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## Factors Affecting the Use of Community Service Sentence Orders among Magistrates as Alternative to Imprisonment in Kinondoni Municipality, Tanzania

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### **Abstract:**

*This paper is based on a study that attempted to explore factors affecting the use of community service sentence orders as alternative to imprisonment in Kinondoni Municipality, Tanzania. The study was based on the ground that, while a growing number of empirical studies have revealed that prison sentence is not a human rights friendly kind of punishment in a civilized country like Tanzania, disappointingly it remains the most preferred and utilized penalty by most courts. Subsequently, thousands of convicted minor and non-recidivist criminals continued to be sentenced to prisons. Therefore, it is apparent that the community service sentence which was perceived as one of the effective alternatives to imprisonment, remains under-utilized, resulting into prisons congestions. This study, therefore, explored factors affecting the use of community service sentence orders among magistrates as alternative to imprisonment in Tanzania. The qualitative approach guided by interpretive paradigm and exploratory design informed this paper. The study consisted of twenty (20) participants who were purposively selected from seven courts of law. The participants included community service officers and magistrates. The in-depth interview was used to capture primary data while secondary data were captured using documentary review. The collected data were analyzed using thematic analysis. The findings revealed that there is lack of confidence of the general public and the courts on community service as a form of punishment since it is perceived to be a lenient kind of punishment. Also the limited public awareness on the existence of community service sentence, limited knowledge on the eligibility criteria for community service offenders and corruptions were identified as major factors affecting the use of community service sentence. In light of the findings, this paper recommends that social workers as human rights advocates should aggressively conduct awareness raising campaigns against overreliance of imprisonment by some magistrates as a form of punishment particularly for petty and non-recidivist offenders. The government should allocate adequate budget to facilitate regular trainings with honorable magistrates to remind them the available options including the use of community service sentence. There is also need of increasing funding to the Community Service Department to facilitate smooth implementation of the community service orders.*

**Keywords:** Community service sentence, imprisonment, human rights and Tanzania

### **1. Introduction**

According to the United Nations (2010), worldwide, the prison population is ever growing. This growth has financial implications on governments and a great cost to the social cohesion of societies. In recent years it was estimated that more 10.1 million people, both sentenced and pre-trial prisoners, who were held in prisons worldwide in May 2011. From these figures, it can be translated that, 146 out of every 100,000 people of the world were in prison at that time (UN, 2010). According to World Prison Population List report (2018) more than 10.74 million people are held in penal institutions throughout the world, either as pre-trial detainees/remand prisoners or having been convicted and sentenced. If one critically looks at these figures, it is clear that the number of prisoners in the world is increasing. However, it should be noted that the figures for Eritrea, Somalia and the Democratic Peoples of North Korea are not available and those for China and Guinea Bissau are incomplete. It was further reported that the United States of America has the highest prison population rate whereby there are 100,000 prisoners per 655 the national population. According to Albrecht (1990) explanations of overcrowding have been preoccupied with the excessive use of prison sentences and the overall growth of prison populations. Furthermore, Yekini and Esq (2013) asserted that imprisonment is a disposition method that has created a lot of problems in most countries. One of these problems is prison overcrowding which is a serious global problem indeed. Overcrowding seems even to represent a characteristic troubling the modern prison.

Historically, imprisonment has been considered as a measure of punishment by different societies. Most prisons traditionally have been perceived as places where those considered social deviants are sent and retained for the sake of protecting society's harmony and preserving the rights and dignity of other members (Connor, 2005). As a result most

prisons are overcrowded Fallin (1989). Latessa and Allen (1997) argued that the greatest danger of prison is in the areas of safety and health. With the continuously increasing rates in the prison population death, inmate assaults and disturbances occur more whether the confinement is in a maximum, medium or minimum security. This critical conditions sparked the human rights activists' movements against imprisonment in many parts of the world including social workers. Social workers as human rights advocates are responsible for intervention of any social problem because its profession mission which emphasizes about helping the vulnerable groups including prisoners (Healey, 2008 and McPherson, 2015). In supporting this argument, Huegler (2016) argued that social workers consider themselves as a key protagonists of social justice and human rights. Historically, social workers as human rights activists have been involved in issues of crime and corrections since the profession's inception in the late 19th century (Rainford, 2010). The social work profession's purpose is promoting human welfare (Council on Social Work Education (CSWE, 2008).

