



# Community service and probation for women

**A study in Kenya**



Towards gender-sensitive alternatives to imprisonment

## Community service and probation for women: A study in Kenya

This publication has been produced under a project funded by the Thailand Institute of Justice.



This publication may be freely reviewed, abstracted, reproduced and translated, in part or in whole, but not for sale or for use in conjunction with commercial purposes. Any changes to the text of this publication must be approved by Penal Reform International. Due credit must be given to Penal Reform International and to this publication. Enquiries should be addressed to [publications@penalreform.org](mailto:publications@penalreform.org).

### **Penal Reform International Head Office**

1 Ardleigh Road  
London N1 4HS  
United Kingdom

Telephone: +44 (0) 207 923 0946

Email: [info@penalreform.org](mailto:info@penalreform.org)

Twitter: @PenalReformInt

[www.penalreform.org](http://www.penalreform.org)

### **Kenya Probation and Aftercare Service**

Taifa Road, Reinsurance Plaza, 11th Floor  
P.O. Box 42335-00100 GPO  
Nairobi  
Kenya

[www.probation.go.ke](http://www.probation.go.ke)

First published September 2016

ISBN: 978-1-909521-55-1

© Penal Reform International 2016

Cover photo: with thanks to Omar Phoenix Khan.

#### **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.

To receive our monthly e-newsletter, please sign up at [www.penalreform.org/keep-informed](http://www.penalreform.org/keep-informed).

#### **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.

# Contents

Acknowledgements	4
Acronyms	4
<b>Introduction</b>	<b>5</b>
<b>Research methodology</b>	<b>6</b>
<b>Background</b>	<b>7</b>
Probation orders	7
Community Service Orders (CSOs)	7
Pre-sentence reports	8
Revision of a prison sentence	9
Supervising and oversight of Probation and Community Service Orders (CSOs)	9
Training	10
Recent reforms related to the non-custodial sentences regime	10
Number of women serving non-custodial sentences and trends	10
<b>Findings</b>	<b>13</b>
Age, marital status and caretaking responsibilities	13
Levels of education	13
Economic status and employment	13
Offences and charges	14
Reasons for offending	14
Pre-trial detention	15
Access to legal representation	15
Experience of domestic violence and sexual abuse	15
Health issues	15
<b>Issues for women serving non-custodial sanctions</b>	<b>17</b>
Breaches of Probation and Community Service Orders (CSOs)	17
Socio-economic issues	19
Safety	20
Stigmatisation	20
Physical and mental health	20
Drug and alcohol dependency	21
Nature of CSO work	21
Tools to undertake CSO work	22
One-day CSOs	22
Supervising officers' attitudes and competence	22
Support requirements	22
<b>Recommendations</b>	<b>24</b>
<b>Further useful resources</b>	<b>29</b>

# Acknowledgements

Penal Reform International (PRI) and the Kenya Probation and Aftercare Service (KPS) would like to thank all of the women who participated in this study and for their willingness to share their experiences and views.

PRI and KPS would also like to thank the officers and other stakeholders who participated in the study.

Gratitude is conveyed to Sarah Kinyanjui, lead researcher and author of this report, as well as assistant researchers, Elizabeth Odhiambo, Mercy Mwarah Deche and Halima Ali for their contribution to this report.

# Acronyms

<b>CSOCC</b>	Community Service Orders Case Committee
<b>CSO</b>	Community Service Order
<b>KPS</b>	Kenya Probation and Aftercare Service
<b>NCSOC</b>	National Community Service Orders Committee
<b>NGO</b>	Non-governmental Organisation
<b>PAS</b>	Probation and Aftercare Services
<b>PCC</b>	Probation Case Committee
<b>PRI</b>	Penal Reform International

# Introduction

Women and girls have always been a minority group in criminal justice systems, which as a result have been designed for men and do not address women's specific characteristics 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).

The Bangkok Rules outline the measures needed to ensure gender-sensitive<sup>1</sup> treatment of women both in prison and those under non-custodial measures or sanctions. By encouraging the development and use of gender-specific non-custodial alternatives to imprisonment, the Bangkok Rules recognise that many female offenders do not pose a risk to society and that imprisonment has a disproportionately negative impact on their rehabilitation and their children's lives.

Non-custodial measures enable women to better meet their caretaking obligations and address the root causes of their offending. They can only do this, however, if they take account of the distinctive needs of female offenders. 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.

With financial support from the Thailand Institute of Justice, Penal Reform International and the Kenya Probation and Aftercare Service are working on a project to design and implement gender-sensitive Community Service and Probation Orders for women. This report is a first step towards that objective.

How does the justice system currently respond to women offenders? What are the experiences of women serving non-custodial sanctions? What are these women convicted of? What kind of difficulties did they face when serving the sanction? What kind of support do they need to successfully complete their Order, and not reoffend? By answering such questions, this report seeks to inform the development of gender-specific policies that will respond better to the needs of women serving non-custodial orders.

This report sets out the context and framework in which women serve non-custodial sentences in Kenya, and their background and characteristics. It then presents the research findings, examining the key challenges faced by women serving Community Service and Probation Orders, requirements for them to successfully complete orders imposed, as well as issues related to current sentencing practices. The report concludes with a number of recommendations which will be used to develop measures to address key areas of concern.

While this report focuses on Kenya, it is possible to draw out common lessons which will be relevant for other countries and systems. Wherever they live, women offenders experience similar problems, including discrimination, stigmatisation, high rates of violence, and economic disempowerment, amongst others. The recommendations will be useful to all those interested in maximising the rehabilitative potential of non-custodial regimes for women.

1. Gender-sensitive (or gender-responsive) practices in this regard 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.)

# Research methodology

Desk and field research were undertaken between February and April 2016. Field research was carried out at the following Probation and Aftercare Services (PAS) stations: Kibera (Nairobi), Mombasa, Nyeri, Maua (Meru), Garissa, Bungoma, Kisii, Kisumu, Makindu, Kapsabet and the Nakuru Probation Hostel. Stations selected:

- are geographically representative (selected on the basis of the old Provincial Administration structure used in Kenya prior to the enactment of the 2010 Constitution) and include urban, peri-urban and rural contexts;
- vary in terms of size and scope;
- have sizeable non-custodial sentences regimes (with the exception of Garissa, which was chosen to ensure regional representation and because it has a predominantly Muslim population).

Two unique projects were also selected: the Nakuru Probation Hostel and the pilot Community Service Order (CSO) project in Maua. Nakuru Probation Hostel, which is one of four of its kind in Kenya, caters for young female offenders, and was chosen in order to provide a context in which respondents are resident in a PAS facility. The pilot CSO project in Maua was chosen firstly because it offers a unique model of CSO placement where offenders are engaged in a pilot project run by PAS, as opposed to individual placements in external institutions, and secondly because of the relatively large number of women allocated to Maua.

A total of 97 female offenders were interviewed in the selected stations: 50 women who were serving/had served CSOs and 47 women who were serving/had served Probation Orders. Five young female offenders were interviewed at the Nakuru Probation Hostel. All respondents were informed of the purpose of the research and assured of anonymity, and all the respondents consented to being interviewed. To ensure objectivity in the sampling of respondents, a general call was issued to the female offenders serving non-custodial sentences in the selected stations, with a recruitment target of ten female offenders from every station. Whilst the sample size was small, interviewing respondents across ten regions provides a fairly representative sample and a diversity of contexts.

Twenty judicial officers, 22 probation officers and 18 community service supervisors were interviewed and a focus group discussion with women serving CSOs was held in Maua. Interviews were also conducted with other key stakeholders.

The research was both quantitative and qualitative. A quantitative assessment of the background of the women offenders was carried out with a view to identifying common attributes. Qualitative research was then undertaken to understand how female offenders interact with the non-custodial sentences regime and their experiences as they serve these sentences. The interviews with probation officers, judicial officers, community service supervisors and other key stakeholders were also qualitative in nature and were geared towards uncovering the gendered aspects of sentencing and supervision of non-custodial orders and how these might impact upon female offenders.

# Background

In Kenya, there are three main non-custodial sanctions available as alternatives to imprisonment: fines, Probation Orders and Community Service Orders (CSOs). The number of offenders serving non-custodial sanctions continues to rise on an annual basis, with a total of 51,604 offenders serving a Probation or Community Service Order in 2015 alone. Over 17 per cent of these were women, although this also includes the significant number of offenders serving 'one-day CSOs' (see below).

The laws relating to sentencing and supervision of sentences in Kenya are largely gender-neutral. Gender-neutral non-custodial programmes can impose disproportionate hardships on women, making it challenging for them to successfully serve their terms and can therefore be argued to be discriminatory.<sup>2</sup>

The 2016 Sentencing Policy Guidelines sought to inject a gender-sensitive approach to sentencing and took into account the UN Bangkok Rules. In particular, the Guidelines require judicial officers when sentencing to consider caretaking obligations, background and family ties of female offenders, pregnancy and breastfeeding. They single out female offenders as one of the 'categories of offenders requiring further consideration',<sup>3</sup> and accordingly call on judicial officers to opt for non-custodial sentences in the absence of aggravating factors.<sup>4</sup> The Sentencing Policy Guidelines were issued on 25 January 2016 so their impact is yet to be realised.

## Probation Orders

Probation Orders are imposed by the court pursuant to the Probation of Offenders Act,<sup>5</sup> after which the designated probation officer assesses the offence, the circumstances of the offence and of the offender, and designs an individual supervision plan. Supervision plans are geared towards rehabilitation and set out conditions of the Order, which may include counselling, or restorative processes such as mediation, amongst others.

Offenders on probation must report to their probation officer at a monthly meeting, where typically they discuss the causes of offending and interventions to prevent reoffending. The officers also provide basic counselling

during these sessions. Where specialised counselling or other treatment (eg. for alcohol and/or drug dependencies) is required, the officers are to refer the offender to appropriate services. In practice, however, there are limited options for referrals, presenting a major challenge in such cases.

The Probation of Offenders Act specifies that supervisors of female offenders serving a probation order must be female,<sup>6</sup> although this is not fully adhered to in practice (see also page 20).

## Community Service Orders (CSOs)

CSOs are imposed by the court and require an offender to engage in unpaid public work for the benefit of the community. The Community Service Orders Act enumerates public work that may be undertaken, but also allows the court to impose other forms of public work.<sup>7</sup> When a suitable work station and supervising officer have been identified, the probation officer informs the court, which then pronounces the Order, the period to be served, the institution (work station), and the supervising officer.

The Community Service Orders Act provides that the maximum period for which an offender can serve a CSO is three years.<sup>8</sup> In practice, the term can be as short as one day. One-day CSOs are usually imposed on offenders charged with petty offences who are transported to different work stations immediately after the court session to work for the rest of that day.

