

The Criminal Record as a Death Sentence: Unmasking the Ignored Realities of Formerly Incarcerated University Graduates on Professional Licencing Challenges

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Abstract: *Recently it is increasingly common practice for universities and professional registration councils to probe into applicants' criminal records as a precondition for admission. Using social constructionism, this qualitative study explored the experiences of six formerly incarcerated individuals previously sentenced to life imprisonment, who hold professional university degrees in Law, Education, Psychology and Social Work and investigated whether having a criminal record had any bearing when applying for professional registration. The results indicate that due to the perceived stigma of, and discrimination against a criminal record, there exist varying degrees of criminal record disclosure ranging from partial, to full and non-disclosure. Furthermore, the results show that, on the one hand, concealment of a criminal record has adverse implications; while disclosure demonstrates the "double-edge sword" nature inherent in disclosing a criminal record and serves to further re-stigmatise and ultimately exclude people with criminal records from gaining admission. The study recommends that professional licensing councils, in collaboration with institutions of higher learning, ought to formulate unambiguous policy guidelines that explicitly outline the conditions that qualify or disqualify the registration of applicants with a criminal record.*

Keywords: *criminal record, stigma, discrimination, professional licensing bodies, South Africa*

Introduction

Over the years, societies have been confronted with an increasingly emerging cohort of people living with the stigma of, and discrimination against, a criminal record. To this end, local and international research on the reintegration of ex-prisoners confirms, consistently so, that there is relentless and subtle governance occurring in society in which the purpose seems to be the exclusion of people with a criminal record from participating in the labour market (Dlamini, 2016; Saliba, 2012). According to scholarly findings on the reintegration of ex-prisoners, having a criminal record serves as an impediment to opportunities such as gainful employment, access to higher education and many other areas of life (Mujuzi, 2014; Mujuzi & Tsweledi, 2014; Rust, 2017). Although a plethora of studies have been conducted on the subject of criminal records in South Africa, there is a dearth of literature regarding the role of the criminal record (Mdakane, 2022), specifically concerning formerly incarcerated people previously sentenced to life imprisonment, yet seeking to register with professional licensing bodies such as the National Bar Council of South Africa (NBCSA), the Health Professions Council of South Africa (HPCSA), the South African Council for Educators (SACE), and the South African Council for Social Services Professions (SACSSP) (Mdakane et al., 2024a). Thus, to fill the gap in literature, the present study purposefully selected six ex-prisoners who had been previously sentenced to a term of *life imprisonment*¹ and had acquired professional degrees in Law, Psychology, Education, and Social Work during



their incarceration. The study aimed to explore the participants' social reintegration experiences and determine whether, if at all, having a criminal record had any bearing on their application for admission to professional licensing bodies, access to further education, and employment. It is precisely this gap in literature that has been largely disregarded by scholars in general, government policy, and more specifically, the White Paper on Corrections (2005), that triggered this research. By focusing on the South African context, the study aims to fill a significant gap in the literature by investigating the barriers and exclusionary practices that individuals with criminal records face when attempting to access higher education and gain professional registration, both of which are essential for successfully negotiating their entry into the labour market after incarceration.

Literature Review

International research has established that people living with the stigma of a criminal record and the resultant discrimination often experience socioeconomic barriers and community rejection upon reintegrating into society (Akanji et al., 2018; Antwi, 2015; Ayuk et al., 2020; Boachie & Asare, 2015; Fredericks et al., 2021; Otero & Barrera, 2021; Wells, 2013). In this regard, employment has been cited in many local and international studies as a key component and a crucial catalyst in the successful reintegration of ex-prisoners. Notwithstanding the above, in South Africa, the Public Service Commission (PSC) (2009) reports that as of 31 July 2008, only 223 persons with a criminal record were permanently employed in the Service, representing a mere 0.02% of the 1.1 million public servants. These figures, plus the fact that the total number of South African citizens with a criminal record is unknown, yet estimated to be in the millions (Mujuzi, 2014; Mujuzi & Tsweledi, 2014) confirm that many ex-prisoners continue to be affected by their criminal record.

Similarly, research conducted in Australia suggests that having a criminal record is rated the fourth highest of five disadvantageous conditions, suggesting that people with a criminal record are perceived as less likely to obtain and maintain employment than people in other disadvantageous conditions (Graffam et al., 2008; Human Rights and Equal Opportunity Commission (HREOC), 2004; Saliba, 2012). Similar and comparable studies in Canada and the United Kingdom also report that employers are generally unwilling to hire people with a criminal record and that the resistance to hiring increases for ex-prisoners convicted of violent offences (Scott, 2010; Weiman, 2007). According to Holzer et al. (2002, p. 3), when prospective employers consider an applicant with a criminal record, they do so guided by their own set of criteria, since "employers, [too] can be held liable for the criminal actions of their employees under the theory of negligent hiring". Research indicates that most negligent hiring claims stem from an employer's failure to conduct adequate pre-employment screening, including criminal background checks, verification of previous employment, and other relevant background investigations that could reveal prior misconduct (McElhattan, 2022). As a result, employers may be deemed negligent for placing individuals with known criminal histories or inappropriate behaviour in positions where they could pose a risk to co-workers, clients, or the general public (DeMitchell, 2021). Under the theory of negligent hiring, an employer may be held liable if it is determined that they should have reasonably foreseen the potential risk posed by the applicant. Consequently, employers are increasingly implementing rigorous recruitment procedures to safeguard the integrity of their hiring practices and to avoid inadvertently recruiting individuals with criminal backgrounds. The aim is to minimise the likelihood of liability arising from the negligent hiring of individuals who may compromise workplace safety and operational integrity (Holzer et al., 2002). Thus, based on the theory of negligent hiring, ex-prisoners may be discouraged from applying for admission to practice. They may even be prohibited from applying for licences for professional registration in certain occupations, including jobs involving handling finances and contact with children, certain health services, and law firms, among others. Some prospective employers even believe that a criminal record indicates some character defect that may pose a higher-than-usual risk of dishonesty and unreliability (Holzer et al., 2002; Slabbert & Bomme, 2014). From these studies, it becomes apparent that employer attitudes and beliefs play a significant role in the labour market experiences of ex-prisoners, as they suggest a general reluctance among employers to hire people with a criminal record. While such stringent recruitment and hiring mechanisms are implemented as a contingency measure to exert more control over individuals deemed unfit or undesirable for professional roles in both private and public enterprises, they are often problematic in that they also unjustly disadvantage those with a criminal past who have since reformed and wish to reintegrate into various sectors of society.

