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INSTITUTE OF DIPLOMACY AND INTERNATIONAL
STUDIES

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**// The Political Economy of Prison Based Security Threats and their
Effects on Public Safety; The Case of Kenya Prison System //**

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**A dissertation submitted in partial fulfillment of the requirements of the
award of the Degree of Masters of Arts
in International Studies, at the Institute of
Diplomacy and International Studies (IDIS), University of Nairobi.**

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DECLARATION

This Project is my original work, and has not been presented to the award of any degree in any other University.

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Date

This project has been submitted for examination and my approval as University supervisor

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Signature



Date

DEDICATION

I wish to dedicate this work to my dear family, my beloved wife Jane, and my children Brian, Ephie, and Joy for their overwhelming support, patience and sacrifices they made to see me comfortably complete my study.

I also wish to dedicate this work to my mum Gladys and my dad Samuel for their counsel, encouragement and prayers throughout my study.

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LIST OF ABBREVIATIONS

ACA	American Correctional association
ACU	AIDS Control Unit
AIAI	Al-Itihad Al-Islami
AIDS	Acquired Immuno-Deficiency Syndrome
CCTV	Closed Circuit Tele-Vision
CIA	Central Intelligence Agency
CID	Criminal Investigation Department
DPM	Directorate of Personnel Management
EU	European Union
EUNAVFOR	European Union Naval Force
FBI	Federal Bureau of Investigation
GOK	Government of Kenya
HIV	Human Immunodeficiency Virus
KNCHR	Kenya National Commission for Human Rights
NACADA	National Agency for the Campaign against Drug Abuse
NARC	National Alliance rainbow Coalition

NSIS	National Security Intelligence Service
OVP & MOHA	Office of the Vice President and Ministry of Home Affairs
PBST	Prison-Based Security Threats
PPP	Public Private Partnership
UK	United Kingdom
UN	United Nations
UNDHR	United Nations Declaration of Human Rights
UP	Undugu Project
USA	United States of America
WoT	War on Terror

ABSTRACT

This study sought to grapple with “The Political Economy of Prison Based Security Threats and their Effect on Public Safety in Kenya.” It responds to three critical questions; What is the nature and form of emerging prison based security threats? What factors undergird the current prison based security threats? And what institutional policies and frameworks are critical for enhancing prison role in societal protection and public safety?

The study is underpinned by three objectives which sought to examine and analyze the nature and form of emerging prison based security threats, the factors that undergird these threats and the apparent inability by the institutional policy frameworks to contain the threat.

The study contends that the prevailing prison based security threats are as a result of emerging trends in crime bolstered by technological advancement, globalization factors together with the convergence of differentiated specialized criminal elements and the weak and outdated policy frameworks.

In response to this, we recommend that the prisons department juxtaposes its policy frameworks with the emerging crime trends in tandem with the demands of modern day technological advancement. This can be achieved by adopting a paradigmatic shift in the *modus operandi* in the management of prisons. This will entail a radical approach to the training and forming of the prison officer equipping him skills, values and attitudes of a correctional officer. Core here is that the administration and exercise of justice which includes imprisonment should serve the purpose of a safe and secure society.

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CHAPTER ONE

INTRODUCTION

1.0 Statement of the Research Problem

Between the year 2000 and 2010 the Kenya prison population grew from an estimated 35,000 to 55,000 inmates representing a 57% increase.¹ While the dominant categorization of crime in earlier periods of the current decade were those of conventional types such as robbery, carjacking, rape, stealing, stock theft, petty crimes of hawking, prostitution, brewing and consumption of illicit brews, by the year 2010 the dynamics had shifted. Prisons were also hosting inmates incarcerated for international organized crimes such as piracy, terrorism, environmental crimes, and drug trafficking.² In 2010, inmates in the conventional category accounted for approximately 46,500 of those 3,500 were those incarcerated for acts of piracy, terrorism, cyber crimes, drug and human trafficking.³

The period between 2005 and 2011 also saw a sharp increase in numbers of inmates held for cyber related organized distortion networks.⁴ For instance, in the past three years alone, an estimated 24,520 mobile phones and 18 laptops were recovered from inmates while an estimated 1,205,000 Kenyans reported threats and/or extortions that were traced to the prisons' spaces.⁵

These dynamics put into question the conventional philosophy that incarceration is an answer to objective threats portended by individuals to the society.

¹Kenya Prisons Service, *Directorate of Legal Affairs, Human Rights and Statistics*, October 2010.

²Ibid.

³Bureau of Democracy, Human Rights and Labour. US Department of State, *2010 Country Reports on Human Rights Practices*.

⁴Kenya Prisons Service, *Directorate of Legal Affairs, Human Rights and Statistics*, October 2011.

⁵Ibid.

The popular imagination that prisons underpin societal security and protection by undertaking correctional means of the undesirables before facilitating their reintegration into the society at one level and those that do not deserve to be released are safely locked away at another level puts the objective reality to the converse. It is interesting to anticipate the apparent convergence of different forms of criminal actors and activities within prison domains.

Indeed this study inclines itself in this direction. It investigates the nature and forms of emerging prison based security threats, it specifically responds to the question; What is the nature and forms of emerging prison based security threats?, What factors undergird the current prison based security threats?, What Institutional policies and frameworks are critical for enhancing the prison role in societal protection and public safety?

1.1 Objective of the Study

Broadly stated, this study seeks to examine the prevailing prison-based security threats in Kenya. In specific terms, the study seeks to;

- a. Examine and analyse the nature and forms of emerging prison-based security threats.

This objective is predicated on several assumptions; that prisons now host a new crop of inmates who are not only technologically savvy, but are capable of transforming prison domains into spaces for mediating crimes external to prisons; and that threats are felt at all sectors which include economic, political, societal, military and environmental levels. In this objective we examine security threats emergent out of convergences of various variables as differentiated intercourse of prisoners such as local and international terrorists, maritime pirates, drugs and arms traffickers and cyber terrorists.

- b. Examine and analyse factors that undergird the current prison-based security threats.

This objective is founded on the assumption that the prison based security threats trace their routes from a labyrinth of sources both internal and external to the prisons. We examine the internal factors that influence prison based security threats such as lack of corresponding capacity among prison officers to deal with technologically savvy prisoners, overcrowding, corruption, low morale, insufficient pay, the physical design of the prison and internal security mechanisms. These vulnerabilities in prison domains may provide the inmates with inherent advantages in committing crime while in prison.

- c. Proffer research based recommendations for analysing policy and requisite organisational framework.

1.2 Hypotheses

The study will be guided by the following specific hypotheses;

- a. That Prison based security threats are a function of technology savvy inmates and the vulnerabilities prevailing within the prison domains.
- b. That Prison based security threats are a function of inappropriate and uncoordinated, internal and external policy constructs.

1.3 Justification of the Study

Numerous attempts have been undertaken towards addressing the challenges that the prisons department faces. Among them is the “Madoka” Report⁶ which in its recommendations, the focus was directed towards improving living conditions of both inmates and prison officers. Little attempt is made to appreciate emerging threats within prison domains, more so the new types of inmates who converge with contemporary vulnerabilities. Notably, there is no reference to appreciate the inability of the prison system to anticipate and contain threats in response to its mandate.

On the other hand, The Kenya Prisons Strategic Plan 2008-2012 sought to expand accommodation facilities for the inmates. The Kenyan prison structural design is based on the Panopticon⁷ Model by Jeremy Bentham in which an inmate out of the sub-consciousness knows that he is under surveillance and therefore restrains himself from engaging in activities that would compromise security. However, little effort has been made in terms of redesigning the prison to anticipate the new differentiated types of criminal elements. With the present day technology, inmates are able to perpetrate their criminal activities while in incarceration within their cells.⁸

Another report⁹ by a task force that was charged with the responsibility of undertaking workload analysis to determine the optimal staffing levels for the prisons department made recommendations; key among them was to expand the staff strength and restructure the establishment.

⁶Report of the High Level Committee on the Prison Crisis, “The Madoka Report.” 2008.

⁷Jeremy Bentham, Miran Bizovic (ed.) *The Panopticon Writings*, London: Verso, 1995, pp 29-95.

⁸Officer in Charge Kamiti Maximum Security Prison on emerging the challenges portended by the new crop of inmates.

⁹Kenya Prison service, Workload Analysis, 2008.

What is conspicuously missing here is an attempt to address the staff remuneration and morale which has greatly compromised prison security in recent years.

The foregoing is what our study seeks to do. We specifically seek to grapple with and understand what types of threats exist, how they form and their implications to the prison mandate. In the process we seek to push a wider understanding of threat mutations within the confines of spaces considered as security generating for the society.

The secondary data and literature on security in Kenya that have been carried out leave gaps since they did not anticipate threats emanating from the prisons. The fact that these threats continue to manifest themselves unabated is clear testimony that these literature has not addressed the issues at hand. For instance, Mutahi and Katumanga¹⁰ in their current works on security, discuss mutation of security environment from monopoly to oligopoly of violence. In the research, the mode of formation of gangs and their symbiotic relationships with the society and politicians is analysed. They go to the extent of outlining threats to the state, while proffering recommendations for containment. However, what is glaring is the evolution of prison based threats. Our study attempts to grapple with this. It is concerned with the process of convergences between technologically savvy inmates and prison vulnerabilities. It also grapples with the apparent policy silence on emerging prison based threats and impacts of internal policy constructs.

¹⁰ Mutahi Ngunyi and Katumanga Musambayi. *“From Monopoly to Oligopoly of Violence: Exploration of A Four-Point Hypothesis Regarding Organized and Organic Militia in Kenya”* 2011.

¹¹ Kenneth Omeje and John Mwangi Githigaro, *“The Challenges of State Policing in Kenya”* The Peace and Conflict Review. Vol. 7, Issue 1. 1659-3995.

On the other hand, Omeje and Githigaro¹¹ in their article; “The Challenges of State Policing in Kenya” proffer preventive action through community policing as the main prescription for security threats in Kenya. They proceed to adopt various strategies to build trust and partnership with the policed while disregarding the prison component. In so doing, they made no attempt to address the security threat emanating from the prison domains. This study is therefore an attempt towards dealing with this apparent gap.

In demonstrating the existing threats, we reverse the traditional theoretical perceptions that the prisons as sites for societal securitization. But instead of confining ourselves to the critique, we seek to further policy options. Our academic justifications are predicated on the foregoing.

1.4 Literature review

1.4.1 Security Threats and Containment

Punishment is conceived as a natural feature of human correction, with history, literature and religion confirming its central role in human relationships from the beginning of civil society. It is perhaps the sense that punishment is an inevitable aspect of social life that leads many people to dismiss as impractical and purely Utopian all suggestions that punishment is something we could and should do without.¹²

The inevitability of punishment points to the need to cultivate law and order in any social setting such that in its absence nothing exists but disorder, chaos and indiscipline.

¹²Wesley Cragg. *The Practice of Punishment: Towards a Theory of Restorative Justice*. New York: Routledge, 1992, p10.

John Locke¹³ argues that punishment requires that there be a law, even though he says that individuals in a state of nature¹⁴ have the legitimacy to punish the wrong-doers. For Locke, the power to punish rests not with the individual but rather with the government. According to Locke, the proper amount of punishment is the amount that would provide restitution to injured parties, protect the public, and deter future crimes.

This perspective informs the logic of incarceration to date. However, what is missing out in Locke's conceptual thrust, are the implication of mismanaged confinements. The locking perspective does not anticipate the consequence of convergences emergent out of organized local and international crime actors, local conventional crimes and technologically savvy innovative inmates to the point at which prisons cease to be options of what Locke refers to as restitution and instead evolve into realms of threats. This is what our study seeks to analyze.

It specifically attempts to grapple with the forming of new modes and forms of prison based threats. It also analyzes the nexus between threats and vulnerabilities while we grapple with the issue of containments.

On the other hand, Immanuel Kant¹⁵ thought of punishment in retributive terms. He also point to its deterrent function. For Kant, if it were that in the last day of civilization, only the hangman and the condemned remained on the town square, the execution of the condemned not only may proceed but also must proceed. This adduces a firm Kantian principle of the notion of duty, that is to say, it is the hangman's duty to punish the condemned, no matter what conditions.

¹³John Locke, *Two Treatises on Government*, ed. by Peter Laslett, Cambridge University Press, 1988, pp 271-76.

¹⁴Where there is no civil government .

¹⁵Immanuel Kant, *The Metaphysical Elements of Justice*, transl. by John Ladd, Bobbs-Merrill Co., 1965, p 102.

Kant's duty-based ethics is the position that punishment should be done as an end in itself rather than as a means to some end. This means that even retribution should be considered, according to Kant, as an end in itself rather than a means to some end. The thought of these philosophers to a large extent express the norm in earlier civilizations.

However, for Kant to contend that punishment is for retributive and deterrent functions, he overlooked the fact that long term incarceration and the "warehousing" of differentiated high risk criminal elements with petty offenders presents a fertile ground for the former to recruit. It is this apparent threat that this study seeks to analyze.

In the Mediaeval era, standard punishments were compensation or fine; followed by corporal punishment, such as branding, and capital punishment such as death by burning to the stake. Prisons were, by and large, places where criminals were held, pending trial or sentencing or until such time as an outstanding debt was paid. After trial, they were used to hold prisoners until sentence, which could have been corporal punishment, banishment or execution.

However, they were rarely used as places of punishment in themselves. Retaliation was accepted through the principle of 'an eye for an eye', known in the legal parlance as *lex talionis*, thus; the law of retaliation.¹⁶ Pre-modern societies relied mostly on religious authorities or family establishments to maintain law and order. The welfare of the group was of primary concern and emphasis was placed on the society's right to revenge against members of the society who broke established rules. The growth of more complex societies weakened the role of the family as a unit of social control hence rendering it ineffective. This gave rise to present day written codes.¹⁷

¹⁶Michael Adler and Brian. *Longhurst, Discourse, Power and Justice: Towards a New Sociology of Imprisonment*, New York: Routledge, 1994, p 2.

¹⁷Institute for Education in Democracy, *Handbook on Human Rights in Kenya Prisons*, Nairobi, 2003, p12.

Hammurabi's Code in 1750 BC was the earliest known code, though it limited punishment to flogging and execution.¹⁸ Punishment was transformed from an act of vengeance to that of reformation and deterrence. With the emergence of Christianity as a state religion in the Roman Empire, great emphasis was placed on mercy as confinement in monasteries replaced executions.

The earlier middle ages had two systems of punishment. The church had its own ecclesiastical system while the secular system was based on the feudal traditions which at times degenerated into violent conflicts between rival lords.¹⁹ The secular system generally punished the wealthy through fines and restitution while the poor received physical punishment. But the Code of Draco inflicted single punishment of death for every infraction of law. His legal work on the potentials of revenge took the form, for instance, of distinguishing between accidental and intentional homicide, and one of his laws protected a killer from the vengeance of the victim's kin.²⁰

With the growth of civil society, imprisonment became a tool of ensuring that law and order is maintained, and crime is punished. Imprisonment as a punishment is meant not only to deprive the individual of his liberty, but also to impose *painful conditions* for the prisoner. From this understanding, it could be argued that prisons are an expression of a theory of punishment, of justice put in practice. The assumption here is that through individualized pain the society deters others while those incarcerated will due to deprivation motivate themselves to be good persons hence securing the society.

¹⁸Dyneley Prince J. 'Review: *The Code of Hammurabi*', in American Journal of Theology Vol. 8, No. 3, The University of Chicago Press Jul., 1904, p 601-609.

¹⁹Institute for Education in Democracy, Op. Cit.p12.

²⁰Donald W Shriver, Jr., *An Ethic for Enemies: Forgiveness in Politics*. New York: Oxford University Press, 1995. pp 13, 235.

What is not however appreciated here is the logic of what Cesare Beccaria²¹ calls the logic of hedonism. This is about the instrumentalization of crime through value derived. In other words, how do we from a policy point deal with the transformation of prisons into cities of accumulation? What nature and forms do these take? What are the security implications? This is what our study seeks to grapple with.

The modern prison has its origin in the Panopticon, an organization designed by Jeremy Bentham in 1791.²² The concept of the design is to allow an observer to observe (-*opticon*) all (*pan-*) prisoners without the prisoners being able to tell if they are being observed or not, thus conveying a “sentiment of an invisible omniscience.” If Panoptism is about architecture of control, how do we orient it in the fast mutating modes and forms of prison based security threats? How do we enhance anticipation and flexibility through structures and policies? These are the issues this study seeks to grapple with.

