



Unfair standards for recruitment of ex-prisoners: Adverse Criminal record as a barrier to employment in Botswana

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Abstract

The possibility of obtaining a Meaningful job continues to be a mirage for many ex-prisoners. Many organisations which control the largest chunk of the labour market in Botswana always put caveats against ex-prisoners interested in joining their workforce.

This Paper discusses the plight of many people who are unable to obtain work after serving their prison sentences, because of their adverse criminal records. They are free, but their freedom is constrained as they cannot exercise their right to earn a living like the rest of the citizens.

This research paper employs the Desk research methodology to scrutinize the discriminatory practices prevalent in recruitment processes in Botswana, particularly concerning ex-prisoners. The study identifies the adverse impact of criminal records on employment opportunities for this demographic and delves into legal frameworks and policies influencing this phenomenon. The paper offers comparative perspectives on the issue in South Africa, Mozambique, Tunisia, Australia, Holland, and Britain. The paper concludes with recommendations for reforming current practices to promote inclusive and fair recruitment policies.

Keywords: Access to Finance, Growth Motivation, Microenterprises, Microenterprise growth, Qualitative Study

1. Introduction

The employment of ex-prisoners poses a significant challenge in Botswana due to discriminatory practices rooted in adverse criminal record checks. This research aims to analyze the legal framework surrounding recruitment practices and their implications for employment opportunities of ex-prisoners. By employing the Desk research methodology, this paper provides a comprehensive overview of relevant laws and regulations. Desk research methodology is also known as documentary research or secondary research, and it relies on data that has already been collected and published by others. Its major data sources include books, public libraries, newspapers, websites, surveys, reports, journals, magazines, videos, podcasts, and other sources. Its main advantages are that it is cheaper and it takes less time to do research.

Historical Background

A. Historical treatment of ex-prisoners in Botswana

The use of adverse criminal records was introduced in Botswana by the British, who had ruled Botswana until 1966. The British had a tradition of keeping records on themselves, from the Domesday Book of Norman times through to the more refined measures that grew up with the Industrial Revolution (Thomas, 2007). The Victorians initiated numerous systems of national registration. In 1869 the first national collection of criminal records was initiated^[1]. These Criminal records were later used by the police, for operational purposes, and by the criminal courts, to help determine appropriate sentences.

¹ Thomas, T. (2007). A Short History of Criminal Records. Palgrave Macmillan, London. https://link.springer.com/chapter/10.1057/9780230592223_2. Accessed on 17/10/2023

The courts had always needed a system to tell them if the alleged offender before them was a first-time offender or a repeat offender. In the case of the latter, the earlier punishment had been ineffective, and something stronger was now needed. In times past, the necessary information came only from local knowledge and sometimes from the branding of offenders with a hot iron.

Branding continued until the eighteenth century and was officially stopped in 1779. Even though it left lasting emotional scars, it is evident that it craftily transformed and continued to exist. In May 2006 the headline ‘*Branded as Criminals*’ was splashed across the front page of a Sunday paper, leading to a story about inaccurate criminal records being accorded to innocent people [2]

The greatest challenge the society faces is fear and the consequential stigma associated with prison. A person who has been incarcerated is generally seen as a threat to the well-being of the society. The Society makes laws to keep records that prohibit ex-convicts from accessing certain jobs. This begs the question, are we not jeopardizing public safety by discriminately making it difficult for released prisoners to succeed? Study finds that the longer someone has been imprisoned, the harder it gets to find their way back into society. Inside the prison, they are stripped of every right and become less fit for life outside. Even though physical branding ended in Britain, psychological branding goes on in its former colonies under the pretext that “ex-offenders who are now out are still dangerous and haven’t paid their dues” [3].

Evolution of recruitment practices in the country

Legal developments and the administration of justice in Bechuanaland were greatly influenced by the official British policy at different periods in the governing of the territory of Bechuanaland. [4] For the eighty years, Britain ruled Bechuanaland, decisions of cases coming before the courts seemed to change with the official policy. As it was in Britain, The courts needed a system to tell them if the alleged offender before them was a first-time offender or a repeat offender. In the case of the latter, the earlier punishment had been ineffective, and something stronger was now needed. In that era, the required information came only from local knowledge. These practices were sometimes used to establish policy on adverse criminal records in the country.

