

AN ANALYSIS OF THE CHALLENGES FACING KENYAN PRISONERS
DURING THEIR REHABILITATION

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BY

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DECLARATION

I, MUTE MI PETER MUTUI, do hereby declare that this research is my original work and that to the best of my knowledge and belief; it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:

Date:

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:.....

[Ms. Anne Kotonya]

DEDICATION

I dedicate this work to my Parents; Mr. David Mutemi and Mrs. Dorothy Mutemi for their love and sacrifice to ensure I got the best education and my younger sister; Yvonne Mutemi for her consistent encouragement and prayers.

ACKNOWLEDGMENTS

I take this opportunity to express my sincere gratitude to the Almighty God for giving me the strength to complete this project. I convey many thanks to Strathmore University library staff for their excellent facilitation and service. Special thanks go to my supervisor Ms. Anne Kotonya for not only her sincere criticism of my work but also for her steadfast guidance, patience and encouragement during the research.

ABSTRACT

The purpose of carrying out this study was to analyse if the Kenya Prison service can effectively fulfil their mandate of rehabilitating offenders while facing challenges of inadequate resources and unprofessional personnel. The specific aim of the study was to assess these challenges and discuss how they affect the personal lives of inmates. The goals of the study were to also develop recommendations based on the research findings. The scope of this research is limited to the challenges facing African and Kenyan prisons. The primary subjects of this study are prisoners. This research therefore encompasses a phenomenal study that aspires to identify what leads to occurrence of a certain phenomenon in this case being the creation of inmates sub-culture from the prisoner's perspective, reactions and perceptions. The theory of Prisonization guided in answering the research problems. The research design is purely qualitative and will seek to understand the research problems from the perspective of inmates. This design is advantageous because of its ability to provide textual descriptions of how prisoners experience the research issues. Due to the closed and secure nature of Kenyan prisons, the data for this study was collected on a desk review basis from previously published reports, journals, books and internet resources. The study hypothesis was that the challenges facing the Kenya prisons service impede its mandate of rehabilitating convicted criminals and ultimately affects the personal lives of prisoners. The collected data supports the view that the challenges faced by the Kenya prisons service of inadequate resources and incapable personnel limit its operations and corrode its rehabilitation programmes. Inmates who are introduced to the criminal justice system are not availed with the necessary interventions they require hence upon release they remain un-rehabilitated. These un-rehabilitated ex-offenders do not acquire necessary skills of social reintegration to help them reunite with society as law abiding citizens hence they remain criminal minded; a factor which causes them to reoffend and return to prison making the Kenya prison service fail in its mandate. The results of the study also reveal that the challenges cause inmates to form societies of social interaction which repudiate interactions between prison management and inmates hence making it difficult for inmates to participate fully in rehabilitation programmes. The study recommends there should be increased support for the Kenya prisons service; courts should also make use of alternative sentencing options and the government of Kenya should invite civil society and the community to participate in reintegration programmes.

LIST OF ABBREVIATIONS

CBO's	Community based organizations
CSO	Community service orders
EPD	Early possible date of discharge
NGO's	Non=governmental organizations
POR	Probation officers report

1. CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

The Kenya Prison Service is a department under the Ministry of Interior and Coordination of National Government. There are 107 prisons in the Republic of Kenya as well as 2 borstal institutions and 1 youth correctional training centre. The prison service functions are guided by the Prison Service Act CAP.90, the Borstal Act CAP.92 as well as the Community Service Orders (CSO) under the Department of Probation and Aftercare services.¹ The Prison service mandate is to contain offenders in safe custody, rehabilitate and reform them, facilitate administration of justice as well as promote prisoners' opportunities for social reintegration. This is done through vocational training and rehabilitation programmes in line with offender's needs which are administered by prison officers, chaplains, psychologists, welfare officers, counsellors, social workers and medical personnel.²

The main principle inculcated into the Kenyan criminal justice system is rehabilitation which is evident even in International Standard Minimum Rules for treatment of prisoners.³ Rehabilitation comes from the Latin word *rehabilitare* which means re-enabling or making fit again. In the context of prison, it means preparing prisoners to re-join society as useful and law-abiding members of the wider community.⁴ Rehabilitation is composed of a number of different types of interventions which are employed in varying degrees to provide purposeful activity for prisoners, they are to challenge offending behaviour, provide basic education to tackle not only illiteracy but also innumeracy and to equip prisoners with life and work skills. The most common interventions are; firstly to identify the offender's needs, classify the types of intervention required. It is also important to address the prisoner's educational deficits. There have to be programmes that challenge the offender's behaviour and provide treatment for substance misuse. Vocational training is provided for purposes of inculcating skills meant to increase prospects of employment upon completion of their sentence. Finally for effective

¹ Kimani P, 'Administration of the Kenya Prisons Organization', *resource material series No.98*, (2006), 84.

² Onyango P, 'Correctional systems in Kenya', *Resource material serial No. 94*, 157th International training course participants paper, (2008), 231.

³ *Standard Minimum Rules for Treatment of Prisoners*, United Nations Congress on the prevention of crime and treatment of offenders, 1955, 1.

⁴ *House of Commons article on rehabilitation of prisoners*, Home Affairs Committee First Report, Volume 1, (2005), 10.

rehabilitation; the prisons have to provide assistance to prisoners with finding accommodation and employment after they serve their sentence.⁵

Kenyan prisons in exercising this mandate face many challenges which are attributable to lack of resources and unprofessional personnel.⁶ These challenges have direct ramifications on the prisoners themselves as they serve their sentences. This is evident because the harsh conditions of prisons, the inadequate availability of resources and the unprofessional skills of prison officers results in prisoners cultivating organizations known as prisoner societies as adaptive measures to the deprivations they face.⁷ These adaptive measures come about because their self-esteem is threatened hence they form societies which develop a social system that enables them to preserve their self-esteem.

The effect of these societies is; the limited resources which are available are shared according to the societies. The societies determine who gets what share of the resources. The end result is; the prisoners who reject these societies and refuse to conform to the prison societies norms lack access to resources which are necessary in their rehabilitation programme. On completion of their prison sentence, they hence leave prisons without being fully rehabilitated but being more criminal minded than how they were when being introduced into the criminal justice system. This in turn encourages recidivism.

1.2 STATEMENT OF PROBLEM

From the above background, prisons are institutions of rehabilitation. Their mandate is to reform criminals as they serve their sentence so that on completion they are readmitted into society as law abiding citizens. The ensuing problem however is; the implementation of the principle of rehabilitation is greatly affected by lack of resources and incapacity of prison officers in Kenyan prisons.⁸ The statement of the problem therefore is; whether our Kenyan prisons can implement their mandate of rehabilitating offenders while facing challenges of inadequate resources and incapable personnel. Are these challenges making our prisoners more criminal minded instead of being rehabilitated?

⁵ *House of commons article on rehabilitation of prisoners*, 12.

⁶ Amanda D, 'Rehabilitation and reintegration in African Prisons', (2006), 164.

⁷ Sue R, *The correctional system; An introduction*, Holts, Rinehart and Winston, 1981, 177.

⁸ Omboto J, 'The challenges facing rehabilitation of prisoners in Kenya and the mitigation strategies', volume 2, *International journal of research in social science*, (2013), 40.

1.3 JUSTIFICATION OF STUDY

Extensive research has been done on the challenges facing prisons when implementing its mandate of rehabilitation. The effects of these challenges however, have not been analysed in depth. As noted by the International Committee of The Red Cross, lack of resources is having a severe detrimental impact on the lives of detainees. The impact alluded to is the creation of prisoner's societies which arise as a result of the lack of resources. The prisoners create these societies so as to share and distribute the limited available resources.⁹ The effect of these societies is some inmates do not get access to resources hence when they are released from prison they remain uneducated, unskilled, un-rehabilitated and end up going back to prison.¹⁰

The study is important to legislators because it may act as a guide when framing rehabilitation programmes and making budgetary allocations for the Kenya Prisons service because the current framework is greatly affected by challenges of inadequate resources and untrained personnel in prisons. The study will also add on to the knowledge of the general public in understanding the mandate of the Kenya Prisons Service in the rehabilitation programmes of criminals and how the conditions of our prisons play a major role in determining the level of reformation impacted in inmates. The study will impact the economic sector based on the implications of recidivism to development. Prudent investments are usually done in a secure environment. An environment that is prone to crime is a threat to economic growth. Thus for development to occur, criminals need to be rehabilitated to reduce reoffending and this will contribute to winning trust of investors.

