



Children of Incarcerated Caregivers

2023 Kenya Prison Nursery Country Report

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Nancy Ngige was six months pregnant when she was incarcerated in one of Kenya’s maximum security women’s prisons. During her pregnancy and after the birth, there were times when she did not have enough food, a clean environment, or access to appropriate medical treatment when she was in pain. Nancy shared her story in an interview with the organization Clean Start Kenya, saying that she believed probation alternatives would significantly improve the lives of women and their children in the Kenyan justice system.¹

In Kenya, children are allowed to stay with their mothers in correctional facilities until the age of four. At any one time, there are estimated to be hundreds of children staying in Kenyan correctional institutions. However, only a few facilities have separate daycare centers for children, and in almost all cases children mix with the general population of the prisons at some point during the day. Despite Kenya’s legal protections for the rights of incarcerated mothers and their children, the creation and implementation of special facilities and services for children incarcerated with their mothers has been inconsistent at best. Nonprofits have stepped in to address some of these issues, advocating for mothers and children and directly providing resources to penal institutions.

Prison System

As of 2022, there were 58,887 people imprisoned in Kenya; 2,683 of these were female prisoners.² There are a total of 43 female correctional facilities in Kenya, the largest of which is Lang’ata Women’s Maximum Security Prison, located just outside of Nairobi.^{3,4} A study from

¹Njambi Mungai, host, “Being in Prison Did Not Stop Me From Nurturing Over 20 Kids,” November 17, 2021, in *The Heart of the Circle*, produced by Clean Start Kenya, <https://podcasters.spotify.com/pod/show/clean-start-kenya/episodes/Nancy-Ngige-Being-in-prison-did-not-stop-me-from-nurturing-over-20-kids-e1adchu>.

² “Kenya,” World Prison Brief, accessed September 30, 2023, <https://www.prisonstudies.org/country/kenya>.

³ Mercy Kahenda, “Prisons Are No Daycare Centres: The Plight of Inmates Raising Children Behind Bars,” *The Standard*, August 16, 2021, https://www.standardmedia.co.ke/health/article/2001420869/prisons-are-no-daycare-centres-the-plight-of-inmates-raising-children-behind-bars?fbclid=IwAR3s5zOGZoXnmyVo5Nu_6VGu8D9HhZHULTnnfueIC0QmwRr5U48jb8tHuk0.

⁴ Kenya National Commission for Human Rights, *Response to the Questionnaire on Deprivation of Liberty of Women and Girls* (Nairobi: Kenyan National Commission for Human Rights, October 1, 2018), 9, https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/DeprivedLiberty/NHRI/Kenya_National_Commission_for_Human_Rights.doc.

2018 found that 81 percent of female detainees in Kenyan prisons had at least one child, while all female detainees in the sample group had some kind of dependent.⁵

The general conditions in Kenya's women's prisons vary between institutions. Independent reports have found that women are subject to unnecessary searches, perform unpaid domestic work, and do not have free access to sanitary products for personal care.^{6,7} However, it is also reported that pregnant women can access appropriate care during childbirth, give birth in hospitals, and are free of constraint during labor, consistent with international guidelines.⁸ Recently, all incarcerated women (and accompanying children) received beds, although they were not universally supplied before.⁹ Nationally, the Kenya Prison Services operates these prisons, but the conditions of women's prisons reveal inconsistencies and a general lack of institutional oversight.

Prison Nurseries

Kenya Prison Systems have implemented the United Nations' Bangkok Rules, which not only promote appropriate care for incarcerated women but also for children incarcerated with their mothers.¹⁰ Rule 49 of the Bangkok Rules states: "Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners."¹¹

In 2000, Kenya collaborated on and signed the African Charter on the Rights and Welfare of the Child, which lays out explicit protections for children of incarcerated mothers.¹² Kenya has also been party to the United Nations Convention on the Rights of the Child.¹³ The Kenyan

⁵ Lukas Muntingh, and Jean Redpath, "The Socio-Economic Impact of Pre-trial Detention in Kenya, Mozambique and Zambia," *Hague Journal on the Rule of Law* 10, no. 1 (2018), 25, <https://acjr.org.za/resource-centre/socio-economic-impact-web-lowres.pdf>.

