

How Kenya's justice system is failing single mothers

When it comes to single mothers, our criminal justice system is broken. It is simply criminalising poverty and survival- by MIRIAM WACHIRA



The world just celebrated International Women's Day last Sunday. This year's theme – access to justice – resonated with me deeply as a lawyer and as an access to justice advocate, prompting both reflection and a sense of urgency.

In Kenya, more than 80 per cent of the women in conflict with the law are single mothers. Many of these women are brought in for petty offences driven by poverty. They are not violent offenders; they are lifelines for their children. And yet, when these women are arrested and charged, they face impossible choices—from fines they cannot pay to prison time that only worsens their circumstances.

When it comes to single mothers, our criminal justice system is broken. It is simply criminalising poverty and survival. There is a need for equal application of the law and to help women fight for their children's interests. By applying the law equally, we can help single mothers access justice by allowing them to report to the police a father who is not supporting his children. The state must then step in to make sure that he provides. This will ensure that single mothers can concentrate on caregiving, rather than risk run-ins with the law.

Every time a woman comes into contact with the justice system, I see the same expression on their face: panic. That was the case for JN, a single mother of two who lives in the slums. The father of the children abandoned them and never provided. With no job and no income, she faced a difficult choice: hawking or being charged with child neglect for being unable to provide for the children. She chose to hawk tomatoes – and she was arrested.

JN had to pay a fine of Sh3,000 or spend two weeks in jail. She only had Sh300, a loan from a friend to buy the tomatoes she was hawking. And so JN went to jail, accompanied by her two-year-old, who she was arrested with. Her eight-year-old was left home alone until a neighbour took the child in.

Days later, her landlord noticed she was missing and threw her few possessions out onto the street. When JN was finally released from jail, she had no job, no clothes, no house.

This is a predicament many women find themselves in; one in which short imprisonment deepens their harm and the circumstances they were in before.

This is not a problem unique to Kenya. Across the globe, the number of women being imprisoned is rising. Does this mean that women have increasingly acquired a criminal mind? Or is it that the broader criminal justice system simply is not meeting their needs?

The United Nations considers it the latter. In December 2010, the UN General Assembly adopted the Bangkok Rules, the first international standard to specifically address the treatment of women in the criminal justice system. They were born from the recognition that women experience crime, justice and imprisonment differently, and that systems built for men often fail to meet their needs.

However, world governments have been slow to implement it. Around the globe, women are still being imprisoned for petty offences without consideration for diversion and non-custodial sentences. This trend has continued to drive women into deeper poverty. Perhaps International Women's Day is another opportunity to revisit this landmark policy and recommit to its principles.

To be sure, acknowledging systemic barriers facing women does not mean excusing unlawful conduct or weakening the rule of law. It means recognising that justice cannot be blind to context. Accountability and equality before the law remain essential.

At the same time, a system that repeatedly punishes survival behaviour without addressing root causes risks entrenching poverty rather than resolving harm. The goal is not preferential treatment, but proportional intelligent responses that uphold the law while preventing avoidable social damage.

To ensure and strengthen access to justice for women, sustainable reforms lie in economic empowerment, streamlined legal aid, digitalised court processes and a social protection system that offers protection and support for women. It must translate into systems that are responsive, practical and grounded in lived realities.

When poverty, caregiving and gendered vulnerability intersect with rigid legal processes, the result is deepening inequality.

Reform does not mean abandoning accountability. It means designing laws, procedures and enforcement mechanisms that prevent unnecessary incarceration, strengthen child support enforcement, expand legal aid and prioritise non-custodial solutions where appropriate. If we are serious about equal application of the law, then we must also be serious about removing the structural barriers that make justice unreachable for the very women it claims to protect.

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