1.4 STATEMENT OF OBJECTIVES

The overall aim of the study is;

- i. To analyse if Kenyan prisons service can fulfil their mandate of rehabilitating offenders while facing challenges of finite resources and unprofessional personnel.

The specific objectives include;

- i. Discussing the effects of these challenges on the personal lives of the prisoners.
- ii. Developing recommendations based on the Standard minimum rules for treatment of prisoners and other International treaties.

⁹ Sue R, *The correctional system; An introduction*, 137.

¹⁰ Joan P, 'Sentencing and Corrections', *Journal on executive sentencing and correction*, (2000), 3.

1.5 RESEARCH QUESTIONS

The research questions pertinent to the dissertation include;

- i. Does our Kenya prisons service have capacity to implement their mandate of rehabilitating offenders?
- ii. How do the challenges faced by the Kenya Prisons service affect the personal lives of the prisoners?
- iii. Which recommendations can be made to remedy the negative effects felt by prisoners? What can be done to promote the positive effects for better rehabilitation? (if any)

1.6 HYPOTHESIS

The challenges facing the Kenya prisons service are impeding the implementation of their mandate to rehabilitate criminals. This is because these challenges which have already in previous research been attributed to lack of resources and untrained personnel are forcing prison inmates to form prisoner's societies which repudiate legitimate norms of the prison service and ultimately dictate how the few goods and services in prisons are to be distributed. Therefore those prisoners who reject these societies or do not conform to their norms are deprived of resources and they do not receive the personal rehabilitation needed. These prisoners who do not receive adequate rehabilitation end up being arrested not long after their release because they are reintegrated into society being uneducated and unskilled hence are unfamiliar with the norms of society and are inclined to re-engage in criminal activity. An identification of the variables and formation of the hypothesis statement ensues.

The independent variable of the research which is the cause of the dependent variables (the effects) is; the challenges faced by the Kenya prisons service of inadequate resources and unskilled personnel. The dependent variables that is the effects of the said challenges are; the creation of prisoners' societies, ineffective rehabilitation of inmates and recidivism. It is therefore hypothesized that; the challenges facing the Kenya prisons service impede its mandate of rehabilitating convicted criminals and ultimately affects the personal lives of prisoners. This hypothesis will be tested by the research through collecting additional information and in concluding the research, this hypothesis will be verified or rejected.

1.7 ASSUMPTIONS

A major assumption in this study will be both male and female prisons are facing the same challenges. The conditions as well as availability of resources in both prison settings are similar. This is so as to present a general overview of all prisons in Kenya instead of focusing on one particular correctional facility.

Another assumption is that; because of the closed and secure nature of Kenyan prisons, gaining access to inmates for purposes of collecting data based on questionnaires and interviews will be difficult and hence this will impact the research technique to be purely desk research which will in essence be advantageous as it will be cheaper and quicker to collect data. The required information will be easily fetched and be used as a benchmark in the research process.

1.8 RESEARCH DESIGN AND METHODOLOGY

The research will be based on a qualitative technique that will collect data through pure desk review. The qualitative research method which is characterised by its aims and relates to understanding some aspect of social life, will seek to understand the research problems from the perspective of the prisoner. This design will generally aim to understand the experiences as well as attitudes of prisoners. The strength of this design will be its ability to provide complex textual descriptions and how prisoners experience the research issues. This design will provide information about the human side of the issues; these are the beliefs, emotions and relationships of prisoners. The data collection process which will be desk review is attributable to the closed and secure nature of Kenyan prisons, conducting field work such as interviews and questionnaires will hence not be employed. The research will acquire data from published reports, statistics, books, searches from libraries and the internet. This is advantageous because of low cost and ease of acquiring information as well as quick pace seeing as no field work will be conducted.

This qualitative methodology will also be based on a biographical study and a phenomenal study. The biographical study will aim to collect and analyse previous data relating to the challenges facing prisons to present a comprehensive set of answers for the research questions. The phenomenal study which aims to identify what leads to occurrence of a certain phenomenon by looking at the phenomena from a certain group's perspective, their reactions, perceptions and feelings. The phenomenal study carried out in this research will be the formation of prisoner societies or better known as prison sub-culture. This phenomenal study

will be analysed based on prisoner's perspectives, reactions, perceptions, reactions and feelings.

The research will incorporate all three fundamental research ethics principles. These core principles being; respect for persons, beneficence and justice. Under respect for the person, the research will be committed to ensure autonomy of the prisoners. The research will ensure that prisoners are not used simply as a means of achieving research objectives. The principle of beneficence on the other hand requires researchers to minimize risks associated with the research such as psychological or social risks and to maximize benefits. This research does not inculcate with it any social nor psychological risks because it is purely desk review and relies on previously published data. The benefits of the research are aspired to be acknowledged in the prison sector, the general public as well as the economic sector. With these aspired benefits, the principle of justice which requires a commitment of ensuring a fair distribution of risks and benefits will hence be complied with.

1.9 LITERATURE REVIEW

There has been extensive research on the challenges facing prisons in their mandate to rehabilitate criminals. This literature review is to be limited only to the challenges facing African as well as Kenyan prisons. In the African context, extensive studies have been done, an example being an exemplary piece of research done by the African Commission Special rapporteur on Prison and conditions of detention facilities in Africa.¹¹ It was noted that many African countries aspire to bring about rehabilitation and development of prisoners however they are faced with realities which make such attempts extremely difficult. These realities include; African prisons are faced with high levels of overcrowding, unprofessional personnel and inadequate resources which result in insufficient sleeping space, lack of proper beds, lack of ventilation and lighting which all ultimately lead to limited time out of cells.¹²

With the above outlined challenges, what then constitutes good prison governance? A good prison governance system is determined by the existence of an enabling policy framework, necessary resources and extent to which prison managements have ability to implement those policies on a day to day basis in a transparent, accountable and ethical manner. This relates

¹¹ Amanda D, 'Rehabilitation and reintegration in African Prisons', 162.

¹² Amanda D, 'Rehabilitation and reintegration in African Prisons', 164.

both to the manner in which offenders are treated in prison system as well as the opportunities which they are afforded to reorient their lives towards a more constructive future.¹³

With these aspects of a good prison governance system, why then do African prisons encounter the above mentioned challenges? In countries where the population at large is subject to severe socio-economic deprivations, governance of prisons and welfare of prisoners are invariably accorded low national priority. Moreover in situations where crime; especially crimes against persons are rampant, there are frequent demands from the public to 'get tough on criminals' and hence emphasis is placed more on punishment, deterrence and protection of society instead of rehabilitation.¹⁴ Where emphasis of punishment is especially strong, it negates the goals of reintegration and rehabilitation.

Previous research on the above mentioned challenges has proven that they are distinct. These problems will hence be analysed separately. The first challenge of African prisons is they are understaffed with few personnel who have received inadequate training to aid them in understanding their role in terms of facilitating offender development and reintegration. There has been much literature on the theory and practice of management of large institutions such as schools or hospitals but comparatively little has been written about management of prisons. Chris Tapscott carried out a research in several South African prisons and found that the reason why African prisons have unprofessional personnel is due to poor recruitment exercises. The requirement to work in a prison is basic legal or administrative skills. Whether such skills were acquired through the civil service or the military, they are deemed sufficient hence unskilled personnel are employed.¹⁵ By making the recruitment qualifications and experience lower, prison officials end up not having the same status as their counterparts in police and military hence their expectations are lower leaving them with no motivation to work.

Overcrowding, the second challenge is characterised by many inmates in one institution hence over burdening the institution. In analysing the factors that give rise to growth of prison population, two distinguishable reasons have been adduced. They include the

¹³ Chris T, 'Challenges to good prison governance in Africa', (2008), 68.

¹⁴ Joan P, 'Sentencing and Corrections', *Journal on executive sentencing and correction*, (2000), 5.

