

The Forgotten Victims of our Correction System: The Case of Children of imprisoned parents in Kenya

Daniel Mutunga, PhD, Daystar University, Kenya

Abstract

Imprisonment has been used as a means of punishment and correction since the 18th Century. Different professionals have discussed the role of imprisonment as punishment and how it has reduced crime and rehabilitated offenders, but criminologists have paid little attention to the effects of imprisonment on the children of imprisoned parents despite their magnitude. These children, whose number and condition are not well known, are referred to as “the forgotten victims of the system of punishment”. The purpose of this paper is to discuss the plight of these millions of children. Using Kenya as an example, the paper assessed the effects of imprisonment of parent offenders on the life of their children, and the readiness of the justice system and child welfare agencies to protect them. The data for this paper was collected from three government departments and an ex-prisoner, and was supplemented by secondary data from a review of relevant literature relevant. The study found that imprisonment of parents deprived children of their primary caregiver and had social, economic and psychological effects on them. The study affirmed other studies that suggested that the number and status of these children is not known and that government departments responsible for the welfare of children intervene only when the courts involve them. It further established that the departments lacked policy and capacity to attend to the plight of these children and policies to guide any needed intervention. The study recommended that, since it is hard to reconcile the punishment of offenders and the welfare of their children, legislation should be reviewed to make provision for the care of these children. There is a great need for collaborative efforts by different child welfare agencies to address gaps in services provided to prisoners’ children and for more research to expose the plight of parent offenders’ children.

Key Words: imprisonment, offender, justice system, Child welfare

Introduction and Background

The family is a universal social institution that is constituted of persons joined to each other by kin relationship, and in which the adult members have the responsibility of caring for the children (Parke & Clarke-Stewart, 2001). As the backbone of society, it is charged with various responsibilities that include reproduction for the perpetuation of human race, and provision of basic needs to its members to ensure their sustenance and security (NCPFCE, n.d.). The family also provides love and affection to create a suitable environment for personality development of children, without which children would be socially and mentally mal-functional. Parke and Clarke-Stewart (2014) noted that the family remains an important institution in the life of the individual.

As the primary socialization agent, the family is mandated to guide individuals to become cultural and social beings who can fit in their society. It provides the initial human behaviour patterns in an orientation and interpersonal relationship so that its members, especially to children, can acquire self-respect and social status. Individuals define themselves in relation to the family they belong to and this sense of belonging plays an important role in terms of assuming various roles within the family. In this sense, most of the prescribed statuses of a person are directly related to the family to which he or she belongs. For example, age, ethnicity, nationality, social class and religion are conferred to an individual because he or she was born into a particular family. It can therefore be said that people are what they are mainly because of the family they grew up in.

Children have a right to be raised in a family and to have access to quality health care, good nutrition, education, play and protection from all forms of harm,

abuse and discrimination. They have a right to grow up in an environment that enables them to attain their full potential in life (Laws of Kenya, Cap 141). It is widely known that the growth of children is greatly influenced by the social environment in which they grow up in; that is, by parents, peers and the critical life experiences.

The social context in which children live provides an opportunity for them to interact with others. This enables them to develop a strong emotional attachment to those who care for them, and this natural process promotes children's motivation to stay close to those who care for them and it helps them to develop a sense of security, affirmation and warmth. The development of a sense of security in these attachments is dependent on how the caregivers relate to the children. Children become securely attached to parents if the parents respond to them in a way that reinforces their confidence and provides the assurance that the parents will provide support when needed (eclkc.ohs.acf.hhs.gov/hslc/tta.../family/docs/rtp-series-families-as-lifelong-educators). The affirmation that someone cares and is there for them gives them confidence and courage to explore and interact with their environment. However, this favourable environment may be interrupted by factors that take away parents from their children for example death, divorce and imprisonment.

The imprisonment of a parent, which is our focus here, takes away an important figure in the life of children and this is said to cause untold suffering in their life. Parental care is central in the development of a child both mentally and psychologically. Parental care also provides security and helps in building confidence in the child (Robertson, 2007). Children are an important part of a community and exposing them to suffering jeopardises their future. Identifying the conditions in which the children of imprisoned parents live in can attract the attention of the rest of

the society and make it think of the necessary intervention. This study therefore focuses on the effect of parental imprisonment on children. It is organised into four sections: literature review on effects of parents' imprisonment on children; the methods used to collect data; the study findings; and the conclusion and recommendations.

