

## EFFECTIVE RE-INTEGRATION OF EX- OFFENDERS: KENYA POLICY ANALYSIS

**FRANCIS OTIATO\***

### **Abstract**

Kenya Government established Probation and Aftercare Services Department on the 20th December 1943 through Peterson lead Commission based on the 1907 British Ordinance. This was a policy aimed at reducing the congestion in prisons- the overcrowding linked to the massive colonial government arresting natives involved in the Nationalism Movement. From 1943 to 2013, the Kenya prisons occupancy rate still remains at 226% of capacity compared to other east African countries like Uganda 214% and Tanzania 145% (Becky & Rob, 2012). Studies have linked the overcrowding to high rates of recidivism and extensive use of regularly prolix pre-trial confinement. The state enacted Power of Mercy Act No.21 of 2011 giving the President Power to grant free or conditional pardon to convicts, deferring punishment or substituting it through the advice of the members of advising committee on power of mercy chaired by the attorney general as a strategy to reduce prison congestion. This paper examines the state policies for reintegrating ex-offenders into society after being released by the president. Particularly, the paper focuses on policies relating to- rehabilitation process, economic empowerment, reintegration training and societal separation and restrictions.

*Keywords:* recidivism, aftercare, reintegration, ex-offenders, rehabilitation

\* TEXAS SOUTHERN UNIVERSITY

The Kenya prisons services run 108 Prisons, two Borstal institutions and one Youth corrective training center. The cumulative capacity of these prisons is about 25,000 inmates, but the entire prisons' capacity currently varies between 50,000 and 55,000 inmates. The overpopulation is linked to extensive use of regularly prolix pre-trial confinement representing 43% of the prisons' population (UNODC, 2012a P.8) and the tremendous rate of recidivism. Recidivism is defined differently by different scholars; others see it as the reoffending of a crime while to others it refers to whether or not a person who is the object of criminal intervention reoffends later- any crime (UNODC, 2012a P.9). For this study, recidivism will refer to prison re-entry. The recidivism rates have shown a continual increase over the past years; 2002 (25.4%), 2003 (27.9%), 2004 (28.5%) and 2005 (31.9%) (UNODC, 2012). In response, the state along with other prison reform agendas enacted the Power of Mercy Act No.2 of 2011 in line with Kenya's new constitution Article 133, which powers the president to grant free or conditional pardon to convicts, defer punishment or substitute it through the advice of members of the advisory committee on power of mercy chaired by the attorney general.

The president has always exercised the power to pardon in the past regimes and released several prisoners during national holidays like; Jamhuri day and Mashujaa day. Section 49 of the prisons Act bestows to the commissioner of prisons power to discharge convicts serving sentences of four years and more on conditions- especially when remaining with three months to conclude the sentence. Subject to correction, I believe this was to allow for gradual re-entry while under the monitor of the justice system, but all has not yielded any good result on decongesting prisons, hence the relevance of power of mercy still remains a debatable issue. The prisoners release to the community requires a systematic and comprehensive attention by policy makers to deal with re-entry plans (Petersilia, 2001 p.360). Research on convict and other offender's rehabilitation recommend that the post release regression and recidivism are contingent to engaging offenders on aftercare assistance (Inciardi, Butzin & Martin, 2004). Without re-entry programs, convicts returning to the society face a tough time even if they had fully rehabilitated in jail (Hammett, Robert, & Kennedy, 2001).

The cost of supervision and maintenance of prisoners is so exorbitant that no state can afford not to ensure effective re-entry programs. With operating cost of about Kenya shillings 1000 per day per prisoner, the state use Kshs.52,000,000 (fifty two million shillings) a day,

amounting to Kshs.18,720,000,000 annually. The cost of policing, investigation, the court system and the victims is heavy that no economy would want to incur (UNODC, 2012a). The successful re-entry into society means the reduction in criminality hence reduced criminals to court, reduced cost of policing and reduced prisons community. What can be done to enhance effective community re-entry? Better understanding of the successful integration ingredients is very critical.

