



**University of Nairobi**

**Faculty of Arts**

**ANALYSIS OF THE LINKAGE BETWEEN PUNISHMENT AND  
RECIDIVISM AMONG PRISONERS IN NAIROBI COUNTY, KENYA**

**OMBOTO, JOHN ONYANGO**

**C80/94529/2014**

**A Thesis Submitted in Fulfillment of the Requirements of the Degree of  
Doctor of Philosophy in Criminology in the Department of Sociology and  
Social Work, University of Nairobi**

**March, 2019**

## DECLARATION

I declare that this thesis is my original work and has not been presented for an award of a Degree or any other academic credit elsewhere. Where other people's work or my own work has been used, this has properly been acknowledged and referenced in accordance with the University of Nairobi's requirements.

Signed..... Date.....

Omboto, John Onyango  
C80/94529/2014  
Department of Sociology and Social Work  
University of Nairobi

This thesis is submitted with our approval as research Supervisors:

	Signature	Date
Name: Dr. Gidraph. G. Wairire Department of Sociology and Social Work University of Nairobi P.O. Box 30197-00100 Nairobi-Kenya	.....	.....
Name: Dr. Mike Chepkong'a Department of Sociology and Social Work University of Nairobi P.O. Box 30197-00100 Nairobi-Kenya	.....	.....

## **DEDICATION**

This work is dedicated to my parents, the Late Mwalimu Andrew Omboto Abong'o and Mama Dusillah Akelo Omboto. To Dad for instilling the value of higher education, hard work, and determination before he died in 1989 when I was a teenager in secondary school, and to Mum for taking care of us, particularly, as a single parent after the death of our father. Her prayers and wise counsel have been of immeasurable value to me. Without these great people in my life, I would not have reached this far.

## ACKNOWLEDGEMENTS

This study would not have been accomplished without the extraordinary support of several individuals and institutions. First, I wish to express my profound gratitude to my supervisors Dr. Gidraph, G. Wairire and Dr. Mike Chepkong'a for their conscientious guidance from the time of writing the proposal to the completion of the thesis. Their critique and meticulous attention to detail contributed greatly to the success of the study.

For the permission to conduct this study, special recognition goes to the National Council for Science, Technology and Innovation (NACOSTI) and Kenya Prisons Service. In particular, I wish to distinguish Madam Lilian Goreti of NACOSTI and Senior Deputy Commissioner of Prisons (SDCP) Benjamin Njoga of Prisons Headquarters for processing the respective authorization within a reasonable time period. No doubt, conducting a successful study in a prison institution requires goodwill, co-operation and support which I was accorded at the two institutions. My gratitude in this regard goes to the Officer in Charge of Kamiti Maximum Security Prison, Assistant Commissioner Prisons (ACP) Henry Kisingu and his Deputy, ACP George Diang'a, the officer in charge of education at the prison, Superintendent of Prisons (SP) Vincent Ochola Gumbi and the Deputy Documentation Officer, Amos Okuthe. At Langata Women Prison, I am similarly obliged to the Officer in Charge, ACP Olivia Obell, the Documentation Officer, SP Emily Momanyi and the Social Welfare Officer, Vane Kerubo. To all other staff members and the inmates at the two institutions who participated in the study, I am very thankful to you.

To my friend and senior colleague at Egerton University Dr. Elisha Ogada of Mathematics Department who for the purpose of this study accompanied me to Kamiti and Langata prisons, especially for acting on various occasions as my research assistant and chauffer, I am profoundly indebted to you for your humility and kindness. Similarly, I am thankful to all my friends and colleagues from whom I sought helpful scholarly consultations in relation to this study.

This study demanded frequent and erratic travels as well as singular focus and attention for which I received essential support and tolerance from my family members. For this, I am appreciative to my wife Caroline Akoth, daughter Lynn Akelo and sons Stanley Omboto and Larry Okoth. Throughout my academic life I have always looked up to my uncle Prof. Peter Amolo Odhiambo of University of Nairobi Medical School; a Thoracic and Cardiovascular Surgeon. I greatly thank him for being my academic role model. Finally and most importantly, I will forever remain beholden to God Almighty for this far I have reached in my pursuit of academic excellence. I completely would not have managed this without His grace and protection.

## TABLE OF CONTENTS

DECLARATION .....	i
DEDICATION .....	ii
ACKNOWLEDGEMENTS .....	iii
LIST OF TABLES .....	ix
LIST OF FIGURES .....	x
ACRONYMS AND ABBREVIATIONS .....	xi
ABSTRACT.....	xiii

### CHAPTER ONE: INTRODUCTION

1.1 Background to the study .....	1
1.2 Problem Statement .....	2
1.3 Key Research Questions .....	4
1.4 Objectives of the Study.....	4
1.4.1 Overall Objective .....	5
1.4.2 Specific objectives .....	5
1.5 Justification of the Study .....	5
1.6 Scope and Limitations of the Study .....	6
1.7 Definition of Key Terms and Concepts .....	7
1.8 Thesis Outline .....	9

### CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction .....	10
2.1.1 Conceptualization of first-time Convicts, Initial punishment and Recidivism.....	10
2.1.2 Evolution of Penology from Punishment to Corrections.....	12
2.1.3 Relationship between Punishment and Recidivism .....	14
2.1.4 The Police, Offender trials and Recidivism in Kenya .....	17
2.1.5 The Impact of Judiciary on Recidivism in Kenya .....	21
2.1.6 Legal instruments for Rehabilitation of Offenders in Kenya.....	25
2.1.7 Contemporary Forms of Judicial Punishment .....	32
2.1.8 Rehabilitation requirements for Different offenders.....	64

2.1.9 Factors that Influence Recidivism among the Convicts .....	76
2.1.10 Challenges facing Rehabilitation of Convicts.....	79
2.1.11 Typology of Crimes and Recidivism .....	79
2.1.12 Socio-demographic and Personality Traits of Recidivists .....	82
2.1.13 Prevention and Control of Recidivism.....	83
2.1.14 Ethical Considerations in the Treatment and Punishment of Convicts.....	85
2.1.15 Summary of Literature Review.....	87
2.2 Theoretical Framework.....	88
2.2.1 Deterrence Theory of punishment .....	88
2.2.2 Strain Theory of Crime .....	90
2.2.3 Labeling Theory of Crime .....	90
2.3 Operationalization of Key Variables .....	93

### **CHAPTER THREE: RESEARCH METHODOLOGY**

3.1 Introduction .....	95
3.2 Site Selection and Description .....	95
3.3 Research Design .....	97
3.4 Target Population .....	98
3.5 Unit of Observation and Analysis.....	98
3.6 Sampling Procedure .....	98
3.7 Sample Size .....	99
3.8 Nature and Sources of Data .....	100
3.9 Techniques of Data Collection.....	100
3.9.1 Use of Questionnaires .....	100
3.9.2 Key Informant Interviews .....	101
3.9.3 Focus Group Discussions.....	102
3.10 Data Collection Tools .....	102
3.11 Data Processing and Analysis.....	103
3.12 Ethical Considerations .....	103
3.13 Problems Encountered in the Field.....	104

## CHAPTER FOUR: DATA PRESENTATION AND ANALYSIS

4.1 Introduction .....	108
4.2 Socio-Economic Characteristics of Recidivists .....	108
4.2.1 Respondents' Gender .....	108
4.2.2 Respondents' Age .....	109
4.2.3 Marital Status of Respondents .....	110
4.2.4 Education Level of Respondents .....	111
4.2.5 Respondents' Socio-economic status.....	111
4.3 Relationship between Initial Punishments and Subsequent Reoffending.....	119
4.3.1 Number of times convicted.....	119
4.3.2 Duration taken before arrest by police after committing first crime .....	120
4.3.3 Duration taken before court sentencing for the initial crime .....	120
4.3.4 Type of punishment for first convictions.....	121
4.3.5 Type of punishment awarded for the second and subsequent convictions .....	122
4.3.6 Punishment and prevention of Recidivism .....	126
4.3.7 Reasons for Recidivism .....	127
4.3.8 Prior Awareness of punishments .....	131
4.3.9 Duration before Arrest for the Second Offence .....	132
4.3.10 Relationship between recidivism and the initial punishment .....	133
4.4 Relationship between Recidivism and Key Variables .....	135
4.4.1 Regression Analysis of Socio-Demographic Characteristics and Recidivism .....	135
4.4.2 Duration before Arrest and Reoffending Counts .....	136
4.4.3 Duration before Sentence by the courts and Reoffending .....	136
4.4.4 Crime committed at first conviction and subsequent recidivism.....	137
4.4.5 Relationship between crimes committed at subsequent convictions and reoffending	138
4.4.6 Relationship between subsequent punishments and Recidivism.....	139
4.5 Typology and Severity of Crimes at Subsequent Convictions .....	140
4.5.1 Typology of crimes by male recidivists.....	140
4.5.2 Types of crime committed by female recidivists.....	141
4.5.3 Crime progression by Male recidivists at Kamiti prison .....	142
4.5.4 Crime progression by Female recidivists at Langata prison.....	143

4.6 Intervention Measures Against Recidivism .....	144
4.6.1 Strategies against Reoffending by First time convicts.....	144
4.6.2 Measures against Reoffending by Recidivists .....	145
4.7 Respondents on Psychosocial Appraisal and Recidivism.....	148
4.7.1 Information on personality.....	148
4.7.2 Information on peer influence and drug and alcohol abuse .....	150
4.7.3 Information on family relations .....	152
4.7.4 Information on upbringing during childhood .....	153
4.7.5 Information on marital relationships.....	154
4.7.6 Involvement in community affairs and acceptance by members.....	155
4.8 Regression Analysis on the effects of psycho-social factors on recidivism .....	157

## **CHAPTER FIVE : SUMMARY, CONCLUSION AND RECOMMENDATIONS**

5.1 Introduction .....	159
5.2 Summary of Key Findings .....	159
5.3 Conclusions .....	161
5.4 Recommendations on Recidivism control .....	162
5. Recommendation for further studies.....	169

## **APPENDICES .....**

<b>APPENDIX I: RESPONDENTS' QUESTIONNAIRE ON RE-CONVICTIONS .....</b>	<b>190</b>
<b>APPENDIX II: RESPONDENTS' PSYCHO-SOCIAL APPRAISAL INVENTORY .....</b>	<b>193</b>
<b>APPENDIX III: KEY INFORMANTS INTERVIEW GUIDE .....</b>	<b>196</b>
<b>APPENDIX IV: FOCUS GROUP DISCUSSION GUIDE.....</b>	<b>197</b>
<b>APPENDIX V: UNIVERSITY RESEARCH PERMISSION LETTER .....</b>	<b>198</b>
<b>APPENDIX VI: RESEARCH AUTHORIZATION LETTER FROM NACOSTI.....</b>	<b>199</b>
<b>APPENDIX VII: RESEARCH CLEARANCE PERMIT .....</b>	<b>200</b>
<b>APPENDIX VIII: LETTER TO PRISONS ON RESEARCH PERMISSION.....</b>	<b>201</b>
<b>APPENDIX IX: PRISONS' RESEARCH APPROVAL LETTER .....</b>	<b>202</b>
<b>APPENDIX X: CHI SQUARE DISTRIBUTION TABLE .....</b>	<b>203</b>
<b>APPENDIX XI: KREJCIE &amp; MORGAN TABLE FOR DETERMINING SAMPLE SIZE ...</b>	<b>204</b>

## LIST OF TABLES

<b>Table 3.1:</b> Sample Size.....	99
<b>Table 3.2:</b> Types of recidivists in the study .....	100
<b>Table 3.3:</b> The Key Informants .....	100
<b>Table 4.1:</b> Respondents' Age.....	109
<b>Table 4.2:</b> Cross Tabulations of Gender and Education Level of Respondents .....	111
<b>Table 4.3:</b> Cross Tabulation of Occupation and Gender of Respondents.....	114
<b>Table 4.4:</b> Distribution of Respondents Based on the Income.....	115
<b>Table 4.5:</b> Distribution of Respondents Based on the Sizes of Land Owned .....	116
<b>Table 4.6:</b> Respondents Conviction Rate.....	119
<b>Table 4.7:</b> Duration before Arrest for Second Offence after Initial Punishment.....	132
<b>Table 4.8:</b> Regression Analysis on Socio-Demographic Characteristics and Recidivism.....	135
<b>Table 4.9:</b> Relationship between duration before arrest by police and reoffending .....	136
<b>Table 4.10:</b> Relationship between duration before sentence by court and Reoffending.....	137
<b>Table 4.11:</b> Relationship between crimes committed at first conviction and reoffending .....	138
<b>Table 4.12:</b> Crimes committed at Subsequent convictions and reoffending.....	138
<b>Table 4.13:</b> Relationship between subsequent punishments and Recidivism .....	139
<b>Table 4.14:</b> Typology of Crimes Committed by Male Recidivists.....	140
<b>Table 4.15:</b> Typology of Crimes Committed by Female Recidivists .....	141
<b>Table 4.16:</b> Comparison of first and subsequent offences by male respondents .....	142
<b>Table 4.17:</b> Crimes progression by female respondents .....	144
<b>Table 4.18:</b> Key informants' strategies for preventing first time convicts from reoffending.....	145
<b>Table 4.19:</b> Key informants' proposed measures against recidivists' reoffending.....	146
<b>Table 4.20:</b> Percentage distribution of Information on personality .....	149
<b>Table 4.21:</b> Percentage distribution of information on drug and alcohol abuse .....	151
<b>Table 4.22:</b> Percentage distribution of information on family relations .....	152
<b>Table 4.23:</b> Percentage distribution on upbringing during childhood .....	153
<b>Table 4.24:</b> Percentage distribution on marital relationships.....	154
<b>Table 4.25:</b> Percentage distribution on involvement in community affairs and acceptance by members .....	156
<b>Table 4. 26:</b> Variables in Equation.....	157

## LIST OF FIGURES

<b>Figure 2.1:</b> Conceptual Framework .....	92
<b>Figure 3.1:</b> Maps of Kenya and Nairobi County showing the study sites .....	97
<b>Figure 4.1:</b> Gender of the Respondents.....	108
<b>Figure 4.2:</b> Marital Status of Respondents.....	110
<b>Figure 4.3:</b> Description of house lived in .....	112
<b>Figure 4.4:</b> Ownership of house lived in.....	113
<b>Figure 4.5:</b> Land Ownership.....	115
<b>Figure 4.6:</b> Duration taken before arrest by police after committing first crime.....	120
<b>Figure 4.7:</b> Duration taken before court sentencing .....	121
<b>Figure 4.8:</b> Punishment Categories for first conviction .....	122
<b>Figure 4.9:</b> Punishment Categories for second and subsequent convictions.....	123
<b>Figure 4.10:</b> Punishment effect on Recidivism .....	127
<b>Figure 4.11:</b> Reasons for Recidivism .....	128
<b>Figure 4.12:</b> Prior awareness on prescribed punishments.....	131
<b>Figure 4.13:</b> Relationship between recidivism and initial punishment.....	133

## ACRONYMS AND ABBREVIATIONS

<b>ABA</b>	:	American Bar Association.
<b>ACP</b>	:	Assistant Commissioner of Prisons.
<b>AG</b>	:	Attorney General.
<b>ANPPCAN</b>	:	African Network for Prevention and Protection of Child Abuse and Neglect.
<b>BMJ</b>	:	British Medical Journal.
<b>CAP</b>	:	Chapter.
<b>CBD</b>	:	Central Business District.
<b>CBG</b>	:	Centre for Security Governance.
<b>CIP</b>	:	Chief Inspector of Prisons.
<b>CJS</b>	:	Criminal Justice System.
<b>CPC</b>	:	Criminal Procedure Code.
<b>CSG</b>	:	Centre for Security Governance.
<b>CSO</b>	:	Community Service Order.
<b>EM</b>	:	Electronic Monitoring.
<b>EU</b>	:	European Union.
<b>GOK</b>	:	Government of Kenya.
<b>IED</b>	:	Institute for Education in Democracy.
<b>IT</b>	:	Information Technology.
<b>KHRC</b>	:	Kenya Human Rights Commission.
<b>KNBS</b>	:	Kenya National Bureau of Statistics.
<b>KNCHR</b>	:	Kenya National Commission on Human Rights.
<b>KPFGDM</b>	:	Kamiti Prison Focus Group Discussion Member.
<b>KPKI</b>	:	Kamiti Prison Key Informant.
<b>KPR</b>	:	Kamiti Prison Respondent.
<b>KPS</b>	:	Kenya Prisons Service.
<b>LPFGDM</b>	:	Langata Prison Focus Group Discussion Member.
<b>LPR</b>	:	Langata Prison Respondent.
<b>NACOSTI</b>	:	National Council for Science, Technology and Innovation.

<b>NCLR</b>	:	National Council of Law Review.
<b>Nd</b>	:	No date.
<b>NGO</b>	:	Non-Governmental Organizations.
<b>NOMS</b>	:	National Offender Management Service.
<b>OVP &amp; MOHA:</b>	:	Office of the Vice President and Ministry of Home Affairs.
<b>PHQ</b>	:	Prison Headquarters.
<b>PKI</b>	:	Police Key Informant.
<b>PRI</b>	:	Penal Reforms International.
<b>PSR</b>	:	Pre-Sentence investigation Reports.
<b>SDCP</b>	:	Senior Deputy Commissioner Prisons
<b>SP</b>	:	Superintendent of Prisons.
<b>SSP</b>	:	Senior Superintendent of Prisons.
<b>U o N</b>	:	University of Nairobi.
<b>UK</b>	:	United Kingdom.
<b>UN</b>	:	United Nations.
<b>UNDP</b>	:	United Nations Development Programme.
<b>UNIAFRI</b>	:	United Nations African Institute for Crime Prevention and Treatment of Offenders.
<b>UNICRI</b>	:	United Nations Interregional Crime and Justice Research Institute.
<b>UNODC</b>	:	United Nations Office on Crime and Drugs.
<b>USA</b>	:	United States of America.

## **ABSTRACT**

Recidivism is a global problem which directly influences crime levels in several countries with the attendant negative effects. Plenty of studies have been conducted on various aspects of this phenomenon particularly on its causes and effects, however, not many such studies, particularly in Kenya, have focused on the possible influence of the first punishment recidivists receive during the initial conviction. This study was therefore designed to establish if there is a connection between the initial punishment and recidivism from the viewpoint of the concerned convicts and professionals. Its specific objectives were to ascertain the profiles of recidivists, investigate the typology and severity of recidivists' crimes with reconviction, and prescribe the treatment which would suit first time convicts and the recidivists as a control strategy for the vice. The study reviewed literature based on fundamental themes on recidivism, and punishment; among the many areas covered are evolution of penology from punishment to corrections, rehabilitation requirements for various types of offenders, challenges facing rehabilitation of convicts, personal traits of recidivists, and ethical considerations in treatment and punishment of convicts. The theoretical framework is anchored on the deterrence theory of punishment, as well as strain and labeling theories of crime.

The study respondents were drawn from Kamiti Maximum Security Prison and Langata Women Prison. It utilized purposive sampling of 167 respondents, 17 of whom participated in focus group discussions (FGDs), and 27 key informants who comprised of 19 prison officers, 4 probation officers and another 4 police officers. Quantitative and qualitative data collection techniques and analysis were utilized in the study. The primary sources of data were questionnaires, FGDs, and key informant interviews. Secondary data was also collected from the recidivists' records at the prison institutions and the courts.

The study found out that the extent of recidivism in Kenya cannot be easily ascertained due to the presence of non-documented recidivists in prison institutions. The study also established that there is no significant link between the initial punishment and recidivism since other factors such as poverty and peer pressure are responsible for the vice. It also established that recidivists are members of the lower social class, young adults and individuals under 40 years, illiterate or semi-illiterate, and mostly in non-marital relationships. In addition to these characteristics, the

study established that convicts who abuse alcohol and drugs have a higher propensity to reoffend. It was also established that criminal severity increases with reconviction among male recidivists who graduate from petty crimes to felonies unlike their female counterparts who generally commit the same petty offences with reconvictions.

The study, therefore, recommends that the best strategy of controlling recidivism is by ensuring that petty first-time offenders are awarded community based punishments instead of imprisonment to curtail contamination and institutionalization. For reformation and rehabilitation of known recidivists, it is essential to put in place individual based strategies to take care of their unique needs before the beginning of any intervention. Further to this, for their effective resettlement after incarceration, a pre-discharge investigation should be conducted on the needs of each recidivist before the actual release into the community. Community acceptance of ex-convicts is also vital to diminish the possibility of recidivism. Finally, the study suggests that researches be conducted on the factors responsible for the presence of non-documented recidivists in Kenya, and the impact of non-documented recidivism on trial and rehabilitation of offenders.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the study

The term recidivism originates from the Latin word *recidere*, which means to fall back (Payne, 2007). It refers to a return to crime after a convict had been punished for the first time. The term is often used interchangeably with ‘repeat offending’, ‘reoffending’ and ‘reconviction’. Thus, recidivists are described as ‘chronic’, ‘multiple’ or ‘prolific’ offenders since they continue to commit crimes despite punishment (Payne 2007; Maltz 2001).

Etymologically, the word ‘punishment’ is derived from Old French word ‘*punir*’ and two Latin words ‘*punier*, which means ‘to punish’ and ‘*poena*’ which means ‘penalty’. As an English verb ‘punish’ means ‘to cause to suffer for an offence’ (Okon, 2013). Punishment therefore refers to the authoritative imposition of a penalty for criminal wrong doing to prevent criminal conduct and to provide retribution (Bohm & Halley, 1997). The authority may be an individual, group of people, an institution or a set of institutions. Punishment can be formal or informal. While the former is normally carried out under a system of laws, the latter occurs in social settings such as the family, kinship group, community and workplace, among others.

In the case of a convict, punishment is formal, as it is guided by the constitution, penal code, and the criminal procedure code, among other laws. In the contemporary society, punishment of convicts is the monopoly of the criminal justice agencies, namely; the police, judiciary, and corrections. The three play different but complementary roles. The penalties awarded by the courts include the death penalty, imprisonment, fines, forfeiture of property, suspended sentence, compensation, restitution, probation service and community service orders, among others (Musyoka, 2013).

Ideally, punishment should control recidivism either due to its capacity to deter, incapacitate, or rehabilitate the convict. However, despite the anticipation, empirical studies have invariably shown that all over the world punishments have limited deterrence on recidivists. For instance in Argentina, Tella and Schargrodsy (2013) established that annual prison recidivism rates was at 22.37% for the ex-prisoners, and 13.21% for those released after being placed under the Electronic Monitoring device. In Singapore, according to Hussain (2015), the number of former

prisoners who returned to prison in 2012 increased by 27.5% compared to 23.3% in 2010, while in Britain, the level of reoffending was as high as 70% in some prison institutions (UNODC, 2012). This problem is also immense in several countries in Africa. For example, in Nigeria, in the year 2010 and 2011, more than 50% of the 25,380 offenders who were on trial were recidivists (Osayi, 2015). Uganda's recidivism rate among Community Service offenders in Kampala rose from 9% to 12% between the year 2004 and 2010 (Ssebuggwawo, 2010). In Kenya, despite the fact that the government has put measures in place such as prison reforms, and expansion of Probation and Community Service Orders to improve on the effectiveness of these main forms of punishment, recidivism has remained a serious problem as indicated in a recent study conducted by the Government which revealed that the number of recidivists in Kenyan prisons in the year 2012 increased by 76.9% in 2013 (KNBS, 2014).

Thus, given the persistent problem of recidivism both internationally and nationally, it is vital to conduct a study on the problem so as to have an elaborate understanding of the vice that would inform instituting effective mitigation strategies.

## **1.2 Problem Statement**

Empirical evidence dating back to as early as late 1960s showing accumulative recidivism rate of 19.08% for the years 1966 to 1970 (Muga, 1975) suggests that recidivism has for a long time been a major problem in Kenya. In fact, a more recent study by the Kenyan government which indicated that the number of recidivists in prisons increased by 76.9% from 12,949 in the year 2012 to 22,910 in 2013 (KNBS 2014) confirms that the problem of recidivism in Kenya is large and on the increase – thus it requires attention given its many negative social effects on the society in general, and on the individual offenders in particular.

To the society, recidivism may lead to the presence of hardened offenders, who because they have not been reformed and rehabilitated during previous convictions and punishments, and are familiar with the going-on within the criminal justice system, may be undeterred from further criminal activities. The recidivists may therefore be responsible for a backlog in court cases due to their involvement in several criminal activities. They can also cause congestion in the penal institutions because they are always arrested and rearrested for their serial involvement in criminal activities. Recidivism can also lead to increased costs of crime management by the

government and exacerbated crime rates accruing from the high number of repeat offenders in police custody, remand homes, and prison institutions that are maintained by the government. On increased crime rate for example, Mednick, Gabrielli and Hutchings (2008) reported that chronic recidivists who were merely 4.09% of the male offenders in the US, were responsible for 64.4% of all the court convictions for male convicts.

Recidivism can also have a negative impact on the correction institutions personnel such as the probation and prison officers who may be disillusioned when they realize that their efforts to reform and rehabilitate such convicts do not bear fruits. On the individual recidivists, recurrent incarcerations may interrupt their family life with devastating social, economic and emotional impacts on their marriage and parenthood as they are always deficient. For the convicts who may have gotten into crime before starting families, they may fail to marry altogether thus may fail in their procreation and other roles as expected by the society.

In an attempt to ensure that convicts are reformed and rehabilitated in order to control recidivism, the Kenyan government, like most governments across the globe, has, since the year 2000, sought to improve the effectiveness of imprisonment by expanding existing prison facilities and building of new ones to enhance prisoners' welfare (KNCHR, 2005). It has also expanded the use of community rehabilitation approaches such as probation to mitigate on the possible negative impacts of institutional rehabilitation of convicts such as institutionalization (GOK 1998, GOK 2009).

However, despite these efforts to control recidivism, the menace still persists in Kenya and around the world. This has been attributed to several factors. For instance, it has been argued that recidivism is related to the type of treatment the offender received for his/her initial criminal act (Paranjape, 2005). Some studies such as Kagendo (2003), Gendreau, Goggin and Cullen (1999), Odegi-Awuondo (2003), Goodstein (1993), Venter, Hoffman and Goudine (2006), and Bohm & Halley (1997) have also attributed recidivism to the weaknesses, and ineffectiveness of imprisonment. The extent of fines and forfeiture of property as punishments to deter all convicts have also been questioned (Bwononga, 1998, Musyoka, 2013). This is particularly true where somebody else assists the convict to pay the fine, in which case the offender does not suffer the economic loss, and may therefore not be deterred from future crime commission.

In spite of these observations, there is a paucity of studies trying to establish an empirical link between the initial punishment and recidivism as majority of studies conducted on the problem both locally and internationally have focused on different issues. For example, Bourke, Boduszek and Hyland (2013), Laisa (2013), Nally, Lockwood, Taping and Knutson (2012), Grieger, Hosser and Schmidt (2012), Odhiambo, (2010) and Kagendo, (2003), focused on causes, predictors and other risk factors. Other studies focussed on the recidivism rate and types of offences of recidivists (McNeil, 2010; Prinsloo 1996), the involvement of juveniles (Mbuba, 2004), the role of religion on its control in women (Thorn, 2009), and the effect of prison sentences (Gendreau, Goggin and Cullen, 1999).

Therefore, given the persistence of the problem, there is a need to ascertain the relationships between the initial punishment and recidivism from the perspective of the concerned offenders and informed persons. Equally important is the need to have an in-depth understanding of the profiles of recidivists, and to investigate whether or not they commit the same crimes in terms of typology and severity after the initial punishment. Addressing these concerns is vital in developing effective control and management strategies for recidivism in Kenya. Finally, the punishment(s) which best suit rehabilitation of first-time convicts on one hand, and recidivists on the other hand is also of great interest in this study.

### **1.3 Key Research Questions**

The following questions were adopted so as to guide the study.

1. Is there a relationship between the initial punishment and recidivism in an offender?
2. What is the typical profile of the recidivists at Kamiti Maximum Security Prison and Langata Women Prison?
3. Do the typology and severity of crimes recidivists commit change with reconvictions?
4. What makes a first-time offender to recidivate, and how should the Kenyan society manage serial recidivists?

### **1.4 Objectives of the Study**

The study was guided by the following objectives:

### **1.4.1 Overall Objective**

The overall objective of this study was to establish the relationship between the initial punishment and re-offending among the inmates at Kamiti Maximum Security Prison and Langata Women Prison, as well as to identify strategies for controlling the problem in the country.

### **1.4.2 Specific objectives**

The specific objectives of this study were:-

1. To examine if there is any link between the initial punishments offenders receive for their first convictions, and subsequent re-offending.
2. To analyze the profiles of recidivists at Kamiti Maximum Security Prison and Langata Women prison.
3. To investigate whether the crimes committed by recidivists vary in terms of typology and severity with subsequent reconvictions.
4. To establish what makes offenders to recidivate, and how punishment of recidivists can be enhanced to control the problem.

### **1.5 Justification of the Study**

Majority of empirical studies on recidivism tend to focus on areas other than the connection between the initial punishment and recidivism by an offender which the present study focuses on. It is therefore hoped that this study will contribute to knowledge and thus serve as a reference material on the factors that influence reconviction of offenders, more specifically on the influence of the initial punishment on recidivism.

It is also envisaged that the findings of the study will be an important source of information for the judges and magistrates in guiding their discretion in awarding punishment for first-time convicts, and the serial offenders who may not benefit from particular treatments. The study will also be vital in enhancing policy on correction and rehabilitation of offenders in Kenya. It will therefore improve the welfare of the society by helping to reduce recidivism, and crime levels. The offenders also stand to benefit because when they are assisted to get out of crime, they will lead more productive lives as free members of the society, as opposed to their circumstances during the perennial court trials and incarcerations.

If the findings and recommendations of this study are given serious considerations by correction services such as probation and prisons, the study shall have been helpful in enhancing reformation and rehabilitation of convicts thus playing a role in reduction of congestion and crowding in correction institutions.

### **1.6 Scope and Limitations of the Study**

This study was conducted in Nairobi County at Kamiti Maximum Security Prison and Langata Women Prison. It mainly investigated the relationship between the initial punishment and recidivism among the male and female offenders serving prison sentences at the respective institutions following reconviction, irrespective of the types of crime committed, the number of reconvictions, the year of conviction and the kinds of punishment awarded during the initial convictions. Specifically, the study investigated the socio-demographic and personal profiles of the recidivists, and sought to establish how the crimes they engage in differ. The treatment first-time convicts require to prevent them from reoffending, and the punishment(s) that would be most effective for serial recidivists as a measure to control recidivism in Kenya were also of great interest to the study.

One limitation of this study is that it did not involve the judicial staffs who are also engaged in the processes of trial and punishment of the recidivists. Arguably, the views and opinions of these important players in the criminal justice system would have enriched the study, thus facilitating a deeper understanding of recidivism. Another limitation concerns the effect of death penalty as a punishment. Whereas the study is averse to the general and specific deterrent capacity of this form of punishment on re-offending, it did not seek to establish the respondents' view on its effect on them, given that capital punishment does not seek to reform and rehabilitate the convicts. Thus, the study majorly engaged the recidivists about other forms of punishment other than the death penalty. Based on the foregoing, the study did not review literature on death sentence though some recidivists involved in the study were awaiting execution. Finally, given that study focused on the recidivists, its findings cannot be generalized to non-repeat offenders.

## **1.7 Definition of Key Terms and Concepts**

In this study the following terms have the indicated meanings:

**Felonies:** These are capital crimes that attract very severe punishments such as 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.

**Documented recidivists:** These are convicts whom the prisons authorities have identified to have been reconvicted either based on self-confession or because prison officers are able to identify them based on the fact that they have gone back to prison institutions after completing previous sentence/s.

**Initial punishment:** This refers to the punishment a recidivist was awarded by the court during his/her first conviction.

**Middle level crimes:** In this study these 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.

**Non-documented Recidivists:** Refers to offenders who for a fact have been re-convicted but are not captured by the government records as recidivists.

**Petty offences:** These are misdemeanors or minor deviations such as prostitution, pick pocketing, 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. The offences attract lenient punishments such as fines, community service order, probation service, and short term prison sentences lasting days, months or less than two years.

**Recidivist Profile:** The socio-economic, demographic and personality characteristics of the recidivist offenders.

**Reformation:** This is the application of various strategies of punishment aimed at changing the character and personality of convicts so that they become law abiding individuals.

**Rehabilitation:** Refers to the ability of the ex-convicts to fit back into the society as law abiding citizens after undertaking various punishments aimed at reforming them.

**Serial recidivist:** This is a chronic recidivist; an offender with three or more convictions.

**Severity of crime:** The seriousness of a crime in terms of the injury caused and punishment prescribed in the penal code.

**Typology of crimes:** This refers to the broad categories of crimes that offenders commit. They include violent crimes, crimes against property, organizational crimes, inchoate crimes, drugs and alcohol related crimes, and moralistic/public order crimes among others.

## **1.8 Thesis Outline**

The first chapter of this thesis introduces the study and the specific aspects that define the study and its focus including its background information, problem statement, research questions, study objectives, and scope and limitations of the study and definition of key terms and concepts. Chapter two provides a review of literature with specific reference to the key themes relevant to the study as derived from the study objectives. It also covers the theories that guided the study, conceptual framework and operational definition of key variables. Chapter three focuses on the study methodology. It describes the study site, research design, target population, sample size, nature of the data used and their sources, and data collection tools and techniques. Chapter four is on data presentation and analysis while in chapter five empirical results are presented and analyzed. Chapter six presents the summary, conclusions and recommendations of the study.

## **CHAPTER TWO**

### **LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

#### **2.1 Introduction**

This chapter presents a critical exposition of the key thematic areas under which the literature review for the study was done. These include conceptualization of first-time convicts, initial punishment and recidivism, evolution of penology from punishment to corrections, the police, offender trials and recidivism in Kenya, the impact of judiciary on recidivism in Kenya, legal instruments for rehabilitation of offenders in Kenya, contemporary forms of judicial punishment, rehabilitation requirements for different offenders, factors that influence recidivism among convicts, challenges facing the rehabilitation of convicts, typology of crimes and recidivism, socio-demographic and personality traits of recidivists, prevention and control of recidivism, and finally ethical considerations in the treatment and punishment of convicts. It also presents the theories that guided the study namely; deterrence theory of punishment, and strain and labeling theories of crime. The chapter also presents the study's conceptual framework, operationalizes the study variables and gives a summary of literature review.

#### **2.1.1 Conceptualization of first-time Convicts, Initial punishment and Recidivism**

The initial punishment refers to the penalty awarded by the courts to a convict for his or her very first conviction for a criminal act. The first conviction viewpoint in punishment argues for lenience when punishing the petty offenders who do not have previous criminal conduct. This is because such offenders are considered to be less likely to reoffend after they have been punished for the crimes committed. First time-convicts are offenders who had never been convicted previously.

According to Castillo et.al (2004), there are three categories of first convicts. The first category comprises of convicts who have zero criminal history. They have completely no previous contact with the criminal justice system such as the police, the courts, probation and prisons. In the second category are those offenders with prior police arrest but no convictions by the courts of law; either because they were found innocent or there were no incriminating evidence against them. The third category under these guidelines also deserving of reduced punishment are those

who had only been convicted of misdemeanors; offences that are not criminal. The sentences mostly awarded to these first time convicts under the US sentencing guidelines are normally probation and other prison alternatives.

Nevertheless, it is vital to point out that, in the above categories, some offenders considered to be first convicts may have committed some crimes previously that were not detected thus neither punished nor recorded within the criminal justice system but they still remain first convicts since they were never tried and position of guilt established. Based on this argument, not all first convicts may in actual sense be first offenders.

Recidivism refers to committing crime again after conviction and correction (reformation). However, real recidivism is looked at in terms of conviction by a court of law and not a mere arrest by the police. This is because it is only conviction that proves guilt. However, a discussion of recidivism as a social problem elicits various debates. First, there is a school of thought which argues that one is not a recidivist if he or she undertakes a reformation programme for a given offence or crime but upon completion later commits a completely different crime from the one they were punished of (Maltz, 2001). Though, in general terms because the offender has committed a crime he or she is a recidivist. Another source of debate is whether violators of probation terms when arrested and imprisoned should be considered as recidivists. The duration between the time of release and time of recidivating is also a source of debate (Castillo et al., 2004). For instance, there is a debate on whether or not a reconviction after longer time durations such as 10 years after the initial punishment should be considered as recidivism (Maltz, 2001).

Another problem with understanding recidivism lies in pointing out its cause; where the problem lies. Whereas it is true that recidivism is a symptom of failure, opinion is divided on whether it is as a result of the failure of the individual recidivists to live up to the expectation of the society after the initial punishment, or it results from the failure of the society to support the reformed offender well enough to keep away from criminal behaviour. In this regard there are concerns that ex-prisoners always suffer serious stigma and discrimination after the completion of their sentences, and release into the society which may influence their reoffending (Osayi, 2015). However, recidivism may also be caused by the failure of the corrections to provide programmes that reform the offenders (Maltz, 2001).

### **2.1.2 Evolution of Penology from Punishment to Corrections**

The changes that have taken place in penology were basically influenced by the classical and positive schools of criminology. Guided by the philosophy of hedonism, the classical school postulated that human beings are governed by the desire for pleasure and the fear of pain; thus, people consciously or intentionally commit crimes after a careful cost-benefit analysis. To control criminality, this school posited that punishment had to be very severe to deter offenders. The positivists, on the other hand, argue that individual responsibility in crimes they commit is not obvious. The school questioned the position of classical theorists based on the fact that severe punishment to the convicts could not deter crime. The positivists therefore postulate that there are other factors beyond the individuals' control that compel them to commit crimes. These factors, they argued, can be social, political, economic, and or psychological in nature (Wright, 2010).

Punishment of offenders has therefore evolved over a period of time from the practices that put greater emphasis on retaliation through physical and psychological torture, banishment, seclusion and even death to the contemporary efforts that seek to reform and rehabilitate the offenders. Influenced by the classical theorists for instance, early societies tortured offenders in public, and or put to death to inflict psychological and or physical pain (Mushanga, 1976). The evolution of punishment has also been steered by various philosophies such as retribution, incapacitation, deterrence, reformation and rehabilitation.

Under the retributive theory, convicts have been punished to revenge against them for their criminal activities. Thus the punishment awarded to a convict is expected to be commensurable to the severity of the offence committed (Paranjape, 2005, Adler, Mueller & Laufer, 2004). The convicts have also been punished to incapacitate them. This is making it impossible for an offender to commit further crime by removing him/her from the society. In the modern societies, this is always achieved through imprisonment and death penalty. However, in some countries like Kenya; the function of prisons in incapacitation has not been successful because the convicts have continued to commit crimes such as extortion behind bars due to weaknesses in the prison system (Adler, Mueller & Laufer, 2004).

The philosophy of deterrence argues that any treatment towards the offenders should make them and others stop committing crime in future based on fear. The former is specific, while the latter is general deterrence. Specific deterrence seeks to make it unpleasant for the convicted offender to repeat similar or other crimes, while the general deterrence targets other individuals who are supposed to be discouraged from committing crime by the punishment of the convict (Wright, 2010).

Reformation and Rehabilitation of convicts is currently the main reason behind punishment of offenders within the Criminal Justice Systems around the world. Adler, Mueller & Laufer, (2007) for example, postulate that one of the general purposes of sentencing offenders by the courts is their correction and rehabilitation. The desire to rehabilitate offenders is a paradigm shift from the harsh and severe punishments which typically involved public torture and humiliation of convicts. The desire to reform and rehabilitate the offenders began with the changes that brought in the Criminal Justice System which took place in the mid-1700s (Mushanga, 1976).

Globally, the most common penalties currently in place for the convicts include community service order, probation service, fines, capital punishment and imprisonment. Imprisonment of offenders began in Europe between 1600 and 1700. In Kenya and other parts of Africa, this form of punishment was imported by the colonialists (KNCHR, 2005). Prisons employ educational, vocational or therapeutic measures in reformation and rehabilitation of offenders, which it is hoped would control recidivism (Playfair & Sington, 1965; Bohm & Halley, 1997).

Nevertheless, the existence of the various forms of punishment and strategies for reformation and rehabilitation of the convicts has not stopped recidivism, which is a major social problem globally. For instance, on the global recidivism rates, a study established that 40.8% of convicts in the USA in 1987 were rearrested after three years (Bohm & Halley, 1997). In India, according to Paranjape (2005), the rate of recidivism in 1998 was 7.7% with 73.4% of the total recidivists having been convicted once before while 18.1% twice before. Similarly, in Australia, Leach, Burgess and Holmwood (2008) found that recidivism was as high as 77%.

The problem of recidivism is also common in Africa. For instance, the level of recidivism in South Africa was estimated to be between 53.3% and 95% (Marelize, 2003). In Nigeria, in the years 2010 and 2011, more than 50% of 25,380 offenders who were on trial were recidivists (Osayi, 2013) while in Uganda, according to Ssebuggwawo (2010), recidivism rate among Community Service offenders in Kampala rose from 9% to 12% between the year 2004 and 2010. In Kenya, the recidivism rate between 2012 and 2013 increased by 76.9% (KNBS, 2014).

### **2.1.3 Relationship between Punishment and Recidivism**

There are various punishments applicable based on the severity of the crime. In the Kenyan situation punishments awarded to the convicts include death penalty, imprisonment, fines, forfeiture of property, compensation, restitution, probation service and community service order (Musyoka, 2013). In the order of severity, Bwononga (1998) observed that death sentence, which ranks top, is passed upon the convicts of felonies such as murder, treason, capital robbery, and attempted robbery. This is because this class of convicts is considered to be very dangerous; thus, should be permanently put away from the society through death. Life imprisonment and imprisonment in that order are the next in severity after the death penalty. Imprisonment is usually imposed on offenders who commit crimes such as grievous harm, manslaughter, arson and rape. In practice, the courts have the discretion to impose a specific number of years. Another punitive sentence is fine. A fine of a specific amount of money may be imposed either solely or in addition to any other punishment or as an alternative to imprisonment.

There are also non-custodial sentences where the convicts serve punishments in the community. The advantage of these sentences is that they ease congestion in prison institutions. In Kenya, the first community based sentence was Community Service Order which was previously called Extra Mural Penal Employment. Under it petty offenders performed communal work in public places (Senna & Siegel, 1993). Another form of noncustodial sentence is probation. While on probation, an offender must comply with all the terms of the probation order which include not committing any offence (Stuckey & Garland, 2000).