3. Legal Framework

A. Constitutional Provisions

Right to fair treatment

The Constitution of Botswana became operational in 1966. Besides the creation of the government, the constitution introduced guarantees to all persons within its jurisdiction. The constitution of Botswana ensures that there is the rule of law by guaranteeing fundamental rights.

Chapter 2 of the Constitution contains various guarantees, where *inter alia* Section 15 (1) states that “Subject to the provisions of subsections (4), (5), and (7) of

this section, no law shall make any provision that is discriminatory either of itself or in its effect”.

S15 (2) prohibits mistreatment in any public office. Ss’ 3 further defines the term ‘discriminatory’ to mean,

“affording different treatment to different persons, political opinions attributable wholly or mainly to their respective descriptions by race, place of origin, tribe, colour, creed, or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description” [5]

Even though the constitution guarantees freedom from discrimination in Section 15, subsection 5 fortifies the guarantee by making what is misconstrued as antithetical, i.e. A “reasonable provision” for additional criteria for employment as a “public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate” [6]

Subsection (5) states,

“Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes reasonable provision concerning qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law”. [7]

According to Black's Law Dictionary, the word ‘reasonable’ means “fair, proper, or moderate under the circumstances” [8] In the famous case of Attorney General v. Dow [1992] BLR 119 (CA),

The Court of Appeal explicated that section 15(3) of the Constitution embraces similar grounds such as citizenship, marital status, and HIV status. There are many parts of statutes or regulations in Botswana that veto employers from employing candidates with criminal records. This is irrespective of the fact that there is a lack of a connection between a criminal record and the job applied for. By invoking the test developed by the Court of Appeal on what criteria should be used to determine an analogous ground, the Court contended that denying a person a job simply because of his criminal record extends to unfair discrimination [9].

B. Labor Laws

National Industrial Relations Codes of Good Practice are Model Procedures and Agreements, which were published in terms of Sec 49 of the Trade Disputes Act and Sec 68 of the Trade Unions & Employers’ Organisation Act and adopted by the Department of Labour and Social Security on 23/8/2002 for use in the industry.

These codes were formulated to eliminate discrimination in the workplace and promote equality of opportunity and treatment in employment. In realizing this, the law imposes certain duties on employers to make efforts to eradicate discrimination in any employment policy or practice and promote equal opportunity at the workplace

² M1 on Sunday, 21 May 2006

³ Kuhlmann M., (2021, March 14). ‘The sentence never ends’ – ex prisoners struggle to re-integrate into society. Available from <https://www.sundaystandard.info/the-sentence-never-ends-ex-prisoners-struggle-to-re-integrate-into-society/>.

⁴ Othlogile, B. (1997). A history of Botswana through case law. PULA Journal of African Studies, 11(1), 82. <https://pdfproc.lib.msu.edu>. Accessed on 16/10/2023.

⁵ Botswana Constitution (CAP II), (Bots)

⁶ Botswana Constitution CAP II (Bots)

⁷ Botswana Constitution CAP II (Bots)

⁸ Black's Law. (2004). Reasonable. In Black's Law dictionary (2nd Ed).

Available from <https://thelawdictionary.org/reasonable/>

⁹ Attorney General v. Dow. BLR 119. CA (1992)

Clause 2, states that:

“Every employer must take steps to eliminate discrimination in any employment policy or practice and must promote equal opportunity at the workplace”^[10]

The code further prohibits indirect discrimination by stating in Clause 5.3 that:

“indirect discrimination occurs if a requirement or condition, which, on the face of it, appears to be neutral, has the effect of discriminating against a person or category of persons”^[11] on the grounds of social origin.”

C. Criminal Justice System

Sentencing and rehabilitation programs

A trend has been observed in Botswana where stigma has permeated into the society, to the extent that most people obliviously manifest it without noticing.

