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Access to Justice for Women incarcerated with Children in Uganda: Flaws and Opportunities for Reform



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Access to Justice for Women incarcerated with Children in Uganda: Flaws and Opportunities for Reform

**A Study Commissioned by Public Interest Clinic
School of Law, Makerere University**

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Executive Summary

Worldwide, prisons and prison regimes have almost invariably been designed for the majority male prison population. The architecture of prisons, security procedures, healthcare, family contact, work and training do not favour female incarceration. In the last decade, there has been a marked increase in the number of women incarcerated in detention facilities. This has given rise to gender-specific health and welfare care needs. While development has been slow and piecemeal, there is a growing international legal framework on the situation of women in conflict with the law, specifically women who are primary care givers and those incarcerated with children.

In 2003, the United Nations General Assembly adopted a Manual on Human Rights for Judges, Prosecutors and Lawyers on Human rights in the Administration of justice. This Manual called upon “governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison”. The Manual also addresses the issue of children of women in prison, with a view to identifying key problems and ways in which they can be addressed. The Kyiv Declaration on Women’s Health in Prison was adopted in 2008, followed by the UN Rules on the Treatment of Women Prisoners and Non-Custodial Sentences on Women Offenders (Bangkok Rules) in 2010. These rules set out comprehensive guidelines and standards for the treatment of female prisoners and recognize women as a vulnerable group within the criminal justice system. The Bangkok Rules comprehensively address the needs of children in prison with their parents and recognizes that the best interest of the child should be upheld even for children incarcerated with their mothers.

Women with children end up in prisons in one of two ways; either a pregnant woman is arrested and gives birth while in prison, or a mother with a young child is admitted with her child. S.59 (1) of the *Prisons Act 2006* provides that female prisoners should be admitted with their infants. It further provides that a female prisoner, pregnant prisoner or nursing prisoner should be provided with special services needed. This is complemented by a growing body of international human rights instruments aimed at addressing the position of women incarcerated with children.

This policy brief is drawn from the full report, entitled *Access to Justice for Women incarcerated with Children* published by the Public Interest Law Clinic of the School of Law Makerere University. It documents the situation and access to justice challenges of women detained with their children with the primary objective of advocating for legislative reform and their better inclusion in the justice system. It highlights the challenges faced by women at various stages of the criminal justice process as illustrated by their lived experiences. .

The findings from the research show that:

1) On arrest:

- i) Women are arrested without due consideration to their caregiving responsibilities and are not given opportunity to make arrangements for the care of their children, while police stations are overcrowded and lack basic beddings and basic sanitary facilities.
- ii) There are no clear policies for dealing with children of arrested women, consequently children, including infants can find themselves left alone at home or abandoned.

2) On access to legal representation:

- i) Access to legal representation remains the primary challenge for women incarcerated with children. Many women in conflict with the law are poor and therefore cannot afford to hire private lawyers; neither do they qualify for legal representation provided by the state because they are petty offenders.
- ii) Majority of the women are first time offenders and showed little or no appreciation for the court process.
- iii) Women charged with capital offences and given lawyers by the state receive perfunctory services from lawyers holding state brief.

3) Mitigation and Alternative Sentencing:

- i) Consideration of caregiving responsibilities and the best interests of the child was not uniformly applied in mitigation of sentencing. Consideration given in each case depends on individual judicial officers and their level of appreciation of the need to consider caregiving responsibilities and/or whether the defense lawyers raise it during mitigation. .
- ii) The international human rights framework strongly emphasizes that imprisonment for pregnant women, nursing mothers and women who are sole caregivers should be used as a last resort. However, there are currently 249 prisons in Uganda holding 998 convicted female detainees and 1156 pre-trial detainees. As at August 2016, there were 237 children detained with their mothers. This means 11% of the female prison population is being detained with a child. While these women are held for the committed entire spectrum of criminal acts, many of them are first time offenders charged with petty offences such as theft and assault.

4) Welfare

Welfare of pregnant women and women with babies varies depending on the prison location and the amount of support that a particular prison receives from NGOs and other charitable institutions. While women detained in urban prisons like Luzira and Jinja had better access to health care services, accommodation facilities and food both for themselves and their children; those in rural prisons face hardship in access to healthcare and nutritious food for their children.

Recommendations:

To the Uganda Prisons Service:

- Develop a gender policy to ensure gender mainstreaming at planning and policy development levels within prisons to better protect and provide for the rights of women incarcerated with their babies.

Justice Law and Order Sector:

- Establish a formal pathway and clear police and judicial protocol for handling women with children when they are first presented before court.
- Develop and appropriate funds for gender-sensitive rehabilitation and reintegration services for women offenders that will equip them with competitive skills upon release.
- Expediently adopt the National Legal Aid Policy to ensure access to legal aid services for the vulnerable such as women, children or victims of crime and to divert appropriate matters away from the formal justice system

To the Ministry of Finance, Planning and Economic Development:

- Increase budgetary allocation to the state Brief Scheme to enhance remuneration for state brief lawyers to ensure adequate legal preparation and representation of indigent persons including women.
- Increase budgetary allocation to the Uganda Prisons Service to cater for the health and nutrition needs of women with babies and children detained with their parents.

To the Judicial Studies Institute:

- Incorporate training on the Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 to all judicial officers to ensure uniform application of the Guidelines.

- Carry out nationwide sensitization, together with Civil Society Organisations, of both judicial officers and the public, to promote use of alternative methods of sentencing.

Directorate of Community Service:

- Develop a programme targeting pregnant women and women with caregiving responsibilities to ensure special targeting in awarding community service orders to strengthen use of alternative methods to imprisonment.
- Need to create linkages between community service volunteers and the LC system to ensure proper supervision of community service orders.

Legal Aid Service Providers Network:

- Ensure nationwide presence of paralegals at police, court and within prisons to enable women offenders to appreciate criminal justice processes.
- The Paralegal Advisory Services should develop a programme targeting pregnant women and women with babies to ensure access to justice for such women from police to prison.

CHAPTER ONE:

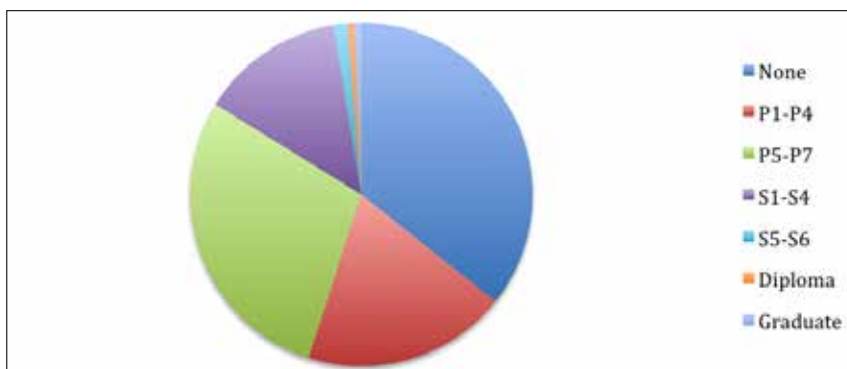
Introduction

1.0 Background and Introduction

Historically, prisons and prison regimes have almost invariably been designed for the majority male prison population – from the architecture of prisons, security procedures, to healthcare, family contact, work and training. Until the last decade, there was no framework specifically addressing the situation of the increasing number of women in conflict with the law. Issues arising from gender-specific health care needs and family responsibilities were also frequently neglected.

