

Bridging the gap between Laws and Implementation:
A case study of Female Prisons in Ghana

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Abstract

This research concentrates on the problems incarcerated females and their children face in Ghana. Researchers and human rights activists have identified some primary concerns about the infringement of rights of incarcerated women across the globe including Ghana. Their challenges include sexual abuse, childcare, gynaecological problems, food insecurity, sex trade by vulnerable groups for protection, violence, sleepless night, transmission of tuberculosis and human immunodeficiency virus, and poor healthcare. Children of incarcerated women also encounter severe problems like poor academic performance; victimization, trauma, teasing, and stigmatization from peers; high drop-out rates; exhibition of internalizing and externalizing behaviors; somatic problems; and juvenile delinquency which takes them to prisons in their adult lives. But the specific reasons why these problems continue to exist, leading to human rights abuses of inmates, have not yet been answered among researchers in Ghana, and this research set to fill that gap. Lax implementation of prison laws is one of the causes of these woes. And to draw the attention of stakeholders to these problems, the research adopted a doctrinal analysis of both primary and secondary resources related to the topic. Consequently, the normative analysis, interpretations, argumentations, and explanations of the materials, portray that, imprisonment is not serving its purpose and that, community service order is the best alternative, particularly for women offenders as the Bangkok Rules stipulate. Ghana does not implement some of the domestic and international human rights laws adopted, signed, and ratified, hence, the rampant human rights infringements in the prisons. Among the reasons found are financial constraints and lack of political will to fight corruption; political interferences in the prison service that frustrate their progress; sheer disregard for children and women's rights and vulnerability; and inadequate street naming and citizens' personal and bio data. To help solve these problems, best practices that have helped reduce recidivism and brought humane treatment to women offenders in Canada and Kenya have been cited for Ghana to emulate accordingly.

Keywords: Implementation of laws, Human Rights, Ghana Prisons Service, Incarcerated women, Non-custodial sentencing/Community service order, Bangkok Rules.

Résumé

Cette recherche se concentre sur les problèmes auxquels sont confrontées les femmes incarcérées et leurs enfants au Ghana. Des chercheurs et des militants des droits humains ont identifié certaines préoccupations concernant la violation des droits des femmes incarcérées à travers le monde, y compris au Ghana. Leurs défis comprennent les abus sexuels, la garde des enfants, les problèmes gynécologiques, l'insécurité alimentaire, le commerce du sexe par un groupe vulnérable pour la protection, la violence, les nuits blanches, la transmission de la tuberculose et du virus de l'immunodéficience humaine et des soins de santé médiocres. Les enfants de femmes incarcérées rencontrent également de graves problèmes comme de mauvais résultats scolaires ; la victimisation, les traumatismes, les taquineries et la stigmatisation des pairs ; des taux d'abandon élevés; exposition de comportements d'intériorisation et d'extériorisation; problèmes somatiques; et la délinquance juvénile qui les conduit en prison dans leur vie d'adulte. Mais les raisons spécifiques pour lesquelles ces problèmes continuent d'exister, conduisant à des violations des droits humains des détenus, n'ont pas encore trouvé de réponse parmi les chercheurs au Ghana, et cette recherche est destinée à combler cette lacune. L'application laxiste des lois pénitentiaires est l'une des causes de ces malheurs. Et pour attirer l'attention des parties prenantes sur ces problèmes, la recherche a adopté une analyse doctrinale des ressources primaires et secondaires liées au sujet. Par conséquent, l'analyse normative, les interprétations, les arguments et les explications des documents montrent que l'emprisonnement ne remplit pas son objectif et que l'ordre de travaux d'intérêt général est la meilleure alternative, en particulier pour les femmes délinquantes, comme le stipulent les Règles de Bangkok. Le Ghana n'applique pas certaines des lois nationales et internationales sur les droits de l'homme adoptées, signées et ratifiées, d'où les violations généralisées des droits de l'homme dans les prisons. Parmi les raisons trouvées figurent les contraintes financières et le manque de volonté politique pour lutter contre la corruption ; les ingérences politiques dans le service pénitentiaire qui entravent leur progression ; le mépris total des droits et de la vulnérabilité des enfants et des femmes ; et des noms de rue et des données personnelles et

biographiques des citoyens inadéquats. Pour aider à résoudre ces problèmes, les meilleures pratiques qui ont contribué à réduire la récidive et apporté un traitement humain aux délinquantes au Canada et au Kenya ont été citées afin de servir de modèle au Ghana.

Mots-clés : application des lois, droits de l'homme, service pénitentiaire du Ghana, femmes incarcérées, peines non privatives de liberté/ordonnance de travaux d'intérêt général, règles de Bangkok.

INTRODUCTION

This thesis primarily aims to unearth impediments to penal reform for female offenders in Ghana and advocate alternatives to incarceration, including the development of the Community Service Order (CSO). Some Ghanaian female prisoners are mothers and CSO will enable them to serve their sentence in the community, access rehabilitation programs, and maintain their caretaking responsibilities. Research has been conducted on prisons and prisoners in Ghana and beyond, but few published works relate to female prisoners and their plights, such as poor health conditions, inadequate sanitation, sexual abuse, childcare, gynaecological problems, food insecurity, sex trade by vulnerable group for protection, violence, sleepless night, transmission of tuberculosis and human immunodeficiency virus,¹ and victimization of incarcerated women's children. The specific reasons why these problems continue to exist, leading to human rights abuses of inmates, have not yet been answered among researchers in Ghana. This thesis attempts to fill that gap. Whether it is a lack of political will, financial constraint, or mere disregard for the human rights of offenders by state authorities, the research will unsnarl the issues. The focus is also, to raise awareness among stakeholders of the special needs of incarcerated females and the negative effect it has on children.

Mothers' incarceration adversely affects the physical, emotional, social, and psychological development of their children, thereby increasing their vulnerability.² The children are maltreated by their family members who take up the caretaking responsibility; drop out of school;³ experience somatic problems; trauma, teasing, and stigmatization from peers; exhibit internalizing and externalizing behaviors; and juvenile delinquency which takes them to prisons in their adult lives.⁴ In Ghana, it is believed that the socialization of children into society is the mother's responsibility.

¹ Todrys Katherine W. et al., "Imprisoned and imperiled: access to HIV and TB prevention and treatment, and denial of human rights, in *Zambian prisons*" (2011) 14:8, at 1-9, online (pdf): *JIAS* <onlinelibrary.wiley.com/doi/pdf/10.1186/1758-2652-14-8>.

² Park D. Ross & Alison K. Clarke-Stewart, "Effects of Parental Incarceration on Young Children" (01 December 2001), online: *U.S. Department of Health and Human Services* <aspe.hhs.gov/reports/effects-parental-incarceration-young-children-0#The>.

³ Teiko Akodi D. Precious, "Redefining the Invisible Victims of Incarceration: Survival Strategies of Young Girls of Incarcerated Mothers in Ghana" (2017) at 3, online (pdf): *International Institute of Social Studies* <thesis.eur.nl/pub/41662/Akodi-Precious-Dede-Teiko-.pdf>.

⁴ Mallicoat L. Stacy, "Women and Crime: A Text/Reader," (September 2014), 2nd ed, at 465-466, online (pdf): *Sage Publishing* <[www.sagepub.com/sites/default/files/upm-binaries/44337_10_\(final\).pdf](http://www.sagepub.com/sites/default/files/upm-binaries/44337_10_(final).pdf)>.

She teaches the children the language, cultural and subcultural aspirations of society, and her absence is considered a threat to the family and society.⁵ The majority of the women incarcerated in Ghana are poor, illiterate, and live in rural areas, so their daily struggle for survival pushes them to succumb to petty crimes⁶ and sometimes serious ones which lead to their incarceration. Illiteracy rates among women and men are 50% and 33% respectively, and it is worse in the hinterlands. It is 54% in Brong Ahafo Region and 76% in the three Northern Regions.⁷ The Greater Accra Region, the capital of Ghana has 21% whereas the Ashanti Region with the second big city has a 40% illiteracy rate among women.⁸ Negative socio-cultural practices become an obstacle for these women to access justice in the country.⁹

Women's rights activists in Ghana constantly advocate for these women and requested that the government implements non-custodial sentences for women offenders, except in circumstances of heinous crimes. These activists became elated when the government signed the Bangkok Rules and prepared a bill for parliament to be passed, but this bill has been in parliament for about seven years without ratification.¹⁰ A Ghanaian scholar Appiahene-Gyamfi called on non-governmental organizations (NGOs) like World Vision International, the National Catholic Secretariate and Christian Council, and the National Council on Women and Development to lead an advocacy movement that will urge the government to introduce a literacy program for women offenders instead of incarceration. He believes that operating women's prisons in Ghana is a waste of human resources and that, no one can justify the custody of only 302 female inmates and the employment of over

⁵ Anku Deladem Ama, "Broken Lives, Broken Relationships: The Experiences of Women in a Ghanaian Prison" (June 2018) at 13-14, online: *UGSpace* <ugspace.ug.edu.gh/bitstream/handle/123456789/29009/Broken%20Lives%2c%20Broken%20Relationships%20The%20Experiences%20of%20Women.pdf?sequence=1&isAllowed=y>.

⁶ Sarpong A. A. et al, "An Assessment of Female Prisoners' Perception of the Accessibility of Quality Healthcare: A Survey in the Kumasi Central Prisons, Ghana," (2015) 5:3, 179 at 183, online (pdf): *Annals of Medical and Health Sciences Research* <www.researchgate.net/publication/277011531_An_Assessment_of_Female_Prisoners'_Perception_of_the_Accessibility_of_Quality_Healthcare>.

⁷ In 2018, Brong Ahafo Region was divided into three regions and the three Northern Regions were also divided into six regions.

⁸ UNESCO Institute for Lifelong Learning, "Literacy and Community Development Programme, Ghana" (27 February 2016), online: *UIL* <uil.unesco.org/case-study/effective-practices-database-litbase-0/literacy-and-community-development-programme-ghana>.

⁹ "Women in Northern Ghana have little access to justice – Survey" (12 May 2009), online: *Business Ghana* <www.businessghana.com/site/news/general/82918/Women-in-Northern-Ghana-have-little-access-to-justice-Survey>.

¹⁰ Informative Interview with Kwarteng O. Ibrahim, Chief Executive Officer of Crime Check Foundation, Ghana, (29 January 2021; 9:07am to 9:23am, Ghana time).

500 female prison officers for supervision. The crimes of these women seldom cause any public panic when they are allowed to stay out of prisons, hence the need to abolish female incarceration in Ghana. Young Women's Christian Association could be tasked to train these women.¹¹

The candidate endorses the concerns raised above and to unravel why implementation of existing prison laws is suboptimal in Ghana, a doctrinal analysis of both primary and secondary materials relevant to the topic will be the main methodology. The primary sources are international laws, national legislation and regulations, cases, and other official documents governing prisons and human rights. Some secondary sources include academic articles; policies; reports; and informative interviews with prison warders, officials in Ghana's department of social welfare, human rights institutions and activists, lawyers, and NGOs in Ghana to solicit their opinions on proposed community service for female offenders. These resources are interpreted; argued in favor or against; and explained based on history, logic, sociology, psychology, or economics to portray the validity of the legal concepts, rules, and principles governing prisons in Ghana and whether they have been implemented appropriately. A normative analysis is done to bring out the intersubjective consensus on prison conditions existing among legal scholars, researchers, lawyers, international organizations, and prison staff in Ghana and beyond.¹² To go through the analysis, interpretations, argumentations, and explanations of the resources, the thesis is divided into four sections and a conclusion. Section one throws light on women's incarceration in Ghana and the right punishment for them. Section two centers on the success or failure of imprisonment while section three attempts to identify why implementation of prison laws is suboptimal in Ghana. Finally, section four makes recommendations based on the best prison practices that favor women offenders in other African countries and beyond. Lesson from best practices is worth emulating as Ghana attempts to avoid the victimization of incarcerated women's children.

¹¹ Appiahene-Gyamfi Joseph, "Alternative to imprisonment in Ghana: a focus on Ghana's criminal justice system" (1995) at 171, online (pdf): *Summit* <summit.sfu.ca/item/6650>.

¹² Van Hoecke Mark, "Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?" in Van Hoecke Mark & Ost François, eds, *European Academy of Legal Theory Monograph Series* (Oxford: Hart Publishing, 2011) 1 at 4-10.

Like any other research, there are challenges that need to be shared. The overreliance on doctrinal analysis may not portray the actual conditions on the ground. Although, the informative interviews and reports from researchers and human rights organizations assume a kind of practicality, the candidate's personal interviews with the inmates and government officials would have triggered certain questions and answers that can help situate the issues perfectly. For example, the candidate would have asked the Finance Minister why the budget did not deal with the problems of the inmates, while their predicament is all over the media.¹³

¹³ "Newsfile on JoyNews" (18 December 2021), online: <www.youtube.com/watch?v=veC6-M182IM>.

I. INCARCERATION OF WOMEN IN GHANA

In the World Female Imprisonment List, incarceration among women around the world rose from 625,000 in 2012 to 714,000 in 2017, and population growth is one of the reasons assigned for this rise, though debatable. Africa is portrayed as having the lowest (3.4%) women imprisonment rate with Comoros, and Guinea Bissau recording 0.3%, while Ghana recorded 0.6% in 2017. Ghana had merely 169 female prisoners in total, a comparatively small number for a country of over 28 million people at the time. By contrast, Canada then had a total of 2,727 female prisoners and a national population of over 35 million.¹⁴ Unlike Nigeria where women incarceration continues to increase because their drug addiction leads them to commit crimes, Ghana's story is different. In Nigeria, one out of every four drug users is a woman¹⁵ and they are more likely to be arrested for cocaine-related crimes than men.¹⁶ Drug use among men in Ghana is higher, with an estimated ratio of 50:1. Under-reporting justifies this wide ratio gap because, among other things, Ghanaians frown on women drug use and stigmatize the users¹⁷ which can explain why women incarceration in Ghana is low. Despite this, it is a call for concern, and to address it, it is important to rely on the following theories: strain, masculinization, opportunity, marginalization, and chivalry to explain why Ghanaian women commit crimes leading to their incarceration. When the cause of criminal acts is known, solutions to reduce crime and recidivism come with ease.

As most African, and Ghanaian researchers draw inspiration from Western and American sociologists, criminologists, psychologists, and anthropologists who have explained why women commit crimes,¹⁸ this section will take the same inspiration.

¹⁴ Roy Walmsley, "World Female Imprisonment List" (2012) 2nd ed, at 1, online (pdf): *ICPS* <www.prisonstudies.org/sites/default/files/resources/downloads/wfil_2nd_edition.pdf>; Roy Walmsley, "World Female Imprisonment List" (2017) 4th ed, at 1-5, online (pdf): *ICPS* <fileserv.idpc.net/library/world_female_prison_4th_edn_v4_web.pdf>.

¹⁵ World Health Organization, "Responding to the challenge of drug use among women in Nigeria" (09 December 2019), online: WHO Africa <www.afro.who.int/news/responding-challenge-drug-use-among-women-nigeria>.

¹⁶ United Nations Office on Drugs and Crime, "Drug Use in Nigeria" (2018) at 43, online (pdf): *UNODC* <www.unodc.org/documents/data-and-analysis/statistics/Drugs/Drug_Use_Survey_Nigeria_2019_BOOK.pdf>.

¹⁷ Bird Lucia, "Domestic Drug Consumption in Ghana: An Under-Reported Phenomenon" (July 2019), at 11-12, online (pdf): *Global Initiative* <globalinitiative.net/wp-content/uploads/2019/07/Ghana-Drug-Report-web.pdf>.

¹⁸ Islam Mohammed J., Banarjee Subrata & Khatun Nurjahan, "Theories of Female Criminality: A criminological analysis" (2014) 7: 1, at 1, online (pdf): *IJCST* <ijcst.journals.yorku.ca/index.php/ijcst/article/viewFile/39737/35977>.

This section also discusses how the introduction of imprisonment in Ghana has adversely affected women offenders, and whether they are given the right punishment or shown any leniency, and if the Department of Social Welfare (or ‘Social Welfare’) does its work accurately for mothers in Ghana’s penitentiaries.

A. What Incites Women to Commit Crimes?

Women criminality is said to be a hidden one¹⁹ or tagged, ‘vanishing females’ as it was eradicated from history and highlighted male crime as if crime is only male phenomena. Until laws changed to recognize female criminality, they were demonized,²⁰ considered as prostitutes, or mentally unstable individuals for offending.²¹ This led to witch-killing mania, a phenomenon which existed in the dark ages of Europe²² that continues to exist in Ghana. On July 23, 2020, A 90-year-old woman was accused of witchcraft and was lynched to death in Ghana.²³ There are ‘witch camps’ where some of these women are kept in the Northern, Upper East, and Upper West regions of the country and have existed for years to date. In recent times, the number of women sent there as a form of banishment is low, yet women’s rights advocates in Ghana wish these camps would be eliminated for good.²⁴ The accusation of witchcraft is often fueled by some traditional priests, Christian pastors, and ‘mallams’ (self-acclaimed Muslim clerics) because they know that about 90% of the population believes in witchcraft. In two matricide cases in Ghana, a fetish priest and

¹⁹ Ibid at 2.

²⁰ Corke Jodie, “Women in Prison: From a critical analysis of female imprisonment, towards a female centered approach to penology” (2019), online (pdf): *University of Hull, CrimSoc* <crimsoc.hull.ac.uk/wp-content/uploads/2020/06/2020_Corke_MACrim_Women_Prison.pdf#:~:text=Women%20in%20Prison%20From%20a%20critical%20analysis%20of,Justice%20and%20Crime%20Control%20September%202019%20Jodie%20Corke>.

²¹ Islam, Banarjee & Khatun, at 1-2.

²² Diaboli Advocatus, “Fifty Years in the Law Business” (New York: Philosophical Library, 1963) 144 at 148, online (pdf): <heinonline-org.proxy3.library.mcgill.ca/HOL/Page?handle=hein.beal/ftyys0001&id=150&collection=beal&index=>.

²³ Duodu Samuel, “Ghana – 90-Year-Old Woman Accused as a “Witch,” & Lynched to Death – Woman Arrested in Video of Lynching” (10 September 2020), online: *Women’s UN Report Network* <wunrn.com/2020/09/ghana-90-year-old-woman-accused-as-a-witch-lynched-to-death-woman-arrested-in-video-of-lynching/>.

²⁴ “Ghana” (2007) 31, 248 at 256-257, online (pdf): *Ann. Hum. Rts. Rep. Submitted to Cong. by U.S. Dep’t St.* <heinonline-org.proxy3.library.mcgill.ca/HOL/Page?collection=intyb&handle=hein.intyb/huhelsnk0031&id=295&men_tab=srchresults>.

a pastor incited the offenders with a prophecy that their mothers had bewitched them and were foiling their progress in life.²⁵

Nowadays, women incarceration keeps increasing which is worrying²⁶ but it is not to say that women are incarcerated more than men. The general concept that men are incarcerated more than women is not debatable, only that, women experience higher strains or unpleasant conditions which lead them to commit both minor²⁷ and major crimes.²⁸ *United States v. Mensah*²⁹ is an example. The offender is a national of Ghana, a developing country, who may be facing hardships so her desire for money inspired her fraudulent behavior. She was a member of an international criminal enterprise and was extradited from Ghana to the United States on 21st August 2020 for prosecution. Her 'enterprise' fraudulently gained over \$10 million from people across the United States through business email and romance scams from 2014 to 2018. Her members were incarcerated in 2019, but she was at large until 16th January 2020.³⁰ Other criminal activities of women include bribery and corruption; forgery; smuggling; looting; children, drugs, and arms trafficking; dacoity; terrorism or militant violence; organized crimes;³¹ and infanticide.³² The following theories give details of why women commit these crimes.

²⁵ Mensah Adinkra, "Matricide in Ghana: Victims, Offenders, and Offense Characteristics" (2018) 62:7, 1925 at 1932 & 1938, online (pdf): *Int. J. Offender Therapy & Comp. Criminol.* <www.researchgate.net/publication/316139872_Matricide_in_Ghana_Victims_Offenders_and_Offense_Characteristics>.

²⁶ Parkes L. Debra, "Women in Prison: Liberty, Equality, and Thinking Outside the Bars" (2016) 12 *JL & Eq'l'y* 1 at 3, online (pdf): <papers.ssrn.com/sol3/papers.cfm?abstract_id=3072726>.

²⁷ Brody Lisa & Agnew Robert, "Gender and Crime: A General Strain Theory Perspective" in Chesney-Lind Meda & Lisa Pasko, eds, *Girls, Women, and Crime: Selected Readings* (California: Sage Publication, 2004) 4 at 4-5, online: *Google Books* <[books.google.ca/books?id=dKmMyFUJHowC&printsec=frontcover&dq=subject:"Female+offenders"&hl=en&sa=X&ved=2ahUKewjIqqrw6bvAhWYFlkFHExxDmoQ6AEwAXoECAgQAg#v=onepage&q&f=false](http://books.google.ca/books?id=dKmMyFUJHowC&printsec=frontcover&dq=subject:)>.

²⁸ Islam, Banarjee & Khatun, at 1.

²⁹ *United States v. Mensah*, (2021) S2 18 Cr. 201 (DLC).

³⁰ United States Attorney's Office, "Acting U.S. Attorney Announces Extradition of Ghanaian National for Multimillion-Dollar Fraud Scheme Involving Business Email Compromises and Romance Scams Targeting Elderly" (26 August 2020), online: *Department of Justice* <www.justice.gov/usao-sdny/pr/acting-us-attorney-announces-extradition-ghanaian-national-multimillion-dollar-fraud>.

³¹ Alrefath Mohammad, "causes and patterns of female criminality; a criminological" at 13, online: *Academia* <www.academia.edu/12185506/causes_and_patterns_of_female_criminality_a_criminological_analysis>.

³² Backhouse Constance B, "Desperate Women and compassionate Court: Infanticide in Nineteenth-Century Canada" (1984) 34:4 at 447, online (pdf): *U of T LJ* <heinonline.org/HOL/Page?public=true&handle=hein.journals/utlj34&div=26&start_page=447&collection=journals&set_as_cur_sor=0&men_tab=srchresults>.

1. Strain and Marginalization Theories

Strain is the “relationships in which others are not treating the individual as he or she would like to be treated,”³³ and his or her response can lead to criminal acts. Crime may be committed if one’s aspiration is not met as the social structures of society can pressurize the person to deviate from the right means to achieve set goals.³⁴ A woman is likely to steal to finance an important social activity or to support the family³⁵ and the accused in the case of *Mensah* is not an exception.³⁶ The psychologist and psychotherapist Anna Motz asserts that women who experienced abuse in the past easily vent their anger on anyone under their care, to annihilate the hated part of themselves or escape their depression and feeling of helplessness.³⁷ For researchers Broidy & Agnew, the root of female crime is oppression. Oppressed females commit crimes as a way of managing the strain they are experiencing.³⁸ When women encounter strains like abusive parents, broken homes, illiteracy, unemployment, and loss of interpersonal relationships, they commit crimes.³⁹ Women are more concerned about establishing and maintaining interpersonal relationships, so they become depressed and commit violent crimes if the relationship ends in conflict and victimization.⁴⁰ A Ghanaian woman poisoned her husband when she was unable to endure continuous beatings and molestation by the husband for 8 years.⁴¹ Again, the vegetative state of a boy traumatized his mother, and she eventually killed him because she could not bear his condition any longer.⁴²

³³ Agnew Robert, “Building on the Foundation of General Strain Theory: Specifying the Types of Strain most likely to Lead to Crime and Delinquency” (2001) 38:4 JRCJ at 319-320, online (pdf): <<https://www.d.umn.edu/~jmaahs/MA%20Theory%20Articles/Agnew%20GST.pdf>>.

³⁴ Merton Robert K., “Social Structure and Anomie” (October 1938) 3: 5 ASR 672-673, online (pdf): ASA <www.jstor.org/stable/2084686>.

³⁵ Broidy & Agnew, at 4-12.

³⁶ United States Attorney’s Office, at para 4.

³⁷ Motz Anna, “The Psychology of Female Violence: Crimes Against the Body” (New York: Routledge, 2008) 2nd ed, 15 at 28-32, online: *Google Books* <books.google.co.uk/books?id=u1N8AgAAQBAJ&pg=PA42&lpg=PA42&dq=he+Psychology+of+Female+Violence&source=bl&ots=mxAhpZsR_Z&sig=lr4UqUPP0KorGLjS8WC1yhr1hNU&hl=en&sa=X&ved=0ahUKewjL1YDIuOPMAhVKIMAKHWZwAugQ6AEIOzAE#v=onepage&q=he%20Psychology%20of%20Female%20Violence&f=false>.

³⁸ Broidy & Agnew, at 11.

³⁹ Anku Deladem Ama, at 8.

