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The Invisible Prisoners: A Case of Children in Malawian Prisons.

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Abstract

Children with incarcerated mothers are considered to be one of the most vulnerable and at risk populations across the globe. Despite vast research on prisons in Malawi, inadequate research has been conducted in the field of children who live with their mothers in prisons, irrespective of the fact that they pose to be one of probable growing category of prison population. The purpose of this study, therefore, was to explore and highlight vulnerability, in terms of challenges, that children who live with their mothers in Malawian prison face and find reasons behind such. Data for this study was collected using qualitative research techniques which included Observations, In-depth Interviews and Key Informant Interviews. Max Weber's typology of authority and William Ogburn's theory of cultural lag have been used as guiding tools in assessing the operations of prisons in Malawi. Findings show that despite provisions in laws governing the operations of prisons, children in Malawian prison face enormous challenges and yet they have never committed any crime at all. It has been observed that it is not possible to change the living conditions of the children living in prison alone, without changing those of their mothers due to the mother-child complete dependency relationship.

Key Words:

Babies in prison; Children in prison.

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CHAPTER ONE: PRISONS

I. BACKGROUND

Prisons are conventionally institutions which form part of the criminal justice system of a country. Individuals in such institutions are physically confined or interned and are usually deprived of a range of personal freedoms. Worldwide, imprisonment or incarceration is a legal penalty that may be imposed by the state, on any individual irrespective of sex, for the commission of a crime. In most countries, it is not uncommon for prisons to hold individuals who are both on remand and those serving sentences¹. Walmsley (2007) estimates that more than 8.75 million people are held in penal institutions throughout the world, mostly as pre-trial detainees (remand prisoners) or having been convicted and sentenced. About half of these are said to be in the United States, Russia or China. Globally, the United States of America has the highest prison population rate of 686².

Regionally, prison population rates vary considerably between different regions of the world, and between different parts of the same continent. For example: in Africa the median rate for western and central African countries is 50 whereas for southern African countries it is 362; in the Americas the median rate for south American countries is 107 whereas for Caribbean countries it is 297; in Asia the median rate for south central Asian countries (mainly the Indian sub-continent) is 54 whereas for (ex-Soviet) central Asian countries it is 426; in Europe the median rate for southern European countries is 69 whereas for central and eastern European countries it is 213; in Oceania (including Australia and New Zealand) the median rate is 110 (Walmsley, 2007)

Prison populations are growing in many parts of the world. Updated information on countries included in the previous 2005 and 2006 editions of the World Prison Population List shows that prison populations have risen in 68% of these countries (in 61% of countries in Africa, 68% in the Americas, 87% in Asia, 65% in Europe and 50% in Oceania)³. Men comprise the majority of prison population. Estimated at an average of four percent worldwide, women

¹ In simple terms, remand refers to detention of suspects before trial or sentencing.

² The prison rate is calculated per 100,000 of a given population

³ The World Prison Population List is compiled, from a variety of sources. In almost all cases the original source is the national prison administration of the country concerned, or else the Ministry responsible for the prison administration.

comprise the minority of the prisoner population (Taylor 2004: 5). However, women form the major, and mostly, the only category of prisoners, who live with their children in prison. Such a tendency is said not to be new in the 21st century, as Fisher (2009: 3) clearly points out that, historically, children were found in prisons, alongside their mothers, almost from the beginning of women's imprisonment.

The Quaker UN Office (2005) lamented that around the world, thousands of children face grave day to day problems because their mother is in prison or pre-trial detention⁴. The long-standing Quaker involvement in criminal justice and human rights issues at the national, regional and international levels has led to increasing concern about the under-considered and growing problem of women in prison and the situation of children of imprisoned mothers. In USA alone, by 2006, more than 110,000 women were incarcerated in either state or federal prisons, and about 70 % of these women were mothers to children below the age of 18.(Cho 2009: 11). Based on these statistics, on any given day, 300,000 minor children are estimated to have an imprisoned mother and most of these children are less than ten years and about 20% are under the age of five (ibid: 11). In countries with indigenous populations, indigenous women tend to be disproportionately represented in the prison population, and they and their children face additional problems. In this paper, the author highlights the experiences of children who live with their mothers in Malawian prisons.

II. STATEMENT OF THE PROBLEM

Although both men and women are subjected to imprisonment, women are the major or only category of prisoners who live with their children in the confines of a prison in various countries. Depending on circumstances, children are either born in prison because their mothers were pregnant on admission into prison, or the children are brought in with their mothers because they are still lactating or because mothers have no one to leave with their children. Despite their small statistical proportion in the overall prison population, the rate of imprisonment of women is increasing rapidly (Taylor 2004, UN Quaker office 2005). During the 1980's, the female prison population increased over 200% and it currently grows at an annual rate of 11.2% (Dallaire 2006: 15). The male prison population, in comparison, has

⁴ Quakers have been involved in issues of criminal justice and conditions in prison for most of the 350 years of their existence.

grown annually at a rate of 6.1%, about half that of females (ibid: 15). Cho (2009: 11) points out that the current trend of female incarceration implies that the number of children whose mothers are imprisoned will continue to increase. With such fearfully escalating figures, one can deduce that more and more children are likely to live with their mothers in prisons. However, little or no attention has been given to the different needs and problems of imprisoned women, let alone women with children, as opposed to imprisoned men (Taylor: 2004:5). Because of such an omission, children of imprisoned mothers face challenges because of their '*invisible*' nature in prisons. Whilst one cannot dismiss the important role played by prisons in maintaining law and order, children of incarcerated mothers commit no crime at all, and yet the penalty they are required to pay is steep and horrendous. More often, far too little attention is paid to these children of imprisoned mothers and their welfare, let alone their rights. Unfortunately, little is known about the kind of challenges such children face, as Taylor (2004), in her preliminary research report, points out to the need for a thorough research of all aspects of women's imprisonment and the impact of maternal imprisonment on children with a view to identifying how to better address the problems and issues identified.

III. PURPOSE OF THE STUDY

Children with incarcerated mothers are considered to be one of the most vulnerable and at risk populations. The purpose of this study, therefore, was to explore and highlight the vulnerability, in terms of challenges that children who live with their mothers in Malawian prisons face and find reasons behind such. In this study, the term 'children' was used to refer to all babies, and infants who live with their mothers in prison⁵. They are being termed as the '*invisible*' simply because authorities tend to view them with a blind eye, particularly because they get into prisons on *ad-hoc* basis, viz-à-vis their mothers are incarcerated, and as such are seen not to be the responsibility of the prison authorities. The Malawian prisons are used as the unit of analyses.

⁵ Typically, the children's ages could range from newly born babies to three years.

IV. RESEARCH QUESTIONS

In attempt to fulfil the purpose of the study, specific research questions were used to unveil the problem at hand. These included:

- What challenges do children in Malawian prisons face?
- Why do children face such challenges despite provisions being made in the laws?
- Why is there a mismatch between the legal provisions for the operation of prisons and the actual reality of how prisons operate in Malawi?
- To what extent are the living conditions of children in Malawian prison in tandem with the international human rights frameworks?

V. SIGNIFICANCE OF THE STUDY

Research has been extensively done surrounding prison inmates in Malawian prisons. Nonetheless, limited attention has been paid to children of incarcerated mothers, subsequently, their voices remain unheard and as such they continue serving as the '*invisible prisoners*'. Findings of this study add on to the knowledge gap that exist in as far as understanding challenges faced by children in prison and why they face such problems is concerned. The researcher deems such information important for development practitioners and policy makers in addressing the needs of such children and in improving the quality of services for women with children/for children in Malawian prisons.

