REPUBLIC OF KENYA

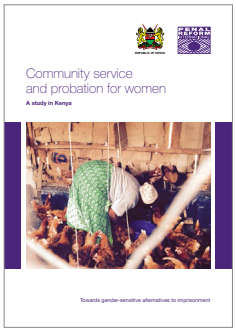
Community service and probation for women

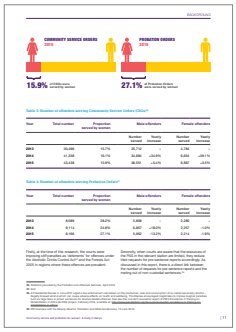
Lessons and recommendations based on a study in Kenya

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Introduction

Women and girls are a minority in criminal justice systems, constituting only an estimated two to nine per cent of national prison populations. As a result, they can find themselves in criminal justice systems that are designed for the male majority population and do not address their specific circumstances and corresponding needs. This was recognised in 2010 when the international community adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) which outline the measures needed to ensure the gender-sensitive[1] treatment of women both in prison and under non-custodial measures or sanctions.

The Bangkok Rules explicitly encourage the development and use of gender-specific non-custodial alternatives to pre-trial detention and to imprisonment. This is in recognition of the fact that many female defendants and offenders do not pose a risk to society and imprisonment frequently has a disproportionately negative impact on their rehabilitation and on their children's lives. On the other hand, non-custodial measures and sanctions which take account of women's distinctive needs enable women to meet their caretaking obligations at the same time as serving their sentence and can be far more effective at addressing the root causes of their offending than time spent in prison. It is worth emphasising that treating female offenders differently from their male counterparts is not unfair or discriminatory. In fact, the reverse is true. Women offenders have distinctive needs that must be identified and addressed so that they can receive equitable treatment.

Within a project implemented by Penal Reform International and the Kenya Probation and Aftercare Service on gender-sensitive Community Service and Probation Orders for women in Kenya, funded by the Thailand Institute of Justice, research was conducted in 2016[2] to enquire into the existing system and experiences of women serving community sanctions.

Wherever they live, women offenders experience similar problems such as discrimination, stigmatisation, high rates of violence, and poverty. Therefore, while the research deals with the situation in Kenya, it provides lessons and recommendations on how to deliver gender-sensitive community sanctions which will be relevant to other countries. This briefing draws on research by Penal Reform International and other studies on women in the criminal justice system.[3]

Offences and criminal procedures

Research findings and recommendations

1. Certain offences affect women more than men

Criminal offences may appear to be gender-neutral, but in practice certain offences penalise women exclusively or disproportionately. For example, studies document that in a number of regions a high percentage of women offenders are convicted of drug-related offences, attributed to gender disparities in the 'war on drugs'. In some countries women and girls are prosecuted for 'running away' after they have left their homes without permission, often to escape violence by a family member. Women are generally also convicted of sex work offences far more frequently than men.

> "...Many female offenders commit crimes when looking for source of income and not as a result of criminal tendencies."

Probation officer, Kenya.

Offending by women is often closely related to economic and social disadvantage. Women surveyed in Kenya serving community service or probation had been convicted disproportionately compared to men for offences linked to economic survival and supporting their families. These included income-generating activities such as brewing and selling of alcoholic drinks without a licence and collecting firewood from forests for cooking (an offence under wildlife conservation laws). Conviction for these minor offences has a huge impact on women's lives, often perpetuating poverty for them and their families. Nor is there benefit to the community in sending women to prison for such misdemeanours.

> "It cannot be that a woman found collecting firewood in the forest receives the same sentence as someone found logging. The lady is just trying to take care of her family."