As a result of human rights activists' movements against imprisonment as a form of punishment, the community service as a new form of sentencing was developed. According to McGagh (2007) community service is a sanction available to the court that requires a convicted offender to perform unpaid work for the benefit of the community as a direct alternative to custody'. Community service like probation is a non-custodial sanction. An offender sentenced to a community service is usually supervised by probation officers (or community service supervisors) or other officers assigned by the court. Community service order programme was developed as an alternative to imprisonment after imprisonment was seen to present many problems both in the developed and the developing countries. It was also in response to recognition that incarceration was not working and that the problem of crime cannot be solved by incarceration alone (Kenya national CSO practice guideline 2000). Therefore, community service was purposively introduced to decongest prisons and avoid recidivism through application of effective rehabilitation programmes.

In the world history reveals that, the first modern Community Service programme was developed in Alameda County, California (USA) in 1966 when certain traffic offenders were required by the municipal court to perform unpaid work for the community while in Ireland it was first introduced in 1983 (Community Service) Act, 1983). In England and Wales community service was introduced in 1972 under the Criminal Justice Act of 1972 having been recommended by the Advisory Council on the Penal System chaired by Baroness Wootton (thereafter known as the Wootton Committee). Basically, Community service order came as a substitute to imprisonment, which was considered inhumane, degrading and cost ful in terms of its implementation.

In the African context, community service as alternative to prison sentence is not at all alien. In support of this argument Smykla (1981) observed that the history of community-based corrections can be traced back for many centuries. Foreexample, in Africa there were no jails or prisons utilized to punish wrong doers. One of the most common forms of punishment was to do public service (. i.e. community work) the kind of punishment which had a strong public nature. Nukunya (2003) as cited by Parimah (2015) affirms that before the arrival of Europeans in Africa, Africans had their own communal system with a justice system that sought to establish harmony and the reconciliation of offenders and victims. Taking specific example from Ghana for instance the chiefs in the African continent often times tried to ensure that there was compensation of wrong to those who suffered any form of injustice (Dalgleish, 2005).

Therefore, from the above evidence, it is obvious that imprisonment is an adopted child in Africa as it was imposed by the colonialists from Europe during the 1800s. The colonialists utilized imprisonment not as a means by which to punish the commission of common crimes but rather to control and exploit potentially rebellious local populations. Therefore, Africa's earliest experience with formal prisons was not with an eye toward the rehabilitation or reintegration of criminals but rather the economic, political, and social suppression of indigenous peoples. It was in these early prisons that even child offenders were subjected to brutal confinement and recruited as sources of cheap labour (Sarkin, 2008). Thus, with the Africa's ever growing population, the hope is expressed that non-custodial sentencing options will relieve the overcrowding and its associated ills. The non-custodial sentencing probably has its origin in the realization that imprisonment is not suitable for all offenders. In this connection, in 1996, representatives from 40 African countries met in Kampala Uganda to look at penal reforms in view of the undesirable prison conditions in most of the African countries (Penal Reform International, 1997). At the end of the conference, the Kampala Declaration was signed stipulating that, there must be improved conditions in prisons. One among the alternatives suggested for the incarceration (imprisonment) was community service sentence which was also recommended during the Ouagadougou declaration (Penal Reform International, 2012).

In Tanzania the Community Service programme is not a new phenomenon. Traditionally and before the introduction of prisons in the country, Tanzanians used to solve their correctional problems within the community. Community service therefore is like going back to the roots whereby the community is in charge or at least has some role in rehabilitating offenders (Lila, 2012). The community service programme was officially developed as an alternative to prison sentence in 2002 after the enactment of the Community Service Act, No 6/2002. This was one of the government response to prison overcrowding and its associated consequences. According to Muiluvuori (2001) prisons bring upon a person and the economic pressures associated with the maintenance of a criminal justice system which is retributive, hence community service could be a worthy alternative to imprisonment. Community service opens avenues for offenders to engage in some productive work that would resultantly benefit the community at large (Graham, 2012). According to Wing Lo and Harris (2004), community service as alternative sentence to imprisonment can help change the cause of the offender's behavior because it instils in the offender a sense of moral obligation to the community. Moreover, community service is considered to be financially prudent and it can reduce prisons' overcrowding as well as reductions in the rate of recidivism (Lutze *et al*, 2012).