CHAPTER TWO: THEORETICAL FRAMEWORK AND LITERATURE REVIEW

I. THEORETICAL FRAMEWORK

In his theory of authority, one of the most sociological questions for Max Weber was the issue of how *power* operates in social life. He viewed the key determinant in social relations as being *power*- the probability that one actor within a social relationship will be in a position to carry out his will despite resistance (Adams & Sydie 2001:181). In addition, this includes the probability that a command would be obeyed. Domination, a related concept, he defined as the *probability* that a command....will be obeyed by a given group of persons (ibid: 181). In his essay titled 'Psychology of the World Religions', Weber points that all ruling powers, profane and religious, political and apolitical, may be considered as variations of, or approximations to, certain pure types of power. He argues that these types are constructed by searching for the basis of *legitimacy* which the ruling power claims (Weber in Gerth and Mills 1977: 294).

Max Weber proposed theory of authority includes three types, legal-rational, charismatic and traditional. Weber asserts that our modern 'associations', above all the political ones, are the type of 'legal' authority. He narrates that the legitimacy of the power holder to give commands rests upon rules that are rationally established by enactment, by agreement or by imposition (ibid: 294). The legitimacy for establishing these rules rests, in turn, upon rationally enacted or interpreted constitution (ibid: 294). In legal authority, orders are given in the name of the impersonal norm, rather than in the name of a personal authority, and that even the giving of command constitutes obedience toward a norm rather than the an arbitrary freedom, favour or privilege. Weber stresses that bureaucratic rule was not and is not the only variety of legal authority, but it is the purest (ibid: 299)

Weber distinguishes legal authority to other types of authority; charismatic and traditionalism. In the latter, refers to rule over men, whether predominantly external or predominantly internal, to which the governed submit because of their belief in the extraordinary quality of the specific person (ibid: 295). The legitimacy of their rules rests on the belief in and the devotion to the extraordinary, which is valued because it goes beyond the normal human qualities, and which was originally valued as supernatural. The source of these

beliefs is the proving of the charismatic quality through miracles, victories and other successes, which is through the welfare of the governed. Such beliefs and the claimed authority resting on them therefore disappear, or threaten to disappear, as soon as proof is lacking and as soon as the charismatically qualified person appears to be devoid of his magical power or forsaken by his god(*ibid*: 296)

Traditionalism refers to the psychic attitude- set for the habitual workaday and to the belief in the everyday routine as an inviolable norm of conduct. Domination that rests upon this basis, that is, upon piety for what actually, allegedly or presumably has always existed, will be called ‘traditionalist authority (*ibid*: 296).

Spencer interpreted Weber’s theory to say that legitimate order and authority stems from “different aspects of a single phenomenon - the forms that underlie all instances of ordered human interaction”. There are two fundamental components of order, norms and authority. Spencer explained that “authority and norms represent polar principles of social organization: In the one case organization rests upon orientation to a rule or a principle; in the other instance it is based upon compliance to commands” (Spencer 1970: 124). In the case of prisons that this paper centers on, apart from the authority, the norms that surround the operations of prisons also plays an important role in understanding the plight of children in Malawian prisons. For instance, the way the prison wardresses and other officials are used in deliberating their duty of looking after prisoners is of paramount importance in understanding the problem at hand.

Reflecting on Weber’s typology of authority, one wonders how one type of authority could be operational in a particular instance considering the dynamics of the social world. However, Coser points out that when Weber wrote about these “pure” types of authority, he was aware that in empirical reality mixtures would be found in the legitimation of authority. (Coser 1971: 227). Admittedly, Weber pioneered a path towards understanding how authority is legitimated as a belief. Collins observes that, for Weber, these categories of authority “do not exist merely for the sake of labelling and classifying history; they are embedded in a larger network of concepts and in an image of how they work” (Collins 1986: 6). Weber’s typology of authority has been used to identify the kind of authority that reigns over Malawian prisons. Knowledge of such is useful in understanding how Malawi prisons operate and why children face the kind of challenges they face.

Even though Max Weber's theory of authority provides useful insights in identifying the type of authority used in Malawian prisons, the theory however fails to go beyond the mere description of 'operational authority' in a given context. In this regard, Max Weber's typology of authority is complimented with William's Ogburn theory of 'Cultural lag' to explain the mismatch between legal provisions and actual practices in Malawian Prisons. Quoting Redfield's definition of culture, Ogburn defines culture as an organised body of conventional understandings, manifest in act and artifact, which persisting through tradition, characterises a human group(Ogburn1964:3). The concept of culture is of significance because of its contribution to the study of social change. However, Ogburn acknowledges that culture is a large concept, and in this regard, each definition would seem inadequate to convey its rich meaning.

Ogburn argues that a 'cultural lag' occurs when one of the two parts of a culture which are correlated changes before or in greater degree than the other part does, thereby causing less adjustment between the two parts than existed previously(ibid: 86). As change occurs in a particular culture, sometimes maladjustments may occur but it should be noted that acute tensions become eventually smoothed out. Such strains are in many cases caused by the fact that there is a delay or lag, in keeping up with precipitating changes. (ibid: 12). Ogburn's theory, however, does not shade more light on the length of the expected time frame when such acute tensions are supposed to be smoothed out.

Even though the theory was originally coined to explain technological changes of early 1900's, it can be used to explain different sociological issues in the post-modern society as the technology was not inherent in the theory as such. Furthermore, Brinkman (1997) notes that most critics of cultural lag point to the theory as being too broad or too general to be of any real value. Brinkman disagrees with this assertion if the lag in question is empirically testable; a belief that was at the heart of Ogburn's theory as well. To help distinguish between different types of lag Brinkman prefers the term socio-cultural lag rather than merely cultural lag. Brinkman uses this term "socio-cultural lag", which he attributes to Frances R. Allen, to indicate that lags involve both social as well as cultural elements.

Other critiques have argued that cultural lag is more of a concept than theory. However, cultural lag does not pertain simply to conception alone, but relates to theory and explanation as well, 'I think it better to say that since it is a concept of a relationship, it is a theory. It is

therefore more than merely a new term in the language' (Ogburn 1964: 169). As concept and theory, cultural lag helps to identify, analyse and explain social problems as well as to predict and anticipate future problems. More than that, it can also be policy-oriented and direct us to possible solutions. In this study, the author views prison operations as being a culture- and the two correlated parts of such a culture being the laws governing the prisons and the traditional practice/norms under which prisons operate.

II. LITERATURE REVIEW

INTRODUCTION

In part, due to the reproductive role of women in society, when a mother is imprisoned, her children may go into prison with her. In other cases, apprehended pregnant women give birth whilst in prison and as such are forced to stay with their children in prison or detention areas because the children are very young and need breast feeding. Yet in other cases, children are separated from their mothers and left on the 'outside'. Sadly, neither of these situations is satisfactory, as a Special Rapporteur on Prisons and Conditions of Detention in Africa stated:

Prisons are not a safe place for pregnant women, babies and young children and it is not advisable to separate babies and young children from their mother.⁶

Such being a powerful sentiment, however, the special Rapporteur does not give a hint on a recommendable way of treating children whose mothers are incarcerated. Infact, the statement points out to the complexity of the issue of children with incarcerated mothers. It is clear, from the statement, that letting children to live with their mothers in prison should not be condoned, whilst at the same time, it does not support the fact that children should be separated from their mothers as they go in prison. Nonetheless, such a dilemma is useful in the analysis of special needs of women with children in prisons.

INTERNATIONAL CHILD RIGHTS PROTECTION AND GUIDELINES

Internationally, guidelines are set as standard procedures that have to be adhered to so as to ensure that the welfare of children living with their mothers in prison is achieved. Two such guidelines, The Convention on the Rights of a Child and the Standard Minimum Rules for the Treatment of Prisoners are discussed.

⁶ Dr Vera Chirwa was the incumbent of this office.

