
**WE NEED IT NOW! INTERROGATING THE CONCEPT OF AN OPEN PRISON
FOR FEMALE INMATES WITH CHILDREN IN ZIMBABWE**

By

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Abstract

This dissertation seeks to realise equality for female inmates in the Zimbabwean prison system by urging the state to establish the women's open prison it has kept on hold for 15 years after extending the benefit of an equivalent facility (Connemara Male Open Prison) to deserving male prisoners. Key to the researcher's insights and findings is the fact that she is a Legal Officer and a Superintendent with the Zimbabwe Prisons and Correctional Service (ZPCS) and has a background in the issue of open prisons by virtue of being a member of the Open Prison Selection Committee. The writer draws from her experience and professional status and uses the women's law approach to take female inmates as the starting point to effectively reveal the imbalance between facilities for male and female inmates. Employing this unique approach throughout her research, she interviewed female inmates with children in prison and at home to explore their lived realities in the conventional prison system. Other methodological approaches, such as the human rights approach, sex and gender analysis and the Actors and Structures were invoked as complementary approaches to the broad and well-grounded women's law approach. The findings showed that female inmates are usually the primary care givers to their children; hence, the harsh conditions of their incarceration in the traditional closed prison system (originally designed with only men in mind) have a serious negative impact on the physical, mental, emotional and developmental health and well-being of both them and their children. There are little or no government programmes to cushion the blow of these conditions on mother and child nor to train mothers beyond low-paying stereotypical gendered skills in order to equip them for success beyond prison (a valuable benefit enjoyed by male open prison inmates). Therefore, the study concluded by calling for: (i) an open prison for female inmates as it would address most of the challenges faced by female inmates with children in the conventional prison system; (ii) the application of the 'best interests of the child' principle in the treatment of children throughout the criminal justice system; (iii) the active promotion of non-gendered rehabilitation activities for female inmates and (iv) the increased use of non-custodial sentences for deserving female offenders. These recommendations would enable Zimbabwe to comply with her obligations to protect and promote gender equality and the best interests of the child as provided in her Constitution and international conventions.

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Declaration

I, Patricia Shumba Mavhembu, do hereby certify that this dissertation is my original work presented towards the Masters in Women’s law, University of Zimbabwe and has not been previously presented for any other degree or other award in any academic institution.

Signed.....

Date.....

This dissertation was submitted for examination with my approval as the University Supervisor

Signed.....

Date.....

PROFFESSOR JULIE STEWART

Director of Southern and Eastern Africa regional Centre for women’s Law, University of Zimbabwe

Date.....Signed.....

Dedication

This research is dedicated to my late parents, Jennifer Sekai Dukwara and Edmos Shumba Mavhembu. It is hard not to remember you in such moments, with a wish in mind of course.

To my husband Albert, for your unwavering support, you keep me going. And to my lovely daughter, Doctor Atipa. Hope you are a star. I can see it in your eyes!

To the children of incarcerated mothers, I wish you a bright future.

Above all, to the Almighty, God, for apart from You I can do nothing!

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To the ZPCS, Management and staff, let us pursue Correctional Excellence with the female inmate in mind! To the Prison Legal Officers-Team Legal, I salute you, our efforts are not in vain.

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List of abbreviations and acronyms

ACERWC	African Child Experts on the Rights and Welfare of the Child (referred to as ‘the Committee’)
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	United Nations Convention on the Rights of the Child
ICRC	International Committee of the Red Cross
JLOS	Justice, Law and Order Sector
NGO	Non Government Organization
PRI	Penal Reform International
SEARCWL	Southern and Eastern African Regional Centre for Women’s Law
UNSMRs, 1955	United Nations Standard Minimum Rules (UNSMRs) for the Treatment of Offenders (1955) (The UNSMRs, 1955)
UNSMRs, 2010	UN Standard Minimum Rules (UNSMRs) for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (2010) (The UNSMRs or Bangkok Rules, 2010)
UNSMRs, 2016	Standard Minimum Rules (UNSMRs) for the Treatment of Prisoners (2016) (The UNSMRs or Nelson Mandela Rules, 2016)
UNODC	United Nations on Drugs and Crime
ZPCS	Zimbabwe Prisons and Correctional Service

List of human right instruments

The Convention on the Elimination of all forms of Discrimination Against Women 1979, (CEDAW).

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (The Women's Protocol).

United Nations Standard Minimum Rules (UNSMRs) for the Treatment of Offenders (1955) (The UNSMRs, 1955).

UN Standard Minimum Rules (UNSMRs) for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (2010) (The UNSMRs or Bangkok Rules, 2010).

UN Standard Minimum Rules (UNSMRs) for the Treatment of Prisoners (2016) (The UNSMRs or Nelson Mandela Rules, 2016)

United Nations Convention on the Rights of the Child (CRC).

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

List of local legislation

Constitution of Zimbabwe, Act No 20, 2013

Prisons Act Chapter, 7:11

Prisons Act: Statutory Instrument 60/2014

Prisons Act: Statutory Instrument 96/2012

List of case law

South Africa

S v M (CCT 53/06) [2007] (Constitutional Court judgment)

Zimbabwe

S v Ngorima HH-43-15 (unreported Harare High Court judgment)

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Executive summary

This dissertation interrogates the concept of an open prison for female inmates with children in Zimbabwe. The writer uses the women's law approach to explore the lived realities of female inmates with children in the conventional prison system in light of gender equality and best interests of the child provisions in the 2013 Zimbabwean Constitution. It discusses the need to address the current disparity between prison facilities for men and women. Currently, there is an open prison for male inmates only, yet female inmates with children would benefit from the same facility which addresses their lived realities and sex and gender specific needs better than the conventional prison.

The writer notes that the current prison regime is at odds with the provisions on equality and non-discrimination as provided in section 56 of the Constitution of Zimbabwe and other human rights instruments. She then calls for the expeditious implementation of an open prison for female inmates as one of the ways through which the rights of female inmates and their children can be protected and promoted.

Women in prison remain an afterthought in many settings and their facilities remain inadequate for pregnant and women with children. It was found that incarceration results in loss of contact between female inmates and their children left at home, as the alternative caregivers cannot afford to take the children to visit their mothers in prison because they are usually located far from their homes. Separation from children thus remains a major source of stress for female inmates and their children. Also, most of the prisons lack facilities that help to create a better environment for children, such as pre-schools and nursery facilities. As a result children with their mothers in prison end up being treated like prisoners which is against the Constitution and international human rights provisions. There have been some discussions on the international and regional legal plane about how far the best interests of the child principle should be interpreted and applied to protect children of incarcerated mothers. This has not been the case in Zimbabwe and the application of the principle seems to be limited to family law cases of custody and maintenance.

In the wake of section 81(2) of the Constitution, this paper discusses how this principle has been interpreted on the international and regional legal plane and it encourages actors within Zimbabwe's criminal justice system to begin to pay attention to the best interest of children

of female offenders in light of the fact that although child rearing should be a shared role between men and women, the reality is that women largely remain the primary caregivers to their children. In the same vein an open prison would enable female inmates to maintain the much needed contact with their children.

Further, it would seem the state's focus is limited to the rehabilitation and re-integration of inmates, forgetting one of the most important pieces of the puzzle, their children, as there are no specific measures targeting children of incarcerated mothers. An interview with a representative from UNICEF Zimbabwe revealed that a functional child protection programme would identify such children and protect their rights; yet an interview at the Social Services Department indicated that while the department acknowledges its obligations of providing alternative care for such children, it has not done much as there are no statistics for such children and it is too financially handicapped to identify and address their needs, hence they remain invisible. Thus, the children fall through the gaps within the system and this is where an open prison would come in as a measure to reduce the challenges faced by children with mothers in prison and left at home.

The study showed that most of the offences committed by female offenders are economic in nature due to the unrecognised and unrewarded gender roles, they typically perform and they are mostly non violent in nature, often committed in order to provide for their children. For instance, it was found that offences such as growing dagga, illegal mining and smuggling of goods were popular among female inmates coupled with a few cases of assault and culpable homicide. This points to the need for an open prison so that women are not totally separated from the children they feel compelled to support and this further calls for an increased use of non- custodial measures so that female offenders are given an opportunity to continue with their roles of providing for their children. It emerged that rehabilitation activities for female inmates are gendered as they are confined to the usual activities for women, such as gardening and hairdressing, which do not generate the much needed income to sustain them and their children upon release, while their male counterparts are exposed to a variety of income generating activities, such as welding, carpentry and formal education, among other things.

The paper concludes by calling upon the state to expeditiously implement an open prison for female inmates in order to fulfil its constitutional and international human rights obligations.

Also, the paper calls for the facilities at the open prison to take into account the sex and gender specific needs of female inmates by having facilities such as mother and baby units for female inmates with children in prison, single cells to promote privacy for female inmates with no children in prison as well as child friendly facilities. Further, the paper emphasises the need for the criminal justice system to protect the best interests of the child right from the arrest through to the trial and imprisonment of their mother and this should be coupled with the use of non- custodial sentences and economically empowering rehabilitation activities.

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND OF THE STUDY

1.1 Why an open prison for female inmates

As soon as I joined Zimbabwe Prisons and Correctional Service (ZPCS) as a legal officer, sometime in 2011, I was assigned to the Open Prison Selection Committee for men and since then I have interviewed and recommended groups of male inmates to the only open prison in Zimbabwe at Connemara.

I should confess that during the past four years as a prison officer, my interaction with inmates has been biased towards male inmates as we would visit male prisons for the purpose of identifying those who qualified to go the open prison. Occasionally, I would visit female inmates where they are housed in prisons annexed to male prisons to greet them and see their facilities but it never occurred to me that there was a need to capture the voices of these women and get to understand their challenges prior to the setting up of an open prison¹ for female inmates.

The Women and Criminal Justice class which I attended at Southern and Eastern African Regional Centre for Women's Law (SEARCWL) helped me to focus on the female inmates more closely. During lectures, I would link the discussions to my knowledge of the lived realities of female inmates and issues like the stigma and discrimination that they often carry throughout the system coupled with the geographical location of their prisons which usually make it difficult for them to have visitors, resulting in their losing contact with family and children left at home after incarceration. For instance, during the course of my duty I have heard prison rehabilitation officers highlighting the fact that loss of contact with family, especially children, often results in female inmates suffering emotional distress, thus making rehabilitation of such inmates difficult. Further, the class visit helped me to view Connemara from a different angle. As I toured the facility with gender lenses, I noted that indeed women, especially those with children, would benefit from an open prison system and this led me to investigate how women would benefit and how it could be done as I suddenly realised that

¹ According to Rohita Bura; An open prison is defined as a minimum-security prison, open camp, or prison without bars and is open in four respects: Open to prisoners, who enjoy freedom of movement, Open in security, marked by the absence of precautions against escape, such as walls, bars, locks and armed guards; Open in organisation, i.e., working is based on inmates' sense of self-responsibility, self-discipline, and self-confidence; and Open to public, i.e., people can visit the prison and meet prisoners.(Bura, 2012).

this discrimination goes against the provisions of section 56 of Zimbabwe's Constitution which provides for equality and non-discrimination.

As a member of the Open Prison Selection Committee, I frequently interact with the Guidelines to the Open Prison System in Zimbabwe which are the legal basis upon which the open prison system is premised. Interestingly, these guidelines provide for female inmates under the Inmates Clothing Section which contains a list of clothing items which female inmates are allowed to take to the open prison. This generated even more interest for me to do this research and investigate the reasons behind the prevailing discrimination, considering that female inmates were part of the original plan as provided in the guidelines. Furthermore, in light of the fact that liberal feminists argue that the law should be the starting point in seeking to achieve equality between men and women, the question that kept coming to my mind was, 'Why is there a gap between law and reality?'

The Ministry of Justice Legal and Parliamentary Affairs which is the parent ministry to the Department of Prisons and authorities within prisons frequently make comments in the media about having an open prison for female inmates, citing the need to protect children of incarcerated mothers as one of the major reasons.² However, up to now such a suggestion has not been implemented. This failure to establish an open prison has serious implications for female inmates who are losing out on all its benefits.

All this revived in me the desire to begin the fight for equality and non-discrimination as I felt guilty for having failed to advocate for the rights of female inmates by being part of the system, a system that view men as the norm and women as 'the other' (Beauvoir, 1949). This forms the foundations of this paper which also seeks to locate itself within the various studies on the imprisonment of women through an exploration of how equality and non-discrimination can be addressed when it comes to accommodation facilities for female inmates and also how the best interests of the child principle can be employed to address the rights of children accompanying their mothers to prison and those left behind when their mothers are incarcerated in light of the 2013 Zimbabwean Constitution and various human rights instruments.

² See: The Herald 26 October 2010; Newsday Zimbabwe 4 October 2012; The Herald Zimbabwe 16 July 2014; and New Zimbabwe 26 March 2014.

1.2 Contextualising the problem

This research is about equality for female inmates in the prison system. The Zimbabwe Constitution provides for equality and non-discrimination as well as children's rights. For inmates, section 50(5)(d) of the Constitution provides for their right to conditions of detention that are consistent with human dignity.

According to United Nations on Drugs and Crime (UNODC) the percentage of women in prison worldwide, including pre-trial detention, is very small (between 2% and 9% exceptionally above 10%). Since the vast majority of prisoners are men, the special needs of women are usually not taken into account, resulting in discrimination against women prisoners (UNODC, 2013). This challenge is also faced by female inmates in Zimbabwe as there is only one open prison for male inmates and that is Connemara open prison in the Midlands province. There is no open prison for female inmates although the government has approved the setting up of an open prison for female inmates in Marondera (a centre about 60 kilometres from the capital city, Harare). It should be noted that implementation of the open prison for female inmates has been outstanding since 1998 when Connemara was built and this paper seeks to advocate for equality and non-discrimination for female inmates by adding the voices of female inmates to the operationalization of the open prison system for female inmates in Zimbabwe.

Over the years there has been an increase in the number of female inmates in Zimbabwe with the 2012 prison population census indicating a steady increase.³ Female inmates face various challenges in the conventional prison set-up and this includes limited and even lack of contact with children at home in most cases, inadequate facilities for children accompanying their mothers in prison, including, for example, restrictive security regimes, limited play time for children and reintegration challenges, among other things. The fact is that female inmates would benefit from the open prison system in various ways including the issue of home visits which improves contact with family members and better facilities for children accompanying their mothers in prison such as more time for children to enjoy their right to play due to minimum security restrictions. This research seeks to investigate the life experiences of female inmates with children in the conventional prison system and explore whether their conditions comply with relevant provisions of the Constitution and human rights instruments

³ Zimstat conducted a census of female inmates for the first time in 2012 and the results show a steady increase although they remain less than their male counterparts.

and how the concept of an open prison can address some of the challenges faced by female inmates.

The other problem that necessitated this research is that despite several comments, debates and media reports about the open prison for female inmates, there has been no implementation of the open prison and female inmates have endured discrimination for the past 15 years. Also, children accompanying their mothers in prison have endured the unfavourable conditions as there are usually few female prison facilities and accompanying services. For instance, there are only two female prisons in Zimbabwe that have pre-school facilities for children accompanying their mothers in prison.⁴ Children left at home have not been spared either as they lose contact with their incarcerated mothers in most cases. This scenario, coupled with the fact that there is no case law on the best interests of children living with their mothers in prison and also children left at home complicate the whole process. This paper is important as it will expose the challenges faced by female inmates with children in the conventional prisons and call for the expeditious implementation of the open prison for female inmates in Zimbabwe.

1.3 Objectives of the research

This study seeks to achieve the following objectives:

1. To investigate the suitability of an open prison for female inmates with children in Zimbabwe.
2. To examine the conditions in Zimbabwe's conventional prisons so as to ascertain whether they are responsive to the specific needs of female inmates with children.
3. To ascertain the attitudes of actors and structures regarding the implementation of an open prison for female inmates.

