

ASSESSMENT AND TREATMENT OF SPECIAL NEEDS OFFENDERS

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I. INTRODUCTION

The population of prisoners held in Kenyan prisons on 10 February 2013 was 51,945 prisoners, but the vast majority of these prisoners are male with a small percentage of female prisoners. This number includes offenders who are convicted, those awaiting trial, and people held as civil debtors, youthful offenders held in Borstal institutions and Youth Corrective Centres and special category mental patients. Male prisoners constitute 94.6% of the population while female prisoners make up 5.4% of the population. Convicted prisoners represent 59% of the total while unconvicted prisoners are 41% of the total. The population of prisoners keeps varying from time to time from as low as 45,000 to as high as 65,000. Members of staff of Kenya Prisons Service totaled approximately 18,000 by the end of December 2013, with about 3,000 performing specialized duties such as counselors, vocational-skills instructors, medical personnel, chaplaincy services and social workers.

The actual number of special needs offenders is difficult to calculate because apart from female offenders and youth offenders, whose statistics can be easily be obtained from official records, the rest, like offenders with disabilities, elderly offenders and offenders with mental illness, cannot be conclusively singled out from official records because their statistics are scattered in different documents in different offices of the Prison Department. Therefore their numbers in Kenyan prisons are not certain. However in the recent past, concerted efforts to obtain verifiable numbers of offenders with special needs have taken place, with all institutions required to come up with statistics on offenders with disabilities, both physical and mental. This will ensure that Departmental policymakers have data to serve as the basis for the formulation of policies to govern the treatment of these special needs offenders.

Special needs offenders require extra attention while in prison because they are vulnerable due to their gender, physical and mental disposition, and social status. This special attention needs to involve all criminal justice stakeholders and other agencies in the assessment and treatment of these offenders in order to ensure they are not harmed by imprisonment but are rehabilitated and successfully reintegrated. I will briefly highlight the Kenya Prisons perspective on special needs offenders, especially offenders with mental and physical disabilities, the elderly and female offenders.

II. FEMALE OFFENDERS

In Kenya, just like most other countries, female offenders constitute a small percentage of offenders held in prisons or rehabilitation centres, which is between 2-8% of the total numbers of offenders in custody across the world. Due to the small number of female offenders in prison, most countries, including Kenya, invest very little in female prisons and this in turn means that the standard of care for female offenders is compromised due to poor infrastructure, inadequate provision of food, health services and social amenities. Female prisons are few and far between, thus making it difficult for the offenders to be visited by their children, family and friends. For example, in the western region of Kenya there are only two women's prisons whereas there are six men's prisons. Lack of visitation results in the likelihood of losing ties with persons who would have made their reintegration back into the community easier.

Female offenders require additional health services such as reproductive health services. Expectant

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offenders need pre- and post-natal care. Offenders with children accompanying them in prison require child friendly facilities and provisions for their children. Most female offenders are primary caregivers, and their imprisonment affects other people, for example, their children and other family members; the effect of their imprisonment goes far beyond the prison walls. Some female offenders are victims of sexual abuse and violence making them vulnerable to suffer mental disorders as a result of these traumatic experiences. In jurisdictions where female offenders are supervised by male prison officials, incidents of sexual abuse can be experienced through abuse by male prison officers.

The Bangkok Rules on the treatment of female offenders recognize the importance of according female offenders special attention due to the above-mentioned issues and more. Kenya is a signatory to many conventions and treaties that protect the rights of women and children and also conventions on the treatment of offenders in custody.

The Prisons Act Chapter 90, Laws of Kenya, was crafted to conform to the United Nations Standard Minimum Rules on the Treatment of Offenders in custody, and it has specific provisions on how female offenders should be treated or handled while in custody. Section 28 of the Act states that "In any prison in which any female prisoner is imprisoned, there shall be a woman prison officer who shall have the care and the superintendence of female prisoners, and who shall be responsible for their discipline." All Kenyan women's prisons are administered by female prison officers; male prison officers do not have unsupervised contact with female offenders.

Assessment of needs for female offenders in Kenyan prisons is done during admission by a reception board. The board consists of the officer in charge of the prison, social welfare officer and other officials. During this board meeting the needs of an offender are assessed with any special needs documented, the offender is informed of her rights and obligations, complaint mechanisms and ways and means of communicating with friends, relatives and legal representation. The social welfare officer will act as the link between the offender and the community, and will take follow-up action with local welfare agencies to ensure the offender's issues such as the well-being of his or her children are catered for; the officer will also aid in placement of children in foster care or care centres or with relatives in case the children attain the age of four years (under Kenyan law, female offenders are allowed to stay with their children in prison as long as they are under four years old) while the mother is still in prison. Most Kenyan women's prisons have established day care centres to cater for children accompanying their mothers in prison. In addition the children are provided with food, clothing and other provisions at government expense. The Prison Service has employed qualified personnel to run these day care centres and has also benefited from donations from well-wishers and donors.