The Convention on the Rights of the Child

The United Nations, through The Convention on the Rights of the Child [hereafter CRC], posits the acceptable standard of treatment that children should be given under its state parties⁷. In its preamble, the CRC recalls that in the Universal Declaration of Human Rights, the United Nations proclaimed that childhood is entitled to special care and assistance. In accordance to the CRC, a child is defined as any person under the age of eighteen⁸. In addition, Article 2 of the CRC explicitly states that state Parties shall respect and ensure that the rights set in the Convention to each child within their jurisdiction are adhered to, without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status- *including imprisonment* [author's emphasis]. However, despite the CRC articulating in its article 27 [2] that the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development, such a provision does not provide what parents must do in confined environments like prisons.

The Standard Minimum Rules for the Treatment of Prisoners

As part of the international community, The Malawi Prison service is also guided by The Standard Minimum Rules for the Treatment of Prisoners [hereafter SMRTP]. In the preliminary observations of the SMRTP, it states: “the rules ... set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions” and “they should ... serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.”⁹

Under the medical services section, the only section in which reference is made to children of imprisoned mothers, the SMRTP recommends that in women's institutions “... there shall be

⁷ The CRC was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Its entry into force was on 2 September 1990, in accordance with its article 49

⁸ See article 1 of the CRC

⁹ The SMRTP was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

special accommodation for all necessary pre-natal and post-natal care and treatment” and that arrangements be made for children to be born in a hospital outside the prison. Such a recommendation calls upon the separation of mothers with children from the general women prison population. It is interesting to note that under the same section of medical services, the SMRTP make reference to the ‘authorization’ that may be given to children to stay with their mothers, stating that “where nursing infants are allowed to remain in the institutions with their mothers...” (ibid, Part I, article 23(2)). The Implementation of this provision would, as understood by the author, only be possible if the mothers are also ‘authorized’ to keep the children with them.

However, such a provision is in conflict with the exercise of the rights of children and mothers as provided in article 9 of the CRC that a child shall not be separated from his/her parents against their will.....It would seem from the SMRTP that allowing children to stay with their mothers is an entitlement or privilege given to children and not to their mothers, to whom provisions in the SMRTP apply and the way it is in practice applied. Furthermore, as Alejos (2005) also notes, the SMRTP do not refer to the principle of the best interests of the child (CRC article 3), leaving open the possibility to ‘allow’ children to remain with their mothers without due consideration of what is in the best interests of the child. More importantly, the SMRTP do not refer to the responsibility of the State to ensure the child special protection and provide care and assistance as is necessary for his/her well being¹⁰. Contrary to article 18 of the CRC, neither do the SMRTP refer to the States’ obligation to assist the imprisoned parent in his/her child-rearing responsibilities, in particular, given the limitations of imprisonment.

While the SMRTP provides for special care and accommodation for mothers of children in the SMRTP, it is important to note that there are many gaps on the assumed treatment of children in prison as far as addressing their special needs is concerned. Beyond the basic pre- and post-natal medical services for pregnant women, the guidelines fail to set specific standards and make more specific recommendations with regard to the special needs of children –treatment and safety of children; health and specialized medical care and assistance for pregnant mothers and unborn children and small children; special hygiene and sanitation

¹⁰ See the CRC articles 3(2); 2(1); 20(1))

needs; and specialized attention and treatment for the enjoyment of their basic human rights and freedoms(Alejos, 2005).

CHILD RIGHTS PROTECTION IN MALAWI

Historical background

Since attainment of independence on 6th July 1964, for thirty years, Malawi remained under an autocratic rule of a self declared ‘life presidency’ of Dr Hastings Kamuzu Banda. Banda’s regime, amongst other things, was criticized of human rights abuses. By 1992, Malawi began to show all the usual symptoms of a country approaching the end of a long standing autocratic regime. Increasing international pressure and mounting domestic opposition led to massive protests that resulted to a call for a national referendum in June 1993. Malawi's 1993 national referendum, in which 63 percent of the voting population opted for multiparty democracy, brought an end to the centralized, one-party, one-man dictatorship that had ruled the country. The referendum was followed by presidential elections which saw Bakili Muluzi, emerging as a winner in the democratic elections held in 1994.

By 1995, the present Malawi Republican Constitution came into force after being provisionally adopted by the Constitutional Conference that framed it in 1994, following the Referendum. Twea (2009:1) points out that the Constitutional change that occurred in Malawi in 1994 ushered in a new Constitutional order, from one based on parliamentary supremacy to one based on constitutional supremacy with an entrenched bill of rights. The Constitution establishes a Law Commission with powers to review and make recommendations relating to the repeal and amendment of laws¹¹. Since the Law Commission became functional, several special law commissions have been appointed and have reviewed the laws with a view to make them compatible with the rights provided for in the Constitution as well as to comply with international standards.

Child rights protection provisions in the constitution

Despite ratifying to the CRC in 1991, Malawi only made significant advances in addressing the rights of the child, following the transition in 1994. Malawi instituted various reforms in governance with a view to ensuring that all citizens, including children, could enjoy the

¹¹ Malawi Constitution Section 132

freedoms provided for in the Constitution. The Constitution of Republic of Malawi (1995) specifically provided some rights and protection for children in the Bill of Rights, which stated that "all children regardless of the circumstances of their birth are entitled to equal treatment before the law". Unlike, the CRC, according to the Constitution of the Republic of Malawi, a child is defined as any person below the age of 16. More importantly, Section 23 (c) particularly provides for the protection of children against any treatment that is harmful to their health, or to their physical, mental, and social development. However, implementation of such enshrined laws, by some state institutions, prisons to be specific, leaves a lot to be desired.

The Malawi Prisons Service

In Malawi, prisons were established under the Prisons Act of 1956¹². As of 2007, Malawi had a prison rate of 78, above the median rate of the central African region of 50, in which it falls (Walmsley, 2007). In accordance to its mission statement, The Malawi Prison Service aims;

"To provide for safe, humane custody and rehabilitation of offenders in order to contribute to public security and socio-economic development in Malawi"(The Malawi Prison Service, 2009).

The Malawi Prisons Service mandate, its roles and responsibilities are derived from the Constitution of the Republic of Malawi and Laws of Malawi. Inclusive in this regard are:

- The *Constitution of Malawi 17:153* "House, detain and rehabilitate persons committed to prisons."
- The *Laws of Malawi 9:09 and Standing Orders* "Control of prisons and management of such institutions and incidental matters."

Malawi Prison Act in comparison with the South African Prison Act

A comparison of the Malawi prison act to that of South Africa has been done so as to assess, to some level, the progress that Malawi has made in as far implementing the rights of a child in prison is concerned. South Africa has been chosen because it was one of the countries that was famous for human rights abuses under its apartheid rule and is believed to have improved a great deal. Again, the two countries belong to the same Southern African Region. Section 60 of the Malawi Prisons Act cap 9:02 states that:

¹² The prison act has been redrafted in line with democratization in Malawi and provisions for human rights issues.

“...subject to such conditions as may be specified by the commissioner, any unweaned infant/ child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessaries at the public expense:

Provided that, when such child has been weaned, the officer in charge, on being satisfied that there are relatives or friends of the child able to support it, shall cause such child to be handed over to such relatives or such friends, or, if he is not so satisfied, shall hand such child over to the care of such welfare authority as may be approved for the purpose, by the Commissioner.

From the above, it is clear that a female prisoner with an ‘*unweaned*’ child has the right to be given clothing and other necessities for the child. However this right is not absolute or unlimited. First this right is “...*subject to such conditions as may be specified by the Commissioner...*” This in essence means that the Commissioner can impose limitations to this right. Such limitations can for instance be due to lack of resources that government and the department of Prisons has. Secondly the use of the phrase “**may** be supplied with clothing and necessaries” [author’s emphasis] means that the Prison authorities can choose not to provide the supplies and necessaries.