Although women represent a small percentage of the total prison population, their numbers are increasing and the rate of increase is much greater than that of men.¹ For instance, statistics from the Uganda Prisons Service indicate a steady increase in the number of women in detention. As at May 2015 there were 1933 women in custody compared to 2530 women by May 2016 representing a 31% increase.² Women also constitute a vulnerable group in prisons mainly due to the low education levels; many women offenders are either illiterate or have very basic levels of education and are therefore unaware about the criminal justice process and their rights.

Education Levels of women offenders

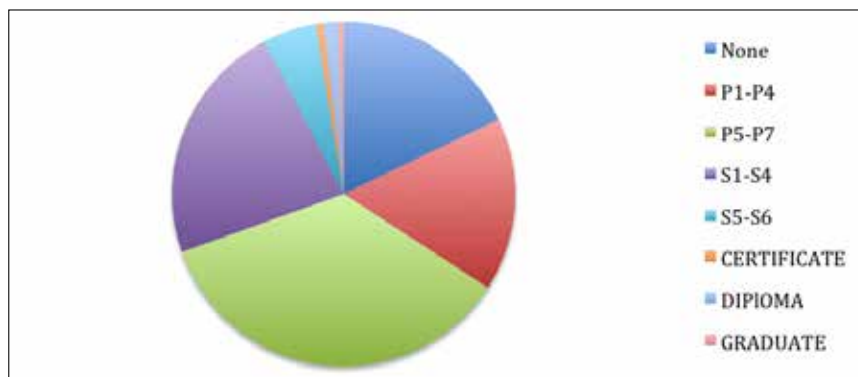


Source: Uganda Prisons Service, 2016

1 Kyiv Declaration on Women's Health in Prison, 2008

2 Statistics from Uganda Prisons Service

Education Levels of female petty offenders



Source: *Uganda Prisons Service, 2016*

Secondly, majority of the women in conflict with the law are not usually gainfully employed before incarceration and many fail to attain gainful employment after release. This often leaves them at the mercy of their partners especially in ensuring access to justice as well as caring for their children during detention and post release.

Occupation / employment of female offenders before arrest

Employment before arrest	Total	Percentage (%)
Building/Masonry/Pottery	2	0.2
Casual Laboring	41	4.2
Security - Private Groups	6	0.6
Security – Government	4	0.4
Shop Attendant	44	4.5
Teaching	12	1.2
Cattle Keeper/Herdsman	4	0.4
Hawking	2	0.2
Saloon	21	2.2
Peasantry	577	59.5
Business	100	10.3
Assorted Traders	86	8.9
None	71	7.3
Total	970	100.0

(Statistics from Uganda Prisons Service, December 2016)

While there are considerable variations in the situation of women in conflict with the law in different countries, the reasons for and intensity of their vulnerability

and corresponding needs, a number of factors are common to most.³ They face challenges in accessing justice on an equal basis with men, having caring responsibilities for their children and families and post-release stigmatization, victimization and abandonment by their families are among these challenges.⁴

One of the most difficult challenges involving the imprisonment of women is the question of how best to deal with women incarcerated with children; this arises in two circumstances either: when a pregnant woman is imprisoned and gives birth while in detention, or where a woman is incarcerated with a young- usually breastfeeding child. The number of children in detention with their mothers has been rising over the years. As at May 2016 there were 215 children compared to 256 children by May 2017, marking a 19% increase.⁵

1.1 Legal Framework for the Protection of Women incarcerated with Children

There has been a general disregard for the gender-specific needs of women including women with children in prisons.⁶ The increasing number of women in prisons globally⁷ has highlighted the shortcomings in the prison systems in meeting the gender-specific needs of women prisoners incarcerated with their children.⁸

In recognition of the specific needs of pregnant women and women incarcerated with children, Principle 5 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations, 1988) states as follows:

Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles... shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

In 2003, the United Nations called upon "...governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they can be addressed."⁹ This was followed by the adoption

3 United Nations Office on Drugs and Crime, Handbook on Women and Imprisonment, pg.7.

4 Ibid.

5 Statistics from Uganda Prisons Service, December 2016

6 Foundation for Human Rights Initiative and Penal Reform International, 'Who are women prisoners?' pg. 8.

7 According to the Institute for Criminal Policy Research, the world female prison population total has increased by 50% since 2000 while the overall prison population is reported to have grown by 18%.

8 Foundation for Human Rights Initiative and Penal Reform International, 'Who are women prisoners?' pg. 8.

9 General Assembly adopted resolution A/RES/58/183 on Human rights in the Administration of Justice

of the Kyiv Declaration on Women's Health in Prison. These complement existing international and regional standards aimed at improving the rights of women and prison conditions such as the International Covenant on Civil and Political Rights, Convention on the Elimination of all forms of Discrimination Against Women, the African Charter on Human and Peoples' Rights, amongst others.

In 2010, the UN General Assembly adopted the UN Rules on the Treatment of Women Prisoners and Non-Custodial Sentences on Women Offenders (Bangkok Rules). These rules set out comprehensive guidelines and standards for the treatment of female prisoners and recognize women as a vulnerable group within the criminal justice system. The Bangkok Rules are the first international instrument to comprehensively address the needs of children in prison with their parent.

In Uganda, S.59 (1) of the *Prisons Act 2006* provides that female prisoners should be admitted with their infants. It further provides that a female prisoner, pregnant prisoner or nursing prisoner should be provided with special services needed.¹⁰ Currently, there are 249 prisons in Uganda holding 998 convicted female detainees and 1156 pre-trial detainees. Of these prisons, 15 are exclusively women's prisons. As at August 2016, there were 237 children detained with their mothers.¹¹ Luzira women's prison has the highest number of children detained with their mothers (27), followed by Jinja women's prison (13).¹² Considering that women in prison are a small minority in national prison populations and that women with babies are even less in numbers, their specific needs and characteristics as subjects of the criminal justice system have remained unacknowledged and unaddressed.

Access to legal assistance in Uganda remains a challenge primarily due to lack of adequate resources especially for the poor and marginalized. Many women in conflict with the law are from poor backgrounds. In a research conducted in prisons in Uganda, three quarters of women who participated in the survey said that they were poor (40%) or very poor (36%). A fifth of women identified themselves as being above average income and none as high earners.¹³ These findings show the disproportionate level of poverty among women prisoners. As such, majority of detained women not only lack the capacity to guarantee upkeep for their children but also lack the economic means to hire a lawyer, are illiterate and unaware of their legal rights.

Broadly, the protection provided for under the key instruments can be categorized into; access to legal protection, non-custodial measures, protection for the best interests of the child, health and hygiene, and nutrition. While some of these provisions enshrined in the Beijing rules and other international instruments are incorporated in the *Prisons Act*, there remain several gaps in the framework. For instance, the 1995 Constitution of Uganda is silent on the plight of women offenders.