There are no specific provisions in the Community Service Orders Act relating to the allocation of or considerations to be taken into account for women offenders, and unlike for Probation Orders, no requirement for women offenders to be supervised by women. However, judicial officers and probation officers interviewed noted that most female offenders are semi-illiterate and unskilled and are therefore allocated general duties such as cleaning or gardening at CSO stations.

2. Article 27(4) of the 2010 Constitution of Kenya prohibits the State and individuals from discriminating against anyone directly or indirectly on the basis of sex. On indirect discrimination, see Interights, *Non-Discrimination in international law: A handbook for practitioners*, Interights, London, 2011, p70.

3. For the Sentencing Policy Guidelines 2016, see [www.judiciary.go.ke/portal/assets/filemanager\\_uploads/reports/Sentencing%20Policy%20Guidelines%20Booklet.pdf](http://www.judiciary.go.ke/portal/assets/filemanager_uploads/reports/Sentencing%20Policy%20Guidelines%20Booklet.pdf) <accessed 20 June 2016>. While the Guidelines are policy directions, judicial officers are expected to adhere to them and paragraph 24.2 of the Guidelines require reasons to be given for any departure from the Guidelines. See specifically, paragraphs 7.19(6) and 20.36 - 20.41.

4. *Ibid*, paragraph 20.41.

5. The court imposing the Order places 'an offender under the supervision of a probation officer', Probation of Offenders Act 1943, s.2.

6. Probation of Offenders Act 1943, s.14 (2).

7. Community Service Orders Act 1998, s. 3(2) (b).

8. *Ibid*, s. 3(1) & 2 (a).

Responsibility for allocation of work stations lies with probation officers who liaise with a station in advance of the Order to confirm its willingness and capacity to engage and supervise a new offender.<sup>9</sup>

Supervising officers, who are based at the assigned institution, are not employees of the Probation and Aftercare Services (PAS) but are employees of the designated institutions and are specified in the Order. In some cases, volunteer supervising officers are appointed to supervise the one-day CSOs. There are also small-scale CSO projects in various stations run by the PAS which are supervised by probation officers.<sup>10</sup>

The CSO projects set up by the PAS include afforestation projects in which offenders run tree nurseries and projects where they farm poultry, rabbits, fish and goats. These projects facilitate skills training as part of the rehabilitation process.<sup>11</sup>

Community Service Orders rarely include directions with respect to issues such as drug or alcohol dependencies, mental health or experiences of violence. Two reasons were given for this: firstly, it is expected that the probation officer will draw up a comprehensive supervision plan incorporating treatment options. Secondly, courts recognise the lack of adequate institutions, such as drug and alcohol rehabilitation centres, and are therefore minded not to make orders in vain.

## Pre-sentence reports

When determining whether to sentence an offender to a non-custodial measure, various factors are taken into account (as required by the Sentencing Policy Guidelines and the Probation of Offenders Act). Judicial officers interviewed indicated that in most cases they request a pre-sentence report<sup>12</sup> from the Probation and Aftercare Services (PAS) to guide them in this decision.

Overall, national statistics reveal that judicial officers are increasingly requesting pre-sentence reports. The sharp rise seen in 2014 (see Table 1 and Table 2) may be linked to the various prison decongestion exercises that took place that year.

Pre-sentence reports are critical for women offenders as they reveal their unique individual circumstances that can help determine the suitability of a particular sentence. The probation officers interviewed highlighted that the court can request either a general pre-sentence report or a specific CSO report. They explained that requests for the former were more desirable as they gave the probation officers latitude to assess an offender's suitability for both Probation Orders and CSOs. This is important as Probation Orders are more appropriate for women with health issues, histories of victimisation, significant caretaking obligations and those who require psycho-social support, as the support and treatment mechanisms are not available to offenders serving CSOs.

Interviews with judicial officers highlighted three critical issues with the current pre-sentence reporting system.

## Funding and capacity

As a result of lack of funding, probation officers are sometimes unable to provide pre-sentence reports on time and in some cases enquiries are poorly carried out. Late submission of reports has implications for the length of time spent in pre-trial detention. Judicial officers are aware of this and prioritise the cases for which they request reports. Whilst they noted that they usually find it more necessary to receive reports for women offenders, this is not always the case. In the absence of pre-sentence reports, factors that impact on female offenders' suitability for non-custodial sentences may not come to the attention of the court.

**Table 1: Requests for pre-sentence reports for Community Service Orders**

Year	Male offenders		Female offenders	
	Number of requests	Yearly increase/decrease	Number of requests	Yearly increase/decrease
2013	26,204	-	4,695	-
2014	38,966	+48.7%	6,920	+47.4%
2015	36,770	-5.6%	7,103	+2.6%

**Table 2: Requests for general pre-sentence reports**

Year	Male offenders		Female offenders	
	Number of requests	Yearly increase/decrease	Number of requests	Yearly increase/decrease
2013	9,062	-	2,139	-
2014	10,455	+15.4%	2,661	+24.4%
2015	9,276	-11.3%	2,476	-7.0%

9. Section 3(5)(a) of the Community Service Orders Act 1998 requires that adequate arrangements for the execution of the Order are in place. See also Kenya Community Service Orders Programme, *Training manual for the Kenya community service programme*, Probation and Aftercare Services, Nairobi, 2013, p12. Stations tend to base their response on the availability of supervising officers or the availability of slots if they already have other offenders. The probation officers surveyed indicated that with respect to new work stations they often felt that the stigma attached to offenders in some cases contributed to their reluctance to receive offenders for CSOs.

10. See, for example, Penal Reform International, *Excellence in training on rehabilitation in Africa (ExTRA) project*, mid-term evaluation, Kenya, 2016, p5.

11. *Ibid.*

12. Also known as Social Enquiry Reports.

This is particularly so in the cases of women who are first-time offenders, who have little experience on how to present mitigating factors in their defence and may be intimidated by the court environment. The judicial officers interviewed noted that they proactively guide women offenders at the mitigation stage.

## Standardisation

Judicial officers interviewed pointed out that the pre-sentence reports differ from one station to another and there is a need to standardise investigations and report writing. In their assessment, while the format of pre-sentence reports is usually standard, the content differs and depends on the individual probation officer. This can result in courts not being guided adequately on the suitability of non-custodial sentences.

## Authenticity

Guaranteeing the authenticity of pre-sentence reports and ensuring that those who write them are officers with integrity is critical for all offenders and for the sentencing process. Mechanisms to guarantee that pre-sentence reports are factual, objective and unbiased should be in place.<sup>13</sup> Inaccurate reports could have a lasting and severe impact on many women offenders who may receive a prison sentence as a result. The Sentencing Policy Guidelines allow the offender to challenge issues raised by other parties, which include probation officers. The court can also request clarification from probation officers on information contained in the pre-sentence report. Effective feedback and monitoring mechanisms are critical to ensure that reports are prepared professionally and ethically.<sup>14</sup>

## Revision of a prison sentence

Prisoners can also be ordered to serve community service in lieu of prison terms following revision of their sentences.<sup>15</sup> As part of prison decongestion exercises, the National Community Service Orders Committee (NCSOC), which is headed by a High Court judge, considers the cases of offenders serving prison terms of three years and under, and in suitable cases revises their prison terms to CSOs.

In practice, women's prisons are prioritised in the decongestion exercises.<sup>16</sup> In 2015, for example, there was a one-off initiative to review the prison sentences being served by women at the Lang'ata Women Prison.<sup>17</sup> This mechanism has huge potential to remedy many cases of imprisoned women who would have been better suited to non-custodial sentences.

## Supervision and oversight of probation and community service orders

With respect to CSOs, probation officers oversee the supervision of offenders and supervising officers manage them on a day-to-day basis. While not required by law, in practice, offenders serving CSOs are also required to report to an assigned probation officer monthly.<sup>18</sup> During this appointment, the offenders are required to submit their work sheets signed by the supervising officer, and probation officers ensure that the offender is serving their term as required and identify any issues that need to be addressed. For instance, probation officers confirm the work that is allocated to the offender, as well as whether they are facing any challenges at the work station. Probation officers are also required to make routine visits to the work stations. During these visits they check that the offenders are reporting to their work stations and that there is a safe working environment.<sup>19</sup>

There are Community Service Orders Case Committees (CSOCCs) established in each station, headed by judicial officers and drawing membership from a wide range of institutions.<sup>20</sup> They are tasked with providing oversight for the community service programme in a station, including by engaging with the National Community Service Orders Committee (NCSOC).<sup>21</sup> The Sentencing Guidelines call upon judicial officers heading the CSOCCs to be proactive in reviewing the programmes and in ensuring that they are operating optimally. The NCSOC is mandated to engage in research on the operation of the CSO programme and to engage with the Case Committees to identify issues that require its intervention.<sup>22</sup>

Probation Orders are supervised by probation officers who are employees of the PAS.<sup>23</sup> Oversight of the probation system is provided by the Probation Case Committees (PCCs) which also draw their membership from different institutions.

13. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 7.1.

14. Probation officers are public officers and are therefore bound by Article 10 of the Constitution, the Anti-corruption and Economic Crimes Act 2003, as well as the Public Officer Ethics Act 2003, which set out the professional standards required of them.

15. Section 364 of the Criminal Procedure Code 1930 mandates the revision of sentences by the High Court.

16. PRI interview with the Chairman, National Community Service Orders Committee, 15 April 2016.

17. This was pursuant to the revision mandate and was carried out by the Kenya Women Judges and Magistrates Association. Information obtained by PRI interview with the Chairperson, Judicial Taskforce on Bail and Bond, 14 April 2016.

18. PRI interviews with probation officers and female offenders in ten stations between February and March 2016.

19. Kenya Community Service Orders Programme, *Training manual for the Kenya community service programme*, Probation and Aftercare Services, Nairobi, 2013, p28.

20. Community Service Orders Act 1998, section 11.

21. The National Community Service Orders Committee (NCSOC) is headed by a judge of the High Court and comprised of representatives of the key institutions in the criminal justice system. It provides national oversight of the community service programme and policy direction. (See Community Service Orders Act 1998, section 8.)

22. Sentencing Policy Guidelines 2016, paragraph 26.10.

23. Probation of Offenders Act 1943, s.5 (1) and s. 16(1) (b).

Similar to the CSOCCs, the PCCs consider and review the cases being supervised by the probation officers. The PCCs are required to report to the Central Probation Committee, which directs the probation programme at the national level. Its mandate includes providing advice on policy interventions.<sup>24</sup>

## Training

There is an inconsistent approach to training of stakeholders on gender-specific policies and practices. While the probation officers indicated that they had received some form of general training on gender, only two of them had been trained on the UN Bangkok Rules. None of the judges and magistrates nor CSO supervision officers interviewed had been trained on the Bangkok Rules. Most CSO supervision officers had only received a cursory introduction to supervising CSOs.