Furthermore the timeframe within which such a female prisoner can stay with her child is limited to the period when such child is unweaned. The act neither establishes an upper age limit for such ‘*unweaned*’ children living in prisons nor does it refer to the number of ‘nursing infants’ of the same mother who can remain in an institution with their mother. Such ambiguity leaves the specific age limit that children may live in prison debatable since the weaning age differs from mothers’ preferences. In addition, the act also points out that the moment the child is weaned the Commissioner must either deliver the child to its relatives or friends or a social welfare organisation. Whether this is in the interests of the child, especially taking into consideration the rights of the child remains unclear.

It is noteworthy that the above situation is different from the South African situation. In terms of Section 20 of South Africa’s Correctional Services Act 111 of 1997,

- (1) A female prisoner may be permitted, subject to such conditions as may be prescribed by regulation, to have her child with her until such child is five years of age.
- (2) The Department is responsible for food, clothing, health care as contemplated in section 12 and facilities for the sound development of the child for the period that such child remains in prison.

- (3) Where practicable, the Commissioner must ensure that a mother and child unit is available for the accommodation of female prisoners and the children whom they may be permitted to have with them.

Clearly, a female prisoner in South Africa has the freedom to stay with her child for up to 5 years while in Malawi, such a period remains ambiguous. Furthermore, it is provided for, that during this period, the South African Department of Correctional Services has the responsibility to feed, clothe and provide health care for the child. The South African Act therefore gives an absolute duty to the Department of Correctional Services to provide such amenities to the child of a female prisoner whereas the Malawian Act lives this to the discretion of the commissioner. The latter Act therefore does not protect the welfare of the child or at least lives it on shaky ground rather than on a solid and clear ground.

Empirical evidence from South Africa suggests that the prison authorities strive to fulfil the requirements set forth in the correction act. According to a South African Human Rights Commission Report on Rights of Prisoners:

Female prisoners are given special units which are conducive to sound physical, social and mental care and development of children. The standards of care provided by the Department of Social Services in these units are regularly upgraded to correspond with the international norms and standards. The conditions provide the mother with the opportunity to exercise and develop her parental duties, responsibilities, and skills. Childcare facilities are also provided to maximise the potential for the child's proper development. (Report on the Rights of Prisoners for the period of April 2000 to March 2002: 463)

In addition, the commission reports that the Department of Correctional Services has special dietary provisions for the vulnerable groups like pregnant women and children:

“A distinctive dietary scale was offered to pregnant and lactating female prisoners. Infants are provided with a specific diet for infants and a medical practitioner may prescribe a special diet on medical grounds. Cooking apparatus was also made available for after-hour's use” (South African Human Rights report: 252)

The above shows that the South African prison authorities have made considerable progress in ensuring that welfare of children who live in prisons is taken care of. Whereas it is clear that the levels of development between Malawi and South Africa are different, it is still submitted that the Malawian Prison authorities can do better despite their limited resources to protect the welfare of the child.

CHILDREN AND THEIR MOTHERS IN PRISON

Bosworth [1999:9] notes that women's imprisonment has traditionally been characterised by its invisibility, its domesticity and its infantilisation. He argues that equal treatment of male and female prisoners may actually create hardships for women if male needs and programs set the standard (ibid: 59). He also notes;

“The fact that the male and female systems vary so greatly in size and in the nature of the populations, the fact that their respective objectives must vary to some extent, calls for management structures which enable sufficient flexibility in the development and implementation of policies to enable both services achieve equal, but not necessarily the same, treatment for men and women in prison” (ibid: 59)

Indeed, female prisoners are a unique population, requiring gender specific treatment. One such consideration arises from the fact that women are nurturers and mostly are the sole care takers for their children. With the exception of a few countries like Denmark, where children are allowed to stay with their fathers in prison up to three years, studies point out to the fact that children who were found in prison, had their mothers as their sole care takers (Eurochips, 2008). Even in the general prison population where prisoners have children whether babies or older children, women are mostly the sole care givers of the children. In the USA, for example, 64 per cent of imprisoned mothers lived with their children [prior to imprisonment], compared to 44 per cent of imprisoned fathers (Robertson 2007:33). When fathers are imprisoned, the children's mother usually continues caring for them, but maternal imprisonment frequently leaves children without adult care and supervision, compelling them to move in with mothers in prison or move in with relatives, friends, neighbours, foster carers or into statutory institutions.

According to Amnesty International, between 1997 and 1998, more than 2200 pregnant women were imprisoned worldwide, and more than 1300 babies were born in prisons. To

date, the absolute number of children affected nor the proportion of women prisoners with children are not known because this information is not recorded by the authorities, though some countries have approximate figures: up to 90% of women in prison in Chile are estimated to have children for whom they were caring at the time of arrest (Robertson, 2008:8). Nonetheless, various authors agree to the fact that there is a limited body of research examining the plight of children in prison let alone the impact of children living in prison (Robertson 2008, Alejos 2006, Tomasevski 1986).

Policy and practice varies from one country to the other on whether children are allowed to stay with their mothers in prison or not, and the length of stay if allowed to stay. China provides an interesting case as the law provides that pregnant women or those with young children should not begin their term of incarceration before the child reaches the age of 12 and that young children are not allowed to stay with their mothers in prison (Adl 2007: 278). Yet in some countries, children stay in prison along their mothers until they are a year (Scotland), 18 months (France, England, Wales and Uganda) or two years old. Two years old is the most prevalent age and many countries, e.g. Nepal, Sudan and Namibia, have adopted this rule (Ibid: 278). In most of these instances, where children are allowed to stay with their mothers in prison, special provisions are provided. In Costa Rica for instance, a women's prison includes a special unit called a 'cradle house' [*Casa Cuna*] for children whose mothers are imprisoned there. (Tomasevski 1986: 98). However, such remains a farfetched dream for most developing countries.

Available literature points to the fact that where children are not allowed to stay with their mothers in prison, they were put in other forms of care. In Jamaica, for instance, children cannot stay with their mothers in prison as the quote below illustrates;

'Children are not incarcerated with their mothers. If, consequent to their mother's imprisonment they are found in need of care and protection by a juvenile court, they will be placed for foster care or in children's homes.' [Tomasevski 1986: 96]

Likewise, in Thailand, children are also not allowed to stay with their mothers in prison. Only new- born babies can stay with their mothers in prison. Otherwise children are sent to stay

with their relatives or to the Department of Social Welfare until mothers are released (Ibid: 96).

Motherhood remains a crucial element of the social construction of femininity (Bosworth 1999). However, motherhood in the confines of a prison is challenging as the identity of a prisoner structures the opportunities available to her whilst in prison, including the treatment that she receives in situations where she stays with her child in prison. In retrospect, this affects the wellbeing and arguably the development of such a child. Alejos (2005:12) points out that children of imprisoned parents and children residing in prisons are part of a large group of children in especially difficult circumstances in need of special attention. In the same vein, Cho (2009:11) highlights that children with mother incarcerated in prison are indeed one of the most disadvantaged groups of children in the low income population, a category of which children in Malawian prisons fall under.

Until recently, little evidence on the effect of maternal incarceration was available. Cho (2009: 11) points out that such evidence remained largely speculative, deriving primarily from theories in Developmental Psychology and Sociology. Tomasevski (1986:93) asserts that the problem of mothers with children in prison has been reduced to the argument between those asserting that the separation of a child from his or her mother is worse than living in prison, and those claiming that life in prison can never be anything but detrimental to the child. Amidst such debates, in 1990 the Eighth United Nations Congress made the following recommendation:

“The use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories”.

Despite such a recommendation, children continue to be found in prisons. Dallaire (2006:16) posits that separation of children from their mothers, regardless of a child’s age is traumatic for the child. Separation from the primary caregiver for extended periods of time during infancy and toddlerhood is said to be a very risky factor for later maladaptive outcomes. Research carried out show both positive and negative aspects of prison life for such children.

