

UNIVERSITY OF ZIMBABWE



**AN INVESTIGATION INTO THE CHALLENGES FACED BY FEMALE EX-
PRISONERS WHEN RE-INTEGRATING INTO SOCIETY: THE CASE OF MAULA,
MZUZU AND MZIMBA PRISONS IN MALAWI**

By

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Abstract

This research examines the rehabilitation and re-integration programmes for female prisoners in at least 3 prisons in Malawi and the experiences of women ex-prisoners after their release from prison. In breach of its obligations under both binding and persuasive international and regional human rights instruments, including CEDAW, the ICCPR, the United Nations Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) and the Kampala Declaration on Prison Conditions in Africa and the Plan of Action, women prisoners are hardly rehabilitated if at all and there are no meaningful re-integration programmes in the case study prisons. Further, in breach of national legislation, women prisoners and ex-prisoners suffer discrimination due to their sex. The research, employing the women's law approach, reveals that women prisoners' particular needs are inadvertently neglected by the prison authorities. Using radical feminist theory, the research established that there is a blatant mismatch between the Malawi Prisons Service mission statement to safeguard the welfare of all prisoners and the rather unfortunate and discouraging situation in which women prisoners find themselves. This is to a certain extent due to the lack of understanding as to how gender concepts work to discriminate against women coupled with patriarchal predispositions permeating our society as well as the low population of women prisoners. In the examination of the rehabilitation and re-integration programmes and the experiences of women ex-prisoners, both primary and secondary evidence was harnessed using a variety of methods and the results were analysed using a number of inter-related gender sensitive methodologies. Finally, based on the research's conclusions, a number of recommendations have been put forward to different stakeholders concerned with prison matters for action.

Declaration

I hereby declare that the work presented in this research write up is my own research and has not been submitted for any Degree in any University.

Signed

5 April, 2018

Daniel Kuyokwa

This research has been submitted with my approval as the University Supervisor.

Signed.....

5 April, 2018

Prof. Julie Stewart

Dedication

To Almighty God for seeing me through the journey of this study.

To my Daughter, Praise Tuntufye,

For my not being there when you needed me most.

And

To my wife, Sella,

For all your support and encouragement.

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List of abbreviations and acronyms

ACHPR	African Charter on Human and Peoples' Rights
Bangkok Rules	Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
FBO	Faith-based organisation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Kampala Declaration	Kampala Declaration on Prison Conditions in Africa and the Plan of Action
MSCE	Malawi School Certificate of Education Examinations
NGO	Non-governmental organisation
NORHED	Norwegian Programme for Capacity Development in Higher Education & Research for Development
SEARCWL	Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
Standard Minimum Rules	Standard Minimum Rules for the Treatment of Prisoners
TEVETA	Technical Education and Vocational Entrepreneurship Training Authority
UDHR	Universal Declaration of Human Rights
UN	United Nations
VOM	Victim Offender Mediation
Women's Protocol	Protocol to the ACHPR on the Rights of Women in Africa

List of statutes

Convicted Persons (Employment on Public Works) Act (Cap. 9:03 of the Laws of Malawi)
Malawi Constitution of 1994
Penal Code (Cap. 7:01 of the Laws of Malawi)
Prisons Act (Cap. 9:02 of the Laws of Malawi)
Probation of Offenders Act (Cap. 9:01 of the Laws of Malawi)

List of international and regional instruments

African Charter on Human and Peoples' Rights (ACHPR)
 Protocol to the ACHPR on the Rights of Women in Africa (Women's Protocol)
Basic Principles for the Treatment of Prisoners
Body of Principles for the Protection of All Persons under any Form of Detention or
 Imprisonment
Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
 Recommendation 24 of the Committee on the Elimination of Discrimination against
 Women
International Covenant on Civil and Political Rights (ICCPR)
International Covenant on Economic, Social and Cultural Rights (ICESCR)
 General Comment No. 3 of the Committee on Economic, Social and Cultural Rights
 (CESCR)
 General Comment No. 13 of the Committee on Economic, Social and Cultural Rights
 (CESCR)
Kampala Declaration on Prison Conditions in Africa and the Plan of Action
Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial
 Measures for Women Offenders (Bangkok Rules)
Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules)
UN Charter
Universal Declaration of Human Rights (UDHR)

List of figures

Figure 1: Map of Malawi showing the sites of the case study prisons20

List of tables

Table 1:	Showing the respondents based on their sex and location	45
Table 2:	Showing the rehabilitation programmes offered to female and male prisoners in the case study prisons	54
Table 3:	Showing the trend in the Malawi female prison population from 2001	60

Table of contents

Abstract.....	2
Declaration.....	3
Dedication.....	4
Acknowledgements.....	5
List of abbreviations and acronyms	6
List of statutes.....	7
List of international and regional instruments	7
List of figures.....	7
List of tables.....	8
Table of contents.....	9
CHAPTER ONE.....	13
1.0 INTRODUCTION AND BACKGROUND TO THE STUDY.....	13
1.1 Introduction	13
1.1 Problem statement	14
1.2 The aim of the study	16
1.2.1 Objectives of the study	16
1.3 Research assumptions and questions	16
1.3.1 Research assumptions	16
1.3.2 Research questions.....	17
1.4 Justification for the study	17
1.5 Study sites.....	18
1.6 Conclusion.....	19
CHAPTER TWO.....	21
2.0 LAW AND LITERATURE REVIEW.....	21
2.1 Introduction	21
2.2 International human rights instruments	21
2.2.1 International Covenant on Civil and Political Rights (ICCPR).....	21
2.2.2 International Covenant on Economic, Social and Cultural Rights (ICESCR).....	21

2.2.3	<i>Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)</i>	22
2.2.4	<i>UN Charter</i>	23
2.2.5	<i>Universal Declaration of Human Rights (UDHR)</i>	23
2.2.6	<i>Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment</i>	24
2.2.7	<i>The UN's Standard Minimum Rules for the Treatment of Prisoners</i>	24
2.2.9	<i>Basic Principles for the Treatment of Prisoners</i>	26
2.2.10	<i>The UN Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)</i>	26
2.3	Regional human rights instruments	27
2.3.1	<i>African Charter on Human and Peoples' Rights (ACHPR)</i>	27
2.3.2	<i>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol)</i>	27
2.3.3	<i>Kampala Declaration on Prison Conditions in Africa and the Plan of Action</i>	27
2.4	The reception of international law in Malawi.....	28
2.5	National legislation.....	29
2.5.1	<i>The 1994 Constitution</i>	29
2.5.2	<i>The Penal Code (Chapter 7:01 of the Laws of Malawi)</i>	30
2.5.3	<i>The Prisons Act (Chapter 9:02 of the Laws of Malawi)</i>	31
2.5.4	<i>Probation of Offenders Act (Cap. 9:01 of the Laws of Malawi) and Convicted Persons (Employment on Public Works) Act (Cap. 9:03 of the Laws of Malawi)</i>	31
2.6	Conclusion.....	32
CHAPTER THREE		33
3.0	THEORETICAL AND METHODOLOGICAL APPROACH	33
3.1	Introduction	33
3.2	Theoretical framework	33
3.2.1	<i>Radical feminist theory</i>	33
3.2.2	<i>Women's empowerment theory</i>	33
3.3	Methodological framework	34
3.3.1	<i>Introduction</i>	34
3.3.2	<i>Women's law approach</i>	35
3.3.3	<i>Dung beetle approach</i>	37
3.3.4	<i>Sex and gender approach</i>	38

3.3.5	<i>Actors and structures approach</i>	38
3.3.6	<i>Human rights approach</i>	39
3.4	Methods of data collection	41
3.4.1	<i>Key informants</i>	41
3.4.2	<i>In-depth individual interviews</i>	41
3.4.3	<i>Focus group discussions</i>	42
3.4.4	<i>Literature research</i>	42
3.4.5	<i>Research population and the sample</i>	43
3.5	Access to prisons	45
3.6	Challenges and Limitations	46
3.6.1	<i>Data recording</i>	46
3.6.2	<i>Different languages</i>	46
3.6.3	<i>The irony of my position</i>	47
3.6.4	<i>The necessary authorities</i>	47
3.7	Conclusion.....	48
CHAPTER FOUR.....		49
4.0	REHABILITATION FINDINGS	49
4.1	Introduction	49
4.2	Theories and purpose of punishment.....	49
4.2.1	<i>Punishment</i>	49
4.2.2	<i>Retribution</i>	49
4.2.3	<i>Incapacitation</i>	50
4.2.4	<i>Deterrence</i>	50
4.2.5	<i>Rehabilitation</i>	50
4.2.6	<i>Restoration</i>	50
4.3	Defining the terms rehabilitation and re-integration.....	51
4.3.1	<i>Rehabilitation</i>	51
4.3.2	<i>Re-integration</i>	52
4.4	The rehabilitation activities for female prisoners in the case study prisons	52
4.5	Women prisoners' particular needs	56
4.6	Counselling and psycho-social support	57
4.7	Extent of preparation for re-integration into society	60
4.8	Release from prison.....	61
4.9	Conclusion.....	62

CHAPTER FIVE	63
5.0 RE-INTEGRATION FINDINGS	63
5.1 Introduction	63
5.2 A tale of female ex-prisoners' experiences when re-integrating into society.....	63
5.2.1 <i>Community stigma and discrimination against women ex-prisoners</i>	63
5.2.2 <i>Food and housing</i>	65
5.2.3 <i>Marital issues</i>	67
5.2.4 <i>The role of the community and faith based organisation in the re-integration of female prisoners</i>	68
5.3 Re-integration programmes	69
5.3.1 <i>Halfway home or house</i>	69
5.3.2 <i>Restorative justice</i>	69
5.3.3 <i>Family conference</i>	70
5.3.4 <i>Victim Offender Mediation (VOM)</i>	70
5.4 Conclusion.....	70
CHAPTER SIX.....	71
6.0 DISCUSSION AND THE WAY FORWARD	71
6.1 Discussion.....	71
6.2 The way forward.....	72
6.2.1 <i>Policy makers</i>	72
6.2.2 <i>Malawi Law Commission</i>	73
6.2.3 <i>Judicial officers</i>	74
6.2.4 <i>Legal Affairs Committee of Parliament</i>	74
6.2.5 <i>Inspectorate of Prisons</i>	75
Bibliography	76

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

Prisons are institutions that help citizens feel protected by isolating offenders from society and by putting in place deterrent measures against would-be offenders. Prisons are also responsible for carrying out the rehabilitation of prisoners and preparing them through various programmes for their successful re-integration into society.

I conducted this study in three major prisons in Malawi, namely: Maula, Mzuzu and Mzimba Prison. The study was conducted between October, 2017 and February 2018. It focused on investigating the rehabilitation programmes offered to female prisoners and the challenges faced by female ex-prisoners when re-integrating into society after release from prison. To do this, it was essential to interrogate the criminal justice system in Malawi to see to what extent they provided for the rehabilitation programmes tailored for female prisoners and designed to prepare them for a successful re-integration into the community.

The research established that the rehabilitation and re-integration programmes that are made available to mostly male prisoners to the exclusion of their female counterparts are not offered by the prison authorities but by other partners. It was further revealed that due to the lack of rehabilitation opportunities, female ex-prisoners face a number of challenges when re-integrating into society over and above the problems they face in prison.

The choice of my topic for the study was mainly influenced by two factors. The first reason is attributed to the nature of my work. As a State Advocate, among other things, I prepare charge sheets against persons who have been suspected of committing an offence or offences. If the court inquires, I propose the sentence that it should impose on a convicted person. on behalf of the State I also respond to bail applications made by accused persons. In doing all this, I followed the norm¹ without question. It never occurred to me that the norm in practice affects men and women differently. My lack of analysis into the situation can be ascribed to

¹ If from the facts an accused can be charged with a number of possible offences, they are generally charged with the most serious of them. When making a decision whether to allow or refuse a bail application, consideration must be had only to the interests of justice. The interests of justice, as is stipulated in the law, are male-oriented.

the teaching I received during my undergraduate studies which never trained me to question the effect of laws, rules and regulations on different groups of people. I have since discovered I had been simply taught to apply the law as it is without questioning its consequences. Now I realise that the same laws have different affects on individuals and groups.

The second reason was the effect on me of taking the course Women and the Criminal Justice System which exposed me to the different circumstances of women who commit offences and their specific needs within the criminal justice system as a group and as individuals. This stimulated my interest in the matter and therefore, I decided to conduct this research to find out how the criminal justice system in Malawi rehabilitated women prisoners and provided for their specific needs. In the process it was inevitable that I would also find out the views of the personnel in the Malawi criminal justice system who, at its various levels, have the duty to comply with international standards on prison conditions and the treatment of prisoners. Most importantly, I hoped to ignite a debate around the women prisoners' issues so that through this awareness, the criminal justice system could learn to treat women offenders in a more gender sensitive manner.

As it will be seen later, this research has made a number of recommendations. The aim of the recommendations is to ensure that the human rights standards for the treatment of prisoners as set out in the 1994 Constitution of Malawi and relevant international human rights instruments to which Malawi is a State Party, are observed and upheld.

1.1 Problem statement

A review of the literature in Malawi indicates that there is an absence of information regarding rehabilitation and re-integration programmes for prisoners generally and for women prisoners' particular needs in prisons. For instance, a 2001 report for Malawi by the Special Rapporteur on Prisons and Conditions of Detention in Africa of the African Commission on Human and Peoples' Rights, assessed and documented the conditions of detention in police cells and prisons in Malawi. Going through the report I noticed that the rehabilitation of prisoners is mentioned in passing and there is no mention of re-integration programmes for prisoners. Secondly, the first ever study on offenders and rehabilitation was undertaken in 2004. The research aimed at developing an understanding of the motivating factors behind crime in the country, and to achieve some insight into the patterns of offending

and the nature of selected crimes. It did not discuss the rehabilitation of prisoners in Malawi prisons nor did it look at re-integration interventions with the Malawi prisons.²

Further, in her study, 'Women as offenders – the social and legal circumstances of women who commit crimes: A case study of selected prisons in Malawi', Twea (2004) focuses on establishing the social and legal circumstances that have shaped the condition and position of the female offender. She does not look at female prisoners' rehabilitation and re-integration programmes although it is clear in her work the male and female prisoners' experiences of prison is different due to different starting points and inherent male modelled prisons in Malawi. The work of Esme Chombo³ focused on the management of women's menstruation in police and court cells or lack thereof as a human rights issue for women.

