

Reducing Recidivism in Africa and the South African Model: a Legal and Criminological Overview

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Abstract

Recidivism is seen to be the norm with African prisoners. Many factors present themselves as the reasons why a prisoner having gone through the justice system and convectional facility would want to re-offend in order to go back to the prison. Some countries like South Africa have involved measures to check this phenomenon with resounding success. This paper examines by way of an overview the South Africa model and outline causes and possible solutions to the problem of recidivism in Africa by Conclusion. The paper adopts the doctrinal approach whereby it analysis texts, regulations, statutes etc. and draws conclusions.

Keywords: *Recidivism, Prisoners, Prison, Regulations*

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Background to the Study

The concept of recidivism is derived from the Latin word “recidere” which is translated as “to fall back”, this is according to Barnett and Hagel (1977). It is clear that despite current public concern over career criminals, research proved that recidivism is not a new field and it dates back to Warner's 1923 study of the success or failure of parolees in Massachusetts. There is no consistent definition of recidivism as it is a very new field of criminology. Recidivism encompasses sexual reoffending, violent sexual reoffending and any general reoffending. Within the context of criminal justice, According to Maltz (1984) recidivism is defined as the reversion of an individual to criminal behaviour after he or she has been convicted of a prior crime, sentenced and corrected.

As in general Recidivism is accepted as a term meaning commission of a new offence by an individual known to be an offender, and particularly after having been sanctioned by the justice system. According to Blumstein and Larson (1971) is typically measured in terms of an action taken by the police, a prosecutor, or a juvenile or criminal court judge. Recidivism is most commonly the concept that is measured in terms of rear rests, referrals to court, reconvictions or re-confinement. While on the other, According to Evans(2007), Evans indicated that recidivism rate is calculated using the number of offender reoffending within three years of their release divided by the total number of offenders released. Therefore Recidivism refers to the return of an offender to criminal behaviour following conviction, diversion, or punishment.

Kohl, Hoover, McDonald & Solomon looked at recidivist and defined it as any inmates released in a given year who is incarcerated within three years of his/her release to the community for either new sentence or a technical violation. Maltz (1984) emphasized the definition of recidivism further as including the concepts such as arrest, reconviction, incarceration, parole violation, parole suspension, parole revocation, a new offence, absconding and probation.

The reasons that people reoffend vary. The degree to which any particular factor may cause someone to commit another crime is unclear, but the following list comprises seven general theories about why offenders return to criminal practice.

Causes of Recidivism in Africa

In regard to the PRISONER recidivism in Africa the following are taken to be the major causes as below;

1. Incurigibility

Proponents of this view suggest that offenders in Africa are beyond reform, and as such, most sanctions, particularly less onerous ones, will not deter them from future offending. Many politicians subscribe to this philosophy and campaign on justice plat- forms that are aimed to “get tough on crime.” They argue that offenders make a rational choice to commit crimes and will reoffend if they are not punished severely enough this is according to <https://study.com/academy/lesson/recidivism>.

2. Failure of the Sanction

Others believe that individuals will commit further crimes if their original punishment was inappropriate and did not act as a deterrent. Sentences may be too lenient and fail to make people recognize their wrongdoing. They may also be too harsh, which can cause offenders to

disassociate from societal norms and react criminally. Some sanctions may not be an appropriate match for the type of offense or offender, such as a long term of imprisonment for a first-time, minor offender instead of an alternative measure.

3. Failure of Support in Reintegration

Offenders, particularly those who have served lengthy sentences in prison, may have difficulty reaccelerating themselves upon release. With technological advances, shifts in public policy or ideals, political changes, and so on, the outside world may be significantly different from the one they previously knew. [Http://www.restorativejustice.org](http://www.restorativejustice.org) suggests that if offenders cannot adjust to the new norms of an ever-changing society, they may engage in illegal practices in an attempt to satisfy their needs. Recidivism then, is provoked not by the offender nor by the sentence imposed, but rather by the difficulties an individual has reintegrating into society, and the ineffectiveness of support mechanisms that are available to him or her.

4. Failure of Programs

A program, whether in a prison or as part of parole or probation, will only be effective if offenders participate in it fully. Without a commitment to the goals of the program, people may reoffend. For example, if an individual convicted of drinking and driving is sentenced to a 12-step program as a condition of parole, this program can only aid in reducing recidivism if he or she is a willing participant. Similarly, if a program is not effective in meeting the needs of offenders, then it may not prevent reoffending. Using the same example, if the same 12-step program is poorly run or is understaffed and underfunded, it may cause recidivism.