On one hand, with limited literature available as previously pointed out, evidence shows that prison life has effects not only on the welfare of the children but on their development as well. A 2006 report on Indian prisons testifies;

“Many children born in prison have never experienced normal family life up to the age of four-five years. The socialisation pattern of children gets severely affected due to their stay in prison. Their only image of a male authority figure is that of the police and prison officials. They are unaware of the concept of a ‘home’. Boys sometimes talk in the female gender, having grown up only among women in the female ward. Sights like animals on roads frighten these children because of lack of exposure to the outside world". (Report on prisons in INDIA quoted in Robertson 2008: 30)

Similarly, in a study conducted by Adl et al (2007) in Iran revealed the impact that an abnormal atmosphere as the prison environment can have on children. In this study, 33 children who had stayed with their mothers for at least three months before being transferred to foster centers were studied. The study revealed that prison life impacts the physical as well as the mental well being of the children. Preliminary physical examination of the children showed that five of them had body injuries, e.g. bruises, contusions, abrasions, cheek, scratches and bruised lips. The clinical interviews with social workers in the welfare centres revealed that the children had suffered physical ailments (parasitic disease) and had delayed general development and impaired cognition development. Some were confused and shocked after leaving prison. They did not know about such simple concepts as shops, streets, cars, pencils, paintings, mountains, cinema, etc.; they were unable to formulate simple sentences and were afraid to develop a close relationship with their trainers and other children. They had problems with their personal hygiene, such as brushing their teeth, and in using a fork and spoon (ibid :280). In addition, most of the children displayed signs of trauma and shock because of the prison conditions, the caregiver’s negligence or the mother’s hysterical treatment of the child. Furthermore, a survey of the mental status of the children by means of observations and interviews revealed that a third of the children were suffering from one or more conditions of mental retardation, incompatibility, aggressiveness, nail biting or nocturnal enuresis. Three children also had speech problems (ibid: 279)

However, where special provisions for children are catered for, evidence suggests that children who stay with their mothers in prison are not different from those who do not stay in prison. In a study conducted with children in prison nest areas in comparison to children from the general population in Italy, Ferrara et al (2009: 270) confirm that during their stay in prison the children's health was not damaged (relative to their growth, immunisation status and medical assistance) but on the contrary, in some cases, there was an improvement in their health. In Italy, the Italian judicial system provides for nest areas inside female detention centres to enable mothers and their babies of up to 3 years of age to stay together in accordance with the Italian Constitution (article 31) regarding family, motherhood and childhood protection (Ibid: 270). Nest areas have particular characteristics: cells are open, to allow mothers and children to freely move within the section or department, each cell have two rooms including a sleeping place and a crib, an inside bathroom and a store to allow mothers to cook for their children. In their conclusion, Ferrara et al confirm the opinion that where special provisions are offered to the children as is the case with the nest areas with access to health facilities that guarantee a suitable environment, normal psychophysical development and promotion of health for this vulnerable group is achievable (Ibid: 271). Nonetheless, it is difficult to generalise their findings as their study was done at one prison with a nest center.

While the negative aspects of imprisonment of children with their mothers involve a variety of factors, the positive ones are confined solely to the mother-child relationship (Tomasevski 1986:94). Dallaire (2006: 16) reports that in a recent study by Poehlmann (2005), 63% of the 60 children with incarcerated mothers in her study did not have secure attachments to their current care giver or to their incarcerated mother. The study thus support the fact that secure attachments develop through consistent and sensitive care, and thus separations early in a child's life can severely disrupt the formation, development and maintenance of child-mother attachment relationship. In agreement to the above, Ferrara et (2009: 270) points out that from 0 to 3 years of age, the interactive context of children coincides with the maternal figure and the mothers psyche becomes an integral part of the child's mind.

Shamai and Kochal (2008) in their study of mothers who had left their children home, all the women reported that their relationships with their children during imprisonment were accompanied by feelings of intense emotional pain. The women described the type of

relationships they maintained with their children in the context of an ongoing need to cope with that pain. There were two main types of mother-child relationships: (a) avoiding contact with the children, and (b) maintaining contact with the children and containing the pain. The mother-child relationship in this case encompassed feelings of failure, self-blame, and anxiety, and simultaneously serving as a source of hope (ibid: 336) Their findings also indicated that despite the difficult experiences during imprisonment, the mothers perceived it as a starting point for significant changes in their motherhood identity and functioning.

Notwithstanding, studies show no clear consensus on the principle of whether to allow or prohibit children to stay in prison with their mothers.

CHAPTER THREE: METHODOLOGY

RESEARCH DESIGN

Data used for analysis in this paper is an extension of previous work that the author was engaged in. The author was inspired to write a paper that specifically focuses on children in prison whilst being part of the research team that conducted a research in Malawian prisons titled 'Poor, Excluded and Invisible: Women in State custody in Malawi'¹³. In the study, the researchers had aimed at investigating conditions of women in state custody using the women's law approach, an approach that works on the assumption that the law as a social regulatory force is a structured set of rules that has been, largely modelled on the interests and experiences of men and therefore puts women in disadvantaged positions. Since the research had aimed at highlighting the conditions of women as a general category of prisoners, little attention in the analysis was paid on the children who live with their mothers in prison. The author noted that beyond the invisibility of the general category of women in state custody, there is this category of 'prisoners'- whose invisibility is debatably twice as much. This category of 'prisoners', yet innocent, find themselves in prison because their mothers committed a crime. In consideration of such, the author has analysed part of the data collected with a deliberate focus of analysis specially placed on children, whose mothers are/were in prison. In addition, contrary to the women's law approach used in the previous study, the data has been analysed using sociological lens in attempt to understand the problem beyond the confines of the law.

A qualitative research design, with a combination of data collection techniques in form of unstructured interviews, key informant interviews and observations, was used to collect data. Combining the three techniques ensured triangulation, which is a way of making use of the advantages of the various techniques (Flick 2006:389). Flick (1998:129) points that the various methodological alternatives aiming at the collection and analysis of verbal data suggest that it is necessary to make a well-founded decision according to ones study, its research question, its target group. Because of the nature of the study in that the researchers needed an in-depth understanding of the lives of children in prison since limited research has been done in the field; a qualitative research design best suited the research problem at hand. As Berg (1989:6) hints, qualitative techniques allow researchers to share in the understanding

¹³ The author was part of the research team at Women and law in Southern Africa Research and Education Trust (WLSA)- Malawi office.

and perceptions of others and to explore how people structure and give meaning to their daily lives.

In addition, the combination of the data collection techniques acted as a check and balance in ensuring the quality of the data collected. For instance, as Flick (1998: 130) warns, the use of key informants has a disadvantage in that sometimes there is blocking by the expert and that information given is based on the interpretation of the expert. For example; the prison officials may try to paint a good picture of the service they are rendering to children in prison which may not be true in all its totality. In this study, it has been noted that this was not the case as data generated from the women tallied with that provided by the officials.

RESEARCH AREA

This research was conducted in Malawi. Whilst the previous research was undertaken in eleven districts, namely; Nkhatabay, Mzuzu, Mzimba, Mulanje, Chikwawa, Blantyre, Zomba, Mangochi, Lilongwe, Dedza and Nkhotakota, the author has purposefully analysed data that was collected in Blantyre (Chichiri prison), Zomba(Zomba Maximum prison) and Lilongwe(Maula prison).

ROLE OF THE RESEARCHER

Even though prison conditions in Malawi are nerve racking, the author was aware of the biases that she had towards prison before going into the field. Such awareness helped the researcher to collect and analyse the data with an objective mind, as Burgess(1984:22) writes, it is essential that researchers are aware of their biases beforehand so as to ensure objectivity. As I embarked on this research, I had a major bias that women were the most underprivileged category of prisoners in Malawi. I managed to control such a bias by allowing the research participants to explain about a particular issue without much intervention from my side. Probing was only used where clarity was sought.

