

The Influence of Imprisonment on Recidivism in Kenya

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Abstract

Recidivism is a global phenomenon that has persisted over the years. Studies conducted in several countries have attributed the problem to various factors. A University of Nairobi study on recidivism among prisoners in Nairobi County-Kenya established that there is a significant link between imprisonment and the vice. The study conducted at Kamiti Maximum Security Prison and Lang at a Women Prison involved purposively selected 167 respondents who were recidivist prisoners. The sample comprised of one hundred and thirty eight (138) males from Kamiti and twenty nine (29) females from Lang at a. Data for the study was collected by use of questionnaires, focus group discussions, key informant interviews and documentary review. The key informants comprised of serving prison, probation and police officers. Quantitative and qualitative techniques were employed in data analysis. This paper is a detailed presentation of the study findings on the influence of imprisonment in particular on recidivism in Kenya.

Key words: Recidivism, Imprisonment, Kenya.

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I. Introduction

Recidivism refers to a return to crime after a convict had been punished for the first time. The term is often interchangeable with 'repeat offending', 'reoffending' and 'reconviction'. Recidivists are described as 'chronic', 'multiple' or 'prolific' offenders since they continue to commit crimes despite punishment (Payne 2007; Maltz, 2001). Recidivism is wide spread globally, for instance in Argentina, Tella and Schargrodsy (2013) established that the yearly prison recidivism rate was at 22.37% for the offenders released from prison. In Britain, recidivism level has been as high as 70% in some prison institutions (UNODC, 2012). In Kampala - Uganda, recidivism rate among Community Service offenders rose from 9% to 12% between the year 2004 and 2010 (Ssebuggwawo, 2010), while in Nigeria, in the year 2010 and 2011, more than 50% of the 25,380 offenders who were on trial were recidivists (Osayi, 2015). In Kenya, the number of recidivists in prisons increased by 76.9% from 12,949 in the year 2012 to 22,910 in 2013 (KNBS 2014).

Anoverview of the influence of imprisonment on Recidivism

While it is expected that imprisonment as the most commonly applied form of punishment should control recidivism bydeterrence, incapacitation, reformation or rehabilitation this has not been the case. According to McNeil (2010), among the factors that influence the likelihood of an inmate to recidivate is whether or not he or she had been committed to prisons previously with more prior convictions leading to greater chances of recidivism.Generally this inability of prison institutions to curtail re-offending has been attributed to several factors. For example, there are observations that in prisonsconvicts get hardened thus when dischargedthey continue with criminal tendencies. This has lead to the arguments that prisons are 'schools of crime' where the inmates only lean to engage in more serious crimes than the ones they were convicted of (Kagendo, 2003; Gendreau, Goggin & Cullen, 1999). Prison institutions have also been termed as 'criminogenic' that is, they encourage criminal tendencies rather than reform and rehabilitate offenders (Odegi-Awuondo, 2003; Mushanga, 1976).

To Goodstein (1993), prisonsmay be responsible for reconvicts because they instil acquiescent and compliant behaviour which causes institutional dependence. While, according to Venter, Hoffman and Goudine (2006) recidivism can be attributed to imprisonment due to failedreformation and rehabilitation interventions offered to prisoners.In concurrence, James (2015) posits that lack of prisonersrehabilitation programmes present a serious challenge to the prevention of reoffending. The programmesinclude those offered to the convicts while still in prison custody which aims to prepare them for discharge. In this category are provision of education and vocational training. There are alsostrategies that take place during the time of the offendersrelease which aims to assist them as ex-prisoners get the services they need. In this category is offering employment opportunities to

the discharged prisoners. The other programmes are those that are long term in nature that should assist the offenders to permanently reintegrate in the community.