Micha Powen, Principal Secretary, Correctional Services, Kenya.[4]

→ The decriminalisation of misdemeanours should be considered as a measure to decongest the criminal justice system and ensure fairer and more proportionate sanctions. **(Tokyo Rule 2.7, Bangkok Rules 57-58)**

2. Pre-trial detention is overused for women defendants

Both the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and the Bangkok Rules encourage criminal justice systems to provide a wide range of alternatives to pre-trial detention. Women defendants are frequently suitable candidates for such alternatives because they are generally charged with minor and non-violent offences and they present a low risk to society. Pre-trial detention, even for short periods, can have a very significant and harmful impact on their children and families.

> "When I was arrested I lost my business."

Woman offender, Kenya.

Yet, in many countries women end up being detained because common non-custodial options, such as fines and bail, are not gender-specific and are unsuitable for women. For example, reporting times at police stations as a part of bail conditions may conflict with women's caretaking responsibilities. Women may not have access to surety if they do not own property (for legal or economic reasons), and bail amounts are not always affordable.

This is highly relevant in Kenya where 87 per cent of the women interviewed for the research were detained on remand prior to conviction. Their subsequent compliance with the community service or probation order (with records showing less than five per cent of cases marked as 'absconded' or 'unsatisfactory completion') is a strong indicator that court attendance could have been secured without detaining them. Women who participated in the study explained how pre-trial detention disrupted their income-generating activities but also impacted on childcare. Children of single mothers were in some cases left without adult supervision and women were held in custody with infants in dire conditions.

> "My granddaughter who I take care of became pregnant when I was in custody and has now left school and I am blamed for this."

Woman offender, Kenya.

Among the women who were granted bail, many could not meet the bail conditions required. Only six per cent had access to legal representation which may have contributed to their inability to access bail.

In some cases, delays in the submission of pre-sentence reports by probation officers resulted in extended periods of time in pre-trial detention.

➔ Women must have access to legal representation at all court hearings, and particularly bail hearings, to decrease rates of pre-trial detention. Where legal representation is not realistic owing to lack of publicly-funded lawyers, judges should make the necessary enquiries themselves during bail hearings. **(UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 9)**

➔ Judicial officers should apply alternatives to pre-trial detention and ensure any non-custodial alternatives are accessible and gender-sensitive. **(Bangkok Rules 57-58)**

3. Importance of pre-sentence reports

Formal and informal sentencing guidance and pre-sentence reports (also referred to as social enquiry reports) and tools used by probation services and courts are usually gender-neutral and need to be adapted to allow courts to take into account individual circumstances which may reflect gender roles or characteristics. For example, being the sole or primary carer for children or dependent relatives, or having a high level of mental health need, are personal mitigating factors in some sentencing guidelines.

The Bangkok Rules explicitly oblige judicial officers (i.e. magistrates and judges) to use their discretion when sentencing women offenders and to consider mitigating factors, including those set out in any pre-sentence report.

These reports are critically important as they reveal the unique gender-related circumstances of a woman offender which can help to determine the suitability of a particular sentence.

In Kenya, judicial officers stated that in most cases they do request a pre-sentence report for women to guide them when sentencing. However, probation officers do not always provide the reports on time owing to lack of funding, the reports are of varying quality, and are not always factual, objective and unbiased as required in the Tokyo Rules.[6] Furthermore, without a standardised tool for gathering and presenting pre-sentence reports, the inclusion of relevant gender-specific factors is left to the individual discretion of probation officers.

In many contexts, not just in Kenya, there is a need to strengthen the quality of reports for judicial officers in order for sentencing to be in line with the Bangkok Rules.

➔ Pre-sentence or social enquiry reports should always be available to judicial officers at the sentencing stage, and must include information about women's caring responsibilities, any history of victimisation, mental healthcare needs and substance dependencies. **(Bangkok Rule 61)**

➔ Those charged with preparing such reports must have adequate tools, guidance and training so that their enquiries and pre-sentence reports are gender-specific and are prepared ethically and professionally. Relevant issues should be captured consistently rather than left to the individual discretion of probation officers. **(Tokyo Rule 7.1)**

Profile of women serving community service or probation in Kenya

The backgrounds and characteristics of women offenders in Kenya are similar in many aspects to the backgrounds and characteristics of women offenders in other countries*.