5. Peer Pressure and Other Social Provocations

Even if offenders are given appropriate sanctions, are willing to change their behaviour, and are active in a sound rehabilitative program, they may still return to criminal activity due to outside social influences such as peer pressure. For example, even if a young offender is placed in a drug rehabilitation program and wants to remain drug free, he or she may still reengage in drug use if pressured to by friends. In this case recidivism is directly related to social stimulus outside the control of the criminal justice system.

6. Economic Stress

A traditional goal of African culture is to obtain economic wealth and stability. Proponents of this perspective would suggest that people will use illegitimate means to attain goals when they are denied legitimate ways of achieving them. If offenders are unable to support themselves upon release, or if they feel pressured by their low socioeconomic status, they may reengage in illegal behaviour. As such, recidivism occurs, not as a consequence of a failed program rehabilitation program or because an individual does not recognize his or her wrong-doing, but because of the offender's failure to meet economic goals within a broader capitalist system.

7. Mental Health

Some believe that the mental health of an offender can be one of the most important predictors of recidivism. The mentally ill may not respond to any punishment, including imprisonment, rehabilitative programs, or any other measure taken in response to their crime. As such, their tendency to reoffend may continue until their mental health problems are addressed.

8. Inability to attain employment

Most of the prisoners in Africa are imprisoned without jobs and whenever they are released it becomes very hard for them to attain jobs and as a result they are left idle in the society moreover when they have nothing to use in terms of looking after themselves this makes them reoffend since they are left with no option apart from committing crimes.

9. Lack of Education

As in Africa, there are many illiterates who end up committing crimes. Criminals who are illiterates are more difficult to deal with as in rehabilitating them .therefore the lack of education also causes prisoner recidivism in Africa.

10. Lack of Support

This is also another cause of prisoner recidivism because the prisoners are not supported by their government and other people after serving their punishments and are not helped to fight against committing further crimes. As a result they are left causing recidivism in Africa

Solution or Recidivism Strategy/Institutional Framework for reducing recidivism

Due to the above analysis as in relation to the causes of prisoner recidivism in Africa, there are a number of solutions to the above in order to fight against crowding in prisons as a result of recidivism as discussed below.

1. Provision of prison based education

Prison based education programs focus on high school diploma education as well as college degree programs. In addition, vocational training may be offered. These education programs are designed to help inmates gain skills they can utilize when they are released into society.

According to <https://study.com/academy/lesson/recidivism>, the hope is that these skills will help the offender reintegrate into society and avoid additional criminal activities.

2. Restorative justice

According to <http://www.restorativejustice.org>, Restorative justice is a system of criminal rehabilitation that focuses on the damages caused to individuals and communities by criminal offenders. Its goal is to make offenders take responsibility for their actions. Advocates of restorative justice feel that incarceration does not teach offenders that their actions are morally wrong.

Their crimes are treated as violations of state laws and not wrongs against their peers and communities. The theory of restorative justice is built upon human morality. The victim of a crime plays a central role in the reconciliation of the offense which is usually accomplished through restorative dialogue and reparations.

3. Social re integration

Social integration refers to the process of integrating socially and psychologically into one's social environment. However, in the fields of crime prevention and criminal justice, where it is frequently used, the term refers more specifically to various forms of intervention and program targeting individuals to prevent them from becoming involved in criminal behaviour or, for those who are already in conflict with the law, to reduce the likelihood that they will reoffend. Social integration interventions are therefore attempts by various components of the justice system, in partnership with social agencies, NGOs, educational institutions, communities and the offenders' family, to support the successful social integration of individuals at risk of offending or reoffending.

4. Addressing risk factors

Preventing recidivism requires effective interventions based on an understanding of the factors that place offenders at risk and make it difficult for them to successfully reintegrate into society (e.g. early victimization, learning disabilities, substance abuse, unsupportive families, mental

and physical illness, and so on). Some risk factors are dynamic meaning that they are amenable to change whereas other risk factors are not. Dynamic risk factors can be addressed by programs within or outside the criminal justice system.

5. International standards (rehabilitation)

The rehabilitation of offenders and their successful reintegration into the community are among the basic objectives of criminal justice systems. This is clearly acknowledged in international human rights law as well as the United Nations standards and norms, 27 many of which are directly relevant to the rehabilitation and social reintegration of offenders. They include standards relating to interventions in prison, including education, vocational training and other programs, and the need to ensure that offenders maintain contact with the outside world; standards that apply to the early release of offenders from imprisonment; standards that call for the provision of assistance and support to offenders after their release; standards promoting community involvement in the reintegration process; as well as standards encouraging diversion and the use of community-based programs instead of incarceration.