The lack of standardised and consistent training of officers explains different practices across the stations. Some officers embraced gender-sensitive practices<sup>25</sup> while others did not; many of those interviewed had only received an informal induction. When faced with issues requiring a decision, they did not look to knowledge gained in training or policy guidance. Comprehensive guidance for supervising officers is critical to prevent discrimination against female offenders.

## Recent reforms related to the non-custodial sentences regime

The entire justice system in Kenya has recently undergone some major reforms, including some relating to and/or impacting upon the non-custodial sentences regime.

The National Council on Administration Justice (NCAJ) was established in 2011 to provide a coordinated approach in the 'administration of justice and reform of the justice system'.<sup>26</sup> The NCAJ provides a good framework within which the PAS is able to maintain partnerships with institutions that are in one way or another related to its work.

Additionally, the Sentencing Policy Guidelines published in 2016 seek to, amongst other objectives, promote the use of non-custodial sentences in suitable cases.

If fully implemented, these Guidelines will increase the population of offenders serving non-custodial sentences and reduce the prison population. The Bail and Bond Policy Guidelines were also published in 2015.<sup>27</sup> These reiterate the constitutional provisions recognising the right to bail and seek to limit pre-trial detention to cases in which there are compelling reasons to detain an accused person.<sup>28</sup> These two policy guidelines were developed against the backdrop of overcrowding of prisons in Kenya, largely due to the significant number of people in pre-trial detention<sup>29</sup> and the overuse of imprisonment.<sup>30</sup>

The PAS has embarked on various initiatives to build capacity to respond to the ongoing reforms in the criminal justice system, for example developing a comprehensive training manual to train the different stakeholders in the CSOs programme.<sup>31</sup> It has also set up the pilot community service project in Maua, which aims to develop a sustainable model for delivering CSOs<sup>32</sup> and identify good practices to inform policy and operational reforms.

## Number of women serving non-custodial sentences and trends

The overall number of offenders serving non-custodial sentences in Kenya has been rising steadily. In 2013, 38,585 Probation Orders and CSOs were issued to both male and female offenders. The number rose to 51,604 in 2015.<sup>33</sup>

The number of women serving CSOs rose from 4,784 in 2013 to 6,887 in 2015.<sup>34</sup> However, it is worth noting that this figure includes the high number of women serving one-day CSOs. The actual number of offenders serving CSOs over a period of time, and thus having sustained interaction with supervising officers and probation officers, is therefore much lower than the impression given by these statistics.<sup>35</sup>

There has been a marginal decline in the number of female offenders serving Probation Orders. In 2013, the number was 2,280 but fell to 2,214 in 2015. The PAS headquarters pointed out several possible causes for this slight decline.

24. Probation of Offenders (Central Probation Committee) Rules 1948, rule 4.

25. For example, officers at Nakuru Probation Hostel, see page 16.

26. Judicial Service Act 2011, s.35.

27. The Bail and Bond Policy Guidelines are available at: [http://www.judiciary.go.ke/portal/assets/filemanager\\_uploads/Downloads/COMBINED%20Bail%20and%20Bond%20Policy%20Guidelines-1.pdf](http://www.judiciary.go.ke/portal/assets/filemanager_uploads/Downloads/COMBINED%20Bail%20and%20Bond%20Policy%20Guidelines-1.pdf) <accessed 20 June 2016>.

28. See Constitution of Kenya 2010, a.49 (1) (h).

29. Migai A and Kinyanjui S, 'Pre-trial detention in Kenya: Balancing the rights of criminal defendants and the interests of justice', *East African Journal of Peace & Human Rights*, Vol. 19, No.1, 2013, p2.

30. The Judiciary, *Report of the Judicial Taskforce on Sentencing*, Kenya, 2016, p10.

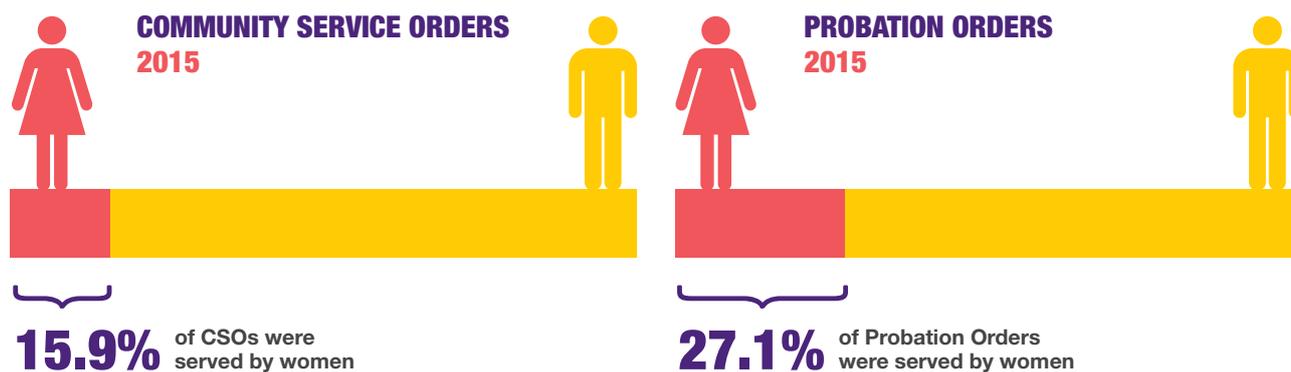
31. Kenya Community Service Orders Programme, *Training manual for the Kenya community service programme*, Probation and Aftercare Services, Nairobi, 2013.

32. PRI interview with the Director, Probation and Aftercare Services, 8 April 2016.

33. Statistics provided by the Probation and Aftercare Services, April 2016.

34. *Ibid.*

35. Please note that the PAS does not maintain records disaggregating one-day CSOs from the rest, so this is a general assessment.



**Table 3: Number of offenders serving Community Service Orders (CSOs)<sup>36</sup>**

Year	Total number	Proportion served by women	Male offenders		Female offenders	
			Number served	Yearly increase	Number served	Yearly increase
2013	30,496	15.7%	25,712	–	4,784	–
2014	41,338	16.1%	34,684	+34.9%	6,654	+39.1%
2015	43,438	15.9%	36,551	+5.4%	6,887	+3.5%

**Table 4: Number of offenders serving Probation Orders<sup>37</sup>**

Year	Total number	Proportion served by women	Male offenders		Female offenders	
			Number served	Yearly increase	Number served	Yearly increase
2013	8,089	28.2%	5,809	–	2,280	–
2014	9,114	24.8%	6,857	+18.0%	2,257	-1.0%
2015	8,166	27.1%	5,952	-13.2%	2,214	-1.9%

Firstly, at the time of this research, the courts were imposing stiff penalties as ‘deterrents’ for offences under the Alcoholic Drinks Control Act<sup>38</sup> and the Forests Act 2005 in regions where these offences are prevalent.

Secondly, when courts are aware that the resources of the PAS in the relevant station are limited, they reduce their requests for pre-sentence reports accordingly. As discussed in this report, there is a direct link between the number of requests for pre-sentence reports and the meting out of non-custodial sentences.<sup>39</sup>

36. Statistics provided by the Probation and Aftercare Services, April 2016.

37. *Ibid.*

38. A Presidential Decree in June 2015 urged a law enforcement crackdown on the production, sale and consumption of so-called secondary alcohol – illegally brewed alcohol which can cause adverse effects on health and wellbeing. This Decree encouraged magistrates to impose tougher penalties such as large fines or prison sentences for alcohol-related offences. See also the mid-term evaluation report of PRI’s *Excellence in Training on Rehabilitation in Africa (EXTRA)* project, February 2016, available at: <http://www.penalreform.org/resource/evaluation-excellence-in-training-on-rehabilitation-in-africa/>.

39. PRI interview with the Deputy Director, Probation and Aftercare Services, 10 June 2016.

Nevertheless, as noted, the number of women serving CSOs or Probation Orders rose to 9,101 in 2015. Whilst this is high compared to the number of convicted female prisoners, it should not be construed to suggest that the use of non-custodial orders is currently optimal. Prison statistics reveal that out of the 2,147 convicted female prisoners as of 31 December 2015, 1,926 (89.7 per cent) were serving prison terms of three years or less.<sup>40</sup> Notwithstanding case specific circumstances such as recidivism, prisoners in this category are eligible and usually suitable for non-custodial sentences.<sup>41</sup> Furthermore, the fact that some prison terms, upon review, are substituted for non-custodial sentences suggests that such offenders were suitable candidates for non-custodial sentences in the first instance.<sup>42</sup>

The judicial officers interviewed indicated that they were increasingly issuing non-custodial sentences to female offenders deemed suitable. They also highlighted that Probation Orders and CSOs tend to be preferred over fines. Some statutes in particular set minimum fines that are unduly high and result in women serving prison terms for defaulting on the payment.<sup>43</sup> For example, the Forests Act 2005 sets a minimum fine of KES 50,000 (approximately \$490 USD) and/or imprisonment for six months for cutting or removing any forest produce.<sup>44</sup> Women collecting firewood in forests are charged under this provision and in most cases are unable to pay the fine. Probation officers interviewed were of the view that women should be sentenced to serve community service instead and allocated tasks that would conserve the forests.

---

40. Statistics provided by the Kenya Prisons Service, April 2016.

41. Section 3(1) of the Community Service Orders Act, 1998.

42. PRI interview with the Chairman, National Community Service Orders Committee; pursuant to the power of review, the judiciary carries out 'prison decongestion exercises', a process in which prison terms of less than three years are reviewed and if deemed suitable are substituted with non-custodial sentences.

43. Interview with the Chairperson, Judicial Taskforce on Bail and Bond, 14 April 2016.

44. Forests Act 2005, Section 52.

# Findings

## Age, marital status and caretaking responsibilities

The women interviewed for the research were aged between 18 and 60. Thirty-seven per cent of the women interviewed were aged between 31 and 40, emerging as the largest age group amongst the respondents.