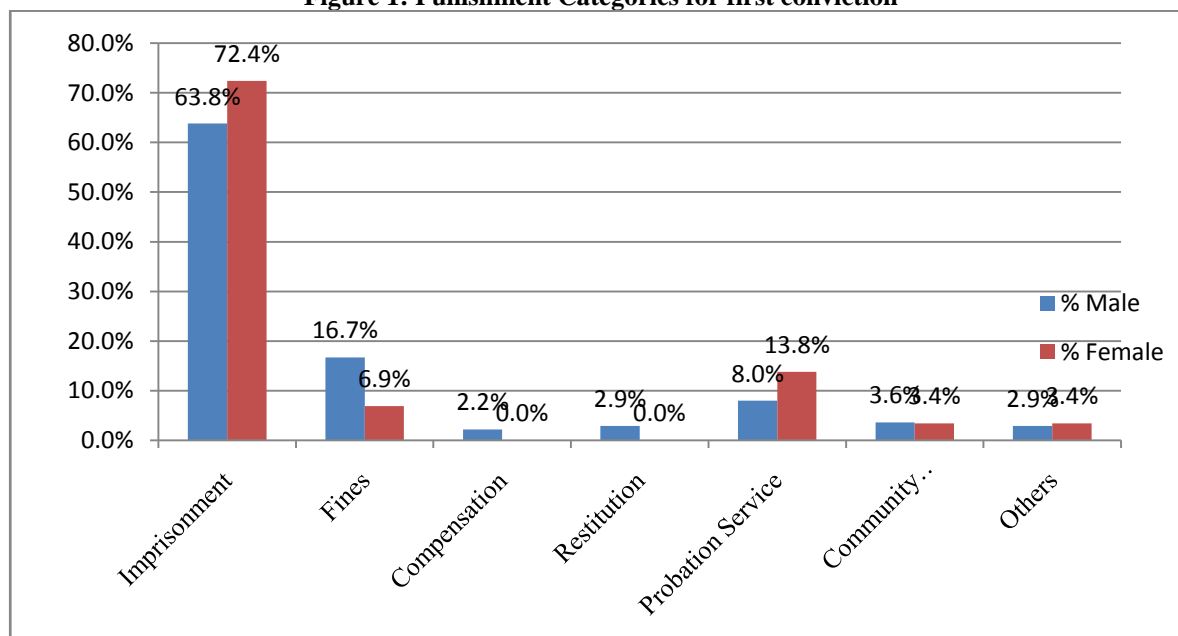
Despite the arguments associating recidivism purely to imprisonment, reoffending as a social problem, cannot be blamed on imprisonment per se since it is not possible to predict future behaviour on the basis of training programmes, and other reformation measures in prisons given the fact that there are many intervening variables such as environmental influences like social stigma and poverty that may impede the effects of reformation and rehabilitation programmes offered in prisons after the offender is released back into the society.

Nevertheless, to ensure that rehabilitation of offenders through imprisonment is fully accomplished, Tewkbury (1997) opines that it is the responsibility of prison authorities to provide treatment for the inmates, and contain them in conducive environments. For the same purpose, Briggs (1975) posits that prison institutions must put up measures to preserve and enhance a person's dignity and self-respect while Playfair & Sington (1965) emphasized that correctional institution must strive to train the inmates so as to counter any possible contamination by fellow felons.

The research findings on the influence of imprisonment on Recidivism in Kenya

To begin with, the study established that greater part of the respondents had been imprisoned for their first and subsequent convictions. For first convictions, majority of the respondents, (64% and 72% males and females respectively) had been awarded imprisonment for their very first conviction while 17% of the males and 7% of females were awarded fines, 8% and 14% respectively were punished by committal on probation service, 3.6% and 3.4% were placed on community service orders. Only males were punished by compensation and restitution albeit a small percentage (5%) as shown in Figure 1.

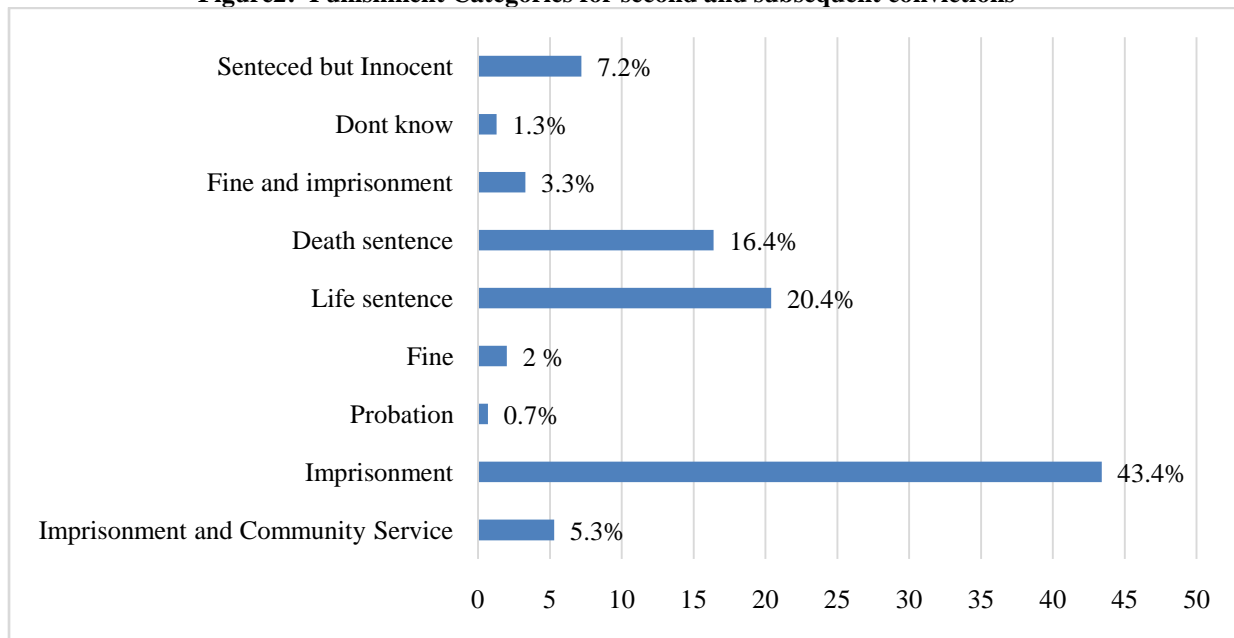
Figure 1: Punishment Categories for first conviction