The International Covenant on Civil and Political Rights²⁸ states that “the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation” (article 10, paragraph 3). The Standard Minimum Rules for the Treatment of Prisoners²⁹ provide:⁵⁸ The purpose and justification of a sentence of imprisonment or a similar measure derivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

6. Evaluating an offender's risk of reoffending

There are methods and instruments to evaluate the key factors that may have an impact on the likelihood that an offender will reoffend. These risk factors are defined as prior factors that increase the probability (risk) of reoffending and the potential danger an offender may thus represent for the victim and the community.

A number of tools have been developed and validated for different types of offender in order to proceed as systematically as possible to the identification of risk factors in individual offenders. Knowledge about risk factors associated with recidivism can be used to develop profiles of high-risk offenders (forensic profiles) to help practitioners and decision makers identify candidates for various forms of intervention. For example, a study of risk factors associated not only with recidivism, but also with severe recidivism, allowed researchers in the Netherlands to offer a forensic profile for young offenders. The profile identifies a number of factors grouped in seven categories: (a) family environment; (b) offence-related risk factors and substance use; (c) history of criminal behaviour; (d) psychological-cognitive factors; (e) psychopathy; (f) social behaviour and interpersonal relationships; and (g) behaviour during stay in an institution, when relevant.

7. Probation

Probation is a program to ensure that inmates are provided with the necessary services in order to ensure that they do not revert to their criminality and thus contributes to recidivism. According to Callison probation may be the most commonly recognized form of community-based corrections. Reid argues that the goal of probation is achieved through the counseling, guidance, assistance, surveillance and restraint of offenders to enable their reintegration into

society as law-abiding and productive members. Clear and Cole define probation as designed to maintain control and to assist offenders while permitting them to live in the community under supervision.

According to Carney probation's destiny is to be the right hand in the administration of justice, refinement of its operation and greater sophistication in its implementation will have to occur, however, according to Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders probation as a criminal justice concept is wholly consistent with the modern community-based trend in corrections.

8. Parole

Parole is a form of release from incarceration, (where the offender is released to home, with the aim of ensuring that when he is in the community, there are no signs of reverting back to criminality with the primary intention to ensure that they do not commit any conduct that will violate the parole conditions). Selection for parole release is discretionary. According to Carter, Glaser & Wilkens, (1984), the authority to release rests with an administrative agency in the executive branch, parole release involves the control or supervision of those released and release is conditional and the parole authority retains power to revoke liberty. Then after the offender has been released into the community with conditions set by the Parole Board, it means that it is not the means to an end, but supervision process will take place to ensure that he/she is not going to commit crime any time soon. Some offenders that are on parole continue to violate parole conditions and thus be rearrested which amounts to recidivism.

9. Re-Entry

Re-entry programs are typically divided into three phases: programs that prepare offenders to re-enter society while they are in prison, programs that connect ex-offenders with services immediately after they are released from prison and programs that provide long-term support and supervision for ex-offenders as they settle into communities permanently (James, 2014).

Miller and Drake although they indicate that there is no answer, a growing body of evidence shows that providing offenders with education and training increases their employment opportunities, addressing their cognitive deficits and helps to reduce their likelihood of recidivating and therefore, in order for education service to be effective, a strong program infrastructure is needed.

South African Model

1. White Paper on Corrections in South Africa.

The White Paper on Corrections in South Africa (2005) arose out of a need for a long-term strategic policy and operational framework that recognizes correctional activities in prisons as all-inclusive societal responsibility. According to the White Paper, the purpose of the correctional system in South Africa is not punishment but protection of the public, promotion of social responsibility and the enhancing of human development in order to prevent recidivism or the return to crime. The White Paper provides a vision for viewing correction as a social responsibility, the White Paper acknowledges the need for offenders to also be restored as they might have been victimized before.

The White Paper clearly indicates that the vast majority of South African offenders originate from communities and families that are plagued by poverty, hunger, unemployment, crime, a distorted value system and absent of figures of authority and care.

Rehabilitation initiatives are premised on basic human rights as enshrined in the Constitution, Act 108 of 1996, needs driven approaches to rehabilitation and aftercare of offenders where the community plays a significant role is more forward in terms of government approach (White Paper on Corrections, 2005).