Section 42(1) of the 1994 Constitution of Malawi provides for the rights of arrested or detained, including sentenced, persons which include the right to be held under conditions consistent with human dignity and contact with the outside world; rights which are essential especially for women prisoners. The Prisons Act of 1956 provides for the establishment of prisons within Malawi as well as the management and control of prisons and their prison population. However, the Act does not specifically articulate or address the real gender issues affecting women prisoners. Thus, prisons overlook women prisoners' particular needs because they do not appreciate how sex and gender concepts work to discriminate against women.

Further, the Prison Training School does not comprehensively teach gender-related programmes to newly recruited prison staff resulting in women's needs in prison being disregarded. Nevertheless, this is the case despite Malawi's commitment at both the international and regional level. In the end, Malawi prisons remain inherently male-oriented. Thus, there is a need for deliberate efforts to be made to create an enabling environment designed to improve the situation of women prisoners in the areas of treatment, rehabilitation

² Twea, S. (2004). 'Women as offenders – the social and legal circumstances of women who commit crimes: A case study of selected prisons in Malawi'. Dissertation, submitted in partial fulfilment for the Masters Degree in Women's Law, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe. (Unpublished).

³ Chombo, S. (2008) 'Who is fooling who? Women and (Non) Management of Menstruation in Police and Court Cells in Malawi'. Dissertation, submitted in partial fulfilment for the Master's Degree in Women's Law, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe. (Unpublished).

and re-integration. Failure to do so amounts to a violation of the rights of women prisoners and non-compliance of the State's obligations at international and regional level.

1.2 The aim of the study

To examine the rehabilitation and re-integration programmes offered to women prisoners to see to what extent they prepare women ex-prisoners for a successful re-integration into society after their release from prison.

1.2.1 Objectives of the study

1. To investigate if there are programmes in the justice system designed to rehabilitate and prepare female prisoners for re-integration into society.
2. To interrogate the justice systems to see to what extent they prepare female prisoners for re-integration into society.
3. To investigate the lived realities of women ex-prisoners when re-integrating into society after release from prison.
4. To determine to what extent the rehabilitation and re-integration programmes in Malawi's prisons, if any, address the particular needs of women prisoners.

1.3 Research assumptions and questions

1.3.1 Research assumptions

The following assumptions were formulated to guide the research:

1. The prison authorities do not provide programmes designed to prepare women prisoners for re-integration into society.
2. Women prisoners have particular needs for re-integration into society.
3. Women ex-prisoners are not capacitated to support their new life as they re-integrate into society.

4. Women ex-prisoners face challenges when re-integrating into society after release from prison.
5. The failure to prepare women ex-prisoners for re-integration into society is a violation of their right to dignity, equality and right to economic activity and a recipe for re-offending.
6. There is need for legal and non-legal interventions to prepare women ex-prisoners for re-integration into society.

1.3.2 Research questions

1. Do prison authorities provide programmes designed to prepare women prisoners for re-integration into society?
2. Do women prisoners have particular needs for re-integration into society?
3. Are women ex-prisoners capacitated to support their new life as they re-integrate into society?
4. Do women ex-prisoners face challenges when re-integrating into society after their release from prison?
5. Does the failure to prepare women ex-prisoners for re-integration into society amount to a violation of their right to dignity, equality and right to economic activity and is such a failure a recipe for re-offending?
6. Is there a need for legal and non-legal interventions to prepare women ex-prisoners for re-integration into society?

1.4 Justification for the study

As I was reading around the topic, I noted that little has been written on the subject of female prisoners' rehabilitation and re-integration programmes in the Malawi criminal justice system. The only related literature that I found was a study conducted in 2004. Although

entitled 'Understanding Offending, Prisoners and Rehabilitation in Malawi', the actual research aimed at developing an understanding of the motivating factors behind crime in the country, and to achieve some insight into the patterns of offending and the nature of selected crimes. Yet the significance of offering rehabilitation gender sensitive re-integration programmes designed to prepare women prisoners for a successful re-integration into society after release from prison cannot be over-emphasized given the evidence from the literature that men and women have different pathways to crimes, the prison regime was mainly designed for male offenders and that women prisoners have particular needs which call for differentiated treatment while in prison.

In view of the foregoing, I felt it is essential to contribute to the literature in this area and, in particular, ignite a discussion about the following issues: whether the criminal justice system prepares women prisoners for a successful re-integration into society after release from prison; the extent to which the criminal justice system provides for the specific needs of women prisoners; what can be done in order to improve the situation of women in prisons.

The study was also important to provoke all personnel in the Malawi criminal justice system to begin to see that issues that affect women prisoners in our prisons are just as relevant as those that affect male prisoners and that they should be given the attention they deserve. As a result, the significance of this study cannot be overstated as it is hoped that it will go a long way in revealing the inequalities and inadequacies in the treatment and preparation of women prisoners for their life after prison.

1.5. Study sites

Originally, I planned to conduct my research in two prisons, namely, Maula Prison in Lilongwe Central Region of Malawi and Mzimba Prison in Mzimba, the Northern Region District. The two prisons were chosen as research sites for a number of reasons. Maula Prison is located in the capital city of Malawi with a population of more than 4 million residents. The capital city encompasses the low and high-density residential areas and the crime rate is high. Maula Prison receives female prisoners from all the other prisons in the Central Administrative Region Districts since many of them do not have a female section. Thus, it was assumed that Maula Prison would accommodate a number of women prisoners who would be serving long jail terms for different offences. This in turn would help me to

investigate the lived realities of female prisoners who are likely to be of different social economic backgrounds (Figure 1).

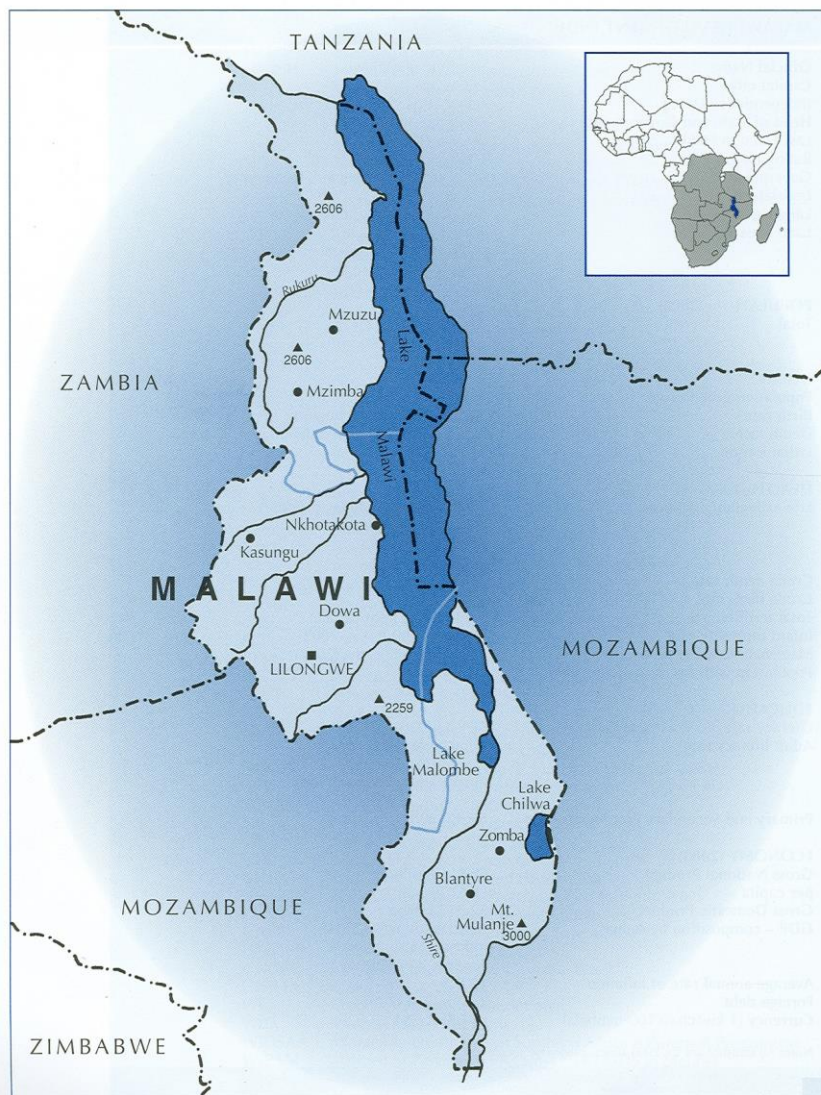
Mzimba Prison on the other hand, is located in the Northern Region Administrative Region. I chose Mzimba because it is the newest prison in Malawi and it has been touted to be the model prison in terms of its facilities, conditions and treatment of prisoners. Therefore, this research aimed at finding out to what extent Mzimba Prison provides for the needs of women prisoners and how gender sensitive are the rehabilitation and re-integration programmes at the institution if any.

While I was planning to go to the field, I learnt that Mzimba Prison did not have female prisoners. All the female prisoners were moved to Mzuzu Prison in 2014 during an outbreak of scabies. In view of this information, I decided to include Mzuzu Prison as a case study prison since I was following female prisoners and the key respondents who were moved there. However, by the time I was conducting my research at Mzuzu Prison, I learnt that some female prisoners had been moved to Mzimba Prison. Eventually, I had still to go to Mzimba Prison for interviews with the female prisoners and the prison staff and authorities.

1.6 Conclusion

This chapter has introduced the study, its aims and objectives, research assumptions and questions, a statement of the problem, the justification for the study and study sites. The following chapter will discuss the literature relating to the treatment and conditions of prison in general and the treatment of women prisoners in particular and provide a point of departure for the research.

Figure 1: Map of Malawi showing the sites of the case study prisons



CHAPTER TWO

2.0 LAW AND LITERATURE REVIEW

2.1 Introduction

There are a number of international and regional human rights instruments that provide for the treatment of prisoners as well as for the general conditions for prisons. These human rights instruments either create binding obligation on the State Parties and or are just persuasive in nature, that is, they offer guidance, suggest acceptable standards and good practice to member States on particular issues related to the condition of prisons or the treatment of prisoners.

2.2 International human rights instruments

2.2.1 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was adopted by the General Assembly of the United Nations (UN) through Resolution 200A (XXI) of 16 December, 1966. It is a binding international human rights instrument to which Malawi is a State Party. The purpose of this instrument is to provide protection and guarantee for the exercise and enjoyment of civil and political rights for everyone.

Article 10(3) of the ICCPR stipulates that the aim of the penitentiary system of treatment of prisoners is their reformation and social rehabilitation. In article 10(1) member States have an obligation to treat with humanity and with respect for the inherent dignity of the human person, all persons deprived of their liberty. Under article 26, discrimination on grounds including sex is prohibited and all persons are equal before the law and guaranteed effective protection against discrimination under the law. International law creates three types of obligations for State Parties and in relation to certain conduct they are the obligations to protect, to desist and to fulfil.

2.2.2 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR was adopted by the General Assembly of the UN in Resolution 2200A (XXI) on 16 December, 1966. It is yet another binding international human rights instrument to which Malawi is a State Party. The purpose of this instrument is to guarantee the progressive realization of these rights. Of importance to this research is article 2(1) which enjoins State

Parties to take steps to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. According to General Comment 3 (para 2) and General Comment 13 (para 43) of the Committee on Economic, Social and Cultural Rights (CESCR), States are generally enjoined to adopt two types of measures, legislative and non-legislative measures. The former include the adoption of legislation and amendment or repeal of legislation inconsistent with the rights provided for in the ICESCR. It may be safely argued that the rights protected in the ICESCR have equal application to women prisoners.

2.2.3 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

CEDAW is yet another binding international instrument to which Malawi is a State Party. It was adopted by the General Assembly of the UN in Resolution 34/180 of 18 December, 1979. It should be observed that CEDAW was adopted in a context where there were already a number of international human rights instruments in force, some binding and others non-binding, for instance, the UN Charter, the UDHR, the ICCPR and the ICESCR, among others. Despite the adoption of these international human rights instruments and their consequent application, it was felt that the particular needs of women were not adequately addressed in their different categories. Hence, it was decided necessary for the adoption of CEDAW to address the specific needs of women which had not been adequately addressed by the previous international human rights instruments. However, and as it will be shown, CEDAW did not adequately address the particular needs of women prisoners. The main purpose of CEDAW is to eliminate all forms of discrimination against women both in the private and public sectors of society and to ensure the *de facto* equality of men and women in all aspects of life.

Article 2(d) of CEDAW obligates member States to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation. Under article 2(g) State Parties are required to repeal all national penal provisions which constitute discrimination against women.

In General Recommendation No. 28 (paragraph 9) the CEDAW Committee explains what the three state obligations under international law entails. The Committee states thus:

‘The obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights. The obligation to protect requires that States parties protect women from discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women. The obligation to fulfil requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*.’

2.2.4 UN Charter

The UN Charter is a non-binding human rights instrument. It is the first international instrument to protect human rights at that level. Under article 1(3), the purpose of the United Nations lies:

‘...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to...sex...’

In the preamble it is stated ‘...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...’

The above provisions indicate the commitment of the UN towards the promotion and protection of human rights for males and females.

2.2.5 Universal Declaration of Human Rights (UDHR)

The UDHR is a non-binding international human rights instrument which sets out in broad terms the rights and fundamental freedoms for all humanity. Under article 23, everyone has the right to work, right to equal pay for equal work and the right to just and favourable remuneration that ensure an existence worthy of human dignity. The right to education is provided for under article 26. Although not binding, the UDHR provides moral weight and justification for the protection and observance of human rights, including the human rights of women prisoners.

2.2.6 Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment

The United Nations Commission on Human Rights drafted this set of principles in 1978. The Principles were adopted by the General Assembly through Resolution 43/173 of 9 December, 1988. I have considered a number of Principles which are directly relevant to the purpose of my study. Principle 31 places an obligation on the (prison) authorities to endeavour to ensure assistance to dependent and, in particular, minor members of the families of detained or imprisoned persons and to devote a particular measure of care to the appropriate custody of children left without supervision. This principle is designed to relieve the anxiety that women prisoners usually have for their young ones left behind in terms of their care and support. Principle 6 prohibits torture or cruel, inhuman or degrading treatment or punishment. Principle 19 obliges the prison authorities to ensure that prisoners are visited by and correspond with, in particular, members of their families and are given adequate opportunity to communicate with the outside world. This principle is particularly significant for many women prisoners who are forced to leave their young children behind when they enter prison in addition to the fact that they as women need to be in constant contact with their family members, friends and relatives.