It is clear that, the advantages of community service over imprisonment are obvious. However, despite the aforementioned advantages of community service sentence orders, imprisonment remains the most utilized penalty by most of the criminal courts in Tanzania. As a result most prisons remains congested with a number eligible offenders for community service sentence orders (Penal Reform International, 2012). Therefore, it is evident that community service in Tanzania still remains far from realizing its objectives. The Tanzania Human Rights Report (2016) in December 2015, affirmed that the prisons whose total designed capacity was for 29,552 inmates, held 31,382, 6 percent above designed capacity and the physical conditions of prisons was extremely worse. The increase in inmates in the prisons has not been translated into improved prison infrastructures to accommodate the congestion, rather they remain as they were fifty years ago. The prison conditions remained punitive and life threatening. The harsh environments in prisons is a typical example of human rights violations.

Despite the negative consequences associated with imprisonment, in Tanzania still there is over-reliance of prison sentence by most criminal courts and the community service as a form of non-custodial sentence remains under-utilized. After going through various empirical studies such as (Law Reform Commission, 1994 and Penal Reform International, 2012 and Kagaruki, 2015), it has been revealed that information regarding the under-utilization of the community service sentence is limited. It is apparent that there is a paucity of empirical studies conducted to explore factors affecting the use of community service sentence orders as alternative sentence to imprisonment in Tanzania. This is the central reason why this paper article is prepared as an extract of a study conducted in Kinondoni Municipality in Dar-Es-Salaam, Tanzania.

## 2. Theoretical Discussion

The theoretical framework for this study is Durkheim's (1938) structural functionalism theory. Factors affecting implementation of community service order were addressed by this theory. The argument advanced in this theory is that a system consists of various components or sub-systems, which must function as a unit. Each structure is interrelated and interlinked and contributing in a different way to keeping the entire society healthy. A malfunctioning of one structure is bound to have a ripple effects on the whole unit. Based on this argument developed by the theory it is clear that the implementation of community service sentence orders requires the participation of magistrates, the community service officers and the general public /community members. Therefore, it is clear that in order to effectively implement community service sentence the court must work closely with the community service officers who are responsible for preparation of the Social Inquiry Report (SIR) as indicated in Section 3 (4) of the community service Act, No 6/2002 which states that "*where a court determines that a community service order should be made, it may, before making the order, direct a community service officer to conduct an inquiry into the circumstances of the case and of the offender and report the findings to the court*". From this provision it is obvious that it is the court that initiate the process of preparing the SIR to determine the suitability of the offender under community service order. Therefore, if the court is silent or does not involve the community service officer, then, it is clear that no report that will be prepared and the court may decide to sentence the eligible offender to prison. In addition to that based on the structural functionalism theory, it can be seen that in order to get maximum co-operation from the public/community, then the community as one of the parts of the structure must be involved. If this does not happen it can create tension and fear or suspicion over the use of community service sentence. According to the theory, to avoid such mistrust, the court, community service officers and the community must work as a unit. The community can be engaged through various ways including the awareness raising campaigns through different channels. Therefore, based on the assumption of the theory, the under-utilization of the community service sentence as alternative to imprisonment is a result of failure of the aforementioned structures to work separately not as one unit.

## 3. Methodology

This paper is based on a study carried out in the year 2015 to explore factors affecting the use of community service sentence as alternative to prison sentence in Tanzania. The study covered Kinondoni Municipality, in Dar-es-Salaam the biggest city in Tanzania. Kinondoni Municipality was selected because it is the Police region having highest crime rates in Tanzania Mainland compared with 2,628 (Traffic Incidents Statistics Report, 2016). The paper is virtually qualitative. Within the qualitative approach the study adopted an exploratory research design to explore factors affecting the use of community service sentence orders as alternative sentence to imprisonment. The choice of an exploratory design was based on its applicability when there is little or no knowledge regarding a given situation. It is advisable to conduct an exploratory study before applying descriptive or analytical studies when the problem and factors contributing to are not well defined (Abiy *et al*, 2009). Since there are very few researches conducted a study on factors affecting the use of community service as alternative to imprisonment in Tanzania, the researcher was required to make the nature of this study exploratory.