¹⁵ Chris T, 'Challenges to good prison governance in Africa', 67.

deterministic reason and the policy driven reason.¹⁶ Under the deterministic reason, the growth of prison population is attributed to factors such as changes in crime rates, demography, social economy, unemployment and poverty. For the policy driven reason, size and growth of prison population is attributed to the consequences of legislative measures such as the criminal justice system and the courts. Judges are said to be sending an increased proportion of offenders to prison for longer periods and making greater use of imprisonment as punishment.

The effect of overcrowding in African prisons is felt throughout the prison system. It places pressure on the management and administrative practises as well as the welfare of the offender. Over and above physical discomfort, excessive numbers of inmates limits prospects for implementation of rehabilitative measures. It also limits basic human rights of the prisoner, not only in limiting their personal space but also restricting opportunities for not only physical but also mental stimulation.

Inadequate resources and facilities is the third challenge to be discussed. These resources and facilities include infirmaries, gyms, dining halls as well as medicine. Most prisons in Africa are said to have substandard medical facilities and in certain instances they are non-existent. The Penal Reform International Survey conducted in the year 2000 revealed that prisoners typically suffer from a range of illnesses reflective of poor living conditions, inadequate diet not to exclude inadequate health care. These illnesses include; tuberculosis, respiratory tract infections and various water borne diseases. Of particular focus however, is transmission of sexually transmitted diseases and HIV/AIDS. With regard to the increasing incidences of HIV/AIDS across Africa, it is inevitable that incoming offenders who are infected with the virus will bring it to prison. It is thus certain that virtually all correctional institutions in Africa currently hold inmates infected with HIV and that many of them die as a consequence of AIDS because the necessary medical care is not availed to them.

In the Kenyan context, prison systems were introduced by the British East Africa Protectorate with the enactment of East Africa Prisons Regulations No.12 of April 1902. During this colonial rule, political dissidents were kept in prison as a way of deterrence. The authoritarian governments sought to gain control over them. They were kept under punitive conditions.¹⁷

¹⁶ Amanda D, 'Rehabilitation and reintegration in African prisons', (2006), 163.

¹⁷ Musyoka A, 'Impact of prison reforms on rehabilitation of offenders in Kenya: The case of Naivasha Maximum security prison', University of Nairobi, November 2013, 2.

Upon attaining independence in 1963, the Kenyan government took control of the prison sector. Today prisons in Kenya are managed by the Kenya prisons service which has been reported for providing harsh prison conditions.¹⁸ These conditions are characterized by overcrowding, congestion, poor diet, degrading clothing and beddings, lack of clean water, poor sanitation, homosexuality, drug abuse, corruption and infectious diseases. All of which are attributable to the British colonial government that established and maintained prisons in such a poor state because most of the prisoners were Africans, particularly rebels who were resisting the white man rule.¹⁹

In 2013, a study was carried out in Naivasha Maximum security prison, the biggest modern penal institution in East and Central Africa. The study conducted by Musyoka Annastacia indicates that the increased number of prisoners has resulted in space deficits which have negatively impacted housing program space and maintenance costs hence overburdening the prisons' systems. Constant breakdowns have resulted to tensions in the institution and disquietedness among prisoners causing riots and strikes. Increased numbers have also had implications on rehabilitation programs. This is because when population rises, programs frequently are not expanded to accommodate the increased population and may even be reduced since program space may be used for inmate housing. Idleness too increased as prisoners lacked jobs to keep them occupied. As a result, prisoners became prone to delinquent behaviours, violence and even escapes.²⁰ The cause of this overcrowding, study has shown, is due to rise in crime rate, rise in rates of convictions and increase in length of sentences. This pushes up the cost of prisoners' maintenance beyond what the economy of Kenya can support.

Inadequacy in terms of food and clothing is also termed a key characteristic and a challenge facing the prison system in Kenya. The fiscal difficulties and inadequacy of resources which the Kenyan government is experiencing are having serious impact on prisons for instance, in the year 2001 in Kamiti Maximum prison Nyeri County, it was reported that prisoners were starving as the National Treasury had failed to provide money for supplies.²¹ Furthermore,

¹⁸ Onyango L, 'Overview of the Kenyan criminal justice system (Corrections)', (2005), 2.

¹⁹ Omboto J, 'The Challenges Facing Rehabilitation of Prisoners in Kenya and the Mitigation Strategies', 39.

²⁰ Musyoka A, 'Impact of prison reforms on rehabilitation of offenders in Kenya: The case of Naivasha Maximum security prison', 37.

²¹ Nyaura J and Njeri M, 'A critical overview of the Kenyan prisons system: Understanding the challenges of correctional practice', Vol. 12 No. 1, *International journal of innovation and scientific research*, (2014), 9.

the problem was worsened by the prisons inability to get food from outside. This resulted in riots as a consequence of the rationing of meals. These conditions are responsible for the deaths of hundreds of prisoners every year.²²

A report by Amnesty International in the year 2000 indicated that Kenyan prisons failure in rehabilitation is attributable to the people entrusted with the responsibility of reforming the prisoners. The wardens in prisons are highly untrained and understaffed. The prison system lacks various skills with regard to penology and corrections. Training in most cases is the core function of reformation and rehabilitation that require prison officers to accept that prisoners are incarcerated as a punishment and not for punishment, and they must have the ability to facilitate not only behaviour but also attitude change.²³

The lacking skills vary from sociologists, psychiatrists, psychologists, professional counsellors, social workers and penologists especially those from security studies. These skills are crucial in the rehabilitation effort of offenders and reintegration back to the society. The poor working conditions of the prisons staff especially those of the junior cadre lowers their morale thus they are unable to fully dedicate themselves to working in such unbearable conditions. It is ironical that the same prison officers who are supposed to rehabilitate the prisoners suffer similar consequences as the prisoners.²⁴

With these harsh prison conditions comes corruption. Corruption still remains a major challenge facing the prison system in Kenya. Consequently, in the public knowledge corruption exists in the outside world, especially in the institution of police and prison service. There is rampant dishonesty among officers who are bribed so as to favour inmates in obtaining drugs and other chattels which are prohibited.

These prohibited chattels tend to deter the main aim of the facilities which is to rehabilitate the prisoners. The use of mobile phones by prisoners seems to be the new crime referred to as the 'mobi-crime' whereby the offenders solicit money from the public by threatening them through phone calls and text messages. These phones are reported to be issued to the

²² Amnesty International, *Kenya Prisons: Deaths due to torture and cruel, inhuman and degrading conditions*, 2000, 2.

²³ Onyango L, 'Overview of the Kenyan criminal justice system (Corrections)', (2005), 4.

²⁴ Nyaura J and Njeri M, 'A critical overview of the Kenyan prisons system: Understanding the challenges of correctional practice', 10.

prisoners by wardens. In most cases, the corruption by the officers may be as a result of the government not paying the prison officers better remuneration.²⁵

This study will build on the literature review which focuses on the challenges mentioned above by aspiring to outline the problems that prisoners face as a result of these challenges in the course of their prison sentence. It will go further to examine the effects of these problems on the prisoners and how such problems affect them while serving their sentence, on completion of their sentences and their reintroduction into society.

1.10 THEORETICAL FRAMEWORK

Rehabilitation is defined as an internal change that results in the cessation of a targeted behaviour. This might be achieved by inflicting pain as a learning tool (behaviour modification) or by other interventions that are not painful such as self-esteem groups, education and religion.²⁶ This principle of rehabilitation can be traced to the utilitarian school of thought that was supported by two philosophers, Cesare Beccaria and Jeremy Bentham.

Cesare Beccaria, the father of the Utilitarian school of thought came up with the concept that 'punishment should fit the crime'. He derived this from two major philosophies; that of social contract as well as free will.²⁷ Under the social contract, an individual was bound to society only by their consent therefore society was responsible to them and vice versa. Beccaria believed in the social contract and reiterated that each individual surrendered only enough liberty to the state to make society viable. Laws therefore should merely be the necessary condition of the social contract and punishment should exist only to defend the sacrificed liberties against usurpation of those liberties by other individuals.²⁸ He opined that the legislature should be guided by the principle of the greatest happiness be shared by the greatest number of people.