Other obligations for Malawi in relation to the treatment of imprisoned persons include: the obligation to detain as close as practicable to their family home.⁴ The aforementioned principles speak directly to circumstances of women prisoners as far as treatment in prisons is concerned and in regard to their specific needs.

2.2.7 The UN's Standard Minimum Rules for the Treatment of Prisoners

These Rules are by far the most comprehensive provisions that prescribe what is considered acceptable treatment of prisoners or any persons subjected to any form of detention or imprisonment anywhere in the world. The rules, which were adopted in 1955 by the first United Nations Congress on the Prevention of Crime and Treatment of Offenders in its Resolution 663 C (XXIV) of 31 July, 1957 and approved in July 1957, are not intended to describe in detail a model system of penal institutions. They only seek to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

⁴ Principle 18.

The rules cover such issues as rehabilitation and re-integration, accommodation, health, clothing, communication and religion and have set guidelines for discipline and punishment among other things (UNODC, 2008). I should hasten to state from the outset however that, these rules are intended simply to be treated as guidelines and not as binding rules. Consequently, the extent of observance of these rules is largely subject to interpretation by individual states and the obligation which they have under particular international conventions and instruments. Practice may vary from country to country and Malawi is no exception.

Rules 65 and 66 of the Standard Minimum Rules for the Treatment of Prisoners, *inter alia*, stipulate that the purpose of imprisonment is to establish in prisoners the will to lead law-abiding and self-supporting lives after their release. This therefore calls for the treatment of sentenced persons to be such as will build self-respect and develop a sense of responsibility. Under rule 58, the purpose and justification of a sentence of imprisonment or a similar measure of deprivation of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, as far as possible, that upon their return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

Thus it is observed that at the international level, there are a number of human rights instruments that have been developed to protect the rights of and to set standards for the treatment of prisoners during their incarceration. Of great importance is the extent to which these various Conventions, Treaties, Standards and Declarations are implemented by State Parties. Also provisions in the various aforementioned international human rights instruments affecting women and their interests are only established by inference. In other words they do not contain specific measures which address the treatment of women prisoners as a special group and there is no marked difference in terms of the treatment of prisoners except when it comes to keeping women in prisons. Thus, e.g., rule 8(a) of the Standard Minimum Rules for the Treatment of Prisoners requires the separation of men from women prisoners. This provision could, however, work to discriminate against women prisoners and negatively affect them given their low population in prison coupled with limited resources.

2.2.9 Basic Principles for the Treatment of Prisoners

The Basic Principles were adopted by the United Nations General Assembly on 14 December, 1990. They relate to the treatment of prisoners. Among other principles, it is a basic principle for the treatment of prisoners that all prisoners retain the human rights and fundamental freedoms set out in the UDHR and, where the State concerned is a party, the ICESCR and the ICCPR and its Optional Protocol as well as such other rights as are set out in other United Nations covenants save for those limitations that are demonstrably necessitated by the fact of incarceration⁵ under principle 8 conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their re-integration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

2.2.10 The UN Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)

The United Nations Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) are by far the most comprehensive rules that provide for the treatment of women prisoners. The Bangkok Rules were adopted by the General Assembly specifically to fill in the gaps that were noted on the treatment and interventions for women prisoners. Thus, the Bangkok Rules provide guidance to UN Members States on the specific treatment of women prisoners which will facilitate their successful re-integration into society. The Rules also highlight the specific needs for women prisoners which must be addressed by prison authorities. For example, rule 60 provides for alternatives to incarceration where appropriate programmes should be offered like therapeutic courses and counselling for victims of domestic violence and sexual abuse, educational and training programmes to improve employment opportunities. Rules 26-28 provide for contact with the outside world for female prisoners, which is critical for their eventual successful re-integration into society. Further, rule 45 encourages prison authorities to utilize options such as home leave, open prisons, halfway houses and community-based programmes to the maximum possible extent for women prisoners so as 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. Finally, rule 47 calls for additional psychological, medical, legal and practical support to be provided to women prisoners upon release.

⁵ Principle 5 of the Basic Principles for the Treatment of Prisoners.

The guiding principle behind such guidance to members States is that most women offenders do not pose as much of a risk to society as most men prisoners do.

2.3 Regional human rights instruments

2.3.1 African Charter on Human and Peoples' Rights (ACHPR)

The ACHPR is the main instrument that protects human and peoples' rights in Africa. Although it does not specifically refer to prisoners, it is arguable that its provisions do in fact apply to them. For example, every prisoner, including every female prisoner, should, in terms of article 5, be protected from 'all forms of exploitation and degradation of man, particularly...cruel, inhuman or degrading punishment and treatment.' It guarantees every individual the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All States Parties are called upon to eliminate every form of discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions.⁶

2.3.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol)

The Women's Protocol contains a comprehensive coverage of women's rights in Africa in addition to the rights recognised and protected under other international and regional human rights instruments including conventions and declarations. For example, under article 12(1)(a), States Parties are called upon to take all appropriate measures to eliminate all forms of discrimination against women and guarantee women equal opportunity and access in the sphere of education and training. Furthermore, article 2(2) enjoins States Parties to commit themselves to modify...practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

2.3.3 Kampala Declaration on Prison Conditions in Africa and the Plan of Action

In its preamble, the Kampala Declaration specifically refers to the needs of women detainees although it does not mention them. Action 2 stipulates that prisoners should retain all rights which are not expressly taken away by the fact of their detention. Action 7 speaks to prisoners' access to education and links it to re-integration. It states that prisoners should be given access to education and skills training in order to make it easier for them to re-integrate

⁶ Article 18 of the African Charter on Human and Peoples' Rights.

into society after their release. Further, under recommendation (f), parties are enjoined: to incorporate international standards and norms on the treatment of prisoners in national legislation; to teach them to prison staff and make them widely known and available to prisoners, the media and members of the public and to properly train prison staff to apply such standards in their treatment of all prisoners; to sensitize members of the public on prisons and the conditions of staff and prisoners and encourage public debate on penal policy and reform through the media.⁷

2.4 The reception of international law in Malawi

After outlining the relevant international and regional human rights instruments relating to the rehabilitation and re-integration and prison conditions and the treatment of prisoners, it is necessary at this point to consider the reception of international law in Malawi as this determines whether a particular human rights instrument has application in Malawi or not.

The legal system in Malawi follows ‘dualism’. In as far as the reception of international law is concerned, ‘dualism’ is a theory that claims that treaties do not become part of the domestic law merely by virtue of their ratification. The ratification of the treaty which binds the state at the international level is the prerogative of the Crown. Once ratified, treaties have to be incorporated explicitly in the domestic legal system.⁸ Incorporation by transformation takes place where the provisions of an international agreement are reflected in parts of the national legislation or where pieces of national legislation are amended or repealed to conform with international norms usually without explicit reference to the source of these norms.⁹

Section 211 of the 1994 Constitution is clear in that it provides that (1) any international agreement entered into after the commencement of this Constitution shall form part of the law of the Republic if so provided by an Act of Parliament. (2) Binding international agreements entered into before the commencement of this Constitution shall continue to bind the Republic unless otherwise provided by an Act of Parliament. (3) Customary international law, unless inconsistent with this Constitution or an Act of Parliament, shall form part of the law of the Republic.

⁷ Recommendation (g) of the Kampala Declaration.

⁸ Viljoen, F. (2012) *International Human Rights Law in Africa*. (2nd ed.) Oxford, Oxford University Press.

⁹ Viljoen, F. (2012) *International Human Rights Law in Africa*. (2nd ed.) Oxford, Oxford University Press.

2.5 National legislation

2.5.1 *The 1994 Constitution*

The advent of multiparty democracy in Malawi saw the promulgation of a new Constitution. Malawi emerged from a history of one party rule characterized by numerous human rights violations and abuses especially against political prisoners. As a result, the Bill of Rights contains comprehensive provisions on the rights of persons detained including sentenced prisoners.¹⁰ The 1994 Constitution also establishes the Malawi Prison Service,¹¹ the Prisons Service Commission,¹² and the Inspectorate of Prisons.¹³ Despite the solid institutional arrangement and safeguards in the administration of penal institutions in Malawi, little has translated into practical positive reality for the women prisoners in the case study prisons. Firstly, the wording of the Constitution is neutral. The drafters presumed that by including the rights of prisoners in the Bill of Rights without specifically mentioning the rights of women prisoners, women prisoners' particular needs would be automatically addressed. Secondly, the laws governing the administration of prisons, as it will be shown, are outdated and disjointed in terms of enforcement.

The Constitution prohibits discrimination of all persons on, among other grounds, sex, other status or condition and guarantees the effective protection by the law against discrimination.¹⁴ The dignity of all persons is inviolable¹⁵ including during the enforcement of a penalty,¹⁶ prohibits torture of any kind or cruel, inhuman or degrading treatment or punishment¹⁷ and

¹⁰ Section 42(1) provides for rights of prisoners which include: the rights to be held under conditions consistent with human dignity, to be given the means of communication and to be visited by his or her spouse, partners, friends, relatives religious, counsellors and medical practitioners of choice.

¹¹ Section 163 establishes the Malawi Prisons Service. It is headed by the Chief Commissioner of Prisons whose principle responsibilities include: to ensure the proper and efficient administration of the penal institutions subject to and in accordance with the protection of rights, the recommendations of the Prisons Service Commission and Inspectorate of Prisons and the directions of the courts in relation to convicted persons to a sentence of incarceration.

¹² Section 167 establishes the Prisons Service Commission whose powers and functions include: the appointment of prison officers (save the Chief Commissioner), confirming appointments, removing officers from office and exercising disciplinary controls over prison officers.

¹³ Section 170 establishes the Inspectorate of Prisons. It is charged with the monitoring of conditions, administration and the general function of penal institutions taking due account of the applicable international standards among other functions and duties.

¹⁴ Section 20(1) of the Constitution.

¹⁵ Section 19(1) of the Constitution.

¹⁶ Section 19(2) of the Constitution.

¹⁷ Section 19(3) of the Constitution.

prohibits corporal punishment.¹⁸ Section 42(g)(v) which applies to juveniles envisages re-integration into society to assume a constructive role as the goal of incarceration.¹⁹

Of particular interest about the 1994 Constitution of Malawi is that it is one of the progressive Constitutions in the Southern African region in as far the principle of equality and non-discrimination is concerned. It specifically provides for the right of women to non-discrimination on the basis of gender²⁰ among other grounds and guarantees them equal protection under the law. It is a measure of protecting the rights of women, including those who are incarcerated.

2.5.2 The Penal Code (Chapter 7:01 of the Laws of Malawi)

This is the principal law in Malawi that creates offences and prescribes punishments. There are two types of offences. A ‘felony’ is defined as an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment with hard labour for three years or more; and a ‘misdemeanour’ is defined as any offence which is not a felony.²¹ The court has a wide range of punishments that it can impose on a convicted person

Under section 25 of the Penal Code, the court may inflict the following punishments: (a) death, (b) imprisonment, (c) fine, (d) compensation (e) finding security to keep the peace and be of good behaviour; or to come up for sentence, (f) liability to police supervision, (g) forfeiture, (h) suspended sentence, (i) public work, (j) community service, (k) probation, (l) weekend or public holiday, (m) attendance centre orders, (n) any other punishment provided by this Code or by any other written law.

An analysis of the above punishments shows that a number of them would help women convicts re-integrate easily into society. For instance punishments like finding security to keep the peace and be of good behaviour; or to come up for sentence, suspended sentence, community service, probation among others.

¹⁸ Section 19(4) of the Constitution.

¹⁹ Section 42(2)(g)(v) provides that...to be treated in a manner that takes into account his or her age and the desirability of promoting re-integration into society to assume a constructive role.

²⁰ Section 24(1) of the Constitution.

²¹ Section 4 of the Penal Code.

2.5.3 The Prisons Act (Chapter 9:02 of the Laws of Malawi)

This Act was enacted in 1956 during British colonial rule. It prescribes general prison administration. It defines a prisoner as any person, whether convicted or not, under detention in any prison. During my research I was informed by the Officer in Charge at Maula Prison that the Prisons Act is to blame to a large extent for the treatment of women prisoners in prisons because, as a principal law on prisons, it is outdated. He further informed me the Act was reviewed and that there is a Prison Bill waiting to be laid before parliament. During an interview, a member of the Legal Affairs Committee of Parliament confirmed that although he had heard about a Prison Bill, he had never seen it and it had not been brought before Parliament for debate. Efforts to access the Bill or even the working papers by the Malawi Law Commission proved futile.

The Prisons Act is not in line with applicable international standards on the treatment of prisoners, let alone female prisoners, nor the provisions of the Constitution. It still retains corporal punishment,²² the straightjacket, penal diet²³ and reduced diet²⁴ among others. While it is hoped that these colonial forms of punishment are not being invoked against today's prisoners, their very presence in the Statute may incite some prison warders to inflict them against those prisoners whom they believe deserve to be treated less than human beings. In its favour, however, is that although the Prisons Act is outdated, it does contain some provisions which ensure gender sensitive treatment of prisoners regarding searches²⁵ and the separation and division of prisoners.²⁶

2.5.4 Probation of Offenders Act (Cap. 9:01 of the Laws of Malawi) and Convicted Persons (Employment on Public Works) Act (Cap. 9:03 of the Laws of Malawi)

These Acts were passed in 1945 and 1956, respectively. Both provide for the enforcement and administration of punishments imposed by competent courts of law. The Probation Committees established under the Probation of Offenders Act has a District Commissioner²⁷ as a member and this Committee reports to the Secretary for Labour²⁸ among others. The

²² Section 98 of the Prisons Act.

²³ Section 93(3) of the Prisons Act.

²⁴ Section 93(2) of the Prisons Act.

²⁵ Section 102 of the Prisons Act provides that a prisoner shall only be searched by a prison officer of the like sex.

²⁶ Section 64 of the Prisons Act.

²⁷ Section 15(2) of the Probation of Offenders Act.

²⁸ Rule 8(e) of the Probation of Offenders Committee Rules.

