

INSTITUTIONAL TREATMENT OF FEMALE OFFENDERS IN KENYA

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I. INTRODUCTION

Kenya's prison establishment and practices borrowed heavily from British colonial penal philosophy whose emphasis was retribution and incapacitation of offenders with very cruel and inhumane penalties. Women offenders faced even worse forms of abuses due to the absence of requisite female-responsive programmes. Culture and traditional stereotypes stigmatized them both during and after imprisonment, turning female offenders into pariahs upon release.

The 1963 political independence from the British colonial system marked a major watershed on the prison practices and treatment of offenders in Kenya. A new philosophy of rehabilitation was adopted. This resonated well at the policy level; however, the implementation of the principles in line with various international conventions and treaties on the treatment of offenders remained wanting as the prison establishment continued with its old practices. Prisons on the whole remained centers of brutality, physical and emotional torture. In a word, rather than being correctional centers, the prison system evolved as emotional graveyards of the inmates.

The emerging globalization and the internationalization of correction institutions blew a new wind of change necessitating, *mutatis mutandis*, a review of our penal systems to move in sync with acceptable best practices. In tandem, the Kenyan government adopted a series of reforms tailored specifically to meet international standards. Despite the milestones, debate is hot among scholars on the reforms. On the one extreme are those who contend that inadequate legislation and lack of sound capital outlay is to blame for the slow implementation of desired programmes. This argument is, however, given a generous *reductio ad absurdum* by scholars such as Austin, J.B. and Donahue, T. (1992: 69, 116-118) et al. who posit that certain treatment options for female offenders do not require funds at all. The "problem" in their very considered opinion has more to do with lack of creativity and conservative nature among prison managers than funds. Further, they blame the dearth of knowledge on the part of prison authorities on how to promote successful outcomes in the treatment and management of female offenders. Complicating an already very sorry state is the fact that correctional institutions receive the least in overall national budgetary allocation and are seldom talked about unless when there is either a jailbreak or an epidemic.

A number of international interventions have lately emerged, mainly through conventions (Bangkok Rules, 2010), legislation and funding to help alleviate challenges that affect the institutional treatment of female offenders. It is expected that with strict adherence to the principles of international laws and the UN conventions, most of the shortfalls in the treatment of female offenders will be mitigated. The Bangkok Rules recognize (in par. 11) that, "not all of the rules can be equally applied in all places and at all times". Nonetheless, correctional responsibilities should permit sufficient enjoyment of human rights and individual respect and dignity of offenders.

This paper is an attempt to examine the current situation on the institutional treatment of female offenders in Kenya, the inherent challenges and a search for possible solutions and to determine the extent to which the country has domesticated the provisions of the Bangkok Rules and other best international practices.

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II. STATUS OF FEMALE-COMMITTED CRIMES IN KENYA

Traditionally, the area of female inmates had not received much attention in the country due to the relatively small population of female offenders as compared to their male counterparts. However, the rapid increase in the number of female offenders has *ipso facto* occasioned the need for viable structures for treatment of female offenders. Cole (2002) and Barbara, R.P (2004) posit that the status of female offending is a reflection of the extent to which social pillars are upheld and the efficacy in which the criminal justice system is able to restore order within a society. Currently, a number of institutional reforms are taking place within the police, the judiciary and the prison departments. The need for these reforms had been revamped after the devastating post-election violence which was associated with a failed criminal justice system¹.