Source: Researcher (2016)

For the second and subsequent convictions; 43.4% of male and female respondents combined, were imprisoned for the second convictions, 20.4% were awarded life sentences, 16.2 % awarded death sentences, 5.3% were both imprisoned and served community service for these convictions, while 3.3% were fined and imprisoned. Another 2% and 0.7% were fined and given probation respectively. Figure 2 presents this information.

Figure2: Punishment Categories for second and subsequent convictions



Source: Researcher (2016)

The fact that majority of the respondents were awarded imprisonment for their first conviction and subsequent convictions seems to echo the findings of Dhimi et al (2006) that imprisonment is the most common type of punishment awarded to convicts globally. Though its common application is influenced by the belief that putting offenders behind bars ensures protection of the society as compared to community-based punishments such as probation (Subramanian & Shames, 2013), imprisonment is also the most common due to the fact that it is often awarded to poor petty offenders in place of fines and other financial penalties.

However, the popular use of imprisonment in Kenya may in itself have influence reoffending in first time convicts as discussed earlier. This is based on the negatives of prison experience, and the weaknesses in prison institutions. These include fights among prisoners, and at times among prisoners and prisons staff, coercion and other acts of indiscipline by prisoners which negate on reformation measures (Mbugua, 2011; Paranjape, 2005; Colvin, 2000; Steiner, 2008); poor physical and social prison conditions which lead to contamination of petty offenders (Kagendo 2003; Gendreau & Cullen, 1999; Odegi-Awuondo, 2003; Mushanga, 1976); brutality by the warders which embitters the convicts into revenge against the general society upon release (Odera-Orika, 1976); instilling of institutional dependence (Goodstein, 1993); overcrowding and congestion (Omboto, 2013 a) among other weaknesses.

In particular, this study found out that prison conditions in Kenya are hostile for effective reformation and rehabilitation while at the same time there is a possibility of prisoners being institutionalized. On the harshness of prison life, Kamiti Prison Focus Group Member Number-2 observed that: *“Here in prison life is also full of suffering, you cannot change when suffering”*.

On institutionalization of prisoners, Kamiti Prison Focus Group Member Number -8 who claimed to have been a street boy and have recidivated four times remarked:

“For the very poor like me, prison life is not bad; in the streets I used to suffer but when I was imprisoned at Industrial Area Prison for the first time for the offence of snatching a lady’s bag, I found free food and somewhere to sleep unlike in the streets where I lived, life outside prison is for the rich. Now even if I am discharged, I will steal to come back.”

Another member of the focus group Kamiti Prison Focus Group Member Number -1 asserted:

“Imprisonment is the main form of punishment thus people who have not been to prison fear committing crime because they don’t want to be here, but if you have been here, you no longer fear because you realize it is not as bad as people outside there say; moreover, people quickly adjust.”