Effects of Parent Imprisonment on Their Children

Crime rate in many countries has increased in the recent past and hence it is expected that the number of people being sent to prison is also on the increase leading to an unprecedented number of children experiencing parental imprisonment. Murray and Farrington (2008) record that, an inmates' survey conducted every five years in the USA shows that in 1999 there were 1.5 million children of imprisoned parents. In the same year, the number of children with a mother in prison nearly doubled. Another study done in England and Wales in 1991 showed that 32% male and 42% female prisoners had dependent children living with them before they were imprisoned. In 2006, Murray and Farrington estimated that in both England and Wales there were 88,000 children under 18 years with a parent in prison. They further stated that they did not have any evidence-based statistics on children of imprisoned parents in the USA even though they estimated that between 125,000 and 150,000 children experienced parental imprisonment every year. In 2007 they estimated that close to 130,000 children under age 18 experienced parental imprisonment each year in England and Wales (Robertson, 2007).

At the time of this study, the researcher was not aware of any up-to-date estimate of children with parents in prison in Kenya, but as indicated above, where studies on this topic have been done, they confirm that the number of imprisoned

children is very high. Murray and Farrington (2008) observed that in the USA, England and other areas where an attempt has been made to investigate the matter, the number of children with imprisoned parents is high. Given that many of these studies are estimates, research to expose the affected population and/or to discuss the effects of the imprisonment of parents on children is necessary.

Judicial systems focus on the offender only and this makes those around the offender to be forgotten or neglected right from the point of arrest to after the offenders are released. For example, the police may not consider the trauma children are likely to suffer from a night arrest of their parent and very often judges may not consider the caring responsibilities of a parent and give them a noncustodial sentence. Simmons (2000) argues that due to this invisibility in most jurisdictions and child welfare systems, no meaningful intervention can be done. Robertson (2007) argues that if the children are considered during the court process, many of the negative effects of parental imprisonment can be avoided. This is because the parents' absence has adverse social, economic and psychological effects on the life of a child. However, as the American Bar Association (ABA) has established, even though legal policies and procedures on how children of arrestees should be treated may not exist, arresting officers have a responsibility to ensure the safety of these children (Simmons, 2000). They can consider calling the Child Welfare Agencies take the child to a place of care and safety

According to Simmons (2000), separation of children from their parents by imprisonment can and does affect children in various ways and hence every effort should be made to maintain a meaningful relationship between them and their imprisoned parents through visits, and where possible telephone interactions. Allowing and maintaining contact enables the parent to continue to participate in the

development and general well-being and self-esteem of their children. Simmons, however, noted that this is not always possible because of distance to the prison, rigid prison rules and regulations on visits, limited visiting time and expensive telephone contacts. These conditions drastically reduce the chances of the children maintaining contact with their parents and as a result they become very vulnerable. They are exposed to different forms of risks because in some cases, and depending on the caregiver, children are not told the truth about the absence of their parents. They are therefore likely to develop fear that their parent is dead or to have all manner of imaginations concerning the absence of their parent. It is, therefore, important to look at the effect of this separation in detail to understand its extent.

Murray and Farrington (2008) viewed that children of imprisoned parents were isolated and hence neglected in various ways. They were overlooked as a group with its own rights even before thinking of them as a special needs group. Scharff-Smith and Gampell (2011) observed that there is no government institution legally charged with the responsibility of taking care of such children despite many countries being signatories to the UN Committee on the rights of the Child. Scharff-Smith and Gampell (2011, p. 18) further argued that even though the United Kingdom (UK) recognises the children of prisoners as a vulnerable group, it does not recognise them as children in need or as a group that needs attention. As a result, children of prisoners are not ranked high in the priority list of vulnerable children and are not “likely to receive support or protection as required by the child-welfare legislation”. According to Scharff-Smith and Gampell (2011), literature has raised concern on the services provided to this category of children by the government and the fragmented and un-coordinated nature of the social, education, health and judicial services

provided by government departments. Thus, the services necessary for addressing the needs of these children are basically unavailable.

