



Guidance document on the Bangkok Rules

**Implementing the United Nations Rules on the Treatment of
Women Prisoners and Non-custodial Measures for Women Offenders**



**Guidance Document on the Bangkok Rules: Implementing
the United Nations Rules on the Treatment of Women
Prisoners and Non-custodial Measures for Women Offenders**

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Introduction

The adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) in December 2010 represented an important step forward in recognising the gender-specific needs of women in criminal justice systems. The Bangkok Rules supplement the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) to provide the standards that should be applied for women in criminal justice systems. Since their adoption, many programmes and initiatives have sought to improve the treatment of women in prison by training prison officers and other key stakeholders, and to develop innovative rehabilitation programmes and non-custodial alternatives to imprisonment for women.

Implementation of the Bangkok Rules around the world, however, remains piecemeal. One grave indicator of this is that the global female prison population increased by 17 per cent (over 100,000 women) in the ten years following adoption of the Rules and continues to rise at a faster rate than the general prison population.¹ Marking the tenth anniversary of the Bangkok Rules in December 2020, UN and regional human rights leaders called on all states to implement the Bangkok Rules in full² and over 80 organisations issued a similar joint call to action.³

Many of the Rules do not require additional resources for their implementation, but a change in awareness, attitude and practices. Investment is needed, however, in training criminal justice actors on the Bangkok Rules and sensitising them to the backgrounds and needs of women in contact with the criminal justice system, as well as data collection and research to understand the characteristics of women in conflict with the law, the most common reasons that lead women to commit offences, and effective responses to support women to build positive, self-supporting lives in different regions and countries.

This *Guidance document on the Bangkok Rules* was updated in 2021 to incorporate new standards, particularly the Nelson Mandela Rules and the Revised European Prison Rules (EPR), as well as new practices around the world that seek to create more effective criminal justice systems that respect women's rights.

How to use the *Guidance Document on the Bangkok Rules*

This *Guidance Document on the Bangkok Rules* can be used as a reference document and as a resource for use in reviewing legislation, developing gender-sensitive policies, and in training criminal justice actors and other relevant stakeholders around the world.

It offers practical guidance to legislators, policymakers, prison authorities, probation services, social welfare and healthcare services in the community, non-governmental organisations (NGOs) and other relevant actors to help and encourage them to take the actions necessary to respond appropriately to the needs of women in contact with the law and to improve their social reintegration prospects.

1. 'Addressing the 105,000 increase in the global female prison population, ten years after the Bangkok Rules were adopted', Triona Lenihan for *Penal Reform International*, 10 December 2020, www.penalreform.org/blog/addressing-the-105000-increase-in-the-global-female.
 2. 'Human rights leaders call for full implementation of the UN Bangkok Rules', *PRI*, 10 December 2020, www.penalreform.org/news/human-rights-leaders-call-for-full-implementation-of.
 3. 'Joint Call to Action to implement the UN Bangkok Rules', *PRI*, 10 December 2020, www.penalreform.org/resource/joint-call-to-action-to-implement-the-un.

The updated guidance brings together the most recent knowledge, international experience, good prison management practices and technical papers developed by UN bodies and other international organisations to assist policymakers, legislators and practitioners to implement the Rules in a way that is consistent with international standards. It also provides useful references and a resource list for more detailed information on specific issues.

There are **11 thematic chapters** which bring together the Rules relating to that theme. The **importance of each Rule** is explained with references to other relevant standards or resources, followed by detailed guidance on **how each Rule can be implemented** at both legislative and practical levels. The structure of the publication largely follows the structure of the Bangkok Rules with a few exceptions for increased coherence and accessibility. **Examples of promising practices** from around the world are included to inspire solutions, generate new thinking and point to new tools and resources.

The *Guidance Document on the Bangkok Rules* forms part of PRI's Toolbox on the UN Bangkok Rules.⁴

Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
CAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	UN Convention on the Rights of the Child
EPR	European Prison Rules
HRI	Harm Reduction International
IACHR	Inter-American Court on Human Rights
IASP	International Association for Suicide Prevention
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPC	International Drug Policy Consortium
ILO	International Labour Organization
IOM	International Organization for Migration
NGOs	Non-governmental organisations
NPMs	National Preventative Mechanisms
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE-ODIHR	Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights

4. www.penalreform.org/issues/women/work/tools-resources.

PRI	Penal Reform International
STIs	Sexually transmitted infections
TIJ	Thailand Institute of Justice
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCRC	UN Committee on the Rights of the Child
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
WFP	United Nations World Food Programme
WHO	World Health Organization
WMA	World Medical Association
WOLA	Washington Office on Latin America

Abbreviations

Bangkok Rules	UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
Nelson Mandela Rules	Revised Standard Minimum Rules for the Treatment of Prisoners
Beijing Rules	UN Standard Minimum Rules for the Administration of Juvenile Justice
Tokyo Rules	UN Standard Minimum Rules for Non-custodial Measures
Havana Rules	UN Rules for the Protection of Juveniles Deprived of their Liberty
Body of Principles	UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
Istanbul Statement	Istanbul Statement on the use and effects of solitary confinement
Legal Aid Principles and Guidelines	UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
Special Rapporteur on Torture	UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Note on terminology

Rules and provisions are quoted directly from source, but we invite the reader to bear in mind that the terminology used in some Rules or provisions is outdated. This guidance document endeavours to at all times use people-centred language that promotes the rights of all persons in contact with criminal justice systems.

The term “gender” refers to the roles, behaviours, activities, and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialisation processes.⁵

Terms like “women in prison” and “people in prison” are used to describe imprisoned persons regardless of their legal status.

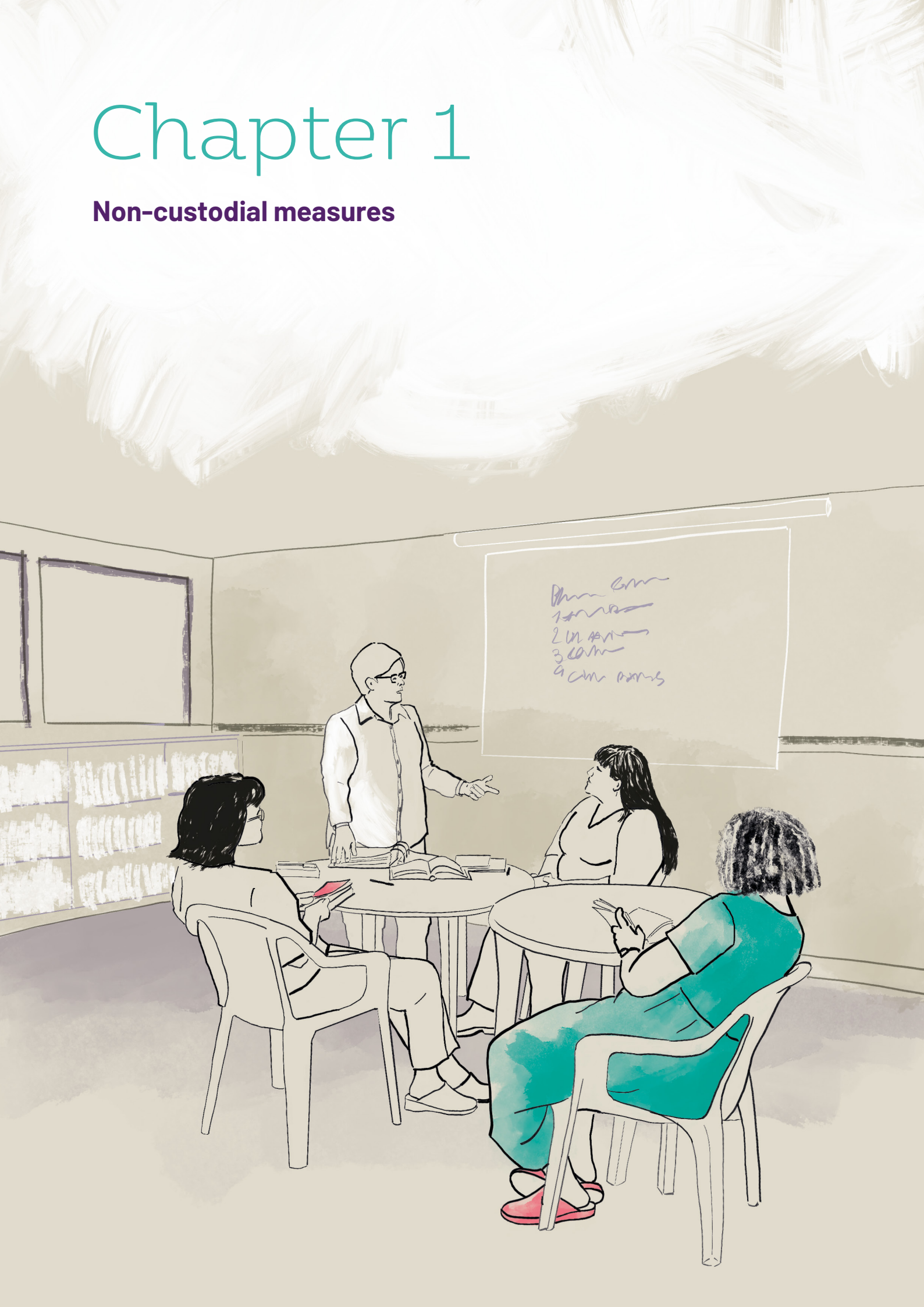
The terms “ill-treatment” and “torture and other ill-treatment” are used to describe “torture and other cruel, inhuman or degrading treatment or punishment”, as defined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The term “principle of non-discrimination” or any other references to discrimination refer to Rule 2 of the Nelson Mandela Rules as well as Articles 2 para. 1 and Article 26 of the International Covenant on Civil and Political Rights (ICCPR) stating that “there shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status” and subsequent interpretative instruments.

5. See for example: ‘Gender Equality Glossary’, *UN Women*, trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G [accessed on 6 October 2021].

Chapter 1

Non-custodial measures



Non-custodial measures

➔ Rules 57 to 66

The Tokyo Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for people subject to alternatives to imprisonment. The section in the Bangkok Rules on non-custodial measures supplements the Tokyo Rules, interpreting them from a gender perspective in light of the increased knowledge about women in the criminal justice system, as well as the increasing numbers of women who are experiencing detention and imprisonment since the adoption of the Tokyo Rules in 1990.

The majority of women in prison are charged with minor, non-violent offences and do not pose a security risk to the public. Many are imprisoned due to poverty and inability to pay fines or are in prison as a direct or indirect result of multiple layers of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and the community.⁶ A large proportion of women in prison experience mental ill-health and/or drug dependence and would benefit from specialised treatment, rather than isolation from society. In most cases, therefore, community sanctions and measures which take into account women's backgrounds and individual needs can more effectively facilitate the social reintegration requirements of women in contact with the criminal justice system.⁷

The Rules on non-custodial measures included in the Bangkok Rules provide important guidance to policymakers, legislators, sentencing authorities and prison staff on measures that can be taken in legislation and practice to reduce the imprisonment of women, taking account of their background, circumstances, and caring responsibilities. The Rules place a requirement on policymakers and decision makers to always consider the best interests of any children involved, to ensure that alternatives which take account of gender-specific needs are available in practice, as well as to provide for the particular circumstances and vulnerabilities of specific groups, such as women who need protection, girls in the criminal justice system, and women and girls who have been trafficked.

1.1 Alternatives to detention and imprisonment

➔ Rules 57, 58, 60, 62, 64



Rule 57

The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pre-trial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.

6. PRI, *Briefing: Access to Justice. Discrimination of women in criminal justice systems*, January 2012.

7. UNODC, *Handbook on Women and Imprisonment*, 2nd Edition, 2014, p. 4.

**Rule 58**

Taking into account the provisions of rule 2.3 of the Tokyo Rules, women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties. Alternative ways of managing women who commit offences, such as diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible.

**Rule 60**

Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.

**Why they are important**

Rule 2.3 of the Tokyo Rules, referred to in Rule 58 provides that:

In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the individual in contact with the law and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

In addition, Rule 1.5 of the Tokyo Rules provides that:

"Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalise criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the person in contact with the law."

Rules 57, 58 and 60 of the Bangkok Rules supplement these Rules, taking account of the "observance of human rights, the requirements of social justice and the rehabilitation needs of the person", in view of women's backgrounds and caring responsibilities. They recognise that many women have experienced gender-based violence, have mental healthcare needs or substance dependencies, and the offences they commit are often closely related to these factors.⁸ Responding to the individual rehabilitative needs of women in contact with the law therefore requires adequate assistance, support and treatment to overcome psychological consequences of violence or abuse, mental health needs and/or substance dependencies.

They also acknowledge the impact of women's imprisonment on any person for whom they are the primary carer, including parents, relatives, and the particular impact on children whose mother is imprisoned.⁹

Most sentencing practices and guidelines apply the same considerations to men and women, failing to take account of women's backgrounds, profiles and the complex factors that may lead to a woman committing an offence. For example, a PRI-commissioned study of sentencing practices for women convicted of drug-related offences found that while some countries more often impose non-custodial sentences in such cases, the complex reasons and pathways of women's contact with criminal justice systems for such offences are not adequately reflected in legislation, sentencing guidelines or practices.¹⁰

8. UNODC, *Handbook on Women and Imprisonment*, 2nd Edition, 2014.

9. See for example, PRI, *Covid-19 and the Rights of Children of Parents who are Incarcerated: Impacts and Recommendations*, April 2020; 'Hidden Consequences: The Impact of Incarceration on Dependent Children', National Institute of Justice, 1 March 2017, nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children.

10. PRI, Linklaters LLP and IDPC, *Sentencing of women convicted of drug-related offences*, 2020.

These Rules cover not only alternatives to prison sentences, but also alternatives to pre-trial detention. They take into account the fact that pre-trial detention of women, even for short periods, can have a very significant and harmful impact on women themselves and their children and families, especially if they are the sole or primary carers of their children, and urge authorities to prioritise alternatives to pre-trial detention for women, wherever possible. They also take into account the enormous social and economic costs of the excessive, and very often unnecessary, use of pre-trial detention, which has been documented in a growing body of research.¹¹ It should also be noted that women often experience pre-trial detention due to not being able to afford bail or legal representation to challenge their detention, which impacts women more than men in societies where women typically do not have control over family finances.¹²

The Tokyo Rules encourage the development of new non-custodial measures which should be “closely monitored and their use systematically evaluated” (Rule 2.4).

In most countries, there is a shortage of alternatives to prison sentences that meet the specific needs of women in contact with the law, which hinders the use of non-custodial measures and sanctions by authorities and courts. To address this, Rule 60 puts the responsibility on States to allocate adequate financial and human resources to the development of non-custodial measures and sanctions which respond specifically to the most commonly encountered needs of women in contact with the law in their particular jurisdiction.

It also recognises the practical challenges which many women may face in participating in programmes, treatment and courses, due to their caring responsibilities and therefore requires that non-custodial measures and sanctions developed for women should take account of the need of mothers to care for their children. Rule 60 also makes specific reference to the need to develop women-only services, recognising research which shows that drop out from treatment programmes is much lower in gender-specific programmes which provide women-only services,¹³ and that women have better long-term outcomes following drug treatment that focuses on issues more commonly found among women with drug dependence.¹⁴ Women-only services provide a safe space for women that may have experienced male violence to receive interventions tailored to their specific needs, such as trauma-informed group and individual treatment practices, childcare and parenting education, mental healthcare, obstetrics and gynaecological care, social support, and many others.¹⁵



Putting them into practice

- Policymakers, legislators, and criminal justice institutions should work together to develop legislation, policies, and measures to reduce the imprisonment of women, as far as possible. This may involve the review and revision of relevant legislation, including the criminal code and criminal procedure code, to ensure that judicial authorities have sufficient alternative options to pre-trial detention and imprisonment, which address women’s specific needs.
- States should remove criminal and administrative penalties, from fines to detention, for offences such as drug use, cultivation, and possession of drugs for personal use, and possession of drug use paraphernalia, such as needles and syringes. Decriminalisation policies pave the way for providing an enabling and supportive environment for the provision of gender-responsive harm reduction, voluntary drug dependence treatment, and other health and social services that women who use drugs may need.

11. See for example, Catherine Heard and Helen Fair, *Pre-Trial Detention and its Overuse*, Institute for Crime & Justice Policy Research, November 2019; Léon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, Vera Institute of Justice, April 2019; Series of reports: UNDP and Partners, *The Socioeconomic Impact of Pretrial Detention*, UNDP, 2013.

12. UNFPA and UN Women, *Gender Alert on COVID-19 Afghanistan, Issue XIV: The Impact of COVID-19 on Women and Girls in Prisons and Detention Settings*, 20 August 2020, p. 3.

13. See for example, UNODC, *Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned*, 2004, pp. 2, 11-12, 49.

14. WHO and UNODC, *International Standards for the Treatment of Drug Use Disorders, Revised Edition incorporating results of field testing*, 2020, p. 78.

15. *Ibid.*, p. 81.

- The relevant provisions of the Bangkok Rules (in particular, Rules 57 to 66) and relevant national legislation should be included in the training curriculum of criminal justice actors, including the police, prosecutors, and judges, to ensure they are understood and implemented at all stages of the criminal justice system.
- Gender-sensitive non-custodial measures should be considered for women at all stages of the criminal justice process. When determining whether to apply non-custodial measures, judges and prosecutors should assess a set of established criteria aligned with the Tokyo and Bangkok Rules. Prosecutors should exercise their discretion and decline to pursue criminal charges against women unless necessary “for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims”, and judges and prosecutors should consider “the rehabilitative needs of the offender, the protection of society and the interests of the victim”.¹⁶
- To make informed sentencing decisions, judicial authorities should be provided information about a woman’s circumstances, such as any caring responsibilities, history of victimisation, substance dependency or healthcare needs, including mental healthcare. In some jurisdictions, this can be achieved through social inquiry reports. Such reports may be prepared by social services and should include an assessment of the probable impact of imprisonment on any children or dependents, and arrangements for childcare in the absence of the mother.¹⁷
- Supervision of alternatives to imprisonment should also take into account the specific situation and needs of women. When community sanctions are not gender-sensitive, women may fail to comply with certain conditions and be imprisoned as a result. An understanding by probation officers and magistrates/judges of the specific backgrounds and needs of women in contact with the law is a prerequisite for a gender-sensitive system.¹⁸
- States should allocate resources to the assessment and understanding, via data collection, research and collaboration with NGOs who work with women, of the most common underlying factors which lead to women coming in contact with the criminal justice system, in order to build a reliable knowledge base for the development of appropriate, targeted non-custodial measures and sanctions to respond to the needs of women.
- States need to allocate adequate administrative and financial capacity to establish a national system of non-custodial measures which respond to the specific needs of women. They should create structures and mechanisms to implement alternatives to imprisonment, including restorative justice and alternative conflict resolution.
- When a woman is arrested for an alleged crime and she does not pose a risk to society, the police should have the option to issue a diversion. Diversionary measures can provide a suitable response without severely disrupting the woman’s life, employment, and caring responsibilities. For example, restorative justice processes can often play a role in facilitating the social reintegration of women in conflict with the law.¹⁹ They may take place as an alternative to prosecution for less serious crimes, when the woman has pleaded guilty in court but before sentence, after sentence, in prison or in the community.
- The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters²⁰ provide additional guidance in developing appropriate responses to women in the criminal justice system, where appropriate.
- It is important to stress that non-custodial sentences should be imposed as a replacement for prison sentences and not as a way of further widening the scope of criminal punishment to cover those minor offences which had not been punishable by criminal sanctions.²¹

16. UNODC, *Toolkit on Gender-Responsive Non-Custodial Measures*, 2020, p. 22.

17. ‘Resources for implementing a gender-sensitive approach to non-custodial sentences’, PRI, 2017, www.penalreform.org/resource/gender-sensitive-approach.

18. PRI, *Gender-sensitive community service and probation orders*, June 2017, p. 2.

19. UNODC, *Handbook on Restorative Justice Programmes*, Second edition, 2020, p. 18.

20. Endorsed by the UN Economic and Social Council, 24 July 2002, E/RES/2002/12.

21. Parliamentary Assembly of the CoE, *Promoting alternatives to imprisonment*, Resolution 1938, 2013, Articles 6 and 7.

- Gender-sensitive approaches to diversionary measures and alternatives to imprisonment should consider the whole range of specific factors that draw women into contact with the criminal justice system. Rather than replacing one form of punishment with another, like house arrest, alternatives to imprisonment should take a less interventionist approach to address the woman's individual needs through counselling, mentoring, and referrals to training or education, voluntary drug treatment and harm reduction, legal assistance, mental health support or other social services.
- Based on existing knowledge about the typical backgrounds of women in conflict with the law worldwide, consideration should be given to the development of therapeutic programmes or counselling for victims of domestic violence, human trafficking, and sexual abuse; individualised and inter-disciplinary treatment for women with mental healthcare needs; evidence-based treatment for women with substance dependencies; and educational and training programmes. While responding to the needs of women based on individual assessments and research on the most common challenges faced by women in contact with the criminal justice system, such programmes should avoid gender stereotyping by providing a broad and flexible range of opportunities (for example, not be limited to cleaning and cooking).



PROMISING PRACTICE

The revised *Guidelines for social investigations and pre-sentence reports*²² of the Kenya Probation and Aftercare Service provide detailed guidance on what information needs to be collected through a social inquiry or investigation process to produce pre-sentence reports. The Guidelines recognise the complex needs which women in contact with the law may have in relation to their economic survival, caring responsibilities, experiences of domestic or sexual violence, or other abuse during their lives which may have had a direct or indirect link to the offence. The key thematic areas that the probation officer needs to pay particular attention to are: family and social life, including any caring responsibilities and living circumstances prior to arrest; education and economic status, including employment status, means of subsistence, skills and qualifications; health and medical issues, including pregnancy, mental health, drug and substance use, as well as any prior experience or risk of domestic violence or other abuse; and previous conflict with the law noting the developmental stages of conflict.



PROMISING PRACTICE

In Northamptonshire, England, there is a specific community service for women that includes mental health treatment alongside holistic support, through a 'Women's Centre'. The Centre offers support on mental health, physical health, education, financial stability, relationships, employment and vocational training, and provides programmes to empower women to be more resilient. The programme seeks to reduce reoffending by addressing the root causes of offending, along with reducing short-term prison sentences. It is based on the fact that many people in conflict with the law have experienced years of trauma and abuse for which they have received little support and have poor experiences of health and wider social care issues; therefore, by addressing their mental health, substance use and associated social issues effectively through part of their community service, women in contact with the law are more likely to engage in treatment and not reoffend. As women tend to be given short-term prison sentences for minor offences, such community sentences also avoid the harm that prison sentences can have on women and their children.²³

22. *Guidelines for social investigations and pre-sentence reports*, revised in 2017 within the project 'Working towards gender-sensitive community service and probation orders in Kenya', jointly implemented by the Kenya Probation and Aftercare Service (KPAS) and PRI, with funding from TIJ.

23. 'A community sentence for women with mental health needs', Olivia Rope for Penal Reform International, 1 November 2018, www.penalreform.org/blog/a-community-sentence-for-women-with-mental-health/.



Rule 62

The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.



Why it is important

Fifty per cent of women in prison, compared to 30 per cent of men, are estimated to have experienced drug dependence in the year prior to imprisonment.²⁴

WHO and UNODC have stated that treatment for people with drug use disorders who come into contact with the criminal justice system may – depending on the offence – take place as an alternative to conviction or punishment or in parallel to sentencing or imprisonment (in prison settings, for example); that prison should always be a last-resort measure (in line with international standards); and that offering evidence-based treatment for drug use disorders in contact with the criminal justice system is an effective public health and public safety response.²⁵

UNODC, UN WOMEN, WHO and INPUD state that most women who have been charged with drug-related offences can be dealt with more effectively by alternatives to imprisonment specifically targeting the drug problem rather than imprisonment.²⁶

Drug dependence treatment and care, either as an alternative to imprisonment, or accessed while in prison, coupled with social support and reintegration services after release can decrease the risk of drug dependence relapse, of HIV infection and transmission and of contact with the criminal justice system, with significant benefits for the individual health, as well as public security.

Drug treatment should always be voluntary. Any treatment for drug dependence without the free and informed consent of the person involved is in breach of international human rights law and standards and ethical medical standards.²⁷ In a joint statement, issued in June 2020, on “Compulsory drug detention and rehabilitation centres”, United Nations entities called on states to permanently close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community that are aligned with international guidelines and principles of drug dependence treatment, drug use and human rights.²⁸ The statement noted, among other things, that:

“Criteria for detention in these centres vary within and among countries, but people are often detained without sufficient due process, legal safeguards or judicial review in the name of “treatment” or “rehabilitation”. They face higher vulnerabilities, including HIV, TB as well as COVID-19, as a result of sub-standard living conditions, including massive overcrowding and related challenges in maintaining physical distancing. Moreover, detention in these centres has been reported to involve forced labour, lack of adequate nutrition, physical and sexual violence, and denial or comparatively lower access to and quality of healthcare services.”

The UN Working Group on Arbitrary Detention (WGAD) emphasised in its 2021 study on the impact of drug policies that drug treatment should always be voluntary, based on informed consent and the right to choose one's treatment freely, to refuse treatment or to discontinue it at any time, and only carried out by health professionals. Oversight of the process should also rest exclusively with trained medical professionals and never courts, judges or others.²⁹

24. UNODC, *World Drug Report 2019*, 26 June 2019, p. 21.

25. WHO and UNODC, *International Standards for the Treatment of Drug Use Disorders, Revised Edition incorporating results of field testing*, 2020; see also Steven Belenko et al., ‘Treating Substance Use Disorders in the Criminal Justice System’, *Current Psychiatry Reports*, Volume 15, Issue 11, 2013, p. 414; UNODC and WHO, *Treatment and care for people with drug use disorders in contact with the criminal justice system: alternatives to conviction or punishment*, 2019; WOLA, IDPC, Dejusticia, and CIM OAS, *Women, Drug Policies and Incarceration, A Guide for Policy Reform in Latin America and the Caribbean*, 2016.

26. UNODC, UN WOMEN, WHO and INPUD, *Policy Brief. Women who inject drugs and HIV: Addressing specific needs*, 2014.

27. UNODC, *From coercion to cohesion: treating drug dependence through health care, not punishment. Discussion Paper*, 2010, p. 9.

28. ILO, UNDP, OHCHR, UNAIDS, UNHCR, UNICEF, UNODC, UN WOMEN, WFP, WHO, UNESCO and IOM, *Joint Statement. Compulsory drug detention and rehabilitation centres in Asia and the Pacific in the context of COVID-19*, 1 June 2020.

29. Human Rights Council, *Study of the Working Group on Arbitrary Detention on Arbitrary detention relating to drug policies*, A/HRC/47/40, 18 May 2021, para. 83, p. 13 with reference to A/HRC/30/65, para. 43.

The WGAD previously noted in its 2015 report that drug consumption or dependence is not sufficient justification for detention and that involuntary confinement of those who use or are suspected of using drugs should be avoided.³⁰

The Outcome Document adopted by the UN General Assembly Special Session (UNGASS) on drugs in 2016 reiterates the need for voluntary participation in treatment programmes with informed consent, as well as outreach programmes to prevent social marginalisation and promote non-stigmatising attitudes, encourage drug users to seek treatment and care, facilitate access to treatment and expand capacity.³¹

The Outcome Document recognises the specific needs of women in contact with illegal drug markets and the limited availability and accessibility of gender-sensitive services for women who use drugs and includes recommendations to better address these needs.³² It includes ensuring non-discriminatory access to a broad range of interventions, including in prisons and after imprisonment, with special attention to the specific needs of women (para. 1(k)); non-discriminatory access to healthcare and social services, including for detained women (para. 4(b)); women's involvement in the development, implementation, monitoring and evaluation of drug policies and programmes (para 4(g)); and considering the specific needs and possible multiple vulnerabilities of women in prison for drug offences, in line with the Bangkok Rules (para. 4(n)).

In its resolution on "Mainstreaming a gender perspective in drug-related policies and programmes"³³ adopted in 2016, the Commission on Narcotic Drugs invited member states, inter alia, "To take into account the specific needs and circumstances of women, including by taking measures to provide safe environments for women, and to use a wide range of alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature".

Studies have found that comprehensive or enhanced programming, which includes components such as women-only groups, childcare, prenatal care, women-focused topics, mental health programming, produces better outcomes for women in comparison with traditional mixed-gender programmes.³⁴



PROMISING PRACTICE

Metzineres in Barcelona, Spain represents a gender-sensitive, trauma-informed, holistic model of support for women and gender non-conforming people who use drugs. It is an innovative harm reduction and peer support programme catering to individual diverse needs of beneficiaries. The centre provides shelter and access to multi-disciplinary services (medical, social, health-related interventions and basic subsistence support) for beneficiaries who have experienced and survived various situations of vulnerability including discrimination, violence and abuse.³⁵



Putting it into practice

Legislative measures

- States should review and, where necessary, revise legislation to ensure women are not criminalised or otherwise punished for using drugs, and that women with drug dependence are offered drug treatment, harm reduction and other drug services in the community, that are evidence-based, gender-sensitive, and trauma-informed, as diversion measures and alternatives to punishment and imprisonment.

30. Human Rights Council, *Report of the Working Group on Arbitrary Detention*, A/HRC/30/36, 10 July 2015, paras. 57-61.

31. UN General Assembly, *Our joint commitment to effectively addressing and countering the world drug problem*, A/RES/S-30/1, 4 May 2016 (adopted on 19 April 2016), para. 1(j).

32. Marie Nougier et al., *Taking Stock of Half a Decade of Drug Policy, An Evaluation of UNGASS Implementation*, IDPC, 12 April 2021.

33. Commission on Narcotic Drugs, *Mainstreaming a gender perspective in drug-related policies and programmes*, Resolution 59/5, 2016.

34. Sam Shirley-Beavan et al., 'Women and barriers to harm reduction services: a literature review and initial findings from a qualitative study in Barcelona, Spain', *Harm Reduction Journal*, Volume 17, 2020.

35. For details see Aura Roig Forteza, *Metzineres: Sheltering and Empowering Women Who Use Drugs, Survivors of Violence*, WOLA, IDPC, Dejusticia and Metzineres, 2020.

Practical measures

- While working towards decriminalisation of drug use and certain drug offences, states should establish effective coordination between health and social services and the criminal justice system to divert women in contact with the law for drug offences to social services, harm reduction or drug treatment programmes in the community and for continuity of care upon release from imprisonment.³⁶
- The ministry of health should work together and collaborate with relevant civil society and peer-led organisations and services in the community to develop gender-sensitive harm reduction and drug treatment programmes for women, including pregnant women and women who are parents or guardians with children. Such programmes should offer women-only services, care for children of mothers, and include strategies to address sexual and reproductive health, trauma and mental health issues.
- States should consider implementing, gender-sensitive guidelines and quality standards in their drug policies in order to maximise coherence with existing activities, efficient allocation of resources and positive outcomes for women who use drugs, their children, and their families.³⁷
- The relevant ministries should allocate adequate resources for the development and effective functioning of such programmes and ensure that they are available and easily accessible to women both in urban and in rural areas nationwide. Where possible, treatment should be provided free-of-charge to all, and at the very least, to indigent women.
- Measures should be taken to respect the confidentiality of women who use drugs, based on the fundamental principle of confidentiality in medical practice and taking into account the particular stigma and discrimination women who use drugs face in many communities.

**Rule 64**

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

**Why it is important**

A series of recommendations and resolutions at international and regional levels have urged states to restrict as far as possible the imprisonment of pregnant women or mothers who are the primary carers of children. For example, the Human Rights Council Resolution on the Rights of the Child adopted in March 2012 calls upon states to “give priority, when sentencing or deciding on pre-trial measures for a pregnant woman or a child’s sole or primary care-giver, to non-custodial measures, bearing in mind the gravity of the offence and after taking into account the best interests of the child”.³⁸ Similar provisions are included in resolutions of the UN General Assembly,³⁹ Crime Congress,⁴⁰ Commission on Narcotic Drugs,⁴¹ and in the Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.⁴²

³⁶ For more on what comprehensive harm reduction components and key interventions look like for women who inject drugs, as well as challenges women face in accessing these programmes, see UNODC, UN Women, WHO and INPUD, “Women who inject drugs and HIV: Addressing specific needs” (2014), and *Additional Resources – Drug use and HIV* at the end of this document.

³⁷ Commission on Narcotic Drugs, *Promoting strategies and measures addressing specific needs of women in the context of comprehensive and integrated drug demand reduction programmes and strategies*, Resolution 55/5, March 2012, para. 6.

³⁸ Human Rights Council, *Rights of the child*, A/HRC/RES/19/37, 19 April 2012.

³⁹ UN General Assembly, *Rights of the child*, A/RES/63/241, 13 March 2009 (adopted on 24 December 2008), para. 47(a) and (b).

⁴⁰ Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, *Resolution 19, Management of criminal justice and development of sentencing policies*, Report of the 8th UN Congress on the Prevention of Crime and Treatment of Offenders, A/CONF.144/28/Rev.1, 1990.

⁴¹ Commission on Narcotic Drugs, *Mainstreaming a gender perspective in drug-related policies and programmes*, Resolution 59/5, 2016.

⁴² UN General Assembly, *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, A/C.3/69/L.5*, 25 September 2014, para. 34.



PROMISING PRACTICE

Drew House in New York, USA, is a partnership between the local District Attorney's Office and a non-profit supportive housing provider, which allows women charged with their first non-violent felony offence to fulfil the Court's mandates while living with their children in a supportive housing apartment. Drew House offers a rehabilitative environment that focuses on family stability, counselling, job training, and other support services. It is also a permanent supportive housing programme, meaning that women who have completed their court mandates are welcome to stay for as long as they want to. In response to the serious impediments that a felony charge presents to future employment and housing opportunities, felony charges are expunged after completion of the programme to prevent future disenfranchisement. Allowing women to reside in Drew House with their children has been found to have strengthened families without compromising public safety.⁴³

The 2019 Global Study on Children Deprived of Liberty also states that there should be a presumption against a custodial measure or sentence for primary caregivers, and "States should put in place laws and policies in favour of non-custodial solutions for parents of dependent children. In accordance with the best interests of the child, judicial authorities are encouraged to strictly apply the criteria of necessity, proportionality, and reasonableness when they consider ordering pre-trial detention of persons who are responsible for children and adolescents, specifically in view of its impact on these dependants".⁴⁴

Rule 64 of the Bangkok Rules and the recommendations notes above reflect the guiding principle of the CRC to consider the best interests of the child in all matters concerning them (Article 3). The UN Committee on the Rights of the Child (UNCRC) has provided increasing recommendations to states on the primacy of the best interests of the child when sentencing primary carers, prioritising non-custodial sanctions and community-based sentencing, potential effects of sanctions on the wellbeing and best interests of any child, preventing parent-child separation through the use of non-custodial alternatives including at the pre-trial stage, and avoiding the birth of children in prison through the use of non-custodial alternatives for women who are pregnant.⁴⁵

Article 30 of the African Charter on the Rights and Welfare of the Child (ACRWC) sets out a number of provisions ensuring 'special treatment' for pregnant women and mothers who are accused or convicted of criminal offences, including that states ensure that a non-custodial sentence will always be first considered when sentencing such mothers, establish and promote alternative measures to institutional confinement for the treatment of such mothers, and ensure that a mother shall not be imprisoned with her child or be subject to a death sentence.⁴⁶ In 2013, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) published General Comment No.1 on children of incarcerated and imprisoned parents and primary caregivers, and has provided further guidance on the rights of these children in almost every set of Concluding Observations to States made so far.⁴⁷

The Council of Europe (CoE) in 2018 published a specific recommendation on the treatment of children with imprisoned parents which provides that "Where a custodial sentence is being contemplated, the rights and best interests of any affected children should be taken into consideration and alternatives to detention be used as far as possible and appropriate, especially in the case of a parent who is a primary caregiver."⁴⁸

These recommendations are based on the internationally accepted premise that prisons are not suitable places to care for pregnant women, breastfeeding mothers, babies and small children. Confinement, overcrowding and the lack of adequate nutrition, hygiene

43. 'Drew House: Alternative to incarceration', *HousingPlus*, housingplusnyc.org/drew-house-alternative-to-incarceration/ [accessed on 6 October 2021]; 'Evaluation of a Supportive Housing Alternative to Incarceration for Women Charged with a Felony and Their Children', Lorie S. Goshin et al., 22 September 2011, shnny.org/uploads/DrewHouse_Report.pdf.

44. Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, November 2019, Chapter 10, Section 5, para. 8.

45. As outlined in Lucy Halton and Laurel Townhead, *Children of Incarcerated Parents - International Standards and Guidelines*, Quaker United Nations Office, March 2020, Endnote 11.

46. ACRWC, Article 30(a)-(e).

47. ACRWC and PRI, *A short guide to General Comment No.1: Children of incarcerated and imprisoned parents and primary caregivers*, 2014.

48. CoE, *Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents*, December 2018, para 2.

and healthcare can harm the mental and physical health of the mother and the child. It is also widely accepted that the separation of a mother from her child due to imprisonment can have a long-lasting negative impact on the developmental and emotional wellbeing of the child and may increase the prospects of their coming in conflict with the law and imprisoned themselves, especially if the mother was the sole carer (See Rule 60).

Taking these factors into account and bearing in mind the fundamental principle of the Tokyo Rules, which is to move towards an increased use of non-custodial sanctions and measures instead of imprisonment, some of the first categories to prioritise for alternatives to imprisonment are pregnant women, breastfeeding mothers, and mothers with dependent children.



Putting it into practice

- States should review their legislation with a view to including provisions that allow for courts to consider and prioritise non-custodial measures and sanctions in the case of women who are pregnant or who have dependent children, who have committed certain categories of offences (e.g., non-violent) or who are assessed not to pose a danger to the public (e.g., they may still be low-risk if a violent offence was committed against a partner who had abused them).
- When certain categories of offences are committed by a pregnant woman or a mother with a small child, sentences may be deferred, for example, until the child reaches a certain age and reviewed at that time, based on pre-established criteria which should provide eligibility for the cancellation of imprisonment or reduction to a non-custodial sanction under certain conditions (e.g., not to commit an offence during that period).
- States where sentencing guidelines are used should review and amend the guidelines to ensure that courts only consider custodial sentences for pregnant women and women with dependent children when the offence is serious and violent, the woman represents a continuing danger, and after taking into account the best interests of the child or children.
- Given the complexity of determining a child's best interests in these circumstances, detailed technical guidance on best interests' assessments is needed which should draw on the UNCRC's General Comment No.14 and ACERWC's General Comment No.1, in particular its five-point test for assessing a child's best interests when sentencing their caregiver.⁴⁹

1.2 Sentencing: taking into account mitigating factors

➔ Rule 61



Rule 61

When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds.

⁴⁹ For further detailed guidance, see Lucy Halton and Laurel Townhead, *Children of Incarcerated Parents - International Standards and Guidelines*, Quaker United Nations Office, March 2020, pp. 6-7.



Why it is important

Rule 61 represents an interpretation and reflection of provisions of the Tokyo Rules, as they apply to women in contact with justice system:

Rule 3.3 of the Tokyo Rules:

"Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law."

Rule 7.1 of the Tokyo Rules:

"If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorised official or agency. The report should contain social information that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified."

The Rule calls on judicial authorities to consider these factors, together with the caring responsibilities of women. Such information may be set out in social inquiry reports, as "information and recommendations that are relevant to the sentencing procedure" referred to in Rule 7.1 of the Tokyo Rules.

The UN Common Position on Incarceration issued in 2021 reflects these standards and includes, as a priority objective, reform efforts aimed at ensuring "proportionate and individualized sentencing that takes into account the nature, gravity and circumstances of the offence, as well as the background of the offender, and that ensures proper consideration of diversion and other noncustodial measures".⁵⁰

Rule 61 is of particular relevance to women who commit violent offences against their partners as a consequence of long-term and systematic abuse by them. Research demonstrates that a considerable proportion of women accused or convicted of violent offences worldwide have histories of domestic and/or sexual abuse which led to their offending.⁵¹ Whilst approaches differ globally, some jurisdictions, including some Australian states and Brazil, consider a history of abuse as a mitigating factor in sentencing for violent crimes leading to a lesser sentence. This acknowledges the reduced culpability of those who have experienced violence and abuse in their state of self-defence against abusers, as well as emotional conditions such as "battered woman syndrome" and slow-burn reaction to long-term abuse.⁵²

The Rule would also be applicable to a large proportion of women who commit drug-related offences, many of them due to coercion by their male partners, or because they agree to act as couriers (or "drug mules"), due to poverty and a need to provide for their children, and often without sufficient understanding about the possible consequences of their actions.⁵³ Judges in some jurisdictions (UK, New Zealand) consider women's low-level involvement and insignificant role in drug dealing, or gender-related factors, such as pregnancy, dependence on male partners who instigated the commission of the crime, abuse, coercion, etc.⁵⁴

The major international instruments, including the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances⁵⁵ and the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations⁵⁶ call on governments to take multidisciplinary initiatives, of which alternatives to imprisonment are a key part.⁵⁷ More recently, the UN General Assembly called for proportionate and effective sentencing policies, practices and responses, encouraging alternatives to conviction or punishment

50. UN, *United Nations System Common Position on Incarceration*, April 2021, p. 11.

51. A UN report on Kyrgyzstan noted that 70% of women convicted of killing a husband or other family member had experienced a "longstanding pattern of physical abuse or forced economic dependence". Similar statistics from Jordan, South Africa, the United States and Argentina demonstrate that this is a global phenomenon, extending across countries and regions, traversing culture and levels of development. Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/14/22/Add.2*, 28 May 2010; see also PRI and Linklaters LLP, *Women who kill in response to domestic violence: How do criminal justice systems respond?*, 2016, p. 4.

