

WOMEN INCARCERATION VICTIMIZED THEIR CHILDREN: A CASE STUDY OF WOMEN PRISONS IN GHANA

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Abstract

This article concentrates on the problems incarcerated females and their children face in Ghana. Researchers and human rights activists have identified some primary concerns about the infringement of rights of incarcerated women across the globe including Ghana. Their challenges include gynaecological problems, food insecurity, sex trade by vulnerable groups for protection, sleepless night, and poor health conditions and childcare. Their children also encounter severe problems like poor academic performance; victimization, trauma, and stigmatization from peers; high drop-out rates; and juvenile delinquency which takes them to prisons in their adult lives. But the specific reasons why these problems continue to exist, leading to human rights abuses of female inmates and their children, have not yet been answered among researchers in Ghana, and this research is poised to fill that gap. Financial constraint and sheer disregard for children and women's rights and their vulnerability are some of the reasons found to be the causes of these woes. To draw the attention of stakeholders to these problems, a doctrinal analysis of both primary and secondary resources related to the topic was adopted. Consequently, the normative analysis and explanations of the materials, portray that, imprisonment is not serving its purpose and that, community service order is the best alternative for women offenders, so they can continue their caretaking responsibilities in accordance with the Bangkok Rules.

Keywords: Financial constraint, Human rights, Ghana Prisons Service, Incarcerated women and their children, Community service order

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1. Introduction

This research primarily aims to unearth impediments to penal reform for female offenders in Ghana and advocate alternatives to incarceration, including the development of the Community Service Order (CSO). Some Ghanaian female prisoners are mothers and CSO will enable them to serve their sentence in the community, access rehabilitation programs, and maintain their caretaking responsibilities. Research has been conducted on prisons and prisoners in Ghana and beyond, but few published works relate to female prisoners and their plights, such as poor health conditions, childcare, gynaecological problems, food insecurity, sex trade by the vulnerable group for protection, and sleepless night (Todrys et al., 2011). To Park and Alison (2001), the incarceration of these mothers victimizes their children as the children's physical, emotional, social, and psychological development are affected, thereby increasing their vulnerability.

Most of the family members who take up the caretaking responsibilities maltreat these children, so they experience poor academic performance; school drop-out (Teiko, 2017); trauma, and stigmatization from peers; and juvenile delinquency which takes them to prisons in their adult lives (Mallicoat, 2021). The specific reasons why these problems continue to exist, leading to human rights abuses of women inmates and their children, have not yet been answered among researchers in Ghana and this paper is set to fill that gap. Whether it is a mere disregard for the human rights of women offenders and their children, or financial problems, the writer will detangle the issues.

In Ghana, it is believed that the socialization of children into society is the mother's responsibility. She teaches the children the language, cultural and subcultural aspirations of society, and her absence is considered a threat to the family and society (Anku, 2021). For K.O. Ibrahim, the Chief Executive Officer of Crime Check Foundation, Ghana (personal communication, January 29, 2021), this is among the reasons why human rights activists in Ghana constantly requested that the government implements non-custodial sentences, so the women can continue their traditional duties. These activists became elated when Ghana signed the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) which promote CSO because women offenders pose no risk to the community (UN Office of Drug and Crime [UNODC], 2010). A bill on the CSO was prepared for parliament to pass into law, but it has been in parliament for over seven years without ratification. He doubts if the bill will be given the necessary attention, while his non-governmental organization (NGO) keeps lobbying for it (Ibrahim, personal communication, January 29, 2021).

Other stakeholders have called on NGOs like World Vision International and the National Council on Women and Development to lead an advocacy movement that will urge the government to introduce a literacy program for women offenders instead of incarceration. They argue that operating women's prisons is a waste of human resources as we cannot justify the custody of only 302 female inmates and the employment of over 500 female prison officers for supervision. The crimes of these women seldom cause any public panic, hence the need to abolish female incarceration in Ghana (Appiahene-Gyamfi, 1995).

A doctrinal analysis of both primary and secondary materials relevant to the topic is the main methodology (Van, 2011, pp. 4-10) to unravel why human rights abuses of incarcerated women and their children continue to exist in Ghana. The primary sources are international laws, cases, national legislation and regulations on prisons and human rights. The secondary

sources may include academic articles; policies; reports; and informative interviews with stakeholders, lawyers, and NGOs in Ghana to solicit their opinions on proposed community service for female offenders. This paper begins discussion on women's incarceration in Ghana and whether it has been successful or otherwise. It will also deliberate on the factors causing human rights abuses of incarcerated females. Finally, a few recommendations will be provided based on some best prison practices that favor women offenders in other African countries and beyond.