Interviews indicated that the majority of women serving community service or a probation order in Kenya were:

- **mothers with young children:** three quarters had children under the age of 18.
- **of low educational status:** only 21 per cent had been to secondary school and none had university qualifications.
- **low earners:** the majority worked in the informal sector in agricultural and domestic activities such as hairdressing or selling household goods and food/drink.
- **convicted of minor and non-violent offences:** for example, 36 per cent of women were convicted of selling alcoholic drinks without a licence and 13 per cent for other minor offences such as collecting wood in forests and failure to construct a toilet.
- **offending to earn money:** 67 per cent said they had offended to earn money and support their family.
- **unable to access a lawyer:** only six per cent had access to legal representation during the court process.
- **survivors of violence:** 33 per cent admitted to being subjected to domestic violence at one point in their lives.[5]
- **in poor health:** many women interviewed were HIV positive or living with AIDS.
- **unskilled:** most women interviewed were semi-illiterate and unskilled.

*See PRI's research series: '*Who are women prisoners?*' for more information, available at www.penalreform.org.

Towards gender-sensitive community sanctions

Research findings

The Bangkok Rules explicitly encourage the development and use of gender-specific non-custodial alternatives to imprisonment (and pre-trial detention) which take into account 'the history of victimization of many women offenders and their caretaking responsibilities' **(Rule 57)**.

Sentences served in the community avoid the high social and economic cost of detention and have proven to be more effective than imprisonment in preventing reoffending, particularly for women convicted of minor, non-violent offences. However, non-custodial sentences are often tailored to the requirements and situation of male offenders and ignore the different reality of women's lives. For example, the high level of poverty experienced by women offenders and their dependency on male family members means that they are often unable to pay fines, which are the most frequently employed alternative to imprisonment for minor, non-violent offences. As a consequence, they are given a more punitive sentence instead.

Interviews with women in Kenya illustrated how grateful they were to be able to serve Probation Orders[7] and Community Service Orders[8] (CSOs) rather than prison terms, not least because they meant that they could continue to fulfil their familial role, caring for children and other family members, and continue with income-generating activities that support their families.

However, there were still many challenges surrounding these community sanctions. The interviews revealed some difficulties with compliance because of competing personal or family responsibilities, for example, childcare, pregnancy, remarrying and relocating or attending funerals (where attendance is expected for several days and involves contributing to cooking duties, etc.). A few women also said they had relocated after escaping from a violent spouse.

The following points outline some of the challenges for women serving Probation and Community Service Orders in Kenya, which are likely to be relevant in other countries.

- Courts prefer giving Probation Orders and CSOs over fines especially because some statutes set minimum fines that are unduly high and result in women serving prison terms for defaulting on the payment.
- Most of the women serving Probation Orders and CSOs said they struggled to save money to pay for transport to attend appointments at the probation office or 'work stations'. This is unsurprising given that for most, poverty was a major reason for their offending.
- Because there are fewer 'work stations' suitable for women serving CSOs those assigned are often far away from where they live. The time to travel to and from these work stations affects their caretaking obligations and reduces their chances of securing casual jobs before or after the CSO work for the day. However, where women were allocated to stations that were easily accessible and where the working hours were structured in a way that would allow 'off days', they were able to meet their financial and caregiving obligations and successfully serve their sentences.
- The total length of and scheduled working hours of a CSO negatively impacted on many women's caregiving responsibilities and livelihoods. Coupled with long distances to the work station, the requirement to work two hours per day for five days meant that they lost the critical morning hours when casual jobs are usually available. It was explained, for instance: *'A widow with a sick child went to look for help at the CSO project as she could not be treated without KES 50 [0.50 USD] required at the dispensary. The widow did not have the money as she had not done any casual work that day.'*

Recommendations on community service and probation for women

A number of specific recommendations emerged from PRI's research in Kenya exploring how different stakeholders in the criminal justice system can help to deliver non-custodial sanctions – specifically community service and probation – in a way that is gender-sensitive.