Acts should be reviewed and be implemented as such, since punishments under the Acts would facilitate the successful re-integration of women offenders.

2.6 Conclusion

This chapter has presented the relevant law and literature on prisoner treatment at international, regional and national level. In the next chapter, I consider the theoretical and methodological framework of the research.

CHAPTER THREE

3.0 THEORETICAL AND METHODOLOGICAL APPROACH

3.1 Introduction

This chapter looks at feminist theories that I will employ to explain the conduct and perceptions of the prison authorities in as far as treatment and preparation of female prisoners for re-integration is concerned.

3.2 Theoretical framework

3.2.1 Radical feminist theory

Some radical feminists believe that women's oppression is so entrenched in society especially in state institutions and thus, they propose a restructuring of the state institutions so that the rights of women can be realized (Tong, 1989). Some of the respondents especially the actors were insensitive to the needs of women prisoners. The actors at present treat women prisoners without assessing the effect of their treatment on them, even though from experience they are aware of the effects prison has on male prisoners. For example, they are aware of male prisoners who are rehabilitated but nevertheless still find life after prison very difficult and that some of them reoffend in no time after being released from prison. The following is an example of such an attitude or perception:

‘We cannot mix male and female prisoners since the facilities are at the male section of the prison’ (Voice of a prison officer).

Thus employing radical feminist's theory helped me to realize the extent of the attitude or perception that exists in state institutions which makes them disregard women and the difficulties they have adjusting to prison or life after prison. Since this theory also helped me appreciate the climate of the culture among the prison hierarchy I was able to collect data with an open mind.

3.2.2 Women's empowerment theory

The theory of women's empowerment argues that greater access to educational and occupational resources increases women's chances of professional development, creating a larger pool of women eligible for power positions such as political office and that higher levels of economic development bring more social services to societies. Through their

alleviation of the costs in labour and time of everyday responsibilities associated with care giving (e.g., child-rearing, domestic work), increases in these services free up time for social pursuits in women's lives (Kenworthy & Malami, 1999). The theory according to Inglehart and Welzel (2005) emphasizes the conversion of economic development into a cultural process of human development that gives rise to an emancipative worldview, reflected in self-expression values that emphasize human choice and autonomy, including the choices and autonomy of women. Thus, the gains of gender equality and increased economic and educational opportunities will inevitably lead to greater women's and girls' access to economic activities and involvement in the same.

I found the theory useful because it enjoins the government to fulfil its obligation by creating an enabling environment both in law and in fact for women's and girls' exercise and enjoyment of their economic rights. The theory further recognises the fact that changing cultural and egalitarian attitudes leads to women's autonomy and empowerment. The theory resonates well with what Miss. Katengeza told me in an interview. She said:

‘Women ex-prisoners need capital and other resources to help them settle after release from prison. But these are not provided by the prison authorities.’

Using this theory I was able to evaluate and see to what extent women's empowerment through different rehabilitation programmes would work towards gender equality and reduced instances of discrimination and the overall resource distribution in society.

3.3 Methodological framework

3.3.1 Introduction

The research design was used to determine what methodologies and data collecting methods would be used in the research. In this chapter, I discuss the methodologies and data collecting methods that I employed and the justification for using them. The purpose of this study is to investigate the rehabilitation and the challenges women ex-prisoners encounter when re-integrating into society after release from prison. Thus, women prisoners and ex-prisoners became the departure point for the study and they were traced both in prisons and in the community. For me to carry out an exhaustive and revealing research it was indispensable to employ the use of a number of methodological approaches. In combining the various methodologies and data collecting methods, I was in a position to collect different data from

the various informants which in most instances was complementary. Where contradictions arose in data collected, these acted as pointers to further investigation.

The fact that hairdressing and textile and design are the only rehabilitation programmes offered to women prisoners which are run by St. John of God in conjunction with the Technical Education and Vocational Entrepreneurship Training Authority (TEVETA) confirmed my assumptions that the prison authorities do not provide rehabilitation programmes designed to prepare women prisoners for re-integration into society and women ex-prisoners are not capacitated to support their new life as they re-integrate into society.

3.3.2 Women's law approach

The women's law approach is a woman-centred legal discipline which takes women's actual 'lived experiences' as a starting point for the analysis of the position of women in law and in society.²⁹ In this research a woman-centred approach with a gender relational perspective was combined to examine the lived realities of women prisoners and ex-prisoners in contrast with the experiences of male prisoners. The purpose of the women's law approach is to engage empirical knowledge about gender relations and local practices and procedure in a constant dialogue with theoretical generalization and concept building.³⁰

For me to gain the empirical knowledge of the lived realities of the women prisoners and ex-prisoners, I went to prisons and into the community to interview the women concerned. In order to unearth how the law responded to women prisoners' and ex-prisoners' lived realities, I examined the relevant international human rights instruments and the national law. Using the women's law approach I was able to gather information relating to women's lives in general which suggested that they experience a divide between reality and theory. The methodological approach became a tool in educating some informants about the experiences of women prisoners in prisons in Malawi in general and the challenges that they face when re-integrating into society and thus, the need for deliberate efforts to prepare them for a successful re-integration into society after release from prison.

²⁹ Bentzon, A.W., et al. (1998) *Pursuing Grounded Theory in Law: South-North Experiences in Developing Women's Law*. Harare, Tano-Aschehong and Mond Book.

³⁰ Dahl, T. S. (1987) *Women's Law: An Introduction to Feminist Jurisprudence*. Oslo, Norwegian University Press.

For example, the officer in charge at Mzuzu Prison in consultation with the medical officer, promised to find a solution to the problem of disposal of menstrual materials after use by women prisoners so that they can start using the material while in prison. Further, it became true for the member of the Inspectorate of Prisons who until the interview, though she had made visits to prisons in her capacity as a member of Inspectorate of Prisons, had never thought of the women prisoners' experiences in prisons in the manner in which this research was able to investigate them. In the end, she promised to use the next Inspectorate of Prisons' visit to raise the issues with the prison authority and other stakeholders as part of her mandate under the Constitution.

The approach helped me to realize the importance of women prisoners and ex-prisoners who undergo rehabilitation and the experience of re-integration into society after release from prison and created in me a positive and sympathetic state of mind to meet and interact with the women prisoners and ex-prisoners. Without the use of this approach I would not have considered it vital to interview the women prisoners and ex-prisoners, since I would have been only concerned with the actors being primarily prison staff, members of the Inspectorate of Prisons and judicial officers.

The approach also assisted me to ask the 'woman's question' in conducting the research particularly relating to women's prisoners' particular needs. The 'woman's question' further helped me to listen to the voices of women prisoners and ex-prisoners on their anticipated and actual experiences when re-integrating into society and also to come to the realization that the challenges that women ex-prisoners are facing are not due to their sex, but rather are as a result of the law and personnel in the Malawi criminal justice system especially the Malawi Prisons Service, who, unconsciously but nevertheless systematically, underestimate the challenges that women ex-prisoners are facing due to the lack of or less rehabilitation and preparation for re-integration into society after release from prison.

For example, I found that since women prisoners are presumed somehow to be able to manage successfully on their own during their prison experience, little attention is paid to their rehabilitation and re-integration needs.

3.3.3 *Dung beetle approach*

The dung beetle approach is a grounded research process in which the researcher collects data, sifts and analyses it, considers the implications of the findings, determines what to collect next to meet their needs and continues the collection and analysis cycle.³¹ For each day I collected data I took time in the evenings to analyze the information collected. This assisted me to identify the gaps in the data and work to collect relevant data the next day of research. The dung beetle approach was instrumental in helping me to identify and visit other respondents that I did not initially include in my list of respondents drawn up at the research design stage and before the actual research.

For example, I did not include Balaka Halfway Home and Chance for Change in the list of respondents; however, after collecting information from members of staff at Maula Prison, a member of Inspectorate of Prisons and a judicial officer and analyzing it, it became pertinent also to contact Balaka Halfway Home to hear their views and experiences on rehabilitation and re-integration of prisoners, since Balaka Halfway Home is an institution that is purely solely to the re-integration of ex-prisoners, male and female.

Using the dung beetle approach I was able to confirm my assumptions and filled in the gaps that were generated by information from other respondents. All the assumptions save the fifth assumption (whose last part was challenged) were sustained during the research. Opinion was divided concerning the first assumption and I had to determine whether the assumption was challenged or not. Some respondents were of the view that the low number of women prisoners contributed to their receiving fewer opportunities rehabilitation. Others thought that the difficult working environment of prison staff where there are no or very few promotions and misallocation of prison human resources were responsible for women prisoners' lack of or less rehabilitation services and further others were of the view that lack of rehabilitation programmes for women prisoners was the cause.

I weighed all these arguments against international human rights standards and I came to the conclusion that the first assumption was not challenged. Part of the fifth assumption which was challenged concerns women ex-prisoners re-offending due to failure to prepare them for successful re-integration into society by the prison authorities. What came out clearly was

³¹ Bentzon, A.W., et al. (1998) *Pursuing Grounded Theory in Law: South-North Experiences in Developing Women's Law*. Tano-Aschehong. Harare, Mond Book.

that, although most women ex-prisoners are not prepared for re-integration into society after release from prison, most of such women do not re-offend. Those that fail to support their life through 'normal means', go into prostitution as a means of earning a livelihood. I did not interrogate the issue further and I think it is an area for further research.

3.3.4 Sex and gender approach

The sex and gender approach is based on the physiological distinction between men and women and the roles that society ascribes to either based on these differences. Whereas sex refers to the biologically based categories of men and women, gender signifies the psychological features frequently associated with the biological states assigned either by an observer or individual subject.³²

I used this approach in this research with the aim of establishing the nature of the rehabilitation programmes that were made available to female prisoners as compared to those that were offered to male prisoners. Although I was not allowed to visit the male sections of the prisons, employing the sex and gender analysis approach enabled me to discover that the gender stereotypes common in many aspects of the Malawian society permeated the prisons. Through responses to questions I established, on the one hand, that male prisoners in all the three case study prisons had a variety of rehabilitation programmes open to them. They are: carpentry, cell phone repair, bricklaying and welding, among others. These are occupations normally associated with males in our society including formal education. On the other hand, female prisoners had a very limited number of programmes. They were offered only hair dressing and textile and designs. Further, these occupations are also usually associated with women in the general Malawian community.

3.3.5 Actors and structures approach

My first assumption was that the prison authorities do not provide programmes designed to prepare women prisoners for re-integration into society. The reasoning behind this assumption was that the prison authorities have an obligation to provide the rehabilitation and re-integration programmes to prisoners in Malawi as a body mandated to implement prison sentences as imposed by courts. Thus, using the actors and structures approach I found out one category of actors were the policy makers. They were the officials at the Ministry of

³² Radford, J. (1998) Why Can't a Woman be more like a Man. Radford, J., eds Gender and Choice in Education and Occupation. London and New York, Routledge.

Home Affairs, the ministry responsible for the Prison Service and the Police. Key here was the Department of Prisons as the implementer or facilitator in the provision of rehabilitation and re-integration programmes to women prisoners.

The actors and structures approach further helped me to identify the Police, Legal Affairs Committee of Parliament and the Inspectorate of Prisons as other categories of actors with prisons as the structures. I investigated how the rehabilitation and re-integration programmes if any were implemented. The last category of actors was judicial officers since they determine cases involving women. The purpose of engaging the judicial officers was to find out how they handle cases involving women as regards the sentence they impose since the length of a sentence imposed on a convicted person has an effect on re-integration.

Using this approach I was able to identify other actors like the community police forum and faith-based organizations among others. I further employed the approach to identify the gap in service delivery to women prisoners by the Prison Service. For example, I noted reluctance and lack of creativity on the part of the officer in charge and some prison staff to allow women prisoners access to the various vocational courses offered to male prisoners simply because the classes for these courses take place in the male section of the prison and they cannot mix male and female prisoners.

3.3.6 Human rights approach

According to Goonesekere (2000), the human rights approach involves an analysis of a problem or situation from a holistic perspective of human rights and corresponding obligations of government according to international human rights standards. I used this approach in order to examine the extent to which the international human rights instruments and the national legislation provide for the rights of prisoners and the standards for the conditions and treatment of prisoners.

Thus, this approach enabled me to assess the extent to which legislation on prisoner rehabilitation and re-integration if any, and conditions and treatment of prisoners comply with Malawi's human rights obligations at the international and regional level. Further, the human rights approach enabled me to explore and establish the extent to which the implementation or non-implementation of the existing legislation contributes to the

observance or violation of women's human rights with respect to their specific needs and generally.

In my assessment I used international and regional human rights instruments such as:

- The International Covenant on Civil and Political Rights (ICCPR);
- The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW);
- The Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment;
- The UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules);
- The Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules);
- The African Charter on Human and People's Rights (ACHPR); and
- The Protocol to the ACHPR on the Rights of Women in Africa (Women's Protocol).

These instruments among other things provide for the rights of prisoners, the minimum standards for the conditions and treatment of prisoners, the rehabilitation programmes and the re-integration of prisoners and, above all, the specific issues affecting women prisoners. I hasten to add that some of these human rights instruments are binding on Malawi and others are not. They do, however, provide guidance to Malawi on the internationally accepted standards concerning prisoner rehabilitation and re-integration programmes.

The approach also assisted me in assessing the state in its various capacities relating to prisoner rehabilitation and re-integration. The capacity under assessment included the state as a 'resourcer.' It is common knowledge that the state as a 'resourcer' maintains a significant influence and control over any programmes that might be introduced or run in prison. In its capacity as an 'enabler' the state plays a critical role of creating an enabling environment such as by providing a legal and policy framework for offender rehabilitation and re-integration. The state as an 'implementer' is expected to directly provide rehabilitation and re-integration programmes in compliance with international human rights standards and is

therefore obliged to ensure the continued provision of the programmes. As ‘guarantor of quality practice’ the state recognises and needs to always endeavour to enforce good practices and protect the beneficiaries of services. As a result, the state is anticipated to fulfil the role of guarantor or encourager of good-quality practice. The state may facilitate the process by involving NGOs and other players in general.

As a result of the analysis I have managed to come up with recommendations which, if implemented, would facilitate women prisoners’ provision and access to rehabilitation programmes while in prison and their attendant successful re-integration into society after release from prison as law abiding and productive citizens.