1.4 Research assumptions

1. The current open prison system in Zimbabwe discriminates against female inmates.
2. Female inmates with children face more challenges in conventional prisons than their male counterparts.

⁴ There are 3 female only prisons and around 23 other female prisons attached to male prisons and a few children are admitted with their mothers into those prisons.

3. An open prison is appropriate for female inmates with children accompanying them in prison and with children at home.
4. There is a need to take into account the needs of female inmates with children prior to the setting up of an open prison.
5. The current legislation and policies on open prisons do not adequately protect the rights of female inmates and their children.
6. There is a need for legislation and other measures to address and extend open prisons to female inmates in Zimbabwe.

1.5 Research questions

1. Does the current open prison system in Zimbabwe discriminate against female inmates?
2. Do female inmates face more challenges in a conventional prison than their male counterparts?
3. Is an open prison appropriate for the lived realities of female inmates?
4. Is there a need to take into account the needs of female inmates prior to the setting up of an open prison?
5. Does the current legislation and policies on open prisons adequately protect the rights of female inmates?
6. Is there a need for legislation and other measures to address and extend open prisons to female inmates in Zimbabwe?

1.6 Area of the study

There was a need to demarcate the prisons of research from the outset. This is due to the fact that there are two types of prisons which accommodate female inmates in Zimbabwe. There are mixed prisons where female inmates are accommodated in a separate wing attached to the male prison and female only prisons where female inmates occupy the whole prison. I was further confronted with the reality that the mixed prisons accommodate female inmates in small numbers and they are dotted around the country. Thus, there was a need to streamline and focus on the possible within the time frame available for the research. I then decided to select prisons which are located in areas that are representative of the four regions of the Prison Service and they are the Matabeleland, Manicaland, Mashonaland and Midlands regions. I also had to balance the geographical locations in order to capture different

experiences. For instance; women detained at the border town of Beitbridge have different experiences from those in Harare. There was also a need to assess rehabilitation activities which are in most cases influenced by the geographical location of the prison. For instance, there are more farming activities in Manicaland than there are in Matabeleland due to their different weather patterns.

This study was therefore carried out in four prisons which accommodate female inmates in Zimbabwe, that is, Chikurubi female prison, Beitbridge prison, Mutare prison and Shurugwi female prison. ZPCS management and staff members were interviewed as well as representatives from the Ministry of Justice Legal and Parliamentary Affairs and ZPCS stakeholders. I am convinced that the results of this study will apply to most parts of the country due to the fact that I met and interviewed female inmates from different parts of the country in the four prisons and further, there was a similarity in most of the concerns raised by women in the four prisons, a sign that some of the issues affecting female inmates are generally similar.

CHAPTER TWO

2.0 METHODOLOGICAL APPROACHES AND METHODS

2.1 Navigating the not so common road

As a women's law researcher, I took female inmates as my focal point and collected data on their lived realities in the conventional prison system and this bottom-up approach is required by the women's law approach. One of my assumptions was that female inmates face more challenges in a conventional prison than their male counterparts, hence I interviewed female inmates with children in prison in order to capture their voices on their experiences and challenges associated with their living conditions in a conventional prison as women. I also captured their voices in relation to challenges associated with having children with them in such conditions and interventions they expected from the state. I focused on the woman as she interacts with the prison system, not how women fitted into the prison system and this helped me to unearth the fact that female inmates remain marginalised due to their small numbers. I also interrogated the responsiveness of prison conditions and facilities to children's rights and needs. Further, I interviewed female inmates with children at home to capture their voices on their experiences, for example, one inmate indicated that she was better off than her teenage daughter who had taken over all her responsibilities and was failing to balance that with her school work while she was in prison.

I also bore in mind that the women's law approach knows no boundaries due to the fact that women are defined as women through a whole series of relationships, from the most intimate and private to the most open and public (Dahl, 1987: 30), and, further, that gender makes a difference in terms of standard correctional procedures (Covington and Bloom, 2003: 130). Therefore, I also interrogated the policy on open prisons to examine how female inmates fit into the whole process and how the current legal provisions correspond to their realities and specific needs.

Within the winnowing basket that is women's law and bearing in mind some of my assumptions that the current open prison is discriminatory against female inmates and that there is a need to take into account the needs of female inmates with children prior to the setting up of an open prison, I interviewed the policy makers in prisons and the Ministry of Justice (employing the relevant actors and structures approach) in order to capture their

perspectives, actions and inactions in relation to an open prison for female inmates. It was critical to obtain the reasons behind the delay in the construction of an open prison for female inmates and the key actors' likely attitudes towards its set-up and their influence over its structure in order to gauge the extent to which the lived realities of female inmates with children are considered. One of the actors was the Commissioner-General of Prisons.

Also, within the women's law approach, I saw the benefit of being on the ground as I capitalised on the fact that this methodological approach is an interactive process and engaged with various categories of women, married, widowed and single, with children in prison and at home. Thus, I gathered empirical data based on my research assumptions and questions. For instance, it emerged whilst in the field that female inmates are also limited to gendered activities when it comes to rehabilitation programmes and this not only called for an exploration of the impact of such activities, but also indicated to me the need to emphasise the fact that rehabilitation activities at the intended female open prison should be focused on helping women to earn an income after release from prison.

Further, although the Constitution provides for equality and non-discrimination and the treatment of all inmates with dignity, female inmates need more sex- as well as gender-specific conditions, especially due to the fact that most of them have children and they usually have the burden of parenting which is not usually the case with their male counterparts. Thus, I noted the importance of sex and gender analysis when it comes to the design and implementation of the open prison for female inmates.

It is not in doubt that female inmates and their children have rights both at the local and international level. According to Stang Dahl, the main aim of the women's law approach is to describe, explain and understand women's legal position especially for the purpose of improving their position in law and society. The women's law approach describes and evaluates law from a feminist perspective (Dahl, 1987: 27). Compliance of the state with human rights instruments on women and children's rights was measured in light of the obtaining situation in which female inmates face challenges with their children in the conventional prison system and their children at home are exposed to risks of abuse, lack of parental care and neglect due to the absence of their incarcerated mothers. The best interests of the child both in prison and at home and gender equality are some of the issues for interrogation in this research.

2.2 Data collection methods

2.2.1 *My two hats*

Throughout the research, I wore two hats, one as a prison officer and the other as a student: I was an officer to fellow officers and a student to inmates. I made prior arrangements with Officers In Charge of stations over the phone so that they would facilitate this arrangement and this was meant to gain the trust of the inmates and encourage the giving of honest responses as I explored the lived realities of female inmates. Thus, female inmates never got to know that I was a prison officer.

2.2.2 *Ethical considerations*

SEARCWL has a code of ethics for researchers and as a matter of policy, researchers read and sign the same prior to conducting research. This code emphasises the need to respect the dignity and privacy of the respondents and also that their rights are paramount throughout the research. It also places emphasis on the following: the need to communicate the research to the respondents and elicit their informed consent; the right of respondents to remain anonymous; the need to ask them clear questions in a respectful manner; that the publication of results should respect the respondents' right to dignity and also the need to maintain the privacy of the respondents.

This code formed the foundation of my research methods and influenced my conduct throughout the research. In the field I first acquired authority from the Commissioner-General of Prisons to conduct research in selected female prisons and this was done after communicating clearly and fully the nature of my research and the aims by submitting my research proposal.

The next step was to make arrangements with my colleagues, Officers in Charge of the prison stations that I intended to visit. My colleagues knew me as a fellow officer of senior rank and I requested them to inform the female inmates that I was a student. This arrangement enabled me to be left with inmates during individual interviews because my colleagues trusted me as a fellow officer. This arrangement meant inmates were free to share their concerns and views in the absence of officers and this allowed me to obtain more honest responses than I may otherwise have received and which are valuable to this paper.

However, this arrangement placed a heavy onus on me to protect the female inmates I interviewed to ensure that nothing they said or did would prejudice them. Prior to my conducting the research, there was always a the dilemma of balancing what I would find in my research and my responsibilities as a prison officer. So, I made it a point that in my engagement with female inmates, I would never cross the line of being a student. In getting informed consent, the participants were first advised that they had no obligation to be interviewed which meant that they were free to turn down my interview request. It should be noted that all potential interviewees freely agreed to the interviews and I later observed that this was due to the fact that they actually saw it as an opportunity to share their heavy burdens with me. They would frequently make such comments as ‘thank you for listening to me’ after I expressed my gratitude for the interview opportunity.

Further, the participants were briefed on the purpose of the study and this was explained as the need to see how the state can improve the living conditions of female inmates without mentioning the issue of an open prison to avoid a situation in which female inmates would just point to the need for an open prison without being clear on what challenges it would address. The approach was to find out what women genuinely wanted the state to do in terms of addressing their needs without teaching them about an open prison and then deduce how the proposed solution of an open prison could address the challenges they raised. In reality, this worked out well as only two inmates had an idea about an open prison and made recommendations for it during one-on-one interviews. Confidentiality of information was stressed and maintained throughout the research. This has meant that there will also be selective exclusion of information such as identity throughout this paper.

2.2.3 Focus group discussions

After making arrangements with officers in charge of the relevant prison stations, I visited the prisons as a student to the inmates and a prison officer to the officers. The officers in charge would introduce me as a student doing research and would leave me with rehabilitation officers who were mostly my juniors in terms of rank and I would take time to unpack my topic and explain that participation was voluntary.

I started off with focus group discussions as a way of getting inmates to appreciate the topic for discussion and to generate interest. It was also an opportunity for them to decide if they would want to proceed to individual interviews. I tapped into the free atmosphere that is

usually associated with focus group discussions to get women's views on their living conditions and the challenges associated with having children at home and also in prison. A total of four focus group discussions were held at the four prisons that I visited. I was impressed by the levels of participation and I noted that once one inmate set the ball rolling many would follow and there was plenty of data due to high interaction levels. Of course, there was great need for me to keep the discussion flowing and also to keep track of all the data (Bentzon *et al.*, 1998: 208). This was mostly due to the fact that issues of children usually generate a lot of interest for women, regardless of status. It is also my understanding that children's rights are not divorced from women's issues and rights in many Zimbabwean homes. This method was very effective and most women would go on to give recommendations on how they expected the state to address their plight. Most of them suggested ways that would enable them to have at the very least contact with their children at home and better facilities for their children in prison.

2.2.4 *In-depth interviews*

I used purposive random sampling and targeted female inmates with children in prison first and the rest afterwards for individual interviews so as to capture their experiences as mothers with children in a closed prison set-up and also those with children at home. For the first time in my four years as a prison officer, I got to interact more closely and meaningfully with female inmates, thanks to the women's law course. As highlighted earlier, I would first emphasise the fact that the interview was voluntary and most female inmates seemed to enjoy the individual interviews probably because they took it as a platform to share their cares and worries with someone. I realised that most of the inmates who had children in prison also had children at home and most of the women would get emotional about their painful experiences and they felt free to express their concerns and fears, something they could not do during focus group discussions. Further, I got to appreciate the individual experiences based on the status of the women. Married inmates had different challenges from the widowed and single mothers. Some inmates were taking care of children with disabilities, others were taking care of orphaned grandchildren or nieces and nephews, while some were taking care of minor children and there were even others who were concerned about the adult children they had left at home. This proved the fact that women do not constitute a monolithic group. I also found that women were free to share the nature of their offences and gathered that they mostly commit these offences in a bid to maintain their roles as wives and mothers.

2.2.5 Key informants

The key informants were chosen on the basis of their positions and perceived knowledge on the issue of an open prison for female inmates. Prisons management, officers in charge of female prisons and officials with the Ministry of Justice were some of the targeted informants. The objective was to get the official position from these strategic sources and issues to do with current plans, targets and challenges associated with implementation were solicited from the respondents. The information discussed also helped me to triangulate the data obtained from female inmates.

2.2.6 Observations

Through observation of the activities by female inmates, the nature of their food and feeding times, I managed to assess the living conditions of female inmates and this helped to critique data collected from key informants. For instance, I observed that the elderly female inmates who were left to take care of children whose mothers had to leave them to perform prison work (usually gardening) were sometimes overwhelmed, especially when they would sometimes have as many as three children in their care making it difficult for them to give adequate attention to an individual child's needs. I also took time to go into the cells, especially those designated for women with children in prison and assess their condition in view of the number of female inmates and their children sharing the cells. I also assessed, where they were provided, the adequacy of the children's playing facilities.

2.2.7 Perusal of relevant files

As a prison officer, I had an opportunity to access relevant files on the open prison system in Zimbabwe. These files were helpful as they enabled me to trace the origins of the open prison system, the establishment of Connemara open prison for men and also how female inmates were excluded, although they were part of the original plans. This triangulated some of the data I had gathered from the key informants and enabled me to probe further into the gaps in the data. Armed with such information, for instance, I interviewed some members of management again in order to clarify the reason why female inmates did not benefit from the open prison system at the same time as their male counterparts given the fact that an open prison is so ideal for female inmates with children and had been approved at the same time as the open prison for men. The information I gleaned from the files cleared the misconception I had prior to the research that the approval for a women's prison had been given much later in about 2010 when the issue was topical in the media.

2.2.8 *My role as an insider researcher*

As a prison officer, I benefitted from the following aspects of this research.

Rank is crucial in my line of duty hence being a superintendent made it easier for me to interact with officers in charge. For instance, I was given a day with inmates by a fellow superintendent at one of the female prisons making data collection easier as I had focus group discussions, one-on-one interviews and also had time to observe the living conditions of female inmates.

After focus group discussions with inmates in the presence of officers, I held individual interviews with inmates in private and this helped me to get more honest responses. I had easy access to the Commissioner-General of Prisons' office because our offices are at the national headquarters.

However, I had such challenges booking an appointment with the Permanent Secretary for Justice that I ended up interviewing one of the directors. This, however, turned out to be a bonus which I had not anticipated because the prisons desk at the Ministry falls under this director's office. This meant that I received practical responses from this respondent who has spent a long time handling prison issues.

My unique position and context resulted in the following advantages for the research.

I had easy access to prisons as I used my work identity card and letter of authority to conduct research to gain access to the prisons and would not go through the usual security restrictions. I also drew upon the trust of my colleagues as they allowed me to conduct interviews in their absence. In turn, this enabled me to get more honest responses from inmates and these will be useful in advocating for an open prison for female inmates. Experience has taught me that inmates are usually not free to express their views in the presence of prison officers, including myself, as they fear that they might suffer prejudice, so this arrangement was extremely worthwhile.

As a prison officer, I have access to work-related documentation which cannot be accessed by non-officers. Accessing files on open prison enabled me to appreciate how the system

came to be adopted and the existing gaps in the implementation of the open prison for female inmates.

I had an opportunity to continually clarify issues surrounding and lobby for an open prison for female inmates. Data triangulation which is envisaged in the grounded approach was made easier because of my being a prison officer. For instance, after perusing files I engaged the authorities through interviews to clarify what I found out in the files.

I had easy access to partner organisations. Contacting partner organisations such as the International Committee of the Red Cross (ICRC) was made easier because of my position in prisons as in most cases we have had meetings on other issues prior to this research.

I have already rekindled talk around the issue of an open prison for female inmates. For instance, some members of the prison management appreciated the research citing the fact that as management they were already considering ways in which the open prison can be implemented to benefit female inmates.

However, I did not manage to take photographs of female inmates and their children although this would have shown the realities on the ground. This is due to the fact that there was an overriding need to protect the rights of female inmates and also for security reasons. The photographs that will be attached were obtained mostly from the print media and are already in the public domain.

Prison	Number of inmates interviewed
Chikurubi female prison	12 female inmates
Beitbridge prison	6 female inmates
Shurugwi female prison	33 female inmates
Mutare prison	15 female inmates

Table 1: Showing details of female inmate respondents

The above table shows the female inmates I researched through both focus group discussions and individual interviews. For instance, at Shurugwi female prison, I had a focus group with a total of thirty-three female inmates and individual interviews with fifteen female inmates.

