



The Economics of Pretrial Detention Reducing Congestion in Kenya's Prisons

Jackline Kagume, Leo Kipkogei Kemboi

Friday, September 2, 2022

Constitution, Law & Economy Programme

Outline

- Introduction
- Policy problem
- Study objectives & Justification
- Scenarios
- Conclusion

Judiciary to review cases of minor offenders in effort to decongest prisons

CHIEF JUSTICE DAVID MARAGA

SHARE



Chief Justice David Maraga says the Judiciary is contemplating a review of cases of thousands of remandees in the country's correctional facilities in the effort to decongest prisons.

Justice Maraga says the decongestion plans that will be conducted within the law seeks to fast track reunions of minor offenders with their families and halve operational costs. He terms as overstretched.

He was speaking today at the Nakuru GK Prison where he attended to the needs of inmates at the facility which has 906 minor offenders in remand.

The Chief Justice said more judges and magistrates will be hired to speed up the Prosecution in expediting pending cases of petty offenses to enable offenders be reintegrated in society.

As prisoner feeding costs hit Sh5.5bn, is plea bargaining the solution?

Wednesday, January 26, 2022



By Fred Kibor



Director of Public Prosecutions, Noordin Haji. PHOTO | JEFF ANGOTE | NMG



Prison warders walk past the entrance of the Kamiti Maximum Security Prison in Nairobi, on November 18, 2021.

| Simon Maina | AFP

Policy Problem: Large Share of Unconvicted Prisoners

Category of prisoners	2016	2017	2018	2019	2020	2021
Convicted Persons	82433	80404	83896	77347	29306	65463
Un convicted Prisoners	127794	127764	139822	141948	56813	94658
Total Prisoners	210227	208168	223718	219295	86119	159921
Share of Un convicted Prisoners	61%	61%	62%	65%	66%	86%

Source: KNBS Economic Survey 2022



The Economics of Pretrial Detention: Reducing Congestion in Kenya's Prisons

Study on using ankle bracelet technology in Kenya Criminal Justice System

Why Ankle Bracelet?

- COK 2010 asserts the right to bail which frees persons during the period of their trials until the matters are concluded.
- Article 29(a) CoK 2010 - every person has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause, or be detained without trial.

Objectives of the Study

1. Calculate the actual costs of imprisonment
2. Compute the deficit or surplus associated with prison sentences or remission of prison terms and how it affects budgets allocated within same period
3. Identify policy measures for closing deficits or reallocating surplus funds to competing social needs, such as prisoner rehabilitation and crime prevention
4. To use simulation analysis to determine how prison costs can be reduced

Justification for this study- Ankle Bracelet

1. Resources are scarce
2. Expanding Freedoms
3. Disproportionate effect on women
4. Efficiency of Prisons

Baseline Scenario

		2016	2017	2018	2019	2020	2021
	Male Unconvicted Prisoners	118118	117529	128331	129552	52624	88131
	Female Unconvicted Prisoners	9676	10235	11491	12396	4189	6527
Total Unconvicted Prisoners		127794	127764	139822	141948	56813	94658
Total Convicted Prisoners		82433	80404	83896	77347	29306	65263

Source: KNBS Economic Survey (Various Issues)

Model of Prison Population

- The number of persons in prison can be approximately predicted using the following instrumental variable model.

$$Y = \alpha + \beta X + \lambda Z + u \quad (1)$$

$$X = a + bT + \rho Z + v \quad (2)$$

Where,

- Y = Convicted persons per year;
- X = Accused and arrested but unconvicted (or convicted with a petty offence) persons per year;
- T = Bracelet technology for monitoring unconvicted persons or petty offenders, an instrument for X ;
- Z = all other factors that affect Y and Z , such as age, gender, occupation, and location.
- The variables u and v are the disturbance terms, whereas the coefficients in the model are parameters to be estimated.

Estimated size of reduced prison population if an ankle bracelet is worn by 25% of un-convicted prisoners.

	2016	2017	2018	2019	2020	2021
Un-convicted Prisoners (Baseline)	127794	127764	139822	141948	56813	94658
Un-convicted Prisoners (Taking into account a 25% population out on Ankle Bracelet)	95846	95823	104867	106461	42610	70994
Convicted Persons	82433	80404	83896	77347	29306	65263
Total Prisoners	178279	176227	188763	183808	71916	136257
Reduction overall in Prison Population	-15.2%	-15.3%	-15.6%	-16.2%	-16.5%	-14.8%

Source: KNBS Economic Survey (Various Issues), author's calculations

Estimated size of reduced prison population if 50% of un-convicted prisoners wear ankle bracelets.

	2016	2017	2018	2019	2020	2021
Un-convicted Prisoners (Baseline)	127794	127764	139822	141948	56813	94658
Un-convicted Prisoners (Taking into account a 50% population out on Ankle Bracelet)	63897	63882	69911	70974	28407	47329
Convicted Persons	82433	80404	83896	77347	29306	65263
Total Prisoners	146330	144286	153807	148321	57713	112592
Reduction in Prison Population	27.9%	28.4%	29.4%	31.5%	32.6%	26.6%

Source: KNBS Economic Survey (Various Issues), author's calculations

Estimated size of reduced prison population if 75% of un-convicted prisoners wear ankle bracelets.