However, whereas there are several factors that influence whether a convict will reoffend or not after punishment, it has also been observed that there is a correlation between recidivism and the punishment a convict received on his or her first conviction (Paranjape, 2005). In agreement, Castillo et al., (2004) states that the first offender groups have consistent patterns of lower

recidivism rates. These are offenders with neither prior convictions nor criminal conduct; thus, had never been punished previously.

For instance, on recidivism and imprisonment, McNeil (2010) observes that among the factors that influence the likelihood of a convict to recidivate is whether or not he or she had been committed to prisons previously. He postulates that more prior prison terms lead to greater chances of recidivism. However, McNeil's study also noted that the inmates who are more monitored by supervision after release from prisons are more likely to recidivate. This is probably because any crime they commit will be detected and lead to arrest and conviction. The study further observed that the younger the age of the prisoner at the time of release, the higher the chances of recidivism.

The other factors which influences whether or not prisoners will recidivate rests on the prisoners' personality and socio-demographics that include indiscipline and infractions while in prison by an inmate. In this regard, the prisoners who have more disciplinary reports record higher recidivism rates (McNeil 2010). This trend may be influenced by the fact that indiscipline negates on the ex-convicts participation in reformation programmes. Still on the influence of imprisonment based the individual factors, Bohm & Halley (1997) posit that recidivism rates are highest for the ex-prisoners during the first year of release from prison, in younger prisoners, prisoners with less education, among prisoners who were unemployed before imprisonment, those who were drug and alcohol addicts before imprisonment, those who had higher rates of misconduct in prisons, and the ex-prisoners who did not participate in education programmes while in prison.

These scholars, however, concur that recidivism is not in any way related to gender or the length of the prison term. On education, the finding of these scholars is corroborated by Kagendo (2003) who confirmed that 82% of the 207 recidivists in Kenyan prison institutions had very few years of formal education. That a majority of those with lower level of education reoffend after imprisonment is probably due to the fact that the well-educated are more likely to be employed after reformation and discharge compared to their fellow inmates with poor education.

Recidivism has also been blamed on the failure of imprisonment as a form of punishment. For instance, several scholars have observed that prisoners get hardened and, on release, continue with criminal tendencies. This thought has led to the arguments to the effect that prisons are 'schools of crime' where the inmates only learn to engage in more serious crimes than the ones they were convicted of because of contamination of petty offenders by hard core criminals (Kagendo, 2003; Gendreau, Goggin & Cullen 1999). In terms of their conditions, prison institutions have also been termed as 'criminogenic' (Odegi-Awuondo 2003; Mushanga, 1976). Those who belong to this school of thought argue that the social and physical prison environment encourages criminal tendencies rather than reformation and rehabilitation of offenders. For instance, in regard to prison conditions in Kenya, Odera-Orika (1976) observed that imprisonment only embitters the convicts into revenge against the general society due to the suffering experienced in jail.

Goodstein (1993) concurs that prison might be to blame for recidivism because they instil acquiescent and compliant behaviour which causes institutional dependence. This is confirmed by the findings of Jonson and Nagin (2015) that, after the strict routine life in prison, the discharged prisoner finds it hard to stand on his or her feet in the free man's world. Some who have been in prison for very long, they observed, lose the habit of making their own decisions. However, Venter, Hoffman and Goudine (2006) argue that whereas recidivism is attributed to imprisonment, it is due to the fact that rehabilitation interventions are provided too late and many of the programmes are focused on the process rather than result. The scholar recommends that halfway houses should be provided in good time, and that prison rehabilitation should focus on the prisoner empowerment. This advice is important to the Kenyan Government given that Halfway Homes, just like parole, have never been established yet they are vital for rehabilitation of the offenders released from prison institutions.

Nevertheless, to ensure that rehabilitation of offenders through imprisonment is fully accomplished, Tewkbury (1997) opines that it is the responsibility of prison authorities to provide treatment for the inmates, and contain them in favourable environments. For the same purpose, Briggs (1975) proposes that prison institutions must put up measures to preserve and enhance a man's dignity and self-respect. On their part, Playfair and Sington (1965) emphasize

that correctional institutions must strive to train the inmates so as to counter any possible contamination by fellow felons.

Community Based Punishments have equally been blamed for convicts' recidivism. For instance, Reifen (1972) blames juvenile recidivism on the insufficiency and inadequacy of Community Services. In support of this observation, Crouch (1993) observed that law breakers in the low social class fear the supervision of probation thus prefer imprisonment of two (2) or three (3) years instead. The extent of fines and forfeiture of property as punishments to deter all convicts have also been questioned (Bwononga, 1998; Musyoka, 2013). This is more so for the offenders who are not economically deficient, and where a third party comes in to assist in the payment of fines, thus excusing the offender from the financial loss.

#### **2.1.4 The Police, Offender trials and Recidivism in Kenya**

The Criminal Justice System (CJS) refers to the agencies or institutions that deal with the management of crime through the arrest of offenders, investigation of cases, and determination of the cases to ascertain the guilt or innocence of suspects, and finally reformation and rehabilitation of the convicts through various punishments (Bohm & Halley, 1997). In Kenya, the CJS comprises of the police, the courts and correction institutions which are prisons and the probation. These institutions are separately organized but are closely interrelated parts that perform distinct tasks which have a direct effect on the work of each other. Their main objective is delivery of justice and crime control which includes prevention of recidivism. To achieve these mandates, this legal system should operate with maximum efficiency which ensures that only the guilty offenders are convicted and punished.

However, according to Omuya (2015), the police in Kenya are faced with various challenges which in the end negate on the work of the judiciary of ensuring that only the guilty offenders are punished while the innocent set free. The impacts of such challenges have a multiplier effect on the correction institutions as they strive to reform the offenders so as to curtail recidivism. To begin with, among the many duties of the police service are investigation of criminal cases, apprehension of offenders, and their production and prosecution in courts of law within a prescribed time period. However, the police in Kenya have not fully succeeded in these duties.

For instance suspected criminals get away with crimes as a result of incompetence of the police (Mageka 2015).

Some police officers are also not professional in their work (Mageka, 2015). For instance, at the crime report level, there are complaints that individuals who report cases at the police stations or those who approach individual police officers with reports face a lot of difficulties because some officers at the report office receive crime reports with bias. For example, domestic violence or rape against women is trivialized by male officers thus the victims find it embarrassing to report such cases to male officers because the questions they ask are discomfoting and expose the victim to ridicule. The victims of such crimes are thus in most cases scared away and never report these grievous offences making the suspects to continue with the same crimes.

To control these biases at reporting, the police reforms in Kenya have seen the introduction of gender and children reporting desks at the police stations to assist in professional handling of cases and reports that involve children and those that have gender sensitive issues such as gender-based violence (Omuya, 2015). In investigations, some police officers also approach their work with formed opinions which negates on tenets of fair and independent investigations. This in some cases has seen innocent suspects punished and the guilty left un-convicted. Where an innocent person has been sentenced to prisons, for example, they become bitter and may end up committing retaliatory crimes after discharge thus may become recidivists.

Limited resources also hinder the police operations; these include lack of necessary equipment (Nyongesa, 2013). For instance, investigation of crimes such as murder and rape is a specialized field which requires up-to-date technologies. However, the problem in Kenya is that forensic laboratories that would enable the police to test and analyze evidences to prove the cases beyond reasonable doubt are unavailable (Mageka, 2015). A case in point is the analyses of DNA, blood samples, and finger prints which yield important evidence during investigation to implicate suspects, yet due to absence of forensic laboratories owned by the police, they are dependent on the Government Chemist, which is an independent outfit with several other responsibilities, thus, may not analyze the specimens as fast as needed even in situations where police are required to produce evidences in courts to prove the culpability of suspects within a specific time. In short,

even if criminal investigators are well-trained, they lack the much needed technology that would enable them to resolve crimes with remarkable success. Added to this, the police in Kenya also lack other basic equipment such as vehicles needed for their effective facilitation in the fight against crime.

The professionalism of the Kenya police in terms of respect for human rights has also been questioned. For instance, the police have been accused of violating the rights of individuals during arrests and detention in custody (Omeje & Githigaro, 2010). Though the law requires that suspects should communicate with their lawyers, be informed of the reason for arrest, involve their lawyers during interrogation, and be treated in a humane manner among others, there have been complaints that these rights are always violated by the police. Another complaint in regard to human rights relates to the use of force. It has been observed that whereas the police are empowered to use necessary force to effect the arrests and ensure order, there are no determinants in various particular situations of how much is necessary force. As a result individual police officers end up being brutal, yet find justification in this clause. The police have also been accused of taking the law in their hands by torturing and killing the suspects (Omboto, 2015). Where suspects are killed, they are denied the opportunity to defend themselves as provided for in law.

The conditions, under which the police hold suspects, are also deplorable (Omeje & Githigaro, 2010). The cells are congested, poorly ventilated and dirty. Some do not even have lavatory facilities, thus the accused are forced to use buckets. The suspects in most cases do not even access bathing or drinking water for the duration of time they are in custody, this leads to infection and the spread contagious of diseases, and bribery of the police by suspects in search for favours. Some suspects can therefore plead guilty in courts of law even though innocent to be sentenced fast enough so as to escape the misery of police remand cells. Such offenders may not benefit from reformation and rehabilitation mechanisms of the corrections because they would feel they were wrongly convicted.

External interference particularly from the political class is another problem that the police in Kenya are faced with (Kivoi & Mbae, 2013). Because in Kenya the appointment and vetting of

the Inspector General of Police and the deputies is done by apolitical authority, the force has never been independent to investigate and prosecute matters that involve people with the correct political connections with the appointing authorities. This has been made possible by the fact that while the constitution promulgated in the year 2010 insulated the appointment of Inspector General of Police and his deputies from the executive influence by vesting the powers on the National Police Commission with the approval of parliament, a government bill that gave the president power to remove, retire and re-deploy a deputy inspector general before the age of retirement was presented and passed in parliament in the year 2015. The bill also removed the security of tenure of the police oversight authority chairman and board members (The Daily Nation Newspaper 6/10/2015). The changes have seriously watered down the independence of National Police Service.

The junior police officers also receive undue pressure or coercion from their seniors in cases the latter have vested interests. In some cases their seniors do not also accord them the much needed cooperation in matters of strategy implementation (Nyongesa, 2013). Under these circumstances, the investigations, prosecution and punishment of the offenders are interfered with.

Because of bribery, the police department in Kenya has been ranked top nationally in corruption on several occasions with Amnesty International in the year 2014 describing the service as a bribe factory with a leading corruption score of 81% (Mageka, 2015). This implies that the law is enforced with a lot of partiality hence denying justice to the public. For instance, a person accused of an offence may evade arrest by corrupting the police or, if arrested, will win cases in courts of law by bribing the investigating officers and police prosecutors. This scenario creates situations where justice will go to the highest bidder. It would also lead to the guilty people evading punishment, as the innocent are wrongly punished – something against the principle of criminal justice. When such innocent people end up in prison or under any form of punishment, they would be a bitter lot, who, on release, may decide to get into crime because they had been wrongly punished. Another problem is that at the police stations, due to the inadequacy of the cells, suspects are mixed up - juveniles and adults, males and females - this leads to the juveniles learning capital crimes from adults which may lead them to recidivism (Mageka, 2015).

Finally the number of police officers is another major impediment to successful operations of the police in Kenya. Their number compared to the country's population has in the past been way below the internationally recommended ratio of 1: 400. The poor terms and conditions of work also affect the police in Kenya (Nyongesa, 2013). These include poor housing, low salaries, unfavourable scheme of service, and poor recruitment and promotion procedures among others which compel the police to have bad attitude towards their work, and low morale as they execute their duties. These poor terms and conditions have been used to justify corruption within the police department, which as discussed in the foregoing, affect arrest of suspects, investigation of cases, prosecution and determination of guilt or innocence.

### **2.1.5 The Impact of Judiciary on Recidivism in Kenya**

The Judiciary in any government is entrusted with the responsibility of determining the guilt or innocence of a party charged with violation of civil or criminal law. This involves hearing cases, calling witnesses, listening to mitigation, and entering judgments based on the facts and evidences adduced. A magistrate or a judge either acquits or awards punishments, which can either be harsh or lenient depending on the severity of the offence. Where the accused person is not satisfied with the verdict he or she can appeal to a higher court (Bosire, 2012).

However, according to Mnjama (2013), the process of determining a case is complex and may be frightening for those who stand accused particularly for the first time suspects. The fear and confusion are more compounded for defendants who are poor and illiterate, more so if they have limited command of English and Kiswahili. This is because of the fact that though there is provision for interpreters, fairness demands that everyone who enters the courts should understand well the proceedings, of which this category of offenders are disadvantaged, yet they cannot seek the assistance of lawyers. For this category of offenders, therefore, the attainment of fairness from the judicial processes may always be limited, and where they are unfairly convicted and punished, they may become bitter and turn into recidivists.

According to Muneeni (2011), in Kenya, a number of problems have also hindered the delivery of justice by the judiciary which may lead to unfair conviction and punishment or acquittal of the guilty suspects, both of which can influence reoffending by such convicts. First, some magistrates and judges do not act impartially due to various biases which may be based on

having a set opinion about a particular individual or case. For instance, personal experiences with criminals may make a magistrate or judge to be unduly harsh in sentencing the convicts. Added to this, personal disposition, mood and personality of the judge or magistrate and other qualifications such as practical legal knowledge and exposure to the culture of the people involved in a case can also influence the final judgments entered by the courts. The magistrates and judges biases may also be influenced by his/her acquaintance with the defense attorney or prosecutor involved in a case in question. When these influences lead to unfair award of punishments, the convicts involved may reoffend.

However, one of the greatest causes of biases in the judiciary in Kenya is corruption (Gathu, 2014). This is a serious menace that has touched even senior members of the bench and thus affected public confidence in the Kenyan judiciary. For instance, a judicial perception survey conducted in the year 2012 established that out of 1222 respondents, 44% disliked the Kenyan courts because they are easily corruptible (Infotrak, 2012). Corruption in the judiciary takes the form of judges and magistrates being bought or bribed to enter favourable rulings and judgments.

It also refers to situations where the subordinate or support staff in the judiciary are induced to interfere with cases within the courts by instigating disappearances of court files, and even altering the statements of witnesses recorded in courts during proceedings. On the court files for example, Mnjama (2013) established that frequent cases of lost or misplaced case files in the Kenyan court system impacts negatively on the administration of justice. These cases, the scholar observed, are linked to corrupt practices. The corrupt practices result into miscarriage of justice and may lead to recidivism as the guilty offenders who are not punished will not be deterred while the unfairly punished become bitter and vengeful.

Another impediment in the delivery of justice by the Judiciary in Kenya lies in the delay of determination of cases. In the year 2012, an Infotrak survey established that 45% of the 1222 respondents detested the Kenyan courts because of delay in handling cases. This delay affects the memory of facts during trials as some witnesses may die where the cases take several years. The other possible consequences of delay in cases which may negatively affect the judgments and

punishment of suspects include loss of exhibits, frustration of witnesses, wearing down of the complainants who may lose hope and stop concentrating on the cases altogether. The delays may be as a result of some lawyers who employ delaying tactics such as unnecessary adjournments in cases that do not favour their clients (Infotrak, 2012).

The delays may also be occasioned by the high number of cases handled by individual judges and magistrates. The high number of cases handled by individual judges and magistrates has been as a result of lack of adequate resources to employ more staffs. For instance, Muneeni, (2011) argued that lack of resources, absence of well documented strategy and lack of leadership and direction were the main challenges facing the Judiciary in Kenya. In the delay of cases for whatever causes, the aggrieved party is disadvantaged since justice delayed is justice denied. Added to this, a delayed punishment in itself has a negative impact in deterring an offender, while punishment of the innocent party, may embitter such offenders to a point of recidivating.

Legal technicalities have also denied several individuals justice in cases where the charges are defective. Whereas the magistrates are supposed to immediately order for amendments, some may not do this until the matter is knocked out (Muneeni, 2011). The defective charges in most cases arise from the fact that some police officers who draw the charge sheets lack the legal knowledge thus end up preferring wrong charges which may be technically knocked out by the more educated and experienced lawyers. For instance use of the term “carnal knowledge” instead of penetration in rape cases may be disputed in rape cases. A police officer may also prefer a lesser charge for a suspect if compromised, for example charging a suspect with robbery instead of robbery with violence.

All these may lead to a discharge of a guilty offender or an award of a lenient punishment lacking in deterrence which may lead to reoffending. Other legal technicalities include going against the 24-hour rule. This is where the police hold suspects in their custody for more than 24 hours before presenting them in court. Such a breach may lead to termination of the cases based on the argument that the accused persons’ rights were violated by the police. When this happens, the victims of such crimes are the losers as they are denied justice while the acquitted

perpetrators may turn into undeterred serial recidivists. However, such legal timelines may also lead to poor investigations caused by a hurry not to be time barred (Mnjama, 2013).

Consequently, due to the technicalities of court procedures which are cumbersome and complicated, some accused persons do opt for a plea of guilt even when they are innocent because it is convenient (Mnjama, 2013). For instance in some petty cases such as being drunk and disorderly, a person who denies the charge is remanded for a month or 14 days whereas those who plead guilty may be sentenced to a months' community service or imprisonment or a fine of a few hundred Kenya shillings. A person who pleads guilty for convenience may not benefit from the resultant rehabilitation strategies of the awarded punishment. Other than the technicalities, few people, particularly the gullible, understand what is expected of them and their rights while in court. This includes how they should conduct themselves, yet only the rich can afford legal representation. In such circumstances, the poor people are left under the mercies of the deity.

Legal provisions such as *de novo* in section 200 of Criminal Procedure Code (CPC) which though are meant to ensure justice are also at times misused (Bosire, 2012). This section, for instance, allows cases to start a fresh which may not only have the disadvantage of frustrating witnesses but may also destabilize should the witnesses relocate and fail to be traced. Some witnesses may also die or become incapable of testifying for one reason or another. Section 87(a) on withdrawal of charges, which empowers the prosecution to withdraw any criminal matter from the court with the approval of the presiding magistrate have also been misused especially where the prosecutor and the magistrate have been compromised. Another section, 215 of the (CPC) on the benefit of doubt that gives the magistrate power to acquit a suspect on the grounds that the court has some uncleared doubts regarding certain facts of the matter has also been misused by compromised judges and magistrates who fix nonexistent doubts so as to release the suspects hence denying justice to the crime victims.

Other legal provisions that have been misused include the discretion of the Attorney General (AG) under the '*nolleprosequere*' provision as per section of 85 of the CPC which empowers the AG to terminate any criminal case without giving any explanation at any time during the

proceedings. This section has, however, at times been misused as was the case in the year 2006 Murder case: Republic vs. Thomas Patrick Cholmondeley Criminal Case Number 55 2006 (Kenya Law, 2006), and in the media case against the then first Lady Lucy Kibaki (Miscellaneous Civil suit Number 5 Otieno Clifford Richard vs. H.E Mrs. Lucy Muthoni Kibaki -Retrieved from [www.kenyalaw.org](http://www.kenyalaw.org).) when in both cases the AG registered a ‘*nolleprosequere*’. When offenders are not tried conclusively, and punished where and when found guilty, they may turn into recidivists.

The provisions allowing the magistrates to award punishments based on their discretions as per sections 28, 29(1), 31, 36, of the Penal Code has also seen magistrates issue very lenient sentences which leave the offenders undeterred. Failure to provide for witness in terms of subsistence and transport for those who travel from far or who have to spend nights out has also frustrated the punishment of crime suspects because most witnesses who are never paid do not appear in courts again. This has also made several individuals reluctant to be witnesses. Poor witnesses protection in Kenya has similarly made witnesses to refuse to testify in courts due fear for their safety and life (Kiprono, Ngetich & Mwangi, 2015). All these not only hinder delivery of justice, but also affect punishment of offenders.

In conclusion, the most common impediments in the punishment of offenders by the Judiciary in Kenya are corruption and interference with the court process. The powerful elites in the society; the politicians, businessmen and businesswomen, and the bureaucrats do always try to influence the court decisions in the matters where they have interests. On its part, corruption normally takes the form of bribery and other influences towards the prosecutors, magistrates and judges as well as other judicial support staff. Subsequently, when an offender is wrongly convicted and punished due to legal technicalities, corruption and or political interference, they cannot benefit from any reformation and rehabilitation strategy; instead, they become bitter and vengeful against the society. On the other hand, guilty suspects not punished for the same reasons may continue with criminal activities un-deterred.

#### **2.1.6 Legal instruments for Rehabilitation of Offenders in Kenya**

In Kenya, the main institutions directly mandated to reform and rehabilitate offenders are prisons and probation service. The probation service is guided by the Probation of Offenders Act CAP 64

Laws of Kenya and the Community Service Order Act Number 10 of 1998. The other relevant laws to probation service include the laws governing prisons, the Mental Health Act CAP 248, the Children's Act of 2001, the Penal Code CAP 63, and the Criminal Procedure Code CAP 75 Laws of Kenya.

For Prisons Service, the sources of laws that govern the operation of the department include the Kenyan Constitution, the prison Standing Orders which are administrative rules, Prison Act CAP 90, the Borstal institutions Act CAP 92, and the Children's Act CAP 506. The other related laws that govern the operations of prison officers are the Anti-corruption and Economic Crimes Act, the Public Officer Ethics Act, the Work Man Compensation Act, the Employment Act, the Pensions Act, the Official Secrets Act, and the Civil Service Code of Regulations among others. The other relevant policies that have guided Kenya prisons are the open door policy, remote parenting policy, open visitation policy, and prisons policy on HIV/AIDS (KPS, IED, 2005). The reformation and rehabilitative programmes are also governed by the Constitution of Kenya 2010.

There are also international laws that guide the work of prison officers in Kenya. These include the Standard Minimum Rules, the 1949 Geneva Conventions and additional Protocols, particularly the third convention on treatment of prisoners, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment among others. The Non-Custodial sentences are guided by the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) of 14<sup>th</sup> December 1990. Below is a detailed discussion of these international and local legal instruments.

#### **a) International Laws that are applicable to Rehabilitation of Offenders**

The development of most of the international instruments that guide the treatment of offender all over the world, Kenya included was influenced by the First and Second World Wars of 1914-1918 and 1939-1945 respectively. These wars were characterized by lawlessness whereby acts of brutality and unjustifiable destruction of property were experienced. During these two wars millions of people were killed and others permanently maimed. The captured enemy soldiers were cruelly treated and their civil rights abused. These harsh treatments were influenced by racial, religious and political inclinations (Gary, 2010). When the wars ended the nations came

together to take stock of their aftermath. This taking of stock is what influenced the development of international instruments on how prisoners were to be dealt with.

The instruments that resulted from these considerations include the Geneva conventions, the UN standard minimum rules for the treatment of prisoners, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International covenant on civil and political rights, the European convention for the prevention of torture and inhuman or degrading treatment or punishment and the convention on the rights of persons with disabilities. Though all these instruments largely talk about the prisoners of war, they have globally been accepted as vital guidelines in the treatment of all kinds of prisoners.

In the case of the first three Geneva conventions of 12<sup>th</sup> August 1949, for example, the first and second conventions deal with the provision of medical treatment for the wounded and the sick prisoners. These two conventions outline that medical facilities, equipment and personnel both fixed and mobile should be established for treatment of sick prisoners. The third convention guide humane treatment of prisoners. It, for instance, outlaws hostility towards the convicts, holding convicts in squalid conditions, and it guides documentation of prisoners' details, and safe custody of their properties.

The Standard Minimum Rules for the Treatment of Prisoners were adopted on 30 August 1955 by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The minimum rules together with the recommendations of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provide several guidelines on how prisoners and other individuals held in custody should be treated (KPS, IED, 2005). For instance rule 46 of the Standard Minimum rules on the treatment of prisoners' require that prison staffs should be professionals and of good conduct, they must also be efficient and physically fit. Rules 46 to 54 stipulate that prison officers should be of adequate education and selected carefully based on integrity, humanity, professionalism and personal suitability. This rule states that prison staff must undergo training and pass both practical and theoretical tests before beginning their work.

The basic rule illustrated in the standards on how offenders in custody should be treated proclaims that "there shall be no discrimination on grounds of race, colour, sex, language,

religion, political or other opinion, national or social origin, property, birth or other status.” It also calls for respect of religious beliefs of prisoners. There is also a provision that a register for prisoners must be maintained indicating the identity, reasons for custody and date plus hour of admission and release. The prisoners should also be separated on the basis of sex, whether they have been tried or not, age, and seriousness of their offences.

These rules also require that prisoners must be held in hygienic conditions with adequate space, ventilation, lighting and sanitary facilities. The prisoners must also be provided with adequate water and toilet articles, and are required to keep themselves clean so as to ensure personal hygiene. The clothing and beddings must also be clean and adequate while the food should be of required dietary standards in terms of quantity and quality. On exercise and sport, the regulations provide that a prisoner shall have at least one hour of exercise in the open air if the weather permits, and for the health of prisoners, medical doctors of varied specializations including psychiatry are to be available to treat prisoners in all institutions. The need for every prisoner to be examined by the medical officer shortly after admission, and segregation of prisoners suspected of contagious diseases are equally emphasized in the provisions.

In ensuring discipline, these laws prohibit cruel, inhuman and/or degrading punishments, including corporal punishment and restriction of prisoners in dark cells. Where a prisoner is to be punished the medical officer must be consulted before implementing any punishment that may be prejudicial to the physical or mental health of a prisoner. However, in practice this has not prevented torture of prisoners in prison institutions across the globe. According to Jeremy (2008), the laws also require that prison authorities in every institution maintain, for the use of prisoners, a library with recreational and instructional books.

On religious and spiritual wellbeing, authorities should provide religious leaders for each and every religion that the prisoners profess to hold services with them and conduct pastoral visits. These laws provide that no prisoner should be denied guidance of a qualified representative of his or her religion, nor shall he or she be required to observe religious doctrines contrary to his or her faith. It is also required that the insane and mentally challenged prisoners are not to be

detained in prisons but should be treated in specialized institutions to ensure their healing and rehabilitation.

On the code of conduct for law enforcement officials, the rules require that the officers must respect and protect human dignity and uphold the human rights of all the prisoners under their care. They must also protect the health of the prisoners and seek medical attention should an inmate fall sick. Further to these, they must not solicit any kind of favour including, money, or sexual intercourse with the offenders in their custody. However, despite these provisions, some prisons staff in Kenya have conducted illegal businesses with prisoners such as smuggling mobile telephones and drugs into prison institutions for use by prisoners - these acts in the end negate on reformation and rehabilitation of convicts (Omboto, 2013a; *The Standard Newspaper*, November 6, 2015).

On its part, Article ten (10) of the International Covenant on Civil and Political Rights of 23<sup>rd</sup> March 1976 further demands that any person deprived of their liberty shall be treated with humanity and dignity. The article further requires that convicted prisoners be separated from the pre-trial detainees, and the juvenile prisoners from adults. In Kenya, these provisions have not fully been adhered to due to overcrowding in prison institutions caused by among other factors, poor funding which has prevented the building of more prison institutions, and/or expansion of the existing ones. These challenges have jeopardized reformation and rehabilitation of offenders by prisons.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was enacted on 1<sup>st</sup> March 2002. The convention established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which was permitted to visit all places of detention within the European Union to ensure that in such places the human rights of detainees are respected, and the conditions are humane. However, despite the provisions of the above international legal instruments for humane treatment of convicts as discussed, the prisoners have continued to suffer in squalid conditions all over the world, Kenya included. This negates on their reformation and rehabilitation, thus, may be an influential factor for the high recidivism rates.

For rehabilitation of offenders in the communities, the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) of 14<sup>th</sup> December 1990 require that the decision to put an offender on a non-custodial measure should be based on the nature and gravity of the offence, personality and background of the convict, the purposes of sentencing and the rights of the victims of crime.

#### **b) Domestic laws that govern Rehabilitation of Offenders in Kenya Prisons**

The Prisons Act Cap 90 and the Prison Standing Orders are the two main legal documents that guide the work of prison officers and rehabilitation of convicts by prisons in Kenya. These laws empower the officer-in-charge or an officer detailed by him or her to allocate to each prisoner the labour for which he or she is best suited to enhance his or her rehabilitation. The first consideration being to give each prisoner the best training which his or her sentence, capacity and the resources of the prison permit. To fulfill this provision, Cap 90 (3) states that the technical services' objective is "to train the inmates in useful skills which can help him or her get a job or employ her/himself after release from prison."

On prisoners' vocational training, the Prison Standing Orders on its part outline that prisoners should be trained in the following trades in the prison industries: carpentry, masonry, metal work (blacksmith and tinsmith), tailoring, dress making, welding, spray painting and polishing, mechanic trades, panel beating, electrical trades, electronic repair, cookery, basket making, crocheting, leather work (boots, shoes, belts bags making), shoe shine and repair, upholstery (cushions, sofa, vehicle seats making), wood carving, fitting, sign writing, and fine arts.

According to the standing orders, before a particular prisoner is placed on a specific training, considerations are made based on his or her health, the duration of sentence, the prisoner's interest, previous professions, and education level attained before imprisonment. The Prisoner's Vocational Training Programmes and farming training activities are meant to equip the convicts with skills by which they should earn a living by lawful means after imprisonment. These trainings are offered based on the assumption that most inmates committed crimes because of poverty occasioned by lack of vocational skills that could enable them to earn a living by honest and lawful means.

To ensure that the environment for reformation and rehabilitation of offenders is conducive, Prisons Act Cap 90 and the Standing Orders outline stringent regulations to prevent the entry of contrabands such as illicit drugs and substances. For instance, Prisons Act Cap 90 section 66 (K) and (J) and section 124 (1) (M), (S) and (V) outlaw trafficking in contrabands by all the members of the prison community while section 124 (1) (M) forbids prison staff from taking tobacco or spirituous or fermented liquor or any other prohibited article into prison institutions. Part (S) of the section further prohibit members of staff from trafficking with inmates whereas part (V) of the same outlaw prisons staff from accepting any fee or gratuity from, or having any commercial dealing with a prisoner or discharged prisoner, a friend of prisoner or with visitor to prisoner (Omboto, 2010).

Concerning the inmates, section 66 (K) outlaws them from having, in their cells, wards or possessions, unauthorized materials. Part (J) proscribes any inmate from giving to, or receiving from any person any unauthorized item. In addition, Standing Orders, in chapter 10 section 50 (1) outline that “No prisoner shall under any pretence whatsoever be allowed any spirits, wine, beer or other intoxicating or stupefying drink, drug or matter, except such, and in such quantities, as may be directed in particular cases by the medical officer by order in writing. “Part 2 outlaws prisoners from smoking. The Prison Standing Orders further provide that to reform and rehabilitate offenders; inmates in need of education should be offered learning opportunity through formal education and non-formal education. The formal education is conducted as per the 8:4:4 system of education while the latter is under adult education programme.

### **c) Kenyan Laws that govern the Probation Service**

Probation Service in Kenya mainly draws its mandate from the Probation of Offenders Act Cap 64 Laws of Kenya, and the Community Service Order Act (No. 10 of 1998). However, because probation officers deal with broad categories of offenders such as juveniles, the mentally sick, convicted prisoners, and also due to the fact that their work overlaps to other agencies, there are other relevant laws that guide probation service in Kenya. These laws are the Prisons Act Cap 90 laws of Kenya, the Borstal Institutions Act Cap 92, the Mental Health Act Cap 248, the Children’s Act of 2001, the Penal Code Cap 63, and the Criminal Procedure Code Cap 75 Laws of Kenya. The Mental Health Act Cap 248 guide probation officers when dealing with the offenders that are mentally challenged. In most cases such offenders are normally referred to

mental hospitals for free treatment, and medical reports on their progress presented by the concerned probation officer to the courts.

The Prisons Act Cap 90 is imperative to the probation personnel when handling the convicts who are remanded in prison custody as the officers write the pre-sentence reports at the request of the concern courts. The act is also vital in all engagements between the probation and prisons in Kenya while the Borstal Institutions Act Cap 92 guides the probation officers in handling juvenile offenders aged between 15 and 18 years. For the offenders below the Borstal Institutions age, the probation officers use the Children's Act of 2001 as a guide in handling them. The Penal Code Cap 63 and the Criminal Procedure Code Cap 75 are important to the probation officers in advising the courts on the suitable penalties for the various offences and help in directing criminal procedures respectively.

### **2.1.7 Contemporary Forms of Judicial Punishment**

World over, after an offender has been found guilty as charged, the judge or magistrate can award an array of sentences depending on the severity and circumstances of the crime (Stuckey & Garland, 2000). These penalties either require them to serve time in institutions or leave them in the communities. However, for the punishment awarded to be effective, Grunhut (1948) is of the view that it must be immediate to convince the offender that crime will not be tolerated. Though, this requirement is not easy to observe particularly where it takes a long period of time for cases to be determined. The punishment should also give the offender a fair chance for a fresh start; and further to these, the state which claims the right of punishment must uphold superior values which the offender can reasonably be expected to acknowledge. The goals of criminal punishment are general deterrence, incapacitation, specific deterrence, retribution, rehabilitation and restitution (Senna & Siegel, 1993).

Bwononga, (1998) maintains that there are two main types of sentences: punitive sentences and non-custodial sentences. Under the punitive sentences, he outlines death sentence, imprisonment and imposition of fines while the non-custodial ones include probation, discharge, costs and forfeitures. The punitive sentences are usually passed upon those who have been convicted of serious crimes like murder, treason, capital robbery, theft, and causing death by dangerous driving among others while non-custodial sentences are imposed in less serious crimes.

Grunhut (1948) observes that in the early societies, the most common forms of punishment were death, physical torture, mutilation, branding, public humiliation, fines and forfeiture of property, banishment, transportation, and imprisonment. He further states that over a period of time, each of these sentences had several variation and application. For example, death penalty included hanging, electrocution, crucifixion, and burning. Imprisonment has included incarceration in dungeons, guardhouses, galleys, jails, workhouses, houses of correction and penitentiaries. Physical torture and mutilation have also assumed numerous and barbarous forms such as flogging, burning, dismemberment and disfiguration.

In the present-day Kenya, Bwononga, (1998) gives an exhaustive list of punishments currently in place. These include death sentence, which he argues, ranks top in order of severity. The sentence is passed upon those convicted of felonies such as murder, treason, capital robbery and attempted robbery. This is because this class of convicts is considered to be very dangerous; thus, should be permanently put away from the society. Life imprisonment and imprisonment in that order are the next in severity after the death penalty. Imprisonment is usually imposed on offenders who commit crimes such as grievous harm, manslaughter, arson and rape. In practice the courts have the discretion to impose a specific number of years. Another punitive sentence is fine. A fine of a specific amount of money may be imposed either in addition to any other punishment or solely or as an alternative to imprisonment.

However, in Kenya like in other jurisdictions, there are also non-custodial sentences. Here the offenders serve their sentences outside prison. Though in the public eye non-custodial sentences are seen to be very lenient to the accused thus leading to discontentment from the aggrieved, the sentences are encouraged for non-capital offenders to ease the congestion in the prisons. The first type of non-custodial sentence in Kenya is Community Service Order where an offender is required to perform communal work which includes light manual work such as cutting grass and cleaning public places. It is a punishment usually imposed on offenders convicted of minor offences such as being drunk and disorderly, trespass, common assaults, affray, and creating disturbances (Senna & Siegel, 1993).

Probation is also another form of non-custodial sentence geared towards reforming the offenders and rehabilitating them into the society. Before an offender is sentenced to probation, it must be established that he or she is remorseful and repentant. While on probation, an offender must

comply with all the terms of the probation order which include not committing any offence (Stuckey & Garland, 2000). The courts may also discharge the offenders. There are two types of discharges: conditional and absolute discharges. In conditional discharge, the convict is released on certain conditions and for a specific period for which non-compliance may render the convict to be returned to court for another sentencing. The punishment options available to the courts are always dictated by the sentencing guidelines for particular crimes. If prescribed sentencing guidelines do not exist, the judge has the discretion to award a sentence within the statutory limits and alternatives (Stuckey & Garland, 2000). The subsequent section is an elaborate discussion of these types of punishment in the modern societies.

#### **a) Imprisonment and its latent Dysfunctions**

Even though there are other non-custodial penalties for convicted offenders such as fines, community service order, and probation service, imprisonment is the most commonly applied, particularly for non-petty offences (Dhami, Mandel, Loewenstein & Ayton, 2006). In the last four decades, this practice has been driven by the belief that incarceration is the best measure of ensuring protection of the society (Subramanian & Shames, 2013). Imprisonment is also the most common form of punishment because it is given as an alternative to petty offenders who cannot afford fines and other financial penalties.

While historical records indicate that custodial confinement of offenders existed in Athens as far back as 353 BC when it was employed in the Athenian Polis (Allen, 1997), imprisonment of offenders as it is known today began in Europe between 1600 and 1700 years as a paradigm shift from the harsh and severe punishments which typically involved public torture and humiliation of convicts. It originated in the desire to reform and rehabilitate the offenders in private places which brought in the Criminal Justice System (Mushanga, 1976). In the United States of America, it became common in 1800s while in Kenya, and other parts of Africa, this form of punishment was imported by the colonialists (Bohm & Halley, 1997; KNCHR, 2005).

The fact that imprisonment developed as an improvement from the harsh and degrading public torture of real and perceived offenders does not mean that torture does not take place within prison walls. It was, for example, established that both physical and verbal abuse is common in correctional institutions worldwide. For instance, according to Silverman and Vega (1996),

authorized brutal practices such as whipping inmates were still common in the United States of America, particularly in Arkansas and Mississippi in the 1960s. In Kenya before the prisons reforms began in earnest in 2003, torture and degrading treatment of inmates was a common means of enforcing discipline and compliance in prison institutions (KNCHR, 2005).

To reform and rehabilitate offenders, there are various measures within the prison walls, for example, there are Prisoner's Vocational Training Programmes and on-job training such as training in farming activities meant to equip the convicts with skills by which they should earn a living through lawful means after imprisonment. These trainings are offered based on the assumption that most convicts commit crimes because of poverty occasioned by lack of vocational skills that could enable them to earn a living by honest and lawful means. Imprisonment also employs recreational and therapeutic techniques such as guidance and counseling. There is also provision of basic formal education, and behaviour modification programmes as the offenders are viewed as sick individuals in need of treatment (Tewkbury, 1997).

Though widely employed, imprisonment is marked by several demerits for the prisoners which negate on their reformation and rehabilitation. For example, there is little freedom characterized by routine activities with no opportunity of self-direction given that prisoners' movement is highly restricted (Haralombos & Holborn, 2007). For instance, the prisoners cannot move around as they may wish, they also have limited choice on the food they eat, the work they engage in among other limitations as these are dictated by the prison authorities. Prisoners do not also make decisions on matters that affect them. At times even simple decisions such as when to take a bath is made for them. Prisoners may also be expected to perform intolerable roles that they would not willing accept in a free society.

At times the inmates face unbearable confinement conditions under atrocious prison authorities. There is also restricted outside social contacts, marked by limited visits that are supervised. Other negative characteristics of prison life are deterioration of convicts' vocational and professional skills, interruption of family life, and heterosexual starvation leading to high number of cases of homosexuality and lesbianism within prison institutions (Omboto, 2013a; Bohm

&Halley, 1997). On the offenders' professional regression, for instance, Polisky and Shavell (1999) observed that for the white collar offenders, the negative impact of imprisonment, stigma and loss of earning does not to a greater extent depend on the length of the prison term.

As a disruption of family life, Murray and Farrington (2008) observed that parental imprisonment may lead to antisocial behaviour in children such as delinquency, mental problems, drug abuse, and truancy among others. This is more pronounced if the imprisoned parent is a mother or if the parent is imprisoned for a long period of time. This observation underlines the importance of a mother in upbringing of children, and the importance of the presence of parents to the children's socialization. Imprisonment also impacts negatively on child support. For instance, according to Chung (2012), in Wisconsin, USA, the imprisonment of the fathers increased dependency on government provided stamp food by the affected families. The study established that the US government provided food work as a safety net when families face deprivation due to fathers' imprisonment. This, however, imposes a substantial economic burden on the tax payers. Imprisonment also leads to poverty among the inmates.

For instance, Crimshaw (2014) established that prisoners reenter their communities poorer than they left. In America, for example, it was observed that prisons and jails have produced outcasts whose main characteristics include poverty. The poverty of ex-prisoners can be attributed to the fact while in prison institutions, inmates are not engaged in economically viable activities, which are well paying. Thus, the prisoners leave prisons to their communities worse than they left.

In the control of crime which is supposed to be the most important benefit of imprisonment given its ability to incapacitate the offenders by removing them from the society, incarceration makes it impossible for such offenders to commit crimes, at least for the time they are held in prison custody. The expectation is not normally met particularly in Kenya where the prisoners have continued to commit crimes such as extortion against the society because of management challenges, and advancement in technology (Omboto, 2013a).

#### **b) Factors antithetical to the attainment of Imprisonment Goals**

There are various challenges that can impede the achievement of prison functions in any prison system in the world; for instance, according to Paranjape, (2005), life in prison was meant to deter people from committing crime by isolating them from the public, ensuring strict discipline

and provision of bare necessities. There is also strict security arrangements and monotonous routine life. These restrictions are imposed on the inmates' liberty against their will, which often makes them to be unwilling to comply with the prison rules and regulations. This in the end leads to various acts of indiscipline such as fights and fracas between the inmates themselves, and the inmates and prison officers. Breaking of prison rules, prison riots, among others are also common in prison institutions. In these kinds of situations, prisons cannot achieve their mandate. On riots which rocked the English prisons in 1990 for instance, Wolf (1990) recommended the need for ensuring the correct balance between security, control and justice to achieve an effective prison management.

Other causes of indiscipline among the inmates are as a result of poor and insufficient diet, poor sanitations and prisoners' health provisions. Aware that it is the obligation of the government to provide for them; these situations provoke disquiet among prisoners. Another factor that makes inmates to disobey prison rules and regulations include, but are not limited to, mistrust and lack of faith in prison authorities whom they consider to be forceful and harsh on them. The senior prison management do also resort to corrupt practices, and often extend preferential treatment to some inmates in exchange for inducement; this causes antipathy among the other prisoners which leads to cold wars between the inmates and prisons staff (GOK, 2008; Paranjape, 2005). To alleviate this situation, Coyle (2002) recommends that the prison management must create an environment where all members of the prison community are treated with fairness and justice, also, in which prisoners have the prospect to participate in productive activities. The scholar suggests that, above all, prisons should prepare the prisoners for life outside the prison walls well in advance.