SAMPLING TECHNIQUES

Burgess (1984: 55) identifies judgement or purposeful sampling as a form of sampling where informants may be selected for study according to the criteria established by the researcher or previous experience that endows them with special knowledge. The author purposefully

sampled Chichiri, Zomba, Maula and Mzuzu prisons because the chosen prisons are referral centres and as such it was mostly likely to find women with children at such prisons. Such a decision was made in reflective of the fact that women with children constitute a minority of the whole prison population. The author also chose the prisons so as to ensure the representation of all the three regions that divide Malawi as a country. The research participants were also purposeful sampled since they were deemed to be the right sources of the sought data.

DATA COLLECTION AND ANALYSIS

Mothers with children in prison were utilised as research participants for the unstructured interviews, while the prison officials served the role of key informants during the interviews. Observations were made on the interaction of mothers with other prisoners, mothers with their children and inspection of the women's cells. This was possible since all the interviews took place within the premises deemed as the women prison vicinity. Data generated for analysis has only been data that was collected from women with children at the time of the study. This data has been complemented by that from prison officials in whose institutions such children were found.

Considering the prison circumstances, where one could not miss but notice the nervousness that the women had because of the fear instilled in them, the researcher established rapport with the interviewees so as to ensure that the women were free to discuss sensitive matters with the researcher they did not know of. This was done by assuring every interviewee that the information provided by her was solely meant for the research purpose and that under no circumstance would their names be revealed to the officials or to anybody else.

Interviews with the women took place outside their cells or in other instances in a room that the prison officials could offer. A request had to be made to ensure that only the researcher and the interviewee, mostly with her child were present at the interview. Such a request was made because the prison officials were seen as a threat to the women which would have prevented them from divulging any information in the presence of such officials. Thematic analysis has been used to analyse the data.

LIMITATIONS AND DELIMITATIONS

The fact that children are found in prisons on *ad-hoc* basis posed to be a major challenge for the study. That meant participants for the study were only those women who had children at the time of the study and not necessarily the number of women the researcher would have loved to study. Nonetheless, since the study had a qualitative design, the issue of numbers of participants matters less than the data generated out of such participants.

Due to the fact that the ‘children’ under study were inarticulate, in as much as the researcher could have loved to learn the experiences of prison life from the children themselves, that proved impossible since the children were very young. As such, data generated depended on observations made by mothers and their day to day experience with their children in prison.

In addition, the fact that the number of women with children in prison was not enough for a quantitative study to fulfil demands of representativeness and statistical analyses, the qualitative methods were preferred over quantitative methods. Neale (1986: 51) states that a general rule to deciding how big a sample should be to ensure representativeness is that the larger the sample, the more precise will be the estimate of the characteristics in the population (not below 100).

Since the study focused on unveiling the experiences of children in prison, male prisoners were not considered for the study since only women were found with children in prison. District Social Welfare Officers were not interviewed since at no point did any participant, be it the mothers or the prison officials, pointed out of their involvement in prison.

ISSUES OF LIABILITY AND VALIDITY

To ensure validity, viz-a-vis the extent to which research instruments measure what they are meant to measure (Punch 2005:97), the research instruments designed for the study were pilot tested so as to assess the extent to which they were collecting the desired data. In addition, whilst in the field, the research team met on a daily basis to update each other on any emerging issues and for call backs where errors in data collection were made.

CHAPTER FOUR: RESEARCH FINDINGS AND DISCUSSIONS

PRISONS SETTING

Women were the only category of prisoners who stay with children in Malawian prisons. Such women were found at Chichiri, Zomba, Maula and Mzuzu prisons. Since the prisons under study also serve as referral prisons, women prisoners originated not just from the districts in which the prisons are located, but also from other districts and regions. With the highest female prison population of 63, Chichiri prison had 6 children staying with their mothers in custody while Maula prison had 5 children with 43 female inmates. Zomba prison had 32 inmates and 4 children living in prison. Mzuzu prison had the least number of female prisoners totalling 13 and had 2 children.

Upon entering the prisons, just a glance at the cells, one only imagines what life could be like being a prisoner. As I walked into Maula prison, I was appalled by the entirely metallic iron structures that I saw. Little did I imagine that they were actually prison cells for women prisoners. Being quite a warm day, when I was given the opportunity to enter one of the cells, I could not help but notice the massive heat waves that surrounded the interior of the cell. Iron as a metal gets very hot when exposed to heat and very cold when exposed to cold conditions. Such are the conditions that women with children at Maula prison live with.

Just as you would expect in prisons, all the prisons' entrances were guarded, igniting a feeling in me of being in bondage and being in a secluded world. Observations of the cells revealed that just like any other prisoners, the women with their children shared accommodation in the allocated cells together with other general inmates. During the observations that were made, at Chichiri and Maula prisons, women with children had their sleeping mats on the floor just like any other prisoners. Somehow privileged, female prisoners at Zomba and Mzuzu prisons had beds in their cells, but had no special room or beds for women with children.

CHALLENGES FACED CHILDREN IN PRISON

It is important, at this juncture, to point out that using Weber's typology of authority, the Malawi prison service enjoys the legal authority, where the legitimacy of the power holder, in this case prison officials, rests upon rules that are rationally established by enactment. In the

second chapter, it has been discussed that the Malawi Prisons service derives its mandate and power to operate from the Constitution of Malawi and laws governing the country.

Thematically, challenges faced by children who stay with their mothers in prison were presented in four dimensions. These included inadequate health care, poor nutrition, children development in prisons, and access to basic amenities. On a general note, findings show that the children have inadequate or are even denied access to the mentioned basics because of one underlying reason; lag in societal change. This concept will be discussed later in the coming sections.

Inadequate Health Care

The CRC, to which Malawi is party to, explicitly articulates in its Article 6 that;

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child'

In addition, Article 24 stipulates that;

'States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services'

Research findings show that the right to health for children living in prison comes in what can be termed as 'half measures'. Whilst all the prisons visited had a health facility available within the prison premises, access to medical care for the children is not automatic. The fact that the mothers of the children are prisoners, translates into strict following of procedures as laid by management. The implications of following strict procedures on the children are just numerous. For instance, the findings show that children who live in prison generally do not attend ante-natal clinics, where children of their age are monitored. In addition, if a child falls sick, the responsible mother is expected to report to the women prisoners' leader who then reports to prison wardress on duty. In her own time, the wardress reports to the female section head who decides whether to send the child to the dispensary or not. Such kind of prison bureaucracy comes into conflict with the role of the mother that the prisoners have. The

mothers expressed deep concern to the fact that they do not have a free will in deciding what is best for the child even in circumstances that the health of the child of deteriorating. In all instances, the women prisoners wait for the orders to take their sick children to the hospital. In their her own words, this is what one prisoner had to say;

“The fact that we are told when we can go to the hospital makes everything difficult. For example, ever since I got here, we have only gone to the central hospital for Under-five clinic just once. So the children just stay as adults, their growth is not monitored. This is not good for the children as we can not know how they are growing”. *Prisoner, Maula prison*¹⁴.

Since the prisons are meant for the adults, supply of medicines at the available clinics is essentially for adults and not children. As such, even in circumstances where the mothers are allowed to get to the clinic, the children do not get the best of care required for their age. The situation of access to medical care is even harder for women prisoners who are on remand as they have to wait for the police to send an officer to escort them to the hospital. Prisoners on remand can not be escorted to the hospital by prison wardresses as they are considered to be still in the hands of police.

