



REPUBLIC OF KENYA



# Gender-sensitive Community Service and Probation Orders

## Background

The emotional, social and economic consequences of imprisonment experienced by women, even for short periods, are acute and enduring. They extend to their families, and particularly to their children. Research shows that children of incarcerated parents have access to no or poor primary education, and are more likely than their peers to commit offences themselves.

“Going to prison would have been a big problem as I have lots of people who depend on me.”

“My granddaughter, who I take care of, became pregnant when I was in custody and has now left school and I am blamed for this.”

Voices of women interviewed in Kenya.

Typically, women are convicted of petty crimes closely linked to poverty, and, therefore, gender-sensitive alternatives carry a huge potential to avoid imprisonment. However, non-custodial sanctions globally have been almost exclusively created for men, and the differing needs and experiences of women completing these sanctions have been largely overlooked.

In 2010, the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the ‘Bangkok Rules’) were adopted by the UN General Assembly.

They provide guidance on the treatment of women offenders and prisoners. Yet, to date, the study and implementation of these Rules has almost entirely focused on the treatment of women in prison, with little attention dedicated to the prevention of imprisonment through the development of gender-sensitive non-custodial sentences.

“Women are the CEOs of households. Locking them up means everything else will end in ruin.”

Magistrate, Kenya.

## A new approach

In 2017, a project was piloted in Kenya to improve the understanding of what a gender-sensitive approach to non-custodial sanctions for women means in practice, based on evidence and in consultation with women offenders who have served community service or probation orders.

The project was implemented by Penal Reform International (PRI) and the Probation and Aftercare Service (KPAS) in Kenya, and was designed with a view to enabling the approach undertaken and lessons learned to be applied in other countries. The project was funded by the Thailand Institute of Justice (TIJ), and contributes to Sustainable Development Goal 5 (gender equality), among other SDGs.

## Context-specific research

The project commenced with an in-depth independent study (*Community service and probation for women: a study in Kenya*), in order to understand the specific context of women offenders in the country and to establish evidence-based recommendations. The study collected the views of women who had served community sanctions, specifically community service orders (CSOs) and probation orders. It also included interviews with probation officers and magistrates.

Of the numerous recommendations made in the report, one was prioritised as strategically important and identified as the greatest opportunity to highlight gender aspects before sentencing, contributing to the avoidance of women's imprisonment.

Accordingly, the project partners adapted the methodology for probation officers' social enquiries and for drafting pre-sentence reports – the reports produced by probation officers to inform magistrates of the background of the offender and recommend sentencing options, particularly community sanctions.

In order for probation officers to better reflect the realities and backgrounds of women offenders in these reports, the project partners amended the *Guidelines for Social Investigations and Pre-sentence Reports*, a tool used by KPAS to structure and guide probation officers' enquiries and their reports to magistrates.

As Clement Okech, Assistant Director of Probation, explained:

**“We chose to focus on the pre-sentence report as (...) we felt that it was the best opportunity to highlight the issues of women and connect with the court.”**

To test the adapted tools, a team of senior probation staff travelled to two locations – Kisumu and Nakuru counties – to conduct ‘induction clinics’ with local probation officers.

The induction clinics broadly covered:

- An overview of the UN Bangkok Rules and why they are important.
- An overview of the findings of the in-depth study in Kenya.
- An introduction to the amended tools and their relevance for advising courts through pre-sentence reports.
- Gender issues when supervising female offenders.

## Impact of the project

An external evaluation of the project found that it ‘genuinely broke new ground in terms of research, was effective in terms of improving the gender-sensitive approach of probation officers to women offenders and has provided an easily replicable model that can be scaled-up within Kenya and applied to other countries globally’.

### Ensuring gender equality in access to non-custodial alternatives

Women may be discriminated in accessing alternatives to prison sentences if criminal justice systems ignore their specific backgrounds and needs, notably caretaking obligations and any victimisation.

Magistrates and judges may not consider such alternatives if probation officers do not enquire into their backgrounds, and women may fail to comply with community sanctions and be imprisoned as a result if the supervision is not gender-sensitive.