Compliance to prison rules and regulations by the inmates which adversely affects reformation and rehabilitation of the inmates is also interfered with by the inmates' unmet sexual urge. Their extended absence from the normal society and the detachment from spouses and lovers deny the inmates sexual gratification which is a vital biological urge of all normal adults. Because they fail to control their sexual desire, the inmates due to lack of conjugal visits resort to homosexuality and sodomy inside the prison walls; these can be by force or consented (UNODC/GOK, 2012 a). Due to lack of protections such as condoms, the prisoners who get involved in such sexual deviations get infected with and spread diseases such as HIV and AIDS,

sexually transmitted diseases, and other infections such as hepatitis B and C, which, in the end, compel the prison authorities to spend a lot of resources on the inmates' health rather than on meeting their core functions of reformation and rehabilitation.

Fights and coercion among the inmates is another factor that negates on the achievement of prisons' core functions (Paranjape, 2005; Colvin, 2000). Fights are brought about by the desire of some individual inmates to control other felons. For instance, prisoners who committed capital offences normally look down on petty offenders. The conflicts are made worse by the introduction of prisoners 'self-governance'. For example, in India, an observation was made that due to lack of general moral discipline among criminals majority of whom are illiterate and from the lower class of the society, when allowed to govern themselves in prisons, conflict normally arises between them (Paranjape, 2005).

Coercion in prison takes the form beatings and/or being denied material needs for instance by having inmates' materials or items stolen. There is also indirect coercion where prisoners witness others being beaten up thus creating a threatening environment in which fear and intimidation become common aspects of life. This results into psychological distress under which the achievement of prisons mandates is impossible. Steiner (2008) summarizes the traditional explanations of prison indiscipline: deprivations suffered by inmates as a result of incarceration, such as lose of autonomy, freedom of movement, and access to goods and services, heterosexual relationships among others. He concurs with Paranjape (2005) that other than deprivations, another source of disorder among inmates is differences that arise between them.

It has also been argued that the physical and social prison conditions have made them unsuitable for convicts' reformation. Thus, prisons have been described as 'schools of crime' where the inmates only learn to engage in more serious crimes than the ones they were convicted of (Kagendo 2003; Gendreau, Goggin & Cullen, 1999). Prison institutions have also been described as 'criminogenic' (Odegi-Awuondo, 2003; Mushanga, 1976); that is, they encourage criminal tendencies rather than reformation and rehabilitation of offenders. In reference to prisons in Kenya, for instance, Odera-Oruka (1976) argued that hostile prison conditions make ex-convicts vengeful against the general society. It has also been observed that prisoners always become institutionalized, for example, Goodstein (1993) observed that prisons instil acquiescent and compliant behaviour which causes institutional dependence.

Congestion and overcrowding is another factor that has led to the failure of prison institutions to achieve their mandate across world; for instance, in the US, enormous prison overcrowding contributed significantly to the increase in prisoners' rights litigation. By 1992 the populations of institutions in 29 states exceeded the institutions' capacity. The National prison project of American Civil Liberties Union reported that as at January 1, 1992, forty states, including the District of Columbia, Puerto Rico, and the Virgin Island were under court orders to reduce prison populations (National Prison Project, Corrections Digest, 1992). In Kenya, it has been established that overcrowding and congestion is the root cause problems in prisons institutions (Omboto, 2013 a).

However, Venter, Hoffman and Goudine (2006) postulate that where recidivism is attributable to imprisonment, it is due to the fact that rehabilitation interventions are provided too late and many of the programmes are focused on the process rather than results. The scholars recommend that halfway houses should be provided in good time, and that prison rehabilitation should focus on the prisoner empowerment. This advice is important in the Kenyan situation given that halfway homes just like Parole have never been established yet they are vital for rehabilitation of the offenders released from prison institutions. The convicts reformation and rehabilitation through imprisonment can also be improved on by provision of conducive environment (Tewkbury, 1997). This scholar views offenders as sick individuals in need of treatment achievable by among others, psychological and substance abuse counseling, provision of basic formal education, behaviour modification and job training programmes.

Further to these, Briggs (1975) recommended that for reformation and rehabilitation of prisoners to be achieved, the institutions must put up measures to preserve and enhance a prisoners' dignity and self-respect that are likely to assist in their rehabilitation, which normally takes place through training and other activities. Playfair and Sington (1965) emphasize that correctional institutions must strive to offer intended training to all the offenders that ever gets into the institutions to counter any possible contamination by fellow felons. They observe that treatment or reform attempted in these institutions are normally counter balanced by anti-treatment and confirmation in criminal ways at the hands of fellow inmates since contact between the inmates is normally more continuous than that of inmates with the prison staff.

### **c) Historical Development of the Kenyan Prisons**

Imprisonment is the main form of punishment in Kenya. It is normally awarded to the offenders that are considered to be a threat to the society based on the crimes they have committed. It also serves as an option to those who cannot afford fines. Prison as an institution in Kenya was established by the British colonialists through a Prisons Board circular number 1 of 18<sup>th</sup> March 1911. By 1912, there were 30 prison institutions with 1,466 prisoners and 300 members of staff (GOK, 2011 a). Although it operated as an autonomous entity, prisons continued to be administered by the Inspector General of Police. The first Inspector General of Prisons was only appointed in 1914 and he doubled up as the secretary of the prisons board. In 1917 the posts of Commissioner and Assistant Commissioner were created and subsequently held by R. Donald and T.A. Gray respectively. The first prison in Kenya was Fort Jesus which served as a prison from 1900 to 1958. In December, 1925, the Detention Camps Ordinance No. 25 was passed to establish detention camps which were meant for petty offenders thus segregating them from those who had committed felonies who were kept in prisons to avoid contamination of petty offenders by hard core criminals (GOK, 2011 a).

To control recidivism, vocational training programmes for prisoners were established in 1927. This saw posting of five Technical instructors in the protectorate from England to train prisoners in carpentry and masonry. To improve the prison staff efficiency and discipline, training of more members of staff was enhanced in 1929 when the training depot in Nairobi was enlarged and training duration extended to six months instead of the then few weeks. In June the same year, the Governors' Vagrancy Ordinance created detention camps for the detention of native vagrants, who had previously been committed to prisons. This was to avoid contamination of such category of inmates by hard core criminals (GOK, 2011 a).

In 1931, a system where all sentences of ten years and above were reviewed after five years with recommendations of the Commissioner of Prisons submitted on each and every case to enable reformed prisoners to be pardoned. In 1932, a prison service library was established for the prison staff to learn more about their duties. The reading materials were kept at the Headquarters for use by all officers in various parts of Kenya. In June 1934 the Juvenile Ordinance was enacted. This was influenced by the English "Children and Young Persons Act of 1933 which gave the governor power to establish three categories of approved schools. The first category

was meant for the committal of children or young persons not convicted of criminal offences, up to the age of 18 years. The second was for the committal of children convicted of criminal offences, up to the age of 16 years, and the third one for the committal of young persons convicted of criminal offences, up to the age of 18 years. These schools were under the Chief Inspector of Approved Schools reporting to the Approved Schools Board with the Commissioner of Prisons as Chief Inspector of the Approved Schools (GOK, 2011 a).

The first Prisoners' Discharged Board which was run by the Salvation Army was established in 1936 to help discharged prisoners get employment. In May 1940, the first Prisons Standing Orders was published. And in 1950, prison service was placed under the control of the Attorney General and Members for Law and Order. In September 1952, a conference of Prison Officers was held which discussed, among others, the classification of youthful offenders who needed a special institution other than approved schools; this led to establishment of Shikusa Training center for youthful first time offenders (GOK, 2011 a).

However, an event that had the greatest impact on the development of prisons in Kenya was the declaration of a state of emergency in 1952. It resulted into a greater increase in the prison population, and by 1953, the population rose to 20,251 from 9,954. The training of staff was also negatively affected with the training period shortened to a few weeks to the serve the increased population. This need for more staff led to the development of another training camp in Kamiti in 1954 which was considered spacious for training of a large numbers of officers.

A supplementary training site was set up in Thika for rifle training to cub any uprising. The need for speedy communication at this time also saw the introduction of radio telephones in prisons. By the year 1954, there were a total of 176 stations to handle Mau Mau suspects. These were 50 prisons, 40 Prison camps, 54 Detention camps and 32 emergency detention camps. The prisoner population stood at 28,630 while the staff population was 11,025. A negative impact of this period in the development of prisons in Kenya was deterioration in prisons conditions (GOK, 2011 a).

In 1959, after the end of the emergency period, prisons department developed programmes that focused on the treatment and training of prisoners. New prison legislations were drafted to enhance reformation and rehabilitation of offenders. The additional legislations that came into

being by 1959 were those concerned with Borstal Institutions, Extra Mural Penal Employment and the detention of youthful offenders in Detention camps. Given that the number of female prisoners increased during the emergency period, efforts were also made to increase the number and capacity of female officers. Thus in 1960 a Superintendent of Prisons Mrs. M. P. Rochfort was transferred to Kenya from Uganda to oversee the recruitment and training of women staff. This led to establishment of separate central prisons for women at Langata (Nairobi) and Nakuru, with facilities for training of staff, which saw an increase in the number of trained female prisons staff (GOK,2011 a).

For all this time, prisons in Kenya was in the Ministry of Defence but concerted efforts to make it reform the offenders saw it moved to the Ministry of Social Services in April, 1962. The other new changes that were enacted were classification and segregation of prisoners based on age, history and character. The progressive stage system for inmates' promotion to higher stages depending on their good behaviour with each higher stage offering the inmate more privileges than those in a lower stage; and the prisoners earning scheme were also introduced. In the same year, the new Prisons Ordinance was passed by Legislative Council in December which provided for changes such as proper classification, a stage system, an earning scheme, parole, compulsory supervision, extra mural penal employment, and the establishment of a Youth Corrective Training Centre. An officer experienced in Borstal Management was also employed to establish a Borstal institution. More senior prison officers who were Africans were also appointed in the same year and 23 prisons were under them. For instance, Mrs. Phoebe Asiyu was appointed the first African woman Assistant Superintendent of Prisons and Mr. Andrew Kisia Saikwa as the first African officer to take charge of the Rift Valley province (GOK, 2011a).

After independence in 1963, legislations to guide prisons were enacted; these are CAP 90 (Prisons Act), CAP 91 (Detention Camps Act) and CAP 92 (Borstal Act) and Andrew K. Saikwa was appointed as the first African Commissioner of Prisons in October, 1964 with all but one African senior officers. In July 1970, five provincial commanders were appointed, all, as Assistant Commissioners of Prisons to head the five regions. The training of prison officers was enhanced in 1984 with the establishment of expansive Prisons Staff Training College at Ruiru. The training emphases were on prison administration and theories of crime (GOK, 2011a).

However, major changes occurred in the year 2000 with the open door policy occasioned by democratization in the country, and the enlightenment on human rights issues in the 1990s. The members of the public are now privileged to question human rights concerns in prisons and prisons' management. This has resulted into building and expanding prison institutions to reduce congestion, improvement on prisoners' uniforms, provision of mattresses and blankets to the inmates, procurement of comfortable buses that transport inmates to courts, improvement of hospital services and matters of transfers. There is also improvement in diet as the inmates are provided with rice, and sugared porridge. Also, in place is family bonding opportunities during open day visitations, and remote parenting (GOK, 2011 a).

Of significance was another incident that brought change in prisons - the strike by members of staff in 2008, which instigated a change in the top command that saw the two top level managers brought in from the police. The notable changes brought about by this management include establishment of dog and horse units in prisons to enhance security, introduction of new staff uniforms, and enhanced training for staff (GOK, 2011 a).

#### **d) Reformation and Rehabilitation Techniques in Kenyan Prisons**

According to GOK (1979), several strategies that aim to reform and rehabilitate offenders in Kenya prisons have been instigated. For instance, inmates in need of education are offered the same through formal education and non-formal education as the free citizens. The formal education is conducted under 8:4:4 system of education while non-formal is under adult education programme. These two arrangements have seen several prisoners continue with education and sit for national examinations within the prison walls. Guidance and counseling, and spiritual programmes are also in place to cater for emotional and spiritual needs of the inmates. The programmes are offered by trained spiritual leaders employed by the prison department.

The inmates are also engaged in sports, hobbies, handcrafts and other recreational activities for leisure and relaxation. The prison standing orders also stipulate that the prisoners should be paid for their work in prison under Prisoners Earning Scheme, though have not been effected for a long time and the amount stipulated is too little to support inmates on release. To inculcate good work ethics, the prisoners are allocated various duties under Prisoners' Labour Distribution

supervised by the prison officers. To encourage good behaviour, convicted offenders are also offered remission which is a third of their sentence for non-capital crimes that attract more than one month prison term. Meanwhile, prisoners who do not exhibit good behaviour lose the remission. The well behaved prisoners who have stayed longer in prison also receive privileges under the prisoners' stage system. This involves promotion of long serving and well behaved prisoners from the lower stages to the special stage. The higher the prisoners' stage the better the privileges. These privileges are in form of unrestricted movement within prison institutions, better clothing and beddings, additional food ratio, and increment in the number of visits to the prisoner per month (GOK, 1979).

Prisons in Kenya should also ensure that petty offenders do not learn serious crimes from the hard core criminals; to achieve this, the prisoners should be classified and segregated. However this has not been implemented as required due to congestion and overcrowding in prison institutions occasioned by high crime rate in the country and insufficient funding by the government which has inhibited building of new prison institutions and expanding the existing ones. Other impediments to the effectiveness of imprisonment in Kenya include availability of drugs and substances, and other contrabands in prison institutions as well as incidents of corruption (GoK, 2008).

It has been established, for example, that drugs such as cannabis, heroin and cocaine are readily available in Kenya prisons. The presence and abuse of such drugs, and other contrabands in prison institutions have resulted into serious cases of inmates' indiscipline – a situation in which no meaningful reformation and rehabilitation can take place (Omboto, 2010). For instance, according to the *Standard Newspaper* (November 6, 2015), a Naivasha Maximum Security Prison Chief Inspector (CIP) was nabbed with 1772 rolls of cannabis sativa hidden in car tyres as he was just about to supply to the 3000 inmates in that facility. This senior prison officer who was also found with several mobile phones was remanded at Nakuru Police station.

The presence of these illegal mobile phones has also enabled the inmates to continue committing crimes such as extortion while in prison. To control these vices, it is high time the government of Kenya gave serious attention to the Correctional Departments in the Country so as to weed out

the individuals lacking in integrity; those who perpetuate the vice. Currently, much of the government attention on the Criminal Justice Institutions in Kenya is directed to the police and the judiciary in matters like vetting of the staff.

#### **e) Core Functions of Prisons Service in Kenya**

GOK (2013) and KNCHR (2005) outline the goals of Kenya prisons and provide a vision for helping maintain a just, safe, secure and peaceful society. GOK (2013) outlines the obligation of the service as ensuring the rule of law, creation of humane condition for inmates, and promotion of inter-agency collaborations. It emphasizes that the primary role of prison is to prepare offenders for their rehabilitation into the society as law abiding citizens.

This policy statement gives a broad vision that aims to guide the transformation of Kenya Prison Service into a modern correctional institution in reformation and rehabilitation of offenders that will curtail recidivism. According to KNCHR (2005) the key function of Kenya prisons is, first and foremost, reformation and rehabilitation of prisoners through training and counseling. Training aims to equip the inmates with skills they would use to earn a living by lawful means after release from custody; this is normally achieved under prisoners' vocational training programme. Counseling targets the inmate's minds, it appeals to them on the need to discard criminality on release through creation of awareness on the dangers of crime to the society and the individual convicts among others.

Prisons in Kenya and all over the world also ensure that inmates are in safe custody. This is all about ensuring that the inmates do not escape from lawful custody. This concerns both the remand inmates who are awaiting the conclusion of their cases in various courts, and the convicted prisoners in for reformation and rehabilitation. The containment and safe custody functions help in the protection of the society when the dangerous criminals are locked up. They also ensure that institutional rehabilitation mandate is accomplished as the inmates would be present for reformation and rehabilitation programmes. However, as these offenders are contained in prison institutions, Kenya prisons must ensure that their basic human needs are provided for, and their human rights respected. This has not been fully achieved given that prisoners live in squalid conditions, and the cases of physical torture and beatings of prisoners by

the prison staff in which at times lead to death are common in prison institutions (*Standard Newspaper*, October 27, 2015).

Kenya prisons should also facilitate administration of justice through the production of inmates to various courts for trial. These are normally the remand prisoners whose crimes don't have bail and bond terms, and those who are unable to meet such terms thus must attend to their cases while in custody. It is the responsibility of prisons to ensure that they are produced in courts when and as required. However, because of transport and other related challenges, there are at times, delays in meeting this mandate.

Prisons should also reform convicted young offenders in Borstal Institutions for their rehabilitation function. This function first ensures that young offenders are segregated from mature and dangerous criminals; this assists in preventing contamination of young offenders. Borstal institutions should also equip the young offenders with skills which they can use to earn a living on release. The main challenge in achieving this mandate by Kenya prisons is that there are only two Borstal Institutions in the country against the increased number of juvenile offenders. These two institutions are Shimo la tewa in Mombasa and Shikusa in Western Kenya.

It is also the responsibility of Prison Service in Kenya to recruit, train, and develop suitable personnel for prison work. This is mostly done through field recruitments countrywide by the Human Resource Department. The training which involves field drills and class work is undertaken at Prisons Staff Training College (PSTC) in Ruiru. The prison department must also provide conducive work environment for its personnel for effective service delivery. However, while there are some notable improvements in training occasioned by collaboration between the service and Kenyatta University (*Daily Nation Newspaper*, August 27<sup>th</sup> 2015), other terms and conditions of work such as housing, particularly for the junior prisons staff have remained pathetic, and these affect reformation and rehabilitation of convicts as their morale for the delicate work remains low.

Kenya prisons also take care of the children aged four years and below who accompany their mothers in prison. By law a child of four years or less can't be separated from his/her mother; therefore, convicted mothers of children of such ages must have these children with them in prison institutions. Prisons under the supervision of the children's department ensure that all the

needs of such children are met. After the age of four, such children are normally released to their relatives or to the children's homes for those who do not have caring relatives. Kenya Prisons should also provide awareness amongst its staff and inmates on social welfare issues and HIV/AIDS, co-operative benefits to the staff and other staff development issues. Finally, it should also conduct research on crime trends in the country.

#### **f) Prisoners' Vocational Training Programme**

The Prisoners' Vocational Training Programme is one of the interventions directed at ensuring proper reintegration of convicted inmates in the community after imprisonment. In Hong Kong, Tam and Heng (2008) observe that the vocational training programme aims at inculcating good work habits and discipline in the offenders, offering hands on experience through practical training and acquisition of job skills, giving certificates for the trades acquired, and opening up opportunities for further training. Thus, the programme should equip the inmates with the skills and knowledge that they would need on release to do particular jobs.

This training is based on the assumption that most convicts commit crime because of poverty occasioned by lack of vocational skills that could enable them to earn a living by honest and lawful means. However, while this assumption is in line with Robert K. Merton's Strain Theory of Crime, it is worth noting that crime, particularly non-property acquisition crimes, and even some property related crimes such as theft, have several other causes not related to poverty; for instance, theft by kleptomaniacs, the offenders who steal because of mental sickness. Nevertheless, Prisoners' Vocational Training Programme deserves every support because any initiative geared towards reducing crime and recidivism is a move in the right direction.

Empirical studies attest to the positive impact of this programme in reducing recidivism rates. For instance, in the US, the inmates who participated in vocational training programmes had lower recidivism rates (Ward, 2009; Gordon & Weldon 2003). The participants also had fewer cases of indiscipline during imprisonment. Added to this, participation by inmates in vocational training and education programmes also led to parole

According to Bohm and Halley (1997), these programmes mostly operate as part of inmates' job assignments and are geared towards the traditional blue-collar employments such as welding and

auto mechanics. Furthermore, the programmes offered in women prisons in the US have often been criticized for concentrating excessively on stereotypical women jobs. These scholars have also confirmed that recidivism rate is high among prisoners who fail to participate in education and training programmes in prisons.

The success of Prisoners Vocational Programme as a reformation and rehabilitation tool depends on the kind of personnel who are in charge and the general prison conditions. For instance, Mushanga (1976) recommends that the prison officers must have higher education and be well trained for the success in rehabilitation of offenders to be achieved. In concurrence, Klare (1966) postulates that knowledgeable prison officers, for example in disciplines such as psychology, counseling, sociology, criminology and other social sciences are important for inmates' rehabilitation. These are the kind of rehabilitators who can be well versed in criminal etiology.

Emphasizing on the quality of the prisons staff, Coyle (2002) opines that for prisoners' rehabilitation through training to be a success the men and women who are to work in prisons need to be carefully chosen to make sure that they have appropriate personal qualities and educational background apart from the technical skills. The correct attitude of the offenders towards the vocational training programme is also mandatory for its success. This is because without the positive attitude, the convicts may not readily acquire the skills, and even if they are compelled to learn the skills, they may not value the skills enough to make use of them to earn a living after have been released from prisons.

Bottoms & Macclintock (1973) opined that it is also essential for the staff to obtain the co-operation of the inmates if they are to have any lasting impact on them through the implementation of training plans. Without this, the scholars warned, that the training would be a kind of daily ritual, something being done to make custody more desirable. They further postulate that the staff must strive to obtain appreciation of the offender's attitude. In Great Britain, a report presented by the Home Office Department Secretary to Parliament in November 1969 on Prisons Vocational Training stated that the training would in the long run help an offender only if it is within its capacities, provides skill which will assist in obtaining better

employment on release, and if the offender will have the opportunity, the ability and the determination to find and to retain such employment.

In Kenya, the development of Prisoners Vocational Training Programme started with the establishment of Prison Industrial Training in 1962 under technical services (GOK, 1982). Prisons Act Cap 90 (3) states that the objective of technical services is “to train the inmates in useful skills which can help him or her get a job or employ her/himself after release from prison.” The Prison Standing Orders, on their part, outline that prisoners should be trained in the following trades in the Prison Industries: carpentry, masonry, metal work (blacksmith and tinsmith), tailoring, dress making, welding, spray painting and polishing, mechanic trades, panel beating, electrical trades, electronic repair, cookery, basket making, crocheting, leather work (boots, shoes, belts bags making), shoe shine and repair, upholstery (cushions, sofa, vehicle seats making), wood carving, fitting, sign writing, and fine arts.

According to this document, before a particular prisoner is placed on a specific training, considerations are made based on his or her health, the duration of sentence, the prisoner’s interest, previous professions, and the education level attained before imprisonment. GOK (2008) observed that prison farms and industries are operated under the Revolving Fund established through legal notices numbers 314 of 22<sup>nd</sup> July 1988, and 87 of 8<sup>th</sup> April 1993 to train and rehabilitate prisoners. This is meant to reduce recidivism. However, corruption by the senior prison managers, misappropriation, and mismanagement of resources and funds negates on the attainment of the purposes for which the prison farms and industries were established, the most essential of which is reduction of recidivism (GOK, 2008).

#### **g) Probation Service Orders as a Punishment**

Historically, the probation service as it is known today originated from the efforts of Mr. John Augustus (1785-1859), a Boston shoemaker who in early 1940s accepted to stand bail for petty offenders in exchange of the judges postponing prison sentences. He offered to monitor the offenders and report back to the judges on their behaviour in the community. Charges for the well behaved were dropped while those who continued to deviate proceeded to prisons. Augustus’ efforts resulted into enactment of the first formal probation laws in Massachusetts, US

in 1878, and by 1957 all states in America had enacted the probation laws (Bohm & Halley, 1997).

In Britain, according to GOK (2009), probation service began in 1943 under the Probation of Offenders Ordinance of 1943 which was based on the British ordinance of 1907. The first courses for assistant probation officers were then conducted in 1947 and 1948. By 1954 the Probation Service in Britain was responsible for approved schools and juvenile remand homes which previously had been attached to prisons department. This development of Probation Service was influenced by the need for Juvenile Justice System, and the need to manage offenders outside the Criminal Justice System (Klus, 1998).

Therefore, after its full development and spread world over, Probation Service is now a court awarded penalty in which a convict is set free into his or her community under the supervision of a probation officer who ensures that he or she abides by certain conditions for a specified period of time. The probation officers are specially trained for their work. Based on their training and philosophy, they believe in the capacity of the offenders to change for the better thus are able to facilitate reformation and rehabilitation of such convicts (Robinson, Burke & Millings, 2015).

The Probation Service is one of the Community Based Rehabilitation Strategies whose main objective is to enable the petty offenders to avoid the negative impacts of imprisonment. Because of this, it is always seen as an alternative to imprisonment. In placing the offenders on probation, the court files a probation service order detailing the duration and other conditions of the probation sentence. It then becomes the duty of the Probation officer to ensure that the probationer abides by the conditions of his or her probation until the successful completion of the sentence. One of the most important conditions is the requirement that the offender is not to commit any crime during the time of the probation (Musyoka, 2013). However, if the probationer fails to comply with the probation order, the officer applies for revocation by charging the probationer in court with the offence of violating the probation conditions. If this happens, the offender is sentenced to prisons.

Whether or not a convict can be sentenced to probation service is based on several factors. One, it is dependent on the facts of the offenders' criminal case in question. For instance, in the US, eligibility for probation or parole is based on facts such as use or possession of a gun when

committing a crime (King & Brynn, 2014). The decision is also influenced by the risk a particular offender poses to the society (Milgram, Holsinger, Vannostrand & Alsdof, 2015). On this risk principle, the convicts awarded Probation Service Order are those that require minimal supervision because they are not a danger to public safety, and are less likely to recidivate than those sentenced to prison.

The convicts' criminal history also determines their sentence on probation (Cornish & Whetzel, 2014). For instance, the recidivist convicts are normally sentenced to prisons as they are considered a danger to their society. Further, the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) of 14<sup>th</sup> December 1990 also provide that the decision to put an offender on a noncustodial measure should be based on the nature and gravity of the offence, personality and background of the convict, the purposes of sentencing and the rights of the victims of crime. However, Starr (2015) posits that the offender's risk assessment should not be based on factors such as poverty and other socio-demographic identities of the offenders. The scholar argues that court judgments have considered risk scores based not only on socio-economic and family related disadvantages but also on demographic traits like gender and age. This leads to differential treatment with no merit in reformation and rehabilitation.

The duties of probation officers go beyond Probation Service work of supervising offenders on court orders to rehabilitate them. GOK (2014 a), probation officers work with the offenders, communities and victims of crime. They are trained professionals who employ social work and professional approaches and methods to assess the offenders for court reports and parole boards. For the courts, they prepare Pre-Sentence Reports (PSR) on the offenders' criminal history and other socio-economic details which guide the judges and magistrates before entering rulings and judgments, thus they greatly assist in delivery of justice (Daly & Peck, 2007). Beyond their work with probationers, they also supervise offenders on parole. All these services the probation officers engage in are aimed at reducing recidivism.

The probation officers rehabilitate the convicts through supervision, resettlement, reintegration, counseling, and, where necessary, reconciliation of the offenders and their victims. Probation also strives to secure vocational training and employment opportunities for the offenders in need based on the offenders' capacities and qualifications respectively. In supervision, the probation officer acts as a guide and counselor thus helping the convict to get out of criminality. He or she

ensures that the probationer adheres to the strict supervision guidelines. The probation officers also make sure that the probationers abide by the laws, and do not commit crime during the probation period. In Kenya, this control is achieved by liaising with the area chiefs and the police officers.

But as probation service imposes control, in Britain, Weaver (2014) argues that regulations forced on the offenders by the probation as they seek to decriminalize them are not sufficient to bring about life long change if the officers are not sensitive to the individual offenders' personal priorities, values , aspirations and relationships. This scholar observed that the major challenge facing probation service is staffing. This leads to work overload and delays in commencement in engagement between the convicts and probation officers. This observation is in concurrence with earlier findings of UNICJRI (1997) that absence of the needed personnel, support structures and funds are the greatest impediments to utilization of probation as a noncustodial sentence. Rutter (2015) further established that there is more intense workload for the probation staff while important work assessment tools for risk of recidivism are underutilized due to failure to provide incorporated Information Technology (IT) systems that should be employed for the purpose.

The other technique of enforcement of probation obedience that aims to curtail recidivism is frequent appointment between the probationer and his or her probation officer. This enables the professional to detect any negative changes in the convict and take remedial measures. Besides, in developed countries such as USA and UK, probation surveillance is also conducted by the use of electronic monitoring gadgets such as biometric reporting where finger printing technology is employed to enable the probationer to log on, and access and provide information (Travis, 2015). Nevertheless, it has been observed that the use of such gadgets poses more challenges. For instance, according to Padmore (2015), electronic gadgets cannot deal with the various complex human issues of probationers that require the help of trained probation officers. Some of the problematic issues are occasionally detected by the officers during their face to face interactions with the offenders under their care and must not be officially reported by them.

Counseling by the probation officers assists the offenders to make conscious decisions to discard criminality. This is based on the awareness created in them on the negative effects of crime on themselves and the society in general. Above all, it also assists them to be aware of opportunities open to them for honest living. Cognitive counseling also assists the offenders to

abandon faulty beliefs and attitudes on which criminality may be grounded on. It also empowers the offender to handle internal feelings such as anger, frustrations, despair, and uncontrolled desires that may have led them to crime.

On job placement and training, the Probation Officers can recommend the offenders under their care to potential employers, and for training in government institutes based on their need. This gesture has the potential to prevent recidivism in the offenders who might have gotten in crime because of poverty occasioned by lack of capacities to earn a living by honest means. In the case of the convicts who are drug and substance addicts, the probation officers refer them for treatment in government hospitals. In Kenya for instance, at Nairobi County the probationers with drug dependency problems are always referred to Mathari Mental Hospital which is a government institution for treatment. Finally, reconciliation of the offender with his or her victim by the probation staff is helpful in ensuring acceptance for the probationer by the society. This is a key function in ameliorating the chances of revenge against the offenders by the victims and or their loved ones given that some members of the public do not always consider probation service to be punitive enough for the convicts.

It is important, at this juncture, to point out that control needs and rehabilitation strategies vary from one probationer to another; thus, it is the responsibility of the probation officer to determine what is appropriate. To achieve this, a need and risk assessment is normally conducted to formulate the supervision and treatment plans for each probationer. In addition, Shapland et al. (2012) postulate that for probation service to bear results, there must be a motivating, caring and encouraging relationship demonstrated by the probation officer to the probationer and not merely monitoring and surveillance. The offender should also be engaged in identifying the needs and goals for supervision. The officers must also be in a position to identify what may cause the probationers to reoffend, and work around such factors. The common factors according to these scholars are lack of money, employment, skills or qualifications, drugs and substance abuse and lack of housing. For the offenders' desistance from further criminal activities, supportive relationships with spouses, loved ones and other relatives are equally vital.

Generally, probation service has several merits. For instance, as a community based rehabilitation approach, it assists the offender to avoid the many disadvantages associated with institutional rehabilitation in prisons such as contamination of petty offenders by the hardcore criminals. In

terms of the cost for the government in rehabilitating the convicts, probation is cheaper in comparison to imprisonment. It also assists the offender to avoid stigmatization and labeling normally associated with imprisonment that may lead to recidivism. The offenders on probation also continue with their lives in the community without much interruption. This enables them to offer socio-economic and emotional support to their families and loved ones. On top of these, by rehabilitating petty offenders in the society, probation also helps in the decongestion of prison institutions. Despite these advantages of probation service, O'Beirne, Denney and Gabe (2004) posit that probation officers fear dealing with probationers who commit violent offences. They also fear visiting isolated estates to see probationers, and they dread when violent probationers establish where they live. This fear of danger is a serious challenge in the work of probation officers.

#### **h) Probation Service in Kenya**

According to GOK (2009), the history of Probation in Kenya dates back to 1943 when the Peterson Commission recommended to the British Colonial Government that probation service should be established. Kenya Probation Service therefore owes its origin to the Probation Ordinance in Britain, and it became operational in 1946. It resulted out of a desire to solve the problem of congestion in prison institutions, and during its formative stages, it was confined to the then Nairobi Municipality and it only handled juveniles and women offenders.

Administratively, the probation service in Kenya is currently headed by the Director of Probation Service assisted by two Deputies and several senior Probation officers. The counties are headed by the Assistant Directors while the sub-counties are under Chief Probation Officers. In total, there are about six hundred and fifty (650) probation officers and five hundred (500) support staff (Okech, 2015). Over the years, Probation has been under different ministries with minimal changes on its statutes. Its services have grown and expanded from Nairobi where it began to all parts of the country; currently, there is a probation department in all the courts in the country.

Probation Service mainly draws its mandate from the Probation of Offenders Act Cap 64 Laws of Kenya, and the Community Service Order Act (No. 10 of 1998). However, because probation officers deal with broad categories of offenders such as juveniles, the mentally sick, convicted prisoners, and also due to the fact that their work overlaps to other agencies, there are other

relevant laws that guide probation service in Kenya. These laws are the Prisons Act Cap 90 laws of Kenya, the Borstal Institutions Act Cap 92, the Mental Health Act Cap 248, the Children's Act of 2001, the Penal Code Cap 63, and the Criminal Procedure Code Cap 75 Laws of Kenya.

In Kenya, like in other jurisdictions, the duties of probation officers include conducting investigations on the background of offenders, and compiling and submitting of reports on the same in courts of law. These reports guide the judges and magistrates in their rulings and judgments in the cases over the convicts. However, the core function of probation in Kenya is in reformation and rehabilitation of convicts. As a punishment, the law in Kenya allows the courts to sentence offenders to serve a minimum of six months and a maximum of three years after considering salient issues in the pre-sentence investigation reports prepared by the probation staff, and the evidence adduced in courts. This process of rehabilitation involves supervision of offenders serving noncustodial sentences, reconciliation of the convicts and the victims of their crimes, and integration of an offender in the community. The offenders occasionally interact with the probation officer who ensures compliance with the probation conditions, and implements the rehabilitation plan.

According to Okwara (2013), in Kenya, Probation as a government agency involved in the administration of criminal justice, is specifically charged with the responsibility of implementing correctional services within the community. To this end, it ensures crime prevention, peace building and conflict resolution. She postulates that Probation rehabilitates offenders through social modeling, problem solving, counseling and functional family therapy. GOK (2011 b) posit that the success in rehabilitation depends heavily on the ability to consistently and reliably categorize the offenders based on their needs such that those with special needs can be identified and given appropriate services. The special needs offenders deserve extra rehabilitation strategies in order to prevent recidivism. Such strategies may be sex offenders' treatment programmes, drug and alcohol treatment, and anger management.

According to GOK (2006 a), probation in Kenya go an extra mile in rehabilitating juvenile offenders by offering them material assistance such as school uniforms and miscellaneous fees for those in school. They are also given admission in technical and vocational institutions; those with skills are provided with tools as well as being assisted to start small-scale businesses; or

encouraged to be self-employed. Probation also empowers women convicts by assisting them to set up income generating projects such as selling groceries, operating kiosks, tailoring and dressmaking among others to prevent their recidivation. For the probationers who come from the home environments that are hostile to their proper rehabilitation, they are normally taken into institutions called Probation Hostels that are run by the Kenya Probation Service. The hostels are places of temporary residence for probationers as probation officers make efforts to have them accepted and resettled at home. In Kenya, there are five (5) probation hostels with a capacity of over two hundred (200) residents. Only one of the hostels is for females. These hostels are Kimomo Junior and Senior hostels in Eldoret, Shanzu hostel in Mombasa, Makadara Boys hostel in Nairobi, Nakuru girls' hostel in Nakuru County, and Siaya hostel in Siaya County (Okech, 2015).

#### **i) Problems facing Probation Service in Kenya**

As discussed earlier, the work of probation officers is broad and involving. For instance, they supervise offenders who have been placed under them by the courts as an alternative to imprisonment, and, at the same time, conduct social investigations for the pre-sentence reports. To achieve the objectives, probation officers must therefore handle complex paperwork that demands a lot of time, as well as handle huge caseloads. Their daily work is thus characterized by strain and stress that often result into burn out.

According to Hannah (2012), the probation service in Kenya is also stretched and has limited resources to supervise work placements. This makes the effectiveness of this form of punishment in Kenya uncertain and ineffective thus leading to recidivism. To Okech, (2015), the main challenges facing probation service in Kenya include absconding by the probationers, recidivism, poor supervision, and inadequate resources. The researcher observes that supervision of convicts on short sentences against inadequate personnel and finances is a major problem. Lack of offender reentry programmes also negates rehabilitation through probation. The situation is made worse by the presence of few probation hostels in the country, lack of halfway homes, and weak legislative support. In concurrence, Aben, (2011) established that inadequate resources, lack of co-operation from the offenders and lack of rehabilitation facilities for drug convicts were the major challenges facing probation service in Kilifi County. The difficult probationers who do not

cooperate with the probation officers become recidivists since they end up not benefiting from the rehabilitation measures on offer.

Inadequate financial resources are caused by insufficient funding from the exchequer. This may result in probation service officers lacking resources that would help them to conduct visits for social inquiry reports. In the end, the resultant reports may be incorrect in content thus misleading the courts. High caseloads for individual officers due to understaffing also lead to poor and insufficient work quality in terms of pre-sentence investigation reports and convicts' supervision.

Finally, in Kenya, among the other impediments to the success of probation according to Okoth-Opondi (nd) is the problem of corruption. This may take the form of some probation officers colluding with criminals to write fake social inquiry reports favourable for noncustodial sentences. These probation officers and magistrates benefit themselves from such deals which, in the end, make hardcore offenders such as robbers, manslaughter suspects, and violent convicts to benefit from noncustodial sentences like probation. When such offenders are not adequately punished, thus not deterred; they may become serial recidivists.

Another challenge that has been generally observed is that probation service has always been underutilized in many countries. For instance, in Nigeria, Yekini & Salisu (2013) argue that probation has not been fully employed since most courts find it more suitable to send offenders to jails. This calls for an awareness campaign among the judiciary and the prosecutions on the benefits of community based treatment approaches.

#### **j) Community Service Orders as a Penalty**

Community Service Order (CSO) is a punishment where a person found guilty of a criminal offence is directed by the courts to perform unpaid work for the benefit of the community (GOK&UNAFRIC, 2011). According to Klus (1998), though unpaid work and reparative sanctions have a long history, it was not until 1966 that community service was first employed as criminal punishment for drunk drivers in the USA, and by mid-1970s' it was extended to the rehabilitation of juveniles. In Germany, CSO began in 1969, while in England and Wales in mid-1970's where the penalty became popular in preventing the negatives of short term

imprisonment. Across Europe, CSO was instituted in Italy in 1980, Portugal 1983, Norway, France and Denmark 1984, and in the Netherlands it was introduced in 1989 as a court-awarded sanction. As an alternative to imprisonment, CSO became popular as a means of enabling offenders to restore the damage done to the society as it presented a message to the offenders that crime had a public consequence. In Sri Lanka, according to Sugihara et al. (1994), it was first introduced in 1973 by the administrative of justice law of No 44.

In Kenya, GOK&UNIAFRI (2011) opine that the precursor of CSO was Extra-Mural Penal Employment (EMPE) which was provided for by the prisons Act Cap 90 and supervised by the prison officers. Hence the offender was sentenced to work in a public institution for a period of time not exceeding six months under the supervision of a prison officer. However, because prison work is institution based, the prison department could not supervise the offenders effectively. This prompted EMPE to be managed by the provincial administration, particularly the chief who took charge of supervising the offenders sentenced to work in their locations.

But even under the chiefs, the problem of supervision worsened because they had other responsibilities and were also not trained in the management of such offenders thus could not keep track of the convicts. Some provincial administrators also abused EMPE by making convicts to work in private enterprises which brought disquiet from the public. This resentment by the public and reluctance of the judiciary to sentence offenders to EMPE made the prisons population to bulge leading to outbreak of diseases due to poor living conditions that attracted international outcry.

In response, the government began to explore ways of dealing with the problem through the engagement of Penal Reforms International (PRI) and the African Network for Prevention and Protection of Child Abuse and Neglect (ANPPCAN). These two bodies organized a symposium in 1995 to discuss ways of improving EMPE and provide a way forward in dealing with petty offenders in Kenya. The results of the deliberations and a recommendation of a task force appointed by the Attorney General saw the enactment the CSO Act in 1998 by parliament.

Thus in Kenya CSO draws its mandate from the Community Service Act, the Probation Act CAP 64 and the penal code CAP 63. Under CSO, an offender is required to perform communal manual work in public places such as hospitals, schools, government offices and other

government institutions (Musyoka, 2013). The manual works normally performed by the convicts include cutting grass and cleaning public buildings. As they offer services to the community, the offenders are usually supervised by the probation officers. The CSO sentence duration must not exceed three (3) years. The punishment is usually imposed on offenders convicted of minor offences such as being drunk and disorderly, trespass, common assaults and creating disturbances (Senna & Siegel 1993). According to Hannah (2012), the use of this form of punishment has increased in Kenya with the conviction of 3,000 offenders in 1990 to 55,000 in 1997.

The punishment has benefits to the society and the individual convict. For instance, rehabilitation of the petty offenders in the community is cheaper compared to imprisonment. It also assists in decongesting prison institutions, and helps prevent contamination of petty offenders by hardcore felons in prison, which reduces the chances of recidivism. CSO is also a form of reparation to the society where the offenders are given the opportunity to pay back to the community for the injuries inflicted upon it, as they also reconcile with the victims of their crimes. Klus (1998) postulates that community is a victim in crimes thus in CSO the offenders are offered the opportunity for reparation and retribution 'in kind'.

Another benefit is that the offender maintains family ties, and supports their loved ones (GOK&UNAFRI 2011; Omondi, 2015). CSO also discourages criminality, for instance, according to the report of Community Service Advisory Committee of the Municipality of Middlesex Centre (2013), by making the offenders to work in public for free is painful, lowers the dignity of the offenders, makes the offenders to get reformed, and discourages recidivism.

However, the major challenges facing Community Service Oder, according to Hannah (2012), is that the public take it as well as probation as lesser punishments to the offenders. This may make society members not to appreciate convicts in their midst. Another challenge established by Hannah (2012) is that it is not easy to find work which develops the convicts' skills for the job market. This implies that after serving on CSO, the convicts are not assisted to acquire employment opportunities which may lead to recidivism.