52. PRI and Linklaters LLP, *Women who kill in response to domestic violence: How do criminal justice systems respond?*, 2016.

53. Bangkok Rules, Commentary to Rule 61; PRI, Linklaters LLP and IDPC, *Sentencing of women convicted of drug-related offences*, 2020.

54. PRI, Linklaters LLP and IDPC, *Sentencing of women convicted of drug-related offences*, 2020.

55. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

56. UN General Assembly, *Declaration on the guiding principles on drug demand reduction*, A/RES/S-20/3, 8 September 1998.

57. Bangkok Rules, Commentary to Rule 61.

in appropriate cases, taking into account the Tokyo Rules,⁵⁸ and the Human Rights Council called on states to mainstream a gender perspective in drug policies and programmes, with gender-sensitive and age-appropriate measures that take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem.⁵⁹

The WGAD, in its study on drug policies published in 2021,⁶⁰ reiterated its concern in previous reports about disproportionate sentences (mandatory minimum sentencing and disproportionately long sentences) for drug-related offences and called for revisions to penal policies and drug legislation to reduce minimum and maximum penalties and decriminalise the personal use of drugs and minor drug offences. The report also highlights women's gendered pathways to drug-related offences and discriminatory sentencing policies in relation to them.⁶¹

Punitive drug laws that automatically categorise a broad range of drug offences as serious, prioritise pretrial detention, or establish lengthy minimum prison sentences for drug offences fail to take account of mitigating factors and impact women disproportionately, as drug offences often lead to women's contact with criminal justice systems.⁶²



PROMISING PRACTICE

In Vietnam under Criminal Code 2015, Articles 67 – 68, a woman's sentence can be postponed if she is pregnant or has a young child until her child reaches three years of age. If the woman is the sole income earner in the family and imprisonment will cause the family to face extreme hardship, the sentence may be deferred for up to one year unless committing an offence against national security or an extremely serious crime.⁶³



Putting it into practice

- Legislation should be reviewed and, where necessary, revised to ensure that courts are allowed a certain amount of discretion when sentencing women, so that they can take into account various relevant factors, such as the crime history of the woman in conflict with the law, her social circumstances, including any history of violence or abuse, her caretaking responsibilities, including whether she is a single mother, the reasons for committing the offence and the severity of the offence, among other factors deemed to be relevant to the commitment of the offence.
- In addition, taking into account the legal system of the particular jurisdiction, guidance for sentencing should be provided, which can take various forms⁶⁴ to encourage courts to favourably take into account women's background, circumstances and vulnerabilities, as well as their caretaking responsibilities, before passing a sentence.
- Probation services or social services may be required to compile social inquiry reports in the case of some or all women (depending on the availability of resources). For example, the preparation of such reports may be mandatory in the cases of women facing long sentences and all women who are pregnant and who have dependent children.
- Where it is not possible to have social inquiry reports due to resource limitations, courts should take the responsibility to inquire into the background, circumstances and caretaking responsibilities of women during the trial process.

58. UN General Assembly, *Our joint commitment to effectively addressing and countering the world drug problem*, A/RES/S-30/1, 4 May 2016 (adopted on 19 April 2016), paras. (j) and (l).

59. Human Rights Council, *Contribution to the implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights*, A/HRC/RES/37/42, 4 April 2018 (adopted on 23 March 2018), para. 4.

60. Human Rights Council, *Study of the Working Group on Arbitrary Detention on Arbitrary Detention relating to drug policies*, A/HRC/47/40, 18 May 2021, paras. 35–39 (G. Disproportionate sentencing).

61. *Ibid.*, paras. 56–63 (D. Women).

62. Adrià Cots Fernández and Marie Nougier, *Punitive drug laws: 10 years undermining the Bangkok Rules*, CELS, PRI, IDPC, Dejusticia, WOLA and WHRIN, February 2021.

63. Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, November 2019.

64. See for example, CoE, *Recommendation No. R(92)17 of the Committee of Ministers to Member States Concerning Consistency in Sentencing* (Adopted by the Committee of Ministers on 19 October 1992 at the 482nd meeting of the Ministers' Deputies).

1.3 Post-sentencing dispositions

➔ Rule 63



Rule 63

Decisions regarding early conditional release (parole) shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social reintegration needs.



Why it is important

Parole or early conditional release means the early release of sentenced persons under individualised post-release conditions. It can be mandatory when it takes place automatically after a minimum period or a fixed proportion of the sentence has been served, or it can be discretionary when a decision has to be made whether to release someone conditionally, after a certain period of the sentence has been served.⁶⁵ Conditional release or parole is always accompanied by a general condition that the released person should refrain from engaging in criminal activities. Other conditions may be imposed to the extent that these are appropriate for the individual's successful social reintegration.

As long as people released from prison receive adequate support, assistance and supervision, early conditional release (parole) can significantly assist with their social reintegration by enabling their gradual, planned resettlement. The value of early conditional release in this regard is recognised in Rule 9 of the Tokyo Rules, and by regional bodies such as the CoE.⁶⁶ The support given to women following release is crucial to their successful social reintegration and reducing reoffending.

Rule 63 aims to ensure that those responsible for taking decisions on early conditional release should consider the particularly harmful impact of imprisonment on women, their need for family contact and their caretaking responsibilities, as well as their generally low security risk, when assessing the social reintegration benefits of early release. In this context, they should also consider the needs and best interests of any children living with their mother in prison as well as children who remain outside.



Putting it into practice

- Assessment tools should be developed to ensure that all the relevant information about the woman in prison helps to reliably determine her risks and her social reintegration needs.
- Bodies responsible for making parole decisions should be provided with information relevant to the social reintegration needs of the woman, in particular the potential benefits both to the woman and to her family of reuniting, and about any children the woman has inside or outside prison.
- Bodies responsible for making parole decisions should consider favourably the information provided on the woman's caretaking responsibilities and social reintegration needs. The woman should be provided with an opportunity to participate in the decision-making process.
- In jurisdictions where people in prison need to apply for early conditional release, they should be informed of this right, both at the beginning of their sentence and at the time when they become eligible to apply.

65. UNODC, *Criminal Justice Assessment Toolkit, Custodial and Non-custodial Measures, Social Reintegration Tool*, March 2010, p. 25.

66. See CoE, *Recommendation Rec(2003)22 of the Committee of Ministers to Member States on conditional release (parole)*, Adopted by the Committee of Ministers on 24 September 2003.

- Prison authorities, staff of the parole system, social services or other bodies responsible for the supervision of women released on early conditional release should coordinate to ensure they receive assistance and support during the period of transition. Where relevant, they should work with healthcare services for any continuum of care the women may require, for example, treatment for substance dependence or mental health.



PROMISING PRACTICE

Some countries explicitly included pregnant women, breastfeeding mothers, and mothers with young children in emergency release schemes implemented in response to the COVID-19 pandemic. According to a report by DLA Piper,⁶⁷ a quarter of the 53 jurisdictions surveyed applied specific criteria to enable the release of women in prison, including those who were pregnant, breastfeeding or had young children in prison. For example: women in prison were explicitly included in emergency releases from prisons in Jordan and Bahrain; pregnant women were included for release in Maryland (USA); convicted women with young children living with them in prison were released in South Africa and Ethiopia; as were women in pre-trial detention with children living with them in Rwanda.

1.4 Women who need protection

➔ Rule 59



Rule 59

Generally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organisations or other community services, shall be used to protect women who need such protection. Temporary measures involving custody to protect a woman shall only be applied when necessary and expressly requested by the woman concerned and shall in all cases be supervised by judicial or other competent authorities. Such protective measures shall not be continued against the will of the woman concerned.



Why it is important

This Rule is unique in that it covers the needs of a group of women who are neither in contact with justice system nor imprisoned, but victims of violence. It has been included in the Bangkok Rules because of the practice in some countries of using prisons as places of 'protection' for victims of violence. It is therefore an extreme and vivid example of the thin line between victimisation and imprisonment, in the case of women.

Rule 59 of the Bangkok Rules prescribes strict and narrow criteria for when protective detention can be used. The obligation of the state is to protect a woman in danger using measures that don't involve detention. If at all, such 'protective detention' is a last, temporary resort. The woman concerned must be free to leave whenever she wishes, having received all relevant information, including the risks she may face.

The Rule recognises that many women may themselves feel forced to request this extreme form of protection to escape potential violence, either because they have been raped and may be in danger of harm by the perpetrator or his relatives (for example to prevent women from testifying), or for not conforming to strict norms required by custom, tradition or religion in some societies, putting them at risk of an 'honour-based killing' or other forms of violence, or because they may simply be escaping from systematic violence in their home. For example,

67. DLA Piper, *A global analysis of prisoner releases in response to COVID 19*, December 2020, p. 27.

NGOs who provide support to Jordanian women in administrative detention informed PRI that women may be detained because they are at risk of being harmed by their family because of a perceived moral transgression such as adultery, consensual sex outside of marriage (known as zina) or being seen in the presence of an unrelated male.⁶⁸ In some countries, prisons may be used to protect trafficked persons.

The challenge faced here is to provide such women with the protection that they need, if they so request, while, on the other hand, to ensure that they do not, in effect, become imprisoned or at risk of possible further abuse. This is not an easy tension to resolve. The WGAD has expressed very clearly that "... recourse to deprivation of liberty in order to protect victims should be reconsidered and, in any event, must be supervised by a judicial authority, and that such a measure must be used only as a last resort and when the victims themselves desire it".⁶⁹

In most countries, there are shelters or safe houses run by independent bodies, such as NGOs, as well as by social welfare services, which provide a far better option for the temporary protection of such women, provided that they expressly wish to be protected in this way.

The 'temporary' nature of such measures is paramount in order for them to be acceptable. Under the Declaration on the Elimination of Violence against Women, Article 4(f), states have the responsibility to develop comprehensive approaches for the protection of women against any form of violence.⁷⁰



Putting it into practice

Legislative measures

- States should review and revise, as necessary, all relevant legislation to ensure that laws protect women against gender-based violence and that they do not lead to the re-victimisation of women due to insensitivity to gender considerations.

Practical measures

- States should also review their law enforcement and criminal justice practices to ensure that maximum protection is provided to women who have experienced gender-based violence and that such women are not re-victimised in practice. For example, women who apply to the police for protection, due to fears of being killed or fleeing domestic violence, should not be sent back home, but offered protection while longer-term measures to resolve the problem are identified.
- UNODC advises judges to take a victim-centred approach while determining the appropriate protection measures. A crucial principle of any protection measure is the need to respect women's rights, dignity and privacy and seek their views. Protection should afford women safety so that they can develop their own strengths and strategies for coping with violence.⁷¹
- States should allocate adequate financial and human resources to the establishment of adequate safe houses/shelters in the community managed by social services or by another relevant body, such as the ministry responsible for women or for human rights. They should also set up effective collaboration mechanisms with NGOs who run such shelters to ensure that women who need such protection are referred to these NGOs promptly and with respect to the need for strict confidentiality.
- Where, in exceptional circumstances, women are housed in places of detention for their protection due to the lack of better alternatives, states should ensure that all measures are taken to ensure that such women are not treated as if they are imprisoned: (a) women should be free to leave whenever they wish, having received all information relevant to their situation, including the risks they may face if they leave; (b) such women should be held in strictly separate accommodation from detained persons; (c) staff responsible for their

68. PRI, *Who are Women Prisoners? Survey Results from Jordan and Tunisia*, August 2014, pp. 7-8.

69. Commission on Human Rights, *Report of the Working Group on Arbitrary Detention on civil and political rights, including the question of torture and detention*, E/CN.4/2003/8, 16 December 2002, para. 65.

70. Bangkok Rules, Commentary to Rule 59.

71. UNODC, *Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-based Violence against Women and Girls*, 2019, p. 62-63.

supervision and care should be properly trained to respond to these women's particular needs, recognising their vulnerability and the trauma that they may have experienced; (d) the women should be offered psycho-social assistance and legal aid; (e) places of such detention should be supervised regularly by an independent judicial authority.

- In all cases the women concerned must express a desire, in writing, to receive such measures of protection and they should be provided with all the information relating to the conditions of such places of protection, services provided and procedures for leaving them.
- The provision of such protection should not mean that authorities are relieved of their responsibilities to address the underlying causes for the need to take such extreme measures to protect victims of violence in general, as well as the need to apprehend and bring to justice the perpetrators of any violence that may have already occurred.

1.5 Girls in conflict with the law

➔ Rule 65



Rule 65

Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of girl children in conflict with the law shall be taken into account in decision-making.



Why it is important

The CRC, Article 37(b) provides that “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.

The Beijing Rules include detailed Rules on how to deal with children in conflict with the law. They provide that the age of criminal responsibility should not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.⁷² They encourage the diversion of children in conflict with the law from the criminal justice system⁷³ and avoiding institutionalisation to the greatest possible extent.⁷⁴

Rule 65 re-emphasises these principles, taking into account the fact that children are imprisoned too frequently and unnecessarily, as well as for longer periods than necessary. It is estimated that at least 410,000 children are held in detention every year in remand centres and prisons worldwide, in addition to an estimated 1 million children held every year in police custody. An estimated 160,000–250,000 children are held in remand centres and prisons worldwide on any given day.⁷⁵

Even though the rate of imprisonment for girls is much lower compared to boys, girls often experience gender-based discrimination. For instance, they are much more commonly arrested for status offences (such as, running away, truancy, disorderly conduct),⁷⁶ rather than criminal activities and are more likely to be subject to discrimination on dual bases, due to age and also gender.⁷⁷

72. UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, A/RES/40/33, 29 November 1985, Rule 4.1.

73. Beijing Rule 11.

74. Beijing Rule 18.1.

75. Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, November 2019, p. 10.

76. The Sentencing Project, *Incarcerated Women and Girls*, 24 November 2014. For instance, in the US, even though girls comprise just 15% of imprisoned youth, they make up a much higher proportion of those incarcerated for the lowest level offenses. Thirty-six percent of youth incarcerated for status offenses (such as truancy and curfew violations) are girls. More than half of youth incarcerated for running away are girls. Overall, one-third of incarcerated girls are held for status offenses or for violating the terms of their probation (based on statistics from 2017).

77. UN General Assembly, *Report of the Independent Expert leading the United Nations global study on children deprived of liberty*, A/74/136, 11 July 2019.

According to the UN Global Study on Children Deprived of Liberty, other reasons which bring girls in conflict with the law include being trafficked as a migrant girl, behavioural problems triggered by domestic abuse, violations of loitering and public safety laws, not carrying proper identification, sexual exploitation during armed conflict, and disability.⁷⁸ In some states where abortion is criminalised, girls can also face imprisonment, even where the pregnancy is a result of rape. Girls from poor families face increased risk of imprisonment as they lack access to effective legal representation and other supportive systems.

In detention, girls face particular disadvantages and are especially vulnerable to sexual and other forms of violence.⁷⁹ Girls have particular protection needs due to their age and gender, as well as social reintegration needs, which can be much better served in the community, with assistance provided to address the underlying causes of any offence committed and with constructive support offered by social services, probation services and others, as relevant, to help them build positive and crime-free lives, in full conformity with the Beijing Rules.

Under the Beijing Rules, states must seek to mobilise all relevant actors, including families, schools, and community groups, to promote a child's well-being with a view to reducing the need for intervention under the law and ensuring fair and humane responses for those in contact with the law (Rule 1.3). Formal trial should be avoided wherever appropriate (Rule 11.1). Detention pending trial must be used only as a measure of last resort and for the shortest time possible (Rule 13.1) and be replaced by alternative measures wherever possible, such as close supervision, intensive care or placement with a family or in an educational setting or home (Rule 13.2). A large variety of measures should be available to authorities so as to avoid institutionalisation of children to the greatest extent possible (Rule 18.1).

Girls in conflict with the law may be pregnant or mothers, so in addition to the considerations outlined above, the provisions of Rule 64 (see above) should also be taken into account.



Putting it into practice

Legislative measures

- Legislation and/or sentencing guidelines should be reviewed and, as necessary, revised, to:
 - Ensure that appropriate scope for discretion is allowed at all stages of criminal proceedings and at the different levels of justice for children administration, to direct girls away from the criminal justice process. Criteria should be established in legislation that empower the police, prosecution or other agencies dealing with cases involving children to dispose of such cases at their discretion, in line with the best interests of the child, without having to resort to formal hearings. The particular gender-based vulnerability of girls should be taken into account in developing such criteria, aiming to reduce the detention of girls to the absolute minimum necessary.
 - Include a sufficient number of special alternatives to pre-trial detention and imprisonment suitable to respond to the special needs of children in conflict with the law, including the particular needs of girls.
 - Remove so-called 'moral' or 'status' offences that discriminate against girls such as leaving home, not adhering to certain dress codes or having sex outside of marriage. These offences should be abolished and, where necessary, any conduct should be addressed outside the justice system through multi-agency child protection mechanisms.
- States should review their law enforcement and criminal justice practices to ensure that maximum protection is provided to girl victims of gender-based violence. For example, girls who apply to the police for protection due to fears of being killed or fleeing domestic violence should not be sent back home, but offered protection which does not include detention, while longer term measures to resolve the problem are identified.

78. Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, November 2019, p. 9.

79. *Ibid.*, para. 38.

Practical measures

Social inquiry reports or pre-sentence reports, which assess a child's background and the cause of offending, need to be made available to the courts before a sentence is passed. These may be prepared by social services, probation officers, or similar institutions. The reports should take into account the particular vulnerability of girls in detention, as well as their special needs and social reintegration requirements.

Criminal justice actors who deal with cases of children should be appropriately trained and sensitised, including those responsible for preparing pre-sentence reports. States must provide timely, effective, specialised and competent legal representation to girls who are unable to pay for it. States should provide systematic and ongoing gender-sensitive training for professionals in the criminal justice system involved with working with girls, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others.⁸⁰ For example, judges dealing with children's cases should receive special training on the CRC and the psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous people.⁸¹ Law enforcement training should also cover the physical, mental and social development of children, as well as specific needs of the most vulnerable children, which includes girls.⁸²

States should invest in developing appropriate services and community measures suitable for children in conflict with the law. Mechanisms of coordination should be established between community services and criminal justice actors, starting with the police, to ensure effective implementation of diversionary measures. Alternative sanctions such as community service or supervision orders should reflect the fact that a large proportion of girls in conflict with the law have mental healthcare needs, substance dependence, live in poverty, or have histories of domestic violence or sexual abuse. Diverting them to a suitable gender-appropriate treatment programme addresses their needs much more effectively than the harsh environment of prison as well as being more cost-effective.

Criminal justice agencies should form links with civil society as far as possible in assisting with the social reintegration of children in conflict with the law.

States need to conduct research and systematically collect data that is disaggregated by gender and age to fully understand the most common underlying factors which lead girls to come in contact with the criminal justice system and the different impact of policies and programmes to prevent and respond to offending on girls and boys. This data and research should be used to inform planning and policy formulation and the development of targeted non-custodial measures and sanctions that are gender-specific and age-appropriate to respond to their needs.

80. PRI and IPJJ, *Neglected needs: girls in the criminal justice system*, 2014.

81. CRC, *Children's Rights in Juvenile Justice, General Comment No.10 (2007)*, CRC/C/GC/10, 25 April 2007, para. 97.

82. *Ibid.*, para. 40.

1.6 Human trafficking

➔ Rule 66



Rule 66

Maximum effort shall be made to ratify the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention to fully implement their provisions so as to provide maximum protection to victims of trafficking in order to avoid secondary victimization of many foreign-national women.



Why it is important

Every country in the world is affected by human trafficking, whether as a country of origin, transit, or destination for victims.

To remedy the lack of specific and adequate legislation on trafficking in persons, the United Nations adopted the UN Convention against Transnational Organized Crime, and its Protocol. This Protocol emphasises the need to protect victims, prosecute perpetrators and for this purpose to increase capacity, training and international cooperation in the area of trafficking in persons. For example, Article 6. paragraphs 3, 4 and 5 of the Protocol, provide that:

“3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.”

Trafficked persons are subjected to multiple human rights abuses (such as violence or forced prostitution) and are often victims of crime, whether or not the persons responsible for the trafficking are identified, arrested, charged, prosecuted or convicted. Sometimes trafficked persons are detained or charged for breaching immigration rules or for their involvement in illegal activities because they have been trafficked. Trafficked women are a vulnerable group of women who increasingly find themselves in prison.

In 2018, for every 10 trafficked persons detected globally, five are adult women and two are girls. Migrants account for a significant share of those detected in most regions. Traffickers prey upon the marginalised and poorest members of society. Cases examined by UNODC found that at least half of all involved people were targeted because of economic need.⁸³ Sexual exploitation remains the most commonly identified form of human trafficking, accounting for 50 per cent of trafficking, followed by forced labour (38 per cent) which has been increasing.⁸⁴

83. UNODC, *Global Report on Trafficking in Persons*, 2020, p. 4.

84. *Ibid.*, p. 11 (Fig. 3 Share of detected trafficking victims, by form of exploitation, 2018).

Whilst the UN Convention against Transnational Organized Crime and its Protocol do not oblige states to refrain from criminalising and prosecuting trafficked people, multiple other international and regional guidelines, action plans, declarations and resolutions urge states to refrain from prosecution.⁸⁵ This principle of non-punishment has emerged in recognition of concerns for victims who have been compelled or have otherwise committed crimes as a direct result of their trafficking.⁸⁶ Punishing trafficked persons for the crimes they commit as a result of their exploitation undermines their rights, reduces the likelihood that they will report their victimisation to the authorities, and reduces the opportunities to bring traffickers to justice, as victim cooperation is the main tool used in many countries to prosecute traffickers.⁸⁷

The Conference of the Parties to the UN Convention against Transnational Organized Crime recently called for states to consider ensuring that trafficked persons are “not inappropriately punished or prosecuted for acts they commit as a direct consequence of being trafficked and, where appropriate, provide access to remedies if they are punished or prosecuted for such acts...”⁸⁸

The non-punishment principle is also included in Article 26 of the 2005 CoE Trafficking Convention, Article 8 of the EU Directive (2011/36); and the Recommended Principle by the United Nations High Commissioner for Human Rights.⁸⁹

The Committee on the Elimination of Discrimination against Women stresses in its General Comment No. 38 on trafficking in women and girls in the context of global migration to “ensure that all women and girl victims of trafficking, without exception, are not subject to arrest, charge, detention, prosecution or penalty or are otherwise punished for irregular entry or stay in countries of transit and destination, absence of documentation, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims of trafficking.” It adds that “the non-punishment principle must be enshrined in legislation and implemented through proper training to ensure responders are able to identify trafficking victims for such relief; not compel victims to provide evidence or testimony in exchange for immunity from prosecution redress or services and provide recourse for trafficking victims to clear their criminal records in cases where they have been convicted of crimes that were committed as a direct consequence of being a victim of trafficking”.⁹⁰

The CoE Convention on Action against Trafficking in Human Beings⁹¹ provides for a recovery and reflection period of at least 30 days for victims of human trafficking to recover from the trauma experienced and to decide whether or not to testify against their traffickers, after having received all information as to their rights and considered possible risks they face (Article 13).

This also complies with the requirements to protect trafficked persons set out in Article 7 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, quoted above, and Article 8, which requires that states give due regard to the safety of trafficked persons when taking steps to repatriate them, and that such repatriation should preferably be voluntary.

85. See for example, UNODC, *Legislative guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, 2020; Committee on the Elimination of Discrimination against Women, *General recommendation No. 38 on trafficking in women and girls in the context of global migration*, CEDAW/C/GC/38, 2020, p. 98; UN General Assembly, *Trafficking in women and girls*, A/RES/65/190, 21 December 2010, para. 17.

86. The Inter-Agency Coordination Group against Trafficking in Persons (ICAT), *Non-punishment of Victims of Trafficking*, Issue brief, 08/2020, www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/04/19-10800_ICAT-Issue-Brief-8_Ebook_final.pdf.

87. UNODC, *Global Report on Trafficking in Persons*, 2020, p. 19.

88. Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *Effective implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, CTOC/COP/2020/L.6/Rev.1, 15 October 2020, para. 13(g); see also: The Inter-agency coordination group against Trafficking in Persons, *Non-Punishment of Victims of Trafficking Issue Brief 08/2020*, 2020.

89. UNODC, *Global Report on Trafficking in Persons*, 2020, p. 19.

90. Committee on the Elimination of Discrimination against Women, *General recommendation No. 38 on trafficking in women and girls in the context of global migration*, CEDAW/C/GC/38, 2020, para. 98.

91. CoE, *Convention on Action against Trafficking in Human Beings*, CETS No 197, 16 May 2004.



Putting it into practice

- States should make every effort to ratify the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing that Convention, and incorporate their provisions into their domestic legislation.
- States should review and where necessary revise their legislation and practices to ensure that they provide maximum possible protection for trafficked persons from further victimisation. Legislation and practices should ensure that:⁹²
 - Trafficked persons are not detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination.⁹³
 - Trafficked persons are not prosecuted for trafficking-related offences, such as holding false passports or working without authorisation, even if they agreed to hold false documents or to work without authorisation.⁹⁴
 - Similarly, whether sex work is legal or not, persons being trafficked into sexual exploitation should not be prosecuted, even if the person originally consented to working in the sex industry.⁹⁵
 - Trafficked persons are effectively protected from retaliation by traffickers, both before and after testifying against them, which may include providing the victims with permanent or temporary resident permits in the country of destination (both before and after testifying), as well as other protection measures, such as protecting their identity, including by providing them with a new identity where necessary.⁹⁶

^{92.} For further practical guidance on the treatment of trafficked persons, see UNODC Tools for Protocol Implementation on Human Trafficking, www.unodc.org/unodc/en/human-trafficking/tools.html.

^{93.} OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Principle 7.

^{94.} Ibid, and UNODC, *Tools to Combat Trafficking in Persons*, 2008, p. 103.

^{95.} Ibid.

^{96.} See Coe, *Convention on Action against Trafficking in Human Beings*, CETS No. 197, 16 May 2005, Article 28(2).

Chapter 2

Non-discrimination of women in prison



Non-discrimination of women in prison

➔ Rule 1 (Supplements Rule 2 of the Nelson Mandela Rules)

The Bangkok Rules are based on the principle of non-discrimination. This principle is set out in Articles 2.1 and Article 26 of the ICCPR which prohibits any discrimination “on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status” and subsequent interpretative instruments.⁹⁷

Rule 2 of the Nelson Mandela Rules sets out this fundamental principle and requires that the needs of every person in prison are provided for, so that no one experiences discrimination on any of these grounds. It requires that the religious beliefs and moral precepts of people in prison are respected and emphasises individualisation of their treatment. For the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of people in prison, particularly those in situations of vulnerability in prison settings. Measures to protect and promote the rights of people in prison with specific needs are required and shall not be regarded as discriminatory.

Bangkok Rule 1 supplements Rule 2 of the Nelson Mandela Rules. Because prisons and their systems are usually built and designed for the needs of the majority male prison population, women often experience discrimination in prison. Rule 1 of the Bangkok Rules emphasises this need in the case of all women in prison and represents the fundamental principle on which the Bangkok Rules are based.

Article 4 of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides the legal basis for this rule. Article 4(1) of CEDAW provides that:

“Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.”

This would mean that, since the specific needs of women are not temporary needs, but inherent in the status of women due to their gender, prison policies and practices should ensure that such needs are provided for on a constant basis, so that “de facto equality between men and women” is maintained (e.g., special healthcare needs, protection against gender-based violence etc). In addition, such policies and practices should include measures to compensate for some of the practical disadvantages faced by women in prison (e.g., allowing for longer visits if visits are too infrequent due to the long distances that the family must travel). Such measures may be discontinued if and when women are housed close to their homes, as required by Rule 4.

Article 4(2) of CEDAW is very clear that:

“Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.”

Thus, all measures taken to promote the physical and mental wellbeing of pregnant women, breastfeeding mothers, and mothers with small children in prison, are required by CEDAW.

⁹⁷ OSCE ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, 2018, p. 6.

The same principles are reflected in Principle 5(2) of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, which provides:

“Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.”



Rule 1

In order for the principle of non-discrimination, embodied in [Rule 2 of the Nelson Mandela Rules] to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.



Why it is important

Rule 1 is based on the recognition that women in prison are often discriminated against, due to the fact that prisons and prison regimes are developed with the needs of the majority male prison population in mind. Women (and girls) comprise the minority in prisons around the world, constituting an estimated two to nine per cent of national prison populations. However, the number of imprisoned women has increased significantly in some countries, and at a greater rate than for men.⁹⁸

Equal treatment of men and women does not result in equal outcomes. As laid out in the Bangkok Rules, policies developed for women in prison do not constitute discrimination against men in prison. Given the discrimination usually faced by women in detention settings, proactive measures are needed to achieve equality for women.

Due to their small number amongst the prison population, the specific needs and characteristics of women and girls as subjects of the criminal justice system have tended to remain unacknowledged and unaddressed. Prison systems and prison regimes are almost invariably designed for the majority male prison population – from the architecture of prisons to security procedures, facilities for healthcare, family contact, work and training. As a consequence, few prisons meet the specific needs of women and often do not prepare them for release with gender-sensitive rehabilitation programmes.

Discrimination comes in many forms; from the number of rehabilitation services and facilities available, to the fact that women are often imprisoned far from home due to their small number and there being fewer prisons available for them, as recognised by Rule 4 of the Bangkok Rules. Because of this, the distance needed to travel and the related cost in visiting a woman in prison often pose major obstacles to regular visits. One of the key factors that assists with social reintegration is the ability to maintain links with family while in prison. Women are often housed in prisons far away from their homes, which hinders the maintenance of links with their families and children, with a particularly harmful effect on their mental wellbeing and social reintegration prospects. Therefore, in practice, it is difficult to apply the principle of non-discrimination, unless affirmative action is taken by prison administrators to ensure that women in prison have equal access to all services and rights enjoyed by men. Policies need to be designed to counter this discrimination. Affirmative action requires taking initiatives and allowing for special considerations, when applying the Nelson Mandela Rules to women in prison.

98. Roy Walmsley, *World Female Imprisonment List, fourth Edition*, Institute for Criminal Policy Research, 2017.

Some prison administrations deny women conjugal visits because they are concerned about pregnancies. Such policies constitute discriminatory treatment. Also, the consequences of limiting conjugal visits for women in prison on these grounds may be permanent in that it may de facto deprive women of having children altogether. Moreover, such limitation denies the right to family and private life not only to the woman detained, but also to her partner.⁹⁹ As Rule 58(2) of the Nelson Mandela Rules stipulates, “where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men.” In order to ensure fair and equal access to this entitlement, relevant procedures and premises need to be in place respecting safety and dignity of people in prison.

Although many difficulties faced by women upon release are similar to those of men, the intensity and multiplicity of their post-release needs can be very different. Women are likely to suffer increased discrimination after release from prison, due to social stereotypes. They might be rejected by their families or may lose their parental rights. If they have left an abusive or violent relationship, women will have to establish a new life, which is likely to entail economic, social, and legal difficulties, in addition to the challenges of transition to life outside prison. In many countries, the risk of losing their accommodation and employment upon detention is higher for women, and women in contact with the law are confronted with increased stigmatisation in most societies for contravening prevailing role models for their sex. They therefore are likely to have particular support requirements in terms of housing, reunification with their families, and employment, and will need assistance which is gender-responsive. While a general requirement to apply individual treatment according to the needs of people in prison is enshrined in Rule 2 of the Nelson Mandela Rules, pre-release preparation and post-release support policies and programmes are typically structured around the needs of men and rarely address the specific needs of women, with targeted continuum-of-care in the community after release. Rehabilitation programmes should be designed and made available in prisons specifically for women, taking into account their specific needs, aiming to address the underlying factors that led to their offence and to cope with the challenges they face as women in prison. Programmes offered should include skills which are not traditionally considered as appropriate for women due to gender stereotyping.

Women in prison have greater primary healthcare needs in comparison to men. Health conditions may have been untreated before admission due to discrimination in accessing adequate healthcare services in the community, especially for women from economically and socially disadvantaged backgrounds. Due to the typical background of women in prison, which can include injecting drug use, sexual abuse, violence, sex work and unsafe sexual practices, a significant number of women are infected with sexually transmitted infections (STIs), including HIV and hepatitis, at the time they enter prison. Also, women who are admitted to prison are more likely than men to experience mental health issues, often as a result of domestic violence, physical and sexual abuse, and examination by male doctors may put them at risk of re-traumatisation. According to research, women in prison are at higher risk of harming themselves or attempting suicide in comparison to men in prison, due to the higher level of mental illness and substance dependence and the harmful impact of isolation from the community on the mental wellbeing of women.¹⁰⁰

Due to their small numbers, girls in prison are likely to have even less access to suitable educational and vocational training facilities than either adult women or boys in prison. Any programmes provided for girls are likely to have been developed to address the needs of boys.

Also, girls in prison are even more unlikely to have access to gender-sensitive and age-appropriate healthcare or counselling for physical or sexual abuse experienced prior to imprisonment. Pregnant girls comprise one of the most vulnerable groups in prisons, due to the social stigmatisation to which they may be subjected, their inexperience in dealing with pregnancy and the lack of adequate facilities for them in prison.

99. OSCE ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, 2018, p. 5.

100. PRI and PRT, *Women in prison: mental health and well-being – a guide for prison staff*, 2020.



Putting it into practice

- The Bangkok Rules provide guidance on what action is needed to establish equality in all areas of detention, from sentencing, providing healthcare in prison, through to rehabilitation services post-release.
- States and prison authorities have the responsibility to develop gender-sensitive prison management policies in order to ensure that the specific needs of women in prison are taken into account in the entire management ethos and the treatment of people in prison. Gender-sensitive prison management policies and practices should also take into account the specific needs and vulnerabilities of different groups of women in prison, based on their ethnicity, race, nationality, sexual orientation, age or other 'minority' status.
- It is advisable that all key stakeholders that should be involved in the treatment and rehabilitation of women in prison participate in the development of such policies, within a comprehensive consultation process, in order to develop policies and initiatives that respond to women's needs in a holistic manner, to ensure that they are sustainable and that the requisite budget to implement them are identified and allocated by the relevant stakeholders.
- A gender-sensitive prison management approach must start from the admission of a woman to prison, continuing throughout her imprisonment, and must guide also her arrangements for release and post-release support requirements. The Bangkok Rules provide guidance to prison authorities on how a gender-sensitive prison management approach should be reflected in the prison regime, healthcare, activities and a range of other areas of prison management in the case of women in prison, in practice.
- The introduction of gender-sensitive prison management policies may include both legislative and practical measures, depending on the country and on the laws, regulations and policies that are already in place.
- Recognising women's particular needs and vulnerabilities in prison settings and beyond, and to address the risk that women's needs will be disregarded, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) sets standards outlining how practical aspects of prison life should be arranged for women considering a number of factors such as "any physical, sexual or psychological form of violence, including domestic violence, they might have suffered before the imprisonment, a high level of mental healthcare needs, a high level of drug or alcohol dependency, specific (for example, reproductive) healthcare needs, caretaking responsibilities for their children and/or their families, and the high likelihood of post-release victimisation and abandonment by their families."¹⁰¹

¹⁰¹ CPT, *Factsheet Women in prison*, CPT/Inf(2018)5, 2018.

Chapter 3

Admission, registration and allocation



Admission, registration and allocation

➔ Rules 2 to 4

Anyone admitted to prison may feel very vulnerable. However, a woman's experience can be particularly distressing. This may be caused by a variety of factors, including separation from children, fears and worries about imprisonment itself and the associated stigma, as well as experiencing symptoms of withdrawal for those with substance dependence.¹⁰² Rates of suicide and self-harm are particularly high in the initial period of imprisonment, especially among women.¹⁰³

Rules 7 and 54 of the Nelson Mandela Rules provide guidance on the registration and admission of all people in prison. Rule 7 places an obligation on prison authorities to ensure that there is a legal record of everyone who is admitted to prison, including valid commitment order and details what type of assistance and information should be provided to someone entering prison. This includes a record of any visible injuries and complaints about prior ill-treatment, an inventory of personal property, information relating to court hearings, legal representation and names and location of family.

The Bangkok Rules (on admission, registration and allocation) supplement this guidance with further requirements that take into account the particular vulnerability of women and their specific needs and recognise the reality that many women committed to detention are mothers.

3.1 Admission

➔ Rule 2



Rule 2

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.
2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.



Why it is important

All people in prison are entitled to inform, or have informed, members of their family or other appropriate person of their choice of their imprisonment, promptly after arrest (Body of Principles, Principle 16(1)). Under Rule 54–55 of the Nelson Mandela Rules, on admission to prison, every person should be provided with written information about all the regulations

¹⁰² PRT, *There when you need them most: pact's first night in custody services*, 2007.

¹⁰³ Howard League for Penal Reform, *Care, concern and carpets: How women's prisons can use first night in custody centres to reduce distress*, 2006; WHO and IASP, *Preventing suicide in jails and prisons*, 2007.

governing the treatment of people in prison of his/her category, on how to seek information and make complaints, among others. This must be provided in the most commonly used languages of the prison population and, if needed, interpretation should be provided, or the information should be provided orally or in a manner appropriate to their needs. If the person is a foreign national, their right to contact consular representatives should be clearly explained and facilities provided for them to either contact consular representatives themselves or ask the competent authorities to do so (Body of Principles, Principle 16(2)).

Given common feelings of vulnerability on first admission to prison, good prison management practices require prison staff working in the admission area to be specifically trained to fulfil their responsibilities to complete the admission procedure in a way which is both lawful and sensitive to the welfare and dignity of the person. This would entail treating newly admitted persons with respect, explaining very clearly their rights and responsibilities, providing them facilities to contact their families and providing them information on how to access legal counsel, if requested.

Women are especially vulnerable immediately after arrest and during admission to prison and should be treated with special sensitivity during this period. Some women already have mental health conditions before they come to prison. Others develop poor mental health during their time in prison. This might be related to their detention and related conditions or the way they are treated by staff or other people in prison. Negative experiences during arrest can impact people's mental health. The time in police custody can be especially stressful for mothers if they don't know what is happening to their children.¹⁰⁴

Most women who are admitted to prison are mothers,¹⁰⁵ and the separation from their children, as well as the rest of their family can have a severely negative impact on their mental wellbeing. In many countries, being detained or imprisoned will entail a particular stigma for women, which can add to their distress. Research shows that women in prison are four times more likely to self-harm and attempt suicide than women in the community and are at least nine times more likely to die from suicide compared to the general female population.¹⁰⁶

The children of people in prison can also suffer from the immediate consequences of separation from their parents, especially from their mothers who are often the primary carers of children.

The Convention on the Rights of the Child (CRC), Article 3(1) requires that all decisions involving children should be based on the need to protect the best interests of children:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

In addition, CRC, Article 3(2) provides that:

"States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

For guidelines regarding assessments of a child's best interests when sentencing their caregiver, see also [Rule 64](#).

Mothers need to be able to make preparations for their children's welfare before entering prison. These preparations may include arranging alternative care for the children remaining outside prison and explaining to their children what is happening and why they are being separated.

¹⁰⁴. PRI and PRT, *Women in prison: mental health and well-being – a guide for prison staff*, 2020, p. 8.

¹⁰⁵. 'Double punishment: The situation, challenges and adversities faced by mothers in prison around the world', Miranda Rathmell for *Penal Reform International*, 21 June 2021, www.penalreform.org/blog/double-punishment-the-situation-challenges-and-adversities-faced-by-mothers-in-prison-around-the-world.

¹⁰⁶. Seena Fazel et al., 'Suicide in prisons: an international study of prevalence and contributory factors', *The Lancet*, Volume 4, Issue 12, 1 December 2017.



Putting it into practice

- Policies should be introduced to ensure that detained or imprisoned women with caretaking responsibilities are given the opportunity to arrange for the care of their children before being admitted to prison, so that children may receive the protection and care which is necessary for their wellbeing.
- In order for mothers to undertake this task, legislation may be introduced to grant such women a suspension of the sentence for an appropriate period.
- Alternatively, the prison authorities may grant home leave to the woman concerned as soon as possible after admission.
- The woman concerned should also be given access to information on alternative care arrangements, for example in a children's home or social welfare facility, and what the long-term consequences of arranging for such care may be, including how she can keep in contact with her children, visiting arrangements for the children, taking into account CRC, Article 9(3).
- In all such cases the best interests of children should be paramount. Thus, if for example, a mother has abused her child and the child is deemed to be at continued risk, the mother's access to the child may be restricted or prohibited, in line with CRC, Article 9(1).
- Prison authorities should set up a special reception area for women being admitted to prison, where they are provided facilities to inform their family of their detention and place of detention.
- Prison staff should receive special training to deal professionally and sensitively with newly admitted women and where applicable, their children.
- Prison staff should provide newly admitted women with written information relating to their rights and obligations, the procedures that they must follow to enjoy their rights and fulfil their obligations and where to seek additional information, in a language which they understand. Such information should be explained to them orally as well, in the case of illiterate and literate women, to ensure that they have understood the rules and to give them a chance to ask questions.
- Prison staff should also provide information on how to access legal counsel, and legal aid if necessary, and assistance with contacting lawyers or other legal aid providers, if the woman requires such assistance.
- Consideration may be given to providing facilities where people who are newly admitted can spend their first 48 hours, or longer, to help with transition to prison life.



PROMISING PRACTICE

In some countries, 'reception' or 'first night custody centres' are used to reduce the distress experienced when entering prison. In London's Holloway Women's Prison (now closed), a dedicated first night centre was set up to house women coming into the prison for the first night. The women would receive more information and help from an organisation Pact (Prisoners Advice and Care Trust), prison officers with special training, medical staff and members of a peer support scheme. The environment was designed to be as welcoming, personal, and non-institutional as possible. A study found that the centre reduced the distress of newly admitted women as it helped to meet their practical needs. For example, there were fewer difficulties and less frustration in making contact with family.¹⁰⁷

¹⁰⁷. 'First night and early days in custody', *The Prison Advice and Care Trust*, www.prisonadvice.org.uk/first-night-and-early-days-in-custody [accessed on 6 October 2021]; Jessica Jacobson and Kimmett Edgar with Nancy Louck, *There when you need them most: pact's first night in custody services*, Prison Reform Trust, 2007.