Another philosophy that greatly influenced Beccaria was that of free will. He argued that human behaviour is purposive and that it is based on hedonism (the pain- pleasure principle). People choose actions that give pleasure and avoid those that give pain. Therefore punishment should be assigned to each crime in a degree that would result in more pain than

²⁵ Omboto J, 'The Challenges Facing Rehabilitation of Prisoners in Kenya and the Mitigation Strategies', 42.

²⁶ Joycelyn M, *Prisons today and tomorrow*, 3ed, Jones and Barlett, 2013, 8.

²⁷ Sue R, *The correctional system; An introduction*, 28.

²⁸ Sue R, *The correctional system; An introduction*, 29.

those who committed the forbidden act. The philosophy was to let the punishment fit the crime.

Bentham adopted Beccaria's argument that mankind is governed by pursuit of pleasure and avoidance of pain hence for him these two masters affect the behaviour of man and could be utilised to rehabilitate criminal behaviour through a careful application of law.²⁹ This idea was based on 'hedonistic calculus' which involved two concepts; that man was rational and hedonistic (pleasure seeking) and sort to maximize pleasure and minimize pain. Bentham posited that all punishment is mischief and if it ought to be admitted, it should only be admitted in as far as it promises to exclude some greater evil. By reforming the criminal, by deterring him or others from similar offences in the future, the good that comes out of punishment may outweigh the intrinsic evil of suffering deliberately inflicted.³⁰ Without such effect, or if the suffering inflicted exceeds the suffering avoided, the institution of punishment would be unjustified.

Also that a legal system could accurately determine exactly what measure of punishment was necessary to slightly outweigh the potential pleasure or profit from any criminal act hence if done correctly all people would rationally choose to abide by the law because the pain outweighs the pleasure.³¹ For Bentham the objectives of punishment were to prevent all offences, to prevent worse offences, to prevent mischief and to act at the least expense.³² The Utilitarian school of thought therefore was of the opinion that punishment must determine the good coming from it, must outweigh the inherent evil of such punishment and that the beneficial aspects of imprisonment must be rehabilitation and deterrence.

This school of thought was criticised by the opposing retributive school which received support from philosophers such as Immanuel Kant and Raffaele Garofalo. Kant states that the dilemma of utilitarianism is that it justifies punishing innocent people provided that such punishment causes less suffering than might otherwise be caused by the would be criminals it deters.³³

²⁹ Joycelyn M, *Prisons today and tomorrow*, 5.

³⁰ Jeffrie G, *Punishment and rehabilitation*, Wadsworth publishers, 1973, 23.

³¹ Joycelyn M, *Prisons today and tomorrow*, 6.

³² Sue R, *The correctional system; An introduction*, 31.

³³ Sue R, *The correctional system; An introduction*, 35.

The retributive school believed that society has a right to punish criminals, as long as it is done lawfully and proportionally to the wrong committed by the offender.³⁴ It posited that the guilty should suffer and that justice or moral order requires punishment which need not be justified in terms of value or rightness.³⁵ Retributive school believed that the punishment should fit the criminal and not the crime as seen in the utilitarian school. Raffaele Garofalo believed that since different criminals had different needs, it is foolish to impose on all who commit the same offence the same punishment. He argued that when a criminal can be rehabilitated in 10 years, it is foolish to keep him in prison for 20 years when another person who needs to stay longer is released in 5 years.³⁶

The retributive school criticised the utilitarian by stating that if punishment should be justified as a way of reforming criminals, it would seem better to punish them before rather than after they have committed criminal acts. The retributivists claim that utilitarian's are in danger of losing sight of two conditions which are necessary to the very idea of punishment. These are; that an offence has been committed and that punishment should be for the offender himself who alone deserves it.³⁷

On the theory of prisoners' societies; it is said that no formal structure, no matter how coercive can deny or prevent a counter culture from emerging. What prison institutions deny by way of self-respect, freedom and normative standards exemplifies society's rejection towards them. Donald Clemmer defined this theory as prisonization. To him, prisonization was the process by which new inmates became familiar with and internalized not only prison norms but values as well. The process begins the moment a new inmate learns his status as a prisoner. The influences in prisons breed criminality and antisocial behaviour which inculcate inmates with criminal ideologies. For him, the degree to which the process is effective depends on several factors. These are; the inmate's personality, the type of relationships they had outside prison, whether they become members of these societies, their placement in prison that is the cell as well as cellmates and the degree to which they accept the codes in prisons.³⁸

³⁴ Joycelyn M, *Prisons today and tomorrow*, 5.

³⁵ Jeffrie G, *Punishment and rehabilitation*, 21.

³⁶ Sue R, *The correctional system; An introduction*, 33.

³⁷ Jeffrie G, *Punishment and rehabilitation*, 23.

³⁸ Sue R, *The Correctional system; An introduction*, 176.

Donald Clemmer attributes emergence of prisoner's societies or inmate sub-cultures to two basic models; the Deprivation model and the Importation model. The deprivation model posits that these societies arise as a result of deprivations encountered in prisons such as loss of status, suffering as well as degradation. He defined these deprivations as 'Pains of imprisonment.' Because of these deprivations, inmates have a choice to either unify with their fellow captives in a spirit of mutual cooperation or withdraw to seek only the satisfaction of one's own needs. To mitigate these pains, inmates establish patterns of cooperative social interactions which determine how the limited goods and services in prisons shall be distributed and shared among inmates.³⁹ Prisoner's organization and behaviour is largely a response or adaptation to the institutional conditions and deprivations of their environment. Inmates repudiate the norms of prison wardens, prison administration and society at large to join forces with each other, developing a social system which enables them to preserve their self-esteem.

The importation model which was propagated by John Irwin and Donald Cressey posits that patterns of behaviour are brought to prison by the inmates themselves. Irwin emphasizes the need to distinguish between 'prison culture' and 'criminal subculture.' To do so, he posits three types of prison sub-cultures which are; thief sub-culture, convict sub-culture and legitimate sub-culture.⁴⁰ The thief sub-culture refers to patterns of value that are characteristic of professional thieves and other career criminals. This is found in prison settings as well as outside prison walls. The convict sub-culture occurs when inmates are introduced to prisons and due to deprivations they face, the scarce available resources must be competed for and the most manipulative individuals win these resources as well as positions of influence. The legitimate sub-culture on the other hand is composed of inmates who isolate themselves from other inmates. This constitutes a population of inmates who do not trouble the staff nor prison wardens. Irwin and Donald believed that a combination of convict and thief sub-cultures formed inmate sub-culture or prisoners societies.

This research will be based on the theory of prisonization. This theory is most applicable because it outlines how prison societies arise and what the prisoners try to avoid when they form such societies. This theory guides the research when analysing the effects of 'pains of imprisonment' on prisoners. It also contributes to the development of appropriate

³⁹ Sue R, *The Correctional systems; An introduction*, 177.

⁴⁰ Bowker H, *Corrections; the science and the art*, Collier Macmillan publishers, 1982, 277.

recommendations which are to be made in order to mitigate the negative findings of the research, (if any).

2. CHAPTER 2; the capacity of Kenyan prisons to implement their mandate of rehabilitating offenders.

Prison reforms in Kenyan prisons were introduced to address human rights issues in prisons and to turn Kenyan prisons objectives from punishment, torment and humiliation institutions to correctional and rehabilitation facilities. The recent prisons service reforms, the Kenya Prisons Service strategic plan 2005- 2009, calls for containing offenders in humane and safe conditions, in order to facilitate responsive administration of justice, rehabilitation, social re-integration and community protection.⁴¹ Rehabilitation involves preparing prisoners to return to society and providing them with the personal and networking support that will help them make a better adjustment for re-integration into society. To this end, rehabilitation focuses on changing the diverse circumstances that may have predisposed individuals to law breaking and is the process that, ideally, provides convicted offenders with the opportunities to resist further offending upon release. It is also about three-way harm reduction, in relation to the offender, the community and the victim and about breaking down barriers to reintegration in terms of employability and citizenship, in order to reduce the prospect of reoffending or recidivism.⁴²

The Kenyan prisons service is faced with several challenges in discharging its mandate of rehabilitation. These are highlighted in the literature review above but can be summarised into; severe overcrowding, shortage of food, clean water, diseases and unskilled prison personnel. From the Human Rights Watch World Report of 2001, Kenyan prisons are faced with shortages of food, clean water and adequate clothing; limited access to medical services; corruption as well as prisoner on prisoner human rights violations. Diseases which are often the predictable consequence of overcrowding, malnutrition, unhygienic conditions and lack of medical care remain the most common causes of death in Kenyan prison. For instance,

⁴¹ Kimani P, 'Administration of the Kenya Prisons Organization', *resource material series No.98*, (2006), 84.