Dr. Sophie Moagi, a Clinical psychologist articulates that:

“Society’s perception is that, for a person to go to prison he is dangerous and was therefore removed from society to keep everyone safe. For an ex-offender who has served their term and is to reintegrate back into the world outside the jail, society, unfortunately, doesn’t forget. They simply feel that that person hasn’t been punished enough. Job hunting becomes tough because employers really want to know if you are an ex-convict. This is further fueled by the ‘once a criminal always a criminal mindset.’ Avoiding crime is only one challenge prisoners’ face. Other obstacles awaiting individuals upon their release are debt and often broken family bonds. Even seemingly trivial things can become problematic. Choosing what to eat, what time to go to sleep, learning how the internet works, and how to behave in traffic can prove challenging. The longer someone has been imprisoned, the harder it gets to find their way back into society. Inside the prison, they are stripped of every right and become less fit for life outside. Society tends to think that ex-offenders who are now out are still dangerous and haven’t paid their dues. In other countries, there are halfway houses (prisoners are sent to serve time at a halfway house at the end of their prison sentence. Time at the halfway house is focused on re-entry participation including job training and drug treatment.) Psychologically, prison introduces embarrassment, and self-esteem issues that one is forced to confront and needs a lot of social support”^[12]

Be that as it may, Botswana Prisons has adopted an offender rehabilitation and reintegration strategy to assist offenders in managing risk issues associated with their criminal behaviour and acquiring the necessary skills to live as law-abiding citizens.^[13]

Although the Programme is at an infant stage, the long-term goal of preparing inmates for their release and reintegration into society is yet to bear fruit.

In an interview with The Midweek Sun, spokesperson for Botswana Prisons, Oagile Kojane says that.

“The strategy will empower ex-offenders to live a meaningful and quality life with less chance of re-offending.”

What the Botswana Prison Service had in mind was the establishment of community social reintegration committees, which would train the ex-offenders on self-employing skills to avoid re-offending. Thus Botswana Prison Service Commissioner, Dinah Marathe handed over a Reintegration Project consisting of a modern poultry house, 100 chicks, feeds, feeders, drinkers, and medication to Baitseeng Gaerole in Digawana. Gaerole completed her sentence at Gaborone Women’s Prison after successfully going through training and rehabilitation programs. Following her release, Prison Officers in the Southern Division including Prisons Headquarters voluntarily contributed some funds to the project.

IV. Discriminatory Practices

The following are some of the instances where ex-prisoners are proscribed from employment because of their adverse criminal record:

a) Public service

There is a strong statutory debarment from appointment in the Public Service of Botswana where S 18 states:

“A person who has been convicted of an offense involving moral turpitude, or who has been dismissed from the public service shall not be appointed to any public office without the written approval of the Director or Permanent Secretary to the President as the case may be, for positions which they appoint for”.^[15]

b) Police

The enabling Act requires all applicants to the position of a police officer to make a Declaration on attestation. The Police Act criminalizes any form of misrepresentation by stating that;^[16]

“Every person shall, before making the declaration required by subsection (1), answer truly any questions put to him as to his previous service, academic qualifications, career, and employment and as to whether he has at any time been convicted of any offense punishable by the laws of Botswana or the laws of any other country.”^[17]

Although the Act does not expressly restrict candidates with criminal records from joining the police, police vacancy adverts inviting applications for employment as police constables are clear that the applicant according to S 9.2 must, among other things:

1. be of good character,
2. Have no adverse criminal record.^[18]

c) The Military

The Botswana Defence Force has similar restrictions on potential applicants with criminal records. They are barred

¹⁰ National Industrial Relations Codes of Good Practice are Model Procedures and Agreements. Department of Labour and Social Security (BW). <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/botswanacodeofgoodpracticeart5.pdf>. [Retrieved, Jan 31, 2023]

¹¹ National Industrial Relations Codes of Good Practice are Model Procedures and Agreements. Department of Labour and Social Security (BW). Available from <https://www.edoc.unibas.ch>. [Retrieved, Jan 31, 2023]