### **Purpose/ policy implications of the study**

The purpose of this study was to summarize the qualitative literatures on the policies relating to rehabilitation and reintegration of offenders into society following the enactment of The Power of Mercy Act no, 21 of 2011 laws of Kenya giving the president powers to release offenders from prison as a de congestion strategy. This type of qualitative examination of literatures on rehabilitation and reintegration policies has never been done in Kenya. It is hoped that the study's findings would be very necessary in providing an explanation to current trends of reintegration policies in Kenya. Secondly, focusing on the offenders' re-entry, this report is timely and relevant to the current overcrowding problems in Kenya prisons. Third, this research focuses on identifying effective policies. Once identified a blue print can be developed for successful reintegration programs. Fourth, this paper provides information that is vital to policy makers and funding sources when making funding decisions for re-entry programs.

The research questions are: How effective are the current available policies on rehabilitation and reintegration of offenders? Do the current prisons overcrowding relate to inadequate rehabilitation and reintegration policies? What are the hindrances to effective rehabilitation and reintegration process?

### **Literature Review**

### **Introduction**

The main study variable is the reintegration of offenders which is directly being influenced by three independent variables: employment opportunities, social separation, restriction and re-entry policies. The research has affirmed that socio-economic determinants can be notable predictors of the offenders' recidivism and tenacious illegal conduct. These

determinants include family functioning and ties (Gendreau, Little, & Goggin, 1996), work (Belenko, Foltz, Lang and Sung, 2004), training (Sung 2003) and social fulfillment (Gendreau, et al., 1996). Consequently, the essential purpose of aftercare rehabilitation is to identify employment and training requirements needed for the job market (Belenko, et al., 2004). Training should aim at equipping ex-convicts with skills viable for reintegration into the legal job market or to provide necessary knowledge abilities and career expertise (Martin & Inciardi, 1993). This puts them into a better place for jobs and promotions, therefore, improving their social fulfillment (Gendreau et al., 1996).

Many ex-convicts encounter barriers to obtaining primary livelihood upon discharge such as fair residence because of bad family relationships, inadequacy of financial support for rental down payments or prejudice by landlords (Hammett et al., 2001). Criminal records are invariably at the top of the landlords rules to deny a housing contract (Petersilia, 2001). Many companies hold it necessary to reject those with criminal histories to evade creating what they deem a hazardous environment for their clients and workers, as well as to avoid legal quandaries and business interruptions (Belenko, 2002a).

The family dynamics is very necessary for the understanding of social separation and restriction. Strong relationship and support structure within the family is a vital restraint to relapse into crime (Belenko, 2006). Without a nexus to the family, research shows that freed offenders are more likely to return to deal with other criminals in their neighborhood, shunning positive goals completely (Listwan, et al., 2006). This can end in a distancing from society as well as family subset (Beck & Mumola, 1999). The Business community who know these ex-convicts – some of whom may have been victims of the same offenders – makes it explicitly clear that they are not welcomed, and often call in police officers pushing them from the limits of the community that many of them uprightly want to re-up. When pushed to these extremes, the risk – benefit ratio of committing another crime seems not only attainable, but intelligent and sound.

## Theoretical review

For the purpose of this research, the study will utilize, labeling theory. This theory explains the deviance in terms of the person's social connection and tags that restrict their socialization and job opportunities. The intellectual heritage of labeling thoughts can be traced back to symbolic interaction writings of both George H. Mead and W. I. Thomas. Tannenbaum's 1938 book 'dramatization of evil' argues that the process of tagging offenders or felons abets delinquency and crime (1938 pp.19-20). Labeling is the process of defining, classifying, and separating someone and then making them conscious and self-conscious of their weaknesses and deficiencies (Williams & McShane, 2010 p.112). This dramatic negative labeling become turning points in that person's identity; henceforth they apt "to employ their deviant behavior or a role based upon them as a means of defense, attack, or adjustment to the problems created by the societal reaction"(Taxman, Young, et al., 2003). Individual having been labeled they:

*Become more visible in the sense that people are more aware of them. This awareness often causes them to be watched more closely, those who are in criminal justice agencies closely watch individuals once they have come to the attention of their agency. In a sense, those labeled are the clientele of the criminal justice system, and like any other good business, the system keeps close tabs on its customers (Williams & McShane, 2010 p.113).*