⁴² Owino B, Egesah O, Akong'a J, 'Looking in the mirror; reflection on implementation of the principles of penal systems in Kenya's prisons', volume 3, *journal of international academic research for multidisciplinary*, (2015), 210.

food and water shortages in prisons, combined with extreme overcrowding are the ideal conditions for the spread of communicable diseases such as Tuberculosis (TB). Physical abuse of prisoners through torture and ill treatment by guards remains another chronic problem in Kenyan prisons.⁴³ Rehabilitation is difficult to achieve because of these challenges. A prison system is considered successful when it does not result in recidivism. One would expect that all the above problems combined would be adequate punishment for inmates and thus deter them from committing more crimes. However, this seems not to be true in Kenya as recent research such as that carried out by Evans Makori in Kakamega County has shown that a considerable number of the prison population in the country comprises of recidivists.⁴⁴

Recidivism as a theoretical construction is a fairly simple idea that some criminals will reoffend after they have been convicted, rehabilitated, and punished for a crime. It refers to the return of an offender to criminal behaviour. The reasons that people reoffend vary, however research has comprised a list of seven general theories about why offenders return to criminal practices. They are; incorrigibility, failure of sanctions, failure of support in reintegration, failure of rehabilitation programmes, peer pressure, economic stress and mental health.⁴⁵

Incorrigibility is the view that offenders are beyond reform, and as such, most sanctions, particularly less onerous ones, will not deter them from future offending. Many politicians subscribe to this philosophy and campaign on justice platforms that are aimed to “get tough on crime.” This is evident from famous Kenyan prisons literature namely; novels, poems and plays where authors delve into the horrific experiences and conditions in Kenyan prisons. Ngugi Wa Thiong’o for example was imprisoned in Kamiti maximum prison in 1977 by the Kenyatta regime for four years after he wrote an article titled ‘Kenya Twendapi (Kenya Where are we Headed), in reaction to the disbandment of Kenya People’s Union, a political party that emerged in 1966 led by the late Oginga Odinga.⁴⁶ Such politicians as the late Jomo Kenyatta’s regime argue that offenders make a rational choice to commit crimes and will reoffend if they are not punished severely.

⁴³ Human rights watch, *World Report 2015; events of 2014*, Seven stories press publishers, 2015, 332.

⁴⁴ Makori E, ‘Socio-Economic Factors That Influence Recidivism in Kakamega County; Kenya’, volume 47, *Journal of Law, Policy and Globalization*, (2016), 117.

⁴⁵ Amanda D, ‘Good practice principles in reducing reoffending: a review of the literature’, (2012), 17.

⁴⁶ <http://www.pambazuka.org/arts/prison-literature-kenya>, on 8 December 2016.

This study submits that with this kind of mentality from our political leaders, the Kenyan justice system will be unable to effectively rehabilitate offenders. As much as committing a crime is a rational choice, the reason for imprisonment should be to rehabilitate this person by assessing why they were likely to commit the crime and what interventions can be impacted on them not to just throw the offender in jail. If this practice of getting tough on criminals continues to be the norm in Kenya, convicted prisoners will continue to be criminal minded instead of being nurtured into law abiding citizens.

Failure of sanctions on the other hand is based on the belief that individuals will commit further crimes if their original punishment was inappropriate and did not act as a deterrent. Sentences may be too lenient and fail to make people recognize their wrongdoing. They may also be too harsh, which can cause offenders to disassociate from societal norms and react criminally. Some sanctions may not be an appropriate match for the type of offense or offender, such as a long term of imprisonment for a first-time minor offender instead of alternative measures. Kenya recognises the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) of 1990. These rules advocate for the viability of non-custodial sentences as an alternative to incarceration. However this is not the case as many Kenyan inmates still serve long sentences. It is at the discretion of a presiding magistrate or judge to order a pre-sentence report from a probation officer; a comprehensive pre-sentence report provides information on the background of the offender, his or her personal history, and the circumstances of the offence, his or her attitude and the attitude of the community, all of which are important elements in determining appropriate sentence.⁴⁷ Magistrates and judges in Kenya are however not committed to giving non-custodial sentences because of fears that the perpetrators might abscond despite being availed with pre-sentence reports by probation officers hence give lengthy sentences.

Failure of support in reintegration is where offenders, particularly those who have served lengthy sentences in prison, may have difficulty reintegrating themselves upon release. The department of probation and aftercare services in conjunction with the Kenya prison service are mandated to offer reintegration support systems which involve offender supervision and reintegration. This is a community concern as well. The community meaning; the offender's immediate family, general citizens, non-governmental organizations (NGOs), as well as faith-

⁴⁷ Achieng C, 'Effective resettlement of offenders by strengthening community reintegration factors; Kenya's experience', *Resource material serial No. 82*, 145th International training course participants paper, (2010), 62.

based and community-based organizations (CBOs) that offer specific services towards offender treatment. With technological advances, shifts in public policy, ideals as well as political changes; the outside world may be significantly different from the one that offenders previously knew before incarceration. The department of probation and aftercare services together with the Kenya prisons service find it difficult to engage the community and hold awareness programmes to teach the community about support mechanisms for reintegration of offenders because they lack the necessary resources and funds to do so. If offenders cannot adjust to the new norms of an ever-changing society, they may engage in illegal practices in an attempt to satisfy their needs. Recidivism then, is provoked not by the offender nor by the sentence imposed, but rather by the difficulties the individual has reintegrating themselves into society, and the ineffectiveness of the limited support mechanisms that are available to them.

Failure of rehabilitation programs is another cause of recidivism. A rehabilitation program will only be effective if offenders participate in it fully. Without a commitment to the goals of the program, people may reoffend. Similarly, if a program is not effective in meeting the needs of offenders, then it may not prevent reoffending. The Kenya prisons service problems of staff shortage, inadequately trained staff and poorly remunerated prison officers have negative implications on their performance. It becomes difficult for them to avail rehabilitation programmes such as vocational training to all inmates. Because of this shortage, inmates tend to feel they are rejected by the prison system hence do not find the morale to participate fully in limited available rehabilitation programmes. Without interest to participate, even the limited available programmes are left largely unutilised hence ultimately go to waste.

Another cause of recidivism is peer pressure and other social provocations. Even if offenders are given appropriate sanctions and are willing to change their behaviour, and are active in rehabilitative programs, they may still return to criminal activity due to outside social influences such as peer pressure. For example, even if a young offender is placed in a drug rehabilitation program and wants to remain drug free, he or she may still reengage in drug use if pressured to by friends. In this case recidivism is directly related to social stimulus outside the control of the criminal justice system. This study submits that as much as the Kenya prisons service does not have direct control over peer pressure, they can control its intensity by housing inmates based on criteria's of age or offences committed hence making it easy to

monitor inmates. The challenge of inadequate facilities which leads to overcrowding however makes it hard to do so hence peer pressure still remains rampant in our penal institutions.

Economic stress as another cause of recidivism suggests that if offenders are unable to support themselves upon release, or if they feel pressured by their low socio-economic status, they may reengage in illegal behaviour. The Kenya prisons service is unable to deal with these socio-economic issues because of lack of adequate community support structures and capacity to offer effective reintegration and resettlement therefore; upon release inmates who are un-rehabilitated do not acquire interpersonal social skills that aid in communication, understanding and acting. This study submits that without adequate resources to conduct community education and awareness, the community perceives ex-offenders as criminals who are not worthy of employment. With this rejection an ex-offender thus finds it difficult to not only acquire employment but also to relate with others in the community. They find themselves in situations where they are unable to express themselves effectively because of communication skills barriers hence most of them lack employment.