3.4 Methods of data collection

3.4.1 Key informants

I used a number of methods to collect data in this research. A number of key informants were identified during the research design stage. Among them were the men and women prisoners, men and women ex-prisoners, officials from the Ministry of Home Affairs and Internal Security and prison staff in the case study prisons, faith-based organisations (FBOs), and human rights organisations. I discovered during the interviews that there is no written policy on prisoner rehabilitation and re-integration in Malawi prisons, although an offender rehabilitation and re-integration strategy is observed but their details were not made available to me.

3.4.2 In-depth individual interviews

I formulated the research questions that I used to guide my research before I went into the field. The questions were based on the research assumptions. However, during the interviews with respondents in the field, I did not limit myself to the questions, but could follow up on any issue that arose during the interview. I held eighteen individual semi-structured in-depth interviews with members of the Prison Service, female and male prisoners and ex-prisoners, judicial officers, a member of the Inspectorate of Prisons and a member of the Legal Affairs Committee of Parliament, among others. The aim of the interviews was to find out whether there was a written policy on prisoner rehabilitation and re-integration, the nature of the rehabilitation and re-integration programmes that were on offer to women prisoners and ex-prisoners and the challenges that women ex-prisoner face when re-integrating into society

after release from prisons. While the purpose of the interviews held with two judicial officers separately was to find out what factors influence their decisions on sentence in cases involving women suspects given the fact that women suspects present themselves with peculiar circumstances and whether alternatives to imprisonment for female offenders is an option, for instance, community service.

3.4.3 Focus group discussions

This is a method of data collection that seeks the views of a group of people with some common interest. I held seven focus group discussions with women prisoners at Maula and Mzimba Prisons, with prison warders at Maula and Mzimba Prisons, with members of the community at Traditional Authority Chitukula headquarters and with members of the faith based organisation. The focus group discussion was guided by the research questions that I had formulated before going to the field, but as in individual interviews, the research questions did not limit my research; rather, they were used as a technique of data collection that informed my research assumptions.

Although the women in prisons had different backgrounds, it was assumed that being in prison made them face the same conditions which would make group discussions an appropriate method of data collection. For example at Maula Prison, I found female prisoners who belong to both the wealthier and poorer classes of society. It was however their imprisonment that was a common factor justifying the focus group discussion.

The purpose of the group discussions was, first, to find out from the women prisoners the rehabilitation that they were undergoing as they served their jail terms, their specific needs in prison as women prisoners and the probable challenges which they are likely to face after release from prison. And secondly, their purpose was to identify workable solutions and present them to the policy makers for implementation based on the experiences of women in prison.

3.4.4 Literature research

Literature for the research included browsing on the internet for information on the topic and library research. The purpose was to learn from other writers/researchers on what has been uncovered about the topic of prisoner rehabilitation and re-integration and the attendant challenges faced by female ex-prisoners in other jurisdictions. The search confirmed the

observation made by Rafter (1997) that what has been ignored is both the physical presence of women in prison and the fact that prisons themselves are gendered institutions, reflecting and reinforcing beliefs about sexual differences. The literature research included both published and unpublished works.

3.4.5 Research population and the sample

I used the purposive sampling method in this research. According to Ipsos (2008), the factors and dimensions that influence the selection of the sample are analytically and theoretically linked to the research questions of the particular study. The research was aimed at interrogating the justice system to see to what extent they prepared women prisoners for re-integration into society through the rehabilitation and re-integration programmes for female prisoners and examine its interface with the lived realities of women ex-prisoners when they re-integrate into society.

Therefore, it was necessary to have interviews with the prison authorities as implementers of the rehabilitation and re-integration programmes, if any, the Inspectorate of Prisons mandated under the Constitution to monitor the conditions in prisons in Malawi and a Legal Affairs Committee of Parliament which is responsible for scrutinizing legislation.

The purpose was to investigate the policy on prisoners rehabilitation and re-integration if any in an effort to assess to what extent such policy provided for gender sensitive programmes that meet or take into account women prisoners' specific needs and its adherence to applicable international standards on prison conditions and the treatment of prisoners.

The women prisoners themselves in prisons and ex-prisoners in the community became key informants because it was their lived realities that would inform the assumptions of this research. They were interviewed in an attempt to assess to what extent they viewed their treatment and prison conditions as a human rights issue. The female and male prison warder too were targeted as respondents in an effort to assess to what extent their training prepared them to recognise the need for differential treatment between male and female prisoners given their different pathways to crimes and the risk they pose to society. The selection of the sample of the respondents was purposely done to include female prisoners who were serving jail sentences of six years and above so as to appreciate the impact of imprisonment and envisage the challenges likely to be encountered after they are released from prison.

However, due to the low population of female prisoners some serving jail terms of less than six years only a few were interviewed.

The number of respondents interviewed during the research was considered manageable. I held two focus group discussions at Maula Prison. One with seven female prisoners all serving jail terms of six years and above and for different offences, and another with four warders, one male and three female. While at Mzimba Prison, I held two focus group discussions also: one with three prisoners, two female and one male, and another with five prison warders, three female and two male.

Further, I also held two focus group discussions at Traditional Authority Chitukula's area: one with 18 members of the community, ten female and eight male, and another with seven male members of a Community Policing Forum. Finally, I held a focus group discussion with a nun and a priest at St. Francis Parish Lilongwe. I also held individual interviews. I held eighteen individual interviews with various other respondents. There were four questionnaires used: One for an official at the Malawi Prison Headquarters, one for the Central Regional Prosecutions Office, one Senior Resident Magistrate (professional magistrate) and the last one for a member of a faith-based organisation.

The purpose of the interview with prisoners and prison warders was to find out the rehabilitation and re-integration programmes available to women in prison as it was assumed that the prison authorities do not provide the rehabilitation programmes designed to prepare women prisoners for re-integration into society. It was also assumed that women prisoners have specific needs, and that while they are in prison they are not equipped to support their new life after prison.

The purpose of the interviews with community members at Chitukula and the faith based members was to find out how they receive ex-prisoners and their role in their re-integration into society as it was assumed that female ex-prisoners face challenges when re-integrating into society after release from prison.

Sixty-eight respondents were interviewed and out of these thirty-five were women. Out of the thirty-five women, thirteen of them were either prisoners or ex-prisoners. The interviews

were based on the women’s lived experiences as prisoners or as ex-prisoners working their way to re-integration into society (Table 1).

Table 1: Showing the respondents based on their sex and location

	Women prisoners	Ex-prisoners	Prison officials	Judicial officers	Faith based	Community members	NGOs	Others	Total
Female	11	2	7	3	1	10	0	1	35
Male	1	3	9		2	15	2	1	33
Total	12	5	16	3	3	25	2	2	68

3.5 Access to prisons

My visit to Maula Prison turned out to be very important to my research. I went there on 2 November, 2017. The purpose of my visit was to find out about the procedure involved when a person seeks permission to conduct research in prisons in Malawi. I arrived at the prison premise at around 8:50 a.m. I found a long queue of people most of whom were carrying baskets. Being still morning, I assumed they were delivering food to their friends and relatives who were incarcerated at the prison. I joined the queue. I could not see what was happening inside the gate.

As the queue moved closer to the gate, I saw two tables inside the gate. There were prison warders at the tables, some were standing and others were sitting down, male and female warders. There was one, a male warder who controlled our entry at the gate. Inside those who brought food were searched and asked to eat some of the food they brought before they could take it to the prisoner. When my turn to enter came, I was asked how they could help me since I was just carrying a bag on my back. I responded saying that I wanted to see the officer in charge. The prison warder further asked me, ‘Is it personal or business?’ I responded that it was business. Fortunately, without further questions the man directed me to an office within the administration block.

When I arrived there I could not believe my ears when I heard the voice of my long-time friend Luke Mkandawire call out to me from a distance. ‘Daniel!! What brings you here?’ he said. The last time I had met with Luke was in 2008 when he was working at Zomba Maximum Prison. I first met him was in 1999 in Misuku Hills in the Northern District of Chitipa. Luke had come to visit his uncle who was the Postmaster at our local Postal Agency after writing his Malawi School Certificate of Education Examinations (MSCE). We became friends. Luke left Misuku Hills in early 2000. There was a breakdown of communication between us and we lost touch with each other. Meanwhile, Luke joined the Malawi Prison Service as a prison warder.

It is this friendship with Luke and my meeting him at Maula Prison that proved so vital to my access to the prisons for the research. I told Luke my reason for visiting Maula Prison. He explained to me the required procedure and went on to put me in touch with the officer who is responsible for research in the Malawi Prison Service. The officer was instrumental in ensuring that the Chief Commissioner of Prisons granted me permission in time to conduct the interviews in the case study prisons. I also sought and was granted permission from the Registrar of the High Court and Supreme Court of Appeal to interview judicial officers and the Senior Deputy Registrar of the High Court, a former student of SEARCWL, facilitated my permission from the Registrar.

3.6 Challenges and Limitations

3.6.1 *Data recording*

Using a Braille recording machine to take notes during an interview or discussion from people who are not familiar with it may be distracting as it is noisy and I had to warn my respondents of this beforehand. In the circumstances, carrying out interviews and recording the information was one of the many challenges that I encountered. It was not easy to capture as much of what was being said as I would have liked. It would have been more ideal to have used a tape recorder to capture information

3.6.2 *Different languages*

All my interviews with male and women prisoners and ex-prisoners were done in vernacular languages except one, namely, Chichewa and Tumbuka. The aim of using the local languages was to create an environment where the respondents could share their experiences freely and

more fully and also to bridge the distance between the men and women prisoners and ex-prisoners and myself as the researcher. Further, some of my respondents did not have much formal education such that the only way to effectively communicate with them was through the use of a local language. This has meant that some expressions in the vernacular languages may not have comparable translation in English. While the meanings of some of these words are lost when translated into English, I have made every effort to provide as close a translation of what was said as possible so as to help the reader appreciate the context of the words.

3.6.3 The irony of my position

As a Senior State Advocate working at the headquarters of the Directorate of Public Prosecutions, I could have introduced myself as such during the research and this no doubt could have had an influence on the data collection process. However, after I considered these implications, I decided not to do so and simply introduced myself as a Masters in Women's Law student of SEARCWL. I paid heed to the remarks of Mrs Justice Esme Chombo, a former SEARCWL student, who could not keep her identity a secret because she was already known by many of her key respondents, and had this to say about her research experience:

‘Whilst my position as a judge enabled me to knock on any door at any time, this was not without its own challenges. At Lilongwe Police Station the Station Officer, in an attempt to be seen to follow procedure, told me that women do not spend more than 48 hours before being granted bail or sent to court. When I visited the cell I found three women who had already spent more than seventy-two hours, and one had spent six days in the cell.’

Not disclosing the fact that I was a State Advocate enabled me to conduct my research in a ‘natural’ environment where respondents were speaking to and gave information to a researcher. For example, the prison warders both at Maula and Mzimba Prisons were able to raise challenges and issues affecting their work performance and welfare more freely I think than if they had known that I was a part of the system.

3.6.4 The necessary authorities

It is a requirement under the Prison Visitors' Regulations that all interviews with any prisoner be conducted in the presence of the prison authorities. During a focus group discussion with female prisoners at Maula Prison and individual interviews at Mzuzu Prison, the prison warders were present. At Mzimba Prison however, I was allowed to hold a focus group

discussion with a male and two female prisoners in one room and without the presence of the prison warder. I observed the unembellished difference between the two experiences in terms of the way the respondents were able to express themselves in answering the questions and narrating their experiences in prisons.

The presence of prison warders did quite significantly affect my interviews in as far as the respondents were not very free to express themselves and articulate the issues and experiences of their prison lives and this may have had an effect on the quality of data I collected. For example, the interview which I held at Mzuzu Prison with a female prisoner in the presence of a female warder led to the respondent becoming unwilling to speak and continue with the interview. However, at Mzimba Prison, one respondent described her treatment in prison as if she was a broiler waiting to be slaughtered. There was nothing meaningful that she was doing in prison that could help her in her life after prison. This respondent was able to describe her treatment in prison in such a manner because the prison warders were not present which meant she had no fear of reprisal.

3.7 Conclusion

As a result of employing a combination of methodologies especially the women's law approach in this research, I gathered a lot of information that I could not deal with in this research. This is so because the information deals with the lived realities of women and men prisoners and how they interrelate with the different structures and actors and the law. The following chapter presents the main findings of the research.

CHAPTER FOUR

4.0 REHABILITATION FINDINGS

4.1 Introduction

This chapter and the next will discuss the findings on the main aim of this research which was to examine the rehabilitation and integration programmes offered to women prisoners to see to what extent they prepare women prisoners for their successful re-integration into society after release from prison. The focus of this chapter is on the rehabilitation of women prisoners in the case study prisons. The chapter will also discuss objective one and two of the research which were to investigate if there are programmes in the justice system designed to rehabilitate and prepare female prisoners for re-integration into society and to interrogate the justice system to see to what extent they prepare female ex-prisoners for re-integration into society, respectively.

4.2 Theories and purpose of punishment

4.2.1 Punishment

According to Bedau and Kelly (2017), punishment is the authorized imposition of deprivations of freedom or privacy or other goods to which the person otherwise has a right, or the imposition of special burdens because the person has been found guilty of some criminal violation, typically (though not invariably) involving harm to the innocent. It is the redress that the commonwealth takes against an offending member.³³ Theories of punishment can be broadly classified into three, depending on the goal of punishment. Utilitarian theories are forward looking and concerned with the future consequences of punishment. Non-utilitarian theories are backward looking and focus on the past acts and mental states of the offender, and mixed theories are both forward and backward looking.³⁴

4.2.2 Retribution

Maclean (1986) describes retribution as 'sublimated vengeance' in that the suffering of the criminal is a source of psychological satisfaction to those whom he has injured. It appears the end of punishment for retributists is the punishment itself.³⁵ Retributive theory is based on rights, desserts and justice. It holds that the guilty deserve to be punished, and no moral

³³ Sethna, M.J. (1971) *Society and the Criminal*, (3rd Ed) Bombay: N.M Tripathi Pvt Ltd.

³⁴ <http://www.legalsutra.org/utilitarian-and-Kantian-concept-of-punishment>. Accessed on 21/03/2018.

³⁵ Bindal, A. (2009). 'Rethinking Theoretical Foundation of Retributive Theory of Punishment', 51 *JILL*.

consideration relevant to punishment outweighs the offender's criminal desserts. This theory finds support from retributists in that the state is justified in acting as an agent of revenge because private individuals would otherwise seek vengeance on their own and society would be plunged into chaos.