2. Women Incarceration in Ghana

In the World Female Imprisonment List, incarceration among women around the world rose from 625,000 in 2012 to 714,000 in 2017, and debatably, population growth is one of the reasons assigned for this rise. Africa is portrayed as having the lowest (3.4%) with Ghana recording 0.6% in 2017 (Roy, 2012 & 2021). In the World Health Organization African report (2019), incarceration of Nigerian women is on the increase compared to Ghanaian women because their drug addiction leads them to commit crimes. Drug use among men in Ghana is higher, with an estimated ratio of 50:1. Under-reporting justifies this wide ratio gap because, among other things, Ghanaians frown on women drug use and stigmatize the users (Bird, 2019). Despite this, it is a call for concern, as their children are victimized and to address it, this article relies on the following theories: strain, masculinization, opportunity, marginalization, and chivalry to explain why some Ghanaian women commit crimes leading to their incarceration. Also, it is vital to access how the introduction of imprisonment in Ghana has affected the punishment of female offenders and whether the Department of Social Welfare (or 'Social Welfare') does its work accurately to support the mothers and their children in Ghana's penitentiaries.

2.1. What Incites Women to Commit Crimes?

Corke (2019) tagged women criminality as 'vanishing females' as it was eradicated from history. Women offenders were demonized, leading to witch-killing mania. A phenomenon which existed in the dark ages of Europe (Diaboli, 1963) that continues to exist in Ghana. On July 23, 2020, a 90-year-old woman was accused of witchcraft and was lynched to death in Ghana (Duodu, 2020).

For Parkes (2016), it is worrying to know that women incarceration keeps increasing across the globe. They experience higher strains which lead them to commit both minor (Broidy & Agnew, 2004) and major crimes (Islam et al., 2014). The United States v. Mensah is an example. The offender is a national of Ghana, a developing country, who may be facing hardships so her desire for money inspired her fraudulent behaviour (United States Department of Justice, 2020). Women are involved in other criminal activities like bribery and corruption; children, drugs, and arms trafficking; terrorism; organized crimes (Alrefath, n.d.); and infanticide (Backhouse, 1984). The following theories give details of why women commit these crimes.

2.2. Strain and Marginalization Theories

Agnew (2021) explains strain as the “relationships in which others are not treating the individual as he or she would like to be treated” (pp. 319-320), and his or her response can lead to criminal acts. Crime may be committed if one’s aspiration is not met as the social structures of society can pressurize the person to deviate from the right means to achieve set goals (Merton, 1938). A woman is likely to steal to finance an important social activity or to support the family (Broidy & Agnew, 2004). Women who experienced abuse in the past easily vent their anger on anyone under their care, to annihilate the hated part of themselves (Mott, 2008). For Broidy and Agnew (2004), the root of female crime is oppression. When women are oppressed and encounter abusive parents, unemployment, and loss of interpersonal relationships, they commit crimes to manage the situation (Anku, 2021). Kazic and Aidoo revealed that crime among women increased by 2.7% between 2004 and 2013 while men’s criminal activities decreased by 9% in the same year (Kazic & Aidoo, 2021). Among the following are the reasons for such increase. A Ghanaian woman poisoned her husband when she was unable to endure continuous molestation by the husband for 8 years (Amnesty International, 2012). In *R v Inglis* the vegetative state of a boy traumatized his mother, and she eventually killed him because his condition was unbearable.

Hirschi’s Social Bond Theory describes women criminality as a lack of social bonds. Women who experience poor parental management in their early lives, have self-control deficits and engage in crime when the opportunity presents itself. Social control reduces the tendency to commit crime as everyone has the drive to be aggressive (Key Idea: Hirschi’s Social Bond, n.d.). Attachment has a psychological affection, so its impairment affects the child. Such children have no affection towards their parents or anyone else and will not be embarrassed if a relationship goes sour after committing a crime (Hirschi, 1969). The “idle hands are the devil’s workshop” (Key Idea: Hirschi’s Social Bond, n.d., pp. 58-59), therefore those engaged in prosocial activities are less likely to commit crimes. Chesney-Lind argues that the socialization process in a capitalist social structure marginalized women’s position as they receive unsecured jobs and salaries. So, their response to this marginalization may produce crime. Opponents to this theory claim that it could not explain the increase in white-collar and corporate crimes among upper-class women (Islam et al., 2014).