Research by Muntingh (2009) also confirms that unsuccessful job applications often deter ex-prisoners' willingness and desire to work due to the stigma and label of a criminal record. Therefore, to the extent that a criminal record reinforces the stereotype that ex-prisoners are "undeserving" job candidates, disclosure of such a record is often accompanied by risks of being excluded or eliminated during the shortlisting period (Frana, 2010; Mujuzi & Tsweledi, 2014). For example, a recent phenomenological study incorporating the Labelling Theory sought to explore the experiences of Kenya's prisoner population. The results show that concealment of a criminal record is a popular choice employed as a coping mechanism among ex-prisoners (Muthee, 2020). Similar results emerged from Spain and the Netherlands (Zand-Kurtovic, 2017; Zand-Kurtovic & Rovira, 2017). However, in South Africa, there is a dearth of literature aimed at documenting such experiences, as criminal justice studies tend to gravitate towards entry-level, low-skilled jobs, thereby conveniently selecting study participants who committed non-violent crimes, excluding ex-prisoners who committed violent crimes. As a constitutional democracy, South Africa takes pride in having one of the best constitutions globally (Heywood, 2021). Nevertheless, despite its international acclaim, its transformative impact has not been thoroughly enjoyed by incarcerated individuals who have chosen to use higher education as a tool to negotiate their resettlement back into the law-abiding South African society. Local research indicates that ex-prisoners experience discrimination in higher education admissions and professional licensing, rendering them ineligible for employment in various professional fields. For example, Mugume (2017), following an analysis of 2016 application forms of 16 South African institutions, concluded that South African universities used discriminatory admission practices to create bottlenecks for ex-prisoners seeking access to higher education. Miselo and Mutereko (2019) also found that the number of incarcerated students is significantly lower than it could be, due to a lack of financial aid and overcrowding, which create barriers for many incarcerated students seeking access to higher education. Additionally, many incarcerated students experience a high drop-out rate. Mdakane et al. (2024b) note that inadequate support for incarcerated students and an emphasis on security measures cause them to lose time needed to attend tutorials and access learning centres and libraries. This leads to challenges in meeting assignment submission deadlines, participating in online tutorials, and maintaining regular communication with their higher education institutions.

In his thesis, Mdakane (2022) argues that many challenges confronting the South African prison education system also play out in other African correctional systems. Quan-Baffour et al. (2022) concur that much of the limited access to formal higher education in African correctional systems stems from prison education systems prioritising short-term training, which is primarily vocational. To highlight the extent of this phenomenon, Quan-Baffour et al. (2022) cite case studies of five African countries - Uganda, Nigeria, Ethiopia, Ghana, and Tanzania - proving that most of these countries' correctional facilities mainly provide non-formal education for men, women, and youth offenders. Nevertheless, Uganda has shown promising signs in expanding access to higher education compared to its neighbouring countries, primarily through partnerships between correctional services and the Ugandan higher education institutions (Baffour et al., 2022). In contrast, among the five prison education systems evaluated, Tanzania demonstrated a lack of commitment to improving access to higher education in its correctional centres, instead focusing on strengthening its Vocational Education and Training programmes. Similarly, literature emanating from Malawi indicates that Malawi's correctional facilities fail to provide quality education and that its government falls short in providing formal education and vocational training to inmates (Kajawo & Johnson, 2023; Kajawo & Nyirongo, 2022). Moreover, the education programmes are frequently managed by unqualified personnel with little experience, and the overall administrative structure is inadequate. Collectively, these studies show that many inmates across sub-Saharan Africa have limited or no access to education services, and when available, the quality is often inferior to mainstream education (Kajawo & Nyirongo, 2022; Mdakane, 2022).