3.2 Registration

➔ **Rule 3** (*Supplements Rule 7 of the Nelson Mandela Rules*)



Rule 3

1. The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status.
2. All information relating to the children's identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children.



Why it is important

The purpose of registration is to ensure that everyone in prison is accounted for as a safeguard against and human rights violations, that their needs are known and provided for, and to support effective management of detention facilities, transparency and accountability.¹⁰⁸

Rule 7 of the Nelson Mandela Rules, among other instruments, such as the Declaration on the Protection of All Persons from Enforced Disappearance (Article 10) obliges prison authorities to keep an up-to-date registration book which must contain information about people's identity, the day and hour of their admission to prison and the reasons for their commitment to prison.

In many countries, dependent children are admitted together with their parents, usually their mothers, to prison. Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the child (Rule 49(1) of the Bangkok Rules). Individuals with caregiving responsibilities for children shall be enabled to make arrangements for their care before or on admission, taking into account the best interests of the child. At admission, the prison administration should record the number of children a person has, their ages, and their current primary caregiver, and endeavour to keep this information up-to-date to enable prison authorities to contact children outside, in case of need, and to assist women to maintain contact with their children outside on a regular basis.

Rule 3 provides guidance to prison authorities about how to deal with children being admitted to prison with their mothers, as well as what steps to take to ensure that women can maintain links with children outside prison, taking into account the provision of the CRC, Article 9(3):

"States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."

Registering children who are admitted to prison with their parents does not in any way imply that they may be treated as imprisoned (Rule 59).

The CoE Recommendation on Children of Imprisoned Parents considers the importance of allowing children to have accurate and appropriate information concerning their parents in cases where they are imprisoned, that prisoners are supported in receiving information regarding their rights and the rights of their children during their detention and in how to talk to their children about their imprisonment. To reassure children that while their parent

¹⁰⁸ UNODC, *Handbook on Prisoner File Management*, 2008, p. 4; More guidance on the purpose and types of files and records in detention and safeguards they represent can be found at: 'Files and records', APT, www.apt.ch/en/knowledge-hub/detention-focus-database/safeguards/files-and-records [accessed on 6 October 2021].

is not living with them, he or she is safe, people in prison shall be encouraged to provide information of their whereabouts to their children and caregivers as soon as possible after imprisonment.¹⁰⁹ The gathering of information about the children of imprisoned mothers, whether accompanying their mothers or not, is also important to increase general knowledge about imprisoned mothers and to improve the suitability and effectiveness of criminal justice responses to mothers, while taking account of the best interests of their children.



Putting it into practice

- Prison authorities should ensure that the procedures which relate to the registration of people in prison include the registration of any children accompanying their mothers in prison, with at least their names and their ages. This information, together with the findings of the medical examination required by Rule 9, should be used to develop prison policies and services to respond to the needs of children in prison with their mothers, depending on their age, gender, healthcare needs and special nutritional requirements.
- Information should also be recorded, with the mother's permission, of any children the woman in prison has outside prison, their address and custody or guardianship status.
- It is important that an explanation is given to the women about the purposes for which this information is being collected. While women should be encouraged to provide information about their children outside prison, they may have reasons for not wishing to disclose such information and they should never be forced to do so.
- It is equally important that the information about children of imprisoned mothers is kept confidential, which means that it should not be shared with any other person or institution, without the consent of the mother. It should also never be used in a way which may not be in the best interests of the children, in line with CRC, Article 16 which provides that:

"1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks."

3.3 Allocation

➔ Rule 4



Rule 4

Women in prison shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.



Why it is important

Research in countries worldwide indicate that one of the key factors that assists with social reintegration is a person's ability to maintain links with their family during detention. The requirement to allocate people, as far as possible, and if they so request, to facilities close to their homes helps to maintain family ties (Body of Principles, Principle 20 and Rule 59 of the Nelson Mandela Rules, underlined by Rules 106 and 107) helps to maintain family ties.

¹⁰⁹ CoE, Recommendation CM/Rec(2018)5 of the Committee of Ministers to Member States concerning children with imprisoned parents, December 2018, Rule 14, and Explanatory Memorandum to the Recommendation, p. 34.

However, women are most often allocated far away from their homes, due to the small number of women's prisons in most countries. Thus, this is an example of how women in prison are often discriminated against, due to practical reasons. Recognising this disadvantage faced by women, Rule 4 gives prison authorities the responsibility to make special efforts to accommodate women close to their places of residence, or the place where they would like to be eventually released.¹¹⁰

Such an allocation must take into account the wishes of the woman concerned, as many women in prison may have a history of domestic and other forms of violence. Some women may not wish to be allocated close to their homes, preferring to put a distance between themselves and a husband, partner or other person who may have been a perpetrator of such violence prior to imprisonment.



Putting it into practice

- Prison authorities should ensure that more attention is paid to the allocation of women, so that they can be located as close as possible to their homes. Even if prison authorities are not responsible for decisions on allocation, they can still play an important role in advising other relevant authorities on the most appropriate allocation for individuals.¹¹¹
- Governments and relevant ministries should consider the establishment of a larger number of small units to house women in conflict with the law that can be located close to places where most women in prison come from.
- If resources do not allow for the above, consideration may be given to increasing the number of women's sections, attached to men's prisons, with the requisite staffing, facilities and services, taking into account the gender-specific needs of women in prison, outlined in the Bangkok Rules, in order to be in a position to house women closer to their homes.

Also refer to Rules 6 to 9 on medical screening on entry to prison, in Chapter 4.

110. APT and PRI, *Women in detention: a guide to gender-sensitive monitoring*, 2013, p.16.

111. OSCE ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, 2018, p. 27.

Chapter 4

Hygiene and healthcare



Hygiene and healthcare

➔ Rules 5 to 18

Several international standards define the quality of healthcare that should be provided to people in prison. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.¹¹² This applies to people in prison equally as it does to every other human being. People in prison retain their fundamental right to enjoy good health, both physical and mental, and retain their entitlement to a standard of healthcare that is at least the equivalent of that provided in the wider community.¹¹³

The United Nations Basic Principles for the Treatment of Prisoners¹¹⁴ outline that “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation” (Principle 9). Therefore, the fact that people are in prison does not mean that they have any reduced right to appropriate healthcare. In fact, when a state deprives people of their liberty, it takes on a responsibility to look after their health in terms both of the conditions under which it detains them and of the individual treatment that may be necessary.¹¹⁵

Prison administrations have a responsibility to provide healthcare and also to establish conditions that promote the wellbeing of both people in prison and prison staff. People in prison should not leave prison in a worse condition than when they entered. This principle is reinforced by Recommendation No. R(98)7 of the Committee of Ministers of the CoE¹¹⁶ concerning the ethical and organizational aspects of health care in prison and by CPT, particularly in its 3rd general report.¹¹⁷ The European Court of Human Rights also has considerable body of case law confirming the obligation of states to safeguard the health of detainees in their care.

In terms of the obligation to provide adequate healthcare to people in prison, there are two fundamental aspects,¹¹⁸ the relationship between the person and the healthcare staff¹¹⁹ and also how prison health care is organised.¹²⁰

The Nelson Mandela Rules which contain revised provisions related to healthcare in line with modern standards, including in relation to medical ethics, cover health care services in prisons, under the respective heading “Health-care services”, which includes Rules 24 to 35. The new Rules provide specific guidance on how healthcare services in prisons should be organised and the specific duties and responsibilities of healthcare staff. In addition, the Rules provide more detail on addressing the needs of those with mental health issues or other specific healthcare needs. The Rules also reiterate the absolute prohibition of torture or other illtreatment by healthcare staff and their obligation to document and report cases they become aware of.

¹¹². UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Resolution 2200A (XXI), 16 December 1966.

¹¹³. Andrew Coyle, *Standards in Prison Health (Chapter 2, Prisons and Health)*, WHO Regional Office for Europe, 2014, p. 6.

¹¹⁴. UN General Assembly, *Basic principles for the treatment of prisoners*, Resolution 45/111, 14 December 1990.

¹¹⁵. Andrew Coyle, *Standards in Prison Health (Chapter 2, Prisons and Health)*, WHO Regional Office for Europe, 2014, p. 6.

¹¹⁶. CoE, *Recommendation No. R(98)7 of the Committee of Ministers to Member States concerning the ethical and organisational aspects of health care in prison*, 8 April 1998.

¹¹⁷. CPT, *3rd general report on the CPT's activities covering the period 1 January to 31 December 1992*, CPT/Inf(93)12, 4 June 1993.

¹¹⁸. Andrew Coyle, *Standards in Prison Health (Chapter 2, Prisons and Health)*, WHO Regional Office for Europe, 2014, p. 6.

¹¹⁹. UN General Assembly, *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 37/194, 18 December 1982.

¹²⁰. For details about how healthcare services should be organised in prisons, please refer to: UNODC and WHO Regional Office for Europe, *Good Governance for Prison Health in the 21st Century: A policy brief on the organisation of prison health*, 2013; see WMA, *Declaration of Seoul on Professional Autonomy and Clinical Independence*, 59th WMA General Assembly, October 2008.

These Rules require that healthcare services in prisons should be organised in close relationship with the general healthcare services in the community in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence; full clinical independence of healthcare staff from prison administration; state responsibility for providing healthcare services to people in prison having them under custody; equivalency of healthcare which is of the same standard as in the outside world; continuity of care upon release into the community; and specific training for prison staff and healthcare providers.¹²¹

Rule 25 lays out tasks of a healthcare service which needs to be in place for every individual including evaluation, promotion, protection and improvement of both physical and mental health of people in prison, particularly attending to those with special health needs or issues hampering their rehabilitation. The Rule requires for the healthcare service to be staffed with an interdisciplinary team consisting of sufficient qualified personnel including those possessing sufficient expertise in psychology and psychiatry and a qualified dentist too.

The rules on women's gender-specific healthcare needs are limited to pregnancy, pre- and post-natal care, how to deal with the birth of a baby (Rule 28) and the establishment of childcare facilities in prisons for children staying with their mothers (Rule 29).

The Bangkok Rules fill an important gap with their comprehensive coverage of the key hygiene and healthcare needs of women in prison, as well as children staying with them in prison.

In order to adequately respond to the healthcare needs of women in prison, gender-specific services need to be provided, including sexual and reproductive healthcare and preventive healthcare. The relatively high prevalence of substance dependence and mental health issues among women in prison also need to be taken into account in healthcare staffing. Rule 15 of the Bangkok Rules states that prison health services shall provide or facilitate specialised treatment programmes designed for women with substance dependence, in view of prior victimisation, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds. Women in prison also tend to have more pre-existing health problems than men due to barriers to accessing health services in the community.

The Bangkok Rules also recognise that, however well managed, prisons are not designed to cater for the needs of pregnant women, breastfeeding mothers and small children, and therefore recommend that pregnant women and women with small children are not imprisoned unless absolutely necessary (See Rule 64), as has been discussed separately in Chapter 1.

Sanitation and personal hygiene are covered in Rules 15, 16, 17 and 18 of the Nelson Mandela Rules, which do not explicitly refer to the special hygiene requirements of women in prison. Prison authorities' responsibilities in relation to the personal hygiene of women in prison have been included in this chapter, due to the key role of hygiene in promoting health and preventing disease.

¹²¹ Fundamental principles of healthcare provision in prisons include: protection, equivalence of care, the right to the highest attainable standard of health, independence, non-discrimination, confidentiality, informed consent, links to community health services and continuity of care, and state responsibility. See OSCE ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, 2018, p. 147.

4.1 Personal hygiene

➔ **Rule 5** (*Supplements Rule 18 of the Nelson Mandela Rules*)



Rule 5

The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.



Why it is important

In order to maintain human dignity, to promote health and prevent disease, people in prison must be able to maintain their personal hygiene. For this reason, in addition to clean water, people in prison need to be provided with such hygiene items, as are needed for health and cleanliness (including soap, toothbrushes, toothpaste and towels, as a minimum), as required by the Nelson Mandela Rules, specifically Rule 18(1). The Rule refers to the need to provide people in prison with facilities to care for their hair and in the cases of men, to be able to shave. However, the Nelson Mandela Rules do not make any mention of women's specific hygiene requirements. Women have distinctive hygiene needs, which also must be met. The CPT considers that the failure to provide basic necessities, such as sanitary pads, can amount to degrading treatment¹²² and recommends ready access to sanitary and washing facilities, adequate quantities of essential hygiene products, such as sanitary towels and tampons, and safe disposal arrangements for blood-stained articles, as particularly important.¹²³

Despite the requirement of Rule 5 that women's specific hygiene needs be met by providing sanitary products free of charge, period poverty and lack of women's access to clean menstrual management materials in prisons remains to be an issue in many countries including high-income ones.¹²⁴



PROMISING PRACTICE

In India, 'The Model Prison Manual' adopted by the Ministry of Home Affairs in 2016 to be used by all states and union territories, provides for basic minimum standards that must be maintained in prisons, including the provision of free sanitary napkins by prison authorities (Rule 26.85). Despite this, prison visits by the Commonwealth Human Rights Initiative (CHRI) revealed the lack of proper infrastructure in women's facilities, limited provision of sanitary products to ensure menstrual hygiene in many prisons, and a general lack of awareness amongst women in prison of their rights and entitlements. In response, CHRI, in collaboration with Boondh (a social enterprise that works on menstrual literacy and policy), initiated expert interventions on menstrual hygiene management in prisons, including capacity building sessions with prison staff and awareness camps with women in prison. They published a document on the minimum standards to be adopted by prison authorities, in line with the Bangkok Rules, to raise awareness of menstrual health and hygiene among women in prison and women prison staff,¹²⁵ and a poster highlighting basic menstrual hygiene practices which was translated into several local languages and disseminated to prison departments for display in prisons.¹²⁶

122. CPT, 10th General Report on CPT's activities covering the period 1 January to 31 December 1999, CPT/Inf (2000) 13, 18 August 2020, para. 31; CPT, *Report to the Estonian Government on the visit to Estonia carried out by CPT from 30 May to 6 June 2012*, CPT/Inf (2014) 1, 21 January 2014, para. 60.

123. CPT, *Factsheet on Women in Prison*, CPT/Inf (2018) 5, 29 January 2018.

124. See 'Period poverty in prisons: ensuring menstrual hygiene and dignity in India', Anju Anna John for *Penal Reform International*, 16 February 2021, www.penalreform.org/blog/period-poverty-in-prisons-ensuring-menstrual-hygiene-and-dignity-in-india/.

125. 'Recommendations on ensuring Menstrual Hygiene in Prisons', Boondh and CHRI, www.humanrightsinitiative.org/download/1590647964CHRI%20&%20BOONDH%20Recommendations%20on%20Ensuring%20Menstrual%20Hygiene%20in%20Prisons.pdf [accessed 6 October 2021].

126. 'Menstrual Hygiene and You', CHRI, 28 May 2020, www.humanrightsinitiative.org/publication/menstrual-hygiene-you.



Putting it into practice

- Prison authorities and staff should ensure that women in prison have regular access to hot water for the personal care of themselves and their accompanying children. This requirement is particularly important in the case of women involved in cooking, those who are pregnant, breastfeeding, menstruating and, where possible, those going through menopause.
- In low-income countries where resources may not allow for the provision of a regular supply of hot water, women should at least have increased access to water in order to fulfil their hygiene requirements.
- Women should have easy access to hygiene articles, including soap, toothbrushes, toothpaste, towels and sanitary towels or pads, free-of-charge. A supply of sanitary pads may be provided, for example, each month together with other hygiene articles, to all people in prison who menstruate. Additional pads, where needed, may be dispersed by female staff or they could be accessible from dispensing machines.

4.2 Medical screening on entry

➔ **Rules 6 to 9** (*Supplements Rules 24-35 of the Nelson Mandela Rules*)

Medical examinations: general/primary healthcare needs



Rule 6

The health screening of women prisoners shall include comprehensive screening to determine primary health care needs, and also shall determine:

- (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling;
- (b) Mental health care needs, including post-traumatic stress disorder and risk of suicide and self-harm;
- (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues;
- (d) The existence of drug dependency;
- (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.



Why it is important

Both the Nelson Mandela Rules and the Body of Principles require that a medical screening of all people in prison is undertaken promptly after admission to prison. The word “promptly” or “as soon as possible” is generally interpreted to mean the day of admission. The CPT has clarified that the medical examination should be carried out within 24 hours of admission.¹²⁷

Rule 30 of the Nelson Mandela Rules outlines the purpose of initial medical screening as to identify: a) health-care needs and respective treatment; b) ill-treatment to which people in prison were subjected to prior to admission; c) any signs of psychological or other stress, including suicide or self-harm and withdrawal symptoms from the use of drugs, medication or alcohol; d) any contagious diseases to be followed up with clinical isolation and treatment; and e) the fitness of a person to work, to exercise and to participate in other activities, as appropriate.

¹²⁷ CPT, 23rd General Report of the CPT, CPT/inf (2013)29, 6 November 2013, para. 73.

As people in prison often come from marginalised backgrounds, newly arrived individuals may have pre-existing, untreated health conditions and/or undiagnosed mental health issues and may have experienced greater exposure to transmissible diseases, inadequate nutrition and had fewer opportunities to access good quality healthcare. Additionally, they may have a high level of substance dependence.

The initial medical screening provides an important opportunity to identify people in prison at risk of suicide or selfharm which is much greater during the first days of imprisonment. Early identification of such risks can help to determine the safe and appropriate allocation and supervision.

For many women in low-income countries, the health screening on entry to prison might constitute their first medical examination. Women in prison have complex health needs, as regards their physical and mental health. Data from countries around the world indicate that women in prison have a higher prevalence of mental ill-health than both the general population and men in prison. Many women in prison also have a history of drug use and/or a drug dependence. Three times as many women as men report that they have experienced violence, either physical or sexual, before their imprisonment (or indeed in previous detention), which can be related to specific mental and physical healthcare needs.¹²⁸

It is important to diagnose any existing health conditions at admission to prison in order to provide adequate treatment and to prevent the exacerbation of their health problems during imprisonment.

Sexually transmitted infections and blood-borne diseases [Rule 6(a)]

Women in prison often have a higher prevalence of blood-borne viruses and STIs than men in prison.¹²⁹ This is because women in prison often have a history of injecting drug use, sexual abuse, violence, sex work and unsafe sexual practices.

Ensuring that such infections are diagnosed as soon as possible on admission is crucial to providing adequate medical care and to prevent the spread of transmissible diseases.

Prevention of transmission of infections to children begins with access to sexual and reproductive health services, including contraception. As with pregnant women outside prison, pregnant women in prisons should have access to the full range of interventions for the prevention of mother-to-child transmission, including family planning and Anti-retroviral therapy (ART) prophylaxis for pregnant and breastfeeding mothers. Children born to women living with HIV should be followed up according to national guidelines.¹³⁰

Mental healthcare [Rule 6(b)]

Women in prison are more likely than men to have existing mental healthcare needs, often as a result of domestic violence, physical and sexual abuse.¹³¹ Some women who have experienced particularly severe violence may be suffering from post-traumatic stress disorder.¹³² A high level of substance use and substance dependence among women in prison is also a risk factor for mental health issues, including self-harm and suicide.

Imprisonment can exacerbate existing mental healthcare needs, especially in the case of women, who feel the impact of separation from children, families and communities, particularly severely.

The comprehensive and detailed screening of women on first admission to prison and regularly throughout their stay, covering health and trauma histories and current mental health status, among others, are key to providing the services appropriate in each case on an individualised basis.

128. Brenda van den Bergh et al., *Women's health and the prison setting (Chapter 18, Prisons and Health)*, WHO Regional Office for Europe, 2014, p. 159.

129. UNODC and WHO Europe, *Women's health in prison: Correcting gender inequity in prison health, 2009*; UNODC and UNAIDS, *Women and HIV in prison settings, 2008*.

130. Fabienne Hariga, *HIV and other bloodborne viruses in prisons (Chapter 7, Prisons and Health)*, WHO Regional Office for Europe, 2014.

131. UNODC and WHO Europe, *Women's health in prison: Correcting gender inequity in prison health, 2009*, p. 27.

132. *Ibid.*

Reproductive health [Rule 6(c)]

One of the key gender-specific health care needs of women is related to their reproductive health, including those relating to pregnancies, childbirth, recent abortions and any related health complications. The Committee on Economic, Social and Cultural Rights (CESCR) and CEDAW have both clearly indicated that women's right to health includes their sexual and reproductive health which states have obligations to respect, protect and fulfil. This is related to other human rights, such as the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination. The Special Rapporteur on the right to health maintains that women are entitled to reproductive healthcare services, and goods and facilities that are available in adequate numbers; accessible physically and economically; accessible without discrimination and of good quality (see report A/61/338).¹³³

Rule 6(c), supported by the recommendations by UN bodies and experts, places a positive obligation on prison managers and healthcare services to provide for the medical care required by women who have had an abortion prior to admission or who require special care because of a recent miscarriage or the delivery of a child or stillborn child, whatever the legal provisions in the particular jurisdiction. Such treatment should start with a medical screening of their healthcare needs on entry. The key importance of the principle of medical confidentiality and the independence of prison medical health services from the prison administration is demonstrated starkly in cases of this nature.

Substance dependence [Rule 6(d)]

Punitive drug laws imposed over the past decades have led to an estimated 2.5 million people worldwide in prison sentenced for drug-related offences.¹³⁴ This disproportionately impacts women, with an estimated 35 per cent of women in prison worldwide for drug offences, compared to 19 per cent of men.¹³⁵ Notwithstanding the nature of their offence, a high proportion of women in prison have a history of drug use.¹³⁶ Women who use drugs face multiple barriers to accessing harm reduction services in the community. These include stigma, gender-based violence and a lack of services that are equipped to address the interaction between drug use and experiences of violence, criminalisation in the form of legal barriers to access, arrest and harassment from law enforcement, and incarceration, as well as a lack of services focused on the specific needs of women.¹³⁷

The high proportion of women who use drugs in prison and the absence of gender-responsive, or even standard harm reduction and treatment programmes in most prisons, coupled with the particular difficulties women face after release put women at a high risk of negative health outcomes (see Rules 45-47 in relation to the high levels of death from drug overdose following release).

Torture and ill-treatment, including gender-based violence [Rule 6(e)]

The first period in police custody and pre-trial detention is when ill-treatment and abuse is most likely to occur.¹³⁸ It is during this time, and in particular during police custody, that suspects may be subjected to ill-treatment in order to force them to confess to crimes. Women are particularly at risk of harassment, abuse and violence, including sexual violence, during this period.¹³⁹

¹³³. 'Sexual and reproductive health and rights', *OHCHR*, www.ohchr.org/en/issues/women/wrgs/pages/healthrights.aspx [accessed on 6 October 2021].

¹³⁴. UNODC, *World Drug Report 2020: Booklet 1*, June 2020, p. 21.

¹³⁵. UNODC, *World Drug Report 2018*, July 2018, p. 9.

¹³⁶. Bangkok Rules, Commentary to Rule 15.

¹³⁷. Sam Shirley-Beavan et al., 'Women and barriers to harm reduction services: a literature review and initial findings from a qualitative study in Barcelona, Spain', *Harm Reduction Journal*, Volume 17, 2020.

¹³⁸. See for example: Human Rights Council, Thirteenth Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/13/39, 9 February 2010, para. 52.

¹³⁹. For a discussion of custodial violence against women, see Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, paras. 19-20.

As noted by the former Special Rapporteur on Torture, “It is widely recognised, including by former Special Rapporteurs on torture and by regional jurisprudence, that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials”.¹⁴⁰

Medical screening on entry to prison is essential to detect ill-treatment and torture by law enforcement officials or others, to bring perpetrators to justice and provide the requisite support and care for victims, when such acts have taken place.



Putting it into practice

- Prison administrations should put in place measures to ensure that all women are offered a medical screening on admission to prison. The medical screening needs to be undertaken by qualified healthcare professionals, including a medical doctor and a psychologist.
- As with patients in the community informed consent should be sought for undergoing medical examinations on admission.
- All questions relating to the health of a prisoner admitted to prison should be the exclusive responsibility of health care staff – that is, other staff should not ask questions relating to a person’s health during the assessment undertaken to determine risks and needs (see [Rules 40 and 41](#) for further guidance).
- It is not always possible to ensure that a doctor is able to carry out a medical examination of all people as soon as they are admitted to prison. Prison administrations should ensure that each person is at least seen by a suitably qualified nurse who can report any concerns to the medical officer.¹⁴¹
- The screening on admission should include an examination to determine any urgent medical needs and primary healthcare needs, as well as an assessment of whether the woman has been subjected to ill-treatment or torture. A more comprehensive medical screening covering all medical needs, including mental healthcare needs, as outlined in [Rule 6](#), may be then undertaken, within a week of admission. This should not, however, lead to any delay in continuing with treatment the woman may have been receiving prior to admission to the prison, in line with the principle of continuity of care.
- As with all medical examinations in the community, detention and prisons, it is vital that on entry medical screenings should be confidential (see [Rule 8](#)).
- An individual and comprehensive healthcare plan should be developed for each woman based on the findings of the screening.¹⁴²
- The health screening should be repeated at reasonable intervals while a woman is in prison.¹⁴³

Sexually transmitted and blood-borne diseases [Rule 6(a)]

- Screening for STIs and blood-borne diseases should comprise an important component of the initial screening for all women in prison, undertaken by qualified health practitioners.
- Voluntary HIV testing and counselling should be offered to all people in prison during medical examinations or physical check-ups. Healthcare staff should go further and, while keeping in mind the voluntary nature of the process, recommend HIV testing and counselling to people in prison with signs, symptoms or medical conditions that could indicate HIV infection, and to pregnant women in prison. People in prison who test positive to HIV, should be provided with comprehensive HIV treatment, care and support¹⁴⁴ (see [Rule 14](#)).

¹⁴⁰. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3, 15 January 2008, para. 34.

¹⁴¹. Andrew Coyle, Helen Fair, *A Human Rights Approach to Prison Management*, Institute for Criminal Policy Research, 2018, 3rd Edition, p. 53; CPT, *CPT standards*, CPT/Inf/E (2002)1 - Rev. 2010, 8 March 2011, Extract from the 3rd General Report [CPT/Inf (93) 12], para. 33.

¹⁴². Brenda van den Bergh et al., *Women’s health in prison, Action guidance and checklists to review current policies and practices*, WHO Regional Office for Europe and UNODC, 2011, p. 19.

¹⁴³. *Ibid.*

¹⁴⁴. UNODC, ILO, WHO, UNFPA, UNAIDS and UNDP, *Technical Brief, 2020 Update, HIV prevention, testing, treatment, care and support in prisons and other closed settings: a comprehensive package of interventions*, 2020.

- All interventions should always be geared towards the best interests of the patient. All treatments should be voluntary, with the informed consent of the patient. Confidentiality of health information should be maintained and people living with HIV should not be segregated. Qualified health officers responsible for the healthcare of people in prison must have the autonomy to decide on treatment needs for their patients, including referrals to public health services. Some groups of people in prison, such as women, young people, people who use drugs, transgender people and men who have sex with men, have special needs to be addressed and are particularly vulnerable to stigma, discrimination and violence.¹⁴⁵

Mental health [Rule 6(b)]

- On-entry screening should include an examination of a person's mental health by a qualified mental health practitioner, to determine mental healthcare needs, including for example, the existence of any post-traumatic stress disorder. It may not be practical or advisable for the screening to determine mental healthcare needs to be undertaken immediately on the day of admission, due to distress and confusion which a woman may be experiencing on her first day in prison. A nurse may undertake an initial assessment for any urgent needs, including the continuation of any mental healthcare treatment already being received, and refer patients who need immediate attention to a mental health practitioner.
- A comprehensive screening may be undertaken within a week of admission after the woman has settled into prison.
- Women with mental health problems should be channelled into the least restrictive housing and receive appropriate individualised treatment from the outset of their imprisonment (see Rules 12 and 13).
- Risk of suicide and self-harm should form an essential element of the assessments on admission, undertaken by a qualified mental health practitioner, and suitable support, counselling and treatment should be provided to women at risk (see Rule 16). The initial medical screening of a detainee provides an important opportunity to identify people at risk of suicide or self-harm. It is particularly important to detect these signs at an early stage, as the risk of suicide or self-harm is much greater than normal during the first days of imprisonment. Additionally, early identification of such risks can help to determine the safe and appropriate allocation and supervision of detainees that have been placed on suicide/self-harm alert.¹⁴⁶
- In cases where women are diagnosed with severe mental health issues, they should be diverted to specialised, suitable and acceptable community healthcare services, wherever possible, and legislation should be reviewed and revised to enable this process, as necessary.¹⁴⁷
- In all cases the women themselves should be fully informed of the treatment offered, expected outcomes and any risks involved. The women should participate in decision-making regarding their treatment plan and the treatment should only be initiated following the patient's informed consent. Measures should be taken to provide access by persons with mental health conditions to the support they may require in exercising their legal capacity, as required by the Convention on the Rights of Persons with Disabilities (CRPD).¹⁴⁸ All measures that relate to the exercise of legal capacity should provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.¹⁴⁹

¹⁴⁵ Ibid, p. 7.

¹⁴⁶ OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, p. 143, para. 5.

¹⁴⁷ Nelson Mandela Rule 109; Revised European Prison Rule 12.1.

¹⁴⁸ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, A/RES/61/106, 24 January 2007 (adopted on 13 December 2006).

¹⁴⁹ Ibid, Article 12.4.

Reproductive health [Rule 6(c)]

- The medical examination offered on entry should include a screening of women's reproductive health history, including recent pregnancies, childbirth, abortions and any related reproductive health complications, and ensure that appropriate treatment and care is provided from the outset of imprisonment, based on an individualised health care plan.

As has already been mentioned, informed consent is required for all medical examinations. Women should not be forced to provide information about their reproductive health history, for example, recent pregnancies or abortions, in line with the underlying principles of medical confidentiality, which is reiterated in Rule 8.

Where a woman has undergone an illegal abortion, she should never be forced to provide information about the person who conducted the abortion as a condition for providing medical treatment. The policies of prison healthcare services should incorporate the needs of this group of women in prison and provide the physical and psychological care such women need, on an impartial and non-discriminatory basis. Where necessary such women should be transferred to community hospitals for treatment.

Substance dependence [Rule 6(d)]

- Women being admitted to prison should be offered comprehensive gender-responsive healthcare services and screening, including treatment for substance dependence, by qualified health specialists, to ensure that appropriate treatment and care is provided.
- The purpose and possible consequences of the screening, including the treatment and services available for drug dependence in the prison and the extent to which such treatment can remain confidential, should be explained to the women, whose informed consent to the screening should be sought before any examination is undertaken. If the woman decides not to undergo screening or disclose any dependencies, this should be noted in her medical file and the screening should not proceed.
- Women who indicate they use drugs or experience dependence should not be penalised. Drug dependence should always be approached as a healthcare issue. Evidence-based and gender-responsive harm reduction and drug treatment services should be available and accessible to all women in prison, on a voluntary basis (see Rule 15).

Torture and ill-treatment, including sexual violence [Rule 6(e)]:**Legislative measures**

- Domestic legislation should be reviewed and, where necessary, revised to ensure that torture is a criminal offence and that it includes explicitly custodial rape as a form of torture. Other forms of sexual abuse in places of detention should be included in legislation as forms of ill-treatment or torture, depending on their nature and severity.
- States should put in place measures to ensure that people in prison who experience sexual violence have access to an independent judicial assessment of their cases, and that they are provided with free legal assistance during this process.

Torture and ill-treatment, including sexual violence [Rule 6(e)]:**Practical measures**

- Prison authorities and health care services should ensure that all medical examinations on admission include an examination for signs for any abuse or ill-treatment.
- Prison administrations should issue guidelines to prison staff on the steps to be taken when a woman complains of having been ill-treated or tortured when she is admitted to prison and safeguards from retaliations.

- Prison staff and prison healthcare staff should receive specific training on facilitating women who have been subjected to ill-treatment and torture, including sexual violence, to come forward and talk about their experience, as well as on responding to women who complain of ill-treatment and torture, in a sensitive and professional manner.
- If a woman complains of having been ill-treated, including by having been subjected to sexual violence, she should be examined as a priority. In such cases, medical examinations should be undertaken immediately on admission to prison.
- Any woman complaining of ill-treatment and torture, including rape or other forms of sexual violence, should have the right to be examined by an independent health professional, due to the particular need for trust on the part of the victim and impartiality on the part of the doctor.
- The doctor should explain to the victim all possible medical and forensic options and should act in accordance with the victim's wishes. The duties of the physician include obtaining voluntary informed consent for the examination, recording of all medical findings of abuse and obtaining samples for forensic examination.¹⁵⁰
- Whenever possible, the examination should be performed by an expert in documenting sexual assault. Otherwise, the examining physician should speak to an expert or consult a standard text on clinical forensic medicine.¹⁵¹ Ideally, there should be adequate physical and technical facilities for appropriate examination of survivors of sexual violation by a team of experienced psychiatrists, psychologists, gynaecologists and nurses, who are trained in the treatment of survivors of sexual torture.¹⁵²
- Where the alleged assault occurred more than a week earlier and there are no signs of bruises or lacerations, there is less immediacy in conducting a pelvic examination. Time can be taken to try to find the most qualified person to document findings and the best environment in which to interview the individual. However, it may still be beneficial to properly photograph residual lesions, if this is possible.¹⁵³
- An additional purpose of the consultation after sexual assault is to offer support and advice. This should cover the potential of STIs, HIV, pregnancy, and physical harm.¹⁵⁴ See also [Rule 25\(2\)](#) for further guidance.

Responsibilities if ill-treatment and torture, including sexual violence is diagnosed



Rule 7

- 1.** If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.
- 2.** Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.
- 3.** Specific measures shall be developed to avoid any form of retaliation against those making such reports or taking legal action.

^{150.} OHCHR, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, HR/P/PT/8/Rev.1, 9 August 1999, pp. 39–40.

^{151.} *Ibid.*, p. 40.

^{152.} *Ibid.*

^{153.} *Ibid.*

^{154.} *Ibid.*



Why it is important

States are obliged to undertake an effective investigation whenever there are indications of torture or other ill-treatment (Article 12 of CAT). Policymakers should ensure that investigations into allegations of torture and other ill-treatment are launched whenever there are reasonable grounds to suspect it has taken place, even without a formal complaint.¹⁵⁵ Healthcare staff play an important role, not only in treating a person who has been injured either physically or mentally, but also because documentation of injuries and other signs of such treatment are a pre-requisite for an effective investigation, and subsequent accountability.¹⁵⁶

Investigations into signs of torture or other ill-treatment can be initiated by healthcare staff, in accordance with Rule 34 of the Nelson Mandela Rules, which requires them to “document and report such cases to the competent medical, administrative or judicial authority”, if during either examination of a detainee upon admission or while providing medical care they become aware of any signs of torture or ill-treatment.¹⁵⁷ Rule 34 also requires that proper procedural safeguards be followed not to put a detainee under risk of exposure and retaliation.¹⁵⁸

Healthcare staff working in prisons have an ethical and professional obligation to document and report any instances of torture and other ill-treatment that they become aware of. No obligation to a third party can override the duty to protect an individual from torture or other ill-treatment and to report such cases.¹⁵⁹ Documentation of injuries provides crucial evidence for any complaint and for the investigation of allegations of torture and other ill-treatment. When ill-treatment is documented and reported in a timely manner, it is easier to put in place appropriate care, support and rehabilitation programmes for the victim. This applies equally to those who were subject to abuse before their detention and those who were subjected to ill-treatment in detention.¹⁶⁰

The Declaration on the Elimination of Violence against Women adopted by the General Assembly in resolution 48/104, Article 4(c) proclaims that states should “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”. This obligation is reflected in Rule 7 of the Bangkok Rules.

Rule 7 explains prison authorities’ responsibilities if medical examinations reveal that a woman has been subjected to ill-treatment or torture, including sexual abuse or rape, during previous custody. It underlines the woman’s right to seek recourse from judicial authorities and provides clear guidance as to what prison staff should do to ensure that such women are aware of this right and to take the necessary steps to assist them, if the woman wish to take legal action.

The Rule also recognises that, in some circumstances, women may not wish to take legal action against the perpetrators of abuse, and it is important that their wishes are respected.¹⁶¹

All persons who have experienced ill-treatment or torture, including specifically gender-based violence, are likely to experience extreme and prolonged psychological damage and trauma, especially if they do not receive qualified and timely psychological support.

155. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report to the General Assembly, A/69/387*, 23 September 2014, para. 22.

156. OSCE ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, 2018, para. 76.

157. See also the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and the UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

158. OSCE ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, 2018, para. 88.

159. WMA, *Declaration of Tokyo Guidelines for physicians concerning torture and other cruel, inhuman, or degrading treatment or punishment in relation to detention and imprisonment*, 29th World Medical Assembly, October 1975, Article 1: states that “The physician shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures”. WMA, *Resolution on the responsibility of physicians in the documentation and denunciation of acts of torture or cruel or inhuman or degrading treatment*, 54th WMA General Assembly, September 2003, sets out in more detail the obligations of doctors in relation to evidence of torture.

160. OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, para. 80.

161. See details about the consent of a victim to report torture in OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, p. 159, paras. 82-91.

Women who complain about their treatment may be at risk of retaliation by law enforcement officials. They may receive threats of such retaliation before they make a formal complaint or afterwards, to force them to withdraw their complaints.¹⁶² Such retaliation may include unjustified disciplinary punishments during their imprisonment, being denied basic rights and services, being strip searched unnecessarily, being transferred to prisons far away from their homes, among others.



Putting it into practice

- Women who have been victims of ill-treatment and torture, including sexual abuse and rape, should be provided with a full and clear explanation as to their legal rights to make an official complaint about their treatment to independent judicial authorities. If the woman does not speak the language most commonly used in the prison, the explanation should be provided with the assistance of a qualified interpreter.
- Any decision whether to issue a complaint or not should be based on a fully informed understanding of the procedures and possible outcomes of the complaints procedure. Thus, the prison authorities must ensure that all women who have been subjected to abuse and ill-treatment are given full information about their rights and that they have access to legal counsel before they take any decision. They should never be coerced into not submitting complaints.
- Physicians responsible for assessing and documenting ill-treatment or torture have an ethical obligation to denounce acts of torture or cruel, inhuman or degrading treatment;¹⁶³ however, as noted in the WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment, “doctors should use their discretion in this matter, bearing in mind paragraph 69 of the Istanbul Protocol”, which states: “In some cases, two ethical obligations are in conflict. International codes and ethical principles require the reporting of information concerning torture or maltreatment to a responsible body. In some jurisdictions, this is also a legal requirement. In some cases, however, patients may refuse to give consent to being examined for such purposes or to having the information gained from examination disclosed to others. They may be fearful of the risks of reprisals for themselves or their families. In such situations, health professionals have dual responsibilities: to the patient and to society at large, which has an interest in ensuring that perpetrators of abuse are brought to justice. The fundamental principle of avoiding harm must feature prominently in consideration of such dilemmas. Health professionals should seek solutions that promote justice without breaking the individual’s right to confidentiality. Advice should be sought from reliable agencies; in some cases, this may be the national medical association or non-governmental agencies.”
- Where consent is not given, healthcare staff might consider reporting the incident with anonymised information, providing it is possible to provide sufficient details without identifying the victim. In all cases, healthcare staff are required to document the ill-treatment even if they do not report it to the authorities.¹⁶⁴
- If the woman decides to take legal action, she should be assisted to access a lawyer, which should be provided free-of-charge, if she cannot afford to pay for a lawyer.
- In cases of sexual abuse where the woman does not wish the event to be known due to socio-cultural pressures or personal reasons, the physician who carries out the medical examination, investigative agencies and the courts have an obligation to cooperate in maintaining her privacy.¹⁶⁵

¹⁶² See for example U.S. Commission on Civil Rights, *Women in Prison Seeking Justice Behind Bars*, February 2020, pp. 111, 114, 127-129, 206, 229.

¹⁶³ WMA, *Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment*, 54th WMA General Assembly, September 2003 and amended by the 58th WMA General Assembly, October 2007, recommendations to national medical associations, recommendation 9(1).

¹⁶⁴ OSCE ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, 2018, p. 159, para. 88.

¹⁶⁵ OHCHR, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, HR/P/PT/8/Rev.1, 9 August 1999, p. 39.

- In all cases women should be provided with appropriate and professional psychological support, for as long as it is necessary. Such treatment may be provided in cooperation with specialist services in the community and NGOs.
- In all cases, appropriate laboratory tests should be undertaken, and treatment prescribed for any sexual and reproductive health complications. In appropriate cases women who have been exposed to a risk should be provided with post-exposure prophylaxis (PEP).
- Measures should be put in place to protect women who have complained of ill-treatment and torture from retaliation by prison staff. These measures should include:
 - adherence to the principle of confidentiality during the whole process;
 - proper supervision of women at risk;
 - access to an independent and effective complaints mechanism;
 - a clear policy against retaliation by staff and disciplinary procedures to hold those who threaten to retaliate or do retaliate to account.

Medical confidentiality



Rule 8

The right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times.



