



KENYA'S NEW PRISON INDUSTRIAL COMPLEX: Fundamental flaws in Uhuru Kenyatta's plan to make jails profitable

By Christine Mungai



“When I first became involved in anti-prison activism during the late 1960s, I was astounded to learn that there were then close to two hundred thousand people in prison. Had anyone told me that in three decades, ten times as many people would be locked away in cages, I would have been absolutely incredulous.” ~ Angela Davis

In the one hundred years between the mid-1850s and 1980s - a period of nearly 130 years - the state of California constructed a total of nine prisons and two prison camps. But in the five years between 1984 and 1989, nine more prisons were constructed. It had taken more than a century to build the first nine prisons in California, and less than a decade for that number to double. Today, there are 34 state prisons in California, and this is not counting federal prisons or county jails - the equivalent of Kenya's police cells. The state of California also has 43 prison "conservation" camps, whose inmates are [procured](#) to fight wildfires and respond to other public emergencies.

That the US is running a Prison Industrial Complex has been well documented. America accounts for just 5% of the world's population, but 25% of the world's prisoners. Ava DuVernay's gripping 2016 documentary, *13th*, expertly tracks the policies, systems and forces that have pressed more than 2.3

million Americans – overwhelmingly black and Latino – into the prison system, so much so that in some neighbourhoods, going to prison is almost a normal rite of passage.

But what the figures above from California reveal is that the processes that produce mass incarceration of an entire demographic can be astonishingly rapid and diabolically efficient.

“The first thing that happened when we got there is we were told to strip. In the open. All wardens sitting there watching. I think this was the worst thing to happen to us. We were many. The indignity of standing naked in front of strangers...” ~ Anonymous submission to #PrisonDiaries (courtesy of @MarigaThoithi)

In early October, [a press statement](#) from the Presidential Strategic Communications Unit (PSCU) revealed a plan to establish the Kenya Prison Enterprise Corporation, a “state enterprise” that would reportedly expand the scope of prison work programmes “with the aim of unlocking the revenue potential of the prisons industry, and ultimately turn it into a reformative and financially self-sustaining entity.”

The new corporation will also contribute to the realisation of President [Uhuru] Kenyatta’s Big 4 Agenda, particularly food security, affordable housing, and manufacturing,” a statement from State House said. The corporation will be mandated to “organise and manage” the assets of the Prisons Department, including 86 prison farms with a total of over 18,200 acres of land. The corporation will, at some point, “foster ease of entry into partnership with the private sector on different spheres” – a vague statement that could include private contracting of anything from construction of prison facilities to full operations.

As Michael Onsando at BrainstormKE [has argued](#), the plan to “unlock the revenue potential” of the prison industry is linked to the current financial distress in the Jubilee administration, as well as to a desire to make some gains in President Uhuru Kenyatta’s “legacy” term.

However, it is horrifying to think that the way to kill two birds – job creation and industrialisation – is by the deadly stone of expanding the prison sector, corralling people into a pool of cheap labour with almost no rights. Granted, there are many [different privatisation models](#). Private firms can be contracted to build prisons, to manage them, or both. Countries such as the US, UK and Australia have privatised the entire chain of operations from construction to day-to-day operations, while in Europe the trend is to outsource specific functions, such as catering, administration, healthcare and security. In many Asian prisons, the private sector is more directly involved in the prison industry by contracting inmates to work in for-profit factories or firms. Kenya seems to be leaning towards a mixed model, where the corporation, for now, remains fully state-owned but is run with a private sector ethos.

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Kenya’s prisons house nearly 50,000 people in facilities designed to hold 14,000. Stories of horrific conditions of disease, vermin and lack of food are common.

Most of the support for the privatisation of prisons is in the form of two arguments: one, that the

private sector can run prisons better than governments can; and two, and that prisons ought to support themselves financially.

[The evidence is mixed](#) on the first claim; privatisation does not always save money or improve efficiency. A 2011 investigative report by the American Civil Liberties Union revealed that private prisons “do not save money, cannot be demonstrated to save money in meaningful amounts, or may even cost more than government prisons.”

A value-for-money study commissioned by the Dutch government found that while operational costs in private prisons were reduced by 2-13%, savings disappeared once transaction and other financial costs were taken into account.