Mdakane et al. (2024a) conducted a qualitative case study involving 23 policy documents and a heterogeneous sample of 12 participants to evaluate how policies affect the admission of formerly incarcerated students to higher education and professional councils. Their findings indicate that application processes often permit institutions to access personal data, including criminal records. Moreover, some professions apply strict "fit and proper person" criteria, which exclude individuals with criminal histories, thereby hindering reintegration into the workforce and dissuading them from pursuing professional careers. The study concludes that these exclusionary policies reflect a lack of statutory guidance on managing applications from individuals with criminal records. Furthermore, current South African policies do not address key nuances such as the

link between the offence and the specific category of accreditation, the nature of the offence (i.e. violent vs. non-violent), or the time elapsed since the offence. South Africa's Department of Correctional Services (2012) concedes that, due to a lack of a clear policy governing the parameters of prison educational programmes, the administration of the prison education programme is challenging to administer. Furthermore, Miller et al. (2018) deduce that a bottleneck system has resulted in downsizing the number of prisoners eligible for education programmes, engendering discriminatory practices. Evidence suggests that, even post-incarceration, ex-prisoners are made to pay for the crimes for which they were imprisoned. Due to stigmatisation, adequately qualified ex-prisoners cannot gain professional accreditation from professional licensing bodies and gainful professional employment (Mdakane, 2022), hence, they take menial jobs to earn a living and prevent recidivism (Chikadzi, 2017). Comparatively speaking, prison education literature uncovering the collateral consequences of a criminal record on access to higher education and professional licensing in South Africa and the rest of the African continent is limited (Mdakane, 2022). This cements the significance of the current study, which aims to explore the experiences of formerly incarcerated students who were previously sentenced to life imprisonment. It examines how these individuals navigated the processes of applying for professional licences, entering postgraduate education, and seeking employment in South Africa's labour market after earning their professional university degrees.

Theoretical Framework

The present study aimed to gain an in-depth understanding of the post-incarcerated lived experiences of ex-prisoners who had been sentenced to life imprisonment for their crimes. The study's overarching theoretical framework was grounded in Robert Agnew's General Strain Theory (GST) and the Labelling Theory. Social constructionism shares common premises with the interpretive approach (Owen, 1995; Smith & Eatough, 2017). Together, they contend that knowledge is produced by exploring and understanding the social world of study participants, focusing on meaning and interpretations. Both theories underscore that as ex-prisoners re-enter society, they ordinarily carry with them the stigma and label of a criminal record (James, 2016; Makhuza, 2020), which engenders the stereotype that ex-prisoners are untrustworthy and pose an imminent danger to society, thus diminishing the prospects of their assimilation, self-determination, human agency and, in the bigger scheme of things, employability (Mitchell & Palagashvili, 2022). These theories consistently and explicitly associate ex-prisoners' feelings of stress, anxiety, depression, fear and resentment with the spillover effects of the negativity around their ability to assert themselves post-incarceration (Sugie & Turney, 2017). In relation to the usefulness of both theories to the objectives and novelty of the study, their adoption was sparked by the authors' conception that they would create a lens through which the labour market experiences of formerly incarcerated people (previously sentenced to life imprisonment) could be dissected, animated, contextualised and understood in the simplest possible terms. Because in the study, some (i.e., two) researchers possessed what Xu (2016) prefers to call "an outsider" perspective. Not only did the stance of wearing the lens of these theories enable them to familiarise themselves with the world views of the participants, but also enabled them to moderate the reporting of participants' realities and the subjectiveness of the co-researcher with an "insider" perspective (p. 1); owing to their previous first-hand experience of incarceration (albeit under different sentencing conditions and post-incarceration labour market experience, in comparison to the study participants).

Methods

Situated within the social constructionism paradigm, the present study adopted a qualitative exploratory research design to draw on the subjective perspectives of six South African male ex-prisoners who had been previously incarcerated for life imprisonment and hold professional university degrees. Situating the study within the social constructionism paradigm binds researchers to consider different facets of the phenomenon while assuming a critical stance on the taken-for-granted knowledge in society that often serves the values and interests of dominant groups (Mazabow, 2007). It upholds the notion that the way people understand the world is a product of historical and cultural interaction and negotiation processes between and among differ-

groups of people. Edley (2001), supported by Gergen (1999), observed the symbiosis between qualitative research and social constructivism. They state that when used in combination, qualitative research and social constructivism propel researchers to consider that participants can only relay their subjective experiences relative to the world in which they experienced the research problem, and as such, they should not be deemed as objective subjects (Edley, 2001; Gergen, 1999). Therefore, two central questions guided the study: What are the higher education admission and professional licensing experiences of formerly incarcerated people previously sentenced to life imprisonment in preparation for employment after release from prison? Secondly, how do they make sense of their labour market experiences, in other words, what meanings do they attach to the experience of searching for employment with a criminal record?

Participant Selection

The participants in this study were six adult male prisoners of African descent who had been previously incarcerated for life imprisonment and hold university degrees in Law, Education, Psychology and Social Work. The researchers drew on a purposive sampling technique to recruit two ex-prisoners. The snowball sampling took effect in relation to recruiting four ex-prisoners, who were recommended by the initially recruited two ex-prisoners. The criteria for inclusion of the participants were based on the following: (1) the study participants had to be formerly incarcerated people previously sentenced to life imprisonment for crimes classified as Schedule-6 offences. These are offences such as rape, murder and robbery, (2) the study participants had to be adult males of African descent; and (3) they had to be in possession of a professional university qualification leading to registration and/or affiliation with an experienced licensing body, such as the National Bar Council of South Africa (NBCSA), the South African Council for Educators (SACE), the Health Professions Council of South Africa (HPCSA), the South African Council for Social Service Professions (SACSSP).