⁴⁰ Broidy & Agnew, at 5-6 & 14.

⁴¹ Amnesty International, “Ghana: ‘Prisoners are bottom of the pile’: The human rights of inmates in Ghana” (2012), at 35, online (pdf): *Amnesty Int’l* <www.amnesty.org/en/documents/AFR28/002/2012/en/>.

⁴² R v Inglis [2011] 1 WLR 1110.

Hirschi's Social Bond Theory describes women criminality as a lack of social bonds. Women who experience poor parental management in their early lives, have self-control deficits and engage in crime when the opportunity presents itself.⁴³ In Ghana, some of these women are easily lured into drug trafficking, with the hope of enriching themselves overnight, and such was the case in *Gabriel Joanne*. This involved two students and a fire officer who attempted to export heroin from Ghana to the United States illegally but were apprehended at the Kotoka International Airport, Ghana.⁴⁴ It is social control that reduces the tendency to commit crime as everyone has the drive to be selfish and aggressive which leads to criminal acts.⁴⁵ Attachment has a psychological affection, so its impairment affects the child. Such children have no affection towards their parents, institution, or anyone else and will not be embarrassed or care if a relationship goes sour after committing a crime.⁴⁶ Do matricide or patricide offenders lack attachment too? Behaviors like this may be associated with mental illness. When a lady killed her mother because she could not bear the mother's accusation of immoral acts, the court arranged a psychiatric evaluation for her, and the result showed that she was mentally unstable.⁴⁷ For Hirschi, the 'idle hands are the devil's workshop,' therefore those engaged in prosocial activities are less likely to commit crimes. Also, people's adherence to a particular belief system prevents them from acting against the values of the faith they adhere to,⁴⁸ but this cannot be entirely true. In Ghana, most people follow one religion or the other and none of the religions endorses corrupt practices which are still high (43 points),⁴⁹ and impeding progress in the country.

According to Chesney-Lind, the socialization process of women in a capitalist social structure marginalized their position as they receive unsecured and less

⁴³ Anku Deladem Ama, at 16.

⁴⁴ *Gabriel Joanne vs The Republic*, 2011 SC [2011] 3 SCGLR 2.

⁴⁵ "Key Idea: Hirschi's Social Bond/Social Control Theory," at 57-58, online (pdf): *Sage Pub* <https://www.sagepub.com/sites/default/files/upm-binaries/36812_5.pdf>.

⁴⁶ Hirschi Travis, "Causes of delinquency" (California: University of California Press, 1969) at 84, online (pdf): *Google Books* <books.google.ca/books?id=53MNtMqy0fIC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false>.

⁴⁷ Mensah Adinkra, at 1938-1939.

⁴⁸ "Key Idea: Hirschi's Social Bond/Social Control Theory," at 58-59.

⁴⁹ "Ghana Corruption Index," online: <[16](http://tradingeconomics.com/ghana/corruption-index#:~:text=Corruption%20Index%20in%20Ghana%20is%20expected%20to%20reach,Points%20in%202021%2C%20according%20to%20our%20econometric%20models.>>.</p>
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honorable jobs and salaries. Women's participation in the labor market does not imply equality or improvement in their economic situation. That is why their response to this marginalization may produce crime. Opponents to this theory claim that it could not explain the increase in white-collar and corporate crimes among upper-class women.⁵⁰

2. Masculinity and Opportunity Theories

Freda Adler contended that 'masculinization processes of women' in the 1970s accounted for the increased female criminal activities. Women who behave like men are empowered and involved in serious violent crimes more than non-empowered females. The theory is male-centered and cannot explain why females in Third World countries engage in crime.⁵¹ An economist Nadia Campaniello added that females' participation in the labor and crime market has increased because of technological progress and changes in social norms. Women now work outside the home to bridge the socio-economic disparity between males and females, contributing to their criminal acts.⁵² Those outside the paid labor force too, are involved in loan or credit card fraud and claim government benefit when they are not legally entitled to it.⁵³ In Ghana, unemployed women commit more crimes⁵⁴ or assist men to commit various kinds of crimes including child-stealing,⁵⁵ which the Domestic Violence and Victims' Support Unit's 2011 report reveals its rise.⁵⁶ To Rita J. Simon, when women get the same opportunities as men in the job market and rise to specialized positions, or if their efficiency, social communication, and opportunities increased, they engage in white-collar and employment-related crimes. Volatile marital issues that motivate women's criminal acts can be solved through skilled training and education that promote legal,

⁵⁰ Islam, Banarjee & Khatun, at 5-7.

⁵¹ Ibid at 3-5.

⁵² Campaniello Nadia, "Women in Crime" (November 2014) at 1-4, online (pdf): *IZA World of Labor* <wol.iza.org/uploads/articles/105/pdfs/women-in-crime.pdf>.

⁵³ Islam, Banarjee & Khatun, at 5-6.

⁵⁴ Sarpong A. A. et al., at 183.

⁵⁵ Wrigley-Asante Charlotte, "Gendered perception of crime and safety: Insights from different socio-economic urban neighborhoods in Ghana" (2016) 8: 1, 103 at 112, online (pdf): *Gh J of Geography* <www.ajol.info/index.php/gjg/article/view/138521>.

⁵⁶ "Child stealing on the rise in Accra" (21 June 2011), online: *Myjoyonline* <<https://www.myjoyonline.com/child-stealing-on-the-rise-in-accra/>>.

economical, physical, and emotional liberation.⁵⁷ Thus, programs geared towards financial and emotional empowerment circumvent recidivism and crimes among women.⁵⁸

Nonetheless, the Chivalry theorists insisted that it is leniency shown towards women that incite their offence. Chivalry is “an honorable and polite way of behaving especially toward women.”⁵⁹ The criminal justice system is lenient towards women offenders which becomes a sort of incentive and makes them susceptible to committing crimes more than men, although their crimes are considered less harmful per economic standards. Adversaries consider this theory a myth and not practical.⁶⁰ Is the criminal justice system lenient to women offenders? What accounts for the increasing numbers of incarcerated females as shown above? Leniency cannot explain women’s criminality completely. That notwithstanding, the justice system may be lenient towards women because of their primary responsibilities and special position they occupy in the family like procreation, childcare, and maintenance of the home.⁶¹ During incarceration, the children are separated from the mothers, and this is always unbearable and accounts for why incarcerated women with mental disorders is higher than incarcerated men. They go through a lot of challenges like sexual abuse, drug addiction, and a substantial risk of acquiring infectious diseases that are expensive to treat in prisons.⁶²

Undoubtedly, the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)⁶³ were adopted for courts to be lenient towards female offenders because of their children. The hidden victims of a mother’s incarceration are the children, but the courts barely acknowledge their plight.⁶⁴ They go through a host of problems including juvenile delinquency.⁶⁵ Article

⁵⁷ Islam, Banarjee & Khatun, at 6.

⁵⁸ Adler Freda, “Sisters in Crime: The Rise of the New Female Criminal” (New York: McGraw Hill, 1975) at 188, online: *HathiTrust ETAS* <<https://babel.hathitrust.org/cgi/pt?id=mdp.39015058018097&view=1up&seq=20>>.

⁵⁹ Merriam Webster’s Dictionaries, “Chivalry,” online: <www.merriam-webster.com/dictionary/chivalry>.

⁶⁰ Islam, Banarjee & Khatun, at 7.

⁶¹ Anku Deladem Ama, at 13-14.

⁶² Mallicoat L. Stacy, at 464-465.

⁶³ The UN Economic and Social Council, “UN Economic and Social Council Resolution 2010/16: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)” (22 July 2010), online: *UN Economic and Social Council (ECOSOC)* <www.refworld.org/docid/4d92e5392.html>.

⁶⁴ Martin Eric, “Hidden Consequences: The Impact of Incarceration on Dependent Children” (2017) 278, at 1, online: *NIJ* <www.ojp.gov/pdffiles1/nij/250349.pdf>.

⁶⁵ Park & Alison, at para 7-17.

3 of the UN Convention on the Rights of the Child 1989 and Article 19 of the African Charter on the Rights and Welfare of the Child require those in authority to act in the best interest of the child. Everyone is responsible for ensuring that the physical, psychological, spiritual, moral integrity, and human dignity of the child are preserved. In General Comment No. 14 of the Convention on the Rights of the Child, the best interest of the child must cover the following three concepts: one, a substantive right where the child's interest will be given the principal consideration when other interests are involved; two, a fundamental, interpretative legal principle. By this, the interpretation to reach the best interest of the child must override any other interpretation opened for a legal provision. Lastly, three, a rule of procedure. This means that in making decisions that affect children one must evaluate the positive or negative impact it will have on them.⁶⁶

The Bangkok Rule 2(2) provides that females with childcare responsibilities should not be detained during the trial. Section 313(A) of Ghana's Criminal Procedure Code 1960 (Act 30) demands that the sentence of a pregnant female must be suspended until an appropriate time. Similarly, Article 27(1) of Ghana's 1992 Constitution states, "special care shall be accorded to mothers during a reasonable period before and after childbirth." Are these provisions implemented in Ghana? Ibrahim Kwarteng, Chief Executive Officer of Crime Check Foundation in Ghana reveals that there are several pregnant women in Ghana's prisons indicating that the courts do not adhere to the provisions in the Constitution and Act 30. He referred to several pictures and videos on the Foundation's website (<https://crimecheckfoundation.org/>), showing his interaction with some of these pregnant inmates. He occasionally helps them financially with antenatal and postnatal care in the hospitals outside the prisons. He doubts if the CSO bill will be given any attention. His institution continues to lobby for the passage of this bill as an alternative to imprisonment for women offenders in Ghana.⁶⁷

⁶⁶ Committee on the Rights of the Children, "General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)," (2013) at 4, online: *OHCHR* <https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf>.

⁶⁷ See informative Interview with Kwarteng O. Ibrahim.

B. Should Female Offenders be Punished?

One of the opponents of retributivism, Gertrude Ezorsky, imagines “a world in which punishing criminals has no further effects worth achieving and that punishment does not deter or rehabilitate.”⁶⁸ Thus, the penal systems are powerless in controlling crimes.⁶⁹ Is it because the response to misconduct is too harsh?⁷⁰ Or it is just not working. This paper does not contend punishment of female wrongdoers, its concerns are how and what the punishment entails including the indirect effect it has on their children and families. Ghana’s principles of punishment in antiquity were akin to Hammurabi and Justinian codes, which punished offenders under inhumane conditions including death, amputation, and banishment.⁷¹ The concept of punishment has evolved, and modern societies have incorporated community service order (CSO), forfeiture of property, restitution of victims,⁷² probation, conditional discharge, and caution to the criminal justice system.⁷³ Ghana seems to be wallowing in the past because it lacks some of these innovative forms of punishment.⁷⁴

Additionally, Ghana subscribes to utilitarian and retributive philosophies of punishment as community well-being is prioritized.⁷⁵ These concepts aim at punishing to protect human rights, private property, the democratic process, and the constitutions of the modern state.⁷⁶ Are these aims achieved? The subsequent subsections, therefore, discuss the theories of punishment, punishment systems in Ghana (Gold Coast) before the introduction of imprisonment by the British; and the challenges of the Department of Social Welfare that hinder their duty to respond swiftly and appropriately to the incarcerated mothers and their babies.

⁶⁸ Murtagh Kevin, “Punishment,” *online: IEP* <iep.utm.edu/punishme/>.

⁶⁹ Lombroso Cesare, Guglielmo Ferrero & Morrison William Douglas, “The female offender” (New York: D. Appleton, 1895) at v, *online: Internet Archive* <archive.org/details/femaleoffender00lomb/page/n9/mode/2up>.

⁷⁰ Farlex, “Punishment” *online: The Free Dictionary* <legal-dictionary.thefreedictionary.com/Theories+of+Punishment>.

⁷¹ Burgess Ann Wolbert, Regehr Cheryl & Roberts Albert R., “Victimology: Theories and Applications” (Massachusetts: Jones and Bartlett Publishers, 2010) at 103 & 105.

⁷² Farlex, at para 2.

⁷³ Husak Douglas N., “Kinds of Punishment” (2017) at 1, *online (pdf):* <ssrn.com/abstract=2979458>.

⁷⁴ See informative Interview with Kwarteng O. Ibrahim.

⁷⁵ Seidman Robert B., “The Ghana Prison System: An Historical Perspective” (1966) 3:2, 89 at 90, *online (pdf): U Ghana LJ* <heinonline.org/HOL/Page?handle=hein.journals/unghan3&id=99&collection=journals&index=>.

⁷⁶ Murtagh Kevin, at para 1.

1. Utilitarian and Retributive Theories of Punishment

In the respective analysis of proponents of utilitarianism, Jeremy Bentham, and John Stuart Mill, good is pleasure or happiness while evil is pain or unhappiness experienced by the largest number of people in society.⁷⁷ Punishment is justifiable as the key concepts of deterrence, incapacitation, and rehabilitation are achieved to bring happiness to both society and the offender. Indeed, it is right to isolate a person if that will prevent him/her from offending and deter others as well. Where necessary, offenders must be given medical, mental, or psychological treatment, and educational programs for better assimilation into the job market.⁷⁸ Disabled inmates in Ghana's prisons confirmed that they are provided with vocational skills and an opportunity to upgrade their knowledge.⁷⁹ H. J. McCloskey discredits the concept of utilitarianism because it agrees to punish an innocent individual if that will bring general happiness to society. For him, retributivism or distributivism is apt because useful punishment is critical and not punishments to satisfy societal anger. His main idea is inherent in "equals should be treated equally and unequals unequally."⁸⁰ Immanuel Kant subscribes to *lex talionis* as punishment to create balance on the scale of justice. The critique is that this notion cannot be applied to all offenses including a childless kidnapper. They questioned if the rapist can be raped. Contemporary retributivists proposed the proportionality principle because there should be variations in punishment.⁸¹

In H.L.A. Hart's view, punishment must be varied because different issues like the justification of punishment as in utilitarianism and who to punish as in retributivism must be taken into consideration. He endorses insanity pleas and suggests that a person should only be responsible for an offence if s/he understands the action taken and is able to reason and control his/her conduct before arriving at that decision.⁸² For this

⁷⁷ Ibid at para 1.

⁷⁸ Farlex, at para 12-16.

⁷⁹ Dogbe Joslin et al., "Assessment of prison life of persons with disability in Ghana" (2016) 16, at 5, online (pdf): *BMC Int'l Health & Hum. Rt.* <bmcinthealthhumrights.biomedcentral.com/track/pdf/10.1186/s12914-016-0094-y.pdf>.

⁸⁰ McCloskey H. J. (1965), "A non-utilitarian approach to punishment" (29 August 2008) 8: 1-4, 249 at 249-260, online: *Routledge* <www.tandfonline.com/doi/pdf/10.1080/00201746508601433?needAccess=true>.

⁸¹ Murtagh Kevin, at para 10 & 25-26.

⁸² Ibid at para 17-20.

reason, young children do not have ‘capacity responsibility.’ He criticized the ruling in *M’Naughten* because it failed to address those with mental or psychological problems that prevent them from controlling their behavior and eventually committing crimes.⁸³ In *M’Naughten* the insanity plea will suffice only under three conditions:

- i. the accused labored under a defect of reason; ii. caused by a disease of the mind; iii. so that either he did not know the nature and quality of his acts, or that he did not know what he was doing was wrong.⁸⁴

Hart’s rivals claim that sane adults can also break the law without guilt since the fact of a crime may be known but it may be tricky to know if the person has ‘capacity responsibility’ to act differently.⁸⁵

2. Introduction of Imprisonment in Ghana

i. Punishment before Colonial Rule

Before colonial rule, the different ethnic groups in Ghana had their own punishment systems. In the Northern part, murder was a sin against the Earth and the Ancestors. Bows and arrows were sacred objects that must not be stolen. Among the Ashanti tribe, murder, sexual offences, offending a chief, cowardice in war, and witchcraft were heinous crimes that break the ties between the society and the tribal gods. In both tribes, offenders were obliged to make sacrifices or are killed to appease the gods, meaning that the goal was not reformation of perpetrators. Less serious offences attracted compensation of gold dust to the victim or a sacrifice of a fowl. Stealing was rare, as the Fante tribe instituted a utilitarian approach. If a person stole food out of hunger, he went free.⁸⁶

The Ewe tribe’s ‘Trokosi’ system was more inhumane. Any aggravated offence was a sin against the gods, and the offender was killed or instead, gave out his prepubescent girl to the priest. She served as a slave and sexual partner to the priest, while he

⁸³ Summers Robert S., “Reviewed Work(s): Punishment and Responsibility by H. L. A. Hart” (1969), 19:4, 642 at 644 & 650, online (pdf): *UTLJ* <www.jstor.org/stable/824999>.

⁸⁴ *R v M’Naughten* (1843) 8 E.R. 10 Cl. & F. 200.

⁸⁵ Summers Robert S., at 645-647.

⁸⁶ Seidman Robert B., 89 at 90.

restricted her movements. This kind of punishment does not seem to be abolished to date because, in 1998, Parliament of Ghana passed a law to abolish it when over 3500 young girls were reported to be serving under ‘Trokosi.’⁸⁷ Whether the perpetrators obeyed this ruling, calls for an in-depth investigation into it. It also boils down to the main idea of this current research, ‘bridging the gap between laws and implementation: a case study of female prisons in Ghana.’ We are quick to adopt the laws, but structures to implement them become a big issue, as there is always a disconnect between the laws and implementation in Ghana, no matter the thoroughness of the laws.⁸⁸

ii. Prisons System During and After Colonial Rule

As earlier indicated, although some of the pre-colonial punishments were inhumane, offenders were not imprisoned. Instead, they served their punishment from home while caring for their families—in contrast to the colonial legacy of imprisonment to date in Ghana.⁸⁹ Governor George Maclean began the prison system in Ghana with 91 debtors incarcerated in 1841. Later, he officially instituted prison cells in four forts:⁹⁰ James Fort (1662), Cape Coast Castle (1664), Winneba Castle (1694), and Fort William/Anomabu (1753),⁹¹ which housed 129 inmates. This was the leadup to the adoption of the Prisons Ordinance 1860 as a guide to the provision of safekeeping measures for inmates. To conform to the prison system in England, in 1863, the prison operated on three pillars: the separate system, penal labor, and minimum diet.⁹² Presently, England has other kinds of punishment including CSO,⁹³ whereas Ghana

⁸⁷ Greene Sandra E., “Modern “Trokosi” and the 1807 Abolition in Ghana: Connecting Past and Present” (2009) 66:4, at 959-960, online (pdf): www.jstor.org/proxy3.library.mcgill.ca/stable/pdf/40467549.pdf?ab_segments=0%252Fbasic_search_gsv2%252Fcontrol&refreqid=excelsior%3A9448164061c17745b76740737ecd500c.

⁸⁸ Ministry of Gender, Children and Social Protection, “Child and Family Welfare Policy” (November 2014) at 3, online (pdf): bettercarenetwork.org/sites/default/files/Child%20and%20Family%20Welfare%20Policy%20-%20Ghana.pdf.

⁸⁹ Akoensi D. Thomas, “Governance through power sharing in Ghanaian prisons: a symbiotic relationship between officers and inmates” in Jefferson M Andrew & Martin Max Tomas, eds, *Everyday Prison Governance in Africa*, (2014) 212, at 33, online (pdf): rucforsk.ruc.dk/ws/files/49437431/PSJ_212_March_2014.pdf.

⁹⁰ Seidman Robert B., at 91.

⁹¹ Salifu Ambrose Imoru, “The Beginning of Ghana Prisons Service” (1980), at 2-3, online (pdf): www.ghanaprison.gov.gh/pdf/THE%20BEGINNING%20OF%20GHANA%20PRISONS%20SERVICE.pdf.

⁹² Seidman Robert B., at 93-96.

⁹³ Parliamentary Office of Science and Technology, “Alternatives to Custodial Sentencing” (2008) 308, at 1-4, online (pdf): www.parliament.uk/globalassets/documents/post/postpn308.pdf.

continues to operate on these pillars. Theoretically, they have been improved in the current prison Act,⁹⁴ but practically they are in their worse forms.⁹⁵

The prisons were placed under the ‘Gilbert and Sullivan term,’ but its deplorable state, coupled with the lackadaisical attitude of the warders (resulting in the abscondment of about 34 inmates), forced the government to place it under the police department in 1902. When the prison facilities, inmates, and staff began to upsurge, the police and the prison departments were separated, and a Director-General was appointed to supervise the prisons. By 1948 the prisons across the country had increased to 29 with an inmate population of 3,000, necessitating an autonomous body. It was renamed Ghana Prisons Service in January 1964⁹⁶ with the following core functions and mandates: safe custody, welfare, reformation, and rehabilitation of inmates.⁹⁷ Whether these mandates and values are executed to the core is subject to further discussion as the research unfolds. Currently, the number of prisons in Ghana is 43 out of which 7 are female. The authorized capacity is 9,945 but the total population as of June 2021 is 13200. The total population of females is 188,⁹⁸ including four pregnant women and a nursing mother.⁹⁹ As the initial intent for prisons was for males only; presently females have been added to the same facility while no significant expansion has been made to suit them,¹⁰⁰ increasing their suffering more than the men.¹⁰¹ The appalling state of prisons in Ghana calls for human and financial resources to revamp them.¹⁰²

⁹⁴ See the NRC 46, Sections 32, 35(1)(a), 37, and 42(4).

⁹⁵ Fatoki Yewande, “Stains of Human Rights Abuse: A Look into the Correctional Service System in Nigeria and Ghana” (2021) 2:1, 34 at 43, online (pdf): *Carnelian JL & Pol* <heinonline-org.proxy3.library.mcgill.ca/HOL/Page?public=true&handle=hein.journals/cjlp2&div=6&start_page=[iii]&collection=journals&set_as_cursor=1&men_tab=srchresults>.

⁹⁶ Salifu Ambrose Imoru, at 1-4.

⁹⁷ Ghana Prisons Service, “Ten – Year Strategic Development Plan 2015 – 2025” (2015), at 4, online (pdf): <www.scribd.com/doc/291242021/Ghana-Prisons-Service-Ten-Year-Strategic-Development-Plan>.

⁹⁸ Institute of Crime & Justice Policy Research, “World Prison Brief Data: Ghana,” online: <www.prisonstudies.org/country/ghana>.

⁹⁹ See informative Interview with Kwarteng O. Ibrahim.

¹⁰⁰ Sarpong A. A. et al, at 180.

¹⁰¹ Zedner Lucia, “Wayward Sisters: The Prison for Women” in Morris Norval & Rothman J. David, eds, *The Oxford History of the Prisons: The Practice of Punishment in Western Society* (New York: Oxford University Press, 1995) at 296-297.

¹⁰² Ghana Prisons Service, “Ten-Year Strategic Development Plan 2015 – 2025,” at 8-9.

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

When the father is incarcerated, obviously the mother is in control, but incarceration of a mother often incites a question like ‘who takes care of the children?’ Men are unable to cope with childcare responsibilities when the woman stays in prison for more than four years.¹⁰³ Mothers’ incarceration has negative effects on children’s adjustment, leading to their hostility towards their caregivers. They are likely to engage in social vices¹⁰⁴ which can send them to prison in their adult lives.¹⁰⁵ The women also think that the biggest punishment during incarceration is separation from their children. One female inmate bemoaned, “I can do time alone OK. But it’s not knowing what’s happening to my son that hurts most [sic].”¹⁰⁶ Another one said, “I just don’t want to be here. I want to go home. My child is my problem. I want to go home [sic].”¹⁰⁷ Article 9 of the UN Convention on the Rights of the Child provides that children must not be separated from their parents. Does it also mean innocent children should be in prison with their mothers? Surely not. But they are found there, which violates their rights.¹⁰⁸ In Ghana, only Nsawam Women Central prison operates mother and baby unit to keep the mother-child bond after birth, but the food and medical care of the babies are not covered by the prison service because they are not considered inmates. The mothers rely on families and/or donors to be able to care for the babies.¹⁰⁹ This is why CSO as an alternative to incarceration, especially for women is crucial. The mother will have the opportunity to properly care for the baby as she continues to serve her punishment.

In Bowlby’s attachment theory, children are programmed to survive on the attachment they form with their primary caregiver after birth. And there is no doubt that mothers as primary caretakers provide this essential attachment.¹¹⁰ Ghanaians

¹⁰³ Teiko Akodi D. Precious, at 3.

¹⁰⁴ McLeod Saul, “Bowlby’s Attachment Theory” (5 February 2017), online: *Simply Psychology* <www.simplypsychology.org/bowlby.html>.

¹⁰⁵ Mallicoat L. Stacy, at 465-466.

¹⁰⁶ Parke & Alison, at para 1.

¹⁰⁷ Amnesty International, “Ghana: ‘Prisoners are bottom of the pile,’” at 6.