Nursery and day care centre at Kakamega Women's Prison

Issues of health of female offenders in Kenya are also well documented and a medical officer is available to offer medical services to all offenders. Female offenders are offered medical services and reproductive health services in prison health centres and are referred to community medical centres for specialized treatment or in case of child birth. The government provides sanitary towels for all offenders.

Offenders suffering from HIV/AIDS are accorded the same standard of care as the one offered to the community by provision of counseling and Anti Retro Viral (ARV) drugs. Their confidentiality is

protected, and they are allowed to form support groups to help in living positively with HIV. On release from prison there is a well established referral system to ensure that the offenders do not lack medicine and support services. The Department has a fully fledged Aids Control Unit with branches in all prisons.

Rehabilitation programmes are available to all convicted offenders and discussions on the best rehabilitation programmes an offender can undertake are held with the input of the offender and consider the criminogenic factors that led to the commission of the crime. Formal education for offenders who are illiterate is also offered. This education is similar to that which is offered to the community. Data collected from women's prisons across the country indicate that about 60% of female offenders are illiterate; therefore formal education is an important rehabilitation strategy.

Psychosocial counseling is offered to offenders who are in need, especially those who have suffered from sexual abuse and gender-based violence. Addiction and substance abuse programmes are offered to offenders assessed to be substance or drug addicts. Family visits are also encouraged to enable offenders to maintain constant touch with their children, relatives and friends. With the advent of mobile telephony, offenders are allowed to communicate with the outside world, and offenders with children in foster care are also allowed visit them under supervision.

In Kenya most female offenders are charged with minor offences especially related to brewing of illicit alcohol; therefore rehabilitation programmes are tailored to offer alternative means of earning a living. Programmes like dress making, knitting, juice making, soup making, hair dressing, modern farming and entrepreneurship skills are offered.

In an effort to aid smooth reintegration into the community, Kenyan prisons have discharge boards in all prisons. The discharge boards are saddled with the task of seeking employment for offenders who wish to be employed after release or aiding in looking for sponsors to help offenders start income generating activities. The board invites other agencies like the probation services, social services, potential employers and Non Governmental Organizations (NGOs) to these meetings. Deliberation on the best way to help the offender reintegrate successfully into the community are discussed and dealt with in these meetings.

However, assessment and treatment of female offenders in Kenya has its challenges:

- Lack of linkages between stakeholders, like police, courts, probation services and prisons, for example, lack of probation reports and court proceedings. This leads to gaps in offender's information, which delays formulation of individual treatment plans.
- Offenders serving short-term imprisonment and offenders awaiting trial are many and their numbers overwhelm prison officers. This means their issues are not adequately addressed in prison.
- There is a shortage of adequately trained prison personnel or specialized officers who are trained to handle unique issues of female offenders.
- Lack of adequate resources to run special programmes for female offenders while in prison and after release. Most programmes present are sponsored by NGOs and their sustainability is not guaranteed.
- Stigmatization and victimization of female offenders by the community. This leads to lack of support upon release and can lead to recidivism (reoffending)

Therefore stakeholders in the offender management cycle, like courts, police, probation services, social service, prisons and the community, must work in close cooperation to ensure female offenders are accorded the proper care and protection while in prison and are successfully reintegrated into the community after release. The Prison Department needs to come up with modern programmes to rehabilitate female offenders dealing in crimes such as drugs and human trafficking, cybercrimes and

terrorism that are increasingly involving female offenders. The Department also needs to introduce special programmes for rehabilitation of female offenders suffering from physical disabilities.

III. OFFENDERS WITH PHYSICAL DISABILITIES

The number of persons living with disabilities is steadily increasing, and more of them are finding themselves in prison. In Kenya the number of persons with disabilities is not known because some families hide their relatives who suffer from any form of disability. The number of offenders with disabilities is not known; however the Department has realized that it has to start making provision in its plans for offenders with disabilities. In the year 2013, the Department embarked on an exercise to collect data on the number of offenders with disabilities, both physical and mental. This exercise did not achieve its goal because officers in prisons had difficulties in identifying the types and severity of disabilities. The officers lacked specialized training to deal with offenders with disabilities. Facilities such as accommodation blocks, toilets, workshops and even offices were not designed and constructed with offenders with disabilities in mind. It is only recently that prisons started building offices, accommodations blocks and other facilities with ramps and provision of toilet facilities for physically impaired persons. It is now official government policy for all facilities and buildings to be user friendly for persons with disabilities.