Description of Respondents	Number and Sex
Commissioner-General of Prisons	1 male
Deputy Commissioner-Generals	2 males and 1 female
Legal Officers	1 female
Rehabilitation Officers	6 females
Officers in Charge	2 females and 3 males
Director in the Ministry of Justice	1 female
Stakeholders	1 female and 1 male

Table 2: Showing details of respondents apart from female inmates

The above table shows the various key informants that were interviewed during the research in their capacity as policy makers and officials who could contribute towards the implementation of the open prison for female inmates.

2.2.9 Impact of my research methods

The discussed data collection methods contributed to my ability to gather relevant data. Together with my experience as a prison officer, they also helped me to know which data to collect and how to get information from female inmates and officers. Also, perusing files helped me to unearth the history of the concept of open prisons in Zimbabwe as well as the gaps in the implementation process which excluded women. Throughout the research, I continuously triangulated the data with my experience as a prison officer and this helped me to check the validity of the data. It was also revealed that female inmates and their children would benefit from an open prison facility. Thus, I managed to collect adequate information which I can use to lobby for an open prison for female inmates.

CHAPTER THREE

3.0 WHAT ARE WE TALKING ABOUT?

3.1 Unpacking the open prison system

An open prison is defined as minimum security prison, open camp or prison without bars in which prisoners are trusted not to escape (Bura, 2012). I first visited Connemara open prison for men in my capacity as a prison officer and a member of the Open Prison Selection Committee. What struck me was the low perimeter fence around the facility and on our way there we had met an inmate who was herding prison cattle kilometres away from the prison and was doing so unsupervised. Further, I noted that the inmates at the open prison had keys to their rooms and they walked around the prison and the nearby community unescorted totally unlike the conditions in the closed prison set-up. The inmates also work under minimum supervision as they are trusted to be responsible and honest. Having been to Chikurubi Maximum and Harare Central Prisons which have high walls, I was surprised by the low security restrictions.

This development has not been limited to Zimbabwe as it has followed world trends in which countries have for some time been turning to open prisons for solutions for and valuable improvements to the traditional closed prison system. According to Vibhute, these institutions ostensibly eliminate the tensions and barriers created by the restrictions and physical restraints placed on inmates of a conventional prison and provide them with better opportunities for re-interaction and re-assimilating with community and family. They furnish a ‘half-way-home’ to their inmates for their smooth and effective socio-psychological rehabilitation and re-integration into the social mainstream (Vibhute, 2005). Thus, open prisons help in maintaining humane and dignified treatment for inmates as well as contact with family which promote their successful reintegration into society.

3.2 There is a story behind the open prison philosophy!

The philosophy of open prisons is reflected in the two *dicta* of Sir Alexander Paterson, a penologist and member Secretary of the Prison Commission of the United Kingdom who made an outstanding contribution to the development of the open prison system as follows:

1. A *man* is sent to prison as punishment and not for punishment
2. You cannot train a *man* for freedom under conditions of captivity.
(my emphasis)⁵

According to Sinha, this philosophy led to the opening of the first British open prison, New Hall Camp as a satellite to Wakefield prison in the 1930s in the UK and this prison was characterised by lack of walls and even a boundary fence. However, the pioneering effort in this area was the Witzwill establishment in Switzerland as far back as in 1891 (Sinha, 2013: 76).

From my experience with the Connemara open prison for men in Zimbabwe, I have learnt that rehabilitation and reintegration of inmates is the major thrust of an open prison. It also relieves its inmates from the restrictive security regime which characterises a closed prison, such as constant head-counts, inspections, limited number of visitors and visiting time and high standards of discipline. The open prison facilities are characterised by the absence of high walls, physical restraints and minimum supervision of their inmates. Further, the inmates are encouraged to and given an opportunity to re-mould their behaviour and approach to life. In this regard, the inmates are given relatively more freedom to interact with not only the prison personnel and other inmates but the outside community as well. They are also offered better services such as home leave, vocational and formal education, among other things. Overall, the operation of an open prison places emphasis on self-control, self-assurance and accountability of inmates.

Therefore, while a traditional closed prison is dominated by a high security regime coupled with high discipline and a general lack of trust towards its inmates, limits their freedom and deprives them of activities that would otherwise benefit them, an open prison serves the dual purpose of both eliminating criminals from society and reforming them under institutional treatment by blanketing out the very conditions which helped turn them into violators of the law in the first place (Sinha 2013:76).

⁵ The use of the word *man* confirms a 2009 study by ICRC which revealed that prison is essentially a man's world. Prisons are run by men for men and female prisons are a poor adaptation of an environment meant to hold men in a secure environment.

In the same vein, it was accepted on the international level that a person is not denuded of his or her rights by virtue of incarceration. The First Congress of the United Nations on the Prevention of Crime and Treatment of Offenders, then defined an open institution ‘as characterized by the absence of material and physical precautions against escape (such as walls, locks, bars, armed or other special security guards), and by a system based on self-discipline and the inmate’s sense of responsibility towards the group in which he lives.’⁶

Further, the First Congress discussed the possible structure of an open prison and was persuaded that minimum security and self-discipline of inmates should be accepted as the basics of such prisons. It was believed that by avoiding the restrictive security regime of closed prisons, open prisons can advance the goal of rehabilitation of offenders in a more effective manner. The First UN Congress also encouraged states to set up open prisons in view of their benefits.

It is interesting to note that female inmates still remained invisible then due to their small numbers and although there was provision for non-discrimination in the United Nations Standard Minimum Rules (UNSMRs) for the Treatment of Offenders (1955) (The UNSMRs, 1955), the specific needs of female inmates were only captured in 2010 in the UN Standard Minimum Rules (UNSMRs) for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (2010) (The UNSMRs or Bangkok Rules, 2010).

For female inmates the developments have been generally slow, hence there are few open prisons for female inmates worldwide, with India having had its first open prison for women in 2010 and the UK in the 1990s. Zimbabwe should not hesitate to make the move, however, given the fact that Connemara was established in the 1990s and from interaction with my fellow students, I gathered that it is actually a potential model for most African countries. What is important is that female inmates should also be able to receive the same benefits as their male counterparts and nothing should stop that development.

⁶ See, Recommendation I, United Nations, Resolution and Recommendations adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (August 29, 1955).

3.3 How it all started! The concept of an open prison in Zimbabwe

The idea of an open prison in Zimbabwe was conceived as far back as 1994 and this culminated in a study tour by a team of prison officers to the UK and Denmark in 1998.⁷ The concept of an open prison was then developed from the reports of the team and some of the issues were adopted to suit our conditions. For instance, the team noted that in Denmark, there were conjugal visits at the open prison but such arrangements are not available at Connemara as home leave is interpreted to also accommodate conjugal issues.

Connemara and Shurugwi closed prisons were then identified for purposes of accommodating male and female inmates, respectively. In 1999 a committee selected 108 male inmates and 30 female inmates for the two 'open prisons.' However, only Connemara was officially opened as an open prison for male inmates on 30 October 2000 and Shurugwi remained a closed prison and this has marked the beginning of discrimination against female inmates for the past 15 years.

3.4 Open, but closed to women!

Officially opened in October 2000, Connemara open prison for male inmates actually opened its gates in 1999 and since then several groups of inmates have passed through it. It was agreed by key informants that so far the project has been a success. There are several characteristics of the open prison system which make it ideal for female inmates with children as shown below.

Home leave and visits. The inmates are allowed to go on home leave for five days per month and these visits are unsupervised as this is deemed unnecessary. Where the inmate cannot afford travel expenses then they are met from funds raised from projects run by the inmates at the facility. As a member of the Open Prison Selection Committee and also a student, I have interviewed several male inmates who indicate that when they go home they start off projects such as poultry farming and leave their wives in charge and monitor the business when they visit them every month. Some participate in agricultural activities while others take time to be with their families and to attend important family gatherings. Most female inmates I interviewed wished for just such an opportunity to see the children they have left at home and find out how they are and their challenges.

⁷ Report of the visit to open prisons in Denmark and the United Kingdom, 1998.

With regard to visits from relatives and friends, inmates are allowed up to 10 visitors per visit usually during weekends from 9 a.m. to 3 p.m. in order to maintain the offender's social relationships and encourage their reintegration. The conversations with their relatives are normally out of hearing but in sight of prison officers. In this regard the few female inmates who were being visited by their children, wished they could spend more time with them and also have direct contact with them whenever they visited.

Security measures. The male inmates at Connemara enjoy flexible lock-up times which means that they go to bed around 9 p.m. and this helps to create a more normal homely environment. For female inmates with children in prison it would mean that they would have an opportunity to prepare feeding bottles for their children and for them to adjust supper time so that they could manage to breast feed their children throughout the night.

Cooking and dining room facilities. The preparation of meals and dining room facilities are communal and the food is provided from public funds. Inmates are allowed to bring uncooked food in the form of potatoes, meat and eggs and these improve their diets given the fact that in most cases the food offered in prisons does not offer adequate nutritional value due to budgetary constraints. For female inmates such an arrangement would help them prepare nutritious food for themselves and their children.

Inmates accommodation. Inmates at Connemara are housed in a communal block upon arrival and they later graduate to single rooms, thus giving them more privacy. Also inmates in single cells keep the keys to their own rooms. In addition, single rooms are furnished with a table and a chair. The single cell accommodation would be appropriate for female inmates due to the fact that they have children and also that they value privacy.

Rehabilitation activities. The major thrust of an open prison is rehabilitation and counselling is viewed as a key issue coupled with training. There are a variety of rehabilitation activities which include formal education, vocational training at the nearby Kaguvi Vocational Training Centre as well as University education which is the latest development; one male inmate has received a sponsorship from a local church and is attending lectures at Midlands State University. The inmate, like any other student, commutes to the university in the morning in civilian clothing and attends lectures during the day returning to the open prison in the evening. He also has access to the internet at the open prison and is allowed to make

use of his personal computer for his studies. This is a crucial development which should be encouraged throughout the system. Such activities are not available to female inmates as shall be discussed later and there is every reason why they should also benefit from such a facility.

Additional one quarter remission. Inmates are given an additional one quarter remission of the sentence still to be served at the open prison by the officer in charge and this reduces the offender's period of imprisonment considering the fact that he would have benefitted from the usual remission in a closed prison. Separation from children is the major source of distress for female inmates hence the benefit of a similar remission provision would reduce the stress suffered by female inmates who could also spend less time away from their children.

Ablution facilities. Each residential block of inmates has well constructed and maintained ablution facilities at one end of the block which houses them and the entrance to it is inside the block which means that even at night inmates can leave their rooms to use the ablutions. Even facilities for inmates in communal cells are well partitioned with doors which can be closed. Privacy is an important issue for female inmates and such facilities would make their conditions more dignified.

The above and many more constitute the benefits associated with the concept of an open prison in Zimbabwe and the current situation is such that only male inmates are sufficiently privileged to access them while female inmates remain confined to the closed prison system. Without implementation of the open prison for female inmates, the open prison remains open, but closed to female inmates!

CHAPTER FOUR

4.0 WHEN THE HAND THAT IS SUPPOSED TO ‘ROCK THE CRADLE’ IS RESTRICTED!



Figure 1: Female inmates with their children at Chikurubi female prison (Source: The Sunday Mail, Zimbabwe dated 23 September 2015).

4.1 The connection between mother and child

Many years ago William Rose pointed out, in relation to mothers, that: ‘For the hand that rocks the cradle is the hand that rules the world.’⁸ I had forgotten about this statement until I embarked on this research. This statement is still true today as, traditionally, women have been and remain the prime carers of their children. I would say that most women who stay at home or work outside their home and frantically try to keep it all together at night in preparation for the next day, identify with this statement. I live with my husband and our young daughter, and, although both of us are employed, I am the primary care giver of our child. I prepare her for pre-school and take her to and from pre-school on a daily basis. Whenever she is not well, I take leave from work to take her to the doctor. I have noted that much the same occurs among my female colleagues. And so I feel closer to my daughter than anyone else and whenever I travel away from home I frequently enquire about her wellbeing from my husband, I know he can take care of her but I just like and have to be sure. The hand that rocks the cradle does indeed rule the world as, even today, the caretaking role still largely rests on the woman. Women are still expected to provide a place of love and safety for their children, to train them to be world changers, to relate with others, to take responsibility, the

⁸ I William Stewart Ross, *The Hand that Rocks the Cradle*, in *The Oxford Book of English Verse* 105 (Christopher B. Ricks ed. 1999).

list is endless. Just like mine, the stories of most female inmates reflect the gender disparity or unequal social distribution of child care that exists in our society. Although child bearing is the only experience which differentiates women from men, child rearing part is supposed to be shared between the two.

Research has shown that: ‘When a woman is jailed, the children even need counselling services because most have a close bond with their mothers’ (Njeru, 2012). I would add that jailed mothers also need counselling as separation from a child is traumatising. For instance, one inmate said:

‘Muno mucell tiri 10, vana vakamiririrwa muno i24, tinomuka kwaakunoyedza tichitaura zvatinyira pavana vedu pasina hapo zvatinyogona kuita’.

(Translation: ‘There are ten of us in this cell and a total of twenty-four children are represented here, we wake up at dawn and discuss our worries about our children with no solutions, though.’)

Another inmate who had left two children at home had this to say:

‘Ndinomuka husiku, ndotarisa light remuno iro ndichishaya kuti saka vana vangu vanozyigona sei ndisipo’.

(Translation: ‘I wake up during the night and look at the light bulb in this cell, wondering how my two children are managing without me.’)

Throughout the research, I could relate to the experiences of the female inmates most of whom have children either in prison or at home. Out of all the female inmates interviewed, only one did not have a child, but still she was a primary caregiver to her late sister’s children. The inmates who were mothers were also primary caregivers to their children and separation from their children resulted in anxiety and distress. Also, it is my understanding that women’s rights and issues are closely linked to children’s rights and issues in many Zimbabwean homes. In the end there seems to be a connection between mother and child, one that is often stronger than in any other relationship. This has also been confirmed by research as follows:

‘Motherhood and the relationship between mothers and their children are distinguishing features of the female prison population. They require particular attention and responses in law, policy and practice. Unnecessary separation of mothers from their children, not only affect the individual mother and child,

but the long-lasting negative impacts may have *broader societal and inter-generational effects*' (Brett, 2012: 8). (My emphasis)⁹

A disruption in the connection between mothers and their children results in emotional distress on both the mother and the child and in this regard one inmate had this to say:

'Pandinowana ndiro yangu yesadza muno mujere ndinombomira kudya ndofunga kuti mwanasikana wangu ane 7 years adya here? Dzimwe nguva rinobva raramba kupinda.'

(Translation: 'When I get my meal here in prison, before eating I think about my 7 year old daughter wondering whether she would have eaten, sometimes I then fail to eat.')

Considering that mothers are their children's primary care givers, the incarceration of women has considerable side effects on their children. Sometimes alternative care givers are available to provide for their children. However, they may fail or neglect to do so, and sometimes even possibly abuse them if they are seen as unwanted burdens. However, what is certain is that the relationship between mother and child actually suffers in these trying times.

Almost all the female inmates I interviewed indicated that when they were arrested their first thoughts turned to their children, realising that they would be worse off during their incarceration. Often after their release female inmates re-offend in an effort to provide for their children. A tearful middle aged female inmate said:

'Pandakasungwa ndakatanga kufunga vana vangu, kuti vachararama sei ndisipo ndichitarisa kuti ndakatosungirwa kurima mbanje ndichitengesa kuti vaende kuchikoro.'

(Translation: 'When I was arrested, I first thought about my children, wondering how they would survive, especially in light of the fact that I was growing dagga in order to pay their tuition.')

Another inmate had this to say:

'Ndikanzwa kuti mwana wangu arwara ndirimuno mujere neni ndinotorwarawo.'

