Incarcerated LGBT+ Women in Kenya

Kenya's Binary System and Gender Inequality: LGBT+ people in Kenya have historically suffered throughout the second half of the twentieth century with discrimination from their communities and governments. Although it is unclear to when this discrimination began in Kenya, many scholars claim that homosexuality was considered taboo even before the implementation of colonial laws. Islamic legal scholars Javaid Rehman and Eleni Polymenopoulou argue that any region implementing Shari'a law produced a patriarchal marital system that promoted marriage solely between man and woman.⁶³ Since Kenya had a large population of Muslim communities, these binary standards were already set in motion. However, with British rule and the epistemic violence that followed after Kenya's independence, these standards intensified and brought more discriminative gender platforms.

With the Magistrates Courts Act in 1967, kadhi courts were fully integrated into Kenya's judiciary. This act integrated the High Court, Court of Appeal, and *kadhi*, enforcing common law (brought by the British colonists) and Shari'a law (introduced through Arab trade along the coast).⁶⁴ While this judiciary proposed a multi-religious court system, enforced judgments limited the freedom of sexual orientation and promoted a binary system that set permanent gender normative expectations. In addition, since old colonial laws were upheld; the penal code remained, which criminalized same-sex relations. By the end of the twentieth century and into the twenty-first century, these laws became more exclusionary towards homosexuals in Kenya.

⁶³ Javaid Rehman and Eleni Polymenopoulou, "Is Green a Part of the Rainbow: Sharia, Homosexuality, and LGBT Rights in the Muslim World." (Bronx, NY: Fordham International Law, 2013), 30.

⁶⁴ Hashim, "Colonial Policy Towards Muslim Personal Law in Kenya and Post-Colonial Court Practice," 240.

Kenyan today who are openly homosexual receive prolonged sentences in prison. According to Sections 162, 163, and 165 of the Penal Code Cap 63 Laws of Kenya in 2020, “Different sexual acts and attempted sexual acts between people of the same sex are illegal and may be punished with imprisonment of up to five or up to 14 years.”⁶⁵ While this law delineates a prolonged sentence, prison sentences could potentially be longer depending on the jurist’s discretion and their views towards homosexuality. Even if an LGBT+ Kenyan committed a minor offense, their sentence could have been lengthened and their punishment could be immoral. Because of this injustice, these incarcerated individuals experienced far more discrimination than the general population of heterosexual men.

Freedom papers from political prisoners showed that there were forms of resistance through writing, but this changes when dealing with a less elite class of people, this being the LGBT+. Moreover, there are pervasive legacies of colonialism into the postcolonial period. The continuation of these despotic colonial institutions is evident through the various orally written narratives of anonymous LGBT+ inmates.⁶⁶

⁶⁵ International Advisory Group on Country Information, *Country Policy and Information Note Kenya: Sexual orientation and gender identity and expression*, Version 3, 1-60, Home Office (2020), 13.

⁶⁶ These narratives are from a collection of homosexual accounts in Nairobi, Kenya and were published by a multidisciplinary arts organization called the Nest Collective in 2015. This organization’s goal was to share their research through film, but after being prohibited in many countries in 2014, they wrote a book instead in order to make the world aware of this injustice in Kenya. In just two years, this book titled *Stories of Our Lives: Queer Narratives from Kenya*, accumulated interviews from over 250 people who shared their daily lives of being LGBT+ in the twentieth and twenty-first century.

Resistance of LGBT+ Inmates in Prison: These first two narratives are from two homosexual inmates who were betrayed and beaten by law enforcement and prison staff. In this first narrative, a transgender inmate wrote about their relationship with a female police officer:

I am a transgender. I was born a woman, but I have always felt like I am a man... Once I dated a female police officer. I wasn't really into her, but she was crazy about me. I got bored with her after a while and told her I was leaving her... She said, 'Ukiniacha, nitakuua.' [If you leave me, I will kill you...] She sent one of her fellow female officers to arrest me. The officer arrested me for loitering. I asked her, 'what is loitering? Have I robbed anyone? Or raped someone? Or beaten someone...' She started beating me, and I ran away. She followed me, and I beat her seriously. Other policemen came to her rescue. I had to stop beating her, because they came with guns. They really beat me and arrested me. I stayed in the cell for two days, and it's only my fellow queers who rescued me from prison.⁶⁷

Based on their account, police in Kenya were vile to those who resisted their discriminatory rules. When the victim tried to reason with the officer, the situation escalated and led to more violence. Interestingly enough, the transgender writer was also beaten by a woman police officer, who not only sexually exploited the victim, but also enforced these gender norms of oppression. This is to say that both women, men, and potentially other genders oppressed and abused other inmates of other genders within the prison system.