¹⁰⁸ Appiahene-Gyamfi Joseph, at 114.

¹⁰⁹ Amnesty International, “Ghana: ‘Prisoners are bottom of the pile,’” at 25-26.

¹¹⁰ McLeod Saul, at para 1 & 14.

believe that girls' maturity, knowledge in menstruation, marriage, and sexuality depends on the mother, therefore they need the mother's guidance in their early years of life.¹¹¹ As CSO is not part of Ghana's criminal justice system, one would ask how the children are cared for after the mother's incarceration. A woman who delivers in the prison weans the baby after two years and the Social Welfare separates the children and places them under institutional (orphanage homes) or foster care if no reliable family member is identified. The women dislike this moment and complain that the separation is done when it is not due.¹¹² But which one is preferable, maternal, or institutional care? Certainly, maternal, or parental care is superior to orphanage homes.¹¹³ In most cases, the children who are left under the care of their families become more vulnerable as they face maltreatment, low or no supervision, neglect, discrimination, deprivation, and exploitation. The adolescent girl among the neglected children automatically becomes the mother to care for her younger siblings. She may be involved in social vices to fend for herself and her siblings. Irresponsible men take advantage of her and impregnate her, increasing the impoverishment in which she and her siblings already find themselves.¹¹⁴

Programs in the orphanages are also unreliable as it creates adjustment problems for the children during family reunion. The children who profess faiths other than the one found in the institutional homes are unable to practice their faith. For this reason, the Social Welfare adopted the foster care system in 2019 to gradually fade out the orphanages. By this, they can place the children under caregivers with similar ethnic or religious beliefs, fulfilling the provisions under Article 25 (3) of the African Charter on the Rights and Welfare of the Child. As of 2020, fifty (50) voluntary foster parents have been trained, issued licenses, and are monitored as they care for the children. Their eligibility depends on their health, security, and employment statuses. They are

¹¹¹ Teiko Akodi D. Precious, at viii.

¹¹² Méndez Juan E., "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Addendum: Mission to Ghana" (5 March 2014), at 13, online: *UN Hum. Rts. Council* <www.refworld.org/publisher,UNHRC,MISSION,GHA,531f11244,0.html>.

¹¹³ Informative interview with Isaac Jackson Acquaye, Program Head for Justice Administration & Opong Patrick, Program Head for Community Care at the Regional Office of Social Welfare, (28 January 2021; 12:00 to 14:00, Ghana time); Emma Larbi, Ag. Head of Department for Social Welfare and Community Development at the New Juaben District office of the Social Welfare, (29 January 2021; 8:31am to 9:12am, Ghana time).

¹¹⁴ Teiko Akodi D. Precious, at 2-12.

just caretakers and cannot adopt them because children of incarcerated women are not adopted in Ghana. Since they are not paid for this responsibility, the Social Welfare pays the medical bills of the children.¹¹⁵ Unlike the United States' Adoption and Safe Families Act (1997) which denies a mother's custody of her child if she spends over fifteen months in prison,¹¹⁶ the arrangement for Ghanaian women offenders is better because the women get custody of their children no matter the number of months they spend in prisons. If after prison she wants the children to continue to stay in the institution because of financial constraints, she is allowed and can come for them at any time.¹¹⁷

Officials from Social Welfare confessed that their outfit is faced with enormous constraints, impeding their progress. They enumerated several laws like Foster Care Regulation (2007), Domestic Violence Act (2007), Persons with Disability Act 2006 (Act 715), and Human Trafficking Act (2005), that Ghana has adopted to protect vulnerable groups, but these children continue to suffer. For them, enforcement is not encouraging for a lack of human and financial resources. Their budget is so insignificant that the office is not able to play its supervisory role effectively to ensure the protection of these vulnerable children. The 'prison after care agents' are liaisons between the incarcerated mothers and the children, but financial constraint cripples them from planning for the children to visit their mothers in prison. They also organize counselling for older or younger children after their mothers' incarceration. This activity is ineffective for lack of funds. The Regional and District offices have only one car for supervision, which is woefully inadequate. There are neither computers nor accessories to keep data and track their activities, no incentive to work, poor salaries, and no allowance for those who work on weekends.¹¹⁸

¹¹⁵ See informative interview with Isaac Jackson Acquaye, & Opong Patrick; and Emma Larbi.

¹¹⁶ Child Welfare League of America, "Summary of The Adoption and Safe Families Act of 1997," online: *Adoption.com* <adoption.com/atollo/articles/summary-adoption-and-safe-families-act-of-1997/>.

¹¹⁷ See informative interview with Isaac Jackson Acquaye, & Opong Patrick; and Emma Larbi.

¹¹⁸ *Ibid.*

II. GAUGING THE EFFECTIVENESS OF IMPRISONMENT

In an effort to call on the government of Ghana to institute and implement non-custodial sentences like the community service order (CSO) for women offenders, it is crucial to determine if imprisonment has been successful or failed since its inception. This Section will also discuss the following: the laws governing imprisonment in Ghana; standards of prison laws in Africa and beyond; and regional and international human rights laws adopted to bring dignity to inmates. These laws are not implemented as required in Ghana, leading to infringement of rights of the inmates and that is why it is vital to consider standards from best prison practices from elsewhere, so Ghana can learn from them.

A. *Imprisonment*

Imprisonment is the imposition of involuntary physical confinement to restrict an offender's freedom of movement.¹¹⁹ In Ghana, the aim of incarceration is deterrence, protection of the public, rehabilitation, reformation, resocialization,¹²⁰ and reduce recidivism. Rule 4 of the Mandela Rules provides that the time spent in prisons must be geared towards programs that will allow reintegration, law-abiding and self-supporting lives after prison.¹²¹ Has imprisonment been successful in fulfilling these purposes? To Cesare Beccaria, imprisonment deprives offenders' freedom for a certain duration and that will stick in their minds and effect change or serve as deterrence.¹²² Jeremy Bentham believed in imprisonment but alluded that his prison concept, *panopticon*, a Greek word for "all seeing" would have been the ideal model. It was

¹¹⁹ Peter M. Edward, "Prison Before the Prison" in Morris Norval & Rothman J. David, eds, *The Oxford History of the Prisons: The Practice of Punishment in Western Society* (New York: Oxford University Press, 1995) at 3.

¹²⁰ Appiahene-Gyamfi Joseph, at 6.

¹²¹ Penal Reform International, "The Rehabilitation and Social Reintegration of Women Prisoners: Implementation of the Bangkok Rules" (2019) at 2, online (pdf): *PRI* <cdn.penalreform.org/wp-content/uploads/2019/05/PRI_Rehabilitation-of-women-prisoners_WEB.pdf>.

¹²² Thorsten Sellin, "A Look at Prison History" (1967) 31:3, 18 at 19-20 & 23, online (pdf): *Fed Probation* <heinonline-org.proxy3.library.mcgill.ca/HOL/Page?collection=journals&handle=hein.journals/fedpro31&id=202&men_tab=srchresults>.

designed to save resources and enhance inmates' conformity to authority because they will feel that they are under constant surveillance when they are not. Bentham's contenders attributed his concept to exploitation of the poor while the rich continue to dominate the community.¹²³ This recalls a metaphorical statement by a human rights activist in Ghana, "the net of Ghana prisons only catches the small fish and not the big ones."¹²⁴ For some scholars, the criminal justice system, penal laws, punishment, and incarceration must be obliterated completely, because imprisonment is repressive, and deterrence has never been achieved, leading to overcrowding. The administration of justice is "too costly, too painful, too destructive, too inefficient, too slow, and too complex for a truly civilized people."¹²⁵

The penal policies and strategies to achieve the purpose of incarceration are inadequate, dysfunctional, and have failed to reduce crime. The re-socialization program for instance is inappropriately done and it fails to bring out the qualities the inmates need to become good citizens after prison. Again, the public and all actors in the criminal justice system are confused about their unique roles to achieve deterrence and reduce recidivism in Ghana.¹²⁶ In Ofori-Dua et al.'s research, 34% of Ghanaian inmates were recidivists, making them conclude that incarceration is not serving its purpose. This led to overcrowding and increased the death toll from 72 in 2010 to 82 in 2011. They suggested that alternative punishment including CSO must be considered in Ghana.¹²⁷ Female inmates lack access to good healthcare, sanitary condition, and basic amenities leading to spread of infectious diseases¹²⁸ still, it is uncommon to record overcrowding in their facility. This happened in 2011 when the Kumasi female prison accommodated 47 instead of 30 inmates. Their condition puts

¹²³ White Malcolm, "Bentham and the Panopticon: Totalitarian or Utilitarian" (1995) at 67 & 75, online (pdf): *UCL Jurisprudence Rev* <http://heinonline.org/HOL/Page?public=true&handle=hein.journals/ucljurev2&div=10&start_page=67&collection=journals&set_as_cursor=1&men_tab=srchresults>.

¹²⁴ See informative Interview with Kwarteng O. Ibrahim.

¹²⁵ Appiahene-Gyamfi Joseph, at 1.

¹²⁶ *Ibid* at 5-6 & 171.

¹²⁷ Ofori-Dua Kwadwo et al., "Prison without Walls: Perception about Community Service as an Alternative to Imprisonment in Kumasi Metropolis, Ashanti Region, Ghana" (2015) 3:6, 130 at 131 & 137, online (pdf): *Int'l J Soc Sci Stud* <www.researchgate.net/publication/283236491_Prison_without_Walls_Perception_about_Community_Service_as_an_Alternative_to_Imprisonment_in_Kumasi_Metropolis_Ashanti_Region_Ghana>.

¹²⁸ Sarpong A. A. et al., at 179.

them at higher risk of acquiring HIV/AIDS due to the sharing of sharp objects like razors and needles, injecting drug users, tattooing, unprotected sex, and “blood covenant (cutting their fingers and pressing the bleeding fingers together to seal a promise)”¹²⁹ in Ghana’s prisons. Rehabilitation must be the ultimate goal because the effect incarceration has on third parties calls for governments to focus on investing highly in economic and community development.¹³⁰ Likewise, an excerpt from the Kampala Declaration on prison conditions in Africa states: “imprisonment does not serve the interests of justice, nor does it protect the public, nor is it a good use of scarce public resources.”¹³¹

B. Human Right Laws, Policies, and other Laws Governing the Prisons in Ghana

The laws governing Ghana prisons include but are not limited to the 1992 Constitution of the Republic of Ghana, Prisons Service Decree 1972 (NRCD 46), Prisons Standing Orders (1960), Prisons Regulation L.I 412/58, Prisons (Declaration of Prisons) Instrument 1971, Prisons Service (Staff Discipline) Regulations 2016, and Prisons Service (General Administration) Regulations 2016. Other laws and policies adopted to shape and give a facelift to the rights of the Ghanaian and the prison system in Ghana include the Commission on Human Rights and Administrative Justice Act 1993 (Act 456), Criminal Code of Ghana 1960 (Act 29), Criminal Procedure Code 1960 (Act 30), Juvenile Justice Act 2003 (Act 653), Alternative Dispute Resolution 2010 (Act 798), Child and Family Welfare Policy (214), The Children’s Act 1998 (Act 560), and the Legal Aid Scheme Act, 1997 (Act 542).

¹²⁹ Amnesty International, “Ghana: ‘Prisoners are bottom of the pile,’” at 22 & 30.

¹³⁰ Pritikin Martin H., “Is Prisons Increasing Crime” (2008) 2008:6, 1055-1058 & 1106-1108, online (pdf): *Wis L Rev* <heinonline-

org.proxy3.library.mcgill.ca/HOL/Page?collection=journals&handle=hein.journals/wlr2008&id=1063&men_tab=srchresults>.

¹³¹ “The Kampala Declaration” (1996), at 4, online (pdf): <cdn.penalreform.org/wp-content/uploads/2013/06/rep-1996-kampala-declaration-en.pdf>.

1. What the Laws Entail in Brief

Chapter 16 (Articles 205-209) of the 1992 Constitution of Ghana provides the blueprint for all the other laws and policies governing the prison service in Ghana. Article 208(2) states, “The Prisons Service Council may, with the prior approval of the President, by constitutional instrument, make regulations for the performance of its functions under this Constitution or any other law and for the effective and efficient administration of prisons and the Prisons Service.” To ensure safe custody, Articles 15(2) and 208(3) prohibit any form of torture or ill-treatment of citizens or offenders and encourage inmates to lodge a complaint about any cruel and inhumane treatment meted out to them. Chapter 5 (Articles 12-33) extensively enumerates all the rights conferred on the populace. To ensure the realization of these rights and avoid breaches, Chapter 18 (Articles 216-230) provides the creation of the Commission on Human Rights and Administrative Justice (CHRAJ), whose duty is to investigate all complaints about human rights abuses in the country. After investigation, it can go to court for redress or where necessary, calls parties for negotiations and appropriate reparations to be made (Article 218). The subsequent subsections discuss some of the provisions in the laws and whether they are enforced aptly.

i. Prison Service Decree (NRCD 46) and Standing Orders

Basically, all the laws specify the structures, functions, benefits, and disciplinary measures for the prison service, the staff, and the inmates’ well-being. Sections 1 & 2 of the NRCD 46 instruct the prison authority to prioritize inmates’ welfare, safe custody, and avoid any torturous act that violates the rights of inmates. Despite this, an inmate told Amnesty International, “they can close their eyes and beat us like a dog, but we are not a dog [sic].”¹³² Inmates have the right to complain to the authorities about any mistreatment (Section 22), but they rarely make such complaints. Provisions

¹³² Amnesty International, “Ghana: ‘Prisoners are Bottom of the Pile,’” at 27.

under Section 35 are enforced as about 45% of disabled inmates admit that they have access to a recreational facility.¹³³ Sections 23-26 enumerate the offences and punishments for officers if they neglect their legal mandates. The first annual human rights report on Ghana in 1976 indicated that Ghana does not condone degrading treatment, but it was a widespread practice. It was reported that the culprits were disciplined.¹³⁴

Sections 43 and 44 allows a reduction in food quantity and caning of about fifty strokes as inmates' punishment hence, it is not startling that successive annual human right reports including the 2019 and 2020 ones, will continue to feature brutality of citizens and inmates in Ghana. The police do this with impunity, and it worsened during the Covid-19 lockdown as the police maltreated some Ghanaians for not complying with the Covid-19 measures. While the reports acknowledged the government's efforts in general to punish contraveners of the law,¹³⁵ it is expected that over the years, adequate improvement towards achieving international standards in respecting human rights will be the target. Irrespective of the negativities reported, Ghana was hailed for ensuring zero outbreak of Covid-19 in the prisons. Donations from philanthropists helped them to screen inmates regularly to avoid the risk of Covid spread.¹³⁶ Presidential pardon of 1589 inmates also contributed to this success.¹³⁷ It reduced the prison population from 14,467 in 2018¹³⁸ to 13,333 in November 2020.¹³⁹ Nevertheless, overcrowding continues to exist.

The UN Rapporteur also reported similar abuses in Ghana's penitentiaries in 2014. He wondered why corrupt and bad practices were entertained in the prison. Among

¹³³ Dogbe Joslin et al, at 4.

¹³⁴ Ghana, "1 Annual Human Rights Reports Submitted to Congress by the U.S. Department of State" (1976-1977) 1, at 41, online (pdf): *I Ann. Hum. Rts. Rep. Submitted to Cong. by U.S. Dep't St.* <heinonline-org.proxy3.library.mcgill.ca/HOL/Page?handle=hein.intyb/huhelsnk0001&id=195&collection=intyb&index=>.

¹³⁵ Ghana, "Country Reports on Human Rights Practices for 2019" (2019), at 1- 3, online (pdf): *US Dep't of St., Bureau of Demo., Hum. Rts and Labor* <www.state.gov/wp-content/uploads/2020/02/GHANA-2019-HUMAN-RIGHTS-REPORT.pdf>; Ghana, "2020 Country Reports on Human Rights Practices: Ghana" at 1-3, online: <www.bing.com/newtabredirect?url=https%3A%2F%2Fwww.state.gov%2Freports%2F2020-country-reports-on-human-rights-practices%2Fghana%2F>.

¹³⁶ Ibid, "2020 Country Reports on Human Rights Practices: Ghana," at 4.

¹³⁷ Amnesty International, "Amnesty International Report 2020/21: The State of the World's Human Rights," (2020/2021), at 171, online (pdf): *Amnesty Int'l* <www.amnesty.org/en/location/africa/west-and-central-africa/ghana/report-ghana/>.

¹³⁸ Institute of Crime & Justice Policy Research.

¹³⁹ Amnesty International, "Amnesty International Report 2020/21," at 171.

them are officers authorizing inmates considered as the ‘star class,’ to discipline fellow inmates considered as the ‘black coats.’¹⁴⁰ Human rights advocates have called on the Commission on Human Rights and Administrative Justice to visit the prisons unannounced because most of the abuses are done in-camera, thus the media seldom get to know of it.¹⁴¹ Undoubtedly, monitoring institutions like the Police Intelligence, Professional Standards Bureau, and the Commission on Human Rights and Administrative Justice are under-resourced, making them almost white elephants.¹⁴² The abysmal execution of Sections 35, 36, and 37 accounts for the poor healthcare of inmates, unhygienic environment, and unaccommodating space in the prisons. Inmates confirmed, “They don’t give us shaving stick. They wanted to use force to take someone else’s blade, but I refused because I don’t want sickness [sic].”¹⁴³ Another one said, “We never get soap to wash unless your family bring you soap [sic].”¹⁴⁴ The toilet facility is an eyesore because it often overflows with excrement as more than 100 inmates share one toilet.¹⁴⁵

The incarcerated females easily get infectious diseases like candidiasis and other skin infections, but their healthcare service is poor compared to the men.¹⁴⁶ Their special health needs are not addressed, and they face barriers in accessing rehabilitation programs in the prisons.¹⁴⁷ Indeed, female prisons in Ghana are often not overcrowded¹⁴⁸ but they encounter the same adverse conditions of bed bugs and stinky environment as the men. If CSO is applied in favor of women offenders, their prisons can be converted into men’s prisons to reduce the mess at the men’s penitentiaries until such a time the government is ready to implement CSO for both sexes.

¹⁴⁰ Méndez Juan E., at 6.

¹⁴¹ “CHRAJ Boss Advised to Make Unannounced Visits to Prison” (13 August 2021), online: *The Ghana Report* <www.theghanareport.com/chraj-boss-advised-to-make-unannounced-visits-to-prison/>.

¹⁴² Méndez Juan E., at 8.

¹⁴³ Amnesty International, “Ghana: ‘Prisoners are bottom of the pile,’” at 23.

¹⁴⁴ *Ibid* at 34.

¹⁴⁵ Ghana, “Country Reports on Human Rights Practices for 2019,” at 3.

¹⁴⁶ Sarpong A. A. et al., at 179 & 182.

¹⁴⁷ “New Publication: Implementation of the Bangkok Rules,” online: *Canada OPCAT Project* <canadaopcatproject.ca/2019/06/08/new-publication-implementation-bangkok-rules/>.

¹⁴⁸ Informative Interview with ASP Abdul Latif Adamu, Eastern Regional Public Relations Officer of the Ghana Prison, and officer in charge of education and the correctional diagnostic center of Nsawam prisons, (20 December 2020; 8:30am to 9:05am, Ghana time).

The Prisons Standing Orders look promising, and if all therein is implemented, inmates will enjoy humane treatment. Its Nos. 59 to 72 and 328 order the authorities to keep a clean and healthy prison environment, but the unpleasant smell and inmates' skin scabies portray that these rules are not applied as needed. Nos. 382 to 393 and Mandela Rule 41 are enforced without criticism from the populace. Inmates are allowed to express their faith and receive visitors whether for religious or non-religious purposes. These kinds of visits have reformed some of the inmates into preachers after their release.¹⁴⁹ Visitors were not allowed to bring food to the inmates. This rule is defied because the prisons lack the capacity to feed the inmates properly.¹⁵⁰ They complain that the food is bad, and the soup is always diluted with water before everyone can get a share.¹⁵¹ This must encourage the abolishment of the 'punishment diet' under Section 43(3)(d) of the NRCD 46 and No. 237 of the Standing Orders. If the innutritious food is reduced for punishment's sake, the nutritive value the inmates need for survival will be lost.

Education in prisons helps in the reintegration and employment opportunities of offenders and reduces the rate of re-offending because education is "imperative in its own right."¹⁵² To fulfil this purpose as provided under Mandela Rule 40, No. 605 of the Standing Orders and Section 41 of the NRCD 46, the prison authority has collaborated with the University of Cape Coast, Ghana, and Plan Volta Foundation to introduce a Distance Learning Program in the prisons. By this, inmates can acquire a baccalaureate as they serve their sentence. It commenced in the Nsawam prisons in 2019, featuring 59 male inmates and two programs, 'Education and Business Commerce.' The women were encouraged to join, and 16 of them have enrolled for the 2021/2022 academic year. Under No. 622 of the Standing Orders and Section 42 of the NRCD 46 inmates are allowed to work. They are even engaged in agricultural activities to supplement the food supply in the prisons. The Brompton Portfolios established a paper tissue manufacturing factory in Nsawam prisons in 2019, under the

¹⁴⁹ See informative Interview with Kwarteng O. Ibrahim.

¹⁵⁰ Ghana, "Country Reports on Human Rights Practices for 2019," at 5.

¹⁵¹ Amnesty International, "Ghana: 'Prisoners are Bottom of the Pile.'" at 19.

¹⁵² Penal Reform International, "The Rehabilitation and Social Reintegration of Women Prisoners," at 29.

one district one factory (1D1F) policy of the Ghana government. The establishment of the Distance Learning Program also brought teaching opportunities to three male inmates who teach and earn income under the program.¹⁵³ No. 622 allows remanded prisoners to take a paid job whether skilled or unskilled in or outside the prisons. What baffles the mind is No. 369 of the Standing Orders which denies prisoners compensation if injured during prison work. A clear disregard for their dignity.

Furthermore, the internationally recommended space in the prison is 1.5 to 3 cubic meters, while No. 104 of the Standing Orders recommends a minimum of 36 cubic feet of air space between each prisoner. Except for Ankaful prison which has a sort of modern prison facility, none of the prisons meets this standard. A space of 8 x 5 meters is shared by 115 inmates while a cell designed for 4 people houses 40 inmates, making them sleep in turns.¹⁵⁴ The Church of Pentecost responded to the outcry of the prison authorities on overcrowding and has completed one state-of-the-art prison at Ejura in the Ashanti Region of Ghana. Three more are in various stages of completion in different parts of the country. The president of the church defended the church's initiative by quoting Hebrews 13:3: "Continue to remember those in prison as if you were together with them in prison and those who are mistreated as if you yourselves were suffering."¹⁵⁵ For some Ghanaians, it is mind-boggling to use an amount of GHS 3,297,139.81 (CAN \$683,826.80) to build prisons while it can be channeled into factories, schools, and hospitals, which most communities lack. The church has failed in its duty to instill discipline into the congregation so they will avoid crime. The devil finds work for the idle hand therefore, it is imperative to have more factories for the unemployed who may succumb to crime because of hardship to find work to do.¹⁵⁶

¹⁵³ See informative Interview with ASP Abdul Latif Adamu.

¹⁵⁴ Méndez Juan E., at 9.

¹⁵⁵ "Church of Pentecost hands over Ejura Camp Prison to Ghana Prisons Service" (12 May 2021), online: *CNR* <citinewsroom.com/2021/05/church-of-pentecost-hands-over-ejura-camp-prison-to-ghana-prisons-service-photos/>.

¹⁵⁶ "Ghanaians Blast Pentecost Church for Building a Prison and not a Factory," online: *Opera News* <gh.opera.news/gh/en/religion/c458674ba5dd2b21d150c02467d853a4>.

ii. Alternative Dispute Resolution (Act 798)

Laws that seek to lessen the burden of the judiciary and the prison service in Ghana include the Alternative Dispute Resolution, which was practiced even before colonialism introduced prison system in Ghana. The outcome is often restorative or reparation and the commentary to the Bangkok Rules 57-58 confirms its effectiveness for the proper reintegration of the women offenders.¹⁵⁷ Ghana does not have specific laws on non-custodial sentences in criminal matters, yet there are provisions scattered in the various Acts of Parliament indicating a non-custodial punishment. Section 7 of Act 798 and Section 73 of the Court's Act encourage the court to refer non-aggravated crimes to Alternative Dispute Resolution, with parties' consent and the court adopts the outcome. Section 96(3) of the Public Financial Management Act creates an opportunity for those who defraud the state or are involved in corruptible acts to refund instead of strict custodial terms. After, the culprits cannot work in any governmental institution for ten years. Article 23 of the Juvenile Justice Act requires a juvenile to be placed under the care of their parents, guardian, close relative, any fit person, or remanded home closer to the court during trial.¹⁵⁸ Its Articles 29-31 allow the juvenile court to pass custodial or non-custodial sentences on the juvenile, including probation depending on the offence.