Female offenders in Kenya make up to about 18% of the total prison population with the number increasing from 10,857 in 2004 to 18,112 in 2012. They also account for up to 4% of all violent crimes in Kenya (Kenya Police Crime Statistics, 2011). More women are getting increasingly involved in crimes that hitherto were male dominated. Most female offenders are from poor backgrounds with low social status. The majority of them are illiterate, mainly from broken families. In certain cases, an abusive past and residence in urban centers also predispose some females to commit crime. Female crimes in Kenya are diametrically opposed to those of their male counterparts. Whereas males have a tendency to be involved in violent crimes and other serious acts of subversion, female offences are less severe. Christine, A.O, (2010) and Barbara, R. P., (2004), established that the majority of females commit offences including assault, loitering, littering, hawking, and illicit alcohol brewing and sale. Presently, a number of females have been arrested for crimes such as prostitution, child neglect, child trafficking, drug trafficking, economic fraud and homicide. The offences notwithstanding, those arrested find themselves assigned to one of the eighteen (18) women's prisons in the country with Langata and Shimon La Tewa maximum security women's prisons housing inmate populations of between 2,000 and 3,500 offenders.

III. INSTITUTIONAL TREATMENT OF FEMALE OFFENDERS

Prior to the adaptation of the Bangkok Rules, Kenya had domesticated specifically the UN Standard Minimum Rules on the Treatment of Prisoners (SMR), 1955, the Geneva Declarations on Human Rights (UDHR) of 1948. These conventions and rules set minimum standards for the admission, containment and rehabilitation of offenders within the correctional institutions.

A. Admission of Female Offenders in Correctional Institutions

Accordingly, in light of the Bangkok Rules, inmates are classified on the basis of their age, health, special needs and security concerns so as to define suitable rehabilitation programmes and appropriate provisions for each category of offenders. Inmates are also informed about their responsibilities, human rights, and avenues to seek recourse in case of need or abuse.

B. Containment of Female Offenders

In line with the UN Standard Minimum Rules for the Treatment of Prisoners, (1955: Rule 8a), the Kenya Prison Act (CAP. 90), and the Bangkok Rules (2010: Rule 5), female offenders in Kenya are separated in female only institutions. The department, with various partnerships, has provided facilities and materials for women's specific hygiene needs, including sanitary towels, and a regular supply of water and electricity. There are separate wards for those inmates who are old, lactating, pregnant or suffering from mental illness. Offenders are issued free toiletry and sanitary towels and adequate food rations. A number of children who accompany their mothers benefit from day care institutions, adequate water and electricity supplies and are accommodated in separate dormitories.

C. Infrastructural Provision in the Treatment of Female Offenders

The Kampala Declaration (1996) and the department's strategic plan have become the necessary tools in the extensive infrastructural upgrades in most women's prisons in the country. Most of the old colonial structures have been transformed into modern accommodation facilities in the effort to create

¹See Kriegler- www.kas.de, Philip Ransley- www.administrationpolice.go.ke and Waki reports.

safe, secure and humane conditions for female prisoners. Further, there has been improvement in the transport system from the colonial lorry pick up (*black mariamu*) to modern humane buses. The creation of the Directorate of Prisons Health Services has also seen the improvement of healthcare delivery in all prison institutions.

D. Recruitment Policy and Available Skills

The recruitment policy within the Kenya Prison Service is guided by the national Constitution (2010) and Public Service Act, which provide for gender parity and engagement of competent officers within the civil service. Even though there has been concerted effort to attain gender parity within the Kenya prison service staff, little has been attained especially in key rehabilitation departments. There are staff deficiencies in carrying out new demands in the treatment of female offenders.

E. Rehabilitation Programmes for Female Offenders in Kenya

Skill acquisition as a sufficient and necessary plank in rehabilitation programmes is being implemented through partnerships with various NGOs, stakeholders and the international community. The philosophy behind these rehabilitation programmes is to prepare prisoners for community reintegration in line with the Kenya prison reform agenda and various provisions contained in international covenants.

F. Treatment of Female Offenders with Substance Abuse Cases

Substance abuse treatment is a priority need of the majority of female offenders in the country. Management of these offenders remains a big challenge for prison authority in Kenya. For proper management more specific information concerning incarcerated offenders with alcohol and drug problems is needed. As a corollary to alcohol and drugs, HIV/AIDS has further complicated the plight of female offenders.