Data Collection Instruments and Analysis Procedure

One-on-one semi-structured interviews were considered an ideal method for understanding what it means to live with the stigma of, and discrimination against a criminal record, and how the study participants made sense of that meaning. Therefore, all the interviews were audio-recorded, and the language used to communicate with the participants varied. Some interviews were conducted predominantly utilising a combination of IsiZulu, South and Northern Sotho, English, and prison *lingo*, with a few requiring translation into English. The interviews took as long as the participants required, but all were between 60 and 90 minutes each. The recordings were subsequently transcribed verbatim, and the transcripts were analysed thematically using the Interpretative Phenomenological Analysis (IPA) method. The Interpretative Phenomenological Analysis (IPA) was an appropriate method because it allows for the deep exploration of the participants' lived experiences and how they make sense of that personal experience (Smith, 2004). As a method of analysis, it reduces large and complex data by organising and making sense of the data in ways that allow for the development of codes, patterns, and themes. The IPA involves several steps, and to get an understanding of the whole data, this study involved repeatedly reviewing all six transcripts, making notes in the margins of the interview transcripts, and underlining the participants' most salient words, metaphors, and phrases. The data then underwent descriptive coding line by line and one after the other. These were later separated into small segments and specific units of information (Maree, 2007). In addition, this culminated in grouping responses across participants (Best & Kahn, 2006). The participants' verbatim quotes were used to create code labels, and each unique code represented a specific unit of data. The constructed codes were later organised by arranging the codes into categories. The codes that shared similarities were grouped into clusters that logically and intuitively fit together while removing the codes that seemed to apply to the same phenomenon. Lastly, theoretical coding, also known as second-cycle coding, was used to establish an association between information already known and that articulated by the study participants. This stage involved answering the study's research questions by developing links amongst the identified themes, labelling, relabelling and reconfiguring some of them in ways that best captured the essence of the participants' views (Smith & Osborne, 2009). The average age of the participants was 45, and according to Table 1 below, the participants' employment status shows that two out of the six participants were employed (permanent and fixed-term contracts), two were unemployed, and the other two were self-employed as street vendors. Regarding their professional registration status, only two participants were professionally registered, while the other four were unregistered and thus not affiliated with any professional registration body.

Table 1*Demographic details of study participants*

Study participant (Identifier)	Age (in years)	Ethnicity	Employment status	Qualification & level of education	Professional registration status
Participant 1	46	IsiZulu	Self-employed (street vendor)	Psychology (honours)	Unregistered
Participant 2	43	IsiZulu	Self-employed (street vendor)	Psychology (honours)	Unregistered
Participant 3	42	Sesotho	Unemployed	Bachelor's degree in Social Work	Registered
Participant 4	44	Setswana	Employed (fixed-term contract)	Law (Master's candidate)	Unregistered
Participant 5	48	Sesotho	Unemployed	Bachelor of Laws (LLB)	Unregistered
Participant 6	47	IsiZulu	Employed (permanent)	Education (PhD candidate)	Registered

Data Analysis

Qualitative data analysis is one of the most labour-intensive processes of a qualitative research inquiry (Leech & Onwuegbuzie, 2007) because it enables the researchers to understand the core meaning of their qualitative data (Ngulube, 2015). In this study, the researchers relied on the thematic analysis of the semi-structured interview-generated data. Initially, researchers repeatedly read through the transcript to locate the data patterns consistent with the research questions and objectives. Recurrent and interesting patterns in the narrative were highlighted and taken as tentative themes. The final stage of this exercise entailed the researchers' deliberation on which tentative themes to endorse as final themes, in order to curate the study's findings. Ultimately, the researchers mutually agreed to endorse two primary themes and six subthemes, namely: Theme 1, referred to as "the varying degrees of criminal record disclosure", which encapsulates the following subthemes: (a) full criminal record disclosure, (b) partial criminal record disclosure, and (c) non-disclosure (concealment). Theme 2, referred to as the "effects of secondary stigmatisation due to a criminal record", encapsulates the following subthemes: (d) self-exclusion from labour market participation, (e) a sense of apprehension and hopelessness about the future, as well as (f) perceptions of discrimination and marginalisation due to a criminal record.

Ethical Issues

Before conducting the interviews with the participants, ethical approval to conduct the study was sought from the University of South Africa (Unisa) and followed by the Department of Correctional Services (DCS), and Unisa subsequently granted it on 01 November 2018 (ERC Reference #: PERC-17085). Study participants were each invited to participate and thoroughly informed about the study's objectives, as well as briefed on the voluntary nature of the study, which meant they had the right to refuse or stop participation without incurring any penalties.

Other ethical considerations included issues of privacy, anonymity, and confidentiality. For example, the participants' real identities were protected by concealing any identifiers; instead, they were referred to by numbers. Furthermore, whereas some of the study participants were unemployed and looking for a job, others were employed. This meant that conducting the interviews varied from taking place in the ex-prisoners' homes to their places of work. All the interviews were conducted in the cities of Pretoria and Johannesburg, Gauteng, South Africa. The study participants consented and gave a form permitting the researchers to audio-record the

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Presentation of the Empirical Findings

The Varying Degrees of Criminal Record Disclosure

This theme was constructed around the complex web of issues emanating from criminal record disclosure and the inconsistency with which the participants had experienced their "coming out" degrees. Similarly, it was interesting to note that decisions about criminal record disclosure, including the amount of information to be disclosed, varied for each participant based on the merit of the person with whom they interacted. Thus, based on the participants' employment status, enquiring whether they disclose their criminal records when applying for vacancies or admission to professional licensing bodies became imperative. Moreover, when answered in the affirmative, to probe what and how much information they disclose. According to the study participants, there are varying degrees of criminal record disclosure, ranging from complete to partial and non-disclosure. The three themes below illustrate the varied degrees of disclosure:

Full Criminal Record Disclosure

The results of the present study overwhelmingly suggested that full disclosure (as opposed to partial disclosure and non-disclosure) remains in society's best interest, and that honesty and disclosing any previous convictions when applying for vacancies and/or admission to professional licensing bodies is essential. Ironically, the participants invariably experienced society's construction of "honesty is the best policy" as a double-edged sword; and this sentiment was shared strongly among the participants. From the verbatim accounts presented below in italics, it can be deduced that the participants openly declared their criminal records to avoid dishonesty. To justify the stance of openly declaring their criminal record, Participant 1 said:

I disclose my criminal record, I have no reason to hide it because if my employer hires me only to find out I have a criminal record, that is dishonesty and can even make me lose my job. So, it is better for the employer to know from the onset that I have a criminal record [Participant 1].