Why is the court not doing the same for women offenders for the sake of their juvenile children, who suffer during their mothers' incarceration? When outlining the objectives of the Child and Family Welfare Policy too, the specific needs of children of incarcerated mothers were missing. They are:

- i) to design child and family welfare programs and activities to more effectively prevent and protect children from all forms of violence, abuse, neglect, and exploitation;
- ii) ensure effective coordination of the child and family welfare system at all levels;
- iii) empower children and families to better understand abusive situations and make choices to prevent and respond to situations of risk;
- iv) build capacity of institutions and service providers to ensure quality of services for children and families in urban and rural areas;
- v) reform existing laws and policies to conform to the Child

¹⁵⁷ UN Office of Drug and Crime, "The Bangkok Rules" (2010) at 44, online (pdf): UNODC <www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf>.

¹⁵⁸ Informative Interview with Musah Suleman, a criminal law practicing lawyer in Ghana, (07 March 2021; 8:53am to 9:20am, Montreal time).

and Family Welfare system; and vi) ensure provision of adequate human, technical and financial resources required for the functioning of the Child and Family Welfare system at all levels.¹⁵⁹

The Executive Director of Stand Ghana admitted that their activities do not cover children of incarcerated women, and it is unfortunate the policy did not address them as well. She promised to ensure that her organization incorporate that into their activities and help in the campaign for CSO for women. She expressed fear of non-implementation of the policy because it has become the norm in Ghana and that, the Bangkok Rules are not in isolation. Even when Ghana was eulogized as the first in the world to ratify the UN Convention on the Right of Children on 5 February 1990, abuse and increased vulnerability of children has not been reduced as anticipated.¹⁶⁰ Undeniably, children of incarcerated mothers are few in Ghana.¹⁶¹ It is still crucial to address them in a policy framework like the Child and Family Welfare because these children frequently have negative experiences in Ghanaian society, and they need special attention.¹⁶² Adding their miseries to such policy may compel the government to hasten the ratification and enforcement of the Bangkok Rules and other existing human rights laws.

iii. The Criminal Code (Act 29) and Criminal Procedure Code (Act 30)

The popular maxim, *nullum crimen sine lege nulla poena sine lege*, “no crime or punishment without a law”¹⁶³ is applied in Ghana under Article 19(21) of the 1992 constitution. Article 7(2) of the African Charter on Human and Peoples' Rights (Banjul Charter) reiterated a similar concept in the above-mentioned maxim. However, Section 10 of Act 29 provides an exception, allowing the court a discretion to punish people for contempt when the offences that qualify for contempt are not codified. This increases the overcrowding problems in the prisons. Can arbitrariness be seen here?

¹⁵⁹ Ministry of Gender, Children and Social Protection, at vii.

¹⁶⁰ Informative Interview with Rosemary Kayi, the Executive Director/ Co-founder of Stand Ghana, (29 January 2021; 4:34pm to 4:44pm Ghana time).

¹⁶¹ See informative Interview with ASP Abdul Latif Adamu.

¹⁶² Teiko Akodi D. Precious, at 3 & 5.

¹⁶³ “Nullum Crimen Sine Lege, Nulla Poena Sine Lege Law and Legal Definition,” online: *US Legal* <definitions.uslegal.com/n/nullum-crimen-sine-lege-nulla-poena-sine-lege/>.

Article 11 of the Universal Declaration of Human Rights (UDHR) 1948 abhors punishing offences that are not specified in the penal laws of a country. A Ghanaian scholar, Ofori-Amankwah proposed that crime must not be left in the hands of judges or any group of people, no matter what. It must be predetermined and documented for all citizens to know the acceptable and unacceptable behaviors, hence the “criminal quality of an act cannot be discerned by intuition.”¹⁶⁴ Both Acts 29 and 30 seek to fulfil this maxim and bring more humane treatment to offenders. How well these Acts have been executed needs to be investigated because when the criminal justice system implements Acts 29 and 30, the prison system becomes the recipient.¹⁶⁵

Act 29 lists all offences and their related punishments. Section 315 prohibits every form of trial by ordeal, which was common in most traditional settings in Ghana, before and after colonization. It states, “the trial by the ordeal of sasswood, eserepbean, or other poison, boiling oil, fire, immersion in water, or exposure to the attacks of crocodiles or other wild animals, or by any ordeal which is likely to result in the death of or bodily injury to any party to the proceeding is unlawful.”¹⁶⁶ This continues to exist and the lynching of a 90-year-old woman in 2020¹⁶⁷ and an Army officer in 2017 are testimonies.¹⁶⁸ The judiciary and all parties involved in court processes are expected to follow the right procedure before, during, and after trial because Article 33 of the constitution instructs the court to protect every right. Sections 325 to 330 of Act 30 provide an opportunity for an appeal after conviction with time limitations. No. 613 of the Standing Orders offers only ten days for inmates to appeal. Why the limitations? Crime has no ‘expiry date’ in Ghana; thus, a statute of limitations is only related to civil and not criminal matters. Why is the appeal for criminal convicts not treated the same? The time limitation puts most inmates in a disadvantaged position, and this must be reviewed.

¹⁶⁴ Ofori-Amankwah E. H, “Human Rights and the Criminal Process in Ghana” (2005) 1, 111 at 114-116, online: *KNUST LJ* <[www.heinonline.org/HOL/Page?public=true&handle=hein.journals/knust2&div=10&start_page=111&collection=journals&set_as_cu_rsr=0&men_tab=srchresults](http://heinonline.org/HOL/Page?public=true&handle=hein.journals/knust2&div=10&start_page=111&collection=journals&set_as_cu_rsr=0&men_tab=srchresults)>.

¹⁶⁵ Amnesty International, “Ghana: ‘Prisoners are bottom of the pile,’” at 11.

¹⁶⁶ Criminal Code of Ghana, 1960 (ACT 29), “Section 315,” online (pdf): <www.ilo.org/dyn/natlex/docs/ELECTRONIC/88530/101255/F575989920/GHA88530.pdf>.

¹⁶⁷ See Duodu Samuel.

¹⁶⁸ “Captain Mahama’s lynching: Second video evidence appears” (01 June 2017), online: *Graphic online* <www.graphic.com.gh/news/general-news/captain-mahama-s-lynchng-second-video-evidence-appears.html>.

Appeal is a creature of statute, and a convict can only take advantage of the privilege given within the stipulated time limit. If the time lapses, the convict may seek leave of the court to be able to appeal, and if the court finds the application reasonable, the appeal processes may commence.¹⁶⁹ How many of these poor inmates know of this opportunity? Section 613(b) of the Standing Orders stipulates no cost for an appeal. Legal aid is assigned to those who wish to appeal, but it is under-resourced and unable to meet its target.¹⁷⁰ The appellants are expected to bear the fees for administrative work and most of the convicts are unable to afford it.¹⁷¹ A pregnant inmate with an 11-month-old baby at home complained “I had a lawyer that my family paid for, but I don’t have money to make an appeal. Another woman was pregnant and appealed and got out [sic].”¹⁷²

Section 313A of Act 30 orders the courts to suspend a woman’s sentence due to her pregnancy. Under Section 312 if she is sentenced to death, it must be changed to life imprisonment. She must be kept in healthy and hygienic condition until she delivers. In praxis, they are not cared for as the law stipulates, ignoring the fact that their risk of developing mental ill-health is high.¹⁷³ They either walk or pay their own taxi fare to receive antenatal care in the hospitals outside the prisons in the company of a uniformed officer. There is no special food for them as they eat the same food as the men inmates. In most cases their offences are non-capital and non-custodial punishment would be the best option. Sometimes they are imprisoned because of their inability to pay a fine, or do not even know their charge and why they are in prison because of illiteracy.¹⁷⁴ As the courts do not adhere strictly to Section 313A of Act 30, the prison authority has drafted a bill to curb the issues of pregnant inmates. The bill includes the authorization to run pregnancy tests for women offenders and a CSO

¹⁶⁹ Informative Interview with Musah Suleman, a criminal law practicing lawyer in Ghana, (24 September 2021; 6:00pm to 7:20pm, Montreal time).

¹⁷⁰ Amnesty International, “Ghana: ‘Prisoners are bottom of the pile,’” at 7.

¹⁷¹ See informative Interview with Musah Suleman, (24 September 2021).

¹⁷² Amnesty International, “Ghana: ‘Prisoners are bottom of the pile,’” at 6.

¹⁷³ Abbott Laura, “Pregnancy in Prison: The Effect on Mental Wellbeing” (23 September 2018), online: *Int’l Forum for Wellbeing in Preg.* <www.ifwip.org/2018/09/23/pregnancy-in-prison-the-effect-on-mental-wellbeing/>.

¹⁷⁴ Amnesty International, “Ghana: ‘Prisoners are bottom of the pile,’” at 13-15 & 25-26.

proposal. If it gets approval, those found to be pregnant during the admission process will be refused.¹⁷⁵

A mother's incarceration victimizes the child, so amendment of Section 312 and strict implementation of Section 313A must be encouraged. If the child's best interest is the goal as specified in Article 2 of the Children's Act and Article 3 of the Convention on the Right of the Child, an alternative to incarceration to ensure a continuous bond between mother and child is needed. Experts continue to persuade the government to adopt CSO, verbal sanctions, confiscation, and parole¹⁷⁶ to eradicate the victimization of children of incarcerated women in Ghana. Sometimes, the child is victimized twice because of the mother's incarceration and what goes through the child's mind must keep the public in awe. A seven-year-old son of Rosemond Alade Brown found himself in such a situation. In *The Republic v Rosemond Alade Brown*, the defendant was sentenced to 90 days imprisonment for breaching the following laws of Ghana:

Section 280 of Act 29, publication of obscenity; sections 1 (d) (iii) and 3 (2) of the Domestic Violence Act, 2007, (Act 732), undermining another person's privacy or dignity; and sections 1 (d) (iv) and 3 (2) of the Domestic Violence Act, 2007, (Act 732), detracting or likely to detract from another person's dignity and worth as a human being.¹⁷⁷

Ghanaian society despises nudity in public, and that was the kind of picture she posted on her Instagram page while her son stood in front of her, watching her nakedness. No doubt she abused the child, and she must be punished. But how? The judge was sentimental, and it was obvious in the judgment as she questioned, "what has become of our values as a country?"¹⁷⁸ The child's best interest was not considered here, truly as a hidden victim, his plight was disregarded.¹⁷⁹ The defendant is a single parent and the sole breadwinner, caring for her son and mother. She pleaded guilty but ignorant about the law on obscenity,¹⁸⁰ and did not know that the maxim *ignorantia*

¹⁷⁵ See informative Interview with ASP Abdul Latif Adamu.

¹⁷⁶ Amnesty International, "Ghana: 'Prisoners are bottom of the pile,'" at 15.

¹⁷⁷ *The Republic v Rosemond Alade Brown* (D12/112/2021) [2021].

¹⁷⁸ *Ibid* at 3.

¹⁷⁹ Martin Eric, at 1.

¹⁸⁰ *The Republic v Rosemond Alade Brown* (D12/112/2021) [2021].

juris non-excusat, ‘ignorant of the law is not an excuse’ applies in Ghana.¹⁸¹ In Ghana, “we’re born into the law; we live within the law, and we die according to the law.”¹⁸² Can this maxim continuously hold water when the respective illiteracy rate among men and women in Ghana is 33% and 50%?¹⁸³

C. The Standard of Prison Conditions in other African Countries and Beyond

Ghana interacts socially, educationally, medically, and economically with other countries in Africa, Europe, Asia, the Caribbean, the Americas, and Oceania. Ghana belongs to international and regional organizations like the United Nations (UN), Commonwealth of Nations, African Union (AU), and Economic Community of West African States (ECOWAS), to which most of the countries mentioned in the areas above are also members. Each of these countries has unique criminal justice systems instituted to reduce crime and recidivism to the barest minimum, and it will be phenomenal for Ghana to learn from their best practices. In this thesis, examples will be drawn from one African country and one Western country which have gained success in implementing the community service order (CSO) for women offenders under the Bangkok Rules. This is to encourage stakeholders in Ghana that it is doable once a neighboring country has succeeded in implementing the CSO.

1. Prison Conditions in other African Countries

The prisons in most African countries have similarly poor conditions regarding health care accessibilities and human rights abuses as in Ghana. Some of these countries have made efforts to reduce these problems through the introduction of CSO as an alternative to custodial sentences. Zimbabwe was the first African

¹⁸¹ See Section 29(2) of Act 29.

¹⁸² Antiedu Tachie Benjamin & Larbi Appiah Goodnuff, “Can the Ordinary Ghanaian Plead Ignorance of Law?” (25 May 2021), online: *Modern Ghana*

<www.modernghana.com/news/1083557/can-the-ordinary-ghanaian-plead-ignorance-of.html>.

¹⁸³ UNESCO Institute for Lifelong Learning, at para 2.

country, to embrace CSO in the 1990s; followed by Kenya; then Tanzania; Uganda; and others followed later. Ghana, on the other hand, was not one of those. Penal Reform International technically supported these countries to develop and improve their CSO systems. It facilitated public education about the essence of community service. This was done through Seven Public Open Days, where magistrates and ex-convicts with outstanding behaviors during their Community Service, had the opportunity to meet the local communities. They discussed the importance of the CSO and answered the public about their concerns over the CSO as an alternative to imprisonment. These former offenders were also trained in entrepreneurial skills and given seed capital to start businesses of their own. Penal Reform International encouraged other African countries to learn from the good examples of their neighbors including “Kenya’s involvement of a seconded magistrate in the coordination of community service.”¹⁸⁴

Kenya’s achievement in executing the CSO to reduce overcrowding in its prisons¹⁸⁵ is discussed in this thesis because of some commonalities between Ghana and Kenya. They are cohorts in terms of the periods they attained independence from British rule. Ghana gained independence on 6 March 1957; six years later Kenya had its independence on 12 December 1963. Again, Ghana and Kenya have not implemented the death penalty for three decades.¹⁸⁶ Kenya is among the ten most populated countries in Africa,¹⁸⁷ and it is ideal for Ghana to identify and learn how Kenya has been able to implement the CSO amidst the large population numbers and resource constraints after independence.¹⁸⁸

¹⁸⁴ Penal Reform International, “Excellence in Training on Rehabilitation in Africa (ExTRA) Project: Mid-term Evaluation” (2016) at 3 & 9, online (pdf): *Penal Reform Int’l* <<https://cdn.penalreform.org/wp-content/uploads/2016/02/ExTRA-Project-Mid-term-Evaluation-1.pdf>>.

¹⁸⁵ *Ibid* at 3.

¹⁸⁶ Amnesty International, “Kenya: Important judgement highlights unfairness and cruelty of the Death Penalty in the country” (2010) at 2, online (pdf): *Amnesty Int’l* <www.amnesty.org/en/wp-content/uploads/2021/07/afr320122010en.pdf>.

¹⁸⁷ “The Most Populated Countries in Africa” (2021), online: *World Atlas* <www.worldatlas.com/articles/the-10-most-populated-countries-in-africa.html>.

¹⁸⁸ Penal Reform International, “Excellence in Training on Rehabilitation in Africa (ExTRA) Project,” at 3.

i. Alternative to Imprisonment in Kenya

The UN Rapporteur and Penal Reform International report in 2000, indicated that inmates in Kenyan prisons suffer from infectious diseases, torture, death, and a host of other inhumane treatment.¹⁸⁹ Overcrowding contributes to these poor situations and a judge, Justice Luka Kimaru blamed lawmakers for adopting harsh laws,¹⁹⁰ under the Alcoholic Drinks Control Act, 2010.¹⁹¹ It emphasizes too much on incarceration, so the media dubbed it “Notorious Law” because it has put more women (70%) in prison than men (29%).¹⁹² Constant public uproar nudged the authorities to establish structures to implement the long-standing law on CSO. Kenya adopted CSO in 1990 but was neutral among the genders and implementation was discriminatory towards women offenders. After ascending to the Bangkok Rules, Kenya adopted a gender-specific policy in 2016, ‘the Sentencing Policy Guidelines’ in favor of women offenders. The guidelines demanded that, if there are no aggravating circumstances, the court must consider the following: “caretaking obligations, background and family ties, pregnancy and breastfeeding”¹⁹³ when sentencing women offenders.

Currently, Kenya’s criminal justice system is concentrated on restorative rather than retributive justice commonly used in time past. Enforcement of national and international laws adopted and ratified to bring humane treatment to offenders in Kenya is inspiring.¹⁹⁴ The Change Hub Innovation Centre was introduced to provide technological skills to the female inmates for proper reintegration into the job market after prison. This technology takes the women through the following: coding, web

¹⁸⁹ Amnesty International, “Kenya Prisons: Deaths due to torture and cruel, inhuman and degrading conditions” (7 December 2000), at 1-6, online: *Amnesty Int’l* <www.amnesty.org/en/documents/AFR32/010/2000/en/>.

¹⁹⁰ Daily Nation, “Kenya: Judge Blames Harsh, Stiff Laws for Prison Congestion” (6 April 2016), Online: *AllAfrica* <allafrica.com/stories/201604060361.html>.

¹⁹¹ The National Council for Law Reporting, “Alcoholic Drinks Control Act, 2010” (2010), online (pdf): *Kenya law Report* <www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Alcoholic_Drinks_Control_Act_No4of2010.pdf>.

¹⁹² “The notorious law: This is what has landed many Kenyan women in jail” (2018), online: *The Standard* <www.standardmedia.co.ke/entertainment/the-standard/2001249715/the-notorious-law-this-is-what-has-landed-many-kenyan-women-in-jail#:~:text=There%20are%2018%20women's%20prisons,between%20%2C000%20and%20%23%2C500%20offenders>.

¹⁹³ Penal Reform International, “Community Service and Probation for Women: A study in Kenya” (2016) at 7, online (pdf): *PRI* <cdn.penalreform.org/wp-content/uploads/2016/10/Revised-PRI-Kenya-women-prisoners-report-WEB.pdf>; “Excellence in Training on Rehabilitation in Africa (ExTRA) Project,” at 3.

¹⁹⁴ Onyango-Israel Olivia L. A., “Overview of the Kenyan Criminal Justice System (Corrections)” at 150, online (pdf): *UNAFEI* <www.unafei.or.jp/publications/pdf/RS_No90/No90_20PA_Onyango-Israel.pdf>.

design, computer hardware maintenance, and 3D printing. Inmates also could gain a law degree in prison. This is a collaboration among the African Prisons Project, the University of London, and Kenyan University lecturers.¹⁹⁵

a. Probation and Community Service Order

The three main non-custodial sanctions in Kenya are fines, probation orders and CSO. Kenyan judicial officers confirmed that they preferred probation orders and CSO to fines because the women are unable to pay the fine of KES 50,000 (U.S. \$490) when they breach the Forest Act 2005, and that leads to their incarceration. Women are mostly the culprit as they innocently collect firewood in the forest to cook for their families and not because of criminal tendencies.¹⁹⁶ The probation order suspends the punishment on condition, while they are supervised, guided, and given therapy if needed. Both adult and juvenile offenders who commit non-capital offences get this opportunity, whereas Ghana imposes probation orders on only juvenile offenders. Probation order has been part of Kenya's criminal justice system since 1943 but lack of professional probation officers led to its suboptimal implementation. The British imported five of its probation officers to train nine Kenyans on the job.¹⁹⁷ Presently, the probation order is regulated by the Probation of Offenders Act Cap 64 and has several qualified officers discharging their duties accordingly. Pursuant to Cap 64, a probation officer must assess the offence, the offender, and the circumstances of the offence before designing a supervision plan for the convict. The plan may involve rehabilitation, counselling, restorative, or mediation processes. The officer and the offender meet monthly to discuss the offence, how to avoid reoffending, and where necessary, the officer refers her to the appropriate service for special treatment.¹⁹⁸

¹⁹⁵ Penal Reform International, "The Rehabilitation and Social Reintegration of Women Prisoners," at 16 & 31.

¹⁹⁶ Ibid, "Community Service and Probation for Women," at 7 & 11-13.

¹⁹⁷ "Overview of the Community Corrections System in Kenya," at 1-11, online (pdf): *UNAFEI* <https://unafei.or.jp/english/activities/pdf/other/Overview_of_CommunityCorrections_Kenya_E.pdf>.

¹⁹⁸ Penal Reform International, "Community service and probation for women," at 6-8.

In 2015, the court began a decongestion exercise with the female prisons as the priority. Women offenders serving three years of imprisonment or below were made to go for community service,¹⁹⁹ leading to the adoption of the Community Service Order Act Cap 93. It became part of the Statute Law Miscellaneous Amendment Act No. 18, to regulate the CSO program in Kenya.²⁰⁰ Cap 93 provides a list of work to be issued but allows the court to use its discretion to impose any form of public work that benefits the community. Work under CSO does not involve salary. The probation officer provides a pre-sentence report to the court before the court pronounces the order, which has a maximum of three years and a minimum of one day for petty crime offenders. The women may challenge any unsatisfactory pre-sentence report. The officers' report helps to identify the unique needs of women offenders so that they are placed in a suitable workstation. It is also for the supervisor to confirm the workstation's capacity and his/her willingness to accept, engage, and supervise the new offender. Unlike the probation order that may keep some of the offenders in the probation hostels for intensive supervision and training, women under CSO commute from their various homes to the workstation to work daily.²⁰¹

The women expressed joy for the opportunity to maintain ties with families while serving their sentences.²⁰² About 85% of the women under CSO had children and most of these children were under 18 years of age and meeting their caretaking responsibility simultaneously was important for them.²⁰³ Kenyan researchers have disclosed that CSO reduces recidivism because offenders get easy access to rehabilitation and skills training. The offenders acknowledged that it has positively affected their lives and drastically reduced kleptomaniac behaviors.²⁰⁴

¹⁹⁹ Ibid at 9.

²⁰⁰ Ministry of Interior & Coordination of National Government State Department for Correctional Services, "Probation of Offenders Act and Community Service Orders Act Amended" online: <www.probation.go.ke/news/98-probation-and-community-service-orders-act-amended.html>.

²⁰¹ Penal Reform International, "Community service and probation for women" at 7-9.

²⁰² Ngetich Kipchirchir Collins, Murenga Hadija & Kisaka Wafula, "Effectiveness of Community Service Orders in Rehabilitating Offenders' Behaviour in Kericho County, Kenya" (2019) 1:2 at 71, online (pdf): *Int'l Academic J L & Soc'ty* <www.iajournals.org/articles/iajls_v1_i2_58_77.pdf>.

²⁰³ Penal Reform International, "Community service and probation for women," at 13.

²⁰⁴ Ngetich, Murenga & Kisaka, at 63-72.

At the various workstations, there are a variety of projects to facilitate skills training in the rehabilitation process. The Probation and Aftercare Services engage the offenders in projects like cleaning, gardening, afforestation, and other farming activities including rearing poultry, rabbits, fish, and goats. The women record their activities on a worksheet, and the supervising officer signs it before they submit it to the probation officers every month. For a safe working environment, the probation officers visit the workstations frequently and the worksheet also informs them about the women's progress. Each station has a Community Service Orders Case Committee headed by a judicial officer to ensure surveillance of the CSO program. Members of this committee are drawn from different institutions and are to work hand in hand with the National Community Service Orders Committee. The National Committee's duty is to research the CSO program depending on identified challenges provided to it by the station's committee. The research and its findings help them to improve the community service program. The work of the National Committee is supplemented with that of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. This Institute designs unique methodologies through human rights auditing and action plans to produce a comprehensive report on compliance with the Mandela and Bangkok Rules. It began in Indonesia, and Kenya has adopted it to ensure conformity because it is found that the smallest increase in compliance to these international rules has significant impact on offenders serving in the community and those in prisons.²⁰⁵

Prison staff has been trained and sensitized on the CSO, so implementation of the Mandela and Bangkok Rules across the 118 prisons in Kenya is encouraging though not perfect. Kenya's officials were occasionally made to assist other correctional systems around the world because their CSO program is impactful. Helping other correctional institutions internationally has also influenced the Kenyans to strengthen their system with international best practices.²⁰⁶

²⁰⁵ Penal Reform International, "Community Service and Probation for Women," at 8-9; "The Rehabilitation and Social Reintegration of Women Prisoners," at 21.

²⁰⁶ Chepkonga C. K. Mary, "The Impact of Global Drug Policy on Women: Shifting the Needle" (2020) at 125, online (pdf): *Emerald Insight* <www.emerald.com/insight/content/doi/10.1108/978-1-83982-882-920200018/full/pdf?title=women-drug-policy-and-the-kenyan-prison-system>.