2.3. Masculinity and Opportunity Theories

Freda Adler contended that the ‘masculinization processes of women’ in the 1970s accounted for the increased female criminal activities. Empowered women are involved in serious violent crimes more than non-empowered females. This theory is male-centered and cannot explain why females in Third World countries engage in crime (Islam et al., 2014). Campaniello (2014) opined that changes in social norms have allowed women to work outside the home to bridge the socio-economic disparity between males and females, contributing to their criminal acts. However, those outside the paid labor force too, are involved in loan or credit card fraud and claim government benefit when they are not legally entitled to it (Islam et al., 2014). In Ghana, unemployed women commit more crimes (Sarpong et al., 2015), or assist men to commit various kinds of crimes including child-stealing, which the Domestic Violence and Victims’ Support Unit (DOVVSU) reveals its increase (Child stealing on the rise in Accra, 2011).

Nonetheless, the Chivalry theorists insisted that it is leniency shown towards women that incite their offence. Chivalry is an honorable behaviour a man may show towards a woman (Merriam Webster's Dictionaries, n.d.). The criminal justice system is lenient towards women offenders which becomes an incentive and makes them susceptible to committing crimes, though their crimes are considered less harmful per economic standards (Islam et al., 2014). Is the justice system lenient to women offenders? What accounts for the increasing numbers of incarcerated females as shown above? That notwithstanding, the justice system may be lenient towards women because of their special position they occupy in the family like procreation, childcare, and maintenance of the home (Anku, 2021). During incarceration, the children are separated from the mothers, and this is always unbearable and accounts for the high mental disorders among incarcerated women. They also acquire infectious diseases that are expensive to treat in prisons (Mallicoat, 2021).

Undoubtedly, the Bangkok Rules were adopted for courts to be lenient towards female offenders because of their children as they are the hidden victims of mothers' incarceration, but the courts barely acknowledged their plight (Martin, 2017). Article 3 of the UN Convention on the Rights of the Child 1989 and Article 19 of the African Charter on the Rights and Welfare of the Child require those in authority to act in the best interest of the child. Everyone must ensure that the physical, psychological, spiritual, moral integrity, and human dignity of the child are preserved. Thus, in making decisions that affect children one must evaluate the positive or negative impact it will have on them (Committee on the Rights of the Children, 2013).

The Bangkok Rule 2(2) provides that females with childcare responsibilities should not be detained during trial. Section 313(A) of Ghana's Criminal Procedure Code 1960 (Act 30) demands that the sentence of a pregnant female must be suspended until an appropriate time. Similarly, Ghana's 1992 Constitution states, "special care shall be accorded to mothers during a reasonable period before and after childbirth" [Article 27(1)]. Are these provisions implemented in Ghana? Evidence from Ghana prisons reveals that there are several pregnant women inmates, indicating that the courts do not adhere to the above provisions. Occasionally, NGOs help them financially with antenatal and postnatal care in the hospitals outside the prisons (Ibrahim, personal communication, January 29, 2021).

3. Introduction of Imprisonment in Ghana - Punishment before Colonial Rule

Before colonial rule, the different ethnic groups in Ghana had their own punishment systems.¹ In the Northern part, murder was a sin against the Earth and the Ancestors. Among the Ashanti tribe, murder, sexual offences, cowardice in war, and witchcraft were heinous crimes that break the ties between the society and the tribal gods. In both tribes, offenders were obliged to make sacrifices or are killed to appease the gods. The Fante tribe instituted a utilitarian approach. If a person stole food out of hunger, he went free (Seidman, 1966). The Ewe tribe's 'Trokosi' system was rather inhumane. Any aggravated offence was a sin against the gods, and the offender was killed or instead, gave out his prepubescent girl to the priest. She served as a slave and sexual partner to the priest, while he restricted her movements. In 1998, Parliament of Ghana passed a law to abolish it when over 3500 young girls were reported to be serving under 'Trokosi' (Greene, 2009). Whether the perpetrators obeyed this ruling, calls for

¹ The British made Ghana (Gold Coast) its colony in 1874 and brought a lot of changes to the justice delivery system and cultural aspirations of the Ghanaian people. Since independence from the British rule in 1957, Ghana has maintained the Anglo-Saxon legal system introduced by the British.

an in-depth investigation into it because there is always a disconnect between the laws and implementation in Ghana (Ministry of Gender, Children and Social Protection, 2014).