1.4.2 Threat Production

Imprisonment is a form of punishment. It is therefore important to understand the concept of imprisonment in the context of punishment generally. Etymologically, punishment comes from Latin word ‘*punire*’ which means ‘to cause to undergo pain or suffering for a crime or wrongdoing’.²³

According to Donald W. Shriver, Jr., punishment is a word best reserved to a wide array of social disciplines, some of which only remotely fit the offence.

²¹Cesare Beccaria 1764: *An Essay on Crime and Punishment (Dei Delitti e dello Pene)* Translated with introduction by H. Paolucci. Indianapolis. In Bobbs-merrills., 1975.

²²Jeremy Bentham, Miran Bizovic (ed.) *The Panopticon Writings*, London: Verso, 1995, pp 29-95.

²³New World Dictionary of the American Language, 2nd College Edition, New York: Simon & Schuster, 1953.

The motto of the punisher is: "For your hurt, we hurt in return, but not necessarily in kind. Above all we must reassert the standards which you have defied; our punishment must not defy them either."²⁴ This is an affirmation that punishment ought to seek to equalize the severity of the crime with the severity of the punishment; punishment must be just.

In the *Handbook on Human Rights in Kenya Prisons*, imprisonment refers to the act of confining a person, especially in jail, and restricting his enjoyment of certain freedoms that he would normally enjoy in different circumstances.²⁵ In judicial system it refers to the holding of a person, either as castigation for a wrong, hence imposing a penalty consisting of mandatory custody of the convict, either in a jail or some other closed therapeutic and/or educational institution.²⁶

Nearly two centuries now John Howard described imprisonment as a situation where a check of the public eye is removed and the power of the law is spent. He argues that prison experience has a considerable bearing on the fulfilment of the most important aim of criminal justice, that is, the protection of the law-abiding community through the modification of the behaviour of prisoners.²⁷ It is argued by specialists in correctional justice that the experiences prisoners have in prison social life usually turn out to be considerably more important than the various schemes for rehabilitation set up by prison administrations.²⁸ The use of prisons in crime control has greatly increased in the last decade. Most recently, mandatory minimum sentencing policies have gained widespread popularity throughout, severely limiting judicial discretion in sentencing.

²⁴Donald W Shriver, Jr., Op. cit. p 33.

²⁵Institute for Education in Democracy, Op. Cit. p13.

²⁶J. C. Chaturvedi. *Penology and Correctional Administration*, Delhi, India: Isha Books. 2006, p 28.

²⁷Norman Johnson, Leonard Savitz and Marvin E. Wolfgang, *The Sociology of Punishment and Correction*. New York: John Wiley and Sons. 1962, p 383.

²⁸Ibid.

The principle rationale for mandatory minimums is the belief that the length of prison sentence acts as a deterrent to future recidivism. It is also arguable that harsher prison conditions may induce greater post-release recidivism among criminals. This would have great impact on prison policy. At the same time, it could be argued that such harsh conditions could deter crime among the non-incarcerated.²⁹

However this argument for mandatory minimum sentencing policy disregards the retributive aspect of justice in which the severity of the punishment must be equal to the severity of the crime in order to offer psychological relief to the victim of crime without necessarily 'over-punishing' the criminal. Mandatory minimum sentencing is a blanket policy and therefore does not pay attention to the fact that every criminal case is unique in itself. Submission to an inferior role, accumulations of facts concerning the organization of the prison, and the development of somewhat new habits are aspects of prisonization which are operative for all inmates. This study is therefore an attempt to analyze these glaring gaps.

It is the universality of these influences that are sufficient to make a man characteristic of the penal community and probably so disrupt his personality that a happy adjustment in any community becomes next to impossible. Those characteristics of prisonization that are of interest to this study are those influences that breed criminality and anti-sociality which make the inmate characteristic of the criminalistic ideology in the prison community.³⁰ The influences of these universal factors depend, first on the offender him/herself and his/her susceptibility to a culture which depends primarily on the type of relationships he had prior to imprisonment.

²⁹M. Keith Chen & Jesse M. Shapiro, *Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity-Based Approach*.⁹ *American Law Economics Review* (2007). p 22.

³⁰*Ibid*, p 481.

Secondly, these universal factors depend on the kind and extent of relationship which an inmate has with persons external to the prisons. The third determinant which is likely to influence the inmate's prisonization is whether or not an inmate becomes affiliated in prison primary or semi-primary groups. A fourth determinant depends on chance; a chance placement in work gang, cell-house, and with cellmate. The fifth factor pertains to whether a prisoner accepts the dogmas or codes of the prison culture while other determinants depend on age, criminality, nationality, race, religion conditioning, and every determinant is more or less interrelated with every other one.

1.4.3 Incarceration for Security

Conventionally, the purpose of law in a society is to maintain or maximize community protection and public safety. Michel Foucault states in his masterpiece *'Discipline and Punish: The Birth of the Prison'* that "prison marks an important moment in the history of penal justice: its access to 'humanity'. It is not merely that 'stone can make people docile and knowable,' it is also that policies of coercion introduce 'procedures for distributing individuals; fixing them in space; classifying them; extracting from them the maximum in time and forces; training their bodies; coding their continuous behaviour; maintaining them in perfect visibility; forming around them an apparatus of observation, registration and recording; and constituting on them a body of knowledge that is accumulated and centralized.'" Prison discipline is a powerful mechanism that constrains prisoners and defines how they can be forced to do what we wish, to operate as we wish, with the techniques, the speed, the control and the efficiency that we determine.³¹ This raises a debate whether prisons should be used to coerce criminals into reformation since reformation requires the individual's effort. The individual must be willing to reform.

³¹ Allen M. Hornblum. "Review of *Acres of Skin: Human Experiments at Holmesburg Prison*", in *Journal of Criminal Justice and Popular Culture*, New York: Routledge press, 6(1), 1998, pp 4-9.

There are five justifications of punishment which are summarized under the following: just retribution, deterrence, prevention, rehabilitation and reformation. Conventionally, these are the *raison d'être* (reason of being) for punishment and/or imprisonment; this is to assert that there has to exist a sufficient and justified reason for punishment. But whether these justifications are appropriate for their intended purposes is a totally different question which invites a debate that will form part of this study. Each one of these justifications aims at one and the same purpose that of maintaining and maximizing community protection. Thus every one of them seeks to inculcate both societal values in the offender hence improving community protection and public safety. It can therefore be correctly stated that the function of punishment is to deter, and the five are various methods of deterring individuals from committing crimes.³² Punishment is still meted on individuals primarily for the purpose of vengeance, or deterrence, or in the interest of a just balance of accounts between deliberate evildoers on one hand and an injured and enraged society on the other.³³ We do not yet generally punish, as scientific criminology would imply, in order to change antisocial attitudes into social attitudes. Emile Durkheim views punishment as an act of vengeance:

“What we avenge and what the criminal expiates is the outrage to morality.”³⁴

He further argues that crime, rather than punishment, is a natural, and in some sense desirable, aspect of society, and that societies devoid of crime will seek to redefine certain behaviours as crimes partly to reinforce the norms in that society.³⁵ It could be argued, though, that vengeance is not essentially a necessity because of the need to deter the bulk of the population from doing likewise. The socialization process prevents most deviant behaviour.

³²H. Odera Orika, *Punishment and Terrorism in Africa: Problems in the Philosophy and Practice of Punishment*, Nairobi, Kenya: East Africa Publishers 1976 p 26.

³³Donald Reed Taft, *Criminology*, New York: Macmillan, 1956 p 359.

³⁴Emile Durkheim, *The Division of Labour in Society*, transl. by George Simpson. Glencoe: Free Press.1947, p 89.

³⁵Michael Tonry, *Op cit.*, p 65.

Only the unsocialized individual fits the model of classical criminology and is deterred from expressing deviant impulses by a good calculation of pleasures and punishments.³⁶

As a balance between annihilation of the offender on one hand and pardon on the other, imprisonment could be viewed as an appropriate consequence of serious crimes. Imprisonment can be justified as a cliché of modern penology that placing the offender in prison is for the purpose of punishment, deterrence and reform.³⁷

However, it is proper and incumbent that we investigate briefly the perceived effects of imprisonment according to various schools of thought. This shall indeed inform our further discussions on the various purposes of imprisonment. There are three schools of thought dominating the debate on whether prisons and/or prison sentence increase crime.³⁸ The first school of thought holds that prisons suppress criminal behaviour. Given the unpleasantness of prison life and the negative social stigma associated with incarceration, these should serve as deterrent to probable criminal behaviour. The second is the “schools of crime” viewpoint which proposes just the opposite, i.e., prisons increase criminality. Its proponents argue that the barren, inhuman, and psychologically destructive nature of imprisonment makes offenders more likely to recidivate³⁹ upon release. Indeed, the agencies built by society for preventing deviance are often so poorly equipped for the task that we might well ask why this is regarded as their “real” function in the first instance.

³⁶Talcott Parsons, *The Structure of Social Action*, Glencoe, IL: Free Press 1949, pp 402-3.

³⁷Gresham M. Sykes. David Dressler, (ed) “*The purpose of imprisonment*,” in *Readings in Criminology and Penology*, New York: Columbia University Press, 1972.

³⁸Paul Gendreau & Claire Goggin. *The Effects of Prison Sentences on Recidivism*, Centre for Criminal Justice Studies, University of New Brunswick.

³⁹Act of re-offending by released inmates.

A thoroughly familiar argument is that many of the institutions designed to discourage deviant behaviour actually operate in such a way as to perpetrate it. Indeed, prisons and other similar agencies provide aid and shelter to large populations of deviant persons, sometimes giving them a certain or undue advantage in the competition for social resources. But beyond this, such institutions gather marginal people into tightly segregated groups and spaces, giving them an opportunity to teach one another the skills and attitudes of a deviant career, and even provoke them into using these skills by reinforcing their sense of alienation from the rest of society.

The misery suffered in goals is not half their evil; they are filled with every sort of corruption that poverty and wickedness can generate; with all the shameless and profligate enormities that can be produced by the impudence of ignominy, the rage of want, and the malignity of despair. In a prison the check of the public eye is removed; and the power of the law is spent.

“There are few fears, there are no blushes. The lewd inflame the more modest; the audacious harden the timid. Everyone fortifies himself as he can against his own remaining sensibility; endeavouring to practice on others the arts that are practiced on himself; and to gain the applause of his worst associate by imitating their manners.”⁴⁰

It is interesting to anticipate how this school of thought will inform our study on the convergence of international and local crime actors within the prison domains.

The third school of thought, labelled the ‘minimalist/interaction’ position, contends that, the effect of prison on offenders is, for the most part minimal. Here prisons are essentially ‘psychological deep freezes’ where offenders enter with a set of antisocial attitudes and behaviours which are little changed during incarceration.

⁴⁰John Howard, *State of the Prisons in England and Wales* (3rded.), Warrington: William Eyres, 1784, p 12.

This perspective suggests that lower risk offenders may be more adversely affected by greater lengths of incarceration through exposure to an environment typically dominated by their higher risk, hard core peers. When a person or group penetrates and fuses with another group, assimilation may be said to have taken place.⁴¹ It implies that the assimilated come to share the sentiments, memories and traditions of the static group. The men who come to prison are not greatly different from the ones already there so far as broad culture influences are concerned. They all seem to speak the same language, have similar national heritage, and they all appear to be stigmatized. The term assimilation describes a slow, gradual, and a more or less unconscious process during which a person learns enough of the culture of a social unit into which he is placed to make him characteristic of it.⁴² In prisons, terms this is referred to as prisonization.⁴³ Every offender who enters the prison undergoes prisonization to some extent. The first and most obvious integrative step concerns his/her status. He/she becomes at once an anonymous figure in a subordinate group with a number replacing his/her name. He/she starts wearing clothes of the members of the subordinate group. He/she is soon absorbed into the prison culture. These influences on the individual are often referred to as universal factors of prisonization. An act therefore is not morally good if it is done for certain end or benefit.⁴⁴ This means that it would be difficult to reconcile Kant's duty-based punishment with the consequentialist approach to punishment such as deterrence and rehabilitation. Punishment just like any other good then must derive from the moral law hence ought to be understood as a categorical/universal imperative or command and not as a hypothetical or conditional imperative.⁴⁵

⁴¹Donald Clemmer, *The Prison Community: Prisonalization*, New York: Rinehart & Company, Inc., 1958 (reissue), pp 298-304.

⁴²Norman Johnston et al, Op cit. p 479.

⁴³The absorption, in more or less degree, of the folk-ways, traditions, customs, and general culture of the prison.

⁴⁴Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals*, transl. by J.H. Paton, New York: Harper and Row, 1948.

⁴⁵Donald C. Abel, *Fifty Readings in Philosophy*, New York: McGraw-Hill, Inc., 1994, pp 366-67.

A retributive theorist sees the primary justification in the fact that an offence has been committed, which indeed deserves the punishment of the offender. The philosophy of retributive theorist is that the severity of the punishment must equal to the severity of the crime committed. According to Ingemar Hedenius the deterrence function is essential in all forms of retribution.⁴⁶ The fear of revenge of retributive punishment does to some extent restrain some potential criminals from carrying out their criminal intentions. This implies that community protection and public safety may be apparently maintained. Just retribution could therefore be regarded as a form of deterrence.

However, long term prison sentences and the insistence on retribution among other methods for achieving restorative justice makes such “warehousing” of criminals, as a rather expensive affair. It cannot be ignored that as a social force it shapes the nature of the penal institution through community reactions and construction of budgets. Yet another facet of this debate disregards the financial cost for the most part. The argument regarding warehousing rests upon the theory that any punishment considered respectful of human rights should not include caging humans for life without chance of release and that even death is morally and ethically a higher road than the no parole prison sentences.⁴⁷ But a retributivist would look the other way arguing that life sentence does in fact act not only as deterrence but also as a way of offering psychological relief to the victim’s relatives and friends.

Interestingly, there are those who argue that only retribution is a justification for punishing criminals. Gerard V. Bradley argues, along this line, that deterrence, rehabilitation and incapacitation are not adequate bases for sentencing those convicted of crime.

⁴⁶T. Mushanga, *Punishment and Deterrence*, Mawazo, Vol. 3, 1972.

⁴⁷Manto & Kassebaum Attorneys at Law, Article published by [CriminalLawyerMiamiFlorida.com](http://www.CriminalLawyerMiamiFlorida.com).
[http://wn.com/Prison Reform Report](http://wn.com/Prison_Reform_Report). posted on 14th October 2010.

He thinks that these goals, despite accounting for a sound aim of punishment, are secondary aims of punishment and none, on its own, can morally justify punishment.⁴⁸ Bradley's argument is debatable since it would require that he defines not only the method of distinguishing primary from secondary aim of punishment but also what makes retribution important than the other theories.

Deterrence on the other hand is a theory from behavioural psychology about preventing or controlling actions or behaviour through fear of punishment or retribution. In deterrence, the criminal is used as a "threat to themselves and others." According to Jeremy Bentham general prevention ought to be the chief end of punishment hence its real justification. He contends that punishment reduced future deviance by instilling a fear of punishment in the criminal and the society.⁴⁹ He argues that punishment inflicted on the individual becomes a source of security for all when such a punishment serves as preventive measure not only to the same delinquent but also to all those who may harbour the same motives.⁵⁰ Bentham clearly thinks sanctions are operating not just after an act but also beforehand in order to discourage such behaviour.

Bentham's theory was based on an idealistic conception of man – that man as such would be deterred from crime if punishment was applied swiftly, certainly, and severely.⁵¹ Cognizant of the fact that punishment is evil, he concedes that if the punishment exceeds the evil of the offence, the punishment will therefore be unprofitable, thus it will have purchased exemption from one evil at the expense of another.⁵²

⁴⁸Gerard V. Bradley, *Harvard Journal of Law and Public Policy*, Vol 27, Issue 1, Gale Group, 2003, pp19-20.

⁴⁹J. C. Chaturvedi. Op. Cit. p63.

⁵⁰Richard G Lyons, "Jeremy Bentham's Ethics of Surveillance: A Critical Analysis," *Journal of Thought* 32, 1997, pp 43–52.

⁵¹J. C. Chaturvedi. Op. cit. p63.

⁵²Jeremy Bentham. *Principles of Morals and Legislation*, Hafner Pub. Co. 1968, p170.

The basic idea of deterrence is to discourage both offenders and others from committing a similar offence. For Bentham, the idea of punishment would provide an opportunity for the offender to reform.

Deterrence is divided into two separate categories.⁵³ There is the general deterrence which manifests itself in policies in which examples are made of deviants. In this case, punishment is executed in such a way as to scare others from committing the same crime. Proponents of this theory, unlike those of retributivist theory, argue that punishment may be chosen not only according to the nature of crime, but also according to how it shall have effect on the minds of the would be criminals. The individual actor is not the focus of the attempt at behavioural change, but rather receives punishment in public view in order to deter other individuals from deviance in the future. This means that if more and more of the potential criminals are scared the community protection and public safety would improve. Specific deterrence on the other hand focuses on the individual's deviance and attempts to correct his or her behaviour. Punishment is meant to discourage the individual from recidivism.