2. Standard of Prison Conditions in Countries outside Africa

Inhumane treatment is not related to African penitentiaries alone. Other Western countries including Canada also have their fair share of it. Ms. Twins, a former prisoner, and the recipient of the 2020 Ed McIsaac Human Rights in Corrections Award experienced human rights violations, and abuses in a Canadian penitentiary. After her release, she led a campaign to make sure that illegal and unjust treatments are eradicated among indigenous women and girls in prison.²⁰⁷ Though Canada abolished the death penalty for ordinary crimes in 1976 following its last execution in 1962,²⁰⁸ the Correctional Investigator of Canada, Zinger reports that other inhuman practices continue to exist in the prisons. Sexual violence and coercion are cankers in the prisons, and the fact that they go below the radar should not be taken as a consequence of incarceration. The victims do not report for fear of re-victimization, retribution, or retaliation by staff or fellow inmates' perpetrators.²⁰⁹ That being noted, Canada has one of the best correctional facilities where different programs are organized for women offenders for proper reintegration into the communities.²¹⁰

The Okimaw Ohci Healing Lodge and the Buffalo Sage Wellness House were created to provide traditional healing and minimum-to-medium security for women offenders. These lodges are managed by the indigenous community which designs culturally sensitive programs to address the women's social, educational, vocational, correctional, emotional, physical, and spiritual needs. The unique programs at the lodges, give the women the opportunity for a supervised day trip, partial or full parole, and therapy for their Post-Traumatic Stress Disorders (PTSD). The Walls to Bridges (W2B) is also an essential educational program in the prisons that treat all participants, both prisoners and non-prisoners as peers. This program is very motivating as it puts

²⁰⁷ Office of the Correctional Investigator, "Ms. Joey Twins Receives the 2020 Ed McIsaac Human Rights in Corrections Award" (10 December 2020), online: *OCI* <www.oci-bec.gc.ca/cnt/comm/press/press20201210-eng.aspx>.

²⁰⁸ In 1998, Canada became abolitionists for all crimes, including those in wartime. Amnesty International, "Death Penalty in Canada: Canada has been a fully abolitionist country since the 10th of December 1998," online: *Amnesty Int'l* <www.amnesty.ca/what-we-do/death-penalty/death-penalty-in-canada/>.

²⁰⁹ Zinger Ivan, "Office of the Correctional Investigator Annual Report 2019-2020" (26 June 2020), online: *OCI* <www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20192020-eng.aspx>.

²¹⁰ Correctional Service Canada, "Gender Responsive Corrections for Women in Canada: The Road to Successful Reintegration," online: *CSC* <www.csc-scc.gc.ca/women/002002-0005-en.shtml>.

both prison and non-prisoned university students together for scholarly analysis through innovative, experiential, and dialogical processes. And upon their release, the Unlocking the Gates Peer Health Mentoring Program meets them at the prison gate to welcome them into the community as they start their new life outside the prison. Under this program, the women receive the required health and social needs within the first few days of their release because the group members are former convicts, so they understand the women inmates better.²¹¹

Canada imposed CSO before the legislation of UN's Bangkok Rules because CSO "was a cheap but constructive alternative to imprisonment; rehabilitative and reformatory; a penal measure which draws a balance between punishment and rehabilitation; a measure which sees to the needs of the victim or the general community; and a sanction which expands the penal code and offers more choice to sentencers."²¹² Among the countries practicing CSO outside Africa, Canada remains discussion relevant base of comparison in this thesis. Besides, the candidate schools in Canada and wants to grab the opportunity to know more about its criminal justice system and how it benefits women offenders. Ghana's scope of sanctions only comprises fines; absolute and conditional discharge; juvenile probation; imprisonment; and death.²¹³

Meanwhile, Canada's ambit of sanctions is wide. It entails CSO, encompassing probation orders, and conditional and suspended sentences; absolute or conditional discharge; fines; imprisonment; intermittent sentence; indeterminate sentence for dangerous offenders; life sentences; victim surcharge; and restitution. Moreover, Canada and Ghana were colonized by the British, inherited the British legal tradition,²¹⁴ and are co-members of the Commonwealth of Nations. What Canada is doing right to be counted among the top ten most peaceful countries around the globe²¹⁵ needs to be

²¹¹ Penal Reform International, "The rehabilitation and social reintegration of women prisoners," at 31, 39 & 45.

²¹² Vass A. Antony & Menzies Ken, "The Community Service Order as a Public and Private Enterprise" (1989) 29: 3, 255 at 257, online (pdf): *Brit. J. Criminol.* <www-jstor-org.proxy3.library.mcgill.ca/stable/pdf/23638363.pdf?refreqid=excelsior%3Ad334eeb5cfd215a0efb4f72c00c10733>.

²¹³ Ghana Prison Service, "Ten – Year Strategic Development Plan 2015 – 2025," at 7.

²¹⁴ The Aboriginal Justice Implementation Commission, "The Justice System and Aboriginal People," online: *AJIC* <www.ajic.mb.ca/volumel/chapter10.html#4>.

²¹⁵ Institute for Economics & Peace, "Global Peace Index 2021: Measuring Peace in a Complex World" (2021) at 9, online (pdf): *IEP* <www.economicsandpeace.org/wp-content/uploads/2021/06/GPI-2021-web.pdf>.

emulated. Ghana has a lot to learn from these good milieus in Canada, where the variety of criminal sentences available may have helped reduce recidivism and foster rehabilitation by enabling judges to tailor sentences to individual offenders.²¹⁶

i. Community Service Orders

The Department of Justice and probation officers enforce the CSO. They collaborate with several community resource centers, towns and municipal governments, lions' clubs, friendship centers, and youth justice committees to help the offenders in fulfilling their mandate. These agencies register the offenders and assign them to the various work centers to cut grass and wood; flood rinks; work at community centers, bingos, and daycare centers; become school aides; as well as sort clothing for the Salvation Army. They report the offenders' progress to the probation officer, Crown attorneys, and the court.²¹⁷ Probation orders, as well as conditional and suspended sentences, are most courts' preferences. Some Canadian judges consider both to be the same and have a similar impact on offenders, but there is a thin margin between them.²¹⁸ Supervision and monitoring during a conditional sentence are very stringent compared to probation orders. For a conditional sentence, the court must be satisfied that the offender will not pose danger to the community before it is imposed.²¹⁹

The first major sentencing reform, Bill C-41, was passed in 1996 to reduce the imposition of prison sentences, especially for property crimes and personal injury offences. The Bill introduced the conditional sentence of imprisonment where offenders are given the opportunity to serve their term of imprisonment in the community with conditions depending on the offence. If the offence does not involve imprisonment of two years or more and the offender will not pose any danger to the

²¹⁶ Roberts V. Julian & LaPrairie Carol, "Research Report Conditional Sentencing in Canada: An Overview of Research Findings RR2000-6e" (2000) at 34, online (pdf): *Department of Justice Canada* <canada.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00_6/rr00_6.pdf>.

²¹⁷ The Aboriginal Justice Implementation Commission, at para 140 & 141-143.

²¹⁸ Roberts & LaPrairie, at v-vi & 8-11.

²¹⁹ Johnson Sara, "Outcomes of Probation and Conditional Sentence Supervision: An Analysis of Newfoundland and Labrador, Nova Scotia, New Brunswick, Saskatchewan, and Alberta, 2003/2004 to 2004/2005" (2006) 26:7, at 3, online (pdf): *Statistics Canada* <publications.gc.ca/collections/Collection-R/Statcan/85-002-XIE/85-002-XIE2006007.pdf>.

community, s/he will be asked to serve an average of eight months under the following compulsory conditions:

Must keep the peace and be of good behavior; appear before the court when required to do so by the court; report to a supervisor within two working days, or such longer period as the court directs; remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor; and notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.²²⁰

The ensuing optional conditions may also apply to expedite reintegration and protect the community: Alcohol/drug treatment; other treatment; restitution; community service work; curfew; no contact; house arrest with electronic monitoring; house arrest without electronic monitoring; and abstain from alcohol, drugs, and carrying a weapon.²²¹ Like Kenya, the probation officers in Canada furnish the court with detailed information about the offender for appropriate conditions to be pronounced. The probation order has a maximum of three years in the form of a discharge with mandatory and optional conditions as with conditional sentences, or the sentence will be suspended. The officer guides and ensures compliance by the offenders. In case of any violation of the conditions, he informs the prosecutor or files a violation report depending on the gravity of the breach. The public has raised concerns about the achievability of some of the orders, and it is a call for consideration. For instance, an order that an addict abstains from use is mostly breached and for fear of been charged for violation, the offender cannot open up to the probation officer about his continued use to be referred for treatment.²²²

D. Regional and International Laws to Protect the Dignity of Inmates

In 1922, the International Penal and Penitentiary Commission (IPPC) was formed to deliberate and campaign for humane treatment of prisoners. This inspired people like

²²⁰ Roberts & LaPrairie, at v-vi, 1-12 & 21; See Section 742.3 of the Criminal Code of Canada (CCC).

²²¹ Ibid at 3; See Sections 732.1(3)(h) & 742.3(2) of the CCC.

²²² The Aboriginal Justice Implementation Commission, at para 134-136.

Jeremy Bentham, Howard Jones, and Sir Winston Churchill to join the advocacy group. After World War II, the United Nations Economic and Social Council (UNESCO) saw the need to adopt standard rules for all member states to consider in handling their prisoners. This led to the enactment of the United Nations Standard Minimum Rules for the Treatment of Prisoners based on the principles of the IPPC.²²³ This and other human rights laws like the Universal Declaration of Human Rights 1948 have inspired different international and regional associations of the world to adopt human rights laws including rules on humane treatment for prisons across the globe.²²⁴ Ghana is a signatory to several of these international and regional human rights laws and has ratified some of them,²²⁵ but implementation is either sub-standard or has yet to see the light of day. Aspects related to the thesis topic are dealt with in the subsequent subsections.

1. Human Rights Laws adopted in African Region

Ghana has participated in all the human rights laws adopted in the Region to protect all Africans whether in prison or not. These include the African Charter on Human and Peoples' Rights 1981 (Banjul Charter) and its women's protocol (2003); African Charter on the Rights and Welfare of the Child 1990; the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reforms in Africa (2002); the Kampala Declaration on Prison Conditions in Africa 1996; and other protocols.²²⁶ The preamble of the Banjul Charter states: "freedom, equality, justice, and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples." All member states must enact legislation to give effect to the charter while prohibiting exploitation and degrading treatment (Articles 1 & 5). Articles 16 & 18 instruct that discrimination against women must be eliminated whilst upholding the

²²³ Ofori-Amankwah E. H., at 122.

²²⁴ Nnaemeka-Agu P., "Discrimination and the African Charter on Human and Peoples' Rights" (1993) 19:4, at 1670, online (pdf): *Commw L Bull* <http://heinonline.org/HOL/Page?public=true&handle=hein.journals/commwlb19&div=71&start_page=1670&collection=journals&set_as_cursor=2&men_tab=srchresults>.

²²⁵ Stand Ghana, "Human Rights Instruments Ghana Ratified," online: <www.standghana.org/your-rights/human-rights-instruments-ghana-ratified/>.

²²⁶ Ofori-Amankwah E. H., at 125-126.

protection of rights of women, children, and those with mental and physical challenges. The right to education mentioned under Article 17²²⁷ is implemented in Ghana. Both the prisons and the junior borstal homes have educational facilities for the inmates.²²⁸

Article 18 might have motivated the African Women’s Rights Movement to request for an adoption of a specific legal instrument to extend the scope of women’s rights in the Banjul Charter. The advocacy led to the approval of the African Women’s Protocol (Maputo Protocol) in July 2003, which Ghana ratified in 2007, and the AU Solemn Declaration on Gender Equality in July 2004.²²⁹ The protocol and the Declaration promoted education for women and children (Article 12); better reproductive health among rural African women (Article 14); and directed state parties to outlaw all harmful cultural practices against women. Examples include humiliating widowhood rights, female genital mutilation, and forced marriages (Article 5). Article 30 of the Rights and Welfare of the Child stipulates that a non-custodial sentence should be the first option for young girls, pregnant women, or women with children who commit offenses. More importantly, Article 24 of the Maputo protocol provides protection for the rights and dignity of pregnant or breastfeeding women in prisons but did not address non-custodial sentences for women.²³⁰

The inhumane treatment and poor conditions in African prisons persist unabated, and several reports including that of Amnesty International mentioned earlier in this thesis attest to that. Either the AU Special Rapporteurs are not working efficiently or are merely overwhelmed by the rate of overcrowding and other poor conditions in most penitentiaries in Africa. They have no capacity to handle urgent cases and their report on the prison assessment is usually problematic because it is poorly structured with haphazard analysis. Their recommendations are often couched in a way that suggests

²²⁷ African Union, “African (Banjul) Charter on Human and Peoples’ Rights” (1981) at 1-6, online (pdf): <www.african-court.org/wpafc/wp-content/uploads/2020/04/AFRICAN-BANJUL-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf>.

²²⁸ See informative Interview with ASP Abdul Latif Adamu.

²²⁹ Viljoen Frans, “An Introduction to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa” (2009) 16:1, at 11, 14, 18-20 & 24-25 online (pdf): *Wash. & Lee J. Civ. Rts. & Soc. Just.* <scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1291&context=crsj>.

²³⁰ Kounte Koffi, “Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Simplified)” (2005), at 10 & 25-26, online (pdf): *African Union* <www.peacewomen.org/assets/file/Resources/NGO/hr_protocoltotheafricancharteronhumanandpeoplesrightsontherightsofwomenafrica_2003.pdf>.

that a violation of international standards has been concealed. This leads to a lack of adequate and accurate information needed by the Commission to make informed decisions about the countries that do not adhere to the prison rules, declarations, and protocols in the region.²³¹

2. International Human Right Laws

The UN's quest to avoid future wars and encourage all nations to protect human rights no matter the status of the person has led to the legislation of several human rights laws. This includes but is not limited to the Universal Declaration of Human Rights 1948, Standard Minimum Rules for the Treatment of prisoners 1957, which became Mandela Rules in 2015. It was named after the late president of South Africa Nelson Mandela, whose pursuit of universal respect for human rights, equality, democracy, and peace, landed him in jail for 27 years.²³² The others are the UN Standard Minimum Rules for Noncustodial Measures (Tokyo Rules) 1990, Health in Prisons Program (HIPP) 1995, Convention on the Rights of the Child (UNCRC) 1989, Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, Bangkok Rules 2010, and Handbook for Prison Managers & Policymakers on Women & Imprisonment 2008. These laws promote respect for human rights even if incarceration deprives them of their liberty, and the International Criminal Tribunal (ICT) set an example. The court respected the dignity of the perpetrators of genocide and crime against humanity during the Yugoslavia and Rwanda wars in 1993 and 1994, respectively.²³³

The main concern of this thesis is to encourage the government to implement relevant national and international human rights laws that Ghana has adopted, signed, or ratified

²³¹ Viljoen Frans, at 142-143 & 171.

²³² Penal Reform International, "UN Nelson Mandela Rules," online: *PRI* <[²³³ Dirk Van Zyl Smit, "Punishment and Human Rights" in Simon Jonathan & Sparks Richard, eds, *The SAGE Handbook of Punishment and Society* \(London: SAGE Publications, 2013\) at 6, online: <\[sk-sagepub-com.proxy3.library.mcgill.ca/reference/download/hdbk_punishment-society/n20.pdf\]\(http://sk-sagepub-com.proxy3.library.mcgill.ca/reference/download/hdbk_punishment-society/n20.pdf\)>.](http://www.penalreform.org/issues/prison-conditions/standard-minimum-rules/#:~:text=The%20Rules%20are%20known%20as%20the%20E2%80%98Nelson%20Mandela,and%20the%20promotion%20of%20a%20culture%20of%20peace%20E2%80%99.>.</p></div><div data-bbox=)

and to promote alternative punishment for women offenders in Ghana for the benefit of their children. For these reasons, the emphasis will be on the Bangkok Rules as they are the first UN rules to specifically address children of incarcerated women.²³⁴

i. The Bangkok Rules

Two years before the Bangkok Rules' adoption, the UN designed a handbook to serve as a guide to legislators, NGOs, and other policymakers who are making efforts to reform the criminal justice system in their jurisdictions. They are urged to implement the resolutions of the UN. The handbook also centered on the vulnerability of women in pretrial detention and women offenders who are foreigners. It advocates that increased awareness of women's profiles is critical to help eradicate the unnecessary imprisonment and discrimination among women in prisons.²³⁵

During the sixty-fifth session of the UN General Assembly, Resolution 65/229 was passed, bringing into existence the 'Bangkok Rules,' to complement and supplement but not to replace the Tokyo and Mandela Rules. The following considerations were raised before the Bangkok Rules were finally passed: that prisons around the world were previously built to accommodate men, consequently the facilities are not suitable for women; girls and women offenders do not pose risk to the community, hence CSO must be prioritized for them. They are more vulnerable and require special needs in the prisons, especially those with children. It also highlighted the impact of mothers' imprisonment on their children. Members are encouraged to adopt legislations and allocate finances for the implementation of an alternative punishment to imprisonment and design measures to eliminate all forms of violence and discrimination against women and women offenders. Those who have achieved such alternative punishment must also share their strategies with other members for emulation. Members are again

²³⁴ Penal Reform International, "Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)" (2013) at 3, online (pdf): *PRI* <cdn.penalreform.org/wp-content/uploads/2013/10/PRI-TIJ-Guidance-Documents-on-Bangkok-Rules-October-2013.pdf>.

²³⁵ Atabay Tomris, "Handbook on Women and Imprisonment" (2014), 2nd ed, at 1 & 4-5, online: *UNODC* <www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf>.

reminded of the Bangkok Declaration on Synergies and Responses in 2005, when they promised to concentrate on “the development and maintenance of fair and efficient criminal justice institutions, including the humane treatment of all those in pretrial and correctional facilities, in accordance with applicable international standards.”²³⁶

In the Bangkok Rules and its commentary, non-custodial sentences are addressed from Rule 57 to 66 to supplement those in the Tokyo Rules. In sum, the Rules involved “women-only services”²³⁷ to safeguard women offenders against abuse or violence. The Bangkok Rules advise courts to consider non-custodial sentences as the first option for pregnant women and young girls because girls’ vulnerability increases with incarceration or detention and negatively affects their intellectual and psychological development. More so, before imposing sanctions, courts must take into account the aggravating nature of the crime, caretaking responsibilities, and the criminal and victimization history of the women offenders. Governments should eliminate the use of detention as protection for rape victims because it victimizes them the more. Rather, they should prohibit any custom, religious, or traditional practices that discriminate or violate women’s rights. They ought to provide resources to cater for alternative punishment and intervention programs for the women. It again called on governments to deport rather than incarcerate trafficked foreign women considered to be engaging in sex work, as they are victims of exploitation, false promises, and coercion.²³⁸

According to Rule 53, transfer of incarcerated women to their home country should be based on the principles in the Model Agreement on the Transfer of Foreign Prisoners. In case the incarcerated woman has a child, the child’s best interest must be considered, especially if she requests that the child be transferred with her to her home country to continue serving the prison term there. In most cases, the transfer is important because the woman might have left her children in her home country before she fell victim to trafficking. Under Rules 2-4, adequate registration and profiling of incarcerated women, and their children should be paramount to provide them with the

²³⁶ UN Office of Drug and Crime, at 1-8.

²³⁷ Penal Reform International, “Guidance Document on the Bangkok Rules,” at 7.

²³⁸ UN Office of Drug and Crime, at 43-47.

necessary needs on admission into the prisons. And where applicable, reasonable suspension of detention must be considered because of the child; if not, a family member takes up the caregiving responsibility from the mother. As they register to be admitted, the women go through screening and personal searches. The prison wardens are advised to be circumspect in protecting offenders' dignity during this process (Rules 19-20).²³⁹

In Mandela Rule 53, only female officials are preferred during the registration process except when a male specialist is necessary, particularly during screening to rule out any HIV or blood-borne diseases or counselling for post-traumatic stress disorder, drug dependency, suicide, and self-harm intention (Rule 6). Obviously, non-custodial is a priority for such women as Rule 64 specifies because the prison is not designed for mothers and their children, it will be unhygienic for them no matter how neat it looked: Rule 5 instructs that the facilities to accommodate them ought to be very hygienic to meet their needs. Rule 42 encourages member states to design a comprehensive, balanced, and gender-specific program for women inmates.²⁴⁰ Ghana's female penitentiary has a vocational program that teaches the women soap-making; batik tie and dye; sewing; and other handicrafts,²⁴¹ but it is not as comprehensive as in Kenya and Canada, as discussed above.

Why do the Bangkok Rules also provide for measures to be followed to handle incarcerated women? Is this an admission that women must continuously be incarcerated? As the first UN Rules to address children of incarcerated mothers, why are the Bangkok Rules not focusing on encouraging member states to strictly adopt non-custodial punishment, except for hardened women criminals who make the society unsafe to inhabit? Meanwhile, one of the premises on which the Bangkok Rules were enacted is the fact that women offenders pose no risk to society.²⁴² Why then are the Bangkok Rules not all about taking the women offenders through rehabilitation and vocational or educational programs to make them good people? When they

²³⁹ Penal Reform International, "Guidance Document on the Bangkok Rules," at 27-30, 61-63 & 99.

²⁴⁰ Ibid at 12, 33-34, & 79-80.

²⁴¹ See informative Interview with ASP Abdul Latif Adamu.

²⁴² UN Office of Drug and Crime, at 2.

become better, they will be ready to give good training to the children who are the future leaders of every country. A popular saying by a famous researcher, scholar, and educator in Ghana, Dr. James Emmanuel Kwegyir Aggrey is, “if you educate a man, you educate an individual but if you educate a woman, you educate a whole nation.”²⁴³ This kind of conscientization may help member states to realize the impact of incarcerated women on children and will begin to strictly sway towards non-custodial sentences as the sole punishment for women offenders.

²⁴³ “Famous Quotes and Sayings,” online: <www.quotes.net/quote/67261>.

III. SUBOPTIMAL IMPLEMENTATION OF LAWS IN GHANA

Generally, Ghana lacks effective implementation of laws adopted to effect positive change in the country. This was notably mentioned in the *Child and Family Welfare Policy*²⁴⁴ and in the *Prison Service's Ten-Year Strategic Development Plan 2015–2025*.²⁴⁵ Professor Opanyin Agyekum of the University of Ghana observed that Ghana has laws prohibiting many things, but the personnel put in charge of implementation is the country's biggest problem.²⁴⁶ The program manager of Ghana Integrity Initiative, Mary Awelana Addah, made a similar observation when commenting on how Ghana adopts laws to fight corruption that they do not, however, execute effectively. Ghana does not need more laws, rather, strengthening the existing ones and ensuring implementation is the way to go.²⁴⁷ When the Information Minister, Hon. Kojo Opong Nkrumah was asked about the problems Ghana faces in introducing different youth entrepreneurial programs, he said, “truly most programs suffer challenges at the implementation level, and we have to keep an eye on implementation.”²⁴⁸

This thesis studies the lax implementation of prison and other human rights laws, leading to human rights abuses of inmates, especially female inmates in Ghana. Policies or laws need adequate funding to facilitate their effective implementation, but successive governments lack the political will to provide sufficient funding for that. It can also be associated with sheer disrespect or disregard for female offenders and their human rights. The capacity of prison staff is another area of concern, and the ensuing discussion will be based on the assumptions or concerns raised above.

²⁴⁴ Ministry of Gender, Children and Social Protection, at 3.

²⁴⁵ Ghana Prison Service, “Ten-Year Strategic Development Plan 2015 – 2025,” at 9.

²⁴⁶ ‘Kokrokoo,’ “Drowning Saga: You Might Not Be ‘Lucky,’ Stop Using Kids for Labour- Opanyin Agyekum to Teachers” (16 November 2021), online: *Despite Media* <www.youtube.com/watch?v=KciMF0iQZ8g> (‘Kokrokoo’ is An Akan Language radio program and what was said has been translated into the English Language for the sake of this thesis).

²⁴⁷ Newsfile, “Mary Awelana Addah on Corruption Scorecard” (18 December 2021), online: *JoyNews* <www.youtube.com/watch?v=veC6-M182IM>.

²⁴⁸ “Kojo Opong Nkrumah on Budget Presentation” (17 November 2021), online: *JoyNews* <www.youtube.com/watch?v=6F5cKKt27gk>.

A. Background History on Ghana's Economic Difficulties

Ghana is a West African country occupying an area of 238,533 square kilometers near the Gulf of Guinea with a current population of 32,372,889. It is endowed with many natural resources like gold, cocoa, bauxite, petroleum, silver, and large agricultural land (69.1%)²⁴⁹ but categorized under a developing economy by the UN.²⁵⁰ Agriculture contributes about 36% of the Gross Domestic Product (GDP), making it the bedrock of the country's economy. For lack of technological expertise to add value to this agricultural produce and other natural resources, they are exported in their primary state which does not fetch enough foreign exchange for Ghana. This is one of the reasons why Ghana continues to rely on the international community for technical and financial support to balance its budget deficit.²⁵¹ Value additions create employment, and the government accrues more income to embark on major projects. In 2018, political leaders assured citizens of their plan to stop the exportation of raw materials because it enriches other countries and makes the Ghanaian poor.²⁵² Whether this promise has been kept is the subject for another discussion.