Poor Nutrition

Being prisoners, women in prison are only able to provide their children food stuffs that they receive in their capacity as prisoners. For them, the prisons provide an additional ration in form of plain corn flour which the women use to make porridge for their children. Apart from that, nothing else is given to the children. Prisons being one of the under-resourced institutions in Malawi, sometimes no rations are available for prisoners. This challenges the mothers as it leaves them with no other option to feed the children since as prisoners; they heavily depend on the institution for their wellbeing and that of their children. Specifically, this is what the mothers had to say;

“My daughter is two years and six months and I still breast feed her. For supplementary food for my child, the prison gives us the same corn flour which

¹⁴ The prisoner had a 1 year 11 months son, on remand, and had been in prison for 6 months at the time of study.

we receive as adults to make our meals. We use that to prepare porridge for the children. If my child has something different, well wishers from different churches come to give us food for the children”. *Prisoner, Chichiri prison*

“The food that we eat here is not good for the children. You know the prison provides *Nsima* [a meal made of plain corn flour] and beans only on everyday basis. You can not just be feeding a child this type of food daily. Sometimes we even stay without any corn flour to cook food with. So the children are left hungry and that is not healthy for children, it is depriving them a basic necessity”- *Prisoner, Maua Prison*.

Child Development

Child development is one of the most important aspects for the wellbeing and transformation of a child into a ‘normal’ human being. Article 27 of the CRC narrates; ‘States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development’. However, findings of the study show that prison life negatively impacts the normal development of the children. This was specifically reported by mothers whose children were in a process of learning how to talk as they complained that children are learning ‘bad’ language because of their exposure to prison life.

‘My child is learning to speak now and all he is able to say is abusive language. This place is not meant for children. People here are bitter for being in prison and as such they swear and speak abusive language most of the times. Since my child is being raised around such an environment, he has started speaking such bad things.’ *Prisoner, Maua prison*

As prisons harbour frustrated persons of all kinds, the mothers concern on the language development of their children points out to what the children are capable of learning whilst staying in prison. Tarcott Parsons (1955: 49) in his writing on family, socialization and interaction process concedes that language is indeed a product of learning, and that, it is in fact the end product of the first major phase of the socialisation process, a continuous process of learning that makes a child a human being. The fact that the children experience the first developmental experiences whilst surrounded by prisoners is worrisome indeed as this is an important stage of personality development.

The above scenario points to the fact that children are indeed capable of learning anything. The fact that the children are believed to learn bad language shows that the children are capable of learning other behaviours including criminality, the core business of their surroundings. Parsons (ibid: 54) explains how personality development occurs in children. He points out that human personality as a system of social action is the internalization of systems of social objects which originated as the role-units of the successive series of social systems in which the individual has come to be integrated in the course of history. Put simply, the contacts that one makes in life and becomes part and parcel of, plays a bigger role in the personality development of a person. In this regard, it can be argued that prison life is detrimental to the personality development of children.

The mothers also explained that the children are restricted from playing since prisoners are locked back in the cells at specific times in accordance to the prison rules. In most prisons, prisoners are locked back in the cells by 16.00 hrs.

‘Being locked early is bad for the children, you know they crawl around to play and this is hard as there is no room for them to play. *Prisoner, Maula prison.*

Lack of other basic amenities

Apart from the already stated hurdles that the children who live with their mothers in Malawian prisons face, the plight of such children even extends to lack of other basic necessities such as clothes and laundry and bathing soap for their daily hygiene. Narrating such hurdles faced, this is what their mothers had to say;

“My child has no jersey. I came here just the way I was caught and I did not have the opportunity to bring my son any warm clothes. The only clothes my son has are the ones he is wearing and nothing else. Since I was apprehended in Rumphi and transferred here, it is so difficult for me to even send someone to bring me the clothes since no one has ever visited me here. Mzuzu is cold and yet I have nothing to keep my son warm, and as such I fear that he might catch pneumonia”. *Prisoner, Mzuzu*

Even though in some prisons women acknowledged receiving laundry soap, the general consensus was that the soap is not enough to meet their needs especially due to the fact that they have children who need more soap than adults. The commonest type of soap that the women receive is a local laundry soap Malawian branded called ‘Maluwa’. No special bathing soap is distributed in Malawian prisons, and as such the laundry brand is used to bathe children as well. It became evident that women prisoners are somehow a privileged category of prisoners because more often they are visited by representatives of different churches, who see prisons as better grounds of converting people to worshipping God, and in the process bring the women some gifts in form of soap, foods and some clothes.

“We get the chance to receive soap when we get visitors like from the churches who bring some soap as gifts for us. But the problem is that most of the times we do not get enough since the wardresses also get some for themselves. Rarely do we get the chance to receive soap from prison. I do remember that they sometimes distribute one piece of ‘Maluwa’ soap once a month. This is not enough because some of us have children and as you know children’s clothes have to be washed more often”- *Prisoner, Maula prison.*

The adoption of the new constitution with a bill of rights by the Malawian government was supposedly the dawn of new social change in all its institutions. As the constitution pledged to protect children from any treatment that is harmful or hazardous to their wellbeing, one would expect such to be the guiding principles for the operations of prisons in the country. In addition, by ratifying to the CRC, the government pledged to support and implement the rights of a child. . The fact that the laws provide such for the children and yet in reality the opposite happens, that is children have inadequate access to health, poor nutrition, challenges in child development and lack of other basic amenities show that the practices of the Malawi prisons service, regarding the treatment of children, is not in tandem with the international standards set and its own laws that were set to safeguard the wellbeing of the children. In essence, the situation can be interpreted to mean that the Malawi prisons service does not use the legal- authority vested in it by the laws. That being the case, one wonders why things are not changing despite provisions being made in the laws.

Interestingly, the Malawi scenario provides a challenge to sociologists to try and explain the situation. The situation points out to the fact that social change is complex. In the given case,

change of laws governing a society did not automatically lead to the desired actual societal change. In this context, one can explain such laxity to change as being probably due to the historical background that Malawi has. Earlier on in this paper, it was discussed how Malawi remained under an autocratic regime that was popular with the abuses of human rights in its state institutions until 1994, when a new constitution with the bill of rights came into existence. Prisons were regarded as institutions for punishment and not as agents of positive re-socialisation of people with deviant behaviour as is expected today.

If this view holds true, in essence the situation can be interpreted to mean that despite the changes in the laws, the mindset that Malawi prisons service, as a society, has towards prison has not changed. In sociological terms, Malawi is experiencing what Ogburn (1964: 86) refers to as cultural lag or cultural delay. As a cultural lag occurs when one of the two parts of a culture which are correlated changes before or in greater degree than the other part does, one sees a delay or lag in the shift of attitude and practice from the traditional way of doing things to the modern way where the prison institutions are guided by laws and international frameworks. Ogburn (1964) further states that there must, of course be change occurring at unequal time intervals. With the case at hand, the changes in the laws occurred faster than the institutional changes. Due to this deeply rooted belief in punishment that prisons had been subjected to, children of incarcerated mothers get punished alongside their mothers. As one sees traditionalism in the way prisons are run-as the Prison service through its officials apply the old ways of operating the institutions- one sees a conflict as prisons are supposed to operate under legal authority and not on traditionalism, as the laws suggest. Ogburn's theory of cultural lag suggests that at some point, the maladjustment that occurs in society as is the case with Malawi prisons eventually smoothes out. However, fourteen years down the line since the new constitution with the bill of rights was first adopted in the country, there is still a mismatch between the legal provisions and the actual practices in prison.

PRISON OFFICIALS PERSPECTIVE ON CHILDREN IN PRISON

Key informant interviews with prison officials confirmed the dimension of prison life for children as presented by their mothers. The study also revealed that welfare of the children in prison is generally left at the mercy of prison officials. Depending on the willingness of management at a particular institution, the welfare of children living in prisons remains in limbo. According to prison officials, women with children are essentially a burden to them;

‘I work and I get squeezed beyond my normal duties because I have to find necessities for these children since the prison do not offer anything special for them. I go around begging for resources for these children. If I do not get any help I reach a point when I use my own resources to help the children I just got some rice from feed the children organisation. So I have given one bag to a child who is at this prison and another bag to a child of a prisoner who is at Domasi prison. - *Prison official, Zomba prison.*

The fact that other prison officials view children in prison as their personal burden again points out again to the failure of the system to use the legitimate legal authority vested in it. As Berger and Luckmann (1966:111) stress, legitimation not only tells the individual why he should perform one action and not another; it also tells him why things are what they are. Instead of calling for the application of the laws to relieve the situation, the officials find themselves begging for the children from the society at large. The fact that some prison officials go an extra mile trying to provide for the children points out to the laxity of the whole system. One wonders what happens to children in prisons where the prison officials do not offer special assistance as the above scenario is. Indeed, such children suffer and their voices remain unheard as they still remain invisible.