4.2.3 Incapacitation

Incapacitation, according to Schmalleger (2003), aims at protecting innocent members of society from offenders who might harm them if not prevented in some way. The incapacitation works by separating offenders from the community so as to reduce opportunities on the part of offenders for further criminality.

4.2.4 Deterrence

The Malawian Magistrates' Handbook describes deterrence as punishment aimed at preventing an offender from breaking the law again. Specific deterrence is based on the notion that a person who has been subjected to suffering will not re-offend. While for general deterrence, other persons will not offend because they have seen the suffering inflicted on offenders. The overall goal of this form of punishment is crime prevention.³⁶

4.2.5 Rehabilitation

According to Schmalleger (2003), rehabilitation seeks to bring about functional change in offenders and their behaviour. The goal is to reduce the number of criminal offenders by educational and psychological treatment to reduce the risk of future criminality.

4.2.6 Restoration

According to Schmalleger (2003), restoration is a sentence that seeks to address the damage caused by the offender by making the victim and the society whole again. In essence this sentencing principle recognises that the communities are victims of crimes; that punishment is used to pay back to the community; that punishment should be combined with help and that communities are given a voice in shaping restorative sanctions.³⁷

³⁶ Schmalleger, F. (2003) *Criminal Justice Today: An Introductory Text for the Twenty First Century*. 7th Ed. New York, Prentice Hall.

³⁷ Schmalleger, F. (2003) *Criminal Justice Today: An Introductory Text for the Twenty First Century*. 7th Ed. New York, Prentice Hall. Page 408.

The following observations may be made upon considering these different theories. Firstly, punishment is intended to make society more safe and secure. Secondly, it is intended to make the offender understand the consequences of his or her action and change for the better in the future. Thirdly, it is intended to expiate for the harm caused. And finally, punishment is intended to reform offenders and make them into more productive citizens. There are various forms of punishment and each has an effect on a prisoner's future behaviour.

4.3 Defining the terms rehabilitation and re-integration

4.3.1 Rehabilitation

On the one hand, article 10(3) of the ICCPR stipulates that the essential aim of prisoners' treatment in a penitentiary system is their reformation and social rehabilitation. Rehabilitation is a sentencing principle or justification for punishment. It has long been a contentious topic in the fields of both criminology and penology. The term itself means the process of helping a person to re-adapt to society or to restore someone to a former position or rank.³⁸ It is a term that is broadly accepted to mean a planned intervention which aims to bring about change in some aspect of the offender that is thought to cause the offender's criminality, such as attitudes, cognitive processes, personality or mental health. It also refers to social relations with others, education and vocational skills and employment. The intervention is intended to make the offender less likely to break the law in the future, or reduce recidivism.

The rehabilitation of offenders and their successful re-integration into the community are among the basic objectives of the criminal justice systems. This is clearly acknowledged in both international human rights law as well as the United Nations standards and norms on rehabilitation of offenders which include standards relating to interventions in prison, including education, vocational training and other programmes, and the need to ensure that offenders maintain contact with the outside world.³⁹ Thus broadly speaking, rehabilitation concerns itself with interventions in prison relating to vocational training, education and other programmes, and the need to maintain contact with the outside world.

³⁸ Irwin, J. (1980) *Prisons in Turmoil*. Little, Boston, Brown.

³⁹ UN Introductory Handbook on the Prevention of Recidivism and the Social Re-integration of Offenders.

4.3.2 Re-integration

On the other hand, re-integration refers to all activity and programming conducted to prepare an offender to return safely to the community and live as a law-abiding citizen.⁴⁰ Re-integration as a sentencing goal changes the focus from ‘fixing the offender’ to a more complex recognition of shared responsibility.⁴¹ Re-integration entails not only education, life skills training and self-control, but also employment, mental and physical health, housing and family relationships.⁴² According to the ‘Introductory Handbook on the Prevention of Recidivism and the Social Re-integration of Offenders’, the term refers to various forms of interventions and programmes targeting individuals to prevent them from becoming involved in criminal behaviour or, for those who are already in conflict with the law, to reduce the likelihood that they will reoffend.⁴³ Consequently, the re-integration programmes within the criminal justice system relate to standards that apply to the early release of offenders from imprisonment, standards that call for the provision of assistance and support to offenders after their release, standards promoting community involvement in the re-integration process, as well as standards encouraging diversion and the use of community-based programmes instead of incarceration, among others.⁴⁴ The significance of re-integration in supporting the efforts of rehabilitation to prevent re-offending cannot be over emphasized. Thus, without setting re-integration as a goal and creating a path toward it, rehabilitation can do little more than provide offenders with temporary comfort (McAree *et al.*, 2011).

4.4 The rehabilitation activities for female prisoners in the case study prisons

Objectives one and three of this research were to investigate if there are programmes in the justice system designed to rehabilitate and prepare female prisoners for re-integration into society and to determine to what extent the rehabilitation and re-integration programmes in the case study prisons address the women’s particular needs. The use of the women’s law approach as a methodology helped me to unpack these objectives by looking at the women prisoners’ lived experiences in as far as the provision of rehabilitation programmes was concerned. Further, informed by my first and third assumptions that the prison authorities do not provide programmes designed to prepare women prisoners for re-integration into society

⁴⁰ Thurber, A. Understanding Offender Re-integration. Correctional Service of Canada.

⁴¹ Resenthal, A.J.D. and Wolf, E. (2004) Unlocking the Potential of Re-integration. Working paper. New York.

⁴² Lukas, M. (2005) ‘Offender Rehabilitation and Re-integration: Taking the White Paper Forward. Civil Society Prison Reform Initiative.’ Cape Town.

⁴³ UN Introductory Handbook on the Prevention of Recidivism and the Social Re-integration of Offenders.

⁴⁴ Lukas, M. (2005) ‘Offender Rehabilitation and Re-integration: Taking the White Paper Forward. Civil Society Prison Reform Initiative.’ Cape Town.

and women ex-prisoners are not equipped to support their new life as they re-integrate into society, I found it necessary to talk to the women prisoners themselves in order to find out about the rehabilitation programmes that are offered to them in the case study prisons.

It came out clearly from the resulting individual interviews and the Focus Group Discussions which I held with female prisoners, in some cases with male prisoners as well, that the rehabilitation programmes in the case study prisons are not offered by the prison authorities but by external partners. This is the case notwithstanding the Malawi Prison Service's Mission Statement which stipulates that 'we exist to provide for safe, humane custody and rehabilitation of offenders in order to contribute to public safety and social economic development in Malawi.'

It also emerged that women are offered two rehabilitation programmes namely: hairdressing and textile and design in contrast with male prisoners who are offered a variety of rehabilitation programmes.

During a Focus Group Discussion I held at Maula Prison with members of prison staff, I was informed that the Malawi Prison Service does not have any rehabilitation or re-integration programmes for female prisoners:

'The Malawi Prison Service does not have any re-integration programme for ex-prisoners. In the past we used to have Malawi Prison Fellowship where prisoners after finishing their prison sentence used to go to learn tailoring, carpentry and other trades. We hear that there are plans to reinvigorate the programmes at prison fellowship' (Voice of a prison staff member).

One woman prisoner shared her experience of rehabilitation programmes at Maula Prison. She said:

'Since I came to prison in 2015, the only programme that I have seen women take part in is hair dressing. Women are taught how to do hair make-up so that when they finish their jail sentence and are released from prison, they can establish their own businesses wherever they will go to support their lives. This is in sharp contrast with our male counterparts who have a number of rehabilitation programmes offered to them...In 2015 when I was admitted, I found a school for female prisoners. The school was closed the same year yet, fellow male prisoners have that opportunity to do school.'

Further, during a Focus Group Discussion I held with female prisoners at Maula Prison, I asked them what other rehabilitation programmes they would want to be offered. In response one female prisoner said:

‘The prison authorities should consider introducing other rehabilitation programmes for women prisoners. For example, pig farming, tailoring, computer lessons, internet lessons because the world has changed, cookery, irrigation farming among others.’

From the discussion above, a number of issues emerge. Firstly, the rehabilitation activities for female prisoners are influenced or inadvertently premised on the gender stereotypical roles of women in our society which is mostly male-dominated. Secondly, women prisoners view themselves out of the gender stereotypical confinement as indicated by the kind of other rehabilitation activities they are aspiring for. Employing the women’s empowerment theory, one would argue that female prisoners’ economic independence is the drive behind aspiring to get involved with activities that earn more money than the traditional ones. The rehabilitation programmes offered to male and female prisoners are presented in Table 2

Table 2: Showing the rehabilitation programmes offered to female and male prisoners in the case study prisons

Women prisoners’ rehabilitation activities	Male prisoners’ rehabilitation activities
Hairdressing	Hairdressing
Textile and design	Textile and design
	Carpentry
	Cell phone repair
	Soap making
	Tailoring
	Bricklaying
	Formal education

It can be argued from the above information that women prisoners are discriminated against in as far as the provision of rehabilitation programmes is concerned and that this has serious negative implications for their re-integration into society. It is a violation of their right to non-discrimination and equality as enshrined in the 1994 Constitution and in international human rights instruments.

Using the radical feminist theory, it can be argued that the gender-role stereotypical rehabilitation activities for women prisoners are as a result of the attitudes and perceptions of the state institution towards women prisoners who are dealt with on *ad hoc* basis as they were never in their plans. However, examining the list of rehabilitation programmes that women prisoners' would want introduced, one would conclude that women prisoners have sufficient awareness of what they want to do and thus, should not be limited by the gender role stereotypes which unconsciously informed the prison authorities to allocate hairdressing and textile and design to women prisoners.

However, when I asked the Officer in Charge why women prisoners were not offered the range of rehabilitation programmes as is done for male prisoners, he informed me that the challenge was that they cannot mix female and male prisoners. Apparently, the facilities for teaching and learning and classrooms for other rehabilitation programmes other than hairdressing are located in the male section of the prison compound. This shows a lack of or neglect on the part of the prison authorities to find creative solutions to the problem so that women prisoners should also benefit from rehabilitation activities in the male section of the prison.

The statement by the Officer in Charge confirm the findings from the literature that most prisons were not designed to house women prisoners and provide for all their needs. As Twea (2004) remarks:

‘It may be argued that at the time prisons were being built in Malawi, it was not adequately envisaged what kind of needs women would have while in prison. Most prisons were built for men and *ad hoc* measures had to be taken to cater for women.’

Malawi has made commitments to adhere to international standards relating to treatment of prisoners. Rule 58 of the Minimum Standards for the Treatment of Prisoners provides that:

‘The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.’

Thus, the prison authority by not ensuring the rehabilitation of its female prisoners is ultimately not protecting society against crime, is not empowering women prisoners to lead a self-supportive life when they are released from prison and this has the result of perpetuating poverty in the society since research shows that most of the women who are involved in crime come from a poor social economic background. Above all, it is a violation of the rights of female prisoners.

4.5 Women prisoners' particular needs

An analysis of the research findings reveal that women prisoners have needs which are specific to them as women which call for gender differentiated treatment. The findings confirm my second assumption which was that women prisoners have particular needs for re-integration. During a focus group discussion with female prisoners and a male prison at Mzimba Prison, female prisoners identified sufficient sanitary material for use during menstruation as one of their particular needs. They informed me that the prison authorities do not provide them with any sanitary material for use during such times. While under Regulation 58(3) a male prisoner's only need is recognised (i.e., to keep their beards shaved and provided with the means to do so), provision for female prisoners' particular needs is totally ignored or neglected.

In the same vein, Rafter (1997) remarks:

‘What has been ignored is both the physical presence of women in prison and the fact that prisons themselves are gendered institutions, reflecting and reinforcing beliefs about sexual differences.’

One female prisoner Zayinabu described her experience as she explained:

‘...menstruation period is the toughest time of my prison stay, since I am forced to stay with a wet cloth for many hours which is irritating but I can do little about it. I do not have enough pants so that I can change more frequently. We are treated like less human beings.’

When I asked the Station Officer about whether the prison made available the sanitary materials or women prisoners, he confirmed to me that the prison did not provide any sanitary materials to women prisoners. The Station Officer, however, was quick to add that it was just an oversight that as a prison they did not provide the sanitary materials to their female

inmates. He promised to talk to the matron at the prison to make a requisition for the sanitary materials for female prisoners every month. While the Station Officer made this proposal with good intentions, its effect is to medicalise a normal life condition.

Mzuzu Prison presented a rather different situation. While at Mzimba Prison women prisoners were not provided the sanitary materials, a female prisoner at Mzuzu Prison informed me during the interview that well-wishers especially from religious institutions made available the sanitary materials to female prisoners but they could not use them while in prison. In an interview with one female member of staff, she confirmed to me that they did indeed receive sanitary materials on behalf of female prisoners and kept them for their use at home after they completed their jail sentences. When I asked her why this was the case, she said that as a section they had nowhere to dispose of the materials after use.

In her article and given the low numbers of women prisoners, Makarati⁴⁵ expected their situation to be well taken care of as regards their particular needs. Her research, however, revealed a reality of rather dehumanizing women prisoners' conditions and treatment. Women had insufficient sanitary facilities and at times they had to make do with one a pad a day and could not change pads at night, among other issues.

From the research findings it is clear that the prison authorities are insensitive to the women prisoners' particular needs. Section 42 of the 1994 Constitution provides for the right to be held under conditions consistent with human dignity. A prison environment which does not provide for sanitary materials for women during their menstrual circles cannot, in my view, be said to comply with the requirement that women are to be held under conditions consistent with human dignity. It is a violation of the right to dignity for women, as enshrined in the Constitution, not to provide them with the means of managing menstruation. However, when the matter was brought to the attention of the Officer in Charge, he promised to sort it out as lack of disposal place was not an issue. Alternatives could be found.

4.6 Counselling and psycho-social support

Counselling and psychosocial support for women prisoners is another need particular for women prisoners. I found that anxiety concerning the welfare and safety of the children is a

⁴⁵ Samakayi-Makarati, J.N. (2003) 'Female Prisoners in Male Prisons' In: Msengezi, C. and Staunton, L. eds. *A Tragedy of Lives Women in Prisons in Zimbabwe*. Harare, Weaver Press.

big problem for women prisoners which adds so much pain to their incarceration. I also found that the need for constant contact or communication with their family members and relatives is another pressing issue for women prisoners. One of them said:

‘As a woman I have needs that are specific to me even here in prison. ‘Ndi zinanso zimene zmakhuza ine ngati mayi.’