The lack of resources within the service also leads to lack of awareness of the few existing community structures and services provided by the government as per the Community Service Order (CSO) Act which provides that public work shall be availed to inmates and shall include but not be limited to construction or maintenance of public roads or roads of access, afforestation works, environment conservation, projects for water conservation, management or distribution and supply, maintenance work in public schools, hospitals and other public social service amenities, the nature or type of public work shall in any particular case be determined by the court in consultation with the Community Service Orders Committee.⁴⁸ As such, recidivism occurs, not as a consequence of a failed rehabilitation program or because an individual does not recognize his or her wrongdoing, but because of the offender's failure to meet economic goals within a broader Kenyan capitalist system.

The final cause of recidivism; mental health of an offender can be one of the most important predictors of recidivism. The mentally ill may not respond to any punishment, including imprisonment, rehabilitative programs, or any other measure taken in response to their crime. As long as the Kenya prisons service continues to face challenges of lack of adequate medical personnel such as psychiatrists, drugs and medical equipment, the mentally ill in Kenyan prisons will not be rehabilitated. This is because people who do not have their wits about

⁴⁸ Section 3 (2), *The Community Service Order Act* (Act No. 10 of 1998)

them are incapable of comprehending the value of programmes such as vocational training or training workshops. It is essential that such mental incapacity is medically dispensed with. If this is not done, the rehabilitation programmes inculcated upon the mentally challenged inmates would have no impact on them due to the fact that such persons do not understand the consequences of such actions. As such, their tendency to reoffend may continue until their mental health problems are addressed.⁴⁹

In a study carried out by Mercyline Nasiloli on the factors influencing recidivism among convicted prisoners in Lang'ata women prison; the study results have shown that prisoners who received education in prison were less likely to commit crime than those who did not. The study also revealed that majority of the prisoners who participated in vocational training had less chances of reoffending. It was established that the inmates who underwent vocational training were less likely to engage in crime compared to those who did not as they were economically viable and useful to their society. The study established that most of the prisoners' behaviour had changed as a result of their participation in guidance and counselling. This enabled the prisoners to manage triggers of criminal behaviour such as anger, bad company, and drug abuse which earlier influenced majority of them to commit crimes they were convicted for. The study revealed that prisoners who received support for tools and equipment were less likely to re-offend than those who did not.⁵⁰ It is hence evident from the research carried out by Mercyline Nasiloli that as long as Kenya Prisons service continues to be overburdened by lack of enough workshops and machinery for purposes of promoting vocational training and education, rehabilitation of offenders and curbing of recidivism will remain a challenge.

From an analysis of the challenges facing the Kenyan prisons service, this study submits that the challenges and harsh conditions in prisons tend to radicalise and harden convicts who perceive that they have been neglected and left on their own by society. There is also a lack of effective programme planning for inmates and an ineffective reception board in Kenyan prisons, hence inmates are not assessed to determine which education, life enrichment programmes, job training, counselling or drug treatment could be expected to help them not

⁴⁹ Latessa E and Reitler A, 'What Works in Reducing Recidivism and How Does it Relate to Drug Courts?', Volume 41, *Ohio Northern University Law Review*, (2015), 787.

⁵⁰ Nasiloli M, 'Factors influencing recidivism among convicted prisoners; a case of Lang'ata women prison in Nairobi County, Kenya', published research paper, University of Nairobi, 2015, 42.

return to prison; instead, inmates undergo evaluation aimed at determining security risk rather than program needs. This research notes that, the Kenya Prisons Service has a tradition of giving institutional needs precedence over the needs for inmates to receive meaningful job training or attend class as they depend on the inmates to perform prison support tasks such as cooking, cleaning, farming and laundry. Lastly, the discharge boards in Kenyan prisons are not effective in discharging inmates. They do not carry out their mandate of discharging inmates effectively because of lack of adequate funding to aid in facilitation of released offenders and to ensure they are reintegrated into the community. Facilitation here means acquiring employment through recommendations from the board and getting funding for acquisition of tools and equipment that will help the ex-offender acquire a decent living to support their needs and reintegrate them into society as law abiding citizens. What happens instead is inmates continue with their prison labour until they reach their Early Possible Date of discharge (E.P.D), after which, they are provided with transport fare which is just enough to take them to the courts which convicted them and the records of these ex-offender are closed, no follow up measures are available to monitor the ex-offender. This shows that the Kenya Prisons Department in conjunction with the department of Probation and Aftercare Services have not put in place re-entry programs nor follow up procedures designed to give inmates intensive counselling and job experience that ultimately help ex-prisoners find a place to live and work after they are released.⁵¹

In light of the above causes of recidivism and how such causes are propagated by the challenges faced by the Kenya prisons service, together with the fact that a prison system's success is determined by the rate of recidivism, this research argues that the Kenya Prisons Service is incapable of implementing their mandate to rehabilitate offenders because a vast majority of Kenyan inmates today constitutes recidivists. The challenges faced by the Kenya prisons service of inadequate resources and incapable personnel limit its operations and corrode its rehabilitation programmes. Inmates who are introduced to the criminal justice system are not availed with the necessary interventions they require hence upon release they remain un-rehabilitated. These un-rehabilitated ex-offenders do not acquire necessary skills of social reintegration to help them reunite with society as law abiding citizens hence they remain criminal minded; a factor which causes them to reoffend and return to prison making

⁵¹ Owino B et al, 'Looking in the mirror; reflection on implementation of the principles of penal systems in Kenya's prisons', volume 3, *journal of international academic research for multidisciplinary*, (2015), 213.

the Kenya prison service fail in its mandate. This conclusion fulfils one of the aims of the research; this being research objective (1) and the above analysis of the challenges faced by the Kenya prisons service answers research question (1) by finding that; the prison service is incapable of implementing its mandate of rehabilitation as long as it is facing challenges of inadequate resources and unprofessional personnel.

3. CHAPTER 3; Effects of the challenges faced by Kenya prisons service to personal lives of inmates

Vast amount of research carried out on matters pertaining to the prison system is done from the perspective of the rulers rather than the ruled. This research however examines the captive's society from the position of the inmates. Indeed each prisoner brings to the custodial institution their own needs and their own interpretations of life within prison walls. What remains constant is the series of status degrading ceremonies which all prisoners experience when they are being introduced to prison institutions. These ceremonies; research has shown, serve two functions; to destroy their identity and to assign them new identifies of a lower order.⁵²

The challenges faced by the Kenya prisons service of inadequate resources, facilities as well as unprofessional and harsh staff becomes a reality to prisoners the moment they are introduced to the institution. Inmates on arrival at prisons are met with an entry shock which prison wardens characterise as an initiation ceremony. New inmates are stripped off their personal belongings, given a number, examined, inspected, weighed and documented. The prisoner's personal identity is eroded once they start wearing the prison uniforms which have identification numbers as this reminds them that they are no longer themselves but are instead part of the prison system.⁵³ They are thus socialized into the life of prison from the first moment they enter the institution through the incorporation of the norms of prison life into one's habits of thinking, feeling, and acting which is referred to as the theory of prisonization.

Donald Clemmer's view of emergence of inmate sub-culture is based on two models; the deprivations model and the importation model. In order to well elaborate how the challenges faced by Kenyan prisons service affect the personal lives of inmates; the research will borrow

⁵² Harold G, 'Conditions of successful degradation ceremonies', *American journal of Sociology*, (2000), 420.

⁵³ Agasa E, 'Effects of Imprisonment on Inmates at Industrial Area Remand and Lang'ata Women Prisons in Kenya', Volume 20, *Journal of Humanities and Social Science*, (2015), 12.

heavily from the deprivation model. The major proponent of the deprivation model; Gresham Sykes believed that inmate subculture is the product of the attempt to adapt to the deprivations imposed by incarceration.⁵⁴ This theory applies in Kenya because Kenyan inmates face many deprivations that arise because of the challenges faced by the Kenya prisons service, if it were not for the challenges, these deprivations would not arise. The challenges of inadequately trained and understaffed prison wardens result in deprivations of security to the prisoners, overcrowding leads to deprivation of goods and services necessary in the effective rehabilitation of inmates and inadequate facilities results in deprivations of heterosexual relationships and liberty. A discussion of the outlined deprivations ensues.