10 S. 59(3) of the *Prisons Act 2006*.

11 Accessed from Uganda Prisons Service as at August 2016.

12 Ibid.

13 Foundation for Human Rights Initiative and Penal Reform International, 'Who are women prisoners?', pg. 11.

The Children Act Cap.59 (as amended) does not also address the issue of children detained with their mothers.

1.2 The Study

1.2.1 Objectives

The objectives of the study were five-fold:

- a) To determine and document the situation of mothers in incarceration with children in prisons, reflecting their lived realities and access to justice challenges they face;
- b) To determine and document the challenges that mothers in incarceration face in order to better advocate for their better inclusion in the justice system and for legislative reform;
- c) To establish existing intervention models for the mothers and children and the lessons learnt that can be harnessed to enhance access to justice for mothers in incarceration;
- d) To examine and document best practices that can be drawn from a comparative analysis with countries that share similar legal and judicial framework like Uganda;
- e) To identify the current actors working in the area of access to justice for women in incarceration with children.

1.2.2 Methodology

This report is based on a study conducted between August 2016 and March 2017. It is based on literature review, and interviews conducted with inmates and prisons officials in Jinja, Luzira and Nakasongola prisons. Thirty-eight pregnant and women with children in each of the prisons visited were interviewed.¹⁴

Many of the interviews were conducted in the presence of prison officials, and the researchers were not able to independently verify the statements of each of the inmates.

¹⁴ In each facility all the pregnant women and women with children within the prison premises were interviewed

CHAPTER TWO

The Criminal Justice System and women incarcerated with children

2.0 Introduction

In Uganda like in most parts of the world, mothers are the primary care giver for their young children. In recognition of the fact that any limitation on the liberty of the mother affects a child, there is a developing human rights framework for the support of women incarcerated with children as well as the protection of the best interest of the child.

This chapter will look at the human rights standards relating to treatment of women with children or pregnant mothers, and the women's lived experiences as they interface with the criminal justice system. The treatment of children and their mothers from time of arrest to sentencing will be examined.

2.1 Arrest and detention of Women with Children

Article 23 (4) (b) of the 1995 Constitution of Uganda provides that detention in police custody should not exceed 48 hours. Research has shown that this requirement is rarely, if ever, complied with. For instance, the 17th Annual Report of the Uganda Human Rights Commission, notes that of the 613 cases in 2014, more than half were for detention beyond 48 hours.

For most of the women with babies and care giving responsibilities, the point of arrest usually means they will be arrested and detained with babies and other younger children in their custody. For single parents with school age going children, this often translates into having to leave the home without due preparation on who will take care of the home during detention, thereby compromising their wellbeing. The arrest and detention of women by the police therefore has a multiplier effect and a decision to arrest should be informed and balanced against several factors.

General Comment No. 1 on Article 30 of the ACRWC on Children of Incarcerated and Imprisoned Parents and Primary Caregivers recommends that:

State Parties must put mechanisms in place to minimize arrests of

parents/primary caregivers, taking all other considerations into account, such as the crime allegedly committed and alternative methods for securing attendance to court.¹⁵

The Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa recommend that women with care giving responsibilities should:

... be permitted prior to or on admission to make arrangements for these children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.¹⁶

However, the Guidelines were only recently released by the African Commission on Human and Peoples' Rights and are therefore unknown to many stakeholders. This therefore creates a need for wider sensitization of key actors including police, judiciary and prison administration on the guidelines to ensure effective implementation. The Uganda Police Standing Orders are silent on arrest of women with children. Many women with babies and those with care giving responsibilities are arrested without due consideration to their care giving responsibilities or being given a window of opportunity to make arrangements for the care of their children. In fact, it would appear that there is no consideration given to the specific situation and peculiar needs of women with children.

"At the time of arrest I was three months pregnant with a 1-year-old baby. Police came home and arrested me together with my baby for allegedly murdering a neighbour. My 7-year-old child remained home alone though I was later told that my mother had taken her into her custody. I was detained for 2 months at Wobulenzi Central Police Station where I was tortured repeatedly. Police would teargas me in the presence of my baby. To this day my baby, who is now three years old is frail and the one I gave birth to is also weak. My daughter is no longer attending school since my mother cannot afford to pay her fees."¹⁷

"I was arrested and detained with my 8-month-old baby from Kiruhura district. My other 3 children aged, 10, 7, and 5 years stayed home with my husband. We were squatters on that land so am not sure if my husband and children are still staying there or not. I have not heard from my husband or children since I was arrested. This worries me."¹⁸

"At the time of arrest I was 1 month pregnant with 5 other children aged 10, 9,

15 Para.44 of General Comment No. 1 of the African Committee of Experts on the Rights and Welfare of the Child, 2013.

16 Rule 32 (b) (111) of the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa.

17 Interview with a 23 year old detainee at Nakasongola Women's Prison on 14th February 2017.

18 Interview with a 26 year old detainee at Nakasongola Women's Prison on 14th February 2017

8,6 and 3 years. When police arrested me my children who were home at the time stayed alone. I was later informed at court that my sister in law was looking after them. I have not seen them since and am not sure how they are. I gave birth from prison and my baby is now 3 years old. She was taken to the nearby orphanage.”¹⁹

The Child and Family Protection Unit (CFPU) of the Uganda Police Force is mandated to, among others, create an environment in which children and women’s rights are recognized, respected and protected. In addition, the police often try to find relatives or an NGO to care for a child so that they do not have to stay with their parents in police cells. However this may pose other challenges of child trafficking and abandonment in light of the fact that there are state run shelter homes for children. In Uganda, most police stations especially in urban areas are overcrowded; there are no beddings and sanitary facilities are lacking. There is no police station with appropriate facilities to hold a woman with a baby or a child.

“I have three children. Six-year-old twins and a 10-month-old baby. I am charged with theft. My baby was three weeks old when I was arrested and taken to Old Kampala police Station. It was the rainy season; water runs in when there is a lot of rain and its very cold. I had to send the baby back home after one day. I would breastfeed her and send her home. When I was produced in court and remanded, I came with her.”²⁰

There is no clear police policy for dealing with children of arrested parents, nor any reliable referral systems.²¹ Consequently, children can find themselves left alone at home or abandoned.²²

“When the police came to arrest me I was home alone with the children. I have two children the eldest is four and this one is two and a half. They took me with the younger child and we left the older one at home. The police also entered my house and took away everything. They wanted my husband. And when he heard he was wanted; he fled. I have had no contact with anyone outside. I don’t know where the older child is.”

On the whole, there is need for a streamlined procedure for handling women with children on arrest by the police and by the courts when they are first presented. This would ensure that the interests and welfare of the child are taken into consideration as required under the Children’s Act and international law.