⁶ Cyrus R. Vance Center for International Justice, "Women in Prison," *Africa Regional Initiative* (2019), 15-16 https://www.vancecenter.org/wp-content/uploads/2019/10/WIP_ARI_Report-Final-10-15-2019-compressed.pdf.

⁷ Caitlin Nordahl, "What Life is Really Like for Women Locked up In Langata Prison," *Diaspora Messenger*, updated April 24, 2023, <https://diasporamessenger.com/2013/01/what-life-is-really-like-for-women-locked-up-in-langata-prison>.

⁸ Vance Center for International Justice, *Women in Prison*, 21.

⁹ Felix Yegon, "Joy as Foundation Donates 2,168 Beds to Women Prisons," *People Daily*, November 19, 2021, <https://www.pd.co.ke/news/joy-as-foundation-donates-2168-beds-to-women-prisons-102673/>.

¹⁰ Mary C. K. Chepkonga, "The Impact of Global Drug Policy on Women: Shifting the Needle" (Emerald Publishing Limited), November 19, 2020, 125.

¹¹ United Nations General Assembly, Resolution A/RES/65/229, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, A/C.3/65/L.5, 17 (March 16, 2011), https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

¹² African Union, "African Charter on the Rights and Welfare of the Child," 26th Ordinary Sess. Assembly of Heads of State & Gov't of OAU (adopted July 1, 1990), <https://au.int/en/treaties/african-charter-rights-and-welfare-child>.

¹³ United Nations General Assembly, Resolution 44/25, *Convention on the Rights of the Child*, Treaty Series, vol. 1577, 3 (adopted November 20, 1989), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

constitution grants rights to children, which are expanded upon in the Children Act (2022).¹⁴ Based on these commitments, the Kenyan government is to provide legal protections for children incarcerated with their mothers.

Kenya's Prisons Act permits children to stay with their parents in two circumstances: the mother is incarcerated while pregnant and gives birth to the child while serving her sentence, or the mother lacks any other guardian to care for the child. If these conditions are met, the Kenya Prisons Act section 30(4) provides that:

[T]he infant child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessaries at public expense ...[the] child shall only be permitted to remain in prison until it attains the age of four years or until arrangements for its proper care outside prison are concluded, whichever shall be the earlier.¹⁵

A report from 2021 estimated that 200 children currently lived with their mothers in penal institutions, although the estimates were as high as 600 before the COVID-19 pandemic.¹⁶ Another study from 2019 reported 105 children living with their incarcerated mothers in Lang'ata prison alone.¹⁷

Of the 43 correctional facilities that house women in Kenya, only about 10 currently have daycare centers and nurseries.¹⁸ However, the Minister of the Interior has said adding daycare facilities to all women's prisons is a priority.¹⁹ The first and largest of the existing prison nurseries operates in Lang'ata, and was established in partnership with the Faraja Foundation, a nonprofit organization which works with vulnerable populations across the prison system.²⁰ In those prisons without daycare facilities, children stay with their mothers throughout the entire day. In almost all cases, children sleep with their mothers and no isolated mother-and-baby cells

¹⁴ National Assembly, *The Children Act, 2022* [Kenya], No. 38 of 2021, May 24, 2022, http://www.parliament.go.ke/sites/default/files/2022-06/The%20Children%20Bill%2C%20%28National%20Assembly%20Bills%20No%20%281%29.%2038%20of%202021%29%27_.pdf.

¹⁵ *The Prisons Act* [Kenya], CAP 90, revised 2009, <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PrisonsActCap90.pdf>, 15.

¹⁶ "Young Children in Kenya Prisons Making Headlines," *African Early Childhood Network (AfECN)*, 2021, <https://afecn.org/blog/2021/4/14/afecn-making-headlines-in-early-childhood>.

¹⁷ Jane Kositany Cheruiyot, "An Assessment of the Challenges of Children in Prison with Their Mothers: A Case of Langata Women Maximum Prison," *Interdisciplinary Journal on the African Child* 1, no. 1 (2019): 7, <https://www.daystar.ac.ke/ijac/downloads/articles/The%20Challenges%20Of%20Children%20In%20Prison%20With%20Their%20Mothers.pdf>

¹⁸ "Young Children," *AfECN*.

