

Full Length Research Paper

Alternative strategies against malfunctioning Criminal Justice System in ensuring security in Kenya

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Crime control in any country though primarily a mandate of the government should be a responsibility for all people, and an engagement of several agencies. This is because crime which is the main source of insecurity has many negative impacts. At the individual, family and neighbourhood levels, effective crime control lies in ensuring that one does not become a victim. However, in some countries like Kenya, provision of security has been left mainly to the traditional government institutions such as the police who have not succeeded because of a plethora of weaknesses in and mal-functioning of the criminal justice system in general. The aim of this paper is to explore these limitations against the fulfillment of deterrence, incapacitation, reformation and rehabilitation theories of punishment by the Criminal Justice System in Kenya. The methodology involved elaborate review of the findings of numerous scholars on the factors responsible for the malfunctions of the Criminal Justice System in Kenya. The paper concludes by making a case for the use of environmental, situational and social strategies based on the theories of public security as a mechanism of ensuring security in the country instead of relying heavily on the criminal justice agencies.

Key words: Criminal justice system, theories of punishment, theories of public security, crime control strategies, Kenya.

INTRODUCTION

The Criminal Justice Institutions; namely The Police, Judiciary and Corrections should in synergy ensure that suspected offenders are arrested, tried and ultimately punished so that they never commit crimes again. These efforts are meant to reduce criminal activities thus ensuring public safety and security. To achieve this noble goal, the whole process should ensure that punishment is able to deter, incapacitate, reform and rehabilitate the convicts (Tewkbury, 1997; Birzer and Roberson, 2004; Adler et al., 1996). However, in Kenya, evidence abounds

on the inability of the Criminal Justice Institutions to realize effective security due to several weaknesses.

Literature review: challenges facing enhancement of security by criminal justice institutions In Kenya

The success or otherwise of a criminal justice system can be measured among others by the extent to which its institutions in their respective functions enables the

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attainment of safety and security in the society. In Kenya however, several factors have negatively affected these key institutions in their work.

To begin with, among the main duties of the police in relation to public security in Kenya like in other countries, are investigation of cases, arrest of the offenders and presentation of evidences in courts of law during trial. However, it has been observed that there are several weaknesses in the police service and other ills that have had negative consequences on the court decisions, and penalties awarded to the offenders which in the end may lead to perpetuation of crimes and recidivism by the offenders to the detriment of public safety and security. For instance, some police officers are not professional enough in their work particularly when it comes to handling gender based crimes, and respect for human rights (Omuya, 2015; Omeje and Githigaro, 2010; Omboto, 2015). Limited resources are another hindrance to the police operations, which includes lack of necessary apparatus (Mageka, 2015). The police in Kenya also suffer from external meddling in their work, particularly from the political class (Kivoi and Mbae, 2013; Nyongesa, 2013).

Corruption in Kenyan police which in the year 2014 made Amnesty International to describe the service as a bribe factory is another anathema (Mageka, 2015). This implies that the law is enforced with a lot of partiality which in the end denies justice to the public and spurs crime levels. This means that people who commit crime may evade arrest by bribing the police or if arrested, compromise the investigating officers and thus evade punishment. This exacerbates insecurity as the undeterred offenders continue with crimes. In the end, based on the foregoing, the police in Kenya are not very effective in ensuring security.

Similarly, the Judiciary has several weaknesses. For instance, Gathu (2014) observed that one of the greatest causes of biases in the Kenyan Judiciary is corruption which takes the form of judges and magistrates being bought or bribed to enter favourable rulings and give judgments which lead to miscarriage of justice. This results into failure to punish guilty offenders who would continue with criminal activities due to lack of deterrence. The other prominent factor among others which affect the delivery of justice is delays in determination of cases (Infotrak, 2012). These factors among others encumber the effectiveness of the judiciary, and therefore lead to higher insecurity rates. They are responsible for poor rulings, convictions and wrong or ineffective punishments which make the unfairly convicted and punished offenders to become bitter, thus turning into vicious criminals, while the guilty but unjustly acquitted continue with crime.

The Correction institutions which in Kenya are mainly prisons and probation are no better. It has been established that there are a myriad of problems that have made it near impossible for prison institutions to

achieve any meaningful goals of punishment. For instance, the capacity of prisons personnel to rehabilitate the offender has been questioned against their level of education, training and integrity. The academic and training levels of the majority of prisons staff has been established to be lower for the delicate work of rehabilitation, while in terms of integrity; several prison officers have been caught smuggling drugs and phones into prison institutions thus negating on the achievement of the prisons mandates (Omboto, 2013). There have also been complaints about deplorable prison conditions and the hostile treatment of offenders therein by the prisons staff; under such circumstances no reformation can be attained (Odera-Orika, 1985). The end results of all these have been high rates of recidivism among prisoners (Kenya National Bureau of Statistics (KNBS), 2014), which raises crime rate and level of insecurity in the country.