Thirty-six per cent of the women were married or living with a partner. The study revealed that in many cases, married women, while not termed as the heads of households, bear the bulk of responsibilities. In addition to taking care of children, the communal nature of local cultures means that many of the women interviewed were shouldering caretaking responsibilities for extended family, both their own and that of their spouse. These caretaking obligations are often not only burdensome, but can also be unpredictable with extended family members relying on them for various needs often at late notice. In one of the stations, a community leader who serves as a CSO supervising officer remarked:

*“ In this area, women shoulder most of the responsibilities; you will find men relaxing at shopping centres while the women work. ”*

These sentiments were echoed by a probation officer who stated:

*“ Men are not working in this station; they are irresponsible. Women are the sole providers. When serving a CSO, the family suffers. In fact, many female offenders commit crimes when looking for source of income and not as a result of criminal tendencies. ”*

Eighty-five per cent of the women had children; 55 per cent of the women had between one and three children and 31 per cent had more than three children. Three quarters of the women interviewed had children under the age of 18. All interviewees agreed that non-custodial sanctions enabled them to meet their caretaking obligations better than a prison term would have done, but also highlighted that serving a non-custodial sentence could still present difficulties in this regard.

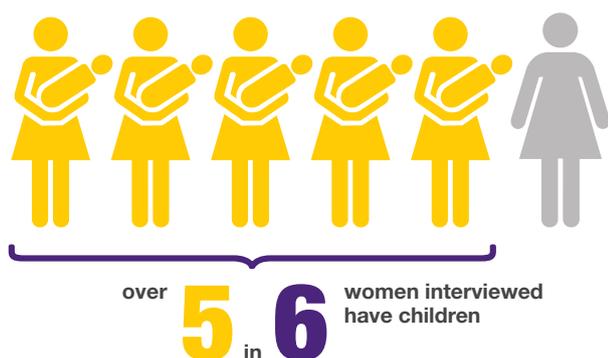
## Levels of education

Sixty-one per cent of the women interviewed had only been to primary school and most had not completed primary school education, with some attending as few as two years of primary school. Only 21 per cent of the women had been to secondary school and none of them had obtained university qualifications. Lack of or minimal education limits women’s opportunities to earn a decent living and explains to a large extent the economic hardship they experienced.

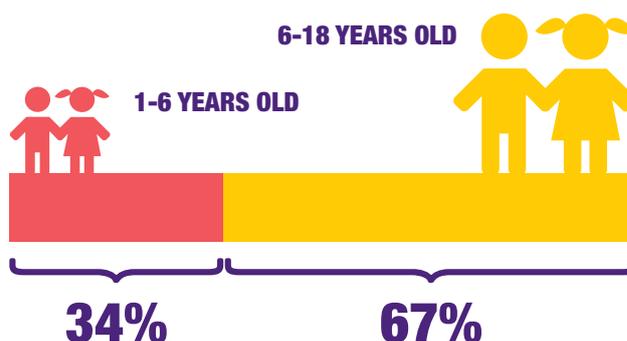
## Economic status and employment

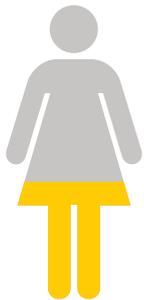
Relatively few women were in formal employment at the time of arrest. Only four per cent of the women interviewed held clerical jobs; three per cent were government workers. The majority of the women were low earners, working in the informal sector engaging in agricultural and domestic activities, hairdressing, or selling cheap items such as household goods and food/drink.

### PROPORTION OF WOMEN WHO ARE MOTHERS



### AGE OF THEIR CHILDREN





**36%**

of the women interviewed were convicted of

**ALCOHOL-RELATED OFFENCES (MAINLY ILLEGAL BREWING)**



**67%**

of the women interviewed said they had offended

**TO EARN MONEY AND SUPPORT THEIR FAMILY**

## Offences and charges

Data collected revealed that the largest proportion of offences committed by women serving non-custodial sanctions were minor and non-violent. Thirty-six per cent of the women were convicted for offences against the Alcoholic Drinks Control Act 2012 which included sale of alcoholic drinks without a licence.<sup>45</sup> Eighteen per cent of the women were convicted of other minor offences, including collecting wood in forests ('removing forest produce' under the Forests Act 2005),<sup>46</sup> entering and cutting grass in a national park (offences under the Wildlife Conservation and Management Act 2013),<sup>47</sup> and failure to construct a toilet, which is an offence under the Meru by-laws. It is notable that the effect of these recent statutes has been to widen the net of the criminal law, criminalising impoverished women.

## Reasons for offending

For the majority of the women interviewed, offending was linked to economic need. This was echoed by probation and judicial officers who reiterated the connection between poverty and offending. Sixty-seven per cent of the women interviewed said they had offended in order to earn a living and to support their families. Other reasons highlighted were anger, provocation, stress and alcohol dependence.

The women convicted of selling *kangara* and *chang'aa* (illicit alcoholic drinks) without a licence, gave three reasons for committing the offence. Firstly, brewing is a steady source of income without which they would not be able to support their families. Secondly, most were able to sell the alcohol from their homes which enabled them to take care of their children at the same time. Thirdly, in many cases, they were able to obtain the ingredients for brewing on credit and could pay the supplier upon selling the drinks.

The women interviewed who were convicted for removing forest produce under the Forest Act were also driven by economic reasons as they rely on firewood for cooking.

**Table 5: Offences women interviewed were convicted of**

Offences	Proportion
<b>Alcohol-related offences (under the Alcoholic Drinks Control Act)</b>	36%
<b>Assault</b>	18%
<b>Offences against public health, forest and county by-laws</b>	13%
<b>Theft</b>	9%
<b>Child abuse</b>	6%
<b>Presenting false cheques and trespass</b>	4%
<b>Drug possession</b>	3%
<b>Attempting suicide</b>	1%
<b>Grievous bodily harm</b>	1%
<b>Others</b>	9%

In a few cases, women interviewed revealed that they sold the surplus firewood collected to meet other basic needs. The offenders who had been convicted under the Wildlife Conservation and Management Act revealed that they were cutting grass in the park to feed their animals during a drought. Some said that their animals died when they were in pre-trial detention, illustrating both the severe shortage of fodder as well as the wider impact of their detention.

The cases of the women convicted for failure to construct toilets also highlight the interplay between poverty and heading a household. The women could not afford to hire workers to construct the toilets and they could not do it by themselves:

**“ I had no money. Was I to build a toilet or pay school fees? ”**

45. See also Penal Reform International, *Excellence in training on rehabilitation in Africa (EXTRA) project*, mid-term evaluation, 2016, p14. This research found that over a third of women prisoners in a Meru prison visited in 2015 had been convicted of brewing illicit alcohol.

46. Under section 52(1) (a) of the Forest Act 2005, it is an offence to cut or take any forest produce.

47. Under Section 102 of the Wildlife Conservation and Management Act 2013, unauthorized entry into a national park is an offence, as is clearing or cultivating any land or any related activity contrary to the provisions of the Act.



# 87%

of the women interviewed had been

**HELD IN PRE-TRIAL DETENTION**



# 6%

of the women interviewed

**HAD ACCESS TO LEGAL REPRESENTATION**

*“My husband does not care and I was expectant. Why was I the one arrested?”*

*“I was arrested immediately after my husband's burial. Building a toilet was not a priority.”*

All these cases exemplify the impact of poverty on women in light of the roles they play as caregivers as well as heads of households.

## Pre-trial detention

Eighty-seven per cent of the women interviewed were held in custody prior to conviction. Most of the women were not granted bail and those who were could not meet the monetary bail terms or security required. In some cases, the extended detention period was caused by delays in the submission of pre-sentence reports by probation officers.

In addition to disrupting income-generating activities, the study illustrated the negative impact of pre-trial detention on families. Children of single mothers were in some cases left without adult supervision. In other cases, women were held in custody with infants in dire conditions.

Pre-trial detention for women subsequently serving non-custodial sentences is of particular concern. Their subsequent compliance with the non-custodial sentences is a strong indicator that court attendance could have been secured without detaining them for petty offences. Pre-trial detention had a clear, lasting impact on the women concerned:

*“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.”*

*“When I was arrested I lost my business.”*

## Access to legal representation

Only six per cent of the women interviewed had legal representation in court. Advocates are out of reach for most offenders in Kenya who cannot afford legal fees.<sup>48</sup> Non-governmental organisations provide legal aid but with limited capacity, their services benefit very few offenders.

## Experience of domestic violence and sexual abuse

Thirty-three per cent of the women interviewed admitted to being subjected to domestic violence at one point in their lives.<sup>49</sup> Eight per cent of the women revealed that they had been sexually abused. However, the real figure is likely to be higher. Additional research would be required to collect data on this sensitive question. Histories of abuse and the impact of violence may be better understood through the use of other methodologies.

The study has shown a clear link between divorces or separation, domestic violence and offending. Women who have been victims of domestic violence and choose to leave their abusive partners often struggle financially and commit economic offences to support their families.

## Health issues

Twenty-six per cent of the women interviewed had existing health issues that required medical attention. Seventy-three per cent of these women were able to access medical treatment at government medical facilities which are affordable.

Although the women interviewed were not asked if they were HIV positive or living with AIDS, many shared that they were. They also said they were able to access antiretroviral (ARV) drugs from government medical facilities, but they found it difficult to meet their dietary requirements due to their low income.<sup>50</sup>

48. The need for legal aid has been a long-term issue of concern in Kenya. The Legal Aid Act 2016 which seeks to establish a framework for legal aid was passed in April 2016. Available at: [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct\\_No\\_6\\_of\\_2016.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct_No_6_of_2016.pdf) <accessed 16 August 2016>.

49. Domestic violence remains an issue of concern in Kenya, as found by the Kenya Demographic and Health Survey of 2014. More than one-third of ever-married women report that they have experienced physical violence by their husband or partner. An additional 32% report emotional violence, and 13% report sexual violence. The survey also reported that almost half (45%) of women aged 15-49 have experienced physical violence (since the age of 15), <https://www.dhsprogram.com/pubs/pdf/SR227/SR227.pdf> <accessed 18 August 2016>.

50. For national statistics on HIV/AIDS see: [www.unaids.org/en/regionscountries/countries/kenya](http://www.unaids.org/en/regionscountries/countries/kenya) <accessed 22 August 2016>. There is no disaggregated data on the prevalence of HIV/AIDS among offenders serving non-custodial or custodial sentences.

### Nakuru Probation Hostel

In some cases, the courts issue probation orders requiring young offenders to serve their term in a 'probation hostel'. There are four probation hostels including one in Nakuru which houses female offenders aged between 12 and 22, with the majority aged between 14 and 17 years.<sup>51</sup>

The standard term served in a probation hostel is a year but in some cases, such as where the offender has failed to complete a course or where the home environment is not considered to be conducive to rehabilitation, extensions can be sought from the court. Young offenders interviewed for this research appreciated the regime at the hostel, noting that it was distinct from a prison, allowing them to come and go.

Absconding is rare and is usually linked to offenders' backgrounds. For example, interviewees suggested that offenders who prior to arrest had been working in prostitution and were largely independent tended to find it difficult to adhere to institutional rules.