Due to the lack of trained officers in disability management, treatment programmes are ad hoc and disjointed. Offenders with disabilities gain very little from rehabilitation programmes offered in prisons apart from counseling services. Wheel chairs, white canes, crutches and other equipment to aid in mobility are in short supply. Provision of health services for offenders with disabilities in Kenyan prisons are similar to those offered to the community and specialized treatment is available, although sometimes the offenders have to be transferred out of their local prisons in order to access these services. This leads to a disconnect with their relatives and friends who are important stakeholders in the rehabilitation process.



Prison buildings with ramps for accessibility by disabled offenders

The Department liaises mostly with NGOs to help in the treatment of offenders with disabilities, but it will need to train all its officers to at least have basic knowledge on how to identify and offer support to offenders with disabilities. Reintegration of offenders with disabilities presents unique challenges, especially if the offenders have little or no support system from family and friends. Most offenders commit offences related to property and crimes against persons like assault. Equipping offenders with income generating skills and counseling them on anger management would go a long way in reducing incidences of recidivism.

Challenges facing persons with disabilities

- Lack of trained personnel in handling offenders with diverse disabilities
- Lack of specialized facilities, equipment and instruments for mobility
- Inaccessible buildings and facilities

- Lack of suitable rehabilitation programmes
- Lack of funds to aid in reintegration

It is vital that offenders with disabilities in prison are offered facilities, equipment and provisions that will help them cope or overcome the difficulty brought about by their disabilities. Persons should be accorded non-custodial sentences unless they are convicted of serious offences. Modern rehabilitation programmes, like use of information and communications technology, should be utilized in assessment and treatment of offenders with disabilities.

IV. OFFENDERS WITH MENTAL DISORDERS

The number of offenders with mental disorders in Kenya is deceptive. This is because while in official statistics there is an entry on offenders with mental illness, in the actual sense this is the number of offenders declared to be mentally ill by courts after trial or before. According to statistics available, by the end of December 2013, there were only 184 offenders classified as having mental illness. These offenders were sent to prison for detention awaiting removal to mental illness facilities or to be under observation. The assessment of this category of offenders is fairly easy because a competent court prior to committing the offender to prison would have conducted inquiries into the mental status of the offenders and established, with help of a qualified medical practitioner, that the offender is indeed suffering from one or more mental ailments. The role of the prison officers is to ensure that the offender's basic necessities are provided, he or she is not exposed to any harm, is accorded medical help as required and the family and friends are allowed to visit. It is important to inform courts and other agencies of the progress of the offender.

However some offenders by virtue of the imprisonment or deprivation of freedom become psychologically and emotionally disturbed by this traumatic experience and develop mental disorders. Other offenders develop mental disorders as a consequence of prolonged drug and substance abuse. These offenders are difficult to identify unless prison officers are trained to notice the subtle signs associated with the onset of mental disorders. Medical officers and counselors should be on the lookout for signs of mental illness or disorders in offenders because most mental disorders are treatable if discovered early and the patient is put on appropriate therapy. In Kenyan prisons, facilities for dealing with drug and substance abuse are inadequate. Procedures are, however, present on what should be done by the medical officer or officer in charge if an offender is suspected to be suffering from a mental disorder. Section 38 (I) of the Prisons Act states:

Whenever a medical officer is of the opinion that any prisoner is of unsound mind, he may, by order under his hand in the form prescribed, direct that such prisoner be removed to any mental hospital in Kenya and be there detained, and such order shall be authority for the reception of the prisoner and for his detention in such mental hospital until removed or discharged as hereinafter provided.

However due to lack of proper knowledge on mental health and very few qualified medical personnel in mental health, most offenders who suffer from mental illness or disorders receive insufficient care and suffer at the hands of prison officers who mistake them as being rude, uncouth, lazy or unruly. Prison officers need to be trained in mental health issues in order to help them know how to detect offenders with mental health problems and how to handle different offenders with different mental issues. Involvement of relatives and friends in the treatment of offenders with mental illness and disorders is highly advisable due the fact that these relatives or friends will offer a support system that extends beyond the prison, and this support would be crucial to the offender when released from prison to aid in recovery and reintegration.

