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## Linkages between Punishment and Recidivism in Kenya: Analysis of Typology and Severity of Recidivists' Crimes

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### **Abstract:**

*Recidivism is a global problem which has persisted over the years irrespective of the kind of punishment to the convicts. For a deeper understanding of the problem, a study conducted on the link between recidivism and punishment was premised to among others analyze progression in criminality by recidivists based on the typology and severity of crimes committed. This study which involved recidivists was conducted at Kamiti Maximum Security Prison and Langata Women prison in Nairobi County. The study purposively selected a sample size of 167 males and females from the two prison institutions. Data was collected by use of questionnaires, focus group discussions and key informant interviews. Both quantitative and qualitative techniques were also utilized in data analysis. The study categorized crimes into petty crimes, middle level crimes and felonies. It was established that the severity of crimes increases with reconviction among male recidivists compared to their female counterparts as discussed in detail.*

**Keywords:** *Recidivism, criminal career progression, typology and severity of crimes, Kenya*

### **1. Introduction**

Recidivism is going back to crime after a convict had been punished for the first time. Recidivists are therefore described as chronic offenders since they continue to commit crimes despite punishment (Payne 2007; Maltz, 2001). The penalties normally awarded to convicts by the courts include death penalty, imprisonment, fines, forfeiture of property, suspended sentence, compensation, restitution, probation service and community service order (Musyoka, 2013). Other than death penalty, all the punishments seek to prevent recidivism which has failed both locally and internationally.

For instance, in Argentina, Tella and Schargrodsky (2013) established that the yearly prison recidivism rate was at 22.37% for the offenders released from prison, and 13.21% for those released after being under Electronic Monitoring. In Uganda recidivism rate among Community Service offenders in Kampala, rose from 9% to 12% between the year 2004 and 2010 (Ssebuggwawo, 2010). While in Kenya, the number of recidivists in Kenyan prisons in the year 2012 increased by 76.9% in 2013 (KNBS, 2014).

A study on recidivism and crime rate by Mednick, Gabrielli and Hutchings(2008) in the United States America established that chronic recidivists who were merely 4.09% of the male offenders were responsible for 64.4% of all the court convictions for male convicts. This finding justifies an investigation into whether or not the recidivists commit same crimes in terms of typology and severity after the initial punishment.

### **2. Literature Review**

#### *2.1. Typology of Crimes and Recidivism*

According to Adler, Mueller and Laufer(1995), the main types of crimes are violent crimes, crimes against property, drugs and alcohol related crimes, and sexual morality crimes. Violent crimes, according Ray (2013), include homicide, assault, child abuse and sexual offences. Even though this scholar categorizes sexual offences as violent crimes, not all these offences can fall under this category; for instance, sexual morality crimes such as prostitution, indecent willful exposure, and obscenity common among women are nonviolent. However, rape and defilement are violent crimes. The main sexual offences according to Terry (2013) are rape; pedophile; production, dissemination and ownership of pornography; and child pornography. The factors that influence sexual offending in an individual are being sexually abused as a child, having low self-esteem, denying

the sex offence, and lacking empathy with the victim (Hanson, 2000). Though sex offenders are comparatively fewer than other offenders, their impact is substantial and oppressive (Broadhurst & Muller, 1992).

In the US, Stalans, Yanford, Seng, Oslon and Repp(2004) established that violent crimes include first and second-degree murder, involuntary manslaughter, reckless homicide, armed or unarmed robbery, battery, reckless conduct, domestic battery, assault, aggravated arson, unlawful use of weapon, aggravated discharge of firearm, harassment, mob action, intimidation, unlawful restraint, and violation of an order of protection. Majority of perpetrators of violent offences according to Ray (2013) are men. For instance, in England and Wales, 90% of stranger attack offenders were male while 66% of attacks on women were committed by males.

