

**In whose Best Interest? Tracking Reforms and Culture Changes in Criminalizing Women
in Conflict with the Law in Kakamega, Kenya**

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Abstract

Escalating incarceration rates among women suggest an increasing number of children whose rights of parental care are grossly violated and needs deprived. Precisely, there is no data showing the exact numbers of children of imprisoned women in Kenya. However, by law, the Best Interests of the Child remains a primary consideration in all actions affecting children whose parents are in conflict with the law, at all stages of criminal justice and alternative care decision-making process. Children of women in some form of criminal justice control are at the highest scale of vulnerability yet, the least visible populations for policy makers, penal institutions, and international and local communities in Kenya. Very little is documented on the circumstances of imprisoned mothers' children and their needs are largely ignored by penal institutions and prison regimes. This article delved into the situation of Children Accompanying their Mothers to Prison (CAMP) and those left under alternative care due to mothers' incarceration. It attempted to provide a voice for this population whose feelings, opinions, and personal experiences are rarely explored, yet greatly affected by policies and procedures that were not designed with their needs in mind. Based on qualitative interviews with 48 women, the paper documented subtle nuances and parenting concerns of imprisoned mothers. Specifically, it looked into how their imprisonment has affected the life of their children and what has worked for them. The paper suggests policy recommendations, action plans and programs that can be considered to ensure that Kenya effectively implements Article 30 of the African Charter on the Rights and Welfare of the Child.

Key Words: Children, incarceration mothers.

Introduction and Background of the Study

For imprisoned mothers, one of the greatest punishments incarceration carries with it is separation from their children and loss of motherhood. This is exemplified in narratives and counter narratives of two women inmates in a Kakamega-based correctional facility. Rael (not real name) a 39-year-old single mother of three, who worked as a fruit vendor in the Uganda-Kenya border prior to her first sentence, was a convict taken in for brewing *changaa* (an illicit brew). Rael, accompanied by a 10-month-old baby boy, has served in jail for 7 months. She is also a mother of three others (4, 8 and 16-year-olds). Rael's other children stay with her old mother, a widow who depends on coffee proceeds. According to Rael,

I feel so much pain when I think of my children at home. I cannot tell how my children are doing. I come from far (345 km away) and no one visits me. My siblings say that agreeing to charges that I never committed was quite stupid of me. But I was cheated. So, they never visit me. I ask my God to preserve me to complete my jail term ending in October (two months from now) so that I can join my children. I do not even know whether my children are going to school. The last time I was in court (six months back), I met my ailing mum (with a kidney problem) who told me that my eldest daughter (16 years old and a KCPE candidate) had disappeared from home and was spotted in Nairobi. To date, no one knows her whereabouts. I pray for God to keep me safe and also days to rush quickly so that I can go and search for my only daughter and take care of my other children. (Interview Summary, 2016).

Willy (nick name) 39-year-old mother of three who had been in detention for two years (since May 2014) awaiting trial on allegations of conspiracy together with the husband to murder (a younger brother-in-law). The husband was also awaiting trial (in the men's wing of the same compound). Willy had been married for 21 years and had three sons (19, 14 & 9 years). Willy was currently disturbed that her case had stalled and failed to understand whether she should be referred to as a detainee or a prisoner. She failed to understand why other cases were progressing while hers was not. On the situation of her children, this is what Willy had to say:

At the moment I'm just trusting on God to take control. There are lots of issues surrounding me. The last time I was in court when the witnesses did not turn up (nine months ago), I was told my second born son (who was in form one) left school and disappeared from home. After some time Madam (welfare officer) told me that someone called to say that my last born got burnt severely. The same messenger mentioned to her that neighbors burnt my house, sold all my properties including our "shamba" (land). I am worried really how life has turned to be. My children have nowhere to call home. Since then, no one has visited or called again so I am just in darkness. I have told Madam (Welfare Officer) to tell my eldest son to come and visit me so that I know the fate of my small children. I hope one day someone will consider either my husband or I to serve on probation. Personally, I would really appreciate to reunite with my children. If freed or made to serve on probation. I would engage in my small businesses and definitely we would move on with life. I would also visit and give hope to their father. A mother is the 'msingi' (foundation) of 'boma' (home) (Interview Summary, 2016).