A study by Richard Schwartz and Jerome Skolnick (1962) illustrates the criminogenic consequence of a criminal label. They carried a field research to study the impact of a criminal court record on the employability of an untrained worker. Four hiring portfolios were created with indistinguishable credentials except for a record of criminal responsibility. As Schwartz and Skolnick describe it:

*The four portfolios varied only in the candidate's detailed record of criminal court involvement. The first folder point out the candidate had been convicted and sentenced for assault; the second, he had been tried for assault and acquitted; third, also tried for assault and acquitted, but with a letter from the judge certifying the finding of not guilty and reaffirming the legal presumption of innocence. The fourth folder made no mention of any criminal record (p.134)*

Twenty-five copies of each of the folders were created. These folders were offered by an employment agent to one hundred people hiring resort hotel jobs in the Catskills. Reactions by the hotel employers were placed in one of two categories: a willingness to consider the applicant in any way and those who made no response or refused to consider the applicant. Only one employer expressed further interest in the convicted folder, three in the tried-but acquitted folder, six in the tried-and-acquitted with letter folder, and nine in the no-criminal record folder. While there are problems with the study, the labeling implications are clear: Not only does a criminal record help reduce employment opportunities, but any suggestion of criminal involvement may have a similar effect (William & McShane, 2010).

### Research hypotheses

- I. Effective rehabilitation and reintegration program reduces recidivism hence decline in prison re-entry.
- II. There are limited policies in place for rehabilitation and societal re-entry of ex-offenders in Kenya.

### Methodology

#### Selection of Studies

To answer these research questions, the study took a qualitative approach to analyze and review data. Qualitative content analysis has been defined as: “a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (Hsieh & Shannon, 2005, p.1278). This study utilized three methodologies. First, a library search of journal publications at Robert J. Terry library on Criminal Justice and probation rehabilitation - 2000 to 2013 series. Second, a computer searches conducted employing Google Scholar, literati academic, academic electronic database and online archives like Wiley online library. Descriptors used were; recidivism, aftercare, reintegration, ex-offenders, rehabilitation. Third, additional study on bibliographies of the selected articles was conducted to widen research base.

#### Data Analysis/ Results

Seven articles met criteria for inclusion in this study- all of the studies were conducted in Kenya and collected data relating to government policies on rehabilitation and reintegration of

offenders. The results are presented in the tables as shown in the *below*. Each study was considered as independent respondent to our research questions for data analysis purposes. The tables show identified views of each particular scholar in relation to the effectiveness of current policies and what they regard as the hindrances to effective rehabilitation and reintegration process in Kenya.

**Table 1: Current policy situation in Kenya**

Source	Results
Obondi (Unknown)	-Parole, though stipulated in the prisons Act (cap90), is yet to be operationalised and hence aftercare services (reintegrating and resettlement of offenders are offered only to ex-borstal-youth offenders and psychiatric offenders. -There is lack of sentencing policies that would give guideline and define roles
Dissel (2001)	-Kenya inherited the penal system from the British colonial government on its independence in 1963. In addition, the country has ratified a number of the international instruments protecting the rights of prisoners and detainees, including African chapter on human conditions in prison. What is lacking is the independent oversight of Kenya's prisons. -No independent group is allowed to access prisons, hence difficult to evaluate their programs.
Omboto (2013)	-The advisory committee on the prerogative committee has failed to advice on how to deal with death row convicts who have been in prison over the years- committee is not playing their role.
Onyango-Israel ( Unknown)	-A philosophy of rehabilitation resonated well at the policy level; However, the implementation of the principles in line with various international conventions and treaties remains wanting as the prison establishment continue with old practices. -The emerging international demands forced Kenya into reforms-which have been hindered by lack of sound outlay for implementation of desired programs.
Gatotoh et al (2011)	-The policies need to address correctional counseling, working conditions and enhance training opportunity.
UNODC (2012a)	-the probation department only offers aftercare services to ex- borstal inmates who are conditionally released and complete their sentence under the supervision of the probation officer- on a voluntary basis.