3.1. Prisons System During and After Colonial Rule

Even though some of the pre-colonial punishments were inhumane, offenders were not imprisoned. They served their punishment from home while caring for their families (Akoensi, 2014). Governor George Maclean began the prison system in Ghana with 91 debtors incarcerated in 1841. Later, he officially instituted prison cells in four forts (Seidman, 1966): James Fort (1662), Cape Coast Castle (1664), Winneba Castle (1694), and Fort William/Anomabu (1753), which housed 129 inmates (Salifu, 1980). This was the leadup to the adoption of the Prisons Ordinance 1860 as a guide to the provision of safekeeping measures for inmates, to conform to the prison system in England. The prison operated on three pillars: the separate system, penal labor, and minimum diet (Seidman, 1966). Presently, England has non-custodial punishments including CSO (Parliamentary Office of Science and Technology [POST], 2008), whereas Ghana continues to operate on these pillars. Theoretically, they have been improved in the current prison Act (Sections 32, 35(1)(a), 37, and 42(4)), but practically, they are in their worse forms (Fatoki, 2021).

Currently, the number of prisons in Ghana is 43 out of which 7 are female. As of June 2021, the total population of female inmates is 188 (Institute of Crime and Justice Policy Research, n.d.), including four pregnant women and a nursing mother (Ibrahim, personal communication, January 29, 2021). As the initial intent for prisons was for males only, presently females have been added to the same facility while no significant expansion has been made to suit them, increasing their vulnerability (Sarpong et al., 2015). Ghana Prisons Service (2015) reports that the appalling state of the prisons needs total overhauling.

3.2. While Mothers Remain in Prison, Who Takes Care of Their Children?

When the father is incarcerated, obviously the mother is in control, but incarceration of a mother often incites a question like ‘who takes care of the children?’ Teiko’s (2017) research discloses that men are unable to cope with childcare responsibilities when the woman stays in prison for more than four years. McLeod’s (2017) research reveals that mothers’ incarceration has negative effects on children’s adjustment. They become hostile towards their caregivers and are likely to engage in social vices which can send them to prison in their adult lives. These children are six times more likely to become incarcerated themselves, and it is prevalent among those whose mothers are incarcerated (Martin (2017). For the women, the biggest punishment during incarceration is separation from their children. One female inmate bemoaned, “I can do time alone OK. But it’s not knowing what’s happening to my son that hurts most [sic]” (Parke & Alison 2001, para 1). Another one said, “I just don’t want to be here. I want to go home. My child is my problem. I want to go home [sic]” (Amnesty International, 2012, p. 6).

Article 9 of the UN Convention on the Rights of the Child provides that children must not be separated from their parents. Does it also mean innocent children should be in prison with their mothers? Appiahene-Gyamfi (1995) answers that it is a violation of the rights of the children found in the prisons. Amnesty International reports (2012) that in Ghana, only Nsawam Women Central prison operates mother and baby unit to keep the mother-child bond after birth, but the food and medical care of the babies are not covered by the prison service. The mothers

rely on families and/or donors to care for the babies. Hence, CSO as an alternative to incarceration for women is crucial.

In Bowlby's attachment theory, children are programmed to survive on the attachment they form with their primary caregiver after birth. Certainly, mothers as primary caretakers provide this essential attachment (McLeod, 2017). Ghanaians believe that girls' maturity, knowledge in menstruation, marriage, and sexuality depends on the mother, therefore they need the mother's guidance in their early years of life (Teiko, 2017). How are these children cared for after the mother's incarceration? The UN Special Rapporteur observed that women who deliver in Ghana's prisons wean the baby after two years and the Social Welfare separates the children and places them under institutional (orphanage homes) or foster care if no reliable family member is identified. The women dislike this moment and complain that the separation is done when it is not due (Méndez, 2014). But which one is preferable, maternal, or institutional care? The Social Welfare officials confirmed that maternal, or parental care is superior to orphanage homes. Some of these children abscond from the orphanages or family homes because of neglect, discrimination, deprivation, and exploitation to stay in ghettos thus, losing the country's future professionals to the street (Acquaye, Opong & Larbi, personal communication, January 28, 2021). The adolescent girl among the neglected children automatically becomes the mother. She may be involved in social vices to fend for herself and her younger siblings. Irresponsible men take advantage of her and impregnate her, increasing their impoverishment (Teiko, 2017).