(Translation: 'If I get information that my daughter is sick I will get emotionally affected such that I also become sick.')

⁹ Disturbing the bond impacts on generations, the country and the world at large!

Thus, women have a strong connection with their children due to the fact that they give birth to them and the bond between them grows as they child grows up. This reality results in the difficulties associated with separation of mother from child or upon incarceration of a mother because in either case the child, as a result of the separation, end up paying for their mother's sins. There is also a general lack of consideration of 'the best interests of the child' in the whole incarceration of female inmate/mother process.

4.2 Who is being punished? The realities of an incarcerated mother

'Given the effects on children of paternal incarceration, one would surmise the incarceration of the child's mother, who is commonly the primary caregiver, would have even further detrimental effects to the child's overall wellbeing' (LeFlore & Holston, 1989).

Section 58 of the Prisons Act Chapter 7:11 provides for the admission of an unweaned infant child with its mother; that the child may be supplied with clothing and necessities at the public expense and also provides that arrangements will be made for the child to be handed over to relatives or friends after they have been weaned. Where there are no friends or relatives, the child shall be handed over to the Department of Social Services. The Zimbabwe Constitution has elaborate provisions on children's rights enunciated in section 81 and they should be interpreted to protect the rights of children whose mothers are incarcerated, especially the right to family or parental care or appropriate care when removed from the family environment. Rule 29 of the UN Standard Minimum Rules (UNSMRs) for the Treatment of Prisoners (2016) (The UNSMRs or Nelson Mandela Rules, 2016) provides that children accompanying their mothers in prison shall not be treated as prisoners. The Bangkok Rules (2010) also provide for such children's rights to be honoured.

Incarceration of their mother can affect all areas of a child's life and these effects are many and varied. Some of the challenges children experience may have existed before their mother's incarceration, for instance, most female inmates referred to the drought that prevails in the country and how they feared that their children at home would lack food during their incarceration as they, as their mothers, used to fend for them. Some of the issues however, emerge solely as a consequence of the incarceration of their mother. For instance, most inmates feared that their children would be forced to drop out of school due to the non-payment of fees and they risked physical and sexual abuse from substitute carers.

Throughout the research, I learnt that most female inmates have children either in prison or at home. This position is buttressed by earlier research. For instance, it was noted that most of the women in prison are mothers and in most cases, they are the main care-givers of young children (Sarkin, 2008: 139). Further, research has also shown that both situations can expose the child to risk. For instance, the Special Rapporteur on Prisons and Conditions of Detention in Africa stated:

‘Prisons are not a safe place for pregnant women, babies and young children and it is not advisable to separate babies and young children from their mother’ (Chirwa, 2001: 36).

Thus, there is always a dilemma as to how children of incarcerated mothers should be treated and this most often results in their either paying for their mother’s wrong doing if they remain behind at home or ‘serving’ their mother’s sentence if they accompany them to prison (Samakayi-Makarati, 2003: 17). Thus, they end up experiencing their mothers’ punishment. The best interests of the innocent imprisoned children remain largely unacknowledged because of gaps in the system. For instance, the law is not yet clear on the issue, the Prison Service is underfunded and the Social Services department is financially handicapped. It was noted that incarceration in a prison is a circumstance likely to have negative effects on anyone’s life (Carlen, 1983: 76). This implies that these innocent children who are either born in prison or accompany their mothers to prison are likely to be affected even more profoundly and seriously.

Most women cited their children as their main source of worry during incarceration. Some inmates were single mothers and widows who had been solely responsible for their children’s welfare before imprisonment. Although other inmates had husbands, they had always left the duty of child care and maintenance solely to their wives. In some cases the inmates had left the children in the care of their old or sick mothers who would find it difficult to effectively care for them.

Several inmates were saddened by their children’s failure to attend school due to their imprisonment. One inmate said:

'Ndakanzwa kuti mwana wangu wandakasiya arimugrade one akabva amiswa kuenda kuchikoro pandakangoharirwa nekuti murume wangu akati haakwanise zvekumukira achimugadzirira makuseni saka ngaandimirire.'

(Translation: 'I heard that my son, who was in the first grade has stopped attending school because my husband indicated that he could not prepare him for school in the morning, suggesting that he should wait until I am released from prison.')

At around 6.30 a.m., I arrived at Shurugwi female prison and a colleague opened the gate for me and we waited for the time when inmates are allowed out of their cells. As we waited, a young cry came from one of the cells. I was taken aback as I learned that another child was being incarcerated with their mother. This was not my first encounter with children accompanying their mothers to prison. I had seen a larger number at Chikurubi female prison most probably because of its larger size. The major concern is that while the law, in terms of the Prisons Act and SI 60/2014, makes provision for dietary and other necessities for children incarcerated with their mothers, the reality is that prisons cannot fulfil their obligations due to budgetary constraints. The ZPCS has often called for assistance in providing for these children due to the above reasons (Agere, 2015).

In this regard one inmate had this to say:

'Ndakauya mujere ndinenhumbu,mwana avenegore,pano vanoedza chose vanambuya kuti tiwane kudya kwakanaka tichiyamwisa uye kwevana asi hazvikwani.'

(Translation: 'When I came to prison I was pregnant, now my daughter is 12 months old, the officers here try to get us nutritious food as breast feeding mothers and also for our children but the food is not enough and in most cases it is not nutritious.')

It was found that children are either incarcerated with their mothers or if at home, they are separated for the whole period of incarceration. Children in prison with their mothers endure isolation, with limited access to the outside world which often results in the violation of their rights, either directly or indirectly. This is coupled with poor living conditions and the unavailability of basics such as clothing, nutritious food and play facilities.

A mother with a child in prison had this to say:

'Sezvamurikuona,mwana wangu hachisina hembe,dzese dzaadiki, muno hadziwanike uye hapana arikundishanyira saka handizive kuti ndichaitasei netuhembe utwu.Nekuda kwekusungwa kwangu aakutoshama.'

(Translation: 'As you can see my daughter has outgrown her clothes, they are now small, there are no supplies in prison and nobody visits me, I don't know how I will manage with such small clothes. Due to my incarceration, my daughter will soon have no clothes left.')

Thus, in as much as the Prisons Act provides for clothing for children accompanying their mothers in prison, the reality is that this is not possible due to a lack of funding, hence, in the end, heavy reliance is placed on well wishers who are sometimes limited to assisting certain prisons and not others.

I asked an inmate who was feeding her 8 month old son with porridge what her main worry was and her prompt answer was:

'Muno mujere handisikuwana kudya kunovaka muviri wemwana, handina dovi uye sugar inomboshaikwa.Zvasiyana nekumba kwandinomhanya mhanya saamai kuti mwana akure zvakana.'

(Translation: 'I cannot get nutritious food for my child here in prison. I don't have peanut butter for the child's porridge, and sugar is sometimes not available. This place is different from home where I could run around and get nutritious food for the baby.')

Further, children of incarcerated mothers are as much prisoners as their mothers. In most prisons their play ground is concrete and the area small. In relation to the general environment a mother said:

'Honai kuvharika kwakaita nzvimbo ino mwana haana pekutambira, haana kusununguka, ini naye tese tirivasungwa pano nekuda kwemamiriro enzvimbo yacho.'

(Translation: 'Just look around, the closed nature of this environment, my child has limited space to play, both me and my child are prisoners because of this environment which is limiting.')

The challenges faced by children of incarcerated mothers cannot be overemphasised. The effects of strict penitentiary rules involving the mother on the child's development and well-being were some of the harmful aspects highlighted. For instance, one inmate had this to say:

'Muno mujere munonetsa kukudzira mwana nekuda kwemitemo yakawanda, ukada kutsiura mwana unogona kupedzisira wapanichiwa saka mwana anogona kukura nemisikanzwa isingaite.'

(Translation: 'It is difficult to raise a child in prison due to the strict rules that govern us, for instance, one might be punished for disciplining their child such that children might grow up with wayward behaviour.')

Female inmates with children at home generally suffer emotional distress due to separation from their children; they also fear the risk of relationship breakdown coupled with the risk of the children being more vulnerable to neglect and abuse. This is further compounded by difficulties in visiting which result in a loss of contact and anxiety for both mother and child.

Most of the female inmates I interviewed cited the fact that they feared for their girl children, especially in light of the prevalence of child sexual abuse in the country.

In this regard an inmate had this to say:

'Zvinotyisa kugara kure nemwana musikana, ndinotyira mwana wangu veduwe, anogona kubhinywa ndirimuno kudai, baba vake variko asi naivo handingavimbi navo nekuti bhinya ravemumba.'

(Translation: 'It is frightening for a mother to be separated from the girl child. I fear that my daughter might be sexually abused during my incarceration, I cannot even trust my husband, as you know, nowadays the perpetrator is in the home.')

Another inmate said:

'Ndinotyia kuti mwana wangu anogona kurepewa ende anogona kushaya waangavimba kuti ataurire nyaya yacho ndisipo kudai.'

(Translation: 'I fear that my daughter might be raped and find it difficult to confide in people at home during my incarceration.')

Research has shown that 'many of these children, it is clear, may suffer more pain than does their criminal parent in prison or even the original crime victim' (Shaw, 1990). This supports most of the findings revealed by the research.

One inmate had this to say:

'Ini nditori nani pamwanasikana wangu ane 17 years akasara kumba arikuita basa rese randaiita ndirikumba obva abatanidza nekuenda uchikoro, anofunga kuti pamba pachadyiwei, obika ,owacha ini handifunge zvese izvozvo ndirimuno, saka ndiye arikutondipikira jere.'

(Translation: 'I am better off than my seventeen year old daughter, who has taken over all my roles. She decides what to eat and prepares it, does the laundry and has to balance all that with her school work. I don't have to think about all that because I am incarcerated, hence she is actually 'serving' my sentence.')

When mothers are incarcerated, children pay the price; they are the hidden and silent victims in the whole puzzle. This is aggravated by the fact that the state does not have specific measures to help children of incarcerated mothers. An interview with a representative from UNICEF Zimbabwe revealed that the organisation is working with the child protection system together with various stakeholders but there are no programmes to help such children. She however indicated that if the system were functional, such children would be detected and their rights protected. An interview at the Department of Social Services revealed that while the department acknowledges its obligations of providing alternative care for such children, it is financially handicapped and there are no statistics concerning such children and so they remain invisible. Further, one of the Prison Social Workers highlighted the fact that where relatives are not available or unwilling, most children end up staying in prison with their mothers even after being weaned because the Social Services Department is not prepared to take them to government homes due to funding challenges. Also, children grow up in a limited environment where they are exposed to female inmates and officers only which affects them psychologically and they lack adequate playing facilities which would enhance their development.

Thus, children of incarcerated mothers are not recognised and their rights are not protected together with those of other children. There is a risk of losing generations in the process. It would seem the state's focus is limited to the rehabilitation and re-integration of inmates, forgetting one of the most important pieces of the puzzle, their children.

There are also those inmates who did not manage to make any arrangements for their children's welfare before their incarceration because they were not given an opportunity to do so. For instance, the women who were imprisoned for cultivating dagga narrated how they

were taken from their gardens and had to send messages to their children through those who witnessed their arrest.

An elderly inmate had this to say:

'Musoro wangu unotema, ndinonzwa kupisa pachipfuva, handirare husiku ndichifunga zvirema zviviri zvandakasiya kumba, chimwe chinogweshwa, chimwe chimumumu, netuzukuru twakasiwa nemwanasikana akafa ne AIDS, kamwe kane makore 8 kamwe 4. Handizive kuti vanorarama sei vanhu vakadaro, handina kupiwa mukana wekundovagadzirira pandakasungwa.'

(Translation: 'My head aches, I feel a burning sensation in my chest, I cannot even sleep well because of my two children with disabilities; one cripple without a wheel chair and another one who is deaf and mute, together with two grandchildren aged four and eight, whose mother died of an AIDS related illness. I wonder how such people can survive on their own, I was not given an opportunity to go and prepare for their welfare upon arrest!')

The Officer in Charge indicated that she had contacted the Department of Social Services so that they would visit this inmate's children and assist but they indicated that they could not assist due to lack of funding. A question kept ringing in my mind, one that I could not answer, 'What gets asked in mitigation at the courts if such children are left home alone?'

Most inmates called for the state to at least allow their children to attend school for free during the period of incarceration as most children were forced to drop out of school due to lack of funding. The Social Services department does not have specific provisions for such children; neither does the Ministry of Education accommodate them in schools without paying tuition. Thus, children of incarcerated mothers often fall through the gaps between government departments. Further, they have endured the unfavourable conditions described above and even more. Therefore, they would benefit from deliberate and judicious interventions.

The children of prisoners are the invisible victims of crime and the penal system. They have done no wrong, yet they suffer the stigma of criminality. Their rights to nurture are affected both by the criminal action of their parent and by the state's response to it in the name of justice (Robertson, 2012: 8).

Need I say more, children of incarcerated mothers are punished along with their mothers. Given such a situation where there are gaps in available services, surely there is a need to adopt measures which will protect children who are our common future and an open prison for female inmates is at the very least one such measure.

4.3 The ‘best interests of the child’ versus the incarceration of their mother

The African Child Experts on the Rights and Welfare of the Child (ACERWC) note:

‘When a criminal court detains a child’s parent, the court reshapes the child’s family just as much as a family law court issuing an order of custody, adoption, or divorce, and as a result children’s best interests need to have a primary role in such circumstances’ (General Comment Number 1:2013).

Section 81(2) of the Constitution of Zimbabwe provides that ‘the best interests of the child’ are paramount in all actions concerning the child. This provision is in line with the UN Convention on the Rights of the Child (CRC) which provides in article 3 that in all matters concerning children, the best interests of the child shall be a primary consideration. The African Charter on the Rights and Welfare of the Child (ACRWC) also provides for the best interests of the child in article 4(1) which provides that in all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration. It is interesting to note that all three legal provisions do not define the best interests of the child. John Eeklaar defines ‘best interests’ as ‘basic interests, for example, to physical, emotional and intellectual care developmental interests, to enter adulthood as far as possible without disadvantage; autonomy interests, especially the freedom to choose a lifestyle of their own’ (Eeklaar, 1992: 230-231).

It should be noted that the Zimbabwean Constitution and the CRC do not have specific provisions for children whose parents have been incarcerated, although several provisions may be interpreted to protect children in this situation. However, article 30 of the ACRWC provides specifically for the rights of children of incarcerated mothers and this is in line with the lived realities of African women, who are in most cases the primary care givers and in some instances the sole carers of their children. This provision has been described as a unique feature of ACRWC which finds no counterpart in the ICRC (Chirwa, 2002).

However, it should be noted that both the ACRWC and the CRC require the compulsory consideration of alternatives to custody to ensure that the deprivation of liberty is used only as a last resort. It can be deduced that this approach arises not from concern for the mothers but rather from apprehension regarding the potential for violation of the rights of affected children (Sarkin, 2008: 129). Article 30 of the ACRWC provides, among other things, that state parties shall undertake to provide special treatment for expectant mothers and mothers of infants and young children who have been accused or found guilty of infringing the penal law by: ensuring non-custodial sentences are prioritised; establishing alternative measures to institutional confinement; establishing special alternative institutions for holding such mothers; ensuring that a mother shall not be imprisoned with her child; ensuring that a death sentence shall not be imposed on such mothers and the essential aim of imprisonment shall be rehabilitation and re-integration.

In dedicating its first general comment to article 30 of the ACRWC, the Committee notes that children suffer trauma caused by arrest, pre-trial detention and imprisonment of their caregivers and acknowledges that such children are often invisible. This makes it clear that in most cases the best interests of such children are often overlooked by many states, Zimbabwe included. The application of the principle of the best interests of the child in Zimbabwe has been limited to cases involving custody and adoption of children and is rarely considered in the criminal justice system. The above position deserves critical consideration due to the fact that for a long time, the criminal justice systems of Africa and beyond have overlooked the principle of the best interests of the child whose mother has been incarcerated.