### **k) Fines as Punishment**

A fine is a sum of money an offender is required to pay to the authorities as a penalty for their criminal activities. It is a court-awarded penalty where a convict is ordered to pay a specific amount of money to the state. In this kind of penalty, there is a minimum intervention in the offender's life by the state (Zveki'c, 1994). As an alternative to imprisonment, it is the most common form of punishment usually for minor offences. For instance, according to Adeyemi (1994), in Nigeria in 1988, the Magistrates courts employed fines more frequently than any other forms of punishment at 46.5%, while the District courts' tally stood at 67.0%. The amount usually paid as a fine is normally set by a court but there are statutory limits as the penal codes specify the minimum or the maximum fines payable in various crimes. Fines can be paid as alternative to imprisonment or can be combined with it.

As a punishment, one of the main merits of a fine is that it is economical in that it does not cost the government much expense to administer (Zveki'c, 1994). Fines also generate revenue that can be used by the state to offset the cost of operating the judicial system. It also does not stigmatize the offenders or their families, and can help the offender to avoid the negative effects of imprisonment, such as loss of employment (Cole, Mahoney & Hanson, 1987). A fine is also the only punishment available where an organization, rather than an individual, has broken the law.

However, the disadvantage of a fine is that its application may be discriminative against the poor who may not afford to pay compared to the affluent offenders. In this case, the poor offenders always head to prisons as an alternative thus suffer demerits associated with prisons (Zveki'c, 1994). As a rehabilitation tool, fines also have little impact on the rich convicts who may not feel the intended financial pain thus may have no reason not to recidivate. According to Nicholson (1994), the other weaknesses of fines lie in the possibility of payment by a third person such as a friend or relative to the convict. This would obviously deny the offender the intended impact thus may not be deterred from committing more crimes in future. Recidivism may also be as a result of the convicts resorting to more crime in order to get back the money paid as a fine.

### **l) Victim Compensation and Restitution**

Restitution refers to giving back an equivalent of a loss or damage or injury to the victim of a crime. In CJS, restitution is a court-ordered payment made by a convict to the victim of his or her crime for the harm caused by a criminal activity (Reid, 1994). According to Zveki'c (1994), restitution is one of the compensatory payments which in many countries are imposed as conditional sentences. He observes that compensation applies in criminal matters while in civil matters it is restitution.

The use of restitution is widespread all over the world. In Colombia, there is a mandatory victims' restitution Act which requires the convicts of federal crimes involving property to give back any property taken, or if return is impossible, then to pay for the victims' loss (Hill, 2013). In the US, according to Harris, Kaminska and Springer (2013) restitution is one of the various types of financial penalties for the white collar offenders. In Kenya, KPS and IED (2005) posit that the penal code empowers the court to order the convict to compensate the victim of his or her crime for the injury caused.

According to Tuckness (2010), the purpose of restitution is to restore the state that existed before the damage occasioned by the crime. In awarding restitution, the courts quantify the loss the crime victims have suffered, in the end this compensation to the victims becomes a loss to the convict which should make him or her to desist from committing crimes in future (Asner & Thornson 2013; Levin & Ramachandran, 2013). However, the weakness of restitution or offender compensation is that, like fines, someone else can assist the convict to pay. For instance, when the offender is a juvenile, restitution payment is made by the parents thus negating on its effect which may result into recidivism.

### **m) Convicts' Forfeiture of Property**

As a punishment, forfeiture of property is a court-ordered relinquishment of money or assets by a convict without compensation. It is a kind of punishment where a court gives a government the power to take over a property which is connected to a criminal activity after a convict has been found guilty. Forfeiture of property wrongfully acquired or used has existed since ancient times and can be traced in the old testament of the bible. For instance, Ezra Chapter 10.8 states "that anybody who fails to appear within three days would forfeit all his property in accordance with

the decision of the officials and the elders”. Exodus 21:28, on its part states that if an ox gore a man or woman to death the ox shall be confiscated and stoned to death and its meat shall not be eaten (Rothman & Schwarcz, 1993; Takata, 2004) .

Currently, in many jurisdictions, the laws guaranteeing forfeiture are in place. Such laws allow the states to seize assets acquired through criminal activities such as fraud, money laundering, drug trafficking and illegal trade in fire arms among others. In the USA, according to Siegel (1983) the policy of forfeiture stipulates that any car, house, boat or aircraft found to contain illegal drugs must be forfeited and put on auction. The US coast guard laws additionally stipulate a zero-tolerance approach such that any trace of narcotics, even a tenth of an ounce found on board of a million-dollar worth yacht could result in forfeiture of the yacht. In relation to the punishment of drug and substance offenders, forfeiture has been encouraged by the 1988 UN Convention against Illicit Trafficking Narcotic Drugs and Psychotropic substances.

In Kenya, CAP 59 of the preservation of organized crimes Act of 2010 legalizes the forfeiture of property of organized criminal groups. This act empowers the court to order forfeiture of any money or property gained from or used to perpetuate an organized crime. On its part, the land commission Act of 2012, outlines that any land acquired through corrupt means would be forfeited to the government. Section 29 of the penal code Cap 63 also allows the court to impose forfeiture of property as additional penalty to individuals convicted under section 118 and 119 which outlaws receiving or obtaining a property to conceal or withhold evidence about a felony. On his part, Zveki’c (1994) observes that forfeiture is normally employed as an additional sanction, and not independent penal sanction. This means a convict can be sentenced to prisons and his or her property confiscated.

The aim of forfeiture of property is to disrupt criminal activities of a convict by confiscating assets that might have been acquired by criminal means. It aims to weaken the economic position of the convict to disenable him or her from continuing with more criminal activities in future thus preventing recidivism. Further to this, because some offenders are motivated by greed for acquisition of material wealth, forfeiture can be dissuasion to them if they know that such illegally acquired properties will be taken away from them. The assets forfeited can also be sold by the government and the proceeds used to fight crime in the country. However, if employed as an independent penalty, forfeiture of assets like other financial sanctions such as fines may not

discourage the exceedingly rich offenders who may continue with criminal activities thus become recidivists.

#### **n) Diversion and other forms of Punishment for Misdemeanours**

For minor offences, the magistrates may make various orders that in the public eye may not amount to punishment. For instance, courts may conditionally discharge the offenders. Here the convict is released on certain conditions and for a specific period. Failure to abide by the conditions would lead the convict to be returned to court for another form of punishment. The security to keep peace and be of good behaviour that is normally ordered by the courts to the convicts is a form of conditional release.

The courts may also order the convict to reconcile with the victim of his or her criminal activity. In Kenya, under the criminal procedure Code, section 176, trial court is mandated to seek effective reconciliation between the accused person and the victim of their crimes. This may require a stay of proceedings before conviction (Musyoka, 2013). In case of a traffic offence related to driving, the courts may disqualify the convict from driving as a punishment. This form of punishment is normally imposed on offenders who cause death by dangerous driving; reckless drivers; and those convicted of driving under the influence of alcohol. The foreign offenders may also be deported as a punishment. This may be in addition to any other sentence. For instance, a foreigner may be deported after the completion of his or her prison term. In this case, the order is made to the minister in charge of immigration to deport the convict.

However, diversion has also been applied in the treatment of petty offenders and juveniles. It is diverting the offender from the Criminal Justice System particularly prisons, and channeling him or her into, for example, a social welfare agency (Reid, 1994; Siegel, 2006). Diversion may be applied at various stages of handling an offender within the CJS but is most frequently employed prior to adjudication of a case (Bohm & Halley, 1997). For instance, a police officer who has arrested a petty offender can apply diversion by warning or cautioning him or her never to repeat the same offence, then set the offender free. Diversion can also take place after the offender has been presented at the court of law when the prosecutor who has all the information relating to the offence and evidence withdraws the case and requests the magistrate that the offender should not be punished but be warned never to repeat that offence. Also at the court level, the judge or

magistrate after having heard the case in which the convict has been proved guilty can discharge him or her unconditionally with a warning that a repeat of that offence will lead to a severe penalty. These are diversion of adjudicated offenders who have been found guilty.

According to Champion, (2007) the logistical benefits and functions of diversion include its role in reducing the case load for the courts and the probation staff. For the courts, this is true when the offenders are diverted at the police level. Diversion also helps to prevent institutionalization of offenders, which may cause recidivism. However, one serious weakness of diversion is that it may be considered by the concerned offenders to be too lenient thus non-deterrent, and may lead to recidivism.

### **2.1.8 Rehabilitation requirements for Different offenders**

There are various types of offenders with different reformation and rehabilitation needs. These are sex offenders, property related offenders, drugs and substance offenders, violent offenders, and psychopathic offenders. The punishments offered to these offenders should be infused with the correct strategies that would ensure that they are reformed and rehabilitated back into their communities as law abiding citizens. Below is a discussion of the experts' opinions on the rehabilitative needs of these varied types of offenders.

#### **a) Reformation and rehabilitation techniques for Sex offenders**

Though sex offences are distinct, sex offenders are at times categorized as violent offenders. According to Soothill (2010), sex offending is perverse and some go undetected thus controlling it requires a multi-prong approach beyond the criminal justice solutions. This category of offences violates another person's sexual rights and encompasses the common predatory crimes such as rape, indecent (sexual) assault and pedophilia. Other sex crimes include incest, sodomy, bestiality (zoophilia), prostitution (in some jurisdictions), bigamy, necrophilia, exhibitionism, and sex slavery among many others (Soothill, 2010). In Kenya, GOK (2006 b) lists the following as sexual offences: defilement, rape, incest, child pornography, prostitution, promotion of sexual offences with a child, child prostitution, child sex tourism, sexual harassment, and deliberate transmission of HIV. An attempt to commit these crimes is also a criminal offence.

According to Freudian explanations, some of these crimes are caused by arrested psychological development or regression to childhood forms of sexual arousal. Some sex criminals are also disturbed or inadequate individuals who cannot form satisfactory relationships. However, the fertile ground for the development of sexual offending is an unfavorable family background of abuse and neglect (Hanson & Morton-Bourgon, 2004). When individuals were not properly nurtured and guided, it may lead to problems in social functioning depicted by mistrust, hostility, and insecure attachment. In turn, these may be associated with social rejection, loneliness, neglect, and negative peer associations and delinquent behaviour. Under these conditions, pervasive intimacy which may be adversarial for a normal sex life may develop. Additionally, negative beliefs that condone non-consenting sex also contribute to sex crime among individuals. However, sex crime offenders do not have any noticeable difference from the general population (Hanson & Morton-Bourgon, 2004).

The oldest form of punishment to sex offenders in history has been castration. This form of punishment or treatment has been in use since 1500 BC. However, because it was seen as barbaric and cruel, castration was mostly applied as a last resort on offenders with severe mental abnormalities (BMJ, 1955). This form of punishment has continued to date as a means of permanently incapacitating the offender from sexual intercourse so as to prevent him or her from future sex crimes. Thus, chemical as well as physical castration of sex offenders is considered to be a danger to society and has continued to date in some jurisdictions under a legal framework referred to as protective treatment and is seen to be the answer to the public fear of pedophiles and other sex criminals such as rapists (Hall, 2014; Beech & Grubin, 2010). This is because sex offenders are the most feared and despised (Rickert, 2010). Because of this perceived potential danger of sex offenders to the community, in the US, there is legislation empowering the authorities to continue detaining the sex offenders considered dangerous beyond the expiry of their sentences (Yung, 2011; Miller, 2010).

Also, several laws have further been developed to incapacitate sexual offenders. These are the laws requiring that the community members are notified where sexual offenders live, and the sexual offenders' registration laws which require that sexual offenders notify the police of their residential locations and places of employment for tracking and monitoring purposes (Prescott

&Rockoff, 2011). The laws aim to prevent these offenders from attacking local victims such as their neighbours. According to Agan (2011), the sex offender registration laws in the US reduce recidivism through target hardening where potential victims increase their safety precautions or through increased police monitoring. Additionally, as the theory of ‘distance decay’ posits that offenders are more likely to recidivate closer home, the statutes do also seek to distance the sex offenders from the potential child victims (Berenson & Appelbaum, 2011). However, in Kenya, according to Sexual Offences Act, the most severe form of punishment for sex crimes is life imprisonment as castration of sex offence convicts is not allowed by the statutes.

Cognitive Behavioural Approaches for treatment or rehabilitation of sex offenders is one of the techniques that are effective in reducing recidivism of offenders with deficient moral reasoning (Lipsay, Chapman & Ladenberger, 2001). This technique focuses on changing the thinking pattern related to sexual offending and deviant sexual behaviour in the offenders, and can only be employed by trained experts. Another vital technique in rehabilitation of sex offenders under cognitive approaches is psycho-educational approach which focuses on, among others, inculcating in the offenders empathy for the victims while also teaching them to take responsibility for their sexual offences.

The Cognitive Behavioural Approaches or Treatment also assists in training the offenders how to manage their sexual emotions. Counseling therapy is also used under this technique to create awareness in the offenders on their underlying problems so as to instigate change in behaviour. Counseling therapy can be applied to individual offenders or similar group of offenders such as exhibitionists. Other than Cognitive Behavioural Treatment, pharmacological approach is also employed in rehabilitation of sex offenders (Kington, Yates & Firestone, 2012). This involves the use of medicines such as serotonergic, antiandrogen and antidepressants to reduce libido in the offenders. It is expected that the reduced libido will incapacitate the sex offender from reoffending.

However, application of any strategies meant to rehabilitate sex offenders must begin with diagnostic assessment and tests which are psychologically oriented to ascertain the root cause of the sexual deviation – such as personality disorder – in the offender. These assessments and tests should be conducted by competent psychologists or psychiatrists who also collect clinical information to ascertain the cause of the sex crime in the offender. The assessment methods include a clinical interview and administration of psychological scales. The clinically relevant data can be collected from previous medical reports, family members, social workers, public administrators, the police, and prisons records on previous arrests.

In conclusion, whereas majority of the sex offenders are always rehabilitated while in prison custody, Hanvey (2011) established that sex offender's treatment programmes in prison can be highly effective, but their impact is lost due to social isolation which the offender is subjected to once discharged into the community. The loneness, he asserts, can lead to reoffending. This observation calls for a balance on the restrictions and isolation such offenders are subjected to. Further, Soothill (2010) advises that for rehabilitation of this category of offenders to succeed, sex offending should much more be handled as a public health issue, and not only as a criminal justice concern deserving of severe punishment. This should involve professional expertise from medicine, epidemiology, psychology, sociology, criminology, education and economics, and be focused on the general well-being and safety of the community in general rather than being overly concerned with the individual offender.

#### **b) Reformation and Rehabilitation of Property-related Offenders**

Property-related offenders execute crimes against property. These are offences that involve unlawful acquirement or damage of property. The common property acquisition crimes are theft; pick pocketing, burglary, forgery, obtaining money or property by false pretences, shop lifting, misappropriation of public funds, bribery and other types of corruption and economic crimes. The property related offenders are in two major categories: the poor who commit crime to survive and the not so poor who involve themselves in criminal activities due to greed (Omboto, 2013 b). These two categories of offenders require different rehabilitation strategies.

Those who commit crimes for survival can benefit from vocational training programme me to equip them with skills to earn a living to prevent recidivism. This, in some countries like the US, is mostly operated as part of inmates' job assignments (Bohm& Halley, 1997). Prison Vocational Training Programmes provide this category of inmates with job skills that will improve their marketability upon release. The other strategy for rehabilitating this category of offenders is provision of education since some of them have very low education levels. These two techniques are vital for their reformation and rehabilitation given that recidivism rate is high among such offenders who fail to participate in education and training programmes in prisons (Bohm& Halley, 1997).In Kenya, prisoners 'vocational training programme is enshrined in the Prisons Act Cap 90, and the Prison Standing Orders. The trades under this programme as per these documents include carpentry, masonry, metal work (blacksmith and tinsmith), tailoring, dress making, welding, spray painting and polishing, mechanic trades, panel beating, electrical trades, electronic repair, cookery, basket making, crocheting, leather work (boots, shoes, belts bags making), shoe shining and repair, upholstery (cushions, sofa, vehicle seats making), wood carving, fitting, sign writing, and fine arts.

However, for the property offenders driven by greed for material wealth, counseling offered by competent counselors and engagement in religious soul searching by religious leader may be of help. If these offenders are counselled on the vanity of excessive accumulation of material wealth, more so, through unlawful means, they may change their attitude and detest Mahatma Gandhi's seven social evils, among them "*wealth without work*" (Omboto, 2013 b). This rehabilitation approach, among others, can also be of help to the morality offenders such as prostitutes.

### **c) Reformation and rehabilitation of Drugs and Substance Offenders**

Drug and substance offenders exist in two broad categories that require distinct strategies to rehabilitate. The first group is those convicts whose crimes are acquisition and abuse of illegal drugs and substances. The other is those offenders whose crime is possession and or smuggling of such illegal drugs and substances (Omboto, 2010; Tiger, 2011).Nonetheless, rehabilitation of drug and substance offenders is vital in reducing crime rate. This is based on the fact that it had been established that drugs and substance abuse influences commission of criminal activities by

offenders. In USA, for instance, Bohm and Harley (1997) established that almost half of the inmates in prisons had committed their crimes under the influence of drugs, while about 78% of the prison inmates reported to have used illegal drugs in their life with 58% admitting to be regular users outside prison.

Additionally, adult prisoners convicted of drug offences were about 68% thus drug violations were the major reason for the large prison population growth in the United States both in the 1980s and 1990s. Further, Walters (2012) established that more than half of the convicts 'population in US has a history of serious substance abuse or dependency. In Great Britain, Tiger (2011) observed that alcohol and drugs are the major causes of contact between the offenders and CJS either directly or indirectly. This is because a large number of offenders engage in criminal activities to sustain their involvement in illegal drug use. In Kenya, effective rehabilitation of drug and substance offenders is an urgent and challenging concern given that various empirical studies such as Omboto (2010) have shown that the vice is rife in the general society and prison institutions themselves.

Treatment programmes for drug and substance abuse offenders can take place both within the correction institutions and in the communities. The strategies that can be applied within the institutions include group counseling and self-help groups for a group of offenders who abuse drugs and substances, and intensive therapy for individual offenders. The other prison based drug problems treatments comprise the inpatient treatment programmes that are pharmacological in nature. This begins with detoxification of new convicts sentenced to prisons which should be mandatory in treating drug induced withdrawal problems. Another strategy is drug awareness creation which involves giving information on the negative impacts of drugs such as addiction, diseases, financial and social implications such as divorce, separation loss of friends among others. Counseling and awareness creation model is more preferred by those who see addiction to drugs as a social problem for which medical treatment alone would only be partially successful.

However, another technique that is comprehensive and commonly applied in the communities is therapeutic community technique (Tiger, 2011). This is a programme that requires that a drug abuser remains in treatment for a long period of time ranging from several months to a few years.

It also focuses on transforming the personality of the addict since drug abuse is seen as a sign of a larger problem within the individual, which must be treated. The treatment administration is intense and involves encounter groups made up of people who have experienced similar problems in the past and overcame.

These people are expected to assist in resolving the offenders' resistance so as to ensure no relapse during and after treatment. Additional strategies employed in the therapeutic community technique include counseling and education which are expected to create awareness in the offenders on the potential dangers they face among others. Pharmaco-therapies, a combination of medicine and counseling, is also normally employed. In this strategy, the offender is treated with medicines and counseling therapies at the same time (Tiger, (2011). However, for those convicted of smuggling drugs and substances, education and creation of awareness by trained and competent rehabilitation officers on the dangers of these activities to individuals and the society will suffice.

#### **d) Reformation and Rehabilitation of Violent Offenders**

Violent and aggressive offenders are those convicted of criminal charges of violence against other individuals. These convicts normally commit crimes such as assaults, grievous bodily harms, homicide, kidnapping, and rape among others (Kathryn, 1999). The personal characteristics of these offenders include lack of self-control and presence of impulsivity as they are normally unable to control themselves when they are annoyed. A good number of these convicts also suffer from personality disorders as they are people of unpredictable personality. On this, Kathryn, (1999) posits that 'cognitive distortions' are responsible for criminality in violent offenders. This violence also emanates from the fact that they have uncontrollable anger and are hostile in nature.

Most of these offenders are also psychopathic; that is, they suffer from severe mental disorders characterized by lack of remorse, lack a sense of guilt and inability to empathize with others (Kathryn, (1999). Confirming this characteristic of violent offenders, Tengstrom, Grann, Langston and Kullgreen (2000) posit that mental sickness particularly schizophrenia has been associated with violent offenders. In concurrence, Hodgins (2008) observes that massive evidence indicate that people suffering from schizophrenia are more at risk to engage in violence

towards others compared to the general populations. Further, Jarvinen (1977) had earlier established that people guilty of grave violence present problems which are primarily psychological and psychiatric in nature. The scholar established that such offenders suffer from psychic disintegration and display “narcissism wounded self-esteem, paranoia and splitting”.

These offenders also suffer from poor interpersonal problem solving capacity (Hodgins, 2008). Thus, they are normally confrontational which lead to violent crimes should situations of interpersonal differences arise. In these cases, they may end up injuring others, or at worst committing murder. Many of these offenders are also known to abuse drugs and substances which may be the cause of their mental sicknesses. These offenders also prefer solitude; this is because they do not fit well in the community. In most cases they choice to be on their own because they are unable to socialize with other people. Another marked characteristic of these offenders is that they also usually blame others for the consequences of their violent actions, and see themselves the victims and not the offender (Jarvinen, 1977). In most cases, they have weapons at their proposal which they use to execute their crimes and to defend themselves. Most of these offenders also have low education level and they lack vocational training. In prisons and other penal institutions, they have a high level of indiscipline cases.

The rehabilitation strategies which suit these offenders are varied but before a measure is employed it is first of all important for the rehabilitation officers to understand the causes of aggression and violence in the offenders. Depending on the established underlying causes, the following strategies have been employed in the rehabilitation of such offenders. First and foremost, pharmacological intervention is vital for the offenders suffering from mental illness. This is in the realm of psychiatry and it involves trained medical doctors who prescribe psychotropic medications. This can be done in prison medical wards or such offenders can be admitted in civilian mental hospitals for psychiatric care. Similarly, drugs and substance abuse treatment is recommended for convicts who cause of their criminality is embedded on abuse of drugs and substances.

Psychological interventions are useful in rehabilitation of violent offenders. These include psychotherapy such as individual therapies where the individual violent offender is confronted on his or her violent tendency and is counseled. Psychological counseling offered by trained

counselors is also vital for this kind of offenders. Here the counselors guide and teach the offenders on how to handle their anger and high tempers. Family therapy is also useful to violent offender in the community. Under it, close family members counsel the offenders with whom they live while on probation service against violence (Kathryn, 1999).

Lipsay, Chapman & Ladenberger, (2001) posits that another psychological intervention important for violent offenders is training on social skills to reduce aggressive behaviour (Kathryn (1999)). For instance, self-regulation training to impart skills for anger management such as stress inoculation and deep breathing as relaxation training during strain and stress are vital in controlling anger that would lead to aggressive behaviour. Other skills that should be imparted are social interaction skills, problem solving skills and or cognitive coping skills. Imitation and modeling, also a psychological technique used to modify behaviour can similarly be employed. It involves advising and encouraging the individual offenders to imitate well behaved and successful members of the society who are not violent.

According to Lipsay, Chapman & Ladenberger, (2001) and Kathryn (1999), cognitive Behavioral Therapy is also another vital technique in reformation and rehabilitation of violent and aggressive convicts. It is based on the psychological theories of crime which posit that offending behaviour is linked to inadequate thinking skills such as problem solving, moral reasoning, cognitive style, self-control and the like. Under it are calisthenics and advice intended to change dysfunctional thinking pattern in the offenders. Cognitive therapy focuses majorly on interpersonal relationships, feelings of entitlement, self-justification, transferring blame and impractical expectations about outcomes of antisocial behaviour. It empowers the convicts to be conscious of the existence of dysfunctional thought patterns or negative thinking, attitudes, expectations and beliefs in them, and to know how these negatives contribute to their criminality.

Education and provision of vocational skills are also vital in reformation and rehabilitation of aggressive and violent offenders (Tewkbury, 1997). For instance, if they are educated on the risks and disadvantages of their perilous crimes such as being injured or injuring and/or killing others or being killed, they may desist from violent crimes. The educational programmes should be provided to enable offenders to understand how their crime affects the society. On the other

hand, provision of provisional skills to these offenders on which they can rely on to get their basic needs is equally helpful because people who cannot afford the basic needs can turn aggressive. Finally, deterrent punishment meted out on the violent offenders for their offences can also prevent them from reoffending.

#### **e) Reformation and Rehabilitation of Psychopathic Offenders**

Criminal psychopaths are offenders who are mentally sick or suffer from psychological problems. Mental disorder is best understood as a behavioural disorder diagnosed on the basis of behavioural indicators such as perceptions, thoughts, desires, feelings, moods and actions (Morse, 2011). The treatment of the mentally disordered offenders within the Criminal Justice System is governed by the McNaghten rule and they are normally handled by the Criminal Justice Personnel and the medical professionals.

At trial, where the court suspects or is informed that the offender before it is suffering from mental illness, it orders for psychiatric evaluation tests to ascertain the truth (ABA, 2010). Even though this class of criminals may be guilty of offences committed, they do have the mental disease as their defense, therefore, they are viewed as not worthy of punishment. Because of this, psychopathic convicts are normally committed to mental health facilities for psychiatric treatment. They may also be confined to prisons for the same purpose, and to protect the general society from their violent tendencies, and to protect them from the society members who may, in ignorance, harm them if offended.

Because psychopaths are four to eight times more likely to be violent recidivists compared to non-psychopaths (Kiehl & Hoffman, 2011), they may commit crimes such as murder, assault, rape, and destruction of property. For instance, pyromaniacs - the mentally sick people who cannot resist setting fires – are prone to arson. These criminal and violent behaviours are a function of their pathology (Rice & Harris, 1992). Thus rehabilitation of offenders with mental sickness should begin with treatment of their mental pathology. This is in addressing the many behavioural, cognitive and emotional symptoms that they present. According to Friedrich (1998) this involves techniques such as psychotherapy, behaviour modification, educational measures and pharmacological treatment.

In concurrence, Morgan et.al (2012) posit that psychiatric rehabilitation should include social and educational services, supportive community interventions, substance abuse treatment and family support services for positive outcomes to be realized. However, as the mentally derailed offenders receive treatment for their mental sickness, they should also receive extra treatment apparatus to provide them with skills for independent living, and skills necessary for prevention of further hostile or other violent criminality.

Given that proper mental health treatment and care may not be readily available in general prisons, and, if available, may only be suitable for management of acute conditions (Gagliard, Lovewell, Peterson & Jamelka, 2004), these offenders are normally admitted for specialized inpatient care in mental hospitals outside prison institutions. For instance, in Kenya this is normally at Mathari Mental Hospital Maximum Security Unit. However, those who do not pose serious dangers to the public and those on the road to recovery can also receive specialized community care, where they take drugs in the community (at home). Nonetheless, treatment in the community is usually interfered with by factors such as abuse of alcohol and drugs occasioned by poor supervision and control. Finally, treatment of mentally disordered offenders is developed on individual basis after broad evaluation of the offender, something that entails not only interviewing and observation but also collecting information from family members and mental health and social professionals.

#### **f) An Overview of Contemporary Offender Rehabilitation Strategies**

Punishment should be both punitive and rehabilitative; thus, imbedded in the common forms of punishment such as imprisonment and probation are various interventions meant to reform and rehabilitate the offenders (Tewkbury (1997). These strategies include the interventions that target the development of various skills: cognitive, social, parenting skills and anger management. When individuals lack these skills, they may be prone to committing various crimes (McNeil, 2010). For instance, those who cannot control their anger are most likely to commit offences such as grievous harm and even murder in interactive conflicts. The same applies to people lacking in social and parental skills who may end up in endemic conflict with others and harm their children respectively (Fromader and Malott (2010).

The other strategies involve the use of medical psychology and other psychological approaches such as psychological counseling to change the criminal acts of the offenders. Counseling and psychotherapy conducted by professionals help in assisting the offenders to know their problems and where their criminalities emanate from. It also assists the offenders to endeavour to be law abiding.

According to Williams (2001), some of the interventions applied are medical in nature. The most common in this category is the use of medical drugs in treating psychiatric cases. To be successful, psychiatric treatment must involve the engagement of competent psychiatrists in the diagnosis and treatment of offenders. The two approaches used by these experts are administering drugs to the offenders orally or intravenously, and the application of socio-psychological approach which involves the use of environmental reorganization and personal influences to change the offender. This involves social workers and counselors.

The engagement of social workers and probation officers which is also based on the treatment paradigm is also commonly applied (Briggs, 1975). These experts dig into the background of offenders to identify the causes of their criminality, and go ahead to develop a one on one relationship with offenders in an effort to guide them out of crime (O'Leary, 2013). This is common under probation as a punishment to the offenders. These professionals counsel and guide the offenders, and may also reconcile them with the victims of their crimes. There are also specific kinds of measures directed at particular convicts such as sex offenders (Stojanovski, 2009), and driving offenders. For instance, it may require that driving offenders be retrained to polish their skills to prevent reoffending while castration of perennial sex offenders has been applied in some jurisdictions.

Finally, according to James (2015), there are some interventions that are directed at ensuring proper social reintegration of offenders back into their communities. These measures involve provision of education, training and employment. For instance, under vocational training programmes offered in prison institutions, the offenders are trained in vocational skills such as farming, carpentry, dress making among others from which they can earn a living by lawful means after discharge. This is important because when individuals lack the means to put food on

the table, and meet their other basic needs; they are most likely to recidivate. The measures concerned with proper social reintegration of offenders back into the society are concerned with their resettlement. However, it should be noted that successful reformation and rehabilitation of offenders call for application of multi-model techniques (Playfair and Sington, 1965).

### **2.1.9 Factors that Influence Recidivism among the Convicts**

According to McNeil (2010), among the factors that influence the likelihood of an inmate to recidivate is whether or not he or she had been committed to prisons previously with more prior convictions leading to greater chances of recidivism. In agreement, Castillo et al. (2004) confirm this by stating that the first offender groups, who are offenders with neither prior convictions nor criminal conduct, have consistent patterns of lower recidivism rates. Another factor is whether the inmate is supervised after release. The supervised inmates are more likely to recidivate. This is probably because they are more closely monitored. The younger the age of the prisoner at the time of release, according to McNeil (2010), the higher the chances of recidivism. On gender, Paranjape (2005) observed that the males are more prone to recidivism than females; he attributes this to the male physical strength and adventurous attitude. However, men compared to women also have a lot of socioeconomic responsibilities.

Indiscipline and infractions while in prison by an inmate is also a factor in recidivism. McNeil (2010) established that prisoners who have more disciplinary reports record higher recidivism rates. This may be based on the fact that indiscipline negates on their participation on reformation programmes. Education level is also a factor in recidivism, the study established that those with lower levels of education recidivate much more than the well-educated. This finding is corroborated by Kagendo (2003) who confirmed that 82% of the 207 recidivists in Kenyan prison institutions had very few years of formal education. That a majority of those with lower level of education are recidivists is probably due to the fact that the well-educated are more likely to be employed after discharge and rehabilitation compared to their colleagues with poor education.

Confirming the influence of these factors on recidivism Bohm & Halley (1997) observe that recidivism rates are highest for the ex-prisoners during the first year of release from prison, in younger persons, people with less education, among those who were unemployed before

imprisonment, those who were drug and alcohol addicts before imprisonment, those who have higher rates of misconduct in prison, and those who did not participate in education programme while in prison. These scholars argue that recidivism is not in any way related to gender or the length of the prison term.

However, according to Williams(2001), offenders with brain dysfunction are likely to become recidivists given that they are not able to learn from the past punishment awarded to them, cannot fathom the after-effects of their actions, and are impulsive in their actions. In concurrence Salenkin, Rogers, Ustad & Sewell (1998) cite studies that show that male inmates who are psychopaths are likely to recidivate within the first year of release. Further, inmates with mental sickness are twice as likely to have their parole or probation revoked, and are at an elevated risk for re-arrest (Vanderloo & Butters, 2012).

To rehabilitate this category of convicts with mental, emotional or brain dysfunctions requires the input of trained psychiatric doctors to handle their conditions to full recovery. The failure of Community Based Rehabilitation Strategies is also to blame for recidivism. For instance, Reifen (1972) blames juvenile recidivism on insufficient and inadequate special community services. In support of this, Crouch (1993) observed that law breakers in low social class fear the supervision of probation and thus prefer imprisonment of two(2) or three (3) years instead.

Recidivism has also been blamed on the failure of the Institutional Corrections. For instance, several scholars have observed that prisoners get hardened, and, on release, continue with criminal tendencies. This has led to the arguments that prisons are 'schools of crime' where the inmates only learn to engage in more serious crimes than the ones they were convicted of (Kagendo, 2003; Gendreau, Goggin & Cullen, 1999). Prison institutions have also been termed as criminogenic (Odegi-Awuondo, 2003; Mushanga, 1976); that is, they encourage criminal tendencies rather than reform and rehabilitate offenders. In addition, Goodstein, (1993) opines that prisons might be to blame for recidivism because they instil acquiescent and compliant behaviour which causes institutional dependence. In agreement, Kamunyu (nd) observed that giving of orders that must be complied with during imprisonment, and decision making by prison authorities on basic issues concerning the prisoners' life make the inmates to be institutionalized

and operate like mechanical actors. In the end, the inmates become dependent on prison institutions.

However, Venter, Hoffman and Goudine, (2006) postulate that where recidivism is attributed to imprisonment, it is due to the fact that rehabilitation interventions are provided too late and many of the programmes are focused on the process rather than results. The scholar recommends that halfway houses should be provided in good time, and that prison rehabilitation should focus on the prisoner empowerment. This advice is important to the Kenyan Government given that halfway homes just like parole have never been established yet they are vital for rehabilitation of the offenders released from prison institutions (GOK, 2005).

On his part, James (2015) posits that lack of offender reentry programmes present a serious challenge to the prevention of reoffending. He opines that the offender reentry programmes are of three distinct categories; first, are the programmes that take place while the offender is still in prison custody. These seek to prepare the offender for discharge. The second form refers to the programmes that take place during the time of the offenders release to assist them in receiving the services they may need, and third are the long term programmes that assist the offenders to permanently reintegrate in the community. Despite these arguments associating recidivism purely to imprisonment, reoffending, as a social problem, cannot be blamed on imprisonment per se since it is not possible to predict future behaviour on the basis of training programmes, and other reformation measures in prisons because there are many intervening variables such as environmental influences that may impede the effects of reformation and rehabilitation programmes after the offender is released back into the society (McNeil, 2010).

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

### **2.1.10 Challenges facing Rehabilitation of Convicts**

There are various challenges affecting reformation and rehabilitation of convicts which render punishment ineffective thus leading to recidivism. These problems can broadly be looked at under the challenges facing the ex-convicts in the society such as poverty and social stigma, and the causes inherent in the convicts themselves such as rebellion against the laws and authority, and alcoholism and drug abuse (Bohm & Halley, 1997). Other contributing factors relate to challenges and weaknesses in the criminal justice system which are responsible for arresting the suspects, determining guilt, and rehabilitation of the convicts (Omeje & Githigaro, 2010). Such weaknesses and challenges in the criminal justice system may lead to delay in punishment, and application of wrong punishment.

Reformed convicts may still regress back to crime when they do not have a legal means to earn their basic needs due to poverty. This is more so if, due to social stigma and discrimination, they fail to receive the required support from the society members in terms of employment among others (Williams, (2001). Similarly, according to Gendreau, Goggin and Cullen, (1999) the convicts who continue to abuse drugs and alcohol during and or after undertaking punishment meant to reform and rehabilitate them will continue with their criminal activities as such habits will negate the effectiveness of reformation and rehabilitation. The same applies to rebellious convicts and ex-convicts who fail to obey laws and regulations during and after reformation.

The challenges and weaknesses within the Criminal Justice System such as corruption, backlog of cases that lead to delays in punishment, and lack of trained rehabilitators among many others also work against reformation and rehabilitation of convicts making them to be discharged non-reformed (Omeje & Githigaro, 2010, Venter, Hoffman and Goudine, 2006). The limitations in the various forms of punishment can also result into recidivism. This study discusses such weaknesses under the typologies of the punishments.

### **2.1.11 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 to 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 & 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 more 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 non-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 centers 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.

### **2.1.12 Socio-demographic and Personality Traits of Recidivists**

Offender profile refers to the socio-demographic characteristics of the offenders. A criminal profile is a mental picture of the suspect. Profiling offenders is a key area of interest in Forensic Criminology. It refers to the characteristics that are relevant in determining a suspect. It is an exhaustive list of offender traits and emotional states covering almost every facet of their past, present and future. The profile includes age of the offender, sex, marital status, education level, socioeconomic status, mannerisms and personality, employment, use of drugs and/or alcohol, use of weapons in crime among others (Patheric, Bent & Ferguson, 2010). Similarly, Adams, Cross and Jackson (2010) postulate that these are basically what Criminal Records Office will document about a particular criminal and they include full details of his personal description and antecedent history. Establishing the profile of offenders is vital in crime control and management as it offers a lead of who the suspect is where no arrests have been made. It is thus vital in aiding apprehension, prosecution and conviction of offenders.

According to McNeil (2010), the majority of recidivists are young adults. This can probably be attributed to the fact that this category of people still have many goals in life to accomplish such as buying properties and settling down in families compared to the old (McNeil, 2010). On gender, Paranjape (2005) observed that males are more prone to recidivism than females; this he attributes to the male physical strength and adventurous attitude. However, men compared to women also have a lot of socioeconomic responsibilities. On education level, Kagendo (2003) established that 82% of the 207 recidivists in Kenyan prison institutions had very few years of formal education.

That a majority of those with lower level of education are recidivists is probably due to the fact that the well-educated are more likely to be employed after reformation and discharge for their first criminal activities compared to their colleagues with poor education. Based on the personality and economic status of recidivists, Bohm & Halley (1997) posit that recidivists are offenders who are undisciplined, unemployed and those addicted to drugs and substances. This profile of the recidivists can be explained by the fact that they are not easy to rehabilitate if the

correct measures are not employed such as provision of employment, and drug and substance treatment.

As regards the emotional and mental states of recidivists, Williams (2001) observed that offenders with brain dysfunction are likely to become recidivists given that they are not able to learn from the past punishments awarded to them; they cannot fathom the after effects of their actions, and are impulsive in their actions. On the profile of the South African recidivists, Schoeman (2002) established that they have high levels of anxiety which is a reflection of a dysfunction in social functioning. They also lack the ability to experience empathy.

### **2.1.13 Prevention and Control of Recidivism**

According to Robinson (2000), even a small decrease in recidivism rate saves government millions of currencies for prisoners' accommodation; brings about ease in inmates' control; lowers police and court costs; and leads to fewer criminals and victims of crime. It also increases community productivity. Based on these benefits, serious efforts must be directed at reducing the recidivism rates, and given that the management of social problems is dependent upon their causes, recidivism can also be controlled by tackling its causes.

Given that education level is a factor in recidivism as per the findings of Kagendo (2003) who confirmed that 82% of the 207 recidivists in Kenyan prison institutions had very few years of formal education, it is the responsibility of the state and other stake holders to ensure that the education level of its citizens is raised to enhance their ability of finding jobs. In the case of uneducated prisoners, the prison system must ensure that they are offered the opportunity to better their education. This need is supported by the findings of Vacca (2004) that prisoners who attend educational programmes while in prison are less likely to return to prison after discharge. In concurrence with this observation, Chappell (2004) established that the more schooling an imprisoned person receives, the less likely he or she is to get into crime after release with only 10% of those who received education in prison being arrested again compared to 60% of those who had not received education.

Given that it has also been well established that recidivism rates are highest for the ex-prisoners during the first year of release from prisons as per the findings of Bohm & Halley (1997), there is need for proper reintegration into the society of offenders who have been imprisoned. In Kenya,

for instance, prisoners are released directly into the society without the assistance of Parole and Halfway Homes since such institutions are lacking. It is, therefore, prudent for the government to establish these institutions for proper resettlement of the offenders.

Community Based Rehabilitation Strategies should also be enhanced to control recidivism. For instance, O'Leary (2013) posits that ensuring a stable accommodation plays a significant role in programmes aimed at reducing recidivism. This is more applicable to the prisoners discharged from prison institutions. Furthermore, on resettlement of ex-prisoners into the society, Fromader and Malott (2010) recommend that family life education should be provided to the inmates so as to improve their family relationships because this will make them less likely to reoffend. This is because people with knowledge on how to maintain healthy family relationships ensure family cohesion. However, offenders with brain dysfunction who are more likely to recidivate, should be treated of their mental and emotional conditions to full recovery by qualified psychologists and psychiatric practitioners. Williams (2001) recommends that these kind of offenders need medication and other psychosocial support for their full rehabilitation.

On recidivism and imprisonment, it is vital to address the reasons why several scholars have been critical on the ability of imprisonment to rehabilitate the offenders. The arguments, for example, that prison institutions are 'schools of crime' (Kagendo, 2003; Gendreau, Goggin & Cullen, 1999) or 'criminogenic' (Odegi-Awuondo 2003; Mushanga (1976) or that at best the institutions have no appreciable effect on recidivism because imprisonment lack the crucial elements of punishment vital for maximum effect such as being immediate and intense (Gendreau, Goggin & Cullen 1999) must be addressed. First the delays in court trials that result into belated punishments must be curtailed as much as possible so that the enormity of the crime is not watered down. Faster trials, that aim at ensuring speedy convictions and, punishment that is proportional to the severity of the offence committed will be deterrent to the criminal thus controlling recidivism.

According to Paranjape, (2005), rehabilitation of offenders through imprisonment can be improved on by engaging the inmates in corrective work and keeping them busy during the period of incarceration. He suggests that penal administrators must also give individualized treatment to prisoners, and not to treat them as a group because criminality is a symptom of

individual disorder. He postulates that psychotherapy and psychiatry are some vital techniques that can assist in the reformation of the prisoners. Tewkbury (1997) opines that prison authorities should, on top of providing treatment for the inmates, contain them in favourable environments. Briggs (1975), on his part, argues that prison institutions must put up measures to preserve and enhance a person's dignity and self-respect for full reformation and rehabilitation to be realized.

The advice of these scholars is vital in managing recidivism in Kenya because it has been established that the prison conditions in the country are unfavourable for rehabilitation of prisoners. For instance, these institutions are overpopulated and characterized by harsh and unhygienic conditions, insufficient medical care, homosexuality, abuse of tobacco and drugs, and work without pay (Omboto, 2013 a). Other prison based measures that are key in enhancing reformation and rehabilitation - thus would reduce recidivism- include proper classification and segregation of offenders to prevent contamination of petty offenders by hardcore criminals Paranjape (2005).