UNODC (2012)	<p>-On attempts to improve the conditions of detention, respect of human right and support for rehabilitation, the KPS has embarked open door policy to make it possible for the KPS to work closely with external stakeholders and partners.</p> <p>-In 2008, following the Madoka committee report on prison conditions, the rehabilitation was strengthened, a Directorate of rehabilitation was created, and progress was made –some offenders rehabilitation programs have been implemented, mostly vocational and formal education programs. The progress in implementing rehabilitation programs has been made, but slow-the number of prisoners who actually have access to such programs remain limited.</p> <p>-Currently, there is no comprehensive policy or legislation concerning aftercare services. It is not clear whether the proposed will include a broader review of the desirability of instituting a broader parole program.</p>
--------------	---

Note; -

- Obondi A. O. Christine. Effective Resettlement of offenders by strengthening ‘community reintegration factors’: Kenya’s experience. Retrieved from [www.unafei.or.jp/english/pdf/RS\\_No82/No82\\_09PA\\_Obondi.pdf](http://www.unafei.or.jp/english/pdf/RS_No82/No82_09PA_Obondi.pdf).
- Onyango –Israel, O.L. *Institutional treatment of female offenders in Kenya*. Retrieved from [www.unafei.or.jp/english/pdf/RS\\_No90/No90\\_19PA\\_Onyango-Israel.pdf](http://www.unafei.or.jp/english/pdf/RS_No90/No90_19PA_Onyango-Israel.pdf).

**Table 2: Obstacles to effective reintegration**

Source	Result
Obondi (Unknown)	<p>-Punitive community attitudes resulting in stigmatization of ex-offenders.</p> <p>-practitioners need appropriate skills.</p> <p>-lack of adequate linkages among partners in the criminal justice.</p> <p>-lack of structure for co-operation among the non state actors.</p> <p>-There is no laid down structures for collaboration and co-operation with private or public partners.</p> <p>-Lack of a general database: this hamper the flow of information regarding ex-offenders</p> <p>-lack of sentencing policy that would give guidelines and define roles.</p> <p>-lack of adequate community support structures.</p> <p>-lack of awareness of the existing family structures and services provided.</p> <p>-corruption</p> <p>-Bureaucracy.</p>
Dissel (2001)	<p>-prisoners mainly are involved in farm work and women are engaged in cooking, cleaning and taking care of warders dogs – it is difficult to see how this works contributes to the development of the prisoner skills.</p> <p>- No independent group is allowed access to prisons making it difficult to ascertain what is happening.</p> <p>-limited resources</p>
Omboto (2013)	<p>-limited training of officers.</p> <p>-lack of professionalism and integrity.</p> <p>-limited resources.</p> <p>-lack of personnel motivation</p>



Onyango-Israel (Unknown)	<ul style="list-style-type: none"> <li>-Prisons have remained a centre of brutality, physical and emotional torture, rather than being correctional centre-the prison system evolved as emotional graveyards for the inmates.</li> <li>-lack of knowledge on how to promote successful outcomes.</li> <li>-limited budgetary allocation.</li> <li>-lack of necessary tools and resources for assessing, or testing for the needed treatment.</li> <li>-uncoordinated manner in which partners in criminal justice system dispense their business.</li> <li>-lack of policy framework to regulate and coordinate the functions of all criminal agencies and harmonize their functions.</li> </ul>
Gatotoh et al (2011)	<ul style="list-style-type: none"> <li>-lack of needed correctional counseling.</li> <li>-poor working conditions</li> <li>-lack of proper training</li> </ul>
UNODC (2012a)	<ul style="list-style-type: none"> <li>-the supervision service is on a voluntary basis.</li> </ul>
UNODC (2012)	<ul style="list-style-type: none"> <li>-Currently, there is no comprehensive policy or legislation concerning aftercare services. It is not clear whether the proposed will include a broader review of the desirability of instituting a broader parole program.</li> </ul>

### Discussions/ Findings

The study summarizes a growing body of the empirical literature that examines the Kenya’s policies and views on how they hinder effective rehabilitation and reintegration. The concept of rehabilitation and reintegration policies should centre on filling the gaps between prison life and societal reintegration (Gatotoh et al, 2011). The inherent features of Kenya prisons remain punitive than reformative – the inherited colonial buildings and cells with black paintings of inner walls only paints a picture of darkness ahead in prison. The reform agenda should not only concentrate on ideologies, but also structural reforms are needed (Dissel, 2001). The research by UNDC (2012), indicates that the government has attempted to improve the conditions, respect of human right and support for rehabilitation, a matter seen by Onyango-Israel’s findings as a conception that has resonated well at the policy level; However, the implementation of the principles in line with various international treaties and conventions remains wanting as prisons establishment continue with old methods.