Rules 64, 49 and 52 of the Bangkok Rules (2010) provide for non-custodial sentences for pregnant women and women with dependent children, call for consideration of the best interests of the child and the need for the authorities to ensure that there are appropriate provisions for the care of such children where custodial sentences are being considered. The Rules are also clear that children in prison with their mothers shall never be treated as prisoners and that the environment provided for such children's upbringing shall be as close as possible to that of a child outside prison. Further, states are called upon to ensure that women prisoners shall be given the maximum possible opportunity and facilities to meet with their children after the separation has taken place. All of the provisions stated above make it clear that the state has obligations and authorities have responsibilities for promoting and protecting the best interests of these children.

From the Zimbabwean Constitution, the CRC, the Bangkok Rules (2010) and the ACRWC, it is critical to note that the best interests of the child are not merely one factor to consider among others, not just the most important consideration but they are simply determinative. Section 81 of the Zimbabwe Constitution is unusually comprehensive and emancipatory in nature, signifying the dawn of a new era in which children are not expected to be affected by their mother's sins and traumas. For instance, it places emphasis on the right to parental or appropriate care when removed from the family environment, protection from neglect and abuse as well as rights to education, health and nutrition. Therefore, the state has an obligation to promote motherly or parental care for the children in order to mitigate the risk of any harm that might befall them. Where family breakdown cannot be avoided the state has an obligation to minimise the resultant negative effect on children as far as it can and this is where an open prison would be an ideal solution.

The reality on the ground is divorced from the foregoing and from experiences in the field. I kept wondering what could be done to ensure the best interests of children in prison with their mothers are prioritised considering the fact that they endure unfavourable conditions of the conventional prison together with their mothers. This position is representative of many prisons across the world as Save the Children noted: Every year, scores of children walk into the bleak environment of the jails, obviously holding the hands of their mothers, and just like that, the four walls of the jails become their new home (Qadri, 2012).

Also, for children left at home, I noted that the state was not doing much in terms of following up and assessing their living conditions after the incarceration of their mothers. These children's education is often disturbed and disrupted. For instance, one inmate had this to say:

'Ndakatokumbira kuti vana vangu vaendeswe kumusha vanogara nevabereki vangu asi handione vachienderera mberi nechikoro sezvo vabereki vangu vachembera uye vasina chekubata.'

(Translation: 'I have requested my relatives to take my children to the rural areas so that they stay with my parents, but I don't see them proceeding with their education because my parents are now old and they are financially handicapped.')

Another inmate tearfully said:

'Mwana wangu aive form four,ndini ndaibhadhara mafees zvino handifungi kuti achapedzisa chikoro nekuti vabereki vangu vachembera uye havana mari ndinotyia kuti achaita bhinya nekungogara.'

(Translation: 'My son was doing Form Four, I was responsible for the payment of his tuition, now I do not know if he will manage to complete this level because my parents are very old and they cannot afford tuition, I actually fear that he becomes idle, he might become a gangster.')

Based upon the above evidence of these voices, it should be noted that in violation of the best interests of the child, most children have their education disrupted when they are transferred to new environments where they have to start adjusting all over again. Some children actually stopped attending school after the incarceration of their mothers especially where they were their sole providers, which is prevalent amongst female inmates today.

Section 7 of the Children's Act Chapter 5:06 prohibits the neglect or ill treatment of children in any manner that would affect their health and morals. It further defines neglect, ill treatment or abandonment of the child to include failure to provide basic necessities such as food and clothing.

On the right to food, one inmate said:

'Muno mujere handiwani kudya kunovaka muviri wemwana semazai,dovi kana nyama nekuti hamuna,saka ndoshanda nezviripo.'

(Translation: 'I can't get nutritious food such as eggs, peanut butter or even meat here in prison so I just do with what is available.')

An inmate who had left her children at home said:

'Ndakasiya vanakomana vaviri nemusikana anga anenhumbu,ndini ndaitsvagira vana ava zvekudya zvino kubva pandakasungwa handizive kuti varikurarama nei.'

(Translation: 'I left my two sons and a pregnant teenage daughter at home. I used to fend for them and supply their food, now I wonder how they are surviving.')

When children visit their mothers in prison, they are limited to the usual 30 minutes visiting time and they see their mothers through the fence. It was gathered that this arrangement is

occasioned by the need to accommodate more visitors because there are stipulated visiting days in prisons. It is also a security measure as the visits in closed prisons are supervised by officers who sometimes have other work related activities to do. However, due to the fact that female inmates do not get many visitors, increasing the visiting period could be considered so that the few inmates who do receive visitors could have more time with them, especially their children.

In this regard, one inmate had this to say:

'Mwana wangu ane 7 years anouya naamai vangu kuzondiona after 3 months, ndinomuona nepafence apo kwe 30 minutes dzinotenderwa pano.'
(Translation: 'My seven year old son comes with my mother to visit me after three months; I interact with him through the fence.')

While visiting helps to maintain the bond between mother and child, such restrictive practices tend to limit it. Considering that these visits are rare due to the usually high travel costs involved, an open prison system would promote increased contact between mother and child.

On the regional legal plane, the South African Constitutional Court in the case of *S v M* (CCT 53/06) [2007] passed a judgment that took into account the application of the best interests of the child when sentencing a child's primary caregiver. The court reasoned that where the possible imprisonment of the parent would have harmful effects on the child, then it is the duty of the court to protect such a child by considering non-custodial sentences in the light of the severity of the offence. Thus, when all has been said and done, the best interests of the child should be the fundamental consideration at all stages, it should cut across the system, right from decisions made by the police, the courts all the way up to the prisons, yet this is not always the case in criminal proceedings.

Further, it should be noted that Zimbabwean courts have not specifically dealt with the issue of the best interests of children in relation to their incarcerated mothers; so far this principle has only been judicially considered in family law matters.¹⁰ For instance, when the Zimbabwean delegation to Geneva in January 2016 was asked by the Child Rights Committee on whether a sentence against a child's parent could be annulled if it did not take

¹⁰ The Committee on the Rights of the Child considers Zimbabwe's periodic report on 19 January 2016, Geneva.

into consideration the best interests of the child, they said that all courts were obliged to take the best interests of the child into consideration and that there had been no cases where it had not been taken into account (UNOHCHR, 2016). This general statement is indicative of the fact that enough attention has not been paid to the reality on the ground because there is still no clarity as to how the criminal courts should deal with the issue of the best interests of the child in cases such as the one raised by the Committee. Therefore, more focus needs to be trained on the perilous situation in which such vulnerable children find themselves.

It is essential that children of prisoners are recognised as children who are in this situation through no fault of their own and are entitled to all their rights under the CRC, the ACWC and the Constitution of Zimbabwe including the right to non-discrimination, to maintaining contact with their mothers, and to have their best interests taken into account and to be heard in all proceedings affecting them.

This issue is a complex one involving the balancing of competing interests being the need, on the one hand, for the state to penalise wrongdoers and, on the other, its obligation to protect the best interests of the child. Section 81(2) of the Constitution of Zimbabwe places a duty on the courts to apply a child-centred approach. It is not possible, however, for a mother to escape imprisonment simply because she has a child under her care. In other words, the best interests of the child cannot simply be used as an excuse to exempt parents and caregivers from being detained or imprisoned for their criminal conduct. Such an approach would render the criminal justice system unworkable to the detriment of society as well as the broader interests of all children who benefit along with everyone else from the prevention of crime (ACERWC, 2013). In other words, the best interests of the child also competes with the societal interests of maintaining confidence in the criminal justice system and its ability to penalise and reprimand those who break the law. In this regard the ACERWC notes in the General Comment that article 30 should not be interpreted as allowing for convicted parents/primary caregivers to evade accountability for their offences.

It is against such a background, therefore, that the Zimbabwean courts should be equipped to take the best interests of the child into account in light of the seriousness of the offence and overall protection of society when considering the incarceration of a mother or primary caregiver. Further, the section 81(3) of the Constitution provides that children are entitled to adequate protection by the courts. This provision places an obligation on the courts to take

the lead in protecting the best interests of the child, not only in family law matters but also in criminal law matters upon the incarceration of their mother or primary caregiver.

Article 30(1)(c) of the ACRWC calls upon state parties to establish 'alternate special institutions' for mothers to be able to take their children with them to prison and still have access to facilities that promote the best interests of the child by enabling mothers to maintain contact with children outside prison and also to have access to better facilities that promote the development of the child within the prison. This is where an open prison for female inmates would be suitable for Zimbabwe, especially bearing in mind the fact that imprisonment of mothers cannot be totally avoided, as each case depends on its circumstances and in some instances incarceration is inevitable. Therefore, it is critical to note that establishing an open prison for female inmates would address some of these important issues.

Further, it is critical to note that while the imprisonment of a mother is a negative event, the way in which such imprisonment is handled could alter its effects and protect the best interests of the child. The open prison system is one of the ways through which the best interests of the child could be protected considering the fact that the environment in an open prison would be conducive for children accompanying their mothers in prison and also that the women can visit their children at home and maintain the on-going contact with them necessary for their development.

In the South African Constitutional case of *S v M* (CCT 53/06) [2007] ZACC 18 (September 2007) Sachs, J noted at para 18:

'Every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them.'

Thus, children's rights must be considered separately from their parents. The time to act is now, the business as usual approach will never address the needs of these excluded and invisible children. It is not in doubt that children are our common future and their best

interests should be of paramount importance which means that the state should adopt legislative and other measures to protect their rights.

4.4 Why not women? Interrogating the elements of equality and non-discrimination

A female inmate who knew about Connemara open prison for men said:

‘Hurumende ngaitivakirewo open prison sevakadzi, sei varume chete vari ivo vanemukana wekupota vachienda kumba isu tisina, handiti musha mukadzi here pachivanhu chedu, kugara kwatakaita muno vana dzavanherera.’

(Translation: ‘The government should build us an open prison as female inmates. Why should our male counterparts benefit from home leave while we cannot do the same as women; we say, a woman is the back bone of a home, our children are now living as orphans because we don’t have such a facility.’)

Section 56 of the Zimbabwean Constitution provides for equality and non-discrimination and this is in line with various international human rights provisions. According to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), discrimination against women can be defined as ‘...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’ The CEDAW Committee reiterated that the failure of detention facilities to adopt a gender-sensitive approach to the specific needs of women prisoners constitutes discrimination within the meaning of article 1 of CEDAW.¹¹

The Maputo Protocol echoes the same sentiments as CEDAW adding further that discrimination destroys the enjoyment of human rights by women in all spheres of life. Although not legally binding, the Bangkok Rules (2010) are crucial to protecting the rights of female inmates explicitly addressing the different needs that women have and the different situations they come from. The Bangkok Rules (2010) are also the first international instrument to address the needs of children in prison with their parents (Penal Reform International, 2013).

¹¹ *Inga Abramova v Belarus*, Communication No. 23/2009, UN Doc. CEDAW/C/49/D/20/2008 (29 August 2011).

Rule 1 of the Bangkok Rules (2010) emphasises the need to take into account the distinctive needs of female inmates in their application and where such needs are provided in order to achieve substantial equality such a move shall not be regarded as discriminatory. Rule 26 provides for the female inmate's contact with family and children, while Rule 28 provides for the creation of a conducive environment for children visiting their mothers in prison. The rules also call for non-custodial sentences for women offenders and their humane treatment.

Having been a public prosecutor for some time, one question that kept crossing my mind as I was doing research was why women are 'popular' as victims but forgotten as offenders? This was triggered when I kept observing how society and its structures keep turning a blind eye to them. Female inmates seem to be forgotten, even by their families who do not visit them due to a combination of challenges such as transport costs, attitudes and stigma. Also, prison regimes are almost invariably designed for the majority male prison population and discrimination flows from a lack of women-orientated programming and facilities (Townhead, 2006: 7). Thus, it should be noted that many aspects of female imprisonment relate to discrimination.

A considerable proportion of women offenders are in prison as a direct or indirect result of multiple layers of discrimination and deprivation (Penal Reform International, 2013: 3). Intersectionality has a link to female criminality in that women commit offences due to various interlocking oppressions visited upon them by communities which already treat them as second class citizens. One of the most interesting aspects of women in relation to crime is that it is often the effort to play out their roles as wives and mothers which leads them to commit crime (Altman, 1976: 2). This position is still the same today and is actually worsened by the prevailing economic hardships in the country, coupled with prevalent droughts. For instance, I met a group of nine inmates who were incarcerated for growing dagga in their gardens in order to pay school fees and buy food for their children and families. Some of these women had husbands who could not provide for their family, while others were widows and primary caregivers of their children and grandchildren. The majority of the inmates I interviewed came from backgrounds of limited formal education and were family breadwinners and fending for their children.

One inmate said:

'Ngingumfelokazi, ekubhubheni komkami wangitshiya ngilabantwana abayisithupha. Ngabotshelwa iborder jumping ngifuna ukuya eGoli lapho umngane wami owayenginxusele khona umsebenzi wezindlini. Ngangicabanga ukuthi ukusebenza loku kuzangiphathisa ukubhadalela abantwana imali yesikolo njengoba ngilesikwelede esikhulu.'

(Translation: 'I am a widow, when my husband passed away, he left me with six children, I was arrested for trying to cross the border through an illegal point. I wanted to go to South Africa because my friend had invited me to work as a house maid. I thought working there would enable to pay tuition for my children since I already have a huge debt.'))

Given the background of unrecognised and unrewarded gender roles that women carry out in their families coupled with interlocking oppressions and discrimination, it is critical that female inmates be protected from further discrimination in the prison system. In light of this, it has been argued that a coherent and effective policy towards women in the criminal justice and penal systems will only be developed when it is recognized that women's crimes are committed in different circumstances to men's. Therefore, the response to both men and women lawbreakers should be in part gender-specific rather than merely crime and sentence specific (Carlen, 2013: 10).

In an interview, a female colleague confirmed that being a female prisoner is synonymous with serving a double sentence; the first sentence for being a woman, and the second for being felonious. The Quaker United Nations Office made similar findings noting that although both men and women are subjected to imprisonment, little consideration has been given to the different needs and problems of imprisoned women as opposed to men (Taylor, 2003). Also, female inmates are often sole carers of minor children meaning that their imprisonment cannot be considered in isolation, yet the available facilities might not be responsive to their specific needs.

Further, research has shown that even a short prison term has a particularly harsh effect on women causing intense family disruption. Most women who are imprisoned are mothers, and they are far more likely than male prisoners to be the sole carer of children (Townhead, 2006: 8). According to the United Nations, the fact that the proportion of male prisoners has always been vastly larger than that of women in the prison system has resulted in a general disregard to the gender-specific needs of women, as well as a denial of many services and opportunities

accessible to male prisoners (UNODC, 2014). This is reflective of the Zimbabwean scenario where female inmates were excluded from having an open prison due to their smaller numbers and the system has failed to accommodate them for the past 15 years. In this regard, it is critical to note that discrimination cuts across inmates in general but female inmates suffer more.

Women have suffered from greater family dislocation than men, as there are limited prison facilities for them. For instance, there are three prisons for female inmates in Zimbabwe. While there are other female prisons that are annexed to male prisons, they accommodate very few female inmates. Consequently, most female inmates at female only prisons cited the fact that they were not frequently visited due to high travel costs as they were detained in facilities which are far away from their homes. In this regard one inmate said:

'Ndakapedzisira kuona mwana wangu ndichiri kuGokwe prison ndakamirira kutongwa nekuti kumba kwaiita 2 dollars kuenda kubva kujere. Kubvira pandakotongwa kusvika parizvino amai vangu havasi kukwanisa kuuya naye nekuda kwemari dzemabhazi.'

(Translation: 'I last saw my child when I was detained at Gokwe prison because it cost two dollars to travel from home. From the time I was sentenced, until now, my mother cannot afford to visit and bring the child because the fares have increased due to the long distance.')