Drugs and alcohol related crimes are many and varied. There are crimes that involve acquisition and abuse of illegal drugs and substances. The other are crimes related to possession and/or smuggling of such illegal drugs and substances (Omboto, 2010; Tiger, 2011). Furthermore, drugs and alcohol precipitate other crimes; for example, according to Traynor and Wincup, (2013), alcohol and drugs are frequently offered as explanations for crimes of rage that lead to violence. The scholars argue that rage crimes have been attributed to cocaine and heroin while excessive use of alcohol is attributed to violent and social behaviour. Crimes against property include burglary, forgery, obtaining money or property by false pretences, larceny, shoplifting, pick pocketing, misappropriation of public funds, bribery and other forms of corruption among others (Adler, Mueller & Laufer 1995).

On recidivism among drug offenders, Kim, Benson, Rasmussen and Zuehlke(1993) established that male drug offenders are more likely to recidivate compared to females, and persons convicted of possession are less likely to recidivate than persons who convicted of other drug crimes such as trafficking, smuggling, production, delivery and distribution. This is probably based on the allure of financial returns. Further, the study observed that imprisonment is much likely to deter recidivism among drug offenders than probation. This positive effect of imprisonment may be because it is more restrictive and severe than probation; also, offenders on probation may still access drugs and substances. These scholars also established that drug offenders who commit other crimes are more likely to recidivate than other drug offenders.

According to Hanson (2000), among the major predictors of sexual offence recidivism are deviant sexual preferences, early onset of sexual offending, and anti-social personality disorder. The study established that pedophiles are more likely to recidivate but rapists are more likely to recidivate than child molesters with none sexual offence. However, even though all kinds of offenders have the propensity to recidivate, majority of recidivists commit property acquisition crimes (Oloo, 1989; McNeil, 2010). For instance, McNeil (2010) with respect to USA established that the inmates who have a higher number of theft and/or fraud offences in their criminal history are more likely turn into recidivists. The reason as to why such offenders commit property related crimes may be because some of them particularly the poor commit those crimes as a means of survival. Nevertheless, not all recidivists are poor, and not all poor offenders become recidivists.

Confirming that recidivism rates are high in property offences, Nagin, Cullen & Jonson, (2009) established that recidivism rate among robbers stood at 70.2%, burglars 78.8%, and selling or possession of stolen property 74.4%. Comparatively, in non-property crimes, homicide recidivism rate was established to be 40.7%, rape 48.0%, while other sexual offences' rate was at 41.4%. The study established that recidivism rate is low in crimes that attract long prison terms because the offenders are always released into the society when they are older thus may not reoffend.

In terms of rural-urban dichotomy, crime and recidivism rates are higher in urban areas compared to rural areas (Paranjape (2005). This can be attributed to among others, the fact that urban centres are heterogeneous while rural areas are homogeneous in characteristics. For instance, the urban population is composed of individuals, some of whom are very rich while others destitute, thus, commission of property related crimes is more common in urban centers than in rural areas.

## 2.2. Study Area and Methodology

The study on the link between recidivism and punishment which sort to among others establish whether the typology and severity of crimes committed by recidivists change with reconvictions was conducted at Kamiti Maximum Security Prison and Langata Women Prison both situated in Nairobi County. Kamiti is the oldest penal institution in Kenya having been established in 1954 by the colonial government. It is located to the North East, about 15 kilometers from the Nairobi City Central Business District and is accessed through the Thika Super-Highway. From the highway the prison lies about seven kilometers off Roysambu round about. Langata is also the oldest prison for women in the country; it is located along Langata Road opposite Wilson Airport and about 5 kilometers south of Nairobi Central Business District. The institution is accessible through Uhuru/Mombasa roads, branching at Nyayo National Stadium and proceeding along Langata road.

The study was a survey in design. This design is suitable in gathering information on personal characteristics and opinion of respondents. The design requires a representative sample that reflects major characteristics of the study population. The units are thus selected in a manner that ensures balanced representation of the population of interest. Data was collected through filling of questionnaires, key informant interviews and focus group discussions. Non-probability sampling methods were employed in selecting the respondents for the study. A sample size of one hundred and sixty-seven (167) male and female recidivists who were purposively selected filled questionnaires. The study also engaged key informants and focus group discussion members. The numbers of key informants were twelve (12) prison officers at Kamiti Prison, seven (7) at Langata Women, four (4) police officers, and four (4) probation officers. Two focus group discussions were held, one at

Kamiti and the other at Langata. At Kamiti the members were twelve (12), while at Langata Prison they were five (5). Focus group discussion members were serial recidivists.