The individual is punished to learn a lesson. In the case of specific deterrence, the offender himself or herself is "taught a lesson."⁵⁴ By subjecting prisoners to harsh conditions, authorities hope to convince them to avoid future criminal behaviour and to exemplify for others the rewards for avoiding such behaviour. The fear of punishment therefore wins over whatever benefit or pleasure the illegal activity might bring. The deterrence model frequently goes far beyond "an eye for an eye," exacting a more severe punishment than it would seem to be indicated by the crime.

⁵³H. Odera Oruka. Op. Cit. p28.

⁵⁴Institute for Education in Democracy. Op. Cit. p32.

Torture has been used in the past as a deterrent, as have the public embarrassment and discomfort of stocks, and, in religious communities, excommunication. Stocks are devices that were used in the medieval times for torture, public humiliations, and corporal punishment. Executions, especially gruesome ones such as mob justice and decapitation, often for petty offenses, are further examples of attempts at deterrence. One can view imprisonment as an intervention deployed by society as a pre-emptive, harm-reduction device, using the threat of punishment as a restraint to anyone proposing to engage in harmful behaviour.

Gresham M. Sykes finds that the idea of deterrence as an aim of imprisonment is somewhat more complicated, for the argument contains three parts which need to be treated separately.⁵⁵ First, it is claimed that for those who have been imprisoned their experience is (or ought to be) sufficiently distasteful to convince them that crime had best be avoided in the future. This decision to forego crime is not expected to come from a change in attitudes and values concerning the wrongness of crime. Rather, it supposedly flows from a sharpened awareness of the penalties attached to wrongdoing.

Second, it is argued that imprisonment is important as a deterrent not for the individual who has committed a crime and who has been placed in prison but for the great mass of citizens who totter on the edge. The image of the prison is supposed to check errant impulses, and again it is fear rather than morality which is expected to guide the individual in his action. Third, there is the assertion that the deterrent effect of imprisonment is largely a matter of keeping known criminals temporarily out of circulation and the major aim of imprisonment is to keep offenders within the walls where they cannot prey on the free community, at least for the moment.

⁵⁵Gresham M. Sykes. David Dressler (ed), *The purpose of imprisonment*, from *Readings in Criminology and Penology*, New York: Columbia University Press, 1972.

Technology has defied the last perception because it has been reported that currently in Kenya,⁵⁶ prisoners carry out their crimes from behind bars 'armed' with phones and laptops, and not guns and machetes.

The general and specific forms of deterrence, assume rationality on the part of deviants and criminals, and in this line of thought, crime can ultimately be prevented through altering the cost benefit ratios of such behaviours. One can view this as a procedure deployed by society as a pre-emptive, harm-reduction device which uses the threat of punishment as a deterrent to anyone proposing to engage in the behaviour causing harm. In this regard, the State becomes involved because governing entities can become convinced that the costs of not incarcerating the offending individual outweigh the costs of imprisonment by restricting the individual's liberty. Imprisonment may provide future harm-reduction at least to the outside population, assuming those shamed or incarcerated or otherwise restrained for committing crimes reform.

Adherents of imprisonment as deterrence tend to support those policies which would make life in prison painful. But this presents a moral dilemma when it comes to justifying punishment for the criminal in order to deter the non-criminal. However a more serious problem is presented by the fact that the view of imprisonment as deterrence is based on a hypothetical cause-effect relationship. This leads us to question whether prison experience induces the criminal to refrain from crime, and whether the image of the prison acts as deterrence to those who have never been in jail. These concerns are of great relevance as they point to certain assumptions that need to be justified in light of improving community protection and safety.

⁵⁶Kenya Prisons Service, *Directorate of Legal Affairs, Human Rights and Statistics*, October 2010.

In response Jean Graven, a law professor who had defended the utility and efficacy of capital punishment in terms of future social benefits, Albert Camus, a French Existentialist philosopher, presents a set of philosophical arguments against capital punishment as a deterrent. Graven argued that the role of capital punishment is not vengeance but protection of society by discouraging criminal candidates.⁵⁷

On the other hand, Camus argues that the state does not believe in the example of deterrence of which it so often speaks in seeking to justify its practice of severe punishment. Camus observes that if the society indeed believed in the deterrent possibilities of “serving as an example” by severe punitive measures, then society would celebrate severe punishments such as executions with the publicity it now reserves for national holidays and new brands of merchandise. Secondly, Camus argues that criminals are not truly intimidated by the possibility of capital punishment. Here he supports the argument of Armstrong, H. L. A. Hart, and Zildourg, to the effect that severity of punishment has little or no deterrent effect on potential criminals. Camus further quotes other authors to the effect that while thieves were being executed on the public scaffold, pickpockets were busy working through the assembled on-lookers.⁵⁸

Whereas Graven argued for the efficacy of capital punishment, Camus responds that even if such efficiency be a real consequence of such punishment, it is offset by other consequences injurious to human values. This means that the act of execution is degrading for the crowd, the executioner, and the criminal, and its appeal is only to base instincts.

⁵⁷Jean Graven, *Revue de Criminologie et Police Technique*, 1952 p3. In Norman Johnson, Leonard Savitz and Marvin E. Wolfgang, *The Sociology of Punishment and Correction* New York: John Wiley and Sons. 1962, p340.

⁵⁸Norman Johnston et al, Op. cit. p341.

He further argues that, if capital punishment eliminates the guilty, it also eliminates the chance of correcting judicial errors imposed on the innocent. Finally, even a just imposition of capital punishment implies that the condemned has lost an opportunity or universal human power of correcting his ways.⁵⁹

Another criticism of the deterrence model is that criminals typically have a rather short-term orientation compared to how important the possibility of long-term consequences is. In addition, the quality of life of a criminal may be so horrific that any treatment he receives within the criminal justice system will only be seen as an improvement over their previous situation. However, if that's the case, then this points to a far more serious social problem; the problem that prisons would be viewed as better alternatives to the harsh 'outside' world.

The rehabilitative approach seeks to prevent criminals from continuing in their immoral ways, not necessarily out of fear but rather by engaging the criminal to leave a life of crime. This is indeed one aspect of rehabilitation. Reform and rehabilitation as 'aims of punishment' gained perhaps their widest support in the mid 20th Century, providing a different sense of purpose for punishment thereby leading to a general optimism about the possibilities of punishment.⁶⁰

Camus lends positive support to the rehabilitative justification of punishment. The criminal always remains a human offender, and as human he is always free to learn new values and new adaptations. The imposition of punishment is justified only by its ability to re-educate an offender, giving him/her an opportunity to return to society as an integral human being.⁶¹

⁵⁹Ibid, p341.

⁶⁰John Cochrane, Gaynor Melville & Ian Marsh, *Criminal Justice: An introduction to Philosophies, Theories and Practice*. London: Routledge Press. 2004, p 3.

⁶¹Norman Johnston et al, Op. cit. p 341.

The theory of rehabilitation is based on the assumption that people are not permanently criminal and that it is possible to restore a criminal to a useful life; a life in which they contribute to their own wellbeing and to the order of the society. Rehabilitation means the restoration of a person to useful life, through therapy and education, operation, and capacity. In seeking to use imprisonment for rehabilitating the offender, the aim is to eradicate those root causes of crime which lie within the guilty person. The theory is mostly associated with the treatment of the offender. It views punishment in the rehabilitation sense as a means of educating the offender. This has been the ideal and therefore seems to be the most popular approach to correcting the offender in recent years, perhaps influenced by the growth of democracy and human rights legislations. The main goal of rehabilitation is to prevent habitual offending, also known as criminal recidivism. Rather than punishing the harm out of a criminal, rehabilitation would seek, by means of education or therapy, to bring a criminal into a more normal state of mind, or into a stable attitude which would be helpful rather than harmful to the human society.

This punishment theory is based on the belief that punishment is being inflicted on an offender in order to reform him/her, or rehabilitate them in order that they re-integrate into society much easier. Its foundation considers that none can inflict a severe punishment of imprisonment and expect the offender to be reformed and be integrated in society upon his/her release. In recent years, with the rise of sociological and psychological behaviourism the search for causal factors underlying criminality has become more sophisticated.

Rehabilitative theories present their own deficiencies; there is no sound scientific research to determine how different individuals react to the same rehabilitating methods.

Rehabilitation may depend more decisively on the individual's psychological and social background than on the rehabilitating methods, therapy, or philosophy. It is therefore wrong to conceive it as an exact science. Rehabilitation program may prove to be too costly and complex to be successfully implemented in developing countries. Finally, rehabilitation must refer to the sociological findings on the socialization and re-socialization processes. It entails a much more complex, sometimes traumatic change on the individual's character. The goals of reform and rehabilitation whose values have dominated the field of correctional justice have been sharply criticized and widely abandoned. The justifications of punishment that have dominated sentencing through most of this century have lost their capacity to persuade.

According to Lord Windlesham, there is reason to believe that rehabilitation is in decline and notes that if public opinion affects penal policy, then there will be more interest shown in retribution as the way to go in future.⁶² Despite this assertion, all these theories are important in understanding the increase in crime and the assumed lack of effectiveness of the prison system. All the arguments for imprisonment point to safety and community protection as the ultimate goal. Therefore prisons are perceived to be places of security. However, with the emergent of new trends in crime in this highly globalized world, prisons seem to perpetuate rather than curb crime. In other words, if prisons were intended to guarantee security, then how do we orient the current prison system to deal with the ever mutating prison based threats? How do we from a policy point deal with the transformation of prisons into cite of accumulation? What security implications will this have? This is what this study set out to grapple with.

⁶²J. C. Chaturvedi. *Penology and Correctional Administration*, Delhi, India: Isha Books. 2006. p 64.

1.5 Conceptual Framework

This study critically examines the Panoptism model against the theories of retribution, deterrence, prevention, rehabilitation and reformation founded upon Jeremy Bentham's principles of utilitarianism.⁶³ According to the Panopticon model, the prison authorities exploit uncertainty as a means of controlling inmates by creating in them a belief that they are under surveillance at all times. The prison is structured in such a way that officers who watch over the inmates cannot be seen. For instance watch towers are strategically mounted around the perimeter fence to enable the officer watch over the inmates as they move about within the compound without them seeing him or her. Similarly, prison cells and wards have small openings which enable the officer to see the inside but they cannot enable the prisoner to see the outside. This is meant for officers patrolling outside the prison cells while prisoners are locked up. Therefore even when not being watched, the inmates will still follow the prison rules and regulations for that they will be seen if they engage in unlawful activities.

However, with a lot of human rights advocacy, inmates are left out most part of the day. They have therefore mastered the security operations and are able to know when they not being watched. Similarly, some officers may be compromised to avail to inmates information regarding prison security. Moreover, this model is challenged by differentiated technologically savvy inmates in the prison system in this age of great technological advancement and globalization. This category of inmates may engage in criminal activities without the knowledge of officers who may be watching over them. This may therefore explain the complexity in the nature and form of prison based security threats which are mutating prisons into spaces of insecurity.

⁶³Jeremy Bentham, Miran Bizovic (ed.) *The Panopticon Writings*, London: Verso, 1995, pp 29-95.

On the other hand, utilitarianism is a consequentialist normative ethical theory that places the locus of right and wrong on the outcomes of choosing one action over the other. According to the theory, a person chooses to act in a particular way depending on a calculation of the consequent pain against pleasure. The person will engage in an act whose consequent pleasure outweighs pain. In the case of inmates, it is assumed they will not engage in prohibited activities for fear of punishment if caught and instead will engage in rehabilitation programmes which may earn them some privileges. In such an environment potential security threats are contained.

However, some hard core incarcerated for cyber, terrorism and piracy may view gains of engaging in unlawful activities while in prison as more pleasurable compared to any from of pain they may undergo. Some terror suspects have admitted their crime and requested the court to sentence them. Such prisoners would stop at nothing in their bid to recruit members to their terror groups. This is also for the fact that after all, they are already in prison. Also the harsh prison conditions may harden inmates so that there is no fear of any sort of pain.

Figure I. Duality of Security



The conceptual model illustrates that the prison system provides an environment that is meant to transform persons of criminal behaviour to law abiding citizens before their consequent reintegration into the society. In order for the Panopticon and utilitarian models to function, the prison system should engage in capacity building, networking with other players in the criminal justice system, intelligence gathering and sharing and adequate funding. This will ensure that prison based threats are dealt with and existing vulnerabilities are addressed leading to community protection and public safety. Therefore where the converse is the case, then prisons will continue transforming into spaces of insecurity.

1.6 Research Methodology

The methodology adopted in this study is defined by its nature. It specifically relied on secondary data. Underlying these were values derived from the secondary data. The study sought to take advantage of the already existing literature to which extent we made reference to academic books and journals on penology, corrections, security and public safety. However it is noted that, given the dynamism with which prison based security threats are mutating over time and space, it implied that the literature be augmented by reality on the ground.

To respond to this gap we opted to supplement our research with primary data. Here we maximised on direct interviews with key respondents who included prison officers, inmates, police officers and the general public. Underlying this is their knowledge repository. Such interviews were conducted in carefully selected prisons amongst them; Shimo La Tewa Prison which is host to the pirates, Kamiti and Naivasha Maximum Security Prisons which host high risk inmates such as the pirates and Manyani Prison dependent on the nature of the problem of the study. These interviews were both face to face and through telephone. The interview questions were open ended and the respondents had a free way to support their opinions.

One of our greatest limitations was to secure appointments with key respondents whom by the nature of their duty were either unavailable or were on tight schedules. Given the nature of the area of study, it was rather challenging to obtain information from inmates for fear of victimization. Language barrier was equally challenging during interviews especially with the pirates.

To overcome these shortcomings we used the internet to reach some respondents, internet based research and the archives to access government information. We also had to wait patiently for some of the respondents to create time. It also had to take a lot of persuasions and reassurance to convince the respondents to cooperate during the interviews. The use of interpreters came in handy during interviews with those who could not communicate in the national languages.

1.7 Outline of the Chapters

Chapter 1

Chapter one introduces the study. It consists of the statement of the problem, the objective, hypotheses, justification of the study, literature review, Conceptual framework, research methodology, and the chapter outline. It provides the background information and theories that will anchor our area of study. It is against such background that we shall be able to explore the nature of emerging prison based security threats and their implications on public safety in chapter two.

Chapter 2

Chapter two explores the nature of the emerging prison-based security threats and their implications on public safety. It specifically attempts to conceptualize the dynamics of mutating security threats emergent out of the convergence between international and local actors, technologically savvy inmates and the apparent vulnerabilities within the prison domains. This provides the basis for us to examine and analyze the factors that undergird the prison based security threats in chapter three.

Chapter 3

Chapter three examines the factors that influence the current prison-based security threats. It examines the internal and external environments to the prison and how they affect the prison's role in public safety. It appreciates threats by examining and analysing the vulnerability architecture. Such an investigation will lead us to proffer research based recommendations for anchoring policy and requisite organizational framework in chapter four.

Chapter 4

Chapter four provides a recapitulation of the study, a conclusion, and recommendations. The Conclusion shall be a justified with clearly elaborated premises discussed and discovered in the course of the study. It is upon such a conclusion that we can proffer research based recommendations that shall transcend the realm of theory to that of practice. It is against such recommendations that a workable strategy for dealing with the prison based security threats can be derived.

CHAPTER TWO

FROM SECURITY TO INSECURITY: CONTEXTUALIZING FORMS OF THREATS

2.0 Introduction

The question of when a threat becomes a security issue depends not only on its type and recipient's perception, but also on the intensity with which it operates⁶⁴. The main factors affecting the intensity of a threat are the specificity of its identity, its nearness in space and time, the probability of its occurring, the weight of its consequences and whether or not perceptions of the threat are amplified by historical circumstances.

This chapter attempts to contextualize the dynamics of mutating security threats by examining mutations in the prison domains emergent out of the convergence between technological savvy inmates and other ordinary inmates and vulnerabilities from the foregoing perception. It specifically responds to the question: What are the nature and form of prison based security threats? The chapter examines and analyzes the nature and forms of emerging prison based security threats and attempts to draw a nexus between them and the inmate type. This objective is underpinned by several assumptions; prisons are a habitat of new forms of security threats. That these are a function of not only technologically savvy inmates engaged in organized crime and terrorism but also whose access to both vulnerable staff and other inmates, are transforming prisons into spaces for perpetrating their criminal activities external to the prisons. That the prisons apparently do not have the corresponding capacity to match the threats.

