

## Chapter 13

# Women, Drug Policy and the Kenyan Prison System

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### Introduction

Women in Kenya are increasingly exposed to drug and enforcement related harms and risk of incarceration. The Kenyan National Survey on Drug Use and Health (2011) shows that men aged 18 and older have almost twice the rate of substance dependence as adult women. However, among youths aged 12 to 17, the rate of substance dependence for both genders is the same at 6.9%. In line with global trends, women represent a minority of the prison population not including pre-trial detention and remand, at 3,378 prisoners (6.3% of the total prison population of Kenya). An estimated 70% are serving sentences for alcohol and drug-related offences. However, it should be noted that the availability of reliable gender-disaggregated data is a challenge that is acknowledged by the Kenya National Bureau of Statistics (KNBS and UN Women, 2019). Understanding how gender can interact with age and patterns of substance use is important for the design of effective outreach, prevention, treatment and rehabilitation in a prison setting, especially targeting female prisoners.

### The Social Impact of Drug Use on Women

Women's involvement in drug use and trafficking exposes them to social injustice and abuse, including sexual abuse (Mburu, Limmer, & Holland, 2019). This makes women vulnerable to negative health and social outcomes such as disease risk, unwanted pregnancies, sexually transmitted infections and child abuse or neglect. Even when women may not directly participate in drug use or the drug

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**The Impact of Global Drug Policy on Women: Shifting the Needle, 123–129**

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trade, they are often responsible for minimising and managing the associated risks for themselves, their families and communities (Mburu et al., 2019).

The involvement of women in drug use and the drug trade reflects decreased social and economic opportunities and inequalities in access to education and employment. While poverty does not necessarily lead to crime, it reduces prospects, cripples morale and exacerbates female exclusion and marginalisation. This, in turn, renders more women vulnerable to the influence of crime and exposure to drug use (Cherishe, 2010). The overwhelming majority of those who use illicit drugs do not commit property crime or violent crime (Achode, 2012; Graycar, McGregor, & Makkai, 2001). Research indicates that over 70% partially sustain their drug use through sex work (Anglin & Hser, 1987). After release from prison, most women return to their families and communities with even more complex mental health needs as a result of incarceration (Jordan et al., 2002).

## **Prison and Policy in Kenya**

The incarceration of people who use drugs (PWUD) does not achieve the goals of prison administrations. Prison institutions generally do not have rehabilitative structures or the capacity to provide counselling and treatment for drug dependence. Moreover, because drugs are still accessible from within prisons, incarceration does not ensure termination of use.

The promulgation of Kenya's Constitution in 2010 brought much needed reforms to the Criminal Justice System. Point 5 of Article 2 ensures that international laws, treaties and conventions ratified by Kenya shall form part Kenyan law. Articles 48 to 50 of the Constitution guarantee the right to justice, the presumption of innocence and the right to a fair trial (Government of Kenya, 2010).

Drug policies in Kenya are informed by the Kenya Narcotic Drugs and Psychotropic Substances Control Act of 1994, which criminalises the possession and trafficking of drugs. The National Authority for the Campaign against Drug Abuse (NACADA) was established under the Kenyan Constitution to coordinate efforts, including multi-sector campaigns, enforcement and rehabilitation, the mapping of key impacted areas and the provision of drug use data to the state. Within this punitive framework, there is a growing number of women incarcerated for minor drug and alcohol-related offences. In line with global trends, this has resulted in overcrowding in Kenyan prisons (Kimani Ndung'u, 2016, p. 87; Onyango-Israel, 2013).

## **Correctional Services and the Incarceration of Women**

Kenya Prisons Services runs 118 prison facilities (Kenya Prisons Service, n.d.), hosting 51,000 inmates, representing a 190% occupancy rate. Of these, over 3,300 are women (World Prison Brief, 2018).