Once incarcerated, a person is removed from the familiar setting of their home and is placed in a setting of unfamiliar people, both staff and other prisoners. There can hence be not only real threats to their personal safety but also stress and anxiety of not feeling safe. With the lack of enough prison wardens and staff in Kenyan prisons, inmates who face security risks are unable to acquire the needed attention to preserve their personal dignity and respect from assault. This is despite the United Nations Standard Minimum Rules for the Treatment of Prisoners advocating that prisoners shall be treated in a manner that shall encourage prisoner's self-dignity, self-respect and develop their sense of responsibility.⁵⁵

Overcrowding in Kenyan prisons places pressure on the administrative practises of the prisons which leads to deprivations of goods and services as inmates result to scrambling and violence in order to obtain the said goods and services which not only aid in physical and mental stimulation but also necessary in their rehabilitation. Material possessions are so large a part of an individual's conception of themselves that to be stripped off them is to be attacked at the deepest level of personality. This study thus submits that this challenge of overcrowding leads to low levels of esteem among some inmate therefore interfering with their rehabilitation.

The inadequacy of resources and facilities in Kenyan prisons leads to deprivations of heterosexual relationships. Prisoners are deprived of intimate relationships because there are no facilities for conjugal visits, which are important for normal social life. With this challenge of lack of facilities, Kenyan prisons end up dictating how inmates are able to

⁵⁴ Sue R, *The Correctional system; An introduction*, 177.

⁵⁵ Rule 65, *Standard Minimum Rules for Treatment of Prisoners*, United Nations Congress on the prevention of crime and treatment of offenders, 1955.

express their sexuality and gender. If inmates are rejected and impoverished by the facts of their imprisonment, they are also figuratively castrated by their involuntary celibacy. This study submits that lack of heterosexual intercourse is a frustrating experience for imprisoned criminals in Kenya, a frustration which weighs heavily and painfully on their minds during confinement and ultimately affects their rehabilitation. This is because inmates are unable to express their sexuality freely hence they develop low esteem tendencies that affect their rehabilitation.

The inadequate facilities and resources also lead to deprivations of liberty which constitutes inmates being confined within prison walls or their cells for most part of the day being idle as is evident from the research carried out by Jasper Edward and Margaret Njeri in Kamiti maximum prison.⁵⁶ The inmate's freedom of movement is also curtailed and they are usually under a demand that they stay in their cells until given permission to do otherwise. This research submits that there is therefore in effect a double deprivation here; confinement to the institution and confinement within that same institution. That is to mean, an inmate is not only removed from their own home, but they are then controlled on how they can move about the prison.

These deprivations discussed above have a direct impact on the prisoners themselves. Because the prisoners cannot escape these deprivations be it psychologically or physically, they hence establish patterns of social interaction among themselves. This interaction has herein been previously alluded to as prisoners' societies which aids in mitigating the above outlined pains they undergo during confinement. This prisoner's social system is functional for them in that it enables them to minimize, through cooperation, the pains of imprisonment. This social system redefines the meaning of material possession hence the limited available goods and services are distributed according to their cooperative social system, it also helps to solve the problem of personal security and alleviate fear of isolation. Every inmate has a choice of either uniting with their fellow captives in a spirit of mutual cooperation or to withdraw and seek only the satisfaction of their own needs. In either case however, this research submits that inmates' patterns of behaviour is an adaptation to the deprivations of their environment.⁵⁷

⁵⁶ Nyaura J and Njeri M, 'A Critical Overview of the Kenyan Prisons System: Understanding the Challenges of Correctional Practice', Volume 12, *International Journal of Innovation and Scientific Research*, (2014), 10.

⁵⁷ Sue R, *The Correctional system; An introduction*, 178.

The question that lingers then is; how does this inmate sub-culture affect the rehabilitation programme in Kenyan prisons? Rehabilitation of offenders involves the re-joining of offenders to re-join society as useful, law abiding members of a wider community therefore reducing recidivism. There are different rehabilitation models around the world employed in varying degree however the most common interventions which the Kenya prison service employs involves; first identifying the offenders' needs and classifying the types of interventions required which is espoused at Rule 8 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.⁵⁸ Educational deficits and needs of individual prisoners as well as behavioural and cognitive skill programmes have to be employed to challenge the offender's behaviour as well as treatment of substance abuse. Vocational training which provides transferrable skills to increase prospects of employment and enhance work experience of prisoners is another intervention employed. Resettlement assistance is also necessary during rehabilitation process as it aids prisoners to find accommodation after release.⁵⁹

The above measures of rehabilitation employed are however quashed by inmates sub-culture. The inmates sub-culture is antithetical to the goals of rehabilitation. This is because the message of the inmates sub-culture disintegrates the very system of legitimate norms that are at the heart of prison rehabilitation programmes. Instead of participating in prison treatment programmes, inmates' subculture mandates avoidance of the same and labels prison wardens and staff as part of a different social world in which convicts neither seek nor desire membership.⁶⁰

This study agrees with the above notion that these beliefs of the inmates' subculture reject prisoner-warden relationships and interactions hence no participation in rehabilitation programmes by the prisoners. The lack of this relationships lead to recidivism because if unable to relate with a prisoner, a prison warden would not be able to carry out effective psychiatric evaluations of an offender to determine the offender's rehabilitation needs. Kenyan offenders are thus more likely to return to criminal behaviour after conviction and release because the deprivations they face force them to cultivate a sub-culture that terms them as being people of a low social order which rejects norms of the prisons and society at

⁵⁸ Rule 8, *Standard Minimum Rules for Treatment of Prisoners*, United Nations Congress on the prevention of crime and treatment of offenders, 1955.

⁵⁹ *House of commons article on rehabilitation of prisoners*, 10.

⁶⁰ Howells K, 'The Psycho-Social Environment (PSE) of Prisons and Its Relationship to Recidivism', (2000), 208.

large. They are hence nurtured to not participate fully in the limited available rehabilitation programmes provided by the Kenya prisons service. A programme will only be effective if the offender participates in it fully.⁶¹ This conclusion fulfils the research objective (2) and with the above discussion of the effects of the challenges faced by Kenya prisons services on personal lives inmates, research question (2) is answered by finding that the said challenges cause inmates to form societies of social interaction which repudiate interactions between prison management and inmates hence making it difficult for inmates to participate fully in rehabilitation programmes.

4. CHAPTER 4; Recommendations

Based on the results of the study, several recommendations and suggestions can be made to combat the challenges faced by the Kenyan prisons service so as to attempt to improve their service delivery of rehabilitating convicted persons. These include but are not limited to;

Increased support for the Kenya prisons service and department of probation and aftercare services

There is a need to ensure that more budgetary allocations are given to both the Kenya prisons service and the department of probation and aftercare services. The government can increase such allocations by attracting donors and inviting non-governmental organizations to participate in rehabilitation programmes. By doing so, the Kenya prisons service will be able to secure the necessary equipment for training prisoners and providing vocational training hence combating the current inadequacy being experienced in Kenyan penal institutions. The increase in budgetary allocation should also be adequate for ensuring necessary equipment that will be used by prison staff such as walkie talkies and a dog section to address the security concerns and deficits in Kenyan prisons.⁶²

The government should strive to improve the scheme of service for the prisons department. Structures need to be established to facilitate recruitment, promotion and retention of adequate and relevant personnel. It should ensure more vacancies are created for recruitment of more experts to reduce the current inadequacy and heavy workload. The scheme should be improved to provide for professional training and refresher courses which are necessary for

⁶¹ Sanei M, 'Factors affecting recidivism and return to prison male prisoners in the prisons of the west of Guilan and strategies for prevention', *Journal of Scientific Research and Development*, (2015), 160.