AGE LIMIT FOR CHILDREN IN MALAWIAN PRISON

Research findings show a discrepancy of what officials of different prisons perceive to be the official age limit of allowing children to stay in prison. This confirms the ambiguity that the Malawi Prison Act has. As mentioned earlier on in the paper, the Act points out that children may stay with their mothers in prison as long as they are ‘*unweaned*’, without specifying any age limit of what is meant by ‘*unweaned*’. To that effect, it is not surprising that Prison officials at different prisons provided what they perceived to be the official age limit, and I quote;

“Officially, children of female prisoners are allowed to stay with their mothers up to five years of age- *Prison official, Maula prison,*

“The law says we can only keep the children up to two years”- *Prison Official, Chichiri Prison*

The officials' reference to the law as a way of justifying the period of which a child may stay in prison stresses the fact that when laws are not clear, people have the tendency to make their own laws to suit their own situations. This challenges the whole purpose of having laws as rational means of guiding operation of institutions.

MOTHERS WITH CHILDREN IN PRISON

Findings of this research show role conflict of the concurrent roles that women have as mothers and as prisoners. To begin with, most mothers felt that it was worthy that they were allowed to have their children with them in prison because they were the sore providers of the children in terms of breast feeding and child care as the below quote depicts;

“I was arrested when I was pregnant and came into custody with my three year old daughter. I preferred staying with my child in prison because no one else at her home could look after her. When I was 5 months pregnant some white people came and took away my daughter and took her to an orphanage. Am so worried as to how she is doing being very young and alone out there. I later gave birth to the baby I was expecting and now my baby is 17 months old and I stay with him here since I have to breast feed him.” *Prisoner, Zomba prison.*

Interviews with prison officials also confirmed that most prisoners complain that there is no one to leave their children with at home. According to the prison official at Chichiri Prison, even in circumstances that a woman has left a husband at home, most men refuse to take responsibility of staying with babies and young children. Despite being happy that they are allowed to stay with their children, in their voices, the women acknowledged the toughness and stiffness of life as prisoners as they play their double roles- their official role of being prisoners besides being mothers, thereby displaying a role conflict that arises as the women try to balance the two.

“On the day that I was arrested, I was beaten by the police, as they said I had to confess to having committed the murder of my uncle. I slept with the hand cuffs the whole night and yet I had a baby with me. My son kept on crying but I could not carry him. But as a prisoner, what do I do, I just had to watch him cry and do nothing about it” *Prisoner, Maula prison.*

The experience of the above prisoner also goes beyond to highlight how power is a key determinant in social relations as Weber had suggested. If the woman had a choice to resist, undoubtedly she could have done so. However, the authorities were able to carry on their will on her because of the legitimacy they have in doing so as derived from the laws that govern prisons.

In conveying what it feels like to be in prison with the children, the women prisoners had nothing good to say about prison life.

“This place is more like a grave. Imagine we get locked into the cells at 4 pm, which is really day light and we are not used to that. When we get in there, the children want to be playing but there is no space to play and as a result they move all over and end up peeing on other peoples beddings and as mothers we get in conflict with the other prisoners because they do not get happy with that. In addition, with the nature of the living conditions in a cell of many adults, children get sick most of the times. You know since we are overcrowded, we breathe at each other and all that”. *Prisoner, Maula prison*

Comparing prison life to that of the grave shows how abnormal life is like for children staying with their mothers in prison. The connotation of the grave in this case also highlights the hopelessness that the women have as they see their life in prison as a dead end and full of neglect. Infact, the comparison of prison life to that of the grave shows the power dynamics underplay- that women are not in control of their lives, and that they are under the prison authorities. Furthermore, such sentiments tell us that most women if given a choice would not allow to be admitted into prison with their children. However the fact that there is no one else to look after the children and due to general poverty results in reluctance of leaving their children at home. The voices of women prisoners who had their children sent home were equally desperate and showed the women's unwillingness to let go off their children.

“It was difficult to stay with my son when he was born here in prison because he was asthmatic. I could not get him the medical attention at all times. You know here we operate under restrictions. He is staying with my father and step mother.

(sheds a tear and sobs) I know he is having a hard time out there since he receives limited care since I, his mother am here, am not with him. My parents are poor, they do nothing, and they cannot ably support the child. I only sent him home so that they can look for him traditional medicine for his asthma attacks. I want to get out of here and take care of my sick child. I have no peace staying here knowing that my son is alone out there. I have nothing to help myself with, please help me. *(Starts crying)*”- *Prisoner, Chichiri Prison.*

As I listened to the woman sobbing with tears in her eyes, I could see the dilemma in which she found herself in. In as much as she wanted to stay with her child, she was at the same time willing to let go off her child because of the restrictions she was operating under. Her reactions showed a complexity in ‘what is best for the child- as to whether to let women stay with their children in prison or *not* to let the children stay with their mothers in prison. Upon reflecting on the findings of the study, the author of this paper is of the opinion that it is not possible to completely change the living conditions of children living in prison without changing those of their mothers. This is due to the mother-child relationship that exists and the dependency of the children on their mothers in everything.

CONCLUSIONS

The research findings bring out three important dimensions of the life of children living with their mothers in prison. These include the use of state power by the prisons, the role conflict that the mothers experience and the ultimate question of ‘what is best for the child?’ using Max Weber’s typology of authority, findings show that the Malawi prisons service is supposedly to be under the rational legal authority as it has its powers embedded in the laws of Malawi. However, the findings reveal that prisons as apparatuses of the Malawi government do not exercise their legitimate power as conditions of children and their mothers living in prison remains unchanged despite provisions being made in the laws. It has been learnt that there is a cultural lag in that the constitutional changes that took place in 1994 have not automatically translated into the change in the operation of the prison system. Findings reveal a unified voice of neglect and abuse of children’s rights through the legitimate control of women prisoners. This has been evident as children living in prison lack virtually everything, simply because their mothers are under state control. Without questioning, the international and domestic laws that govern the operations of prisons are

seen to operate on a more theoretical level, such that their application in practice remains rhetoric.

The historical background that Malawi as a country has is being attributed to the said cultural lag. The abuse of human rights that engulfed all corners of government bureaucracies during the one party regime continues to haunt the operations of the prison service up to date. Despite the fact that the constitution of Malawi, through its bill of rights, provides for the implementation of child's rights, Malawi prison service chooses not to apply the laws. To some extent, the traditional mind set of people, that prisoners are supposed to be punished to pay for the crimes they committed is also one of the reasons why enough attention is not paid to the prisoners which in turn affects the wellbeing of children living in prison. It is worth noting that the two types of authority operating in Malawian prisons, legal authority and traditionalism appear to conflict each other.

The adversity of women with children is clear on the role conflict that the women experience as mothers and prisoners at the same time. Women's nurturing role in society is challenged by their 'new' role as prisoners which determine their behaviour in prison. As prisoners, their lack of control over their lives, let alone that of their children, is the major deciding factor of whether children should be allowed to stay with their mothers in prison or not. However, given other conditions, such as mothers' emotional wellbeing and lack of readily available and willing supporting structures for children should they leave the prisons, show the intricacy such decisions can have on the lives of the children. The question of 'what is best for the child?' remains a challenge for both the government and the mothers.

In a nutshell, with all the challenges faced by children who stay with their mothers in prison, the research points out to the fact that it is not possible to only improve the living conditions of the children in prison without improving those of their mothers because of the complete reliance of the children on their mothers.

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