More and more women in conflict with the law are spending time behind bars in many world states (Bureau of Justice Statistics 2003; Council for European Affairs, 2007). Over the last decade, female prison population has soared dramatically with the rate of increase approximated to be much greater than that of their male counterparts in some countries (Incarcerated Women, 2012; Institute for Criminal Policy Research, 2014). At the moment in eleven countries, women comprise more than one in every ten prisoners, that is approximately 2 to 8 per cent of the prison population (Incarcerated Women, 2012). It suffices then to say that women are a small minority of the prison population, but a minority that is growing at a disproportionate rate (Incarcerated Women, 2012).

In the US, the number of women serving sentences of more than a year grew by 757 per cent between 1977 and 2004. This was nearly twice 388 per cent increase in the male prison population. In England and Wales, the number of women in prison has more than doubled over the past decade, while the number of men has increased by half (ICPR, 2014). Between 1984 and 2003, Australia hit a 75 per cent increase in the imprisonment of men while women soared by 209 per cent. Similar trends were reported between 1994 and 2004 in Mexico, Bolivia,

Colombia, Kenya, Kyrgyzstan, New Zealand and other parts of Europe. The most recent publication from Argentina revealed that female prisoners within the federal system increased by 193 per cent, while the male population grew by 111 per cent between 1990 and 2012 (ICPR, 2014; *Incarcerated Women*, 2012). According to scholars (Carson. & Golinelli, 2013; Chui, 2010), the upsurge stems from “get tough” criminal justice policies worldwide, increased use of imprisonment to punish offences that were previously punished by non-custodial sentences (e.g drug offences and nonviolent theft) as well as mandatory minimum sentences applied to a range of felonies.

In the glare of these soaring numbers, correctional center policies are not yet cognizant of the fact that women offenders are a unique segment in any prison population, not only based on their economic and social disadvantage, but also reproductive and caregiving responsibilities. (LaVigne, Davies, & Brazzell, 2008). Women in conflict with the law, world over, continue to bump into regimes, invariably designed for their male counterparts. By all standards and in all manner of definitions, from the architecture of prisons, to security procedures, to facilities for healthcare, family contact, work and training, prisons can simply be described an “inappropriate setting” for a woman (Tompkin, 2009). Prisons do not often meet the needs of women prisoners. All too often, human rights and basic dignity of women in prison and their dependents are systematically violated (Levy-Pounds, 2006).

In our zeal to make women offenders pay by forfeiting their freedom, the main victim is the innocent child facing hardship and developmental risks. The UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders commonly known as the Bangkok Rules is a powerful provision that has not only outlined non-custodial measures ideal

for a pregnant woman or a child's sole or primary caretaker, but also the responsibility of state parties (UN Commission on Crime Prevention and Criminal Justice, 2015). The revised UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), covering minimum standards in all prisons, equally stipulates relevant provisions regarding birth registration of children born in prison and issues of parent-child contact among others (United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015)

The UN Committee on the Rights of the Child, during the Day of General Discussion on children of incarcerated parents in 2011, considered the prisoners' children issue during States' reporting processes. Among the key issues was the inadequacy of conditions for children living in prisons. This Committee recommended that where the defendant has child-caring responsibilities, the principle of BIC should be "carefully and independently" considered by independent professionals and taken into account in all decisions related to detention (i.e. pre-trial detention to sentencing) and in decisions concerning alternative placement of the child. (UNCCPJ, 2015; UNSMRTP, 2015). The Committee also made it clear that alternative care for children who are separated from their imprisoned mothers should be sought. Importantly, children are to maintain personal and direct contact with their mothers who remain in prison.

Article 30 of the African Charter on the Rights and Welfare of the Child (ACRWC) is yet another unique tool within the canon of regional and international human rights law. This article highlights directly how the rights of children are affected when their primary caregivers are caught up in conflict with the Law. It lays out a number of provisions ensuring "special treatment" for pregnant women and mothers who are accused or convicted of criminal offences. Specifically, ACRWC's provision requires that non-custodial sentences should always be

considered first and that alternatives to detention be established and promoted. In part, it states “States’ essential aim of the penitentiary system will be reformation, the integration of the mother to the family and social rehabilitation” (ACRWC, 1989).