### 2.3. Theoretical Framework

The study made use of Deterrence Theory of Punishment to analyze an effective punishment; and Strain, and Labeling Theories of Crime to understand recidivism. Deterrence theory further argues that if punishment is not severe enough such that it overcomes the pleasure derived from crime; that is, when the proportionality is lacking, then the individuals will not be deterred from further criminal activities (Wright, 2010). However, this proportionality must be observed because if the punishment is too severe for a petty offence then the punished offender will be bitter thus vengeful against the society. In this case, the ex-convict may become a recidivist who commits more serious crimes; therefore, the punishment should be parsimonious to the seriousness of the crime committed.

The theory also posits that whether or not an offender will be deterred from committing crime in future is based on the alacrity and the guarantee of punishment for the crime committed. The former refers to the swiftness with which the punishment is awarded to the offender after the crime is committed. The guarantee of punishment or the certainty element that is also vital for a punishment to deter crime is all about the probability that crime, when committed, will be punished. If an offender is sure in his or her mind that if they commit a crime, they will be caught and severely punished, then such offenders are likely to desist from committing crime. In conclusion, the deterrence theory of punishment assumes that if the punishment is certain, severe and swift, recidivism will be lower and vice versa.

Strain Theory founded by Robert K. Merton, crime commission is caused by the frustrations individuals suffer in their attempt to achieve the society's goals through legitimate means. The strain suffered produces a number of deviants such as rebels, innovators such as robbers and thieves, and other deviants like vagrants, drunkards, alcoholics, drug addicts, or pariahs (Joyce, 2011). These individuals are not only potential criminals but also easily become recidivists because, as rebels, drunkards, drug addicts and alcoholics, they would not benefit fully from the punishment meant to reform and rehabilitate them as first-time convicts. Similarly, regardless of the punishment awarded, the ex-convicts may still indulge in criminal behaviour if they continue to lack the legitimate means to acquire their basic needs.

On its part, Labeling Theory of Crime according to Williams (2001) posit that deviance or criminal behavior starts with the society labeling some acts as criminal and goes ahead to label individuals who commit such acts as criminals. This makes such individuals to internalize the negative label and over a period of time takes on the traits that define the real criminal. Tannenbaum (1938) explains that one becomes what he or she is described to be. This is reinforced by failure to be accepted by employers, police profiling, and strained relations with the law-abiding members of the society (Lemert, 1951). Recidivism for instance results where an ex-convict is denied an employment opportunity that would assist him or her to support themselves and their dependents through legitimate means because of their criminal past.

## 3. Results and Discussions

On the typology of crime committed by recidivists, the respondents were asked in the questionnaire to state the crimes they committed during first and subsequent convictions. The study findings concerning the male and female recidivists were as follows.

### 3.1. Typology of Crimes Committed by the Male Recidivists

The respondents were requested to state the crimes they were convicted of at the first, second and successive convictions. These crimes were latter put into various categories. Table 1 gives a detailed summary of the crimes that the male respondents committed during the various convictions.

Crimes	First Crime		Second Crime		Third Crime		Fourth Crime	
	N	%	N	%	N	%	N	%
Crimes Against Property	79	57%	86	62%	34	85%	6	86%
Violent crimes against person	26	19%	42	30%	4	10%	1	14%
Others	33	24%	10	7%	2	5%	0	0%
Total	138	100%	138	100%	40	100%	7	100%

Table 1: Typology of Crimes Committed by Male Recidivists

Source: Researcher (2016)