→ Capacity and awareness regarding gender-specific factors amongst criminal justice stakeholders

All relevant stakeholders in the criminal justice system need to be aware of the specific characteristics and needs of women offenders and should receive training on the application of the Bangkok Rules and the Tokyo Rules. Training initiatives should involve all relevant stakeholders, including probation officers, judges and magistrates, as well as supervising officers. Delivery to mixed stakeholder groups has been shown to be beneficial.[9]

To identify and address the underlying causes of offending, governments should allocate resources to disaggregated data collection and research and collaboration with non-governmental organisations working with women offenders to: gather information on the most common factors that lead women to come into contact with the criminal justice system and the level of compliance with community service orders, and to inform community sanctions and support programmes. PRI's 'Community Service Measurement Tracker' is a useful resource for improving data collection.[10]

Probation officers should be encouraged to document experiences with women offenders to learn from each other and to identify good practices.

→ Practical measures to address challenges for women serving community service

Practical issues need to be considered when assigning community service placements. They should be allocated as close as possible to an offender's home to reduce transport costs and commuting time. Work hours should be adapted as necessary to fit with family obligations. Placements should be supervised by officers who are aware of the personal situation of the woman offenders under their supervision.

Furthermore, placements should take into account women's individual skills, overall health and physical capacity. They should be devised in a way that is sensitive to cultural and local differences, while avoiding gender stereotypes (for example, not be limited to cleaning and cooking).

→ Safety for women whilst serving a community sanction

The majority of women interviewed in Kenya did not mention incidents or concerns about personal safety in serving their community service order. However, violence against women, including sexual abuse, is known to be under-reported.[11]

Research has demonstrated the benefits of women-only treatment programmes, which is reflected in the Bangkok Rules. Another tool to safeguard women's security whilst serving their non-custodial sanction are complaint mechanisms that allow women to contact a person of trust in a confidential way, in particular for incidents of sexual harassment, violence or exploitation. It may be necessary for complaints to be anonymous and women should be assured that any such complaints will not be interpreted as unwillingness to comply with the sentence.

Good practice in Kenya: Economic empowerment initiatives

The *Uwezo Initiative* in Kibera provides women offenders with basic entrepreneurial skills and stock to help them set up small businesses such as selling second-hand clothes and running food kiosks. A number of women explained that as a result they were able to earn a living and were highly motivated to continue. Some challenges were raised, including keeping the businesses going during 'hard times' and the need for access to loans that they can reinvest in their businesses, but the women interviewed indicated their commitment not to reoffend as their financial needs were now met.

One beneficiary of this fund explained: *'Now I have a shop; Uwezo funded me to start the shop and I am doing well. My brother runs the shop when I report to the probation office every month.'*

> "An administrative police officer used to sexually harass me. I resisted his advances and reported it to the probation office and he was transferred."

Woman serving a Community Service Order in Kenya.

Whereas in Kenya, the women interviewed did not feel it was very important to be supervised by female probation officers, in other contexts this may be appropriate to protect women.

Women offenders should never be supervised by the person responsible for their arrest.

→ Skill-building and other support programmes

Factors such as low confidence and lack of life skills, including on how to handle parenting or relationship stress, have also been found to be particularly relevant for women offenders along with a high incidence of mental health problems.

The Bangkok Rules call for non-custodial sanctions that include interventions to address the most common problems leading to women's contact with the criminal justice system, such as skills training and counselling for victims of domestic violence and sexual abuse.[12]

Since poverty is a significant driver of women's offending in many contexts, rehabilitation services that include vocational training and economic empowerment have an important role to play in addressing this root cause.

> "I need capital to start another business or skills to enable me to be employed, otherwise I have no option but go back to brewing alcohol."

Woman serving a community sanction, Kenya.

A participatory approach with the relevant community should be adopted in designing community service programmes so they can give input on what public works are required and would be beneficial.