¹² Kuhlmann M., (2021, March 14). ‘The sentence never ends’ – ex-prisoners struggle to re-integrate into society. Sunday Standard: Botswana Edition. <https://www.sundaystandard.info/the-sentence-never-ends-ex-prisoners-struggle-to-re-integrate-into-society/>

¹³ Lucas, L (2022, Sept 7). Prisons hands over business project to ex-convict. The Midweek Sun: Botswana Edition. <https://www.pressreader.com/botswana/the-midweek-sun/20220907/281629604101235>

¹⁴ <https://www.unodc.org>

¹⁵ Public Service Act. 2010(Bots).

¹⁶ Police Act. (1979). Bots. Available from: <https://www.gov.bw>

¹⁷ *ibid*

¹⁸ Botswana Police Service. (2022). Vacancy Circular no. 2 of 2022. <https://web.facebook.com/photo/?fbid=394587492707636&set=pcb.394587972707588>

from joining the army through BDF vacancy adverts which invite applications for employment as uniformed employees. The statement makes it very clear that the applicants must, "Have no adverse criminal record".^[19]

d) Company Directors.

A person with a criminal record could be disqualified from appointment as a director of a company registered under the Companies Act, Chapter 42:01, or from holding the office of a director.

^[20] "Under section 146(2) (c), a person is disqualified from being appointed or holding office as a director of a company if the person is prohibited by sections 500 of the Act. Section 500 states that a person convicted of certain offenses cannot be appointed to manage a company within five years of the conviction or judgment without the leave of the court. Offenses include those committed during the promotion, formation of a company, insider trading, and other offenses covered in other sections, for instance, stock market manipulation."^[21]

- e) Private Security Services. The Botswana government website on eligibility for a Private Security Services License states that
"Only citizens of Botswana with no criminal record can apply for a license to operate a private security services company as a Director"^[22].

The significance of employment in social reintegration

The connection between crime and joblessness is intricate and unclear at times. On the one hand, research conducted in the USA established that two-thirds of employers reported that they would not hire a person with a criminal record suggesting that ex-offenders face substantial impediments while seeking employment.²³ In Canada, (Scott 2010) established that employers are unwilling to hire ex-offenders and that the resistance to hiring increases for those convicted of violent crimes. Australia, too, researchers surveyed 83 of 300 employers and found that only 12% of employers agreed to hire an ex-offender^[24] Employer willingness to hire ex-offenders was higher for those with a college degree, with a vocational trade, or having completed two training programs. Employers further cautioned that although they would hire ex-offenders based on government incentives, they were reluctant to hire ex-offenders convicted of violent crimes or crimes against children. However,

^[25] "As time goes on, the sectors of the economy where employers are most likely to hire ex-offenders—i.e., blue-collar jobs in construction/manufacturing and/or those with little customer contact—are becoming scarcer, suggesting that employment opportunities for these individuals might continue to diminish."

However, further research established that active interaction

with ex-offenders reduces an organization's tendency to experience the fear that ex-offenders will commit a further crime^[26] (Giguere and Dundes, 2002)

V. Case Studies

A. Eminent cases of discrimination against ex-prisoners South African situation

In South Africa, a former British colony inherited the practice of branding ex-convicts by keeping and using records of their crimes against them. Ex-convicts' rights were incessantly violated, but after criminal justice reforms, it has been possible to expunge certain adverse criminal records against ex-convicts. South Africa introduced a provision under sections 2 and 3 of the Criminal Procedure Amendment Act 2009 (S.A), allowing criminal records relating to certain criminal convictions to be expunged and invalidated. The effect of this exercise was that all future background checks done on an ex-convict would not show any bit of previous convictions.

Mozambican case study

In Mozambique, shortly after independence from the Portuguese in 1975, custodial sentence was hardly applied. People who committed crimes such as stealing were not sent to jail and were given community work to do. The rationale for adopting this style of punishment was to teach the convicts a sense of responsibility and an appreciation of human dignity. It was believed that inside prison, the criminals became more hardened, and recidivism was more probable.