The study comprised of twenty participants where by thirteen of them were community service officers attached to different courts while seven participants were honorable magistrates from seven courts based in Kinondoni Municipality. The in-depth interviews were digitally recorded and transcribed in verbatim form. The data were analyzed using thematic analysis model as developed by Braun and Clarke (2006). Using this model, data were read for understanding several times. An inductive analysis and exploratory approach was applied during this process. Coding, sorting and organizing data are an integral part of thematic analysis. The data were searched systematically for re-occurring words, which later became code words. These code words were then grouped to form themes. Manual coding

during the data analysis was used to help with the management of the data. Ethics approval for this research was granted by the Probation and Community Service Department.

#### 4. Results and Discussion

This section presents the findings on factors affecting the use of community service sentence orders as alternative to imprisonment in Tanzania with specific attention at Kinondoni Municipality. The findings are the results of data collected using in-depth interview and documentary analysis. It emerged from the study that several factors affect the use of community service sentence orders as alternative to imprisonment. The major factors identified in the use of community service sentence as alternative to imprisonment include: limited resources among community service officers, lack of confidence of the public and the courts, limited public awareness and corruptions. These factors are discussed in this section as follows:

The study was conducted in Kinondoni Municipality and involved thirteen (13) community service officers and seven (7) honorable magistrates selected from seven courts of law. The main objective of the study was to explore affecting the use of community service sentence as alternative to prison sentence. Community service order as per section 3(1) of the community service Act, No.6/2002 is an order posed to offenders convicted to serve their sentences in the community by performing community work for the benefit of the community. Currently, the probation services division within the ministry of Home affairs is charged with the role of implementing non-custodial sentences in Tanzania. While legislation regarding community service is generally clear and precise, and while community service has proved to be a humane and cost effective alternative to imprisonment, it has not been accepted whether or not offenders in the community have truly benefited.

Its existence come as a factor to save some purposes like decongesting prisons; reduce running costs of caring inmates, as a means of enhancing human rights and many other factors.

##### 4.1. Limited Resources

Based on the individual interviews conducted by different community service officers it was revealed that limited resources in terms of transport or funding to facilitate movement in order to prepare pre-sentence reports significantly affects the use of community service sentence. Consequently, some community service officers either completely fail to prepare pre-sentence reports or fail to prepare them on time. It should be borne in mind that pre-sentence report as stipulated under Regulation No..GN... In support one of the community service officers shared the following views:

*I spend my own salary sometimes to conduct home visits for the purpose of collecting views from the community and other key stakeholders like the police and ten cell leaders in order to be able to prepare pre-sentence report and present it before the court. Sometimes we get transport from the headquarter but sometimes it is not reliable because of lack of fuel so what I do is just to volunteer myself.....(Interview, Community Service Officer (male), June, 2015).*

Another participant added:

*.....It's true that sometimes we ask them (community service officers) to prepare reports so that we can be able after conviction of offenders committed petty offences but they fail to prepare them timely due to lack of transport so we decide to send the eligible offenders to prisons ... (Interview, Magistrate (Female), June, 2015).*

From the two extracts above, it is clear that limited resources affects the successful implementation of community service in Tanzania. The findings are in line with study conducted by Birungi (2005) in Uganda with particular focus at Masaka and Mukono Districts, where it was found that the government has not been very supportive in the implementation of this programme. The financial contributions made was insufficient to sustain the activities of the programme. This contributed greatly to the slow and poor implementation of community service. In Tanzania similar situation exist and this gives an implication that the government should allocate adequate budget for the Community and Probation service Department to facilitate the smooth execution of its core functions to reduce prisons overcrowding.