The most recent bold move was the adoption of the General Comment No. 1 on Article 30 of the African Charter entitled ‘Children of Incarcerated and Imprisoned Parents and Primary Caregivers’ (ACERWC, 2013). Although not legally binding, it is a persuasive, authoritative and practical tool which defines States Parties’ obligations to respect, protect and fulfill the rights of this often overlooked and invisible group of children. Its provisions do not only apply to mothers, but also to fathers, foster parent or another family member. The GC sets out obligations for State Parties. States must ensure no death sentence on pregnant women or mothers of young children. States must also seek non-custodial sentence, appropriate alternative care or special institutions for children of prisoners, alternative measures to pre-trial detention and regular contact between primary caregivers and children (ACERWC, 2013).

Undoubtedly, well-meaning laws, policies and provisions safeguarding the rights of this group of children are clearly stipulated. In Kenya, the Children’s Act (2001) and Kenyan Constitution (2010) echo the provisions of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, with clear measures to be practiced within the “Best Interests Principle” In part, the Children’s Act (2001) states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the BIC shall be a primary consideration.

Unfortunately, children of prisoners still fall through the cracks created by lack of commitment in response to their needs (Tompkin, 2009).) There is inadequate social welfare

provision and generally lack of concern by state agencies regarding the plight of this group of children. In Africa for example, the rights and welfare of these “secondary victims of crime” have often been violated, needs either deprived or gravely affected at every stage of their parents’ criminal proceedings and during the term of imprisonment (ICPS, 2013; Tompkin, 2009). The impact of parental arrest and imprisonment on children goes beyond affecting the relationship between the child and imprisoned parent, into all aspects of a child’s life (ICPS, 2013).

Women in Conflict with the Law in Africa

Women offending and imprisonment in Africa and beyond is closely associated with women’s poverty. Recent statistics show that most women face drug-related charges, minor and non-violent offences that do not pose a risk to the public. An investigation by UN Development Program and Open Society Justice Initiative (2013) conducted in Sierra Leone revealed that women on remand or pre-trial detention constitute a large percentage of the women’s prison population. In Kenya’s Shimo-La-Tewa Women’s Prison, approximately 47.3% of such offenders were in pre-trial detention according to World Health Organization (2011) report. In close scrutiny two questions emerge: Why these huge numbers at the pre-trial detention, and where they rightly belong- the prison, police cells or detention camps.

According to World Health Organization (2011), women in sub-Saharan Africa fall within the economically and socially disadvantaged segments of society, a vulnerability (inability to afford bail or the services of a lawyer) that leads them into detention. Typically, most women convicts are young, unemployed, uneducated and had lived with four or more children of dependent age (Christian, Mellow & Thomas, 2006; UN-DPOSJI, 2013). A high

proportion of the women detainees have a history of alcohol and substance abuse; an indicator, that women prisoners are more in need of treatment for mental disabilities or substance dependence rather than isolation from society. In countries where legislation derives from certain interpretations of religious laws, women are often discriminated against and imprisoned for so-called moral crimes (UN-DPOSJI, 2013). As such the proportion and the rate at which women are held in pre-trial detention is growing faster than that of male pre-trial detainees in many African countries. Typically, African states have not lived up to the expectation of the principle that states that “pretrial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim” (UNCCPJ 2015; UNSMRTP 2015).

Women Incarceration: A Developmental Risk for Young Children

We do not know with precision how many children in Africa have primary caregivers who are in conflict with the law. This is because jails, corrections departments, schools, child welfare departments, and other systems do not have accurate statistics for this vulnerable population. However, according to estimates by ICPS (2013), there were just over one million prisoners in Africa (excluding Eritrea and Somalia) in October 2013. In about half of these countries, large proportion of prisoners, that is, more than 40 per cent who were in pre-trial detention reported to have had three and more dependent children. Indeed, Wildeman (2009) reported that rights of a large number of children are affected by imprisonment of over a million adults in Africa, the vast majority of whom are likely to be primary caregivers of at least one child and most likely more.