The Kenya government has been quick in ratifying treaties and conventions yet in actuality the implementation becomes a problem (UNODC, 2012, Dissel 2001, and Onyango-Israel, Unknown). Some of the policies such as aftercare programs only exist in papers, but there

are no comprehensive policies or legislation governing its operation (UNODC, 2012). The rehabilitation and reintegration efforts being exercised at two different levels of the government- Department of probation and aftercare services and Kenya prison services- lack policy framework to regulate and coordinate the functions of their operations and any other stakeholder for harmonized functioning. The new power of mercy Act, 2012 is obvious still at a very early stage of implementation, and there may be still some confusion within the various entities about how system will be implemented and about the respective roles of the various agencies and departments involved. According to UNODC (2012), some Kenya prisons and Kenya probation department officials noted that the power of Mercy Act does not seem to define what measures can or should be taken in relation to utilization of this Act to promote the reintegration of offenders and their supervision. This should be defined, if possible, in the rules and regulations for the implementation of the Act. If no provision is made for assisting and supervising released offenders under this Act, many of them can be expected to fail their social reintegration and commits crime.

### **Recommendations**

We need to rethink who should be responsible for making parole release decisions- in other words the composition of the advisory committee on power of mercy. According to the Act, the Attorney General chairs the committee and its members comprise of the cabinet secretary responsible for correctional services and other members appointed by the president for a non-renewable term of five years on part time basis. The committee currently has nine members; most of them have no professional qualification on correctional services. The 'part-time' makes the job not attractive to any professional seeking employment and those who go for it does not take it serious as they may be engaged in other personal duties, therefore; the employment should be permanent and renewable based on achievements.

The appointment by the president, although it may increase political accountability of the committee, it also makes it highly vulnerable to improper political pressures. In developed states like Ohio, by contrast, parole board members are appointed by the director of corrections, serve in civil service positions, and must have an extensive background in criminal justice (Petersilia, 2001). As cited by Omboto (2013), who is a senior prisons officer - the advisory committee has failed to advice on how to deal with death row convicts who have been in prison; no executions

have been done since 1985 and convicts are still being sentenced to death- this raises questions to the competency of the committee.

### Limitations

The present findings must be considered in light of the study's limitations. Because of time and limited resources for the field work, the articles content analysis was chosen as the most appropriate.

Ethically there are three basic research principles identified in Belmont report: respect, beneficence, and justice. Being a review of articles, the principal of respect and justice was observed by acknowledging and referencing all works of other scholars in this research to promote honesty in the field of academia. Benefits will be to all that will be using this paper for their further knowledge generation.

### Conclusion

It is possibly time for Kenya to begin important moves towards establishing a just parole system. A new strategy and law would be the most credible. The attorney general being the principal legal advisor to the Government and ex-official in Kenyan parliament, and Cabinet secretary being a member, the advisory committee stand a better chance of being able to martial their policies of interests not only to parliament, but also to the president- the backing of professionals with extensive experience in criminal justice will be very necessary. The public will not support the reintegration process until they know their roles and partners in the process hence, the need of professionals for research before the actual release.