When interviewed, the girls said that they were well catered for and their gender-specific needs, such as provision of sanitary towels, were met. The probation officers interviewed explained that over time they have been able to identify the needs of the girls and have adapted their

programmes to meet these, running activities to raise self-esteem and self-confidence, for example. The hostel seeks to deliver skills training, counselling and social activities designed with young female offenders in mind.

Overall, awareness of gender-sensitivity amongst the probation officers was evident and one of the probation officers had been trained on the UN Bangkok Rules.<sup>52</sup>

Some challenges were identified. For example, interviews showed that young women at the hostel had come from as far afield as Malindi, Mombasa, Migori and Embu, which makes it challenging for their parents to visit them. Family support is critical in the rehabilitation process and this lack of parental contact is therefore concerning.

Also, while girls can obtain formal education or skills such as dress-making and catering, equipment was lacking or outdated and there was a lack of aftercare support for successful reintegration. Many of the girls were prevented from using the skills gained because they did not have the capital to purchase machinery (including sewing machines) to start a business. The financial means required for starting a business were low, ranging from KES 2,000 (approx. 20 USD) to KES 20,000 (approx. 200 USD).

51. The other probation hostels house male offenders: Shanzu in Mombasa; Kimumu in Eldoret; and Nairobi.

52. Penal Reform International and the Kenyan Probation and Aftercare Service, Training for Trainers on the Bangkok Rules, Nakuru, Kenya, 30 March - 1 April 2015, with financial support from the UK Government (UKAID).

# Issues for women serving non-custodial sanctions

While women interviewed said that Probation Orders and CSOs were preferable as they enabled them to fulfil their caretaking obligations at the same time, they also highlighted a number of challenges.

## Breaches of Probation and Community Service Orders

The probation officers and judicial officers interviewed indicated that with respect to female offenders, the rate of breach for both Probation Orders and CSOs is relatively low.

The completion of Orders can be recorded in three ways: as satisfactory, unsatisfactory or absconded (see Tables 6 and 7). There are two scenarios in which an order would be recorded as 'unsatisfactory': either the offender has not reported to their work station, which is reported to the court where the case is reviewed, but then they have subsequently returned to complete it, or the offender commits another offence during the time he/she is serving an Order. The national completion statistics as reflected in Tables 6 and 7 may not reflect the whole picture as not all breaches would be reported to the court immediately. The supervisors/probation officers have some discretion as to whether to report a breach and in some cases may issue a warning, for example.

As Table 7 demonstrates, there were higher rates of breaches among female juvenile offenders serving Probation Orders compared to female adult offenders and male juvenile offenders. Further research would be required to understand the reasons for this. However, one explanation may be that there is no Borstal Institution for girls and so those who have committed serious offences may be given non-custodial sentences and are perhaps more likely to breach. Boys who commit serious offences would be sent to the Borstal Institution and serious adult female offenders would receive a prison sentence.

As far as interviews were able to capture reasons for why women offenders did not comply with non-custodial orders, responses indicate that it is usually linked to personal or family matters. Examples include caretaking obligations, pregnancy, attending funerals, remarrying and relocating, escape from violent spouses, or in some cases being arrested for another offence.

Understanding the cultural context gives an insight into reasons for not complying with non-custodial sentences. For instance, women are expected to attend funerals for several days and carry out chores such as cooking for guests. Failure to comply may result in women being ostracised and female offenders are therefore likely to prioritise such obligations over Probation or CSOs.

Female offenders interviewed reported that during their first induction meeting with their probation officer, they were advised to inform the probation officers and supervising officers of any factors that could affect their adherence with the Order. However, some women said that they were reluctant to do so, fearing that if they appeared uncooperative, they might be given a custodial sentence instead.

More specifically, offenders serving CSOs are guided to contact the probation officer if an issue could not be resolved with their supervising officer. For example, if an offender reported that she was unwell and unable to report to work, but the supervising officer ignored this and recorded it as absconding instead, the probation officer should be contacted to address the issue.

The probation officers and supervising officers indicated that mobile phones have enhanced communication and offenders are in a better position to keep the officers informed. However, some offenders face barriers to prompt communication of issues. Some cannot afford to call the probation officer, for example. Others lack family support and cannot ask them to call the probation officer on their behalf, or they may have kept the fact of their CSO hidden from their family members altogether.

**Table 6: National completion statistics for Community Service Orders<sup>53</sup>**

	2013	2014	2015		2013	2014	2015
<b>Female adults</b>				<b>Female juveniles</b>			
<b>Total number</b>	4,128	6,217	6,361	<b>Total number</b>	36	92	12
<b>Satisfactory completion</b>	96.6%	98.2%	98.2%	<b>Satisfactory completion</b>	69.4%	96.7%	100%
<b>Absconded</b>	2.2%	1.2%	0.4%	<b>Absconded</b>	0%	3.3%	0%
<b>Unsatisfactory completion</b>	1.2%	0.6%	1.4%	<b>Unsatisfactory completion</b>	30.6%	0%	0%
<b>Male adults</b>				<b>Male juveniles</b>			
<b>Total number</b>	24,876	35,797	36,263	<b>Total number</b>	180	254	59
<b>Satisfactory completion</b>	96.2%	98.1%	99.0%	<b>Satisfactory completion</b>	67.8%	69.7%	93.2%
<b>Absconded</b>	2.7%	1.4%	0.7%	<b>Absconded</b>	10.6%	11.4%	3.4%
<b>Unsatisfactory completion</b>	1.1%	0.5%	0.3%	<b>Unsatisfactory completion</b>	21.7%	18.9%	3.4%

**Table 7: National completion statistics for Probation Orders<sup>54</sup>**

	2013	2014	2015		2013	2014	2015
<b>Female adults</b>				<b>Female juveniles</b>			
<b>Total number</b>	1,473	1,147	1,516	<b>Total number</b>	169	122	200
<b>Satisfactory completion</b>	92.5%	92.8%	93.7%	<b>Satisfactory completion</b>	88.2%	85.2%	68.0%
<b>Absconded</b>	5.3%	4.8%	4.5%	<b>Absconded</b>	8.9%	9.8%	4.0%
<b>Unsatisfactory completion</b>	2.2%	2.4%	1.8%	<b>Unsatisfactory completion</b>	3.0%	4.9%	28.0%
<b>Male adults</b>				<b>Male juveniles</b>			
<b>Total number</b>	5,605	3,668	5,145	<b>Total number</b>	1,154	694	994
<b>Satisfactory completion</b>	88.2%	88.6%	89.5%	<b>Satisfactory completion</b>	77.1%	84.4%	88.1%
<b>Absconded</b>	7.0%	7.4%	6.8%	<b>Absconded</b>	7.1%	7.2%	5.8%
<b>Unsatisfactory completion</b>	4.8%	4.0%	3.7%	<b>Unsatisfactory completion</b>	15.8%	8.4%	6.0%

53. Statistics provided by the Probation and Aftercare Services, June 2016.

54. *Ibid.*

## Socio-economic issues

### Transport and distance

Most of the women serving Probation Orders and CSOs said they struggled to save money during the month to pay for transport to attend their monthly appointments at the probation office. This is unsurprising given that for most poverty was a major reason for their offending. In some cases, they had to rely on their spouses/boyfriends to support them, who would sometimes respond only begrudgingly. If they were unable to raise the bus fare, they had to walk very long distances. The women interviewed emphasised the need for support to ease the financial burden arising from the obligation to report monthly. One of the women illustrated the extent of the financial challenge by remarking that:

**“ Even today, I had to borrow money to enable me to come here.<sup>55</sup> ”**

Although distance is a factor that probation officers and courts are expected to consider before placing an offender on a CSO, in the absence of other suitable stations, female offenders are sometimes assigned to workplaces far away from where they live.<sup>56</sup> This increases the commuting time, affecting their caretaking obligations and reducing their chances of securing casual jobs before or after the CSO work for the day.

**“ 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. ”**

### Length and scheduling of community service work

Overall, when not well structured, serving community service has been shown to have a grave socio-economic impact on women. One of the women interviewed described this as follows:

**“ The worst time for us is harvest time. Our crops rot away in the fields. The other house chore that is interfered with, is fetching water. When we are unable to fetch water early in the morning before reporting for CSO work, we go at 1pm when the sun is scorching. Children come home from school and find the food not ready. ”**

Both the total length of and scheduled working hours of a CSO are factors which can impact negatively on women serving the Orders. Women serving CSOs for a whole year, for example, have to completely reorganise their lives.

CSOs require offenders to work ten hours each week, typically two hours a day over five consecutive days. Twenty-one per cent of women interviewed indicated that this schedule left them unable to secure casual jobs which they rely on to survive. While women are only required to work two hours each day, when additional commuting time is factored in, they lose the critical morning hours when casual jobs are usually available. This problem was particularly prominent for women serving longer terms and also at the Maua pilot project as many offenders have to travel long distances to the project location.

One of the supervising officers remarked that the main issue raised by the women serving CSOs is that:

**“ The CSO work interferes with their livelihoods like planting and fetching water; [as well as] pregnancy and nursing. ”**

In one of the stations, the situation was exacerbated by the engagement of a volunteer supervisor who did not keep to time and kept the women waiting:

**“ Initially he would arrive an hour later after we arrived. He would compute the hours as from when he arrived which meant that we would get late. We challenged this and he has now reformed. ”**

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 obligations and successfully serve their sentences. In some stations, the women were allowed to work ten hours spread out over two consecutive working days and they could take up casual jobs for the remaining three working days.

In some cases, CSOs had a negative impact on childcare. Some mothers left children as young as two years old unattended and would instruct neighbours to attend to them when they cried. Again, however, where there was some flexibility on the spread of hours for serving their Orders, women were able to organise proper childcare.

There have been cases where women arrived to serve their community service, carrying their children on their backs because they could not secure childcare arrangements. While a common practice in many rural areas in Kenya, this may raise concerns regarding the safety and health of babies, for example if the mothers are assigned to work outside in hot conditions. In such situations, breaks, including for breast-feeding, need to be provided.

With no policy guidelines for supervising officers on women-specific issues, many of the issues that arise are left to the discretion of the individual officer.

55. Note that women who participated in the study were reimbursed for their transportation costs.

56. Kenya Community Service Orders Programme, *Training manual for the Kenya community service programme*, Probation and Aftercare Services, Nairobi, 2013.