19 Interview with a 31 year old detainee at Nakasongola Women’s Prison on 14th February 2017

20 Interview at Luzira Women’s Prison on 13th February 2017.

21 Penal Reform International, ‘A Shared Sentence: *Children of Imprisoned Parents in Uganda*’, 2015, pg. 9.

22 *ibid*

2.2 Trial and Sentencing of Pregnant Women and Women with Children

2.2.1 Legal Assistance

The International Covenant on Civil and Political Rights stresses the need for State Parties to have legal assistance assigned to accused persons, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it.²³

Rule 2 of the Bangkok Rules enjoins States Parties to pay adequate attention to the admission procedures for women and children due to their vulnerability including access to legal advice. The Rules also stress the need to ensure adequate legal representation for women and children due to their vulnerability. The African Commission on Human and Peoples' Rights also enjoins States Parties to ensure that all persons are entitled to legal representation at all stages of the proceedings.²⁴

The *Constitution of the Republic of Uganda, 1995* provides for legal representation of individuals charged with an offence which carries a sentence of death or imprisonment for life. This however leaves the largest majority of indigent women offenders who commit petty offences and cannot afford to hire a lawyer defenceless.²⁵ In contrast to male prison populations, women mainly commit petty crimes such as theft, assault and fraud. However, due to their economic status, they are particularly vulnerable to being detained because of their inability to pay fines for petty offences and/or to pay for bail.²⁶ For instance, only 1.2% of the women in prisons were professional teachers, with the majority, being peasants {59.5%} and a large number, {39.3%}, still engaged in informal labour.²⁷ It is thus not surprising that the highest support requirement identified by women in prisons in Uganda is access to legal representation (49%).²⁸

Of all the women interviewed in this study, only three women in Luzira and one in Nakasongola mentioned having had private lawyers.

I was the treasurer of my savings club and I lost 9.9m/=. I was pregnant; I was remanded to Luzira for three months and then released on bail. I tried to get a lawyer; I went to the Uganda Law Society, to FIDA to UGANET and many other groups but I could not get help- the lawyers that were recommended asked for too much money.²⁹

23 Article 14 (3) (d) of the International Covenant on Civil and Political Rights, 1966

24 Principle 2 (f) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa

25 According to Uganda Prisons Service statistics 2016, 435 of the 1877 women in prison had committed petty offences.

26 Briefing: Access to Justice: Discrimination of women in criminal justice systems, January 2012, Toolbox on the UN Bangkok Rules by Penal Reform International.

27 Supra at no.24 then use of alternative methods to imprisonment. .

28 Foundation for Human Rights Initiative and Penal Reform International, 'Who are women prisoners?', pg.20.

29 Interview at Luzira Women's Prison on 13th February 2017.

The lack of legal representation can lead to immense delays in the criminal process especially because women in conflict with the law depend on the willingness of male family members to spend resources on due process of law for them.³⁰

While legal representation is a right guaranteed under the Constitution of Uganda, and it is the duty of government to ensure that every legally challenged person receives legal representation as required in the interest of justice, it lacks the resources to engage an attorney for every suspect. The women charged with non-capital offences highlighted the need to ensure legal assistance for all persons in conflict with the law. All women interviewed who were charged with non-capital offences showed little or no appreciation of the court proceedings. This was attributed to failure to access a lawyer and with the exception of the four that had private lawyers, their trials were conducted without lawyers to defend them, which disproportionately denied them the right to a fair trial. One mother on being asked whether she had notified court that she was pregnant during trial responded that she was not given an opportunity as the trial was mainly between the magistrate and the state prosecutor.

Even for women charged with capital offences, the quality of the state-provided legal representation accorded to them was wanting. Many noted that they only got to meet their lawyers in court once the case hearing had commenced. This denied them the chance to discuss the merits of their cases prior to the court hearing and getting advice on what to expect in court and how to conduct themselves during the court process.

A lawyer was provided to handle our case. However, I and my co-accused never met him until court when trial had started. The day we were sentenced he came to court after we had been sentenced to 14 years for the murder of my husband. He was not there the whole time we were being sentenced. I did not appeal against the sentence for fear of having the sentence increased.³¹

A National Legal Aid Policy has been submitted to cabinet for approval. The Policy recognizes the urgent need to ensure provision of access to justice and legal aid to all indigent persons in Uganda. The Policy recommends a mixed model of legal aid delivery based on private-public partnerships between state and non-state actors and consisting of state-employed legal aid providers and accredited non-state legal aid providers.³² However, for this to be realized, there is need for Government to finance the implementation of the Policy.³³ One key recommendation from the judiciary is that the Government should develop a public defender system synonymous with the Directorate of Public Prosecutions for the state, where every

30 Briefing: Access to Justice: Discrimination of women in criminal justice systems, January 2012, Toolbox on the UN Bangkok Rules by Penal Reform International

31 Interview at Nakasongola Women's Prison on 14th February 2017.

32 Justice Law and Order Sector, Draft National Legal Aid Policy, pg. 4.

33 Interview with Justice Lameck Mukasa, Former Head of the Criminal Division, High Court of Uganda, on 9th May 2017.

accused person would be entitled to a defence lawyer once produced in court.³⁴

Non-state legal aid providers have attempted to bridge the gap in access to legal representation through legal aid provisions. Civil Society Organizations (CSOs) formalized a coordination mechanism by forming the Legal Aid Service Providers Network (LASPNET) in 2004. While non-state actors have creatively enhanced access to justice, however there has been no standardized method of practice resulting in an *ad hoc* approach. Furthermore, the extent of coverage is still limited within the country as many are urban based. There is also no specific program targeting pregnant women or women incarcerated with children.

2.2.2 Mitigation

The Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 recommend that:

Where it is brought to the attention of the court that an offender is a primary care giver, the court shall consider the following-

- The effect of a custodial sentence to a child if such a sentence is passed;
- Whether the child will adequately be cared for while the care giver is serving the custodial sentence.³⁵

Almost half of the convicted women interviewed revealed that judicial officers considered women's care giving responsibilities as a mitigating factor during sentencing, especially for petty offences. This was also the case for some capital offences where more lenient sentences were awarded as a result.

I was charged and convicted of manslaughter of my co-wife. I have 5 children aged 17, 16, 10, 8 and 4 months. During sentencing the judge asked me how many children I had after which he informed me that he was going to award me a more lenient sentence. He sentenced me to six and half years' imprisonment.

³⁶

*I am a mother of 13 children aged; 21, 19, 18, 16, 15, 14, 13, twins aged 10, 8, 6, 5 and a 4-year-old (who is currently detained in prison with her). I was convicted of murder. At the time of sentencing, I had just given birth so the judge asked how many children I had. After informing him he sentenced me to 6 years' imprisonment.*³⁷

I was charged with theft of money. During trial and sentencing I was 8

³⁴ Ibid.

³⁵ Guideline 49 (1) (a) and (b) of the Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.

³⁶ Interview at Nakasongola Women's Prison on 14th February 2017.

³⁷ Interview at Jinja Women's Prison on 15th February 2017.

*months pregnant. The judicial officer informed me that due to my condition (pregnancy) and age, he was going to impose a more lenient sentence. I was sentenced to 7 months in prison.*³⁸

However, the practice was not uniform; for others their care giving responsibilities were not considered.

*I was charged and convicted of murdering my sister in laws child. At the time of sentencing my baby was 2 weeks old. During sentencing the judge did not make any reference to my child despite me going with her to court. I was sentenced to 20 years.*³⁹

*I was charged with theft and sentenced to one year and four months. I was pregnant at the time of arrest so I was released on bail. By the time I was convicted, I was nine months pregnant. I pleaded the pregnancy but the magistrate said there is a hospital in prison and I could give birth there free of charge. I gave birth at the staff clinic in Luzira two days after my sentencing.*⁴⁰

It would therefore appear that at present, consideration of care giving responsibilities during mitigation largely depends on the awareness and pro-activeness of individual judges. Since the Sentencing Guidelines are not mandatory, but rather meant to guide judicial officers, some do not appreciate the need to apply them while others are not aware of the same.⁴¹ As a result, it is quite common to find women charged with petty offences serving a sentence of imprisonment. Furthermore, many of the women interviewed did not know that having children, and/or being pregnant or having sole caretaking responsibilities was a mitigating factor. As such, many did not raise this in court during sentencing.