→ Family and psycho-social support

Women interviewed in Kenya explained that family support, both practical and financial, was a critical component in enabling them to serve their sentence successfully.

The research findings also revealed that psycho-social support, including counselling, is a critical requirement to prevent reoffending since anger, stress and living with abusive spouses/partners are all barriers to successfully completing a Probation Order or CSO and can be a cause of (re)offending.

There are currently few interventions to address mental health issues in Kenya. Peer support groups have proven to be particularly successful for women offenders, providing a low-cost option where there is a lack of psycho-social support.

Good practice in Kenya: Gender-sensitive programmes at a girls' probation hostel

The Nakuru residential 'probation hostel', one of four such institutions in Kenya, houses female offenders aged between 12 and 22. The standard term served in a probation hostel is a year but in exceptional cases extensions can be sought from the court. The hostel seeks to deliver skills training, counselling and social activities designed with young female offenders in mind. Girls interviewed appreciated the regime at the hostel, noting that it was distinct from a prison, allowing them to come and go. The probation officers interviewed explained that over time they have been able to identify the needs of girls and have adapted their programmes to meet these, running activities to raise self-esteem and self-confidence, for example.

Overall, awareness of gender sensitivity amongst the probation officers was evident. One of the probation officers had been trained by PRI on the UN Bangkok Rules.

Some challenges were identified. While family support is critical in the rehabilitation process, in some cases distances from homes made it challenging for parents to visit. Also, while girls can obtain formal education or learn skills such as dress making and catering, equipment was lacking or outdated and there was a lack of aftercare support for successful reintegration. For instance, the hostel does not have a budget to provide small amounts of capital to help the girls use the skills they had gained, for example, to purchase sewing machines to start a business.

→ Governance structures to build coordination and collaboration

A commonly overlooked issue is the importance of having mechanisms in place within government to focus explicitly on women in the criminal justice system. Without this visibility across different departments and ministries, provision for gender-sensitive non-custodial sanctions is likely to remain at best inconsistent and at worst ignored.

As a starting point, governments should develop and mainstream a national gender policy based on the Bangkok Rules so that gender-sensitive approaches are mainstreamed throughout the criminal justice system. It is also important to have a coordination mechanism that brings together relevant stakeholders to share information on the treatment of women defendants and offenders. Increased cooperation could also help strengthen the provision of additional support programmes for women serving community sanctions by involving providers of programmes to address mental health and drug and alcohol dependencies.

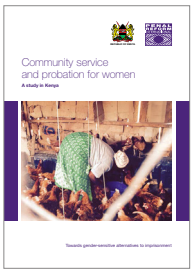
> "However hard we worked with civil servants, the general response at that time was, "Women are only 5% of the prison population; we must focus on the larger numbers." It was a real battle to get attention. The sea change that came with the joined-up work and the cross-departmental team was huge."
>
> Parliamentary Inquiry, United Kingdom.[13]

Further resources

Full research report

Community service and probation for women: a study in Kenya

Available online at: www.penalreform.org/resource/community-service-and-probation-for-women-a-study/



Short documentary

Equal justice: making community sanctions work for women in Kenya

Highlights the benefits and challenges for women serving community sanctions. Features interviews with women offenders, the Kenya Probation and Aftercare Service and Penal Reform International.

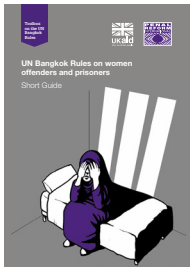
7 mins. Available online at: www.penalreform.org/resource/equal-justice-making-community-sanctions-work-women-kenya/

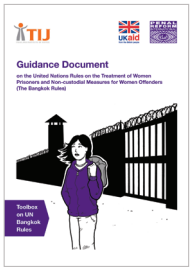


Toolbox on UN Bangkok Rules

A range of practical resources to assist with putting the UN Bangkok Rules into practice. Includes a Guidance Document, Index of Implementation and free online course. Tools available in multiple languages.