Within the criminal justice system in Kenya, those arrested for drug-related offences are often put into pre-trial detention with unaffordable or strict bail terms (Heard & Fair, 2019; Muntingh & Redpath, 2016). This is despite the Constitution of Kenya stipulating that a person who has been arrested must be

arraigned in court within 24 hours, regardless of the nature of the offence, and that they must receive bail (Government of Kenya, 2010). The Kenya Prisons Service is mandated to provide safe custody for inmates, as well as access to rehabilitation services and to carry out other orders given by the court. The institution stands at the end of the criminal justice system and has little power to influence the determination of the court regarding punitive or rehabilitative measures and alternative, non-custodial sentences for people convicted of drug-related crimes. Alternatives to incarceration need to be implemented at all levels of the Criminal Justice System according to the Community Service Order (CSO) Act and the Probation Act. These recommend converting sentences of less than three years to orders of either probation or community service. The Narcotic Act of 1994 also outlines guidelines for the rehabilitation of PWUD, yet this option is not enforced.

Little research has been conducted on substance use among prison inmates in Kenya. General population surveys that have examined drug use usually omit this 'hidden' population. Such data would offer important insights into drug-related morbidity and possible preventive measures (Kinyanjui & Atwoli, 2013). There is a considerable need for substance use treatment for the majority of women incarcerated for drug-related offences in the country. Providing adequate services for these women is a challenge for the prison authority in Kenya. Proper management would require more specific information concerning HIV/AIDS status and drug or alcohol dependency.

## **Implementation of Best Practices in Kenya**

The Bangkok Rules provide comprehensive standards for the treatment of incarcerated women. The rules address issues such as prior victimisation and its links with incarceration; alternatives to incarceration; mental and physical health care; safety and security; contact with family members; staff training; pregnant women and mothers with children in prison; and prisoner rehabilitation and reintegration, among other things. The Mandela Rules, or the Standard Minimum Rules for the Treatment of Prisoners, adopted by the UN General Assembly in 2015, also set out broad standards on the treatment of prisoners and best practices in prison management that are grounded in human rights.

Kenya Prisons Service has cascaded the implementation of Bangkok and Mandela Rules across its 118 prison institutions by establishing a coordinating section at the Prisons Headquarters as well as a human rights desk and point person at each station. Prison staff were trained and sensitised on these rules, which enhanced uptake and ownership (Odhiambo, 2017; United Nations Office on Drugs and Crime (UNODC), 2017). This allowed other countries to use Kenya as a benchmark and for Kenyan officials to support other International Correctional Systems through capacity building and system strengthening, entrenching international best practices in their own systems (Kimani Ndung'u, 2017; Odhiambo, 2017).

Across these prison institutions, everyone who enters is searched in order to avoid the smuggling of contraband, including drugs. A notice of these terms is

clearly posted and indicates what items are considered to be contraband. All inmates are screened upon admission using a special comprehensive prison form (PF 10). They are further categorised and classified based on relevant information from their medical examination on admission. Those identified with drug dependence are linked to psychological counselling and support (MOH, 2017). Further referrals to external medical interventions, such as Medically Assisted Therapy (MAT), are being provided to eligible cases under a programme launched by the UNODC (MOH, 2017), county-level governments and the National AIDS and STIs Control Programme (Nascop) (Atieno, 2018).

Around 90% of special-needs offenders, including female inmates, are identified on admission to prison through initial screening using a prison customised medical screening tool. This functions to link inmates, including those with drug dependency, with various rehabilitation and intervention programmes and ongoing continuity of care. However, many others are later identified following late onset of withdrawal symptoms or through prison surveillance and internal identification systems.

However, despite the roll-out of best practice guidelines, Incarceration does not necessarily result in the termination of drug use or provision of treatment and rehabilitation services. Drugs are often more accessible within prison institutions despite stringent measures designed to curb supply (MOH, 2017). PWUD can find it easier to access drugs inside prison than outside, often complicating the rehabilitative measures of eradicating drug abuse while in prison custody.