Based on the information from the table above, it is evident that throughout their criminal life, majority of male recidivists engage in crimes against property. For instance, crimes against property recorded the highest percentages of 57%, 62%, 85% and 86% in first, second, third and fourth convictions respectively compared to violent crimes against the person, which recorded 19%, 30%, 10% and 14% respectively. Similarly, crimes in other categories combined such as sexual crimes, traffic offences, and alcohol and drug related crimes among others recorded minimal percentages 24%, 7%, 5% and 0% respectively. Most of the property crimes committed by the recidivists were geared towards acquisition of properties and not destruction. This can be attributed to the fact that poverty is the leading cause of crime in Kenya. The findings of this study are

in agreement with the assertion of Oloo (1989) and McNeil (2010) that compared to the other offenders, property related offenders have a greater propensity to reoffend. This is because majority of such offenders seek to meet their physiological needs. Thus, McNeil (2010) established that thieves and fraudsters are more likely turn into recidivists.

### 3.2. Crimes Committed by Female Recidivists

As concern the female respondents, Table 2 gives a detailed summary of the types of crime that they committed during the various convictions.

Crimes	First Crime		Second Crime		Third Crime	
	N	%	N	%	N	%
Crimes Against Property	17	59%	13	45%	0	0%
Violent crimes against person	4	14%	6	21%	0	0%
Others	5	17%	6	21%	4	57%
Moralistic crimes	3	10%	4	14%	3	43%
Total	29	100%	29	100%	7	100%

Table 2: Typology of Crimes Committed by Female Recidivists  
Source: Researcher (2016)

As per the above table, majority of the female recidivists just like their male counterparts also engaged in property acquisition crimes. For instance, among the respondents at Langata prison a majority at 59% and 45% committed property crimes during their first and second convictions respectively. The crimes they were convicted of include operating businesses without licenses, selling chang'aa (illegal liquor), handling stolen property, petty theft, and obtaining money by false pretences. Few of the female recidivists also commit violent crimes, in this category the crimes that were committed by 14% (4 respondents) are attempted robbery, grievous harm, affray (fights) and manslaughter.

However, other crimes that 17% of female recidivists were convicted of are alcohol and drug related offences such as being in possession of bangi (cannabis sativa). The female offenders who committed moralistic offences (prostitution, loitering) during first conviction were 10% (3 respondents) and 14% (4 respondents) for first and second convictions respectively. The study also revealed that some of the female recidivists who commit alcohol and drug related offences, and moralistic crimes become serial recidivists (convicted more than 3 times).

Compared to their male counterparts, slightly fewer females were convicted of violent and capital offences such as robberies, murder, and manslaughter. This may be attributed to the feminine qualities and fewer social responsibilities society bestows on women as compared to men.

### 3.3. Crime Progression by Male Recidivists at Kamiti Prison

To analyze progression in criminality by recidivists, the respondents were requested to state all the crimes they had been convicted of at the first and successive reoffending. The study categorized the crimes into petty offences, middle level crimes and felonies. Generally, petty crimes are misdemeanors or minor deviations. In Kenya the common crimes in this category are pick pocketing, prostitution, trespass, hawking, petty theft, drunkard and disorderly, brewing alcohol, creating disturbance, affray, operating business without license, handling stolen property, abetting crime, obtaining money by false pretences, loitering, giving false information, and impersonation among others. The offences attract lenient punishments such as fines, community service order probation service, and short-term prison sentences lasting days, months or a maximum of two years. Middle level crimes according to this study are serious offences such as ordinary theft, petty corruption offences, stealing by servant, ordinary assault, burglary, and house breaking. The offences attract severe punishments such as imprisonment terms of between 3 to 10 years.

Felonies are capital crimes that attract very severe punishments such long imprisonment terms of over 10 years, life imprisonment, and death penalty. The offences include rape, defilement, robbery, and robbery with violence, grievous harm, malicious damage to property, arson, murder, manslaughter among others.

The kinds of crimes that were committed by the male respondents in terms of severity are outlined in table 3 below.

