The death of George Floyd in the United States has sparked a number of important conversations, particularly around racial justice and policing. As protests against brutal criminal justice systems and demands to address colonial legacies have spread around world, the penal system – the one particular institution that brings the two strands together – has not received as much attention.

The prisons that litter the African landscape are both a legacy of colonial subjugation and a site for egregious human rights abuses. Yet there have been few calls on the continent for their abolition or defunding. In fact, even throughout the period of anti-colonial agitation and struggle, there seem to have been few such demands. This is curious given the fact that incarceration as punishment was completely unknown in Africa before the arrival of the Europeans.

Pre-colonial justice systems “were victim rather than perpetrator-centered with the end goal being compensation instead of incarceration” notes Prof. Jeremy Sarkin. Though pre-trial detention was common and some centralised states, such as the West African kingdom of Dahomey, had permanent prisons, these were not penal institutions but rather facilities for temporary detention as suspects or convicts awaited justice.

However, even in the pre-colonial epoch, interaction with Europe had begun to influence penal
systems and ideas around confinement. According to Florence Bernault, author of *A History of Prison and Confinement in Africa*, “the intensification of the slave trade in the eighteenth and nineteenth centuries, and the violence it entailed at the time of abolition meant that unprecedented numbers of Africans faced capture and enslavement and that Europeans’ pre-colonial influence over African penal systems came mostly from the diffusion of antiquated devices of bodily restrain and torture”.

In indigenous systems, corporal and capital punishments were reserved for the worst crimes, while, according to Leonard Kercher’s 1981 treatise on the Kenyan penal system, “ostracism, religious sanctions and expulsion were ... employed mainly against lesser habitual offenders who had outraged the conscience and exhausted [society’s] patience”. Such expulsions in some societies took the form of enslavement and the slave trade incentivised this punishment to be imposed for an increasing range of crimes. Those sold off were held in camps where men were shackled, though in some instances, women and children were allowed to wander free in guarded compounds as they awaited shipment.

Similarly, as the abolition of the slave trade was enforced, both slavers and slave rescuers kept victims in enclosed compounds – the former to avoid patrols and the latter to house and supervise them in so-called “villages of liberty”. In this way, the idea of confinement became increasingly familiar to many on the continent, though it was not yet linked to punishment; that came with colonialism.

There is no evidence of the existence of pre-colonial prisons in Kenya. However, it is notable that prisons were among the first buildings the British built whenever they went into a future colony. Within 16 years of their arrival in Kenya in 1895, they had built 30 prisons with an average daily incarcerated population of over 1,500. In the next 20 years, the numbers of both prisons and inmates would more than double. By the dawn of the Second World War, Kenya was incarcerating a far greater proportion of its population than British colonies elsewhere in East and Central Africa, with 145 out of every 100,000 natives in prison. And in 1951, on the eve of the Mau Mau war, prisons held nearly 12,000 people.

Daniel Branch attributes the high incarceration rate to the fact that Kenya was a settler colony and to the fact that, as fellow historian, David Anderson relates, “law and order had been a near obsession with certain section of the European settler community”. This is another link with the US, where for a long time, the phrase “law and order” has been used to conflate black resistance to the racist hierarchy with criminality, most recently in its use by President Donald Trump with regard to the Black Lives Matter protests.

Similarly, in Kenya, imprisonment in the service of demands for “law and order” was not about dispensing justice. As Branch observes, “Kenya’s prisoners were serving sentences in institutions with no historically derived meaning, having been convicted for activities that they would not themselves consider offences”. Prisons were rather an extension of the colonisation project, a punitive device to ensure compliance with the racist colonial order, as well as its dictates and privileging of white authority.

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Colonial prison differed from its counterpart in Europe. “The body and pain are not the ultimate objects of ... punitive action,” wrote Michel Foucault in his book, *Discipline and Punish*, which details the long-term changes in the focus of European penology. However, according to Bernault, “while the Western penitentiary reframed free individuals as equal citizens and legal subjects, the colonial prison primarily construed Africans as objects of power”. It was about the exercise of power over them and ideas like rehabilitation of offenders that were being propounded in the West by the prison reform movement. These reforms had little impact on how the colonial prison was run.

As Branch notes, from the beginning, Kenyan prisons were deemed by critics to be “insufficiently harsh”. In his paper, “Imprisonment and Colonialism In Kenya”, he quotes one visitor to Lamu in 1909 complaining that the prison was “a farce - the punishment instead of acting as a deterrent only encourages the prisoners to commit offences, they have no proper work to perform, they are given all the holidays”.