## **Human Rights and Drugs**

The UN Development Programme notes that corruption, violence and instability fueled by the war on drugs generate large-scale human rights violations, discrimination and the marginalisation of PWUD, indigenous people, women and youth. Domestic and international anti-drug policies are a leading cause of rising rates of incarceration of women around the world. Studies have found high rates of women being imprisoned for drug-related offences (Amnesty International, 1999). There is a strong link between violence against women and their incarceration, whether prior to, during or after imprisonment (UN Human Rights Council, 2013). Throughout the world, women prisoners face similar human rights violations relating to those factors that led to their imprisonment, the conditions they face in prison, and the consequences of their incarceration.

Kenya's Drug Control Bill (2011) puts an excessive focus on incarceration. The Criminal Procedure Code Section 21 prohibits the use of greater or excessive force, particularly where there is no threat to escape or resistance of arrest. The police code of conduct and ethics forbids subjecting arrested persons to torture, hardships and inhuman treatment. In dealing with PWUD, police officers often overlook these codes and beat up, demand bribes, arrest and arbitrarily detain drug users as well as deny them treatment for withdrawal symptoms (Kageha, 2015, p. 12).

Gender-based violence is a critical issue within this context. It includes childhood sexual abuse, intimate partner violence, non-partner assault, and trafficking

for sexual exploitation. Global estimates produced by WHO indicate that approximately one in three women worldwide experiences physical, sexual intimate partner violence or non-partner sexual violence in their lifetime.

There is sufficient legislation and policies prohibiting acts against humanity by state officials implementing drug-related laws and policies in Kenya, however, impunity creates barriers to access basic human rights for the vulnerable in society, including women, thereby affecting their access to health and freedom from violence and discrimination.

The illicit nature of the drug trade fuels violence and abuse and is linked to higher rates of sexual violence and sex trafficking, where women's bodies are collateral damage in the profitable drug trade. It is clear that deeply flawed responses to the world drug problem are undermining gender equality, and that a gender perspective is needed in all forums.

The direct and indirect effects of punitive approaches to drug use have been well documented and impact the availability and accessibility of health services. This approach also has specific impacts and effects on women, especially at the intersections of drug use and sex work and is perpetuated by health professionals, law enforcement and the wider community. Other laws and policies that affect women are those where drug use is applied as a criterion for loss of child custody, forced or coerced sterilisation, abortion, and the criminalisation of drug use during pregnancy. Policies in some countries require the registration of PWUD, further discouraging women from accessing services.

## **Health-oriented Approaches for Women Who Use Drugs**

The Single Convention on Narcotic Drugs (1961) states that Parties shall give special attention to and take practicable measures for the prevention of drug use and for the early identification, treatment, education, rehabilitation, aftercare and social reintegration of the persons involved. Evidence indicates health-oriented approaches as an alternative to criminal justice measures increases recovery and a reduction in crime and the criminal costs of imprisonment (UNODC, 2010b).

As many women incarcerated for drug-related offences need access to substance use treatment, accessibility within prisons should be a public health priority. Experts and policymakers should understand and consider public health-based measures and understand evidence-based approaches to treatment. An understanding of how the implementation of the Psychotropic Narcotic Act No. 4 (1994) affects treatment capacity in Kenya should also be developed. Presently, the criminalisation of PWUD has restricted access to health services and aggressive law enforcement practices have promoted risky drug use practices which accelerate the spread of HIV.

There is an unmet need for treatment and rehabilitation services in Kenya and in particular for gender-sensitive provision. Moreover, policies should focus not only on the establishment but also the regulation of rehabilitation centres across the country. Accessibility of these services is especially crucial as this population often faces various deterrence factors, including partner dependence for support and approvals to access such services (MOH, 2017).