An understanding by probation officers and magistrates/ judges of the specific backgrounds and needs of women offenders is a prerequisite for a gender-sensitive system. Probation officers involved in the project confirmed that it gave them an evidence-based backing to improve their work with women offenders. They highlighted the change in mindset and interviewing technique after the induction clinic.

**“Before, I thought an offender is an offender, and it doesn't matter if they are male or female. My thinking was there is no excuse for committing a crime. But after I have gotten a change of perception. Now I take a little more time to dig deeper and find out more and what really caused them to offend.”**

**“Since the training (...) the investigations were exhaustive. I realised that they [the women offenders] had many issues that mostly came from the family set up. All were sole providers for their family and committed crimes out of desperation. They needed empowerment and counselling.”**

Probation Officers, Kisumu County.

## Change in relationships between women offenders and probation officers

Improved relationships were also evidenced between probation officers and women offenders as a result of the project, and this enabled a more gender-specific, individualised approach. Probation officers mentioned that they had noticed an improvement in the way that female clients related to them, after adopting the new gender-sensitive approach.

A probation officer in Nakuru County noted:

**“I used to treat them just as offenders. Now I have a better understanding. I am more sympathetic and find out who they are and why they may have committed the offence. The women have been more accepting of my questions and open up more. If you show that you want to understand they are more friendly and give more details about their life.”**

## Improved quality of pre-sentence reports, better reflecting women offenders’ backgrounds

Many officers spoke of favourable changes linked to the depth and quality of their reports:

**“Before I would have brushed over issues and used closed questions, not taking time to probe and find out details. Now I engage them more and use open-ended questions – giving time to express themselves and explain. I also specifically find out gender-related issues. For example, I would never have asked about reproductive health before.”**

**“If I hadn’t had the training [induction clinic], I wouldn’t have gone deeper into issues and underlying problems. Before I generally looked at the offence, but now I give due consideration to other holistic aspects of their life.”**

Probation Officers, Kisumu County.

Magistrates commented that they noticed an increase in detail and quality of information in pre-sentence reports after the ‘induction clinics’ had taken place.

**“I did notice a change in the reports; they are now much more detailed and in depth.”**

Magistrate in Nakuru.

**“I have received much more detailed pre-sentence reports, including details (...) and exactly who they are, rather than before when they didn’t say much.”**

Magistrate in Nakuru.

Several officers explained that while magistrates may previously have dedicated little time to the detailed context and went directly to the recommendations, following the change in approach to reporting the magistrates had started to ask the probation officers further questions about gender-related issues.

Others noted that magistrates who had been sensitised about the gender-sensitive approach started to prioritise cases of women in order to shorten pre-trial detention, and some requested pre-sentence reports at a faster rate.

**“We are now receiving more referrals from court as their confidence in us has increased and information sharing with magistrates has improved due to the quality of our reports.”**

Probation Officer in Kisumu.

## Changes to court outcomes for women offenders

The quality of the new approach to reporting appeared to spark an increase in the use of non-custodial sentences. Officers gave examples of cases that they had handled since the induction clinics, which they believed would normally have led to a custodial sentence. Due to more detailed gender-sensitive information being uncovered, officers now had reasons to recommend non-custodial sentences.

A probation officer explained the impact of the new approach on the decisions made by magistrates for women at court:

**“I believe that the five cases of women offenders I handled since the ‘induction clinic’ would have been given a custodial sentence or a fine, but they would not have been able to afford the fine and gone to prison. Now they received probation orders.”**

## Gender-sensitive supervision of community sanctions

The project also explored differences that need to be made for women while serving a non-custodial sentence. Gender-specific considerations refer to the community sanction chosen (community service or probation order), the type of work and times during which community service is delivered by the women, the time and frequency of appointments they are required to attend at their probation office, and support provided to them, such as counselling.