Considering the fact that this inmate had served close to 12 months of her sentence and had six more months to go, the chances of seeing her child during incarceration were close to zero, especially considering the prevailing negative economic situation.

Fewer programs have also been offered to female inmates and they have had no significant vocational training opportunities as they have been confined to the usual gendered activities. For instance, one of the rehabilitation officers at a female prison indicated that there was no formal education facility for women because teachers were not available at the prison, yet male prisoners in the same region have access to teachers and are actually attending lessons. This research gathered that for female inmates the focus seem to be on knitting, tailoring, hairdressing, trades for which the female inmates are not given certificates and also for which they will not be able to generate much income. In my capacity as a master's student, I attended a workshop where products from prisons were showcased to various attendants as a marketing strategy. I noted that the whole range of products had been manufactured by male

inmates and officers. It had never occurred to me that I was part of the discrimination by virtue of my failure to act. Upon enquiring about the situation from a colleague, I was told that the workshop facilities were not available at female prisons, which is true. This situation is not limited to Zimbabwean prisons; a colleague from Zambia also made the same findings in his research (Njamba, 2016). Colleagues from Kenya and Uganda also confirmed the same during discussions I had with them.

Discrimination which affects female inmates often flows from the fact that the prison system was designed for men. However, this cannot continue to be used as a justification or excuse for the continuing neglect of female inmates and their children; as prison officers, we have a duty to rise up and take action, address the glaring discrimination against female inmates and reform the prison system so that it responds effectively to the particular needs of women and girls.

It was found that when the concept of an open prison was introduced in Zimbabwe, the original plan was to accommodate both male and female inmates within the system. However, in the end, the female inmates were dropped along the way and for the past 15 years, only male inmates have enjoyed the benefits associated with the open prison system since its introduction in Zimbabwe. The reasons proffered for the exclusion of women were that they were fewer in number and that there was a much larger male inmate population and that their overcrowded prisons needed to be decongested. And since there was also limited funding for the project, women were excluded from the project. Further, women's rights issues were not then as popular an issue as they are now.

Rule 45 of the Bangkok Rules (2010) is of particular interest as it clearly provides for the utilization of options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage. The Rules acknowledge the importance of open prisons for female inmates; hence, leaving them out is a problem which must be addressed as a matter of urgency.

Rule 2 of the Nelson Mandela Rules (2016) provides that in order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the

individual needs of prisoners, in particular the most vulnerable categories of inmates in prison settings. It is time for prisons to rectify the disparity in the open prison system. Female inmates have their own individual needs which must be addressed.

All major human rights instruments have one thing in common, that is the equality of rights between men and women. Gender equality should therefore apply to female inmates. It should be known that there is a special connection between mother and child. Further, incarceration of the mother impacts negatively on the mother and the child whose best interests are not usually given priority in the criminal justice system. Also, female inmates are subjected to discrimination in the prison system and this further constrains their position. All this calls for protective measures on the part of the state and its agencies and the open prison is one of them.

4.5 Then I found a facility closer to an open prison!

My last prison visit was to Mutare prison which accommodates both male and female inmates. I had heard about the unique rehabilitation activities and programmes for both male and female inmates during the course of my duty but I had never considered them as actually a potential open prison model. An interview with a regional rehabilitation officer for Manicaland region confirmed this development and since then I noted that Mutare is to some extent operating as an open prison and is doing so without cost to the department of prisons. The inmates there are earning an income and acquiring skills. There is a work release programme for both male and female inmates and the Gogo Olive knitting project which accommodates female inmates in knitting and ex-female inmates are free to continue with it after prison.

Work release programmes

The inmates in Mutare are allowed to work outside prison facilities in terms of section 76 of the Prison Act Chapter 7:11. Female inmates are allowed to go to a local private company and receive training in various activities and, in turn, the inmates receive allowances based on the fact that they contribute to the company's productive output during their period of attachment. The arrangement is facilitated by an agreement between prisons and the private company. In the morning the inmates are ferried to a private company who give them company uniforms to wear during working hours. They enjoy usual break and lunch periods

associated with formal employment. About five female inmates participate in this programme and they participate in activities such as poultry and horticulture; training in tailoring is said to be in the pipeline. The money the inmates earn from the project enables them to pay tuition fees for their children left at home and to supplement their daily requirements while in prison and this has improved the livelihoods of their children. Further this programme serves as a bridge between life in prison and life in the community. This beneficial programme should be replicated in other regions with private companies. Prisons receive a percentage of the total earnings made by the female inmates. These funds could be channelled towards the savings to establish an open prison for female inmates, a project that could be expedited if the programme were to be extended to other prisons.

Gogo Olive knitting project

The Gogo Olive knitting project was instituted in 2008 by a female donor, Julie Hagan from Scotland, who had visited Mutare prison and observed the plight of female inmates. An interview with her revealed that she was also moved by children accompanying their mothers in prison and those left at home and the fact that female inmates were in prison for what she referred to as ‘minor offences mostly committed in a bid to fend for their children.’ She then chose the knitting project as it would tap into the female inmate’s usual skills of knitting and there was also a market for the products within and mostly outside the country. The programme targets female inmates as well as ex-inmates who choose to continue with the project after their release from prison together with what Julie referred to as less privileged women of the community. The dolls which are the final product are sold in sets and female inmates and ex-inmates work at their own pace in knitting the sets of dolls. The payment they receive depends on the number of sets they make.

Female inmates interviewed highlighted the fact that they appreciated the project as it enabled them not only to supplement their daily requirements in prison but to also pay tuition fees and support their children’s daily requirements. This helps to protect the best interests of the child as well. The authorities at the Manicaland prison headquarters highlighted the fact that they appreciated the cordial relations they enjoyed with the involved stakeholders as they have translated into improved livelihoods for female inmates and ex-inmates together with their children.

I had an opportunity to visit and spend time at the Gogo Olive premises during my field research and I appreciated the progress that the project has made to date. Below is a photograph taken at the premises and it can be seen that the women participants are allowed to bring their children to the workshop where they enjoy the benefit of performing their care giving roles as mothers while enjoying the dignity of working to earn an income for themselves and their dependents.



Figure 2: Photograph showing ex-inmates and less privileged women at the Gogo Olive premises in Mutare. I am standing with their knitted dolls in my hands and to my right is Julie Hagan, founder of the Gogo Olive project.

Inmates, interviewed about this programme which, though gendered, has proved to be useful, had this to say:

‘Ndinotenda project yekuruka iyi nekuti ndirikuwana mari yekubhadhara mafees evana ndirimuno mujere, uye nemari yekushandisa. Vana vanotouya kuzotora mari kujere zvichitofamba.’

(Translation: ‘I am grateful because I earn income from this project such that I am paying tuition for my children while in prison, My children actually come to prison to get money for tuition and upkeep.’)

Another inmate, I found knitting said:

‘Pamusoro pekuwana mari kubva kuproject iyi ndinovaraidzika zvikuru zvekuti handinyanyofunga zvakawanda.’

(Translation: ‘Besides the fact that I earn income from this project, it helps me as a pass time such that I do not get stressed.’)

An ex-inmate who is continuing with the project and is now a trainer had this to say:

‘Project iyi yakandibatsira ndirimujere,vana havana kumbomira kuenda kuchikoro nekuda kwemari yandaitumira sezvo murume singashandi.Ndabuda mujere handina kutambura ndakangoenderera mberi nanhasi ndirikurarama.’
(Translation: ‘The knitting project was very beneficial to me during incarceration because I managed to send my children to school since my husband was and still is unemployed. After release from prison, I did not face any challenges as I just continued and this is my main source of income.’)

Another ex-inmate said:

‘Dai panga pasina project iyi ndakatosungwa zvekare nekuti ndaingodzokera kungoda kwaChiadzwa kuitira kuraramisa vana semunhu asina kudzidza,pamwe ndingadai ndakatosungwa futi.’
(Translation: ‘Had it not been for this project, I could have returned to Chiadzwa for illegal diamond mining for the sake of providing for my children. I had no other option as I am not educated, maybe I could be back in prison.’)

The benefits of programmes of this nature cannot be overemphasised. It is clear that they transform the lives of female inmates and their children for the better.



Figure 3: A group photograph of ex-female inmates and underprivileged women knitting for an income in the Gogo Olive workshop.

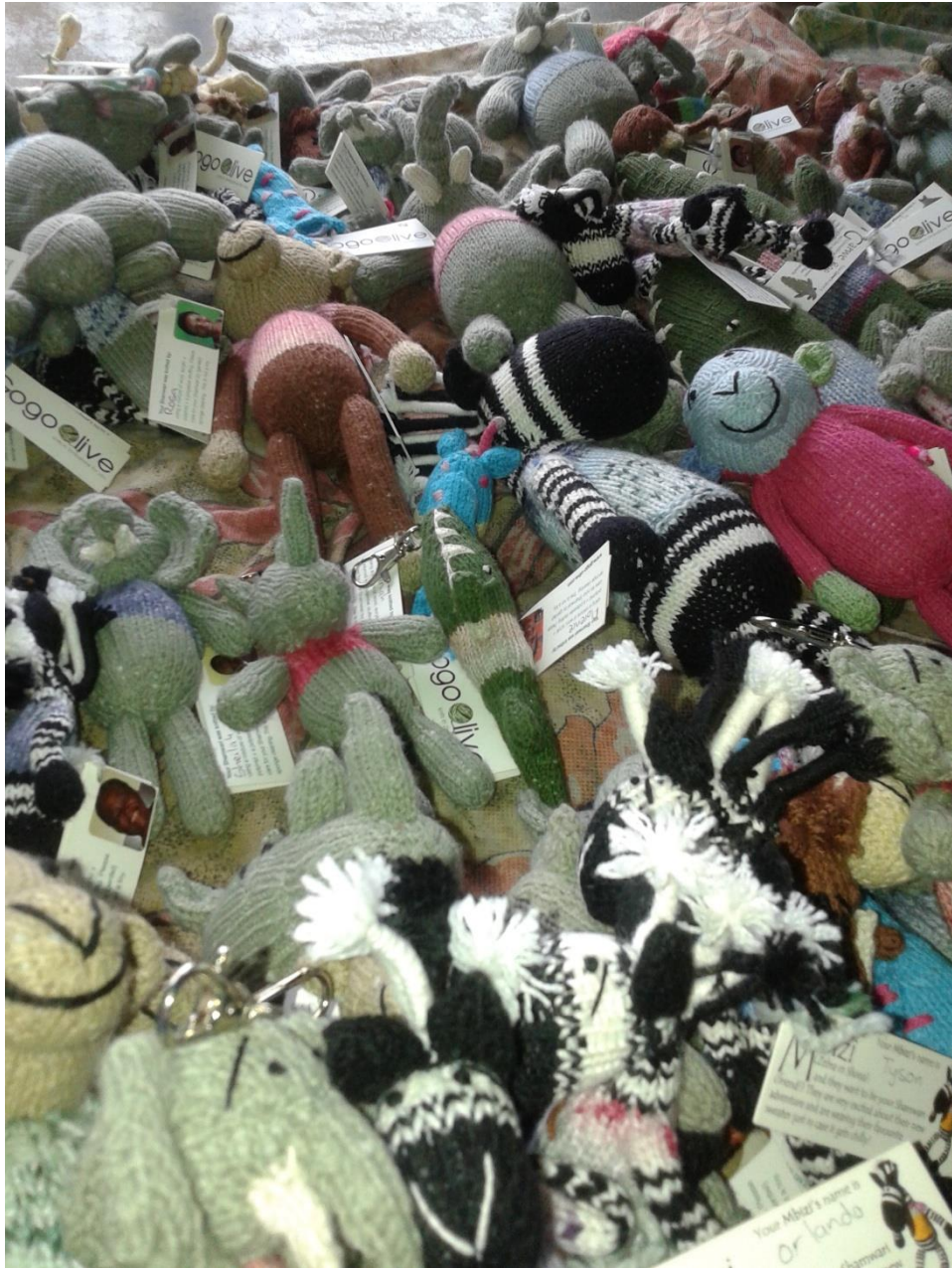


Figure 4: Photograph of Gogo Olive knitted wares ready for the market!

It was gathered throughout the research that funding remains the major stumbling block to the implementation of the open prison for female inmates. However, from the Mutare prison visit experience it should be noted that there are actually ways which can be employed to make the open prison a reality for female inmates as what is happening already constitutes a *de facto* open prison. Further, the activities currently carried out at Mutare prison are relevant to the lived realities of female inmates with children and they assist them in fulfilling their care giving roles particularly during their incarceration. Such activities should be introduced and encouraged within all prisons accommodating female inmates and the income generated from

these activities in the form of deductions from earnings by inmates channelled to the construction of the long overdue open prison for female inmates. Further, operating costs at the open prison could be greatly reduced as the income from similar programmes could be used to supplement its budget.

CHAPTER FIVE

5.0 WHY WAIT? WAY FORWARD!

While section 50(5)(d) of the Zimbabwean Constitution provides for the right of detained persons to conditions that are consistent with human dignity, section 50(5)(c) provides for communication and visits by spouses or relatives for prisoners. In the context of this research, these provisions may be more fully understood and implemented in the spirit of article 30 of the ACRWC which calls upon state parties to establish special institutions for holding mothers of infants and young children who have been found guilty of infringing penal law.

Further ACERWC indicated that such institutions must focus on realising children's rights with programs that allow mothers to reside together with their infants in prison and facilities such as nurseries could be employed. Also, the Committee recommends work-release programs that expand the opportunities for work release in lieu of prison and calls upon states to provide greater opportunities for incarcerated parents to participate in direct care of their children.

Further, rule 45 of the Bangkok Rules (2010) provides, among other things, that prison authorities shall utilize options such as home leave, open prisons and halfway houses for women prisoners to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage. Research has also shown that there is a need to create alternatives to secure custody because a controlled prison environment such as the conventional prison fosters, by its nature, dependence and powerlessness which are the two factors that lead women into the criminal justice system in the first place (Covington and Bloom, 2003: 136). Thus, an open prison for women would offer secure custody with limited control thereby helping female inmates to become independent.

The above instruments are key to justifying why an open prison is appropriate for female inmates and how it should be structured. As indicated earlier in this paper, the lived realities of women call for such a measure.

5.1 Model open prison for women

5.1.1 Who qualifies! The selection criteria

According to Vibhute, open institutions are essentially reserved for comparatively low security-risk prisoners who are ‘thoroughly screened’ on the basis of a set of highly subjective criteria predominantly premised on the nature of crime, the length of sentence undergone and (track) prison record, character, and security risk (Vibhute, 2012). In the same vein, Connemara has been operating on set criteria. In addition, after using the selection criteria to identify potential candidates, the Selection Committee then interviews the inmates individually to ascertain whether they meet all the requirements and emphasis is placed on the fact that going to the open prison is voluntary. The committee also take its time to raise awareness about the open prison facility to help the inmates make an informed decision.

The following criteria (which are part of the Guidelines to the Open Prison System in Zimbabwe) are currently in use at the Connemara open prison for male inmates. The inmate must:

- have been sentenced to an effective sentence of 2 years or more.
- have served at least 12 months in the closed prison and have 12 to 24 months still to serve.
- have proved to be trustworthy and hardworking requiring minimum supervision.
- not have committed specified offences that are murder, carjacking, armed robbery, stock theft and unlawful entry.
- be over the age of 60 (regardless of the offence they committed).
- must have been in constant contact with his family.
- have positive identification.
- be of fixed abode.

Comment on the selection criteria

Based on the literature I read on women’s imprisonment, views from those in the prison service and the discussions I had in my research, I gathered that a large number of female inmates deserve access to an open prison. For instance, the Commissioner-General of Prisons indicated that all convicted female inmates would qualify to enter an open prison.