⁶⁴Barry Buzan, *People, States and Fears: An Agenda for International Security Studies in the Post-Cold War Era*. 2nd Edition. Hertfordshire: Harvester Wheatsheaf, 1991 p134.

It discerns threats such as those connected to terrorism, piracy, arms trafficking and cyber crime, also referred to as hard core threats in this study. The study further examines the soft core threats which include HIV and AIDS and Drug trafficking based threats within prison spaces. This dynamic is subsequently weighed against the category of prisoners and specifically their ability to exploit the new advances in information technology. The chapter argues that the prison based security threats are a function of the convergence of innovative technologically savvy, differentiated criminal elements and the vulnerabilities prevailing within the prison domains.

The chapter therefore examines security threats that originate and are domiciled in prison across the five security sectors. It is organized around two main sections that consist what it conceptualizes as hard-core and soft-core threats. Hard-core threats are further sub-divided into four parts of Terrorism, Maritime Piracy, Arms Trafficking and Cybercrime based security threats. On the other hand, soft-core security threats are sub-divided into two parts of HIV and AIDS, and Drug trafficking.

2.1 From Narratives of Societal Security to Locations of Hard-Core Insecurity

The apparent popular notion is that prisons serve the traditional roles of punishment. For John Locke, punishment requires that there be law, even though he states that individuals in a 'state of nature'⁶⁵ have the legitimacy to punish 'wrong' doers. Conventionally, the purpose of law in a society is to maintain or maximize community protection and public safety. He contends that in a civil society, the power of punishment rests not with the individual but the government and that the proper amount of punishment is that which would provide restitution to injured parties, protect the public and deter future crimes.⁶⁶

⁶⁵Where there is no government

⁶⁶John Locke, *Two Treatises on Government*, ed. by Peter Laslett, Cambridge University Press, 1988, pp 271-76.

Immanuel Kant on the other hand sees punishment as essential for retributivist purposes and that it can perform deterrent functions too on an individual. In the process, by way of locking out 'wrong' doers, the society is protected. The objective reality now demonstrates the converse. A wide range of threats have been evolving and mutating from the prisons consequent to the convergence of global dynamics of terrorism, organized crime and local actors that are technologically savvy in the highly vulnerable prison spaces. The fact that Kenyan prisons have become hosts to these criminal elements operationalizing facets of security threats has profoundly compromised the very essence of the prisons as correctional centres.

Prison based security threats are felt at all sectors; economic, political, societal, military and environmental.⁶⁷ As we analyse these threats, we append ourselves to Buzan's contention, that these "five sectors do not operate in isolation from each other. Each defines a focal point within the security problematique, and a way of ordering priorities, but all are woven together in a strong web of linkage".⁶⁸ Therefore a threat to one spills over to the rest. The most obvious threat that would seem to present the most pressing concerns is military threat. This affects all components of the state which put to question the basic duty of a state to be able to protect its citizens as well as have an adverse effect on the "layers of social and individual interest".⁶⁹ In the prison context, a military threat takes on different levels of importance, and the fact that they involve the use of force including use of lethal weapons puts them in a special category when it comes to security.

⁶⁷ Barry Buzan, "New Patterns of Global Security in the Twenty-First Century", *International Affairs*, 67.3 (1991), pp 431-451.

⁶⁸ Ibid pp 431-451

⁶⁹ Barry Buzan, *People, States and Fears: An Agenda for International Security Studies in the Post-Cold War Era*. 1st Edition. Hertfordshire: Harvester Wheatsheaf, 1991 and 2008, p 119.

For instance, at the coastal region of Kenya, a militia group; the Mombasa Republican Council (MRC) which is seeking secession has engaged the government in protracted battles. What is interesting is the fact that those arrested are in possession of lethal weapons. These engagements have resulted in the leadership of the group and some members being arrested thus ending up in Kenyan prisons. This in effect poses a great security challenge to the Kenyan prisons given that they lack capacity in terms of human resources and even infrastructure to contain such a category of prisoners. Given that the group is a constituency of the indigenous community makes it even more difficult for the prisons to manage this threat. While issues of the coast indigenous communities are firmly anchored in the horizontal stratifications of class on the regional and national level, the rise of MRC reflects the dynamics of free scale networks and their ability to grow, shift and reconfigure themselves quickly.⁷⁰

The fact that MRC draws its strength from coast's shared cultural endowment makes it even worse for the prisons to manage the threat posed by those incarcerated. This increases the intensity of the threat due to the specificity of its identity, its nearness in space and time, the probability of it occurring, the weight of its consequences and whether or not perceptions of the threat are amplified by historical circumstances. This being a free scale network, incarcerating the leadership of such a network fails because new nodes arise in their place and the network reconfigures itself. The leadership while in prisons interact freely with fellow inmates of whom majority are drawn from the coastal region and the prisons lack the capacity to monitor the inmates' activities. The end result is that the leadership is able to recruit from the inmate population and the staff alike members to the MRC that bring the threat to reality.

⁷⁰Barabasi , Albert-Laslo, Erzs ebet Ravasza, and Tamas Vicsek. Deterministic Scale-Free Networks. *Physica A* 299. 2001 pp 599-564.

Motivated by their cultural endowment and ideological beliefs they then advance a new form of threat of a combined inmate and staff force.

On the other hand, a political threat represents a constant concern not only for a state but also the prisons due to the fact that it can be more ambiguous and difficult to identify as the state is, itself, a political entity. Cases of communities rising against each other as was witnessed in the 2007-2008 post election violence (PEV) in Kenya is a clear testimony of what a political threat can portend to a state. This led to many youth being arrested and sent to prison. These youth, having been motivated by their tribal animosity, the warring communities found themselves locked up in same prisons and even sharing cells. A resultant of which the animosity was extended to the inmates involved and even the officers coming from the warring communities as was the case in Eldoret and Nakuru Main Prisons.⁷¹

Economic threats are equally difficult to determine due to the nature of economics itself. As Buzan points out, “the normal condition of actors in a market economy is one of risk, aggressive competition and uncertainty”.⁷² Economic crimes are getting worse in Kenya due to what appears to be lack of adequate deterrent measures including the fact that most firms do not believe in the ability of the judicial process to deal with the problem.⁷³ Kenya being a fast moving economy with a techno savvy population has created a fertile ground for perpetrators to commit economic crimes within and outside the prisons. Economic crimes include; extortion, bribery, corruption, money laundering and cybercrime whose arrests and convictions end up in the Kenyan prisons.

⁷¹Separate interviews with the Officers in Charge of Eldoret and Nakuru Main Prisons on the effects of the Post Election Violence on the Management of their respective institutions. 2010-2011

⁷²Barry Buzan, *People, States and Fears: An Agenda for International Security Studies in the Post-Cold War Era*. 1st Edition. Hertfordshire: Harvester Wheatsheaf, 1991 and 2008, p 124.

⁷³Martin Whitehead, Head of PriceWaterhouse Coopers (PWC) *Global Economic Crime Survey Report*. Nairobi.

While in the prisons these inmates continue to perpetrate their criminal activities using the ever advancing technology. Cases of extortion, bribery, corruption and cyber related crimes in prisons are a common phenomenon among the staff and prisoners. A case in point is the kidnap of a six year old girl child from Mavuno church compound in Nairobi's South C estate by some six women whose demand for ransom was traced to Kamiti Maximum Security Prison.⁷⁴ An inmate by the name Raphael Nderitu, who is locked up in Kamiti maximum Security Prison for a different offence was charged in court for the offence of kidnapping and stealing. It is alleged that he demanded five million Kenya shillings in ransom while in incarceration.⁷⁵

At the social level, societal security threat is possibly the most intriguing of all the five. It cuts across all the five as it is mostly linked to crime, identity and the balance that can be found within any given state.⁷⁶ In prisons, societal threats can be quite difficult to disentangle from other threats across the other sectors. At a lower level of intensity for instance, even the interplay of ideas and communication can produce politically significant societal and cultural threats within the prisons, as illustrated by the reactions of the MRC members upon the arrest of their leadership. Those arrested regrouped and staged a hunger strike as a protest to the state establishment.⁷⁷ The prisons faced with this dilemma, is unable to deal with this unique situation since it lacks the capacity. Our appreciation of the mutating prison based threat advance from the foregoing setting.

⁷⁴Paul Ogemba, Nation Media Group, pogemba@ke.natiomedia.com posted on Friday, October 12, 2012.

⁷⁵*Kamiti prison inmate charged with kidnapping*. Standard Newspaper of 18th October, 2012. Pg 12.

⁷⁶Barry Buzan, *People, States and Fears: An Agenda for International Security Studies in the Post-Cold War Era*. 1st Edition. Hertfordshire: Harvester Wheatsheaf, 1991 and 2008, Pg 122.

⁷⁷ Interview with the Officer in Charge Shimo La Tewa Prison on 16th October 2012 , 1405 hrs.

2.1(a) International and Local Terrorism Convergence

Terrorism had hitherto been seen as a foreign phenomenon of which Kenyan prisons had nothing to worry about. However, in the recent past, Kenya became a target of terror activities whose acts involved both Kenyans and non-Kenyans. Majority of them are Kenyans recruited into international terror networks. For instance, during the 1990s, Muslims in Kenya were exposed to religious radicalism from al-Qa`ida, as well as from the Somali militant group al-Itihad al-Islami (AIAI). AIAI's goal was to establish an Islamic government in Somalia and the Ogaden region of Ethiopia. It attempted to recruit Kenyan Somali youth in Mandera and Garissa districts in Kenya's North Eastern Province as well as in Nairobi's Eastleigh estate.⁷⁸ Such prisoners would be recruited to work for terror groups both in and outside of prisons. This is exacerbated by the presence of technologically savvy prisoners who would use their skills to spread terrorist activities.

The fact that prisons have embraced ICT makes terror threats even more real. Currently prisons have computers and even internet services. This makes it easy for those keen on carrying out terrorist activities to network with their accomplices from both within and outside of the prisons. Moreover, these terror suspects and inmates are endowed with immense wealth with which they use to manipulate and corrupt vulnerable prison officers due to their inadequate remunerations. Such officers sneak cell phones and electronic gadgets with which technologically savvy prisoners use to access the social networks and network to spread terrorist propaganda. Lesser and his colleagues have argued that information is altering the nature of conflict across the entire terrorism spectrum. First, they contend that information revolution is favouring and strengthening network forms of organizations.⁷⁹

⁷⁸<http://www.capitalfm.co.ke/news/2012/06/kenyan-al-shabab-figthers-present-problems-for-families/>. Also see Fredrick Nzes on "Kenyan Somali Islamist Radicalisation" 29th October 2012.

⁷⁹Lesser *et al.* Op. cit., 1999, p. 47.

With the trend where mobile phones are being smuggled in Kenyan prisons and the hitherto euphoric craze about internet accessibility for prisoners, prison officials are stalking the embers of a flicker to full-blown inferno that would be difficult to put out.

For instance, in April 2009 a convicted prisoner by the name Maina Njenga, a member of a local terrorist group; *Mungiki* in Central Kenya was charged with the murder of 29 villagers in the town of Karatina in Central Kenya.⁸⁰ This offence is alleged to have been executed while Maina was in incarceration in Naivasha Maximum Security Prison. This can only be attributed to the fact these inmates are able to communicate, network and interact with their accomplices external to the prisons using the ever advancing technology while in custody without the knowledge of the prison authorities. It is interesting to anticipate what would be resultant of a convergence of this type of character and the international terrorists and the threat they would present to the prison authorities. Despite this threat, prison authorities have not sought to distinguish terrorists from other ordinary criminals. In fact, they do not acknowledge the political and ideological motivation underlying the actions of these terrorists for which they were arrested. In public domain, mostly, terrorists are labelled as 'normal criminals' and their actions considered simply as 'crimes'.⁸¹ Even if suspected terrorists are apprehended, Kenya has no specific anti-terrorism laws in its judicial code. This means that Kenyan prosecutors must charge the suspects with substantially less serious offences, making it both difficult for a conviction and severely lenient judgement in the even of a guilty verdict.

⁸⁰<http://news.bbc.co.uk/2/hi/8323082.stm> Page last updated at 12:47 GMT, Tuesday, 27 October 2009.

⁸¹The International Center for the Study of Radicalization and Political Violence (ICSR). *Prisons and Terrorism: Radicalization and De-radicalization in 15 Countries*. Retrieved on August 13, 2011, from: <http://icsr.info/publications/papers/1277699166PrisonsandTerrorismRadicalisationandDeradicalisationin15Countries.pdf>

This apparent lack of proper distinction between sets of prisoners has resulted in the radicalization of other criminals/prisoners and subsequent recruitment into terrorists who become instrumental in executing their terror activities while in incarceration. The criminal justice system in Kenya does not recognize individuals convicted of terrorism related offences as different from ordinary criminals. Therefore, they do not get investigated by a special unit of the Criminal Investigation Department (CID) neither are they brought to court by special prosecutors. Even though they are held on terrorist related offences, there are no specialized courts where they stand trial. In the absence of such investigative and prosecutorial structures, terrorist prisoners are normalized as ordinary criminals thus reinforcing the need to treat them as such.

For instance, those members of local terror outfits when arrested are charged with offences like being members of an illegal organisation which would result in a less severe crime. Consequently, prison authorities treat such convicts as any other ordinary prisoner with little or no surveillance at all to monitor their activities while incarceration. In so doing, prisoners convicted of terrorism related crimes get leeway interact with their accomplices and continue with their activities right under the noses of prison officials.

Rather than serve their sentence normally, terrorist prisoners involve themselves in activities that range from passive resistance to turning prisons into a battlefield from which to support the wider struggle. Characteristic behaviours of terrorist prisoners include refusal to cooperate with prison authorities for they believe that their imprisonment is occasioned by their belief, but not their actions hence their incarceration is illegitimate. For this reason, they may choose to cooperate with prison officials or even establish a parallel structure.⁸²

⁷⁹ibid., p. 15.

Sometimes they opt to developing their movement's strategy and ideology if they become completely unable to participate in operations and planning of their campaigns. Once they are released from prison, they strive to let their ideology see the light of day. Having been incarcerated, the released prisoners maintain the established links with those still held. Therefore the duo can be able to transact their deeds through networking.

On the other hand, incarcerating terrorists in Kenyan prisons gives them an opportunity to learn the security set up of the prisons making it very dangerous since upon release, some of them could attempt to rescue their accomplices from prison. For instance, the government in an attempt to deal with the threat portended by the transportation of high risk inmates to and from courts established a courthouse in Shimo La Tewa prison. This prescription instead presented yet another threat to the prisons; that of exposing the prison itself to attacks. A case in point is the intelligence report on planned attacks by the MRC secessionist group in an attempt to free their incarcerated leadership at the facility.⁸³

To the extreme extent, terrorist prisoners may endeavour to participate in violent campaigns for they consider it their duty to make a contribution to their movement's course. The most obvious way is to attempt to escape from prison in order to join the movement. In such attempts, hard core criminals may take advantage and escape compromising the security of the community. This undermines the role of prisons as a player in community protection and public safety. If this proves impossible, then they may seek to get involved in strategic and operational planning, or issues of operational guidance/authorization.⁸⁴

⁸³ Nation Newspaper, 30th October 2012.

⁸⁴ The International Center for the Study of Radicalization and Political Violence (ICSR). *Prisons and Terrorism: Radicalization and De-radicalization in 15 Countries*. Retrieved on August 13, 2011, from: <http://icsr.info/publications/papers/1277699166PrisonsandTerrorismRadicalisationandDeradicalisationin15Countries.pdf> p. 15.

2.1(b) From Maritime Spaces to Local Domains: Pirates and the New Security Threats

Another relatively new and threatening trend is the attacks by pirates off the coast of Kenya. Maritime piracy as a source of prison-based security threat follows closely in the footsteps of terrorism for they have a lot in common, save for the geographical locations of their targets. The unfortunate advent of maritime piracy in the Somali waters of the Indian Ocean has presented security threats to Kenyan prisons. Arrests made and the consequent court rulings have thrown most pirates in jails thereby obviously midwifing another brand of security threat within the confines of prisons. Again, the rationale of their operation is akin to that of terrorists: coordinating with their colleagues in the waters through sophisticated communication gadgets to intensify their work and possibly pose the threat of even securing their colleagues' release. Maritime piracy has emerged over the years as a multi-million dollar criminal enterprise that greatly affects thousands of seafarers every year.