¹⁹ Muriithi Mugo, "Better Living Conditions for Incarcerated Children and Women," *The Standard*, 2021, <https://www.standardmedia.co.ke/eastern/article/2001413130/better-living-conditions-for-incarcerated-children-and-women>.

²⁰ "About Us," Faraja, accessed October 2, 2023, <https://www.farajafoundation.or.ke/>.

are provided, although prison officers can attempt to create make-shift nursing areas for mothers with infants.^{21, 22}

Implementation: Conditions & Limitations

For women incarcerated with their children, life in a Kenyan prison can be particularly challenging. Children face unhygienic, overcrowded, and resource-limited facilities. There is a lack of soap and functioning toilets in cells, which children share with their mothers.²³ An assessment of the dietary quality for children in carceral facilities found that only about half of the children attain a minimum acceptable diet; 21.4 percent of the children were developmentally stunted and 7.5 percent were underweight.²⁴ A 2013 study of children in prisons also found serious issues with acute respiratory tract infections (ARI), which are typically caused by overcrowding and extreme temperatures, and a lack of available treatment for children affected by the illness.²⁵

Housed among the general population, children are further exposed to vulgar language and trauma. Independent reports also found that children staying with their mothers are not allowed to leave the prison facilities.²⁶ Some mothers expressed concern about their child's psychological health as a result of living in a penal institution. Talking with *Standard Media*, one mother relayed: “[T]here are times my son asks whether all children at the centre are his siblings and I fail to respond because I do not want him to know I am serving a jail sentence. This, I fear, might affect his growth.”²⁷ The Department of the Interior, under Chief Administrative Secretary Winie Guchu, has acknowledged the need for greater childcare services including psychological services for children and mothers.²⁸

In 2012, the Faraja Foundation established the first prison nursery to address the needs of the children incarcerated with their mothers. The foundation established both a daycare and a nursery at Lang’ata.^{29, 30} In the nursery, mothers can stay for up to three months with their young

²¹ Kahenda, “Prisons Are No Daycare Centres.”

²² Christine Odero (Programs Coordinator, the Faraja Foundation), in discussion with the author, July 24, 2023.

²³ Marie-Claire Van Hout and Rosemary Mhlanga-Gunda, “‘Mankind Owes to the Child the Best that it has to Give’: Prison Conditions and the Health Situation and Rights of Children Incarcerated with Their Mothers in Sub-Saharan African Prisons,” *BMC International Health and Human Rights* 19, no. 13 (2019): 7 <https://bmcinthealthhumrights.biomedcentral.com/articles/10.1186/s12914-019-0194-6>.

²⁴ Mary N. Makau, Sophie Ochola and Dorcus Mbithe, “Feeding Practices of Children Aged 0-59 Months Accompanying Incarcerated Mothers in Selected Women’s Prisons in Kenya,” *The Open Nutrition Journal* 11, no. 1 (2017): 1, <https://benthamopen.com/FULLTEXT/TONUTRJ-11-1>.

²⁵ Makau et al., “Feeding Practices.”

²⁶ Vance Center for International Justice, *Women in Prison*, 21.

²⁷ Kahenda, “Prisons Are No Daycare Centres.”

²⁸ Kahenda, “Prisons Are No Daycare Centres.”

²⁹ Jennifer Warner, *Infants in Orange: An International Model-Based Approach Prison Nurseries*, 26 *Hastings Women’s L.J.* 65 (2015), 81, <https://repository.uchastings.edu/hwlj/vol26/iss1/5>.

³⁰ Faraja Trust, Annual Report 2013, https://www.faraja.net/images/pdf/1406022848faraja_Annual_Report_13_LR.pdf.

children. They can nurse their babies, receive hot water, “‘moderately’ good food,” and a cot for the baby.³¹ In the daycare center, children can spend five to eight hours apart from their mothers, playing with toys, engaging with other children, and being supervised by caretakers apart from the rest of the maximum-security population. The population in the daycare is typically limited to around 30 children at one time.³²

By some accounts, the Faraja Foundation’s daycare center has been a success, alleviating the burden on incarcerated mothers who have to be with their children constantly, and providing age-appropriate stimulation to the children in Lang’ata. The children also have access to nutritious food.³³ However, the daycare is staffed by general prison nurses, most of whom are not specifically trained in child development. With a frequent mother-and-baby turnover rate in the prisons,³⁴ it is also difficult to establish relationships within the daycare.