Participant 5 commented as follows:

I declare my previous criminal conviction based on the fact that I do not want to be caught by surprise. If I'm granted an opportunity to work and it arises, I have a criminal record, it would amount to dishonesty. That is why I disclose from the start [because it] could provide the impression that I am fit and proper to occupy that position [Participant 5].

Based on the above utterances, it is sensible to consider that participants regard declaring their criminal record history as a measure of displaying honesty and transparency.

Partial Criminal Record Disclosure

The second sub-theme was constructed based on the notion that criminal record disclosure depended on the participants' context. For example, Participant 6 had been previously hired for three different jobs, all of which required varying degrees of disclosure, ranging from not disclosing to partial and, ultimately, full disclosure.

To highlight these differences, Participant 6 was asked to explain how he managed interchanging between all three jobs, to which he replied:

When I got out of prison, the officials [employers] were aware where this person was coming from, so I never went through that process which required me to disclose. It was just a conversation that I am out now, can I have a job, just as you would ask for a job [Participant 6].

This response suggests that Participant 6 felt unobligated to disclose his criminal record explicitly since (a) it was a prearranged job and (b) his potential employer already knew his record. Similar to another vacancy once held in Gauteng Province, Participant 6 reported that the owner of the construction company where he worked was fully aware of his criminal history. Likewise, he never disclosed his criminal record because it was a prearranged job. Furthermore, this points to the significance of voluntary versus involuntary disclosure during the application and admission phase and signifies a strong motivation by previously incarcerated people to break away from a criminal career.

Non-Disclosure (Concealment)

As mentioned, there are varying degrees of criminal record disclosure, with previous research suggesting that concealing one's criminal record functions as a coping mechanism (Muthee, 2020). In the present study, all participants knew that concealing a criminal record carries legal implications. Still, more importantly, that concealment induces anxiety, along with the fear of being found out. Despite being affiliated with and employed as a fixed-term contractor, Participant 4 testified that he deliberately concealed his criminal records from his employer with no prospect of ever disclosing them. To explain the rationale behind his decision not to disclose his criminal record, Participant 4 said:

I used to fully disclose...but now, after having learnt the difficult way, that in actual fact disclosing such criminal records is to my discredit, I decided not to disclose any more. [So] Yes, your assumption is quite correct. They [my employers] don't know [about my criminal records], and I intend on keeping it that way...If they are to find out, then summarily I am going to be dismissed from work [Participant 4].

Although a criminal record may remain undetected by employers and/or professional registration bodies due to poor vetting procedures and a lack of oversight, in the present study, its dormancy could neither be ascertained nor guaranteed by the participants because of the fear of being caught out and consequently suffering penalties for non-disclosure. Based on the premise above, one can reasonably formulate the argument that despite being fully aware of the implications of non-disclosure, Participant 4 consciously decided to take the risk "not to disclose any more". While it may appear logical for Participant 4 not to declare his criminal record because it reduces employment prospects, simultaneously, the unwavering determination to conceal a criminal record discreetly engenders one to live a life of secrecy. Participant 4 further reasoned that:

I did not disclose my criminal record because they did not ask me and that was a good thing because had I disclosed, then I doubt I would have had the job by now. I'm even scared of disclosing, like they always speak that honesty is the best policy, but I have a different view. Yes, honesty is the best policy. However, it's prejudicial. It does not work for people with criminal records because once you decide to be honest, such honesty is taken against you [Participant 4].

From his conviction, it stands to reason that some study participants (such as Participant 4) preferred concealing their criminal record as an alternative when seeking and maintaining employment. In contrast, others preferred disclosing their criminal record to avoid dishonesty. In sum, the implications of these results showcase that not all formerly incarcerated individuals believed that criminal record disclosure negatively impacted their chances of finding employment and, by extension, their educational and development prospects. Taken together, these opposing extracts underscore the notion that there can be multiple degrees to criminal record disclosure, comprising full, partial, or non-disclosure (concealment) that can be voluntary or involuntary, as well as context dependent.

The Effects of Secondary Stigmatisation Due to a Criminal Record

It is often argued that ex-prisoners are discriminated against and treated unjustly in society due to their criminal records. According to the study participants, this treatment engendered the re-stigmatisation of people with criminal records. For instance, Participant 3 reiterated that despite ex-prisoners' efforts to reintegrate into society through employment, his experience was that his ex-prisoner status continued to disadvantage him. He felt strongly that he was still judged based on his past, implying that he was still perceived as "untrustworthy". This implicitly undermined any previous and/or future rehabilitation efforts and was explicitly identified as a source of discouragement. The results also highlighted that criminal records have long-term adverse effects. These negative effects were associated with, for example, the experiences of a criminal record as a double-edged sword and were conceived of as "perpetual punishment" aggravated by the stigma of having a criminal record. Exasperation was also in the participants' voices when probing whether declaring a criminal record had any bearing when applying for vacancies or admission to professional licensing bodies. Participant 5 conceded, he said:

Under the South African law, Section 35 of the Constitution, no one can be punished twice for the same offence...the criminal record plays that role indirectly because it is a double punishment [Participant 5].