"Thieves who stole from the community or people who ducked their responsibilities were not sent to jail or beaten, as they had been during the colonial period; instead, they were required to do extra work in a communal field or on a collective project. The object of such a penalty was to instill an appreciation of the dignity of labor and a sense of community responsibility. Those convicted of more serious crimes, such as murder, treason, or desertion, either at public regional meetings or by the Party Regional or Central Committee, were sent to formal reeducation camps. There, in a highly regimented environment that emphasized both extensive political education and intensive collective labor, an attempt was made to rehabilitate the offender so that he or she could later be reintegrated into society. Given this emphasis on rehabilitation, it is not surprising that capital punishment did not figure prominently in the evolving legal system"^[27].

Societies' contribution to positive and negative aspects of crime cannot be underestimated. Society obviously raises criminals and leaves them to criminal justice to correct and isolate them from the very society that made them.

¹⁹ Botswana Defence Force (n.d) vacancies. Retrieved January 29, 2023, from

<https://online.bdf.org.bw/vacancies>

²⁰ Ibid pp7

²¹ Mukuna, J (2020) Some Challenges in the Reintegration of Ex-offenders for Appointment as Directors in Botswana. *Current Journal of Applied Science and Technology*, 39(8),95-101.

²² <https://www.gov.bw/taxonomy/term/144?page=1>. Accessed :Jan,31 2023

²³ Scott T. (2010) Offender Perceptions on the Value of Employment. *Journal of Correctional Education*, v61 n1 p46-67

²⁴ S Albright S., Denq F. (1996) Employer Attitudes toward Hiring Ex-Offenders. *Prison Journal* Volume: 76 Issue: 2.

<https://www.ojp.gov/ncjrs/virtual-library/abstracts/employer-attitudes-toward-hiring-ex-offenders>.

²⁵ Holzer HJ., Raphael S., and Stoll M.(2003) Employment Barriers Facing Ex-Offenders.p13.The Urban Institute Reentry Roundtable Discussion Paper. <https://www.sscnet.ucla.edu>.

²⁶ Rachele Giguere R., Dundes L. (2002) Help Wanted: A Survey of Employer Concerns About Hiring Ex-Convicts. *Criminal Justice Policy Review* Volume: 13 Issue: 4.

²⁷ Isaacman & Isaacman. (1982). *A Socialist Legal System in the Making: Mozambique Before and After Independence in Abel. The Politics of Informal Justice. Vol 2*, Academic Press, New York.<https://www.gsdr.org>.

[28] According to Justice Mondlane, a Supreme Court judge in Mozambique,

“In practice, good sense and justice are based on the usage and customs prevailing in the region where each court is located, as occurred under the previous judicial organization.” [29]

The Tunisian Perspective

Other comparable research conducted in North Africa indicates that for protection and control purposes, the political and civic rights of Tunisians with a criminal record are curtailed [30] (Pouessel, 2017) for instance, by the Tunisian electoral system permitting only those with a clean criminal record to vote (Pouessel, 2017), as is political participation and access to employment, public organs, school and employment in China. Also, Natter (2015) [31] observes that while chronic migration by Tunisians can be attributed to mass unemployment, due to the scanning of fingerprints used by Europe’s deportation system in Italy aimed at border securitization and restricting movement from Tunisia to Italy, there are collateral consequences for Tunisians having a criminal record. Other studies also confirm the inability of people with a criminal record to obtain a visa for traveling to other countries [32] (Feingold, 2021).

Legal challenges and outcomes

Certain legislations not only make it difficult to find employment and withhold certain licenses, which are necessary for earning a living.

Section 7(b) of the Private Security Services Act, 11 of 2015 disqualifies a person from being appointed as a member of the Private Security Services Licensing Board or continuing to hold office if he or she:

(b) Has within 10 years immediately preceding the date of his or her appointment [33], been convicted —

- (i) Of a criminal offense within Botswana, or
- (ii) outside Botswana, of an offense which if committed in Botswana, would have been a criminal offense, and sentenced by a court of competent jurisdiction to imprisonment for a term of six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon [34]

Although this section sets strict criteria for licensing private companies, it is worth noting that a person who needs a license to operate a private security company is estopped from employing himself and earning a living through the punitive criteria.