##### 4.2. Negative Attitudes towards Community Service

Law enforcers (polices and prison officers), court officials, prosecutors and lawyers are not well trained in modern penal law movement, especially restorative justice. Therefore, majority of magistrates tend to rely on imprisonment with mentality that community service is a lenient punishment. In support of this argument one of community service officers from Kinondoni District court had the following views:

*..Most magistrates consider community service as a light punishment which cannot make the offender feel the pain of his/her offence as a results most magistrates are reluctant to use it as alternative to imprisonment..... (Interview, Community Service Officers (female), June, 2015).*

In addition to that, another participant (magistrate) from Magomeni Primary court had similar views as she claimed:

*In my opinion some offenders are complex so I don't think if community service can help them change their criminal behaviors (Interview, Magistrate, and June, 2015).*

From the two quotations above, it is obvious that most magistrates do not use community service sentence during their sentencing process because of the mentality that it is a light punishment. In support of this argument honorable Judge Lila (2012) observed that most of the magistrates hesitate to make use of community service as alternative to imprisonment due to traditional culture of imprisonment. Moreover, Birungi (2005:64) observed, "though community service has been accepted and some have benefited from it, the public still has misconceptions or a poor attitude about it and continues to regard it as a 'soft' punishment and not as punitive enough". Therefore, from the quotation it is

apparent that the little success of community service in Tanzania is partly attributed by the acceptance of imprisonment as a valuable punishment to convicts, inflexible mind set of professionals including magistrates, thus it bears little worthy by the community, magistrates courts as the main core stakeholders and significant others due to some not well address reasons. Actually these aspects of considerations by some of our courts are lopsided and to them it is very easy to rush into simple sentencing means, thus the most preferred option is imprisonment sentences. Community service order is cost conscious and not at all in favor of "leniency" and this should be a determined focus of our justice dispensers. Other partners within the criminal justice system, the community servicer officers, the prisons, police, the society and NGOs are to be engaged to their full extent to campaign for its best positives of the programmes.

#### 4.3. Limited Public Awareness on Community Service Programme

In order to understand the reasons behind the limited use of community service as alternative sentence to imprisonment the authors conducted individual interviews with different participants. During the interviews with community service officers it was clear that limited awareness among the public affect the use of community service sentence as alternative sentence to imprisonment. For example, during the interview sessions with one of the community service officers at Sinza primary court had this to share:

*"... in my experience limited awareness among the general community on the existence of community service as alternative sentence to imprisonment has impact on the implementation of the programme. (Interview, Community Service Officer, June, 2015*

The extract is in line with observations by Penal Reform International (2012) which found that many members of the public in East African countries including Tanzania, lack awareness on community service programmes. This suggests that the public or community members are not familiar with the procedures and available sentencing options used by magistrates. This further explain, why there are prisons congestions in Tanzania because if the community is not aware how can they demand their rights including alternative sentence as stipulated under Regulation 23(1) of the Community Service Act, No 6/2002. The large section of the public is not aware about the use of non-custodial measures, thus this limits their participation in the implementation of alternative sanctions/measures. Again, members of the public are still with the perception that non-custodial sentence does not do justice to victims of the criminal acts, they urge that the system releases convicts who ought to pay dearly for their wrongful acts.

### 5. Limitations of the Study

This study has a limitation inherent that might hinder the effectiveness of the research process. The main limitations of this study is that it was conducted in Kinondoni Municipality only and the small sample size of respondents drawn from within a limited geographic area due to limited time and financial constraints. The population and resulting sample resides in Kinondoni Municipality and does not present the population impacted by imprisonment in other Municipalities of Dar-es-Salaam city. Therefore, any generalizations of the results obtained for this study made should be limited to the population from which the sample was selected and remain specific to the study areas. However, despite this limitation, it is expected that the results could benefit the organizations concerned with human rights activism in other areas.

### 6. Conclusion and Recommendations

In light of the study findings it can be concluded that limited resources, negative attitudes, limited public awareness are the key factors contributing to the overuse of imprisonment despite the proof that community service is more humane and cost effective alternative to imprisonment. This paper recommends the provision of education to the whole society on the significance of community service sentence as alternative to imprisonment. Furthermore, regular training with honorable magistrates on the use of community service sentence should be conducted. There is also a need of increasing funding to the Community Service Department to facilitate implementation of the programme.

### 7. Ethical Considerations

Ethical issues such as informed consent, confidentiality and consequences for the interviewee should be taken into account with any qualitative interview (Kvale, 1996). In this study, ethical issues were considered when carrying out this study as all the research participants were informed about the purpose of the investigation and the features of research design. Informed consent was obtained from individual children and their parents in writing in the local language which research participants understood better. The researcher also ensured that confidentiality and anonymity were employed in which the information collected was strictly used for research purposes. More so, identities of children, parents and key informants were not disclosed.

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