Likewise, Participant 3 confirmed that re-stigmatisation due to a criminal record is another form of punishment - this time, it is a post-incarceration punishment. He expressed his views as follows:

It's perpetual punishment, irrespective of how or whatever your achievements, it is always there, a red dot on a white piece of paper that closes doors for us [Participant 3].

The symbolic interpretation of "a red dot on a white piece of paper" suggests that a criminal record functions to label ex-prisoners deliberately and conspicuously. For instance, even if prisoners sentenced for sexual offences "pay for their sins" via incarceration, once they have been labelled as sex offenders, the label lingers on to further punish and stigmatise them by permanently keeping their name on the sex offenders' list. As supported by Participant 6 below, this impedes business and employment opportunities:

There are businesses I won't be eligible to start, something as simple as accessing the Uber taxi industry...I cannot own a car and put it on Uber because they check those things, criminal records and stuff, so you see that it affects me? It suffocates me [Participant 6].

Therefore, based on the study's findings, it could be argued that criminal record labelling is emotionally and psychologically taxing. For instance, Participant 3 reiterated that despite his efforts to reintegrate into society via employment, challenges related to the stigmatisation of his past due to a criminal record render him unemployable. He said:

They called and booked me for fingerprints verification. Unfortunately, when the results returned, they indicated that I am a parolee serving a life sentence...[so] we try to apply for jobs but once they know you have a criminal record, even though you divulge...its already a minus 10; you are still regarded as untrustworthy, people don't trust you. You're being judged by your past rather than your present and that demoralises [Participant 3].

This experience was shared by other participants and seemed to suggest that the state of unemployment perpetuates formerly incarcerated individuals' regression into crime, particularly if they perceive themselves as worthless and that employers will never hire them. This difference in treatment was also construed as unfair discrimination by the participants, particularly those who still sought employment and registration with professional licensing bodies.

Self-Exclusion from Professional Development and Labour Market Participation

When people or job applicants with criminal records anticipate a possible rejection, they are more likely to develop a sense of apprehension and automatically exclude themselves from applying for vacancies because they believe they will never be hired. Similarly, in the present study, a strong sense of apprehension

among study participants ultimately led to self-exclusionary practices. This premise was predicated on the account below:

People with a profession are the most affected by the criminal record...For instance, when I see a call for papers, there are some that I don't even pay attention to because I know that my criminal record has already precluded me [Participant 6].

The response above suggests that being rejected repeatedly leaves ex-prisoners demotivated, discouraged, and hopeless. In the present study, feelings of despondency were highlighted as follows:

I get discouraged to the point whereby I no longer apply for any government posts because I already know I won't be considered [Participant 4].

Similarly, Participant 6 excluded himself when he said:

I can't travel freely, I can't interact with other scholars in other countries. If there are papers I need to present, attend, or listen to, I can't do that freely because there's that thing whether will I be welcomed [Participant 6].

Conclusively, these results show that ex-prisoners automatically exclude themselves from the job-hunting process, believing that employers' attitudes (as engendered by their criminal record) are the reason why they are not hired. The implication is that criminal records are disqualifiers for job and training opportunities, culminating in a sense of hopelessness followed by self-exclusionary practices.

A Sense of Apprehension and Hopelessness about the Future

This theme reconstructs the meanings of searching for employment with a criminal record in South Africa's labour market and how study participants made sense of this experience. Key to these experiences were the subjective emotions of discouragement and hopelessness regarding prospective employment. In this regard, labour market discrimination was strongly highlighted by Participant 3, who said:

Even if you study, no one will hire you...I tried at correctional services [and] told them I am a social worker and facilitate life skills programmes, but they refused [and] such things are discouraging...Sometimes I feel like going to school does not help, especially when you are a prisoner [Participant 3].

According to research, efforts to access the labour market signify a strong motivation to break away from a criminal career. Yet, the expressions, "[s]ometimes I feel like going to school does not help", exemplify the incongruence between some participants' careers and their labour market aspirations. This disconnect was further shared by other participants who argued that there were no guarantees that people with criminal records would be hired in the labour market. According to the study participants, they had applied to various companies and organisations in both the public and private sectors, but did not receive a response. For instance, Participant 1 said:

I try and apply for other jobs because I [also] studied Human Resources and you find there's a problem with the criminal record, my age, and things like that. And so, I become a person who's continuously applying for vacancies, constantly on the phone, internet...scouting for job opportunities. Unfortunately, I haven't found employment [Participant 1].

The extract above highlights Participant 1's challenges in finding employment, which were shared by Participant 4, who reiterated that labour market discrimination occurs in both the public and private sectors. For instance, he stated that despite excelling at several job interviews, he still could not secure employment in the private sector. Similarly, based on his previous convictions, Participant 4 confirmed that he could neither be appointed as an attorney nor admitted as an advocate due to his criminal history, often resulting in ex-prisoners being relegated to menial jobs. He said:

They [criminal records] are a problem because whenever I apply, more especially in the government departments, I cannot secure employment even for internships. I've had countless

interviews in different departments ...I cannot be appointed as an attorney [and/or] approved as an advocate [Participant 4].

These narratives suggest that acquiring higher education alone was insufficient to help study participants access the labour market. In the present study, the results indicate that a lack of insight into whether study participants would qualify for a job compounded their labour market insecurities, and this process was fuelled and reinforced by the stigma and discrimination associated with searching for a job when having a criminal record.