*I was charged with assault and sentenced to 2 years. I was 6 months pregnant during trial but I did not tell the magistrate. I only got to know that I should have raised it while in prison.*⁴²

I was charged with theft and sentenced to one and half years in Prison. I was six months pregnant by then, this is my first child. The pregnancy wasn't noticeable and I didn't say anything about it. I am due to give birth anytime.

According to a senior judicial officer, this is occasioned by the failure by defence lawyers to comprehensively gather and adduce evidence during mitigation relating to the status of the woman offender. This would assist judicial officers take into

38 Interview at Luzira Women's Prison on 13th February 2017.

39 Interview at Jinja Women's Prison on 15th February 2017.

40 Interview at Luzira Women's Prison on 13th February 2017.

41 Interview with Justice Lameck Mukasa, Former Head of the Criminal Division, High Court of Uganda on 9th May 2017.

42 Interview with an inmate at Jinja Women's Prison on 15th February 2017.

consideration all relevant factors and perhaps pass a more lenient or alternative sentence. In the absence of a lawyer, there is need to roll out paralegals, especially at police stations, to enable women to appreciate their rights from time of arrest to sentencing, thereby empowering them to self-represent especially in lower courts.⁴³

2.3 Non-Custodial Measures

General Comment No.1 of the African Committee of Experts on the Rights and Welfare of the Child reiterates the need to consider non-custodial sentences when sentencing primary care givers or parents.

A non-custodial sentence should always be considered when sentencing parents or primary care givers.⁴⁴

Rule 64 of the Bangkok Rules reiterates that non-custodial sentences for pregnant women and women with dependent children should be preferred where possible and appropriate custodial sentences only preferred when the offence is serious or violent or where the woman offender represents a continuing danger.

In Uganda, where a person is convicted of a minor offence, the court may, instead of sentencing that person to prison, make a community service order.⁴⁵ Any person over 18 years who commits a petty offence punishable by imprisonment of no more than two years may be sentenced to carry-out unpaid work for the community instead of a term of imprisonment. An offender serving a community service order is required to carry out up to maximum of 980 hours (within six months) of unpaid work in their community of residence. A maximum of eight hours a day can be imposed.

The Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 recommend that:

- Where the appropriate sentence is clearly non-custodial, the court shall determine the sentence bearing in mind the interests of the child.⁴⁶
- Where there is a range of sentences available to the court, the court shall use the welfare principle as provided for under section 3 of the Children Act in deciding which sentence to impose.⁴⁷

43 Justice Lameck Mukasa, interview, *op cit*

44 Para.24 of General Comment No. 1 of the African Committee of Experts on the Rights and Welfare of the Child, 2013.

45 S. 3 of the *Community Service Act, Cap.115*.

46 Guideline 49 (3) of the Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.

47 Guideline 49 (4) *ibid*.

However, it would appear that in many cases, the possibility of alternative sentencing was not considered. This was mainly attributed to lack of appreciation of the Guidelines by many criminal justice actors, especially judges and defense lawyers.⁴⁸ As such, mothers who had committed minor offences were imprisoned with their babies with no due consideration for a non-custodial sentence.

I was charged with theft and convicted to 1 year imprisonment. At the time of arrest I was 6 months pregnant.⁴⁹

I was arrested together with my 1month old baby. I was charged with theft of a neighbour's goat and sentenced to 7 months' imprisonment.⁵⁰

I was charged with theft of a pig- at the time I was initially arrested, I was pregnant and I was released on bail. I have three children aged 12, 5 and the baby is now one year. I was sentenced to two years in prison; I tried to explain to the magistrate that I had a baby and I was caretaker for other children. The other two children are separated and are with relatives.⁵¹

Perhaps the most alarming was finding that civil imprisonment applied to a woman recovering from a Caesarian operation with a very young baby.

I was arrested when my baby was two and half months old. I have two other children- the eldest is three years old. I borrowed money from a financial institution for my business; then I had a caesarean section and had to take time off to heal so I could not travel and the business stopped for some time and I missed some payment installments. The judge considered that I had a baby and was hesitant to send me to Luzira but we couldn't reach a settlement with the creditors so they sent me to Luzira.⁵²

Conclusion

For many, especially petty offenders, a prison sentence – with its often-damaging influences and effects – is not the appropriate answer. There are several non-custodial alternatives to imprisonment. These include bail, seizure of travel documents, and periodic reporting to police or other authorities. Where defendants are found guilty, courts have a range of alternative measures to hand out including fines, community service orders or restorative justice programmes, which may be more proportionate to the offence committed, are more likely to result in the offender becoming a law abiding and responsible member of society, and are better suited to

48 Interview with Justice Lameck Mukasa, Former Head of the Criminal Division, High Court of Uganda, on 9th May 2017.

49 Interview at Luzira Women's Prison on 13th February 2017.

50 Ibid.

51 Interview at Nakasongola Women's Prison on 14th February 2017.

52 Interview at Luzira Women's Prison on 13th February 2017.

addressing the interests of the victim and community.⁵³ With legal representation, the courts would be guided to consider all the possible alternatives.

The Directorate of Community Service is mandated to regulate the award and supervision of community service orders. Over the last five years, the Directorate has registered an annual average of 10,000 orders.⁵⁴ Statistics from the Directorate indicate that over the last seven years, sixty eight thousand eighty two offenders have benefited from community service; sixty one thousand six hundred and eighteen males and six thousand four hundred and sixty four females. Other partners including Paralegal Advisory Services and Justice Centers Uganda promote award of non-custodial sentences. Despite these efforts, the number of petty offenders, especially women, end up in prisons remains high. This is mainly a perception issue. Some judicial officers consider custodial sentence as the best option rather than non-custodial sentences. He recommends sensitization of criminal justice actors on the Sentencing Guidelines to ensure more appreciation and application of the same.⁵⁵

53 Accessed from www.penalreform.org on 24th May 2017.

54 Presentation on, '*An overview on Community Service Implementation in Uganda*', by Ms. Shifa Katutu, Acting Commissioner, Directorate of Community Service, Ministry of Internal Affairs, 2017.

55 Interview with Justice Lameck Mukasa, op cit

CHAPTER THREE

Welfare of pregnant/women with babies

3.0 Introduction

Due to their biological and reproductive functions, women in general have more specific health needs than men. The most prominent relate to reproductive health such as menstruation- and the attendant need for sanitary material, menopause, pregnancy and breastfeeding with corresponding needs for medical care, nutrition and hygiene amongst others.