Reyes (2001) referred to children having caregivers in contact with the law as “hidden”, “secondary” victims of crime or collateral convicts serving sentences of their own. Certainly, at all stages of criminal proceedings, before a primary caregiver’s incarceration, from arrest to trial to detention and at imprisonment, children experience a range of challenges. Children affected by the incarceration of their fathers are far more numerous, but it is the incarceration of mothers that is more destabilizing and disproportionately devastating (Dallaire, 2007; Wildeman, 2009). As such, Dallaire (2007) and Myers and colleagues (1999) referred to them as “the riskiest of the high-risk children” in societies. This worsens when mothers are imprisoned more frequently or for longer periods of time or in more punitive conditions. In principle, the scholars underscore that a mother’s imprisonment extends beyond and affects families already challenged by poverty, inadequate housing, abusive or exploitative partners, mental illness, substance abuse and legacies of child abuse.

The impact of mothers’ incarceration on developmental outcomes of a child extends well beyond the imprisonment period (Murray & Farrington, 2008). It has an impact on the child’s internal world (thoughts and feelings), an impact on the family world of the child and an impact on the child in the outside world (at school, in the neighborhood, with peers, etc.) (Murray & Farrington, 2008). It disrupts positive, nurturing relationships, leads to economic strain and instability, elevates the likelihood of recidivism for women, destabilizes an already vulnerable family situation, and causes job and housing losses (Hairston, 2007; Murray & Farrington, 2008). In the words of Christian, Mellow, and Thomas (2006, p. 87) “... families are important to prisoners and to the achievement of major social goals, including the prevention of recidivism and delinquency.”

According to Byrne, Goshin, and Joestl (2010) and Shlafer and Poehlmann (2010), mother's incarceration has an independent effect on a child's emotional and behavioral well-being, family stability and financial circumstances academic performance and mental health (Hairston, 2007; Murray & Farrington, 2008). Furthermore, there is the danger of family criminalization whereby a child who matures to a parent in prison may believe that to be norm. When a mother engages in criminal behavior, becomes involved with the justice system (e.g. arrest, pending court proceedings), is under restrictions in the community, a child is the most affected. Undoubtedly, the impact of the separation caused by incarceration of the mother is most salient for a child (Hairston, 2003; Murray & Farrington, 2008; Wildeman, 2009).

A study by Myers, Marsh, Amlund-Hagen, and Kennon (1999) which sampled children of imprisoned mothers identified a great many risk factors besides mothers' incarceration, including poverty, drug and alcohol problems in their families, community violence, and multiple changes in caregivers. These scholars noted that lives of children are profoundly disrupted when mothers are arrested. Such children experience internalizing (fear, withdrawal, depression, emotional disturbance) and externalizing (anger, fighting, stealing, substance abuse) problems, as well as heightened rates of school failure and eventual criminal activity and incarceration. To date, such children live in every city, every town, and every rural setting such as Kakamega County, but despite their high degree of trauma, amount of trouble they are likely to cause later, they are oddly ignored and no state agency provides for their services in a coordinated way.

Empirical evidence suggests that children may be protected from harmful effects of mother's imprisonment by having stable caregiving arrangements, by their families receiving

social and economic support, and by living in places with more sympathetic public attitudes toward crime and punishment (Shlafer, & Poehlmann, 2010). As a result, world states are increasingly initiating programs that might prevent adverse outcomes for children of women prisoners namely: provision of financial assistance, social support, parenting programs, improved prison visiting procedures, and alternative forms of punishment such as community service and day fines (Owen & Deegan, 2013). None of these initiatives is documented in Kenya. This grounds this paper which not only illuminates the circumstance of children of imprisoned women, but perhaps stimulates some vibrant dialogue on the need for genuine penal reforms and culture change in criminalizing women in Kenya in order to minimize harm and to provide proactively support for children.