²⁸ *ibid*

²⁹ Mondlane J., Antonio L. (1998) “Access to Justice and Alternative Dispute Resolution” in Österreichische außenpolitische Dokumentation, Special Issue, “Building Justice: A Conference on Establishing the Rule of Law in Post-Conflict Situations”, Vienna, 26-27 June 1998.

³⁰ Pouessel, S. (2017). Tunisia and Its Diaspora: Between Protection and Control. In: Weinar, A. (eds) Emigration and Diaspora Policies in the Age of Mobility. Global Migration Issues, vol 9. Springer, Cham. https://doi.org/10.1007/978-3-319-56342-8_13.

³¹ Natter, K. (2015) Revolution and Political Transition in Tunisia: A Migration Game Changer? Migration Information Source. <https://www.migrationpolicy.org/article/revolution-and-political-transition-tunisia-migration-game-changer>.

4. International Perspectives

A. Comparative analysis with international standards United Nations Universal Declaration of Human Rights

The expectation for handling convicts reached an international alarm level when the United Nations passed an instrument to regulate the handling of convicts. Besides other requirements, the United Nations further recommended that UN members should create an environment that is conducive to learning and earning to enable the future smooth integration of the offenders in the job market.

Subsequently, The United Nations General Assembly adopted the Human Rights Universal Instrument on [35] Basic Principles for the Treatment of Prisoners via resolution 45/111 on 14th December 1990.

The instrument requires *inter alia* that:

1. [36] All prisoners be treated with respect due to their inherent dignity and value as human beings.
2. [37] There be no discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

8. Conditions be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country’s labour market and permit them to contribute to their financial support and to that of their families.

[38] Rule 69. As soon as possible after admission and after a study of the personality of each prisoner with a Sentence of suitable length, a Programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, capacities, and dispositions.

Despite the existence of international conventions and recommendations, many of which have been ratified, the protection of the rights of prisoners continues to be a mirage. The Universal Declaration of Human Rights of 1948 did not mention prisoners, although it was implied that — [39] the prohibition of torture, the right to a fair trial, and the presumption of innocence—covered them. Seven years later, in 1955, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Standard Minimum Rules for the Treatment of Prisoners. This was a historical moment, when in 2015, the United Nations General Assembly approved expanded rules, known as the “*Nelson Mandela Rules*”, in remembrance of the most eminent prisoner of the twentieth century.

The provisions for prisoners, as expressed in Rule 72, are established in the Body of Principles for the Treatment of Prisoners (8) which states that:

Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate

³² Feingold, Z. R. (2021). The stigma of incarceration experience: A systematic review. *Psychology, Public Policy, and Law*, 27(4), 550–569. <https://doi.org/10.1037/law0000319>.

³³ Private Security Services Act. (2015) Bots.

³⁴ *Ibid*

³⁵ United Nations Resolution on the Basic Principles for the Treatment of Prisoners. (1990). UN. <https://www.unodc.org>.

³⁶ *Ibid*

³⁷ *ibid*

³⁸ *ibid*

³⁹ The Universal Declaration of Human Rights. (1948) UN. <https://www.ohchr.org>.

their reintegration into the country's labour market and permit them to contribute to their financial support and to that of their families.

Aiding ex-prisoners to re-establish themselves In Society Rule 81. (1)

All Service providers and organizations, executive or otherwise, who are mandated to assist freed prisoners to assimilate into society are required to ensure that freed prisoners are availed with the necessary licenses and credentials, that they have a place to reside without interruption and work to go to and keep them busy, that they properly clothed taking into consideration the various climatic changes. They can commute to wherever they desire to go and make ends meet after release.

Australian Context

In Australia, in some jobs, a criminal record is an irrelevant consideration. (AHRC. 2023). An employer does not need to request criminal record information from job applicants if it is irrelevant to the inherent requirements of these jobs^[40].