	2016	2017	2018	2019	2020	2021
Un-convicted Prisoners (Baseline)	127794	127764	139822	141948	56813	94658
Un-convicted Prisoners (Taking into account a75% population out on Ankle Bracelet)	31949	31941	34956	35487	14203	23665
Convicted Persons	82433	80404	83896	77347	29306	65263
Total Prisoners	114382	112345	118852	112834	43509	88928
Reduction in Prison Population	45.6%	46.0%	46.9%	48.5%	49.5%	44.4%

Source: KNBS Economic Survey (Various Issues), author's calculations

Deploying Ankle Bracelets on Women Charged with Liquor Offenses

	2016	2017	2018	2019	2020	2021
Un-convicted female Prisoners	9676	10235	11491	12396	4189	6527
Un-convicted female Prisoners after adjusting for Liquor Offences	3774	3992	4481	4834	1634	2546
Reduction in overall Female Prison Population	-5902	-6243	-7010	-7562	-2555	-3981

Source: KNBS Economic Survey (Various Issues), author's calculations

Cost-Cutting Simulation

Scenarios	Cost of Running Prison (Ksh Bn)	Reduced Prisoner Count (Number)	Feeding Costs Per Prisoner (Ksh)	Daily Reduced Cost of Running Prisons (Ksh Mn)	Annual Costs (Ksh Bn)	Share of costs saved
No Ankle Bracelets Are Used - (Unconvicted Prison Population Remain as it is)	9.33	0	0	0	0	0
Ankle Bracelets used by 25% of the unconvicted prison population.		23665	270	6.39	2.3	25%
Ankle Bracelets used by 50% of the unconvicted prison population.		47329	270	12.78	4.7	50%
Ankle Bracelets used by 75% of the unconvicted prison population.		70994	270	19.17	7.0	75%

Source: Feeding costs based on public statements by the Director of Public Prosecution, plus the author's own calculations

Conclusion

- There are constitutional, public finance management & social justice arguments for reducing the prison population, especially for persons who have not yet been convicted.
 - If 25% of unconvicted prisoners wore ankle bracelets, the overall prison population would reduce by an average of 16%.
 - If half of all unconvicted prisoners wore the ankle bracelet, the overall prison population would reduce by nearly 29%
 - If at least 75% of unconvicted prisoners wore ankle bracelets, the overall prison population would reduce by 47%.
- The rate of prison population reduction ranges from 44.4% in 2021 to 49.5% in 2020.
 - Food cost savings range from Ksh 6.39 million to Ksh 19.17 million per day.
 - equates to annual cost savings ranging from Ksh 2.3 billion to Ksh 7 billion just on food.
- Deploying ankle bracelets on all women accused of liquor offences, the female prison population is reduced by an average of 60%, which is a significant result.
 - Such a move would be extremely beneficial to the care economy and the appropriate social justice response to the disproportionate effect of liquor offences on women.

References

1. Ardley, Jenny. "The Theory, Development and Application of Electronic Monitoring in Britain." Internet Journal of Criminology ©, 2005.
2. Bartels, Lorana, and Marietta Martinovic. "Electronic Monitoring: The Experience in Australia." European Journal of Probation Vol. 9, no. 1 (2017): 80–102.
3. Kamunde, Muraya. "Judiciary to Review Cases of Minor Offenders in Effort to Decongest Prisons." KBC, October 13, 2018. <https://www.kbc.co.ke/judiciary-to-review-cases-of-minor-offenders-in-effort-to-decongest-prisons/>.
4. Kibor, Fred. "DPP Pushes for Plea Bargain to Decongest Prisons, Cut Upkeep Costs." Business Daily, January 26, 2022. <https://www.businessdailyafrica.com/bd/economy/dpp-pushes-bargain-to-decongest-prisons-save-sh5-5-billion-3695540>.
5. Kilgore J. Would you like an ankle bracelet with that?: winners and losers in electronic monitoring. Dissent 59(1): 66–71. 2012
6. Kilgore J. Electronic Monitoring is not the Answer: Critical Reflections on a Flawed Alternative. Urbana-Champaign Independent Media Center. 2015
7. Kenya National Bureau of Statistics. Economic Survey 2022
8. Matt, Black, and Russell Smith. "Electronic Monitoring in the Criminal Justice System." Australian Institute of Criminology, May 1, 2003. <https://www.aic.gov.au/publications/tandi/tandi254#:~:text=The%20technologies%20of%20electronic%20monitoring>.
9. Murage, George. "Congestion Takes Its Toll on Prisons after Population Doubles." The Star, 2019. <https://www.the-star.co.ke/news/2019-11-17-congestion-takes-its-toll-on-prisons-after-population-doubles/>.
10. Nellis, Mike. "Standards And Ethics in Electronic Monitoring Handbook for Professionals Responsible for the Establishment and the Use of Electronic Monitoring," June 2015. <https://rm.coe.int/handbook-standards-ethics-in-electronic-monitoring-eng/16806ab9b0>.
11. Roman, John K., Akiva M. Liberman, Samuel Taxy, and P. Mitchell Downey. "The Costs and Benefits of Electronic Monitoring for Washington, D.C." The Urban Institute., September 2012.
12. Schmidt, Annesley K. "Electronic Monitoring: What Does the Literature Tell Us?" Federal Probation Volume 6, no. No. 2 (October 1998). https://www.uscourts.gov/sites/default/files/62_2_2_0.pdf.
13. The Informer. "Prison Remandees Cause Congestion in Cells – CJ Maraga," January 15, 2018. <https://theinformer.co.ke/10807/prison-remandees-cause-congestion-in-cells-cj-m-araga/>.
14. Richter, Marina, Barbara Ryser, and Ueli Hostettler. "Punitiveness of Electronic Monitoring: Perception and Experience of an Alternative Sanction." European Journal of Probation, September 16, 2021, 206622032110384. <https://doi.org/10.1177/20662203211038489>.
15. Wooldridge, Jeffrey M. "Instrumental Variables Estimation with Panel Data." Econometric Theory 21, no. 4 (2005): 865–69. <https://www.jstor.org/stable/3533399>.

End!

www.ieakenya.or.ke
admin@ieakenya.or.ke