⁶² Muteti S, 'The effectiveness of the Prisons Service in the rehabilitation of offenders in Kenya', (2008), 118

nurturing relevant skills and disciplines such as counselling, psychology, psychiatry and human rights. This will help prison staff to cope with the dynamic criminal behaviour of prisoners and patterns of offenders hence helping them to better understand their roles and duties within a human rights perspective. It will also address the harsh treatment of prisoners experienced in Kenyan prisons as well as facilitate prisoner- warden relationships which will aid in prisoners voluntary involvement in rehabilitation programmes.⁶³

Alternative Sentencing options and initiatives

There are two broad categories of alternative sentencing options; diversion strategies during pre-trial stage and non-custodial options. Diversion refers to deliberate intervention mechanisms employed to offload suspected offenders from reaching the final stages of the criminal justice system of conviction and sentencing.⁶⁴ At any stage of the criminal justice system, courts have discretion if they deem it fit, to terminate the charges of an offender and let off the person with a warning, caution or an order to keep peace with the victim or offended party. The objective of this diversion would be to cut off categories of petty or persistent offenders, youthful misdemeanour range of offenders and other nuisance offenders from clogging the criminal justice system. This will in effect address the issues of overcrowding and relieve pressure on the Kenya prisons service.

For non-custodial options; these range from conditional and unconditional suspended sentences, probation orders to community service orders. Courts have discretion to decide options of conditional or unconditional discharge. This creates an opportunity for courts to discharge all those found guilty but have proof of ill mental health or terminal illness. This option is not vastly exercised in practise because of fears that the guilty person may abscond. Magistrates and judges are however given the power as per The Probation of Offenders Act to demand for a probation officers report (P.O.R) from probation officers which is a social report that inculcates personal, work and family details of the offender hence alleviate any fear or doubt in the eyes of courts towards absconding.⁶⁵ The use of these discharge

⁶³ Amanda D, 'Good practice principles in reducing reoffending: a review of the literature', (2012), 175.

⁶⁴ Muhoro P, 'Crime Prevention: current issues in correctional treatment and effective countermeasures', *resource material series No. 57*, 115th international training course participants' papers, (2005), 328

⁶⁵ Achieng C, 'Effective resettlement of offenders by strengthening community reintegration factors; Kenya's experience', *Resource material serial No. 82*, 145th International training course participants and observer' paper, (2007), 58.

mechanism should be encouraged so as to reduce the number of mentally ill persons in prisons which will aid in reduction of the current high levels of overcrowding. Courts should also be encouraged to issue probation orders if it is recommended to do so by probation officers under the Probation of offenders Act⁶⁶ as well as issue community service orders as per The Community Service Order Act. The employment of these alternative orders will aid to remedy the issue of overcrowding in prisons.

Invitation of civil society and the community to participate in reintegration programmes

It is suggested that it is time for civil society, government and community at large to join hands in developing an effective and sustainable solution to the problem of reoffending. A partnership between civil society and government will bare fruits because civil society which tends to focus more on; and has the resources to deal with psychosocial aspects of reintegration will fill the gap of the government which focuses primarily on vocational training and educational development. An example of such psychosocial initiatives by the civil society is the Prison Fellowship Kenya which is currently initiating restorative justice and capacity building forums for the inmates with follow-up and empowerment programmes for the ex-prisoners to equip and re-orient them in financial independency.⁶⁷ There is also a need to promote community customary ways of settling disputes, rehabilitating offenders and preventing crimes as is seen in the Meru supreme court of elders; the ‘Njuri Ncheke’ which has aided in supplementing the efforts of the criminal justice system.⁶⁸ This will aid in addressing the issues of recidivism and aid in reconciliation of offenders with their victims and society at large and thus providing ex-offenders with the necessary support systems and environment to resettle into society. This integration of the community with offenders will also promote community policing which will help in fighting crime hence reducing chances of reoffending.

5. CHAPTER 5; Conclusion

This chapter presents a summary of the key findings and discussions. The study had three objectives namely; (1) Analyse if Kenyan prisons can fulfil their mandate of rehabilitating

⁶⁶ Section 5, *The Probation of Offenders Act* (Cap 64)

⁶⁷ http://www.pfkenya.org/downloads/prison_fellowship_kenya_flier.pdf on 13 December 2016.

⁶⁸ Muteti S, ‘The effectiveness of the Prisons Service in the rehabilitation of offenders in Kenya’, (2008), 122.

offenders while facing challenges of infinite resources and unprofessional personnel. (2) Discuss the effects of these challenges on the personal lives of the prisoners. (3) Develop recommendations based on the Standard minimum rules for treatment of prisoners and other International treaties. A thematic discussion of the results is presented below according to the study objectives.

Following the research findings and discussions in the preceding chapters; this study concludes that; rehabilitation is difficult to achieve when the Kenya prisons service is being faced with challenges of severe inmate overcrowding, shortages of food, clean water, diseases and unskilled prison personnel. These challenges as well as harsh conditions, as is evident from the research findings, tend to radicalise and harden convicts who perceive that they have been neglected and left on their own by society. With this radicalisation, the chances of reoffending after serving one's sentence become higher hence ex-prisoners leave our penal institutions being more criminal minded than how they were when being introduced to prison. The research data collected suggested that in prisons where these challenges were not experienced, rehabilitation programmes such as vocational training were administered effectively and levels of recidivism were low. The study therefore answers research question (1); that because a prison systems' success is measured by the rate of recidivism; the Kenya prisons service has failed to effectively rehabilitate inmates, this is based on reports that indicate the rate of recidivism in Kenya has hit 50%.

The results of the study also indicate that the challenges of inadequate resources and understaffed personnel in Kenyan penal institutions lead to deprivations of security, the challenge of overcrowding causes deprivations of goods and services necessary in rehabilitation of offenders and the inadequacy of facilities results in deprivations of heterosexual relationships and liberty for inmates. Based on the results of the study, these challenges affect the personal lives of the inmates because it is not possible for them to escape these deprivations, be it psychologically or physically. They hence establish patterns of social interactions among themselves referred to as prisoners' societies that aid in mitigating the pains they undergo during imprisonment. The study therefore answers research question (2) by finding that this sub-culture affects Kenyan inmate's rehabilitation because it is antithetical to the goals of rehabilitation. The message of the inmates sub-culture disintegrates the very system of legitimate norms that are at the heart of the Kenya prisons service rehabilitation programmes.

Given the findings of the research; several recommendations are made to aid in achieving effective rehabilitation for Kenya inmates as was aspired by research objective (3). These are; increased support for the Kenya prisons service as well as department of probation and aftercare services. The support alluded to is an increase in budgetary allocations which will aid the service to acquire not only the necessary equipment for providing vocational training to prisoners but also equipment for wardens in order to address security concerns in Kenyan prisons. There is also a proposition of encouraging the use of alternative sentencing options for purposes of dealing with issues of overcrowding in Kenyan penal institutions. Invitation of civil society and community participation in reintegration programmes is also proposed so as to provide necessary as well as sustainable reintegration mechanisms and support systems for ex-offenders. This will aid in reducing the high rate of recidivism currently being experienced in Kenya.

In conclusion; the research had initially hypothesized that; the challenges facing the Kenya prisons service impede its mandate of rehabilitating convicted criminals and ultimately affects the personal lives of prisoners. From the research data collected and the analysis done in the research the hypothesis has been tested using the independent variable as the challenges facing the Kenya prisons service and the dependent variables being creation of an inmate sub-culture, inadequate rehabilitation and recidivism. The hypothesis is thus verified and confirmed in the affirmative; because as a result of these challenges there is creation of an inmate sub-culture that rejects the legitimate norms of the Kenya prisons service hence inmates who conform reject prison norms and do not receive adequate rehabilitation. Without being fully rehabilitated; ex-prisoners find it difficult to reintegrate into society, a reality that ultimately leads to recidivism.

5.1 Areas of further research

Rehabilitation of offenders is a process that is affected by the activities of not only the Kenya prisons service but also Courts and the Police departments. It would be of interest to lawyers, sociologists, criminologists and other social scientists to conduct research study in order to determine the extent to which the activities of courts and the police impact the success or failure of the Kenya Prisons service. There is also need to conduct comparative research analysis on the two approaches of rehabilitating offenders; that is imprisonment on one hand and community service orders as well as probation orders on the other hand. This will aid to

determine which approach is more effective so as to come up with a sustainable rehabilitation structure for the Kenya prisons service.

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