Why it is important

People in prison have the same right to confidentiality of medical information as patients in the community. Confidentiality should be assured at all times, unless, as set out in the Nelson Mandela Rules, maintaining such confidentiality would result in a real and imminent threat to the patient or to others. Even in such cases medical information should only be disclosed on a “need to know” basis.¹⁶⁶

The International Code of Medical Ethics of the World Medical Association (WMA) (adopted in 1949, amended in 1968, 1983 and 2006), states that “[a] physician shall respect a patient’s right to confidentiality. It is ethical to disclose confidential information when the patient consents to it or when there is a real and imminent threat of harm to the patient or to others and this threat.”

WMA Declaration of Lisbon on the Rights of the Patient¹⁶⁷ includes the following provisions on the right to confidentiality:

“All identifiable information about a patient’s health status, medical condition, diagnosis, prognosis and treatment and all other information of a personal kind must be kept confidential, even after death. Exceptionally, descendants may have a right of access to information that would inform them of their health risks.

Confidential information can only be disclosed if the patient gives explicit consent or if expressly provided for in the law. Information can be disclosed to other health care providers only on a strictly “need to know” basis unless the patient has given explicit consent.

All identifiable patient data must be protected. The protection of the data must be appropriate to the manner of its storage. Human substances from which identifiable data can be derived must be likewise protected.”

¹⁶⁶. OSCE ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, 2018, p. 163, para. 106.

¹⁶⁷. Adopted by the 34th WMA, September/October 1981 and amended by the 47th WMA General Assembly, September 1995 and editorially revised by the 171st WMA Council Session, October 2005.

The WHO Guidelines on HIV Infection and AIDS in Prisons (1999), Principle 31 underlines the right to medical confidentiality as a general principle:

“31. Information on the health status and medical treatment of prisoners is confidential and should be recorded in files available only to health personnel. Health personnel may provide prison managers of judicial authorities with information that will assist in the treatment and care of the patient, if the prisoner consents.”

Principles 32 and 33 provide specific guidance on confidentiality in the case of HIV and AIDS, as follows:

“32. Information regarding HIV status may only be disclosed to prison managers if the health personnel consider, with due regard to medical ethics, that this is warranted to ensure the safety and well-being of prisoners and staff, applying to disclosure the same principles as those generally applied in the community. Principles and procedures relating to voluntary partner notification in the community should be followed for prisoners.

33. Routine communication of the HIV status of prisoners to the prison administration should never take place. No mark, label, stamp or other visible sign should be placed on prisoners’ files, cells or papers to indicate their HIV status.”

Thus, the breaching of any confidentiality is exceptional and the decision to disclose any information due to real and imminent harm to the patient or others must be taken by the physician and/or with the consent of the patient. If there is reason to believe that maintaining the confidentiality of medical information could result in a real or imminent threat to the patient or others, as set out in Rule 32(1)(c) of the Nelson Mandela Rules, medical staff should first ask for the explicit consent of the patient, including by clearly explaining the reasons for disclosing the information and how it would be disclosed.¹⁶⁸

Medical confidentiality cannot be maintained in some specific circumstances, when, for example, patients with certain infectious diseases, such as tuberculosis or cholera, have to be separated from others to prevent the spreading of the disease. However, this does not mean that those patients forfeit their right to medical confidentiality in relation to health conditions other than those that require their separation. Medical confidentiality can also not be maintained in other specific circumstances, such as when a woman is pregnant and needs to receive pre-natal care or when a person has special dietary requirements (eg. for diabetes). In all cases, however, the breach of confidentiality must be limited only to the condition or disease in question.

Only relevant information should be disclosed on a “need to know” basis. The facility’s medical professional needs to determine who needs to know and what they need to know and should involve an assessment of the specific medical condition and the risks to the patient or others posed by that condition. Only a medical professional can take the decision to disclose medical information without the consent of the patient. The patient should be informed in advance that medical information will be disclosed in order to protect their health or the health of others, and it should be explained that information will be shared on a “need-to-know” basis only.¹⁶⁹

There should be designated rooms for medical examinations that ensure full confidentiality, as required by the Nelson Mandela Rules. If either the patient or the medical professional requests the presence of guards during a medical examination out of concerns for their safety, then guards may be present. Otherwise, medical consultations in prison should always be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff.¹⁷⁰

¹⁶⁸. OSCE ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, 2018, p. 163, para. 112.

¹⁶⁹. *Ibid.*, para. 114.

¹⁷⁰. *Ibid.*, para. 115.

In addition to the general principle of medical confidentiality, there may be many reasons why women may not want to share information about their reproductive health history, in particular, with the authorities or prison healthcare personnel, especially in countries or societies where out of marriage pregnancies and childbirth may be a cause for stigmatisation, and in some societies may be considered criminal acts. Information about any abortions is particularly sensitive, due to its criminalisation in many countries.



Putting it into practice

- The ministry responsible for prisons and the ministry of health, in coordination with national medical associations, should develop clear guidelines on medical confidentiality, refusal to provide information on reproductive health history and the prohibition of vaginal examinations without the consent of the woman. Virginity tests should be prohibited as a form of custodial violence.¹⁷¹
- Prison authorities should ensure that prison rules and regulations relating to healthcare in prisons include the principle of medical confidentiality and the measures to safeguard medical confidentiality as outlined below.
- Prison healthcare services should ensure that all medical records of people in prison, including those which relate to the findings of the initial medical examination on entry are kept confidential. The information should be recorded in separate medical files and be accessible only to health personnel. Health personnel may provide prison managers or judicial authorities with information that will assist in the treatment and care of the patient, if the patient consents.
- This means that:
 - if disclosure of information is sought by a third party, then the patient must be made aware of it, and her consent to disclosure given in writing;
 - information should not be disclosed without the patient's knowledge;
 - personal information should be effectively protected: this means that if the information is held on a computerised database system, access to the database should be restricted to medical staff, with safeguards in place to ensure that others are unable to access the information; if the information is kept manually, the files should be locked up in a secure location, accessible only to medical staff;
 - patients should be made aware that information will, where necessary, be shared within the medical team and with healthcare services in the community (e.g., if a patient has to be transferred to treatment in the community);
 - the principle of medical confidentiality applies to all medical staff, including nurses, psychologists, psychiatrists, pharmacists, therapists etc. All members of the medical team must work within the same ethical guidelines on confidentiality;
 - where interpreters are used, they should also be bound by the principle of medical confidentiality.
- No staff within a prison, with the exception of the healthcare staff, should have access to a patient's medical records or medical information. Even within the medical team only the doctor(s) and nurse(s) should have full access to all medical information.
- In cases where withholding information about the patient's health may damage the patient's or others' health, the physician may take the decision to disclose only the minimum information required to protect the patient and/or others from imminent harm. The decision to disclose limited information to other parties should be made by the doctor responsible for the treatment and have the sole aim of preventing harm to the patient's or others' health

¹⁷¹. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016; Committee on the Elimination of Discrimination Against Women and Committee on the Rights of the Child, *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices*, CEDAW/C/GC/31-CRC/C/GC/18, 14 November 2014; see also WHO, OHCHR and UN Women, *Eliminating Virginity Testing: An Interagency Statement*, 2018.

(e.g., when a woman has a painful infection of her reproductive organs and requires rest and care, the doctor needs only to tell the prison director that she has an infection and cannot participate in the usual prison regime, rather than disclosing the diagnosis). Similarly, information can be disclosed to other healthcare providers only on a strictly “need-to-know” basis unless the patient has given explicit consent for fuller information to be shared.

- Written medical records should be locked away. Great care should be taken when digitalising medical records, to avoid unauthorised access. It is advisable to seek professional expert advice before this is undertaken.
- All consultations with doctors should, wherever possible, take place in private consulting rooms, and never in the presence of other people in prison or non-medical staff, unless the woman being examined has specifically asked for a chaperone, in which case a female nurse or other healthcare staff, and if such is not available, a female member of staff may be present. In such cases the chaperone should be out of hearing of the doctor and patient and the visual privacy and dignity of the women being examined should also be protected, taking into account the wishes of the patient herself (see [Rule 11](#)).
- Prison health personnel should inform women in prison that all medical information, including information on their reproductive health history will be regarded as confidential. The women should be requested to provide information about their reproductive health history on a voluntary basis. No woman should be forced to provide such information.

Medical examinations of children being admitted to prison



Rule 9

If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.



Why it is important

Rule 9 of the Bangkok Rules complements Rule 29(1)(b) of the Nelson Mandela Rules with regard to the admission of dependent children accompanying their mothers in prison and the need to provide child-specific healthcare services, including health screenings upon admission and ongoing monitoring of their development by specialists.

States have the responsibility to respect the right of everyone within their jurisdiction to the highest attainable standards of health, as required by the ICESCR, Article 12. In addition, the CRC, Article 24 provides that:

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

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution. (...)"

Women being admitted to prison are often from marginalised backgrounds and may have experienced mental health issues, substance dependence, and violence. The children of such mothers do not remain unaffected by their circumstances. They are likely to have existing primary healthcare and psychological support requirements on admission to prison.

Health screening on admission to prison is essential to assess the physical and psychological healthcare needs of children accompanying their mothers to provide the appropriate care and treatment during the children's stay in prison, in order to reduce the harmful impact of imprisonment on such children and to protect and promote their physical and mental wellbeing.

The Rule also takes into account the fact that women being admitted to prison and their children are extremely vulnerable at this time and may be unable to fully understand the reasons and consequence of all the procedures, including the medical examinations that are being conducted. If parted from their children when the children's medical examinations are undertaken, the mother's worries may be heightened. If mothers are allowed to be with their children during the health screening, the mother can be reassured that her child or children are being treated humanely and help with responding to any questions to which the child/ children may not be able to respond (e.g., past illnesses, vaccinations etc.).

The CoE Recommendation CM/Rec (2018)5 concerning children with imprisoned parents also calls for support and information to be provided to mothers in prison in order to ensure the right of a child to the highest attainable standard of health, appropriate pre-natal and post-natal healthcare.¹⁷² It also requires that ongoing healthcare services be provided to infants in prison, and also appropriate specialists to monitor their development in collaboration with community health services, as part of fostering welfare and development.¹⁷³



Putting it into practice

- Prison authorities and prison healthcare services should ensure that admission procedures in women's prisons make provision for the medical examination of any accompanying children and that a child health specialist is made available for this purpose.
- If a child health specialist is not immediately available, the initial screening may be undertaken by a qualified nurse, with a full medical examination by a qualified child specialist, as soon as possible after admission (as a maximum within one week of admission, if there is no emergency) to allow for sufficient time for a child health specialist to be available to conduct the health assessment.
- The health screening should determine the child's physical, as well as psychological healthcare needs and be used as a basis for developing a healthcare plan for each child, to be reviewed at regular intervals by qualified healthcare staff.
- Mothers of children being admitted to prison should be allowed to be with their children during the medical examination, taking into account the best interests of the child.

¹⁷². CoE, Committee of Ministers Recommendation CM/Rec (2018)5 concerning children with imprisoned parents, 4 April 2018, Rule 34.

¹⁷³. Ibid, Rule 37.

4.3 Gender-specific healthcare

➔ Rule 10



Rule 10

1. Gender-specific health care services at least equivalent to those available in the community shall be provided to women prisoners.
2. If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.



Why it is important

As explained in the introduction to this chapter and with reference to Rule 6, women in prison have specific healthcare needs. The Nelson Mandela Rules have very limited provision for gender-specific healthcare needs of women, with a focus exclusively on pregnancy, pre- and post-natal care. In addition to these, women need to have access to general reproductive and sexual healthcare, mental healthcare, treatment for substance dependence and any menopausal symptoms which require treatment. Women also have preventive healthcare needs, such as screening for breast and cervical cancer (see Rule 18) and access to education and information about preventive healthcare measures (see Rule 17).

The Rule also recognises that due to cultural reasons, and/or because of past negative experiences with men, including sexual abuse or violence, women may not wish to be examined by a male medical specialist and may even feel re-traumatised by such an examination.¹⁷⁴ Thus, women may wish to be examined and treated exclusively by female doctors.



Putting it into practice

- Collaboration between prison and community health services should be an integral component of medical care provided in all prisons.¹⁷⁵
- Prison healthcare services should develop specific policies relating to healthcare provision for women in prison, in coordination with community health services and a mechanism for cooperation between the ministry of health and prison healthcare should be established to effectively respond to the gender-specific healthcare needs of women.¹⁷⁶
- A regular dialogue between ministers, senior staff and health staff should be developed to ensure that legislation and prison rules support treatment and care.¹⁷⁷
- Specialists in women's healthcare should be available for ongoing consultation in prisons, with arrangements in place for regular visits by gynaecologists.
- Wherever possible, women should receive medical treatment from female nurses and doctors. If a woman requests that she be examined or treated by a female physician or nurse, a female physician or nurse should be invited to the prison establishment, to the extent they are available, except for situations requiring urgent medical intervention. If this is not

¹⁷⁴. Bangkok Rules, Commentary to Rule 10(2).

¹⁷⁵. Nelson Mandela Rule 24(2); see also WHO Europe, *Declaration on Prison Health as part of Public Health*, 24 October 2003.

¹⁷⁶. Brenda van den Bergh et al., *Women's health in prison, Action guidance and checklists to review current policies and practices*, WHO Regional Office for Europe and UNODC, 2011, p. 8.

¹⁷⁷. Ibid.

possible, there must be a female supervisor during her examination in line with the woman's request. The woman should not be obliged to explain the reasons for her preference¹⁷⁸ (see also Rule 11(2)).

- It is considered good practice to have a female chaperone present if an examination of a woman is carried out by a male doctor, whether or not the woman has requested a chaperone, in order to reassure and protect the woman against possible harassment or abuse, as well as protecting the doctor against any subsequent false accusations of harassment or abuse. The female chaperone could be a nurse or other healthcare staff.



Rule 11

1. Only medical staff shall be present during medical examinations unless the doctor is of the view that exceptional circumstances exist or the doctor requests a member of the prison staff to be present for security reasons or the woman prisoner specifically requests the presence of a member of staff as indicated in Rule 10, paragraph 2 above.
2. If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.



Why it is important

Confidentiality of medical examinations is one of the key principles which apply to the health care of all persons, including those in prison. As already mentioned with reference to Rule 8, the International Code of Medical Ethics of the WMA (adopted in 1949, amended in 1968, 1983 and 2006), states that “[a] physician shall respect a patient's right to confidentiality. It is ethical to disclose confidential information when the patient consents to it or when there is a real and imminent threat of harm to the patient or to others and this threat.” Thus, the breaching of any confidentiality is exceptional and the decision to disclose any information due to real and imminent harm to the patient or others must be taken by the physician and/or with the consent of the patient.



Putting it into practice

- Medical confidentiality should be upheld during medical examinations, which means that people in prison or prison staff should not be present during such examinations. Such examinations should take place on an individual basis in a properly equipped healthcare room partitioned off from the view of other people in prison or prison staff.
- If exceptional circumstances exist – for example, if the woman is violent and staff are concerned about the doctor's safety – the nature of the risk should be explained to the doctor and he/she should decide whether a member of staff is necessary during the examination. If the doctor specifically requests a member of staff to be present, women in prison should never have to see a doctor in the presence of male staff. If an examination is undertaken in the presence of female staff, the staff member should be out of hearing of the patient and health practitioner.
- There may also be cases where the patients themselves may request a female staff to be present, if the doctor undertaking the examination is a man. Such requests should be granted, provided that the member of staff should be out of hearing of the doctor and patient.

¹⁷⁸. See Bangkok Rules, Commentary to Rule 10.

4.4 Mental health and care

➔ Rules 12 & 13



Rule 12

Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health care needs in prison or in non-custodial settings.



Rule 13

Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.



Why they are important

These Rules fill a gap in the Nelson Mandela Rules, which do not elaborate on the type of holistic and individualistic approach that should underpin mental healthcare provision for all people in prison.

The Rules should be read in conjunction with Rule 109(1) of the Nelson Mandela Rules, which provides that persons who are found to be not criminally responsible, or who are later diagnosed with severe mental health issues, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities in the community as soon as possible.

The closed and coercive environment of prisons can exacerbate mental ill health and preference should be given, wherever possible, to non-custodial measures and sanctions in the case of women who have mental health issues (see Rule 60).

As has been outlined previously, with reference to Rule 6(b), women in prison have particular mental healthcare needs. These needs may become more acute in prison settings, due to separation from children, families and communities and regimes that do not take account of women's specific needs. Research indicates that women in prison have high rates of mental health problems such as post-traumatic stress disorder, depression, anxiety, phobias and neurosis.¹⁷⁹ Most girls in the criminal justice system have prior histories of abuse and violence and as their particular physical and mental health needs often go unrecognised, incarceration tends to exacerbate trauma, with girls suffering disproportionately from depression and anxiety and exhibiting a higher risk of self-harm or suicide than boys or adults.¹⁸⁰

In addition, high security prison conditions and regimes, where human contact with other people in prison and staff is usually further limited and where access to prison activities may also be restricted, represent an additional and serious risk to mental health. Women's mental distress may be increased by the practice of mixed gender supervision and searches, as well as harsh prison regimes.¹⁸¹

As has been documented on numerous occasions, solitary confinement can provoke or worsen mental ill health.¹⁸² Women in prison subjected to solitary confinement may experience grave psychological consequences, especially if they have mental health issues.¹⁸³ It can amount to torture or ill-treatment when used as a punishment, during

¹⁷⁹. UNODC and WHO Europe, *Women's health in prison: Correcting gender inequity in prison health*, 2009, p. 27.

¹⁸⁰. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, para. 29.

¹⁸¹. See for example, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Rashida Manjoo*, A/HRC/17/26/Add.5, 6 June 2011, para. 40.

¹⁸². UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/63/175, 28 July 2008, Annex: Istanbul Statement on the Use and Effects of Solitary Confinement (adopted on 9 December 2007).

¹⁸³. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, para. 22.

pretrial detention, for prolonged periods or indefinitely and on juveniles and must never be imposed on children, or persons with mental disorders or physical disabilities, or on pregnant and breastfeeding women, or mothers with young children,¹⁸⁴ or as a measure of retaliation against women who have complained of sexual abuse or other harmful treatment.¹⁸⁵ Rule 45(2) of the Nelson Mandela Rules prohibits the use of solitary confinement with regard to people in prison with mental disorders when their conditions would be exacerbated by such measures.



Putting them into practice

- A comprehensive programme aiming to promote mental health in prisons should include the provision of a varied, balanced and flexible prison regime, including access to education, vocational training, recreation, family contact, physical exercise, a balanced diet and opportunities to participate in arts, among others.
- Prison mental health services should be based on the health needs of people in prison and might require more intensive and integrated services than in the wider community. People in prison with mental health issues may also have histories of substance use and/or substance dependence, poor physical health, learning difficulties, poor life skills, trauma, relationship difficulties, unstable housing and/or homelessness, poor education and limited experience of employment. Mental health treatment and care needs to address their social needs and be psychosocial in nature.¹⁸⁶
- Developing an institutional policy which deals with mental health issues in a holistic manner, recognising the key role played by all staff in assisting people in prison to maintain their mental wellbeing, is essential to tackle in a sensitive and informed manner the varying mental health support requirements of all women in prison at different times. Staff awareness of factors that promote and harm mental wellbeing and a gender-sensitive approach to women's mental healthcare needs are essential components of such policies.
- Gender-sensitivity training should be provided to all staff working in women's prisons, which should include awareness raising about times when women may feel particular distress. Prison health care policies and programmes should include training for all staff working in women's prisons to respond appropriately to women's needs, with understanding and sensitivity, and to take timely and accurate decisions on when to refer them to specialised support.
- Following the initial screening on entry, an individual programme of treatment should be developed for those in need, by a qualified prison healthcare team, including a psychologist and where necessary a psychiatrist. Counselling and therapy should be offered as early as possible to those who appear to be at risk of developing mental health issues. In supporting the mental wellbeing of women in prison it is important to recognise some common symptoms of poor mental health.¹⁸⁷
- Treatment should be individualised and based on an integrated approach of counselling, psychosocial support and medication, if necessary. Medication should be used in response to individual needs, rather than as a matter of routine, and in consultation with the patient.¹⁸⁸
- People in prison should be provided with full information about treatment options, risks and expected outcomes and they should participate in treatment planning and decision-making.
- Women with mental disorders are at high risk of abuse in custodial settings. They should be protected, with adequate safeguards and supervision. Such women should not be placed in solitary confinement, as isolation is almost certain to exacerbate their mental ill health.

¹⁸⁴. UN General Assembly, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, A/66/268, 5 August 2011, paras. 57–61 and 81.

¹⁸⁵. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, para. 22.

¹⁸⁶. Graham Durcan and Jan Cees Zwemstra, *Mental Health in Prison (Chapter 11, Prisons and Health)*, WHO Regional Office for Europe, 2014, p. 87.

¹⁸⁷. See non-exhaustive list of symptoms in PRI and PRT, *Women in prison: mental health and well-being - a guide for prison staff*, 2020, p. 19; see also common symptoms and types of mental health conditions in PRI, *Mental Health in Prison: A Short Guide for Prison Staff*, 2018, pp. 6–8.

¹⁸⁸. Bangkok Rules, Commentary to Rule 12.

- Prison authorities should cooperate with services in the community, including NGOs and other community organisations working on mental health and women's issues, to the maximum possible extent, to provide better services and programmes for women, while increasing their contact with the outside world.
- Prison authorities should develop policies and introduce measures that help maintain and improve women's contact with their families, including their children and others close to them. (See [Rule 26](#) for further guidance).
- All treatment plans should be reviewed at regular intervals.
- Where appropriate, in cases which require specialised treatment unavailable in prison, the women concerned should be referred to community healthcare services - if necessary, with a judicial decision. However, account should be taken of the reality that in many low resource countries mental healthcare in the community may be unavailable or highly inadequate and that mental health institutions may not be dissimilar to prisons, sometimes with worse conditions. Therefore, it is important to ascertain whether the mental healthcare outside prison and conditions in mental health institutions are adequate and meet the treatment and care needs of such women, and to ensure that such a transfer does not lead to a worsening of the conditions they are held in and the treatment they receive.



PROMISING PRACTICE

A special mental health unit for women has opened in Western Australia. The new facility - called Bindi Bindi, the Aboriginal Noongar word for butterfly - will be accessible to the 618 women currently in prison across the state, of which nearly half are Indigenous. The Bindi Bindi unit includes 23 beds for women whose mental health needs cannot be met in mainstream units, and a secure wing with six beds for women with more serious mental health concerns. Women are expected to stay for between six and eight weeks and receive a range of trauma recovery services. Staff employed at the unit have received training, and the facility was designed to reduce the risk of self-harm and suicide by minimising ligature points.¹⁸⁹

4.5 HIV prevention, treatment, care and support

➔ Rule 14



Rule 14

In developing responses to HIV/AIDS in penal institutions, programmes and services shall be responsive to the specific needs of women, including prevention of mother-to-child transmission. In this context, prison authorities shall encourage and support the development of initiatives on HIV prevention, treatment and care, such as peer-based education.

189. 'A special mental health unit for incarcerated women has opened in Western Australia', Aaron Fernandes for SBS News, 23 July 2021, www.sbs.com.au/news/a-special-mental-health-unit-for-incarcerated-women-has-opened-in-western-australia/fac4efd9-430d-4fcb-84f2-d62e0cf79c90.



Why it is important

People in prison are more likely to be living with HIV than people in the general population, and there is an elevated risk of contracting HIV in prison. HIV transmission in prison often occurs through the sharing of needles and syringes among people who use drugs, consensual or coerced unsafe sexual practices, unsafe skin piercing and tattooing practices and the improper sterilisation or reuse of medical or dental instruments. HIV in prison may also be transmitted from mothers living with HIV to their infants during pregnancy and delivery.

Women in prison have a higher prevalence of HIV than men in prison. The combination of gender inequality, stigma and discrimination increases the vulnerability of women in prison to HIV infection. The same challenges that lead to women becoming imprisoned are often those that lead to their increased HIV risk, including punitive laws such as those which criminalise sex work and drug use, prolonged detention and high rates of pre-trial detention. Women in prison are often from socially marginalised groups and many have experienced gender-based violence or have a history of high-risk sexual behaviour.¹⁹⁰ Drug use, violence, stigma and discrimination, poor nutrition, early and unwanted pregnancies that women might have been exposed to will require a different set of psychological, social and healthcare approaches than those needed by men.¹⁹¹

In prison, women's specific healthcare needs, including access to sexual and reproductive health, treatment of infectious diseases including STIs, as well as nutrition and hygiene requirements, are often neglected. The limited access for women (and their children) to ante- and postnatal care, labour and delivery services and antiretroviral therapy poses a serious challenge to prevention of mother-to-child transmission of HIV. This leads to infants born in prisons being at high risk of contracting HIV during pregnancy, delivery or breastfeeding.¹⁹²

For these reasons, the provision of treatment and care for STIs and HIV/AIDS should form a key component of gender-responsive health care services in women's prisons.

Before entering prison, many people have not had access to healthcare including for HIV, hepatitis, tuberculosis or drug dependence. Addressing the health needs of people in prison will contribute to their rehabilitation and successful reintegration into the community, as well as to the control of HIV, hepatitis and tuberculosis in the entire community.

While prison authorities have a central role in implementing effective measures and strategies to address HIV/AIDS, this task is not solely the responsibility of prison systems. Maximising the scope, quality, diversity, and effectiveness of prison-based HIV/AIDS prevention and care initiatives requires cooperation and collaborative action that integrates the mandates and responsibilities of various local, national, and international stakeholders.¹⁹³

Establishing effective working links between prison-based services and community services is essential in implementing a comprehensive HIV strategy in prisons. Such collaboration can improve the standards of care in prisons, support prison staff (including providing opportunities for training), ensure that prison services reflect current national best practice, ensure the sustainability of prison programmes, and improve post-release follow-up.¹⁹⁴



Putting it into practice

- Prisons should be included in national HIV programming. The ministry responsible for prisons and the ministry of health should collaborate to develop national policies and strategies to address HIV/AIDS in prisons, including responding to the unique needs of women in prison, within a coherent national framework.

¹⁹⁰. UNODC and UNAIDS, *Women and HIV in prison settings*, 2008.

¹⁹¹. Ibid.

¹⁹². UNODC, UNFPA, WHO, UN Women and UNAIDS, *Technical Guide: Prevention of Mother-to-Child Transmission of HIV in Prison*, 2019.

¹⁹³. UNODC, WHO and UNAIDS, *HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response*, 2006, p. 13.

¹⁹⁴. UNODC, ILO, WHO, UNFPA, UNAIDS and UNDP, *Technical Brief, 2020 Update, HIV prevention, testing, treatment, care and support in prisons and other closed settings: a comprehensive package of interventions*, 2020.

- Strong linkages should be established between prison health authorities and community-based services, including NGOs, which should be involved in delivering care in prisons in order to promote quality and sustainability. Whenever adequate care cannot be provided in prisons, people in prison should be able to access health services in the community.
- People in prison should have access to a full range of sexual and reproductive healthcare. Pregnant and nursing women should have the same access to antenatal and postnatal care and adequate diet as do those in the community and be held in suitable accommodation for them and their children.
- To ensure that the benefits of treatments started before or during imprisonment are not lost, close collaboration with public health services in the community, to allow people to continue their treatment without interruption at all stages of detention: during police and pretrial detention, in prison, during institutional transfers and after release. Assistance should be provided to people released from prisons to facilitate re-entry into the community, including continuity of treatment and care, support and linkages to social protection services.
- Within this framework, prison healthcare services should develop comprehensive, gender-sensitive, HIV prevention, treatment, care and support for women in prison, in close cooperation with community healthcare services.
- Voluntary HIV testing and counselling should be offered to all women on admission to prison and throughout their imprisonment. Women living with HIV should not be segregated due to their health status.¹⁹⁵
- Gender-sensitive HIV prevention, treatment, care and support services should include the following components:¹⁹⁶
 - Awareness raising, information and education on HIV, viral hepatitis and tuberculosis, sexual and reproductive health, mental health, drug use and overdose prevention and management;
 - Providing voluntary confidential HIV testing and counselling services;
 - Providing access to essential prevention commodities such as male and female condoms and condom-compatible lubricants, needle and syringe programmes and naloxone for drug overdose management, and safe tattooing equipment;
 - Policies and strategies for the prevention, detection, response to and elimination of all forms of violence, particularly sexual violence;
 - Screening, early diagnosis and treatment of STIs, access to free, voluntary and non-coercive contraceptive services and family planning;
 - Providing opioid agonist therapy and other evidence-based drug dependence treatment
 - Providing appropriate diet and nutritional supplements;
 - Providing antiretroviral treatments, preventing and treating tuberculosis, other opportunistic infections and other blood-borne diseases such as hepatitis B and C;
 - Providing access to reproductive health and family planning services;
 - Care during pregnancy and delivery in appropriate settings and antiretroviral therapies to pregnant women living with HIV to prevent mother-to-child transmission;
 - Providing pre-exposure prophylaxis (PrEP) as well as post-exposure prophylaxis (PEP) to women who have been exposed to a risk;
 - Care for children, including those born to mothers living with HIV;
 - Prevention of transmission through medical or dental services;
 - Protecting staff from occupational hazards;
 - Palliative care and compassionate release for terminally ill patients.

¹⁹⁵. UNODC, WHO and UNAIDS, *A toolkit for policymakers, programme managers, prison officers and health care providers in prison settings*, 2008, pp. 93-94.

¹⁹⁶. As set out in UNODC, UNAIDS, *Women and HIV in prison settings*, 2008; UNODC, ILO, WHO, UNFPA, UNAIDS and UNDP, *Technical Brief 2020 Update: HIV prevention, testing, treatment, care and support in prisons and other closed settings: a comprehensive package of interventions*, 2020; UNODC, UNFPA, WHO, UN WOMEN and UNAIDS, *Technical Guide: Prevention of Mother-to-Child Transmission of HIV in Prison*, 2019.

- The involvement of women in prison in developing and providing health programmes and services increases the capacity of prisons to respond to HIV/AIDS. Health authorities in prison should encourage and support the development of peer-based education initiatives and educational materials should be designed and delivered by women in prison themselves. Prison authorities should also encourage the development and support of self-help and peer-support groups that raise the issues of HIV/AIDS from the perspective of the women in prisons themselves.¹⁹⁷
- Healthcare in prisons should be adequately funded. Healthcare budgets for prisons must reflect the relatively greater needs of the prison population, and healthcare in these settings should be recognised as an integral part of the public health sector.

See also Rule 34 on the training of institutional personnel.

4.6 Substance dependence treatment programmes

➔ Rule 15



Rule 15

Prison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.



Why it is important

See the discussion for Rule 6(d). Also please refer to Rule 62 in Chapter 1 for further discussion about the gender differences in substance dependence and related complications and the requirement of different treatment approaches.



Putting it into practice

- UNODC, ILO, WHO, UNFPA, UNAIDS and UNDP recommend the implementation of drug dependence treatment and harm reduction in prisons as essential public health measures.¹⁹⁸
- Evidence-based and gender-responsive harm reduction and drug treatment services, should be established in women's prisons, in cooperation with community healthcare services. They should offer at least the same services as those in the community, free of charge and without discrimination on the basis of people's legal status. Harm reduction and drug treatment services should be available both as a continuation of services accessed in the community, and for initiation in prison.
- Evidence-based, gender-responsive harm reduction services should be available, accessible and of the same quality as is available in the community. Programmes should be designed to protect the privacy of women, and with recognition of the stigma and discrimination associated with drug use.

¹⁹⁷ Ibid.

¹⁹⁸ UNODC, ILO, WHO, UNFPA, UNAIDS and UNDP, *Technical Brief, 2020 Update, HIV prevention, testing, treatment, care and support in prisons and other closed settings: a comprehensive package of interventions*, 2020.

- Evidence based, non-compulsory treatment for drug dependence should be available, centred on the individual's choice, physical and mental health needs; alongside psycho-social support. All treatment services must be voluntary, provided in a confidential manner and based on the patient's informed consent.
- Components of a harm reduction and drug treatment strategy may include:¹⁹⁹
 - Confidential, evidence-based advice and information services (in a language that can be understood);
 - Drug education;
 - Harm reduction programmes, including opioid agonist therapy,²⁰⁰ needle and syringe programmes, and provision of naloxone (a highly effective opioid antagonist medicine used to reverse the effects of an opioid overdose);
 - Peer-led support groups; and
 - Voluntary testing for HIV and hepatitis C.
- A multiagency approach involving a range of professionals, NGOs, community groups – including networks of people who use drugs, qualified health professionals and prison staff is desirable. Effective harm reduction and drug treatment strategies require joint working and co-operation between prisons and external agencies.²⁰¹

Programme planning and development

- The following are some of the suggested components of a comprehensive approach to substance dependence programme planning and development, which may improve outcomes, as recommended for all women who use drugs,²⁰² and adapted here to women in prison who use drugs:
 - Programme planning and development should be based on a careful needs assessment, with mechanisms built in to monitor progress. A comprehensive assessment should address areas particularly relevant for women, such as relationships, pregnancy, sexual and reproductive health, mental health, history of gender-based violence, including domestic violence.
 - Women in prison have disproportionately high rates of poor mental health, including risk of self-harm and suicide, and many women in prison have experienced trauma or abuse. Harm reduction and drug treatment services should include components which address such risks (see Rules 12 and 16).
 - Pharmacological interventions, such as opioid agonist therapy as a harm reduction intervention or as drug treatment particularly for women who are pregnant and have an opioid dependence, can reduce illicit substance use and related problems, and result in better outcomes for new-borns. However, pharmacological interventions need to be offered in the context of providing gender-responsive psychosocial treatments and addressing other practical needs.
 - Continuity of care, including continuity of harm reduction and drug dependence treatment, should be promoted on admission to prison, during transfer between prisons, and upon release from prison. Effective linkages should be established to ensure continuity of care within prison systems, across prison facilities and community health care and social services. Pre-release preparations should ensure continuity of care and access to community services after release.

¹⁹⁹. WHO and UNODC, *International standards for the treatment of drug use disorders: Revised edition incorporating results of field testing*, 2020, at 5.3.4.

²⁰⁰. Systematic reviews show that access to opioid agonist treatment (OAT) for drug dependence in prison reduces illicit opioid use and risk behaviours like injection and needle sharing, which, in turn, leads to a reduced risk of HIV, viral hepatitis and tuberculosis, see for example Kelly E. Moore et al., *Effectiveness of medication assisted treatment for opioid use in prison and jail settings: A meta-analysis and systematic review*, *Journal of Substance Abuse Treatment*, Volume 99, 2019.

²⁰¹. *Ibid.*

²⁰². As recommended in UNODC, UN WOMEN, WHO and INPUD, *Policy Brief: Women who inject drugs and HIV: Addressing specific needs*, 2014; UNODC, *Addressing the specific needs of women who inject drugs: Practical guide for service providers on gender-responsive HIV services*, 2016.

4.7 Suicide and self-harm prevention

➔ Rule 16



Rule 16

Developing and implementing strategies, in consultation with mental health care and social welfare services, to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialized support to those at risk shall be part of a comprehensive policy of mental health care in women's prisons.



Why it is important

Women in prison are more likely to self-harm and attempt suicide than women in the community. One study covering 24 countries found that women in prison were four times more likely to commit suicide than women in the community.²⁰³

People in pre-trial detention have a particularly high risk of suicide and self-harm and have greater mental healthcare needs, especially when they experience substance withdrawal symptoms.²⁰⁴

Studies on suicide in prisons suggest that psychiatric illness, substance misuse, and repetitive self-harm are known important risk factors for suicide.

Penal authorities have a duty to take reasonable steps to prevent suicides in prisons, as an obligation under Article 2 of the European Convention on Human Rights, to preserve individuals' right to life. Reasonable steps would entail following advice from a doctor or other healthcare professional, providing a response which conforms with generally accepted medical practice to concerning behaviour, having in place adequate healthcare screening upon admission and periodically throughout imprisonment.²⁰⁵

The purpose of initial assessments is not only to identify and deal with the risks a person poses, but also to identify and address their specific needs and vulnerabilities, including, for example, mental health conditions, previous instances of victimisation, protection from violence and suicide prevention. As with risk assessments, these needs assessments must be individualised, regularly reviewed and updated, and the person in prison should be involved in the process.²⁰⁶

Depression is associated with an increased risk of self-harm or suicide.²⁰⁷ Self-harm in prisons can be associated with drug dependence, a history of alcoholism and with being a victim of violence.²⁰⁸

In some jurisdictions self-harm and suicide attempts are penalised, causing further distress and leading to a worsening of any mental healthcare needs.

²⁰³ Seena Fazel et al., 'Suicide in prisons: an international study of prevalence and contributory factors', *The Lancet*, Volume 4, Issue 12, 2018. See also 'Suicide in prison: a new study on risk factors in the prison environment', Taanvi Ramesh for *Penal Reform International*, 13 June 2018, www.penalreform.org/blog/suicide-in-prison-a-new-study-on-risk.

²⁰⁴ See for example 'Presumption of Guilt: The Global Overuse of Pre-trial Detention', *Open Society Justice Initiative*, September 2014, www.opensocietyfoundations.org/publications/presumption-guilt-global-overuse-pretrial-detention.

²⁰⁵ Mary Rogan, Human rights approaches to suicide in prison: implications for policy, practice and research, *Health and Justice*, Volume 6, Issue 15, 2018, p. 4.

²⁰⁶ OSCE-ODIHR and PRI, *Guidance document on the Nelson Mandela Rules*, p. 23, para. 77.

²⁰⁷ PRI and PRT, *Women in prison: mental health and well-being - a guide for prison staff*, 2020, p. 15.

²⁰⁸ Jo Borrill et al., 'Patterns of self-harm and attempted suicide among white and black/mixed race female prisoners', *Criminal Behaviour and Mental Health*, Volume 13, Issue 4, 2003.



Putting it into practice

- Developing strategies to prevent suicide and self-harm and to provide appropriate, gender-specific and individualised psychosocial and psychiatric support to those at risk need to form a comprehensive element of mental healthcare in prisons.
- The health screening undertaken on entry to prison and regular assessments are key components of self-harm and suicide prevention strategies.²⁰⁹
- In addition, staff need to be trained on issues of mental health to detect risk of self-harm and suicide, and offer assistance, by providing support and referring such cases to specialists.²¹⁰ Post-admission supervision by well trained, sympathetic staff, throughout the period of imprisonment is an essential component of programmes to prevent suicides.²¹¹ This should include the cultivation of the type of relationship between staff and people in prison that will facilitate people in prison to disclose distress if and when it arises.²¹²
- Where people in prison who are experiencing severe mental health issues are not eligible for transfer to a psychiatric hospital, a multifaceted approach should be adopted, involving clinical psychologists in the design of individual programmes, including psycho-social support, counselling and treatment. The absence of such programmes may bring about an increase in incidents of self-harm and an excessive use of prolonged segregation.²¹³
- Because individuals in prison who self-harm often have several psychiatric illnesses and psychosocial difficulties, interventions might need to be more complex than in the general community, be multidisciplinary, and include specialists' input. Restriction of access to means for self-harm is also important, similar to suicide prevention in psychiatric inpatients.²¹⁴ All acts of self-harm or attempted suicide should be approached from a holistic and evidence-based therapeutic standpoint.
- As required by Rule 13, staff should also be aware of particular times (certain situations and stages of detention) when people in prison may be feeling high levels of stress, anxiety and depression, which may lead to self-harm and suicide. This may include initial reception into prison, being held in pre-trial detention, court dates and parole hearings, disciplinary proceedings, solitary confinement, when a friend in prison is moved or released, or if a planned visit by family members doesn't go ahead.²¹⁵
- As recommended by WHO, and as also suggested in relation to Rule 2 on Admission, the reception area and procedures should be organised in such a way as to minimise mental distress. Wherever possible, facilities should be provided to enable people in prison to make early contact with their families. Procedures should ensure that all people in prison receive and understand the information given and that, so far as possible, the information is provided in accordance with their cultural traditions.²¹⁶
- Successful measures of support for people in prison have included peer support programmes, where people in prison are trained in peer support skills in order to monitor prisoners' distress, at critical times, for example, following admission to prison.²¹⁷ WHO and the International Association for Suicide Prevention (IASP) note that, "in some facilities, social support is provided through the use of specially trained inmate 'buddies' or 'listeners', which seems to have a good impact on the wellbeing of potential suicidal inmates, as they may not trust correctional officers but other inmates. Family visits may also be used as a means

209. WHO and IASP, *Preventing Suicide in Jails and Prisons*, 2007, p. 10.

210. *Ibid.*, p. 9; see also PRI and PRT, *Women in prison: mental health and well-being – a guide for prison staff*, 2020.

211. *Ibid.*, p. 12.

212. *Ibid.*, p. 13.

213. CPT, *Factsheet Women in Prison*, CPT/Inf(2018)5, January 2018, p. 4.

214. Keith Hawton et al., 'Self-harm in prisons in England and Wales: an epidemiological study of prevalence, risk factors, clustering, and subsequent suicide', *The Lancet*, Volume 383, 2014; p. 1153.

215. PRI and PRT, *Women in prison: mental health and well-being – a guide for prison staff*, 2020.

216. WHO Europe, *Health in Prisons. A WHO guide to the essentials in prison health*, 2007, p. 142.

217. Morag McArthur et al., *Strategies for Managing Suicide and Self-harm in Prisons*, Australian Institute of Criminology, 1999, p. 4.