G. Treatment of Female Offenders with HIV/AIDS

To respond to the HIV/AIDS pandemic the prison department in 2007 developed a comprehensive policy to manage HIV/AIDS among its staff, inmates and the immediate communities. The policy's main agenda is to provide screening and intervention programmes for effective management of those infected and affected by the scourge.

H. Treatment of Juvenile Female Offenders

Juvenile female offenders, however, are contained together with adults. This has impacted negatively their reformation and subsequent reintegration. Institutional treatment interventions for youthful female offenders in Kenya includes psychosocial therapy, skills training, formal schooling, reintegration, empowerment, HIV/AIDS therapy, and pre- and post-natal services, and pre-school services for the children accompanying their mothers in prisons.

In a nutshell, the driving philosophy behind the rehabilitation programmes entails a mosaic of formal education for juvenile offenders; informal education for illiterate adult inmates; vocational training (industrial and farm enterprises); psychosocial therapy (general and spiritual counselling); business and commercial education; recreational activities including sports and indoor games; talent development; and remote parenting.

IV. CHALLENGES AND PROBLEMS

The prison department faces numerous problems in its effort to offer scientific evidenced-based treatment for female offenders. The basis of these problems lies with either the institutional or structural arrangement prevailing in the prison facilities. Of serious concern is the lack of necessary tools and resources for assessments, or tests, that are designed to identify the needs accommodated or addressed by correctional institutions which are immanent in identifying what services would be most beneficial to female offenders. Besides the uncoordinated manner in which partners in the criminal justice system dispense of their work, there is lack of policy framework to regulate and coordinate the functions of all the criminal justice agencies and to harmonize their functions. Every agency independently pursues its policy agenda without due consideration of the effect of their activities on other institutions. This uncoordinated approach to addressing justice issues leads to problems in the other

sector.

The other challenge that affects delivery of humane treatment to female offenders is lack of sufficient infrastructure and human resources. Most of the prison facilities were designed and built during the colonial era with a completely different philosophy for the treatment of offenders. The process of modernizing and developing existing physical infrastructure, which is one of the pillars of the current department strategic plan, is being implemented.

Overcrowding still remains a big challenge as it stretches the meager resources in prison institutions leading to poor sanitation, the prevalence of communicable diseases and abuse in personal decency of the inmates. Where certain rehabilitation programmes are being offered, their impact is affected due to obsolete facilities. For instance, the provision of education is affected by lack of stationary, modern books and libraries.

The Kenyan justice system has seen a number of high profile women engaged in criminal activities that previously were associated with men. This category of offenders includes well educated, highly trained professionals with very sound financial backgrounds. The prison department does not have any rehabilitation measures for such offenders although their numbers are on the rise.

V. POSSIBLE SOLUTIONS

Timely delivery of justice is key as one of the strategies for decongesting prisons. The courts should hasten the delivery of justice and use the alternative sentencing mechanism to settle disputes other than custodial sentences. The community service order which is available in the country needs to be fully implemented, and petty offenders should be given non-custodial convictions. There is a need for enhanced partnerships to attract funding which can then be used to improve the infrastructure and human resource requirements for effective implementation of rehabilitation programmes. Continuous training and exchange programmes for prison staff are critical to enable them to adopt new treatment options for female offenders. Additionally, female offenders should be exposed to viable and labour market responsive courses.

VI. CONCLUSION

The treatment of female offenders mirrors the manner in which the community is dealing with the socioeconomic affairs that affect the nation. Whenever proper and humane treatment programmes are accorded to female offenders, peace, security and economic posterity is achieved and vice versa. Whereas the prison reforms targeting female offenders in Kenya are commendable, a lot still needs to be done to adapt creative programmes and international best practices such as development of gender-responsive policies, programmes and practices to ensure progressive and social reintegration of offenders. Finally, offenders come from the societies, and community participation in their full reintegration is imperative. The public must therefore be included to ensure the elimination of the psychosocial, economic, and cultural barriers that remain a hindrance to the full implementation of effective rehabilitation programmes for female offenders.

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