In *Hosking v Fraser*, the Northern Territory Anti-Discrimination Commission found that an employment agency should not have sought criminal record information from all applicants for a nursing position because it was not relevant to the inherent requirements of the position^[41].

The post was for a distant area nurse situated in an Aboriginal community. Ms. Hosking appealed that she was probed to consent to a police history check and that, if she did not, her application would not be put on the database of the agency to be forwarded to the employer. The recruitment agency claimed that it was their role to screen out the criminal, inept, and incompetent elements so that they do not manage to gain positions of trust. They claimed that the information requested from applicants was essential in the context of Aboriginal customs and realities that these disadvantaged people face daily.

Although the agency did send the application on to the employer, the NT Commission found that the evidence presented by the agency that a police check was an inherent requirement of the position was 'unconvincing.'

B. Best practices in ex-prisoner reintegration and employment

Dutch shorter sentences and detectable ankle bracelets

A 2016 government study on capacity also noted that a focus on sentencing, with both an increase in shorter sentences and examining how crimes impact society, has helped reduce the prison population, says Wiebe Alkema, spokesperson at the Ministry of Justice and Security.

The Netherlands now has just sixty-one prisoners per 100,000 people in the general population, ranking among the lowest in Europe.

"The Dutch judicial approach to prison is that the taking away of freedom itself is the punishment," van der Laan says. The Supreme Court of Canada made the same statement

concerning the Netherlands. "Therefore, once inside, a prisoner should be treated humanely, and his treatment should not be a form of punishment, too." Yet the first stages of imprisonment can be traumatic, he says, with prisoners facing significant risk of mental health issues. It is a major concern that instead of providing an environment that is conducive for prisoners to acquire skills that can help them make a living after their jail term, prisoners concentrate on using tyrannical means to reprimand prisoners, which eventually leaves them needing more psychological help. "When we lock people away in very short periods, they have less or no opportunity to join employment or education programs," he says. "But there is massive 'detention damage' — even a handful of weeks can be enough to lose a job, home, and social relations."

In cognizance of the effects of incarceration, the Dutch government accepted to release prisoners before the completion of their sentence on the condition that they would accept to wear a monitoring ankle bracelet. The electronic monitoring device has proven to be a marvel in fighting crime in Holland. Instead of keeping the prisoners in jail, electronic monitoring and Community service in Holland have produced commendable results. Although the former is often seen as a lenient punishment, Wermink and colleagues found it reduces Recidivism rates. A 2015 study compared detainees in Belgium serving sentences of between six months and three years and found that the subjects who completed their sentence at home wearing detectable ankle bracelets were less likely to re-offend than peers who had completed their sentence behind bars^[42]

British Social Exclusion Standpoint

The reintegration of ex-convicts in the United Kingdom of Great Britain is done by the Social Exclusion Unit of the UK government. This department has been responsible for thorough prisoner rehabilitation for many years. Despite the rigorous prisoner rehabilitation program, there are cases of some suffering from social exclusion. In one research finding, the unit found the existence of accounts of social exclusion that many prisoners had suffered before, and as a result, of their incarceration.

Social exclusion;^[43]

"Is about more than income poverty. Social exclusion happens when people or places suffer from a series of problems such as unemployment, discrimination, poor skills, low incomes, poor housing, high crime, ill health, and family breakdown. When such problems combine they can create a vicious cycle. Social exclusion can happen as a result of problems that face one person in their life. But it can also start from birth. Being born into poverty or to parents with low skills still significantly influences future life chances."

Incidentally, British research (Social Exclusion Unit, 2002) into social exclusion by unemployment found that most prisoners, who never experienced formal fixed employment were highly likely to re-offend.^[44]

<https://www.usnews.com/news/best-countries/articles/2019-05-13/the-netherlands-is-closing-its-prisons>

⁴³ Boardman, SJ, Killaspy, H., Mezey, G. (2010) Social Inclusion and Mental Health. Cambridge University Press & Assessment. www.cambridge.org.