MAT implementation faces various challenges in Kenya, which include the lack of clear laws and regulations governing its implementation, especially within prison institutions. Methadone treatment can be of benefit in reducing post-release recidivism and incidents of risky drug use behaviours within prison settings (see Bellin et al., 1999; Bruce, 2010). The repressive national drug laws and policies in Kenya have been singled out as undermining public health goals as well as the welfare of PWUD, making it difficult for this population to access essential health services.

Harm reduction strategies are not currently anchored in law, which has resulted in numerous challenges for implementation. This includes strategies such as the provision of syringes and needles. Furthermore, medical facilities within prisons as currently constituted do not have the capacity to administer harm reduction strategies or introduce methadone treatment. A 2012 Commission on Narcotic Drugs resolution noted that women who need suitable treatment for drug dependence rarely have access to harm reduction programmes in prison or during pre-trial detention. Incarcerated women who are drug-dependent and unable to obtain treatment may be even more likely to face violent extortion and abuse than other incarcerated women.

### **Psycho-education and Support**

Psycho-education and support is an important component of rehabilitation programmes in prison settings. This support service involves multi-disciplinary teams including social welfare officers, addiction counsellors, health providers, spiritual workers and training and capacity building partners, such as Supporting for Addiction Prevention and Treatment in Africa (SAPTA). Upon release, drug-dependent inmates are enrolled in rehabilitation Psycho-Education recovery programs. Currently among them is the *Twelve Steps of Healthy Living*, a psycho-educative programme supported by SAPTA in partnership with Kenya prisons in the quest to rehabilitate drug survivors admitted to prison.

### **Linkage and Aftercare Services**

Probation and aftercare services strive to promote and enhance the administration of justice, community safety and public protection through the provision of social inquiry reports, supervision and reintegration of non-custodial offenders, victim support and social crime prevention. The mandate of the Department of Probation and Aftercare Service has been rapidly expanding due to the central role it plays in criminal justice delivery. Most of the functions of this body relate to issues of bail, sentencing, and pre-release decision making within the Criminal Justice System.

The concept of aftercare services is to offer support for formerly incarcerated individuals in order to reduce recidivism and increase meaningful community involvement, social integration and enhance recovery from drug dependency and crime. However, in resource-constrained societies, these aftercare services fail to effectively prevent high levels of recidivism.

Upon release, women face the combined stigma of their gender and status as ex-offenders. They also face challenges in securing community acceptance, which can lead to social isolation and economic disadvantage. Others whose children were placed in foster care often face the challenge of reuniting with their children. Pre-release mitigation measures are therefore initiated and include remote parenting, family open days and home reception escorts and reunion. Women often face difficulties with their children if they have been placed in foster care, particularly as they also face barriers to employment (Penal Reform International and Thailand Institute of Justice, 2019).

National-level legal and policy barriers that affect the basic human rights of women, including access to health and freedom from violence and discrimination, are constructed through the normative framework of the international drug control regime. The direct and indirect effects of punitive approaches to drug use on the availability and accessibility of health services has been well documented.

## **Recommendations**

- Increase domestic financing and resource allocation, including medical insurance coverage for drug treatment and rehabilitation programmes.
- Anchor harm reduction strategies in law to reduce challenges in their implementation.
- Strengthen policy within the criminal justice system to mitigate against arbitrary arrest by law enforcement.
- Strengthen implementation of gender-related policies, increase public participation during development and sensitisation in view of addressing barriers affecting access to rehabilitation and treatment services for women.
- Enhance a proactive effort among judicial officers to implement rehabilitative measures in sentencing convicted PWUD within the framework of the law.
- Evaluate misguided laws by Criminal Justice Agencies to strengthen alternatives to incarceration such as CSOs.
- Mainstream substance use programs in all Government Ministries, Departments and Agencies to sustain the gains achieved.
- Sustain the national and global Advocacy, Community and Social Mobilization from all stakeholders articulating on prevention and mitigation against the effects of drug and substance use.