The emergence of Somalia as the dominant global piracy hotspot has exposed neighbouring countries, and especially Kenya, to security threats. Kenyan prisons where these piracy suspects and convicts are incarcerated have become probable spaces for them to regroup for the purpose of planning further attacks in the high seas, hence posing more security threats. Between the year 2005 and 2010 there have been 675 suspected maritime pirates held in Shimo-La-Tewa and Manyani Coastal Prisons of Kenya.⁸⁵ Placing together people with similar ideologies, beliefs, cultures and attitudes that motivate their criminal activities, offers them an opportunity to plan and execute their deeds.

By definition, the suspects of piracy are those that are apprehended beyond the territorial limits and jurisdiction of the prosecuting state.

⁸⁵Kenya Prisons Service, *Directorate of Legal Affairs, Human Rights and Statistics*, October 2010.

Apprehensions of pirates have been made by the operations of international navies⁸⁶, who lack expertise in collecting and preserving evidence. This has resulted in inability of courts to prove cases against suspects hence being forced to acquit them. As with the case of terrorism, released piracy suspects may recruit prisoners who upon release will join maritime gangs to perpetuate crimes in high seas.

Once piracy convicts are incarcerated access to assistance from their communities or criminal colleagues in a bid to facilitate in prison breaks or escapes become real. Subsequently, underpinning this, are the resources at their disposal compared to level of terms and conditions of service of prison officers.⁸⁷ This raises the potential for prison breaks or escapes which pose a direct threat to prison personnel and to the general population.⁸⁸ The presence of maritime pirates within Kenya's neighbourhood makes it vulnerable to the threat of reprisal actions or aided escapes by loose pirates due to its proximity to pirates inhabited locations. The access to the ever advancing mobile phone technology by these inmates offers them an opportunity to interact and manipulate prison spaces to perpetrate their deeds.

The threat is manifest in the measures that some Kenyan Prisons are putting in place to maximize security. In the city of Mombasa's Shimo La Tewa Prison, a courthouse was recently built within the prison compound to significantly reduce the risk presented by transportation requirements of pirates to the courts therefore undermining chances of aided escapes. However, this has widened the threat even more as an attempt to rescue those incarcerated would put the lives of fellow inmates and officers at great risk. This is evident in the great violence with which pirates perpetrate their crimes.

⁸⁶Ibid., p. 107. All of the 136 piracy suspects passed to Kenya were apprehended by foreign navies

⁸⁷Madoka Report, 2008 p 22

⁸⁸Ibid. All of the 136 piracy suspects passed to Kenya were apprehended by foreign navies p 112.

They use rocket-propelled grenades and AK-47 rifles in their attacks against yachts and merchant vessels⁸⁹. Sometimes they even kill hostages from these hijacked vessels. Rescue attempts will stop at nothing including killing both inmates and officers. Moreover, the pirates could hold some officers hostage and use them to demand for ransom.

Prison authorities demonstrate limited appreciation of the “principle of less deservability”⁹⁰ when managing the security of convicted pirates. Failure to comply with this principle may lead to unrest in prison confines by either prisoners or prison staff. Given the special circumstances that surround the incarceration of pirates and owing to their background, nature, ideologies, beliefs, cultures, attitudes that motivate their criminal activities and their inability to communicate effectively, it raises a possible temptation by prison authorities to treat them in a different or special way, especially when enforcing security measures. This may compromise the principle in one way or another that can result in impairment of the security that they are attempting to maintain.

2.1(c) Arms Trafficking

Arms trafficking continues to rise in the country, a situation exacerbated by war torn neighbouring countries. Small arms proliferation has been difficult to control because, just as in other countries, the movement of these weapons is hard to monitor and measure and does not conform to traditional definitions of a security threat.⁹¹ This has led to ease access to weapons which may be used to commit crime both within and outside of prisons. There have been cases of guns being sneaked into prisons.

⁸⁹Ibid., p. 113.

⁹⁰The principle holds that conditions in prisons in general, or for any specific group of prisoners in particular, should not be the same level or better than those experienced by citizens, and especially prison staff who have not committed an offence.

⁹¹Kim Cragin and Bruce Hoffman, *Arms Trafficking and Colombia*, Santa Monica: Rand Publishers, 2003. p xiii.

For instance in 2005, a criminal purporting to be a visitor smuggled a gun into Hola prison. In the resultant a shootout, one officer was killed while several others sustained injuries.⁹²

On the other hand, easy access to guns by members of the public has seen an increase in their use in crime commission. For instance in the period between 2005 and 2010 alone 1,076 inmates have been held in custody over arms related offences. The fact that prison officers use arms for security purposes while they interact with inmates, including those capable of using arms pre-disposes them to the dangers of being attacked by the inmates with the intent of escaping. This possibility has increased as such inmates have interacted with terror suspects while in prison.

Table 1. Inmates held on arms related offences by province.

PROVINCE	Inmates held
Nairobi Area	256
Eastern Province	160
North Eastern	16
Nyanza Province	48
Western Province	8
Central Province	108
Rift Valley	436
Coast Province	44
TOTAL	1,076

Source: Kenya Prisons Service, *Directorate of Legal Affairs, Human Rights and Statistics, 2011.*

⁹² Kenya prisons report 2005.

Trafficking of contrabands is a common practice in Kenyan Prisons. With readily available weapons, there is the apparent possibility that criminals can acquire these weapons at will and be able to manipulate prison security systems to perpetrate successful breaks out of prisons.

Given the harsh prison conditions, some prisoners could as well use such weapons to commit suicide in prison thereby precipitating a culture of self-killings. This would definitely lead to a negative effect because most criminals would capitalize on the situation to commit crimes within prisons as a way of protest.

2.1(d) Cyber Crime

The advancements in communication technology over the last several decade, has seen the emergence of cyber crime. In Kenya prisoners who land in jails after protracted studies in computer science, information and communication technology are the minds behind this security threat in Kenyan prisons. They have been able to smuggle communication gadgets into prisons this has enabled them to hack and/or crack computer systems of their perceived enemies when they are in jails. Others also coordinate with their colleagues outside the prison to execute the crime on their behalf and sometimes even threaten to stop the cyber war on condition that their imprisoned colleagues are released.

Cyber crime is a new category of crime that requires a new comprehensive legal dimension to address the peculiar nature of the emerging technologies and the unique challenges that traditional crimes seldom address such as international cooperation, jurisdiction, intent, and difficulty of identifying the perpetrator⁹³. Kenya approaches cyber crime both as a traditional crime executed by new methods; and as crime unique in character and hence the necessity for a new legal structure so as to give it a conventional meaning.

⁹³Kizza, J.M. *A Guide to Computer Network Security*. New York, NY: Springer, 2008.

Clifford⁹⁴ has articulately captured the criminal intent that pervades cyber crime and that makes its perpetrators liable for legal suits. He categorizes cyber crime perpetrators into two: hackers and crackers. Hackers are skilled computer wizards who are fond of penetrating computer systems with the intention of gaining knowledge about systems and how they operate. These manoeuvres are criminal for the reason that they cause disruptions to the networks for personal or sometimes political motives.⁹⁵

Cracking on the other hand involves gaining unauthorized access to a computer system or altering the configuration of a computer to suit one's intent. That is, it has more to do with breach of patented rights other than malicious damage to the machine and/or the system. After hacking and cracking, perpetrators can easily indulge in espionage, cyber warfare, phishing, and infecting computer code with viruses and worms.

Cyber crime as a prison-based security threat is an emerging challenge to Kenyan prison authorities due to its complexity. Given the fact that the prison officer is ill-equipped with skills in information communication technology it is interesting to anticipate the kind of damage these inmates can cause to prisons system. Mobile phone technology has made it possible for one to access the social network and manipulate it at will to his or her advantage. The intensity of this threat is demonstrated by the number of cell phones and laptops recovered from inmates. For instance in the between 2008 and 2010 an estimated 24,520 mobile phones and 18 laptops were recovered.

⁹⁴Clifford, R. *Cybercrime: the Investigation, Prosecution, and Defense of a Computer-related Crime*. CA: California Academic Press, 2008.

⁹⁵Ibid. p 36.

Moreover, since the nature of the crime conceals to a large extent the identity of the perpetrator, hacker-prisoners may orchestrate fresh attacks or perpetuate the crimes for which they were jailed. In either way, incarcerating them would not have solved security challenge that they pose.

The effect of Cyber crime as a prison-based security threat spills over to the community. Prisoners have colluded with other criminals outside of prison to extort money from members of the public. A case in point is when a prisoner colluded with some women colluded to kidnap a six year old child whose claim for ransom was traced to Kamiti Maximum Security Prison as earlier alluded in this chapter.⁹⁶ There have been cases of prisoners sending messages to unsuspecting people pretending to have mistakenly sent money to their phone numbers and later request for the money to be returned to them.

The situation is further compounded by the belated rehabilitation of Kenyan prisons that has led to provision of computers to the inmates and even facilitated the training of those who are illiterate to acquire the knowledge. Some prisons, for example, have allowed inmates to access the Internet, which is fodder for hacker prisoners. Data diddling⁹⁷, for example, can be done by anyone with rudimentary computer skills.⁹⁸ Although the prison authorities may have a good intention of using ICT as a rehabilitation tool, they have acted as though they are not aware that their efforts to make affluence out of prisons have detrimental backlash that would take them time to cure.

⁹⁶ Kamiti Prison Inmate charged with Kidnapping. P 36.

⁹⁷It is changing of information from the way it should be entered by either a person typing in the data, a virus, the programmer of the database or application, or anyone else involved in the process of storing information in a computer file.

⁹⁸Pfaffenberger, B. *Computers in your future 2003*. New York, NY: Prentice Hall, 2002.

As noted earlier, most prison personnel in Kenya do not have refined knowledge of computers and this is a handicap in the way they combat cyber crime as a source of prison-based security threat. Therefore, they find it challenging to handle computers and protect very sensitive information from being accessed by the hacker prisoners. The rapid advancement of technology in the communication sector has further complicated issues for prison authorities because every year new communication gadgets with high-tech features are unveiled and before they know how to operate them, hackers whom they convict are already light years ahead insofar as operating these devices is concerned. For example, a prisoner can casually borrow a Smartphone from a naive prison warden and commit crime with it without the latter detecting. In this way, their ignorance is exploited by cyber crime inmates to conduct their trade. Were prison personnel equipped with comprehensive knowledge of computers and related gadgets, such incidences would not occur; hence, abating unnecessary prison-based security threats.

Another dimension of security breach by imprisoned cyber criminals can be attacks by proxies through their sympathizers. Reprisal attacks can target either the prison's computer systems where their colleagues are held or they can decide to unleash worms to infect computers that are beyond the jurisdiction of prison authorities. The latter may be the innocent public institutions with immense influence on prison authorities.

2.2 Prison-Based Soft- Core Security Threats

The soft-core threats are those that do not manifest themselves as obvious threats, but will have long term impact on the security of the prison and the community in general which are traceable to the prison domains. These include HIV and AIDS, Human and Drug trafficking.

It is interesting to note that whereas the core functions of the prisons include containing and keeping offenders in safe custody, rehabilitating and reforming of the offenders through training and counselling and the administration of justice by timely production of prisoners to courts for trials, little effort has been put in place to deal with these threats that do not manifest themselves as obvious. These forms of threats pose an even greater danger to the prison authorities and the society in general given their nature and the secrecy in which the perpetrators execute them. This presents an apparent duality of security threats since they would emanate from society and affect prisons and vice versa. For instance in the case of HIV and AIDS, the withdrawal of a spouse from the society exposes him/her to the possibility of contracting HIV and AIDS within the prison spaces. On the other hand there is the possibility that the partner, in the absence of the spouse becomes vulnerable as he/she tries to look for a substitute to meet the sexual, emotional and financial needs.

2.2(a) The Immuno-Compromised: Compromising Prisons-Based Security

Overcrowded prison facilities, the convergence of different criminal elements, and incarceration of prisoners of varied ages of the same sex for long periods are contributing factors to the rampant spread of HIV and AIDS within the prison spaces. The prison spaces have therefore become spaces that offer inmates opportunities to engage in promiscuous activities which in effect lay ground for the spread of HIV and AIDS. Yet institutional policies in the Kenya Prisons Service do not allow nor provide inmates with protective measures despite the presence and prevalence of homosexual behaviour. The net effect is that these inmates, upon release will be reintegrated back into the society therefore putting the threat of HIV and AIDS to the society into a reality.

The Kenyan prisons like other sectors has borne the brunt of HIV and AIDS since the most affected group falls within the economically productive, mobile and sexually active ages.

The service has suffered due to the impact of HIV and AIDS as is manifested in reduced workforce due to deaths, prolonged illness, absenteeism and low morale of affected or infected workers, and interruptions in their work schedules due to social commitments such as seeking medication. This in effect compromises the security of the prison.

The frequency of homosexual rape in jails is extremely difficult to estimate given the prison environment. Housing more than one inmate per cell which is common in crowded institutions is also a major contributor to incidents of physical violence and sexual assault among inmates. The victim who reports rape in prison faces the probability of further suffering and worse injury whether physical or psychological.

Prisoners are at an exceptional risk for infection with HIV because of the association of injection drug use with incarceration.⁹⁹The use of unsterilized and recycled injection needles among the drug abusers within the prisons lays ground to the spread of HIV and AIDS amongst the inmates. Women prisoners who have practiced prostitution, which frequently is associated with injection drug use and contact with HIV-infected sex partners, pose a threat to fellow inmates.

Incidents of interpersonal violence which include fights involving lacerations, bites and bleeding among the inmates which are very common in prisons present serious risks for HIV infections. Tattooing is a widespread activity in prisons and usually is performed without fresh or sterile instruments. It involves multiple skin punctures with recycled, sharpened, and altered implements such as staples, paper clips, and the plastic ink tubes from ballpoint pens. These soft-core threats may culminate into hard-core threats leading to a vicious cycle.

⁹⁹Elizabeth Kantor, *HIV Transmission and Prevention in Prisons*, April 2006. University of California, San Francisco

For instance, a spouse who learns that his/her partner was infected with HIV during the separation caused by incarceration, and thus has infected him/her, may resort to physical assault including causing fatal injury. Likewise, in extreme cases, a spouse coming home from prison only to learn that his wife was infected by a man known to him, may besides attacking the wife, also attack the man which may result in grievous harm or even death.

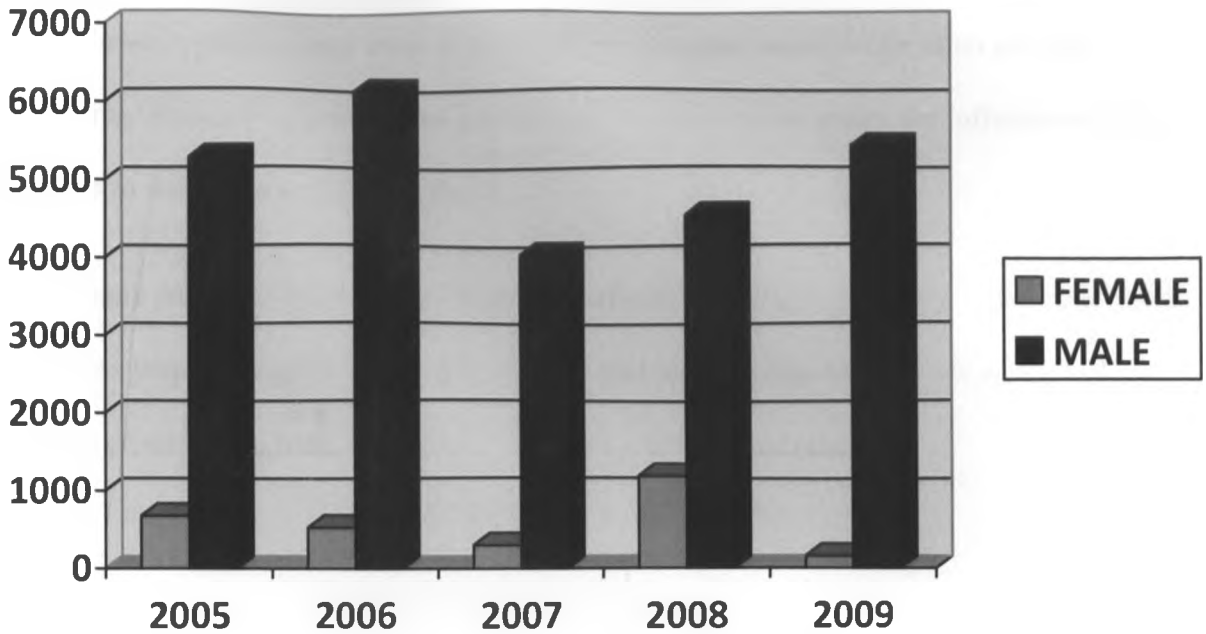
2.2(b) Drug Trafficking

Drug trafficking is inherently connected with organised crime, which poses a direct threat to states and the prisons in particular as it has the ability to undermine the authority and legitimacy of governments¹⁰⁰. Drug trafficking is also incompatible with the fundamental principles of human security. For example, drug trafficking has links to crime, disease, corruption, and terrorism. In Kenya today, Drug trafficking still blossoms despite the fact that there are stringent laws to fight the vice. Most of the suspects who are apprehended find their way into Kenyan Prisons. Between the year 2005 and 2009, a total of 28,360 inmates of which 25,504 were male and 2,855 female had been held for drug related offences in Kenyan Prisons.¹⁰¹

¹⁰⁰ UNODC, 2010 Report

¹⁰¹ Kenya Prisons Service, *Directorate of Legal Affairs, Human Rights and Statistics, 2011*.