After independence in 1957, most of Ghana's political leaders continued to lament the scarcity of funds to meet Ghanaian needs. Ghana's economic growth looks promising as it was the leading cocoa producer in the world, accruing one of the highest per capita incomes in Africa. This started to fluctuate until its decline between 1965 and early 1970s to date, and the intermittent coups d'état is one of the reasons for this unstable economic growth. The military rulers did worse, so Ghana reverted to democratic rule in 1993 until today. The economic mess of the military government continued to cause financial problems for civilian administrations. In 2001, the newly

²⁴⁹ The World Factbook "Ghana" (27 October 2021), online: *CIA* <www.cia.gov/the-world-factbook/countries/ghana/>.

²⁵⁰ World Economic Situation and Prospects, "Country classification" (2014), at 146, online (pdf): *UN* <www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf>.

²⁵¹ Manteaw Samuel O, "Entering the Digital Marketplace: E-Commerce and Jurisdiction in Ghana" (2003) 16:2, at 351, online (pdf): *Transnat'l L & Pol'y* <<http://heinonline-org.proxy3.library.mcgill.ca/HOL/Page?handle=hein.journals/tranl16&id=351&collection=journals&index=>>>.

²⁵² "Ghana to stop exporting raw materials" (18 March 2018), online: *CNR* <citinewsroom.com/2018/03/ghana-stop-exporting-raw-materials-osafo-marfo/>.

elected government's only alternative was to join the Highly Indebted Poor Countries (HIPC) program to survive economically.²⁵³

HIPC is an enhanced debt relief initiative jointly introduced by the International Monetary Fund (IMF) and the World Bank in 1996 to reduce the external debt of poor countries that are struggling to offset their debts. HIPC drastically reduced the debt service as the balance of payment deficit was unsustainable. The government then had the leeway to do other developmental projects²⁵⁴ but obviously, the prison was not among the prioritized institutions, and it has been the practice since. The Information Minister mentioned that the 2022 budget is geared towards revenue mobilization to refurbish weak institutions, but his list did not include the prison service.²⁵⁵ Still, the 8% annual GDP growth rate targeted after independence has never been realized without oil production. The worse growth, -12%, was recorded in 1975²⁵⁶ and the best (15%) was realized in 2011 when oil production began.²⁵⁷ This started to decline the following year and currently it hovers around 3.9%,²⁵⁸ a recovery from the 0.4% growth in 2020, mainly because of COVID-19 and its associated privations. The Finance Minister, Mr. Ken Ofori-Atta projected that the GDP growth will increase to 5.8% in the 2022 fiscal year.²⁵⁹

Apart from exporting primary goods and its related problems, Ghanaians can be described as habitual tax evaders, making revenue mobilization exceedingly difficult for ruling governments. Out of the 25% GDP benchmark, merely 14% gets to government annually.²⁶⁰ About 89% of the workforce is in the informal sector which

²⁵³ Paaku Kludze A. Kodzo, "Ghana in Search of Good Governance" (2001-2005) 21, 166 at 229-230, online (pdf): *Rev. Ghana L.*

<heinonline.org/HOL/Page?public=true&handle=hein.journals/rvghana21&div=9&start_page=166&collection=journals&set_as_cursor=0&men_tab=srchresults>.

²⁵⁴ The Bank of Ghana, "The HIPC Initiative and Ghana's External Debt: An empirical assessment and Policy challenges" (2005), at 1-2, online (pdf): *Bank of Gh* <www.bog.gov.gh/wp-content/uploads/2019/07/THE-HIPC-INITIATIVE-AND-GHANA-policy-brief-1.pdf>.

²⁵⁵ "Kojo Opong Nkrumah on Budget Presentation."

²⁵⁶ Fosu Kwasi Augustin & Aryeetey Ernest, "Ghana's post-independence economic growth 1960-2000" (January 2010), at 1-2, 8 & 30-31, online: *Research Gate* <www.researchgate.net/publication/288587408_Ghana's_post-independence_economic_growth_1960-2000>.

²⁵⁷ Alagidede Paul, Baah-Boateng William & Nketiah- Amponsah Edward, "The Ghanaian Economy: An Overview" (2013) 1, at 5, online (pdf): *Gh J Econs*

<www.researchgate.net/publication/260591239_The_Ghanaian_Economy_An_Overview>.

²⁵⁸ "Ghana GDP Annual Growth Rate," online: *Trading Econs* <tradingeconomics.com/ghana/gdp-growth-annual>.

²⁵⁹ Ken Ofori-Atta, "The Budget Statement and Economic Policy of the Government of Ghana for the 2022 Financial Year" (Budget Statement presented to the Parliament of Ghana, Accra, 17 November 2021) (2021) *Ministry of Finance* <mofep.gov.gh/sites/default/files/news/2022_Budget_Statement_v3.pdf>.

²⁶⁰ "Kojo Opong Nkrumah on Budget Presentation."

has no formal arrangement for tax collection,²⁶¹ causing a lot of tax evasion. They deliberately refuse to pay because of the weak tax administration system in the country, while they know that the government needs the tax revenue to provide social interventions, infrastructure, and other amenities for the populace.²⁶² They blame their non-payment attitude on the inadequate usage of tax revenue by the government²⁶³ and the corrupt practices of some tax officials. They conspire with corrupt taxpayers and issue tax payment receipts when in fact, they have not paid, leading to loss of government funds which adversely affects every aspect of the Ghanaian economy. People are again discouraged from paying the tax since this illegality is not punished.²⁶⁴

The yearly budget of Ghana continues to expose the bad attitudes of Ghanaians towards tax payments. From 2017 to 2021, Greater Accra region, the capital city of Ghana, contributed about 90% of the domestic tax, while Ashanti, Eastern, and Western regions put together, contributed almost 3%. Only 8.2% of all potential taxpayers carry the burden of the rest which is economically unjust. The Finance Minister re-echoed, “out of the total registered voter population of 17, 27941 in 2020, less than 10% contribute to tier two taxes as of June 2021, and 45,109 entities are registered as corporate taxpayers while 54,364 persons are registered as self-employed taxpayers at the Ghana Revenue Authority. These statistics are a poor reflection on us, and we need to change the narratives.”²⁶⁵

Researcher Jeanne Hirschberger alluded that, prisons are expensive to operate. Necessities like food, health care, clothing, electricity, water, safety, and security that normally a prisoner cannot afford personally, must be provided with the taxpayers’ money. Few countries meet the required standard. Most countries allocate insufficient resources to manage the prisons, leading to human rights abuses in the penitentiaries

²⁶¹ Baah-Boateng William & Vanek Joann, “Informal Workers in Ghana: A Statistical Snapshot” (2020) 21, at 1-2, online (pdf): *WIEGO Stats Brief* <www.wiego.org/sites/default/files/publications/file/WIEGO_Statistical_Brief_N21_0.pdf>.

²⁶² Annan Betty, Bekoe William & Nketiah-Amponsah Edward, “Determinants of Tax Evasion in Ghana: 1970-2010,” 6:3, at 97, online (pdf): *Int’l J Econs Sc. & Applied Research* <ijbesar.teiemt.gr/docs/volume6_issue3/tax_evasion_ghana.pdf>.

²⁶³ Fagariba James Clifford, “Perceptions of Causes of SMEs and Traders Tax Evasion: A Case of Accra Metropolis, Ghana” (2016) 6:2, at 124, online (pdf): *American J Econs* <article.sapub.org/10.5923.j.economics.20160602.04.html#Sec1>.

²⁶⁴ Ameyaw Bismark & Dzaka Dominic, “Determinants of Tax Evasion: Empirical Evidence from Ghana” (2016) 7, at 1653-1655, online (pdf): *Modern Economy* <www.scirp.org/pdf/ME_2016121415422153.pdf>.

²⁶⁵ See Ken Ofori-Atta.

and the COVID-19 pandemic worsened the situation.²⁶⁶ Can the poor tax collection and payments be a good explanation for why the prisons in Ghana are not given the expected standard? If so, why is the government dragging its feet on the call for it to include the CSO in Ghana's criminal justice system, beginning with women offenders? In Ghana, most public discussions focused on the contention that, it is yet to see any government with the political will to fight corruption in all aspects of Ghana's economic life, expand the tax net and make its collection effective, prudently invest in the most crucial aspect of the economy including the prison service, and finally, institute the CSO as the Bangkok Rules stipulate.

1. Budget Allocation to Ghana Prison Service

The prison service often complains of inadequate budget allocation which hampers its ability to run important activities to bring dignity, reformation, and rehabilitation to inmates.²⁶⁷ The usual neglect of inmates' plight was repeated in the recent 2022 budget statement presentation. The police and the prison sectors are both under the Ministry of Interior, but the budget acknowledged only the police and its specific issues to be tackled in the budget year.²⁶⁸ Yet, the public questions how the prison officers use the money earmarked for them, especially when the 2013 annual prison reports indicated a supplementary financial disbursement to the prisons. The amount requested (GH¢161,422,181.68) by the prisons was almost doubled (GH¢222,804,551.77) for them to meet their target. Agric activities in the prisons also realized a profit of GH¢290,706.94.²⁶⁹ The prison service council's report revealed a decline in the prison's budget in 2015 and 2016.²⁷⁰ The prison authority added that the profit from Agric is inadequate while they lack the resources to enter commercial farming which is highly

²⁶⁶ Hirschberger Jeanne, "'Imprisonment is expensive' – breaking down the costs and impacts globally" (24 July 2020), online: *PRI* <www.penalreform.org/blog/imprisonment-is-expensive-breaking-down-the-costs-and/>.

²⁶⁷ Ghana Prison Service, "Ten-Year Strategic Development Plan 2015–2025," at 9.

²⁶⁸ See Ken Ofori-Atta.

²⁶⁹ Ghana Prisons Service, "Annual Report 2013" (2013), at 6 & 11, online (pdf): *Ghana prisons* <jmamoah.yolasite.com/resources/Annual%20Report%20Prisons%202013.pdf>.

²⁷⁰ Ghana Prisons Council, "2015-2016 Annual Report to Stakeholders" (2016) at 12, online (pdf): *GPC* <documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3A83737a7f-cf9e-4cae-97f4-e9bb9e06c209#pageNum=1>.

beneficial.²⁷¹ Another problem is the unpatronizing attitude of the public towards products from prisons, making them lack the funds to produce more. James Camp Prison’s cement block factory is a good example, as it produces only 300 instead of 2000 quality blocks.²⁷²

Aside from these activities and budgets from the government, several philanthropists including the Association of Magistrates and Judges, occasionally donate both cash and groceries to the prisons as a response to their complaints of financial difficulties.²⁷³ Are the resources been used for their purpose? Or are they diverted without reaching the inmates?²⁷⁴ Why are donors’ activities hardly captured in the annual reports? Although the 2013 report mentions some donors,²⁷⁵ this must be captured in every report or prison document to gain public trust. In September 2021, the Crime Check Foundation donated GH¢30,000.00 (CAN\$6,359.97) to the prisons²⁷⁶ and Ghanaians questioned if the money would be used purposefully.²⁷⁷

Regardless of the budget, donations, and profits from Agric, the daily amount allotted per prisoner is awful. The director of Amnesty International Ghana, Mr. Frank Kwaku Doyi lobbied for an increment in 2011 and it was adjusted to GH¢1.80 (CAN\$0.36) till today. His recent plea for an increase again to GH¢5.00 (CAN\$1.01) falls on deaf ears now. The GH¢5.00 is still petty but may provide a decent meal compared to the GH¢1.80.²⁷⁸ Inmates continue to lack items like razors, detergents, and are served indecent food.²⁷⁹ The National Commission for Civic Education (NCCE) has even called on the prison officers to ensure corrupt free institution and urged them to report any corrupt practices to the appropriate quarters. This request was made during the 2018 constitution year aimed at promoting good governance with specific issues on

²⁷¹ Ghana Prison Service, “Ten–Year Strategic Development Plan, 2015–2025,” at 20.

²⁷² Ghana Prisons Service Council, “An Introduction to Project Efiase: A guide for understanding the rationale behind Project Efiase,” (2015) at 6, online (pdf): *Gh Prisons Service* <vdocuments.mx/introduction-to-project-efiase.html>.

²⁷³ See informative interview with Kwarteng O. Ibrahim.

²⁷⁴ Fatoki Yewande, at 41.

²⁷⁵ Ghana Prisons Service, “Annual Report 2013,” at 35-36.

²⁷⁶ “CCF Donates Cash to Prisons Service” (14 September 2021), online: *CCF* <crimecheckfoundation.org/2021/09/14/ccf-donates-cash-to-prisons-service/>.

²⁷⁷ “Ghanaians React To GHS 30,000 Donation Made To Ghana Prison Service By Crime Check Foundation,” online: *Opera News* <gh.opera.news/gh/en/society/d5c5d6815f7d9c020b564d4f59df44cb>.

²⁷⁸ “Amnesty International Ghana Advocates Increase in Feeding Grants for Prison Inmates” (28 June 2021), online: *Peace FM Online* <m.peacefmonline.com/pages/local/news/202106/447448.php>.

²⁷⁹ Amnesty International, “Ghana: ‘Prisoners are bottom of the pile,’” at 17, 19, 23, & 34.

transparency and accountability.²⁸⁰ To the Vice President of the Republic of Ghana, Dr. Mahamudu Bawumia, the only solution is digitalization which the government is now pursuing because it reduces the tendency to pay bribes and leads to greater transparency, accountability, and efficiency.²⁸¹

B. Lack of Political Will and/or Political Interference

Over the years, different governments have unsuccessfully tried to fight corruption in Ghana. The Vice President reiterated that, “We have killed people in the past and it has not worked. We have passed many laws and they have not been enforced. We have appealed to people’s sense of morality, and it has not worked.”²⁸² The current government seems to have the political will to do things differently. Can their digitalization and digitization agenda curtail corruption to the barest minimum, and allow Ghana to get the desired revenue for important projects? This is arguable as some institutions have begun sabotaging the digitalization program already.²⁸³ Anyway, this debate exceeds the scope of this thesis.

1. Lack of Political Will

Political will is “the credible commitment demonstrated by political actors and bureaucrats to undertake actions to achieve a set of objectives and to sustain the costs of those actions over time.”²⁸⁴ It is this political will that prods political leaders to adopt and implement anti-corruption reforms and strategies effectively for the development of the country. Failure to do so triggers corruption that becomes a menace

²⁸⁰ The National Commission for Civic Education, “NCCE Challenges the Ghana Prison Service to Fight Corruption” (22 May 2018), online: *NCCE* <ncccegh.org/news/ncce-challenges-the-ghana-prison-service-to-fight-corruption>.

²⁸¹ Dr Mahamudu Bawumia, “Faith-Based Education, Public Morality and Nation Building” (Speech presented at Trinity Theological Seminary during its 76th graduation ceremony in Accra, Ghana, 13 November 2021), (2021) *Trinity Theological Seminary* <trinity.edu.gh/vice-president-at-the-76th-graduation-ceremony/>.

²⁸² *Ibid.*

²⁸³ Newsfile, “Mary Awelana Addah on Corruption Scorecard.”

²⁸⁴ Kukutschka Martínez B. Roberto, “Building Political Will” (2015) at 4, online (pdf): *Transparency Int’l* <www.transparency.org/files/content/corruptionqas/Topic_Guide-Political_Will.pdf#:~:text=The%20lack%20of%20political%20will%20is%20often%20invoked,comprehensive%20anti-corruption%20strategy%20in%20countries%20such%20as%20Singapore12QWKHRWKHUKDQGSZRZHU>.

to the nation, leading to lack of the needed financial and human resources to meet the demands of the citizenry.²⁸⁵ This is the status quo in Ghana since independence. The strategies to fight corruption has led to several coup d'états and extrajudicial killings in Ghana. The revolutionists who usurped power and executed others for being fraudulent, are corrupt themselves. They are partly to be blamed for the economic crises in Ghana.

Dr. Kwame Nkrumah led Ghana to gain independence from British imperial rule and became the first president of the Republic of Ghana. He was accused of corruption and human rights abuses, therefore was ousted by the National Liberation Council in 1966. A constitutional rule was reinstated in 1969 with Professor Kofi Abrefa Busia, as the Prime Minister. The National Redemption Council (NRC) overthrew him in 1972. For the same reason of betrayal of the Ghanaian sovereignty, a counter coup was launched by the Supreme Military Council (SMC) II in 1978 to topple the government of the NRC. In 1979, the Armed Forces Revolutionary Council (AFRC) made another counter coup to overthrow SMC II, for similar excuses. The AFRC oversaw the restoration of democratic governance, with Dr. Hilla Limann as the President but ejected him after 27 months in office. The AFRC renamed its regime as the Provisional National Defence Council (PNDC) and ruled Ghana from 1981 to 1993.²⁸⁶ The PNDC regime began with Self-Reliance Policies. It terminated and/or renegotiated contracts with foreign companies which have signed contracts with the Limann administration. Before reverting to democratic rule in 1993, the regime had turned to the International Monetary Fund (IMF) and the World Bank for loans to run the economy, something they accused the civilian government of doing. Later, "Ghana became the largest per Capita aid recipient in Africa,"²⁸⁷ leading to its ascension to the HIPC program in 2001.²⁸⁸ Obviously, military regimes could not find a lasting solution to Ghana's economic crisis.

²⁸⁵ Ibid.

²⁸⁶ Korash K. A., W. B. Van Lare & A. M. Akiwumi, "Ghana's Preventive Detention Act" (1961) 3:2, 65 at 38-40 & 69-70, online (pdf): *J Int'l Comm Jur* <heinonline-org.proxy3.library.mcgill.ca/HOL/Page?public=true&handle=hein.icj/jouicj0003&div=29&start_page=65&collection=icj&set_a_s_cursor=0&men_tab=srchresults>.

²⁸⁷ Owusu Gyening Kwaku, "Military Coups in Ghana, 1969-1985: A By-Product of Global Economic Injustices?" (2008) at 40-41, 46 & 50, online (pdf): <liu.diva-portal.org/smash/get/diva2:351303/FULLTEXT01.pdf>.

²⁸⁸ Paaku Kludze A. Kodzo, at 230.

The current democratic government believes that digitalizing the economy is the best strategy to drastically reduce corruption since digitization and digitalization lead to digital transformation needed by all economies to “pursue new revenue streams, products and services, and business models.”²⁸⁹ A digitalized economy will help block all leakages breeding corruption in state institutions and will help generate enough funds to pay the workers, reduce borrowing and consequently reduce government’s internal and external debts.²⁹⁰ The digitalization agenda has motivated heavy investment in a long-standing process of national identification, which began in 1973.²⁹¹ Since the mass registration for the national identity cards in 2018²⁹² over 16 million Ghanaians have been enrolled,²⁹³ first in the history of Ghana. Tax identification numbers were introduced in 2017 to properly identify all potential taxpayers and to link them to the national identity and health insurance cards, as well as the digital property addressing system. The purpose of this synchronization is to enhance transparency, accountability, aid economic growth, and confer opportunities to all citizens to enjoy their rights and perform their obligations in a secure environment.²⁹⁴ It is also to reduce tax evasion and mobilize the needed resources for government. The process has exposed over 30,000 professional workers including lawyers and doctors who evade tax hence, the digitalization agenda will bring all of them into the tax net.²⁹⁵

The Vice President restated that Ghana’s tax to GDP (Gross Domestic Product) ratio is 14.3% but only 4% of the adult population was in the tax net as of January 2017. By November 2021, the tax net had expanded to 86%. For him, advanced countries have formalized their economy through digitalization to promote accountability and transparency, reduce corruption, and enhance revenue mobilization. That is the path

²⁸⁹ Savić Dobrica, “From Digitization, through Digitalization, to Digital Transformation” (2019) at 38, online (pdf): <www.researchgate.net/publication/332111919_From_Digitization_through_Digitalization_to_Digital_Transformation>.

²⁹⁰ See Ken Ofori-Atta.

²⁹¹ National Identification Authority, “Our History,” online: *NIA* <nia.gov.gh/our-history/>.

²⁹² Kenneth Agyemang Attafuaah, “Executive Secretary’s Message,” online: *NIA* <nia.gov.gh/executive-secretary/>.

²⁹³ “Ghana Card: NIA to create registration centers at stadia across country” (19 February 2022), online: <www.ghanaweb.com/GhanaHomePage/NewsArchive/Ghana-Card-NIA-to-create-registration-centres-at-stadia-across-country-1473110#:~:text=Reports%20indicate%20that%20more%20than%2016%20million%20Ghanaians,centres%20and%20therefore%20there%20are%20mostly%20longer%20queues.>>.

²⁹⁴ See Kenneth Agyemang Attafuaah.

²⁹⁵ ‘Kokrokoo,’ “one-on-one with Hon. Kojo Opong Nkrumah” (4 November 2021), online: *Despite Media* <www.youtube.com/watch?v=9qaRCidjRw> (‘Kokrokoo’ is an Akan Language radio program and what transpired has been translated into the English Language for the sake of this thesis).

Ghana is toeing now.²⁹⁶ In Ghana, systemic crisis is tackled from the peripheral while the root cause that drives economic activities continues to exist. This new system deals with the core problem and as soft infrastructure, the benefits do not manifest for development immediately but will do eventually. The government will then acquire enough money for all projects.²⁹⁷

The digitalization agenda has been applauded by many Ghanaians but wondered when it will transcend to the rural areas for effective transformation of the whole economy. The Vice President confessed that the rural areas lack internet penetration, and they are working hard to seal the gap.²⁹⁸ One criminal law practitioner argued that before the commencement of the digitalization agenda, collection of citizens' biographical data, the digital property addressing system, and street naming in the country are too poor that every government finds it difficult to institute the Community Service Order (CSO). The present system aids fraudsters to alter their personal data and change jobs or relocate to other places. For him, until the government enrolls every community onto an efficient digital property addressing system; provides accurate street naming system and database of citizen like in the West; put mechanisms to reduce corruption to the barest minimum; and the citizens themselves becoming more patriotic, the CSO can never be a reality in Ghana. At a workshop where the Bench, the Bar, and other stakeholders discussed the essence of introducing Plea Bargaining and CSO into Ghana's criminal justice system, they agreed that the government must learn thoroughly from other jurisdictions before instituting the CSO to achieve maximum compliance. Plea Bargaining and CSO will help to reduce the high volumes of cases in the court, as well as decongest the prisons and the cells.²⁹⁹ After the workshop, the Attorney-General and Minister of Justice is poised to submit two bills, 'Plea Bargaining and Alternative Sentencing Bills' to parliament for deliberations and adoption. The Attorney-General seems to place priority on these bills,³⁰⁰ and it is

²⁹⁶ Dr. Mahamadu Bawumia, "Transforming an Economy through Digitization: The Ghana Story" (A speech delivered at Ashesi University in Ghana, Accra, 2 November 2021) *Ashesi Uni YouTube page* <www.youtube.com/watch?v=tRT8XRBrUNk>.

²⁹⁷ CNBC Africa, "In Conversation with Mahamudu Bawumia on Ghana's Digitization Agenda" (10 December 2021), online: *CNBC Afri* <www.youtube.com/watch?v=XqYNCwVJVw4>.

²⁹⁸ *Ibid.*

²⁹⁹ See informative Interview with Musah Suleman, (07 March 2021; 8:53am to 9:20am).

³⁰⁰ "Decongesting Prisons: Alternative Bills Go to Parliament - Attorney-General" (19 November 2021), online: *Peace Fm online* <peacefmonline.com/pages/politics/politics/202111/456112.php>.

expected that parliament will expedite their activities in its passage, and implementation will also be a priority.

In fact, another major problem of incorporating CSO in the criminal justice system is the politicization of its impact. Successive governments have not taken the bull by the horns because the political landscape in the country is so porous that George Benneh described it as very ‘dirty’ in his autobiography, *My Time My Nation: The Autobiography of Prof. George Benneh*. Opponents or colleagues in the same political party want to gain a flimsy political point to undermine the ruling government³⁰¹ and because illiteracy is high, propaganda mostly overcomes the truth. They will describe the ruling government as heartless and want to release criminals into the community to harm the people and they will buy into it. They will definitely feel unsafe and will vote the government out.³⁰²

2. Political Interference

Improper interferences of political players in the activities of the prison service prevent them from pursuing their legal mandates to achieve better results for the inmates hence, the human rights abuses seen in Ghana’s penitentiaries. A form of intrusion to give guidance regarding adoption of efficient policies, ensure due process in their activities, and demand accountability is accepted as the government allocates funds to the prison service.³⁰³ The prisons experience the following interferences which obstruct the institution’s progress: recruitment processes, training and promotion policies, policy and decision making, transfers,³⁰⁴ and appointments of the chairman of the prison Council and the Director-General of prisons, which the constitution conferred on the President under Articles 206 and 207 respectively.³⁰⁵

³⁰¹ Adom-Okyere Paul, “The Story Behind the Budget that was Rejected in 1980 by Prof Benneh during the Third Republic,” (Presentation at Metro Tv Ghana, 29 November 2021), online: *YouTube* <www.youtube.com/watch?v=Km5ExTMr6OE>.