Theoretical Perspectives Guiding the Study

This study was anchored on the assumptions of three theories, namely developmental, life span and risk-resiliency theory. From a developmental perspective, Bowlby's (1973) attachment theory helps in understanding the importance of parent-child relationship. For Bowlby, lack of opportunity for regular and sustained contact between a child and parent prevents development of a child's attachment and can generate a set of adverse emotional reactions. This interferes with optimal development of the child. It therefore underscores the crucial need for a secure attachment relationship with an alternative caregiver. Better still, there is need for parenting and visitation programs that maintain this contact even as women offenders are held accountable for their offenses (Parke, 2002).

Elder (1998) an advocate of the life-span theory described development as a process that continues throughout the life cycle into adulthood. The childhood period is critical in shaping

later stages of development. Two tenets of this theory stand out: development and adjustment. Adjustment during parental incarceration, vary greatly depending on the age of the parent and developmental level of the child. Young children are overly dependent on primary caregivers, meaning that their developmental stage must be considered during such eventualities.

Finally, risk and resilience theory explains that successful adaptation in the face of stressful life events like the incarceration of a parent varies as a function of two things: the form and frequency of the risks and, the protective or resilience factors that buffer the child from the adverse events. Specifically, protective factors are found in a supportive family environment. The presence of a supportive parent can help buffer the adverse effects of incarceration (Luthar et al., 2000). The environment extends to people outside the family, in the school system, peer groups, or churches, who support children's and parents' coping efforts. The three theories explain clearly that children of incarcerated women are at high risk of various developmental problems if policies guiding incarceration of women are not designed with them in mind.

Methodology

This study adopted a developmental lens in describing the experiences and struggles of this often-overlooked group of people. Based on a small scale qualitative case study, six Focused Group Discussions (eight women per group) were conducted with 48 women in conflict with the law (22 non-convicts and 26 convicts, age ranges 22-79 years) in Kakamega Women's Correctional Facility in Western Kenya. Purposive and stratified sampling techniques were adopted in selecting women convicts with dependent children. Women serving long and short sentences were selected for the study. In-depth interviewing was conducted with 2 Women

Prison Welfare Officers, placing the total numbers of participants at 50. On receiving ethical approval and research clearance, FGDs and in depth personal interviews were held within the women prison premises. The instruments were specifically designed for purposes of understanding the impact of mother's imprisonment on children's wellbeing. Interviews (group and personal) permitted adequate capturing of all the subtle nuances of children and inmates' experiences and in documenting any changes that were viewed by the participants as having derived from incarceration. In-depth analysis of women's voices provided rigor in getting deeper sense the situation of their children. Participant observation allowed the researcher to get a feel of the environment with regard to facilities and programs for Children Accompanying Mothers into Prison (CAMP). Data analysis was accomplished by thematic categorization and reports were done in qualitative (verbatim) inform of excerpts.

Findings and Discussions

The discussion of the findings focuses on childcare arrangement before imprisonment, type of offence, occupation and economic situation before incarceration, challenges during the period of imprisonment and the situation of their dependent children accompanying them and those left at home. The results revealed that 32, that is 67 % of the women who participated in the study had children of dependent age. Twelve (24%) lived with their daughters and grandchildren. At the time of their imprisonment, their younger children sought refuge outside the home such as neighbors' homes while older children were left to fend for themselves. Three of the six younger children had since been taken to a children's home since no one was ready to take care of them.

Thirty-nine (81%) of the women were serving or detained for the first time. A majority 36 (75%) of them had been charged or waiting to be charged for petty and non-violent offences such as brewing *changaa*, stealing property, fights, child neglect, child abuse, lack of documents, conspiracy to rob and roaming at night. This agrees with reports by Christian et al. (2006) and UN-DPOSJI, (2013) which linked economic disadvantage to crime and detention of women in sub-Saharan Africa.

As highlighted by ICPS (2012), significant portion of women prisoners at 12 (25%) were waiting to be charged or were charged with capital offences such as robbery, conspiracy to kill, murder, and manslaughter. In-depth interview with the women revealed that some of the offences appeared to be based on malice while other seemed to have been unintentionally committed.