This was illustrated well by the accounts of two interview participants, one serving a CSO and the other a Probation Order, who were both in the advanced stages of pregnancy. The woman on probation was permitted a period of ‘maternity leave’ by the probation officer, whereas the woman on the CSO was only granted ‘leave’ after a fellow CSO participant intervened with the supervisor on her behalf.<sup>57</sup>

## Safety

While the law requires supervision of female offenders serving Probation Orders by female officers, to ensure safety among other reasons, the findings showed that this is not always adhered to, primarily because there are insufficient numbers of female probation officers.<sup>58</sup> The law is silent on the gender of CSO supervising officers. Respondents did not raise reservations about being supervised by male probation officers. In one station, however, the issue was raised by Muslim offenders who found contact with male supervisors incompatible with the requirements of their religion.

While the majority of the women interviewed did not raise incidents concerning safety in their work stations, experiences by women of harassment and violence, in particular of a sexual nature, tend to be under-reported.

One respondent reported that:

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

Probation officers interviewed noted concern over the harsh environment in police stations, stating that they avoided allocating female offenders to those stations. Also there had been a few reports of female offenders being asked by police officers to perform duties in private premises out of the designated work station. Such conduct compromises the safety of women and probation officers said they did not recommend allocation of offenders to these institutions again.

## Stigmatisation

Twenty-four per cent of the women interviewed stated they had been stigmatised by their communities in one way or another. This relatively low rate of stigmatisation may be attributed both to the fact that most of the community members are in similar economic circumstances and relate to the female offenders’ predicament. It may also be due to the low visibility of community service work; much of the CSO work is similar to the work women undertake as casual labour.

For those who did experience stigmatisation, this is linked to the generally negative public perception of offenders and also illustrates the wider impact of women’s contact with the criminal justice system on their families. For example, one of the women said:

**“ My son started drinking alcohol when I was in pre-trial detention. The community now blames me for this. ”**

Another remarked:

**“ Since I started serving CSO, my business is failing and I have fee arrears. I am now ridiculed because my children are no longer in school. ”**

Some women interviewed admitted that they were discreet about serving the Probation Order or CSO. One of the women interviewed disclosed, for example, that when requesting leave from her employer to report to the probation officer she would state other reasons.

## Physical and mental health

A small number (six per cent) of the women interviewed had health complications resulting from the community service work. These complications were linked to pre-existing conditions which could have been identified during the social enquiry conducted by probation officers.

Consideration of health conditions when assigning work to the offenders depends on the individual supervising officer’s assessment. The following very different reports were received from women working at the same station:

**“ I experience side stitches sometimes when working. I am on medication. ”**

**“ I get backaches because of the heavy manual work. Sometimes, after the CSO work, I am not able to do any other work. ”**

**“ I have a deformed hand. The chief allows me to do lighter duties. ”**

**“ I have a kidney problem. I have told the chief that the hard work affects me but he does not listen. Maybe it is because I was arrested with an alcohol related offence. ”**

While it is expected that probation officers enquire and advise the court appropriately to avoid a negative impact of CSO work on the health of offenders, this is overlooked on occasions. An offender may also develop health-related issues during the term of the CSO, and supervising officers should be able to respond appropriately. This research suggests that supervising officers are not always sensitive to the health status of offenders and in such cases, offenders are subject to undue punishment.

57. There are no policy guidelines on maternity leave. However, women may be given permission by the probation officer or CSO supervisor not to report for a certain period of time.

58. Probation of Offenders Act 1943, s.14 (2).

Mental health issues may also have played a role in offending and have an impact on the ability to serve CSOs. Twenty-six per cent of the women interviewed said that they had experienced depression.<sup>59</sup> Some women indicated that they were anxious and/or stressed. Fifteen per cent of the women serving CSOs cited anxiety about their inability to secure casual jobs as a consequence of the sentence. Many were afraid that they would be unable to meet their financial obligations.

One woman who revealed a history of mental health problems had sought medical assistance, but the medical facility she was referred to was unable to address the issue and attributed it to 'spiritual matters'.

The probation officers interviewed highlighted the inadequacy of mental health facilities, particularly in terms of accessibility. The study suggests that there are inadequate interventions for mental health issues and in general, very little attention has been paid to the mental health-related needs of female offenders in Kenya.

## Drug and alcohol dependency

While 36 per cent of the women interviewed had been convicted of offences against the Alcoholic Drinks Control Act, such as selling alcoholic drinks without a licence, only four per cent of the women said they were themselves dependent on alcohol. The rate of drug dependency was even lower at one per cent of the women interviewed. However, research reveals that many households in Kenya are affected by alcohol abuse.<sup>60</sup> Some of the women revealed that they had experienced domestic violence triggered by the alcohol abuse of a partner. Support for women affected by spouses or other family members' drug and alcohol dependency is therefore needed.

While one of the respondents reported that a session on drug dependency facilitated by the PAS assisted her in dealing with affected family members, this study suggests that the PAS is overall not well equipped to deal with such cases, neither for male nor female offenders. Rehabilitation centres are scarce.

The study revealed that in general the rate of alcohol or drug dependency is higher among offenders ordered to serve one-day CSOs (the offence of being drunk and disorderly usually attracts a one-day CSO sentence). However, offenders serving one-day CSOs have no contact with probation officers and are released without interventions to address their dependency.

### Probation and Aftercare Service (PAS) community service project in Maua

In the PAS-run project in Maua, offenders engage in tangible work which has visible results and benefits the community. Both female and male offenders are eligible to be assigned to this project and those interviewed for this research were working on a road construction project. The station at Maua can cater for more offenders serving CSOs compared to other stations where PAS has to rely on local institutions to provide placements. This means that offenders who are deemed suitable to serve CSOs are not disqualified on the basis of unavailability of work stations and/or supervising officers. The project also provides an opportunity for offenders to gain skills.

## Nature of CSO work

While some respondents expressed concern over the nature of work assigned to them (for example, moving building stones), complaints were rare and in most cases women felt that the roles assigned to them, such as cleaning and gardening, were suitable. It also emerged that perceptions about the suitability of the work tend to depend on practices in the local community. For example, women at the PAS pilot project in Maua were content to dig out and level dry weather roads, carry out manual work at a construction site, dig deep pits for garbage disposal or slash grass. One of the respondents stated:

**“ ...After all we also do the same kind of work at home; we dig in our farms’... ‘kazi si ngumu sana’ translated: ‘the work is not too hard’. ”**

However, the offenders at Maua did explain that after carrying out manual work for their CSO coupled with walking long distances, they were often too exhausted afterwards to carry out any productive household activities, apart from those that were absolutely necessary such as cooking.

In addition to taking into account local practices, supervising officers should also take into account the health status of an offender when allocating work (see page 20).

<sup>59</sup> While not considered a clinical issue in common parlance in Kenya, depression impacts on women's ability to work and fully meet their obligations. The study adopted the WHO definition, according to which mental health is: 'A state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community'. Cases of anxiety and depression were therefore classified as mental health issues that need attention.

<sup>60</sup> Republic of Kenya, *National Alcohol Policy*, Kenya, 2011, p16.

## Tools to undertake CSO work

When serving CSOs, offenders should be equipped with the necessary tools and equipment for the kind of work they are assigned.<sup>61</sup> The study, however, revealed that some institutions do not provide the offenders with tools and equipment needed, requiring them to bring their own. In some cases, the offenders' own tools were not appropriate for the work. One of the women interviewed remarked:

**“ We carry our jembes (hoes) and pangas (machete) but we need spades and slashers to effectively perform the work allocated to us. ”**

Some women admitted to not owning even the basic tools and having to borrow them from neighbours. While this is a concern for both male and female offenders, it is particularly problematic for indigent female offenders and women are less likely in general to own them.

## One-day CSOs

One-day community service programmes in particular do not have proper mechanisms to address women's needs. Supervising officers explained that for women who had been held in custody beforehand and come straight to the station from prison, the one-day CSO presents several problems, including lack of sanitary towels, hunger, engorged breasts for breastfeeding mothers and other health-related issues.

## Supervising officers' attitudes and competence

The study showed that some offenders serving CSOs were supervised by the same police officers who arrested them.<sup>62</sup> There were several examples of women arrested by a village chief for offences against the Alcoholic Drinks Control Act and then ordered to serve community service supervised by the same chief. In such cases supervising officers may have already formed an opinion about the offender and the relationship may be strained.

The research findings also highlighted that the oversight of supervising officers is not optimal.<sup>63</sup> While, in practice, the PAS requires offenders serving CSOs to report to their officers once a month, there are exceptions, for example, where offenders are working on projects far away from the probation office. When probation officers are not proactive in visiting these sites, they tend to remain unaware of the challenges faced by offenders.

Similarly, judicial officers, in their capacity as chairpersons of the CSO case committees, are also expected to make routine visits to work stations to enable them to make informed decisions when sentencing offenders to serve CSOs. However, the study revealed that their visits are rare.

## Support requirements

### Economic empowerment

The lack of programmes to address poverty, which is the root cause of most of the offending by women, was highlighted as a key concern by those interviewed. To prevent reoffending, the majority of the female offenders need economic empowerment that will enable them to meet their financial obligations. Some of the women interviewed admitted that they would most likely reoffend if they were unable to earn a living through legitimate means, for example, remarking:

**“ I have been depressed as no casual work is available and I am tempted to commit the same crime that I was charged for, just for the sake of my children. ”**

**“ 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. ”**

Another respondent, however, illustrated how economic empowerment can mitigate against reoffending:

**“ I completed my community service but the station I was serving in employed me as a cleaner. I am no longer an offender. ”**

The research identified a few initiatives geared towards economic empowerment of the women (see further details on page 23) and evidence from the interviews shows that economic empowerment is a critical part of preventing reoffending. However, with only a limited budget, the PAS is not in a position to roll out such programmes and is dependent upon donors. As a result, the programmes are limited to a few stations.

### Family and community support

Both women serving CSOs and Probation Orders singled out family support (practically and financially) as a critical component in enabling them to serve their orders successfully. Some probation officers encourage family engagement, with one explaining that:

**“ I hold an induction meeting with the offender and her spouse. During this meeting I explain the expectations for the offender and call for their support. For instance, I explain the number of hours that the offender is expected to work. ”**

61. Kenya Community Service Orders Programme, *Training manual for the Kenya community service programme*, Probation and Aftercare Services, Nairobi, 2013, p21.

62. If a CSO is served at the office of the village Chief, the Chief would be the supervisor and there are usually police officers attached the Chief's office/premises. Police may also be involved if a CSO is served at a police station.

63. See page 9.

## Economic empowerment initiatives

### Uwezo Initiative, Kibera Station

The Uwezo Initiative, based at Kibera station, seeks to empower women with basic entrepreneurial skills and capital in kind to help them set up small businesses. Women receive training and are able to identify businesses that they are interested in, ranging from selling second-hand clothes to running food kiosks. Uwezo supplies the women with the stock required rather than money. A number of women interviewed acknowledged the impact that this empowerment had on their lives. Not only were they able to earn a living but were also motivated. 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. The women interviewed who have benefited from the programme indicated their commitment not to reoffend as their financial needs were now met.