³⁰² See informative Interview with Musah Suleman, (07 March 2021; 8:53am to 9:20am).

³⁰³ Nkanbonam Ninkab King David, “The Effect of Political Interference on the Performance of Public Agencies in Ghana: A Case Study of the Youth Employment Agency,” (2019) at 2-3, online: *UGSPACE* <ugspace.ug.edu.gh/bitstream/handle/123456789/32698/The%20Effect%20of%20Political%20Interference%20on%20the%20Performance%20of%20Public%20Agencies%20in%20Ghana%3B%20A%20Case%20Study%20of%20the%20Youth%20Employment%20Agency.pdf?sequence=1&isAllowed=y>.

³⁰⁴ Ghana Prisons Service, “Ten– Year Strategic Development Plan 2015–2025,” at 18-19.

³⁰⁵ See informative Interview with Musah Suleman, (24 September 2021; 6:00pm to 7:20pm).

Recruitment process is the main area of intrusion, marring the purpose of the process as unqualified people are recruited.³⁰⁶ The prison authority set a target for the number and the kind of personnel it needs to occupy the different units of the service, but political leaders impose what is commonly known in Ghana as ‘protocol list,’ on the prison authority.³⁰⁷ This is a list composed of the ruling government’s party sympathizers who may not have the pre-requisites for the recruitment process, violating the UN’s guidelines on recruiting people with “integrity, humanity, professional capacity, and personal suitability.”³⁰⁸ Such people become officers with little or no passion for the job and it adversely affects the quality of their service delivery. Truly, “without appropriate behavior by staff, other reform measures will flounder.”³⁰⁹

The 2021 recruitment process in Ghana comprised 70% ‘protocol list.’ How will the institution achieve its goals with the rest of the 30%? Again, once the Director-General is appointed by the president, the likelihood of appointing those who will sing his praises, avoid making his government unpopular, and promote his agenda, is extremely high. This probably explains why for some time now, the annual prison reports have not been published for public consumption, and no one is held accountable. For political expediency, the President may choose from among junior officers when seniors who merit the same position are available. This brings dissatisfaction and diminishes the enthusiasm of these seniors therefore, they work apathetically. The prison council has a similar arrangement. Aside from the representatives of the Ghana Medical and the Bar Associations who are not appointed by the President, the other eleven members including the chairperson are directly or indirectly appointed by the President to the prison council.³¹⁰ What agenda can they pursue apart from the President’s one?

³⁰⁶ Ghana Prisons Service, “Ten – Year Strategic Development Plan 2015 – 2025” at 19.

³⁰⁷ Informative Interview with a prison officer who did not want his identity to be recorded because of security issues, (19 December 2021; 7:30am to 8:03am, Montreal Time). He said, they are not allowed to give information to the public or talk to the media unless authorized to do as prison wardens. But he thinks the inmates face inhumane treatments and that this information should be shared in order to obtain help.

³⁰⁸ United Nations High Commissioner for Human Rights, “Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials” (2005) at 22, online (pdf): *OHCHR* <www.ohchr.org/Documents/Publications/training11Add3en.pdf>.

³⁰⁹ International Centre for Prison Studies, “Guidance Note 8: Prison staff and their training” (2004) at 1 & 3, online (pdf): *ICPS* <www.prisonstudies.org/sites/default/files/resources/downloads/gn8_6.pdf>.

³¹⁰ See informative Interview with a prison officer who did not want his identity to be recorded.

Upon realizing the inhumane conditions of the inmate, the prison council initiated the Project Efiase in 2015 to educate the public about the prison situation, advocate for public-private partnership, and raise funds for the prisons to effectively fulfil their obligations. By 2016, the council had amassed GH¢252,264.70, out of which GH¢115,088.23 was spent and GH¢137,176.47 was accumulated in the bank.³¹¹ Why the accumulation when the inmates continue to suffer? Are they not aware that the money (GH¢1.80) assigned per inmate is inhumane? Why is the council quiet over it, for Amnesty International Ghana and the media to push for its review?

Nsawam prisons enjoy some form of privileges from the government and philanthropists because it has the biggest prison for both men and women convicts in Ghana. The others are highly under-resourced, which is why they are unable to carry out rehabilitation programs for inmates. There are no classrooms, black/white board, and chalk/marker for teaching, not to mention workshops to train them on employable skills and other handicrafts. There is no proper functioning car to commute inmates to and from the court as well as to send sick inmates to the hospital. To alleviate some of these hardships, the government promised to build two hospitals for the prisons in 2017 and until today, nothing is known about their progress. The military and the police services have hospitals, and it is expected that the Council and the Director-General will also compel the government to do as pledged. Why are they not updating the public on the progress of the hospitals for all these years?³¹² Mayhap, they are gagged because the President appointed them.

C. Prisons Staff Capacity

Ghana prison service is composed of the following departments and units: Finance and Administration, Human Resource Development, Agric, Welfare, Support Services, Service and Technical, Security and Operation, and Inmates Skills Development and Rehabilitation.³¹³ The total staff has grown from 4,597 in 2015³¹⁴ to

³¹¹ Ghana Prisons Service Council, “An Introduction to Project Efiase,” at 1-2; “2015-2016 Annual Report to Stakeholders,” at 124.

³¹² See informative Interview with a prison officer who did not want his identity to be recorded.

³¹³ Ghana Prison Service, “Department & Units” (2015), online: <ghfinder.com/ghana-prisons-service-departments-and-units/>.

³¹⁴ Ibid, “Ten-Year Strategic Development Plan 2015–2025,” at 9.

about 7,528 in 2020, excluding the 2021 recruits. Presently, the ‘protocol list’ has led to overstaffing, especially among the female staff overseeing the women inmates. Most of them refuse to work in the rural prisons, making the city and town prisons choked with redundant lower-ranked personnel.³¹⁵ Researcher Akoensi Thomas opined that the staff-inmate ratio is supposed to be 1:3 but the actual ratio as of 2014 was 1:9 thus, the prison service is understaffed leading to ineffective surveillance and reliance on inmates’ leadership. The anonymous prison officer interviewed, disagrees with this assertion because inmates’ leadership dates back to colonial days, and Sections 459 and 460 of the Standing Orders specify it too. Every institution uses leadership among colleagues for better interaction with top officers to communicate colleagues’ welfare and assists in the enforcement of new policy directions that inure to their benefit.³¹⁶ Apparently, political interference, monetary constraint, and poor conditions restrain them from speaking out and impede these benefits.³¹⁷ By this, junior officers’ passion to work is demoralized, so it is difficult to attract and retain specialists and technocrats in the service. This has influenced the decision to combine the Technical, Services, Human Resource, and Agric units, overburdening the staff under these schedules.³¹⁸

The barracks and offices are too old and no longer accommodating, and reliance on rented apartments has put the prison authority in huge debt. All the departments and units have financial problems leading to setbacks in their mandates.³¹⁹ Will downsizing lead to retaining enough money for the rest to work efficiently? Or there must be compulsory transfers to fill up the understaffed rural prisons? Or channelling them into probation officers and supervisors under CSO is the best option? Experts say that it is vital to downsize to increase performance, while others caution that it must be done with care to avoid reduction of resources that will negatively affect the institution.³²⁰ But then, it is doubtful that the prisons will experience adverse effects if redundant staffs are laid off. Prison jobs are already stressful because of fear, pressure, frustration,

³¹⁵ See informative Interview with a prison officer who did not want his identity to be recorded.

³¹⁶ Akoensi D. Thomas, at 33-37.

³¹⁷ See informative Interview with a prison officer who did not want his identity to be recorded.

³¹⁸ Ghana Prisons Service, “Ten – Year Strategic Development Plan 2015 – 2025,” at 9 & 18-19.

³¹⁹ Ghana Prisons Service Council, “An Introduction to Project Efiase,” at 3-6.

³²⁰ Zorn Michelle L., Norman Patricia, Butler Frank C & Bhussar Manjot, “If You Think Downsizing Might Save Your Company, Think Again” (26 April 2017), online: *Harvard Bus R* <hbr.org/2017/04/if-you-think-downsizing-might-save-your-company-think-again>.

and tiredness,³²¹ and when one is forced to serve at a place s/he dislikes with poorer conditions of service, efficiency will be compromised. Advocates of CSO believe that these personnel can be made probation officers and supervisors under CSO, so they constantly urge the Attorney-General to speed up the submission of the CSO bill to parliament. The prison service operates an ill-defined structure and improper protocols, making the headquarters over-centralized, and causing inappropriate planning and policy execution. How can such a structure address the challenges of a correctional institution?³²²

The warders are not motivated enough. The dissatisfiers like salary, status, working conditions, supervision, administration, and security for their personal lives outweigh the satisfiers or motivators like accomplishments on the job, recognition for accomplishments, growth in skills, growth in responsibilities, and advancement on the job.³²³ Nevertheless, the service motivates the staff through sponsorship schemes to upgrade themselves academically and gain training programs. Few officers are beneficiaries as some officers have served over twenty years without benefiting from any in-service training.³²⁴ Even the projections made for a strategic development plan in the 2012 annual report and repeated in the *Ten-Year Strategic Development Plan* have not been met. Some of the projections made are:

designing programs for continuous training of specialized personnel; publish academic training programs that will focus on more practical areas of personnel development; release officers for short courses on capacity building; carrying out competency-based training for Correctional Diagnostic Centre Staff and in-service training on professional ethics and duties for secretaries; organizing special workshops on management of juvenile offender for core group of Senior Correctional Centre officers;³²⁵ re-branding the service; establishing firefighting teams in each prison who will be trained based on national standards set by the Ghana National Fire Service; and modernization of management practices and administrative structures.³²⁶

³²¹ Akoensi D. Thomas, at 33.

³²² Ghana Prisons Service, “Ten-Year Strategic Development Plan 2015–2025,” at 9 & 16-19.

³²³ Baker Thomas J., “Designing the Job to Motivate” (1976) 45:11, at 3-4, online (pdf): *FBI L. Enforcement Bull* <heinonline-org.proxy3.library.mcgill.ca/HOL/Page?public=true&handle=hein.journals/fbileb45&div=103&start_page=3&collection=usjournals&set_as_cursor=0&men_tab=srchresults>.

³²⁴ Ghana Prisons Service, “Ten-Year Strategic Development Plan 2015–2025,” at 19.

³²⁵ See informative Interview with a prison officer who did not want his identity to be recorded.

³²⁶ Ghana Prisons Service, “Ten-Year Strategic Development Plan 2015–2025,” at 28-58.

D. Disregard or Disrespect for Incarcerated Females and their Human Rights

In Ghana, the tribes that uphold matrilineal system of inheritance allow women from the royal family to play a leading role in the enstoolment of chiefs.³²⁷ They are expected to lead a morally good character, confirming Lombroso's assertion that "women, as required by their nature, are in fact the defenders of the social order."³²⁸ Hence, they experience stigmatization when incarcerated and family members may distance themselves from such women.³²⁹ Actually, both matrilineal and patrilineal tribes in Ghana do not take issues of women's human rights and development seriously. This has transcended to how the state treats its female inmates. A brief history of how women were relegated to the background will give some clues as to why incarcerated women and their children are not given the necessary care and attention, until today. Before, during, and after colonialism in Ghana, women were sidelined with regards to inheritance, property acquisition, education, economic and social activities to effect change in the country. Until the adoption of the Intestate Succession Law 1985 (PNDCL 111) that regulates the inheritance of those who died intestate, wives and children were not entitled to inherit their respective husband and father's estate upon demise. The sole heir was the deceased's maternal nephew while the widow and her children were left to their fate despite the wife's contribution to her husband's property. Women were only important to be married off for the continuation of the family lineage.³³⁰ Young girls are also married off against their will, although the practice has declined lately.³³¹

Prior to the PNDCL 111, the women took advantage of British colonial rule and its respect for women's rights. The brave ones pursued their right to inherit their

³²⁷ Adjei J. Kingsley, "The Role of the Chieftaincy Institution in Ensuring Peace in Ghana from the Pre-Colonial Times to the Present," at 5, online (pdf): <files.isanet.org/ConferenceArchive/e8b6e48cddc6406fb713dfbe731eb106.pdf>.

³²⁸ Şahin Hande, "A Sociological Analysis of Women Criminals in Turkey: A Case Study" (2015) 11:10, 194 at 196, online (pdf): *European Sc. J* <eujournal.org/index.php/esj/article/view/5909>.

³²⁹ Anku Deladem Ama, at 35.

³³⁰ Mikell Gwendolyn, "Culture, Law, and Social Policy: Changing the Economic Status of Ghanaian Women" (1992) 17:1, 225 at 226 & 229-230, online (pdf): *Yale J Int'l L* <heinonline.org/HOL/Page?public=true&handle=hein.journals/yjil17&div=14&start_page=225&collection=journals&set_as_cursor=0&men_tab=srchresults>.

³³¹ United Nations Children's Fund, "Ending Child Marriage: A Profile of Progress in Ghana" (2020) at 6-21, online (pdf): *UNICEF* <reliefweb.int/sites/reliefweb.int/files/resources/Child-marriage-Ghana-brochure-English_2020.pdf>.

husbands' estate in court,³³² though unsuccessful because of the strong application of the indigenous laws. In *Quartey v Martey and Anor*, the plaintiff's claims were dismissed by judge Ollennu, who recapped the principles of the customary law that denies a widow and her children from inheriting the husband's property except for maintenance from the family. No matter her support for the husband in acquiring property, it is the husband's property and not joint ownership,³³³ unless he gifted her some cash or land before his death. This and other outcries by widows who lose everything after the death of their husbands led to the adoption of the PNDCL 111 to replace and correct the irregularities in the indigenous system of inheritance. It offers protection and security to widows and their children.³³⁴ The law also provides a system of distribution of the property so that the man's family, the children, and the widow are satisfied. It prohibits ejection of the widow and children from the deceased's house before the devolution of the property.³³⁵

In terms of education, boys are always the preference, especially if the family's finances are weak. The notion that girls would be married off no matter their education clouded the family's thinking, even after Dr. Kwegyir Aggrey's popular assertion about the importance of educating the girl child.³³⁶ Series of women's advocacy has led to inconsistent affirmative actions by different political leaders over the years.³³⁷ Now, both boys and girls are given equal opportunities to explore their aptitudes, but some cultural and economic obstacles prevent the girls and women from exhibiting their full potentials.³³⁸ In 2017, the government instituted the Free Senior High School policy to protect those with financial glitches, close the educational rift between boys and girls,³³⁹ and fulfill UN's Sustainable Development Goal 4.1.

³³² Mikell Gwendolyn, at 226 & 228-230.

³³³ *Quartey v. Martey & Anor* (1959) GLR 378.

³³⁴ Gedzi Victor Selorme "PNDC Law 111 in Ghana and International Human Rights Laws" (2014) 2:2, 15 at 17-18, online (pdf): *Global J of Pol. & L. Research* <ejournals.org/wp-content/uploads/PNDC-Law-111-in-Ghana-and-International-Human-Rights-Laws.pdf#:~:text=Ghana%20promulgated%20the%20intestate%20succession%20PNDC%20Law%20111,and%20to%20provide%20a%20uniform%20intestate%20succession%20law%E2%80%9D>.

³³⁵ See Sections 3 to 17 of PNDCL 111.

³³⁶ "Famous Quotes and Sayings."

³³⁷ Torto T. Beatrice, "Affirmation Action & Women's Empowerment in Ghana: Challenges to a Growing Democracy" (2013) at 42, online (pdf): *Academia* <www.academia.edu/15352279/Affirmation_Action_and_Womens_Empowerment_in_Ghana_Challenges_to_a_Growing_Democracy>.

³³⁸ Amu Judith Nora, "The Role of Women in Ghana's Economy," at 14, online (pdf): *Friedrich Ebert Stiftung* <library.fes.de/pdf-files/bueros/ghana/02990.pdf>.

³³⁹ "Everything you need to know about the Free SHS policy," online: *Free SHS* <freeshs.gov.gh/index.php/free-shs-policy/>.

As previously mentioned, the ‘dirty’ political game in the country discourages the few educated women to spearhead any major project. Most of them shy away from political or high-ranked positions that will allow them to partake in decisions that affect the lives of women. Other reasons are “lack of funds to support women’s campaigns, verbal and psychological threats from male counterparts, harassment and insults from fellow women and men, chieftaincy and political affiliations and cultural stigmatization.”³⁴⁰ Even Dr. Kwame Nkrumah acknowledged that women were instrumental in Ghana’s strive for independence. He did not legislate strict affirmative action to close the economic disparities between men and women but reserved ten slots for them to be appointed into the legislative assembly in the 1960 constitution. Subsequent constitutions did not maintain this good initiative.³⁴¹ The 40 (14.5%) women parliamentarians out of the 275 total members of parliament,³⁴² are not representative enough. Indeed, this number is an improvement over the previous year, it does not meet the 50% target set under Article 9 of the 2003 African Women’s Protocol, to be achieved by 2020. At the moment, Ghana has the following women’s advocacy groups aimed at women empowerment and girls’ education: Women’s Initiative for Self-Empowerment, the Gender Studies and Human Rights Centre, Federation of Muslim Women Association in Ghana, Women in Law and Development in Africa, ABANTU for Development, Leadership and Advocacy for Women in Africa, the Centre for Gender Studies and Advocacy, the Network for Women’s Rights, the Coalition of Women in Governance, and the Gender Development Resource Centre. In spite of these groups, Ghana has no effective affirmative action policy because it failed to fulfil domestic and international gender policies.³⁴³

The advocacy to recognize women’s rights in Ghana is an admission that women are invisible creatures in society, and incarceration worsens their predicament, especially in terms of their health care.³⁴⁴ Healthcare givers in the male prisons get the

³⁴⁰ Torto T. Beatrice, at 44.

³⁴¹ Ibid at 43.

³⁴² “Women representation in Ghana’s Parliaments” (12 January 2021), online: *CNR* <citinewsroom.com/2021/01/women-representation-in-ghanas-parliaments-infographic/>.

³⁴³ Torto T. Beatrice, at 43- 44 & 46.

³⁴⁴ Braithwaite L. Ronald, Treadwell M. Henrie & Arriola Kimberly R. Jacob, “Health Disparities and Incarcerated Women: A Population Ignored” (2005) 95:10, at 174, online (pdf):

opportunity to update their skills, whereas their female counterparts are often left in the dark.³⁴⁵ Why are female inmates facing challenges when Ghana has all these women advocacy groups? And why are they not campaigning for a pregnancy test before incarceration? Do they frequent the prisons to listen to the women inmates at all? Or these women advocates are also stigmatizing against female inmates because of their crimes? The impact of these prominent groups on Ghanaian women is not in doubt, and the expectation on them to persuade the government to adopt the CSO for women offenders is high.

Nelson Mandela rightly stated that “no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”³⁴⁶ It is therefore not surprising that over the years, government budgets including the 2022 one, did not provide specific interventions for inmates’ challenges. At the 19th World Day against the Death Penalty 2021 dubbed, “Women and the Death Penalty, an invisible reality,” Mr. Doyi appealed to all stakeholders to jointly help to scrap death penalty from Ghana’s criminal justice system. Death penalty is unfair, discriminatory, and violates the right to life as provided under the Universal Declaration of Human Rights. There are 160 inmates on the death row, out of which five are women. Amnesty International Ghana is in the process of assisting one of the women to appeal her death sentence because it is expensive.³⁴⁷ As human rights activists push for the eradication of death penalty, and the establishment of CSO in Ghana, the quandaries of the victims must also be a priority. A proper compensation scheme should be instituted for them.³⁴⁸ Kenya has the Victim Services program which provides protection, counseling, notification, welfare, legal services, and facilitates the reparation process for victims.³⁴⁹ The Victim Fund in Canada assists victims to access

<www.researchgate.net/publication/7578851_Health_Disparities_and_Incarcerated_Women_A_Population_Ignore>.

³⁴⁵ Sarpong A. A. et al., at 182.

³⁴⁶ “The United Nations Standard Minimum Rules for the Treatment of Prisoners: An updated blueprint for prison management in the 21st century,” online (pdf): *UNODC* <unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf>.

³⁴⁷ “160 Inmates on Ghana’s Death Row – Amnesty International” (13 October 2021), online: *Peacefm* <peacefmonline.com/pages/local/social/202110/453721.php>.

³⁴⁸ African Union, “Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa” (2003) at 10 & 17, online (pdf): *ACHPR* <www.files.ethz.ch/isn/103017/Robben_Island_guidelines_eng.pdf>.

³⁴⁹ “Overview of the Community Corrections System in Kenya,” at 11.

justice, creates awareness about the services available to victims of crimes and their families, and provides legal advice and representatives for victims.³⁵⁰

Victims are usually satisfied when culprits are punished harshly because their idea of punishment is different from what punishment seeks to achieve, so educating them³⁵¹ and providing some of these programs will be helpful. They will understand why CSO, and other related punishments reduce crime, but death penalty does not.³⁵² A victim of fraud alleged that the fraudster's 68-year-old mother was aware of her son's activities thus, she was arrested when the son escaped. She was seriously sick that she could not even control her faeces and urine, had swollen legs because of diabetes, and can only walk with the help of others. She was fined GH¢3600.00 (CAN\$763.20) but was imprisoned because she could not pay the fine.³⁵³ Her documentary on Crime Check Foundation's YouTube page is pathetic and one wonders why Ghana's criminal justice system does this to its own citizens. All the women advocacy groups could not rescue her. Crime Check Foundation paid the money imposed on her, and she was released.³⁵⁴ The Banjul Charter indicated an intention to remove all forms of colonialism from Africa as the people struggle to gain dignity and liberation.³⁵⁵ But how do the African leaders treat their own people, particularly offenders, when they get the power to rule? Inhumane treatment abound, violating the spirit and letter of the AU's Banjul Charter.

³⁵⁰ "Victims Fund" (23 August 2021), online: <justice.gc.ca/eng/fund-fina/cj-jp/fund-fond/index.html>.

³⁵¹ See informative Interview with Musah Suleman, (24 September 2021; 6:00pm to 7:20pm).

³⁵² "Murder Rate of Death Penalty States Compared to Non-Death Penalty States," online: *Death Penalty Info Cent.* <deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>.

³⁵³ See informative Interview with Kwarteng O. Ibrahim.

³⁵⁴ Interview of Kwarteng O. Ibrahim, Chief Executive Officer of Crime Check Foundation, Ghana, (2 November 2018). "68-year-old sick woman in prison for a crime committed by her son," online: <www.bing.com/videos/search?q=www.youtube.com%2fwatch%3fv%3dMQSIG-_fmvI&docid=607998903559464040&mid=FF8C930D2E5EB9A65624FF8C930D2E5EB9A65624&view=detail&FORM=VIRE>.

³⁵⁵ African Union, "African (Banjul) Charter on Human and Peoples' Rights," at 2.

IV. LESSONS FROM THE CASE STUDY OF GHANA AND BEST PRACTICES

This thesis is not in any way aimed at denigrating the efforts of the prison service in Ghana and elevating those of Kenya and Canada. They all have their drawbacks, but there are good examples from these countries that Ghana needs to incorporate into its criminal justice system as the Ouagadougou Declaration encouraged all AU members to do.³⁵⁶ If an inmate can claim that robbery is his talent during an advice session,³⁵⁷ imprisonment and rehabilitation programs can help this hardened criminal to change his psyche. Therefore, the thesis is not pressing for a total abolition of imprisonment but supports Appiahene-Gyamfi's advocate for the dissolution of women imprisonment in Ghana as they pose no risk or danger to society.³⁵⁸

Also, the thesis intends to add a voice to the numerous research on Ghana prisons that seek to draw attention to the problems of both the warders and the inmates, particularly by addressing the core issues. That is, slack implementation of prison laws and its adverse effect on the human rights of women inmates and their children. Among other things, the preceding sections centered on the incarceration of women in Ghana, reasons for their poor conditions, and treatment given to women offenders in Kenya and Canada. Hence, this section will emphasize the lessons from Ghana vis-à-vis better outcomes from Kenya and Canada's community work for women offenders that has protected the rights of women offenders in those countries. The reasons for citing examples from Kenya and Canada are elaborated in Section II of this thesis. Apart from these two countries, inspiration may be drawn from other countries, when necessary. Based on the best practices from these countries, recommendations are provided with the expectation that their implementation will significantly reduce the abuse in women's penitentiaries in Ghana, as there is no perfect situation anywhere.³⁵⁹

³⁵⁶ "The Ouagadougou Declaration and Plan of Action on Accelerating Prisons' and Penal Reforms in Africa," (2002), online: *ACHPR* <achpr.org/legalinstruments/detail?id=42>.