Programs in the orphanages are also unreliable as it creates adjustment problems for the children during family reunion. The children who profess faiths other than the one found in the institutional homes are unable to practice their faith (Acquaye, Opong & Larbi, personal communication, January 28, 2021). The foster care system was adopted in 2019 to gradually fade out the orphanages. By this, they can place the children under caregivers with similar ethnic or religious beliefs, fulfilling the provisions under Article 25 (3) of the African Charter on the Rights and Welfare of the Child. Presently, fifty (50) voluntary foster parents have been trained, issued licenses, and are being monitored too, because they cannot adopt such children. Their eligibility depends on their health, security, and employment statuses. They are not paid for this responsibility, so the Social Welfare pays the medical bills of the children. Women who finish serving their prison term may decide to allow their children to continue to stay in the institutions because of financial difficulties and she can go for them at any time (Acquaye, Opong & Larbi, personal communication, January 28, 2021).

Officials from Social Welfare acknowledged that their outfit is faced with enormous constraints, impeding their progress. They enumerated several laws like Foster Care Regulation (2007) and Human Trafficking Act (2005), that Ghana has adopted to protect vulnerable groups, but these children continue to suffer. For them, enforcement is not encouraging for a lack of human and financial resources (Acquaye, Opong & Larbi, personal communication, January 28, 2021). Both the Regional and District offices have limited logistics and budget, contributing to their ineffective supervision and inability to protect these vulnerable children. There is no incentive to work, poor salaries, and no allowance for those who work on weekends (Acquaye, Opong & Larbi, personal communication, January 28, 2021). The 'prison after care agents' are liaisons between the incarcerated mothers and the children. They plan for the children to visit their mothers and organize counselling for the children after their mothers' incarceration. This activity is ineffective for lack of funds (Acquaye, Opong & Larbi, personal communication, January 28, 2021).

3.3. *Gauging the Effectiveness of Imprisonment*

To call on the government of Ghana to institute and implement non-custodial sentences like the community service order (CSO) for women offenders, it is crucial to determine if imprisonment has been successful or failed. Imprisonment is the imposition of involuntary physical confinement to restrict an offender's freedom of movement (Peter, 1995, p. 3). In Ghana, the aim of incarceration is deterrence, protection of the public, rehabilitation, reformation, resocialization (Appiahene-Gyamfi, 1995), and reduce recidivism. Rule 4 of the Mandela Rules provides that the time spent in prisons must be geared towards programs that will allow reintegration, law-abiding and self-supporting lives after prison (Penal Reform International, 2019). Has imprisonment been successful in fulfilling these purposes?

To Cesare Beccaria, imprisonment deprives offenders' freedom for a certain duration and that will stick in their minds and effect change or serve as deterrence (Thorsten, 1967). Jeremy Bentham believed that his prison concept, *panopticon*, a Greek word for "all seeing" would have been the ideal model but it was rejected. It was designed to save resources and enhance inmates' conformity to authority because they will feel that they are under constant surveillance when they are not (White, 1995). Appiahene-Gyamfi (1995) thinks that the criminal justice system, penal laws, and incarceration must be obliterated completely, because imprisonment is repressive, and deterrence has never been achieved. The administration of justice is "too costly, too painful, too destructive, too inefficient, too slow, and too complex for a truly civilized people" (p. 1). The penal policies and strategies to achieve the purpose of incarceration in Ghana are inadequate, dysfunctional, and have failed to reduce crime. The re-socialization program is inappropriately done and has failed to make the inmates good citizens after prison. Again, the public and all actors in the criminal justice system are confused about their unique roles to achieve deterrence and reduce recidivism in Ghana (Appiahene-Gyamfi, 1995).

