

Living with a Death Sentence in Kenya: Prisoners' Experiences of Crime, Punishment & Death Row

Introduction

In Kenya, approximately 600 people are currently on death row. To learn more about their backgrounds and experiences, The Death Penalty Project in partnership with the Kenyan National Commission on Human Rights commissioned Professor Carolyn Hoyle and Lucrezia Rizzelli at the University of Oxford, to conduct research - the first of its kind undertaken in Kenya - to determine who is being subjected to the harshest punishments and learn details of their experiences of the justice process.

To date, research conducted globally on this matter has shown it is consistently the poorest and most marginalised who are disproportionately sentenced to death.

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Living With a Death Sentence in Kenya: Prisoners' Experiences of Crime, Punishment and Death Row

Carolyn Hoyle and Lucrezia Rizzelli



In Partnership with:



Author's affiliation:



How was the research carried out?

The research is based on structured interviews conducted by the Kenya National Commission on Human Rights with a statistically significant sample of 671 death row prisoners, just over a quarter of the total sample have had their sentences commuted to life. The large sample, covers the whole country and is representative of all prisoners sentenced to death in Kenya.

A sample of 671 individuals on death row:

95%
Men



44%
sentenced
for murder



5% Women

56% sentenced
for robbery
with violence

During interviews with prisoners we sought information on:

- Their lives at the time they committed their offences, their socio-economic status and any vulnerabilities and disadvantages;
- Pathways to, and motivations for, offending including why they were not deterred by harsh punishments;
- Experiences of the criminal justice process and of imprisonment.

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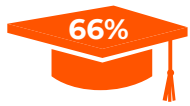


Foreign, Commonwealth & Development Office



Socio-economic, demographic & welfare profile of prisoners

The findings show that those on death row in Kenya are an overwhelmingly disadvantaged, vulnerable, poorly educated group, many of whom have experienced substance abuse and mental health issues.



66% have only completed primary school education
10% have never been in any sort of formal education

Most of the sample was not in permanent full-time employment, and many were in precarious work at the time of their offence. The vast majority (79%) were in 'routine' or 'semi-routine' jobs. They earned on average just over 20,000 Kenyan Shillings (about £133) a month, below Kenya's minimum wage.

Nearly all prisoners (89%) were responsible for the financial support of children and family members, and many were struggling with debt.

At the time of their offence:



89% Were responsible for dependents

More than a third were in debt



10%

Only 1 in 10 were in permanent full-time employment

Almost half (43%) said that they had been relying on alcohol and almost a third had a history of alcohol or substance misuse, higher rates than the national average.

15% reported that they had been experiencing mental health problems, higher than the national average.

In addition to evidencing prisoners' precarious backgrounds the study also reveals that rather than being hardened criminals, the majority of people on death row in Kenya had no prior convictions before their death sentence.

Only 11% of the prisoners had a prior conviction



Prisoners' decisions to offend

The findings reveal that financial gain was the main motivation for those sentenced to death for the crime of robbery with violence.



72% of those convicted of robbery with violence were motivated by money

In the case of murder, only a small minority did so for financial gain; most offended in a state of heightened emotion (sadness, anger, or fear).

Why were prisoners not deterred by harsh punishments?

The study shows that not only were participants not deterred, but they could not have been so as they had neither the knowledge nor concerns about the risks, and most had not acted rationally.



95% of those convicted of robbery, and 86% of those convicted of murder, did not know that they could be punished by death

85% of prisoners had thought that it was unlikely that they would be arrested, and 89% thought it was unlikely that they would be imprisoned



Experiences of the justice system and incarceration

Interviews suggest that many prisoners on death row have been denied basic rights and the due process that should be provided to all criminal suspects and defendants.

Pre-trial:



53% were not given the right to communicate with a lawyer

50% felt compelled to make a confession or to give evidence that could be used against them



49% were not afforded the right to remain silent

Interrogation:



Almost 50% experienced psychological or physical abuse

23% were denied medical attention



Trial:



43% did not understand what was happening in court

27% were denied an interpreter at trial



24% were denied legal assistance at trial

Incarceration:

The psychological impact of being sentenced to death is severe. A lack of socialisation, mental stimulation and little access to medical care and good nutrition can have a devastating impact and fear of execution can cause extreme trauma to mental and physical health.

2/3 of prisoners said that their physical and mental health had suffered



2/3 said that their relationships with families had deteriorated, with 1 in 10 having no visitors

About 1/3 did not have sufficient nourishing food or adequate access to medical care



However, the majority were able to take advantage of a range of work and recreation activities and the vast majority had good relationships with prison officers and other prisoners.

This suggests that while the Kenyan prison service struggles to provide adequate physical conditions, it takes an apparently positive approach to the psychological welfare of prisoners.

Conclusion

Consistent with the findings of similar research conducted elsewhere, the report illustrates that those on death row in Kenya are relatively poor and have a low level of education. Despite precarious employment, many had considerable responsibility for the welfare of dependents at the time of their offence.

The report documents prisoners' pathways to offending and shows how adversities have shaped their decision making process, and how low levels of education and limited resources have impacted on their ability to access adequate legal representation.

From interrogation to trial, the report highlights failings in Kenya's criminal justice system and shows a lack of adequate safeguards in place to prevent wrongful conviction.

The report also indicates that entrenched disadvantages, such as the inability of many of the individuals to understand either English or Swahili, during their trial may have added another layer of unfairness.

Despite showing that within the prison system itself most prisoners do have opportunities for recreation and rehabilitation, many of those sentenced to death may well have been victims of miscarriages of justice, or been denied the opportunity to submit evidence of mitigating circumstances that could have reduced their sentence.

The report concludes that far from 'the worst of the worst', those on death row in Kenya are disproportionately vulnerable and disadvantaged individuals.

Evidence of inequalities within Kenya's criminal justice system detailed in this study should play a significant role in the ongoing debate over whether Kenya should remove capital punishment from its statute book and help challenge arguments which support its retention.

There is a clear need for Kenyan leaders to consider abolition. This research, in conjunction with our two-part opinion report [*The Death Penalty in Kenya: A Punishment that has Died Out in Practice*](#), debunks common misconceptions around the death penalty and helps to contextualise the operation of the death penalty in practice.