Finally, another strategy that can be effective against recidivism among many others is the control of social stigma and discrimination against the offenders who have undertaken reformation and rehabilitation programmes, more so in prison institutions. Despite the fact that a good number of these offenders suffer from multifarious problems such as financial constraints after discharge, the society stigmatizes and neglects them thus seriously jeopardizing their resettlement into the society. The society members should therefore be educated and sensitized to accept and be supportive to the offenders who have been punished so that they do not relapse to criminal activities. As Paranjape (2005) found, 90% of discharged offenders wish to make amends but the society denies them this opportunity through hostility and distrust for them.

#### **2.1.14 Ethical Considerations in the Treatment and Punishment of Convicts**

These are concerns that relate to how the offenders should be handled with fairness with regard to their human rights. Ethical considerations also concern the observance of legal guidelines which seek to ensure the professional conduct of correction staff as they go about their duties. The ethical guidelines in treatment and rehabilitation of convicts can broadly be drawn from medical and legal laws. In Kenya for instance, the prison officers must operate within the local

legal framework guiding the treatment and rehabilitation of convicts in custody. These laws include the Prison Standing Orders, and Prisons Act-CAP 90. They must also observe the international instruments on the treatment of offenders such as the 1949 Geneva Conventions and additional protocols, among others. Thus, to adhere to ethical standards, the professionals such as correction officers and forensic experts must be familiar with legal standards, and professional code of ethics and specialty guidelines that guide their work (Kalmbach & Lysons, 2006).

Ward (2009) argues that when there are conflicts between rehabilitation and punishment components, human rights values and the concept of human dignity that these values protect should be taken into account. However, this may be very tricky in some treatment techniques and given categories of convicts such as sex offenders. For instance, legal and ethical dilemmas exist concerning the use of pharmacological treatment (Melella, Travin & Cullen, 2016; Akbaba, 2015), and surgical castration (Stojanovski, 2009) in sex offenders. The latter is surgical removal of testes, while the former is castration by use of chemicals. The concerns that have been raised are on the negative impacts of these treatment modalities such as rights to procreation, and freedom from cruel and unusual treatment. Another concern is in upholding the prisoners' right to privacy against invasion without compromising security and safety (Bulow, 2014) particularly if the prison authorities' right to conduct searches including strip and cavity searches is considered (Dubler, 2014).

However, in conduct of their duties, it is expected that the correctional officers must be firm and fair to all the offenders under rehabilitation. The convicts must not be discriminated against or accorded preferential treatment based on race, gender, tribe or the rehabilitators' personal idiosyncrasies. It is vital to observe equality in the treatment of offenders; however, the correctional staff must note that equal treatment is not the same as similar treatment. The fundamental rights of prisoners under rehabilitation must be upheld. These include the right to life and good health. To ensure this, the convicts in custody must be provided with the basic needs of survival such as quality and quantity food, clothes, beddings, and timely medical care. The rehabilitators must avoid torture and inhumane treatment of the convicts. These include verbal, physical and other psychological mistreatment or abuse.

It is also expected that male and female offenders must be separated. The same applies to the convicted and not yet convicted offenders; the capital offenders and minor offenders; and the juveniles and adult convicts. Rehabilitation officers must avoid private businesses and other improper relations with convicts. In Kenya, this is a great challenge because it has been established that illegal drugs and other contrabands are smuggled by prisons staff into prison institutions (Omboto, 2010).

It is also an obligation to ensure that the techniques involved in reformation and rehabilitation will enable the convicts to be truly rehabilitated. This is only possible when the offenders are under the care of adequately trained professionals, and the conditions are conducive. In this respect, Harrison and Bernadette (2013) posit that for the sex offenders, one of the important ethical issues involved in providing treatment is the requirement that the treatment must be based on the most effective approach.

#### **2.1.15 Summary of Literature Review**

The available literature on recidivism is robust. These literatures are however silent on the relationship between recidivism and punishment; therefore, the need to fill this lacuna in knowledge. There is also a gap in the literature concerning the profile of recidivists in Kenya which is addressed by this study. Other gaps identified in literature that are addressed by this study are progression in criminal career by recidivists, and offender based recidivism management needs.

For example, several studies available have been focused on recidivism rate and types of offences of recidivists but are not specific to progression in criminality by the recidivists which was of great interest to this study. The literatures have also highlighted causes, predictors and other risk factors for recidivism but have not analyzed the possible influence of initial treatment at first conviction. Some studies have also been focused on particular category of offenders such juveniles, males and females thus failed to give a broader perspective of the vice unlike the present study.

In management of recidivism, several studies conducted, some in other countries have not considered first time convicts and serial recidivists as different entities deserving diverse strategies. Some of these literatures on recidivism control are also very specific to particular offenders, and limited in strategy. Among these studies is Thorn (2009) which was focused on the role of religion in management of recidivism in women.

## **2.2 Theoretical Framework**

This section specifies the theories employed in analyzing recidivism in relation to punishment in Kenya. The study made use of Deterrence Theory of Punishment to analyze an effective punishment; and Strain, and Labeling Theories of Crime to understand recidivism.

### **2.2.1 Deterrence Theory of punishment**

Deterrence theory of punishment has its roots in the Rational Choice theory, and the philosophy of hedonism (Wright, 2010). The former argues that human actions are rationalized based on a premeditated cost benefit analysis. Thus, even in committing crimes, individuals are motivated by the expected gains. However, this is not always the case particularly where offenders commit crimes under the influence of alcohol or drugs (Wright, 2010). The philosophy of hedonism, on the other hand, postulates that whatever man does, he or she is always influenced by the desire for pleasure and the fear of pain. The theory therefore argues that the purpose of any kind of punishment is to deter future criminal activities by inflicting pain that outweighs the pleasure of crime.

This 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 and becomes vengeful against the society. In this case, the ex-convict may become a recidivist who commits more serious crimes; therefore, the punishment should be proportional 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 punishment is awarded to the offender after the crime

is committed. However this vital characteristic of an effective punishment is not possible to attain in the circumstances where the criminal justice process of determining the guilt of an offender may take days, months and even years.

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. However, in some cases, the certainty that all crimes will be punished is not guaranteed due to failure in its detection, apprehension of the offenders, weaknesses and or corruption in court prosecutions and sentencing among others. In this case, ex-convicts may commit crimes expecting to escape apprehension, and/or to corrupt the criminal justice system personnel, but if this fails to materialize and they are arrested and punished, they are considered recidivists.

Another determinant of whether punishment will be deterrent is if the potential offenders are aware of the prescribed punishment for the various crimes that they are likely to receive before they commit the crimes. However, this is not always the case since some people are usually unaware of the specific penalties for various crimes, more so, in countries where majority of the citizenry are ignorant or gullible.

In conclusion, the deterrence theory of punishment assumes that if the punishment is certain, severe and swift, recidivism will be lower and vice versa. Thus, according to Wright (2010), the sentencing policy initiatives in many countries have all along sought to enhance this in the criminal justice systems. This study argues that any court sentence is a punishment, whether its aim is to deter or reform the offender. This argument is premised on the fact that most, if not all, sentences involve some kind of loss, deprivation and pain. The most common of these sentences are fines which are a financial loss, probation which demands that the offender abides by some conditions hence restrictive, and imprisonment which curtails some of the convicts' freedom, and denies them some rights. This study therefore postulates that a punishment that lacks the characteristics discussed above is ineffective and is likely to facilitate recidivism. For instance, the certainty that offenders will be apprehended and punished by the Kenyan courts is not guaranteed due to corruption, poor investigation and other weaknesses in the criminal justice system. The punishments awarded to the offenders may also not be severe enough due to the

same reasons. The convicts are also rarely punished swiftly since the judicial process usually takes forever.

### **2.2.2 Strain Theory of Crime**

The Strain Theory by Robert K. Merton, an American sociologist, postulates that an individual's response to societal expectations and means by which the individual pursues the goals are vital in understanding crime. According to this theory, crime commission is caused by the frustrations individuals suffer in their attempt to achieve the society's goals through legitimate means. The strain suffered, according to Merton, 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, the study argues, 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.

This study therefore postulates that regardless of the punishment awarded, the ex-convicts may still indulge in criminal behaviour if they continue to lack legitimate means such as employment opportunities and legal businesses to acquire their basic needs. In Kenya, for example, several first time convicts cannot earn a living by honest and legal means such as employment because of labeling and lack of job opportunities. Such offenders can also not operate legal businesses due to poverty. Therefore, many first time convicts find it convenient to recidivate in order to earn a livelihood.

### **2.2.3 Labeling Theory of Crime**

According to Williams (2001), 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 as time goes, the person takes on the traits that define the real criminal, and commits criminal acts that conform to the label. Tannenbaum (1938) explains that one becomes what he or she is described to be. The fixation with the criminal label by the person and society makes one to conform to the attributed label. This is reinforced by the fact that the individual labeled a criminal suffers the injustices of the

label such as failure to be accepted by employers, police profiling, and strained relations with the law abiding members of the society (Lemert, 1951).

The social stigma and discrimination that comes with labeling can definitely lead to recidivism, for instance, if an ex-convict is denied an employment opportunity that would assist him or her to support themselves and their dependents through legitimate means. For instance, in Kenya, many public and private organizations demand from potential employees a certificate of good conduct, a document issued by the police only to those who do not have a criminal record. In terms of social network, many law abiding citizens will also not want to be associated with the ex-convicts, who would then be compelled to seek solace from the fellow felons, a situation which reinforces the criminal behavior thus leading to recidivism.

**Figure 2.1: Conceptual Framework**

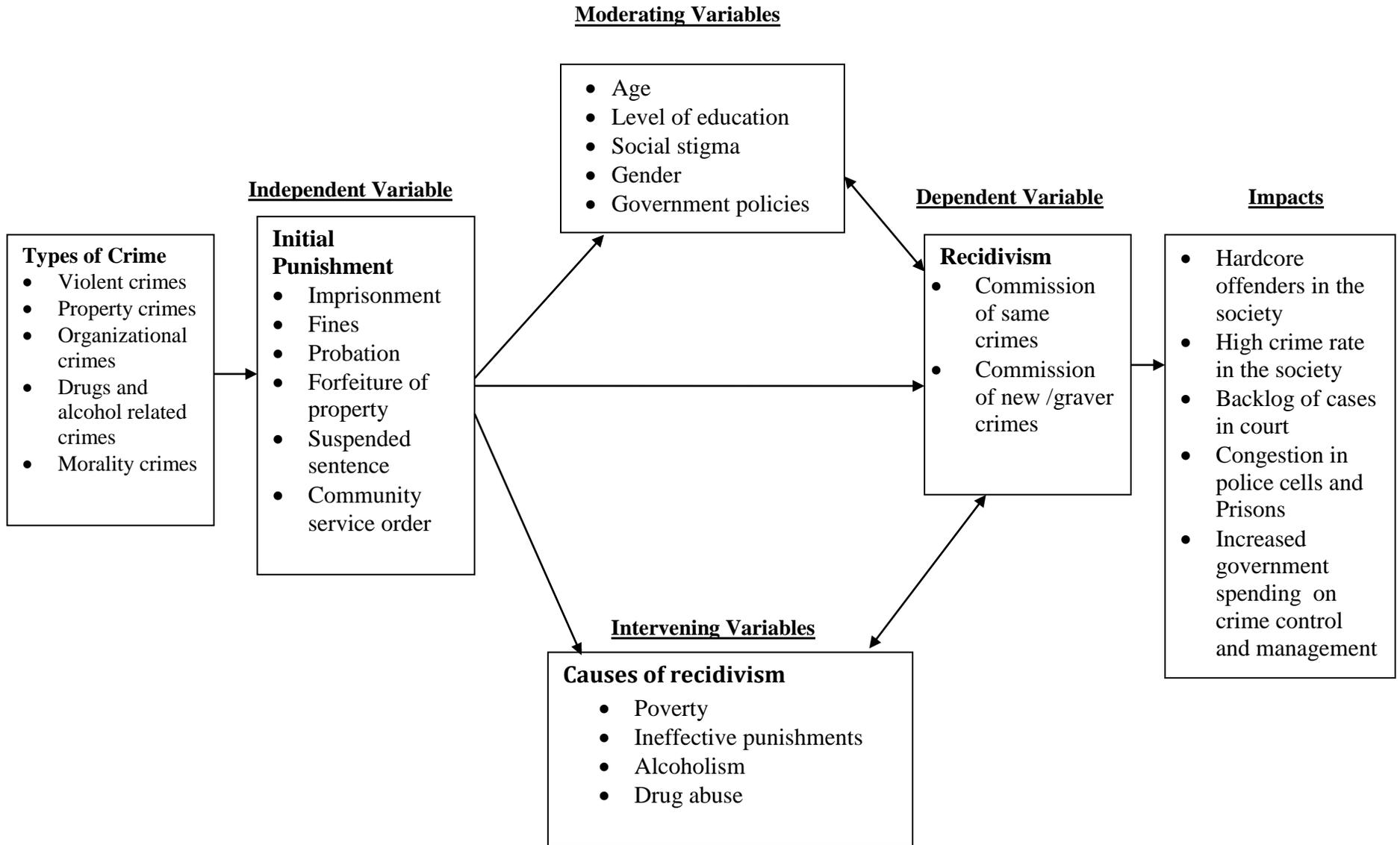


Figure 2.1 illustrates that Initial punishment which is the study's independent variable seeks to reform and or deter the offenders from criminal activities. It takes the form of imprisonment, fines, probation service, suspended sentence, forfeiture of property and community service order. For any of these punishments to be effective in controlling recidivism, it must be swift, severe and certain. The crimes offenders commit either during their first time or as recidivists are violent crimes, crimes against property, organizational crimes, drugs and alcohol related crimes, and morality related crimes. Under violent crimes we have homicide, assault, rape and sexual assault, robbery, kidnapping and terrorism. Crimes against property include larceny or theft, fraud, and burglary. Organizational crimes comprise of white collar crimes, corporate crimes and organized crimes. Other crimes are drugs and alcohol related crimes as well as morality offences.

Recidivism, a dependent variable, may be influenced by among others, ineffective punishment, poverty, alcoholism, and drug and substance abuse which are the intervening variables. The moderating variables of recidivism are age of the offender, gender, level of education, and government policies among others. Recidivism can manifest itself in the ex-convicts committing either the same crimes they had been punished for or new crimes. Subsequent recidivism can be determined by the causes and internal and external factors that predispose the individual to recidivate. These arguments are based on the Strain and Labeling theories of crime, and the Deterrence theory of punishment. The impacts of recidivism include the creation of hardcore offenders in the society, increased crime rate, congestion in police cells and prisons, backlog of court cases, and increased government spending on crime control and offender management.

### 2.3 Operationalization of Key Variables

- (i) **Initial punishment:** This is the independent variable. It refers to the court awarded penalty a recidivist was awarded on his or her first conviction. It can be imprisonment, fine, probation service, suspended sentence, forfeiture of property or community service order.
- (ii) **Recidivism:** This is the dependent variable in the study. It was measured by the number of reconvictions after the initial punishment.
- (iii) **The intervening variables:** These are poverty, rebellion against the laws and authority, alcoholism and drug abuse, labeling, delay in punishment, and application of the lenient punishments.

- a) **Poverty:** This variable was measured by the socioeconomic indicators of the convicts such as the type, ownership and location of residence, whether the residence is permanent, semi-permanent or makeshift, and location of the residence which can be slums, middle class, or upper class areas. The other social status indicators established include ownership of cars, employment and the kind of job, ownership of land etc.
- b) **Rebellion against the laws and authority:** This is indiscipline against prison personnel, rules and regulations. It was measured by the number of infractions and other kinds of indiscipline as recorded against the recidivists by prison authorities.
- c) **Alcoholism and drug abuse:** This is use or abuse of illegal drugs and substances. It is also addiction to alcohol by a recidivist. This variable was measured by the number of cases of drug and substance abuse involving the convicts as per the court and prison records, and their response in the questionnaires.
- d) **Labeling:** This is social isolation, stigma and discrimination towards convicts by the society in general based on previous conviction/s. It was measured in terms of whether or not the inmates had acquired employment opportunities after the initial conviction and punishment, received visits by friends and relatives while in prison, and the number of police arrests that ended up in acquittals due to innocence.
- e) **Delay in punishment:** This is taking a longer time than is reasonably accepted before a convict is punished. It was measured through the duration of time it took from when the convicts committed the initial and subsequent crimes to the time of arrest and punishment as per the court records.
- f) **Application of lenient punishment:** This is an award of a less severe punishment to a convict taking into consideration the nature of crime committed. This was measured through the analysis of the kind of crime committed and the punishment awarded based on the need for severity to deter crime. The study also established from the recidivists whether they consider the punishments received for the initial conviction to be severe enough to deter them from crime.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

This chapter describes the study site, research design, target population, units of analysis and observation, sample size, sampling procedure, sources of data, data collection techniques and tools, as well as data processing and analysis.

#### **3.2 Site Selection and Description**

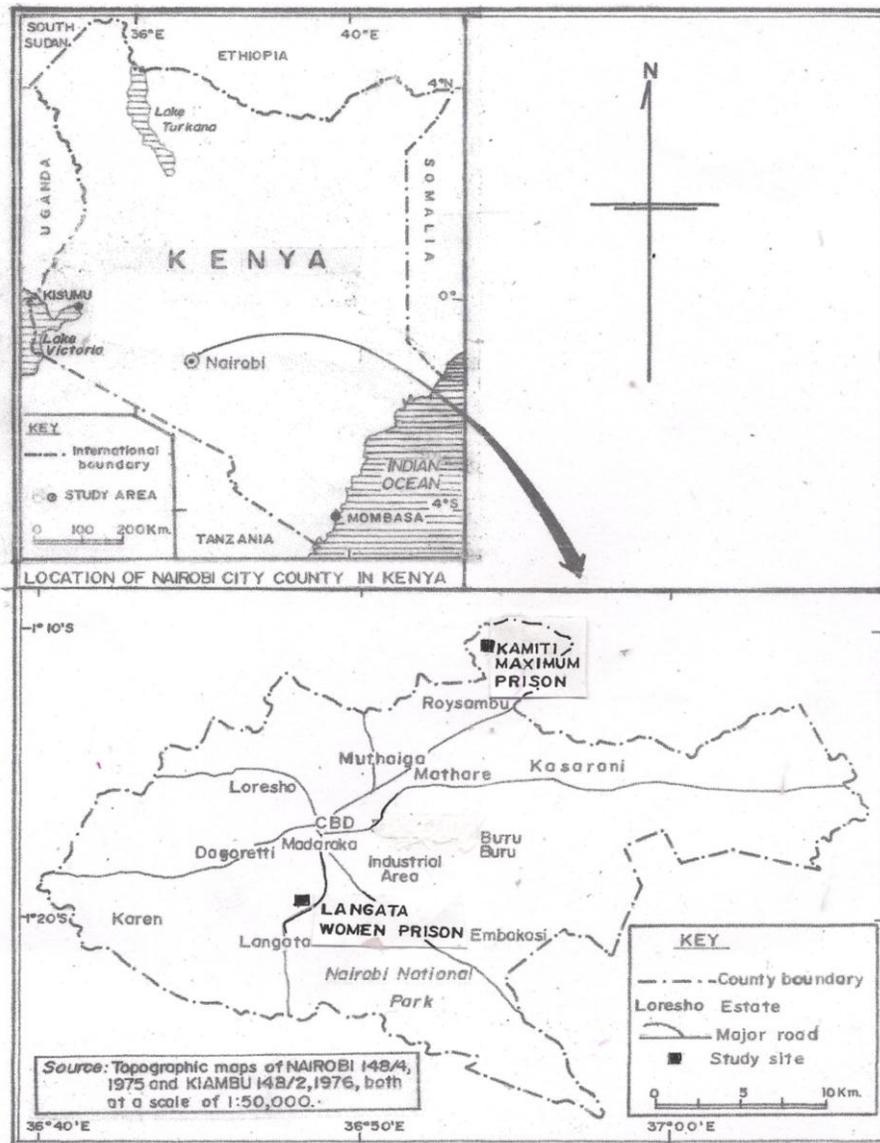
This study was conducted at Kamiti Maximum Security Prison and Langata Women Prison both situated in Nairobi County. The institutions are under Kenya Prisons Service in the Department of Correctional Services and are respectively the largest male and female prison institutions in Kenya. At the time of the study, Kamiti had approximately 1800 male prisoners under the care of about 700 prison officers, while Langata Women Prison had about 600 female inmates under approximately 350 members of staff. These two institutions are maximum security prison institutions; thus, given their structure and location in the capital city, they mainly contain some of the most serious capital male and female criminals in the country.

Kamiti Maximum Security Prison, also known as Kamiti Main Prison, is the oldest penal institution in Kenya having been established in 1954 by the colonial government. It is located to the North East within Nairobi County, 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, and one branches along Zimmerman/ Kamiti Road, off Roysambu Roundabout. The institution's first independent Kenya officer-in-charge was SSP Yacoob Ali who served from 1964 to 1965. Though the prison was meant to accommodate only 1300 inmates, it currently holds about 1800. Hence, the facility is overcrowded.

On the other hand, Langata Women Prison, also the oldest prison for women in the country is located off Langata Road, about 5 kilometers south of Nairobi Central Business District (CBD). The institution is accessible through Uhuru /Mombasa roads, branching at Nyayo National Stadium and proceeding along Langata road. The first independent Kenya officer-in-charge of the institution was SSP Phoebe Asiyo. The study purposively selected these two institutions

because of the following reasons, one; it was easier to access recidivists in the institutions than it would have been to access those serving probation sentences in the community, or those who were awarded other punishments such as fines on reconviction. Two, given that the two institutions are the largest prisons housing the highest number for male and female convicts in the country, the study expected to find more recidivists in the institutions compared to the other smaller prisons. Figure 2 on the next page indicates where the institutions are located.

**Figure 3.1: Maps of Kenya and Nairobi County showing the study sites**



**Source: UoN Cartographer, (2016)**

### **3.3 Research Design**

This study employed survey design. According to Picardi and Masick (2014) a survey research design is the most commonly used method; it includes self-report measures such as use of questionnaires and assessments as well as interviews and are mainly used for collecting data on attitudes, beliefs, preferences, from a representative sample of a population. This design was chosen because the study needed to gather information on personal characteristics and opinions

of respondents. This design also 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. To attain a deeper understanding of the phenomenon from the recidivists themselves and practitioners within the Criminal Justice System i.e. the prison officers, police and probation officers; the study embraced methodological triangulation in data collection. The methods included key informant interviews, focus group discussions (FGDs), and filling of questionnaires with both open and structured questions.

### **3.4 Target Population**

According to Bachman and Schutt (2011), target population refers to elements to which the research would like to generalize the study findings. In this study, therefore, the target population was the recidivists at Kamiti and Langata prison institutions.

### **3.5 Unit of Observation and Analysis**

The units of observations are the cases about which measures are obtained in a sample (Bachman &Schutt, 2012). While the units of analysis are the items to be studied; they are the level of social life on which the research question is focused, and they may be individuals, groups, towns or nations (Bachman &Schutt (2011). Therefore, in this study, both the units of observation and units of analysis were the recidivists at the two prison institutions.

### **3.6 Sampling Procedure**

The study applied purposive sampling which is a non-probability sampling method to select the respondents who participated in the study. The method was used to identify documented recidivists who were one hundred and eighty (180) at Kamiti Maximum Security Prison and thirty seven (37) at Langata Women Prison. The researcher identified them with the help of the prisons staff working at the documentation offices based on the entries in the prisoners' admissions record. However, the study also stumbled on non-documented recidivists, whom documented recidivists acknowledged to having served time with them in other prison institutions, for different convictions and they were also willing to participate in the study. The non-documented recidivists were therefore identified using snowball sampling method. Thirty one (31) out of the eighty one (81) non-documented recidivists whose cases of reoffending were verified from the courts and other prison institutions were involved in the study. Therefore, the male respondents from Kamiti Maximum Security prison who accepted to participate in the

study were one hundred and thirty eight (138) in number, thirty one (31) of whom were non-documented recidivists. While at Langata Women Prison, only twenty nine (29) documented recidivists out of thirty seven (37) identified by the prison authorities accepted to be involved in the study while the rest declined involvement.

The study also employed purposive sampling method to choose key informants and focus group discussion members. The key informants were twelve (12) prison officers from Kamiti Maximum Security Prison, seven (7) from Langata Women Prison, four (4) probation officers from Makadara District and four (4) police officers from Jogoo Road Police Station. All the key informants were chosen based on seniority and length of service. Two focus group discussion panels comprising of serial recidivists were also selected by purposive sampling method. They were twelve (12) and five (5) members at Kamiti and Langata, respectively.

### 3.7 Sample Size

A sample size of one hundred and sixty seven (167) respondents selected through non-probability sampling methods participated in the study. In the sample were one hundred and thirty eight (138) males from Kamiti Maximum Security prison, and twenty nine (29) females from Langata Women Prison. In this sample 136 were documented recidivists while 31 were non-documented recidivists. All non-documented recidivists were males.

**Table 3.1: Sample Size**

<b>Gender</b>	<b>Population</b>	<b>Percentage</b>	<b>Sample</b>	<b>Percentage</b>
Male Recidivists	211	85%	138	56%
Female Recidivists	37	15%	29	12%
<b>Total</b>	<b>248</b>	<b>100%</b>	<b>167</b>	<b>67%</b>

**Source: Researcher (2016)**

The sample size was checked against the one that would have been generated had the study employed probability based sampling method as captured in the work of Krejcie and Morgan (1970) and the result were found to compare favourably. For instance, in the Krejcie and Morgan (1970) from a population of 211 the sample size is approximately 137 while for a population of 37 the sample size is approximately 33.

**Table 3.2: Types of recidivists in the study**

Type of recidivist	Number	Males	Females	Percentage
Documented				
recidivists	136	107	29	81%
Non-documented				
recidivists	31	31	0	19%
<b>Total</b>	<b>167</b>	<b>138</b>	<b>29</b>	<b>100%</b>

**Source: Researcher (2016)**

**Table 3.3: The Key Informants**

Profession	Number	Male	Female	Percentage
Probation Officers	4	3	1	15%
Prison Officers	19	12	7	70%
Police officer	4	2	2	15%
<b>Total</b>	<b>27</b>	<b>17</b>	<b>10</b>	<b>100%</b>

**Source: Researcher (2016)**

### 3.8 Nature and Sources of Data

The study generated both quantitative and qualitative data from primary sources. Quantitative data was generated by administering questionnaires to the respondents, while qualitative data was generated through open-ended questions in the questionnaire as well as from in-depth interviews with key informants, and FGDs' deliberations. Secondary data was also collected from the recidivists' records.

### 3.9 Techniques of Data Collection

The techniques that were employed in data collection were filling of questionnaires by the respondents, key informant interviews; focus group discussions and documentary review at various prisons and law courts.

#### 3.9.1 Use of Questionnaires

This was the main method of data collection. The researcher used questionnaires with both open and close-ended questions to collect information from the respondents who voluntarily accepted to participate in the study. The questionnaires were administered by the researcher and his

assistant. However some inmates who were literate insisted on filling them on their own – which the researcher allowed. Thus, some questionnaires were administered by the researcher while others filled by the respondents themselves. The questionnaires were designed to cover the background of the respondents, their age, gender, level of education, marital status, and a comprehensive recidivism related concerns of interest to the study. At Langata prison, the questionnaires were filled on 24<sup>th</sup> to 26<sup>th</sup> August 2016. While at Kamiti Prison the exercise started on 29<sup>th</sup> August and was completed on 18<sup>th</sup> September 2016.

### **3.9.2 Key Informant Interviews**

Key informants comprised of Prisons Officers based at both the institutions, and police and probation officers based at Jogoo Road Police Station and Makadara District probation office respectively. The study employed purposive Sampling Method to select the key informants. The selected members of staff were expected to be knowledgeable on recidivism issues based on their length of service and seniority. A total of nineteen (19) key informants, twelve (12) from Kamiti and seven (7) from Langata were picked, in addition to four (4) police and another four (4) probation officers. The key informants at Kamiti were three (3) senior prison administrators of the ranks of Superintendent of Prisons to Assistant Commissioner of Prisons, three (3) inspectors of prisons, three (3) senior sergeants with over fifteen years work experience and three (3) warders who have worked in prison for over eighteen (18) years.

At Langata Women Prison the key informants were one (1) Senior Superintendent of Prisons, one (1) Superintendent of Prisons, one (1) Senior Sergeant, one (1) Inspector of prisons, one (1) Chief Inspector of prisons, one (1) corporal, and one (1) wardress all of whom had over fifteen (15) years' work experience. The four (4) police officers at Jogoo Road Police Station were one (1) chief inspector of police, one (1) sergeant and two (2) police constables all with over ten years' experience in police work. The four (4) probation officers comprised of the district probation officer and three other officers working at the Makadara District probation office. All the four had worked as probation officers for over ten years. The interviews were conducted on 20<sup>th</sup> September and 4<sup>th</sup> October 2016 at Langata Women Prison and at Kamiti Maximum Security Prison on diverse dates between 13<sup>th</sup> September and 7<sup>th</sup> October 2016. Police and probation officers were interviewed later on. The researcher and his assistant both audiotaped the interview sessions and took notes manually, the audiotaped was later transcribed.

### **3.9.3 Focus Group Discussions**

Two FGDs were conducted. One was at Kamiti Maximum Security Prison and the other at Langata Women Prison. Both comprised of serial recidivists who had been reconvicted three times or more. These inmates were selected on the expectation that they have an in-depth understanding of recidivism related matters having been reconvicted several times. At Kamiti Maximum Security Prison, the FGD which involved twelve (12) inmates was conducted on Sunday 18<sup>th</sup> September 2016 from 2.30 pm to 5.30 pm. The meeting took place at the institution's library in the presence of a Senior Prison Officer. At Langata Women Prison, the focus group discussion which involved six (6) recidivist prisoners was conducted on Tuesday, 4th October 2016 at 10. 05 to 11.45 am. The researcher and his assistant both audiotaped the discussion sessions and took notes manually, the audiotaped was later transcribed.

### **3.9.4 Documentary Reviews**

With the assistance of prison officers working at the documentation offices in Kamiti Maximum Security Prison and Langata Women Prison, documents were reviewed to assist in identifying the recidivists in these institutions. The documents reviewed were Prisoners' Admission Book, Prisoners' Discharge Book, and Prisoners' Punishment Book. Prisoners' Admission Book and Prisoners' Discharge Book were reviewed to enable the researcher identify recidivist prisoners for engagement in the study. These two records document movement of prisoners in and out of a prison institution during admission and discharge respectively. Prisoners' Punishment Book is used to document disciplinary cases of individual prisoners. This book assisted the study in establishing the discipline level of recidivist prisoners. The other prison institutions and court registries also assisted the study by reviewing their records to ascertain the veracity of previous convictions' claims made by some non-documented recidivists at Kamiti Prison. The study also reviewed Prison Standing Orders Revised Edition 1979 CAP 42 on previous conviction records which elaborates the role of the police in identification of recidivists and guides their admission in prison institutions.

### **3.10 Data Collection Tools**

The study made use of questionnaires with both open-ended and close-ended questions to collect data from the respondents. Key Informants Interview (KII) guide was also employed to direct the interviews with the key informants while FGD guide steered the engagement with the members

of the focus group during discussions. The study also used psycho-social appraisal inventory to collect data on the respondents' profile. This inventory sought to establish the personality of the recidivists, their involvement in drug and alcohol abuse, their upbringing during childhood, their interpersonal and family relationships, discipline, and involvement in the community affairs.

### **3.11 Data Processing and Analysis**

To ensure reliable and valid results, data processing began with cleaning and editing the data collected to check for errors, omissions and inconsistencies such as double responses during fieldwork. The data was then sorted based on a set out criteria. Heuristic coding technique was employed to code qualitative data. This is a method where the researcher determines the code of a data based on core content or meaning (Miles, Huberman and Saldana, 2014). The coded data was then assigned values, thematically analyzed and expressed in terms of arguments, discussions and statements. In some cases, the views of respondents were reported in direct verbatim.

The quantitative data was keyed in and analyzed using Statistical Package for Social Sciences (SPSS) and presented in the form of tables, percentages and diagrams. Regression and correlation analysis was done to test the relationship between the variables.

### **3.12 Ethical Considerations**

In conducting the study, the researcher complied with the ethical standards guiding a research of this nature. The researcher did not engage in plagiarism and fraud. The researcher also did not misuse the trust and privileges bestowed upon him to conduct the study. The research participants were protected from physical and emotional harm by ensuring that they remained anonymous and the information received from them treated confidentially. This was achieved by ensuring that the respondents, key informants and focus group discussion members' names, service and prisoner numbers where applicable and positions are not disclosed in the study reports and discussions as they were promised when their consent to participate in the study was sought. Further, participation in the study was voluntary and based on informed consent. Finally, permission to conduct the study was sought from the relevant government institutions and authorities as required.

### **3.13 Problems Encountered in the Field**

A number of challenges were encountered in conducting this study. They include reluctance by inmates to participate in the study, inconsistencies in prison records, insufficient cooperation from some relevant agencies, strict prison routines and schedules, and high turnover of female participants. Each of these problems is explained in detail below.

#### **Reluctance by inmates to participate in the study**

The first major impediment the study faced was that several documented recidivists identified with the assistance of prisons staff based on the records at Kamiti prison were reluctant to be involved in the study arguing that the study will not benefit them directly. They further complained that they are fatigued by the many researches that target prisoners. A good number of the convicts identified (67%) however later softened their stand and willingly participated in the study. This reluctance was similarly observed at Langata Women prison where no inmate accepted to be a non-documented recidivist unlike in Kamiti prison. During the FGDs, the researcher also noticed that these women prisoners were not as free as their male counterparts. One of them was overwhelmed and cried thus the discussions had to temporarily stop for her to cool down.

#### **Inaccurate Prison Records on Recidivism**

The second major challenge that faced the researcher at the onset at Kamiti Maximum Security Prison is inaccurate prison records on recidivism. The researcher established that the offenders considered to be recidivists are those who had been sentenced to imprisonment previously. This leaves out those who may have received other forms of punishments such as fines, forfeiture of property, suspended sentence, compensation, restitution, probation service and community service order. But even in identifying these offenders who had been imprisoned again by the courts, the prison system mainly relies on the ability of its officers to identify inmates who were in the specific prison institutions before and on the goodwill of the individual convict to be truthful during the admission interview. This is because due to lack of computer system connectivity, it is impossible for the prison department to detect that the prisoner being admitted in one prison institution had previously served and completed another imprisonment term in a different institution.

Thus it is possible, for example, for a dishonest prisoner who had served a sentence at a Migori prison in the Western region of the country to be admitted at Kamiti in Nairobi as a first time convict. The researcher was faced with such un-documented recidivists who claimed to have in the past received different forms of punishment while others claimed to have served prison terms in other institutions. One such offender, a capital prisoner at Kamiti, confessed that he had served a one-year prison sentence in another institution in Nairobi in the year 2010 which the researcher later confirmed to be true. Asked why he did not let the prison administration know about his re-conviction, the inmate who participated in the study asserted that during admission they are asked in Kiswahili “*umewahi kufungwa kwa jela*” which in English is “*have you ever been a prisoner before*” in a tone which makes an inmate fear that honesty may earn him punishment. Based on this assertion, the prison authorities in Kenya seem to view recidivism as re-imprisonment and not a reconviction of which a convict might have been awarded other punishments.

However, according to a key informant (a prison officer), the prisons’ records on recidivism are not correct because the police, particularly the Criminal Investigation Department (CID), the court prosecutors and the prisons officers do not perform their work as required. This officer with vast experience noted that the case of non-documented recidivists in prisons and in the community serving other forms of punishment would not arise if, during trial, the prosecutor indicated to the court whether the offender in question is a first offender or not as required. The prosecutor, he explained, should receive this data from the CID who are responsible for checking finger prints of offenders to determine their criminal history. Based on the findings given to the prosecutor, the convicts’ committal warrant after sentencing should be attached to either C9 or C10 forms which are certificates of previous conviction. The C9 form is for the first offenders, filled and attached to their warrants when a search for their finger prints indicates that they have never been convicted previously. The C10 form is for offenders who are found to have previous convictions, and it indicates the number of convictions.

According to Prison Standing Orders Revised Edition of 1979, forms C9 and C10 also referred to as police forms are vital for rehabilitation of convicts since the classification and assessment of convicted offenders which assists in knowing their reformation needs cannot be accurate without the knowledge of criminal history. The Standing Orders thus requires prison authorities to fill prisoner form (Pf) 28 where there is no C9 or C10 attached to the prisoners’ committal warrant

on admission, and attach the prisoners' photograph and send the form to the police so as for the police to forward to the prison authorities the C9 or C10 form as applicable.

During court trials, forms C9 or C10 should be given to the magistrates and judges before the offenders are sentenced. There is no room for the court prosecutors to verbally inform the court that a given person on trial is a first or serial offender, neither is the court expected to depend on the Pre-sentence Investigation Report prepared by the probation officers. These certificates of previous conviction are more reliable in giving the offenders' previous criminal history because they require checking the offenders' finger prints thus will be valid even where there is change of names.

### **Insufficient cooperation by relevant Agencies**

Because the study never anticipated a deeper engagement with other agencies such as the Criminal Investigation Department of the police, the courts, and other prison institutions as a follow-up on the cases of non-documented recidivists required, the permission for the study was limited to Kamiti and Langata prisons. Based on this fact, some of these institutions particularly the CID were not cooperative when inquiries were made on why forms C9 and 10 which are certificates of previous conviction are never filled and forwarded to prison institutions with the committal warrants as procedurally required. Some court registries and prison institutions which the researcher contacted to ascertain the cases of particular non-convicted recidivists also declined on the basis that the study was restricted to Kamiti and Langata prisons, while the ones that confirmed such cases requested that they must not be mentioned in the study. Owing to this insufficient cooperation, the researcher only managed to verify thirty-one (31) out of fifty one (51) cases of non-documented recidivists it intended to authenticate.

### **Scheduling of key Informant Interviews and Focused Group Discussions**

Given the strict prison work routine and procedures particularly at Kamiti Maximum Security Prison which at times require some officers and prisoners to be out of the institution, and the need that prison visitors should not interfere with prisoners when they are at work, it resulted into several failed appointments aimed at conducting KIIs with some selected prisons staff. Organizing FGDs with the serial recidivists was equally affected. For instance, two key informants were only able to honour successful appointments between 6.30 and 7.00 am. Similarly, it was not possible to have a FGD during the week days. Because of this, the

researcher was compelled to reschedule the discussions with the inmates at Kamiti on a Sunday instead of a working day which turned out to be quite successful.

### **High turnover of Female Recidivists at Langata Prison**

Finally, because of high turnover of female recidivists at Langata prisons, some inmates who had participated in the study by filling the questionnaires had left the prison before FGDs were conducted. This denied the researcher the opportunity to engage them. Some of these convicts paid fines while others were discharged after their short imprisonment duration for the petty offences they had committed. A key informant working at the documentation office at the institution had indicated that it is possible for a prisoner to return to the prison twice or thrice a year for minor transgressions.

## CHAPTER FOUR

### DATA PRESENTATION AND ANALYSIS

#### 4.1 Introduction

This chapter presents data gathered from the field in relation to the study objectives. The quantitative data are presented through the use of frequency tables and diagrams. While qualitative data are thematically expressed in terms of arguments, discussions and statements. The chapter is divided into the following sections: personal and socio-economic characteristics of recidivists, relationship between the initial punishment and subsequent reoffending, correlation between recidivism and key variables, typology and severity of crimes at subsequent convictions, intervention measures against recidivism, and lastly findings from the respondents' psycho-social appraisal.

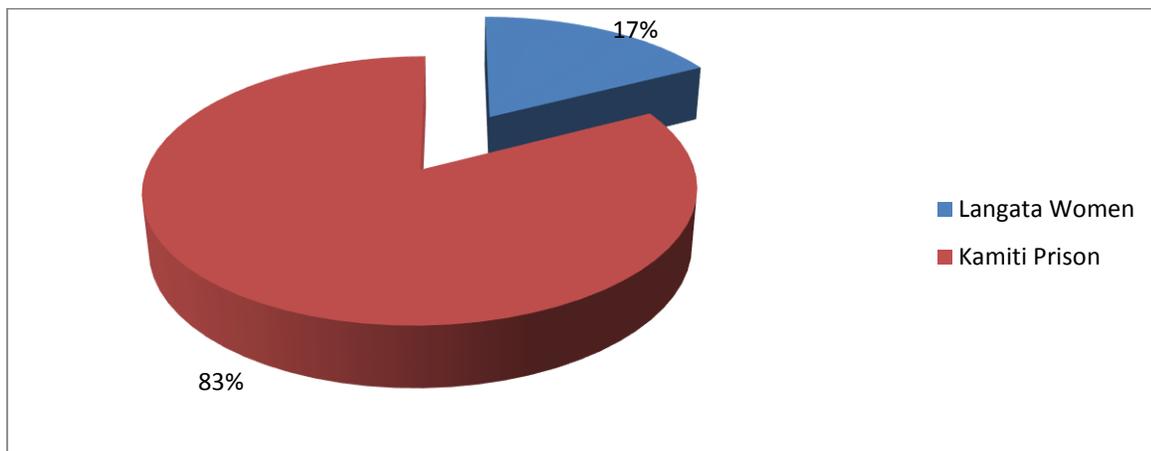
#### 4.2 Socio-Economic Characteristics of Recidivists

Under personal and socio-economic characteristics, the recidivists' personal attributes such as gender, age, marital status, education level, and socio-economic status were established as presented below.

##### 4.2.1 Respondents' Gender

Majority of the respondents (83%) were males imprisoned at Kamiti Maximum Security Prison while 17% were females serving sentences at Langata Women Prison. Figure 4.1 below shows the gender proportion of the respondents.

**Figure 4.1: Gender of the Respondents**



Source: Researcher (2016)

Evidently, the number of male recidivists in Kenya prisons is higher than that of their female counterparts. This finding corresponds with the opinion of Paranjape (2005) that males are more prone to re-offending than females due to the fact that they have more socio-economic responsibilities compared to women. They are therefore more likely to get involved in crime and also recidivate. Furthermore, the male agility and physical strength also make them more daring and explorative. However, in this study the huge disproportion is also attributed to the fact that male respondents at Kamiti were both documented and non-documented recidivists while at Langata only documented recidivists were involved in the study.