- to foster social support, as well as a source of information about the risk for suicide of an inmate.²¹⁸ Peer support groups enable people in prison to come together to discuss topics of mutual interest in a supportive environment and to raise ideas and areas of concern with prison staff.
- Research indicates that the majority of suicides in prisons occur when a person is isolated from staff and fellow people in prison.²¹⁹ Therefore, placement in segregation or solitary confinement can increase the risk of suicide,²²⁰ and should be avoided (see [Rule 22](#) for the absolute prohibition of solitary confinement in the case of certain categories of women in prison). WHO and IASP recommend people at risk of attempting suicide to be housed in a dormitory or shared cell setting.²²¹
- As the commentary on this rule notes, “it must be emphasised that a fundamental element of strategies to reduce incidents of self-harm and suicide in prisons, is to create a prison environment, which promotes mental health. In parallel to the identification, and supervision of “at-risk” and the individual treatment provided to them, there is a need for prison managers and staff to take a proactive and positive approach to improve prison morale, in order to reduce incidents of self-harm and suicide.”²²² A gender-sensitive prison management approach, with maximum possible opportunities for women to maintain contact with their families and children, are essential components of such an approach.

4.8 Preventive healthcare services

➔ Rules 17 & 18



Rule 17

Women prisoners shall receive education and information about preventive health care measures, including from HIV, sexually transmitted diseases and other, blood-borne diseases, as well as gender-specific health conditions.



Why it is important

Access to awareness raising, education and information is a key component of preventive healthcare services in prisons, particularly taking into account relatively low education level and awareness among people in prison, who often come from socially and economically marginalised backgrounds. This is even more important for women, who confront additional barriers to education and challenges associated with stigmatisation in accessing information and education about STIs and reproductive health issues.²²³

Prisons can provide an opportunity to raise the awareness of women on all of these issues and inform them on measures that they can take to reduce the risk of developing sexual and reproductive health problems.

²¹⁸. WHO and IASP, *Preventing Suicide in Jails and Prisons*, 2007, p. 16.

²¹⁹. Ibid.

²²⁰. Ibid.

²²¹. Ibid.

²²². Bangkok Rules, Commentary to Rule 16.

²²³. Bangkok Rules, Commentary to Rule 17.



Putting it into practice

- Women should be provided with written information materials on the main gender-specific health conditions, modes of transmission of STIs and blood borne diseases, risk factors and measures that can be taken to protect themselves from these conditions. Such information should be provided in a language that is easy to understand and also in multiple languages, most commonly spoken in the prison.
- Women should be encouraged to ask questions, if they do not understand any of the information provided. Healthcare staff should be available to respond to such queries on a confidential basis.
- Information and education sessions should be provided on a regular basis on key issues, in cooperation with community healthcare services.
- Cooperation should be developed with NGOs in the community which work on the healthcare of women and such NGOs should be encouraged to run programmes in prisons to raise awareness.



Rule 18

Preventive health care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community.



Why it is important

Preventive health services provided in prisons should be equivalent to those in the community, in line with the right enjoyed by all men and women, including people in prison, to the highest attainable standard of mental and physical wellbeing, as provided by the ICESCR, Article 12. To the extent that preventive healthcare measures of relevance to women, such as screening for breast and cervical cancer, and pap tests, are available in the community, they should also be offered to women in prison.²²⁴

These screening programmes should be included in the standard procedure in women's prisons. Women in prison are at high risk of cervical cancer, due to high likelihood of contracting human papillomavirus as an STI, yet they are less likely to have been screened for it and are unlikely to complete appropriate follow-up and management of abnormal smear results.²²⁵

Preventive healthcare services can also include the provision of contraceptive pills, which are not exclusively taken to prevent pregnancy, but also for other conditions related to menstruation.



Putting it into practice

- Prison administrations and health services should ensure that women in prison have access to preventive healthcare services, including regular screening for cervical cancer and breast cancer, by qualified healthcare professionals.
- Preventive healthcare services should be made available in all women's prisons. In cases where the requisite healthcare services cannot be provided in prisons, women should be transferred to community healthcare providers/hospitals to receive the screenings.

²²⁴ CPT, *Factsheet Women in Prison*, CPT/Inf(2018)5, January 2018, p. 4; see 10th General Report on the CPT's activities, para. 32.

²²⁵ Brenda van den Bergh et al., *Women's health and the prison setting (Chapter 18, Prisons and Health)*, WHO Regional Office for Europe, 2014, p. 161.

- Prison health services should establish close cooperation with community healthcare services to ensure access to preventive healthcare services for women.
- If women require contraceptive pills, for whatever reason, they should be able to discuss their requirements with a gynaecologist and be given access to such pills, if deemed appropriate.
- Consideration should be given to ensuring that women are given access to condoms and condom compatible lubricants, especially where conjugal visits are permitted, in all cases, to prevent the transmission of STIs.²²⁶

²²⁶ WHO, UNODC and UNAIDS, *Evidence for Action Technical Papers, Interventions to Address HIV in Prisons, Prevention of Sexual Transmission*, 2007, p. 5.

Chapter 5

Safety and security



Safety and security

➔ Rules 19 to 25

This chapter supplements the Nelson Mandela Rules which cover restrictions, discipline and sanctions (Rules 36 to 46); instruments of restraints (Rules 47 to 49); searches of people in prison and cells (Rules 50 to 53) information to and complaints by people in prison (rules 54 to 57) and prison inspections (Rules 83 to 85). The provisions of the Bangkok Rules on safety and security are based on the understanding that security in prisons can be maintained and improved by respecting the human rights of women in prison and taking into account their specific needs, as well as providing for the particular needs of pregnant women, breastfeeding mothers and women with small children in prison. The Bangkok Rules strengthen the provisions of the Nelson Mandela Rules with guidance on the particular safety requirements of women in prison, taking into account their gender-related vulnerabilities and needs, in relation to searching procedures, the use of restraints, solitary confinement, complaints procedures and prison inspections.

The Bangkok Rules recognise that safety is perhaps the most important need that women in prison have, without which the concept of “social reintegration” remains an abstract concept. The safety requirements of women in prison are also covered elsewhere in the Bangkok Rules, such as screening procedure and classification system (Rules 40–41), women’s separation from men in prison (re-emphasising Rule 11(a) of the Nelson Mandela Rules), and the supervision of women in prison by female staff (Rule 81 of the Nelson Mandela Rules), who should be specially trained to respond appropriately to the specific needs of women in prison (Rules 29 and 33 of the Bangkok Rules) and supplementary provisions relating to the protection of women in prison from gender-based violence (Rule 33 of the Bangkok Rules).

5.1 Searches

➔ Rules 19 to 21 *(Supplements Rules 50–53 of the Nelson Mandela Rules)*



Rule 19

Effective measures shall be taken to ensure that women prisoners’ dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.



Rule 20

Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.



Why they are important

The principle that persons should only be searched by someone of the same gender has been emphasised by various international and regional bodies in order to prevent sexual abuse and humiliation of people in prison. These include the Human Rights Committee, General Comment 16²²⁷ on Article 17 of the ICCPR guaranteeing all persons' right to privacy, as well as the regional instruments, such as Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXI and the Revised EPR.²²⁸

The Nelson Mandela Rules introduced, for the first time, standards on searches of people in prison, visitors, and cells, and provide guidance on how to conduct searches in a manner that respects the dignity and privacy of the individuals concerned. The Rules also clarify the role of healthcare professionals in carrying out body cavity searches.²²⁹

Rules 50–52 of the Nelson Mandela Rules require searches to be governed by law and regulations and that any decision on whether to conduct a search should consider whether it is necessary and proportionate and should not be used to harass or intimidate. At the regional level, the Revised EPR outline safeguards and procedures of searches in prisons (Rule 54).²³⁰

These rules apply to all personal searches, including pat-down and frisk searches (of the outer clothing, mouth, nose, ears, and hair).

Additional principles and rules apply to strip searches and invasive body searches, in line with the WMA Statement on Body Searches of Prisoners.²³¹ A strip search refers to the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas. Invasive body searches, on the other hand, involve a physical inspection of a person's genital or anal regions.²³²

Strip and invasive body searches are common practices²³³ and have a disproportionate impact on women, particularly when conducted by male guards. The UN Special Rapporteur on violence against women described improper touching during searches carried out by male prison staff as 'sanctioned sexual harassment'.²³⁴ Strip and invasive body searches can constitute ill-treatment when conducted in a disproportionate, humiliating or discriminatory manner. When conducted for a prohibited purpose or for any reason based on discrimination and leading to severe pain or suffering, they amount to torture.²³⁵

Searches are a highly sensitive issue for all people in prison. Women in prison may be especially sensitive to searches as many have previously experienced sexual or gender-based violence.²³⁶ Body searches can also be particularly distressing for people of certain religious or cultural backgrounds.²³⁷

In 2017, UN Special Rapporteur on violence against women raised the issue of routine strip searches as one of issues of concern in her report on Australia. The report found that "imprisoned women have commonly experienced domestic violence and sexual assault" and concluded that "the continued practice of strip-searching women within prisons exacerbates this trauma".²³⁸ The Inspector of Custodial Service of Australia found that "routine strip searches conflict with trauma-informed care", are not intelligent-led and are in general ineffective.²³⁹

²²⁷ The Human Rights Committee, in its General Comment 16 on Article 17 stated that "[s]o far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex" (see Compilation of general comments and general recommendations adopted by human rights treaty bodies, HRI/GEN/1/Rev.3, Part I).

²²⁸ CoE, *Recommendation Rec(2006)2-rev of the Committee of Ministers to Member States on the European Prison Rules*, 2020, Rule 54.5.

²²⁹ OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, p. 54.

²³⁰ CoE, *Recommendation Rec(2006)2-rev of the Committee of Ministers to Member States on the European Prison Rules*, 1 July 2020.

²³¹ WMA, *Statement on body searches of prisoners*, adopted by the 45th World Medical Assembly, October 1993 and revised at the 170th Council Session, May 2005.

²³² Bangkok Rules, Commentary to Rule 19.

²³³ UN General Assembly, *Report of the Special Rapporteur on violence against women, its causes and consequences*, A/68/340, 21 August 2013.

²³⁴ Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to the United States of America*, E/CN.4/1999/68/Add.2, 4 January 1999, paras. 55, 58.

²³⁵ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, para. 23.

²³⁶ APT and PRI, *Balancing Security and Dignity in Prisons: a framework for preventive monitoring*, 2015, pp. 11–12.

²³⁷ OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, p. 55.

²³⁸ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Australia*, A/HRC/38/47/Add.1, 17 April 2018, para. 54.

²³⁹ Office of the Inspector of Custodial Services, *Strip searching practices in Western Australian prisons*, March 2019, pp. 2, 13–14.

“The Nelson Mandela Rules provide that “intrusive” searches (including both strip and body cavity searches) should only be conducted when absolutely necessary, in private and by trained staff of the same sex”.

The CPT has also called for searches to be conducted only by staff of the same sex out of sight of custodial staff of the opposite sex and to minimise embarrassment by allowing a person to remove clothing above the waist and put the clothes back on before removing further clothing.²⁴⁰

The WMA in their Statement on Body Searches of Prisoners has recommended that body cavity searches be used only as a last resort.²⁴¹

“... The purpose of the search is primarily security and/or to prevent contraband, such as weapons or drugs, from entering the prison. These searches are performed for security reasons and not for medical reasons. Nevertheless, they should not be done by anyone other than a person with appropriate medical training. This non-medical act may be performed by a physician to protect the prisoner from the harm that might result from a search by a non-medically trained examiner. In such a case the physician should explain this to the prisoner. The physician should furthermore explain to the prisoner that the usual conditions of medical confidentiality do not apply during this imposed procedure and that the results of the search will be revealed to the authorities. If a physician is duly mandated by an authority and agrees to perform a body cavity search on a prisoner, the authority should be duly informed that it is necessary for this procedure to be done in a humane manner.

If the search is conducted by a physician, it should not be done by the physician who will also subsequently provide medical care to the prisoner.

The physician’s obligation to provide medical care to the prisoner should not be compromised by an obligation to participate in the prison’s security system.

The World Medical Association urges all governments and public officials with responsibility for public safety to recognise that such invasive search procedures are serious assaults on a person’s privacy and dignity, and they also carry some risk of physical and psychological injury. Therefore, the World Medical Association exhorts that, to the extent feasible without compromising public security:

- *alternate methods be used for routine screening of prisoners, and body cavity searches be used only as a last resort;*
- *if a body cavity search must be conducted, the responsible public official must ensure that the search is conducted by personnel with sufficient medical knowledge and skills to safely perform the search;*
- *the same responsible authority ensure that the individual’s privacy and dignity be guaranteed.”*

Finally, the World Medical Association urges all governments and responsible public officials to provide body searches that are performed by a qualified physician whenever warranted by the individual’s physical condition. A specific request by a prisoner for a physician shall be respected, so far as possible.”

²⁴⁰ CPT, Factsheet Women in Prison, CPT/Inf(2018)5, January 2018, p. 7; CPT, 10th General Report on the CPT’s activities, CPT/Inf(2000)13, 18 August 2000, para. 23; CPT, Report to the Government of the Netherlands on the visit to the Netherlands from 2 to 13 May 2016, CPT/Inf(2017)1, 19 January 2017, para. 110; CPT, Report to the Italian Government on the visit to Italy from 8 to 21 April 2016, CPT/Inf(2017)23, 8 September 2017, para. 44; UNODC, Handbook on Dynamic Security and Prison Intelligence, 2015, p. 21.

²⁴¹ WMA, Statement on body searches of prisoners, adopted by the 45th World Medical Assembly, October 1993 and revised at the 170th Council Session, May 2005.

The CoE has noted that: “Body searches are a matter for the administrative authorities and prison doctors should not become involved in such procedures. However, an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring her/his involvement.”²⁴² The CPT has stated that internal examinations should only be conducted by a medical practitioner, who is not the doctor who would treat the patient for health-related issues. Examinations of this intimate nature should be conducted in a way that respects, to the greatest possible extent, the safety and dignity of the woman, and each examination should be properly recorded in a special register.²⁴³



PROMISING PRACTICE

In Thailand, the Corrections Department has introduced full-body scanning technology for searching women in Central Women’s Correctional Institution (CWCI) in Chatuchak district of Bangkok, replacing invasive searches. These full-body scanners, similar to those used at airports, will prevent the smuggling of illegal and prohibited items and avoid human rights violations during physical body searches. The Director General of the Corrections Department has stated that the model currently used is efficient in detecting objects even if they are hidden in some parts of the body that are difficult to detect by a simple body search. With these scanners, the wardens no longer have to touch women’s bodies during searches.²⁴⁴



Putting them into practice

- Prison authorities should develop very clear policies and establish a clear set of procedures with regard to the searching of women in prison, based on the safeguards outlined above in accordance with the principles of legality, necessity and proportionality.
- Safeguards must be in place to prevent the overuse or discriminatory use of all types of searches and records must be kept of all searches, including the reasons for them, who conducted them and any results.
- There should be a total prohibition of all personal searches, including pat-down searches, strip searches and invasive body searches of women by male staff. A sufficient number of female staff should be designated to carry out searches of women in prison.
- Staff awareness about women’s particular vulnerability during searches should be raised, and their training should include search procedures and methods that comply with the requirement to protect the privacy and dignity of the person being searched.

Strip searches and internal body searches

- If there is suspicion that a woman in prison is concealing an illegal item in her body, alternative methods of screening should be used to detect the item. This may include using modern scanning technology or making arrangements to keep the person under close supervision until such time as any forbidden item is expelled from the body.
- Strip searches and invasive body searches of women should only be carried out in exceptional circumstances, if at all, which should be defined by law.
- Strip searches and invasive body searches should always be authorised by the chief executive officer, in writing, and the reason for the search should be put on record.²⁴⁵

²⁴² CoE, Committee of Ministers, Recommendation Concerning the Ethical and Organisational Aspects of Health Care in Prison, No. R(98)7, 8 April 1998, para. 72.

²⁴³ CPT, Factsheet Women in Prison, CPT/Inf(2018)5, January 2018, p. 7; CPT, Report to the Government of Greece on the visit to Greece from 17 to 29 September 2009; CPT/Inf(2010)33, 17 November 2010, paras. 91-92.

²⁴⁴ ‘Prison body scanners to replace invasive searches’, Bangkok Post, 15 December 2016, www.bangkokpost.com/thailand/general/1159721/prison-body-scanners-to-replace-invasive-searches.

²⁴⁵ Bangkok Rules, Commentary to Rule 19.

- Any search should be carried out by exposing only parts of the body (the person should not be completely naked), and in a manner that provides privacy from other people in prison and staff members not required for the search.
- A strip or cavity search should not be conducted if it is likely to cause injury to the person.²⁴⁶
- Strict documentation is to be maintained of the probable cause, authorising official, witnesses, and findings of the search.²⁴⁷
- Staff need to be trained/qualified to carry out strip searches in a way that respects the dignity of the person being searched.

Invasive body searches

- This non-medical act may be performed by a physician to protect the person from the harm that might result from a search by a non-medically trained examiner; if a medically trained staff member is not available or if there is an objective medical reason for the search to be carried out by a qualified physician or if the woman herself requests that the search be carried out by a physician. In such cases the search may be carried out by a physician who is not part of the regular healthcare staff of the prison.
- Invasive body searches should not be undertaken by the physician who will also subsequently provide medical care to the person searched, in order not to compromise the physician's obligation to provide medical care to the person by a requirement to participate in the prison's security system.
- The physician should explain to the person searched that the usual conditions of medical confidentiality do not apply during this imposed procedure and that the results of the search will be revealed to the authorities.
- Pregnant women and girls should never be subjected to vaginal searches.²⁴⁸



Rule 21

Prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.



Why it is important

Contact with children via visits is of utmost importance to women in prison, but the experience can be traumatic for both sides, especially for young children, if it is not handled with sensitivity and kindness.

This Rule provides important guidance on searching procedures of children, based on the best interests principle. Searching procedures should not discourage further visits or cause distress or trauma, which can lead to long-term damage in the case of children.

The UN Subcommittee on Prevention of Torture received many complaints in Brazil relating to the intrusive and humiliating search procedures in place for visitors, including elderly women and children, who had to undergo strip searches and intimate searches.²⁴⁹

Rule 60(2) of the Nelson Mandela Rules notes that search and entry procedures for visitors must be at least as protective as the procedures outlined for people in prison themselves. Visitors must never be treated as if they are imprisoned, and prison staff should be

²⁴⁶. Ibid.

²⁴⁷. Ibid.

²⁴⁸. Ibid, para. 42.

²⁴⁹. UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit to Brazil*, CAT/OP/BRA/1.en, 5 July 2012, para. 118.

particularly sensitive with visiting children. Search procedures should be properly supervised to ensure they are being applied fairly and consistently. Body cavity searches should be avoided and should not be carried out on children.²⁵⁰

Considering the rights of children of incarcerated parents, including to regularly visit their parent(s), the UNCRC recommended measures “to ensure that the visit context is respectful to the child’s dignity and right to privacy” and urged states to “ensure that security matters and policies on incarcerated parents take into account the rights of affected children.”²⁵¹

The CoE stipulates that “Any security checks on children shall be carried out in a child-friendly manner that respects children’s dignity and right to privacy, as well as their right to physical and psychological integrity and safety. Any intrusive searches on children, including body cavity searches, shall be prohibited.”²⁵²



Putting it into practice

- Prison authorities should establish procedures for the searching of visiting children and children living with their mothers in prison, which should clearly define in which circumstances children may be searched, by whom and in what way.
- Children staying with their mothers in prisons, should be searched only when justifiably necessary and with sensitivity.
- A pat-down search can be used to search visiting children. Reasons for the search should be explained to the child, who should be searched in full view of their accompanying adult.
- If allowed at all, strip searches should only be carried out on children in exceptional circumstances. There should be a clear written policy explaining the legal grounds and specific procedures for conducting a strip search of children – whether living with their mother in prison or visiting.
- Such searches should only be carried out in circumstances which do not violate the human rights and dignity of the child. That means that the search should be carried out in private, that the child should not be completely naked at any time and the child should have their guardian with them.
- Children should never be subjected to invasive body searches.
- Clear channels of complaints should be established for visitors, including children, to apply to an independent body, if they feel that their human dignity and rights have been violated during searching procedures. Independent complaints mechanisms should be available to all people in prison as well, as provided in Rule 56 of the Nelson Mandela Rules.
- Staff awareness on searching children should be raised and staff should be trained to carry out searches, professionally and with sensitivity, ensuring that the dignity and privacy of the children are protected. As the commentary to the CoE recommendation notes, “Officers, who are sensitive to children, often develop their own ways of searching children in a playful manner, preserving their integrity in as unobtrusive a manner as possible; pretending to look for treasure, for example, or using their electronic search baton as a fairy wand. Analogies with searches for air travel can be useful in normalising the process and destigmatising the need for such checks and offering them with dignity”.²⁵³

²⁵⁰. OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, pp. 65-66, paras. 59-62.

²⁵¹. Committee on the Rights of the Child, *Day of General Discussion – Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents*, 30 September 2011, note 44, paras. 38 and 39.

²⁵². CoE, *Recommendation CM/Rec(2018)5 of the Committee of Ministers to Member States concerning children with imprisoned parents*, 4 April 2018, para. 23.

²⁵³. CoE, *Recommendation CM/Rec(2018)5 of the Committee of Ministers to Member States concerning children with imprisoned parents*, 4 April 2018, Appendix, para 23.

5.2 Discipline and punishment

➔ **Rules 22 & 23** (Supplements Rules 36-46 of the Nelson Mandela Rules)



Rule 22

Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.



Why it is important

The Nelson Mandela Rules contain provisions which reflect the significant body of international law which limits the use of solitary confinement, also referred to as 'isolation' and 'segregation', regardless of whether such measures are applied as a disciplinary sanction or for other purposes.²⁵⁴

For instance, the UN Special Rapporteur on Torture stated that "Prison regimes of solitary confinement often cause mental and physical suffering or humiliation that amounts to cruel, inhuman or degrading treatment or punishment. If used intentionally for purposes such as punishment, intimidation, coercion or obtaining information or a confession, or for any reason based on discrimination, and if the resulting pain or suffering are severe, solitary confinement even amounts to torture"²⁵⁵ and called for the regulation and restriction on the use of solitary confinement and prohibition of its prolonged use.²⁵⁶

The Human Rights Committee in General Comment No.20 noted that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7".²⁵⁷ The Committee against Torture has also recognised the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventive measure during pre-trial detention, and as a disciplinary measure.²⁵⁸

At the regional level, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,²⁵⁹ Principle XXII, paragraph 3 (Measures of solitary confinement) prohibit the use of solitary confinement in punishment cells, except for exceptional circumstances, and strictly prohibits the imposition of solitary confinement on pregnant women; mothers who are living with their children in the place of deprivation of liberty; and children deprived of liberty.

Rule 44 of the Nelson Mandela Rules (as well as Rule 263 of the Revised EPR) defines solitary confinement as confinement for 22 hours or more a day without meaningful human contact. Rule 45 prohibits indefinite and prolonged solitary confinement (which is defined as confinement for more than 15 days). The Nelson Mandela Rules apply regardless of whether it is used as a disciplinary sanction, to isolate people in pre-trial detention during an ongoing criminal investigation, as an administrative tool for managing specific groups of people in prison or as part of a judicial sentence. The Rules also apply regardless of whether the measure is imposed by the prison administration, by a disciplinary committee or by a court.²⁶⁰

²⁵⁴. OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, p. 104, para. 42.

²⁵⁵. UN General Assembly, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2011, A/66/268, paras. 82-101.

²⁵⁶. UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/68/295, 9 August 2013, paras. 60-61.

²⁵⁷. OHCHR, *CCPR General Comment No. 20: Article 7 ICCPR (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992.

²⁵⁸. UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/63/175, 28 July 2008, para. 80.

²⁵⁹. Inter-American Commission on Human Rights (IACHR), *Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, 13 March 2008.

²⁶⁰. OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, p. 105, para. 42.

Medical research confirms that the denial of meaningful human contact can lead to “isolation syndrome”, the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide, and which can destroy a person’s personality.²⁶¹

The Istanbul Statement on the use and effects of solitary confinement (the Istanbul Statement) underlines that “[s]olitary confinement may cause serious psychological and sometimes physiological ill effects (...) Negative health effects can occur after only a few days in solitary confinement, and the risk rises with each additional day spent in such conditions. (...) The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and wellbeing.”²⁶²

The WMA issued an updated Statement on Solitary Confinement²⁶³ reiterating its negative harmful health effects on humans and called for the implementation of the Nelson Mandela Rules and other related standards with a view to protect the human rights and the dignity of people in prison, vulnerable groups in particular.

Using segregation or solitary confinement as a disciplinary measure raises particular concerns in circumstances when children are affected and effectively penalised by their mother’s confinement. This practice can also be harmful to the mental health of mothers in prison, especially pregnant women and women who have recently given birth.

Rule 22 of the Bangkok Rules supplements Rule 45(2) of the Nelson Mandela Rules (and Rule 60.6.a of the Revised EPR,) to explicitly prohibit the use of solitary confinement or segregation as a disciplinary measure for pregnant women, women with infants and breastfeeding mothers. The WMA recommends that this prohibition should be extended to women up to six months post-partum.²⁶⁴

The Nelson Mandela Rules, in Rule 45(2) prohibits the use of solitary confinement for people with mental or physical disabilities when their conditions would be exacerbated by such measures. The Istanbul Statement also stresses that the use of solitary confinement should be absolutely prohibited for people in prison with mental disorders.²⁶⁵ As outlined above (Rule 6(b) and Rule 12), women are at particular risk of experiencing mental ill-health on admission to prison or during imprisonment, and so face heightened vulnerability to the harmful psychological effects of solitary confinement.



Putting it into practice

- Prison regulations/rules should be reviewed and, where necessary, revised to ensure that they clearly prohibit the use of close confinement/solitary confinement as a punishment in the case of pregnant women, women with infants and breastfeeding mothers in prison. If solitary confinement is prohibited as punishment, it is all the more unacceptable for it to be used when no disciplinary offence has been committed. Thus, this revision would in effect mean the total abolition of the use of solitary confinement in the case of pregnant women, women with infants and breastfeeding mothers.
- Prison staff should be trained to implement the Rule and to respond in a gender-sensitive and constructive manner to disciplinary offences by women in prison.

²⁶¹ Ibid, p. 105, para. 43.

²⁶² UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/63/175, 28 July 2008, Annex: Istanbul Statement on the Use and Effects of Solitary Confinement (adopted on 9 December 2007), p. 2.

²⁶³ WMA, *Statement on Solitary Confinement*, Adopted by the 65th WMA General Assembly, October 2014 and revised by the 70th WMA General Assembly, October 2019.

²⁶⁴ Ibid, para. 4.

²⁶⁵ UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/63/175, 28 July 2008, Annex: Istanbul Statement on the Use and Effects of Solitary Confinement (adopted on 9 December 2007), p. 25.



Rule 23

Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.



Why it is important

Withholding family contact as a disciplinary measure is detrimental to women's mental wellbeing and reduces opportunities to preserve family bonds, with no evidence of any benefits in disciplinary terms.

This Rule supplements Rule 43(3) of the Nelson Mandela Rules which states that disciplinary sanctions or restrictive measures shall not include the prohibition of family contact, and the means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

As explained earlier, women have a strong need for regular contact with their families, especially if they have children outside prison. Total prohibition of contact between women in prison and their families would constitute an extreme form of punishment for women, while also punishing their families, including their children. Such a prohibition would clearly violate provisions of the CRC, including the best interests principle (Article 3(1)) and "the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (Article 9(3)).

The Revised EPR also ban the total prohibition of family contact as a disciplinary sanction for all people in prison.²⁶⁶ The CPT noted that "The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations."²⁶⁷

The CoE has called for special measures "to encourage and enable imprisoned parents to maintain regular and meaningful contact and relations with their children" and that any restrictions on contact should be exceptional and for the shortest period possible,²⁶⁸ noting the fundamental importance for the child of contact with their parent, and that the child should not be punished and suffer because of restrictions imposed on the parent while in prison.²⁶⁹

There may be justification for such a prohibition only in exceptional circumstances, for example, when the child has particular protection needs due to past abuse by the mother.



Putting it into practice

- Prison regulations or rules should be reviewed and, where necessary, revised to ensure that they clearly state that prohibition of family contact as a disciplinary sanction is not allowed with respect to women in prison.
- Revised prison regulations/rules should be made available to all prison staff, who should be trained to implement them.

²⁶⁶ CoE, *Recommendation Rec(2006)2-rev of the Committee of Ministers to Member States on the European Prison Rules*, 1 July 2020, Rule 60.4.

²⁶⁷ CPT, *CPT standards*, CPT/Inf/E(2002)1 - Rev. 2010, 8 March 2011, para. 51.

²⁶⁸ CoE, *Recommendation CM/Rec(2018)5 of the Committee of Ministers to Member States concerning Children with Imprisoned Parents*, 4 April 2018, para. 30.

²⁶⁹ *Ibid.*, Annex, para. 30, p. 38.

5.3 Instruments of restraint

➔ **Rule 24** (Supplements Rules 43(2), and 47–49 of the Nelson Mandela Rules)



Rule 24

Instruments of restraint shall never be used on women during labour, during birth and immediately after birth.



Why it is important

Nelson Mandela Rules 43(2) and Rules 47–49 place strict restrictions on the use of body restraints on people in prison. The Rules specify that restraints: may never be used as a punishment or disciplinary sanction; may only be used as a precaution against escape during a transfer; are only legitimate if no lesser form of controlling an actual risk is available; must be removed as soon as possible (and are always removed when appearing in court); and must not be used longer than strictly necessary.

While Rule 47(2) of the Nelson Mandela Rules provides that restraints can be used to prevent escape, there is no reasonable risk of a woman escaping during labour, while giving birth or after birth. Any use of restraints at these times is therefore in violation of this Rule.

Despite this and statements by medical specialists against the use of restraints like shackling during labour and childbirth, the practice continues in some jurisdictions.²⁷⁰ A number of organisations have condemned the practice, stressing that it is both unnecessary and dangerous to a woman's health and wellbeing, highlighting that the vast majority of women in prison are non-violent offenders and restraining increases their potential for physical harm from an accidental trip or fall. Moreover, freedom from physical restraints is especially critical during labour, delivery and postpartum recovery. Restraints on a pregnant woman can also interfere with medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures.²⁷¹ Women subjected to restraint during childbirth report severe mental distress, depression, anguish, and trauma, according to the American Psychological Association.²⁷²

As the UN Special Rapporteur on Torture noted: "The use of shackles and handcuffs on pregnant women during labour and immediately after childbirth is absolutely prohibited and representative of the failure of the prison system to adapt protocols to unique situations faced by women. When used for punishment or coercion, for any reason based on discrimination or to cause severe pain, including by posing serious threats to health, such treatment can amount to torture or ill-treatment."²⁷³

The UN Special Rapporteur on violence against women, in her report to General Assembly in 2019,²⁷⁴ identified the use of physical restraints, in some instances with shackles, or the use of mouth gags on women in labour or during their post-delivery recovery, as constituting mistreatment, gender-based violence, or obstetric violence.

²⁷⁰ For example, in the USA, as of December 2020 only 36 states and the District of Columbia have banned the shackling of women in prison while in labour, despite a federal law enacted in 2018 prohibiting shackling of expectant mothers. See 'Pregnant and shackled: why inmates are still giving birth cuffed and bound', *The Guardian*, 24 January 2020, www.theguardian.com/us-news/2020/jan/24/shackled-pregnant-women-prisoners-birth.

²⁷¹ 'An "Act to prohibit the shackling of pregnant prisoners" model state legislation', AMA Advocacy Resource Center, 2015, www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/specialty%20group/arc/shackling-pregnant-prisoners-issue-brief.pdf.

²⁷² American Psychological Association, *End the Use of Restraints on Incarcerated Women and Adolescents during Pregnancy, Labor, Childbirth, and Recovery*, August 2017.

²⁷³ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Ms. Rashida Manjoo: *Mission to the United States of America*, A/HRC/17/26/Add.5/Corr.1, 20 November 2012.

²⁷⁴ UN General Assembly, *Report of the Special Rapporteur on violence against women, its causes and consequences on a human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence*, A/74/137, 11 July 2019, para. 22.



Putting it into practice

Legislative measures

- Prison regulations or rules should be reviewed and revised to include an explicit prohibition of restraints on women who are in labour, who are giving birth and who have just given birth.

Practical measures

- Prison administrations should establish clear procedures with regard to the use of body restraints, restricting their use to those circumstances outlined in Nelson Mandela Rules 47-48 and with clear rules that ensure that the use of restraints are applied strictly no longer than the time necessary, as required by Rule 48(1.c) of the Nelson Mandela Rules.
- The procedures should clearly prohibit the use of all kinds of restraints on women during labour, childbirth and immediately after childbirth, as required by Rule 24 of the Bangkok Rules and the 48(2) of the Nelson Mandela Rules. Other measures may be taken to prevent escapes based on individual risk assessments, such as the close supervision of such women by staff of the same gender.
- Prison staff should be trained to implement these procedures.



PROMISING PRACTICE

In the USA, the American Civil Liberties Union (ACLU) successfully litigated the case of a detained woman who was shackled during labour and immediately after childbirth. With the help of the ACLU's National Prison Project, Reproductive Freedom Project, and Women's Rights Project, the 8th Circuit Federal Court of Appeals found that legal precedent clearly establishes the constitutional protections against shackling pregnant women in labour. This decision paved the way for the case to go to trial where a jury found that the officer who shackled the woman violated the Constitution.²⁷⁵

5.4 Information, complaints, and inspections

➔ Rule 25

(Supplements Rules 54 and 57 of the Nelson Mandela Rules on information and complaints, and Rules 82- 83 with regard to inspection)



Rule 25

1. Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation.
2. Women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid.
3. In order to monitor the conditions of detention and treatment of women prisoners, inspectorates, visiting or monitoring boards or supervisory bodies shall include women members.

²⁷⁵. ACLU, *Briefing paper: The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers*, 2018.



Why it is important

Rule 54 of the Nelson Mandela Rules obliges prison authorities to educate and inform people in prison about their rights as well as the applicable rules and regulations in prison, including those that relate to complaints procedures. Without access to information, people cannot exercise their rights if they are treated unfairly. The knowledge that they can challenge unfair treatment may, in itself, lead to a more peaceful prison environment.²⁷⁶

Rule 56 of the Nelson Mandela Rules provides that every person has the right to make complaints to the detaining authorities, prison director, authorised staff, and to external inspectors, the central prison administration and judicial authorities. Complaints can also be made through the person's own legal representation.

Under Rule 57 of the Nelson Mandela Rules, prisons need to ensure complaints can be made safely and confidentially, followed up promptly and replied to without delay with proper safeguards in place from any risk of retaliation, intimidation or other negative consequences.

Any complaint or request, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, should be recorded in the prisoner file management system, unless it is confidential (Rule 8(d) of the Nelson Mandela Rules).

CAT, Article 13 provides:

"Each State Party should ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps should be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

Women in prison in many countries face high risk of gender-based violence, including acts that inflict physical, mental or sexual harm or suffering, threats of such acts or coercion,²⁷⁷ which amounts to ill-treatment and, depending on the circumstances and nature of the violence, to torture.

Women and girls are at particular risk of sexual assault by men in prison and male prison staff, including rape, insults, humiliation and unnecessary invasive body searches. Women have been watched by male guards in intimate moments such as dressing or showering,²⁷⁸ subjected to rape or sexual assault as a means of coercion to elicit confessions, in exchange for basic goods or privileges in prison, to humiliate and dehumanise them or merely as an abuse of power.²⁷⁹

The Bangkok Rules 25(1) and (2) explain states' responsibilities, specifically in the case of women in prison who complain about sexual abuse – what the response should be and what support they should provide to the women. The Rule is a reflection of states' obligation under CAT, Article 13, in this case, with reference to women in prison.²⁸⁰

Rule 25(3) supplements Rule 83 of the Nelson Mandela Rules which provides for a twofold system for regular inspections of prisons and penal services: (a) internal or administrative inspections conducted by the central prison administration; and (b) external inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.

Regular, competent and intensive inspections which examine prison regimes to ensure that policies and practice are in conformity with laws and regulations are an important safeguard for people in prison and staff alike, which aid implementation of international and national rules about treatment of people in prison.²⁸¹

²⁷⁶. OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, paras. 116, 118, p. 29.

²⁷⁷. CEDAW, *General Recommendation No. 19*, para. 6.

²⁷⁸. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, para. 19.

²⁷⁹. OSCE ODIHR, *Preventing and Addressing Sexual and Gender Based Violence in Places of Deprivation of Liberty, Standards, Approaches and Examples from the OSCE region*, 2019.

²⁸⁰. Bangkok Rules, Commentary to Rule 25.

²⁸¹. See PRI and APT, *Detention Monitoring Tool: Incident management and independent investigations*, 2018; PRI and APT, *Women in detention: a guide to gender-sensitive monitoring*, 2013.

By obliging states to ensure that the inspection bodies include female members, the Rule ensures that the treatment of women in prison is better assessed and their needs are better understood. In addition, women in prison are likely to feel more comfortable in expressing their concerns or discussing their needs with female members of the inspection bodies, particularly with regard to issues that are gender-sensitive.

In this regard, the CPT calls for greater efforts “to ensure a gender-sensitive monitoring of prisons, attuned to the potential compounding of problems women face in prison.”²⁸²



Putting it into practice

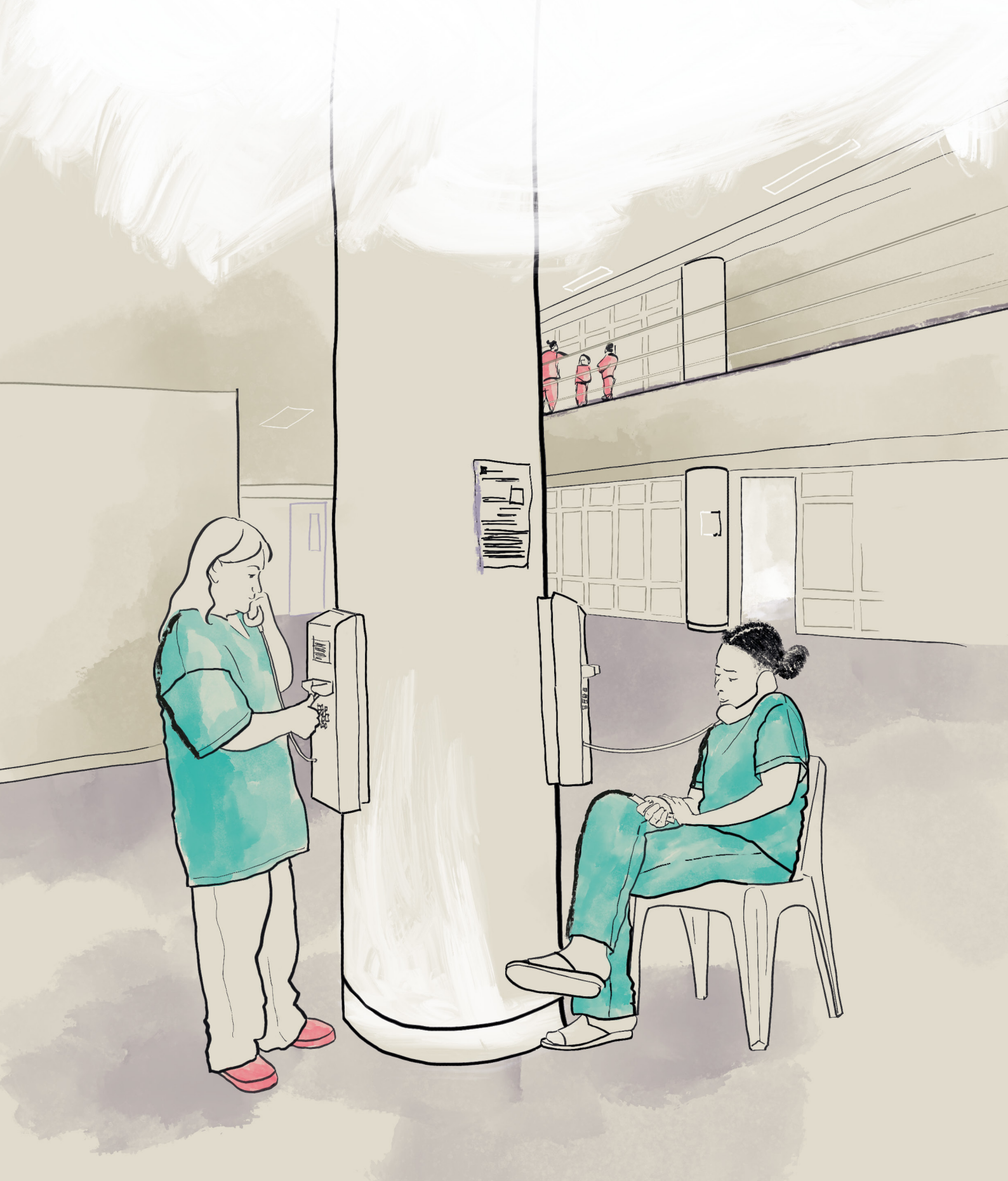
- On admission to prison, all women should be provided with written information, in a language they understand, on their rights to complain and procedures to make complaints to the prison director, to central prison authorities, to prison inspection bodies, judicial authorities or other competent authorities. The rules should also be explained orally to all women, especially to those who are illiterate.
- In order to ensure everyone understands all their rights and obligations, including their right to complain about their treatment, the relevant provisions of the prison rules and regulations may be printed in pamphlets, which can be given to people on admission to prison. Suitable illustrations of the rules and regulations can also be prepared and posted at strategic locations around the prison compound.
- In countries with several languages, these posters and pamphlets should be available in the local languages. In countries or prisons with significant populations of foreign nationals in prisons, such pamphlets, posters and information materials should also take account of the language needs of the foreign nationals.
- Complaints submitted to the central prison administration, judicial and other independent bodies should not be subject to censorship. There should be in place mechanisms and safeguards to ensure the confidentiality of such complaints.
- People in prison should never be intimidated to prevent them from filing any complaints they may have about the prison system.
- Prison administrations should develop clear policies and procedures with regard to the correct response to complaints of abuse by all people in prison, including sexual abuse by women, and staff should be trained in implementing the policies.
- If a woman in prison complains of abuse, her complaint should never be regarded as frivolous or groundless. Alleged sexual abuse is a very serious complaint, which may amount to ill-treatment or torture, depending on the case, and requires an independent investigation of the complaint in all cases. Independent investigation means that it should be carried out by judicial or other competent authorities (e.g., a parliamentary body) which is independent of the prison administration and the ministry responsible for prisons.
- Women in prison who report abuse should be provided immediate protection. Such protection measures may include a leave of absence of the alleged perpetrator, if a prison officer, while the investigation is taking place. It is not advisable to transfer the woman to another prison, as this would almost certainly mean that she would be taken further away from her home, given the small number of women’s prisons in most countries. Segregation is also not advisable, unless specifically requested, as this can be perceived and experienced as a punishment. If the woman complains of intimidation to withdraw her complaint or any form of retaliation, her complaints should be taken seriously and immediately addressed.
- In order to protect women against any intimidation or retaliation, there should be clear policies and mechanisms in place to employ disciplinary measures against prison staff that try to or do retaliate, and it should be made very clear to all prison staff that such conduct will not be tolerated.