As a woman serving a community sanction explained:

**“The probation order helped me a lot. I learned how to live with other people in the community. I learned how to survive without committing other offences.”**

**“The strongest advantage [of the new approach promoted within the project] is when it comes to the intervention and rehabilitation plan. It really guides you to prepare good intervention plans to help [the offender] to change and reduce reoffending rates.”**

Probation Officer in pilot region.

## Lessons learned

### Advantage of an evidence-based approach

Undertaking a comprehensive study in the first stage of the project allowed for activities to be based on tangible evidence and the experience of women offenders.

International technical experts, such as a representative of the UN Office on Drugs and Crime (UNODC), highlighted the merits of this approach.

**“Funding for programmes always calls for evidence and information, but we don’t always have this luxury. Yet this investigation has been started in the proper manner, with research first and then clear recommendations.”**

Representative of the UNODC.

## Advantages of communicating through video documentary

In addition to the research report, a short documentary film was produced to highlight the benefits for, and also the challenges experienced by, women serving community sanctions. Viewers found the film to be a valuable tool due to its effectiveness at communicating key messages with a lasting impact.

**“I am very visual and this was very well done. The structure and perspective would be valuable to policymakers as an immediate target, so is an excellent advocacy tool, but also relevant to practitioners.”**

Representative of the UNODC.

## Advantages of adapting local tools

Rather than importing tools developed in other countries, the project adapted tools already known to and used by the local probation service, incorporating the findings of the research study and implementing a gender-sensitive approach.

Senior officers from KPAS noted their clear preference for this approach, as it involved working collaboratively with them to innovate and reform their own tools. This ensured all amendments were culturally relevant, officers were familiar with the processes, and the implementing governmental department felt they had complete ownership of the project.

A representative from KPAS stated:

**“From concept development to implementation, the project has been ours, as those with the relevant knowledge and experience. We and PRI have the same goals. We are together.”**

The participatory approach adopted is deemed to contribute to long-term sustainability.

## Advantages of a localised induction

Probation officers spoke positively about the ‘induction clinics’ conducted in their stations, and how they allowed them to discuss implementation of a gender-sensitive approach in their specific local context. Officers valued the opportunity to discuss real examples of clients’ reports, and recommendations for how to adapt their approach.

## A gender-sensitive approach can also benefit men

Several probation officers observed that the improved approach to interviewing techniques was equally applicable to male clients and that the improved quality of information gathered led to greater consideration for non-custodial sentences for men as well.

“Now I capture more details that I had presumed previously to be minor and unimportant. I don’t just look at family background of the man, but fully report on other relevant details.”

Probation Officer in Nakuru County.

## Inclusion of other stakeholders

While the pilot project focused on the work of the probation service, future projects could involve other criminal justice stakeholders immediately after the research phase.

Probation officers particularly noted the importance of sensitising magistrates – as the ultimate decision-makers – on pre-trial detention as well as community sanctions.

### Stakeholders who should be sensitised on a gender-specific approach:

- Judiciary
- Probation service
- Police
- Prisons
- Children’s services
- Local government officials
- Relevant non-governmental organisations
- Women’s group leaders
- Local community/religious leaders

One officer noted:

“Sometimes, when you do a [pre-sentence] report and take into consideration all factors, you really feel that they [the offenders] need rehabilitation and not a punitive sanction, but you are left frustrated when the court does the contrary.”

Reflecting the positive experience in one pilot region, this could include, for example, the involvement of institutions comparable to Court User Committees (CUCs) in Kenya, a body that brings together all agencies involved in the court system, meeting once a month to discuss relevant topics.

### A localised induction:

#### Good practice from Nakuru

In Nakuru, the County Probation Director implemented a local initiative to enhance the effectiveness of the approach with his staff. This included:

#### Meeting of local probation leadership

A meeting was held with the ‘officers in charge’ from each of the probation stations in the region, to discuss the gender-sensitive approach and how best to sensitise their officers.

### Summary documents

The County Probation Director provided summary documents of international standards (Bangkok Rules), of the *Guidelines for Social Investigations and Pre-sentence Reports*, and on justifications for a gender-sensitive approach, in order to make material more easily accessible to his officers.