Thirty-six (75%) women prisoners reported to have suffered social and economic challenges before incarceration. Among these challenges which led them to crime were lack of financial support from spouses, failure to give birth, abusive relationship, irresponsible relationships, social alienation and stigma associated with their HIV/AIDS status, wrangles within polygamous marriages, malice from close relatives, marital conflicts and poverty.

Similar to earlier report by UN-DPOSJI (2013), the largest proportion at 41(85%) of women who participated in this study reported to be doing small businesses such as vegetable and fruit vending, *changaa* brewing, selling clothes, charcoal, engagement in casual labor on farms in an attempt to either supplement family income or as the bread winners of their children and grandchildren.

On the issue of childcare arrangement, 28(58%) had their children being supported by relatives such as aunties, grandmothers, co- wives, step-sisters, or cousins. One woman had her child taken care of by a neighbor. This corroborates Murray and Farrington (2008) and Hairston (2007) who reported on childcare disruptions in the event of mother's imprisonment. Twenty-four (50%), of the women lived with their spouses up to the time of their imprisonment. A significant proportion at 6(13%) mentioned that their spouses had since remarried.

Similar to reports by Krisberg and Temin, (2001), 31(64%) respondents reported that their children faced a host of problems and numerous life stressors, including caregiver changes, increased poverty, and involvement with the child welfare system, in addition to the pain of parental separation. Some of the common reports were children disappearing from home, child marriages, child trafficking, residential disruptions, child abuse, drug abuse, sexual abuse, child labour, poor access to medical services (e.g. ARVs for children living with HIVAIDS), poor school attendance, school disruptions and transfers, childhood accidents and injuries, as well as behavioral and developmental disorders. They received most of the reports through welfare officers, who received calls on their behalf and alerted them or when they went to courts. The challenges the women listed were found to result from increased rates of anxiety, depression, learning problems and lack of adequate care of the children. Only 7(15%) of the women reported that their children were doing well in the hands of responsible spouses and relatives. 8(17%) reported to be unaware of where their children were, while 2(4) had no children left at home.

Status of Children Accompanying their Parents to Prison

The study wanted to know about the welfare of the women prisoners with young children and found that the children stayed with their mothers until their third birthday after which

alternative childcare arrangement was sought. More often than not, mothers were encouraged to prepare for children's exit at age 3 by identifying relatives that would offer custodial care upon the children's exit. For a few of the children who lacked kinship networks, chances or spaces would be sought in various charitable children's institutions which were often packed to capacity.

In an interview, one of the inmates serving a one-year sentence and facing charges of possession of illicit brew and accompanied by a seven-month-old baby boy had this to say;

Allowing mothers to come with young children here is quite good. My only boy 'Baraka' (meaning blessings) gives me hope to live. I am really anxious about the life of my other children but when I look at him, I see reason to live tomorrow. If I was not allowed to have him here, I would have died of stress because he was barely three weeks when I was arrested. I had expected that I was going to be released on the basis that I had a young child but when I realized that it was not forthcoming, I accepted the situation. Most of us accompanied by young children have successfully served their jail terms and they have always encouraged me to take heart. (Interview Summary, 2016)

Basic Services and Facilities for Children Accompanying Mothers in Prison

A total of twenty-four (24) children aged between six months to two and a half years lived with their mothers in the correctional facility. None of the inmates was expectant. The facility seemed overstretched since it is primarily meant to cater for about 100 inmates and 10 children. Observation showed that most of the children appeared to be in good health. They had access to good nutrition (e.g special diet in form of milk and eggs). Both mothers and children received appropriate medical treatment and had access to specialist child health and mother services with the Provincial General Hospital. Health services for both mothers and children were in place offering immunization, growth monitoring and family planning services for mothers. Well-wishers and charitable organization provided clothes, mattresses, blankets, foodstuff and toys. With regard to moth- child contact and child care, the correctional facility

had a schedule where mothers had the opportunity to do manual work and at specific time have chance to be with their children. During manual work, an inmate in charge (commonly referred to as mother of children) of childcare remained with the children in the children's units and took care of all the 24 children's needs.