#### 4.2.2 Respondents' Age

Majority of the respondents (35.3%), males and females combined, were aged between 31-40 years, 26.9% were between 41-50 years, 24% were 18-30 years, 11.4% were between 51-60 years while 2.45% were between 61-70 years. Table 4.1 illustrates the findings.

**Table 4.1: Respondents' Age**

Age	Gender			
	Male		Female	
	N	%	N	%
18 - 30 years	30	18.0%	10	6.0%
31-40 years	46	27.5%	13	7.8%
41 - 50 years	41	24.6%	4	2.4%
51 - 60 years	17	10.2%	2	1.2%
61 - 70 years	4	2.4%	0	0.0%
<b>Total</b>	<b>138</b>	<b>82.6%</b>	<b>29</b>	<b>17.4%</b>

**Source: Researcher (2016)**

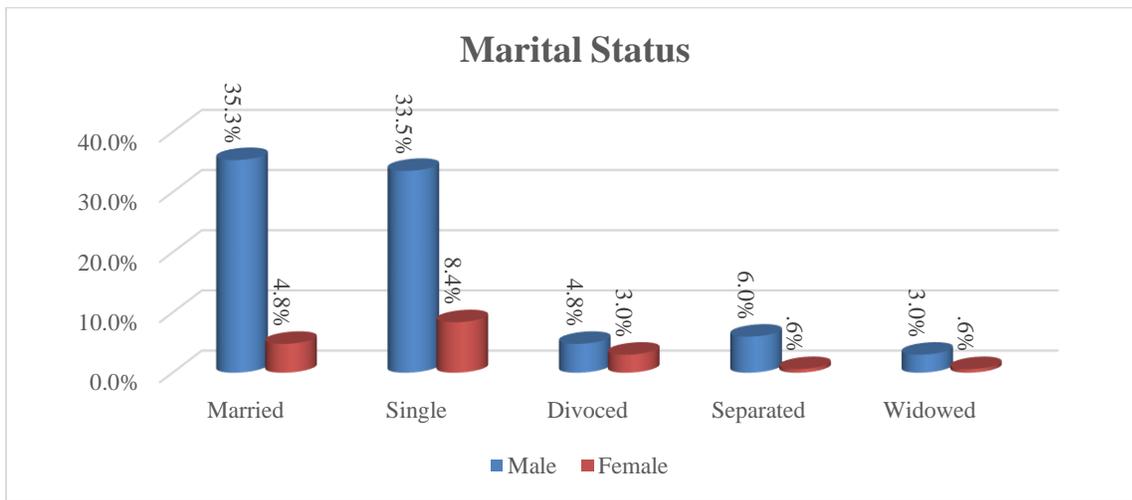
That 59.3% of these male and female recidivists were aged between 18 and 40 years resonates with the findings of McNeil (2010) that most of the recidivists are young adults. This fact may be because within these ages individuals still have many goals in life to achieve such as buying property and settling down in families. If they cannot achieve these obligations by legal and honest means, they are more likely to engage in criminal activities and may turn into recidivists. Conversely, individuals aged above 40 years are more likely to have settled in life in terms of starting families. For instance, at this age most people are married and may not wish to engage in

criminal activities due to the social bonds they have with their families – the spouses and children whom they may wish to shield from shame and suffering should they engage in crime and are caught and punished.

#### 4.2.3 Marital Status of Respondents

Among the male and female respondents combined, 41.9% were single, 40.1% were married, 7.8% were divorced, 6.6% were separated while 3.6% were widowed. Figure 4.2 below illustrates these findings.

**Figure 4.2: Marital Status of Respondents**



**Source: Researcher (2016)**

The finding that majority of the recidivists (59.9%) were either single, divorced, separated or widowed and not in marital relationships seems to confirm the claim by social control theorists that the lesser the attachment (social bond) the higher the susceptibility that the individuals may become criminals. Moreover, Siegel (1983) posits that without attachment to family, it is improbable that feelings of respect for others, the law and authority will develop. Without this respect, individuals who become criminals are more likely turn into recidivists. However, the fact that most of the offenders at 52.7% and 39.5% had received imprisonment as a punishment during their first and second convictions respectively, may be the cause of their marital state, particularly those who are divorced and separated. Apel, Nieuwebeerta, Blokland & Schellen, (2009) posit that imprisonment experience exposes offenders who were married before incarceration to higher divorce risks due to prolonged period of separation.

#### 4.2.4 Education Level of Respondents

Among the respondents, 38.9%; males and females combined, had reached secondary level education, 33.5% primary level education, 15% college level education, 6.6% had no formal education while 6% had university education. Table 4.2 below illustrates the findings.

**Table 4.2: Cross Tabulations of Gender and Education Level of Respondents**

Highest formal education level	Gender					
	Male		Female		Total	
	N	%	N	%	N	%
None	11	6.6%	0	0.0%	11	6.6%
Primary	48	28.7%	8	4.8%	56	33.5%
Secondary	52	31.1%	13	7.8%	65	38.9%
College	17	10.2%	8	4.8%	25	15.0%
University	10	6.0%	0	0.0%	10	6.0%
<b>Total</b>	<b>138</b>	<b>82.6%</b>	<b>29</b>	<b>17.4%</b>	<b>167</b>	<b>100.0%</b>

**Source: Researcher (2016)**

This finding on the level of education of recidivists seems to verify what was earlier established by Kagendo (2003) that a majority of recidivists in Kenyan prison institutions have few years of formal education. That 79% of the recidivists' level of education range between none and secondary may be a cause of their continued involvement in crime due to the fact that their counterparts with college and university level education are more likely to be employed after first conviction and punishment compared to them. Their situation is also made worse by the fact that in Kenya, the number of college and university graduates has steadily risen over the years, thus denying the lowly educated and trained individuals opportunities for formal employment. This may therefore predispose them to engage in criminal activities.

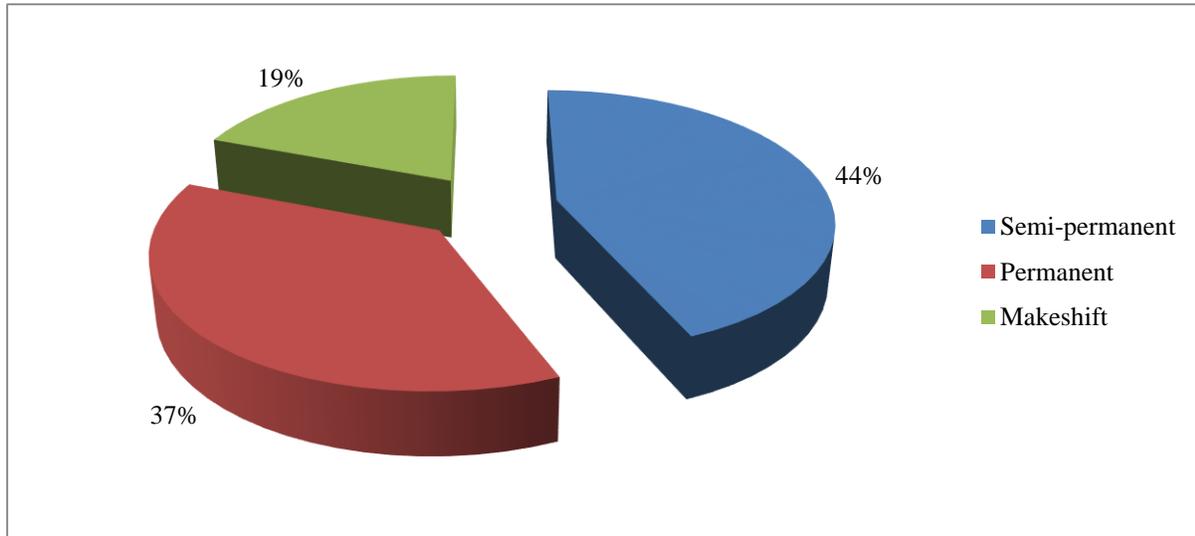
#### 4.2.5 Respondents' Socio-economic status

To determine the socio-economic status of recidivist prisoners engaged in the study as respondents, the researcher sought to establish the type of house structure they lived in before arrest and conviction, house ownership status, occupation of respondents before imprisonment, salary/ income of respondents before conviction, land ownership and the size of land. The findings were as follows.

### Type of House Structure lived in before Imprisonment.

Majority of the respondents, males and females combined, (44%) lived in semi-permanent structures, 37% lived in permanent structures while 19% lived in makeshift structures. Figure 4.3 shows the findings.

**Figure 4. 3: Description of house lived in**



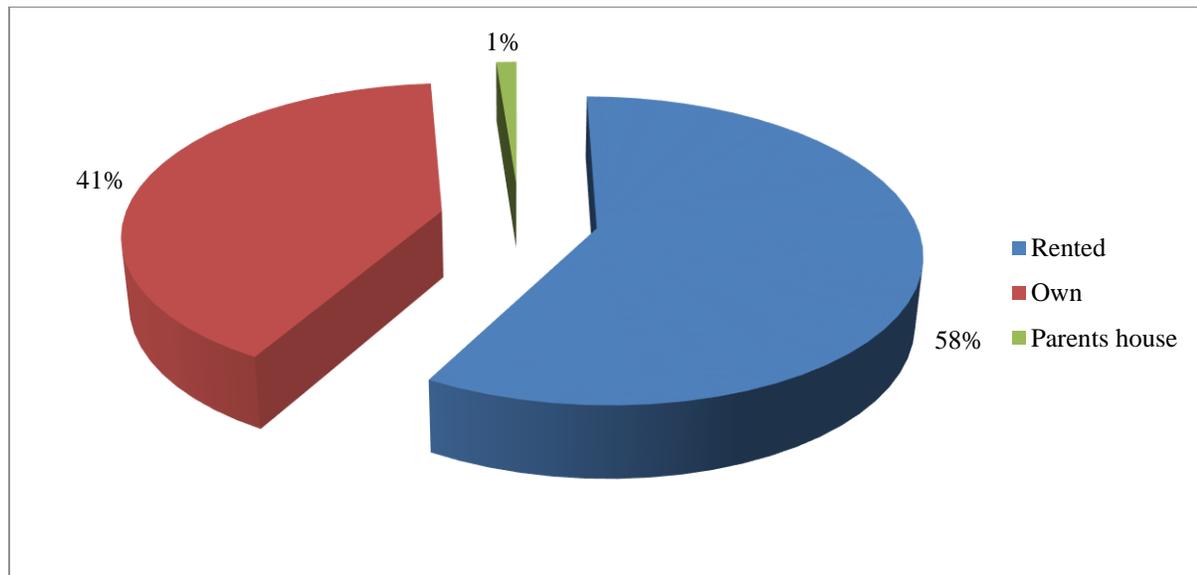
**Source: Researcher (2016)**

Conventionally, the kind of house structure individuals live in connotes their social status. In Kenya, individuals from middle and upper social classes live in permanent houses. Based on this fact, the study concludes that majority of the respondents were from the lower social class given that they lived in semi-permanent and makeshift structures before their conviction. That the majority were from the lower social class may imply that they were struggling to meet their basic needs, and this may have been the cause of their perennial convictions.

### House Ownership Status

Majority of both males and females respondents, (58.1%) lived in rented houses, 40.7% lived in their own houses while 1.2% lived in their parents' house. Figure 4.4 indicates the findings.

**Figure 4.4: Ownership of house lived in**



**Source: Researcher (2016)**

The fact that before their conviction majority of the respondents lived in rental premises which were either semi-permanent or makeshift structures further confirms that they are from the lower social class. This is based on the fact that in Kenya it is common for individuals from the middle and upper social classes to live in their own houses, and if not owned they rent permanent houses. Therefore, that the majority lived in rental houses means that they might have borne the strain of payment given that they come from lower social class. This may have caused their re-offending.

#### **Occupation of respondents before imprisonment**

Among the respondents, only 8.4% were formally employed, 38.9% were self-employed and 35.9% were in informal employments earning wages for survival. The rest of the recidivists (16.8%) were unemployed meaning that they were not earning any income. Table 4.3 cross tabulates gender of respondents and occupation before imprisonment.

**Table 4.3: Cross Tabulation of Occupation and Gender of Respondents**

Occupation	Gender					
	Male		Female		Total	
	N	%	N	%	N	%
Formal Employment	11	6.6%	3	1.8%	14	8.4%
Self-Employment	50	29.9%	15	9%	65	38.9%
Informal Employment	56	33.5%	4	2.4%	60	35.9%
Unemployed	21	12.6	7	4.2%	28	16.8%
Total	138	82.6%	29	17.4%	167	100.0%

**Source: Researcher (2016)**

On occupation, it can be concluded that only 8.4% of male and female respondents were on reliable income by being in formal employment. Those who were self-employed and the ones in informal employments may not have had a steady source of livelihood. However, the ones who were worst off were the 16.8% who reported being unemployed. Crime and recidivism levels are always worst among the unemployed because such individuals find it very difficult to earn a living by legal means thus in most cases resort to crime, and they end up being recidivists.

#### **Salary/ Income of respondents per Month**

On monthly income, the study collected discrete data; exact monthly earnings in Kenya shillings from the respondents which were later categorized as low income, medium income and high income. A total of 83.2% of the respondents were found to be low income earners (earned Kshs 25,000 and below), followed by 15.6 % middle income earners (earned between 26,000 and 90,000) and only 1.2% earned more than Kshs. 90000. In comparison based on gender, most of the respondents of either gender were low income earners. Table 4.4 indicates the findings.

**Table 4.4: Distribution of Respondents Based on the Income**

Salary or income in Kshs	Gender					
	Male		Female		Total	
	N	%	N	%	N	%
High Income	2	1.2%	0	0%	2	1.2%
Medium Income	23	13.8%	3	1.8%	26	15.6%
Low Income	113	67.7%	26	15.6%	139	83.2%
Total	138	82.6%	29	17.4%	167	100%

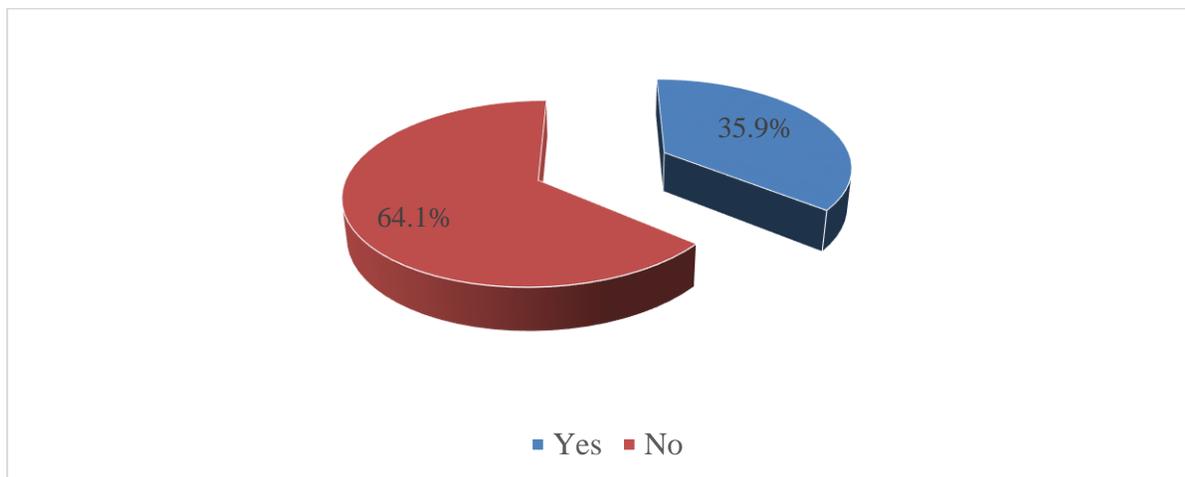
**Source: Researcher (2016)**

From the findings above on income, it can be deduced that some recidivists are likely to be low income earners thus may face financial difficulties in meeting their various needs. This financial difficulty may be the root cause of their engagement in crime, and subsequent re-offending.

### Land Ownership

Majority of the respondents 64.1% (males and female) indicated that they do not own any piece of land while only 35.9% own land. Figure 4.5 shows the findings.

**Figure 4.5: Land Ownership**



**Source: Researcher (2016)**

Land is a treasured economic resource in Kenya. Those who own land are invariably economically advantaged as they can practice agriculture, build houses and also acquire loans from financial institutions to operate businesses. It is therefore possible that those who do not own any pieces of land are economically disadvantaged. This can be attributed to the 64% of the respondents who indicated that they did not own any piece of land. This economic disadvantage may influence commission crime, and re-offending as the culprits seek to earn their physiological needs.

### Size of land Owned

Of the 35.9 % (60) respondents who owned land, 93% were male and 7% female. The 44.8% of the males who own land own not more than 3 acres. Only 14% of the males owned between 4 and 6 acres. However, a sizeable number of respondents, all males (28%) owned large tracts of land of 10 and above acres. However, 1.2% (2) respondents, who indicate that they own land declined to mention the sizes of their lands, thus only 34.7% (58) respondents indicated their land sizes. The results clearly indicate that the rights to land ownership rest with the men to the disadvantage of women who may be relegated to dependency on men. Lack of land as an economic resource may also force women to resort to crime and re-offending for survival. Table 4.5 summarizes the findings.

**Table 4.5: Distribution of Respondents Based on the Sizes of Land Owned**

Size of land	Gender					
	Total		Male		Female	
	N	%	N	%	N	%
Less than 1 acre	13	22.40%	12	20.70%	1	1.70%
Between 1 and 3 acres	16	27.60%	14	24.10%	2	3.40%
Between 4 and 6 acres	9	15.50%	8	13.80%	1	1.70%
Between 7 and 9 acres	4	6.90%	4	6.90%	0	0.00%
10 and above acres	16	27.60%	16	27.60%	0	0.00%
<b>Total</b>	<b>58</b>	<b>100.00%</b>	<b>54</b>	<b>93.10%</b>	<b>4</b>	<b>6.90%</b>

Source: Researcher (2016)

The findings indicate that females are disadvantaged when it comes to land ownership as only 7% owned land. Given the economic advantages attributed to land ownership, this implies that they are economically disadvantaged. However, male recidivists are also disadvantaged in this regard since 44.8% owned three acres or less which cannot be put to large scale economic advantage such as large scale farming.

Generally, from the socio-economic data presented above (on the type of house structure the convicts lived in, house ownership, occupation before imprisonment, income levels, land ownership and size of land owned by the respondents) the study appears to confirm that the majority of the recidivists come from the lower social class. This is backed by the fact that 63% of the respondents lived in semi-permanent and makeshift structures before their arrest and conviction. As concerns ownership of the houses, 58% lived in rented houses. On monthly income, 83.2% of the respondents were low income earners. Additionally, on ownership of land which is a treasured economic resource in Kenya, 64% of these recidivists did not own any piece of land of whatever size.

In terms of occupation before arrest and conviction, 12% of the respondents were unemployed, while majority at 38% were engaged in menial tasks such as casual labourers, hawkers, herdsman, handcart drivers, car washers, guards, farm workers and vendors. This finding is similar to that of Scott (2010) who established that a large number of offenders in federal prison institutions in Canada had unstable work history and had no trade. According to Bohm and Halley (1997), Merton's Differential Opportunity Theory of crime posits that when individuals lack the legal means to earn their basic needs, they innovate in the context of engaging in crimes such as theft, burglary, robbery, organized crimes, and prostitution.

This theory of crime explains why there are more of the poor than the wealthy in crime. Once they have been punished for the initial offences, the poor may recidivate if their economic circumstances have not changed. This is in line with the findings of Bohm and Halley (1997) that recidivists are usually the unemployed. In Norway, Skardhamar and Telle, (2012) established that the likelihood of recidivism is significantly lower when former prisoners are employed compared with when they are unemployed.

The above findings from the respondents on the typical profile of recidivists in Kenya are consistent with the opinions of the key informants and FGD members from whom the attributes can be summarized as follows:

- Majority of the recidivists are males.
- Majority of them are poor and they come from the lower social class.
- They are mostly the youth and young adults. Kamiti Prison Key Informant- 6 (KPKI-6) summarized these three attributes thus:

*“Wengi wawenye wana rudi rudi ni wanaume vijana, wenye wamezobwa na umasikini na hawana kazi.” “Many of the prisoners who come and go are poor young men who are unemployed”.*

- Several of them abuse drugs and alcohol. On this Langata Focus Group Discussion Member Number-3 (LPFGDM-3) who had been re-convicted several times attributed her problems to drugs and alcoholism. She asserted:

*“I regret why I started taking alcohol and drugs, at times I steal or sell my body to buy drugs”.*

- They lack professional skills or trades.
- They are illiterate or have lower formal education; thus they reoffend because they cannot improve their skills, cannot learn from their mistakes, have no alternatives in life and therefore rely on crime as a source of income. KPFGDM-6 observed:

*“Sisi hatuku batika kuwenda shule na hatuna kazi sasa hualifu ndio kazi yetu” “We were not lucky enough to go to school and we are unemployed, so crime is our job”*

- They mostly come from dysfunctional families or had poor childhood upbringing. They also have poor family relations and are, thus, hardly visited by relatives in prisons. For instance, KPKI-1 observed:

*“Most of these prisoners who keep coming back to prison are never even visited, it seems they have been rejected, but some of them came from the streets”*

- In prisons, they are disobedient to the prison rules and personnel and they do not take the reformation and rehabilitation programme seriously. For instance, on this; KPKI-3 observed:

*“Such prisoners give us very hard time; they would not want to follow prison rules. When it comes to work, they malinge a lot”*

### **4.3 Relationship between Initial Punishments and Subsequent Reoffending**

To establish the link between Initial Punishments and Subsequent Reoffending the study established the following.

#### **4.3.1 Number of times convicted**

Majority of the respondents interviewed (62.9%) had been convicted twice, 31.1% had been convicted three times, 4.2% convicted four times, 1.2% convicted 5 times while 0.6% had been convicted over six times. Table 4.6 shows the results.

**Table 4.6: Respondents Conviction Rate**

Number of times arrested	Gender					
	Male		Female		Total	
	N	%	N	%	N	%
2 times	88	52.7%	17	10.2%	105	62.9%
3 times	40	24.0%	12	7.2%	52	31.1%
4 times	7	4.2%	0	0.0%	7	4.2%
5 times	2	1.2%	0	0.0%	2	1.2%
over 6 times	1	0.6%	0	0.0%	1	0.6%
<b>Total</b>	<b>138</b>	<b>82.6%</b>	<b>29</b>	<b>17.4%</b>	<b>167</b>	<b>100.0%</b>

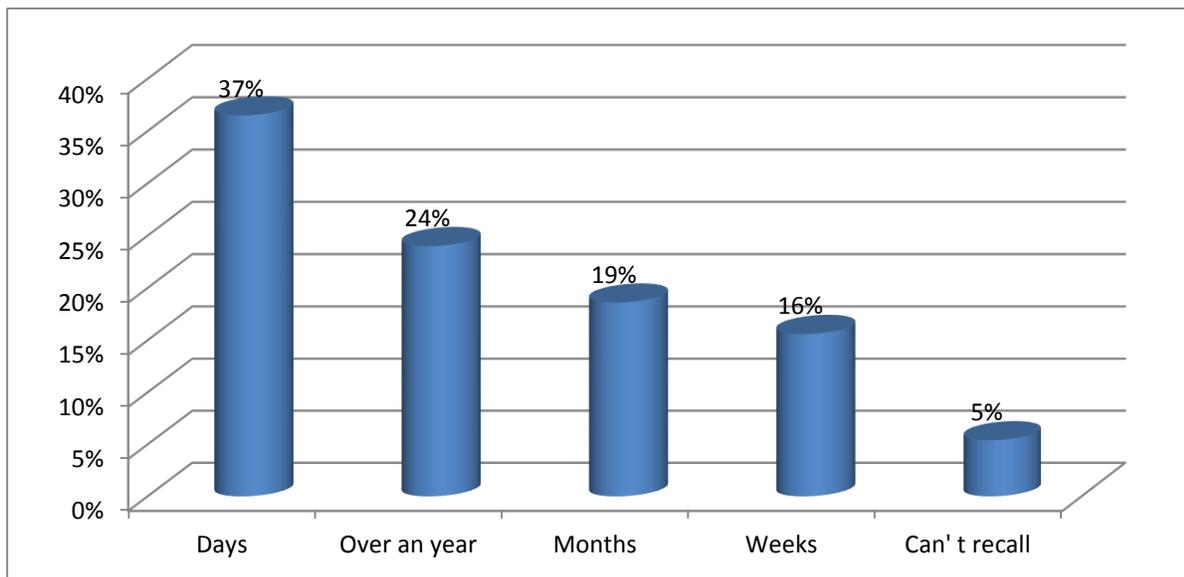
**Source: Researcher (2016)**

Based on these findings, there are fewer serial recidivists at 37.1% at the two prison institutions than ordinary recidivists. Serial recidivists according to Mednick, Gabrielli and Hutchings (2008) are offenders who have been convicted 3 times or more and are normally the most undesired because they are usually responsible for a large proportion of criminal activities. Comparatively more males than females are serial offenders at 30% and 7.2% respectively. This may partly be attributed to the socio-economic responsibilities of men in patriarchal communities such as those in Kenya.

#### 4.3.2 Duration taken before arrest by police after committing first crime

Of the respondents, 37% took days before being arrested by police after committing their first crimes, 24% took over a year before being arrested, 19% took months before being arrested, 15.6% took weeks while 5.4% could not recall the duration they took before being arrested by the police. Figure 4.6 illustrates the findings.

**Figure 4. 6: Duration taken before arrest by police after committing first crime**

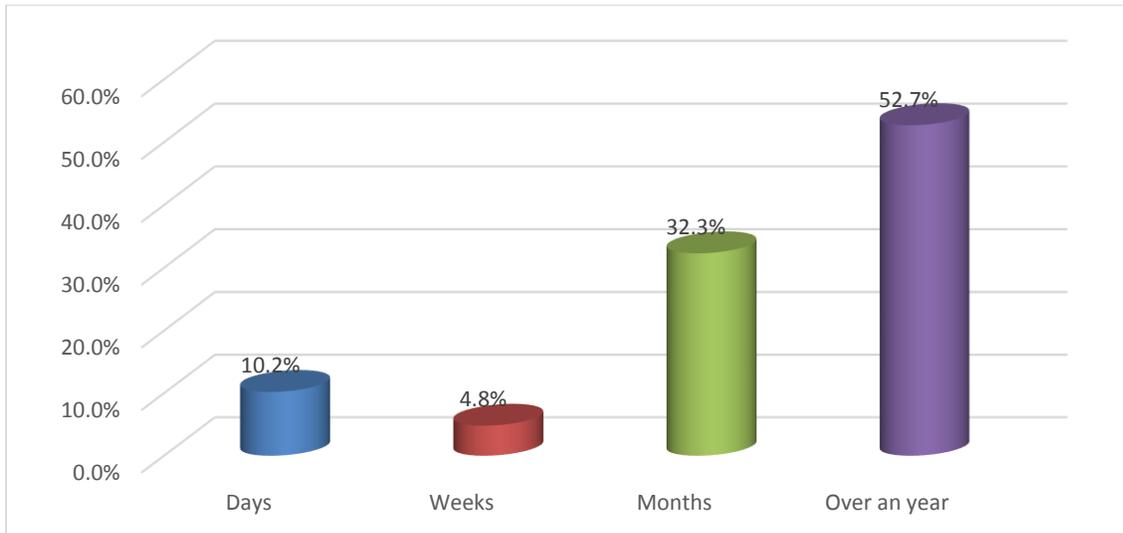


**Source: Researcher (2016)**

#### 4.3.3 Duration taken before court sentencing for the initial crime

Majority of the respondents, males and females combined (52.7%) took over a year before being sentenced by the court from the time they committed their very first crime while 32.3% took months. Figure 4.7 shows the results.

**Figure 4. 7: Duration taken before court sentencing**



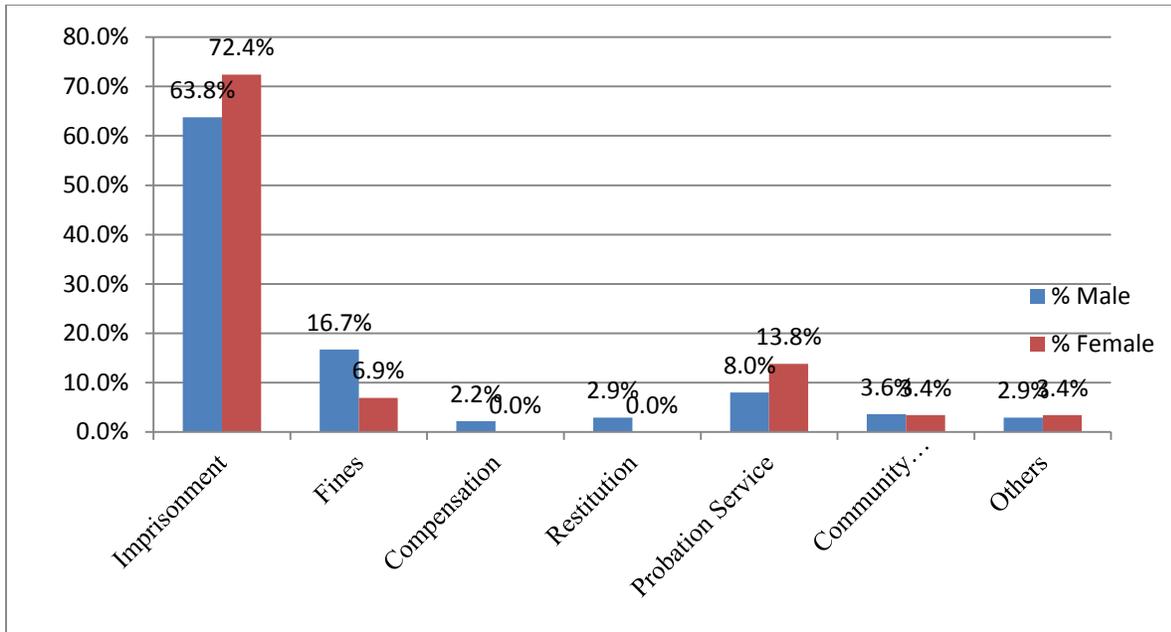
**Source: Researcher (2016)**

On the durations taken before arrest by police after committing a crime and that taken before court sentencing, Deterrence Theory of punishment posits that one of the characteristics of an effective punishment that would control re-offending is alacrity; the swiftness with which the punishment is awarded to the offender after the crime was committed. However, as per this study, 59% of the respondents took weeks to over a year to be arrested by the police for trial and conviction while cases of 52.7% took over a year for their cases to be concluded from the time the cases were taken to court for determination. Hence the average period between crime commission and conviction took too long for the punishments for the very first crimes to be effective. This means that the punishments that were awarded for the initial crimes came too late thus could not control recidivism.

#### **4.3.4 Type of punishment for first convictions**

Majority of the respondents, (64% and 72% males and females respectively) had been awarded imprisonment for their very first conviction while 17% of the males and 7% of females were awarded fines, 8% and 14% respectively were punished by committal on probation service, 3.6% and 3.4% were placed on community service orders. Only males were punished by compensation and restitution albeit a small percentage (5%) as shown in Figure 4.8.

**Figure 4.8: Punishment Categories for first conviction**

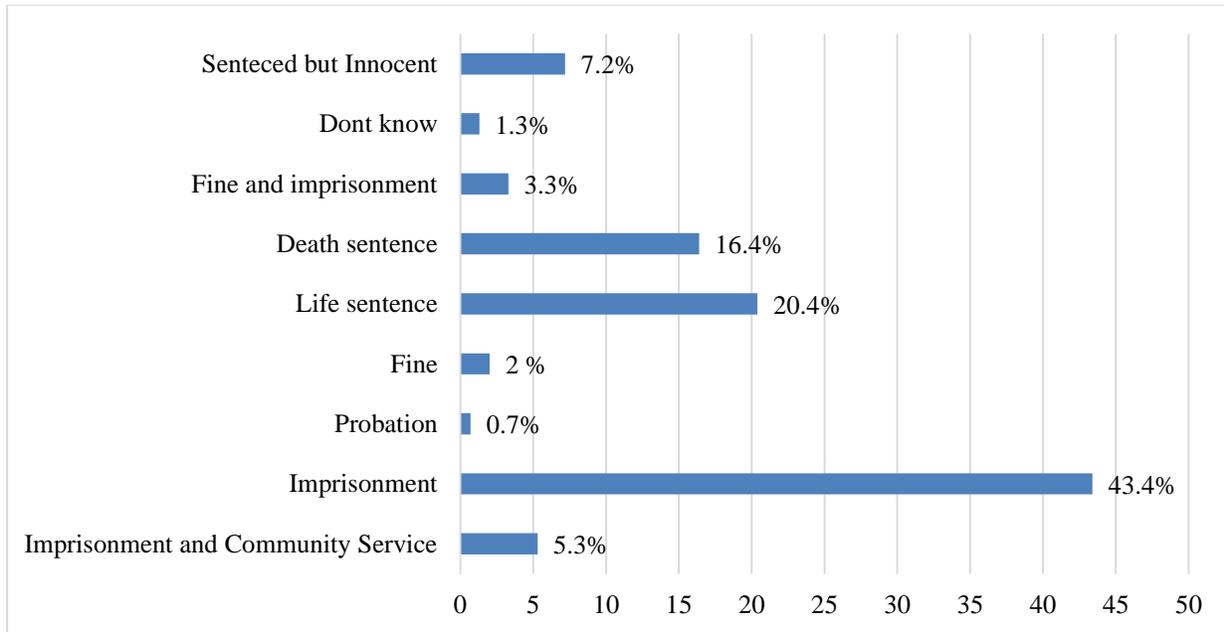


**Source: Researcher (2016)**

#### **4.3.5 Type of punishment awarded for the second and subsequent convictions**

Among the male and female respondents, 43.4% were imprisoned for the second convictions, 20.4% were awarded life sentences, 16.2 % awarded death sentences, 7.2 % claimed to have been guilty during first conviction but were wrongly convicted for subsequent crimes thus though they participated in the study on the basis that they have been reconvicted they strongly insisted to be first offenders. For those who had been convicted more than twice, 5.3% were imprisoned and community service for these convictions, while 3.3% were fined and imprisoned. Another 2% and 0.7% were fined and given probation respectively. However, 1.3% (2) respondents were not clear on the punishments received given that they were serial recidivists at Langata Prison who had been convicted over four times for petty offences. Figure 4.9 presents this information.

**Figure 4. 9: Punishment Categories for second and subsequent convictions**



**Source: Researcher (2016)**

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

However, the popular use of imprisonment may in itself influence reoffending. This was confirmed by McNeil (2010) who asserted that the likelihood of an inmate to recidivate is influenced by prior imprisonment, with previous prison terms leading to greater chances of recidivism. This is based on the weaknesses inherent in this kind of punishment that impede reformation of convicts. These weaknesses include fights among prisoners, and at times among prisoners and prisons staff, coercion and other acts of indiscipline by prisoners which negate on reformation measures (Mbugua, 2011; Paranjape, 2005; Colvin, 2000; Steiner, 2008); poor physical and social prison conditions which lead to contamination of petty offenders (Kagendo 2003; Gendreau and Cullen, 1999; Odegi-Awuondo, 2003; Mushanga, 1976); brutality by the

warders which embitters the convicts into revenge against the general society upon release (Odera-Oruka, 1976); instilling of institutional dependence (Goodstein, 1993); overcrowding and congestion (Omboto, 2013 a) among other weaknesses. On the harshness of prison life, Kamiti Prison Focus Group Member Number-2 (KPFGDM-2) observed during focus group discussions that:

*“Hapa jela naye kuteseka ndio saidi, uwesi badilika kama unateseka” (Here in prison life is also full of suffering, one cannot change when suffering).*

On institutionalization of prisoners, KPFGDM-8 who claimed to have been a street boy and have recidivated four times remarked:

*“Kwa walala hoye kama mimi, jela si mbaya, kwa streets nili teseka na nilipo fungwiwa Inda maraya kwanza kwa makosaya snatching kibeti ya mama nili pata jela iko chakula ya bure na mahali pa kulala, sio kama inje kwa streets mahali nilitoka, uko raia ni ya matajiri. Sasa ata ukinitoa hapa nita iba nirudi” (For the very poor like me, prison life is not bad; in the streets I used to suffer but when I was imprisoned at Industrial Area Prison for the first time for the offence of snatching a lady’s bag, I found free food and somewhere to sleep unlike in the streets where I lived, life outside prison is for the rich. Now even if I am discharged, I will steal so as to come back.)*

Another member of the focus group KPFGDM-1 asserted:

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

These weaknesses described above render imprisonment ineffective thus may contribute to recidivism.

On other reasons why imprisonment in Kenya may not reform convicts, Kamiti Prison Key Informant 1 (KPKI-1) observed as follows:

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

Other than the capacity of prison officers, a focus group discussion member also pointed out that former prisoners in Kenya are more likely to reoffend because of integrity and character of prison officers who cannot be emulated as role models by prisoners they seek to reform. The KPFGDM-10 remarked:

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

Concerning criminalization of petty offenders in prisons, KPFGDM-3 had put it thus:

*“Bad influence from fellow prisoners is the reason why some of us are here. A prison such as Kamiti is for bad people; we are bad people all put together, and we can only get very bad by contact with one another and it is worse for petty offenders who come here and those who never committed the crimes they are convicted of. This bad influence should be addressed. When we were at the*

*Industrial Area Prison, we laughed at and mocked a watchman who was charged with failure to prevent a crime. We told him: wewe ni mjinga sana ulikuwa ukilinda pesa mingi bila kuiba na sasa uko hapa na sisi robbers kwa makosa bandia, ungezuia wezi wenye wakona bunduki na rungu?ukirudi iba” (You are very foolish, you were guarding a lot of money without stealing, and now you are here with us robbers on a fake charge, how could you stop robbers armed with guns using a club? If you get out, steal). This guy promised to steal and rob when he leaves prison and he did and is with me here at Kamiti. Also, after release from prisons, the former prisoners who find life difficult contact the colleagues met in prisons with whom they form vicious criminal gangs and commit more serious offences”.*

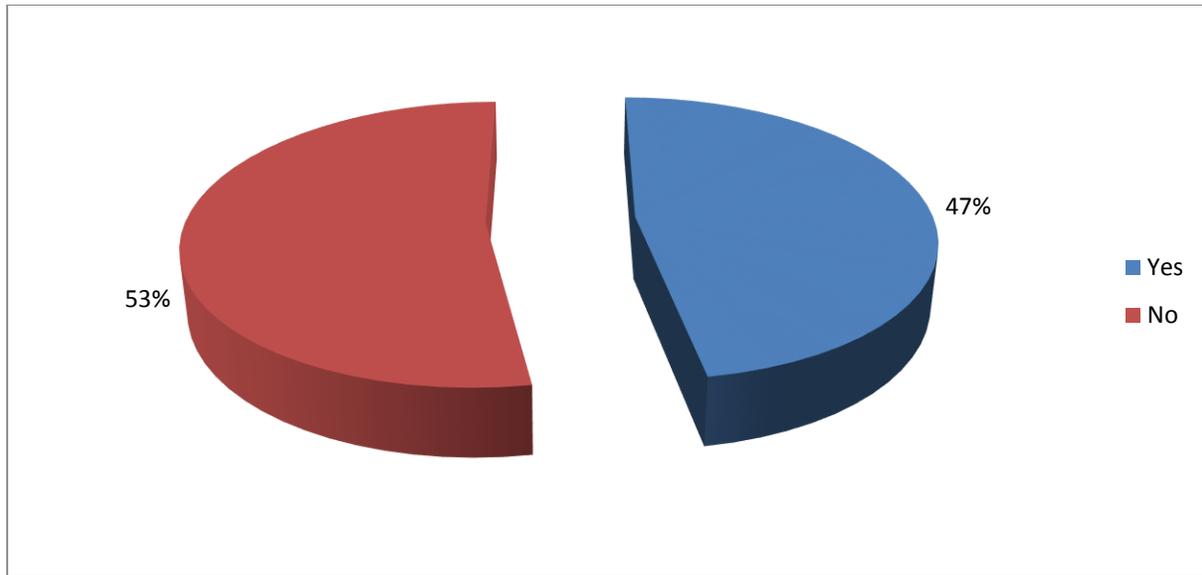
The 20% of the convicts whom from the findings were sentenced to life sentences, and the 16% awarded death penalties during second convictions are those who committed capital crimes such as rape, robbery with violence, murder, and manslaughter. According to the penal code or Criminal Procedure Code CAP 63, these crimes deserve the two punishments. However, the fact that neither of the two punishments were awarded during first convictions is a pointer that recidivists commit less serious crimes compared to when they recidivate.

That 7% of the respondents accepted that they were guilty on first convictions but insisted that they were wrongly convicted on the second and subsequent convictions, if they are truthful; points to the inadequacies in the criminal justice system institutions mandated with trial and conviction of offenders in Kenya as postulated by Omuya (2015), Nyongesa (2013), Mageka (2015), Omboto (2015), and Kivoi and Mbae (2013) about the police, and (Gathu, 2014; Infotrak, 2012; Mnjama, 2013; Muneeni, 2011; Kiprono, Ngetich & Mwangi, 2015) on the courts.

#### **4.3.6 Punishment and prevention of Recidivism**

Among those interviewed, 53% indicated that the nature of punishment received could not stop them from future criminal activities, while 47% were in agreement that punishment could stop them from future criminal activities. Figure 4.10 shows the findings.