Available online at: www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/tools-resources/





References

1. Gender-sensitive (or gender-responsive) practices are 'practices, programs, assessments, or policies that account for the differences in characteristics and life experiences that women and men bring to the justice system and that have been tested by methodologically rigorous research and found to be effective in reducing recidivism'. (National Resource Center on Justice Involved Women, *Gender Responsive Interventions in the Era of Evidence-Based Practice: A Consumer's Guide to Understanding Research*, p1.)
2. For this research, 97 female offenders in Kenya were interviewed who were either serving or had served Community Service Orders or Probation Orders and who lived in different regions, as well as five women in a probation hostel. 22 judicial officers, 22 probation officers and 18 community service supervisors and other key stakeholders were also interviewed. The research took place between February and April 2016 in different locations around the country. For further information about the methodology, please see the full report available at: www.penalreform.org/resource/community-service-and-probation-for-women-a-study/ <accessed 13 October 2016>.
3. See Penal Reform International's research series, *Who are women prisoners?*, which includes four reports covering the profile and background of women in prison in seven countries across four regions, available at: www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/research <accessed 20 October 2016>. See also, Penal Reform International/Andrea Huber, *Women in criminal justice systems: the added value of the UN Bangkok Rules*, 2015.
4. 'Petty offenders to be released in bid to decongest Kenya prisons', *The Standard Kenya*, 4 October 2016, www.standardmedia.co.ke/article/2000218320/petty-offenders-to-be-released-in-bid-to-decongest-kenya-prisons <accessed 13th October 2016>.
5. The Kenya Demographic and Health Survey of 2014 found that more than one third of ever-married women reported that they had experienced physical violence by their husband or partner; 32% reported emotional violence, and 13% reported sexual violence; almost half (45%) of women aged 15-49 had experienced physical violence. Available at: www.dhsprogram.com/pubs/pdf/SR227/SR227.pdf <accessed 21 September 2016>.
6. Tokyo Rules, Rule 7.1
7. In Kenya, Probation Orders involve regular meetings with a probation officer to discuss progress. Supervision plans are geared towards rehabilitation and may include counselling, or restorative processes such as mediation, where these services are available. Probation officers supervising a woman offender should be female although this is not always observed in practice.
8. In Kenya, Community Service Orders require an offender to engage in unpaid public work for the benefit of the community for a specified period.
9. In Uganda, the Community Service Department found that mixing up different stakeholders in one training session helped pave the way for a better understanding of community service issues and ideas on how to move forward together. See Penal Reform International, *Excellence in Training on Rehabilitation in Africa (ExTRA) Project, mid-term evaluation*, January 2016, p40.
10. For more information, see Penal Reform International, *Excellence in Training on Rehabilitation in Africa (ExTRA) Project: Community Service as an Alternative to Imprisonment, final evaluation*, September 2016.
11. See for example, UN Women, 'Virtual knowledge centre to end violence against women and girls, Consequences on individuals and communities', available at: www.endvawnow.org/en/articles/1476-consequences-on-individuals-and-communities.html <accessed 27 October 2016>.
12. Rule 60 of the Bangkok Rules promotes support interventions alongside the application of non-custodial alternatives for women offenders, which should take account of the 'need to provide care for children and women-only services'.
13. Extract from *The Corston Report: A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system*, Home Office, UK, March 2007.

Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.

We promote alternatives to prison which support the rehabilitation of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

We currently have programmes in the Middle East and North Africa, Sub-Saharan Africa, Eastern Europe, Central Asia and the South Caucasus, and work with partners in South Asia.

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The Kenyan Probation and Aftercare Service is the sole administrator of community based sanctions in Kenya.

The Department is one of the agencies that form the Kenyan criminal justice system and is specifically charged with the responsibility of implementing supervised non-custodial correctional services within the community. We are driven by the desire to reform and cause positive change in the lives of offenders. We believe that offenders can change given a second chance by providing appropriate rehabilitation and treatment interventions.

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