Robertson (2007) and Scharff-Smith and Gampell (2011) raised concern that very little research has been done to expose the situation of the children of imprisoned parents. Even though there has been calls and recommendations for research on how imprisonment of parents affects children and how these effects can be addressed, there has not been much response thus denying the children an opportunity to tell their own stories to the world in order to allow for the formulation of policy and programmes that address their needs. Robertson (2007) concurred on this and says there is no agency or department with accurate information on the number, whereabouts and the condition of these children. This neglect of the child from the point of arrest of the parent to trial, imprisonment and release has made their rights, needs and best interest be overlooked and neglected by both society and its institutions.

The imprisonment of a parent greatly disrupts children's care, family ties and the financial support initially provided by the parent (Simmons, 2000). Change in caregiving can cause emotional stress because it may involve moving school, moving house and may mean placement with multiple caregivers. The disruption may even be worse when children are separated from the natural family and taken to a fostered or adopted care. The situation worsens if children have to take the responsibility of caring of their siblings and other house chores, a move that exerts pressure on them (Murray & Farrington, 2008).

Imprisonment of a mother is very disruptive to the children for they are likely to be taken to a foster care, have a step mother since the father may remarry or have a succession of caregivers and may never be reunited with the mother when she is out

of prison. The situation also puts more strain on the extended family networks than the imprisonment a father. It makes grandparents and siblings to take up carer responsibilities with the former finding it a big challenge because of age, lack of income and inability to cope with problems associated with generational gap (Murray & Farrington, 2005).

Murray and Farrington (2005) found that the imprisonment of parents has economic effects on the family. While the criminal justice systems aims at punishing the offender, its effect is an economic punishment to the family especially the children. It destabilises the family and puts the children at the risk of poverty or enhances the pre-existing situation of poverty. It is argued that in some cases the imprisonment of parents amounts to punishing poverty since most of them tend to have experienced poverty before imprisonment (Mumola 2000; Robertson, 2007). It puts pressure on the expenditure of the family. For example, a family may do away with family holidays, reduce the number of visits to prison for children to see their parents, force the carer to look for employments or change employment in order to provide the needed care, and this reduces the amount of attention given to the children. This disruption of the family setup may force carers to do things they would not have liked to do thus causing much stress to a point of not providing the required support to the children despite their willingness.

Removal of a parent figure from the life a child may change or lead to a breakdown of parent/child relationship (Robertson, 2007). For example, imprisonment disrupts harmony that may not be easy to restore even after the parent is released from prison because it deprives the child of the opportunity for emotional and social bonding and this is worse if the child does not get an opportunity to have contacts with the parent while in prison. Research has shown that the number of

children with an opportunity to visit their parents in prison has remained low. Scharff-Smith and Gampell's (2011) study established that two-thirds of imprisoned fathers in the USA had never received a visit from their children. They further reported that in a study done in the UK, 29% and 42% of imprisoned men and women, respectively, had challenges having contact with family and friends. This demonstrates how parents' imprisonment may disrupt parent-child relationship if no contact is maintained during the separation. Robertson (2007) commenting on the same argued that imprisonment of a parent impoverishes the family especially the children and its effects can be felt by future generations. Long period of separation between parents and their children without contact may make the children relate to their parent as a stranger after the imprisonment. Also, having been in prison for a long period of time, on release the parents come home to a new environment and operations to which they may not fit in. The interruption of parent-child relationship caused by imprisonment makes the released parents become intruders in the life of the children because the children had learned to live without the parents. The children may easily resist the parents' authority. Such a reaction adds pressure on the child-parent relationship and further stresses the parent and strains the relationship even the more. It is notable that very young children have the highest risk of relationship disruption when their mothers are incarcerated and the carers are not able to provide material and emotional support (Scharff-Smith & Gampell, 2011).

Concerning the health of children of imprisoned parents, Scharff-Smith and Gampell, (2011, p. 27) claimed that "children are traumatised by a parent's arrest, imprisonment and release with the severity of the damage increasing if the child experiences frequent arrests and separation". They further argued that separation deprives children of the emotional and psychological resource which may

compromise growth and development. The common child reactions to this loss include sadness, confusion, fear and developmental regression. Other behaviours that result from separation according to Scharff-Smith and Gampell (2011) include attachment disorders, drug and alcohol addiction, delinquency and poor academic performance. The physical and mental health manifestation of these effects include truancy, running away from home, poor performance in school and self-blame guilt. In some cases the psychological problems may be worse especially when children may feel guilty or blame themselves for the arrest of their parent. This self-blame may come about in a situation of poverty where the children may think the parent stole to support them and hence the reason for self-blame (Robertson, 2007).