3.1 Health and Hygiene

Pregnant prisoners should be provided with the same level of health care as that provided to women outside prison, including access to obstetricians, gynaecologists and midwives.⁵⁶ The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) enjoins States Parties to provide women appropriate services in connection with pregnancy, confinement and the post-natal period, and granting free services where necessary.⁵⁷

While CEDAW does not specifically address the particular needs of women in prison, the United Nations Standard Minimum Rules for the Treatment of Prisoners addresses this issue; it provides that in women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. It further provides that arrangements shall be made wherever practical for children to be born in a hospital outside the institution and in the event, that a child is born in prison, this fact shall not be mentioned in the birth certificate.⁵⁸

The Bangkok Rules further provide that the health screening of women prisoners should include comprehensive screening to determine primary health-care needs, and the reproductive health history of the woman prisoner, including current or recent pregnancies and any related reproductive issues. The Rules also provide that women prisoners shall have facilities and materials required to meet women's

56 Health and Women pg. 31.

57 Article 12 (2) of the Convention on the Elimination of all forms of Discrimination Against Women, 1981.

58 Article 23 (1) *ibid.*

specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women.⁵⁹

Unlike the Bangkok Rules, the *Prisons Act* does not categorize the needs of women prisoners. Rather, it provides for access to health services for all as is available in the country without discrimination.⁶⁰ Failure to implement international standards relating to access to health care for women in prisons has jeopardised the dignity and health of women prisoners. This has resulted in pregnant women rarely receiving adequate ante- and post-natal care in prison and often times having to purchase hygiene products themselves or relying on Non-Governmental Organizations to provide them.

Access to health care for women in prisons is essential to protecting their dignity. For pregnant women, access to adequate pre- and post-natal care in prison is essential to protecting the wellbeing of the mother and the baby. Of the three facilities visited, Luzira women prison located in the outskirts of Kampala, and Jinja Women prison had the necessary facilities to cater for pregnant and breast feeding mothers. All the women interviewed at both facilities who had either given birth and / or were nursing their babies affirmed this. Expectant mothers were guaranteed access to adequate and periodic ante-natal and post-natal care.

I was remanded to Luzira Women's prison when I was 7 months pregnant. The in-charge told me that I had to go for antenatal care every two weeks. I delivered from the prison hospital and had no complications. After giving birth, I was separated from the main female ward and I stayed in the maternity ward where nursing mothers are detained.

I was remanded to Luzira Women prison when I was 5 months pregnant. I received periodic antenatal and post-natal care from the prison hospital. In this prison, they give special attention to pregnant women. I would not have afforded such care outside prison.

I gave birth from Jinja hospital. Before giving birth, I was able to receive ante-natal care from the health facility within prison.

⁵⁹ Rules 6 and 5 of the Un Treatment of Women Prisoners and Non-Custodial Sentences of Women Offenders, 2010.

⁶⁰ S. 57 (f) of the *Prisons Act*, 2006.

Care provided at Nakasongola Women's prison was not adequate as that in Luzira and Jinja. Women interviewed revealed that access to pre- and post-natal care was not sufficient. All the women who had delivered while in prison were transferred to Luzira Women prison at the time of giving birth.

I was remanded to Nakasongola Women prison when I was 4 months pregnant. I went for ante-natal check-up only twice. I was later transferred to Luzira Women prison when I was 8 months pregnant. I delivered from Naguru hospital. The care was very good in hospital. My baby was immunised while at Luzira. I was transferred back to Nakasongola Women prison when my baby was 2 years old.

I was arrested when I was two months pregnant. I had my antenatal visits and the baby was born in Prison at the staff clinic in Luzira.

I was transferred to Luzira Women prison when I was 7 months pregnant. The facilities at Nakasongola Women prison are not as adequate as those at Luzira Women prison. I only received 1 ante-natal check-up while at Nakasongola Women prison. At Luzira Women prison, I had to go for ante-natal check-ups every two weeks. I gave birth from Naguru hospital.

Access to healthcare is not uniform. While in Prisons close to urban centers –such as Luzira and Jinja inmates have access to Government facilities such as health center IVs and hospitals, in rural areas, health centres are located far away and in many cases services are lacking. In Luzira, women give birth from the prison hospital or Naguru hospital. Similarly, in Jinja, Women prison, women deliver from Jinja hospital. In Nakasongola, pregnant women are transferred to Luzira Women towards their due date. Similarly, women with sick children are transferred to Luzira to access treatment at Mulago hospital; while this guarantees access to much needed medical care, it results in many being taken far from their homes and families limiting contact with their family members especially children.

Access to basic sanitary materials also varies; although in all the prisons visited women reported receiving sanitary pads. Hygiene on the other hand is uniform with all the women prisons being in good sanitary condition. At Luzira Women prison, the women receive sanitary wear from well-wishers and NGOs. All the women facilities visited were very clean- and for this the UPS is to be credited.

3.2 Nutrition

Pregnant women in prison should be ensured a nutritious diet, timely and regular meals and regular exercise. Like pregnant women, breastfeeding mothers have specific health and nutrition needs that are often unmet in prison. As such, appropriate food must be provided free of charge for breastfeeding women, as

well as for their babies, including milk, high-protein products and fresh fruit and vegetables.⁶¹

CEDAW provides that in addition to provision of health care, an adequate nutrition during pregnancy and lactation should be provided for women.⁶² The African Charter on the Rights and Welfare of the Child reiterates the need for States Parties to the Charter to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law.⁶³ The dietary requirements of pregnant women may not be considered or catered for by prison authorities, while the food provided may be insufficient to cover the nutritional requirements of pregnant women.⁶⁴ The *Prisons Act* provides generally that a prisoner shall be provided with food of nutritious value adequate for health and strength and that the food shall be of wholesome quality, well prepared and served.⁶⁵

All facilities visited endeavored to provide nutritious diet for both expectant and breastfeeding mothers. Special meals were provided for both categories of women.

At Nakasongola Women prison pregnant women and breast feeding mothers receive special meals. We get porridge with sugar and extra portions of food. When vegetables are prepared, we are served first.

I was remanded to Jinja Women prison when I was 6 months pregnant. I was given extra care unlike the other women. Pregnant women are given extra porridge and sugar and served more food.

At Luzira Women prison we receive special meals and care during pregnancy and also after giving birth. We are given supplementary diet of vegetables and fruits. We are also given extra portions unlike other women in other prisons.

Provision of a nutritious diet remains at the discretion and capacity of the individual facility. Currently, the Uganda Prisons Service lacks adequate resources to provide uniform services to inmates.

3.3 Rehabilitation and reintegration services

The Uganda Prisons Service (UPS) strategic plan provides for rehabilitation of offenders as a key objective. The institution offers rehabilitation programmes including spiritual counseling, hand craft, tailoring and education to women

61 United Nations Office on Drugs and Crime, 2008, pg.41.

62 Article 12 (2) of the Convention on Elimination of all forms of Discrimination Against Women, 1981.

63 Article 30 of the African Charter on the Rights and Welfare of the Child, 1999.

64 United Nations Office on Drugs and Crime, 2008, pg. 19.

65 S. 69 (1) of the *Prisons Act. Cap.59.*

prisoners. However, because of prison budget constraints⁶⁶ and limited technical capacity, the programmes offered are limited to a few urban prisons and do not equip women with sustainable skills which would improve their employability, social inclusion and reintegration after release. Many women expressed uncertainty on what they would do once they left prison mainly because they were not educated and lacked skills that could help improve their livelihood.