Since its creation by the Faraja Foundation, the administration of the daycare center has been turned over to the Kenyan prison system.³⁵ The Faraja Foundation has provided assistance for the creation of five other prison nurseries throughout Kenya, although Lang’ata remains the most modern prison nursery.³⁶ At the other facilities, the Faraja Foundation added carpeting, painted walls, and provided toys in empty buildings or spaces, turning them into makeshift nurseries.³⁷ At facilities that do not have any official nursery, prison officers can similarly construct makeshift nurseries apart from the general population, although this is dependent on the prison and officers in charge.³⁸

The Kenyan government maintains an open door policy, allowing organizations like the Faraja Foundation to supplement institutional programming for children, although they ultimately retain administrative responsibility.³⁹ Clean Start, dedicated to social and healing support for women and children impacted by the criminal justice system, is another organization working in Kenyan prisons.⁴⁰ They have provided resources directly to prisons, collecting and donating children’s supplies, and they offer responsive caregiving training to both mothers and prison guards.⁴¹

³¹ Vance Center for International Justice, *Women in Prison*, 21, 22.

³² Odero, discussion with the author, July 24, 2023.

³³ Vance Center for International Justice, *Women in Prison*, 21.

³⁴ Tom Shavis and Collins Reuben Gaunya, “Factors Affecting the Education of Children Accompanying Their Mothers to Prison: A Case of Kakamega and Kisumu Women Prisons, Kenya,” *Developing Country Studies* 5, no. 21 (2015): 19, <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.735.2498&rep=rep1&type=pdf>.

³⁵ Odero, discussion with the author, July 24, 2023.

³⁶ Odero, discussion with the author, July 24, 2023.

³⁷ Odero, discussion with the author, July 24, 2023.

³⁸ Odero, discussion with the author, July 24, 2023.

³⁹ Vance Center for International Justice, *Women in Prison*, 21.

⁴⁰ “Children of Incarcerated Mothers,” Clean Start Kenya, accessed July 20, 2023, <https://cleanstartafrica.org/the-children/>.

⁴¹ “Children of Incarcerated Mothers,” Clean Start.

Faraja installed a kitchen with food warmers and fridges in the Lang'ata nursery and oversees repairs and provides other support where necessary.⁴²

In 2022, the Kenya Prison Service launched the Policy On the Care of Children of Incarcerated Mothers, which offers guidance to prison service management and other stakeholders for providing quality care to children of incarcerated mothers.^{43,44} Africa Early Childhood Network (AfECN), a non-profit that champions children's rights,⁴⁵ sponsored the policy.⁴⁶ Faraja played a key role in informing policy gaps, especially regarding childcare and reintegration needs, and Clean Start was also a key partner in policy formation, along with other stakeholders.⁴⁷ The policy provides a framework for thinking about the best interest of the child, and the stakeholder organizations are now working to build on this success by developing actionable legislation with specific goals.⁴⁸

Although Kenyan law provides for protections for children, and for children of incarcerated parents specifically, many children in Kenyan prisons receive inadequate care. Non-governmental organizations like the Faraja Foundation, Clean Start, Prison Kids, The Nest Kenya, and AfCEN work to address these gaps,⁴⁹ but children will continue to fall through the cracks without significant institutional action.

Alternatives

In the case of children who do not stay with their sentenced mothers, the Kenya Prisons Act provides that mothers are entitled make arrangements for their outside care.⁵⁰ Both the Prison Welfare Office and the courts provide assistance to mothers who need to make alternative arrangements.⁵¹ Organizations like the Nest provide care for children whose mothers are incarcerated; the children live in the Nest's "Children's Home" and receive care and access to education.⁵² Other non-profits like Clean Start Kenya also assist with children's schools fees and provide other support for children and their mothers as they reintegrate into society after release from prison.⁵³

⁴² Christine Odero (Programs Coordinator, the Faraja Foundation), in discussion with the author, October 20, 2023.

⁴³ Audrey Masitsa, "New Dawn for Children of Incarcerated Mothers with Launch of New Child Care Policy," *Clean Start Kenya*, September 1, 2022, <https://cleanstartkenya.org/new-dawn-for-children-of-incarcerated-mothers-with-launch-of-new-child-care-policy/>.