Table 2. Inmates held on Drug related offences by gender.



Source: Kenya Prisons Service, *Directorate of Legal Affairs, Human Rights and Statistics, 2011.*

Kenya is a transit zone for drugs targeted by drug traffickers from as far as Asia, North America and Europe. Therefore with such large numbers of prisoners on drug related charges, prisons could be turned into recruitment centres of drug traffickers. They recruit 'pushers' from among fellow inmates. The more the number of 'pushers' the more the vice expands. Money made from drugs is used to corrupt security systems compromising the security of the society. Moreover, an increase in the number of pushers implies greater availability of drugs, thus increased number of abusers. Under the influence of drugs, such abusers may engage in criminal activities. Also, since drugs are very expensive, abusers will resort to crime to sustain supplies. Drug trafficking litters the society with dirty money, which is in turn laundered and infused in the mainstream economy. This may lead to inflation which in turn increases poverty levels by making most basic items unaffordable. In such cases, some people may resort to crime as a means of survival.

On the other hand, while in incarceration, given their immense wealth and the apparent vulnerability of the prison spaces, incarcerated drug traffickers continue with their activities even within the prison confines. They avail drugs to fellow inmates which leads to an increase in the number of drug users who upon release will engage in crime either under the influence of drugs or as a means to sustain their drug supply.

Prisoners under the influence of drugs are difficult to manage. In extreme cases, they may engage in riots jeopardising the security of prisons and also leading to mass escapes which may see hard core criminals go back to society endangering the lives of others.

CHAPTER THREE

THE PRISON ARCHITECTURE OF CONTROL: THE SOFTWARE AND HARDWARE MECHANISMS.

3.0 Introduction

In this chapter we seek to contextualize factors underpinning prison based security threats. We specifically respond to the question; what factors undergird the current prison based security threats? In responding to this question, we append ourselves to Buzan's¹⁰² conceptual appreciation of insecurity as a convergence of a phenomenon and vulnerabilities. Buzan argues that for threats to be grasped as insecurity, they have to be converged with prevailing vulnerabilities. The distinction between threats and vulnerabilities points to a key divide in security policy, in that states can seek to reduce their insecurity either by reducing prevailing vulnerabilities or by dealing with threats.

This chapter appreciates threats by examining and analyzing the vulnerability architecture. This is conceived here as a convergence of variables both external and internal to the prisons. The former is conceptualized as the software component of prison control mechanisms. It is first constituted by; the policy constructs that shape institutional design and behaviour. Second, is the entire criminal justice system within which the Kenya prisons service operates. The latter is conceived in this chapter as the hardware component of the prison control mechanisms. Notably, we analyze the prison architecture of control by examining the dynamics underpinning the forming of the prison officer, the physical design, and the internal security mechanisms.

¹⁰²Barry Buzan, *People, States and Fear*. 2nd ed. Boulder, Colorado: Lynne Rienner Publishers. 199 1, p112.

The core argument in this chapter is that the prevailing prison based security threats are a function of the vulnerabilities of the prison spaces that provide opportunity and value to innovative inmates. To this extent the chapter is organized around two core parts; threats that comprise the software of the prison control mechanisms and the vulnerabilities that constitute the hardware of the prison control mechanisms. Part one is further subdivided into four units which include external policies and vulnerabilities, internal policy dilemmas, the criminal justice system, and the economies of crime. Part two on the other hand is organised around four units. These include the forming of the prison officer, political economies and vulnerabilities, the physical design of the prison, and the internal security control mechanisms.

3.1 The Software of Prison Control Mechanisms

The software of prison control mechanisms are those factors that influence prison based security threats that go beyond the authority of the prisons yet they impact on the role of prisons in community protection and public safety.¹⁰³ They include the external and internal policy constructs, the criminal justice system and the economies of crime.

Despite the existence of policies that offer guidelines in the management of prisons, the institutions have become spaces that are mutating security threats to the society. These threats are created by the volatile external and internal environment with potential to compromise the security of prisons. Lack of an elaborate foreign policy document and the bilateral engagements between the Kenyan government and the West coupled with the absence of an internal security policy which would provide proper guidelines on how to handle high risk inmates have sharpened the vulnerability challenge within the prison spaces.

¹⁰³ NARC Government reform Agenda, 2009.

This has been made worse by the fact that the internal security system in Kenya has placed the Kenya Prisons on the periphery of the wider national security architecture. This has led to poor coordination between the police and the prisons. This implies that matters of national security are dealt with and decisions made in disregard of the prison authorities and yet the prisons are expected to execute some of the resolutions made.

On the other hand, the criminal justice system which includes the Judiciary, the National Police, the Prosecution, and the Probation has also had its share in precipitating prison based security threats. The delays in the dispensation of justice by the courts, lack of laws on terrorism and piracy that would guide the court process, coupled with the haphazard swoops by the police and the criminalization of ex-prisoners has only but led to congesting the prisons. This therefore implies that the facilities for the purpose of rehabilitating and reforming the inmates are over stretched thereby rendering the purpose of imprisonment useless. With this kind of scenario, the inmates are left idle giving them an opportunity to converge, form prison gangs, recruit each other into criminal activities and even execute such activities while in incarceration.

This is therefore an investigation into the functionality of the prevailing policy constructs and the role of the criminal justice system in precipitating prison based security threats against the backdrop of new crime dynamics fuelled by advancement in information technology and globalization and how they impact on prison based security.

3.1(a) External Policies and Vulnerabilities

Policy constructs are essentially sinews around which the state institutions are shaped, renewed and sustained. As a set of guidelines, they provide the framework within which institutional infrastructure, Human and material components are developed and sustained. In the Kenya's correctional systems' context, two policy components have defined vulnerability architecture. The first is the country's foreign policy. The second consists of a cluster of domestic policies employed by the government with the objective of ensuring that prisons are effective in creating a better and secure environment for community protection and public safety.

While there exists no official document outlining the foreign policy in Kenya, we deduce this from statements of state actors such as the head of state, Ministers and the general behaviour of institutions. In principal, national interests are supposed to underpin a state's external relations, yet what constitutes these interests is what the rational actor determines. The general presupposition is that despite elements of subjectivity, the objective component remains core. In Kenya's case, its close geo-political and economic interests have not only mediated its relations with the West but have also exposed it to new forms of threat phenomena. Consequent to its relations with the latter and more specifically the proximity to the collapsed state of Somalia, Kenya has evolved as a target of opportunity for terrorists waging war against Western interests.

Notwithstanding the intensity of terror activities since the post cold war attack in Nairobi in august 1998, little had been undertaken in terms of transformation of infrastructure in prisons to respond to the nature and capacities of terror suspects. Kenya instead sought closer working relations with the US both having been victims of the terrorist attack.

Later on, the twin attacks of September 11 – 2001 on the US and subsequent declaration by the then President George Bush on global “War on Terror” further sealed their working relations.¹⁰⁴ This led to the macro-securitization of the war on terror. This idea is based on Ole Waever’s¹⁰⁵ concept of securitization, where an issue is securitized when it gets constructed into a threat. The idea of macro-securitization, is the same concept, but on a much larger scale: “macro-securitizations are aimed at, and up to a point succeeding, in framing security issues, agendas and relationships on a system-wide basis,”¹⁰⁶ ...they “are based on universalist constructions of threats and/or referent objects.”¹⁰⁷

Collaboration with the US for instance has engendered strong working relations between Kenya’s Criminal Investigation Department (CID), National Security Intelligence Services (NSIS); and the United States’ Federal Bureau of Investigations (FBI), Central Intelligence Agency (CIA). Notably, the collaboration has seen increased capture of terror suspects who are sent to Kenyan prisons.

While it can be argued that this collaboration minimises the threats to Kenya, the apparent perception is that it favours the macro global interest of the US conceptualized as the global war on terror. With Kenya not having its own domestically conceived policy on terrorism, it has not been in a position to mediate resource allocations generated internally or externally to help the prison system to anticipate and deal with the consequences of the collaboration. In essence, the apparent focus on maintaining international security by fighting to reduce terrorist threat, the state risks generating internal security problems.

¹⁰⁴Buckley A.E.M. & Singh R. *The Bush doctrine and the war on terrorism: global responses, global consequences*. New York, NY: Taylor & Francis, 2006.

¹⁰⁵Ole Waever, “Securitization and Desecuritization”, *On Security*, Ed. By Ronnie Lipschutz, New York, Columbia University Press, 1998, p 6.

¹⁰⁶Barry Buzan, “The ‘War on Terrorism’ as the new Macro-Securitization”, Oslo Workshop Papers, Oslo, 2006, p1.

¹⁰⁷Ibid. p1.

This stems from the inability to maximise on external policy opportunities to reduce vulnerabilities engendered by common criminal elements to high risk suspects.

Underpinning this are the covert enabling networks that high risk suspects maintain allowing them to have access to capital which the local criminals and officers do not possess. It is this potential ability to deploy capital that has seen several escape attempts take place.

Prison authorities have little influence on the foreign policy, yet it is the cause of the security threats in the prisons related to international operations. Buzan states that finding “a policy which mixes elements of a national security strategy with elements of an international one is optimal”¹⁰⁸.

The state’s geo-political position has equally sharpened the vulnerability. The collapse of the Somali state converged with a rise in piracy cases against global sea lines of communication. Critical here was the security actions by Western navies that saw arrests of pirates with whom they were reluctant to repatriate to their capitals. The exit option to this were the bilateral agreements signed by the Republic of Kenya to prosecute suspected pirates seized and delivered by the naval forces of the United States, United Kingdom, Canada, China, Denmark, and the European Union. Pursuant to the agreement between the EU and Kenya on March 2009, the EU-led Naval Force (EUNAVFOR) known as *Operation Atalanta*, may transfer prisoners in connection with piracy to Kenyan authorities for the purpose of investigation and prosecution. Under the agreement, the suspects were to be accorded adequate accommodation and nourishment.¹⁰⁹

To understand the underlying security dynamics we need to examine the pirate capabilities and compare them with internal prison vulnerabilities.

¹⁰⁸Barry Buzan, *People, States and Fear*, An Agenda for International Security Studies in the Post-Cold War Era. 1st Edition. Hertfordshire: Harvester Wheatsheaf, 1991 and 2008, P 335.

¹⁰⁹Walter Menya, *Deal on Piracy Trials Skewed, say Ministers*, Daily Nation, June 26, available at <http://www.nation.co.ke/News/1056/947196-//w9h9nu-//index.html>.

While the agreement pointed the need for suspects being accorded these requirements, it made no provisions for their availability in terms of budgetary allocations. The agreement compounded the already existing policy gap which does not anticipate the changing dynamics among prisoners and thus engender flexibility in terms of response. Given that prisons service is constrained by resources, the service found itself incapable to meet the exigencies of the new agreement. For instance, Shimo La Tewa prison which hosted these suspected pirates has a capacity of 900 inmates yet it now hosts an average of 2450 inmates.¹¹⁰ Second is that fact that the facilities are decrepit consequently they do not meet the threshold as required by the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Unfortunately for the prisons, there has been no training, nor was there expansion of facilities, and in the end, the vulnerability architecture was sealed. By October 2010, Kenya could hold no more thus resulting to a crisis that saw the Attorney General criticize and voice Kenya's inability to handle the phenomenon of piracy.¹¹¹

The critical question here is that of whether the state should focus outward by cutting off threats at the source implying an end to cooperation with the West and attempting to deal with Somalia based threats in what Buzan refers to as international security strategy or focus inward by reducing vulnerabilities to which he conceptualizes as the national security strategy.¹¹² Very little has been forthcoming with the few attempts to grasp reforms in prison being limited to improving living conditions of inmates. Attempts at evolving a strategic plan remain constrained by the absence of a Grand National Security Policy from which the definition of prison based

¹¹⁰ Kenya Prisons Service, *Directorate of Legal Affairs, Human Rights and Statistics*, 8th October 2012.

¹¹¹ See Kenya Ends Co-operation in Hosting Somali Pirate Trials, BBC News Africa October 1st 2010, available at <http://www.bbc.co.uk/news/worldafrica-11454762>.

¹¹² Barry Buzan, *People, States and Fear*, An Agenda for International Security Studies in the Post-Cold War Era. 1st Edition. Hertfordshire: Harvester Wheatsheaf, 1991 and 2008. P 112.

treats can be derived and policy based responses resolved.

These would entail how to relate with the West on matters of policy on piracy related inmates. Here National security internal equivalent is the internal security which would have to provide the setting for expanded infrastructure, and the training and equipment for the officers to correspond to the level of threat phenomenon.

The mitigation of the influence that Kenya's foreign policy has on prison-based security threat is difficult to achieve given the sensitivity that surround the bilateral relationships between countries. That is, the benefits that the foreign policy brings to the country are far much beyond the dangers that it exposes the citizenry to owing to indispensable principle of interdependence among countries. Perhaps the most viable option that can be taken is that of urging the diplomatic corps in the country to initiate extradition proceedings for which Kenya's judiciary should be asked to expedite. Flirting with the idea of changing foreign policy in part would be a wishful thinking since the technicalities and repercussions of doing the same are enormous.

3.1(b) Internal Policy Dilemmas

At the domestic level, part of the vulnerabilities is anchored by the absence of internal security policy. The institutions lack proper guidelines on how to handle high risk individuals and worse still, the internal security institutional behaviour has not sought to integrate the prison system in the wider national security architecture. Without proper policy guidelines, there is no coordination between the prison and the police. The fact that prisons lacks a developed intelligence and follow-up, implies that they cannot provide the necessary intelligence to the police with respect to inmates, worse still, when released from prison, little link exists between the police and the prisons.

Prisons have a special role of correcting and punishing individuals who have deviated from the conventional norms and have committed offences that are prohibited by the laws of their respective lands.

The seclusion from the society that is done to prisoners is a way of protecting the society from either the potential or the actual harm that they may cause by their untoward behaviour. During their stint in custody, prisoners undergo various trainings that range from occupational, psychological, academic, to spiritual.¹¹³ Since they are individuals who are deemed to be dangerous, they are equipped with skills that will enable them to re-integrate well in the society once they have completed serving their sentences. While in prison, however, there are some prisoners who remain recalcitrant. This class of prisoners work day and night to cause security breach within and without prison confines.

A number of institutional and policy frameworks that have been formulated to provide a holistic approach to prison based security. Despite this, there are a plethora of challenges that have been witnessed by the prison department with respect to the implementation of the existing reformative policies that can enhance security in Kenyan prisons. All the stakeholders have played their part in ensuring that security within Kenyan prisons is made watertight and the responsibility rests, to a greater part with the executive to spearhead the implementation process. However, since the Roundtable Conference on Prison Policy¹¹⁴ was held in 2001 together with the numerous commissions and committees that have been formed with the aim of improving security in prisons, there are some obstacles that have derailed the implementation process *in toto*. These include inadequate funding, corruption and delay in dispensation of justice. Consequently, the department has had committee after committee that seeks to override these obstacles; but unfortunately they have not been successful.¹¹⁵

¹¹³ Norman Johnston et al, *The Sociology of Punishment and Correction*. New York: John Wiley and Sons. 1962, p 341.

¹¹⁴ *Towards Methods of Improving Prison Policy in Kenya*, A Report by The Round Table Conference held between October 14 – 16, 2001 at Mountain Lodge in Nyeri. The participants were prison officials, members of the judicial sector, the then Vice President and the Minister for Home Affairs, and some regional dignitaries.

¹¹⁵ Report of the High Level Committee on the Prison Crisis, "The Madoka Report," 2008. Pp 6, 22, 61.