Some of the reasons provided are that most offences committed by women are not serious which means that they would be eligible for the open prison system. For instance, during my research, I learnt that most female inmates were incarcerated for committing economic offences in order to support their families, such as, growing dagga for sale, theft of maize meal and smuggling goods at the border. Only a very few had been imprisoned for culpable homicide.

Women are usually responsible for taking care of their children and based on the research, it was found that most female inmates have babies. By purpose and design the closed prison system does not provide a conducive environment for raising their children, whereas an open prison environment would go a long way to meeting their needs by offering better facilities and conditions. Also, since female inmates rarely attempt to escape from prison, they do not pose a serious security threat.

However, some stakeholders (namely, representatives from the ICRC and the Ministry of Justice) highlighted the need for criteria to be used to make sure that those who would be transferred to the facility would not pose a risk to the community. There was however consensus on the fact that women pose less of a danger than men to the community and that while the criteria for men should be reviewed, some of the provisions should be relaxed for women.

In the event that the current open prison selection criteria are adopted there is a need for changes to be made so that it will suit the specific needs of the different categories of female inmates.

For instance, one inmate had this to say:

‘Murume wangu akanditsamwira nekuti ndakakwereta mari asingazive haasati ambondishanyira, saka pandinobuda muno handizive kwekuenda kuda ndichambotanga ndaenda kumba kwedu, hamheno.’

(Translation: ‘My husband is angry with me because I borrowed money without his knowledge. He has not visited me ever since incarceration, so I am not sure where to go upon release, maybe I will go to my parent’s home, I don’t know.’)

Thus, it is recommended that the issue of a woman's failure to cite a fixed abode after her incarceration should not necessarily be held against her. Also, the requirement that she must have been in constant touch with her relatives (when the reality is that most female inmates do not receive get visitors in prison) must be removed from the criteria. Rather emphasis should be placed on the need for a female inmate to first make contact with family and relatives she trusts and then advise the prison authorities of the address she wishes to use.

5.2.2 Structures and facilities

It was found that the open prison for female inmates will be at Marondera prison which currently accommodates both male and female inmates. Plans are that most of the structures will be refurbished as a cost cutting measure and the facility will have a holding capacity of 1,000 female inmates. Further, different views were gathered on the intended model open prison for female inmates. For instance, a female interviewee suggested that there should be separate rooms for privacy furnished with a bed for the mother and a cot for her child, coupled with facilities such as a nursery school located close to mothers for frequent breastfeeding and a clinic. She emphasised that any other facilities suitable for an average child should be provided for children at the open prison in line with human rights standards.

She further indicated that there is a need to make a study tour of all conventional prisons so that any best practices they have tried and tested may also be incorporated into the new open prison right from the onset for the benefit female inmates. She gave an example of female prisons in Swaziland which she once visited noting that their hostels have good facilities for women and children and also rehabilitation activities which can benefit women by setting them on the road to economic independence.

A male informant indicated that he visited Israel sometime ago and observed that female inmates with children were accommodated in well-ventilated cells with a bed and a cot for their children. There was a hospital, a pre-school and he would recommend the same set-up for the female open prison.

According to the Basic Principles for the Treatment of Prisoners except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the

human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and other rights as are set out in other United Nations covenants.”¹²

Further, these international instruments emphasise the need for children with their mothers in prison to have access facilities such as nurseries and pre-schools which any average child would benefit from and also specifically trained personnel to take care of the children while separated from their mothers. This should be coupled with the availability of alternative care arrangements which protect the best interests of the child when the child reaches the age required by law for them to leave the prison facility.

It is important to note that, although the focus of this paper is on female inmates with children, women do not constitute a homogeneous group. Hence specifications which will benefit women of all categories who make up the entire female offender population should also be considered and accommodated. So, for example, facilities should also accommodate elderly female inmates, those with children and those with disabilities because they have different needs, for instance, women with disabilities might find it difficult to climb stairs, so sufficient provision should be made for them.

It was gathered that the structures at the female open prison will be long term or permanent facilities. Therefore, decisions made at the design stage will have far-reaching implications throughout the operational life-cycle of the prison facility and will have a significant impact upon its functionality and the ability of prison management to conduct a safe, secure and effective regime that meets international norms (UNOPS, 2016). This process should also be thorough in order to minimise costs associated with the issue of changing designs. Thus, right from the start the design should promote safety, decency and dignity for inmates as well as staff. An awareness of the specific needs of female inmates should inform the design from the onset. In other words, women inmates’ unique needs, responsibilities, roles and relationships which are crucial to their well-being, rehabilitation and re-integration back into society should inspire and continue to inspire this whole process right from the beginning of its life (Dahl, 1987: 27).

¹² 1 UN General Assembly. Basic Principles for the Treatment of Prisoners [hereafter Basic Principles] 1990. G.A. Res. 45/111, princ 5. See also Fifth Conference of the Central, Eastern and Southern African Heads of Correctional Services. African Charter on Prisoners’ Rights [hereafter ACPR]. 2001. Para A(1)(b): ‘Prisoners shall enjoy all rights to the extent that they are not expressly and lawfully limited or denied as a consequence of the fact of detention.’

According to the UN Office for Project Services, prisoners housed at open prisons pose the lowest risk of escape hence these facilities are likely to provide rooms or small dormitories that are locked overnight. The perimeter fence line exists to mark the boundary of the prison property rather than to prevent any serious attempt at escape. Further if located in remote areas or where there is extensive ownership of surrounding land, they may not require boundary fencing at all (UNOPS, 2016). Therefore applied to these research findings, there is a need to consider the requirement of a fence as a measure to protect children of female inmates from leaving the prison complex unmonitored.

Accommodation facilities

Mother and baby units

In conventional prisons, female inmates with children are housed separately from the rest of the inmates but even so the environment does not provide them with sufficiently healthy conditions. Thus, there is a need for blocks of a special type of cells meant to accommodate female inmates with children in prison. According to international standards, such cells need to be more spacious than standard single cells to allow the inclusion of a cot and baby changing facilities. The cell should also have a toilet and a hand basin to maintain high standards of hygiene for both children and their mothers (UNOPS, 2016). Further, this could be complemented with additional space, enough to accommodate extra beds such that the inmate's older children who may stay overnight, especially in light of the fact that there are places that are far from Marondera where a same day return journey might be impossible for children of incarcerated mothers to undertake.

Single cells

In general women value privacy, hence, single rooms would be appropriate for inmates who do not have children in prison. There should be a bed, a table and a chair and a source of light to encourage studies and other developmental activities in the cells. Inmates should be allowed to keep personal effects such as television sets and radios. For security purposes the entrance door to the block should be locked at night.

Ablution facilities

In the single cells section, each residential block of inmates should have ablution facilities at one end of the block and the entrance to the ablutions must be from the inside for security purposes. The inmates should be free to leave their individual rooms at night to use the

facilities because the main entrance will be locked. There should be separate toilets and bathrooms and the bathrooms should have screens for purposes of maintaining privacy while toilets will need to have doors.

In relation to privacy, one inmate said:

'Kushandisa toilet muno kwakaoma, honai pairi pachena apo unenge uchiwonekwa nevamwe ende hazvina kusununguka.'

(Translation: 'As you can see, the way these toilets are designed make it difficult for one to use them comfortably [as] everyone can see you.')

Female inmates thus value privacy and it should be maintained at the open prison as dignity is the fundamental element of human self-esteem and self respect (Dahl, 1987: 98).

Lounge facilities

There should be two separate lounges, furnished and with TV, radio and videos and uncensored newspapers. One could be located at the residential block for the exclusive use of inmates during their spare time as female inmates value their relationships and interaction with each other as they find comfort sharing their common burden of concerns and fears. For instance, one inmate had this to say:

'Tinomuka husiku tichitaura zvevana vedu, kuvasuwa kwatinoita nekuvatyira kwatinoita.'

(Translation: 'We wake up during the night and discuss about our children, sharing concerns and fears about them.')

A lounge would give them room to interact more freely and away from the staff members. The lounge can also be used by female inmates with children to spend quality time with their children. The lounge space can be partitioned into smaller spaces to promote communication and foster relationships. The second lounge could be located close to the dining facilities and could be multi-purpose and used by inmates and officers, for gatherings, discussions or visitors, as the need arises.

Library facilities and formal education classroom

Most female inmates are interested in taking up formal education but they are often limited by its unavailability at female prisons.

One inmate said:

'Ndichitarisa kuti ndakatongerwa 5 years, dai ndaiwana mukana wekudzidza ndaitoda nekuti ndakaperera paform 2 kuchikoro, zvino pano hapana tinongoenda kugarden chete.'

(Translation: 'Considering my sentence of 5 years, I wish I could attend formal education classes because I dropped out of school at Junior Secondary level due to lack of tuition, however the facility is not available at this prison, we only do gardening.')

The rehabilitation officer at the prison indicated that while arrangements could be made for classes to be held in a sheltered area, there were no teachers at the female prison. However, there are teachers at male prisons within the same region. Therefore, the availability of teachers and other relevant staff should be ensured from the start. There should be a library for inmates and officers stocked with books for formal education, vocational training and leisure. There should be room to facilitate inter-library loans so as to enhance the capacity of the library.

Cooking facilities

The preparation of meals for inmates should be communal to accommodate every inmate at the expense of the state. Most rehabilitation activities will enable female inmates to earn some income while in prison (as shall be discussed below). Therefore, facilities should be made for them to bring into the prison uncooked food and prepare it for themselves and their children as this will supplement their diets. For instance, I was part of a study tour to Uganda under the Justice Law and Order Sector (JLOS). We visited Luzira Female Prison and learnt that inmates were allowed to prepare their extra food from home under the supervision of officers although the prison was actually closed. This practice would be even more practical at an open prison where security is a bit more relaxed.

Home leave and visits by relatives

A sobbing middle-aged mother of two said:

'Hapana arikumbondishanyira kubva pandakavharirwa muno, kana vana handichavaziva, patova negore.'

(Translation: 'Nobody has ever visited since, I was incarcerated, I haven't seen my children for a year now.')

It is critical to note that most female inmates do not get visitors and if they do, it is not usually frequent due to a number of reasons such as the prison's distance from their home and the stigma of knowing or being related to a prisoner. Therefore, female inmates ought to be allowed to take home leave once every three weeks and extra leave should be extended to them in the case of special circumstances, for instance, a female inmate might need to nurse a sick child, attend a funeral or to be part of one of the children's special occasions, such as, a graduation or birthday and this should be facilitated as this would promote the child's development.

Where female inmates get visits from their children, they should be allowed to sleep over at the prison to encourage bonding and also to enable the child to be free to share their challenges in light of the fact that separation is traumatic to both the mother and the child. Also, the fact that the open prison will be located in Marondera means that some visitors will have to travel long distances and returning home on the same day could be a challenge, hence this should be taken into consideration.

Travel expenses for female inmates to go home should be met by the state. As discussed earlier, most female inmates come from backgrounds where fending for their children has routinely exhausted their funds and made saving money an impossibility. Such funds can be raised from rehabilitation activities that the female inmates will perform collectively at the open prison.

Flexible lock-up times

Most female inmates were concerned about the strict and inconvenient lock-up times which characterise conventional prisons, involving eating supper at around 4 p.m. and being confined to their cells until about 7 a.m. the next day. In this regard one inmate had this to say:

'Semunhu anoyamwisa ndinotodya sadza rinotakurika mudumbu kuma 4 patinovharirwa kuitira kuti ndigone kurara ndichiyamwisa mwana zvakakwana, ndinomuka ndinenzara nekuti handina anondiunzira chimwe chikafu chekudya pakati apa.'

(Translation: 'I eat as much food as my stomach can carry before lock up time around 1600 hours so that I can manage to breastfeed my child throughout the night. Still I will be famished by the time we get out of the cells because nobody can bring me supplementary food which would help me.'))

Use of the telephone

To maintain communication between mother and child, female inmates should be allowed the use of a telephone facility in prison in order to maintain constant communication with their children who have been left at home and with their family. In light of current technology, the use of cell phones would be ideal but for security reasons they may only be allowed after due and proper consideration.

Healthcare facilities

Female inmates have special health needs that should be checked regularly, for instance, the Bangkok Rules (2010) provide for the need for regular checks for cervical and breast cancer. This should be considered when assigning medical personnel to the open prison so that female inmates will get services that are specific to their requirements. A secure medical room will be required to allow a designated space for internal and external healthcare providers to examine prisoners and their children, conduct assessments and development checks, provide treatment and dispense medication (UNOPS, 2016). Privacy must be guaranteed in such facilities.

Interview/counselling room

In light of the fact that female inmates come from different backgrounds with different challenges, there is also a need for an interview/counselling room. This room would be used for interviewing female inmates by a specifically trained prison officer in private and away from the other general officer population. These initial interviews can also be used to encourage the inmate to take up various rehabilitation activities and empower them to make decisions early so that they can maximise the opportunities to improve themselves. The room can also be used for counselling female inmates as an on-going process in the prison. This will further enhance their rehabilitation and reformation. The room should be welcoming and comfortable space and the inmate's privacy must be guaranteed.

Children's playing facilities

Children's playing facilities could simply take the form of an sheltered area outside or a few benches under some trees where inmates can also sit while their children are playing. Flowers and trees would help to improve the atmosphere of the place for the children. Play equipment such as swings should be provided and if older children visit, opportunities for their active interaction with the younger ones in prison should be created by allowing them to play together in the area.

5.2.3 There is life in and after prison! Rehabilitation activities

Changes over the years in prisons, from retribution to rehabilitation and the on-going move in the African setting from prisons to correctional services¹³ all point to the need to change the prison system. Prisons have been transformed from punishment institutions designed to fulfil the community's revenge on the offender to institutions designed to reform, rehabilitate and reintegrate prisoners into the community so that they become productive individuals away from the world of crime as much as possible. However, it was gathered that in reality female inmates do not get to leave prison having acquired better skills capable of earning them substantially more income than before they were incarcerated, as the focus seems to be centred on simply training them to be better housewives. Conversely, their male counterparts within the same prison system are given the opportunity to gain skills which substantially increase their earning power and in most cases they leave prison with certificates of various kinds. For instance, female inmates housed at prisons attached to male prisons spent most of their time idling the day away as even the gardening was done by male inmates and this situation does not augur well for the welfare of female inmates. Those at female only prisons do mostly gardening as the main activity coupled with a few other activities that are deemed suitable for the female gender, such as sewing, cooking and cleaning. This is detrimental to the exercise by female inmates of their rights, especially their rights related to rehabilitation through training and education.

Section 227 of the Zimbabwe Constitution formally introduces the correctional aspect to the Department of Prisons in Zimbabwe and also emphasises the rehabilitation of offenders as being a key function of prisons. Explaining this development, the Commissioner-General of Prisons indicated that this approach means that the Prison Service's role of protecting society

¹³ For instance, South Africa, Zimbabwe (2013) and Zambia (2015) now use the term correctional services.

has been enlarged to encompass both short and long term objectives. The prisons aspect focuses on the short term paradigm of ensuring that inmates are safely contained to prevent their premature release and escape, while the correctional aspect focuses on equipping offenders with skills as witnessed in various rehabilitation programmes on offer and looks upon imprisonment as an opportunity to enable inmates to reposition their approach to life as law abiding citizens upon their release (Mashange, 2015).

Article 30(1)(f) of the ACRWC requires that States shall have a prison system whose essential aim is the 'reformation, the integration of the mother to the family and social rehabilitation.' These provisions have implications for law, policy and training on how to deal with female inmates so that they clearly ought to enjoy the benefits envisioned.

Further, various initiatives have been undertaken on the African continent to encourage reformation of prisons so as to ensure the rehabilitation of inmates and promote their re-integration into society. These include several declarations such as: The Kampala Declaration on Prison Conditions in Africa of 1996; The Arusha Declaration on Good Prison Practice of 1999 and The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa of 2002.