(Translation: ‘And other needs that are associated with me as a mother.’)

‘Ndili ndi ana 4. Pano mmene ndili ku ndende kuno ana anga akuvutitika. Palibe amene angawapatse chisamaliro chokwanira. Ena awathamangitsa ku sukulu chifukwa chosowa fizi. Ndimawapangiri chilichonse anawo ndimawapatsa chakudya, zovala ndi malo ogana. Koma pano pomwe ndili ku ndende kuno ana anga akusowa zonsezi. Inde ndili ndi abale oti akhoza kusamalira anawo koma chisamaliro cha kholo lobeleka mwana ndichofunikira kwambiri kwa mwana.’

(Translation: ‘I am a mother of four children. And as I am here in prison, my children are suffering. There is no one to look after them. Some of them have dropped out of school because there is no one who can provide them school fees. I was responsible for everything in their lives. I provided food, clothing and housing for them. But now that am here in prison all this is a big problem for them. Yes I have relatives who can support them, but the care of a biological parent is very important to a child.’)

(Voice of Miss Chisale who is serving a six year jail term for acts intended to cause grievous harm)

The literature indicates that when a mother is imprisoned, she not only endures the pain of her own imprisonment, but also of being separated from her children. An extract from the ‘Mothers in Prison, Children in Crisis Campaign’ highlights a gendered perspective of imprisonment as follows:

‘When a man is arrested, he is usually confident that someone is caring for his children. When a woman is arrested, she does not have this assurance. Because a woman is usually a child's primary care-giver, a mother in prison suffers both the pain of separation and the concern for her children’s care.’

A 55-year-old Angelina Katengeza who is serving a five year jail sentence for money laundering identified constant contact or communication with her children, family members and relatives as being very critical to her life. She said:

‘I have grandchildren. My last born son had a wedding recently but I did not have the opportunity to go and attend the wedding ceremony since I am here in prison. Whenever there is a funeral of a relative I cannot go and attend because I am in prison. My concern is about my grand-children I wish to visit them.’

The prison authority do not allow prisoners once admitted to prison to go out to visit or attend any family function before completing his or her jail term. Reasons cited for not allowing such visits include shortage of staff in the prison service and practical aspects of such arrangements. However, constant communication with the outside world is critical for women prisoners’ successful re-integration into society. Special attention should be given to who women staying in contact with members of their family or relatives since the literature indicates that in some cases women prisoners have histories of abuse and domestic violence at the hands of their spouses or members of their family or relatives.

Following the above experiences of women in prison, it is vital that they receive proper counselling and psychosocial support to ease the pain and strain of their experiences. During an interview a member of the Social Welfare Officer at Maula Prison on behalf of the Chaplain informed me that upon their admission to prison newcomers are given counselling in order to help them cope with their new life in prison. Asked what kind of counselling offered to them, the officer responded:

‘We offer spiritual counselling to prisoners. The counselling we offer prisoners helps them to understand their situation as prisoners. You know some individuals may not accept the fact that they are to stay in prison without much contact with the outside world for the period they will be in prison. It is very important to make such individuals realize and accept that prison is their new life but not the end of everything.’

He added:

‘If a male or female prisoner has any particular spiritual issue that requires assistance from the church we also organize that.’

Similarly, the Assistant Chaplain at Mzuzu Prison echoed the sentiments of the Social Welfare Officer and also stated that spiritual counselling is offered to prisoners upon admission to prison and during the time that they serve their jail sentence.

In my view spiritual counselling alone is not sufficient to meet the needs of female prisoners in prison. There is a need for counselling that will also address their physical, emotional, and psychological needs as human beings and also help to ease the psychological pain and trauma of prison experience. Further, the counselling should be done by trained qualified professional counsellors.

4.7 Extent of preparation for re-integration into society

Analysis of the research findings reveals that there is some doubt surrounding the nature or extent of rehabilitation women prisoners in the case study prisons undergo to prepare them for successful re-integration into society as law abiding and productive citizens.

‘Re-integration is a form of rehabilitation and empowerment. But am not sure how much empowerment is done to women prisoners because they are considered to be able to manage their situation on their own, they [are] few in numbers and are thus neglected by the system. They form only about one percent of the prison population in Malawi’ (Voice of a judge).

Table 3 gives an indication of the trend in the female prison population. It consists of the number of female prisoners in the prison population on a single date in the year (or the annual average) and the percentage of the total prison population that female prisoners constituted on that day. The female prison population rate is calculated on the basis of the national population total. If the rate were calculated on the basis of the number of females in the national population it would of course be approximately double the figure in the final column.

Table 3: Showing the trend in the Malawi female prison population from 2001

Year	Number of female prisoners	Percentage of total prison population	Female prison population rate (per 100,000 of national population)
2001	91	1.3%	0.8
2005	117	1.2%	0.9
2010	156	1.3%	1.0
2014	129	1.1%	0.8

(Source: World Prison Brief Data)

I was informed by a prison official that as of 12 March, 2018 the total number of female prisoners was 215 against 14,282 male prisoners.

Female prisoners in the case study prisons have the option of partaking in a very limited number of rehabilitation activities. From the research findings, it would therefore be safe to conclude that female prisoners in the case study prisons are not prepared at all or minimally prepared for re-integration into society. It is a paradox that in spite of this lack of assistance, female prisoners rarely re-offend and go back to prison, whereas the opposite is true for male prisoners who despite undergoing extensive rehabilitation suffer a high rate of recidivism.

Both prison warders and prison officials confirmed that female ex-prisoners rarely reoffend. I did not pursue the matter further as to why female ex-prisoners infrequently re-offend despite their ill-preparedness for life after prison. The reason was that I considered it to be an area that needs thorough research which I could not do due to limited time. Suffice to say, I learnt that some become prostitutes in order to survive after prison.

4.8 Release from prison

Section 112 of the Prison Act enjoins the Officer in Charge of a prison to discharge from prison any prisoners under his control immediately upon their becoming entitled thereto. Under section 114 the prison authorities are mandated to meet the travelling expenses for any prisoner who is discharged from prison using funds directly provided by Parliament. In an interview the Officer in Charge at Maula Prison confirmed that his prison meets the travelling expenses for prisoners who are released from prison. I observed what happened to a male prisoner who spent 12 years in prison and was being released on the first day I was conducting interviews. He was given his personal belongings that were taken for safe keeping and was advised to behave responsibly and not to commit further crimes. No support was offered to him. Fortunately for him his relations had come to pick him up from prison.

The picture that one gets from the above provisions on discharge of prisoners and the provision of travelling expenses is a very simplistic one as far the circumstances of women ex-prisoners are concerned. Therefore as will be shown later, the prison authorities need to do more in order to meet the needs of women ex-prisoners. It appeared that female ex-prisoners are simply expected to leave prison and go straight back to their homes to continue living

their lives. Practically, however, it may be the case that the female ex-prisoner may not have shelter, food, clothing or other basic necessities. If she was married before she went into prison, she might leave prison to find out that she had been rejected by both her husband and relatives and her own family members and relatives at the time she committed the offence that led to her incarceration. If she stayed in prison for a very long time, she might not even remember her own home location due to developments which might have taken place while she was in prison. And yet, upon discharge, she is just let go at the prison gate. Nobody really knows what happens to these women.

4.9 Conclusion

This chapter has presented the research findings on the rehabilitation programmes for the female prisoners in the case study prisons, their specific needs and the consequences on non-provision or less provision of the programmes for female prisoners. The next chapter will focus on the re-integration of female ex-prisoners into society and the challenges they encounter.

CHAPTER FIVE

5.0 RE-INTEGRATION FINDINGS

5.1 Introduction

This chapter continues with a discussion of the main findings of this research. It focuses on re-integration and challenges faced by female ex-prisoners when re-integrating into society. The chapter will also discuss objective three of the research which was to investigate the lived realities of women ex-prisoners when re-integrating into society after their release from prison

5.2 A tale of female ex-prisoners' experiences when re-integrating into society

My fourth assumption was that female ex-prisoners face challenges when re-integrating into society after their release from prison. This assumption has been confirmed by what was said by men and women prisoners and ex-prisoners and members of the community and members of the faith based organisations. These challenges are outlined below.

5.2.1 *Community stigma and discrimination against women ex-prisoners*

An analysis of the data collected during the research reveals that both men and women ex-prisoners face a number of challenges when re-integrating into society after release from prison. However, the different starting points for a man and woman in our society coupled with patriarchal predispositions and conservative notions of a woman, make the situation for women ex-prisoners particularly difficult as compared to men ex-prisoners.

‘Our society views such women as worse people since it is unacceptable for a woman to be involved in criminal activities. A man somehow may be forgiven by the society for committing an offence’ (Voice of a male ex-prisoner).

The literature also shows that women ex-prisoners are discriminated against and stigmatized by the community by their sex and the mere fact that they were once imprisoned. They are shunned or at time ostracized by the community.

‘Even here in the market those that know I was once imprisoned they look at me with suspicion as if I am a thief or a criminal. This affects me so much that I always cry why the court sent me to jail. I did not bring any gun to prison on that day. I only went to see my husband who was not happy if I did not go to

see him' (Voice of Aida Moyo, female ex-prisoner who served a five year jail term for aiding the escape of her husband from prison).

When asked what challenges women ex-prisoners face in society when re-integrating, Mr. Ngwira offered this response:

'Social stigma. Some people still take ex-prisoners as evil or unrepentant people. Human reasoning says, 'Once beaten, twice shy' hence society shies away from ex-prisoners. This leaves them socially still incarcerated. Women are worst affected by the burden of social stigma. In Malawi people traditionally accept the mistakes of a man, but they point unforgiving fingers at a woman. A man is accepted to do wrong, not a woman. In this case, women ex-prisoners are given a bigger burden to rejoin society than men ex-prisoners.'

Further, Violet an ex-prisoner stated:

'The main challenge that I encountered when I finished serving my prison sentence was discrimination. "*Kundisala*". I was discriminated against by some relatives, family members, friends and members of the community. Things were not well with me [in] that whenever I did something accidentally, let's say breaking a plate by accident, some family members could refer to my arrest and imprisonment as the reason for the accident. [They would say] "*Chosamva iwe!! nchifukwa unamangidwa mpaka ku ndende.*" (Translation: "You are a fool and that is why you were arrested and imprisoned.")'

A male ex-prisoner had this to say about his experience in community after he finished his jail term:

'We are discriminated against in societal activities. This affects not only our personal development but also the development of the community since our input is excluded. A person might have been working at a very senior position but the moment you become a prisoner all that is lost and utterly forgotten. You cannot make any contribution to the very community you served before going to prison. We cannot be employed by the Government or even private companies' (Voice of Samuel, a male ex-prisoner).

Discrimination against women ex-prisoners in the community has several implications for the individual, the community itself and the nation at large. It is a violation of their right not to be discriminated against as enshrined in the Constitution of Malawi⁴⁶ and it is also a breach of

⁴⁶ Section 19(1) of the Constitution prohibits discrimination of persons in any form on the grounds of, among other things, status or condition and guarantees equal and effective protection under any law.

the duty on the part of the individual members of the community to respect women ex-prisoners imposed on them by the Constitution.⁴⁷ It is a violation of the discrimination clause (as stipulated in CEDAW⁴⁸) by private individuals and Malawi is under obligation to investigate and hold accountable the perpetrators. Further, the women ex-prisoner is subject to stress and psychological trauma as a result of the discrimination and this has an effect on her health and consequently on the wellbeing of the whole family.

Furthermore, the community itself stands to lose the valuable contribution of women ex-prisoners in various economic and developmental activities. It also exposes itself to risk of further criminal activities by women ex-prisoners in a desperate attempt to provide for themselves, their children and other relations. Finally, the nation at large too will not benefit from the potential contributions of the women ex-prisoners who turn their backs on society having been rejected by it through discrimination. The cost of taking care of a prisoner will turn out to be a waste of resources since nothing productive will result from the ex-prisoners in the community where she has gone. In fact, chances are that the nation will keep on spending on more prisoners who are likely to re-offend and come back to prison.

5.2.2 Food and housing

Food and housing is another challenge that women ex-prisoners face when re-integrating into society after release from prison. In an interview Ellen Botha stated:

'Ine masugzo awo nkhuwona kuti namukumana nawo ni kusowa kwa chakulya, wovyiri panyumba na kapito kuti nkhayambe ka bizinesi.'

(Translation: 'I am likely to encounter the challenges of food shortage, lack of family support and lack of capital which I can use to start a small scale business.')

⁴⁷ Under section 12(2) of the Constitution every individual has, among other things, duties towards other individuals, duties which include the duty to respect his or fellow beings without discrimination and to maintain relations aimed at promoting, safeguarding an enforcing mutual tolerance.

⁴⁸ Article (1) 'For the purposes of the present convention, the term 'discrimination against women' shall mean 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 members of a community police forum at Traditional Authority Chitukula identified housing among other challenges that ex-prisoners encounter when re-integrating into society. They remarked:

‘The family members and relatives are advised to support the ex-prisoner in every way possible, i.e., materially...they should provide him or her with material resources for his or her basic needs as he or she is not expected to be able to provide for himself or herself immediately from prison [e.g.,] housing, health care since in most cases ex-prisoners right from prison have health issues.’

During a focus group discussion at Maula Prison, a female prisoner singled out housing as a challenge that women ex-prisoners encounter or are likely to face when re-integrating into society after prison release. One member of the group said:

‘Housing will also be a challenge.’

A male ex-prisoner narrated what it means in reality to spend long period of time cut off from the community as a result of imprisonment. He stated:

‘A person just from prison, especially those who serve long sentences like in my case, are like babies. I did not find anything that I owned before going to prison, as such, I need support from my family members, relatives, friends and the entire society to help me settle down once more just like the way a baby is treated’ (Voice of Samuel ex-prisoner).

In an interview Mr. Mwenye cited food shortage as a challenge that he encountered as he was re-integrating into society after release from prison. He stated:

‘The main challenge that [I] am facing now is food security. I don’t have food to feed myself and my children. To find food it means I have done some piece work, but these days piece work is scarce. The time my friends were working in their gardens I was in prison.’