### Regional meeting

Probation officers from all four project stations in the region were called together for a whole day to discuss the new approach in detail, exchange ideas, and answer any outstanding questions.

# 10 steps to reform

The model for introducing a gender-sensitive approach to non-custodial sentences has been designed in a manner to allow for international replication:

**“Honestly, I have not seen anything to this level of specificity. We [United Nations] have worked with many countries about promotion and implementation and this is incredibly useful.”**

Representative of the UNODC.

**“The replicability of the project means that both the methodology and results are applicable to other regions around the world.”**

Representative of the TIJ.

**01** Conduct a study on the experiences and challenges of women completing non-custodial sentences and of relevant criminal justice stakeholders to gain an in-depth understanding of the specific country’s context.<sup>1</sup>

**02** Use evidence-based recommendations from the study to identify relevant steps to improve gender-sensitivity, in consultation with national practitioners and international experts.

**03** Identify and adapt existing tools and guidelines incorporating research findings and a gender-sensitive approach. Tools to consider include:

- Social enquiry guidelines
- Pre-sentence report forms
- Tools for supervision of non-custodial alternatives.

**04** Create supplementary resources to make material more easily accessible to relevant stakeholders. This could include:

- Summary of the research findings
- Audio-visual material
- Summary of changed guidelines
- Bangkok Rules related to non-custodial sentences.

**05** Provide probation officers and magistrates<sup>2</sup> with the research study findings and the amended tools and conduct ‘induction clinics’ at local probation stations to introduce the gender-specific approach.

**06** Hold regional meetings for probation officers to share ideas and experiences on implementing a gender-sensitive approach across different probation stations.

**07** Hold joint sensitisation meetings with magistrates, prosecutors and probation officers so that each stakeholder can fully appreciate the needs, pressures and expectations of each role when taking a gender-sensitive approach.

**08** Commission an external evaluation of the project to assess the impact of activities, after a test phase is completed. Use recommendations from the evaluation to finalise the adapted tools.

**09** Identify ‘champions’ within the probation service and empower them to speak to other relevant stakeholders and at local community meetings to sensitise the community more broadly.

**10** Identify a senior probation staff role to support and periodically monitor and evaluate the level of adherence of probation officers to the new gender-sensitive approach.

1. Such a study could also include alternatives to pre-trial detention. As a small-scale pilot project, the project implemented in Kenya did not address non-custodial measures as an alternative to pre-trial detention for women, but incorporation of this issue is recommended in any replication.

2. As part of a second phase planned in Kenya, magistrates will be engaged; however, it is recommended to include this stakeholder group in the planning of any replication of this project.

## More information

- *Community service and probation for women: a study in Kenya* (2016).
- *Community service and probation for women: Lessons and recommendations based on a study in Kenya* (2017), available in English and Swahili.
- Documentary film: *'Equal justice': making community sanctions work for women in Kenya* (2016).
- Training module for probation officers on gender-sensitive community sanctions (2017).
- Amended tool: *Guidelines for Social Investigations and Pre-sentence Reports and suggested structure for pre-sentence reports* (2017).
- External evaluation: *Gender-Sensitive Approach to Probation in Kenya: Project Evaluation* (2017).

Please find all materials at: [bit.ly/PRIresources](https://bit.ly/PRIresources)



**Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.**

We promote alternatives to prison which support the rehabilitation of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

We currently have programmes in the Middle East and North Africa, Sub-Saharan Africa, Eastern Europe, Central Asia and the South Caucasus, and work with partners in South Asia.

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

**The Kenya Probation and Aftercare Service (KPAS) is the sole administrator of community based sanctions in Kenya.**

The Department is one of the agencies that form the Kenyan criminal justice system and is specifically charged with the responsibility of implementing supervised non-custodial correctional services within the community. We are driven by the desire to reform and cause positive change in the lives of offenders. We believe that offenders can change given a second chance by providing appropriate rehabilitation and treatment interventions.

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