Despite the prisons department having an elaborate blueprint towards achieving vision 2030 within which security is key, the treasury has not aligned its funding to the prisons strategic plan. For instance, the implementation of the 2008-2012 Kenya Prisons Strategic Plan¹¹⁶ was projected at Kshs. 64,214,200,000 against the treasury's allocation¹¹⁷ of Kshs. 35,187,923,342 for both recurrent and development expenditure which translates to 54.8%. Moreover, even the little amount that is allocated is never released in full. A case in point is in the 2011/2012 budget allocations, only the first and second quarter disbursements were released despite the policy-makers having identified underfunding and out-dated security facilities in prisons as some of the causes of the insecurity threat. The deplorable conditions, in which prisoners live, although captured in the policy frameworks, still await action. All this is brought by the pittance allocation from the Treasury to the department despite its huge demands.¹¹⁸ The unfortunate situation is that even with the meagre funding, there have been cases of misappropriation.

The Prisons Standing Orders which is a policy document clearly outlines the procedures to be followed for the purpose of promotions for prison officers. Despite having very clear guidelines contained in the document on recruitment, promotion and transfers the process has been subject of abuse and manipulation by those responsible for its implementation.¹¹⁹ The resultant of which, officers are demoralized, a situation which has compromised security within and without the prisons. This vulnerable position has exposed officers to resorting to activities that compromise the prison based security.

¹¹⁶Kenya Prisons Strategic Plan, 2008-2012.

¹¹⁷Government Printed Estimates 2008-2012.

¹¹⁸Dissel, A. *Prison Conditions in Africa*. Retrieved on September 11, 2011, from: http://kms1.isn.ethz.ch/serviceengine/Files/ISN/104933/ipublicationdocument_singledocument/b3322a77-5e7b-4e4c-b8b2-066f049f9f8a/en/prisonconditions.pdf.

¹¹⁹*High Level Committee on the Prisons Crisis*, "The Madoka Report" 2008, p 22.

Cases of prison officers deserting duty are very common with 161 cases having been reported for the period running from January 2010 to September 2012 alone.¹²⁰ Some of these officers have even been known to engage in criminal activities such as robberies outside the prison confines. The prison thus becomes a threat to the society by creating a monster out of the very person who is supposed to provide security.

3.1(c) The Criminal Justice System and Vulnerabilities

The Criminal Justice System includes the Judiciary, the Police, the Prosecution, the Prisons and the Probation departments. These departments have a significant contribution to prison based security threats. The duties of the Kenya National Police Service include maintenance of law and order; apprehension of offenders and the enforcement of all laws and regulations with which it is charged; prevention and detection of crime; and protection of life and property.¹²¹ The police, while executing their mandate will apprehend persons suspected to have broken the law and these culprits eventually end up in Kenya's penal institutions which include the prisons. The police are therefore conduits in the process of the administration of justice. The manner with which the police carry out this mandate will have a considerable impact on the prisoner population.

The Kenya National Police Service as an institution is instrumental in managing prison-based security. They are charged with investigating a suspect and gathering incriminating evidence that may prove a case beyond any reasonable doubt leading to a conviction. However, inadequate facilities and training has led to the police delaying with investigations leading to suspects spending long periods in prison remands. This has caused congestion which leaves prisons vulnerable to security threats including riots and assaults.

¹²⁰Kenya Prisons Service, Research and Statistic Department. "Discipline Cases 2010-1012.

¹²¹D.J. Schroeder, & F. A. Lombardo, *Police Officer Exam*. London, UK: Barron's Educational Series, 2005.

Due to insufficient numbers of prosecutors, the police have been called upon to fill the gap. They use evidence adduced by the investigators to link suspects to crimes for which they are charged. The police do not get the corresponding training to handle the prosecution role effectively as this not being their core function. The net effect is that the prosecution is riddled with incompetence thus making the whole process an exercise in futility. This has led to backlog of cases coupled with conflicting interests as the same institution that investigate also play the role of prosecutors. The end effect is that the prisons have to bear the burden of congestion which culminates into rendering prison vulnerable to threats. The facilities for the purpose of containing, reforming and rehabilitating these inmates are therefore over stretched thus rendering the purpose of imprisonment ineffective.

Cognizant of the dire state of congestion in prisons, the Kenya Magistrates and Judges Association has led attempts to bring other criminal justice actors into collaboration under the Court User's Committee (CUC). This requires that the Prisons, the Police and Courts have a co-ordinated approach to their work in the provision of justice.¹²² This will ensure that the institution of justice is enhanced through a three tier process, each stage being efficiently carried out with reasonable dependence on one another. Justice ought to flow in a streamline mode and this is possible if the Prisons, the Police and the Judiciary play their independent roles effectively and efficiently.

The major role of the Judiciary is that of interpreting the laws enacted by the Legislature.¹²³ From the foregoing, it has been intimated that the latter is extremely instrumental in the law-making process, especially those that govern prisons directly or indirectly. It is the duty of the Judiciary to help in the interpretation of these laws to enable the Executive to

¹²² *Report of the High Level Committee on the Prison Crisis, The Madoka Report, 2008, p. 61.*

¹²³ D. E. Hall, *Criminal Law and Procedure*. Chicago, IL: Cengage Learning, 2011.

implement them. Moreover, the Judiciary determines the offences that are punishable by custodial sentences. The sentences meted out to criminals by the judiciary system have over the years had a domino effect insofar as they spur other internal factors into action to cause security lapses within the prison environments. To begin with, the judicial system in Kenya has always considered issuing custodial sentences to virtually all offenders. Those charged with petty offences or otherwise are meted upon custodial sentences in disregard to the capacities of the country's prisons.

Consequently, overcrowding has been a common occurrence in the prisons; bringing with it a chain of problems to prison authorities, worst of all the difficulty of monitoring security within the prison environment. To illustrate the foregoing, a report by Ahmed Rao¹²⁴ committee on ways to improving conditions in overcrowded prisons revealed that the magnitude of overcrowding problem in Kenya, though alarming, varies from one penal institution to another. The prison facilities were designed to hold 26,297 inmates yet they now hold an average of 50,900 inmates which translates to 93% almost twice the capacity. For instance, the inmate population at Kamiti Maximum Security Prison, for example, is over 3000 yet the facility was designed for a population of 1500 inmates. The report revealed that all provinces except for western province were congested with rates ranging between 76% Coast province to 264% in the Eastern province of Kenya as is illustrated in the table below.

¹²⁴Ahmed Rao, *et al.* "Practical Measures to alleviate the Problem of Overcrowding" *Resource Material Series*, No. 57. Retrieved on August 29, 2011 from: http://www.unafei.or.jp/english/pdf/PDF_rms/no57/57-27.pdf

Table 3. Congestion Rates by Province, February, 2011

Province	Inmate Capacity	Actual Population	Congestion Rate %
NAIROBI AREA	4751	8583	81
EASTERN PROVINCE	1542	5618	264
NORTH EASTERN	260	470	81
NYANZA PROVINCE	3286	6043	84
WESTERN PROVINCE	3767	3452	-
CENTRAL PROVINCE	2695	5343	99
RIFT VALLEY	6301	14844	136
COAST PROVINCE	3695	6515	76
TOTAL	26297	50,868	93

Source: Kenya Prisons Service, *Directorate of Legal Affairs, Human Rights and Statistics, 2011.*

From the foregoing, these figures are a clear indication that congestion in the prisons has presented a plethora of threats to the prisons. First is the fact that the facilities for accommodating and rehabilitating the inmates are overstretched. The fact that the inmates will be rendered idle due to the overstretched rehabilitation facilities, they are able to interact with the high risk inmates at will. Secondly, the emergence of crimes like terrorism and piracy, prisons have offered a fertile ground for these suspects to recruit from the masses. For instance the coast province which is host to pirates has a capacity of 3695 yet it holds an average of 6515. This not only offers the high risk inmates an opportunity to recruit but all the numbers.

The lack of clear laws in regard to terrorism, piracy, cybercrime and other emerging crimes is a challenge to the judiciary in dealing with them.

This has led to delay in passing verdicts leading to suspects staying for long in remand. This does not only lead to congestion in prisons, but also offers the inmates an opportunity to engage in criminal activities in view of the fact that remand inmates are not placed on any rehabilitation programs. This predisposes also both the officers and other prisoners who may be accompanying the high risk suspects to court to danger since an attempt to rescue them would be fatal.

The judicial system in the country treats all persons who are accused of committing various offences in a similar pattern. This is a setback with regard to the trial of terrorists or maritime pirates, who should be given special trial owing to the magnitude of their crimes and the potential danger that lurks behind their trial. The civilian courts that try and sentence terrorists to imprisonment are usually attended by their accomplices disguised as 'friends' or 'relatives'. Once inside the courtroom, they take note of every detail said by the judge that may lead them to establish contact with the convicts and continue with their operations.

3.1(d) Economies of Crime

The economic state of a country dictates, to a large extent, the level of security in prisons. Most of the factors that have been discussed in this paper that influence prison-based security threats revolve around finances that are allocated to the department. From the prison personnel, to physical design of prisons, to sophisticated surveillance equipment, adequate funding is required in order to reduce the security threat in prisons. However, the allocation of finances to the prison department by the central government depends directly on the state of economy of the country. When the government prioritizes its allocation of funds the Kenya prisons department is given less prominence compared to other ministries.

At the inception of prison reforms in Kenya after the NARC government took over in 2003, the reforms that occurred targeted the prisoners, not the prisons management.¹²⁵ Consequently, little was done to fortify the security of these correctional centres. Today, the housing units of prison officers are in deplorable conditions yet they are forced to stay in this squalor, thus further worsening their working conditions.¹²⁶ With demoralized prison personnel, it is unlikely to procure impenetrable security within the correctional centres.

As discussed earlier, poor physical structures that Kenyan prisons adorn coupled with the overcrowding makes it difficult for prison warders to conduct proper surveillance that can abate the security threat within the prison. Furthermore, without adequate funding, the prison department is unable to procure the modern equipment such as CCTVs, scanners, metal detectors and mobile phone jammers that are instrumental in monitoring the prisoners. Notably, prisoners have time and space to maintain and run extortion activities with ease from within the prison perimeters.

Unfortunately, there has been no corresponding training of prison officers on how to manage such high risk prisoners like terrorists, hackers/crackers, and maritime pirates. Underlying this is the lack of finances to hire qualified and experienced trainers. Consequently, prison officers are forced to improvise crude ways of dealing with these criminals including outdated searches mechanisms where prisoners are stripped naked in the presence of other inmates. A case in point is the incident in Kamiti Maximum Prison where inmates from courts were subjected to strip down searches to which they resisted resulting in the death of an inmate.¹²⁷

¹²⁵The Nairobi Chronicle, op. cit.

¹²⁶ *Report of High level Committee on the Prison Crisis*, The Madoka Report 2008, p 15.

¹²⁷ Kamiti Torture: Warders face disciplinary action. NTV Kenya news, uploaded on 21st November 2008.

On the other hand, in as much as globalization has brought many benefits to mankind especially in the recent past when rapid development in technology expedited its influence in all corners of the planet it has also come with its own challenges that affect man, among them being prison-based security threat. The world has been reduced to a global village in which people from far-flung corners get the information of what is happening in the other equally distant lands, and interacting almost instantaneously.

There are different kinds of crimes that have been brought about by globalization. Maritime piracy, terrorism, drugs and arms trafficking and cybercrime are some examples of these crimes.¹²⁸ Perpetrators of these criminal activities have landed in Kenyan courts where they have been tried and convicted to serve sentences in Kenyan prisons. Once inside the prisons, these convicts endeavour to perpetuate the very activities for which they were apprehended either through colluding with prison officers or via proxies, who are most often their free accomplices. These interactions are what cause prison-based security threats. All the highlighted cases occur in global networks that would be difficult not only to localize but also to dismantle altogether as a way of maintaining the much critical security. Maritime piracy, for example, contains criminals who operate internationally under an umbrella body. When caught in the high seas, it is very difficult to identify pirates with their countries of origin and this leaves the authorities concerned with little option but to try them in their courts.¹²⁹

Since these unique criminal acts are relatively new, prison authorities in Kenya have not formulated any proper guidelines on dealing with the perpetrators.

¹²⁸George, V. & Page, R.M. *Global social problems*. New York, NY: Polity 2004.

¹²⁹Middleton *et al.* *Global Challenge, Regional Responses: Forging a Common Approach to Maritime Piracy*. Dubai, UAE: Dubai School of Government. Retrieved on August 14, 2011, from: http://counterpiracy.ae/briefing_papers/Forging%20a%20Common%20Approach%20to%20Maritime%20Piracy.pdf

For example, during the wake of 1998 US embassy bombing in Nairobi that followed the arrest of 8 Yemeni and 13 Somali nationals in 2001,¹³⁰ the Kenyan “cell” of *Al Qaeda*¹³¹ still managed to bomb the Paradise Hotel in Mombasa in 2002. This attack was done with the aid of those in prison, which comprised a large number of them after 20 more arrests were made the following year. The international character of these convicts together with the intricate network within which they operate pose a great challenge to prison authorities who are ill equipped to deal with.

To manage the negative impacts of globalization on prison security structures, it is imperative that the prison personnel get rigorous training on and exposure to the changing dynamics of crimes and criminals. This however, will depend on the availability of funds and the willingness of the prison authorities to recruit experts in criminology.

3.2 The Hardware of Prison Control Mechanisms

The internal factors that influence prison based security threats are domestic insofar as they are within the jurisdiction of prison authorities. These factors that fuel prison-based insecurity comprise the forming of the prison officer, the physical design of the prison, and the internal security mechanisms.¹³² These factors constitute the vulnerabilities within the prison spaces which connote both structural and systemic weaknesses which makes the institutions susceptible to existing threats.

In the forming of the prison officer, we shall be seeking to respond to two questions: How does the Kenyan prison officer training and the penal philosophy relate to everyday practice in the Kenyan Prison Service (KPS)?

¹³⁰Khadiagala, *et al.*, *Special Report: Terrorism in the Horn of Africa*. Retrieved on September 1, 2011, from : <http://www.usip.org/files/resources/sr113.pdf>

¹³¹Being a global terrorist network, *Al Qaeda* divides its divisions into cells with a given number of locally and internationally recruited terrorists. The Kenyan cell was established in 1994 by Osama bin Laden’s secretary Wadi el-Hage; *Ibid*, p. 2.

¹³²Robert, T. *Civil Rights on the Cell Block: Race, Reform, and Violence in Texas Prisons and the Nation, 1945 – 1990*. Houston, TX: ProQuest, 2009.

What implications do contradictions in this philosophy and practice have on prison based security? The Kenya Prisons Service has endeavoured to introduce standardised reform interventions rather than bringing about change by exploiting the contradictions and vulnerabilities within its penal institutions. The penal philosophy that emphasises rehabilitation, reform and reintegration and human rights has been incorporated into the prison officer training curriculum. Nevertheless, what has been evident in practice are acts of violence, submission, subordination and humiliation. The prison officers learn how to treat prisoners through disciplinary procedures, drills and strict regimentation of conduct and activities. We shall be seeking to establish whether this approach is in conformity with the corrections philosophy.

3.2(a) The forming of the Prison Officer and Insecurities

Since its conception in 1911 the prison philosophy and practice in Kenya has been harsh, punitive and retributive.¹³³ To actualize this goal, the training of prison officers has been military oriented putting much emphasis on classical security, discipline and military drills. An examination of the prison officer training reveals a number of issues in which everyday practice challenges pretensions to discipline, order and hierarchy. The training does not adequately equip the prison officer with skills to meet the correctional needs of the inmate and the challenges portended by the new crop of inmates convicted of the emerging new trends in crime. Instead, it has made the penal practice in the Kenyan prisons to involve acts of violence, submission, subordination and humiliation. The foundations of these practices are embedded in the everyday practices of prison officer.

¹³³*Training curriculum for Warders and Wardress*, Kenya Prisons Service, Kenya Institute of Education 2005, p ii.

The prison officer learns how to behave towards the prisoner through the disciplinary procedures, drills, marching and strict regimentation of conduct and activities involved in their training. These practices are in fact contested from both above and below in everyday practice of the prison officer training.

This training inadequacy has negatively impacted on the performance of the prison officer in responding to the emerging challenges. Although the Kenya Prisons developed a new curriculum parting from the traditional penal philosophy to the corrective measures, it is still lacking in addressing emerging trends of crime. It has no specific reference on how to deal with terrorists, pirates, cybercrime offenders among others exposing prisons to threats posed by these categories of prisoners.

3.2(b) The Political economies and vulnerabilities

The training of the prison officer has for along time ignored the component of corruption and ethics to an extent that corruption has almost been institutionalized. Corruption is a complex social, political and economic phenomenon that affects almost all countries. It undermines democratic institutions, slows down economic development and contributes to governmental instability.¹³⁴ Corruption though, can manifest itself in different ways and forms in different environments and context. Corruption is evident in cases of abuse of authority for personal gain, advantage or for the advantage of another person or group through coercion, undue influence, misrepresentation, falsification, dishonesty or any other improper act(s) in breach of the laws.