In Ofori-Dua et al.'s (2015) research, 34% of Ghanaian inmates were recidivists, making them conclude that incarceration is not serving its purpose. This led to overcrowding and the death toll increased from 72 in 2010 to 82 in 2011. They suggested that CSO must be considered in Ghana. Still, it is uncommon to record overcrowding in female prisons, the Kumasi prison recorded 47 instead of 30 female inmates in 2011. Their condition puts them at higher risk of acquiring HIV/AIDS due to the sharing of sharp objects like razors, needles, and engaging in unprotected sex (Amnesty International, 2012). Rehabilitation must be the ultimate goal. Incarceration has negative consequences on third parties, so the governments must focus on investing highly in economic and community development (Pritikin, 2008). Likewise, an excerpt from the Kampala Declaration on prison conditions in Africa states: "imprisonment does not serve the interests of justice, nor does it protect the public, nor is it a good use of scarce public resources" (The Kampala Declaration, 1996, p. 4).

3.4. *Reasons for the Human Rights Abuses of Female Inmates*

The factors contributing to the human rights abuses of female inmates in Ghana are multifaceted, but the space allowed in this article accommodated the crucial ones. Among the reasons are financial constraint and sheer disregard for women offenders and their children. The prison service complains that its annual budget is insignificant that they are unable to implement vital programs as the law requires of them (Ghana Prison Service, 2015). Nevertheless, suboptimal implementation of laws is found to be part of the Ghanaian society, contributing to

the country's under-developed status. Professor Opanyin Agyekum of the University of Ghana observed that Ghana has laws prohibiting many things, but the personnel put in charge of implementation is the country's biggest problem (Despite Media, 2021). So, is the prison service right to attribute its lax implementation of laws to financial limitation?

3.5. Budget Allocation to Ghana Prison Service

The prison service often complains of inadequate budget allocation which hampers its ability to run important activities to bring dignity, reformation, and rehabilitation to inmates (Ghana Prison Service, 2015). As usual, the 2022 budget statement presentation did not address the prison service but specified programs to revamp the police service (WoezorTV, 2021). The Prisons Service Council (2016) confirmed that the 2013 budget was reasonable, but it declined in 2015 and 2016. The profit from the Agricultural activities in the prisons is also inadequate and the public does not patronize products from prisons, so they will earn income to supplement its budget. For instance, the James Camp Prison's cement block factory produces only 300 instead of 2000 quality blocks for lack of funds (Ghana Prisons Council, 2015). However, several philanthropists periodically donate cash and groceries to the prisons as a response to their grumbles (Ibrahim, personal communication, January 29, 2021). In September 2021, Crime Check Foundation donated GH¢30,000.00 (*CCF Donates Cash to Prisons Service*,) to the prisons and the populace quizzed if all these resources are used purposefully. Or they are diverted without reaching the inmates (Fatoki 2021, p. 41)? In September 2021, Crime Check Foundation donated GH¢30,000.00 to the prisons and Ghanaians quizzed if the money would be used purposefully (Ghanaians React to GHS 30,000 Donation Made to Ghana Prison Service, n.d.).

Currently, the daily amount allotted per prisoner is GH¢1.80 and the constant call for an upgrade to GH¢5.00 has fallen on deaf ears (Amnesty International Ghana Advocates Increase in Feeding Grants for Prison Inmates, 2021). For this reason, the prisoners lack nutritional food and basic amenities, breaching Sections 1 & 2 of the NRCD 46 which instruct them to prioritize inmates' welfare and safe custody. Similarly, Sections 35, 36, and 37 of the NRCD 46 is not implemented, accounting for the poor healthcare of inmates, unhygienic environment, and unaccommodating space in the prisons. Inmates confirmed, "They don't give us shaving stick. We never get soap to wash unless your family bring you soap [sic]" (Amnesty International, 2012, pp. 23 & 34). The women easily get skin and vaginal infections, but their healthcare service is poorer than the men (Sarpong et al., 2015,). If CSO is applied in favor of women offenders, their prisons can accommodate the men to reduce the mess at the men's penitentiaries, until the government is ready to implement CSO for all.

3.6. Disregard for Incarcerated Women and their Children's Human Rights

Women are expected to lead a morally good character in Ghana, confirming Lombroso's assertion that "women, as required by their nature, are in fact the defenders of the social order" (Şahin, 2015, p. 1496). Hence, they experience stigmatization when incarcerated and family members may distance themselves from such women (Anku, 2021). A brief history of how women were relegated to the background will give some clues as to why incarcerated women and their children are not given the necessary attention until today. Mikell (1992) contends that before, during, and after colonialism in Ghana, women were sidelined with regards to inheritance, property acquisition, education, economic and social activities. Wives and children

were not entitled to inherit their respective husbands and fathers' estate upon demise. The sole heir was the deceased's maternal nephew (Mikell, 1992).