Besides skills development, prisoner's psychological needs should also be addressed. For women with care giving responsibilities, maintaining contact with their children is another way of helping them cope. Unfortunately, most women revealed that they had not been visited or had contact with the children outside prison especially after conviction.

General Comment No.1 of the African Committee of Experts on the Rights and Welfare of the Child recommends that:

Contact between imprisoned parents/primary care givers and children must be facilitated where it is in a child's best interests.⁶⁷ Relevant authorities should establish where a child is living in order that their parent/primary caregiver is sent to a facility within suitable travelling distance of the child's home.⁶⁸

In practice, this is yet to be realized. As a measure of decongesting prisons, prisoners, especially capital offenders, are often sent to high security prisons such as Luzira Women prison and Jinja Women prison. These are usually far from their homes making it difficult for relatives and family to visit.

66 According to UPS Commissioner Rehabilitation and reintegration, the annual prison budget for rehabilitation is an estimated 28,000USD.

67 Para.63 of General Comment No. 1 of the African Committee of Experts on the Rights and Welfare of the Child, 2013.

68 Para.63 of General Comment No. 1 of the African Committee of Experts on the Rights and Welfare of the Child, 2013.

I was convicted to and sentenced to one year; I will be released in April 2017. I last saw my children the day I was convicted in court in Mubende. I am not sure of their whereabouts. Am also a bit worried about being released because am not sure how to move on with my life. I used to sell charcoal before arrest now I have no capital to do anything.

I was sentenced to 17 years' imprisonment from Mbale High Court. I was later transferred to Jinja Women prison where I have been since October 2014. I have not had any visitors not even my three children (she sobs). I do not know how they are. This prison is far from home (Amuria) so transport is a challenge.

Conclusion

As noted from the above analysis, the provision of rehabilitation and reintegration services remains wanting. This is primarily due to limited budgetary resources. As such, women in detention are not able to attain competitive skills that would improve their livelihood upon release thus leading them to re-offend. The Uganda Prisons Service established a Gender Desk. Its primary objective is to address pertinent gender issues in the work of correctional service which directly and indirectly affects staffs performance and prisoners situations resulting from their different biological backgrounds.⁶⁹ However, due to limited funding, gender mainstreaming at planning and policy development levels remains a challenge, thereby affecting the nature of rehabilitation and reintegration services offered to women offenders.⁷⁰

The transfer of inmates far from their homes and families also exposes them to mental and psychological torture and high risks of family disintegration.

69 Interview with Mr. Anthony Owino, Gender Officer, Gender Desk, Uganda Prisons Service on 19th May 2017.

70 Ibid.

CHAPTER FOUR:

Best Practices and Recommendations

4.0 Introduction

International and regional human rights standards and treaties contain principles addressing the distinct needs of women prisoners. They are a resource that can help inform efforts of those seeking to develop effective and proportionate responses to women in the criminal justice system. These include the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), Kyiv Declaration, African Charter on the Rights and Welfare of the Child and the United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Sentences on Women Offenders (Bangkok Rules).

4.1 Alternatives to custody

Rule 64 of the Bangkok Rules provides that non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger. Rule 60 further provides that appropriate resources should be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse and educational and training programmes to improve employment prospects.

Rule 45 of the Bangkok Rules promotes use of open prisons, halfway houses and community-based programmes and services for women prisoners to ease their transition from prison to liberty, reduce stigma and re-establish their contact with their families. This facilitates contact and relationship between the prisoner and her family during incarceration and promotes acceptability of the incarcerated woman by the family and the community thereby paving way for a smooth reintegration of the offender.

The Bangkok Rules also promote provision of additional support to released women prisoners who need psychological, medical, legal and practical help to ensure their successful social reintegration.⁷¹

Rule 61 provides that when sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of a criminal history and relative non-severity and nature of the criminal conduct, in light of women's caretaking responsibilities and typical backgrounds.

The Tokyo Rules emphasize the need to avoid unnecessary use of imprisonment and that the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The rationale is to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society being the core focus.

Different countries have piloted and implemented various alternatives to custody:

4.1.1 Remote Parenting and Open Days

Case study: Remote parenting and open days in Kenya prisons⁷²

The Kenya Prisons Reforms initiated in 2001 saw the introduction of remote parenting, an emerging rehabilitation concept in the correctional domain, that provides prisoners with the opportunities to have unrestricted quality time with their children for the purposes of providing guidance to them to live a purposeful and fulfilling life, despite being incarcerated. This is done by organizing open days for family visits to enable prisoners meet with the family members, and particularly the children whom they attend to about issues related to schooling and other matters that require parents' attention. Considering that a sizeable percentage of prisoners are single parents, such an initiative is vital. During such visits, prisoners monitor the children's school performances as well as address some of their urgent needs.

Remote parenting can only be realized if women offenders are detained close to their homes.

⁷¹ Rule 47 of the United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Sentences on Women Offenders (Bangkok Rules).

⁷² www.unpan1.un.org/intradoc/groups/public/documents/aapam/unpan032702.pdf

4.1.2 *Diversion of Women Offenders*

Case study: Women's diversion programme in New York⁷³

In 2012, the Center for Alternative Sentencing and Employment Services (CASES) launched the Criminal Court Women's Diversion Program (WDP) which provides treatment and alternative sanctions to women charged with misdemeanour offences. Targeting women with mental health and/or substance use problems, the WDP develops individualised case plans before providing a four-stage gender-specific service: first, women are offered counselling that is trauma-focused and person-centred; second, women receive clinical services from CASES' in-house psychiatrist; third, using a best practice model of peer involvement, CASES offers peer-specialist mentoring services to women; finally, the programme staff assist women to access services relating to education, child welfare, domestic violence, job training and a range of other issues.

Development and implementation of tailored gender-sensitive services, mental, psychological and skills development based, are key to addressing causes of women's offending. This reduces the likelihood of women offending. It is therefore recommended that the JLOS should coordinate efforts to identify and develop gender-sensitive initiatives.

4.1.3 *Suspended Sentencing*

Case study: Suspended sentence for pregnant women in Armenia⁷⁴

In Armenia, pregnant women or women with children under 3, except those imprisoned for serious crimes for more than 5 years, can be exempted from punishment or the punishment can be postponed by the court for the period when the woman is exempted from work due to pregnancy, childbirth and until the child reaches the age of 3.

Research studies have shown that women offenders are a low flight risk category. It is therefore recommended that such alternatives should be applied wherever possible; especially if someone facing imprisonment has sole caring responsibilities. This might include remand on bail, community service, a suspended sentence – perhaps until the child is older, or mediation / restorative justice. This also points to the need for gender **learning** of judicial officers especially at the lower bench to enable them appreciate women's special needs and characteristics.

⁷³ Center for Alternative Sentencing and Employment Services www.cases.org/programs/abh/wdp.php

⁷⁴ Penal Reform International, 'Submission for CRC Day of General Discussion, 30 September 2011. Protecting Children in Prison with a Parent – Implement and Develop the Bangkok Rules'.