Perceptions of Discrimination and Marginalisation Due to a Criminal Record

Contemporary research suggests that ex-prisoners face bleak prospects in the labour market, with few employers willing to hire them. The present study's results indicate that the participants' unemployment was exacerbated by the stigma and discrimination associated with their criminal records. These sentiments were reiterated by Participant 4, who illuminated the effects and implications of having a criminal record as follows:

It [criminal record] prevents you from doing many things...you are allowed to have a [driver's] licence but you are prevented from having the means of supporting yourself by acquiring a public driving licence permit. When you apply for a visa, they check whether you have a previous conviction and if you do, you are disqualified...If you want to establish yourself as an entrepreneur, you are disqualified from being a manager of your own company because you have a previous conviction...If you want a gun licence, you are prevented from having such. Hence, I am telling you that it permeates all spheres of life [Participant 4].

The extract above underscores that criminal records have long-term adverse effects. This experience is similar to that of the general population of ex-prisoners. In the present study, collateral consequences were illustrated through a spectrum of examples, with a common resounding narrative underscoring criminal records as instant disqualifiers for accessing business, education, and employment opportunities. For instance, Participant 3 said:

I cannot proceed to master's level, it's compulsory to register with the professional board [SACSSP] and have two years' experience working as a social worker before one can register for master's. Those are the requirements in social work [Participant 3].

According to Participant 3, "the requirements in social work" stifled his academic progress. Similarly, Participant 4 reiterated that he had struggled to register his articles with the Gauteng Law School due to his criminal record. He said:

If you pursue the law profession, then you have to get your articles registered by the relevant law society, [but] I couldn't register my articles because I have a criminal record and the articles clearly state that if you have a criminal record then you are not eligible to be in the law profession [Participant 4].

Participant 5 provided a similar response, stating that:

Due to the fact that I have a criminal record, to do my articles requires a lot of effort and money yet it doesn't have any certainties whether after completing my articles I will be admitted to be an attorney. It is a struggle I know and have heard from others who studied law that it is going to be difficult for me to be granted the certificate to practice as an advocate and that difficulty will arise from the general council of advocates, which is the Bar Council [Participant 5].

Key to this experience was the notion that criminal records lie discreetly dormant for a long time and resurface when study participants seek to gain access to the labour market, higher education institutions/or register with professional licensing bodies. More importantly, getting past a criminal record was experienced as a struggle by all study participants. Participant 6 said:

I am trying to understand how I can rid myself of this criminal record because it does affect me. I was sentenced to life imprisonment, so even now, DCS always follows me, having relations with me, when I move, I must report, when I cough (laughs) you see, so they want to know where you are, what you are doing, and all of that [Participant 6].

Sharing a similar experience was Participant 4, who elaborated that:

I still can't find a permanent job because of the criminal record. So basically I am still paying for it and I believe I will pay for it even for the next coming years of my life [Participant 4].

The extracts above exemplify how criminal records become the unjust regulator of opportunities, negatively affecting people's lives socially and occupationally. Participant 6 commented as follows:

Because of your criminal record, you have to sit and explain yourself and go through all those processes; it's not nice to talk about having been in prison; it is a stigma and burden that you carry all the time [Participant 6].

In addition, Participant 4 stated that:

Having a criminal record is detrimental to one's life. It ruins your whole life! You are forever paying, even after the court found you guilty and you paid by going to prison; so yes, it destroys one's life. You pay for it even years later [Participant 4].

In the same way, Participant 2 recalled an instance where he applied for a job and was unsuccessful, he said:

I applied in Waterkloof. It was run by a physiotherapist, and they said "Eish, a criminal record"; and with others, it raises eyebrows, especially in this profession where you'll be dealing with different kinds of people [Participant 2].

Based on the narratives above, life imprisonment reinforces the notion that debt owed to society can never be repaid through incarceration (Van Zyl Smith, 2003). The symbolic interpretation thereof is that criminal records invariably and discreetly lurk in the background to regulate the labour market, professional licensing and other higher education opportunities for ex-prisoners.

Discussion of Findings

The results of this study have established that early and full disclosure of criminal records is a key requirement when applying for vacancies and/or admission to professional licensing bodies. Drawing upon the experiences of the study participants, one can surmise that stigmatisation, accomplished through labelling, maintains and justifies the exclusion of people with criminal records from higher education and labour market participation. In particular, the results showed that criminal record disclosure negatively impacts ex-prisoners' chances of finding employment and, by extension, their educational and development prospects. Although the relationship between crime and unemployment is complex and ambiguous at best (Onuferova, 2016), a study conducted in the US found that nearly two-thirds of employers reported that they would not hire a person with a criminal record (Holzer et al., 2002). In support of this finding, on the one hand, a survey conducted by Pager et al. (2009) revealed that the majority of US employers harbour negative attitudes towards people with criminal records. On the other hand, a Canadian study confirmed that employers are generally unwilling to hire ex-prisoners and that the resistance to hiring increases for those convicted of violent crimes (Scott, 2010). Similarly, research conducted in Europe and Asia notes that the presence of a criminal record imposes a wide range of legal restrictions on people with a criminal record. Most of these legal restrictions exist in the professional sphere, where a criminal record is an obstacle to engaging in certain activities (Rudell & Winfree, 2006; Voronin, 2021; Wu, 2020). In South Africa, the status quo remains largely unchanged, despite the Department of Labour's (2025) guidance stating that excluding an otherwise suitable and qualified candidate solely on the basis of a criminal record - if such exclusion is found to have occurred - may constitute unfair discrimination on arbitrary grounds.