In this second narrative, a gay male sex worker explains their views and experiences of imprisonment, and shares their hopes to be a transgendered woman:

I'm a male sex worker, and I'm gay. I realized I was gay when I was eight... I've been a sex worker for 24 years now... If I had money, I would have changed my gender a long time ago. I would go all the way, and I'd have boobs; a complete overhaul... You can see my neck is full of knife marks... I've been attacked, raped and jailed many times. There isn't a jail I haven't been in. Jail is terrible. As soon as I enter, everyone can tell I am gay. Some of the prisoners like me, but the wardens always beat me...⁶⁸

⁶⁷ Nest Collective, "Memories," in *Stories of Our Lives: Queer Narratives from Kenya* (Nairobi, KE: Nest Arts Company, 2015), 156-159.

⁶⁸ Ibid, 104-106.

In this narrative, the inmate shared their backstory before imprisonment and the financial obstacles they faced in order to be fully transgendered. The inmate also shared that they had been imprisoned multiple times and were constantly beaten by wardens. Whether it was inside or outside the prison system, homosexuals often experienced physical and sexual violence. They are constantly challenged with unfair treatment and are viewed with repugnance. However, other inmates were kind towards homosexuals and would provide them with basic necessities and protection.

These next two narratives are from the previous male sex worker, who wrote about the mutual aid provided to homosexual inmates in prison. They wrote:

I've never really had any issues with the inmates, whenever they see you *wanajua wamepata chakula*. [They know they've got something to eat.] They're very happy. Very quickly, they start approaching me. It becomes a competition. They try to outdo one another. So one guy says he can get you cigarettes, another says he can get you weed, another says he can get you good food. Everyone is trying to prove they can provide for you more than the other. We're treated like queens in prison, us gay guys.⁶⁹

This narrative presented the different forms of internal mutual aid given amongst other inmates. Within Kenyan prisons, there was an economy built by the inmate population in order to support one another. Since many narratives have displayed corruption and mal-treatment from the police, the only groups of people within the prison system that can be trusted were the inmates themselves. Whether it be drugs, food, or oftentimes, defense, incarcerated individuals trusted each other to watch over them.

In this last narrative, the same inmate was defended by another inmate and wrote:

Because I'm a sex worker, I always have more than one partner in prison. When they find out, they always fight amongst each other; never with me. The wardens are the ones who come to put me in solitary for causing fights. But even then, the

⁶⁹ Ibid, 106-107.

big pin inmate will bribe the wardens and I'll be released and taken to his side of the prison.⁷⁰

Since the system itself continued to perpetuate violence in protocol and did not bother to provide defensive procedures for inmates who were violently brutalized by prison personnel, inmates attempted to save their allies, especially their significant others who were homosexual, through persuasion and bribery. In addition, traveling up the ladder of the inmate hierarchy created advantages. Since the sex worker from the narrative had a certain relationship with one of the inmate leaders, they were able to seek mutual aid of defense, but more specifically, a line of collective self-defense.

Since research on LGBT+ in Kenya are limited because of its criminalization of homosexuality, the narratives provided in this chapter are imperative to showing their history and experiences of imprisonment and activism. These narratives provided insight to how the Kenyan prison system treated LGBT+ individuals with police brutality, gender discrimination, and rejection, which they also faced in society. According to the Nest Collective, “Trans and intersex people are denied citizenship—and therefore livelihoods—in the most basic ways.”⁷¹ Through writing, LGBT+ were able to able to express their pain and struggle for acceptance. The two accounts in this chapter shared the experiences of being a minority and oftentimes, an inmate in Kenya.

⁷⁰ Ibid, 107.

⁷¹ Nest Collective, "Introduction," in *Stories of Our Lives: Queer Narratives from Kenya* (Nairobi, KE: Nest Arts Company, 2015), 7. 40

Summary and Conclusion

This essay provided a historical analysis of the modern prison in Africa and how it connects to the Kenyan experience of inmates and their freedom of expression. Despite the oppressive system that they were controlled within, the power of writing gave inmates the expressive ability to compose poetry, engage in political and social activism, and address the problems they faced in prisons. Italian philosopher Antonio Gramsci, who was imprisoned for six years in the Island of Ustica, argued that “the writing down of notes and criticisms is a didactic principle” for revolutionary action and thought.⁷² While imprisoned for his opposition of Italian Fascism in 1926, he wrote and shared with the world of the destructive hegemony from corrupt governments and their prisons. As mentioned in the introduction, prisons were intended to help and rehabilitate people who committed crimes. However, Foucault explained that modern prisons were contradictory as they asserted their power through surveillance, confinement, creative ways of torture, and conformity. Foucault’s work was imperative for this research as his theory of prisons created a general perspective of the structure and practices in prison. These systems of punishment benefitted the prosecutor and prolonged physical and mental agony to the offender. This was quite exemplified with colonial rule in Africa and British influence over Kenya’s court systems in both the colonial and postcolonial period. British rule in Kenya increased surveillance, changed court procedures, enforced labor systems, and imposed discriminatory laws that limited the freedom of expression, sexuality, and overall, individuality.