³⁵⁷ See informative Interview with DSP Abdul Latif Adamu.

³⁵⁸ Appiahene-Gyamfi Joseph, at 167.

³⁵⁹ See Hirschberger Jeanne.

A. Lessons from Ghana, Kenya, and Canada

The results from the various research on Ghana's prisons, the informative interviews conducted, reports from the UN Special Rapporteur, U.S. Department of State, Amnesty International, and all media platforms in Ghana exposed the human rights abuses in the country and its penitentiaries. Should Ghana continuously be seen endorsing inhumane treatments and punishments? For the UN Rapporteur, it is lack of resources and political will to address crucial issues in health and criminal justice systems that cause the continuous human rights abuses in the country. Monetary issues also prevent many of the inmates from acquiring handicraft training. Less than 10% of nationwide convicts enjoy such programs.³⁶⁰ The distance education to acquire a diploma takes place in Nsawam prisons alone, while Ghana has 43 prison establishments across the country. Though, Ghana is lauded as one of the countries with the lowest female imprisonment rate in the world.³⁶¹ This is a negative recognition and ought to be changed. Ghana must be hailed for successfully enforcing CSO for women offenders to reduce crime and preserve their dignity and that of their children. Nonetheless, some inmates acknowledged the skills and education they acquired in the prisons and the fact that others have been reformed to become preachers after serving their prison terms. This is because they are allowed to express their faith and receive visitors on religious or non-religious grounds in the prison.³⁶²

Kenya and Canada have not abandoned women incarceration as such but the rate of reliance on CSO for women offenders is high and worthy of simulation. Judges in both countries confirmed their preferences for CSO to incarceration because it is impactful. Before independence, Kenya had a commission that recommended a probation order in 1943 and why Ghana did not follow the same tangent when both countries were under British rule, is a conversation for another time. Kenya has the following Acts: Cap 93, Cap 64, and the Sentencing Policy Guidelines that regulate the community service of offenders. The establishment of committees to research, create innovative

³⁶⁰ Méndez Juan E., at 4 & 11.

³⁶¹ Roy Walmsley, "World Female Imprisonment List," 4th ed, at 2-4.

³⁶² See informative Interview with Kwarteng O. Ibrahim.

programs for the development of the CSO, and secure compliance is very thoughtful. The collaboration with the University of London for both inmates and staff to acquire a law degree reduces stigma as it puts both staff and inmates on the same level. And with guidance from Penal Reform International, Kenya has educated its prison staff and the public on the essence of the CSO. The CSO system is structured to include important stakeholders, as well as ex-convicts, to facilitate the offenders' community work. The monthly submission of offenders' worksheets to the probation officers³⁶³ allows them to be part of their own work as they record their daily activities. To lessen the burden of the court, avoid prison overcrowding, and bring justice to the doorsteps of the less privileged, Kenya instituted community paralegals under its Legal Aid Act 2016,³⁶⁴ and offer a diploma course in its law school.³⁶⁵ Paralegals are not legally recognized in Ghana, and it is depriving people in the rural communities of getting justice because accessing the services of lawyers is almost impossible for them.³⁶⁶ A Ghanaian inmate complained to Amnesty International that "people here are perishing because of the lack of a lawyer."³⁶⁷ A state attorney discloses that just as some police officers are trained to take up prosecutorial roles to assist attorneys' work, it is vital to train paralegals to complement lawyers' work too.³⁶⁸

Canadian judges have relied on conditional sentences, and they testify to its satisfactory results over the years.³⁶⁹ As in Kenya, Canada's probation officers also provide information to the court before a court imposes any of the non-custodial sentences on the women offenders. They guide the offenders to execute their work accordingly. Given the state-of-the-art facilities for women inmates and the daily average expenditure of CAN\$ 259 per inmate,³⁷⁰ it is reasonable why Canada believes

³⁶³ Penal Reform International, "Community service and probation for women," at 6-9; "The rehabilitation and social reintegration of women prisoners," at 16 & 21- 31; "Excellence in Training on Rehabilitation in Africa (ExTRA) Project," at 3.

³⁶⁴ Angote Gertrude "Kenya Community Paralegals: Recognition and Financing Research Brief" (25 January 2019), online: *Namati* <namati.org/resources/kenya-community-paralegals-recognition-and-financing-research-brief/>.

³⁶⁵ Kenya School of Law, "Paralegal Studies," online: *KSL* <www.ksl.ac.ke/paralegal-studies/>.

³⁶⁶ Newsfile, "Paralegals in court: giving true meaning to legal aid in Ghana, Samson's Take" (28 October 2017), online: *Joy New* <www.youtube.com/watch?v=OvjTR9l6eQ>.

³⁶⁷ Amnesty International, "Ghana: 'Prisoners are bottom of the pile,'" at 14.

³⁶⁸ Informative Interview with Cyril Boateng Keteku, State Attorney at the Office of the Attorney General and Minister for Justice, Ghana, (26 January 2022; 11:02am to 11:39am, Montreal time).

³⁶⁹ Roberts & LaPrairie, at 19.

³⁷⁰ "Average daily inmate expenditures for adult federal, provincial and territorial correctional services in Canada in fiscal years 2001 to 2020" (4 February 2022), online: *Statista Research Dept.* <www.statista.com/statistics/561289/average-dailyinmate-costs-adult-federal-provincial-territorial-correctional-services->

CSO is cheaper and has applied it for over two decades.³⁷¹ Comparably, Ghana's imprisonment is cheap considering the daily rate of GH¢1.80 (CAN\$0.36) allotted to each inmate, a reason for the human rights abuses in the prisons. The use of a Correctional Investigator helps streamline the correctional institutions in Canada because he reports everything whether good or bad, without concealing. The reliance on ex-convicts' group like the Unlocking the Gates Peer Health Mentoring Program which assist women upon completion of their sentence is motivating.³⁷² The Walls to Bridges brings both inmates and non-prisoners together and this helps the inmates to reveal the best in them and not to feel rejected by society. An ex-convict, Ms. Twins' activities in advocating for the protection of women inmates are rewarded, and it is a good signal that it is worth promoting the rights of women in prisons. It will be better for all women offenders to serve under CSO and abolish the prison system in Canada, but overall, the healing lodges, educational programs, and guidance for the mother-child units³⁷³ established for the women inmates indicate how the country values proper reintegration of these women into society.

B. Recommendations

The reasons for the substandard implementation of prison laws in Ghana are multifaceted, but the space allowed in this thesis accommodated only the crucial ones. If offenders are respected without stigma and given the necessary rehabilitation, they will be useful to society, if not, they will consider society as haters, hence, they will hate back through reoffending. All stakeholders have a part to play in the implementation of the following recommendations:

canada/#:~:text=This%20statistic%20shows%20the%20daily%20inmate%20expenditures%20for,daily%20expenditures%20on%20inmates%20averaged%2023%20Canadian%20dollars.>.

³⁷¹ Vass & Menzies, at 257.

³⁷² Penal Reform International, "The rehabilitation and social reintegration of women prisoners," at 39.

³⁷³ The Collaborating Centre for Prison Health and Education, "Guidelines for the Implementation of Mother-Child Units in Canadian Correctional Facilities" (2015), online (pdf): *CCPHE* <www.cfpc.ca/CFPC/media/Resources/Health-Policy/MCU-Guidelines.pdf>.

1. Ratification and subsequent implementation of the Bangkok Rules must be a topmost priority because women prisoners are more vulnerable, their reintegration into society is difficult, their incarceration adversely affects their children, and they do not cause public panic.³⁷⁴ The kinds of offences that are commonly prosecuted among women in Ghana attest to this. In the Eastern Region for instance, between 2020 and 2021, misdemeanors were common but only four women were prosecuted for a capital offence and few second-degree felonies like theft.³⁷⁵
2. A special supervisor should be assigned to the prisons like the correctional investigator in Canada. This will be helpful because s/he will regularly report on the specific problems facing the prisons and inmates as done by the UN and AU Special Rapporteurs. The Commission on Human Rights and Administrative Justice is supposed to do this, but it is under-resourced, and the scope of its work is too broad, thwarting its prisons supervision. Through a media report, a dilapidated vehicle in one rural prison was replaced³⁷⁶ therefore, special supervisors' reports must be encouraged.
3. If the bill on CSO is eventually passed, the guide to its implementation must ensure that it exhausts all the work the court can impose without allowing discretion. In Kenya, Cap 93 provides a list of work but allows the court a discretion to order any work it deems fit for the women offenders. The fear of settling scores should guide framers of the CSO in Ghana so that all work would be included before implementation. Any work that is identified later should lead to an amendment to include it. Professional probation officers may be lacking from the beginning just like the Kenyan's experience, and by time, adequate probation officers would be trained to do the job.
4. Ghana needs well-structured systems like street naming, and a database of all residents in the country to be able to institute the CSO successfully. The populace should cooperate with the ongoing digitalization process in the country to help in that direction.

³⁷⁴ UN Office of Drug and Crime, at 2.

³⁷⁵ See informative Interview with Cyril Boateng Keteku.

³⁷⁶ See informative Interview with a prison officer who did not want his identity to be recorded.

5. Also, in Kenya, Canada, and other countries like the United Kingdom (UK),³⁷⁷ and Hong Kong,³⁷⁸ the women under CSO are not paid for their work. As most of the women offenders in Ghana are impoverished, it would be suggested that they are given some token when working under the CSO, to be able to care for their dependant(s) and avoid recidivism.
6. The services of Penal Reform International are needed for proper implementation of the CSO. A state attorney reveals that the government is poised to ensure that all necessary structures are put in place before enforcing the CSO. But this will be easy if a collaboration with Penal Reform International is considered because it facilitated the public education and the structures of the CSO system in Kenya and other East African countries. In Kenya, Canada, and even UK, the people consider CSO as too lenient³⁷⁹ or “soft landing,”³⁸⁰ and public education created awareness and acceptance.
7. To avoid stigmatization, preserve confidentiality, and encourage respect for women inmates, non-uniformed officers should accompany pregnant inmates to access ante-natal care in public hospitals. In Canada, an officer escorts the women or pregnant inmates to access community programs in ordinary attire and without restraints. The correctional facility is guided by the mother-child program to care for the babies’ nutritional and health needs,³⁸¹ Ghana needs such guidance in the interim as the CSO bill is yet to be passed.
8. Social Welfare and ‘prison after care agents’ need to be resourced to pursue their mandates efficiently. To continue the bond between the incarcerated mother and her children, the agents arrange for the children to visit her in the prison, but lack of resources curtails their activities.³⁸²
9. If the current economic status prevents the government from increasing the inmates’ daily expenditure, obviously it will not permit investment into a state-of-the-art prison facility for women inmates. Therefore, non-custodial sentence is the

³⁷⁷ Parliamentary Office of Science and Technology, at 2.

³⁷⁸ Social Welfare Department “Community Service Orders (CSO) Scheme,” (2005), online: *GovHK* <www.swd.gov.hk/en/index/site_pubsvc/page_offdr/sub_communityb/id_csoscheme/>.

³⁷⁹ Parliamentary Office of Science and Technology, at 4.

³⁸⁰ Penal Reform International, “Excellence in Training on Rehabilitation in Africa (ExTRA) Project,” at 3.

³⁸¹ The Collaborating Centre for Prison Health and Education, at 5-6.

³⁸² See informative interview with Isaac Jackson Acquaye, & Opong Patrick of Social Welfare.

only option if Ghana is determined to eradicate the human rights abuses in the penitentiaries. Canada has the following variety of non-custodial sanctions that Ghana can learn from: CSO, conditional sentence, absolute or conditional discharge, intermittent sentence, restitution, and victim surcharge.³⁸³

10. A commission to reform the criminal justice system to meet the needs of modern society must be considered because restorative instead of punitive sanctions is the new order.³⁸⁴ The time limitations for appeal under Section 325-330 of Act 30 and No. 613 of the Standing Orders must be reviewed as well. A criminal offence has no statute of limitation and appeal must be treated the same as the limitation deprives justice, meanwhile the legal Aid is unable to help all of them within the stipulated time.
11. The conditions surrounding prisoners' desire to appeal under No. 614 of the Standing Orders need modernization. It provides that inmates must choose between 'appellant' or 'convicted person' during an appeal. And if the appeal is dismissed as an appellant, his sentence commences from the day of the dismissal, when s/he has already spent some time in prison. This is discouraging because the inmates may fear losing the appeal and the compensation to be given as a 'convicted person' when the Appeal Court finds him/her innocent, is not enough compared to the liberty s/he will enjoy within the appeal period.
12. An inspiration can be taken from how Bosnia and Herzegovina execute its criminal sanctions to reduce congestion in Ghana prisons. If an offender on bail is convicted finally, s/he is given 8 to 15 days to report to the prisons to start the imprisonment term. Unless s/he refuses to show up then the court will order his/her apprehension (Article 24).³⁸⁵ An implementation of this kind in Ghana needs proper database of all citizens, and the national identity card registration is a good start.
13. The visitation conditions under Section 38 of the NRCD 46, and Nos. 395, 410, and 460 of Standing Orders should be improved. Well-behaved inmates are allowed to receive visitors, but they can also be permitted to visit their families

³⁸³ "How sentences are imposed," online: *Gov't Canada* <www.justice.gc.ca/eng/cj-jp/victims-victimes/sentencing-peine/imposed-imposees.html>.

³⁸⁴ Appiahene-Gyamfi Joseph, at 169.

³⁸⁵ Federation of Bosnia and Herzegovina, "Law on the Execution of Criminal Sanctions" (24 November 1998), online (pdf): <dpnsee.org/wp-content/uploads/2019/04/Law-on-the-Execution-of-Criminal-Sanctions-BiH.pdf>.

occasionally. In 2019, the candidate's visit to Bosnian biggest prison with Assist. Professor Ena Kazic, a law lecturer at the International University of Sarajevo, discovered that well-behaved inmates are allowed to visit their homes once a month. They are accompanied by a non-uniformed warden to spend some time with their families to relieve boredom and stress, strengthen family bonds, and return to prison. Incarcerated women who get the opportunity to see their children during this visit will be full of joy.

14. Ghana should adopt an Act on paralegal and permit its training in the law school like in Kenya. This has helped Kenya to reduce courts' backlogs and prison congestion. Their arduous work was rewarded in December 2021 during the celebration of the International Human Rights Day and the Jurist of the Year Award, organized by the International Commission of Jurists Kenya.³⁸⁶ Paralegals help to educate the local community about the laws of the land and offer basic legal services. They explain the laws and legal terms in the indigenous language for the people to be aware of their rights and duties.³⁸⁷ As the English language is used in Ghanaian courts, some of the illiterate offenders are unaware of their actual offences.³⁸⁸ The translators may not be apt in their translations. Most rural folks do not also know that some of their activities are against the law and the paralegals can conscientize them on that.
15. No. 588 of the Standing Orders should stimulate the legislation of CSO in Ghana. Why wait until the inmate's sickness gets worse? The causes of an inmate's sickness might be out of the inhumane conditions in the prisons, and when it gets worse, s/he is released to a relative to care for him/her, which is unfair. The hospital bills will be funded solely by the relatives. Similarly, the prison authority must prioritize the treatment of diseases, particularly blood-borne which are commonly

³⁸⁶ International Commission of Jurists, "Kenya recognizes paralegals in promotion of access to justice" (10 December 2021), online: *ICJ* <icj-kenya.org/news/icj-kenya-recognizes-paralegals-in-promotion-of-access-to-justice/>.

³⁸⁷ Moy Abigail H., "Kenya's Community-Based Paralegals: A Tradition of Grassroots Legal Activism" (2018) in Maru Vivek & Gauri Varun, eds, *Community Paralegals and the Pursuit of Justice*, at 167-168, online (pdf): *Cambridge Uni* <www.cambridge.org/core/books/community-paralegals-and-the-pursuit-of-justice/kenyas-communitybased-paralegals/564986EF9694059DFB7C0C0DA7656A72>.

³⁸⁸ Amnesty International, "Ghana: 'Prisoners are bottom of the pile,'" at 13.

found in prisons³⁸⁹ because inmates who are released carrying these diseases are likely to contaminate others in the community.

16. Clues can be taken from the culturally inclined programs for the women's unique needs in Canada's healing lodges. Ghana must also incorporate the cultural aspect of healing into its rehabilitation programs as most Ghanaians believe in native doctors and herbalists. Again, partnership with faith-based organizations and other NGOs whose activities empower women will also help the CSO to be a success.
17. The handiwork training programs in the prisons must be expanded. It is unwarranted that less than 10% of inmates have access to these training opportunities.³⁹⁰ Prison authorities should continue negotiations with Plan Volta Foundation or similar NGOs, and other Universities in Ghana to expand tertiary education in all the prisons. As it stands, one prison pursuing two programs is too skewed. Ghana must emulate the Change Hub Innovation Centre and the acquisition of law degrees in Kenya's prisons as well as Canada's Walls to Bridges because they are more inclusive and reduce stigmatization among women inmates.
18. Similar programs like Unlocking the Gates Peer Health Mentoring composed of ex-convicts must be encouraged in Ghana. A collaborative program with local and international NGOs like Elizabeth Fry Society in Canada³⁹¹ will spur women ex-convicts to join the campaign for female prison reformation. Especially, if an award scheme like the Ed McIsaac Human Rights in Corrections Award is available to motivate these women to come together to push for CSO and human rights protection for women offenders in Ghana.
19. The complaint that the public does not patronize the inmates' products³⁹² can be solved through the organization of exhibitions to uncover the handicrafts of the inmates. In Canada for instance, an art competition is organized for the women inmates to display their talents,³⁹³ easing their reintegration into the community.

³⁸⁹ Ibid at 22.

³⁹⁰ Méndez Juan E., at 11.

³⁹¹ Appiahene-Gyamfi Joseph, at 167.

³⁹² Ghana Prisons Service Council, "An Introduction to Project Efiase," at 6.

³⁹³ Correctional Service Canada, "Gender Responsive Corrections for Women in Canada."

20. Training more Lawyers to work as attorneys is preferable to relying on the police. The competence of the police prosecutors is questionable while their role in arrest, investigation, interrogation, and prosecution is full of corruption and abuse.³⁹⁴ The police keep piles of case files without a proper tracking system and some of the inmates' files go missing,³⁹⁵ leading to long detention without trial and delaying the desire to initiate an appeal process.³⁹⁶
21. Women advocacy groups, NGOs, or individuals must be proactive enough to be able to submit a private bill on affirmative action policy to parliament. The assumption that the men do not want to share power with the women and cause the delay of the affirmative action bill³⁹⁷ cannot be completely true. There are women members of parliament and several women organizations who can work together on this agenda. Adoption of affirmative action act is likely to hasten the ratification of the CSO bill.
22. For accountability, transparency, and public confidence, the annual report of the prison service must always be published. This has not been done for some time now,³⁹⁸ diminishing Ghanaians' trust in the prison authority. The reports must always include donors and sympathizers of inmates for a better assessment as done in the 2013 Annual report.³⁹⁹
23. The citizens must be encouraged to pay taxes so that the needed budget would be allocated to prisons. The government must also sanction tax evaders and corrupt tax collectors or prison officers. The prison officers should portray trustworthiness to avoid corruption perception among the populace, else the support needed to pursue their obligations towards the inmates will not be forthcoming. Also, political players must be circumspect in their interferences in the activities of the prisons.
24. Punishment diet and corporal punishment under sections 43 and 44 of the NRCD 46, and No. 237 of the Standing Orders must be replaced with alternative

³⁹⁴ Appiahene-Gyamfi Joseph, at 170.

³⁹⁵ Méndez Juan E., at 6.

³⁹⁶ Amnesty International, "Ghana: 'Prisoners are bottom of the pile,'" at 14.

³⁹⁷ Newsfile, "Prof. Manuh: The Proper Human Values Bill & Gender Equality." (15 January 2022), online: *Joynew* <www.youtube.com/watch?v=qtDeI_qTlhI>.

³⁹⁸ See informative Interview with ASP Abdul Latif Adamu.

³⁹⁹ Ghana Prisons Service, "Annual Report 2013," at 35-36.

punishment like sweeping, cleaning, and washing of pantry bowls. Can one imagine a breastfeeding inmate given punishment diet? Although the medical officers must approve and monitor the punishments, this is rarely done as the caregivers are overwhelmed with the numbers, lack healthcare equipment, and rarely get any skills upgrade.⁴⁰⁰

25. Construction of the prison hospitals should be expedited to support the health needs of the inmates. UN Rapporteur advised that doctors assigned to the prisons must be done directly from the Ministry of Health and should be independent of the Ministry of the Interior.⁴⁰¹ This can be realized if the hospitals are built and adequately equipped.
26. Programs to assist victims must be prioritized too. Victim Fund in Canada is a satisfactory example, as the Domestic Violence and Victims Support Unit (DOVVSU) in Ghana is unable to function efficiently because of resource constraints. In rape cases, Ghanaian courts mostly order the offender to compensate the victim during the criminal trial. Victims of other crimes are encouraged to seek compensation through civil action. Many of these victims are incapable of pursuing the civil case for lack of funds but take consolation from the imprisonment of the offenders.⁴⁰² This means that, without programs to support their welfare or proper education on the importance of CSO, the victims may be provoked and retaliate by harming the offender, if seen in the community working. Also, if a victim fund is instituted, wealthy offenders may be asked to contribute to it for some period, apart from serving in the community. This can deter others.

⁴⁰⁰ Sarpong A. A. et al., 182.

⁴⁰¹ Méndez Juan E., at 22.

⁴⁰² See informative Interview with Musah Suleman, (24 September 2021; 6:00pm to 7:20pm).

V. CONCLUSION

The main purpose of this thesis is to identify the best criminal justice system and prison practices as opposed to the bad practices in Ghana, that infringe on the rights of inmates, especially women convicts. It is also to draw the attention of the government and all stakeholders to the need to reconsider how the slack implementation of prison regulations victimizes the children and families of incarcerated females. Such children are likely to engage in delinquent behaviors leading to imprisonment.⁴⁰³ Eric Martin's research reveals that children of imprisoned parents are six times more likely to become incarcerated themselves, and it is prevalent among those whose mothers are incarcerated.⁴⁰⁴ Ghana can avoid this as the number of women inmates is not overwhelming; therefore, they can all be allowed to work in the community and still care for their children. This kind of punishment creates employment, decongests the prisons, makes the offenders more responsible, and continues the mother-child bond without a break. Kenyan women offenders under CSO attest to this.⁴⁰⁵

The candidate has not lost sight of the legal dimension of this thesis by raising vital social, economic, and political issues hindering the implementation of prison and other human rights laws in Ghana. The idea is to notify readers how successive governments enact laws but allow other factors to prevent execution in Ghana. This directly or indirectly affects the citizens' human rights adversely, and the emphasis here is the incarcerated females. Again, the candidate does not assume to have found all the answers to the problems facing the prisons and female inmates in Ghana. But citing best practices to be learnt from and advocating against improper political interferences in prison service activities, as well as the call to infuse Ghanaian traditional healing into rehabilitation programs, will substantially preserve inmates' human rights. By the help of Penal Reform International, Kenya has a well-structured CSO; hence, the enforcement of the above recommendations will promote the implementation of CSO and human rights protection among women offenders in Ghana.

⁴⁰³ Mallicoat L. Stacy, at 465-466.

⁴⁰⁴ Martin Eric, at 2.

⁴⁰⁵ Ngetich, Murenga & Kisaka, at 63-72.

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Anonymous prison officer in Ghana, (19 December 2021; 7:30am to 8:03am, Montreal time);

Cyril Boateng Keteku, State Attorney at the Office of the Attorney General and Minister for Justice in Ghana, (26 January 2022; 11:02am to 11:39am, Montreal time); Emma Larbi, Ag. Head of Department for Social Welfare and Community Development at the New Juaben District office of the DSW, (29 January 2021; 8:31am to 9:12am, Ghana time);

Isaac Jackson Acquaye, Program Head for Justice Administration & Opong Patrick, Program Head for Community Care at the Regional Office of the Department of Social Welfare, (28 January 2021; 12:00pm to 2:00pm, Ghana time);

Kwarteng O. Ibrahim, Chief Executive Officer of Crime Check Foundation, Ghana, (29 January 2021; 9:07am to 9:23am, Ghana time);

Musah Suleyman, a criminal law practicing lawyer in Ghana (7 March 2021; 8: 53am to 9:20am and 24 September 2021; 6:00pm to 7:20pm, Montreal time);

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