During the British colonial rule and its introduction of the court system, some brave women pursued their rights to inherit their husbands' estate in court, though unsuccessful because of the strong application of the indigenous laws (Mikell, 1992). In *Quartey*, the plaintiff's claims were dismissed. The judge recapped the principles of the customary law that denies a widow and her children from inheriting the husband's property. No matter her support for the husband in acquiring the property, it is not joint ownership, unless he gifted her something before his death. This and other outcries by widows who lose everything after the death of their husbands led to the adoption of the Intestate Succession Law 1985 (PNDCL 111) to correct the irregularities in the indigenous system of inheritance. It offers protection and security to widows and their children (Gedzi, 2014). The law also provides a system of distribution of the property so that the man's family, the children, and the widow are satisfied. It prohibits ejection of the widow and children from the deceased's house before the devolution of the property (Provisional National Defense Council Law [PNDCL] 111, Sections 3 to 17).

In terms of education, boys are always the preference, especially if the family's finances are weak. The notion that girls would be married off no matter their education clouded the family's thinking, even after Dr. Kwegyir Aggrey's popular assertion about the importance of educating the girl child (Famous Quotes and Sayings, n.d.). Now, both boys and girls are given equal opportunities to explore their aptitudes, but some cultural and economic obstacles prevent the girls and women from exhibiting their full potentials (Amu, n.d.). In 2017, the Free Senior High School policy was introduced to protect those with financial glitches, close the educational rift between boys and girls (Free SHS policy in Ghana, n.d.), and fulfill UN's Sustainable Development Goal 4.1.

The advocacy to recognize women's rights in Ghana is an admission that women are invisible creatures in society, and incarceration worsens their predicament, especially issues relating to healthcare (Braithwaite et al., 2005). Sarpong et al. (2015) disclosed that the healthcare givers in the male prisons get the opportunity to update their skills, whereas their female counterparts do not. Why are female inmates facing challenges when Ghana has substantial women advocacy groups like Women's Initiative for Self-Empowerment (Torto, 2013)? And why are these groups not campaigning for a pregnancy test before incarceration as stipulated in Section 313A of the Criminal Procedure Code? Do they frequent the prisons to listen to the women inmates at all? The impact of these prominent groups on Ghanaian women is undoubted, and the expectation on them to persuade the government to adopt the CSO for women offenders is high. About five women offenders are on the death row and these groups seem to be unaware. At the 19th World Day against the Death Penalty 2021 dubbed, "Women and the Death Penalty, an invisible reality," Mr. Frank Kwaku Doyi, the director of Amnesty International Ghana appealed to all stakeholders to jointly help to scrap death penalty from Ghana's criminal justice system. It violates the right to life under the Universal Declaration of Human Rights. (160 Inmates on Ghana's Death Row, 2021).

As human rights activists push for the eradication of death penalty, and the establishment of CSO in Ghana, the quandaries of the victims must also be a priority. Thus, a proper compensation scheme should be instituted for them (African Union, 2003). A Ghanaian lawyer Musah Suleman (personal communication, September 24, 2021) indicated that victims are usually satisfied when culprits are punished harshly because their idea of punishment is different from what punishment seeks to achieve, so education and valuable reparation will be

helpful. They will understand why CSO, and other related punishments reduce crime, but death penalty does not (Death Penalty Information Center, n.d.). A victim of fraud alleged that the fraudster's 68-year-old mother was aware of her son's activities thus, she was arrested when the son escaped. She was seriously sick that she could not even control her faeces and urine, had swollen legs because of diabetes, and walk with difficulty. She was fined GH¢3600.00 (CAN\$763.20) but was imprisoned because she could not pay the fine. Her documentary is pathetic, and one wonders why Ghana's criminal justice system does this to its own citizens. Crime Check Foundation paid the money imposed on her, and she was released (Crime Check Tv Gh, 2018).

The Banjul Charter indicated an intention to remove all forms of colonialism from Africa as the people struggle to gain dignity and liberation. But how do the African leaders treat their own people, particularly offenders, when they get the power to rule? Inhumane treatment abound, violating the spirit and letter of the AU's Banjul Charter (African Union, 1981).