## References

- Beck, A. J., & Mumola, C. J. (1999). Prisoners in 1998. *Bureau of Justice Statistics Bulletin*, NCJ 175687). Washington, DC: U.S. Department of Justice, Office of Justice Programs.
- Becky Randel, R. A. (2012). *Making Community Service Work: A Resource Pack from East Africa*. London, UK: Penal reform international.
- Belenko, S. (2002). Trends in substance abuse and treatment needs among inmates (final report to the National Institute of Justice). New York: *The National Center on Addiction and Substance Abuse at Columbia University*.
- Belenko, S., Foltz, C., Lang, M., & Sung, H. - E. (2004). The impact on recidivism of residential treatment for high-risk drug felons: A longitudinal analysis. *Journal of Offender Rehabilitation*, 40, 105-132.
- Belenko, S. (2006). Assessing released inmates for substance-abuse-related service needs. *Crime & Delinquency*, 52(1), 94-113.
- Dissel, A. (2001). *Prison conditions in Africa*. Johannesburg: centre for the study of violence and Reconciliation. Retrieved on February, 12 2009.
- Frank P. Williams III and Marilyn D. McShane, (2010). *Criminological theory*. (6<sup>th</sup> ed.), Pearson publishers.
- Gatotoh M. A., Omulema E. B., & Nassiuma D. (2011) Correctional Attitudes. An impetus for a paradigm shift in inmate rehabilitation. *International Journal of Humanities and Social Sciences*, 1(4), 263-270.
- Gendreau, P., Cullen, F. T., & Goggin, C. (1999). The effects of prison sentences on recidivism. Ottawa: *Solicitor General Canada*.
- Hammett, T. M., Roberts, C., & Kennedy, S. (2001). Health-related issues in prisoner reentry. *Crime & Delinquency*, 47, 390-409.
- Hsieh, H.-F., & Shannon, S.E. (2005). Three approaches to qualitative content analysis. *Qualitative Health Research*, 15(9), 1277-1288.
- Inciardi, J. A., Martin, S. S., & Butzin, C. A. (2004). Five-year outcomes of therapeutic community treatment of drug-involved offenders after release from prison. *Crime & Delinquency*, 50(1), 88-107.
- Langan, P. A., & Levin, D. J. (2002). Recidivism of prisoners released in 1994 (NCJ 193427).

- Washington, DC: *Bureau of Justice Statistics, U.S. Department of Justice.*
- Listwan, S. J., Cullen, F. T., & Latessa, E. J. (2006). How to Prevent Prisoners Re-Entry Programs from Failing: Insights from Evidence-Based Corrections. *Fed. Probation*, (70), 19.
- Martin, S. S., & Inciardi, J. (1993). Case management approaches for criminal justice clients. In J. Inciardi (Ed.), *Drug treatment and criminal justice* (pp. 81-96). Newbury Park, CA: Sage.
- Omboto, J.O. (2013). The challenges facing rehabilitation of prisoners in Kenya and the mitigation strategies. *International Journal of Research in Social Sciences*, 2(2), 39-43
- Onyango-Israel, O. L. Institutional treatment of female offenders in Kenya. Retrieved from [www.unafei.or.jp/english/pdf/RS\\_No90/No90\\_19PA\\_Onyango-Israel.pdf](http://www.unafei.or.jp/english/pdf/RS_No90/No90_19PA_Onyango-Israel.pdf).
- Obondi, C. A. Effective resettlement of offenders by strengthening -community reintegration Factors: Kenya's experience. Retrieved from [www.unafei.or.jp/english/pdf/RS\\_No82/No82\\_09PA\\_Obondi.pdf](http://www.unafei.or.jp/english/pdf/RS_No82/No82_09PA_Obondi.pdf).
- United Nations Office on Drugs and Crime (UNODC) (2012a). *Handbook on the prevention of Recidivism and the Social Reintegration of offenders*. United Nations Publications.
- United Nations Office on Drugs and Crime (UNODC) (2012). *A report on Alternatives to imprisonment and the social Reintegration of offenders in Kenya: A second chance*. United Nations Publications.
- Petersilia, J. (2001). Prisoner reentry: Public safety and reintegration challenges. *The Prison Journal*, (81), 360-376.
- Sung, H. - E. (2003). Differential impact of deterrence vs. rehabilitation as drug interventions on recidivism after 36 months. *Journal of Offender Rehabilitation*, (37), 95-108.
- Schwartz, R. D., & Skolnick, J.H. (1962). Two studies of legal stigma. *Social problems*, (10), 133-138.
- Tannenbaum, F. (1938). *Crime and the community*. Boston: Ginn.
- Taxman, F. S., Byrne, J. M., & Young, D. (2003). Targeting for reentry: Matching needs and services to maximize public safety. Washington, DC: *National Institute of Justice.*