Food and shelter are the basic needs that every person needs in order to live a decent life. If prison time was being spent productively, i.e., working to earn some income, the challenge of food and housing could be mitigated since upon release from prison female prisoners could have something to start with. But as it is, ex-prisoners depend on the good will of their family members and relatives to provide them with housing and food.

Thus, the need for food and safe and affordable housing for female ex-prisoners cannot be over emphasized. Literature indicates that in certain cases some female ex-prisoners are denied housing by potential landlords because of their status as ex-prisoners. Lack of housing also affects employment chances for ex-prisoners.

5.2.3 Marital issues

The other area where this research was able to establish that women face challenges relate to their marital relationship. Generally, women and men operate from different positions in this area due to culture and traditions which in most cases favour men. The experiences of ex-prisoners as outlined here come from respondents who saw these things and had not experienced them personally. The female ex-prisoner whom I had interviewed lost her husband while she was in prison. Mr. Samuel explained:

‘Other challenges relate to family life and property. If a man was married and then was imprisoned, when coming out may find his wife married off to another man or was unfaithful having affairs with other men while he was in prison. A woman too, while in prison, if she was married might find her husband married to another woman upon completing the sentence. For women the situation is worse because, our society views such women as worse people since it is unacceptable for a woman to be involved in criminal activities.’

Literature indicates that although both men and women ex-prisoners may experience marital problems after release from prison, women suffer the most as a result of the breakdown of the relationship. In most cases many women prisoners have few job skills or experiences before going to prison and also have few opportunities for vocational training or none at all while incarcerated. The end result is that since their only source of support would be the very family relationship which has broken-down as a result of incarceration, women suffer a double tragedy. Further, women ex-prisoners also find it difficult to re-establish relationships with their children after their release from prison especially since they may not have been able to visit them while incarcerated due to the long distances needed to be travelled. They also find it difficult to establish new social working relationships with other women in society and this adds to the emotional suffering of women even when re-integrating into society.

Some women ex-prisoners are at times rejected by their husbands even when they are willing to continue with the marriage relationship. Relatives of their husband sometimes put pressure on the man to abandon his wife who is an ex-prisoner, although the man may not be willing

to leave her. This is so because they feel that that woman has brought shame and dishonour on the family and therefore, not worthy of their continued association and relationship.

5.2.4 The role of the community and faith based organisation in the re-integration of female prisoners

On the one hand, the community has a critical role to play if female ex-prisoners are to successfully re-integrate into society and lead productive lives. It was discovered that re-integration into society for ex-prisoners depends on two factors, first, the nature of the offence which they committed and second, the period of time they stayed in prison. One member of the community stated:

‘As a community we do our level best to welcome those that have been in prison after they finish serving their sentences. However, this depends on the type of offence that they committed and the time they spent in prison. Generally those that were convicted of murder pose a threat to our community even after finishing their jail sentence. *‘Timakhalbe ndi nthumazi kuti munthu uja ndi woopsa chifukwa ali ndi magazi a munthu.’* (Translation: ‘We are still afraid that the ex-prisoner is dangerous since has human blood in his hands). If a person stays longer in prison, it becomes difficult to re-integrate him or her into our community because we hear that at prison is where hard core criminals are, and as such, we are afraid that this person who spent a long time in prison might have had contact with these people such that he or she is more dangerous than before he or she went to prison.’)

On the other hand, the faith based members also have a role to play in the re-integration process of female ex-prisoners.

‘Jesus called on his followers to cheer prisoners. I think the same principle should apply to ex-prisoners. The church should never discriminate against ex-prisoners. They should never foster the ‘social outcast’ mentality. They should open arms to former prisoners and help them to find solace in society. I remember a former prisoner who was not supported well by the church or society, he became restless’ (Voice of a faith based member).

Another member said:

‘A holistic approach to salvation should not only consider heaven issues but how to create effective and productive citizens here on earth. The faith community should not be fixated on the past mistakes of a person. Jesus welcomed sinners like Zacchaeus and Matthew. When the Pharisees accused him of eating with sinners, Jesus said that it was the sick that needed a doctor,

not the healthy; and that God desired mercy, not sacrifice. In this case Jesus is clear about how the church should treat condemned people. He advocated a welcoming approach.’

As a consequence, a successful prisoner re-integration programme requires the concerted efforts of various players. It is significant however, that in all this the Government through the Malawi Prisons Service should take a leading role and create an enabling environment for other players to come in and offer co-operation and support.

5.3 Re-integration programmes

In this section I present a brief description of some of the re-integration programmes that could benefit female offenders and ex-prisoners as they re-enter society if employed by the Malawi Prison Service.

5.3.1 *Halfway home or house*

Halfway homes or houses include facilities ranging from small correctional institutions located within the community to loosely structured houses which provide minimal support to primarily self-referred clients. The target populations of these facilities also vary considerably but may also serve only persons referred from the criminal justice system through pre-trial diversion, probation, pre-release, work or study release, or parole.⁴⁹ Balaka Halfway Home is an example. They admit both men and women ex-offenders. They offer teaching in four trades: tailoring, carpentry and joinery, welding and fabrication and electrical installation. Ex-prisoners are provided with start-up working tools which are vital for their new life in the community.

5.3.2 *Restorative justice*

It encompasses processes whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications in the future.⁵⁰ It aims to involve the parties to a dispute and others affected by the harm (victims, offenders, families concerned and community members) in collectively identifying harms, needs and obligations through accepting responsibilities, making restitution, and taking measures to

⁴⁹ John, M. e al. (1973) Guidelines and standards for Halfway Houses and community treatment centres. Washington D.C.

⁵⁰ Marshall (1999) Restorative Justice an Overview.

prevent a recurrence of the incident and promoting reconciliation.⁵¹ Restorative justice as part of rehabilitation programmes can work to benefit majority of women prisoners who might not have committed serious offences in that the relationship with the victim and her supporters may already be amended through the process while she is paying to society by serving a jail term.

5.3.3 Family conference

It is a re-integration programme that encourages conversations in families over the prisoner's future relationship. It requires participants to engage with the difficult issues of life after prison and how they will rebuild family relationships. Facilitators lead discussions about what responsibilities offenders feel they have to their families, and what they will need in terms of support when they are released. The program culminates in Family Conferencing, which brings the families of offenders into the prison in order to create a space for dialogue (McAree *et al.*, 2011). Some female ex-prisoners may have acceptance into society and forgiveness as their re-integration needs and these can be better identified during the Conference and addressed accordingly.

5.3.4 Victim Offender Mediation (VOM)

Victim Offender Mediation (VOM) is a re-integration programme where the victim and offender are given the opportunity to meet in a safe and structured setting to engage in a discussion about the crime committed against the victim with the assistance of a trained mediator. The aim is to afford the victim an opportunity to be directly involved in responding to the crime thereby increasing the offender's awareness of the impact of his or her behaviour and providing an opportunity to take responsibility for it.⁵²

5.4 Conclusion

This chapter has presented some of the challenges that female ex-prisoners encounter when re-integrating into society after release from prison. It has also outlined some of the re-integration programmes that if employed by the Malawi Prisons Service, stand to benefit female prisoners and ex-prisoners in as far as successful re-integration into society is concerned. The next chapter contains a discussion and the way forward.

⁵¹ Johnstone (2002) Restorative Justice: Ideas, Values, Debates. United Kingdom. William Publishers.

⁵² Johnstone (2002) Restorative Justice: Ideas, Values, Debates. Oxford. William Publishers.

CHAPTER SIX

6.0 DISCUSSION AND THE WAY FORWARD

6.1 Discussion

As already highlighted earlier, women prisoners and ex-prisoners were the main focus and starting point for this research. The research assumptions were formulated so as to unearth the lived realities of women prisoners and their experience of life after prison. The data collected confirmed my assumption that female ex-prisoners face challenges when re-integrating into society which are compounded by lack of or minimal rehabilitation while in prison. A number of factors were ascribed to the above situation. The prominent ones were the inconspicuousness of women prisoners in the criminal justice system exacerbated by patriarchal perceptions of women ex-prisoners and the lack of a policy on prisoner rehabilitation and re-integration within the Malawi Prisons Service.

It should be noted that failure by the drafters of the 1994 Constitution to make a distinction between sex and gender followed by the use of the neutral terminologies results in even further discrimination against women prisoners and ex-prisoners which negatively impacts against them even though they are not the primary target of the law. The end result is that women prisoners end up stagnating in prison without doing anything meaningful to improve their lives. Thus, deliberate and strenuous efforts need to be undertaken to provide for their specific needs.

In their spirit, the equality provisions in both international and regional human rights instruments and the national laws are intended to remove barriers against women prisoners within the legal framework. However, in reality and to a certain extent they act as obstructions in that they attempt to make equal singularities that have nothing to compare with in men. This includes, for example, the love and affection of most mothers for their children that result from having carried their child in their womb for nine months before birth and menstruation.

Lombroso and Ferrero (1895) are proponents of the long held view that women are congenitally less inclined to commit crime than men; that the few women who are criminal are abnormal; that they are genetically more male than female and that the true, biologically-

determined nature of women is antithetical to crime and that if a woman is a ‘true criminal type’ she is biologically like a man. This view has informed and contributed to the neglect or disregard of the female prisoners specific circumstances and needs. A more open minded approach should be adopted so as to provide for the needs of female prisoners as individuals or a group whose population is on the increase as shown by research from other jurisdictions.

6.2 The way forward

My recommendations to the various actors are not uniform and I have therefore categorized them according to the various actors.

6.2.1 Policy makers

I assume that one of the reasons for the lack of a written policy on the prisoner rehabilitation and re-integration in the Malawi Prisons Service is the lack of awareness or neglect on the part of the policy makers. The policy makers for matters regarding prisons are the Principal Secretary, Directors and Deputy Directors in the Ministry of Home Affairs and Internal Security. The policy should include the following issues:

Rehabilitation programmes for female prisoners which will help them to earn a reasonable income to support their needs in the community. Through consultative meetings with all relevant stakeholders, like community leaders, faith leaders, human rights organisations and women’s human rights organizations, the policy makers should formulate a policy on rehabilitation including such programmes as electrical installation, welding, bricklaying, motor vehicle mechanics, among others. The policy should also make a provision for start-up capital and working tools for female prisoners who have successfully completed the rehabilitation programmes. The kind of re-integration programmes to be included should focus on ensuring constant contact between the female prisoner, her family, children and relatives and early reintroduction into society of female prisoners and community participation.

Other recommendations are:

Through a review of the Malawi Prisons Service establishment, establish a special body or divisions within the Malawi Prisons Service which shall be responsible for the implementation of all the activities under either rehabilitation or re-integration programmes.

Include a gender component in the training curriculum of prison warders by reviewing the current curriculum, increase the training period of prison warders and upgrade the qualification. Place emphasis on a change in mind set and attitude towards female prisoners since in most cases they do not pose the same risk to society as male prisoners.

Further, there is need to consider constructing female prisons one in each administrative region so as to allow for family visits and reduce their transport costs. The female prisons should be equipped with all the necessary facilities, designated infrastructure and well and properly trained staff for rehabilitation and re-integration programmes. Facilities for children, nursing mothers and pregnant women prisoners should also be made available.

Furthermore, the prisons should open their doors to members of the public with a view of making the public aware of what the Prisons Service is doing, challenges it is facing and the role of the public in ensuring success of its efforts to reduce recidivism. The prisons should also sensitize the public to prison activities through public meetings and radio and television programmes. Through the media it should encourage public debate on penal reform.

Finally, through civic education and cooperation with other stakeholders like human rights and women's human rights organizations, the Malawi Prison Service should teach female prisoners their human rights, how and where to seek redress in case of violations which may occur after they are released from prison.

6.2.2 Malawi Law Commission

Under section 135(1)(a) of the Constitution, the Law Commission has power to review and make recommendations regarding any matter pertaining to the laws of Malawi and their conformity with this Constitution and applicable international law. In that regard it should:

Review the Prisons Act to bring it into line with international standards on rehabilitation and re-integration programmes and on the conditions and treatment of female prisoners. It should also review the Convicted Persons (Employment on Public Work) Act (Cap 9:03 of the Laws of Malawi) and Probation of Offenders Act (Cap 9:01 of the Laws of Malawi) and amalgamate the mandates of institutions established under the above legislation to be under one correctional roof.

6.2.3 *Judicial officers*

Judicial officers at all levels should carry out random prison visits to follow up on the rehabilitation of female prisoners both those that are serving short prison sentences and those that are serving long ones. This would help to ensure that female prisoners receive rehabilitation and the visits can also be an opportunity to female prisoners to voice their concerns. To create a conducive environment for the judicial officers' visits, prison warders should not be allowed to be present when these officers are meeting prisoners. This can be done by amending the provisions requiring the presence of prison warders during interviews or meetings with prisoners.

Judicial officers at all levels, especially the graded and lay magistrates, should ensure that appropriate sentences are imposed on female convicts and that non-custodial measures or sentences be seriously considered for female offenders.

The Chief Justice should ensure that the Traditional Courts are established as provided for in the Local Courts Act. The Traditional Courts Act gives jurisdiction to some chiefs to preside over cases involving petty offences. It prescribes fines and compensation as forms of punishment as opposed to imprisonment. Women who commit petty offences stand to benefit by avoiding imprisonment which further complicates their situation.

6.2.4 *Legal Affairs Committee of Parliament*

The Legal Affairs Committee of Parliament should lobby the National Assembly for an increased budgetary allocation to the Malawi Prison Service especially for funds allocated to prison activities and staff training as one of their mandates is to inspect prisons and thereafter make recommendations as to what must be done depending on their findings.

The Committee should also hold the executive arm of Government accountable for the implementation of best practices relating to female prisoner rehabilitation programmes. This can be done by demanding that the Minister of Home Affairs and Internal Security cause to be brought to Parliament reports of the Inspectorate of Prisons for deliberations and eventual enactment or amendments of the law where the Inspectorate so recommends.

6.2.5 Inspectorate of Prisons

The Inspectorate of Prisons should create awareness among its members of the sex-based needs of women in prisons so as to make recommendations that take into account the needs of men and women in prison.

The Inspectorate as a body mandated by the Constitution to monitor the condition of prisons should also take upon itself to investigate the rehabilitation and re-integration programmes to establish compliance with international human rights standards where available and to recommend the enactment of legislation to Parliament through the Minister responsible for the introduction of such programmes in our prisons.

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