*“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.”*

### Table banking, Makindu Station

Makindu station runs a model based on table banking.<sup>64</sup> A donor, Philemon Ministries, contributed KES 20,000 (approx. 200 USD), which served as the principal amount for table banking.

The women in this programme grow the fund by contributing small amounts whenever they meet and are able to get loans from it. Women can use the loans to expand their businesses and become financially stable and interest earned from the loans is fed back into the fund.

A probation officer interviewed praised the programme for playing a big role towards rehabilitating the women, stating:

*“The self-help group was registered with the Ministry of Gender and Social Services. The women meet here once a month. We encouraged them on the importance of being in a group and the Kenya Commercial Bank trained them on saving. There is minimal supervision of women for this group. Even after completing their term they remain in the group.”*

An important and unique feature of this group is the harnessing of group synergy to mobilise resources, as well as providing social support for the women. It draws on the relational nature of women, as well as the communal nature of the community's culture, to provide an accountability and support mechanism.

One beneficiary of this empowerment programme stated:

*“We formed the self-help table banking group. The donor gave us the startup amount and we have been contributing towards it. We are able to get loans from the revolving fund. The loans have helped me in my business.”*

One woman stated that her 'support group', commonly referred to as *chamas*, in Kenya, not only supported her to become financially stable, but also gave her the emotional support that she needed.

## Psycho-social support

The research findings reveal that psycho-social support, including counselling, is a critical requirement to prevent reoffending. Anger, stress and living with abusive spouses/partners are both a barrier to successfully completing a non-custodial sanction and a cause of (re)offending.

Nakuru Probation Hostel is a good example of how psycho-social support needs can be addressed even when funds are limited. The Hostel partners with other institutions (such as churches, NGOs and faith based organisations) to offer counselling and programmes to nurture self-confidence.

<sup>61</sup> Table banking is a group funding strategy where members of a particular group meet once every month, place their savings, loan repayments and other contributions on the table then borrow immediately either as long term or short term loans to one or a number of interested members, see for example: <http://www.actionaid.org/kenya/table-banking-actionaids-initiatives-brings-women-banking-hall>

# Recommendations

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) call for 'gender-sensitive non-custodial measures'. However, to-date, little guidance has been made available on how to capture gender-specific needs and ensure the design and implementation of non-custodial measures address gender aspects.

The present study is a step towards developing such concrete guidance. The recommendations below are informed by the UN Bangkok Rules, in particular Rules 57, 58, 60, 62, which supplement the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).<sup>65</sup> Lessons learned from a broader project on community service implemented by PRI in East Africa, 'Excellence in Training on Rehabilitation in Africa (ExTRA)', have also been taken into account.<sup>66</sup>

## At the governmental level

### 01. Review of criminal legislation

Criminal offences may appear to be gender-neutral, but in practice impact differently on women than they do on men. This study has revealed, for example, the particular impact on women of offences enshrined in the Alcoholic Drinks Control Act 2012, the Forest Act 2005 and the Meru by-laws.

- The length and gravity of the respective sanctions should be reviewed taking into account their specific impact on women offenders.
- Overall, the decriminalisation of misdemeanours should be considered as a measure to decongest the criminal justice system and to ensure proportionality of sanctions.<sup>67</sup>

### 02. Developing a gender policy

- At the national level, a gender policy should be developed, based on the UN Bangkok Rules, to mainstream gender-sensitive approaches throughout every stage of the criminal justice system.
- The gender policy should incorporate, *inter alia*, the recommendations of this report.

### 03. Capacity and funding

In order to deliver its functions professionally the PAS needs to be provided with sufficient capacity to ensure: drafting of pre-sentence reports and related enquiries; induction of supervising officers; supervision of probation orders and CSOs; inspection of work stations; development of work stations and of support programmes; sensitisation of communities and monitoring/documentation of good practice and of problems arising. Despite ongoing efforts to secure additional resources, inadequate funding has been reported as a long term handicap for the PAS.<sup>68</sup>

- The resources of the PAS should be increased in order to allow the development of gender-sensitive policies and programmes in line with the UN Bangkok Rules, and in order to ensure it has sufficient capacity to deliver its functions in light of its widening functions in the criminal justice system.<sup>69</sup>
- Support from international partners should be sought in order to build the capacity of the PAS and in particular to improve data collection and management.

65. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by General Assembly Resolution 45/110 of 14 December 1990.

66. See PRI, *Excellence in training on rehabilitation in Africa (ExTRA) project: Community service as an alternative to imprisonment*, final evaluation, September 2016.

67. See UN Tokyo Rule 2.7 ('The use of non-custodial measures should be part of the movement towards depenalization and decriminalization (...)'. – The UN Special Rapporteur on Extreme Poverty and Human Rights stated that 'States must only have recourse to detention and incarceration when it is necessary to meet a pressing societal need, and in a manner proportionate to that need. States must ensure that arrest or detention does not disproportionately affect those living in poverty'. (Special Rapporteur on Extreme Poverty and Human Rights, Report to the 66th session of the General Assembly, October 2011, UN-Doc. A/66/265). The UN Working Group on Arbitrary Detention stated that the right to liberty 'requires that States should have recourse to deprivation of liberty only insofar as it is necessary to meet a pressing societal need, and in a manner proportionate to that need'. (Working Group on Arbitrary Detention, Report to the Human Rights Council, 30 June 2014, UN-Doc. A/HRC/27/48, para. 72).

68. See for example UNAFRI, *Evaluation of the Community Service Orders Programme in Kenya*, Nairobi 2011, p xvii. PRI interview with the Chairman, National Community Service Orders Committee, 15 April 2016; PRI interview with the Director, Probation and Aftercare Services, 8 April 2016.

69. Tasks of the PAS have widened in recent years, including roles not specified in the legal framework such as with regard to bail, alternative dispute resolution and support of victims.

## At the level of the judiciary

### 04. Reduction of pre-trial detention

Pre-trial detention should be reduced for women offenders, taking into account the large proportion of minor, non-violent offences, their generally low risk to society and the harmful impact of detention on the family, in particular children.<sup>70</sup> Research undertaken in other countries has revealed challenges for women in accessing non-custodial alternatives to pre-trial detention, such as bail.

- Judicial officers should apply alternatives to pre-trial detention, in line with Bangkok Rules 57 and 58, which supplement the UN Tokyo Rules.<sup>71</sup>
- Research should be expanded to enquire into the accessibility of bail and other non-custodial alternatives to pre-trial detention for women offenders.

### 05. Gender-sensitive sentencing

The majority of women offenders are charged with minor, non-violent offences, are predominantly first-time offenders, and do not pose a significant risk to society. Rule 61 of the Bangkok Rules requires that courts have the power to consider mitigating factors in cases

involving women offenders when determining the severity and length of a sanction. Their typical characteristics make women offenders a particularly suitable group for non-custodial alternatives.

- Courts should be guided to take into account mitigating factors in sentencing in line with Bangkok Rule 61, with regard to the determination of the type and gravity of the offence, as well as the length of sanction.<sup>72</sup>
- Judicial officers should be encouraged to request pre-sentence reports, and to specifically request information on the gender-specific background and circumstances of the individual offender and the alleged offence (such as previous experience of violence, caretaking obligations etc).<sup>73</sup>
- Judicial officers should be continuously engaged to ensure adherence to the Sentencing Policy Guidelines and the Bangkok Rules.<sup>74</sup>
- The Bangkok Rules and Tokyo Rules should form part of the curriculum for continuous training for judicial officers.

## At the level of the Probation and Aftercare Services

### 06. Development of tools and guidelines

Probation officers should incorporate gender-specific characteristics and needs in pre-sentence reports. To this end, the 'Practice Guidelines' and 'questionnaire' model structure used by probation officers should be reviewed and adapted as necessary to incorporate the Bangkok Rules and good practice. Additional guidelines, which explain the rationale and provide information about gender-specific needs and characteristics, may be useful when operationalising the tools. Protocols for visits to work stations may need to be adapted (see Recommendation 14).

- Tools and guidelines should be revised to encapsulate, in pre-sentence reports and during supervision of Probation and Community Service Orders, characteristics and needs specific to women offenders.
- Pre-sentence reports should incorporate gender-specific backgrounds such as caretaking obligations (children and other family members), physical and mental health and experiences of violence, in order to inform the selection of the appropriate non-custodial sanction and the specific conditions of the Order.
- The PAS should ensure the standardised use of these tools in order for relevant issues to be captured consistently rather than left to the individual discretion of probation officers.

70. Rules 57 and 58 of the UN Bangkok Rules encourage the development and use wherever possible of diversionary measures and the development of pre-trial and sentencing alternatives for women offenders, taking into account the history of victimisation and caretaking responsibilities.

71. See also the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) General Comment No.1 on Article 30 of the African Charter on the Rights and Welfare of the Child, paras 24 (a) and (b) which ask State Parties to ensure 'priority consideration to non-custodial measures when courts sentence or decide on pre-trial measures for a child's sole or primary carer'.

72. *Ibid.* For example, para 24 (b): 'Safeguards should include judicial consideration of the impact of a custodial sentence on the best interests of a child of the accused or convicted parent or caregiver.'

73. See Tokyo Rule 7.1 on social enquiry reports, which 'should contain information and recommendations that are relevant to the sentencing procedure' and should be 'factual, objective and unbiased'. The UN Bangkok Rules supplement the Tokyo Rules.

74. On the importance of training and sensitisation, see for example GOK and UNAFRI, *Evaluation of the Community Service Orders Programme in Kenya*, Nairobi, 2011.

## 07. Development of CSO placements

To cater for the specific backgrounds and needs of female offenders serving CSOs, the number and diversity of placements should be expanded, geographically (to reduce the distance women have to travel) and in terms of the nature of work allocated.<sup>75</sup>

The research findings indicate that in general women are unprepared to serve their CSO immediately after pre-trial detention or trial.

- Innovative CSO placements should be developed in order to deliver skills training and economic empowerment alongside the delivery of community service, in order to address poverty and unemployment, both major causes of women's offending. A participatory approach with the relevant community should be adopted so they can give input on what public works are required and would be beneficial.
- The programme of one-day CSOs should be adapted to be sensitive to the needs of women, taking into account challenges such as the urgency of caretaking after a period of pre-trial detention, the need for breastfeeding breaks, and basic needs such as sanitary towels.