⁷² Antonio Gramsci, “The intellectuals,” in Gramsci *Selections from the prison notebooks* (Durham, NC: Duke University Press, 2007), 29.

The freedom papers of Jomo Kenyatta, Abdilatif Abdalla, Maina wa Kinyatti, and the two anonymous LGBT+ inmates showed this reality.

More importantly, these sources showed how the practices of prisons in Kenya changed overtime and unfortunately, did not improve or come near their intended purpose of rehabilitation. Instead, prisons proved Foucault's argument that were systems designed to dominate groups through control and governance. The experiences of Abdalla and Kinyatti underscore this argument to be true as their government remained oppressive with their autocratic leaders in the postcolonial period. What is interesting to note are the experiences and actions of Jomo Kenyatta during colonial and postcolonial Kenya. The first source of prison writing used in this essay was Kenyatta's writings on toilet paper in the 1950s. His accounts described how colonial authorities imprisoned and brutally punished him for challenging British rule and attempting to create an independent nation. With his call for "African unity" during his imprisonment, he can be perceived as an empathetic leader who wanted the best for his country. However, as stated in Abdalla's poems, Kenyatta was not what Kenyans perceived him to be, especially after he became president in 1964. Similar to his colonial adversaries, he created a regime that administered the surveillance of his people and prevented them from participating in government opposition. This is ironic since he originally was against laws of surveillance and conformity. With Kinyatti, these practices continued throughout the 1980s under Kenyatta's successor Daniel arap Moi. The punishments experienced in prison for violating these laws during Moi's dictatorship were far worse than Kenyatta's regime, or even imprisonment. Poetry of these political prisoners showed the continuity of colonial violence and autocracy in the postcolonial period. They also showed the differences of being an elite and non-elite in the prison system.

Towards the end of this essay, I explored the experiences of LGBT+ inmates and came to the conclusion that their punishments not only included violence, but also discrimination that proceeded from colonial rule. Although these writings were orally collected, they offered insight into the human rights violations of one of the most discriminated and non-elite population groups. They demonstrated that prison conditions have all but improved over time, and have repressed the right to speak freely. By writing these oral accounts on paper, LGBT+ inmates were able to expose the continued oppression of Kenyan prisons in the postcolonial period and take back this freedom of expression and speech.

I would like to finish off by stating that prison writing was a useful source for this essay. The variety and history of prison writing, especially the use of toilet paper as a writing material was quite fascinating. In addition, other former African presidents and founders of their country have used this tool of writing. Similar to Kenyatta, Kwame Nkrumah and Nelson Mandela expressed their thoughts on colonialism and imprisonment on toilet paper. As research on prison systems and inmate experiences are expanding in African countries such as South Africa, Nigeria, Ethiopia, Egypt, Botswana, Côte d'Ivoire, etc., it is still important to note that Kenya as well as many more African countries are in dire need of further research. Today, Kenya's inmate population has increased to double its size of 19,000 inmates from 1972.⁷³ As governments continue to marginalize, imprison, and harass Kenyans, we, as people who fight for rights to freedom of speech, inclusivity, and fair treatment, must continue, or start to listen to these important communities who have been incarcerated in Kenya, and around the world. My hopes for this essay are to create a foundation for potential researchers to expand on these themes of

⁷³ "Kenya: World Prison Brief Data," *Prison Studies* online, September 2020, <https://www.prisonstudies.org/country/kenya>.

criminality, punishment, colonialism, postcolonialism, police brutality, gender, resistance, and homosexuality in Kenya.