Some countries have rejected proposals to privatise prisons. In Costa Rica, although the government had signed a pre-contract to build a private prison with a capacity for 1,200 inmates at \$73 million, it did not proceed with the deal, instead opting to build facilities at its own expense for 2,600 inmates at \$10million. The Costa Rican government realised that going along with the deal would mean being locked into a contract that would spend \$37 daily per inmate for 20 years, while in the state prisons the amount was \$11. (Inmates in state facilities made up 80% of the prison population.) The government cancelled the contract, and opted instead to improve the situation of all inmates, raising the daily per capita amount to \$16 for all those under confinement.

In South Africa, the government took over a private prison in Bloemfontein because G4S - the private security company contracted to run the prison - “had lost effective control of the facility”. Investigations were launched into allegations that some prisoners had been forcibly injected with anti-psychotic medication and subjected to electric shocks.

The second claim - that private prisons should be able to support themselves financially - is deeply rooted in a neoliberal ethos that judges the value of everything through the logic of the market. We see this in the announcement of the plan by PSCU, which stated that unlocking the revenue potential of the prisons industry would ultimately turn it into “a reformatory and financially self-sustaining entity”.

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The framing of this proposal is curious, particularly in the way it connects *reformation* with *financial independence*. It is neoliberalism offering rehabilitation through success in the market. (No wonder that the phrase “prominent Nairobi businessman/ woman” is often used to sanitise the reputation of people mired in scandal.)

Moreover, in a place like Kenya, where government contracts are often irregularly awarded and where corruption is endemic, privatisation can actually result in degraded services. Already, detectives [are investigating](#) a Sh6.2 billion scandal at the Prisons Department. A senior detective revealed a few weeks ago that investigators from the Directorate of Criminal Investigations and the anti-graft commission were closing in on suspects behind the suspicious spending on prisoners’ food, which was cleared last year although it is still marked as a pending bill.

Now, by linking the prisons sector with President Kenyatta’s Big 4 Agenda, we are likely to see the emergence of a “hard-working performer” at the helm of the prison corporation who will point to the

profits at the end of the prison pipeline as evidence of “cleaning up” the ailing penal system.

“The perpetrator is a product of criminal discourse and a victim of institutions that claim to deter crime, but are actually invested in perpetrating a police state where everyone is under surveillance and on the border of falling into criminality.” ~ Michel Foucault

All this is happening in a worrying context of a criminal justice system that disproportionately targets the young, the poor and the urban. Last year, a damning audit by the National Council on the Administration of Justice revealed that the Kenyan state is essentially at war with informality. In practical terms, poverty is a crime.

Not only that, colonial laws against offences like vagrancy and loitering remain on our statute books and are vigorously enforced - as Carey Baraka [articulated on the perils of being a young man](#) on the streets of Nairobi and being forced to prove your existence by producing an ID card on demand. In fact, demands for ID documents assume that the black body in the city is not legitimate and must be accounted for.

“It’s an assumption that Africans can never be urban,” says city planner Constant Cap. “If you are urban, then you are not a real African, and you must explain your presence in the city to the powers that be. Our cities are actually not planned with us in mind - it is like they are not expecting permanent residents, just itinerant workers who trade their labour.”

This means that [nearly 70% of court cases](#) in our criminal judicial system are criminally petty, nuisance offences, or economically-driven (such as being drunk and disorderly, trading without a licence, loitering, causing a disturbance, or “preparing to commit a felony”). The dragnet is so large and indiscriminate that a Kenyan adult has a 1 in 10 chance of spending some time in police custody over the course of a year, although these figures skew heavily towards those who are young, male and poor.

In some ways, it is a logic that leans towards universal punishment rather than supporting universal prosperity - even for the small street trader who is really not doing anyone any harm, and certainly does not deserve jail time. As the economy continues to be depressed, we are likely to see more people who are unable to secure formal employment and who turn to informal trading on the street. This will make them more vulnerable to police harassment and arbitrary arrest.

A recent investigation by Nation Newsplex [revealed](#) that there are more pre-trial detainees incarcerated in Kenya than convicted prisoners; 90% of those in remand have been granted bail but cannot afford it even though more than half of the bails were set at less than Sh250,000 (roughly \$2,500). In other words, there are immediate better outcomes for being rich and guilty than poor and innocent.