**Figure 4. 10: Punishment effect on Recidivism**



**Source: Researcher (2016)**

The 53% who felt that punishment could not stop them from engaging in criminal activities indicated that other factors such as poverty and bad influence were responsible for their re-offending. While 47% were of the opinion that only punishments that ensure that the poor convicts are economically empowered and counseled can be effective in controlling reoffending. These positions correspond with the findings from the key informants. For instance, on whether punishment can stop re-offending, a key informant at Kamiti Prison opined that:

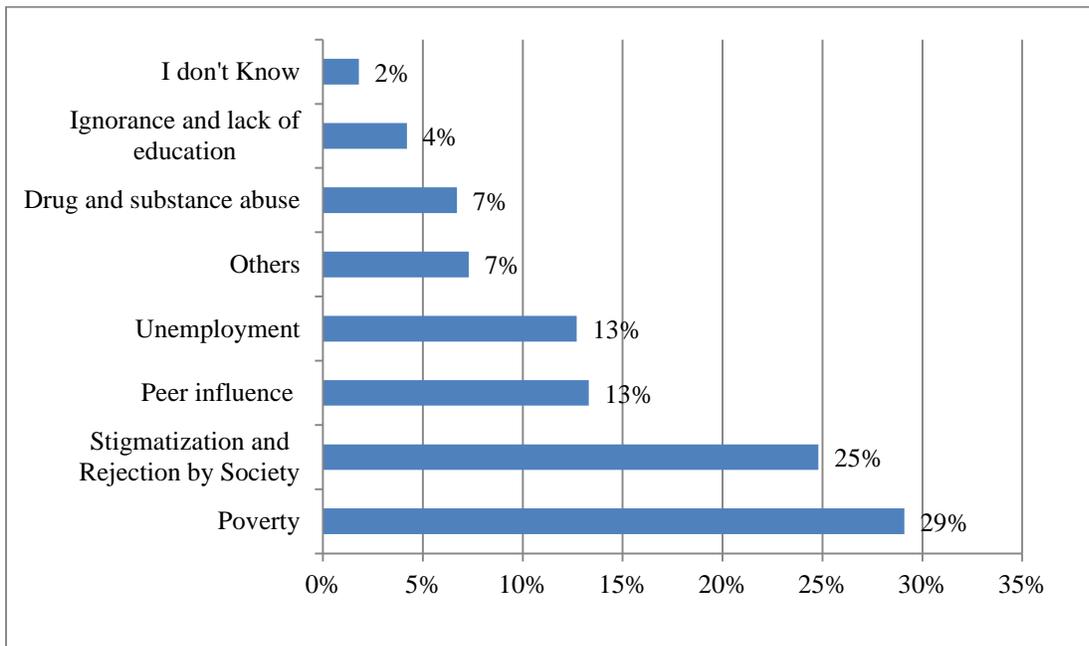
*“A large number of prisoners who keep on coming back to us are the poor who cannot afford basic needs, so their continued criminality cannot in any way be controlled by or attributed to punishment”*

#### **4.3.7 Reasons for Recidivism**

Asked for the reasons why they continue to commit crimes despite their past punishment(s), 29% of the respondents indicated that they are in crime due to poverty, 25% blamed their continued criminality on stigmatization and rejection by members of the society, while 13% each indicated that their reoffending was due to lack of employment, and peer influence. The 7% of the respondents cited that it was due to drug and substance abuse, as another 7% blamed their recidivism on other factors such as easy way of earning a living, the need to revenge against

those who offend them, corruption, land conflicts, psychosocial issues among others. Few respondents (4%) cited ignorance and lack of formal education. While another smaller proportion (2%) indicated that they did not know why they continue to commit crime despite punishment. Figure 4.11 indicates the findings.

**Figure 4. 11: Reasons for Recidivism**



**Source: Researcher (2016)**

During focus group discussions, these factors were elaborated on by the two FGD members at Kamiti prison and Langata in nine categories as follows:-

- Poverty, which is reflected in lack of employment or capital to start business on which one can support themselves and their families, is a major factor in re-offending.
- Bitterness or a drive to revenge where one feels he or she was unfairly convicted or the punishment awarded was too harsh.
- Peer pressure from bad friends with whom one has been involved with in crime, who normally pull back their colleagues into committing crimes despite punishment even when they feel they should stop.
- Drug and alcohol consumption of which the members observed that once one is hooked on drugs and alcohol, punishment has no power over them, more so, if crime is their source of earning to buy the drugs and alcohol.

- Ignorance or failure to accept legal mechanisms of settling disputes as in the cases of grievous bodily harm resulting from fights in situations where one takes the law into their own hand instead of registering complaints with the police.
- Land conflicts commonly witnessed when relatives disagree on how a family land should be sub-divided. The group observed this could lead to murder cases, among others.
- Domestic issues or conflicts between family members and spouses are also responsible for continued criminality.
- Social stigma and discrimination from community members, and bitterness from crime victims who never forgive convicts even after punishment.

On poverty as a factor influencing reoffending by convicts, a Police Officer who was one of the key informants; PKI-2 observed that:

*“Poverty characterized by lack of employment and lack of capital for business are factors that fuel re-offending; therefore the root cause of crime and reoffending which is poverty should be addressed instead of over reliance on punishment”.*

That 29% and 13% of the respondents blamed poverty and unemployment for their reconviction seems to be corroborated by the findings on the socio-demographic characteristics of the respondents which established that a majority come from lower social class, and thus may have been pushed into crime by poverty. The findings are consistent with the opinions of other scholars such as Bohm & Halley (1997) who identified unemployment as one of the causes of re-offending by ex-convicts.

Concerning stigma, discrimination from the community and family members and rejection, KPFGDM-5 put it thus:

*“Immediately people learn that you were once prisoner, they drift away even when you have not offended them in any way. I left prison and got employed by an Asian in his factory in industrial area here in Nairobi. When he learnt that I was once a prisoner, I got fired. At the work place a stool got broken and I offered to repair it, which I did very well. The boss was quite impressed and asked where I had trained, but when I became honest with him and informed him that I had*

*learnt the skill at Kamiti Medium prison, he fired me on the spot accusing me of not having informed him that I am a criminal. I had worked with them for seven months without any mistake. I deeply regret this incident. I stayed for over a year without a job which forced me to steal, and that was the onset of my criminal life as I later became a robber for which I am now condemned to die.”*

On his part, KPFGDM-9 observed:

*“When you have been falsely accused, you do not see the need not commit a crime, after all you are guilty whether you did it or not.”*

KPFGDM-7 summed the extent of stigma thus:

*“To the public, once a criminal, always a criminal, the society does not expect offenders to change”.*

According to Tannenbaum (1938) and Lemert (1951) social stigma and discrimination worsens the rate of recidivism since it leads to police profiling and close monitoring of ex-convicts. The individuals labeled criminals also suffer from other injustices of the label which include failure to be accepted by employers, and strained relations with the law abiding members of the society. In Kenya this observation would appear to be true since convicts are denied certificate of good conduct by the government on the basis of their past criminal history. Without this document, most employers including the government declines to offer job opportunities to applicants.

On bitterness and the need for revenge by crime victims, Langata Prison FGD Member Number-1 (LPFGDM-1) who had been reconvicted four times, attributed her problems to the victim of her first crime who kept accusing her falsely and the area chief and the police that were either compromised or could not believe her protestation of innocence asserted:

*“My first offence was stealing by servant for which I was imprisoned for three (3) years but served one year due to remission and amnesty. When I went back to the estate, the lady I had stolen from in the shop demanded that I pay back her money but because I didn’t, she accused me of a different offence and I was arrested.”*

KPFGDM-6 observed:

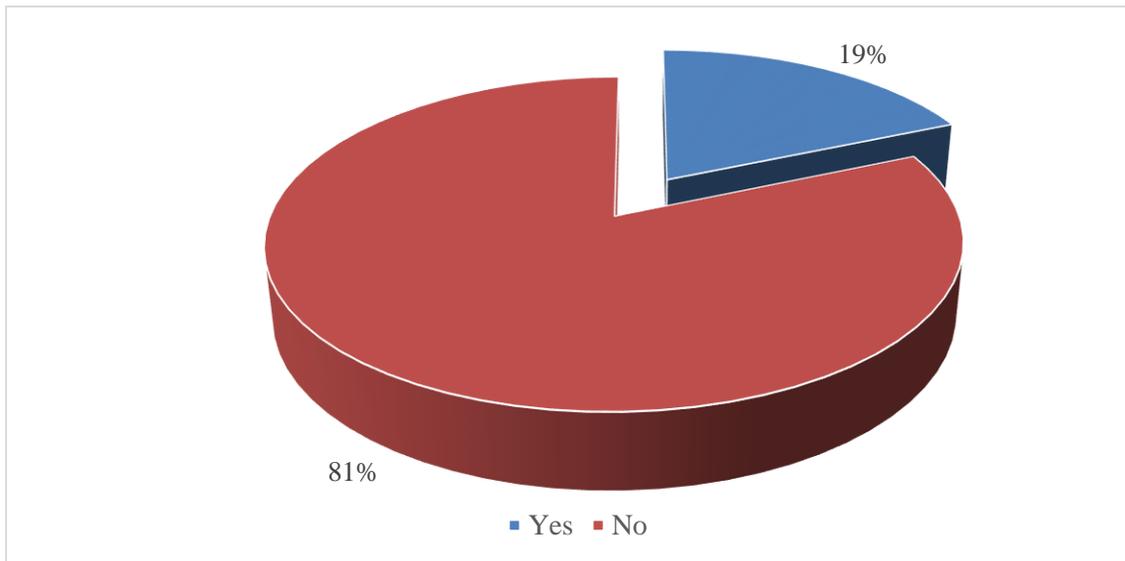
*“Mwenye ulikosea na watu wake wakiona umerudi baada ya kesi kumalizika kotini, bado wanakuandama uwalipe na koti ilishakuhukumu” (After you have been punished by the court, the crime victims still follow you up to pay them.)*

As a result of social stigma and discrimination, rejection by family and relatives, and bitterness from crime victims, some ex-convicts make a conscious decision to go back to crime. The above findings and arguments show that several factors that influence re-offending lie outside the punishment and it can only be curbed by controlling these factors.

#### 4.3.8 Prior Awareness of punishments

Majority (81%) of male and female respondents had no prior knowledge of the punishments prescribed for their first convictions. Only 19% were aware. Figure 4.12 shows the results.

**Figure 4.12: Prior awareness on prescribed punishments**



**Source: Researcher (2016)**

According to Wright, (2010) another factor that determines whether punishment will be effective in deterring crime is awareness of the prescribed punishment for the various crimes. That 81% of the respondents were not aware of the legally prescribed punishments before they committed the crimes implies that they could not be deterred from committing the crimes. This might be another factor responsible for their recidivism. It therefore calls for education of the general

public on the prescribed punishments. This can be done by making the penal code easily available to the public. This document outline prescribed punishments for all crimes.

#### 4.3.9 Duration before Arrest for the Second Offence

Among the respondents, both male and females, 38.3% took over a year before they were arrested again for the second offence after completing their initial punishment while 32.9% took months, 13.8% could not recall the duration, 5.4% took weeks, while 9.6% took days. Comparatively, majority of the males (38%) took over a year before arrest, while majority of the female, 48% took months before second arrest. Table 4.7 indicates the findings.

**Table 4.7: Duration before Arrest for Second Offence after Initial Punishment**

Duration before arrest for second offence	Gender					
	N	Male	N	Female	N	Total
Days	14	10.1%	2	6.9%	16	9.6%
Weeks	9	6.5%	0	0.0%	9	5.4%
Months	41	29.7%	14	48.3%	55	32.9%
Over an year	53	38.4%	11	37.9%	64	38.3%
Can' t recall	21	15.2%	2	6.9%	23	13.8%
<b>Total</b>	<b>138</b>	<b>100.0%</b>	<b>29</b>	<b>100.0%</b>	<b>167</b>	<b>100.0%</b>

**Source: Researcher (2016)**

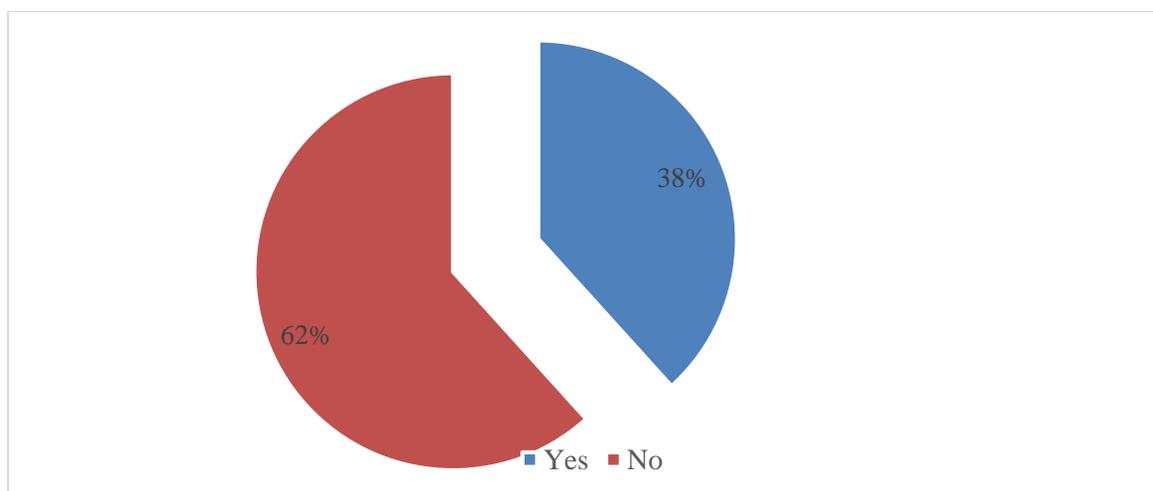
That 48% of the respondents were re-arrested within a year after the initial punishment compared to 38.3% who took over one year to be rearrested appears to confirm the findings of Bohm and Halley (1997) that recidivism rates are highest for ex-prisoners during the first year of release from prison. This according to Goodstein (1993) and Kamunyu (nd) can be attributed to institutional dependence while James (2015), and Venter, Hoffman and Goudine (2006) postulate that it is caused by lack of prisoner empowerment for proper social reintegration into the society which exposes them to a lot of challenges in settling down as law abiding citizens in the communities because they were not adequately prepared before their abrupt discharge.

James (2015) posits that reentry programmes are of three divergent types: The first are those that seek to prepare the offenders for discharge; those that aim to assist them in receiving the services they may need before their release from prison, and lastly strategies geared towards assisting the offenders to permanently re-integrate in the community. If these preparations are not adequately done then the former prisoners are likely to be exposed to difficulties in meeting their physiological needs during the first days of discharge, and may be compelled to reoffend. This therefore, calls for convicts to be released into half way homes before their final discharge into the society. These are institutions that assist ex-prisoners to settle down through counseling and provision of basic needs. This enables the former convicts to settle down in the community after full discharge from prison.

#### 4.3.10 Relationship between recidivism and the initial punishment

Majority of the respondents ; 62 % (104 out of 167) felt that their reoffending was not in any way linked to the initial punishment they received at the first conviction, while 38% (63 out of 167) felt that it had a linkage. Figure 4.13 below show the results.

**Figure 4.13: Relationship between recidivism and initial punishment**



**Source: Researcher (2016)**

This finding that 62% of the respondents felt that their reoffending was not in any way linked to the initial punishment seems to contradict the assertion of Paranjape (2005) that there exists a connection between recidivism and punishment the offender receives for his/her initial criminal act. Even the 38% who connected their reconviction to the punishment simply pointed out to the

fact that a punishment like imprisonment exposed them to stigma, and made them to lose time that they would have used to accumulate resources. Some also pointed out the inability of this form of punishment (imprisonment) to bring change on the offenders for various reasons.

It is also prudent to note that these offenders never received the same forms of punishment for their initial conviction. This was reflected in the varied punishments the members of the FGDs had received. For instance, the study established that among the FGD members at Kamiti four (4) members had been awarded prison sentence, three (3) probation sentence, two (2) fined, another two (2) warned and released (suspended sentence) while one (1) had been placed on community service under Community Service Order. Similarly, at Langata prison among the six (6) FGD members, two (2) had served on CSO for their first conviction, three (3) imprisonment for lack of money to pay fines, while the other one (1) was sentenced to probation.

Asked to comment on the link between recidivism and initial punishment a key informant - KPKI-3 asserted:

*“First punishment does not influence reoffending because every crime depends on different factors, circumstances and on the individual. It is not clear-cut. For instance, convicts without stable backgrounds will reoffend irrespective of the punishment because they depend on the crime to survive.”*

Similar opinions were expressed in focused group discussions. The members observed that several factors influence recidivism in offenders and not punishment. Majority of these factors like poverty, and social stigma and discrimination of former convicts are community based, while some factors such as inability to withstand peer pressure and drunkardness are inherent in the individual convicts.

The general view was that formerly convicted offenders if not properly reformed and rehabilitated, accepted and supported by the community members, will always relapse back to crime, despite the type of initial punishment meted out. However, it was also clear that if the initial punishment is not severe enough, the convicts will not be deterred and may recidivate. Similarly, any form of punishment which does not reform a convict and ensure that he or she is rehabilitated for one reason or another, indirectly makes him or her to reoffend.

#### 4.4 Relationship between Recidivism and Key Variables

The key variables namely marital status, formal education levels, salary or income, duration before police arrest for initial offence, duration before court sentence and type of the first crime were correlated with recidivism.

##### 4.4.1 Regression Analysis of Socio-Demographic Characteristics and Recidivism

Regression Analysis was conducted on the relationship between recidivism and various variables. The findings are shown in table 4.8 below.

**Table 4. 8: Regression Analysis on Socio-Demographic Characteristics and Recidivism**

Variable	B	S.E.	Wald	df	Sig.	Exp(B)
Gender	0.607	11872.43	5.378	1	0.038	2.638
Age	0.209	0.462	7.205	1	0.026	1.233
Marital status	0.023	0.424	0.003	1	0.956	1.024
Education level	-0.685	0.68	2.015	1	0.056	0.504
Occupation	0.911	6547.178		1	0.998	0
Incomes	-0.302	6547.179	3.894	1	0.047	0.331
Constant	3.186	11872.43	0	1	0.997	3.849

**Source: Researcher (2016)**

Y=Recidivism; X<sub>1</sub>=Gender; X<sub>2</sub>=Age; X<sub>3</sub>=Marital status; X<sub>4</sub>=Education level;  
X<sub>5</sub>=Occupation;X<sub>6</sub>=Incomes.

The regression equation(algorithm) is then given by  $Y=a+b_1X_1+b_2 X_2+b_3 X_3+b_4 X_4+b_5 X_5+b_6 X_6$

As shown in Table 4.8 above, only three of the independent variables made a unique statistically significant contribution to the model. These are gender, age and income which have p-values less than 0.05. The remaining model variables did not bear any statistical significance as they have p-values greater than 0.05. The table also reveals that the strongest predictor of recidivism was gender, recording an odds ratio of 2.638. This indicated that male respondents were over 2 times more likely to experience re-conviction, controlling for all other factors in the model. The odds ratio of 0.331 for incomes was less than 1, indicating that for every increase in income, the respondents were 0.331 times less likely to re-engage in crime, controlling for other factors in the model. This finding supports the assertion that

economic difficulties influence recidivism (Scott, 2010, Bohm & Halley, 1997).

#### 4.4.2 Duration before Arrest and Reoffending Counts

The study sought to establish the relationship between the duration before arrest after committing the first crime, and reoffending in second conviction. Table 4.9 presents the findings for this cross tabulation.

**Table 4.9: Relationship between duration before arrest by police and reoffending**

Duration before Arrest	Duration taken before arrest					
	Yes		No		Total	
	N	%	N	%	N	%
Days	27	16%	34	20%	61	37%
Weeks	19	11%	7	4%	26	16%
Months	20	12%	11	7%	31	19%
Over an year	22	13%	27	17%	49	29%
<b>Total</b>	<b>88</b>	<b>53%</b>	<b>79</b>	<b>47%</b>	<b>167</b>	<b>100%</b>
Chi-Square Tests	Value	df	Asymp. Sig. (2-sided)			
Pearson Chi-Square	8.674a	3	0.042			

**Source: Researcher (2016)**

A Chi square statistical test was done. P-Value was taken at 0.05 significance level. The test results show that there is a significant relationship between duration before being arrested by police after committing crime and reoffending.  $P = 0.042$  that is  $< 0.05$  with degree of freedom at 4 and Chi square value at 8.674. Therefore, the duration before an offender is arrested by police after committing crime influences reoffending. This finding is consistent with assertion of deterrence theory that when punishment of convicts is delayed it loses its effectiveness to deter re-offending (Wright, 2010).

#### 4.4.3 Duration before Sentence by the courts and Reoffending

To determine whether the duration before sentence by the courts for committing the initial crime influences re-offending in convicts, it was important that the study conducts a test on the

relationship between the duration before sentence and re-offending the second time. Table 4.10 summarizes the findings.

**Table 4.10: Relationship between duration before sentence by court and Reoffending**

Duration before sentence from time of first crime	Duration before sentence by the court					
	Yes		No		Total	
	N	%	N	%	N	%
Days	12	7%	7	4%	19	11%
Weeks	0	0%	6	4%	6	4%
Months	27	16%	27	16%	54	32%
Over an year	49	29%	39	23%	88	53%
<b>Total</b>	<b>88</b>	<b>53%</b>	<b>79</b>	<b>47%</b>	<b>167</b>	<b>100%</b>
Chi-Square Tests	Value	df	Asymp. Sig.(2-sided)			
Pearson Chi-Square	3.320a	3	0.282			

**Source: Researcher (2016)**

A Chi square statistical test was done. P-Value was taken at 0.05 significance level. The test results show that there is no significant relationship between the duration before sentence by the courts after committing the first crime and reoffending.  $P = 0.282$  that is  $>0.05$  with degree of freedom at 3 and Chi square value at 3.320. Therefore, the duration before Sentence by the courts for the first conviction does not influence reoffending in convicts. This implies that as earlier established, other socio- economic factors such as poverty, labeling and peer pressure among others are responsible for recidivism.

#### **4.4.4 Crime committed at first conviction and subsequent recidivism**

The study sought to determine whether or not the type of crime at the first conviction influences reoffending. The results are given in Table 4.11.

**Table 4.11: Relationship between crimes committed at first conviction and reoffending.**

Crime at first Conviction	First Convictions					
	Yes		No		Total	
	N	%	N	%	N	%
Petty Offence	24	14%	16	10%	40	24%
Middle level Crimes	27	16%	18	11%	45	27%
Felonies	46	27%	36	22%	82	49%
<b>Total</b>	<b>88</b>	<b>53%</b>	<b>79</b>	<b>47%</b>	<b>167</b>	<b>100%</b>
Chi-Square Tests	Value	df	Asymp. Sig.			
Pearson Chi-Square	4.143a	2	(2-sided)		0.0521	

**Source: Researcher (2016)**

A Chi square statistical test was done. P-Value was taken at 0.05 significance level. The test results show that there is no significant relationship between type of crime convicted of at first conviction and reoffending. P = 0.0521 that is >0.05 with degree of freedom at 2 and chi square value at 4.143. Therefore, the type of crime an offender is convicted of at first conviction does not influence recidivism but other factors are responsible for continued criminality by convicts despite punishments. These factors are largely socio-economic in nature as earlier findings indicated.

**4.4.5 Relationship between crimes committed at subsequent convictions and reoffending**

Under this objective, the study examined the relationship between type of crime at first conviction and reoffending. Table 4.12 shows the findings.

**Table 4.12: Relationship between Crimes committed at Subsequent convictions and reoffending**

Crimes at subsequent convictions	Subsequent convictions					
	Yes		No		Total	
	N	%	N	%	N	%
Petty offences	7	4%	9	5%	16	9.5%
Middle Level Crimes	10	6%	6	4%	16	9.5%
Felonies	81	49%	54	32%	135	81%
<b>Total</b>	<b>98</b>	<b>59%</b>	<b>69</b>	<b>41%</b>	<b>167</b>	<b>100%</b>
Chi-Square Tests	Value	df	Asymp. Sig.			
Pearson Chi-Square	8.845a	2	(2-sided)		0.01	

**Source: Researcher (2016)**

A Chi square statistical test was done; P-Value was taken at 0.05 significance level. The test results show that there is a significant relationship between type of crime convicted at second and subsequent convictions and reoffending.  $P = 0.01$  that is  $<0.05$  with degree of freedom at 2 and Chi square value at 8.845. Therefore, type of crime convicted of at second and subsequent convictions influences reoffending.

#### 4.4.6 Relationship between subsequent punishments and Recidivism

Finally, given that a majority of the respondents at 62% (104 out of 167) indicated that their reoffending was not in any way linked to the initial punishment received for the first conviction, a chi square statistical test was done on the relationship between subsequent punishments and recidivism. The results are given in Table 4.13 below.

**Table 4.13 Relationship between subsequent punishments and Recidivism**

Punishment Received	Subsequent punishments at reconversions					
	2 times conviction		More than 2 times conviction		Total	
	N	%	N	%	N	%
Imprisonment	68	41%	41	25%	109	65%
Fines and Forfeiture of Property	24	14%	6	4%	30	18%
Probation and CSO	21	13%	7	4%	28	17%
<b>Total</b>	<b>113</b>	<b>68%</b>	<b>54</b>	<b>32%</b>	<b>167</b>	<b>100%</b>
Chi-Square Tests (2 sided)	Value	df	Asymp. Sig.			
Pearson Chi-Square	2.671a	2	0.005	.066b		

**Source: Researcher (2016)**

A Chi square statistical test was done; P-Value was taken at 0.066 significance level. It therefore emerged that there was no significant relationship between punishments for subsequent convictions and recidivism. Therefore, punishment does not influence reoffending in convicts; this applies to both ordinary and serial recidivists. This finding contradicts an argument by Paranjape (2005) that recidivism is related to the type of treatment a convict receives for the initial crime.

## 4.5 Typology and Severity of Crimes at Subsequent Convictions

This section presents findings on the typology and severity of crimes the respondents committed upon subsequent reconvictions. At the time of this study, some respondents (convicts) were serving their first reconvictions (i.e., for the second offence), others were at their second (for the third offence) or third (for the fourth offence) reconvictions with variations in crime typology and severity as discussed in the subsequent sub-sections.

### 4.5.1 Typology of crimes by male recidivists

Respondents were requested to state the crimes they were convicted of at the first, second and successive convictions. These crimes were later put into various categories. Table 4.14 gives a detailed summary of the crimes that the male respondents committed during the various convictions.

**Table 4:14 Typology of Crimes Committed by Male Recidivists**

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 the person	26	19%	42	30%	4	10%	1	14%
Others	33	24%	10	7%	2	5%	0	0%
<b>Total</b>	<b>138</b>	<b>100%</b>	<b>138</b>	<b>100%</b>	<b>40</b>	<b>100%</b>	<b>7</b>	<b>100%</b>

**Source: Researcher (2016)**

On the typology of crimes committed by male recidivists, based on the information from Table 4.14 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 by 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.

#### 4.5.2 Types of crime committed by female recidivists

Concerning the female respondents, Table 4.15 gives a detailed summary of the types of crime that they committed during the various convictions.

**Table 4.15: Typology of Crimes Committed by Female Recidivists**

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%
<b>Total</b>	<b>29</b>	<b>100%</b>	<b>29</b>	<b>100%</b>	<b>7</b>	<b>100%</b>

**Source: Researcher (2016)**

As per Table 4.15 above, 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 licences, 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.

#### 4.5.3 Crime progression by Male recidivists at Kamiti prison

To analyze progression in criminality by recidivists, respondents were requested to state all the crimes they had been convicted of, at the first and successive reoffending. The crimes were categorized into petty offences, middle level crimes and felonies. The kinds of crimes that were committed by male respondents in terms of severity are outlined in table 4.16 below.

**Table 4.16: Comparison of first and subsequent offences by male respondents**

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%
<b>Total</b>	<b>138</b>	<b>100%</b>	<b>138</b>	<b>100%</b>	<b>40</b>	<b>100%</b>	<b>11</b>	<b>100%</b>

**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, being drunk 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 moved to middle level crimes during their second convictions and committed 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. 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 for a long time. Thus the offenders convicted may not reoffend again in the communities. For instance, those sentenced to life imprisonment and those sentenced to death. 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 and first time convicts in prisons was also pointed out by Kagendo (2003), Gendreau and Cullen (1999), Odegi-Awuondo (2003) and Mushanga (1976).

#### **4.5.4 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 4.17.

**Table 4.17: Crimes progression by female respondents**

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%
<b>Total</b>	<b>29</b>	<b>100%</b>	<b>29</b>	<b>100%</b>	<b>7</b>	<b>100%</b>

**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 them begin and end their criminal careers with petty offences. For instance, 72%, 69% and 100% of the convicted offenders committed 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 or receiving it 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.

#### **4.6 Intervention Measures Against Recidivism**

On recidivism control strategies, the study sought to establish measures that can be instigated to prevent first time convicts from reoffending, and those that are suitable for known recidivists. The following are some of the suggestions that were received as effective for first time offenders and the recidivists.

##### **4.6.1 Strategies against Reoffending by First time convicts**

On the treatment which first time convicts need to prevent them from reoffending, the following suggestions in Table 4.18 were made by the key informants:

**Table 4. 18: Key informants’ strategies for preventing first time convicts from reoffending**

<b>Strategies</b>	<b>N</b>	<b>Percentage</b>
Fairness in punishment by the courts	2	7%
Economic Empowerment	10	37%
Community support and acceptance	8	30%
Severe/ Deterrent punishment	4	15%
Use of Non-custodial Sentences	3	11%
<b>Total</b>	<b>27</b>	<b>100%</b>

**Source: Researcher (2016)**

Concerning the measures that can be taken to prevent recidivism by first time convicts, 37% of the key informants proposed economic empowerment, 30% support and acceptance by community members, 15% proposed deterrence through severe punishment, while 11% and 7% suggested use of non-custodial sentences and fairness by the courts, respectively. These findings from key informants recognize the impact of economic deprivation, and social stigma and discrimination as the two major contributory factors in the reconviction of first time convicts.

The respondents and FGDs similarly laid emphasis on tackling poverty so as to contain recidivism among first time convicts. For instance, the FGD at Langata singled out poverty as a major impediment to their rehabilitation, and the sole cause of reconvictions. They were of the opinion that ex-prisoners should be economically uplifted through soft loans from the government and trust funds. They were also in agreement that first time offenders should be rehabilitated in the communities; and observed that this would only be possible when offenders are sentenced to probation and CSO. The six observed that fines should be avoided because the poor cannot afford them thus ending in prisons for failure to pay. On the best strategy to prevent recidivism, economic empowerment for the poor convicts and proper social reintegration for the former prisoners were over-emphasized.

#### **4.6.2 Measures against Reoffending by Recidivists**

The following measures indicated in Table 4.19 were suggested by the key informants as best suited to control reoffending among recidivists.

**Table 4.19: Key informants’ proposed measures against recidivists’ reoffending**

<b>Measures to assist recidivists desist from crime</b>	<b>N</b>	<b>Percentage</b>
Proper classification/segregation of prisoners	3	11%
Economic empowerment of ex-prisoners	7	25%
Vocational Skills training	2	7.4%
Carry out prison reforms	1	3.7%
Alcohol and Drug awareness training programmes	3	11%
Spiritual support and counseling	1	3.7%
Use of alternative dispute resolution mechanisms	2	7.4%
Community Reintegration Programmes	1	3.7%
Legal Education	1	3.7%
Ensuring Rights and Dignity of Prisoners	1	3.7%
Psychosocial Counseling	2	7.4%
Use of Non-custodial sentences CSO/ probation	3	11%
<b>Total</b>	<b>27</b>	<b>100%</b>

**Source: Researcher (2016)**

On the measures that can be taken to assist recidivists get out of crime, the study revealed that 25% of the respondents suggested economic empowerment for ex-convicts, 11% were for proper classification and segregation of prisoners so as to curtail contamination of petty convicts, while another 11% rooted for use of non-custodial sentences particularly CSO and probation instead of imprisonment. Application of vocational training and offering the convicts psychosocial counseling were suggested by 7.4% each. Use of community integration approaches, spiritual counseling, prison reforms, and ensuring respect for rights and dignity of prisoners were each suggested by 3.7% of the respondents.

These findings show that economic empowerment is the most preferred strategy by the key informants for reducing crimes among recidivists. This may be explained by the fact that these professionals have noticed that a large majority of convicts who reoffend are economically in need.

The need to employ the same measures emerged from the respondents and FGDs. For instance, in the FGDs, the inmates emphasized that unless the government improve on resettlement of ex-prisoners by coming up with institutions to receive prisoners who have served long sentences before their final release into the community to enable them settle down, then re-offending will

continue since majority of the ex-convicts will be forced to live on crime. The focus group, therefore, emphasized that the government should put more attention on social reintegration of ex-prisoners, because they have been labeled, rejected, and discriminated against to an extent that they have been pushed back into crime by the community.

The FGDs also observed that efforts should be made to ensure that prisoners who have acquired trades such as carpentry, masonry, mechanics and the like are assisted to get gainful employment. Some of the prisoners have work experiences spanning up to twenty (20) years which they have spent in prisons but because of labeling, they cannot get access to employment yet they leave prison institution without any capital to establish self-employing engagements.

The groups suggested that since thousands of prisoners are very experienced in various trades which they learnt in prisons and were working in prison industries, it would have been beneficial if there were government-owned industries outside prisons requiring the same skills where ex-convicts can be absorbed as employees. As a proof that prisoners who have served several years in prisons are highly experienced, the researcher was reminded by the group at Kamiti that the highly priced and magnificent seats used by the parliamentarians were made by prisoners at Kamiti Prison Industry.

The group also observed that while all vehicle number plates in Kenya are manufactured by prisoners at Kamiti, these highly skilled convicts are not able to use their skills outside prisons, which would not be the case if there was an extension of the Kamiti vehicle number plate industry outside the prison walls. It was also observed that the training in prisons does not equip the prisoners with entrepreneurial skills thus on release from prisons they move around looking for employment despite the odds against them. The group suggested that the prison authorities should also inculcate in the convicts entrepreneurial skills so that on release, the ex-prisoners will be self-employed and create employment for others. They emphasized that with such skills and capital, recidivism rates will be greatly lowered. On how the ex-prisoners can acquire capital, the focus groups suggested that as a sign of goodwill, the government should create a capital fund for prisoners where they can borrow repayable loans to start businesses. Added to

this, the Kamiti FGD suggested that the issue of prisoners' earning scheme should be revisited so that long termers do not leave prisons empty-handed.

Strong recommendations were also made on certificate of good conduct which is required by employers before any job placement. The focus group at Kamiti suggested that reformed convicts should not be denied this vital document which is demanded by potential employers including the government. The group observed that it is double standards for the government entrusted with reformation and rehabilitation not to trust the offenders they have reformed. The group suggested that the government should trust that the ex-convicts are reformed and should guarantee them to other employers. On the high unemployment rate which influences crime and recidivism rate, the focus group observed that the education sector should be reformed to produce graduates, at all levels, which will be self-reliant after school. The education system should be on mentorship, talent and vocational skills; this will stem the yearning for formal employment after school.

Finally, the focus group at Kamiti recommended that awareness campaign be conducted among the Kenyan society to inculcate a change of attitude towards ex-convicts. The community members should be able to accept that convicts can change through reformation and rehabilitation, thus, as members of the communities, they should forgive them for the wrongs they committed and forget their past. The group suggested that as a sign of goodwill towards ex-convicts, the need for certificate of good conduct from them should be abolished.

#### **4.7 Respondents on Psychosocial Appraisal and Recidivism**

This section focused on establishing the association between psychosocial factors and recidivism. The psychosocial factors considered were personality, alcohol and drug use, interpersonal relationship and discipline, family relations, occupation, childhood upbringing, marital relationship, and community acceptance. The results are presented below.

##### **4.7.1 Information on personality**

Among the respondents interviewed, 48.3% of the women and 33.3% of the men said they are never happy, cheerful and satisfied with their lives. Among the women 48.3% and 30.4% of the men said that they sometimes feel they should be punished for the wrong things they do. The

women at 44.8% and men at 33.3% said they are sometimes easily angered while 37.9% of the women and 39.9% of the men indicated that sometimes when they are angry they cannot control themselves. Similarly, 34.5% of the women and 23.9% of the men prefer solitude sometimes. Table 4. 20 below show the findings.

**Table 4. 20: Percentage distribution of Information on personality**

Information on personality	Langata Women								Kamiti Prison							
	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %
I am happy, cheerful and satisfied with my life	48.3	31	3.4	6.9	10.3	-	29	100	33.3	24.6	13	8.7	13.8	6.5	138	100
I make good decisions	-	41.4	17.2	6.9	34.5	-	29	100	11.6	24.6	14.5	19.6	26.1	3.6	138	100
When I fail I don't lose hope	-	37.9	20.7	6.9	34.5	-	29	100	11.6	19.6	17.4	13.8	34.1	3.6	138	100
I believe I am in control of my life	17.2	31	17.2	3.4	31	-	29	100	11.6	20.3	18.8	14.5	30.4	4.3	138	100
I feel guilty when I do something wrong	13.8	34.5	6.9	6.9	37.9	-	29	100	13.8	26.8	12.3	9.4	31.9	5.8	138	100
I feel I should be punished for the wrong things I do	27.6	48.3	10.3	6.9	6.9	-	29	100	21.7	30.4	14.5	10.1	13	10.1	138	100
People like me	6.9	34.5	20.7	34.5	3.4	-	29	100	9.4	23.9	20.3	21	21.7	3.6	138	100
I am easily angered	3.4	44.8	20.7	20.7	10.3	-	29	100	11.6	33.3	15.2	16.7	19.6	3.6	138	100
When I am angry I can't control myself	13.8	37.9	24.1	13.8	10.3	-	29	100	15.9	39.9	13	10.1	13	8	138	100
I prefer solitude	24.1	34.5	6.9	27.6	6.9	-	29	100	13.8	23.9	15.9	23.2	18.8	4.3	138	100

Source: Researcher (2016)

That 48.3% of the women and 33.3% of the men respondents are not contented with their life as is indicated by the fact that they are never happy, cheerful and satisfied may itself be the cause their criminality. However, it may also mean that they feel that way because of guilt of their criminal life. The latter is re-enforced by the fact that 48.3% of women and 30.4% of the men sometimes feel that they should be punished for the wrong things they do. Similarly, given that women at 44.8% and men at 33.3% are sometimes easily angered while 37.9% of the women and 39.9% of the men cannot sometimes control themselves when annoyed may also be an explanation of why they are in crime. The preference of solitude by 34.5% of the women and 23.9% of the men which may indicate poor social interaction may thus further explain why they commit some categories of crime.

#### **4.7.2 Information on peer influence and drug and alcohol abuse**

Among the women 37.9% and 19.6% of the men said they never got into trouble because of their friends. However, 20.7% of the women and 18.8% of the men said they took drugs while with their friends. On the other hand, 51.7% of the women and 25.4% of the men said they never took illicit drugs and substances in prison. Table 4.21 illustrates the results.

**Table 4. 21: Percentage distribution of information on drug and alcohol abuse**

Information on drug and alcohol abuse	Langata Women								Kamiti Prison							
	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %
I only drunk when was with friends	3.4	27.6	3.4	17.2	6.9	41.4	29	100	11.6	21	7.2	13	11.6	35.5	138	100
I couldn't resist taking alcohol	10.3	17.2	10.3	10.3	10.3	41.4	29	100	17.4	15.2	10.9	8.7	12.3	35.5	138	100
I got into trouble because of my friends	37.9	3.4	6.9	6.9	3.4	41.4	29	100	19.6	15.9	7.2	7.2	12.3	37.7	138	100
I took drugs when I was with friends	31	20.7	3.4	3.4	-	41.4	29	100	18.8	16.7	7.2	9.4	8.7	39.1	138	100
I feel it is not bad to use drugs	27.6	17.2	6.9	-	6.9	41.4	29	100	18.1	18.1	6.5	9.4	7.2	40.6	138	100
I had to use drugs	37.9	10.3	3.4	3.4	3.4	41.4	29	100	20.3	15.2	5.8	8.7	10.1	39.9	138	100
I used drugs to be popular	41.4	13.8	-	-	3.4	41.4	29	100	26.8	13.8	5.8	8	5.8	39.9	138	100
I got into trouble because of drugs	48.3	6.9	-	-	3.4	41.4	29	100	22.5	16.7	2.9	5.1	13	39.9	138	100
I found it fun to use drugs	31	17.2	-	3.4	6.9	41.4	29	100	19.6	15.2	3.6	5.1	13.8	42.8	138	100
I take illicit drugs and substances in prison	51.7	6.9	-	-	-	41.4	29	100	25.4	13.8	4.3	4.3	10.1	42	138	100

Source: Researcher (2016)

That 42.6% of men and 20.6% of women indicated a trace of friends influence in their troubles may be an indication that they are in crime due to peer pressure and bad influence. On the use of drugs in prisons, that 6.9% of women and 32.5% of males have taken drugs while serving prison sentences may be the impeding factor in their failed reformation and rehabilitation.

### 4.7.3 Information on family relations

Among the women respondents 37.9% and 29.7% of the men indicated that they sometimes spend time with their families and have fun as a family together. The women at 41.4% and men at 26.1% said they are always honest with their family members and 31% of the women and 29% of the men said they sometimes share their secrets and what happens to them with their family members, while 41.4% of the women and 26.8% of the men said they often have family gatherings /celebrations. Table 4. 22 on the next page show the findings.

**Table4. 22: Percentage distribution of information on family relations**

Information on family relations	Langata Women								Kamiti Prison							
	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %
Our family spend time and we have fun as a family together	20.7	37.9	6.9	13.8	20.7	-	29	100	17.4	29.7	10.1	12.3	24.6	5.8	138	100
I can be honest with my family members	17.2	10.3	17.2	13.8	41.4	-	29	100	11.6	18.8	16.7	21.7	26.1	5.1	138	100
My family help me out when I am in problem	17.2	27.6	10.3	10.3	34.5	-	29	100	15.2	22.5	18.8	10.9	26.8	5.8	138	100
I share my secrets and what happens to me with the family members	24.1	31	17.2	24.1	3.4	-	29	100	18.1	29	9.4	25.4	2.9	15.2	138	100
We do have family gatherings/celebrations	17.2	31	10.3	41.4	-	-	29	100	23.9	24.6	17.4	26.8	2.9	4.3	138	100

**Source: Researcher (2016)**

The above findings indicate that more women than men are in cordial family relationships where they spend time with their families, have fun together, are honest with each other and share their secrets. This may be the reason why there are less women recidivists than men as dysfunctional families are at times responsible for deviance.

#### 4.7.4 Information on upbringing during childhood

Most of the women 27.6% and 26.1% of the men said they never shared their feelings with their care givers, while 31% of the women and 23.2% of the men said they never spent time together with their care givers. Likewise, 27.6% of the women and 21% of the men said they never chart and talk freely with their care givers. Table 4. 23 indicate the findings.

**Table 4.23: Percentage distribution on upbringing during childhood**

Information on upbringing during childhood	Langata Women								Kamiti Prison							
	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %
I shared my feelings with my care giver	27.6	17.2	6.9	24.1	24.1	-	29	100	26.1	20.3	14.5	13	21	5.1	138	100
My care giver and I spent time together	31	13.8	10.3	13.8	31	-	29	100	23.2	17.4	13	18.8	21.7	5.8	138	100
I could be honest with and confide in my care giver	31	10.3	13.8	31	13.8	-	29	100	24.6	23.9	14.5	9.4	21.7	5.8	138	100
When I got into trouble my care giver stood by me	20.7	27.6	10.3	13.8	27.6	-	29	100	17.4	26.1	14.5	14.5	22.5	5.1	138	100
I could chart and talk freely with my care giver	27.6	20.7	-	20.7	31	-	29	100	21	21	8.7	15.9	27.5	5.8	138	100

Source: Researcher (2016)

In terms childhood upbringing, most respondents seem to have had a normal care and upbringing as only 27.6% of the women and 26.1% of the men never shared their feelings with their care givers. Further, a majority of both were free with and spent time together with their care givers. This implies that other factors not related to faulty upbringing are responsible for their criminality.