²⁸² CPT, *Factsheet Women in Prison*, CPT/Inf(2018)5, January 2018, p. 1.

- Women should be offered and given access to counselling during this time, by independent, qualified healthcare professionals, such as psychologists with experience of dealing with cases of gender-based violence.
- Women in prison who have been subjected to sexual abuse and especially those who have become pregnant as a result, should be given immediate access to qualified medical professionals so that they can discuss their pregnancy and options available to them. Such medical support can best be provided by community health services, specialising in sexual and reproductive healthcare. See [Rule 6\(e\)](#) for further guidance on conducting medical examinations of women who have been raped or been subjected to other forms of abuse, including women’s right to confidentiality.
- Where appropriate, women who have been raped should be offered post-exposure prophylaxis (PEP), if also available in the community (see also [Rule 14](#)).
- If a woman who has been abused wishes to take legal action, states should ensure that she has access to legal aid.
- States should ensure that all official bodies responsible for the inspection of places of detention where women are held include female members. Indeed, effort should be made to include more women than men on inspection bodies which are responsible exclusively to examine places of detention where only women are being held. Where necessary legislative provisions on prison inspections should be reviewed and revised to include this requirement.
- Independent bodies which carry out the monitoring of places of detention should also ensure that their membership includes a sufficient number of women. For example, in countries where National Preventive Mechanisms (NPMs) have been established, following the ratification of Optional Protocol of the Convention against Torture (OPCAT), there is a need to ensure that NPMs include female members.
- Female members of all inspection and monitoring bodies should have the suitable background and qualifications to fulfil their responsibilities effectively (e.g., psychologists, social workers, doctors and legal specialists).

Chapter 6

Contact with the outside world



Contact with the outside world

➔ Rules 26 to 28

Contact with the outside world is covered in Rules 58-63 of the Nelson Mandela Rules which provide for written and electronic correspondence with family and friends, visits and access to news. The Bangkok Rules on contact with the outside world recognise the extremely harmful impact of isolation from families and communities on women in prison, especially where children are involved, and the challenges faced in maintaining contact with families and other loved ones, given most women are held far away from their homes. The Bangkok Rules also take account of the needs of children to keep in contact with their mothers, which is a topic that is not addressed in the Nelson Mandela Rules.

An important aspect of the Bangkok Rules is the requirement for women's access to legal counsel and the assistance that should be provided by prison authorities to enable such contact, expanding on the provision of access to legal representatives in Rules 61, 119 and 120 of the Nelson Mandela Rules. The Bangkok Rules are consistent with the Body of Principles and Basic Principles on the Role of Lawyers,²⁸³ both of which require all categories of people in prison to have access to legal counsel, as further discussed below.



Rule 26

Women prisoners' contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.



Why it is important

Family contact

The legal basis for the protection of the family unit can be found in the ICCPR, Article 23, which provides:

"1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

This requirement is reflected in Rule 58(1) of the Nelson Mandela Rules, which provides for people in prison to be allowed "under necessary supervision, to communicate with their family and friends at regular intervals", both by means of written and electronic correspondence and by receiving visits.

A large majority of women in prison have children outside prison and a great emotional need for regular contact with their children. The children also have the right and need for contact with their mothers, except for exceptional circumstances where this is not in the best interests of the child. In this context, the Human Rights Council Resolution on the Rights of the Child, adopted in March 2012, calls upon states:²⁸⁴

²⁸³ OHCHR, *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990; UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, A/RES/43/173, 9 December 1988.

²⁸⁴ Human Rights Council, *Resolution Rights of the child*, A/HRC/RES/19/37, 23 March 2012, para. 69(c).

“To provide children of persons accused or convicted of offences with access to their incarcerated parents or parental caregivers throughout judicial proceedings and the period of detention, including regular and private meetings with the prisoners, and, wherever possible, contact visits for younger children, subject to the best interests of the child, taking into account the need to ensure the administration of justice.”

Visiting arrangements is one of the areas in which women in prison are usually discriminated against due to the smaller number of women’s prisons, resulting in women often being held further away from their homes than men. The situation can be particularly problematic in large countries, where huge distances need to be covered to reach the small number of women’s prisons.

This discrimination is compounded by the fact that women have a very strong need for regular contact with their families and especially their children. When such contact cannot be maintained, women’s mental wellbeing can be damaged and their prospects for social reintegration undermined.

To eliminate this discrimination, to the extent possible, Rule 4 of the Bangkok Rules obliges states to take appropriate measures to ensure that women are not located far away from their homes.

The Rule also draws attention to the need for prison authorities to take measures to reduce the impact of separation from families and other loved ones, by introducing flexibility in the application of prison regulations and rules which apply to visits and other means of communication, to compensate for the disadvantage faced by most women.

Access to legal counsel

The ICCPR, Articles 9(3) and 14 set out the key safeguards and guarantees applicable during pre-trial, trial and appellate stages, as a crucial component of the right to a fair trial. Indigent people in prison or pre-trial detention are entitled to legal counsel provided by state authorities, free-of-charge, when the interest of justice so require.

The Body of Principles and Basic Principles on the Role of Lawyers, both require that all people in prison, whether pre-trial or sentenced, are given access to legal counsel:

Basic Principles on the Role of Lawyers:

“7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

Body of Principles:

“3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.”

Regional instruments which highlight the right to legal aid include: European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6, para. 3 (c)); the American Convention on Human Rights (Article 8, para. 2); the Arab Charter on Human Rights

(art. 16); and the African Charter on Human and Peoples' Rights (Article 7, para. 1(c)), together with the United Nations Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa of the African Commission on Human and Peoples' Rights.²⁸⁵

Prompt access to a lawyer constitutes an important counterweight to the vulnerability of persons in custody and provides a fundamental safeguard against coercion and ill-treatment.

The UN Legal Aid Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems²⁸⁶ recognise that certain groups are entitled to additional protection or are more vulnerable when involved with the criminal justice system, and provide specific provisions for women, children and groups with special needs. For instance, Principle 13 requires legal aid providers to possess necessary qualifications (education, training, skills and experience) that are commensurate with rights and needs of women, children and groups with special needs.

Women encounter specific obstacles and unique challenges in accessing justice.²⁸⁷ In most societies, women need particular assistance in accessing legal counsel due to their relatively lower educational, social and economic status, and vulnerability to intimidation and coercion. Recognising the specific circumstances and needs of women, Rule 26 of the Bangkok Rules adds additional responsibilities on prison authorities to provide women with special assistance.

The Beijing Declaration and Platform for Action (Article 63(a)) calls on governments to "ensure access to free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty".²⁸⁸ Prison authorities have a crucial role to play in reducing the vulnerability of women in the criminal justice system by providing them with information about their legal rights, by enabling their access to lawyers or paralegal services, by providing facilities for meetings with lawyers, and, if required, interpretation services. NGOs and paralegal aid services also have a key role in assisting indigent women in the criminal justice system, especially in countries and communities where legal aid may be limited or unavailable.

Although the requirement to access legal counsel is certainly more acute in pre-trial detention, including during any appeals, women who have already been convicted may also need legal assistance, to help in applying for commutation or pardon, if they are under sentence of death, or in gaining early conditional release, depending on their circumstances. In addition, communication between people in prison and their lawyers is not necessarily confined exclusively to the case which forms the basis for their imprisonment. People in prison may need to contact lawyers in relation to other matters, some of which may be linked to their imprisonment – such as issues relating to their spouses (such as divorce) and their children, or housing, employment or other issues.

Assisting women with access to legal counsel at all stages of their detention and imprisonment is also key to respecting the rights of any children involved, who are directly and acutely effected by their mothers' imprisonment and whose safety and best interests should be protected at all times.

The CEDAW Committee has outlined some of the particular challenges to women's access to justice: "the centralization of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to access them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to quality, gender-competent legal advice, including legal aid, as well as the deficiencies often noted in the quality of justice systems (gender-insensitive judgments/decisions due to the lack of training, delays and excessive length of proceedings, corruption, etc.) all prevent women from accessing justice."²⁸⁹

²⁸⁵. See more on international and regional standards at UNODC and UNDP, *Global Study on Legal Aid, Global report*, 2016, pp. 14–22.

²⁸⁶. UNODC, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 2013, adopted by UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, A/RES/67/187, 28 March 2013 (adopted on 20 December 2012).

²⁸⁷. UN Women, UNDP, UNODC and OHCHR, *A Practitioner's Toolkit on Women's Access to Justice Programming, Module 4: Women in Conflict with the Law*, 2018, pp. 7–8, also as outlined in UNODC, *Handbook on Ensuring Quality of Legal Aid Service in Criminal Justice Processes*, 2019, pp. 64–65.

²⁸⁸. *Beijing Declaration and Platform of Action*, adopted at the Fourth World Conference on Women, A/CONF.177/20(1995), 27 October 1995, and A/CONF.177/20/Add.1(1995).

²⁸⁹. CEDAW, General Recommendation No. 33.



Putting it into practice

Within the framework of a gender-sensitive prison management approach, prison authorities should develop policies which may include some or all of the following.

Family contact: legislative measures

- Prison regulations or rules should be reviewed and revised either to increase the number of visits, letters, telephone and, where available, video calls women are allowed, or to ensure that prison authorities have the authority to increase them at their own discretion.
- Prison regulations or rules should be reviewed and revised to ensure that prison authorities have the authority to grant prison leave to the greatest extent possible on medical, educational, occupational and family grounds; and that they can do this as soon as and as frequently as possible, following imprisonment, taking into account risk factors and family circumstances related to the person concerned.²⁹⁰

Family contact: practical measures

- Prison authorities should encourage visits to women in prison, and where possible assist with transportation, especially where visits to mothers are concerned. They should never charge for prison visits.
- Prison authorities should establish visiting rooms which facilitate informal communication in a pleasant and comfortable environment. Both people in prison and their visitors should have access to sanitary facilities and children should have play areas.
- If people in prison have access to telephones, prison authorities may increase the telephone calls women in prison are allowed to make to their families, if they are unable to visit due to the long distance. If people in prison do not have access to telephones, efforts should be made to enable such access.
- Prison authorities may allow the extension of the length of visits, when families confront difficulties in visiting due to the long distances involved, lack of resources and transport.
- Prison authorities may provide overnight accommodation for families traveling a long way, free-of-charge.
- Prison authorities can develop cooperation with social services and NGOs to assist with contact between women in prison and their families.
- In parallel to efforts to maintain links with families, prison authorities should consult fully with people in prison, and especially victims of domestic violence and other forms of abuse, to determine who can visit them. Family members should not automatically be allowed to visit, without consultation with the imprisoned person concerned (see [Rule 44](#)).

Access to legal counsel

- Prison authorities should ensure that the information provided to women on admission to prison includes written information about their right to access legal counsel, with contact details of legal aid and paralegal aid services, as applicable. Prison authorities should explain this information orally to those who are illiterate. Such information should be provided in the languages most commonly spoken among the prison population and interpreted where required (see also [Rule 2\(1\)](#)).
- Prison authorities should ensure that facilities are provided for women to meet with their legal representatives in private and provide interpretation services where required.

²⁹⁰. As also recommended by CoE, *Recommendation No. R(82)16 of the Committee of Ministers to Member States on Prison Leave*, 1982, 1 and 2.

- Prison authorities should also assist women to contact relevant NGOs and paralegal aid services to assist women in the criminal justice system, especially in countries and communities where legal aid may be limited or unavailable.
- In countries where there are insufficient of lawyers to provide legal representation, the UN Legal Aid Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems set out a range of measures by which an effective system of legal aid can be established, including through legal representation, paralegals, and partnerships with non-state providers, including NGOs and other service providers.²⁹¹



PROMISING PRACTICE

A joint project by UNODC/UN Women and OHCHR, aims at enhancing access to justice for women in Liberia, Senegal and Sierra Leone. It focuses on improving the situation of women who are at particular risk of being “left behind”, namely women who have experienced violence and women in the criminal justice system, whether as victims, witnesses, accused or prisoners. It promotes gender equality and social inclusion by promoting measures to close important legal and practical gaps that prevent women from accessing the criminal justice system on an equal footing with men, due to existing obstacles in access to legal aid. All project activities pay specific attention to the multiple and intersecting forms of discrimination affecting some women even more than others (e.g., older women, women with disabilities, indigenous or minority women, etc.).²⁹²



Rule 27

Where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men.



Why it is important

Conjugal visits allow people in prison to be visited by one person, usually a spouse or a long-term partner, for a period of up to three hours (or longer). The couple spend the visit in private in a small unit which contains, as a minimum, a bed and a shower with other sanitary facilities.²⁹³ Less formal versions of such visits take place in some countries of Latin America.²⁹⁴

Rule 58(2) of the Nelson Mandela Rules provides that “Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.”

In addition to the disadvantage faced by most women due to their accommodation far away from their homes, in some countries where conjugal visits are allowed, women encounter further discrimination, in that they are not allowed such visits on an equal basis as men due to fears of them becoming pregnant and lack of facilities for accommodating mothers and babies.²⁹⁵

²⁹¹ PRI, *Briefing on the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 2013. Further guidance on legal aid in criminal justice can be found at: www.unodc.org/unodc/en/justice-and-prison-reform/cpcj-tools-legal-aid.html.

²⁹² UNODC, *Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes, Practical Guidance and Promising Practices*, 2019, p. 67.

²⁹³ Andrew Coyle and Helen Fair, *A Human Rights Approach to Prison Management*, Third Edition, Institute of Criminal Policy Research and ICRC, 2018, p. 106.

²⁹⁴ *Ibid.*

²⁹⁵ See for example Natasha Maria Wangen Krahn et al., ‘Conjugal Visits in the Context of Incarceration of Women and Girls in the State of Bahia, Brazil: Permissions, Prohibitions and (In)Visibilities’, *Oñati Socio-Legal Series*, Volume 10, Issue 2, 2020.

Such policies constitute discriminatory treatment. It denies the right to private and family life not only to the woman in prison, but also to her partner, and the impact may be permanent in that it may de facto deprive women of having children altogether – particularly for those serving long or life sentences.²⁹⁶ The right to conjugal visits should apply equally to all relationships regardless of legal status.²⁹⁷

Conjugal visits are recognised as good practice, as they can help maintain the close emotional bonds between partners and spouses, allowing for a limited normalisation of relationships and the maintenance of family links, despite the limits placed on family life by the imprisonment of one partner.

The CPT has recommended that women in prison should be offered the possibility of conjugal visits on an equal footing with men,²⁹⁸ and stated the importance that visits with spouses, partners or other close relatives be facilitated even where such persons are also imprisoned, be it in the same or another facility.²⁹⁹



Putting it into practice

Legislative measures

- In countries where conjugal visits are allowed, the relevant prison-related legislation, including the prison regulations, should be reviewed and, where necessary, revised to allow women in prison to have the right to receive conjugal visits on an equal basis with men.

Practical measures

- Prison authorities should establish accommodation suitable for conjugal visits in women's prisons, with a bed, bedding, sanitary facilities, table and chairs, and a pleasant, non-institutional environment, where women can spend time with their spouses or partners in private.
- Prison authorities should ensure that the prison regime allows for women to enjoy their right to conjugal visits, in practice, on the same basis as for men.
- All couples and individuals have the right to decide freely and responsibly the number, spacing and timing of their children. However, it is good practice, if requested, to provide condoms and other contraceptives to avoid unwanted/unplanned pregnancies and to prevent transmission of STIs.



Rule 28

Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.



Why it is important

The Nelson Mandela Rules provide for regular contact between people in prison and their families, via visits and other means, but do not specify the conditions of visits, including whether they should be open or closed (i.e., allowing physical contact between the person in prison and their family or not).

²⁹⁶ PRI and University of Essex, *Essex paper 3, Initial guidance on the interpretation and implementation of the Nelson Mandela Rules*, 2017, p. 49, as referenced in OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, para. 60, p. 127.

²⁹⁷ The ECtHR has interpreted the right to private and family life as not confined to legally acknowledged relationships. See for example: *Keegan v. Ireland*, 26 May 1994, Series A no. 290, pp. 17–18, para. 44; *Kroon and others v. The Netherlands*, Application no. 18535/91, Judgment of 27 October 1994, para. 30; *Mikulic v. Croatia*, Application no. 53176/99, 7 February 2002, para. 51.

²⁹⁸ CPT, *Factsheet Women in prison*, CPT/Inf(2018)5, 2018; CPT, *Report to the Slovenian Government on the visit to Slovenia from 31 January to 8 February 2006*, CPT/Inf(2008)7, 15 February 2008, para. 87.

²⁹⁹ *Ibid*; CPT, *Rapport au Gouvernement de la République française relatif à la visite effectuée en France du 17 au 21 juin 2002*, CPT/Inf(2003)40, 16 December 2003, para. 53; CPT, *Rapport au Gouvernement de la Roumanie relatif à la visite effectuée en Roumanie du 5 au 17 juin 2014*, CPT/Inf(2015)31, 24 September 2015, para. 105.

It is especially important that mothers in prison should be given the opportunity to maintain bonds with their children on the outside. Visits between mothers and children should always allow physical contact, and as much privacy as possible.³⁰⁰ Screens or physical barriers should not separate them.

If possible, visits between mothers and children should last for a whole day and whenever possible, women should be allowed to leave prison for short periods to be with their families.

In many countries around the world, the conditions of visits are extremely poor. For example, in some countries people in prison and visitors are separated by a wire mesh and have to shout at each other to be heard, due to the distance between them and because of other visitors trying to make themselves heard at the same time. In most systems, people in prison can only see their visitors through a glass panel and talk to them via a telephone, without any contact, even where children are involved. These precautions are not necessarily based on individual security risk assessments.

Such practices do not generate a positive visiting experience and undermine the purpose of visits, which should be to encourage and maintain contacts between families and people in prison. In the case of mothers and their children, this is all the more important, since children may be traumatised by a negative visiting experience, if they cannot touch their mothers and be reassured of their mother's affection via close contact. Environments that are not child-friendly are likely to have a negative impact on a child's experience of the visit.

As the commentary to this Rule notes,³⁰¹ a pleasant visiting experience will not only have a positive impact on the mental and emotional wellbeing of the mother and her children, but also encourage further contact, affecting the social reintegration prospects of women in prison. The implementation of this rule also ensures that the rights of children are protected and promoted in line with CRC Article 9, para. 3.



PROMISING PRACTICE

As of 2015, all Finnish prisons are required to have special visiting rooms for children who come to see their parent, where children are allowed physical contact with their parents. Imprisoned parents can also apply for special 'family visits,' up to a few days in length, which take place in rooms that resemble a living room, with a table, a couch and toys for children and their parents to play with.³⁰² Finland's Vanaja Open Prison has a separate family house, where the family meeting can be arranged, if necessary, for a period of several days. Family houses contain four apartments of different sizes.³⁰³



Putting it into practice

Legislative measures

- Prison regulations and rules should be reviewed and, where necessary, revised to allow for physical contact during visits involving children of women in prison.

Practical measures

- Staff should be specially trained for conducting visits in an atmosphere of human dignity.
- Visits involving children should take place in an environment that is child-friendly in terms of the physical surroundings and staff attitudes. The visiting room should be furnished and decorated to create a warm environment. Play areas should be established for visiting children to make the visit less intimidating for the child, while enabling parents to have some privacy.

³⁰⁰. Human Rights Council, *Rights of the child*, A/HRC/RES/19/37, 23 March 2012, para. 69(c).

³⁰¹. Bangkok Rules, Commentary to Rule 28.

³⁰². Children of Prisoners Europe, *Implementation guide: Italian memorandum of understanding on children with imprisoned parents*, 2018, p. 20.

³⁰³. EuroPris Family Relations Expert Group, *Good Practice Collection Family Relations*, 2017, p. 5.

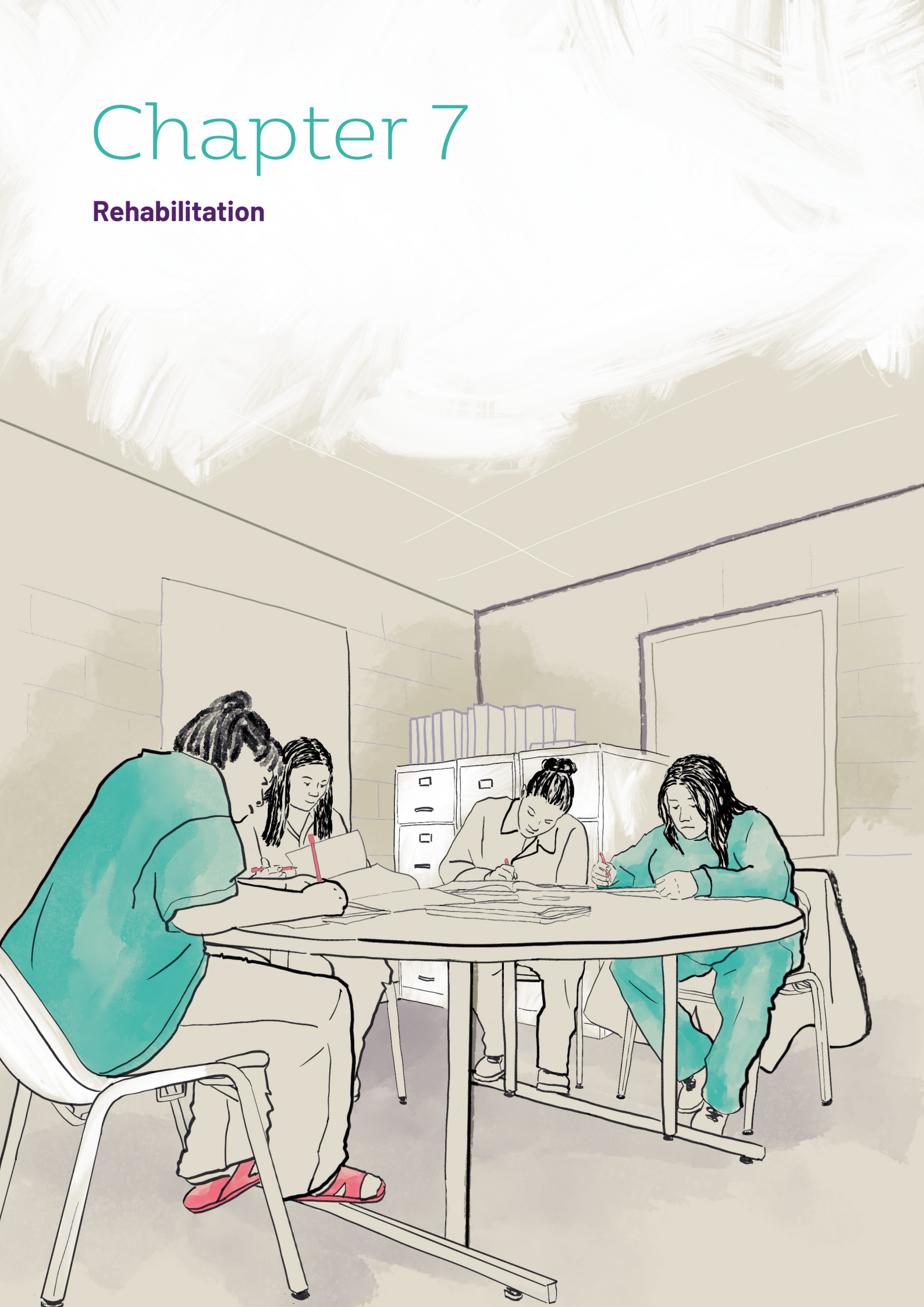
- Children may be tired and restless during visits, especially if they have travelled long distances and have to wait for extended periods before they can see their mothers. Staff should show understanding.
- The CoE has recommended that a designated children’s space be provided “in prison waiting and visiting rooms (with a bottle warmer, a changing table, toys, books, drawing materials, games, etc.) where children can feel safe, welcome and respected” in an “environment conducive to play and interaction with the parent”.³⁰⁴ It has further proposed that children leave the visiting room before the imprisoned parent, that any clothes provided by prison authorities for the parent respect their dignity, especially during visits with children, and that visits in the vicinity of the detention facility be considered, with a view to promoting child-parent relationships in as normal a setting as possible.³⁰⁵

304. CoE, *Recommendation CM/Rec(2018)5 of the Committee of Ministers concerning children with imprisoned parents*, 4 April 2018, para. 20.

305. *Ibid.*, paras. 20-24.

Chapter 7

Rehabilitation



Rehabilitation

➔ Rules 40 to 47

Rules applicable to people serving a prison sentence, which include all the Rules which relate to rehabilitation of people in prison, are contained in Part II of the Nelson Mandela Rules, under the heading of 'Rules applicable to special categories/ Section A. Prisoners under sentence'. This section begins with a list of guiding principles that are fundamental to the treatment of people serving a prison sentence, which underline that prison systems and other agencies should ensure:

"Preparation for release and gradual reintegration of people in prisons combined with effective social aid (Rule 87)

Re-socialisation and social rehabilitation of detainees with the assistance of community agencies (Rule 88)

Individualisation of treatment and a flexible system of classification that provides varying degrees of security according to their needs (Rule 89)

Efficient post-release support and aftercare aimed at reducing societal stigma and promoting social rehabilitation of people following release (Rule 90)"

The subsequent Rules in this section provide details on how these principles should be put into practice in relation to treatment in prison, education and recreation, access to remunerated and meaningful work, maintenance of social relations and assistance with aftercare. It must be emphasised that while all of these provisions apply particularly to people serving a prison sentence, this does not mean that people in pre-trial detention should not be offered work, education and access to other regime activities. People in pre-trial detention often spend long periods of time deprived of liberty; being denied access to education, work and other prison programmes, if they wish to participate, is discriminatory and undermines the rehabilitative purpose of imprisonment.

Rules concerning the rehabilitation of women in prison in the Bangkok Rules are similarly placed in Part II 'Rules applicable to special categories / Section A. Prisoners under sentence' and supplement the Nelson Mandela Rules by employing a gender perspective, taking into account the specific social reintegration requirements of women in prison outlined in previous chapters. Again, it should be emphasised that regime activities that are accessible to women serving a prison sentence, should also be offered to women in pre-trial detention.

10 KEY PRINCIPLES FOR GENDER-SENSITIVE REHABILITATION PROGRAMMES³⁰⁶

01. Part of a national strategy for rehabilitation
02. Community and prisoner driven
03. Supported by staff and managers
04. Gender responsive
05. Individualised
06. Holistic
07. Based on market needs
08. Sustainable and consistent
09. Good quality
10. Evidence-based

³⁰⁶ For full details, see PRI, "Guide to the rehabilitation and social reintegration of women prisoners" (2019) at www.penalreform.org/resource/guide-to-the-rehabilitation-and-social-reintegration-of.

7.1 Classification and individualisation

➔ **Rules 40 & 41** (Supplements Rules 89, 93 and 94 of the Nelson Mandela Rules)



Rule 40

Prison administrators shall develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and implementation towards those prisoners' early rehabilitation, treatment and reintegration into society.



Rule 41

The gender sensitive risk assessment and classification of prisoners shall: (a) Take into account the generally lower risk posed by women in prison to others, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women in prison;

(b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process;

(c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;

(d) Ensure that those with mental health care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.



Why they are important

Individual risk and needs assessments are a key component of the rehabilitation of people in prison and are essential for ensuring that people are housed in facilities that are equipped to meet their education and training needs, taking into account multiple social, legal, healthcare and other considerations. They are also crucial in establishing the level of security required and to reduce the risks of bullying, violence, exploitation, suicide or self-harm.³⁰⁷

Assessments of people in prison should be comprised of three different considerations: the risk a person poses, their individual needs, and sentence planning. The latter includes the activities (such as rehabilitation activities) that a person should undertake during their sentence. To be effective, assessments should involve the person concerned and be regularly reviewed and updated

In many prison systems, assessments focus too heavily on the risk a person poses, at the expense of factors such as mental health, previous abuse, family circumstances and educational ability. As most prisons worldwide use the same classification tools for women and men, despite women's different needs and circumstances, women are often over-classified and subjected to higher levels of security than necessary by ignoring their backgrounds, profiles and gender-specific needs.³⁰⁸ Omitting essential information about a woman, such as a history of domestic violence, sexual abuse or parental responsibility, also reduces the possibility of providing suitable programmes to meet individual needs.³⁰⁹

³⁰⁷ PRI and TIJ, *The rehabilitation and social reintegration of women prisoners*, 2019, p. 25.

³⁰⁸ UNODC, *Handbook on the Classification of Prisoners*, 2020, p. 26.

³⁰⁹ Bangkok Rules Commentary.

As the majority of women in prison have committed comparatively low-level offences, they could be detained under relatively less strict security levels, which would facilitate their social reintegration.³¹⁰

Rule 89 of the Nelson Mandela Rules emphasises that people who have been assigned to different groups should be housed in separate prisons suitable for the treatment and varying degrees of security of each group. In line with the principle that people should be subject to the minimum security measures necessary for their secure custody, it also states that open institutions, since they rely only on self-discipline to prevent escape, provide the conditions most favourable to rehabilitation for carefully selected individuals.

Sentence plans are the foundation of rehabilitation programmes and are designed to address the reasons why people came into contact with the law. They can include training programmes as well as access to substance dependence programmes, and can focus on issues such as personal relationships, family reconciliation and anger management.

Rule 94 of the Nelson Mandela Rules provides that, "...as soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment should be prepared for him or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions."

Risk assessments often wrongly perceive an individual's needs as 'risk factors'. For example, a person who displays symptoms of depression or another mental health issue can receive a higher-security classification which can lead to greater isolation. Instead, mental health issues would be better addressed through a holistic programme of treatment and support in a lower-security setting. This is a common problem in women's prisons because of high rates of mental health issues among women in prison.

It is challenging for prison administrators to manage people with mental health needs. Early identification of mental health needs, upon admission through screening, as part of assessment and classification, and the provision of adequate mental health services are vital, especially for those at risk of suicide and self-harm, or who may be vulnerable to victimisation in prison.



Putting them into practice

- Prison administrators should develop and implement gender-sensitive risk assessment and classification methods addressing the gender-specific needs and circumstances of women in prison, including their unique profiles, backgrounds, and pathways to offending.
- Such tools and methods should be developed by a team of qualified specialists, including social workers, psychologists and medical specialists, and be used to undertake the risk assessment of all women being admitted to prison. The tools should take account of the backgrounds of women in prison, the types of offences they commit, the high level of mental healthcare needs among women due to past victimisation, high levels of substance dependence, parental and other caring responsibilities.
- The tools and methods should ensure that all medical assessments are undertaken only by healthcare staff, who should comply with the principle of medical confidentiality (see Rule 8). Healthcare staff may, however, share limited information with the prison director and staff responsible for developing sentence plans, on a "need-to-know" basis, in order to ensure that a woman's sentence plans matches her needs.
- Prison authorities should allocate women to prisons or sections of prisons which match their risks and needs, based on the principle of accommodating all women in the least restrictive environment and lowest security level necessary, taking into account the generally low risk posed by women in prison, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women in prison.

³¹⁰ UNODC, *Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders*, 2018, p. 94.

- In developing sentence plans for women in prison, prison authorities should take into account the women's backgrounds, including any forms of violence they may have experienced, existence of any mental healthcare needs or substance dependence, as well as parental and other caretaking responsibilities.
- Prison authorities should house women with mental healthcare needs in accommodation which is at the lowest possible security level. Their sentence plan should include appropriate, individualised treatment, delivered by qualified mental healthcare specialists in close cooperation with community healthcare services. Women with serious mental health needs should be transferred to psychiatric or other medical facilities for specialised treatment and care.³¹¹



PROMISING PRACTICE

Recognising that women have very different pathways to prison than men and that traditional assessment tools are male-oriented, the Women's Risk Needs Assessment (WRNA) was developed in the US by the National Institute of Corrections in cooperation with the University of Cincinnati. The WRNA comprises gender-responsive risk and needs assessment tools designed to respond to the specific needs of women in criminal justice systems, taking into account their distinct biological, social and psychological attributes. They include a case file review, a semi-structured interview, a written survey and a case management treatment plan tailored to women. Overall, the WRNA has been effective at predicting women's recidivism and other re-offending behaviour, indicating that the WRNA is a valid tool for classifying adult women in prison. Specifically, items on the WRNA showed statistically significant positive correlations with measures of re-incarceration, technical violations, new arrests, and new convictions.³¹²

7.2 Prison regime

➔ **Rule 42** (*Supplements Rules 91, 92, 95-105 of the Nelson Mandela Rules*)



Rule 42

1. Women prisoners shall have access to a balanced and comprehensive programme of activities, which take account of gender appropriate needs.
2. The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.
3. Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.
4. Particular efforts shall be made to provide appropriate services for women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.

³¹¹. UNODC, *Handbook on the Classification of Prisoners*, 2020, p. 30.

³¹². See 'The Women's Risk Needs Assessment: Putting Gender at the Forefront of Actuarial Risk Assessment', Breanna Boppre and Emily Salisbury for *Penal Reform International*, 12 April 2016, www.penalreform.org/blog/womens-risk-needs-assessment-putting-gender-forefront-actuarial.



Why it is important

Women face specific barriers in accessing programmes and services in prisons and there are often limited rehabilitation opportunities available to them. Programmes that do exist are often heavily gendered and do not cater for the specific backgrounds and rehabilitation needs of women. Women in prison also face specific challenges after their release from prison.

This Rule supplements the requirements in the Nelson Mandela Rules to develop individualised rehabilitation programmes for all people in prison. It explains that the prison regime in women's prisons should not only be comprehensive and balanced, but also respond to the specific needs of women in prison. This is an essential component of the normalisation principle, which requires that life inside prison should resemble as far as possible the positive elements of life outside the prison, and is essential to promote women's social reintegration, which is a requirement both of ICCPR (Article, 10(3)) and the Nelson Mandela Rules (Rule 4).

This does not mean that women should only be offered activities which are deemed to be suitable for women based on stereotypical perceptions, i.e., gender stereotyping (e.g., sewing and cooking). Rehabilitation should include a broad range of programmes, including physical and mental healthcare, substance dependence programmes, physical activities, counselling, psychosocial support, education and vocational training courses, creative and cultural activities, work opportunities, and regular access to well-stocked library facilities.

Vocational training and work programmes in prisons allow people to engage in constructive activities whilst gaining new skills for potential future work. This improves their ability to successfully reintegrate into society and can enhance safety and security in the prison environment. People who can engage in constructive activities in prison are generally less likely to be disruptive, and it can reduce levels of depression and other mental health issues.

Among the most important needs to take into account are the specific needs of pregnant women, nursing mothers and women with small children. Unless there is sufficient flexibility in the prison regime, women who are breastfeeding, for example, may not be able to participate in all the activities which would benefit them due to breastfeeding times. Similarly, unless there are childcare facilities in the prison, mothers with children in prison may not be able to participate.

The Rule underlines the importance of offering pregnant women, breastfeeding mothers and women with small children educational programmes to improve their knowledge about pregnancy and develop their parenting skills, taking into account that many women in prison may not have had an opportunity to receive such education, due to socially and economically disadvantaged backgrounds.

Holistic rehabilitation programmes are particularly important for pregnant women and women with children in prison. Many may leave prison with little or no family support and their childcare responsibilities may make it difficult for them to undertake additional training or find employment and suitable housing. Women leaving prison with their children are also likely to need help dealing with the physical and psychological impact of prison on their children, and in supporting them in adapting to life in the community.

The Rule also recognises that many women in prison have experienced violence or abuse,³¹³ and that their experience will negatively affect their prospects of social reintegration unless appropriate psychosocial support and counselling is provided.

³¹³ Morag Macdonald, 'Women prisoners, mental health, violence and abuse', *International Journal of Law and Psychiatry*, Volume 36, Issue 3-4, 2013; Prison Reform Trust, 'There's a reason we're in trouble' *Domestic abuse as a driver to women's offending*, 2017; Emily M. Wright et al., 'Gender-responsive lessons learned and policy implications for women in prison. A review', *Criminal Justice and Behavior*, Volume 39, Issue 12, 2012; Stephanie S. Covington and Barbara E. Bloom, 'Gender-responsive treatment and services in correctional settings', *Women and Therapy*, Volume 29, Issue 3/4, 2006.



PROMISING PRACTICE

The Change Hub Innovation Centre is a technology-focused rehabilitation programme for women at Langata women's prison in Nairobi, Kenya, which teaches women coding, web design, computer hardware maintenance and 3D printing. The programme is designed to help women access the increasingly technology-based economy on their release. The programme was designed to counter gender stereotyping in training and education opportunities for women in prison, and to give them the opportunity to work in the field of technology. Before the introduction of the Change Hub programme, most courses available to women in Langata prison were limited to those traditionally seen as appropriate, such as sewing and tailoring. The classes were set up in 2016 and are taught by university graduates. Participants in the programme attend classes three times a week and have the opportunity to be paid teaching assistants for the next group of students.³¹⁴



PROMISING PRACTICE

In Bolivia, UNODC, the Bolivian prison administration, and CECOPI (a local NGO), are running an initiative to train women in prison in the field of construction and related technical skills. The programme is designed to help the women acquire technical skills and strengthen their rights, self-esteem, entrepreneurial skills, and decision-making capacities. The project counters the gender stereotyping that leads to men in prison receiving skills in more profitable areas, such as accounting and mechanics, and women in less lucrative industries, such as the production of handicrafts. The initiative is being rolled out with an initial group of 50 women in prison, who are receiving training in a range of construction-related specialities, including building, metalwork, plumbing, pipefitting, carpentry and training to be electricians. Some of the women will subsequently become trainers to teach the skills they have learned to other women. After release, the women will receive support in joining the National Association of Women Constructors, which helps its members promote their services, find work opportunities, and develop their own business.³¹⁵



Putting it into practice

- A balanced and comprehensive programme of activities which respond to the specific needs of women in prison should include education programmes (at least literacy, primary and secondary school education) depending on individual needs, vocational training, meaningful and remunerated work, recreation and sport activities, as required by the Nelson Mandela Rules, as well as programmes that are particularly relevant to women in prison, such as programmes to develop parenting skills, education on gender-sensitive healthcare and pregnancy.
- The majority of people in prison – and women in particular – have multiple, overlapping needs and their successful rehabilitation is dependent on all of these needs being met. Rehabilitation programmes should address the reasons people came into contact with the law, including those that are specific to women in prison. To achieve this, programmes must be integrated and holistic, taking into account economic, social, physical and psychological factors. Programmes that equip people in prison with practical skills whilst at the same time providing therapeutic support can be particularly beneficial. Due to their backgrounds and the specific challenges they face in prison, women are particularly likely to benefit from counselling and psychosocial, cognitive and motivational programmes.
- Women who need psychosocial support or counselling due to experience of sexual violence or abuse should be offered counselling by qualified mental healthcare professionals from community healthcare services.

³¹⁴ PRI and TIJ, *The rehabilitation and social reintegration of women prisoners*, 2019, p. 16.

³¹⁵ PRI, 'The rehabilitation and social reintegration of women prisoners' (2019), p. 32 For more information, see 'Helping Bolivian women build their economic freedom', United Nations Office on Drugs and Crime, 9 October 2018, www.unodc.org/dohadecaration/en/news/2018/10/helping-bolivian-women-build-their-economic-freedom.html

- Other psychosocial support and therapy programmes may be offered in cooperation with community organisations, which may include art therapy, dance therapy or other types of group therapy programmes. Such programmes can empower women to express themselves and help them to gain self-confidence.
- Prison authorities should ensure that the prison regime is flexible enough to allow for the full participation of pregnant women, breastfeeding mothers or women with children in all activities on an equal basis with others. This would mean that, for example, a mother who needs to breastfeed her baby or a mother who wants to attend to her sick child, will be allowed to do these during scheduled activities, without any negative consequences.
- Where possible, and where there are a sufficient number of pregnant women and breastfeeding mothers, separate programmes may be arranged for them, to take account of their specific needs (see also Chapter 8).
- Childcare/nursing facilities should be established in women's prisons, as required by Rule 28 of the Nelson Mandela Rules, so that children accompanying their mothers can be cared for while their mothers participate in activities and programmes. Such facilities may be established in cooperation with NGOs. Mothers should be allowed to spend the maximum possible time with their children in such facilities.



PROMISING PRACTICE

A pilot project in Ayutthaya Provincial Prison in Thailand aims to create a gender-responsive pre-release programme that takes into consideration the profiles and backgrounds of women in prison and equips them with the ability to reintegrate back into society, overcoming some of the economic and cultural challenges that stem from their past marginalised backgrounds. The women attended five types of programmes, which aimed to support them during their reintegration:

- 1. Mental empowerment:** Therapeutic group-learning activities targeting mindfulness and mental stability as well as reintegration and reconciliation opportunities with family members prior to release.
- 2. Financial literacy:** Various activities targeting personal finance and debt management to teach participants how to manage savings and control or decrease debt most effectively.
- 3. Career planning:** Advisory sessions targeting knowledge related to job finding and entering the job market to guide participants on accessing different job channels, methods, and protocols as well as deciding one's career choice.
- 4. Business planning:** Classes and activities to understand the essentials of business planning and building an entrepreneur mindset
- 5. Aftercare support:** Providing necessary post-release support such as shelter, logistical help, job placements, skill training, and work programmes.