**Forced labour**

Incarceration was not just about punishment; it was also a means to extract labour and resources for the colonial state. Prisoners were forced to work on public projects and penal labour was considered a vital part of the colonial economy. As Bernault points out, “By 1933, forced labour had become such a frequent sentence that the government began building prison camps entirely devoted to agricultural and public works”.

This reliance on prison labour contributed to a preference for jailing people. In his testimony to the Bushe Commission, set up in 1933 to look into the Kenyan justice system following a series of scandalous incidents, Sydney Hubert La Fontaine, the Ukamba Province Provincial Commissioner, demonstrated the preference for jailing people. He admitted that he would rarely entertain alternatives to putting natives in prison for a first offence, nor give them time to pay fines. “In the vast bulk of cases they are detained.”

Another incident related by British anti-imperialist Norman Leys in his book, *A Last Chance for Kenya*, demonstrates the connivance of colonial authorities in locking up Africans they knew to be innocent. He tells the story of how one District Officer was shocked, upon taking up a fresh appointment, to discover that white settlers were in the habit of getting his predecessor to imprison and punish their less efficient workers for up to 6 months with hard labour, even though the workers had actually committed no crime! When he tried to stop the custom, the settlers wrote to the governor and he was reprimanded and a commission of inquiry set up to investigate his actions.

It is also important to note that settlers were large beneficiaries of the forced labour of convicts on their farms, which would establish a precedent for future African elites. In 1954, the Kenyan Minister for Defence, Jake Cusack, would say about the use of Mau Mau detainee labour: “We are slave traders and the employment of our slaves are, in this instance, by the Public Works Department.”

Such attitudes, however, inevitably ran up against the limitations of the penal system, which was severely undermanned and under-resourced. By the early 1930s, according to Branch, the Prisons Department employed just 20 Europeans (mainly based in Nairobi) and over 400 Africans. By comparison, the total number of persons they were expected to watch over in the course of 1930 was over 21,000. Pay was also pretty poor and a job in the prison service was the preserve of those without other options and so staff turnover was high. Education standards, by contrast, were abysmally low as the colonial regime preferred to recruit prison staff from among often-illiterate former soldiers.
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Not only were the prisons poorly funded, but they relied on the free labour of inmates to keep them running and to finance a significant part of their operations. In 1930, for example, earnings from prison industries accounted for a fifth of the total cost of the Prisons Department – some £8,856, the equivalent of nearly £600,000 today, or about Sh80 million.

Further, prison facilities and especially the detention camps that had been introduced in 1926 to cater for petty offenders in a vain attempt to ease overcrowding, were ramshackle affairs. In general, they tended to be run on the terms of the incarcerated rather than the warders. In many camps, there was little segregation of the prison community from the rest of society, with inmates in some cases free to come and go as they pleased, which made for some rare comical moments. For example, Branch relates an instance where a magistrate in Mombasa, while inspecting a detention camp, came across an inmate he had sentenced there earlier in the day “having tea with his wife and children just inside the wire”. And in Thika in 1952, inmates would be allowed out for a stroll and could brew their own booze at the Municipality Club.

However, these momentary escapes perhaps did not make much of a difference as life outside the prison had increasingly come to mirror the conditions within it. As Caroline Elkins notes in her Pulitzer Prize-winning book, *Britain’s Gulag*, “For decades before the [Mau Mau] Emergency, British colonizers sought to control the African population through a complex, apartheid-like set of laws dictating among other things where Africans could live, where and when they could move, what crops they could grow and what social places they could frequent.”

The prison was just a part of the system for enforcing this brutal racist hierarchy, other elements of which included public floggings and extortionate fines. For example, as related by Leys, there were reported cases of African boys being fined the equivalent of a month’s wages for stealing a loaf of bread.

The predations and impositions of the colonial state and the resentment they evoked were on the rise, culminating in the outbreak of the Mau Mau uprising in 1952. This would fundamentally change the already brutal Kenya prison system for the worse as tens of thousands of Mau Mau detainees and convicts flooded the system, upending the established hierarchies within it, as well as cementing the place of the prison within the popular imagination as one of physical desecration and social death. It became a terrifying modern-day chimera that combined the pre-colonial corporal and capital punishments, ostracisms and expulsions and applied them on a hitherto unimaginable scale.

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