Challenges encountered by offenders with mental disorders

- Lack of qualified personnel in mental health (few health professionals are conversant with mental health issues).
- Only a few facilities in the country have psychiatry units (patients have to cover long distances

to be attended).

- Some cultures and communities associate mental disorders with witchcraft and resist medical help from conventional medicine.

The government needs to train more mental health workers and open up mental health clinics in all medical facilities. The government also needs to open up rehabilitation centres for persons fighting addiction to drugs and other substances like alcohol; this will give courts and other criminal justice agencies options of recommending rehabilitation in these centres rather than persons being sent to prison.

V. ELDERLY OFFENDERS

Elderly offenders are offenders considered to be aged or who have attained retirement age. In Kenya the retirement age is 60 years old. However, the government has given guidelines on who it considers to be elderly, and in this case any person who is 65 and above is classified as elderly. The statistics of elderly offenders cannot be verified without research, but with as many as 5,000 offenders being either under life imprisonment or facing death sentence, the number may increase significantly. Elderly offenders face enormous challenges due to their age. They have reduced mobility; they suffer from many diseases associated with old age like arthritis, urinary tract infections, and poor eye sight, dementia, among others. Coupled with the fact that many have few or no relatives left makes the management of this type of offender tricky. Prison officers are at pains to implement suitable rehabilitation programmes for these offenders because skill acquisition programmes may be beyond their comprehension. In Kenya social welfare officers are tasked with the responsibility of maintaining offenders' contacts with friends and relatives. Counseling services and post-release strategies should be considered with input from other state and non-state actors. Since Kenya has few retirement homes and nursing homes, capable relatives should be urged to help in the care of these elderly offenders upon release. Issues of the estate should be worked on with the involvement of family members. Issues of offenders who age in prison due to long sentences or life imprisonment should be comprehensively dealt with by introduction of a parole system or sentence review after a duration of imprisonment.

VI. CHALLENGES IN ASSESSMENT AND TREATMENT OF SPECIAL NEEDS OFFENDERS

1. The Department has few service providers who can classify and identify the needs of offenders with special needs.
2. Lack of special facilities to cater for persons with special needs.
3. Few trained personnel to handle persons with special needs.
4. Lack of coordination among key stakeholders, like courts, police, probation, social services and non-state actors.
5. Inadequate funding for programmes touching on special needs offenders.

VII. PROGRESS IN REGARD TO SPECIAL NEEDS OFFENDERS

1. Kenya Prisons Service has established directorates that deal with issues of special needs offenders at its headquarters.
2. The Department has hired a few professionals, i.e., psycho-educational assessment specialists (special needs teachers), with expertise in special education and social workers to help in the identification and classification of persons with special needs and to assist in coordinating issues of special needs offenders with other agencies.
3. The Department has also employed medical practitioners to help in offering quality healthcare

to these offenders.

4. The Department has collaborated with non-state actors in assisting persons with disabilities in our penal institutions.
5. The Department has come up with infrastructural modifications to address and make facilities friendly for persons with special needs, i.e., construction of ramps in some penal institutions.
6. There is sentence remission for all offenders serving definite terms of imprisonment who are not lifers or offenders sentenced to death.

VIII. RECOMMENDATIONS

1. The government should commission research into issues of special needs offenders in order to get data that will help in developing evidence-based programmes.
2. Develop training for needs assessment and courses for staff of the Kenya Prisons Service.
3. The Department of Correctional Services should enhance and make accommodation facilities to conform and cater for persons with special needs, e.g., ramps instead of stairs, special toilets and accommodation facilities for special needs offenders.
4. The Department should enhance the provision of basic facilities for persons with special needs held in custody, i.e., information to be put in Braille for the visually impaired and physiotherapy rooms for persons who are physically challenged.
5. The Department should hire people with expertise and knowledge in handling persons with special needs.
6. The Department should be keen in taking statistics of persons held in custody and collaborate with other agencies that will help in training staff, and even give assistance by providing equipment used for special needs offenders.
7. Introduction of legislation to deal with re-integration of all offenders, especially special needs offenders.
8. Additional allocation of funds to help in initiating and enhancing programmes aimed at assisting special needs offenders.
9. Enhanced coordination of all stakeholders in the assessment and treatment of special needs offenders.

IX. CONCLUSION

The number of special needs offenders will continue to rise steadily in Kenya and around the world. The assessment and treatment of offenders will require the input of the government, criminal justice agencies and other stakeholders to aid in the rehabilitation and reintegration of these offenders in order to make their stays in prisons as conducive to rehabilitation as possible.

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