Another factor why imprisonment in Kenya further influences re-offending rests on the capacity and integrity of prison officers, and possibility of contamination of petty offenders in prison institutions. For example, Kamiti Prison Key Informant -1 observed:

"We keep on receiving sex offenders, yet we can't rehabilitate them. I am aware the convicts require experts such as clinical and psychological counselors to assist them; some may require psychiatric which prisons in Kenya do not have, so we mix them with other convicts and send them to the industry to train in carpentry, tailoring, metal work and the like which is wrong because they do not need those skills to get out of crime. Moreover, some of these sex offenders were in other professions such as teaching. Even for other categories of offenders in medium and minimum prisons, we engage them more in vocational and farming training at the expense of counseling. These activities seem to be more directed at earning prisons and the larger government revenue than at benefiting the convict. If not, of what benefit is knowledge on farming for a convict who doesn't have any piece of land? We concentrate so much on activities which cannot rehabilitate many of the prisoners we host. Prisons department should recognize this fact and employ true rehabilitators not merely safe custody level officers as is the case. The government should realize that most convicted offenders end up in prisons."

On integrity and character of prison officers Kamiti Prison Focus Group Member Number -10 remarked:

"You cannot be reformed by these afandes (prison officers,) they are harsh and need favours from us. If you have money, you can send them to buy for you bangi (cannabis) at a small fee, so we recruit them into crime instead of them reforming us. What do you think someone who was imprisoned because of bangi think when he sees it available here and commonly used?"

Concerning criminalization of petty offenders in prisons, Kamiti Prison Focus Group Member Number -3 had put it thus:

"Bad influence from fellow prisoners is the reason why some of us are here. A prison such as Kamiti is for bad people; we are bad people all put together, and we can only get very bad by contact with one another and it is worse for petty offenders who come here and those who never committed the crimes they are convicted of. This bad influence should be addressed. When we were at the Industrial Area Prison, we laughed at and mocked a watchman who was charged with failure to prevent a crime. We told him: you are very foolish, you were guarding a lot of money without stealing, and now you are here with us robbers on a fake charge, how could you stop robbers armed with guns using a club? If you get out, steal. This guy promised to steal and rob when he leaves prison and he did and is with me here at Kamiti. Also, after release from prisons, the former prisoners who find life difficult contact the colleagues met in prisons with whom they form vicious criminal gangs and commit more serious offences".

Controlling Recidivism in Kenya through Imprisonment

Based on the established problems with imprisonment which is the most widely applied form of punishment in Kenya, the following four measures should be implemented to control the recidivism among convicts.

Committing petty offenders to community-based forms of punishment

First and foremost, since most recidivists engaged in this study had received imprisonment as their first punishment for the initial convictions, and given the identified weakness inherent in this type of punishment and the fact that majority of the recidivists in prisons are petty offenders from the lower social class, the judiciary in Kenya should relook into sentencing policy for petty convicts to control recidivism. For as much as possible, this paper recommends that the courts should always sentence the poor petty crimes convicts to community service and probation or suspended sentences, instead of subjection to fines which they cannot afford thus they end up in prisons. Imprisonment as a punishment should also not be an option for these offenders because they turn into recidivists due to contamination by capital offenders and institutionalization. This recommendation is in line with the requirement of the Community Service Order Act No. 10 of 1998 which outlines those offenders whose crimes on conviction would earn them an imprisonment term of not more than three (3) years should serve community-based punishments. Furthermore, when it comes to social stigma, Schnittker & John (2007) warn that any contact with prisons has effect not just the length of contact.

Enhancement of capacity of prisons to reform and rehabilitate offenders

Given that some convicts will always deserve imprisonment, the Kenya government should ensure that the prison institutions have the capacity to truly reform and rehabilitate offenders. This should begin with a pragmatic assessment of the current state of the institutions in county. There ought to be programmes that suit both short term and long-term prisoners, and the different typologies of offenders. Acquiring vocational skills such as carpentry currently imparted in prisons are only meant for long term convicts who would be in prisons for several years, and there must be proof that these offenders committed crimes due to lack of skills to earn a living by honest and legal means.

Further to this, the fact that prison institutions lack the capacity in terms of personnel and programmes to reform some convicts such as drug, alcohol and sex offenders should be addressed. The government should make sure that prison officers are suitably trained for the delicate work of reformation and rehabilitation by employing the professionals required for all types of offenders instead of some typologies like drug and sex offenders being subjected to artisan courses such as carpentry, tailoring, dress making, and farming as the research established– which cannot rehabilitate them. For instance, according to Kington, Yates & Firestone (2012) and Lipsay, Chapman & Ladenberger (2001), for sex offenders to be reformed, they require pharmacological treatment and Cognitive Behavioural Therapy, while Tiger (2011) posits that drug abuse convicts require pharmacotherapies– combination of medicine treatment and counseling.