⁴⁴ Social Exclusion Unit (2002). Reducing re-offending by ex-prisoners. <https://www.bristol.ac.uk/poverty/downloads/keyofficialdocuments/Reducing%20Reoffending.pdf>

United Nations Convention on the Rights of Persons with Disabilities, December 13, 2006

⁴⁰Australian Human rights Commission. (2023). Human Rights: On the record: Recruitment. https://humanrights.gov.au/our-work/human-rights-record-recruitment-chapter-5#5_1.

⁴¹ *Hosking v Fraser* Central Recruiting (1996) EOC 92-859

⁴² Batist. D. (2019 May 13) The Dutch Are Closing Prisons. US news: US edition.

Conclusion and Recommendations

A criminal record is a barrier to any benefit that flows from employment, as outlined in this research. It serves to verify that a criminal record is a social handicap and an obstacle to sustainable development. The study identified the adverse impact of criminal records on employment opportunities for this demographic and delved into legal frameworks and policies influencing this phenomenon. One published study on the impact of employing ex-convicts, suggests that the work-related misconduct of workers with criminal records is on average less serious than that of other workers ^[45]. By employing the Desk Research methodology, this study has delineated the legal framework, discriminatory practices, and international perspectives on this issue. The recommendations provided aim to promote inclusive and fair recruitment policies that benefit both ex-prisoners and the broader society. The issues outlined should be addressed, to foster a more inclusive and equitable workforce. This study recommends for:

a. Statutory Reforms

Amend existing laws to prohibit discrimination based on criminal records.

Implement policies for record expungement and rehabilitation. The law should further criminalize the ultimatum for adverse criminal records in exceptional cases for employment and require the assimilation of ex-convicts into society.

b. Educational and Sensitization Programs

Raise awareness among employers about the benefits of hiring ex-prisoners.

Provide resources for ex-prisoners to acquire skills and education for better employment prospects. The community plays a critical role in the success of reintegration, hence preparing the community is as important as preparing inmates for reintegration. Conversely, all the hard work and rehabilitation in prison will be in vain if ex-prisoners' assimilation is opposed by their respective communities on re-entry. In Thai jurisdiction, multiple initiatives have been incorporated to promote community acceptance. Besides, Probation officers should be sensitized to train citizenries to appreciate the exercise of reintegration. Psychologists should be hired in every district and be certified to counsel and train members of society and potential employers on how to fruitfully interact with ex-convicts. Benchmarking on countries with outstanding reintegration programs should be considered.

c. Supportive measures ^[46]

Every prison facility runs Pre-release Programs twice a year for inmates whose remaining term is less than six months. It aims at fostering successful reintegration and reducing the chance of reoffending. The emphasis has been on inmates' basic and cognitive skills shortfalls to build up their immunity to crime.

Thus, offenders are provided with education, job training, and behavioral skills, such as living and parenting skills. The department should devise practical mechanisms for assessing

whether prisoners have matured enough to be assimilated into society, without any chance of recidivism. A probation secretariat charged with ensuring that ex-convicts are assimilated without discrimination should be considered. Hiring managers who have previously engaged with ex-offenders are more likely to exhibit compassion towards them during the hiring process ^[47] (Atkin and Armstrong, 2013). Establish support networks for ex-prisoners during reintegration. Counseling clinics could be set up in every village/ward to allow ex-convicts to freely share their experiences and assist one another. Encourage private sector participation in rehabilitation and reintegration efforts. Finally, further research should be undertaken on the subject.

⁴⁵ Minor et al. (2018) *IZA Journal of Labor Policy* 7:8 Pg. 32.

⁴⁶Rujjanavet,S. improving The Reintegration of Offenders into the Community: The Current Situation of Thai Corrections. 01_Annua IReport_No.74_4.0J_Fina.

https://www.unafei.or.jp/publications/pdf/RS_No74/No74_15PA_Rujjanav et.pdf

⁴⁷ Atkin C., Armstrong G. (2013) Does the Concentration of Parolees in a Community Impact Employer Attitudes Toward the Hiring of Ex-Offenders? *Criminal Justice Policy Review* 24(1):71-93.