4. Recommendations

If women offenders are respected without stigma and given the necessary rehabilitation, they will be useful to society as well as their children. All stakeholders have a part to play in the implementation of the following recommendations:

1. Ratification and subsequent implementation of the Bangkok Rules must be a topmost priority because women prisoners are vulnerable, their reintegration into society is difficult, their incarceration adversely affects their children, and they do not cause public panic (UNODC, 2010). A State Attorney C. B. Keteku (personal communication, January 26, 2022), mentioned that the kinds of offences that are commonly prosecuted among women in Ghana attest to this. In the Eastern Region for instance, between 2020 and 2021, misdemeanors were common but only four women were prosecuted for a capital offence and few second-degree felonies like theft were recorded.

2. If the bill on CSO is eventually passed, the guide to its implementation must ensure that it exhausts all the work the court can impose on the women. Kenya adopted the Community Service Order Act Cap 93 to regulate the CSO and provides all the list of work to be imposed on the women offenders.

3. The well-being of the children of incarcerated mothers must be an urgency, therefore, social welfare and the 'prison after care agents' must be resourced so that they can perform their responsibility towards these children.

4. A special supervisor should be assigned to the prisons like the correctional investigator in Canada (Zinger, 2020) and as done by the AU and UN Special Rapporteurs. The Commission on Human Rights and Administrative Justice is supposed to do this in Ghana, but the scope of its work is too broad, thwarting its prisons supervision (Constitution, 1992).

5. The services of Penal Reform International are needed in Ghana. It facilitated the public education and the structures of the CSO system in Kenya and other East African countries. In Kenya, Canada, and even United Kingdom, the people consider CSO as too lenient and public education created awareness and acceptance (Penal Reform International, 2016).

6. In 2019, the writer's visit to Bosnian biggest prison with Assist. Professor Ena Kazic, a law lecturer at the International University of Sarajevo, discovered that well-behaved

inmates are allowed to visit their homes occasionally. They spend some time with their families to relieve boredom, stress, strengthen family bonds, and return to prison. Incarcerated women who get the opportunity to see their children during this visit are full of joy and this example is worthy of emulation as Ghana is yet to institute CSO.

7. Women advocacy groups, NGOs, or individuals must be proactive enough to be able to submit a private bill on affirmative action policy to parliament. There are women members of parliament and several women organizations who can work together on this agenda. Adoption of affirmative action act is likely to hasten the ratification of the CSO bill.

8. In Kenya, Canada, United Kingdom (POST, 2008), and Hong Kong (Social Welfare Department, 2005), the women under CSO are not paid for their work. As most of the women offenders in Ghana are impoverished, it would be suggested that they are given some token when working under the CSO, to care for their dependant(s) and avoid recidivism.

5. Conclusion

It is vital to draw the attention of all patrons to the need to reconsider how mothers' incarceration victimizes the children and families in Ghana. Such children are likely to engage in delinquent behaviors and the country loses its future professionals to the street and eventually to the prison (Mallicoat, 2021). If the child's best interest is the goal as specified in Article 2 of the Children's Act and Article 3 of the Convention on the Right of the Child, an alternative to incarceration is needed to ensure a continuous bond between mother and child. Experts continue to persuade the government to adopt CSO, verbal sanctions, confiscation, and parole (Amnesty International, 2012) to eradicate the victimization of children of incarcerated women in Ghana.

Sometimes the mother's incarceration brings double victimization to the child and the trauma they through must be of great concern. A seven-year-old son of Rosemond Alade Brown was in such a situation. In *The Republic v Rosemond Alade Brown*, the defendant was sentenced to 90 days imprisonment for breaching the publication of obscenity rules (Criminal Code of Ghana, 1960) and Domestic Violence Act (2007). No doubt she abused the child by taking her nude picture with him and she posted it on her Instagram page. But her imprisonment also victimized the child as she is a single parent caring for the boy. CSO would have been a perfect punishment to keep the bond between them. CSO also helps to decongest the prisons and makes the offenders more responsible. Women under CSO in Kenya can attest to this (Ngetich, Murenga and Kisaka, 2019).

In the nutshell, the preceding discussions expose the weakness of the Ghanaian criminal justice system and how it adversely affect the children of incarcerated women. The writer is convinced that, implementation of the above recommendations will reduce the hardships and human rights abuses of the incarcerated women and their children, who are the country's future leaders.

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