Other categories of convicts such as psychopathic offenders may also require medical treatment and counseling for them to be fully reformed and rehabilitated; thus, it is defeatist to subject all convicts to vocational training. Counseling approach in rehabilitation which the study established that is rarely applied in Kenya prisons currently should be introduced. However, this requires that trained professional counselors who are versed in various kinds of counseling as different convicts may need are employed. The types of counseling that the convicts may need include cognitive counseling, transactional counseling, problem management counseling, and reality counseling. Imhabekhai (2002) recommends that where the required experts are not available within the prisons, engagement of part time experts is necessary.

Furthermore, improvement on the quality of personnel should also include having in place people of character and integrity as prison officers. Prison officers should be individuals worth emulating by the prisoners as role models. This cannot be the case where inmates confess about the officers that “...If you have money, you can send them (prison officers) to buy for you bangi (cannabis) at a small fee, so we recruit them into crime instead of them reforming us...”. It is high time the government also vetted all the prisons staff as have been the case with the police, magistrates and judges.

Finally, provision of quality education to long term prisoners for rehabilitation purposes is also vital, more so given that the study established that 6.6% of the respondents had no formal education at all, while 33.5% were primary school drop outs. Education empowers individuals and enhances chances of survival outside crime. Further, Vacca (2004) established that prisoners who receive education while in prison are less likely to return after discharge. In another study, Gordon and Weldon (2003) also established that inmates who undertook general education and vocational training in prisons had recidivism rate of 6.71% compared to 26% rate for non-educated participants. In support of education for prisoners, the scholars posit that it assists individuals to change their personal behaviour, attitudes and values.

Avoidance of abrupt discharges of prisoners

Ensuring that prisoners are reformed and properly reintegrated back into the society should be a topmost priority of the Kenya government. Thus, when deserving offenders have been imprisoned, measures such as remission of sentences and blanket presidential amnesties which do not take into consideration the stage at which an offender was in the reformation process should be avoided at all costs. Moreover, the state should respect the changes in the 2010 constitution which outlawed the power to pardon convicts through unilateral presidential executive order. Article 133 of the constitution directs that the president may exercise power of mercy in accordance with the advice of the advisory committee of the power of mercy. This advice to pardon should be guided by recommendations of correctional services on the inmates’ post-conviction conduct and character. For transparency purposes, section 23 of the Power of Mercy Act demands that the committee gazettes the names of all prisoners released.

This paper makes the recommendation against rushed releases based on the opinions of key informants who participated in the research that remissions and amnesties negate on reformation of prisoners by shortening the periods and ending the reformation and rehabilitation programmes abruptly. The position is also influenced by consistent news reports which have shown that some prisoners released on presidential amnesty have reverted back to crime almost immediately. For instance, in a report entitled “60 percent pardoned offenders jailed again”, the *Standard* newspaper (January 26, 2004) reported that 700 out of 744 ex-convicts released on presidential amnesty on 23rd December, 2003 from prison institutions in the then western province were back at the very institutions after a duration of one month. The president had pardoned 11,500 prisoners countrywide. Further, according to the *Daily Nation Newspaper* (October 25, 2016) in a report entitled “Freed petty offenders back in police cells”, two of the 7000 prisoners who were released on presidential amnesty on 20th October 2016 were reported to have been arrested for fresh offences less than a week from the time of the pardon. One was in police custody over theft of offerings at a church in Laikipia West while the other was arrested for stealing a neighbour’s sheep in Othaya, Nyeri.

Improvement of prison conditions and segregation of inmates

Finally, the prison conditions should also be improved so as to make them conducive for reformation and rehabilitation instead of being viewed by the convicts as places of torture and suffering as is the case presently. All forms of suffering by convicts in these institutions, which only embitters them to revenge against the society when discharged, must be avoided. Prisoners must also be scientifically classified and segregated based on crime etiology and offender's criminal history. The classifications currently employed by prisons service seem to enhance prison administration but may not facilitate reformation and rehabilitation of the convicts. For instance, the classifications are majorly based on the duration a convict has spent in prisons.

Further, petty first-time offenders who land in prisons as remanded or convicted prisoners must not be contaminated by hardcore capital offenders. This requires that the government creates prison institutions for these two diverse classes of offenders or have different sections created for them in existing institutions. The kind of segregation needed is only possible with improved funding from the government and proper planning and utilization funds by the prison authorities.

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