This study also demonstrates that, due to labelling, possessing a criminal record has far-reaching consequences for ex-prisoners. As narrated by study participants, harbouring a criminal record signals “a character defect”. Consequently, this leverages employers, organisations, and institutions to unjustly use the criminal record as a screening tool to identify and discriminate between job applicants and exclude those with a criminal record from participating in the labour market. According to a previous study conducted in the US, screening for criminal records is used with a specific intent. That intent is disproportionately aimed at identifying job applicants with a criminal record (Jay, 2013). Other similar and comparable studies assert that in the labour market, job application forms have an inherent discriminatory clause that directly prevents ex-prisoners from applying for a post. This implies that ex-prisoners encounter significant barriers to employment opportunities. Comprehensively considered, this line of research illustrates that “chances of securing a decent and well-paying job are slim” for job applicants with a criminal record (Lephale, 2016, p. 190). This view finds support from other African studies confirming that criminal record background checks are used mainly for pre-employment screening purposes, resulting in many collateral consequences for ex-prisoners (Boachie & Asare, 2015; Diphoorn, 2016; Muthee, 2020).

A complex web of issues emanated from criminal record disclosure and the inconsistency with which the participants had experienced their degrees of “coming out”. For instance, for some of the study participants, criminal record disclosure amounted to reformation and honesty; while for others, criminal record disclosure represented a blessing (the belief that disclosing facilitated gainful employment and professional registration), as well as a curse (the belief that criminal record disclosure was an instant disqualifier from gainful employment and professional registration). In this regard, research findings in South Africa and Australia suggest that instead of considering job applicants on merit, with both negative and positive credentials being given equal weight, the existence of a criminal record as a negative credential somehow receives priority (Lephale, 2016; Saliba, 2012). This is problematic insofar as it illustrates the criminal record’s ability to travel beyond incarceration, where it disguises itself in exclusionary measures that hinder the successful reintegration of ex-prisoners into the labour market (Saliba, 2012). Several other studies conducted in the Southern African region also report collateral consequences due to possessing a criminal record (Dube-Mawerewere & Chiborise, 2017; Fredericks et al., 2021). For instance, Fredericks et al. (2021) confirm that a criminal record in Namibia results in collateral consequences such as unemployment, working in low-paying jobs and/or poor-quality jobs, while entry into Botswana’s Defence Force equally illustrates that it requires a clean criminal record (Kgosiele, n.d.). Thus, in preventing the above, and stemming directly from the participants’ lived experiences, was the psychological torment and “anxiety-provoking emotions” engendered by the concealment and non-disclosure of their criminal records, including a sense of hopelessness due to “unmet employment expectations” that culminated in feelings of despair and apprehension.

Study Limitations

Due to the COVID-19 pandemic and subsequent lockdown, researchers in many countries, including South Africa, were prohibited from conducting face-to-face interviews. As such, the interviewing process was affected by the worldwide outbreak of the coronavirus. Conducting more interviews with other ex-prisoners could have benefited the study immensely.

Conclusions and Recommendations

This phenomenological study has demonstrated that criminal record declaration comprises various levels, namely (1) concealment and non-disclosure, (2) partial disclosure, and (3) full disclosure. Generally speaking, people who tend to conceal their criminal history are more prone to view criminal record declaration as a double-edged sword owing to the re-stigmatisation by the labour markets. As a result, some ex-prisoners may experience this lasting effect as being exclusionary and marginalising once their criminal history is perceived as constraining their legitimate mobility in the labour market. In retrospect, employers are entitled to enquire and consider previous criminal convictions when assessing an applicant’s suitability for employment (Mujuzi, 2014; Public Service Commission, 2009), even though this could result in unintended negative consequences by creating the false impression that a criminal record is a risk factor for reoffending. However, there is no evidence that applicants with a criminal record are more prone to recidivism once admitted/employed. Towards this end, the present study reconfirms that unemployment is not only detrimental to ex-prisoners,

their families and their community but also destructive and counterproductive at the societal level. Therefore, there is a need for a research agenda specific to the South African context on developing policies that improve employment access for people with a criminal record.

Like many other studies, this study makes yet another call for a strictly South African research agenda aimed at developing and designing policies to include people with criminal records in South Africa's labour market. To help facilitate ex-prisoners' chances of criminal desistance, rather than recidivism, society's unresolved tension that culminates in punishment beyond incarceration can no longer go unchallenged. Therefore, the proposed research agenda will ensure that labour markets, higher education institutions and professional registration bodies consider applicants with criminal records when developing policies specific to the socio-historical context of South Africa. For instance, intersectoral collaboration between the various institutions can help reformulate clear policy guidelines that regulate, while providing advice to applicants with previous criminal records by explicitly outlining the conditions that qualify or disqualify job candidates with a criminal record in specific employment, training/educational programmes and professional registration.

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Endnotes

1 Life imprisonment refers to prisoners serving a life sentence. According to the Correctional Services Act 111 of 1998 (ss. 73 (6) (iv) (vi) and 78 (1)) (Republic of South Africa, 1998), the possibility of release on parole is dependent on two factors, namely: (1) a prisoner serving a life sentence may be considered for parole supervision on the recommendation of the Minister of Correctional Service; and/or (2) a prisoner serving a life sentence may be considered for parole supervision by the Minister of Correctional Services provided that the prisoner has already served 25 years of his/her sentence, or when a prisoner attains the age of 65 or has already spent 15 years behind bars.

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