The endemic corruption that is rampant in Kenya has wrought unimaginable damage to most of the country's public institutions, including prisons. It is shocking that the menace has even penetrated the perceived bulwarks that surround our correctional-cum-penal facilities.

¹³⁴United Nations Office on Drugs and Crime(UNODC), Action Against Corruption and Economic Crime, 2010
2011.

It is not out of the ordinary to hear in the media that a prison officer attached to a given prison has been compromised by inmate(s) to breach security protocols. Therefore, it suffices to say that corruption in prisons play a catalytic role in facilitating prison-based security threats. The irony here is that prison officials, who are charged with ensuring the secure custody of inmates by sealing all the loopholes through which security lapses can occur, are the very ones who bore holes in security loops often for cash gains from prisoners and/or their associates.

Prison officers are vulnerable due to their poor remunerations. Having presented themselves as desperate for cash before inmates, they easily fall prey to prisoners who want to perpetuate their criminal activities to the outside society or those who want to stage a prison-breaks and escapes on the worst-case scenario. An incident that happened in 2010 demonstrates how vulnerable prison warders are to accepting money at the expense prison security by letting contrabands into prisons that threaten security inside and outside prisons. In this incident, mobile phone racket involving death-row inmates was uncovered in one of the country's major prisons. It is believed that demoralized warders accepted monetary rewards from inmates and turned a blind eye as the latter made millions of shillings from the scam.¹³⁵

Terrorist prisoners are notorious for such underground operations after having established a link with their colleagues who are free using prison warders as a conduit of information. Due to their global network, terrorists have a lot of money,¹³⁶ which they can easily spend on Kenyan prison officers to compromise their work and allow them to execute their plans without any hindrance whatsoever. Sometimes, however, the greed for money leads prison officers to acquiesce to plans that even put their lives and that of their colleagues and families in danger.

¹³⁵“The tough road to reforms” *The Standard*, published on 14/01/2011. Retrieved on September 2, 2011, from: <http://www.standardmedia.co.ke/archives/InsidePage.php?id=%202000026762&cid=159>

¹³⁶ Lesser, *et al. Countering the New Terrorism*. Washington, D.C.: Rand Corporation, 1999.

Similarly, convicts of maritime piracy have the same influence on prison wardens that make them sacrifice their duty on the altars of money to the detriment of a population or a group of travellers. This predisposition to manipulation by cunning and moneyed inmates often fuel prison-based security threats.

According to The Nairobi Chronicle (July, 2008)¹³⁷, the corrupt nature of prison officials is cancerous to the operations inside prison walls. It starts from the top cadre then trickles down to warders who manifest it in the crudest manner thereby compromising the security in these prisons. The slow pace at which the top leadership of Prisons Department has attempted to address the plight of the warders has caused untold suffering to junior officers forcing them to use unorthodox means to better their living standards. The report further revealed that funds meant for buying modern equipment for use in prisons and for the construction of better houses for junior officers were returned to treasury and/or reallocated to other “priority” areas. For example, in the 2005/2006 Financial Year, Kshs 400 million was allocated for the construction of prisons’ staff houses.¹³⁸ Out of this amount, only Kshs 170,539,558/- was utilized. In the 2006/2007 Financial Year, the allocation for staff housing was KSh. 500 million yet the prisons utilized only KSh. 348,755,926/-. This translates to a total of KSh. 480,704,514/- allocated for housing returned to the treasury for unexplained reasons.¹³⁹ In fact, all prisons in Kenya suffer an acute housing shortage. There are 3660 houses (17.4%) against staff strength of 17,177. This reflects a shortfall of 82.6%.¹⁴⁰

¹³⁷It is an online magazine that reports on topical issues around the country. It is retrieved from: <http://nairobichronicle.wordpress.com/2008/07/17/damning-report-on-kenyas-prisons/>

¹³⁸*Report of the High Level Committee on the Prison Crisis, The Madoka Report, 2008, p. xi*

¹³⁹*Ibid, p. xi*

¹⁴⁰*Ibid, p. 16*

Consequently, junior prison officers live in squalid shanties, sometimes forced to share single rooms, use polythene sheets, and cardboards to partition their houses.¹⁴¹ The dearth of privacy has provided an opportunity for promiscuity and prostitution, substance abuse, theft, and sadly ways of making quick cash by the officers even if within the prison setting. This persistent conditions under which the junior prison warders live in, has fuelled untoward conducts and sometimes even led to mutinies as the one witnessed in April, 2008.

3.2(c) Physical Design of Prisons

The present day Kenyan Prisons draw their designs from the British Model whose prisons' designs are based on Jeremy Bentham's 1867 Panopticon Model.¹⁴² The concept of the design is to allow an observer to observe (-opticon) all (pan-) prisoners without the prisoners being able to tell if they are being observed or not, thus conveying a "sentiment of an invisible omniscience."

The physical structure of a prison often determines the level of security that such a prison is capable of providing. Usually, the role of the structure is twofold: first, to keep the society out and secondly to keep the inmates in. For this reason, high walls or fences and detection systems are essential when building a prison. According to the United States Department of Correctional Services, "the layout, design, and age and level of maintenance of prisons have a direct impact on the level of security."¹⁴³ The department further describes physical security as the prison building itself, the layout thereof, the design as well as fixed security systems. Having

¹⁴¹*The Nairobi Chronicle*, 2008. Retrieved from: <http://nairobichronicle.wordpress.com/2008/07/17/damning-report-on-kenyas-prisons/>

¹⁴²Jeremy Bentham, Miran Bizovic (ed.) *The Panopticon Writings*, London: Verso, 1995, pp 29-95.

¹⁴³Department of Correctional Services, *Safety and Security*. Retrieved on August 30, 2011 from: <http://www.dcs.gov.za/OffenderManagement/Safetyandsecurity.htm>

understood that, it becomes easy to clearly understand why the physical design plays such a big role in the prison system.

Majority of prison facilities in Kenya are not properly designed to cope with rapidly growing technology that can aid inmates to engage in security threatening activities while behind bars. Most buildings if not dilapidated, are poorly designed giving leeway for inmates to escape or engage in criminal activities undetected. Prison facilities in these conditions, consequently, heighten chances of prison-based security threats orchestrated by inmates' rights under the watch of prison authorities. With wrongly designed structures, prison warders can hardly manage to make proper continuous observations, which can help the department to avoid security incidents.

Given the changing pattern of crimes whose perpetrators often land in prisons, the Kenya Prison Services is faced with the challenge to manage this ever-changing incarcerated population. As discussed in chapter two, convicts of terrorism, cybercrimes, and maritime piracy are the new prisoners who pose greater challenge to prison officials on how to deal with them to avoid breach of security protocols. The designs of Kenyan prisons do not consider such type of unique prisoners hence they are often huddled together with other inmates, who they can convert to their trade or used them to facilitate their criminal activities inside prisons. The argument zeroes in on the inadequate and improperly designed prisons that do not allow for seclusion of various categories of inmates. This herd-management style of prisoners occasioned by the above factor often leads to the intoxication and radicalization of inmates who were hitherto perceived to be of 'good' behaviour.

The recent prison-breaks¹⁴⁴ around the country are consequences of poorly designed prison facilities that easily allow inmates to break through unnoticed by prison wardens on duty. In fact, it is even sad to imagine that most prisons in the country do not have sophisticated surveillance gadgets that should be part of the facilities' design. In the era of CCTVs that simplify surveillance work, most prisons conduct continuous observation physically and sometimes even haphazardly. This state of affairs leaves room for prisoners to do what they want: plan attacks, strike, stage prison-breaks, radicalize others, and write fundamentalist ideologies or manifestos, among other things. Consequently, it can be said that the poorly designed prisons where criminals are incarcerated provide leverage for prisoners with ulterior motives to perfect and execute their plans that often breach the security of people around them and the society as a whole.

3.2(d) The Internal Security Mechanisms

The security of prisoners, prison wardens, and the society depends on the internal security mechanisms that are employed by prisons. Every prison has internal security mechanisms put in place in order to enhance security within and without the prison environment. In the Kenya situation, the security lapses that mar prisons are partly caused by poorly planned internal security mechanisms whose execution is also wanting. A number of factors contribute to this problem. They range from lack of proper training in modern methods of managing prisons to corruption in the service.

¹⁴⁴There has been an increase in the number of prison-breaks in the country lately. The incident at Ukwala that occurred in July 2011 where prisoners used human waste as arsenal against the officer on duty is the latest.

According to the American Correctional Association, inmate classification and reclassification, coupled with proper institutional placement are important internal security mechanisms – perhaps as important as the security provided by bricks and mortar.¹⁴⁵ Prisoners, therefore, should be classified according to different risks that they pose to fellow prisoners, prison personnel, and the community.¹⁴⁶ Terrorists and pirates are a special category of prisoners who require a twenty four hour per day surveillance. Unfortunately, due to lack of space, prisoners are lumped together in places of accommodation which makes it very difficult to monitor the most risky among them. Moreover, classification of prisoners requires a thorough interview with them so as to understand the level of threat they pose. Due to the large numbers of new admissions to prison verses the few numbers of prison officers and who are also not so well trained on proper interviewing procedures, details regarding the threat a prisoner may pose are missed out.

Other equally important internal security measures in Kenya prisons include: searches, ensuring that all parts of the prison are secure and orderly, conducting surveillance, observing and assessing prisoner behaviour. They also include operating security equipment, control of keys and locks, fire awareness duties and collating information and preparing reports. However, the large prisoner populations are overwhelming to ensure these security checks are properly conducted giving a leeway to dangerous prisoners to plot harm against the prison authority, fellow prisoners and the wider society. There are varieties of security issues that navigate around overpopulated prisons. The ratio of prison warders to inmates has risen exponentially over the years hence the former cannot perform their duties adequately.

¹⁴⁵America Correctional Association, *Causes, Preventive Measures, and Methods of Controlling Riots and Disturbances in Correctional Institutes*. Upper Marlboro, MD: Graphic Communications, Inc., 1998.

¹⁴⁶Department of Correctional Services, op. cit., 2003.

The routine surveillance of prisoners can be overwhelming to warders leading to the task being haphazardly done to the breach of security protocols. For example, prisoners who have smuggled cell phones in jails can escape the eyes of prison warders simply because of their huge number, but not because of the laxity on the part of the warder.

In as much as the physical design and inmate categorization are key elements in security, they are incomplete without officer protection services. Prison officials are responsible for the security measures that the physical design cannot control. Some of their duties that must be done effectively include access control, searching of prisoners and their belongings, and movement control both inside and outside prisons and during the transportation of prisoners. However, the laxity in the part of prison officials coupled with their demoralized spirits, has negatively affected the implementation of stringent internal security mechanism.

The lack of early release measures that are capable of decongesting the prison facilities has precipitated vulnerability of prisons to security threats. In Kenya, the 'end-line' early release measures that have been effectively employed in other countries are lacking or are underutilized at home. The parole program, for example, is competently capable of reducing the population of prisoners by a one-third or even more. Unfortunately, this program is unavailable in Kenya hence no opportunity to utilize the early release measure. Subsequently, prisoners end up staying longer in jails for periods unrelated to training needs. Other alternative measures that are always used to decongest prisons are often applied in *ad hoc* basis thus resulting in marginal decongestion of prisons whose impact is never felt. The presidential amnesty measure, for instance, is the prerogative of the president therefore cannot be appropriate in solving the problem of overcrowding in prisons.

Moreover, the population of prisoners that receive the presidential pardon is dismal and hardly decongests prisons.¹⁴⁷ Yet as earlier noted, these large numbers of prisoners make prisons more susceptible to threats. This shows the seriousness with which overcrowding in prison is a menace to security personnel within these confines.

¹⁴⁷Othmani, A. & Bessis, S. *Beyond prison: the fight to reform prison systems around the world*. New York, NY: Berghahn Books, 2008.

CHAPTER FOUR

RECAPITULATION, CONCLUSION, AND RECOMMENDATIONS

4.0 Introduction

This chapter is a recapitulation of our objectives. This chapter has set out four objectives. The first objective is a recapitulation on our two core objectives. It specifically attempts to demonstrate the extent to which set tasks were achieved. The second objective recapitulates on our hypotheses with the task of demonstrating their validity. The third objective anchors conclusion and thesis. The fourth anchors the task of our third objective which sought to proffer research based recommendations for analysing policy and requisite organisational framework.

4.1 Mutating Prison-Based Security Threats

This section responds to the task of our first objective; to examine and analyse the nature and forms of emerging prison-based security threats. This objective was predicated on several assumptions: that prisons now host new crop of inmates who are not only technologically savvy, but are capable of capitalizing on prison vulnerabilities to transform Prison domains into spaces for mediating crimes external to prisons; that: prison based security threats are a function of inappropriate and uncoordinated, internal and external policy constructs; and that these threats are felt at all sectors which include economic, political, societal, military and environmental.

In this objective we examined security threats emergent out of convergences of various variables as differentiated intercourse of prisoners especially after they leave prison and are reintegrated into the society. We sought to examine categories of prisoners and their link to these threats.

The discussion on the emerging nature of prison-based security threats has led to the conclusion that Kenyan prisons have become spaces of mutating insecurity. We observed that there exist two main categories of prison-based security threats. These are the Hard-Core Threats which include Terrorism, Maritime Piracy, Arms Trafficking and Cyber Terrorism based security threats. On the other hand, are the Soft-Core Threats which entail Biological threats portended by the inmates through their interactions, and the apparent vulnerabilities within prison domains. These include HIV and AIDS, Human, and Drug trafficking based threats within prison spaces.

4.2 Factors that undergird the current prison-based security threats

This section responds to our second objective: to examine and analyse factors that undergird the current prison-based security threats. Objective was founded on the assumption that the prison based security threats trace their routes from a labyrinth of sources both internal and external to the prisons. We observed that e internal factors including lack of corresponding capacity among prison officers to deal with technologically savvy prisoners, overcrowding, corruption, low morale, insufficient pay, the physical design of the prison and internal security mechanisms influence prison based security threats. The study established that these apparent vulnerabilities in prison domains provide the inmates with inherent advantages in committing crime while in prison. The study also found that e external factors that are beyond the prison authorities' jurisdiction influence prison based security threats. These included the role of society in precipitating prison based security threats and unfaithfulness of prisoners' partners living in the outside society.

4.3 Conclusion

Our study posed three fundamental questions: What is the nature and forms of emerging prison based security threats? What factors undergird the current prison based security threats? What Institutional policies and frameworks are critical for enhancing the prison role in societal protection and public safety?

Contrary to the conventional thinking in which prisons are assumed to provide security to society by locking out criminals, they have mutated into sites of a wide range of security threats. Underlying these is that “prison based security threats are a function of technologically savvy inmates and vulnerabilities prevailing within the prison domains: and that “prison based security threats are a function of inappropriate and uncoordinated, internal and external policy constructs” are valid.

To the extent that there is convergence of organized local and international crime actors, local conventional crimes and the sophistication of innovative communication technology savvy inmates perpetrating their criminal activities while in incarceration, the transformation of prisons into spaces of mediating crimes remain given.

The most significant issue is the ability of the prison department to build staff capacity, develop infrastructure and review policy framework in tandem with existing prison based security threats. To the extent that prisons are incapable of addressing vulnerabilities within its confines, this security institution will continue transforming into a source of insecurity. In this context that our thesis is anchored; the prevailing prison based security threats are as a result of emerging trends in crime bolstered by technological advancement, globalization factors, the convergence of different forms of specialized criminal elements and weak, outdated policy frameworks.

4.4 Recommendations

This section responds to the task of our third objective: To proffer research based recommendations for anchoring policy and requisite organizational framework. Based on the study findings the following recommendations are proffered: In order to address the emerging challenges which mutate prisons into spaces of insecurity, we recommend the review of the existing policy frameworks.

In order to prepare prison officers to be able to deal with prison based security threats, we recommend that the training and forming of the prison officer should be divorced from the traditional military oriented outfit that emphasises classical security, discipline and drills to that of equipping the officer with skills that meet the correctional needs of the modern day inmate and the challenges portended thereof.

We recommend that the Prisons department develops strategic interventions that would see information that circulates amongst the inmates filtered in order to deal with the threat portended by technologically savvy inmates, without compromising their rights as prisoners. Access to electronic gadgets should be limited to the very essential ones that would not compromise the security of the prison.

In order to deal with the problem of congestion in prisons, we recommend that the criminal justice system be networked and establish a link mechanism that will gather relevant intelligence and coordinate all its actors.

The Panopticon model on which the present day Kenyan prison is modelled does not deal with the threats portended by the present day inmate who is able to perpetrate crime from within the prison walls. We therefore recommend the redesigning, expansion and modernization of the existing facilities.

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