Crimes	First Crime		Second Crime		Third Crime		Fourth Crime	
	N	%	N	%	N	%	N	%
Petty crimes	72	52%	30	22%	1	2.5%	0	0%
Middle level offences	41	30%	65	47%	5	12.5%	2	18%
Felonies	25	18%	43	31%	34	85%	9	82%
Total	138	100%	138	100%	40	100%	11	100%

Table 3: Comparison of First and Subsequent Offences by Male Respondents  
Source: Researcher (2016)

From the above findings it is evident that male recidivists begin their criminal career with petty offences before they finally graduate to felonies. These petty offences include handling stolen property, petty theft, drunkard and disorderly, creating disturbance, affray, abetting crime, obtaining money by false pretences, loitering, giving false information and impersonation. In the table above 52% (72 out of 138) of the convicts committed these petty crimes as their first offences compared to 30% and 18% who committed middle level crimes and felonies respectively.

The offences attract lenient punishments such as CSO, probation, fines and short-term imprisonment terms. These offenders then move to middle level crimes during their second convictions and commit crimes such as ordinary theft, petty corruption offences, stealing by servant, ordinary assault, attempted robbery, burglaries, and house breaking. For instance, at the second conviction, 47% (65 out of 138) were found guilty of these offences compared to 22% and 31% who were convicted of petty crimes and felonies respectively. The middle level crimes attract severe punishments such as imprisonment terms of more than three years.

During their third and subsequent convictions the study established that the male recidivists graduate to felonies which are capital crimes. These crimes include rape, defilement, robbery, and robbery with violence, grievous harm, malicious damage to property, arson, murder, manslaughter among others. The capital crimes attract very severe punishments such as long-term imprisonments ranging from fifteen (15) years to life imprisonment and even death sentence, which compel them to be out of their communities. Thus, the offenders convicted may not reoffend again, for instance those put-on life imprisonments and the ones punished by death penalty. Similarly, those convicted of felonies during their second conviction rarely turn into serial recidivists.

At the third conviction 85% of the convicts committed these crimes, while 82% of those who were convicted the fourth time committed the felonies. This evident progression in criminality by male recidivists may be caused by the fact that offenders get hardened and fear no more with every conviction. However, if imprisoned for the first offences, the convicts may also be contaminated by other more experienced and hardened inmates they come in contact with in prison institutions. This phenomenon of contamination of petty first-time convicts in prisons had been established by Kagendo (2003), Gendreau and Cullen (1999), Odegi-Awuondo(2003) and Mushanga(1976).

### 3.4. Crime Progression by Female Recidivists at Langata Prison

In terms of severity, the kinds of crimes committed by the female respondents during their first and subsequent convictions are outlined in Table 4.

Crimes	First Crime		Second Crime		Third Crime	
	N	%	N	%	N	%
Petty offences.	21	72%	20	69%	7	100%
Middle Level Crimes	6	22%	5	17%	0	0%
Felonies	2	6%	4	14%	0	0%
Total	29	100%	29	100%	7	100%

Table 4: Crimes Progression by Female Respondents  
Source: Researcher (2016)

From the above findings it is evident that the majority of female recidivists unlike their male counterparts do not progress in criminality. Majority of these convicts begin and end their criminal career with petty offences. For instance, 72%, 69% and 100% of the convicted offenders committed the petty offences at their first, second and third convictions respectively. Several of these female recidivists involved in this study were consistently convicted of petty theft, handling stolen property, prostitution, loitering, giving false information, creating disturbance, operating business without licenses, brewing and selling chang'aa (illegal liquor), obtaining money, and receiving money by false pretence. This finding is consistent with the views of key informants and FGD members that women recidivists commit same offences for which they earn short prison sentences with options of fines.

## 4. Conclusion

Majority of recidivists; males and females, more often than not commit property related crimes during their criminal career. In terms of severity of the crimes with reconviction, male recidivists start their criminal career with petty crimes and graduate to more serious crimes with reconvictions. A few males also seem to specialize in specific crimes. This is unlike the female recidivists who commit petty offences throughout life in crime. Concerted effort should therefore be directed in preventing recidivism among first time male convicts because they are a serious danger to the society with reconviction.

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