7.3 Social relations and aftercare

➔ **Rules 43 to 47** (*Supplements Rules 106-108 of the Nelson Mandela Rules*)



Rule 43

Prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration.



Rule 44

In view of women prisoners' disproportionate experience of domestic violence, they shall be properly consulted as to who, including which family members, is allowed to visit them.



Why they are important

These Rules complement Rule 26 on contact with families, emphasising in particular the key importance of visits in the social reintegration of women in prison.

Separation from family, and particularly from children, can be particularly detrimental to the psychological wellbeing of women in prison and impacts their future rehabilitation prospects. Meaningful interactions with family, friends and the community also help prepare women for life after prison, reduce the stigma of imprisonment, and motivate them to participate in rehabilitation programmes. Family visits close to the time of release are particularly important in helping women and their families make post-release plans. However, many women in prison have little meaningful contact with their families. There are many reasons for this, including the fact that women in prison are often ostracised by their families.

Whilst families are key to the resettlement of many people in prison, it should also be noted that, in some cases, family members may have had a role in the factors that led to imprisonment. Rule 44 is based on the recognition that a significant proportion of women in prison have experienced domestic violence, including sexual violence and rape, from male members of their families, partners or spouses, and being visited by the perpetrators of such violence is likely to cause distress and fear, rather than having a positive impact. Ensuring that women in prison are properly consulted as to who may visit them is an important consideration which is not explicitly covered by the Nelson Mandela Rules.



Putting them into practice

- Prison authorities may consider implementing some or all of the following measures to encourage and facilitate visits to women in prison:
 - Where possible, assisting with transportation, especially for visits to mothers;
 - Establishing special days where all families can visit together and initiating special events, which may be organised in cooperation with NGOs, with expenses covered by the prison administration;
 - Extending the length of visits when families confront difficulties in visiting due to the long distances involved, lack of resources and transport;
 - Providing overnight accommodation for families traveling a long way, free-of-charge;
 - Developing cooperation with social services and NGOs to assist with contact between women in prison and their families;
 - Developing other means of enhancing communication with families, such as via taped, videoed or e-mail messages.
- Different types of family visits³¹⁶ can be arranged by prison authorities to facilitate the social reintegration of women. Prison visits should always be free-of-charge for all people in prison.
- Prison Regulations and Rules should include the requirement to consult with women in prison when compiling lists of people who can visit them and this rule should be strictly applied in practice.

³¹⁶ For different types of visits, see OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, p. 119.

**Rule 45**

Prison authorities shall utilise options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.

**Rule 46**

Prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organizations, shall design and implement comprehensive pre- and post-release reintegration programmes which take into account the gender-specific needs of women.

**Rule 47**

Additional support following release shall be provided to released women prisoners who need psychological, medical, legal and practical help to ensure their successful social reintegration, in cooperation with services in the community.

**Why they are important**

Rule 90 of the Nelson Mandela Rules states that “The duty of society does not end with a prisoner’s release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him or her and towards his or her social rehabilitation.” This principle is further emphasised in Rules 107 and 108, which highlight the importance of maintaining relations with people or agencies in the community for rehabilitation, and the ways these agencies can provide assistance to people who have left prison, in close collaboration with each other and prison authorities, starting from the beginning of a person’s sentence.

Pre-release preparation and post-release support policies and programmes are usually developed to respond to the needs of men and rarely address the specific needs of women. Rule 46 of the Bangkok Rules underlines the need for relevant agencies and prison authorities to consider the gender-specific needs of women in prison in designing appropriate pre- and post-release programmes. As the commentary to Rules 45-47 notes,³¹⁷ although many problems women face during re-entry are similar to those of men, the intensity and multiplicity of their post-release needs can be very different. Women are likely to experience particular discrimination after release from prison due to social stereotypes, they might be rejected by their families and, in some countries, may lose their parental rights. If they have left a violent relationship, women will have to establish a new life, which is likely to entail economic, social and legal difficulties, in addition to the challenges of transition to life outside prison. Women are likely to have particular support requirements in terms of housing, reunification with their families and employment, and will need assistance.

As they are often the main caregivers in families, women can especially benefit from extra contact with their family as their release date approaches, including pre-release home leave schemes. Such schemes allow women to reconnect with their families, including their children, and put practical measures in place like employment or housing.

These Rules also draw attention to the specific support that women are likely to require in terms of legal, medical and psycho-social assistance.

Legal assistance may relate to divorce, trying to regain parental rights, to get housing and employment, among others.

³¹⁷ Bangkok Rules, Commentary to Rules 45-47.

Women are more likely than men to have been treated for a mental health problem in prison and may be in need of continued psychosocial support and counselling after release.³¹⁸

The high rate of substance use among women in the criminal justice system may also pose a significant obstacle to successful reintegration³¹⁹ and any treatment started in prison will need to be continued and the situation of released women monitored.

All of these factors need to be taken into account to ensure that the resettlement of released women is successful and that they are able to rebuild their lives in a positive manner following release.



Putting them into practice

- Prison services should consider establishing, if it does not exist, a special unit to support resettlement after prison. Such units should work in close cooperation with the families of detained persons, probation services, or relevant social welfare agencies and NGOs in the community to plan and prepare for women's release.
- In all cases the preparation for release should begin early, following the admission of a woman to prison, in order for women's sentence plans to take into account their post-release social reintegration requirements from the beginning of their sentence.
- Prison services should develop a policy and guidelines for women's preparation for release and post-release support, in cooperation with probation services, relevant social welfare, housing and healthcare agencies or community groups, NGOs working on prison or women's issues, and especially networks representing the voices of women with experience of imprisonment. The policy and guidelines should set out the typical challenges faced in the particular jurisdiction, areas in which women need special support and assistance during their resettlement, what measures can be taken to provide such support and which agencies and organisations are responsible or willing to assist in this process.
- Ministries responsible for justice/prisons, social welfare and healthcare should establish a budget and make funds available for the successful social reintegration of women, by providing the requisite financial support to the above-mentioned agencies. Basic assistance, such as medical care and housing assistance should be offered free-of-charge, taking into account the special needs of certain groups, such as older women or women with disabilities.
- As suggested for Rule 26, prison regulations or rules should be reviewed and revised to ensure that prison authorities have the authority to grant prison leave to the greatest extent possible on medical, educational, occupational and family grounds, as soon as and as frequently as possible following imprisonment, taking into account risk factors and family circumstances related to the person concerned.
- Prison authorities should in practice grant home leave to women in prison, as often as possible and as early as possible following their admission to prison.
- Prison authorities should transfer women to open prisons, halfway houses and other community-based programmes and services for people who have left prison, at the earliest possible opportunity, to enable women to gradually re-establish relationships and seek assistance with employment, housing and other practical or legal matters, in preparation for their eventual release.
- Women in prison should be provided with clear and comprehensive information in a language they understand, covering the support which they can receive following release and the agencies responsible. Where necessary, women should be referred to the relevant social welfare and housing agencies, directly by the prison service unit responsible for resettlement

³¹⁸. Ibid.

³¹⁹. For example, according to a study conducted in Canada, women in prison who did not participate in a drug treatment programme after their release were 10 times more likely to return to prison within one year than other prisoners. The researchers noted that women who use drugs were twice as likely to have unstable housing in the community, were less able to manage stress, were hospitalised more often for mental health issues and had higher recidivism rates than women who do not use drugs. Many of them had experienced trauma in their lives, such as childhood, physical or sexual abuse, or domestic abuse, which may have contributed to their substance abuse and mental health issues. See 'Higher return to prison for women without drug abuse programs', *EurekaAlert*, 31 May 2011, www.eurekaalert.org/pub_releases/2011-05/smh-hrt053111.php

and the women provided with the full list of appointments which have been made for them. As a minimum, financial assistance for transport should be provided to enable women to travel to their place of resettlement.

- Where necessary, the resettlement unit of the prison service should assist women in re-establishing contact with their families. Social welfare agencies or probation services should assist with rebuilding relationships, where necessary and desirable.
- Practical measures should be put in place to ensure that women who have been subjected to violence in their relationships or community do not have to return to the same house or community on release.
- Prison healthcare services should ensure that the principle of continuity of care is applied to women who are released from prison, similar to the application of this principle to women who are admitted to prison (see Rule 6). This means that any healthcare treatment received prior to admission is continued, as necessary, throughout imprisonment (subject to regular reviews) and after a woman is released from prison. Prison health services, which should ideally be integrated with public health services,³²⁰ should, in any case, work closely with healthcare services in the community to ensure that women who need to can continue any treatment, psychosocial, psychiatric or counselling support and care following release from prison.
- Prison healthcare services should refer such women (and their children, where necessary) to healthcare services in the community and provide them with all the necessary medical information, including the type and length of treatment the woman may have received during imprisonment, to the community healthcare services on a confidential basis and with the consent of the woman. Women should be informed about this procedure and be given a copy of their medical files.
- If a woman has a substance dependence, has received treatment for such dependence and requires continued treatment and monitoring, she should be referred to relevant drug treatment services in the community. In all cases women who have had dependencies should be monitored in the community, to ensure that they receive the support they require, to prevent a relapse following release.
- Women who require legal assistance should be provided with the contact details of legal aid services and relevant NGOs in a language they understand.



PROMISING PRACTICE

The Scottish Prison Service plan to build and operate Community Custody Units (CCU) to facilitate reintegration and resettlement of women into the community upon release from prison to help prevent reoffending. CCUs will focus on helping women rebuild and maintain links with their communities, families, and friends. Some of the services on offer would include health and leisure services, employment and voluntary services and dependency treatment services. Areas for location (Cornton Vale, Glasgow, Dundee) have been selected given proximity to local services and good transport links.³²¹

³²⁰ WHO, *Declaration on Prison Health as Part of Public Health*, 24 October 2003.

³²¹ 'Community Custody Units', Scottish Prison Service, www.sps.gov.uk/Corporate/Information/CommunityCustodyUnits.aspx [accessed 6 October 2021];

Frazer McCallum, *SPICe Briefing. Scottish Criminal Justice System: The Prison Service*, The Scottish Government, 13 June 2021.

Chapter 8

**Pregnant women, breastfeeding mothers
and mothers with children in prison**



Pregnant women, breastfeeding mothers and mothers with children in prison

➔ Rules 48 to 52

The Bangkok Rules supplement the Nelson Mandela Rules with more detailed guidance on particular support for women in prison who are pregnant, breastfeeding mothers and mothers with children, taking into account not only their healthcare and nutritional needs, but also the emotional and developmental needs of the children.

The Bangkok Rules also, for the first time, provide international standards on the decision-making process in relation to allowing children to stay with their mothers in prison, what type of treatment children should receive, and in relation to the removal of children from prison, which are sensitive and complex processes for countries to deal with in their prison-related policies.



Rule 48 *(Supplements Rule 28 of the Nelson Mandela Rules)*

- 1.** Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.
- 2.** Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.
- 3.** The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.



Why it is important

Alternatives to imprisonment should always be prioritised for pregnant women and those with young children (see [Chapter 1](#)). Rules in this chapter concern the limited cases when a prison sentence is deemed necessary for pregnant women, breastfeeding mothers and mothers with young children.

In relation to these women, the Nelson Mandela Rules require special accommodation for all necessary prenatal and postnatal care and treatment in women's prisons, for arrangements to be made wherever practicable for children to be born in a hospital outside the prison, and if a child is born in prison, this should not be mentioned in the birth certificate (Rule 28). The Revised EPR similarly state: "Arrangements shall always be made for prisoners to give birth outside prison. Where, nevertheless, a child is born in prison, the authorities shall provide all necessary support and facilities, including special accommodation." (Rule 34.4)

In view of the growing number of women, including pregnant women, breastfeeding mothers and women with children staying with them in prisons worldwide, this and other additional Rules included in the Bangkok Rules, introduce further important guidance to ensure that

the nutritional and other healthcare needs of pregnant women and breastfeeding mothers, as well as the developmental and healthcare needs of dependent children, are included in prison policies, programmes and budgets.

Globally, there is a general lack of adequate prison facilities, such as those with specific mother-child units or other special accommodation for prenatal, perinatal and postnatal care and treatment.³²² Healthcare services in prison are often under-resourced and understaffed and fall below the standard of healthcare women receive in the community, with imprisoned pregnant women rarely receiving adequate ante- and postnatal care.³²³

While Rules 5-18 of the Bangkok Rules provide more detailed guidance on healthcare provision for women and their children in prison – making it clear that the specific healthcare needs of women must not be limited to pre- and postnatal care (see Chapter 4) – Rule 48 provides more guidance on the medical and nutritional needs of pregnant women, breastfeeding mothers and mothers with children in prison.

The Rule also draws attention to a particular group of women whose needs may go unnoticed, but who also require post-natal support and care – those who have given birth shortly before their admittance to prison but whose children have remained outside. When a baby is not in prison with their mother the healthcare needs of the mother can easily go unnoticed. The significance of Rule 6(c) is highlighted here, where women are encouraged to provide information about their reproductive health histories, including any recent pregnancies, so that prison policies and programmes can provide for the postnatal care needs of these women.

The requirement to allow women who want to breastfeed their children to do so is important as breastfeeding is beneficial for the emotional and physical health of the child, as well as the mother. In any case, the principle of taking into account the best interest of the child, as required by CRC, should always be paramount, which means if there is no medical reason for a woman not to breastfeed her child, she should be allowed to do so.



Putting it into practice

- Prison authorities and prison healthcare services should develop policies and programmes to respond to the healthcare needs of pregnant women, breastfeeding mothers and children living with their mothers in prison and ensure that adequate financial and human resources are allocated to implement them.
- Pregnant women, breastfeeding mothers and other women who have recently given birth should be examined regularly by a qualified healthcare practitioner, who should draw up a programme of health and diet for each woman. The nutritional and other healthcare requirements should be provided by the prison authorities free of charge. The women should be given individual information about their healthcare plans and consulted as to their problems and needs.
- Written information should be provided to all pregnant women and women who have recently given birth on pregnancy, giving birth and healthcare following the delivery of the baby, including what they can do to improve their and their children's health and how to prepare for delivery. Such information should be provided in multiple languages, including those languages most frequently spoken among women in the particular prison, and should be explained orally to illiterate women.
- Prison authorities should ensure that pregnant women and breastfeeding mothers are accommodated in cells/dormitories with adequate hygiene and sanitary facilities, regular access to hot water, ventilation, fresh air and heating, and have access to regular exercise.

³²² Manfred Nowak, *UN Global Study on Children Deprived of Liberty*, 2019, para. 53.

³²³ UNODC, *Handbook for prison managers and policymakers on women and imprisonment*, 1st edition, 2008, p. 19.

**Rule 49**

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.

**Rule 50**

Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.

**Rule 51**

1. Children living with their mothers in prison shall be provided with ongoing health care services and their development shall be monitored by specialists, in collaboration with community health services.
2. The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

**Rule 52**

1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.
2. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.
3. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.



Why they are important

Millions of children around the world are affected by the imprisonment of one or both parents. Bangkok Rule 64 states that where possible non-custodial sentences are preferable for pregnant women and women with dependent children (see Chapter 1). The UN Global Study on Children Deprived of Liberty conducted in 2019 found that approximately 19,000 children per year accompany their primary caregiver, usually a mother, in prison.³²⁴ According to the study, this possibility is fraught with difficult considerations, beginning with the question of whether to permit the practice at all, given the adverse consequences of both exposing a child to detention and separating them from a primary caregiver.³²⁵ Since women are often the main or sole carers of children, this is a complex challenge faced in many countries.

Most countries limit the age up to which children can stay in prison with their mother to 2 to 6 years³²⁶ – the child's first or formative years, when bonding with their parent is important for their healthy development. The reality of prison overcrowding in many parts of the world, however, means that children end up living in poor conditions, with little or no access to health services or education facilities.³²⁷

Article 3 of the CRC states that "the best interests of the child shall be a primary consideration" in all actions concerning children undertaken by public or private authorities, and that states shall take all appropriate legislative and administrative measures to ensure the care and protection necessary for a child's wellbeing, taking into account the rights and duties of their parents or legal guardians. It further requires states to "ensure that the

³²⁴. Manfred Nowak, *UN Global Study on Children Deprived of Liberty*, 2019, para. 49.

³²⁵. *Ibid.*, para. 50, p. 11.

³²⁶. Manfred Nowak, *UN Global Study on Children Deprived of Liberty*, 2019, para. 52.

³²⁷. Committee on the Rights of the Child, *Day of General Discussion, Children of incarcerated parents, Report and recommendations*, 30 September 2011, p. 1.

institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

The CRC obliges states to ensure the rights contained in the convention for all children. Most relevant in this context are children right to registration at birth, healthcare and education, protection from abuse, children’s participation in decisions concerning them, and to special protection and assistance from the state when temporarily or permanently deprived of their family environment or unable to remain in that environment in their own best interests (Article 20(1)).

States therefore have a special duty to ensure that all children in their care, including accompanying their mothers in prison, enjoy all their rights under the CRC, with the exception of those that are unavoidable due to their loss, to a certain extent, of freedom of movement and choice in their daily lives.

The Human Rights Council Resolution on the Rights of the Child calls upon states:³²⁸

“To ensure that the best interests of the child should be a primary consideration in relation to the question of whether and how long children of imprisoned mothers should stay with them in prison and emphasizing the responsibility of the State to provide adequate care for women in prison and their children.”

In this context, the UNCRC, Day of General Discussion – Report and Recommendations also included the following recommendations:

“33. (...) the Committee recommends that decisions on whether the best interests of the child are better respected by having the child live with the incarcerated parent or outside the detention facility should always be made on an individual basis.

34. The Committee recommends that State parties ensure the provision of sufficient social services at an adequate quality, including, health and educational facilities, to children living with incarcerated parent(s).

37. The Committee recommends that State parties give due consideration to circumstance in which the best interests of the child may be better fulfilled by having him/her live with the incarcerated parent. In doing so, due consideration to the overall conditions of the incarceration context and particular need for parent-child contact during early childhood should be taken into full account. Furthermore, it is recommended that such decisions be made with the option for judicial review and with full consideration for the best interests of the child...”

The primacy of the child’s best interests is further elaborated upon in the UNCRC’s General Comment no.14, which makes specific reference to the best interests of children of incarcerated parents.³²⁹ It also refers to assessment and procedural safeguards for the evaluation of best interests of children (applicable to the decision whether to accompany mother in prison as well as when to be separated from her).

The UN Guidelines for the Alternative Care of Children provide detailed guidance to policymakers, legislators and practitioners on making alternative care arrangements for children who cannot remain with their mothers in prison or who are being considered for removal from prison, based on the principle of promoting and protecting the best interests of the children.³³⁰

At the regional level, Article 30 of the ACRWC ensures “special treatment” for pregnant women and mothers who are accused or convicted of criminal offences, and states “the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation”.³³¹

³²⁸. Human Rights Council, *Rights of the child*, A/HRC/RES/19/37, 23 March 2012, para. 69(b).

³²⁹. Committee on the Rights of the Child, *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), CRC/C/GC/14, 29 May 2013, paras. 28 and 69.

³³⁰. UN General Assembly, *Guidelines for the Alternative Care of Children*, A/RES/64/142, 24 February 2010 (adopted on 18 December 2009), paras. 57-58.

³³¹. PRI, *Justice for Children Briefing No 3: Children with Parents in Conflict with the Law*, 2012.

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) General Comment No.1 on children of incarcerated and imprisoned parents and primary caregivers which reiterates many of the principles in the Bangkok Rules and elaborates on measures to implement them, emphasising the importance of an individualised approach based on the circumstances of the child, non-discrimination regardless of the status of their parent or caregiver.³³²

The preamble of the Inter-American Principles and Best Practices on the Protection of Persons Deprived of Liberty (Inter-American Principles) provides that where children that are allowed to remain in a place of detention with their parent, “the necessary provisions shall be made for a nursery staffed by qualified persons, and with the appropriate educational, paediatric, and nutritional services, in order to protect the best interest of the child”. The Principles also provide for maintaining regular contact with the families and children of parents who are separated as a result of a custodial sentence.³³³

The CoE in 2018 also published a dedicated recommendation providing detailed guidance for the treatment of children with imprisoned parents, whether separated from a detained parent or in detention with a parent, which emphasises the need to uphold the same standards of healthcare for infants in prison as in the community, the importance of ensuring safety, respect and maintenance of minimum standards including hygiene, ventilation, light, a child friendly atmosphere, utilities for taking care of infant children and supporting mothers to exercise appropriate parental responsibilities.³³⁴

Rule 29 of the Nelson Mandela Rules also stipulates the best interest of the child as a primary consideration in any decision on whether to allow children to stay with their mothers in prison and also contains provisions on the treatment of children.

“1. A decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned. Where children are allowed to remain in prison with a parent, provision shall be made for:

(a) Internal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent;

(b) Child-specific health-care services, including health screenings upon admission and ongoing monitoring of their development by specialists.

2. Children in prison with a parent shall never be treated as prisoners.”

Growing up in prison can be a distressing and traumatic experience for children. Rule 49 of the Bangkok Rules and Rule 29(2) of the Nelson Mandela Rules aim to address this by requiring that children in prison with their mothers should never be treated as if they are imprisoned. However, perhaps partly because they are not imprisoned, prison policies, programmes, staff training and budgets rarely adequately consider the needs of these children.

Rule 52 draws attention to the fact that in most prison systems laws relating to the maximum age until which children can stay with their mothers in prison are applied rigidly, with little consideration of individual circumstances and needs of each child.



Putting them into practice

Legislative provisions for allowing children to stay with their mothers in prison

- In deciding whether to allow children to stay with their mothers in prison the best interests of the child should be the primary consideration, in line with the CRC, Article 3. Legislation should allow flexibility in decision-making and competent authorities (e.g., judicial authorities, child welfare services and prison authorities) should take decisions on an individual basis, depending on the circumstances of the child and family, and on the availability of alternative care options in the community.

³³² ACERWC, *General Comment No. 1 (Article 30 Of the African Charter on the Rights and Welfare of the Child, on Children of Incarcerated and Imprisoned Parents and Primary Caregivers*, 2013; Read more at PRI and ACERWC, *A short guide to General Comment No.1: Children of incarcerated and imprisoned parents and primary caregivers*, 2014.

³³³ PRI, *Justice for Children Briefing No 3: Children with Parents in Conflict with the Law*, 2012.

³³⁴ CoE, *Recommendation CM/Rec(2018)5 of the Committee of Ministers to Member States concerning children with imprisoned parents*, 4 April 2018, pp. 39–40.

- Relevant legislation may need to be reviewed and revised. For example, legislation may provide an indicative age when a mother's and her child's circumstances should be considered, with a view to assessing whether the child's removal from the prison would be in the child's best interests. However, legislation should ensure that maximum flexibility is allowed in taking such decisions, which should always be based on and justified by individual assessments.
- Alternatively, assessments may be undertaken on the advice of the specialist staff/team responsible for the care and wellbeing of the child or at regular intervals (e.g., yearly), which will also need to be set out in the country's domestic legislation.
- Child welfare agencies should have primary responsibility for assessing what the best interests of the child are, in coordination with healthcare specialists and others involved in providing care to the child in prison. The decision-making process should include the mother and child. These assessments should consider the child's emotional and physical wellbeing, the possibility of developing a strong and early attachment to the mother and breastfeeding, the mother's potential caregiving capacity, the nature of the offence, sentence length and mother's behaviour in prison only insofar as they affect the child's welfare and best interests.³³⁵



PROMISING PRACTICE

In New Zealand, there are Mothers with Babies Units in Auckland Region Women's Corrections Facility, Arohata Prison (Wellington) and Christchurch Women's Prison. Women are placed near family, whānau and other significant people in the baby's life. The aim is to help women in prison grow positive relationships with others who can support them in their parenting once they are released. The Mothers with Babies Unit is a type of self-care unit. Mothers and babies have their own bedroom, including a cot for the baby. Up to three other mothers and their children share kitchen and lounge areas. Mothers are provided with items the babies need, including furniture, toys, toiletries, and books. Placement will always depend on what is best for the child. If having the baby with them in prison is deemed not to be the best option, the mother/baby relationship is promoted in other ways, such as special bonding facilities on site where mother and child can regularly spend time together.³³⁶

The treatment of children living with their mothers in prison

- Adequate provisions should be made for the care of children entering prison with their mother, including age-appropriate facilities and services to protect the child from harm and promote their rights to survival, protection, development and participation while in prison.³³⁷
- Staff training, prison policies and programmes should ensure that the children staying with their mothers in prison are never treated as imprisoned.
- Effort should be made to eliminate as far as possible the differences between life in prison and outside prison for such children.
- Prison nurseries should be furnished and decorated in a way which promotes mental wellbeing and reduces the negative impact of institutional starkness, for example, by using bright colours, pictures and fabrics, and by providing play areas and toys. Such efforts should also include maximum possible cooperation with NGOs working on children's, women's and prison issues.

³³⁵ For more on best interests assessments, see Lucy Halton and Laurel Townhead, *Children of Incarcerated Parents – International Standards and Guidelines*, Quaker United Nations Office, March 2020, p. 7.

³³⁶ 'New Beginnings – Mothers with Babies Unit', Department of Corrections, www.corrections.govt.nz/resources/information_brochures/new_beginnings_-_mothers_with_babies_unit [accessed 6 October 2021].

³³⁷ Ibid, paras. 117-118.

- Mothers should be allowed to spend the maximum possible time with their children. Ideally, mothers should be able to spend the night with their children in the same accommodation area and spend as many hours as possible with their children during the day. They should also be encouraged and enabled to take part in prison activities, during which time children should be cared for by qualified staff and nurses.

The healthcare of children living with their mothers in prison

- Children living with their mothers in prison should be examined by a child healthcare specialist at the time of their admission (see Rule 9). A health and nutritional programme should be drawn up for each child at this time.
- Thereafter, their health and development should be monitored by qualified child healthcare specialists, in close collaboration with community healthcare services. Services provided should include the child's regular vaccinations and any other preventive healthcare and treatment provided for children in the community.
- The psychological/emotional needs of such children should be closely monitored to assess any adverse effects of living in a closed institution and measures taken to reduce the negative psychological impact of institutionalisation, based on individual needs.



PROMISING PRACTICE

In 2019, a Female Center was established at Windhoek Correctional Facility in Namibia, which provides programmes for education and training, as well as a child-friendly area for children accompanying their mothers. In addition, there is also a clinic to respond specifically to the health needs of women living in this facility, which was equipped with the support from UNODC. The child-friendly area is designed to provide children under the age of two a harmonic environment, which assists in strengthening or building bonds with their mothers.³³⁸

The removal of a child from prison

- Where an indicative age is provided in the country's national law as a guideline for the consideration of a child's removal from prison, when a child reaches that age a thorough assessment should be undertaken to decide whether their removal from prison would be in their best interests.
- Where no guideline is provided in legislation or other relevant rules, such assessments may be undertaken on the advice of the team of child specialists responsible for the care and wellbeing of the child in prison or at regular intervals specified in law (e.g., yearly).
- Child welfare agencies should have primary responsibility for assessing the advantages and disadvantages of removing a child from prison. The assessment should be undertaken in coordination with the healthcare specialist who has been responsible for the healthcare of the child in prison, the prison social worker and psychologist, who has been involved in the child's developmental care.
- Assessments should consider the conditions in prison, the quality of care children receive in prison and the quality of care they can expect to receive outside prison, and the remaining length of sentence of the mother. The child, if capable of forming their own views, the mother and other family members outside prison should be consulted during the decision-making process.³³⁹

³³⁸. 'Boost for Namibia's prison health', The Namibian, 2 November 2019, www.namibian.com.na/185531/archive-read/Boost-for-Namibias-prison-health; 'UNODC supports HIV health-care services in Namibia's prisons', UNODC, 18 February 2019, www.unodc.org/unodc/en/hiv-aids/new/stories/unodc-supports-hiv-health-care-services-in-namibias-prisons.html.

³³⁹. The child should participate in the decision-making process, as per CRC, Article 12, reiterated by the Committee on the Rights of the Child, *Day of General Discussion, Children of incarcerated parents - Report and recommendations*, 30 September 2011, Rec. 41.

- Mothers and their children should ideally be released together, especially in the case of foreign national women in prison.³⁴⁰ Where this is not possible, the decision to remove a child from prison should only be undertaken when satisfactory alternative care arrangements have been identified.³⁴¹
- If a foreign national mother cannot be released when her child leaves prison, she should be enabled to serve her sentence in her own country if she wishes and it is in the best interests of the child.³⁴²
- Information should be provided to the mother and the child about the alternative care arrangements and how the mother and child will be able to keep in contact with each other following their separation.³⁴³ Children and their mothers should be provided with psychological, emotional and practical support before, during and after separation.
- Once a child has been removed from prison and placed in alternative care, prison authorities and those responsible for the child's continued upbringing should work in cooperation to ensure on-going involvement of the mother in prison in the upbringing of the child, that the child can visit their mother as frequently as possible, and that the mother is allowed frequent home leave to visit her child, unless exceptional security considerations exist.³⁴⁴
- State agencies should be sufficiently resourced and collaborate with civil society organisations to support children with imprisoned parents and their families, including offering logistic and financial support.³⁴⁵

Other Rules which apply to children living with their mothers in prison or which have a direct impact on the children of women in the criminal justice system and prisons:

Rule 2 on admission

Rule 3 on registry

Rule 5 on personal hygiene

Rule 9 on health screening on admission

Rule 14 on HIV prevention, treatment, care and support

Rule 21 on searches

Rule 23 on disciplinary sanctions

Rule 26 and Rule 28 on visits

Rule 33(3) on the training of institutional personnel

Rule 42(2) and Rule 42(3) on the prison regime

Rule 53(3) on foreign nationals

Rules 57, 60, 61, 63 and 64 on sentencing and non-custodial measures

Rule 68 and Rule 70 on research and evaluation

³⁴⁰ Manfred Nowak, *UN Global Study on Children Deprived of Liberty*, 2019, Chapter 10, Section 5, paras. 20 and 21.

³⁴¹ See UN General Assembly, *Guidelines for the Alternative Care of Children*, A/RES/64/142*, 24 February 2010 (adopted on 18 December 2009).

³⁴² Manfred Nowak, *UN Global Study on Children Deprived of Liberty*, 2019, Chapter 10, Section 5, para. 21.

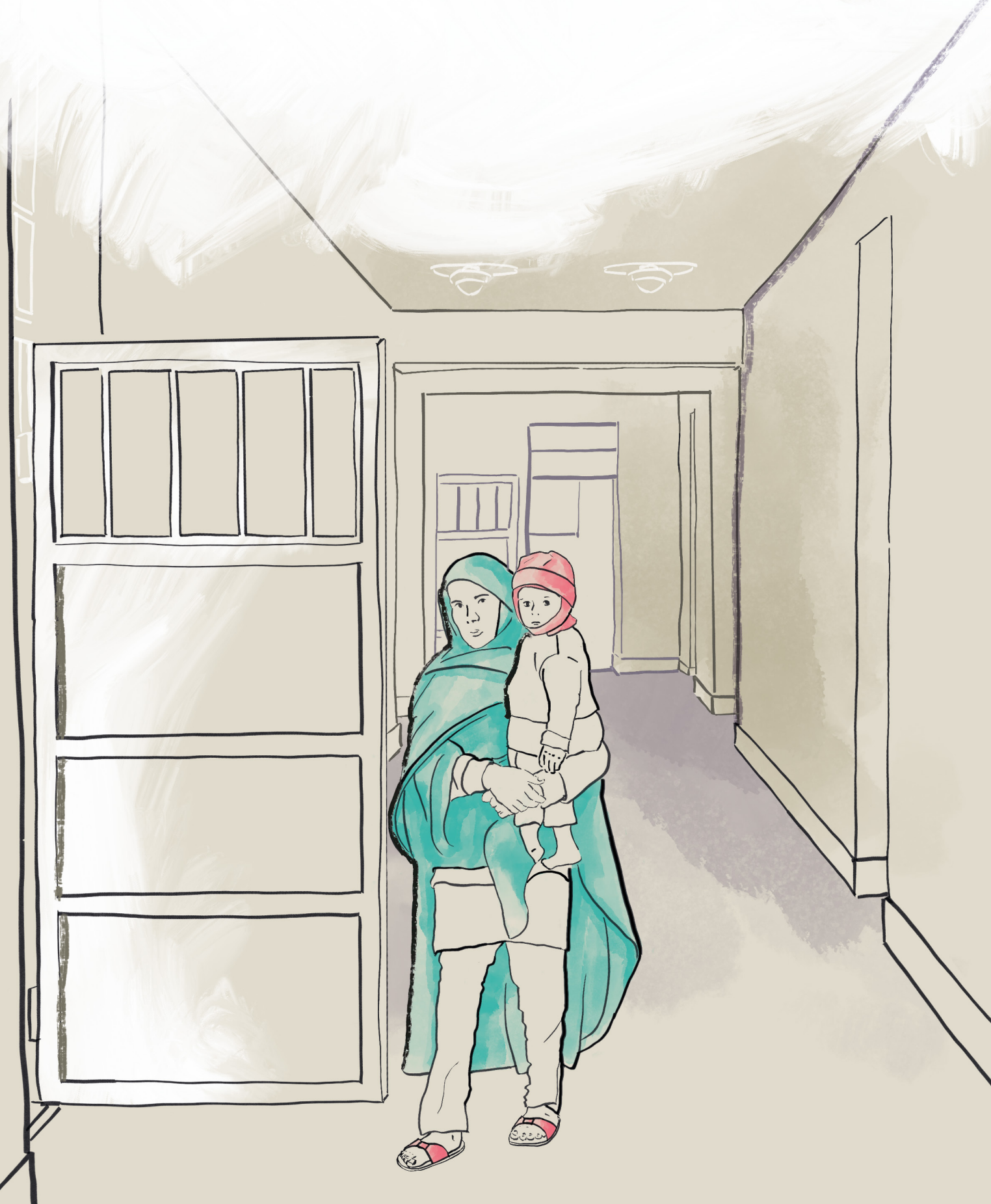
³⁴³ *Ibid.*, para. 64.

³⁴⁴ See Committee on the Rights of the Child, *Day of General Discussion, Children of incarcerated parents – Report and recommendations*, 30 September 2011, Rec. 39; UN General Assembly, *Guidelines for the Alternative Care of Children*, A/RES/64/142*, 24 February 2010 (adopted on 18 December 2009), para. 82; CPT, *Factsheet Women in Prison*, CPT/Inf(2018)5, 2018, p. 5.

³⁴⁵ Manfred Nowak, *UN Global Study on Children Deprived of Liberty*, 2019, Chapter 10, Section 5, para. 22.

Chapter 9

Special categories



Special categories

➔ Rules 36 to 39 & 53 to 56

This chapter covers the special, additional needs of women under arrest or awaiting trial, girls in prison, foreign national women and minority groups and Indigenous peoples.

The Rules on women under arrest and awaiting trial focus on the particular vulnerability of women in pre-trial detention and provide detailed guidance on their protection needs. The Nelson Mandela Rules do not cover this aspect of pre-trial detention, despite documentation by UN bodies and others about the increased risk of all people in prison to ill-treatment and torture during the period prior to conviction and sentencing, including gender-based violence faced by women.³⁴⁶ The Bangkok Rules fill an important gap with specific provisions aiming to prevent gender-based violence in pre-trial detention, to provide the requisite support to victims and to bring perpetrators to justice.

The Nelson Mandela Rules include no specific provisions on children, except for Rule 11(d) which requires young people in prison to be kept separate from adults. There are separate instruments that cover the treatment of children in conflict with the law, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, among others. Though these instruments do not address the needs of girls in a detailed manner, the former provides some guidance to ensure that girls are not discriminated against and that their special needs are taken into account in their treatment (Rule 26.4 of the Beijing Rules). The Bangkok Rules add further, more detailed provisions.

The rights of foreign nationals in prison are covered in a limited way in the Nelson Mandela Rules, which are supplemented by the provisions of the Bangkok Rules, focusing on the special needs of non-national women and their children. These Rules should be read in conjunction with [Rule 66](#) in Chapter 1, which provides for the protection of persons who have been trafficked and requires that they are not imprisoned.

The Nelson Mandela Rules do not explicitly refer to the rights and needs of minority groups and Indigenous peoples, with the exception of the possible relevance of the rules on freedom of religion (Rules 65-66) and requirements for interpreting (Rules 41(3), 61(2) and 80(2)), to some members of these groups. Thus, the Bangkok Rules supplement the Nelson Mandela Rules both in terms of their recognition of the distinctive needs of these categories of detainees, as well as because of their understanding of the additional needs and challenges faced by women represented in these groups. The guidance provided will be of great value in a number of countries, where minority groups and Indigenous peoples are vastly overrepresented in prisons.

³⁴⁶ See for example Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016.

9.1 Women under arrest or awaiting trial

➔ **Rule 56** (*Supplements Rules 111-120 of the Nelson Mandela Rules*)



Rule 56

The particular risk of abuse that women face in pretrial detention shall be recognised by relevant authorities, which shall adopt appropriate measures in policies and practice to guarantee such women's safety at this time. (See also rule 58 below, with regard to alternatives to pretrial detention.)



Why it is important

Rules 111 to 120 of the Nelson Mandela Rules cover the special provisions which apply to the treatment and rights of people in prison under arrest or awaiting trial, consistent with their un-convicted status and therefore the presumption of their innocence. These Rules cover the special privileges these people should enjoy, as well as their right to inform their families immediately of their detention, to receive visits from them, to apply for free legal aid and to receive visits from their legal advisers, among others. The Rules do not make specific reference to the particularly vulnerable status of people in pre-trial detention and any measures to protect them from ill-treatment and abuse.

All people are particularly vulnerable during the pre-trial detention period. During this time pressure may be exerted on them to confess to offences which they may or may not have committed and it is during this time that the risk of being subjected to ill-treatment or torture is particularly high. Therefore, it is essential that relevant ministries and prison authorities put in place measures to protect people at this stage and ensure that such measures are applied in practice.

Rule 56 takes account of women's risk of abuse, in particular sexual abuse and coercion, during this period because of their gender³⁴⁷ and other vulnerabilities, such as lack of education and legal awareness, which can increase their susceptibility to intimidation and coercion. It underlines the responsibility of states to put measures in place to protect women from any abuse or sexual harassment or violence during this period.

In this context it is worth noting that the UN Committee against Torture expressed concern, in a 2011 country report, "about reported acts or threats of violence, including sexual violence, by inmates and public officers, in places of detention (Articles 2, 11 and 16)", and recommended the state take prompt and effective measures to combat prison violence more effectively, in accordance with the Bangkok Rules, and "establish and promote an effective mechanism for receiving complaints of sexual violence and ensure that law enforcement personnel are trained on the absolute prohibition of sexual violence, as a form of torture, and on how to receive such complaints."³⁴⁸

The Rule also draws attention to Rule 58, which urges states to give preference to diversionary measures and alternatives to pre-trial detention in the case of women, where possible and appropriate.

³⁴⁷ See for example Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, para. 20; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26/Add.4, 2 May 2011, para. 33; see also the statement "International Day in Support of Victims of Torture: States Must Take Measures with a Gender Perspective to Prevent Torture", *Inter-American Commission for Human Rights (IACHR)*, 26 June 2021, www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/159.asp.

³⁴⁸ Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture*, CAT/C/BLR/CO/4, 7 December 2011, para. 20.



Putting it into practice

- Medical examinations should be undertaken promptly after admission to pre-trial detention facilities, as required by Rule 30 of the Nelson Mandela Rules, the Body of Principles, Principle 24 and Rule 6(e) of the Bangkok Rules. This should not be confused with virginity tests undertaken in some countries, which is considered a form of custodial violence against women,³⁴⁹ and has been condemned by international bodies³⁵⁰ – see Rule 8.
- Medical examinations should be carried out by a medical doctor independent of the prison service, answerable to the ministry of health. According to Rule 118 of the Nelson Mandela Rules, an untried detainee should be allowed to be visited and treated by their own doctor if there are reasonable grounds for such a request and if the person is able to pay any expenses incurred. This applies also to the initial medical examination on entry, particularly when a woman claims to have been abused (e.g., in police custody) prior to her pre-trial detention.
- Similarly, medical examinations should be undertaken when people are convicted and transferred to prisons, to determine whether any ill-treatment has taken place during the pre-trial detention period (See Rule 6(e)), and if so, for appropriate action to be taken.
- Women in pre-trial detention should have immediate access to legal counsel and in any case not later than 48 hours from the time of arrest or detention.³⁵¹ They should be informed of this right promptly after arrest and be provided with reasonable facilities for communicating with legal counsel.³⁵² If a woman does not have access to legal counsel, prison authorities should assist her with making such contact and legal counsel should be assigned, if she cannot afford a lawyer.³⁵³ Guideline 9 of the UN Legal Aid Principles and Guidelines lays out in more detail recommendations as for the implementation of the right of women to access legal aid.³⁵⁴
- A woman in pre-trial custody should be allowed to inform her family immediately of her detention and be given facilities for communicating with family and friends, and for receiving visits from them.³⁵⁵ Such visits may be subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.
- Women should be separated from men, as provided in Rule 11(a) of the Nelson Mandela Rules.
- Women in prison should be supervised by female staff only, as provided in Rule 81(3) of the Nelson Mandela Rules.
- Clear policies and guidelines should be introduced, relating to the use of force, violence and sexual misconduct by staff; and such policies should include the requirement to conduct an independent investigation of allegations of ill-treatment and torture.³⁵⁶
- All allegations of torture and ill-treatment, including sexual violence in detention, should be investigated promptly, effectively, and impartially, and the perpetrators should be prosecuted and convicted in accordance with the gravity of the acts, as required by CAT Article 4.³⁵⁷
- Staff working in women's prisons should receive training on the prohibition of torture and ill-treatment, including sexual misconduct. Even where the principle of employing predominantly female staff in women's prisons (Rule 81(3) of the Nelson Mandela Rules) is applied, it should not be assumed that abuse will not take place. Female staff have also been

³⁴⁹ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, A/HRC/7/3, 15 January 2008, para. 34.