## 08. Development and expansion of support programmes

This study underlines the need for the development of support programmes in order for Probation and Community Service to increase its rehabilitative potential. Offending by women is driven by economic factors even more so than men's. Factors such as low confidence and lack of life skills, including on how to handle parenting or relationship stress, have been found to be particularly relevant for women. The study also suggests that interventions to address mental health issues are currently lacking. International research has shown that the incidence of mental health problems is higher among women offenders due to their histories and role in society.

- Support programmes for female offenders on Probation Orders and CSOs should be created and expanded, in particular economic empowerment programmes and skill building. The empowerment programme piloted within PRI's ExTRA Project should be expanded or scaled up.<sup>76</sup>
- The PAS should consider the expansion of partnerships with other vocational institutions to provide opportunities for women offenders.
- Other support programmes addressing root causes and factors of offending should be developed in line with Bangkok Rule 60,<sup>77</sup> including life skills and counselling.<sup>78</sup>
- Peer support groups should be created, as they have proven to be particularly successful for women offenders.
- Mechanisms to detect mental health issues should be improved and programmes to address them should be incorporated, in line with Bangkok Rule 60.

## 09. Inter-agency approach

A gender-sensitive non-custodial sentence regime requires a coordinated approach which brings together all relevant stakeholders in the criminal justice system. Increased cooperation with other relevant government agencies could help provide support for mental health issues and for drug and alcohol dependencies which is currently lacking.

- The PAS should engage all stakeholders represented in the Probation and Community Service Case Committees to create awareness as well as to seek cooperation to better address the needs of women offenders.

75. PRI's *Excellence in Training in Rehabilitation (ExTRA)* project has shown the need for imaginative work stations in general, replacing where possible cleaning and slashing with opportunities for rehabilitation, reparation and learning of new skills. See discussion and recommendations in the final evaluation of this project: *Excellence in Training on Rehabilitation in Africa (ExTRA) Project: Community Service as an Alternative to Imprisonment*, September 2016.

76. Short case studies of these empowerment activities are available in the final report of the ExTRA Project. See PRI, *Excellence in Training on Rehabilitation in Africa (ExTRA) Project: Community Service as an Alternative to Imprisonment*, September 2016.

77. Rule 60 of the Bangkok Rules promotes support interventions alongside the application of non-custodial alternatives for women offenders, mentioning 'therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects'. Such programmes should take account of the 'need to provide care for children and women-only services'.

78. On the importance and positive impact of such interventions, see, for example, The Griffins Society, *Missing Voices: Why women engage with, or withdraw from, community services*, January 2013.

## 10. Training of all relevant stakeholders

To deliver gender-sensitive non-custodial measures and sanctions, all relevant stakeholders in the criminal justice system need to be aware of the specific characteristics and needs of women offenders. This includes probation officers, judges and magistrates, as well as supervising officers.

- Training materials should be developed which incorporate the relevant background, characteristics of women offenders, the UN Bangkok Rules and the use of (the revised) tools and guidelines (see Recommendation 6), including Sentencing Guidelines.

- Training initiatives should involve all relevant stakeholders (judges, magistrates, probation officers, supervisors). Delivery to mixed stakeholder groups has been shown to be useful.<sup>79</sup>
- Supervising officers should be sensitised on obstacles specific to women offenders, on work that is suitable, and ways in which working hours can be structured to accommodate the caretaking obligations of women offenders whilst adhering to the terms of the Order.

## At the level of the probation officers

### 11. Allocation of CSO placements

The allocation of community service should be informed by objective criteria and should seek to avoid stigmatising women whilst making visible the contribution of CSOs to the community.

- Placements should be suitable for the respective offender, applying objective considerations such as accessibility of the placement, skills, physiognomy and state of physical and mental health. They should be sensitive to cultural and local differences, while avoiding gender stereotypes (eg. not be limited to cleaning).
- Women offenders should be provided with opportunities to voice any problems with a placement, the type of work, or the work hours.
- County governments and local communities should be engaged in the identification and supervision of work projects.

They should be assured that any such complaints will not be interpreted as unwillingness to conform with the Order.

- Women offenders should never be supervised by the person who arrested them.
- Where possible, female probation officers should be allocated to supervise female offenders.<sup>80</sup>
- Probation officers should consider whether the spouses or other family members should be involved in the induction meeting, balancing the proven positive effect of family support with concerns arising from the particular stigma facing women offenders.
- The PAS should be enabled to carry out more home visits, as an alternative to office appointments, reducing the barriers for women offenders (financially, distances, time commitment), and enabling probation officers to gain a direct impression of the domestic situation of the offender (see also Recommendation 13).
- Supervising officers should be made aware of the particular situation of the woman offender under their supervision, such as caretaking obligations and her familial situation, etc.

### 12. Supervision of Orders

Probation officers should be conscious of gender-specific issues at the induction period and throughout the supervision of Orders.

- Women offenders should be briefed about their rights and duties, and should be encouraged to turn to the probation officer if difficulties or safety concerns arise.

<sup>79</sup> In Uganda, the Community Service Department found that mixing up different stakeholders in one training session facilitated valuable discussions that helped pave the way for a better understanding of community service issues and ideas on how to move forward together. See mid-term evaluation, *Excellence in training on rehabilitation in Africa (ExTRA)* project, January 2016, p40.

<sup>80</sup> While most women interviewed did not express a preference in this regard, reservations may arise due to religious and cultural issues, and international research demonstrates the amount of underreporting for incidents of (sexual) harassment and abuse.

## 13. Adapt CSO placements to women

This research has revealed that reporting times and working hours for serving CSOs can have a negative effect on women being able to secure casual jobs. Women's caretaking obligations (including children and also other family members), accessibility and costs of transport can also present significant difficulties. A physically and emotionally safe environment has proven to be essential for female offenders in the successful completion of such Orders.

- Safety considerations, including safety from (sexual) harassment, violence and exploitation, need to be taken into account when allocating women offenders to work stations.
- Working for police officers or at private premises of supervising officers or other public officials should be prohibited for all offenders, and measures should be put in place to prevent such practices.
- The compatibility of community service with caretaking obligations needs to be ensured, whilst not excluding women offenders from community service.
- Work 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 for women offenders. Women's financial situations and caretaking obligations may call for fewer hours per week over a longer period.
- The tools and equipment, including protective gear, necessary to deliver the work need to be provided at the work station.
- Mechanisms should be developed to ensure that women offenders have somebody they can approach with complaints, in particular those relating to sexual harassment, violence or exploitation.<sup>81</sup>

## 14. Inspection of work stations

- Probation officers should routinely visit the different work stations in accordance with their oversight role.<sup>82</sup>
- Protocols for visits of work stations should include questions that can reveal gender-specific problems and concerns.

## 15. Introduce 'positive rituals' on the completion of Orders

Experience in other countries has shown that 'positive rituals', for example, graduation ceremonies, which recognise efforts towards reform, are important for offenders to be able to move on from an experience in the criminal justice system.<sup>83</sup>

- Probation officers should consider introducing a 'positive ritual' of completion for a CSO/ Probation Order.

## 16. Documentation and statistics

- The PAS should improve the collection and analysis of disaggregated data on Probation Orders and CSOs, including the level of compliance and the length of assignment to work stations for CSOs (in particular one-day CSOs). PRI's 'Community Service Measurement Tracker' (CSMT) should be looked to for improving data collection and further developed.<sup>84</sup>
- Probation officers should be encouraged to document experiences with women offenders in order to learn from each other, and to identify good practices that could be replicated in other stations.

<sup>81</sup>. To address the known reluctance of women in reporting such instances, the possibility of anonymised complaints should be considered.

<sup>82</sup>. As provided in the Community Service Orders Act 1998, Second Schedule, part a, which stipulates that inspections could be combined with home visits and with enquiries for pre-sentence reports, the instruction of supervisors and to identify challenges at the work station or of individual offenders.

<sup>83</sup>. See, for example: Maruna S, 'Judicial Rehabilitation and the 'Clean Bill of Health' in Criminal Justice', *European Journal of Probation*, Vol. 3, No.1, 2011, pp97-117.

<sup>84</sup>. See Penal Reform International, *Excellence in Training on Rehabilitation in Africa (ExTRA) Project: Community Service as an Alternative to Imprisonment*, final evaluation, September 2016.

# Further useful resources

## On the UN Bangkok Rules on women offenders and prisoners

Toolbox  
on the UN  
Bangkok  
Rules

### Guidance document

A guide to each Rule, suggested measures for implementation at policy and practical level, with examples of good practice to inspire new thinking.

### Index of implementation

A comprehensive checklist for an assessment of implementation of the Rules, structured for different actors. Can be used in developing policies and strategies.

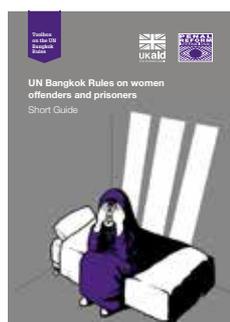
Both documents jointly published with the Thailand Institute of Justice.

### Online course: Women in detention – putting the UN Bangkok Rules into practice

A self-paced, free online course combining analysis of the Rules, interactive assessments and application of the Rules to real life situations, with a certificate issued at completion.

### Short Guide to the Bangkok Rules

A short illustrated guide to the Bangkok Rules, providing an overview of the typical profile of women offenders and their needs, and what the Rules cover.



## On alternatives to imprisonment in East Africa

### Excellence in Training on Rehabilitation in Africa (ExTRA) Project: Community service as an alternative to imprisonment, final evaluation report

The ExTRA project (2014-2016) was a pilot project, supported by UKAID, which focused on developing community service as an alternative to short-term prison sentences for petty offences in three countries – Kenya, Tanzania and Uganda. This final report includes results, learning and recommendations.

### Alternatives to imprisonment in East Africa: trends and challenges

Research and recommendations on the use of alternatives to imprisonment in East Africa.

## Watch a film about this project!

### Equal justice: making community service work for women in Kenya

Highlights the benefits and challenges for women serving community service. Features interviews with women who have served probation, the Kenya Probation and Aftercare Service and PRI.

7 mins. Available at [penalreform.org](http://penalreform.org)



Please visit [www.penalreform.org/resources](http://www.penalreform.org/resources)  
Many of our publications are available in multiple languages.





**Penal Reform International**

1 Ardleigh Road  
London N1 4HS  
United Kingdom

+44 (0) 207 923 0946

[www.penalreform.org](http://www.penalreform.org)

Twitter: @PenalReformInt

ISBN 978-1-909521-55-1

**Kenya Probation and Aftercare Service**

Taifa Road, Reinsurance Plaza, 11th Floor  
P.O. Box 42335-00100 GPO

Nairobi

Kenya

[www.probation.go.ke](http://www.probation.go.ke)

**Funded by**