The draft White Paper states that rehabilitation refers to the following:

- a. Correcting correctional clients to promote human development and social responsibility.
- b. Ensuring that offenders internalize the impact that their actions have had on their victims and on society as a whole separating the offender from the offending behavior; Changing criminal attitudes, behaviour and social circumstance that promote criminality.
- c. Promoting positive social values and responsibility;
- d. Preventing on a holistic, multi-disciplinary approach pertaining to the rehabilitation of offenders, Addressing offenders and the causes of criminal behaviour, Empowering offenders through life and other skills, Conducting needs and risk assessment of offenders; Ensuring social reintegration of offenders back into their communities by focusing on after care services.

The White Paper (2005) indicates that success in rehabilitation also acknowledges that there is no reliable data in South Africa on recidivism; success in the following areas could be a good indicator of the effectiveness of both internal departmental programs and societal initiatives.

- a. Reduction of repeat offending
- b. Effectiveness of released offenders to society
- c. Reduction of new offending as societal institutions begin to play their part and reduction or elimination of criminal offending within correctional centers.

2. Correctional Services Act 111 of 1998

Section Correctional service Act 111 of 1998 states that, the purpose of imprisonment; after having due regard that the deprivation of liberty serves the purposes of punishment, is to enable the sentenced prisoner to lead a socially responsible and crime-free life in future. The Act sets out three objectives, namely, to enforce the sentences imposed by the courts, to detain all inmates in safe custody whilst ensuring their human dignity and to promote the social responsibility and human development of all inmates and persons subjects to community corrections. One of the DCS's main objectives is to provide prisoners with the opportunity to develop and grow into individuals who can positively contribute to conventional society (Burger, 2004:19). The Correctional Services Act of 1998 as amended indicates the following:

A sentenced offender must be prepared for placement, release and reintegration into society by participating in a pre-release program.

Where a sentenced offender is to be placed under correctional supervision or to be released on parole, there must be compliance with section 55(3) of the Act.

At release, sentenced offenders must be provided with material and financial support as prescribed by the regulation.

The Act indicates that there is no uniform generic development program for offenders and that there cannot be one program designed for one offender that would fit all prisoners due to the fact that offenders have committed different types of crimes and they need to be grouped according to the crimes they have committed for the purpose of rehabilitation programs.

In terms of section 41 of the Act, the department of correctional service is under the obligation to provide access to a full range of programs and activities as is practicable in order to meet the educational and training needs of sentenced offenders. One of the conditions that may be set is the rendering of community services as specified in section 60 of the Correctional Service Act 111 of 1998 as amended:

Where a condition of community service is set as part of community corrections, it must stipulate the number of hours which the person is required to serve, which shall not be less than 16 hours per month, unless the court otherwise directed.

- (a) The court, Correctional Supervision and Parole Board or other body which has the authority to impose community service may specify where such community service is to be done.
- (b) Such an order may not be changed without the matter being referred back to the court, board or other body which set the condition unless it provides that the order may be changed by a Supervision Committee.
- (c) If such court, Board or other body does not specify where such community service should be performed, the Supervision Committee must specify the place.

In terms of the Department of Correctional Services Act, the Correctional Supervision and Parole Boards are responsible for making the following decisions:

The placement of offenders on day parole, parole or correctional supervision; the placement of offenders on medical parole.

The release of offenders upon expiry date of their full sentences

The approval of the monitoring phases and conditions of supervision; and

The amendment of conditions or the revocation of an offender's placement on day parole, parole, medical parole, or correctional supervision, depending on the seriousness of the violation.

Section 64 of the Correctional Services Act 111 of 1998, as amended, stipulates the following: The court, Correctional Supervision and Parole Board or the other body which has the authority to impose treatment, development and support programs in terms of section 52(1)(f) may specify what programs the person subjected to community corrections must follow.

Only the court, Board or other body which sets the condition may change it, unless the condition itself provides that it may be changed by a Supervision Committee.

If such court, Board or other Body does not specify what programs the person subjected to community corrections should follow, the Supervision Committee must specify such programs.

The person concerned must attend such programs and stay in attendance for the duration of each individual session of the entire program, unless leave of absence from a session is granted by the National Commissioner.