#### 4.7.5 Information on marital relationships

Among the married respondents 13.8% of the women and 16.7% of the men said they sometimes spend time and have fun with their partners and discuss the issues that concern their marriage with their partners. However, 17.2% of the women and 13% of the men noted that they sometimes fight with and verbally abuse each other with their partners. Table 4.24 shows the findings.

**Table 4. 24: Percentage distribution on marital relationships**

Information on marital relationships	Langata Women Prison								Kamiti Prison							
	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %
My partner and I spend time and have fun together	10.3	13.8	10.3	3.4	6.9	55.2	29	100	5.1	16.7	4.3	4.3	15.9	53.6	138	100
My partner and I share secrets and feelings	6.9	13.8	10.3	3.4	6.9	58.6	29	100	3.6	11.6	10.9	5.1	15.2	53.6	138	100
My partner and I do things together	10.3	13.8	3.4	6.9	6.9	58.6	29	100	3.6	10.9	8	11.6	11.6	54.3	138	100
We discuss the issues that concern our marriage with my partner	13.8	10.3	10.3	-	6.9	58.6	29	100	4.3	16.7	7.2	4.3	13	54.3	138	100
We fight with and verbally abuse each other with my partner	6.9	17.2	6.9	6.9	3.4	58.6	29	100	10.9	13	13	3.6	5.1	54.3	138	100

Source: Researcher (2016)

As per the above table, a large percentage of the respondents at over 50% never responded to questions on marriage because they are not in marital relations as they were single, separated or widowed. Among the married, only 13.8% of the women and 16.7% of the men sometimes spend time together, had fun with their partners and discussed marital issues as partners. Further, 17.2% of the women and 13% of the men sometimes fought with and verbally abused each other with their partners. These are clear indicators of sour marital relations among the few respondents who were married. These unhealthy marital relations may be as a result of their life as criminals or the cause of their criminality as postulated by social control theorists.

#### **4.7.6 Involvement in community affairs and acceptance by members**

Among the women interviewed majority 62.1% said they are sometimes involved in the affairs of their community while only 19.6% of the men said they are always involved in the affairs of their community. The women at 44.8% and men at 26.1% said they sometimes have a cordial relationship with their relatives and people in the community while 44.8% of the women and 29.7% of the men said they sometimes get support from the community members. Likewise, 44.8% of the women and 23.2% of the men noted that they are always respected by their community members. In addition, 34.5% of the women and 24.6% of the men said they always had a good relation with the police, relatives and community members despite the first conviction. Table 4.25 indicates the findings.

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**Table 4.25: Percentage distribution on involvement in community affairs and acceptance by members**

Involvement in community affairs and acceptance by members	Langata Women								Kamiti Prison							
	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %	Never	Sometimes	Half the time	Often	Always	No response	Total count	Total %
Involved in community	17.2	62.1	6.9	6.9	6.9	-	29	100	18.1	26.1	10.1	15.9	19.6	10.1	138	100
Cordial relationship in the community	10.3	44.8	17.2	10.3	17.2	-	29	100	8.7	26.1	10.1	8	24.6	22.5	138	100
I get support from the community members	17.2	44.8	6.9	20.7	10.3	-	29	100	18.1	29.7	10.9	13.8	17.4	10.1	138	100
I care about my community	10.3	27.6	24.1	3.4	34.5	-	29	100	14.5	21	11.6	5.8	34.8	12.3	138	100
Feel prestigious about community	13.8	51.7	6.9	13.8	13.8	-	29	100	20.3	22.5	13.8	8	24.6	10.9	138	100
I have a positive bond with my community	6.9	37.9	13.8	10.3	31	-	29	100	18.1	26.1	8	7.2	28.3	12.3	138	100
My community members respect me	6.9	24.1	10.3	13.8	44.8	-	29	100	13	22.5	13.8	17.4	23.2	10.1	138	100
My friends and relatives visit me here in prison	6.9	44.8	13.8	10.3	24.1	-	29	100	26.1	26.1	8	10.1	17.4	12.3	138	100
Good relation with the police	27.6	24.1	6.9	6.9	34.5	-	29	100	20.3	20.3	11.6	12.3	24.6	10.9	138	100
Falsely accused, arrested or prosecuted	58.6	3.4	10.3	10.3	17.2	-	29	100	29.7	22.5	8	8.7	19.6	11.6	138	100

Source: Researcher (2016)

From the above finding, majority of women at 62.1% compared to men at 19.6% are sometimes involved in their community's affairs. Further, more women again at 44.8% than men at 26.1% sometimes had cordial relationships with their relatives and community members. More women also indicated that get support from the community members. Also in terms of respect, more than men felt that they are they are always respected by their community members. In addition, more women than the men had good relations with the police, relatives and community members despite the first conviction. All these imply that men compared to women may suffer from social stigma and discrimination in their communities. This is reflected in the higher number of women at 44.8% compared to men at 26.1% who are sometimes visited by friends and relatives in prisons. This rejection by relatives and friends may be the reason why a majority are criminals and recidivists. According to labeling theory of crime, social stigma and discrimination is one of the major causes of re-offending in ex-convicts.

#### 4.8 Regression Analysis on the effects of psycho-social factors on recidivism

Regression Analysis was conducted on the relationship between recidivism and various psycho-social factors, and the findings are shown in Table 4.26.

**Table 4. 26: Variables in Equation**

Variable	B	S.E.	Wald	df	Sig.	Exp(B)
Personality	0.134	0.343	4.267	1	0.033	1.814
Alcohol and Drug Use	0.6204	0.462	6.281	1	0.026	2.163
Interpersonal relationship and discipline	0.023	0.424	0.043	1	0.086	1.024
Family relations	-0.57	0.68	2.015	1	0.044	0.504
Occupation	0.911	0.823	1.119	1	0.998	0
Childhood Upbringing	-0.302	0.459	3.894	1	0.057	0.631
Marital relationship	0.014	0.661	2.788	1	0.067	0.428
Community Acceptance	-0.056	0.776	2.872	1	0.023	0.398
Constant	2.246	0.487	1.004	1	0.997	3.225

**Source: Researcher (2016)**

As shown in Table 4.26, only four of the independent variables made a unique statistically significant contribution to the model (personality, alcohol and drug abuse, community acceptance and family relations). From the results, it was revealed that the strongest predictor of recidivism was alcohol and drug abuse, recording an odds ratio of 2.163. This indicates that respondents who had engaged in alcohol and drug abuse were over 2 times more likely to experience re-conviction, other factors being constant.

The odds ratio of 0.398 for community acceptance was less than 1, indicating that for every increase in community acceptance, the respondents were 0.398 times less likely to re-engage in crime, other factors constant. This finding is consistent with Williams (2001), Tannenbaum (1938) and Lemert (1951) who established that rejection by community members due to social stigma is responsible for reconviction in offenders. That alcohol and drug abuse increases the likelihood of re-conviction also confirms earlier findings by Bohm & Halley (1997) that majority of offenders who turn into recidivists are those addicted to drugs and substances.

## **CHAPTER FIVE**

### **SUMMARY, CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Introduction**

The chapter summarizes the study findings based on the objectives of the study and makes conclusions and recommendations.

#### **5.2 Summary of Key Findings**

Though the problem of recidivism exists in Kenya, the study established that it is difficult to ascertain the extent of the problem since the correct number of recidivists particularly in prison institutions remains unknown as there are non-documented recidivists in the country.

On the link between the initial treatment and recidivism, the study established that there is no linkage between the punishment an offender receives during first conviction and recidivism because some other factors not related to punishment make offenders to recidivate. The respondents at 62% opined that their reconviction was not at all connected to the initial punishment they received at the initial conviction. A further proof of non-relationship between punishment and recidivism was also indicated by the fact that a majority of the respondents, at 53% did not feel that if they received a different kind of punishment from what they were awarded at the initial conviction, they would not have re-offended. A Chi square statistical test also revealed that punishment does not influence reoffending by both ordinary and serial recidivists.

As concerns the profile of recidivists in terms of gender, the study established that most of the recidivists at 83% were males. Age-wise, they are young adults and individuals in middle age. The majority of the recidivists (59.3%) were aged between 18 and 40 years. In terms of their level of education, a majority of recidivists were either illiterate or semiliterate, with 38.9% of them being secondary school leavers; 33.5% primary leavers while 6.6% had no formal education. Concerning marital status, majority of the recidivists (60%) are not in marriage relations, they were single, divorced, separated or widowed. In terms of social class, majority of the recidivists came from the lower social class as depicted by the economic indicators such as

unemployment, level of income, and symbolic indicators such as land ownership and residential houses. For example, 63% of the respondents lived in semi-permanent and makeshift structures before their arrest and conviction while 64.1% did not own any piece of land of whatever size. On psycho-social appraisal, the study established that the strongest predictor of recidivism is alcohol and drug abuse by the convict, while community acceptance reduces the possibility of re-engaging in crime.

On the typology and severity of crimes committed by recidivists during the first and subsequent convictions, a majority commit offences related to property acquisition. For instance, male recidivists at 57%, 62%, 85% and 86% committed these crimes during first, second, third and fourth convictions respectively. Likewise, among the females a majority at 59% and 45% committed property crimes during their first and second convictions respectively. On crime progression, male recidivists had shown a clear progression from petty crimes to more severe crimes with reconviction unlike the females whose crimes remain minor. For instance, majority of the male respondents at 52% committed petty offences at first conviction while at second and third convictions majority at 47% and 85% committed middle level crimes and felonies respectively. For the female recidivists, the same petty crimes were noted throughout their convictions. For example, the majority at 72%, 69% and 100% were convicted of the petty offences at first, second and third convictions respectively.

Concerning the control of recidivism, the study established that there is a need to ensure that petty first time offenders are awarded community based forms of punishment such as probation sentence, community service order, suspended sentences, compensation and restitution to curtail the convicts from the negative impacts of imprisonment that influences recidivism. In prisons, there is also need for proper classification and segregation of petty offenders from hardened and seasoned convicts. While before discharge, effective social reintegration and economic empowerment of the first time ex-convicts should be ensured. Concerning reformation and rehabilitation of known recidivists, the study established the need for a thorough pre-sentence investigation to unravel the causes of reconviction so as to award the desired punishments that would assist this category of offenders to get out of crime. The corrections should then come up with individual based reformation and rehabilitation strategies for each recidivist guided by their

peculiar needs. Before these recidivists are discharged from prisons, their community based social support systems should be established to prevent them from reoffending due to rejection.

Finally, outside reformation and rehabilitation arrangement, the study established that recidivism can also be managed by targeting crime levels in the country based on the fact that reduced crime levels mean fewer offenders will be exposed to a possibility of reconviction. Given that the study established that most of the recidivists are unemployed, poor and illiterate or semi-illiterate individuals, crime rates can be reduced by upgrading the literacy level and increasing employment opportunities in the country. The public should also accept the ex-convicts particularly former prisoners, and not label and discriminate against them as the study established that this pushes them back to crime. It is also important to encourage strong social bonds in families and marriage relationships. This can be achieved through religious organizations and their leaders. As Skardhamar, Savolainen, Aase and Lyngstad (2015) posit marriage promotes desistance from crime, and the stronger the marital attachment the better.

### **5.3 Conclusions**

From this study, one of the most important facts learned about recidivism in Kenya is that extra-punishment factors which are socio-economic, individual, and community based in nature largely influence re-offending in convicts. In the socio-economic category, poverty as a factor is the major cause of recidivism. It is characterized by lack of employment or capital to start business from which the ex-convicts can earn a living through their own sweat. This lack forces this category of ex-convicts to eke out a living through crime. Domestic and land conflict is also another socio-economic factor responsible for recidivism among a few convicts. Domestic conflicts occur in troubled marriages while land conflict is common where relatives disagree on how family land should be sub-divided.

The individual factors responsible for recidivism are weaknesses inherent in an individual offender, which influences reoffending. These factors established in a few convicts include bitterness and drive for revenge, inability to withstand peer pressure, drug and alcohol abuse, and ignorance or lack of knowledge. The community based factors are social stigma and discrimination, and labeling of ex-convicts despite punishment received for their first crimes which largely hinder their resettlement in the community. However, the study also established that there are intra- punishment factors which influence re-conviction. These are ineffective

punishments that would not control recidivism. Punishment theorists posit that for a punishment to be effective it must be severe, swift and certain. The offenders must also have known the punishment prescribed for the crimes before committing them. Based on these premises, this study established that at times punishments awarded to the convicts may not prevent reoffending because they are ineffective. The study also established that imprisonment, though the most widely applied form of punishment is ineffective against recidivism due to inherent weaknesses associated to it.

Secondly, it has also been learned from the study that criminal severity increases with reconviction among male recidivists who graduate from petty crimes to felonies unlike their female counterparts who generally commit the same petty offences with reconvictions. However, convicts who abuse alcohol and drugs have a higher propensity to reoffend.

#### **5.4 Recommendations on Recidivism control**

Based on the findings, the following recommendations emerged on control of recidivism:-

##### **5.4.1 The need to ascertain the correct number of recidivists in the country**

First and foremost, given the fact that the correct number of recidivists in prisons is unknown, the study first recommends that the Kenya government should, as a matter of priority, establish the number of recidivists within the prison walls and the number of those serving on community based punishments. This will enhance reformation and rehabilitation of convicts because deciding on suitable punishments by the courts, classification of the convicts in prisons, and drawing of appropriate reformation strategies relies on the correct criminal history. To net all the recidivist convicts, some of whom might have used fake names, the CID of the police service should liaise with the National Registration Bureau which has the custody of finger prints of all adults in Kenya.

Further, to prevent a reoccurrence of this problem of non-documented recidivists, there is need for synergy between all the institutions within the criminal justice system. The police and the prosecution must ensure that forms C9 and C10 are filled and presented to the courts before sentencing and the same attached to the convicts' committal warrants. However, should this fail to be done then prison authorities must petition the CID by sending filled prisoner form (Pf) 28 with the photograph/s of the prisoner/s in question attached to enable the CID process and

forward the correct certificate of previous conviction as outlined by the Prison Standing Orders. This exercise of identifying all the recidivists in the country irrespective of the punishment they are undertaking is vital because it will enable the corrections to design reformation and rehabilitation strategies that specifically suit their needs.

#### **5.4.2 Creation of recidivist databank for crime management purposes**

The Kenya Prison Service should have an inbuilt computer connectivity to enable prison officers detect any recidivist who might have served a prison sentence in any prison institution in the country. At the prisons headquarters, there is need for a detailed digitalized databank on all offenders who have ever entered prison walls giving the number of convictions, offences committed, duration of sentences, and demographic details to enhance reformation and rehabilitation of convicts. Also given that recidivists are responsible for high crime rates as espoused by Mednick, Gabrielli and Hutchings(2008) who established that, in the US, chronic recidivists who were just 4.09% of the male offenders were responsible for 64.4% of all the court convictions for male convicts, it is further recommended that a national recidivism database be developed and managed by the National Crime Research Centre to provide vital country- wide data for use by the various criminal justice agencies for crime management purposes. The centre should also design recidivism prediction systems based on typologies of crimes and on specific offender populations such as male and female categories.

#### **5.4.3 Mandatory community based punishment for poor petty convicts**

Since most recidivists engaged in this study had received imprisonment as their first punishment for the initial convictions, and given the identified weakness inherent in this type of punishment and the fact that majority of the recidivists in prisons are petty offenders from the lower social class, the judiciary should relook into sentencing of petty convicts to control recidivism. For as much as possible, the study recommends that the courts should always sentence the poor petty crimes convicts to community service and probation or suspended sentences, instead of subjection to fines which they cannot afford thus they end up in prisons. Imprisonment as a punishment should also not be an option for these offenders because they turn into recidivists due to contamination by capital offenders and institutionalization. This recommendation is in line with the requirement of the Community Service Order Act No. 10 of 1998 which outlines that offenders whose crimes on conviction would earn them an imprisonment term of not more

than three (3) years should serve community based punishments. Furthermore, when it comes to social stigma, Schnittker and John (2007) warn that any contact with prisons has effect not just the length of contact.

#### **5.4.4 Enhancement of capacity of prisons to reform and rehabilitate offenders**

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

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

Other categories of convicts such as psychopathic offenders may also require medical treatment and counseling for them to be fully reformed and rehabilitated; thus, it is defeatist to subject all convicts to vocational training. Counseling approach in rehabilitation which is rarely applied in prisons in Kenya currently should be introduced. However, this requires that trained professional counselors who are versed in various kinds of counseling as different convicts may need are employed. The types of counseling that the convicts may need include cognitive counseling, transactional counseling, problem management counseling, and reality counseling. Imhabekhai

(2002) recommends that where the required experts are not available within the prisons, personnel for the varied rehabilitation needs, engagement of part time experts is necessary.

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

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

#### **5.4.5 Avoidance of abrupt discharges of prisoners through amnesties**

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

conviction conduct and character. For transparency purposes, section 23 of the Power of Mercy Act demands that the committee gazettes the names of all prisoners released.

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

#### **5.4.6 Improvement of prison conditions and segregation of inmates**

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

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

#### **5.4.7 Appropriate social reintegration of ex-prisoners into the community**

Social reintegration of ex-prisoners in Kenya must be taken seriously. It is absurd to expect a released prisoner who has been abruptly discharged into the community after spending years in prisons where all his/her needs were taken care of to keep away from crime from the first day of freedom without a legal means of meeting the basic needs when such individuals do not have the requisite social and economic support. As is the case in other countries such as the USA, the Kenya government should as a mechanism of controlling recidivism among offenders released from prisons create Half Way Homes, Work Release Programmes and Parole institutions to act as soft landing places for the ex-inmates so as to enhance their reintegration into the society.

These institutions have the advantage of reintroducing the convicts back into the society progressively. They also provide basic needs, assist in reconciling the ex-convict with their crime victims where necessary, and mediate between the offenders and their families in cases of family rejections. These in the end cushion the offenders against social stigma and discrimination which is largely responsible for recidivism. Further, the government and other stakeholders such as NGOs should create a fund where needy ex-convicts can get soft loans to begin life afresh. This is the case in Sweden as one of the key informants at Kamiti observed. However, as James (2015) posits, the most effective reintegration programme for prisoners begin during imprisonment and extend during the release and resettlement processes.

#### **5.4.8 Mollify crime victims through a compensation fund and enhancement of Victim-Offender Reconciliation Programmes**

Another mechanism of enhancing ex-convicts' reintegration and acceptance is to find a means of appeasing crime victims. As the key informants and focus group discussions observed, the community members prefer that convicts are jailed rather than subjected to community based or non-custodial punishments such as CSO, probation or fines which are seen to be lenient for the offenders who hurt them. It was also established that some victims of crimes still demand that the convicts compensate them for the harm even after being taken to court and punished, failure of which they falsely accused them to the police of other crimes, thus, they end up being charged on trumped-up charges. Some victims even plan to harm the ex-convicts despite having been punished by the courts. These challenges can be addressed through enhancement of Victim-Offender Reconciliation Programme with the assistance of community elders and probation officers.

Further, the study proposes that the government should create a victim compensation fund out of the fines collected where money to ameliorate the pain and suffering of the victims of crimes can be sourced. This study postulates that state compensation will dissipate the bitterness and eradicate the ill will towards the ex-convicts. It will also eradicate the opinion that the government uses the plight of crime victims to unfairly earn revenue through fines. The Kenya government should emulate jurisdictions such as USA where part of the fines paid by the crime convicts goes to the crime victims' compensation fund (Herrington, 1985; Floyd, 1969).

#### **5.4.9 Massive sensitization of the public against labeling and social stigma of ex-prisoners**

There is need for massive public sensitization and education to fight labeling, social stigma and discrimination against ex-prisoners. This will enable families, community members and other stakeholders to accept the already punished offenders. However, the sensitization should begin with the Kenya government ensuring that the ex-convicts who have reformed and stayed out of crime for a specified duration of time are given certificates of good conduct and are not discriminated against forever as is the case currently. Lack of this vital document required by the employers only exacerbates the ex-convicts' helplessness in trying to find legal means to earn a living after imprisonment. The community members must be made to appreciate the fact that to

err is human, and change by the transgressors is possible with correct support. Thus, there is the need to forgive, accept and support the ex-convicts for them to abandon criminal activities.

#### **5.4.10 The need for poverty reduction in the county**

Finally, the government should put in place measures for poverty reduction in the country through creation of employment opportunities. Fromader and Mallot (2010) argue that employment is significant in explaining desistance or termination of a criminal career. The scholars established that engagement in job employment helped in reducing recidivism rates in older adult former convicts. In Kenya, expanded employment opportunities will reduce the number of destitute people who commit crime to survive and when convicted and imprisoned would prefer to live in prison because “*life outside prison is for the rich.*” There is also need to reduce the cost of living by controlling the prices of essential commodities. It is also important to issue free licences to the legal businesses operated by the poor. This recommendation is based on the fact that several respondents and focus group discussion members at Langata were in prisons for operating businesses without licences.

#### **5. Recommendation for further studies**

The study recommends a need for further studies in two main areas. One, a research should be conducted on the factors responsible for the presence of non-documented recidivists in Kenya focusing on the problems facing forensic documentation of convicts’ criminal history by the criminal justice institutions. Two, a study should be conducted on the impact of non-documented recidivism on trial of offenders by courts and on their rehabilitation by the corrections.

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**APPENDICES**

**APPENDIX I: RESPONDENTS' QUESTIONNAIRE ON RE-CONVICTIONS**

Respondent no \_\_\_\_\_

Dear Respondent,

My name is John Onyango Omboto. I am a PhD student in Criminology at the University of Nairobi. The purpose of this questionnaire is to collect information on recidivism among prisoners at Kamiti Maximum Security Prison and Langata Women Prison. The information received from you will be treated with utmost confidentiality. Your identity will be kept anonymous because you are not required to reveal your name both during the interview and on this questionnaire. Kindly note that your honesty in answering the questions in this questionnaire is vital in helping the study understand the problem of recidivism.

**Instructions;**

- Please give honest and correct answers to the questions.

Thank you.

**SECTION A: BACKGROUND INFORMATION**

Tick for the appropriate information in the box

1. Gender- Male  Female
2. Age in years - 18-30  31-40  41-50  51-60  61- 70  71- 80   
81- 90  Above 90
3. Marital Status -Married  Single  Divorced  Separated  Widowed
4. Highest formal education level- None  Primary  Secondary  College  University

**SECTION B: INFORMATION ON SOCIO-ECONOMIC STATUS**

- 4 How would you describe the house you lived in?  Permanent  Semi-permanent  
 Makeshift
- 5 Is the premises your own or rented?  Own  Rented
- 6 Before your arrest what was the nature of your work? .....

7 What was your salary or income in Kenya shillings per month? .....

8 Do you own a piece of land?.....If yes, what is the size?

**SECTION C: THE LINK BETWEEN THE INITIAL PUNISHMENTS AND  
SUBSEQUENT REOFFENDING**

9 How many times have you been convicted? 2 times  3 times  4 times  5 times   
6 times  over 6, Specify....

10 How long did it take for you to be arrested by the police from the time you committed your  
very first crime? Days  Weeks  Months  Over a year   
Can't re-call

11 How long did it take to be sentenced by the court from the time you committed your very  
first crime? Days  Weeks  Months  Over a year

12 Which punishment were you awarded for this very first conviction? Imprisonment  Fines  
 Forfeiture of property  Suspended sentences  Compensation   
Restitution  Probation service  Community service order  If none of the above, please  
explain?.....

13 In your honest opinion, can the punishment stop you from future criminal activities?  
Yes  No  Explain your answer .....

14 Were you aware of the punishment prescribed by the law for the first and subsequent crimes  
you had committed before their commission? Yes  No  Explain your answer.....

15 How long did it take before you were arrested and convicted again for the second offence  
after the completion of the initial punishment? Days  Weeks  Months   
Over a year  Can't re-call

16 Do you in any way feel that your reoffending is linked to the initial punishment you were  
awarded at your first conviction? Yes  No   
Explain your answer .....

17 Do you think you would not have re-offended if you received a different kind of punishment  
from the initial punishment? Yes  No   
Explain your answer .....

18 Why do you continue to commit crime despite being punished? .....

**SECTION D: TYPOLOGY AND SEVERITY OF CRIMES WITH RE-CONVICTIONS**

19 Which crime/s were you convicted of at your very first conviction? .....

20 Which crime/s were you convicted of at the sub-sequent re-conviction/s?  
.....

21 Why did you commit the same/ different type of crime in No 21 and 22?.....

**SECTION E: PUNISHMENT AND CONTROL OF RECIDIVISM**

22 Why are you in crime, and which measures can assist recidivists to get out of crime all together? .....

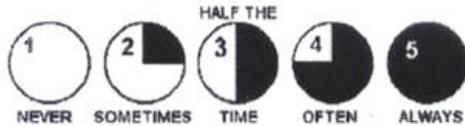
23 In your opinion, how can the treatment of first time convicts be more effective, so that they don't recidivate? .....

**End: Thank you for accepting to participate in this study.**

## APPENDIX II: RESPONDENTS' PSYCHO-SOCIAL APPRAISAL INVENTORY

### **INSTRUCTIONS:**

*Grade yourself as quickly and as honestly as possible by ticking the number that applies to you; don't meditate for too long before you answer. The first answer that comes to mind is normally the correct one.*



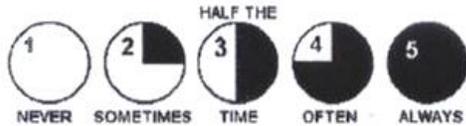
### **(i) Information on the Personality**

1. I am happy, cheerful and satisfied with my life- 1 2 3 4 5
2. I make good decisions - 1 2 3 4 5
3. When I fail I don't lose hope - 1 2 3 4 5
4. I believe I am in control of my life - 1 2 3 4 5
5. I feel guilty when I do something wrong- 1 2 3 4 5
6. I feel I should be punished for the wrong things I do-1 2 3 4 5
7. People like me-1 2 3 4 5
8. I am easily angered-1 2 3 4 5
9. When I am angry I can't control myself-1 2 3 4 5
10. I prefer solitude-1 2 3 4 5

### **(ii) Information on drug and alcohol Use**

**Note: Skip this section if you have never taken any alcohol and or drugs**

1. I only drank when I was with friends-1 2 3 4 5
2. I couldn't resist taking alcohol-1 2 3 4 5
3. I got into trouble because of my drinking-1 2 3 4 5
4. I took drugs when I was with friends-1 2 3 4 5
5. I feel it is not bad to use drugs-1 2 3 4 5
6. I had to use drugs-1 2 3 4 5
7. I used drugs to be popular-1 2 3 4 5
8. I got into trouble because of drugs-1 2 3 4 5



9. I found it fun to use drugs-1 2 3 4 5
10. I take illicit drugs and substances in prison-1 2 3 4 5

**(iii) Information on interpersonal relations and discipline**

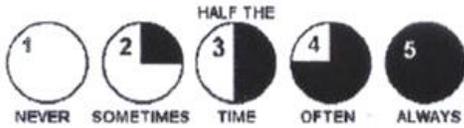
1. I resist the bad influence of my friends-1 2 3 4
2. I tell my friends when I think they are wrong-1 2 3 4 5
3. When I am with my friends I pretend to be contented-1 2 3 4 5
4. There is a special person that respects and cares for me-1 2 3 4 5
5. I can count on a special person when things go wrong-1 2 3 4 5
6. I can talk to a special person about my problems-1 2 3 4 5
7. There is a special person who is a source of comfort to me-1 2 3 4 5
8. I prevent bad things from happening to other people-1 2 3 4 5
9. I do make other people happy-1 2 3 4 5
10. I have been charged or punished by the prison authorities for indiscipline-1 2 3 4 5

**(iv) Information on family relations**

1. Our family spend time and we have fun as a family together-1 2 3 4 5
2. I can be honest with my family members-1 2 3 4 5
3. My family help me out when I am in problem-1 2 3 4 5
4. I share my secrets and what happens to me with the family members-1 2 3 4 5
5. We do have family gatherings/ celebrations-1 2 3 4 5

**(v) Information on upbringing during childhood**

1. I shared my feelings with my care giver-1 2 3 4 5
2. My care giver and I spent time together-1 2 3 4 5
3. I could be honest with and confide in my care giver-1 2 3 4 5
4. When I got into trouble my care giver stood by me-1 2 3 4 5
5. I could chat and talk freely with my care giver-1 2 3 4 5



**(vi) Information on marital relationship**

***NOTE: Ignore this section if you are not married***

1. My partner and I spend time and have fun together-1 2 3 4 5
2. My partner and I share secrets and feelings -1 2 3 4 5
3. My partner and I do things together-1 2 3 4 5
4. We discuss the issues that concern our marriage with my partner-1 2 3 4 5
5. We fight with and verbally abuse each other with my partner-1 2 3 4 5

**(vii) Involvement in community affairs and acceptance by members**

1. I am involved in the affairs of my community-1 2 3 4 5
2. I have cordial relationship with my relatives and people in the community-1 2 3 4 5
3. I get support from the community members-1 2 3 4 5
4. I care about my community-1 2 3 4 5
5. I feel prestigious about my community-1 2 3 4 5
6. I have a positive bond with my community-1 2 3 4 5
7. My community member respect me-1 2 3 4 5
8. My friends and relatives visit me here in prison-1 2 3 4 5
9. My relation with the police, relatives and community members was good despite the first conviction-1 2 3 4 5
10. I had been falsely accused, arrested or prosecuted though innocent due to my first conviction-1 2 3 4 5

***Note: Some of the items in this section have been developed from Schoeman (2002) on the profile of a South African recidivist.***

### **APPENDIX III: KEY INFORMANTS INTERVIEW GUIDE**

Recidivism is a serious problem in many countries. I request that we discuss it in regard to Kenya under the following questions:-

- 1) Does recidivism depend on the type of initial punishment, If yes why, and if no, why not?
  
- 2) What is the typical profile of a recidivist in Kenya?
  
- 3) Which crimes do the recidivists in Kenya commit, and do they commit the same or more serious crimes with re-convictions?
  
- 4) What challenges do the convicts face towards their reformation and rehabilitation after the initial punishment?
  
- 5) In your view, what do you think are the best strategies for managing recidivism in Kenya?
  
- 6) In your opinion, how can the treatment of first time convicts be made effective, so that they don't recidivate?

## **APPENDIX IV: FOCUS GROUP DISCUSSION GUIDE**

I request that we discuss the problem of recidivism in regard to Kenya under the following questions:-

- 1) Is reoffending influenced by the initial punishment a convict received for the first crime?
- 2) What are the characteristics of recidivists in Kenya?
- 3) Which crimes do the recidivists commit?
- 4) Do the recidivists engage in the same crimes with reconviction?
- 5) Which challenges hinder reformation and rehabilitation after offenders' initial punishment?
- 6) How can the problem of recidivism be controlled?

**APPENDIX V: UNIVERSITY RESEARCH PERMISSION LETTER**



**UNIVERSITY OF NAIROBI  
DEPARTMENT OF SOCIOLOGY & SOCIAL WORK**

Fax 254-2-245566  
Telex 22095 Varsity Nairobi Kenya  
Tel. 318262/5 Ext. 28167

P.O. Box 30197  
Nairobi  
Kenya

24/6/16

**TO WHOM IT MAY CONCERN**

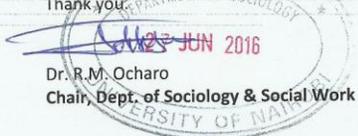
**OMBOTO JOHN ONYANGO – C80/94529/2014**

Through this letter, I wish to confirm that the above named is a bonafide postgraduate student in the Department of Sociology & Social Work, University of Nairobi. He has presented his project thesis entitled; **“An analysis of the linkage between punishment and Recidivism among prisoners in Nairobi County.”**

John is required to collect data pertaining to the research problem from the selected organization to enable him complete his project paper which is a requirement of the Postgraduate degree.

Kindly give him any assistance he may need.

Thank you.

  
Dr. R.M. Ocharo  
Chair, Dept. of Sociology & Social Work

Copy to: Dr. Gidraph G. Wairire  
Dr. Mike Chepkonga

**APPENDIX VI: RESEARCH AUTHORIZATION LETTER FROM NACOSTI**



**NATIONAL COMMISSION FOR SCIENCE,  
TECHNOLOGY AND INNOVATION**

Telephone: +254-20-2213471,  
2241349,3310571,2219420  
Fax: +254-20-318245,318249  
Email: dg@nacosti.go.ke  
Website: www.nacosti.go.ke  
when replying please quote

9<sup>th</sup> Floor, Utalii House  
Uhuru Highway  
P.O. Box 30623-00100  
NAIROBI-KENYA

Ref. No:

Date:

**NACOSTI/P/16/83756/12273**

**29<sup>th</sup> June, 2016**

John Onyango Omboto  
University of Nairobi  
P.O. Box 30197-00100  
**NAIROBI.**

**RE: RESEARCH AUTHORIZATION**

Following your application for authority to carry out research on "*An analysis of the linkage between punishment and recidivism among prisoners in Nairobi County, Kenya*," I am pleased to inform you that you have been authorized to undertake research in **Nairobi County** for the period ending **29<sup>th</sup> June, 2017**.

You are advised to report **the Chief Wardens of selected Prisons, the County Commissioner and the County Director of Education, Nairobi County** before embarking on the research project.

On completion of the research, you are expected to submit **two hard copies and one soft copy in pdf** of the research report/thesis to our office.

**BONIFACE WANYAMA  
FOR: DIRECTOR-GENERAL/CEO**

Copy to:

The Chief Wardens  
Selected Prisons.

The County Commissioner  
Nairobi County.

The County Director of Education  
Nairobi County.

**COUNTY COMMISSIONER  
NAIROBI COUNTY  
P. O. Box 30124-00100, NBI  
TEL: 341666**



National Commission for Science, Technology and Innovation is ISO 9001:2008 Certified

**APPENDIX VII: RESEARCH CLEARANCE PERMIT**

**CONDITIONS**

- 1. You must report to the County Commissioner and the County Education Officer of the area before embarking on your research. Failure to do that may lead to the cancellation of your permit.**
- 2. Government Officers will not be interviewed without prior appointment.**
- 3. No questionnaire will be used unless it has been approved.**
- 4. Excavation, filming and collection of biological specimens are subject to further permission from the relevant Government Ministries.**
- 5. You are required to submit at least two(2) hard copies and one(1) soft copy of your final report.**
- 6. The Government of Kenya reserves the right to modify the conditions of this permit including its cancellation without notice.**

**REPUBLIC OF KENYA**

**NACOSTI**

**National Commission for Science, Technology and Innovation**

**RESEARCH CLEARANCE PERMIT**

**Serial No. A 0822**

**CONDITIONS: see back page**

**THIS IS TO CERTIFY THAT:**

**MR. JOHN ONYANGO OMBOTO**  
**of UNIVERSITY OF NAIROBI, 0-101**  
**NAIROBI, has been permitted to conduct**  
**research in Nairobi County**

**on the topic: AN ANALYSIS OF THE LINKAGE BETWEEN PUNISHMENT AND RECIDIVISM AMONG PRISONERS IN NAIROBI COUNTY, KENYA**

**for the period ending:**  
**29th June, 2017**

**Permit No. : NACOSTI/P/16/83756/12273**  
**Date Of Issue : 29th June, 2016**  
**Fee Received :ksh 2000**

*[Signature]*  
**Applicant's Signature**

*[Signature]*  
**Director General**  
**National Commission for Science, Technology & Innovation**

## APPENDIX VIII: LETTER TO PRISONS ON RESEARCH PERMISSION

JOHN ONYANGO OMBOTO  
EGERTON UNIVERSITY  
NAIROBI CITY CAMPUS  
P.O. BOX 100529-00101  
NAIROBI  
30<sup>th</sup> June, 2016

THE COMMISSIONER GENERAL  
KENYA PRISONS SERVICE  
P.O. BOX 30175-00100  
NAIROBI



Dear Sir,

**RE: PERMISSION TO CONDUCT A RESEARCH FOR A PhD STUDY AT KAMITI  
MAXIMUM SECURITY PRISON AND LANGATA WOMEN PRISON**

I am a student at the University of Nairobi studying for a PhD course in Criminology. As per the attached documents, I have currently been permitted by the university and the National Council for Science, Technology and Innovation to conduct a research on the linkage between Punishment and Recidivism among Prisoners in Nairobi County. The purpose of this letter therefore is to kindly request you for permission to collect information from the prisoners and members of staff at Kamiti Maximum Security Prison and Langata Women Prison for the purpose of the study in the months of August and September 2016.

Should there be a need to clarify any issues after the data collection, I further request to go back to the institutions before 29<sup>th</sup> June 2017. During this exercise, I promise to abide by the rules and regulations governing the institutions.

I look forward for your favourable response.

Faithfully yours,

John O. Omboto.

## APPENDIX IX: PRISONS' RESEARCH APPROVAL LETTER

OFFICE OF THE PRESIDENT  
MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT.  
KENYA PRISONS SERVICE

Telegrams: "COMPRISONS", Nairobi  
Telephone: +254022722900-6.  
Email: Comprisons@yahoo.com  
When replying please quote



PRISONS HEADQUARTERS  
P.O. BOX 30175-00100  
NAIROBI

REF: PRIS 1/21 VOL IV/99

14<sup>TH</sup> July, 2016

John Onyango Omboto  
Egerton University  
Nairobi City Campus  
P.O Box 100529-00101  
Mobile: 0724433044  
**NAIROBI**

**REF: ACADEMIC RESEARCH APPROVAL**

We acknowledge receipt of your letter dated 30<sup>TH</sup> June 2016 requesting to conduct an academic research at Langata Women and Kamiti Maximum prisons focusing on ***'An analysis of the linkage between punishment and Recidivism among prisoners in Nairobi county'***.

This is to inform you that your request has been **APPROVED** and that the research findings should be for academic use only. You are also required to provide the Prisons Headquarters with a copy of your research report at the end of your research.

By a copy of this letter, officers in charge Langata women and Kamiti Maximum prisons are requested to accord you the necessary assistance.

**E.M. MOSIORI**  
**FOR: COMMISSIONER GENERAL OF PRISONS**

**Cc**

OI/C Langata women prison  
OI/C Kamiti Maximum prison

**APPENDIX X: CHI SQUARE DISTRIBUTION TABLE**

<i>df</i>	<i>p</i>						
	0.99	0.95	0.90	0.10	0.05	0.01	0.001
1	0.3157	.00393	.0158	2.706	3.841	6.635	10.827
2	.0201	.103	.211	4.605	5.991	9.210	13.815
3	.115	.352	.584	6.251	7.815	11.345	16.266
4	.297	.711	1.064	7.779	9.488	13.277	18.467
5	.554	1.145	1.610	9.236	11.070	15.086	20.515
6	.872	1.635	2.204	10.645	12.592	16.812	22.457
7	1.239	2.167	2.833	12.017	14.067	18.475	24.322
8	1.646	2.733	3.490	13.362	15.507	20.090	26.125
9	2.088	3.325	4.168	14.684	16.919	21.666	27.877
10	2.558	3.940	4.865	15.987	18.307	23.209	29.588
11	3.053	4.575	5.578	17.275	19.675	24.725	31.264
12	3.571	5.226	6.304	18.549	21.026	26.217	32.909
13	4.107	5.892	7.042	19.812	22.362	27.688	34.528
14	4.660	6.571	7.790	21.064	23.685	29.141	36.123
15	5.229	7.261	8.547	22.307	24.996	30.578	37.697
16	5.812	7.962	9.312	23.542	26.296	32.000	39.252
17	6.408	8.672	10.085	24.769	27.587	33.409	40.790
18	7.015	9.390	10.865	25.989	28.869	34.805	42.312
19	7.633	10.117	11.651	27.204	30.144	36.191	43.820
20	8.260	10.851	12.443	28.412	31.410	37.566	45.315
21	8.897	11.591	13.240	29.615	32.671	38.932	46.797
22	9.542	12.338	14.041	30.813	33.924	40.289	48.268
23	10.196	13.091	14.848	32.007	35.172	41.638	49.728
24	10.856	13.848	15.659	33.196	36.415	42.980	51.179
25	11.524	14.611	16.473	34.382	37.652	44.314	52.620
26	12.198	15.379	17.292	35.563	38.885	45.642	54.052
27	12.879	16.151	18.114	36.741	40.113	46.963	55.476
28	13.565	16.928	18.939	37.916	41.337	48.278	56.893
29	14.256	17.708	19.768	39.087	42.557	49.588	58.302
30	14.953	18.493	20.599	40.256	43.773	50.892	59.703

**Source:** Adapted from Table IV of R.A. Fisher and F. Yate (1974). Statistical Tables for Biological, Agricultural, and Medical Research, 6<sup>th</sup> Ed. Longman Group, Ltd., London.

APPENDIX XI: KREJCIE & MORGAN TABLE FOR DETERMINING SAMPLE SIZE

*Table for Determining Sample Size from a Given Population*

<i>N</i>	<i>S</i>	<i>N</i>	<i>S</i>	<i>N</i>	<i>S</i>
10	10	220	140	1200	291
15	14	230	144	1300	297
20	19	240	148	1400	302
25	24	250	152	1500	306
30	28	260	155	1600	310
35	32	270	159	1700	313
40	36	280	162	1800	317
45	40	290	165	1900	320
50	44	300	169	2000	322
55	48	320	175	2200	327
60	52	340	181	2400	331
65	56	360	186	2600	335
70	59	380	191	2800	338
75	63	400	196	3000	341
80	66	420	201	3500	346
85	70	440	205	4000	351
90	73	460	210	4500	354
95	76	480	214	5000	357
100	80	500	217	6000	361
110	86	550	226	7000	364
120	92	600	234	8000	367
130	97	650	242	9000	368
140	103	700	248	10000	370
150	108	750	254	15000	375
160	113	800	260	20000	377
170	118	850	265	30000	379
180	123	900	269	40000	380
190	127	950	274	50000	381
200	132	1000	278	75000	382
210	136	1100	285	100000	384

Note.—*N* is population size.  
*S* is sample size.