The childcare unit doubled up as an educational unit where the "mother" interacted with the children as they played and learnt some concepts in number work, letter identification, poetry, games and songs. The child unit had a few charts and materials for children's play donated by well-wishers, and a few play and recreational facilities in the outdoor environment. It is worth noting that the young children had lots of opportunities and were not restricted indoors during the day.

In an interview with the "house mother" about the situation of these children, she said:

Here we are provided with blankets, clothes, toys, shoes, mattresses for our children. When our children are sick they are taken to the clinic and can be referred to PGH. This happens to all of us including pregnant women who also get some special treatment such as getting packets of milk just as our children. There is nutritious diet. Our children also get all forms of post-natal care facilities. I am in charge of nursery and we allow children to play and there is some form of stimulation in the nursery class. We have drawings on the wall and we teach them some letters and numbers. For all children who are in need of immunization parents are encouraged to mark their clinic days and alert the welfare officer through our leader about the same. When this is communicated, transport is organized and children are taken for these services on time. (Interview Summary, 2016).

The study showed the children (0-3 years) permitted by Kenyan Law to accompany their mothers to prison seemed to enjoy better services (safety, custodial, security, nutrition health and education) and emotional support. This was not the case with their siblings left at home probably with ailing guardians, aged grandparents or irresponsible caregivers.

Conclusion and Recommendations

This study has shown that a majority of women who were serving sentences in Kakamega Women Correctional Facility were primary caregivers at the time of their imprisonment and lived with children of dependent age, more than half of whom were under the care of relatives.

A majority of the women convicts were serving or were detained for the first time charged or waiting charges for petty and non-violent offences

The largest proportion of the women convicts lived in poverty before incarceration. They either operated small businesses or engaged in casual labor to supplement family income or as the bread winners of their children and grandchildren. A majority reported to have experienced economic hardship due to death of spouse or divorce, marital conflicts, lack of financial support from spouses, abusive relationship, irresponsible relationships, social alienation, and stigma associated with their HIV/AIDS and problems associated with multiple partner marriages.

With regard to the situation of the largest proportion of children left at home, women prisoners reported that incarceration ripped their children off parental love and care but also placed the children in a very vulnerable and deprived state.

Young children (0-3years olds) who accompanied their mothers into prison seemed to have access to better nutrition and health care services, which was made possible through philanthropy.

Most of the women went into crime due to factors beyond their control and some mainly due to childcare responsibility.

Even though some positive initiatives were in place in legislation and in individual prisons when dealing with children whose mothers were in conflict with the law, most of these were not mainstreamed in the justice systems, penal institutions, police services and beyond.

Change in this area is therefore urgently needed so that the rights of children with imprisoned mothers are fulfilled across Kenya. In addition, there is need for the following:

A reevaluation of “get tough policies” that have led to criminalization of all offences and felonies committed by women. This could lead to provision of some form of community-based sentencing, instead of prison-based incarceration. The culture and mission of the correctional system could also be expanded to include reducing recidivism and improving public safety by facilitating maintenance of mother-child relationships during mothers’ imprisonment when it is in the children’s best interest.

Programs that allow women prisoners to maintain their caregiving roles as they serve sentences should be encouraged in every correctional facility. This could include monthly child-centered visitations within a child-friendly environment. This is likely to enhance mother-child bond and connectedness. Parenting classes should be availed to women prisoners to help them deal with parenting issues that come with incarceration.

There is need for dialogue about changing the cultures of disparate systems that will ensure that the needs of children of incarcerated mothers are addressed. In this case, the justice system, penal institutions, family courts and child welfare agencies should be held accountable in designing legislation and seeing to it that services for maintaining connections between a child and an incarcerated mother are in place. Advocacy and attention of well-wishers, donors, state and county legislators could be stimulated to promote change of attitudes that have so far hindered better results in caring for such children. This may lead to establishment of social support policies and services that are likely to help children navigate the period during their mothers’ incarceration.

Alternative caregivers, school counselors, teachers and all those who work with children of incarcerated mothers should be supported (materially and morally) and trained in giving voice to issues concerning these children. They should also be empowered in counselling using a variety of interventions such as individual counseling or therapy, family therapy, or group therapy can be located in schools, clinics, or prisons.

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