The legislation will stipulate that diversion programs aim to achieve certain objectives. Most recent draft of the tabled Bill includes these objectives:

- a. Foster accountability in the child for the harm caused by the offence
- b. Meet the needs of the individual child
- c. Promote reintegration of the child into his or her family and community
- d. Promote reconciliation between the child and the person and/or community affected by the harm caused
- e. Preventing stigmatization of the child
- f. Prevent adverse consequences that may flow from the child being subjected to the criminal justice system and prevent the child from having a criminal record
- g. Reduce recidivism

3. National Crime Prevention Strategy (NCPS) (1996)

The National Crime Prevention Strategy (1996) aims to prevent crime through a strategy whereby a four-pillar approach is used. The National Crime Prevention Strategy is acknowledged that the high crime rate poses a threat to the democracy of South Africa. Schoeman (2012) indicates that crime prevention and management strategies utilized in South Africa does not recognize and address the role that recidivism plays as contributing factor towards the high crime rate.

There are four pillars that represent the areas on which crime prevention and rehabilitation should be focused on (Howes, 1996:37). According to South Africa, the following are the role players that should participate in the crime prevention and rehabilitation process:

Department of Correctional Services (DCS)

Social Welfare

Law Enforcement agencies

The Judicial System; and socializing agencies that are responsible for the teaching of values and norms such as families as well as community members.

In terms of the NCPS, diversion is a viable way of dealing with young offenders for the following reasons:

1. Justice procedures are costly and do not necessarily address the root causes of offending behaviour.
2. Many arrested children are first time offenders and do not necessarily pose a threat to society. Often youth offences are of a less serious nature which does not warrant formal prosecution and/or institutionalization.
3. Contact with the criminal justice system could harm the young person through, for example, awaiting trial in police custody and subsequent stigmatization.
4. Encourage the child to take responsibility for his or her action.

5. Address the specific needs of the individual child.
6. Promote the reintegration of the child into his/her family and community.
7. Encourage the victims of offences to participate in the diversion process.
8. Allow for reparation or restitution to the victim.
9. Promote reconciliation between the offender and the victim.
10. Save the child from being labeled as a result of being subjected to the justice system.
11. x Save the child from getting a criminal record.

According to the Child Justice Alliance (2015), the following methods may be employed to divert young offenders away from the formal justice system:

Order related to good behaviour, school attendance, spending time with family, reporting regularly to a specified person or association with peers that can contribute to the youth's positive behaviour.

An oral or written apology to the victim or victims of the offence.
Formal cautioning with or without conditions.

Compulsory attendance at a school or vocational skills training facility.

Referral to counseling or therapy services. .

Conclusion

It is clear that there is no consensus on the concept of recidivism across the world and in Africa in particular. The comparison of the conceptual factors seems to be confusing as compared from country to country. The high level of crime does require thorough conceptualization of recidivism. Recidivism is synonymously used as reoffending which refers to repetitive offending in the form of re-arrest and reconviction.

Factors such as gender, age, race, and levels of education and socioeconomic situation of the offender do encourage people to recidivate; until these factors are addressed, recidivism will keep on occurring. However, there is a need for research in order to continue determining the causes of recidivism in order to reduce the high rate of recidivism. Africa, compared to other continents, does not have a central database to capture the recidivism rate which should play a role in the development of policies on crime prevention and rehabilitation programs. Africa's lack of adequate programs encourages recidivism and thus results in overcrowding. The challenge remains that those that committed crime should be sentenced for a long time but more importantly while incarcerated be properly managed. The problem is that crime in Africa is considered normal and unavoidable; as a result more efforts have to be applied in order to deal with the scourge associated with prisoner recidivism in Africa.

References

- Ackerley, E., Soothill, K. & Frances, B. (1998). *When do sex offenders stop offending?* Research Bulletin.
- Carney, L. P. (1977). *Probation and parole: legal and social dimension*. California: McGraw-Hill.
- Callison, H.G. (1983). *Introduction to community based corrections: series in criminology and criminal justice*. California: McGraw-Hill.
- Barnett, R. & Hagel, J. (1977). *Assessing the criminal: restitution, retribution and the legal process*. Massachusetts: Ballinger Publishing Group.
- Blumstein, A., & Larson, R.C. (1971). *Problems in modeling and measuring recidivism*. Massachusetts: Ballinger Publishing Group.
- Broadhurst, R. (2000). *Criminal careers, sex offending and dangerous*. London: Routledge.
- Broadhurst, R.G. & Maller, R.A. (1991). *Sex offending and recidivism*. Perth: University of Western Australian Crime Research Centre.
- Introductory Handbook on the prevention of recidivism and the social reintegration of offenders. *Journal of Research in Crime and Delinquency*, 9, 22-29.
- <http://www.restorativejustice.org>. 14 10 2017
- <https://study.com/academy/lesson/recidivism.PDF> 14 10 2017
- <http://www.cjcj.org/pdf/bazemore.PDF> 11 10 2017