Whereas Probation and After Care Services is the only government agency charged with the responsibility of reformation and rehabilitation of offenders in the community in Kenya, it also suffer from several factors that interfere with its' work. These include huge caseloads, poor supervision, lack of co-operation from the offenders and limited resources (Hannah, 2012; Okech, 2015; Aben, 2011). Given these challenges in the criminal justice system institutions, there is need for utilization of different approaches that focus on the risk factors responsible for crime. The strategies are more cost effective and have greater social benefits than the reactive responses of criminal justice agencies because they prevent social, economic, political and psychological effects of crime.

THEORETICAL ANALYSIS

The paper uses theories of punishment to analyze effectiveness of criminal justice institutions in controlling crime and theories of public security in arguing for application of environmental, situational and social strategies in enhancement of public safety. The methodology involves elaborate review of the findings of scholars such as Omuya (2015), Omeje and Githigaro. (2010), Nyongesa (2013) and Gathu (2014) among others on the factors responsible for the malfunctions of the Criminal Justice System in Kenya.

Theories of punishment

The theories of punishment posit that by having in place effective punishment, criminal justice institutions should be able to guarantee public safety by minimizing cases of insecurity through criminal activities. For example, based on deterrence theory, the already punished convicts and others should prefer to abide by the laws due to fear of

punishment. However, the number of recidivists in Kenyan prisons which according to Kenya National Bureau of Statistics (KNBS) (2014) increased by 76.9% in 2013 indicate that punishment and by extension criminal justice institutions have not been successful in deterring crime. This is caused by the fact that in some cases punishment awarded by the courts are not parsimonious to the severity of the crimes. Also, at some times due to corruption and preferential treatments among others, some offenders are not punished; thus continuing to commit crimes undeterred.

According to incapacitation theory, punishment should also make it impossible for the offenders to commit crimes. Based on this philosophy, offenders are normally removed from the community into prison institutions to protect the society from their criminal activities. This implies that prisoners under incarceration should not continue with crimes in prisons and against the society from which they have been removed. However in Kenya, this is not the case given the cases of convicts extorting money from the public through threats and conmanship by use of mobile phones is rife. In addition, reformation and rehabilitation theories expect that through punishment the character and personality of the convicts should be transformed for them to live in the society as law abiding citizens; in a nutshell be rehabilitated. This has also not been achieved as indicated by the recidivism rates.

Theories of public security

These are theories which argue that enhancement of public security lies on community and environment oriented approaches. For example, according to Poyner (1983), Broken Window theory developed by Wilson and Kelling in 1982 posits that images of disorder promote crime. The theory argues that if disorder were eliminated then serious crimes would be prevented. It further postulates that a continuation of disorder in the end weakens social control by making people to disengage with their community, thus giving criminals room. Disorderliness in the community causes crime, and crime causes further disorder and crime. Simply put, this theory of public security argues that if a broken window is not replaced it encourages vandals to continue with the damage thus perpetuating insecurity. In a nutshell, for insecurity to be minimized, disorder should be eliminated.

Routine activity theorists on their part postulate that crime is as a result of a convergence of three elements. These are a motivated offender, suitable target and absence of a suitable guardian. Thus the daily routine activities of individuals strongly influence when and where criminals attack them. This theory has practical implications for prevention of crime and insecurity; it has guided prevention strategies such as mounting of surveillance cameras which deters possible criminals.

Defensible space theory developed by Oscar Newman in 1970 (Poyner, 1983) opines that the building design and the physical layout of a community determine a crime occurrence. It argues that a good design that gives residents ownership and responsibility over their surrounding gives them the chance to control and defend it which bars potential criminals. For instance, neighbourhoods must not have so many exit and entries. Additionally, they must not depend on the police for their security but have a sense of ownership and security for themselves. This theory gave birth to the UK police's program 'Secured by Design' in 1988 which has benefited many homes. However, the effectiveness of defensible space rests on the willingness and the ability of the people concerned to police themselves. This theory is linked to personal space theory.

Situational crime prevention theory which is another public security theory postulates that insecurity can be reduced by minimizing opportunities for crime. This involves putting up measures that reduces the ease to commit crimes by threat agents. The guidelines provided on how to reduce opportunities for offenders to commit crime thus enhancing public security are: removing excuses that facilitate crimes; for instance, it calls for instituting laws at national and organization levels on crime which people are expected to obey. Also calls for the increase in the risks for committing crime; for example by increasing chances of arrests and punishment and also making it difficult to commit crimes.

Finally, social contract theory which originated from the work of Thomas Hobbes should guide state authorities to provide for the populace needs which if neglected compel them to commit crime. This is more relevant given that the threats to human life and national security in the contemporary nations has taken new dimensions which include poverty, unemployment, famine, droughts, diseases, corruption, dictatorship, mismanagement, nuclear threats, pollutions, desertification, wars, internal conflicts, drug trafficking, drug abuse, human trafficking, poor leadership and administration, terrorism among others.

Conclusion: Utilization of non-criminal justice oriented strategies to enhance security

Given the failure and weaknesses of punishment based security enhancement measures, the paper recommends that security management in Kenya should be achieved through the use of environmental, situational and social strategies.