4.2 Considering the Best interests of the Child

Children's best interests must be taken into account at all stages of the criminal justice process. This may necessitate the adoption of a multiplicity of measures: S.3 of the children's Act. [as amended]

4.2.1 Defining and Implementing Age Limits

Where a parent is facing imprisonment, particularly if s/he is their sole carer or where a newborn baby is concerned, separation would entail serious consequences for the child that may threaten their very existence. To that end, strict age limits for a child to remain in prison with its parent should be replaced by individual assessments on a case-by-case basis, to be reviewed on a regular basis. Such a decision should rest with competent authorities who have the capacity to enforce, follow up and review decisions, and should apply the principle of the best interest of the child equally for children of detained mothers as well as fathers.

4.2.2 Accommodation

Children should be allowed to stay in adequate joint accommodation with their parent, preferably separate from the prison, if s/he has to be imprisoned at all. If living with their parent is not considered suitable, appropriate carers, for example their wider family, or foster families, should be explored. NGO involvement should be considered as a path to a solution. However, government should remember to support and also inspect any NGO running as a children's home

4.2.3 Family Visits

Maximum efforts must be made to enable family members to visit the parent and child easily, so that relationships with the wider family can be maintained and children do not risk losing their care network. To that end, flexibility in frequency and timing of visits should be shown to visitors to make family unions as frequent as possible. Facilities for visits should allow for a suitable environment to make for greater sociability. Factors such as distance from the prison and frequency of visiting should be taken into account when determining the length of visit allowed,

and visits by the extended family unit should be specifically facilitated to make for sustained relationships for the future of the children.

4.2.4 Stigma

Children of incarcerated parents should not be stigmatised by a society's prevailing attitudes towards prisoners. They should, as far as possible, have safe contact with the outside world and the opportunity to access education and play activities, spend time with their wider family and meet other children. To that end, governments should engage in public awareness-raising, involving civil society organisations.

4.3 Legal Support

Guaranteeing access to justice for all persons in conflict with the law, whether non-capital and capital offenders, is critical to protecting the rights of vulnerable and marginalized groups such as women and children. Universal access to legal representation remains elusive. A National Legal Aid Policy has been submitted to cabinet for approval. However, consideration of the same is pending the issuance of a certificate of financial implications by the Ministry of Finance, Planning and Economic Development. The current legal aid services provided by CSOs mainly centers on providing indigent persons with legal aid services. It is therefore recommended that CSOs, together with government, should strengthen efforts to carry out empowerment initiatives to enable suspects sustainably handle their issues. This is particularly relevant for women inmates because many of them are first time offenders, have never been out of their homes or spoken out in public and have no knowledge of the criminal justice system and legal processes prior to their court appearance.

Case study: Self-representation of inmates in Uganda

The Paralegal Advisory Services (PAS) is a project hosted by the Foundation for Human Rights Initiative. It seeks to improve the understanding and procedures of the formal criminal justice system by both users and criminal justice agencies in Uganda. PAS trains suspects on self-representation, improving their confidence levels in court cells before they appear in court and encourages them to request for alternatives to imprisonment such as community service. Such initiatives if spread across all prisons in the country will help to enhance access to justice

Conclusion

As illustrated in the case studies above, there are several valid and viable alternatives to incarceration as well as models for the provision of rehabilitation and reintegration services as well as addressing the challenge of access to legal representation. While some may require legal and policy reform, others can be realized with efforts from civil society groups and government

CHAPTER FIVE

Conclusion and Recommendations

5.0 Conclusion

Considering that women are usually the primary caregivers for their young children, arrest and detention process of women by police should be cognizant of their unique needs and promote the best interests of the child. The Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa recommend that women with caregiving responsibilities should be permitted to make arrangements for their children before arrest and where possible, a suspension of sentence should also be considered. In practice however, this is yet to be realized.

Furthermore, majority of women in conflict with the law not only lack the capacity to guarantee upkeep of their children, but also lack the economic means to hire a lawyer. Currently, the Constitution of the Republic of Uganda, 1995 only guarantees legal representation to persons charged with capital offences. This leaves majority of indigent women offenders who commit petty offences and cannot hire a lawyer defenceless. Even for women charged with capital offences, the quality of legal representation remains wanting. Although Civil Society Organisations have attempted to bridge this gap, only a few of them provide support in criminal matters and majority are urban based.

Failure to guarantee legal representation for majority of women offenders, coupled with their limited understanding and interface with the court process, has compromised their ability to benefit from mitigation. Despite some judicial officers' consideration of women's caregiving responsibilities as a mitigating factor, the practice is not uniform. This is mainly due to limited appreciation by some judicial officers of the Sentencing Guidelines' provisions to the welfare of pregnant women or women with babies. Defence lawyers role in gathering and adducing evidence during mitigation as to the status of the women offenders caregiving responsibilities also remains an issue of concern.

Despite a comprehensive legal framework providing for consideration of non-custodial sentences for women with babies or pregnant women, a prison sentence

remains the most common form of punishment passed. This has resulted in many women being detained with their babies.

To protect the dignity of women in prisons, access to healthcare is essential. However, provision of adequate healthcare remains an issue of concern with prisons close to urban centers receiving better healthcare compared to prisons in rural areas.

Access to a nutritious diet especially for pregnant women is equally essential. The Uganda Prisons Service provides access to both health care and nutritious diet, however, there is need to increase budgetary allocation for pregnant women, women with babies and children in prisons to better protect and promote their rights during incarceration.

Provision of gender-sensitive rehabilitation and reintegration services for women with caregiving responsibilities remains a challenge. Due to budgetary constraints and limited technical capacity, current programmes offered by the Uganda Prisons Service are limited to a few urban prisons and do not equip women offenders with competitive skills that would improve their livelihood upon release unlike their male counterparts that engage in more competitive work such as carpentry and metal welding.

To ensure access to justice for women incarcerated with children, there is need to ensure gender-mainstreaming at planning and policy development levels within the criminal justice system; at police, prosecution, judiciary and prisons.

5.1 Recommendations

To the Justice Law and Order sector:

- Establish a formal pathway and clear police and judicial protocol for handling women with children when they are first presented before court.
- Ensure gender-mainstreaming at planning and policy development levels within the criminal justice system; at police, prosecution, judiciary and prisons to better protect and provide for the rights of women incarcerated with their babies.
- Develop and appropriate funds for gender-sensitive rehabilitation and reintegration services for women offenders that will equip them with competitive skills upon release.

To the Executive:

- Expediently adopt the National Legal Aid Policy to ensure access to legal aid services for all suspects.

To the Ministry of Finance Planning and Economic Development:

- Increase budgetary allocation to the state Brief Scheme to enhance remuneration for state brief lawyers .
- Monitor the performance of state brief lawyers.
- Increase budgetary allocation to the Uganda Prisons Service to cater for the health and nutrition needs of women with babies and children detained with their parents.

To the Judicial Studies Institute:

- Incorporate training on the Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 to all judicial officers to ensure uniform application of the Guidelines.
- Carry out nationwide sensitization, together with Civil Society Organisations, of both judicial officers and the public, to promote use of alternative methods of sentencing.

Legal Aid Service Providers Network:

- Ensure nationwide presence of paralegals at police, court and within prisons to enable women offenders to appreciate criminal justice processes.
- Develop a programme targeting pregnant women and women with babies to ensure enhanced access to justice for such women.