Bibliography

- Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. New York, NY: Vintage Books, 2012.
- Rothman, David J. *The Discovery of the Asylum*. Piscataway, NJ: Transaction Publishers, 1971.
- Oruka, Henry Odera. *Punishment and Terrorism in Africa*. Nairobi, Kenya: East African Literature Bureau, 1976.
- Killingray, David. "Punishment to Fit the Crime?: Penal Policy and Practice in British Colonial Africa." In *A History of Prison and Confinement in Africa*, 97-118. Edited by Florence Bernault. Portsmouth: Heinemann, 2003.
- Bernault, Florence. "The Politics of Enclosure in Colonial and Post-Colonial Africa." In *A History of Prison and Confinement in Africa*, 1-53. Edited by Florence Bernault. Portsmouth: Heinemann, 2003.
- Achebe, Nwando. *The Female King of Colonial Nigeria: Ahebi Ugbabe*. Bloomington: Indiana University Press, 2011.
- Bernault, Florence. "The Shadow of Rule: Colonial Power and Modern Punishment in Africa." In *Cultures of Confinement: A history of the Prison in Africa, Asia and Latin America*, Edited by Frank Dihotter & Ian Brown. Ithaca: Cornell University Press, 2007.
- Wanyonyi, Kevin. "The Kadhis' Courts in Kenya: Towards Enhancing Access to Justice for Muslim Women." Lund: Lund University Press, 2016.
- Pouwels, Randall. *The History of Islam in Africa*. Edited by Nehemia Levtzion. Athens: Ohio University Press, 2000.
- Mwakimako, Hassan. "Conflicts and Tensions in the Appointment of Chief Kadhi in Colonial Kenya: 1898-1960s." In *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, 109-134. Edited by Shamil Jeppie, Ebrahim Moosa, and Richard L. Roberts. Amsterdam: Amsterdam University Press, 2010.
- Brown, Beverly B. "Islamic law, Qadhis' courts and Muslim women's legal status: the case of Kenya." In *Journal*, 14(1-2), 94-101. London: Institute of Muslim Minority Affairs, 1993.
- Hashim, Abdulkadir. "Colonial Policy Towards Muslim Personal Law in Kenya and Post-Colonial Court Practice." In *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, 221-246. Edited by Shamil Jeppie, Ebrahim Moosa, and Richard L. Roberts. Amsterdam: Amsterdam University Press, 2010.
- Kinyatti, Maina wa. *A Season of Blood: Poems from Kenyan prisons*. London, UK: Vita Books, 1995.

- Van Vuuren, Helize. "'Labyrinth of loneliness': Breyten Breytenbach's prison poetry (1976–1985)." In *Tydskrif vir Letterkunde*, 46, no. 2. 2009.
- Kenyatta, Jomo. *Facing Mount Kenya: the traditional life of the Gikuyu*. Nairobi, KE: East African Educational Publishers, 2015.
- Aseka, Eric Masinde. *Jomo Kenyatta: A Biography*. Vol. 1. Nairobi, KE: East African Educational Publishers, 1992.
- Kenyatta, Jomo. *Suffering without bitterness: the founding of the Kenya Nation*. Nairobi, KE: East African Publishing House, 1968.
- Thiong'O, Ngugi wa. *Detained: A writer's prison diary*. Portsmouth, NH: Heinemann, 1981.
- Waliaula, Ken Walibora. "Prison, Poetry, and Polyphony in Abdilatif Abdalla's *Sauti ya Dhiki*." In *Research in African Literatures*, Vol. 40, No. 3. Bloomington, IN: Indiana University Press, 2009.
- Rehman, Javaid and Eleni Polymenopoulou, "Is Green a Part of the Rainbow: Sharia, Homosexuality, and LGBT Rights in the Muslim World." *Journal*, vol. 37, no. 1, 1-52. Bronx: Fordham International Law, 2013.
- International Advisory Group on Country Information. *Country Policy and Information Note Kenya: Sexual orientation and gender identity and expression*, Version 3, 1-60. Home Office, 2020.
- Collective, Nest. *Stories of Our Lives: Queer Narratives from Kenya*. Nairobi, KE: Nest Arts Company, 2015.
- Gramsci, Antonio. *Selections from the prison notebooks of Antonio Gramsci*. Durham, NC: Duke University Press, 2007.
- Kenya: World Prison Brief Data. *Prison Studies* online. September 2020.
<https://www.prisonstudies.org/country/kenya>
- Fanon, Frantz. "Introduction" & "The So-Called Dependency Complex of Colonized Peoples." In *Black Skin, White Masks*, 1-7, 61-81. London: Pluto Press, 1986 [1952].
- Nkrumah, Kwame. *The Autobiography of Kwame Nkrumah*. Nashville, TN: Thomas Nelson and Sons, 1959.
- Mandela, Nelson. *Long Walk to Freedom*. Boston, MA: Little, Brown and Company, 2008.
- Kathrada, Ahmed Mohamed. *Letters from Robben Island: A Selection of Ahmed Kathrada's Prison Correspondence, 1964-1989*. Edited by Robert D. Vassen. East Lansing, MI: Michigan State University Press, 1999.