Studies indicate that prisoners' children have a higher probability of suffering mental health and other health conditions than other children. They show that about 30% of children of imprisoned parents experience mental health problems compared to 10% of the rest of the population (Murray & Farrington, 2008). Witnessing the parent being arrested, and especially where force and violence is used, is painful and causes untold fear in the child. Studies associate children witnessing of the arrest of a parent to elevated symptoms of stress later in life. They are said to have a high risk of suffering mental ill health like anxiety and depression which may interfere with their growth and development and which may translate to anti-social behaviour and involvement in crime later in life and in future generation.

Children awareness of parents' imprisonment has remained a debatable issue. In many cases caregivers underrate children and assume they are too young to experience the absence of their parents. Other times they are lied to because of fear that letting them know the truth may have affect them negatively. However, telling them the truth helps them to know where their parents are and that they are secure. If

they discover that they were lied to, they may distrust and lose confidence in their caregivers. Again, some families may not openly discuss a parent's imprisonment for fear of the social stigma associated with imprisonment (Scharff-Smith & Gampell, 2011). However, studies suggested that children have problems relating with their care givers when information about their parents' incarceration is concealed, distorted or presented in a way that can make them panic. They are better helped if the parent's absence is repeatedly explained to them and they are helped to share the grief with the rest of the family. This helps children cope with the situation and tap to the support available in their environment with ease.

Methodology

This was a preliminary study that aimed to lay the foundation for more elaborate research later, on the effects of parents' imprisonment on children. The study chose a descriptive design because such a design presents the situation as it is. The choice was guided by the question the study focused on: what are the effects of parent imprisonment on their children? Being a preliminary study, exploratory in nature, data was collected from three government departments: National Police Service, Probation and Children departments and from one ex-prisoner parent. All the respondents were purposively sampled since they were deemed to have the information relevant to the study. The respondents were two police officers, two probation officers, one children officer, and an ex-prisoner parent. The six respondents were interviewed to establish what happens to children when their parent is arrested and finally confined in prison. The qualitative data collected was analysed by forming themes emerging from the responses given during interviews.

Findings and Discussion

Imprisonment of Offender Parents

Interviews were carried out with the National Police service, Probation and Children Departments to establish their responsibility over children of arrested/imprisoned parents.

Interviews with the police department showed that their focus is mainly the offender and not those around him/her. A probation officer narrated a case where a mother was arrested and finally imprisoned. Her children were taken to the Children's Department and through the Children's Court were committed to an institution. This meant that they were removed from the extended family and community members to a new environment. On release, the mother had a difficult time getting them revert to her custody even when she was able to provide for them. In such a situation the mother and child suffer emotionally because of this forced separation. In a situation like this, the children can feel like they are the ones imprisoned and may not understand why they cannot be home with their mother. Another Probation Officer explained how a mother was imprisoned and her children brought to the Children Department then committed to a rescue centre. One of them, a 17-year old boy, went to live with an aunt for a while and later disappeared and up to the time of the interview, no one knew where he was.

The interview further revealed that some children drop out of school, others run away from home or in some very few cases they are taken by institutions when their parents are arrested or imprisoned. Cases in Kenya courts sometimes take a long time to be determined with the offender in remand prison. When the case is finally determined, even if the offender is released, the children will have suffered a lot and

in some cases irreparable damage. The probation officers interviewed quoted a number of cases where children dropped out of school, and this concurs with what Robertson's (2007, p. 9) report that children of imprisoned parents can react to the separation in various ways including decline in performance or in class attendance.

The ex-prisoner who participated in this study was chosen through the probation department. She explained how after she was imprisoned her daughter had to be moved from a Boarding School to a Day School because her relatives could not afford the fees. She further reported that the daughter declined the offer by the relatives to visit her in prison. During the interview she did not explain why her daughter did not want to visit her, but is noteworthy that she confessed that she also did not want the daughter to visit. Robertson (2007, p. 9) said that arrest or imprisonment of a parent provokes strong reactions in children that may include anger, sadness, fear and stigma among others. The girl in question may have been angry with a system that took her mother away from her; a separation that destabilized her in school and made her performance in class decline. Similarly, the mother may have been so disappointed either with herself or with the system that she did not want to have her daughter to visit and see her suffer in prison.