⁴⁴ Kamau Maichuhie, "Bright Future for Incarcerated Mothers as Prisons Launch Childcare Policy," *Nation*, August 12, 2022, <https://nation.africa/kenya/news/gender/bright-future-for-incarcerated-mothers-as-prisons-launch-childcare-policy-3912326>.

⁴⁵ AfECN, African Early Childhood Network, accessed October 24, 2023, <https://afecn.org/>.

⁴⁶ Maichuhie, "Bright Future for Incarcerated Mothers."

⁴⁷ Odero, discussion with the author, October 20, 2023.

⁴⁸ Odero, discussion with the author, July 24, 2023.

⁴⁹ Odero, discussion with the author, October 20, 2023.

⁵⁰ *The Prisons Act* [Kenya], CAP 90, sec. 30.

⁵¹ Vance Center for International Justice, *Women in Prison*, 19.

⁵² Vance Center for International Justice, *Women in Prison*, 19.

⁵³ "Children of Incarcerated Mothers," Clean Start Kenya.

Child friendly visitations were introduced into the Lang'ata prison in 2017, and have since been introduced at other prisons throughout the country.⁵⁴ According to a report from 2019, “[s]ome prisons in Kenya allow prisoners to prepare and share meals with visiting family members, while other prisons have ‘open fun days’ on which up to five (and more by request) family members can spend the day with the prisoner.” Prisons that do not have “fun days” still maintain separate visitation spaces for families.⁵⁵

Alternative sentencing guidelines provide an option in which neither mothers nor children have to be housed in a carceral facility. In line with the Bangkok rules,⁵⁶ Kenyan sentencing policy says that non-custodial sentences, when possible, should be considered for women with children or vulnerable dependents.⁵⁷ The consideration of non-custodial sentencing would greatly reduce the number of children incarcerated with their mothers. However, the application of this law is reportedly inconsistent.⁵⁸ Recently, in 2018, Kenya made an effort to decriminalize petty offenses and rely more on community service orders,⁵⁹ although it is unclear the extent to which this has been adequately implemented.

While prison nurseries provide a temporary solution to keeping mothers and their children unified, Kenyan stakeholders are pushing for the utilization of alternatives to imprisonment. Terry Nyaoro, representing Clean Start Kenya on [Children of Incarcerated Caregivers’ Internation Prison Nursery Podcast](#), made several recommendations for preventing incarceration and improving the lives of children of incarcerated caregivers, including:

1. Continued education about alternatives to incarceration in Kenya;
2. Access to better legal assistance for mothers before they are sentenced; and
3. Increased availability of safe houses after release, to help mothers and children effectively reintegrate into society.⁶⁰

Nyaoro aptly summarized:

All the different stakeholders are doing their bit; those who are able to train officers are able to train. Those who are able to provide resources for children are doing so. So we

⁵⁴ Vance Center for International Justice, *Women in Prison*, 23.

⁵⁵ Vance Center for International Justice, *Women in Prison*, 24.

⁵⁶ The Bangkok Rules, Rule 64.

⁵⁷ The Judiciary of the Republic of Kenya, *Sentencing Policy Guidelines*, 42, http://kenyalaw.org/kl/fileadmin/pdfdownloads/Sentencing_Policy_Guidelines_Booklet.pdf.

⁵⁸ Vance Center for International Justice, *Women in Prison*, 12.

⁵⁹ Vance Center for International Justice, *Women in Prison*, 11.

⁶⁰ Terry Nyaoro, interview by Paul Dosch, “Kenya: Investing in the Reintegration of Women and Children with Terry Nyaoro of Clean Start Kenya (Episode 5),” *International Prison Nursery Podcast*, Children of Incarcerated Caregivers, <https://cicmn.org/podcast/kenya-investing-in-the-reintegration-of-women-and-children-with-terry-nyaoro-of-clean-start-kenya-episode-5/>.

still have a lot to do. And considering the conditions of the prisons ...we are still advocating for play areas for children. We also want kitchens around so that these children do not have to feel like they are in an unsafe environment. So there's quite a lot to do.⁶¹

⁶¹ Nyaro, "Kenya: Investing in the Reintegration of Women and Children."