Meanwhile, the Judiciary is reeling from [huge budget cuts this year](#). It had requested Sh31 billion to fund its operations for the current financial year but it was allocated Sh17 billion by the National Treasury. The latter figure was further reduced by Parliament to Sh14 billion. This means that judicial officers will likely be under more pressure to arrest and fine, as a prosecutor in the Directorate of Public Prosecutions (DPP) told me. “Petty offences are prosecuted vigorously in the judicial system because they are quick and easy to prove - the only witness needed in most cases is a police officer,” she said. “And the fines are now an even important source of money for the Judiciary.”

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It doesn't help that the key performance indicators (KPIs) for judicial officers are convictions. The gravity of the case doesn't matter because "a conviction is a conviction, and magistrates get promoted on the basis of the number, not the type, of convictions," the prosecutor told me, "even if the charges are just trespassing, hawking, illegal grazing, and the like."

How might the profit incentive in the prisons change the trends in convictions and sentencing? "I definitely see a possibility for it to be more profitable to send people to jail than to fine them," the prosecutor said. "Remandees are often given work to do things like sweep the governor's compound - a profit motive in prisons will escalate this, and it will be framed as a favour to prisoners."

But this is not all. The Kenyan education system is undergoing two major changes. On the one hand, the new curriculum has an increased focus on technical and vocational skills, and less of an emphasis on academic subjects. On the other hand, there is increased surveillance and militarisation of the school system, with authorities, including the Directorate of Criminal Investigations (DCI) and the Education Cabinet Secretary Amina Mohamed, [issuing threats](#) of a criminal record and jail time for students who protest or who are implicated in anti-social behaviour.

"This is to warn every student from primary school, secondary school, college and university that the DCI is archiving and profiling every criminal act and consolidating charges that may be preferred to each and every student involved in any crime," the DCI tweeted in June.

A school-to-prison pipeline is therefore not far-fetched. With the new curriculum putting students on individual "talent" pathways, it will be easy to explain student failures on their lack of talent, thereby obscuring the bigger structural issues that might be at play. And now, students cannot complain, or they risk jail time.

"[The] negative characterization of poor and largely nonwhite youth is in sync with the broader push to replace social services with criminalization," Alex Vitale [writes](#) in "The Criminalization of Youth", an article in *Jacobin* magazine. "As more and more deprived neighborhoods are denied access to decent jobs and schools, their young people are criminalized as 'the worst of the worst' to ensure that the problems in these communities are understood as individual and group moral failures, rather than the result of rapacious market forces and a hollowed-out state."

"Companies that service the criminal system need sufficient quantities of raw materials to guarantee long-term growth . . . In the criminal justice field, the raw material is prisoners and industry will do what is necessary to guarantee a steady supply. For the supply of prisoners to grow, criminal justice policies must ensure a sufficient number of incarcerated [people] regardless of whether crime is rising or the incarceration is necessary." ~ Steven Donziger

Three new menacing forces - the profit motive of privatised prisons, a depressed economy with fewer formal jobs and more informal trade, and a more militarised school system with jail sentences

for unruly students - are likely to work with diabolical synergy to push an increasing number of young people into the criminal justice system.

This should worry us all because mere contact with the system leaves "a stain of criminality", my prosecutor friend told me. "I've seen children and young people enter the criminal justice system for a small reason that could have been handled at home or in the community - and by the time the system is done with them, they are into proper crime: hardened, disillusioned and angry."

Three new menacing forces - the profit motive of privatised prisons, a depressed economy with fewer formal jobs and more informal trade, and a more militarised school system with jail sentences for unruly students - are likely to work with diabolical synergy to push an increasing number of young people into the criminal justice system.

This is not a feature of a broken state apparatus; on the contrary, the state is acting just as it was designed to act, as Keguro Macharia reminds us:

One reads Kenyans demanding colonial systems work better, and weeps.

- *"we need police to do their work properly"*

- *"we need the laws implemented properly"*

- *"we need the judicial systems to work properly"*

If you are being unhumaned, those systems are working properly.

If you are being executed, those systems are working properly.

If you are feeling frustrated and humiliated, those systems are working properly.

The demand cannot be that systems designed to unhuman Africans work properly.

The demand is abolition.

And as for Uhuru Kenyatta achieving the Big 4 agenda through prison "reform", it would be worth looking at how the US government systematically and cynically deprived its black and brown citizens of liberty at a huge cost even to itself. Instead of building good public housing like the Housing Acts of 1949/65/68 mandated, the US rapidly built prisons. So in an evil kind of way, the US did end up investing in public housing - in jail.

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