Studies on children of imprisoned parents show that children react differently to the absence of their parents. Robertson (2007, p. 9) reported that children's reaction to the imprisonment of their parents will "vary greatly" depending on a number of factors. These may range from the support they get from their carers to their age. Murray and Farrington (2008) commenting on the same said that imprisonment of a parent may lead to a child's poor performance in school. The respondent further opined that her absence affected her daughter so much that the girl cried frequently,

lacked sleep and had poor appetite most of the time. This had health effects, but the mother was glad that her daughter's behaviour did not change to be negative.

Readiness of Government Institutions to Protect Children of Prisoners

The findings of this study indicated that police officers had no policy to guide when they arrested an offender who was the guardian of children, and police officers used their discretion as to what to do in such a situation. This can easily put them in a valley of indecision since their focus was the offender. Robertson (2007, p. 7) reporting on the same said that "the focus on the offender means that the people around them are regularly ignored from arrest to post-release". Thus, it is the offender who matters and anyone else is irrelevant. In the event the police choose to arrest the offender, there is no provision at the police station to indicate whether the arrestee had custody of children. The case of children can only arise if the offender brings it up in court during trial, and yet the trial might not follow immediately.

The study further found that none of the departments interviewed, even the Children Department which is mandated by the constitution to safeguard the rights of the child (Laws of Kenya, Cap 141), is mandated to attend to the children of imprisoned parents. The study established that the departments only got involved only when another agency (government or private) or individuals drew their attention to such cases. For example, if a matter comes before a court and the offender brings up the issue of his or her children, the court may request for a Children or Probation Officer's report to guide it in the determination of the case.

Interviews with respondents from the three departments showed that none of them had information on the number of children whose parents were imprisoned. The study established that there was no provision or system in the departments for

capturing this information since other than the police department, the other two did not come into contact with the offender in their line of duty unless when invited to do so by the courts. This ties with what other studies carried out in other regions of the world have shown. Murray and Farrington (2008, p. 138) observed that, “The proportion of children who experience parental imprisonment at some stage between their birth and their eighteenth birthday is unknown”. The absence of a government institution with responsibility over the children of imprisoned parents explains why their number is not known and why there are no services for them.

Further interviews with the departments showed that the Children’s Department is the best placed to deal with children of imprisoned parents since it is the one mandated to implement the Children’s Act that safeguards the welfare of the child. However, the study established that the department only steps in when the plight of the children has been brought to its attention by the community, and that the department is gravely incapacitated to reach out to the many vulnerable children in the country including those of prisoners.

Probation officers are also unable to attend to all the cases of children of imprisoned parents referred to them by the courts due to lack of capacity. Instead they invite relatives of the offender to come to their offices to provide the information needed by court reports, but such interviews in the offices may not capture everything about the children since and thus, this compromises the rights and interests of the child. Once again it is clear that the department responds only when the court requires a report.

Conclusion and Recommendations

Based on the findings of this study, the following conclusions can be made:

First, it is hard to reconcile the punishment of an offender and the caring of their dependent children. Even though crime must be dealt with, it becomes difficult when correction methods used negatively affect other family members, such as, children.

"Second, a big number of offenders are poor and the society ends up putting poverty on trial thus aggravating poverty. In many cases, arresting or imprisoning an offender has adverse effects on their children. Most of the children become delinquent, fall sick, play truancy or end up in poverty."

Third, there is no government institution responsible for the welfare of children whose parents are incarcerated. This makes the children who are left alone or in the hands of relatives or community vulnerable for they can easily be mistreated or neglected.

Police officers, who are the first to come into contact with these children, have no systems in place to ensure the safety of the children when the parent must be arrested. The children only come into the picture if the parent (mainly in mitigation) mentions them during trial.

Based on the foregoing, this study makes the following recommendations:

- There is need to review legislation to take care of children of imprisoned parents;
- The government needs to review its methods of correcting offenders to ensure its dependants particularly children are not made vulnerable;
- There is need for collaboration between government institutions and Child Welfare Agencies in addressing the needs of children of prisoners;
- More resources need to be availed to address the needs of children of imprisoned parents;

- There is need for a more comprehensive research on the effects of parental imprisonment on children.

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