Environmental and situational security management strategies

According to Poyner (1983), measures helpful in

prevention of crimes through environmental designs include surveillance, control of movements, activity support and motivational reinforcement. Surveillance on crime targets which involve among other measures installation of CCTVs in homes and business premises, proper lighting of areas at night, use of supervisory personnel, guards or vigilante groups is key in deterring potential of offenders who would fear being caught in crimes. Related to this, movement controls which involves any procedures that limit the movement of potential offenders into areas where they are most likely to commit crimes is also an effective crime prevention mechanism. The measures which assist in controlling movements include the use of security locks on gates and doors, minimizing entry points, closure of streets, and controlled access to particular areas among others.

Having activities around possible criminal target properties such as banks which increases the presence of many people around the properties most of the time also serves a surveillance function; thus scares potential criminals who may target a property. Motivational reinforcement is also vital. It is about encouraging people to engage in crime prevention activities which involve encouragement of personalized environments, having in place well-kept public areas, ensuring co-operation between business entities, and community policing.

Situational crime prevention approaches seek to reduce the opportunities of committing crimes, increase the risks of committing crimes and decrease the benefits of crime. Poyner (1983) posit that effective situational crime prevention strategies involve target hardening, target removal, removing the means to crime and reducing pay-off among others. Target hardening is a common approach to security which entails the use of stronger locks and burglar proof installations on doors and windows. This assists in barring away potentials criminals from such properties. Target removal is about putting away the properties or resources that are desired by the criminals. For instance, to prevent thefts and robberies of money, cash payment is always replaced by other forms of payment to reduce the risk, this can be use of cheques, electronic money transfer etc.

Concerning removal of the means to crime as a strategy, it involves eliminating access to the items that facilitate commission of criminal activities. Common methods in this strategy include gun control in public places where people may fight, the use of plastic containers instead of bottles, providing prisoners with paper or plastic cutleries among many others. Reducing pay-off involve devaluing properties in case they are stolen or taken away by criminals. The strategy includes marking properties with distinct permanent marks which will discourage theft. For example, window curtains, cups and cutleries are commonly marked with logos of organizations which will make them distasteful to use outside those organizations. Another measure against theft of money on transit has been installing in the safes

chemicals which deface the money notes if broken into. Finally, formal surveillance by the police or employing private security personnel to patrol or guard properties is also a useful situational measure which deters potential offenders.

Social interventions in crime prevention

One of the most effective mechanisms of reducing crime rates in a society is provision of opportunities for honest and legitimate living to the citizens. According to Robert K. Merton, when the society fail to provide some individuals with opportunities to meet the desired goals such as accumulation of material wealth, attaining higher education and training, better housing, clothing, and food among others; crime will most likely arise as a consequence of this conflict between the goals and their attainment through legitimate means. Crime and deviance, therefore is high among the lower class because opportunities to meet the society's desired goals by legitimate means such as employment are fewer for them (Bohm and Halley, 1997). That there are individuals who commit crime as a means of survival due to poverty and unemployment must be a wakeup call to the governments to do everything possible to empower their citizens by creating gainful employment opportunities in both formal and informal sectors to diffuse huge economic inequalities currently experienced. When our youths are trained in various professions but are not guaranteed employment, as is the case in Kenya, then they only turn out to be educated criminals who are very difficult to deal with due to their knowledge and exposure.

The Kenyan government should for instance build decent and affordable houses for the poor to replace slums that host millions in urban centers. Soft loans should be offered to the small scale farmers and other people in the lower economic bracket to enable them start gainful businesses that will create wealth, and unnecessary restrictions to the legal business opportunities that the poor can operate must be removed. The poor must be offered free medical care and free education. The government must control prices of essential commodities because inflation and drastic increase in the cost of living only make the crime rate worse.

Similarly, taxes on essential commodities like food stuffs and fuel used by the lower class should be removed and the tax bracket level should be raised so that the low income earners are left out. Minimum wage for workers must also be raised among other social measures vital in curtailing high crime rates. The Kenya government should also buy land to settle the landless citizens of all ethnic groups to make them productive. In summary, the government must fight with vigor the chief evils of the world that the majority of Kenyans suffer from; malnutrition, diseases, illiteracy, slums and unemployment

which are the root causes of crime among the lower class who are the majority.

Eradication of corruption must also be taken seriously. The Kenya government should be ready to curb all forms of graft both in word and deed. Even though corruption is itself a crime, it is a major contributing factor to several property related crimes. For instance, it is corruption that has caused the huge economic disparity that is evident in our society, where a few dishonest people who have misappropriated state resources are extremely wealthy while the majority of Kenyans are destitute. Because of this, some people do not see anything wrong with earning a living through crime. Finally, education and training for those who are soft target for criminals such as children and women is also vital for crime prevention to inculcate social skills that will insulate them against criminals. For instance, the children must be taught to be wary of strangers as a measure against crime victimization.

CONFLICT OF INTERESTS

The author has not declared any conflict of interests.

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