The above Declarations call for adoption of measures promoting rehabilitation activities both during the period of imprisonment and non-custodial sentence schemes. They also provide for access to rehabilitation programmes by unsentenced prisoners which means that rehabilitation actually starts as soon as a woman is sent to prison, whether or not she has been sentenced; there is no time for her to be idle.

Activities for female inmates

Formal education which encompasses Ordinary and Advanced level studies as well as access to institutions of higher learning should be available to female inmates. During the class visit to Connemara we met a male inmate who is studying with the Midlands State University; this is a positive development which should be extended to female inmates at the open prison right from the start. Further, the facilities at the open prison should be structured in a way which allows distance education for female inmates so that those with children can manage to be close to their children during their studies and also allows great flexibility which would be

particularly beneficial to incarcerated students. There should also be vocational and other training services for those interested in them.

The Commissioner-General of Prisons emphasised the need for female inmates to be given an opportunity to have a choice between several rehabilitation activities at the open prison, instead of replicating the current system within the closed prisons where they are confined to gendered activities. There is need to empower the female inmates in their decision so that they make informed decisions. Thus, workshop facilities with the following: carpentry, welding, motor mechanics, painting and all other activities currently preserved for male inmates must also be made available to and encouraged among female inmates so that they have a wide range of self-improvement courses from which to choose and pursue.

To prevent female inmates from falling into the same trap in which they find themselves in the conventional prison system, the designers and implementers of the women's open prison should constantly ask themselves questions such as the following, 'Armed with gardening skills, hairdressing, or having been idle (as is the case in most female wings at the male prisons) would these women come out of prison better equipped to face the world than they were before committing the offences that saw them being incarcerated? Would a woman be able to fend for her children in a law-abiding manner or would she still be ill-prepared for life after prison?'

There is also need for civic and social education, for instance women can learn how to take care of their children and also have an awareness of important issues like HIV/AIDS. This is currently happening but it is limited to certain prisons hence it should be done for all women after their income generating activities.

The open prison should be open to various organisations so that they can work with inmates. An example of this would be the Gogo Olive knitting project for female inmates in Mutare discussed earlier in this paper. If this is already happening within the confines of the closed prison then surely even more can be done in an open prison. There should also be work release programmes as discussed earlier whereby women go out to designated areas for work during the day, returning to prison in the evening and earn income.

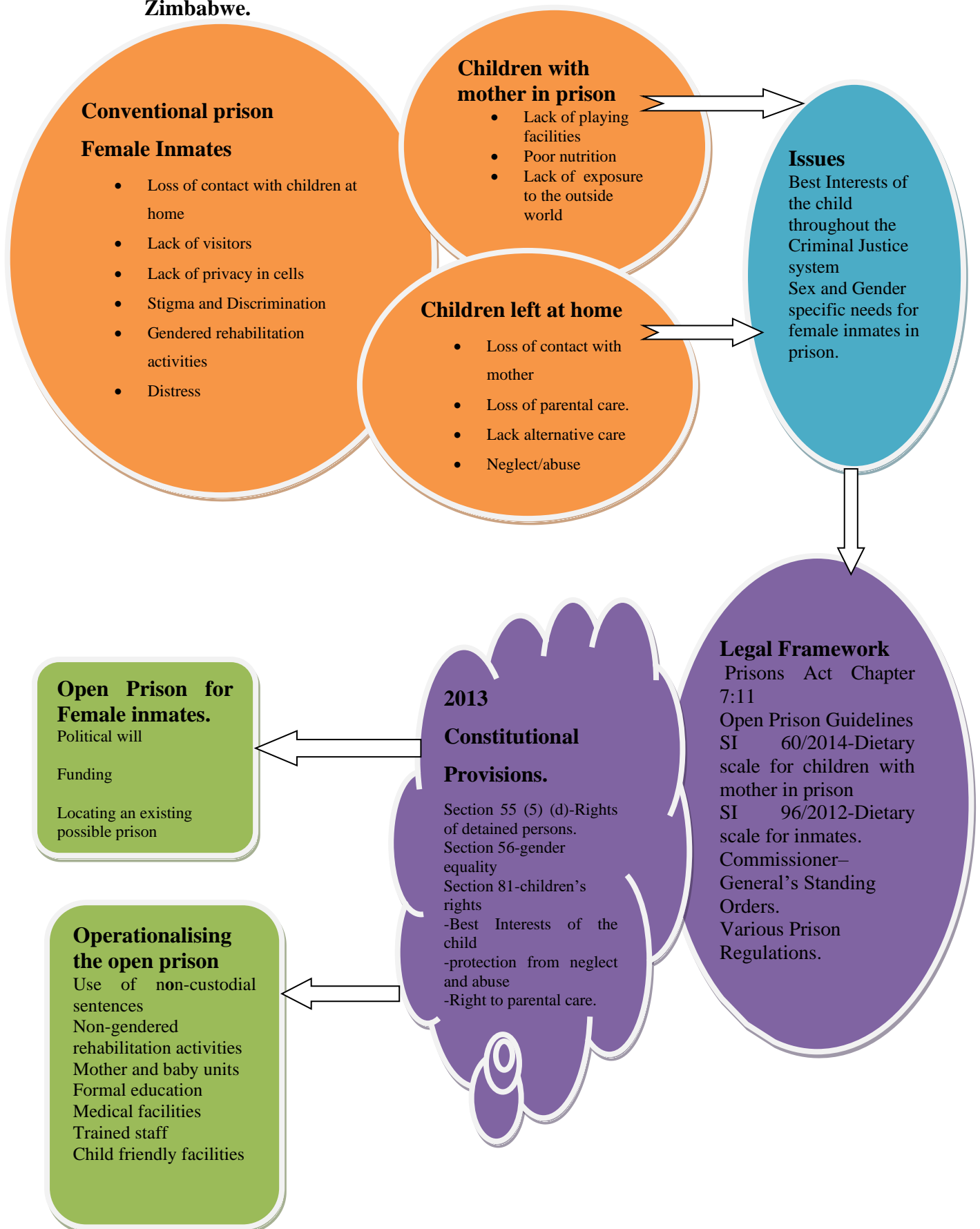
There is also a need to sensitize families and communities in preparation for the reintegration of female inmates back into society due to the fact that they usually face more of a stigma than their male counterparts upon reintegration. Prisons operate within communities hence it is crucial for communities to accept inmates upon release from prison as this will encourage them to live as law abiding citizens.

Thus, the aim of rehabilitation projects should be to promote the independence of the inmates both in prison and after prison so that they become law abiding citizens who are also able to support and empower their children.

Pathway to an open prison for female inmates in Zimbabwe

The diagram below illustrates the path to an open prison in Zimbabwe. It shows the challenges associated with the conventional prison system for female inmates and their children both at home and with their mothers in prison. These challenges should be considered as some of the major reasons behind the need for the implementation of an open prison for female inmates and should encourage the state to take action. Further, the diagram shows that there is enabling legislation in form of the 2013 Constitution which provides for gender equality and the best interests of the child together with the Open Prison Guidelines, the Prisons Act and various Prison Regulations. Political will and funding are critical requirements for implementation if the open prison for women is to materialise. Will power determines the availing of funding and priority should be given to such a noble cause. Then the facilities at the open prison should be sex and gender specific to the benefit of female inmates and their children. The open prison should be designed with the female inmates in mind, especially in light of the fact that throughout this paper the female inmates have spoken and raised their concerns.

Figure 5: Diagram showing the pathway to the open prison for female inmates in Zimbabwe.



5.2.4 Legislative and other measures

In terms of legal provisions, most of the key informants indicated that having a provision for an open prison in the Prisons and Correctional Service Bill¹⁴ and also having specific provisions on the operations of open prisons for female inmates in Prison Regulations and Guidelines would be ideal. What is critical in all this is for the Regulations to capture the specific needs and lived realities of female inmates, their children and other categories of women so that the open prison for female inmates would be beneficial to all female inmates. It should be noted that there is a need for fundraising activities and the support of various organisations for the open prison for female inmates to be a success, especially in light of the fact that the research revealed that the lack of funding is the major obstacle to the establishment of an open prison for women. Further, there should be an all stakeholders approach to the issue of imprisonment of female inmates as prisons are situated at the very end of the criminal justice journey where they are recipients of the products of the community, police and courts. There should be application of non-custodial measures by the courts to deserving female offenders.

In *S v Ngorima* HH-43-15, it was stated that magistrates should not unwittingly contribute to a human rights catastrophe of overcrowded prisons by imposing overly punitive sentences for non-violent crimes as this puts a tremendous strain on a system already struggling to cope with meeting basic humane standards for prisoners. In the same judgment, Tsanga J noted that an approach to sentencing for crimes of a non-violent nature which combines the legal position with lived realities is more likely to result in a balanced sentence. Further, she also observed that women offenders should be treated differently due to the often less dangerous nature of their criminality or the consequences of their gendered roles as care takers.

In the same vein, in its interpretation of article 30(1)(c) of the ACRWC, ACERWC stresses the need for state parties to encourage the courts to favour non-custodial sentences so that special institutions, such as prison, would be considered as a last resort. Therefore, it is critical for Zimbabwean courts to practise the use of imprisonment as sparingly as possible and also to consider the lived realities of women by applying alternatives to imprisonment

¹⁴ ZPCS is currently working on aligning the Prisons Act to the Constitution and the Prisons and Correctional Service Bill introduces a section on open prisons for both male and female inmates, which is not in the current Act.

such as fines, community service, caution and suspended sentences to deserving offenders. For the open prison to function properly, it must adequately accommodate the deserving candidates and must never become overcrowded and overwhelm the facilities.

On community service, the Kadoma Declaration of 1997 calls on African States to promote, in certain cases, community service orders that conform with African traditions as an alternative to custodial sentences. Zimbabwe is one of the pioneers of the community service programme in Africa hence it is widely known. However, there is a need to encourage the courts to make use of the programme and also to equip the department so that it is effectively practised.

One inmate had this to say:

'Dai vemacourt vachinzwisawo kuti tinevana votitongerawo community service nekuti pakupedzisira vana vanoshungurudzwa nekuvharirwa kwedu.'
(Translation: 'The courts should consider community services for women because our children are traumatised by our incarceration.')

Thus, deserving female offenders should benefit from community service and other non-custodial sentences.

Research has shown that imprisonment of a mother, even for the shortest period can have a negative impact on her children. Further, incarceration often robs a woman of a home, a marriage and property. Thus, due to the negative social and psychological impact of imprisonment on women, their families and their children, as well as the fact that the imprisonment of some women could make their reintegration into society more difficult, the emphasis on giving priority to non-custodial measures for women and the trend towards applying alternative sanctions are among the most important points highlighted in various rules on imprisonment and they must be adopted by Zimbabwean courts. Likewise, these rules stress the need for providing alternatives to imprisonment, especially for women who do not constitute a major threat to society. Female offenders are also less likely to have a criminal record and they generally re-offend less often than their male counterparts. These factors alone suggest that community-based sanctions are an appropriate first choice for many female offenders.

Case backlog clearance is also critical for the functioning of open prisons. In some instances inmates stay too long on remand while in other cases there is a delay in sentencing; hence, all this should be addressed so that the open prison functions properly.

There should be programmes targeted towards building confidence of female inmates in preparation for their reintegration into the community. Some issues will include allowing inmates to wear make-up and mentoring with the aim of equipping the inmates for life after prison.

There should be the involvement of other players in the criminal justice system and beyond to ensure the dignified treatment of female inmates throughout their journey through the criminal justice system. The Zimbabwe Republic Police, Judiciary and the Social Services Department all play various roles which critically impact on the person of the female inmate who finally gets admitted to the open prison; hence the women should receive dignified treatment at every stage of the system and in this regard, gender mainstreaming the criminal justice system is critical.

Advocacy and education should be conducted for all prison officers to integrate women and children's rights issues in their work in order to address perceptions that hinder the effectiveness of an open prison for female inmates. Communities should also be actively involved in the process, as was the case at the establishment of Connemara, so that they appreciate the importance of open prisons. This is due to the fact that the general perception is that offenders should be punished and the closed prisons are more effective than open ones which seem to trivialise the wrongs done by the offender against society.¹⁵

5.2.5 Conclusion

When all has been said and done, the state has an obligation in terms of the Constitution and various international human rights provisions, to address the current discrimination which has seen female inmates going without an open prison for the past 15 years. While it was gathered that the Department of Prisons is encouraged to lobby for funding from various stakeholders, this does not offer a carte blanche for the state as the primary duty bearer to abrogate its duties to private players. The Bangkok Rules (2010) note that the principle of

¹⁵ This perception cuts across communities and even in discussions with the my colleagues often pointed out the need for the offender to feel the pain of state punishment for the error of their ways.

non-discrimination requires states to address the unique challenges that women prisoners face and to take into account their gender-specific needs. The principle of non-discrimination also requires states to take into account and address the disparate impact of criminal justice strategies on women and children (OHCHR, 2014). In the same vein, Zimbabwe also has a duty to provide an open prison facility to women offenders.

Further, the state must prioritise use of non-custodial measures for female offenders. This is in line with the requirements of the Bangkok Rules (2010) that states must develop gender-specific diversionary measures and pre-trial and sentencing alternatives to incarceration that take into account the history of victimization of many women and their caretaking responsibilities (Bangkok Rules, 2010). This is due to the fact that the impact of imprisonment can be extremely severe for women and their children as they are usually the primary carers of their children. Thus, even a short period in prison may have damaging consequences for future generations as children's best interests are breached, for instance, most female inmates indicated that their children could not proceed with their education as a result of their imprisonment. There is also a loss of contact with children for female inmates which is exacerbated by the distant location of prisons accommodating female inmates.

While it is difficult to balance the competing interests of the need to achieve justice on one hand and that of protecting children's rights on the other, maintaining the business as usual approach towards the situation of children of incarcerated mothers will affect not only the children concerned but generations to come. Therefore, the state must prioritise implementation of the open prison for female inmates as the initial step towards the protection of the best interests of children of incarcerated mothers either at home or in prison.

Further, the state is obliged to provide female inmates with rehabilitation programmes and services that enable them to earn income after release from prison and consequently provide for their children. This means gender equality should cut across all rehabilitation activities at the open prison and female inmates should be allowed to access formal education, vocational training and work release programmes, among other things. The training and work provided should be continually adjusted to suit prevailing market demands.

It is not enough to have an open prison for female inmates. The Bangkok Rules (2010) together with other international standards oblige states to address the pathways that lead

women to prison and the consequences of their incarceration. For instance, in the Vienna Declaration on Crime and Justice, states agreed to the development of crime prevention strategies that address root causes and risk factors related to crime and victimization through social, health, educational and justice policies (Vienna Declaration on Crime and Justice, 2001). For instance, this research found that most female inmates come from backgrounds of low education and income and they often commit offences in trying to fulfil their roles as wives and mothers.

Further it is critical that the open prison should provide appropriate facilities and regimes for mothers with babies and children living in prison. This will further require adaptation of prison conditions, programmes and staff training. Equally, staff attitudes, flexibility and understanding can go far in providing a more child-friendly environment in general as well as specifically in relation to visiting facilities and procedures for children visiting their mother in prison. In particular, it is essential that children of prisoners are recognised as children who are in this situation through no fault of their own and who are entitled to all their rights under the Convention on the Rights of the Child, including non-discrimination, maintaining contact with their parent, to have their best interests taken into account and to be heard in all proceedings affecting them. I could go on and on, but the Office of the High Commissioner on Human Rights says it better:

‘Much more remains to be done to identify and address the pathways to women’s incarceration; to establish better, safer and more gender-sensitive conditions for women prisoners; to ameliorate the negative consequences of women’s imprisonment’ (OHCHR, 2014).

Need I say more, we should strive to make and preserve a Zimbabwe that is fit for not only the present generation, but for those still to come. Together, with new buildings and a change in ideology, we can go far in protecting the rights of female offenders and reducing the negative impact of imprisonment on their children.

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