³⁵⁰ See WHO, UNODC and UN Women, *Eliminating Virginity Testing: An Interagency Statement*, 2018.

³⁵¹ UN, *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 7.

³⁵² UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, A/RES/43/173, 9 December 1988, Principle 17; Nelson Mandela Rule 61.

³⁵³ UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, A/RES/43/173, 9 December 1988; Nelson Mandela Rule 119(2).

³⁵⁴ UNODC, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 2013; see 'UN Legal Aid Principles and Guidelines', *PRI*, www.penalreform.org/priorities/global-advocacy/international-advocacy/legal-aid-principles-guidelines/ [accessed on 6 October 2021] for more information.

³⁵⁵ Nelson Mandela Rule 68 and UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, A/RES/43/173, 9 December 1988, Principles 16 and 19.

³⁵⁶ See CAT, Articles 12, 13 and 16.

³⁵⁷ UN General Assembly, *Report of the Committee against Torture*, Forty-fifth session (1–19 November 2010), Forty-sixth session, (9 May–3 June 2011), A/66/44, p. 24, para. 15.

reported to abuse women in prison by implementing excessive and degrading searches.³⁵⁸ A functioning, effective and independent monitoring mechanism should be put in place. This may entail a review and revision of relevant legislation to allow for the establishment of independent monitoring bodies, as well as practical measures to facilitate the establishment of an independent monitoring system.

- Countries which have not ratified OPCAT³⁵⁹ are encouraged to ratify it and to set up NPMs, as required by its provisions, to strengthen measures to protect all people in prison, including women and girls, from any kind of ill-treatment and abuse.

9.2 Girls in prison

➔ Rules 36 to 39



Rule 36

Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.



Rule 37

Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.



Rule 38

Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.



Rule 39

Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.



Why they are important

Girls (under the age of 18)³⁶⁰ comprise one of the most vulnerable groups in prisons, due to their age, gender, and small numbers.³⁶¹ While the proportion of girls in prison remains very small, their proportion among youth arrests has been increasing in some countries,³⁶² though most prison systems around the world lack specific policies and programmes to accommodate for their unique needs.

Girls in prison are likely to have challenging socio-economic backgrounds, may have been involved in sex work and may have substance dependencies and related mental healthcare needs, all of which may be overlooked due to their age. Relationship difficulties with family members and partners are far more likely to be an important factor in comparison to boys, with individual offences often linked to personal conflicts, leading to theft or assault.

³⁵⁸. 'Degrading strip search of 200 women prisoners cries out for courts to act', Judith Resnik for CNN, 3 October 2019, edition.cnn.com/2019/10/03/opinions/women-prisoners-have-rights-resnik/index.html.

³⁵⁹. UN General Assembly, *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, A/RES/57/199, 9 January 2003 (adopted on 18 December 2002).

³⁶⁰. Bangkok Rules, Commentary to Rules 36-39.

³⁶¹. PRI and IPJJ, *Neglected Needs: Girls in the Criminal Justice System*, 2014, p. 1.

³⁶². Roy Walmsley, *World Female Imprisonment List, Fourth Edition*, Institute for Criminal Policy Research, 2017.

Girls are also more susceptible to post-traumatic stress and other emotional disorders. Where efforts to address the underlying causes of their offences are lacking, imprisonment is almost certain to exacerbate existing vulnerabilities and problems.

As has been outlined in reference to [Rule 65](#) in Chapter 1, a body of research indicates that for many girls, pathways to criminal justice lie disproportionately in their experiences of sexual abuse and violence and reactions thereto, with trauma to be exacerbated by further victimisation and lack of gender and age-sensitive services in prisons.³⁶³ Girls in prison who have experienced sexual or physical violence can face increased risk of self-harm and suicide.³⁶⁴

All children in prison, and especially girls, are at high risk of abuse in prisons. Where mixed gender staffing has been applied, serious abuse by male staff in girl prisons has been reported, demonstrating the extent of girls' vulnerability in detention.³⁶⁵ Abuse might take place under the guise of restraint procedures, by frequent and routine strip searching, the use of force, sexual abuse, and rape under the guise of consensual sex.³⁶⁶ A large proportion of girls in prison have experienced some form of violence or abuse in the past, which makes them especially susceptible to additional trauma upon being assaulted while in prison. Reports indicate that girls who have been previously sexually abused or exploited may be particular targets of prison staff, similar to adult women in the same position, which causes them to relive the trauma of the earlier experience(s).³⁶⁷

As required by Rule 18 of the Havana Rules, as well as Rule 92(1) of the Nelson Mandela Rules, education is of particular importance in the case of children in prison, as a break in education due to imprisonment may have a long lasting and very harmful impact on their whole lives. However, due to their small numbers, girls' specific needs are usually ignored in prison policies and programmes, including in relation to access to education, as well as vocational training and healthcare, suitable to their age and gender.³⁶⁸

Rule 26.4 of the Beijing Rules underlines the attention that needs to be given to young women in conflict with the law:³⁶⁹

"...young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment should be ensured..."

The CRC, Beijing Rules and Havana Rules contain many other articles and rules which, together with the Bangkok Rules, provide guidance to prison authorities to develop specific strategies and programmes to address the needs of this special group.

The topic of informed consent to medical treatment in the case of children in detention is complex and not adequately explored. CRC, Article 12 provides children who are capable of forming their own views the right to express those views freely in all matters affecting them, with due weight given to their wishes according to age and maturity.

The UNCRC General Comment 4 (2003) on adolescent health and development notes that parents and others legally responsible for the child "have an obligation to take into account the adolescents' views, in accordance with their age and maturity, and to provide a safe and supportive environment in which the adolescent can develop" (para. 7) and that before adults give their consent, "adolescents need to have a chance to express their views freely and their views should be given due weight, in accordance with article 12 of the Convention. However,

³⁶³ Malika Saada Saar et al., *The Sexual Abuse to Prison Pipeline: The Girls' Story*, Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, Ms. Foundation for Women, 2019.

³⁶⁴ For instance, official statistics from New Zealand in September 2019 show 135 incidents of self-harm had been reported in youth justice facilities in the last five years, mostly affecting girls who had experienced sexual or physical violence, see 'Horrifying numbers of self-harm incidents in youth justice facilities', RNZ, 2 September 2019, www.rnz.co.nz/news/national/397928/horrifying-numbers-of-self-harm-incidents-in-youth-justice-facilities.

³⁶⁵ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, para. 19.

³⁶⁶ As has been stressed by the former Special Rapporteur on Torture, among others, "it is crucial to bear in mind that under such circumstances [of detention] it can never be argued that a woman has "consented" to a sexual relationship, even if this appears to be the case." See Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3, 15 January 2008, para. 42.

³⁶⁷ Ibid.

³⁶⁸ PRI and TIJ, *Guide to the rehabilitation and social reintegration of women prisoners*, 2019, p. 41.

³⁶⁹ As referred to in the Bangkok Rules, Commentary to Rules 36-39.

if the adolescent is of sufficient maturity, informed consent shall be obtained from the adolescent her/himself, while informing the parents if that is in the ‘best interest of the child’ (Article 3)’ (para. 32).

The Havana Rules include specific guidance on informed consent to medical treatment in the case of children in detention:

“55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorised and carried out by qualified medical personnel.

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.”

The UN Model Strategies on VAC call for safe and confidential complaint mechanisms that are both effective and easily accessible. Upon arrival at a detention facility, girls, as well as their families, should receive clear child- and gender-sensitive information about their rights, the procedures relevant to their situation, and their right to be heard. They should also be informed about effective remedies and available support services.³⁷⁰



Putting them into practice

Policies for girls in prison

- See Rule 65 which requires preference to be given to non-custodial measures in the case of all children, and in particular girls, due to their particular vulnerability and needs.
- Prison authorities, in cooperation with child protection agencies, should develop specific policies and strategies for the supervision and care of girls in detention, and produce guidelines for staff working in prisons accommodating girl children. The development of such policies, guidelines and programmes should be guided by the CRC, the Bangkok Rules, Beijing Rules and Havana Rules.
- Specialists, such as social workers, child psychologists and healthcare workers, as well as relevant NGOs, families of girls in prison and the girls themselves, should be consulted in the development of such policies and strategies.

Measures to meet the protection needs of girls in prison

- Prison authorities should ensure that the accommodation of girls in prison is strictly separated from boys and from adult men and women.
- Rule 81(3) of the Nelson Mandela Rules, which requires the supervision of women’s prisons by female staff, should be strictly applied in prisons where girls are held.
- The staff of all prisons where children are held, and in particular girls, should be selected carefully, to ensure that staff appointed to work with girls have the appropriate professional requirements, as a first step towards preventing the abuse of children in their care.
- Staff of girls’ prisons should receive special training to fulfil their tasks in a manner that is sensitive to the emotional and developmental needs of girls.

³⁷⁰ UN General Assembly, *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, A/C.3/69/L.5* 25 September 2014, paras. 43(a) and 43(b), as referenced in Office of the Special Representative of the Secretary-General on Violence against Children, *Safeguarding the rights of girls in the criminal justice system - preventing violence, stigmatization and discrimination*, 2015, p. 31-32.

- Prison authorities should ensure that girls are properly supervised to prevent abuse by other children in prison or members of staff.
- Prison authorities should ensure that girls have access to a confidential and independent complaints mechanism and that written and oral information is given to them on admission to prison, in a language that they understand, on how to make complaints.
- All complaints by children in prison in relation to abuse, sexual abuse and other forms of alleged violence should be taken seriously and investigated by an independent body and those who have complained should be protected from retaliation by staff (see [Rule 7](#) for guidance).
- Any staff who is found to have bullied, harassed or abused girls should be subject to disciplinary or criminal sanctions, depending on the nature and severity of the offence committed.
- States and independent monitoring bodies should ensure that prisons where girls are held are included in the programmes of prison inspectors and independent monitoring bodies, referred to in [Rule 25\(3\)](#).

Rehabilitation programmes

- Prison authorities should ensure that girls in prison are given access to education and vocational training programmes available to boys in prison, which in turn should be equivalent to that available outside prison.
- Prison authorities should work closely with national bodies/ministries responsible for education and vocational training, as well as NGOs in delivering appropriate programmes for girls in prison.
- Prison authorities should encourage and facilitate the maintenance of family links, as an essential component of the rehabilitation of children in prison, including girls, unless specific circumstances such as abuse by parents or other members of their families require that they should be protected from their families. Families should also be encouraged to actively participate in the social reintegration of their children.

Healthcare and special programmes

- Children in prison, including girls, should be offered the same medical care and advice offered to their age group in the community. In addition, taking into account the inherently harmful impact of imprisonment, particularly on vulnerable groups such as children, girls should be offered psychological support to reduce the potentially damaging impact of imprisonment on their social reintegration.
- Similar to all women in prison, a gender-sensitive assessment of girls' needs should be undertaken on their admission to prison, with the participation of a specialist in child psychology, in order to determine their risks and needs (see [Rule 6](#)).
- Prison authorities/prison healthcare services should work together with national health services and other relevant services in the community and NGOs to develop gender-specific programmes and services for girls in prison, such as counselling for sexual abuse or violence, by specialists in child psychology, based on individual needs.
- Prison authorities/prison healthcare services should ensure that all girls receive education on women's healthcare issues. Such education can be provided by way of written information about the key aspects of gender-specific healthcare and by organising classes and group work, in cooperation with services in the community.
- Prison authorities/prison healthcare services should make arrangements for girls to have regular access to gynaecologists, similar to adult women in prison. Girls who are pregnant or have just given birth should receive the same quality of pre- and post-natal care as adult women in prison and in the community. In addition, special attention should

be paid to their medical and psychological requirements due to their age and physical and mental vulnerability, taking into account the stigma which may be associated with an early pregnancy.

- As with all healthcare services in prisons, the specialised services required by women and girls in prison are best delivered by community healthcare services, or at least in close collaboration with them, as per Rule 24(2) of the Nelson Mandela Rules.
- Before any treatment takes place the child and their parent or legal guardian should be informed of the purpose, nature, expected outcome and any risks associated with the treatment offered, as well as the possible consequences of not having treatment. Decisions should always take account of the wishes of the children, with due regard to their age and maturity.

9.3 Foreign nationals

➔ **Rule 53** (*Supplements Rule 62 of the Nelson Mandela Rules*)



Rule 53

1. Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign-national women prisoners to their home country, especially if they have children in their home country, shall be considered as early as possible during their imprisonment, following the application or informed consent of the woman concerned.
2. Where a child living with a non-resident foreign-national woman prisoner is to be removed from prison, consideration should be given to relocation of the child to its home country, taking into account the best interests of the child and in consultation with the mother.



Why it is important

The number of foreign nationals in prison has grown dramatically, comprising more than half of the total prison population in some countries.³⁷¹ The number of foreign national women in prison has also increased significantly in many countries and continues to be high particularly in parts of Asia and Latin America, due to punitive drug policies or immigration policies. In Chile, Colombia and Peru, foreign nationals constitute large proportions of women held in pre-trial detention (73, 50 and 42 per cent, respectively), with drug-related charges being the most common reason.³⁷² In Southeast Asia the rapid increase in numbers of foreign national people in prisons, including women, has been attributed to high rise in migration, trafficking and transnational crime.³⁷³ In Thailand's biggest women's prison, foreign national women constitute 8 per cent of the prison population and almost all of them are imprisoned for drug-related offences.³⁷⁴

Foreign national women may be resident in the country of imprisonment or non-resident. Those who are non-resident are likely to be more susceptible to the distress of isolation compared to other women, which may be exacerbated if they do not speak the most common spoken language in the prison. They may have little or no family contact, including with their children. Women who are single parents or the sole carers of the family are likely

371. 'Percentage and Total Number FNP Worldwide 2020-2015-2010-2005', *Prison Watch, The Human Connection*, prisonwatch.org/wp-content/uploads/2020/01/Overview-percentage-and-number-FNPs-worldwide-2020-2015-2010-2005.pdf; See also PRI and TIJ, *Global Prison Trends*, 2021, pp. 25-26; and CoE, *Foreign Offenders in Prison and on Probation in Europe, Trends from 2005 to 2015 (inmates) and situation in 2015 (inmates and probationers)*, November 2019.

372. Coletta A. Youngers et al., *Women Behind Bars for Drug Offenses in Latin America: What the Numbers Make Clear*, The Washington Office on Latin America (WOLA), November 2020, p. 18; 'Pre-trial detention and its overuse: Evidence from ten countries', Institute for Crime Policy Research, 11 November 2019, as referenced in *PRI and TIJ, Global Prison Trends 2021*, p. 26; Teresa Garcia Castro, *Pretrial detention in Latin America: the disproportionate impact on women deprived of liberty for drug offenses*, WOLA, June 2019, p. 7.

373. Chontit Chuenurah and Min Jee Yamada Park, 'Women Prisoners in Southeast Asia: Their Profiles and Pathways to Prison', *Korean Journal of Correctional Discourse* 교정담론, Volume 10, Issue 3, 2016.

374. 'เรือนจำหญิงกลางใจ «ปัญญาบำบัด» ช่วยผู้ต้องขังต่างชาติให้เป็น อีส-ทางใจ', BBC, 25 January 2019, www.bbc.com/thai/thailand-46982999.

to be extremely worried about the welfare of their children, particularly if the children are in the home country if, for example, the woman had left her home country on a temporary basis (e.g., as a drug courier).³⁷⁵

Recognising that non-resident foreign nationals often lose contact with their families while serving prison sentences, causing isolation and obstacles to successful reintegration, the CoE recommends that prison authorities take steps to facilitate the maintenance of relations between foreign nationals in prison and their families living abroad, with special measures to facilitate visits from and contact with children.³⁷⁶

Transfer to home countries may alleviate all the additional challenges foreign nationals face in prison and assist with their social reintegration. This is particularly important in the case of women who may have family and children in their home countries.

A key principle included in the Model Agreement on the transfer of foreign prisoners and recommendations for the treatment of foreign prisoners is that in order for a transfer to serve the purposes of social reintegration, rather than being experienced as an additional punitive measure, it should occur when individuals express a desire to serve their sentences in their home country (Article 7).³⁷⁷

The CoE recommendation³⁷⁸ emphasises that decisions to transfer foreign nationals should respect human rights, the interests of justice and the need to socially reintegrate foreign nationals in prison. It also envisions that pre-sentence reports be prepared for judges about personal circumstances of foreign nationals and their families, the likely impact of various sanctions, and feasibility and expediency of their transfer after sentencing, considering social reintegration needs.³⁷⁹ Independent advice should be provided to foreign nationals in prison about the consequences of such a transfer, and information on conditions of imprisonment, prison regimes and possibilities for release in the receiving country.³⁸⁰

It must be considered that transfers might lead to human rights violations on several bases, including the right to family life, poor and inhuman conditions of detention, ill-treatment, and prison regimes which do not assist social reintegration. Rehabilitation must be the primary justification for transfers.³⁸¹

Rule 53(2) is based on the recognition that when the removal of the children of non-resident foreign national women from prison is to be undertaken, an appropriate carer may not be available in the country of imprisonment. Therefore, the Rule requires that authorities consult with the woman in prison to arrange for the transfer of the child back to the home country, if this would be in the best interest of the child.



Putting it into practice

- Where bilateral or multinational agreements for transferring foreign national people in prison to their home country are in place, foreign national women who are non-resident in the country of imprisonment and whose country is party to such agreements, should receive comprehensive and clear information in a language they understand about the possibility of transfer to their home country. The women should receive information on how to apply for a transfer, the requirements for a transfer and the consequences of a transfer, including the consequences for any children who are with them in the country of imprisonment.
- Foreign national women who are considering applying for a transfer to their home country should be assisted in accessing legal counsel to discuss their situation and be provided with legal aid, if they cannot afford a lawyer themselves.

³⁷⁵ See, for instance Anabel I. Cerezo and María Izco, 'Young Foreign Women in Prison: A Case Study in Malaga Prison', *Temida*, Volume 22, Issue 3, 2019, p. 240.

³⁷⁶ CoE, *Recommendation CM/Rec(2012)12 of the Committee of Ministers to Member States concerning foreign prisoners*, 10 October 2012, Rules 22.7-8.

³⁷⁷ Bangkok Rules, Commentary to Rule 53.

³⁷⁸ CoE, *Recommendation CM/Rec(2012)12 of the Committee of Ministers to Member States concerning foreign prisoners*, 10 October 2012, Rule 10; see also the table of recommendations and good practice examples pertinent to the Rec(2012)12 at www.europris.org/foreignnationals.

³⁷⁹ *Ibid.*, Rules 14.2 and 14.3.

³⁸⁰ *Ibid.*, Rules 35.6 and 35.7.

³⁸¹ Dr. Róisín Mulgrew, 'Foreign Prisoners in Europe: an analysis of the 2012 Council of Europe Recommendation and its implications for international penal policy', *The Review of International Law and Politics*, Volume 12, Issue 44, April 2016.

- Transferring people in prison to serve their sentences in their home country should be considered as early as possible after a sentence has been passed.
- No woman should be transferred to her home country where a risk of ill-treatment or torture exists.³⁸² Furthermore, a transfer should in no case lead to an aggravation of the situation of the person in detention.³⁸³
- In considering a transfer in the case of women who have testified against the main perpetrators of drug trafficking (if, for example, the woman acted as a courier) or against the perpetrators of human trafficking (if the woman was trafficked), decision makers should take account of the risk such women face in their home country, never transfer such women without their consent and ensure that safeguards are in place to protect them from retaliation (see Rule 66).
- If a non-resident foreign national woman serving her sentence in the country of imprisonment has an accompanying child, consideration should be given when removing the child from prison to relocating them to their home country, if alternative care is available in the home country and taking into account other circumstances. Such decisions should always be taken on an individual basis, in full consultation with the mother and in communication with family members, relatives or agencies which will take care of the child/children after their return to their country.

9.4 Minorities and Indigenous peoples

➔ Rules 54 to 55



Rule 54

Prison authorities shall recognise that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programmes and services. Accordingly, prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups.



Rule 55

Pre- and post-release services shall be reviewed to ensure that they are appropriate and accessible to Indigenous women prisoners and to women prisoners from ethnic and racial groups, in consultation with the relevant groups.



Why they are important

There has been a significant increase in the proportion of ethnic and racial minorities and Indigenous peoples in prisons. Such groups are overrepresented in the prisons of some jurisdictions.³⁸⁴

³⁸² CAT, Article 3.

³⁸³ Model Agreement on the transfer of foreign prisoners and recommendations for the treatment of foreign prisoners, Seventh United Nations congress on the Prevention of Crime and the Treatment of Offenders, 26 August to 6 September 1985, A/CONF.121/10, 25 April 1985, para. 19.

³⁸⁴ For example, see PRI, *Global Prison Trends* annual series at www.penalreform.org/resource/global-prison-trends.

The number and proportion of women from ethnic and racial minority groups and Indigenous women are also increasing, in tandem with the general increase of members of these groups in prison. In some countries, their rate of increase is significantly higher than that of their male counterparts. In the United States, for example, African American women are imprisoned at 1.7 times the rate, and Latina women at 1.3 times the rate, of white women.³⁸⁵

Limited available data suggest that Indigenous women are overrepresented in criminal justice systems and the number of Indigenous women in custody is increasing in some countries, including Australia,³⁸⁶ Canada,³⁸⁷ and New Zealand, and the imprisonment of women is increasing at a significantly faster rate than that of men. According to the Report of the Special Rapporteur on the rights of Indigenous peoples, Maori women in New Zealand represent 40 to 60 per cent of the female prison population, while Maori people represent around 15 per cent of the general population; Maori women were also overrepresented for imprisonment and intensive supervision (accounting for 51 per cent of sentences imposed) and underrepresented for more lenient dispositions, such as reparation orders (39 per cent) and fines and discharges (both 33 per cent).³⁸⁸ As the Special Rapporteur notes, "... disregard for collective and individual Indigenous rights – such as abuse of women, mental health problems and poverty – have been identified as causal factors in criminal behaviour among Indigenous women."³⁸⁹

Indigenous women in prison are likely to come from particularly disadvantaged circumstances, giving rise to particular needs. For example, it has been noted that Australian Aboriginal women are imprisoned at a younger age than non-Aboriginal women; they generally have lower levels of education and employment; alcohol, drug use and violence play a greater role in their offending; and they also suffer from a greater incidence of past physical and sexual abuse.³⁹⁰ In Canada, reports indicate that 97 per cent of federally incarcerated Indigenous women were diagnosed with a mental health disorder and 92 per cent were found to have moderate to high needs related to substance use.³⁹¹

The lack of attention and resource allocation to the special needs of minority groups and Indigenous peoples can be reflected in the poor range of rehabilitation programmes addressing the specific requirements of such groups. The lack of equal access to programmes or the lack of appropriate programmes for minority groups and Indigenous peoples may lead to further disadvantages. Since the review and reduction of security levels in prisons take account of programmes completed, people from these groups can be disadvantaged and held in a higher security level than necessary for longer periods.³⁹²

Indigenous women are doubly disadvantaged, since programmes suitable for their specific needs, taking into account both their gender, as well as their culture and traditions as members of ethnic and racial minority groups or Indigenous peoples, are rarely offered. Thus, such women may have to participate either in mainstream programmes for women or special programmes designed for the minority or Indigenous male prison population, neither of which is likely to be entirely suitable to their needs.³⁹³

Due to their particular economic and social marginalisation and the discrimination they face in many societies, minority and Indigenous women that have been released from prison are likely to need special help with housing, social welfare, employment and healthcare. Mainstream post-release support, where it exists, may not take account of the special cultural needs of such groups during this difficult period of reintegration. For example,

³⁸⁵ The Sentencing Project, *Incarcerated Women and Girls*, 24 November 2020.

³⁸⁶ The number of Aboriginal women in prison in Australia increased 148 per cent from 1991-2019; they now represent about 34 per cent of the total female prison population, despite making up only 2 per cent of Australia's total population. 'Crisis of Aboriginal women in prison in Australia', *Aljazeera*, 2 December 2019, www.aljazeera.com/features/2019/12/2/crisis-of-aboriginal-women-in-prison-in-australia.

³⁸⁷ As of January 2020, Indigenous women represent 42 per cent of the female prison population in Canada, "National travesty": report shows one third of Canada's prisoners are Indigenous', *The Guardian*, 22 January 2020, www.theguardian.com/world/2020/jan/22/one-third-canada-prisoners-Indigenous-report.

³⁸⁸ Human Rights Council, *Report of the Special Rapporteur on the rights of Indigenous peoples, Victoria Tauli Corpuz, A/HRC/30/41*, 6 August 2015, para. 40.

³⁸⁹ *Ibid.*, para. 41.

³⁹⁰ Human Rights Council, *Report of the Special Rapporteur on the rights of Indigenous peoples, Victoria Tauli Corpuz, A/HRC/30/41*, 6 August 2015.

³⁹¹ Office of the Correctional Investigator, *Annual report of the Office of the Correctional Investigator 2018-2019*, Government of Canada, 2019.

³⁹² Bangkok Rules, Commentary to Rule 54.

³⁹³ For example, an Australian inquiry observed that Aboriginal women had to use either services for Indigenous men or mainstream services for women, neither of which were appropriate, see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report*, 2002, p. 168.

stigmatisation of Indigenous women may be particularly marked following their release and they may be rejected or ignored by their communities, which increases their likelihood of re-offending.³⁹⁴

The Australian Law Reform Commission has recommended that programmes and services for female Aboriginal and Torres Strait Islander women in the criminal justice system – leading up to, during and post-incarceration – should take into account their particular needs so as to improve their chances of rehabilitation, reduce their likelihood of reoffending and decrease their involvement with the criminal justice system; they must be developed with and delivered by Aboriginal and Torres Strait Islander women, be trauma-informed and culturally appropriate.³⁹⁵



PROMISING PRACTICE

Buffalo Sage Wellness House (BSWH) in Alberta, Canada is a 28-bed Community Residential Facility that houses conditionally released and federally sentenced Indigenous female offenders. Buffalo Sage has a home-like atmosphere with kitchenette and laundry facilities where personal development, life skills, and healing are practiced daily. Native Counselling Services of Alberta's vision for BSWH includes a daily routine for the residents that would consist of household chores, programs and employment training. The operation of BSWH relies on the belief that Aboriginal women and Non-Aboriginal women following the Aboriginal culture who are in contact with the law require specific programs to address their social, educational, emotional, physical and spiritual needs in a culturally sensitive approach in order to recognising their full potential for reintegration back into the community. The foundational program at Buffalo Sage Wellness House is the Spirit of a Warrior Program. Guided by Elders, this circle-based group program explores the effects of personal and historical trauma and provides opportunities for spiritual exploration and healing. BSWH also has a relationships program, a grief and loss program, a mother child program and a wellbriety program.³⁹⁶



Putting them into practice

- In prisons with many women who are members of ethnic and racial minorities and Indigenous peoples, the establishment of a multidisciplinary and multicultural team representing the major services may be considered to advise management, devise strategy, ensure that policies are implemented and monitor outcomes.
- As most minority and Indigenous people in prison are likely to have been disadvantaged in terms of work experience and education, and many will have been unemployed at the time of arrest, providing women from these groups with an opportunity to gain job skills and education should be considered a key component of their social reintegration requirements.
- Prison authorities should consult with the women concerned and collaborate with Indigenous and minority community groups who work with women to develop programmes suitable to the needs of minority or Indigenous women. Involving community organisations in programme design and delivery is valuable in maintaining links between all people in prison and the outside world, easing resource pressures and improving prison atmosphere. Continuing contacts with the community is particularly important, and community organisations can provide the specialised culturally relevant programmes addressing the needs of women belonging to their ethnicity, race, or descent.

³⁹⁴. Ibid.

³⁹⁵. Australian Law Reform Commission (ALRC), *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, December 2017, Recommendation 11–1, p. 16.

³⁹⁶. 'Buffalo Sage Wellness House', Native Counselling Services of Alberta, www.ncsa.ca/programs/buffalo-sage-wellness-house [accessed 6 October 2021]; 'Inside Canada's one-of-a-kind Indigenous prison for women', *The Star*, 15 July 2018, www.thestar.com/edmonton/2018/07/15/historical-trauma-rehabilitation-and-escapes-inside-canadas-one-of-a-kind-indigenous-prison-for-women.html.

- Parole decisions or decisions to lower the security level of women from minority groups or Indigenous peoples should not rely on the completion of a certain number of programmes by such women, if no appropriate programmes responding to their specific needs were accessible to them. In all cases, such decisions should be based on individual assessments by qualified staff rather than on the number of programmes completed.
- Policymakers should invest in studies and assessments to determine the typical challenges faced by women in prison who are members of minority groups or Indigenous peoples when released from prison and the most successful measures that have assisted with their social reintegration, at least where the number or proportion of such women in prison are significant.
- Prison authorities should coordinate with social services in the community, NGOs, community groups, and probation services where they exist, with respect to preparation for release, including re-establishing family contact where necessary, and post-release support of women from minority groups and Indigenous women that is culturally and gender-sensitive.
- Prison health services should make every effort to ensure that any treatment undertaken is continued and/or monitored after release, in close cooperation with services in the community.

Chapter 10

Prison staff



Prison staff

➔ Rules 29 to 35

The nine Rules included in the Nelson Mandela Rules on institutional personnel cover the selection of staff, their appointment on a full-time basis, with civil service status, adequate remuneration, favourable employment benefits and conditions of service, education and training, including in-service training, the employment of specialist staff, the qualities and responsibilities of the prison director, restrictions on the use of force by staff, and a requirement for prison staff to receive special training to restrain aggressive people in prison. One Rule relates to female prison staff setting out staffing requirements in a women's prison or wing.

Rule 81 of the Nelson Mandela Rules requires that:

"1. In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.

2. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.

3. Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women."

The seven Rules included in the Bangkok Rules on institutional personnel add key supplementary provisions to these Rules, with special focus on eliminating the discrimination female prison staff face in many prison services in access to training and to senior positions, and the special training female staff need to receive on the human rights and specific needs of women in prison.

(Supplements Rules 74-82 of the Nelson Mandela Rules)³⁹⁷



Rule 29

Capacity-building for staff employed in women's prisons shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities. Capacity-building measures for women staff shall also include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners.



Rule 30

There shall be a clear and sustained commitment at the managerial level in prison administrations to prevent and address gender-based discrimination against women staff.



Rule 31

Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.

³⁹⁷ Further guidance can be found in OSCE ODIHR and PRI, *Guidance Document on the Nelson Mandela Rules*, 2018, 1.7. Staff Recruitment and Training, p. 41.

**Rule 32**

Women prison staff shall receive equal access to training as male staff, and all staff involved in the management of women's prisons shall receive training on gender sensitivity and prohibition of discrimination and sexual harassment.

**Rule 33**

1. All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners.
2. Basic training shall be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to first aid and basic medicine.
3. Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

**Rule 34**

Capacity-building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, shall also be part of the curriculum.

**Rule 35**

Prison staff shall be trained to detect mental health care needs and risk of self-harm and suicide among women prisoners and to offer assistance by providing support and referring such cases to specialists.

**Why they are important**

These Rules relate primarily to the capacity building of female staff that should be responsible for the management and supervision of women's prisons, as provided by Rule 81 of the Nelson Mandela Rules. Some provisions also apply to male staff in senior management and administrative positions in women's prisons.

Rule 81 of the Nelson Mandela Rules explicitly states that women in prison should only be supervised by female officers. However, this is not the case in many countries. In these instances, the provisions of the Bangkok Rules become all the more important, including in particular Rules 31 and 32.

While the CPT recommends that any women's prison or unit should have sufficient female prison staff³⁹⁸ and in fact, most of the staff in contact with women in prison should be female,³⁹⁹ it also notes the benefit of mixed-gender staffing in fostering a degree of normality in any place of detention, including but not limited to establishments for women, and as an important safeguard against ill-treatment in places of detention.⁴⁰⁰

The Rules recognise that in many prison systems staff assigned to supervise women in prison receive no special training to help them deal with the particular needs of women in prison. The Revised EPR, Rule 81(3) similarly requires that staff who work with specific groups in prison, such as women, foreign nationals, children, or people with mental illness be given specific training for their specialised work.

³⁹⁸ CPT, *Factsheet Women in Prison*, CPT/Inf(2018)5, January 2018; CPT, *Report to the Georgian Government on the visit to Georgia from 19 to 23 November 2012*, CPT/Inf (2013) 18, 31 July 2013, para. 52.

³⁹⁹ Ibid; CPT, *Report to the Hungarian Government on the visit to Hungary from 30 March to 8 April 2005*, CPT/Inf (2006) 20, 29 June 2006, para. 109.

⁴⁰⁰ Ibid, p. 7; CPT, *Report to the Government of the Slovak Republic on the visit to the Slovak Republic from 24 September to 3 October 2013*, CPT/Inf (2014) 29, 25 November 2014, para. 99.

In the male dominated, hierarchical prison environment, female prison staff may face unfair competition as well as discrimination. Often, they have less authority and decision-making power, and they themselves may suffer from sexual harassment and discrimination in their workplaces, and difficulties in achieving promotions due to stereotypical perceptions and discrimination.⁴⁰¹

The Rules aim to address these challenges by ensuring that prison authorities pay special attention to building the capacity of female staff and ensuring they are not discriminated against in access to training and senior positions in the prison service. They recognise that female staff are better equipped to develop appropriate and effective policies and strategies for the supervision, care and rehabilitation of women in prison than their male counterparts due to their better understanding of women's gender-sensitive requirements and vulnerabilities.

Rule 82 of the Nelson Mandela Rules prohibits the use of force by prison staff except in self-defence, cases of attempted escape, or physical resistance to a lawful order. It provides that the use of force must be "no more than is strictly necessary" and must be reported immediately to the director of the institution. The Code of Conduct for Law Enforcement Officials,⁴⁰² Article 3 similarly limits use force to "only when strictly necessary and to the extent required for the performance of their duty". Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,⁴⁰³ Principle 4 requires law enforcement officials to "as far as possible, apply non-violent means before resorting to the use of force and firearms".

The Nelson Mandela Rules require prison staff to receive training on how to apply dynamic security, and also on how to better manage disruptive or violent people in prison by preventing and defusing difficult incidents, through negotiation and mediation for example (see Rule 76(1)(c)). In women's prisons, an emphasis on dynamic security is especially suitable, due to the harmful effects high-security measures can have on women's mental wellbeing and social reintegration prospects. Using disciplinary measures only when strictly necessary should be an essential component of a gender-sensitive approach to prison management.⁴⁰⁴

Rule 31 adds further provisions relating to the use of force, taking into account women's specific needs of protection from sexual abuse and ill-treatment.⁴⁰⁵ It is important to note that such ill-treatment may appear to be consensual (e.g., when women are coerced to provide sexual services in return for their rights or access to services). Therefore, the Rule is of particular significance to ensure that investigations on "use of force" should include the identification of sexual misconduct, which might appear consensual but, in reality, cannot be due to the totally unequal balance of power in the relationship. This should be the premise on which all sexual relationships between staff and people in prison should be viewed/ investigated. In this regard, CPT has called for utmost vigilance regarding inappropriate behaviour and sexual relationships between staff and women in prison and for any allegations to be taken very seriously.⁴⁰⁶

Rules 33 to 35 cover the training of staff working in women's prisons on the human rights and gender-specific needs of women in prison, including healthcare, first aid and basic healthcare for children staying with their mothers in prison. They represent the Bangkok Rules' holistic approach to prison management, including prison healthcare, recognising that in many prison systems specialist healthcare staff are not always or immediately available to respond to all the healthcare needs of people in prison, and that all staff need to be aware of the key issues relating to women's and their children's healthcare in order to incorporate such knowledge into their treatment of the women under their care. The CPT similarly notes the development of more specialised training for staff working with women in prison can be instrumental in addressing their specific needs.⁴⁰⁷

⁴⁰¹ As highlighted in this article 'Should Women Work in Men's Prisons? These Women Say Yes', by Lela Moore for the *New York Times*, 21 November 2018, www.nytimes.com/2018/11/21/reader-center/women-prison-workers.html.

⁴⁰² UN General Assembly, *Code of conduct for law enforcement officials*, A/RES/34/169, 5 February 1980.

⁴⁰³ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁴⁰⁴ PRI and TIJ, *Women in detention: Putting the UN Bangkok Rules into practice*, 2017, p. 90.

⁴⁰⁵ Bangkok Rules, Commentary to Rule 31.

⁴⁰⁶ CPT, *Factsheet Women in Prison*, CPT/Inf(2018)5, January 2018; CPT, *Report to the Government of Ireland on the visit to Ireland from 16 to 26 September 2014*, CPT/Inf(2015)38, 17 November 2015, para. 93.

⁴⁰⁷ CPT, *Factsheet Women in Prison*, CPT/Inf(2018)5, January 2018; CPT, *Report to the Hungarian Government on the visit to Hungary from 3 to 12 April 2013*, CPT/Inf(2014)13, 30 April 2014, para. 56.

These Rules also recognise that in all prison systems, regular staff, rather than healthcare staff will be the first to have to respond to women's and their children's healthcare requirements, including emergencies where immediate action will be needed, and so need training to enable them to respond appropriately and refer such women or children to specialists immediately, when necessary. This does not mean that regular staff should in any way be responsible for providing any treatment which goes beyond an emergency response, in the absence of any advice from healthcare specialists.

Rules 34 and 35 provide further details on the need for staff working in women's prisons to be trained on issues relating to HIV transmission, prevention, treatment and care, the stigma and discrimination women with HIV face, the mental healthcare needs of women in prison, as well as their risk of self-harm and suicide, due to the particular concern in relation to HIV and mental healthcare needs among women in prison, as discussed earlier. They complement Rules 6(a) and (b), 12, 14, 16 and 17.



Putting them into practice

Capacity building

- Prison authorities, in cooperation with civil society organisations working on women's issues, should develop special training programmes for all staff assigned to supervise women in prison on the human rights of women in prison, with specific components on their special social reintegration requirements. The training should be guided by the provisions of the Nelson Mandela Rules and the Bangkok Rules. The current document may supplement the Nelson Mandela Rules and the Bangkok Rules, in trainings or in developing additional training materials. Prison staff working with women in prison should be sensitised to the fact that many women in prison have experienced victimisation and may live with trauma.⁴⁰⁸
- Prison authorities should ensure that female prison staff have the same level of access to all trainings as their male counterparts.
- Capacity building of female staff should aim to empower them within the prison service in order for them to take up senior positions with responsibility to develop strategies, policies and programmes for the management of women's prisons, and the rehabilitation of women in prison. UNODC recommends adopting a gender mainstreaming policy, which may involve the establishment of a "gender working group" within the prison service with a clear mandate to advance gender mainstreaming within the service and within each institution.⁴⁰⁹

Combating discrimination and sexual harassment against female staff

- The prison administration needs to make clear its commitment to eliminating discrimination and sexual harassment against women in the prison service. This commitment should be made clear in the prison service's vision and strategic plans and be reflected in the policies of the prison service.
- Prison services should also review their recruitment procedures, training programmes and access to them, rules for promotion and salary levels to ensure that legislation, regulations, rules and policies do not provide any legal basis for discrimination against female staff in practice.
- The principle of non-discrimination should be included in the training of all staff.
- Female staff should be in a position to make complaints without fear of retaliation in cases of discrimination or sexual harassment. Complaints procedures should be in place for female staff to be able to bring their situation to the attention of senior staff, independent inspectors and other competent authorities authorised to monitor compliance with human rights standards and national law in prisons.

⁴⁰⁸ This article highlights how prison staff become sensitized and more understanding of the behavioural issues of women in prison once they undergo the legally mandated "gender-responsive and trauma-informed corrections" training program in the State of Illinois, USA. 'Women Prisoners Disciplined More than Men, but Staff Training is Changing That', by Dale Chappell for *Prison Legal News*, 2 April 2019, www.prisonlegalnews.org/news/2019/apr/2/women-prisoners-disciplined-more-men-staff-training-changing.

⁴⁰⁹ UNODC, *Handbook for Prison Leaders, A basic training tool and curriculum for prison managers based on international standards and norms*, 2010, p. 59.



PROMISING PRACTICE

A project by the Thailand Institute of Justice (TIJ) in Chiang Mai Women's Correctional Institution aims to support staff in learning how to manage and alleviate the stress of working in a high-pressure environment such as prisons during and after the pandemic, and to enhance their knowledge and understanding about self-care and caring for others while preserving one's own mental health.

The first phase of the project consists of learning stress management techniques through virtual group therapy activities, including art therapy. The second phase includes trainings on body-mind care and practicing self-reflection in daily life, knowing and understanding yourself and others, understanding the sexuality-gender identity framework and its implications in society, identifying how power relations and structural oppression affects certain groups, developing counselling skills for women in prison, organising group activities or therapeutic activities for women in prison, and trauma-informed care techniques for women in prison. In addition, one-on-one consulting sessions will also be available to participating staff.

Awareness raising and training on basic healthcare

- The training of staff assigned to work in women's prisons should include basic training on the main issues relating to women's health in order for staff to be in a position to provide immediate assistance, where a doctor is not available, and ensure that those who need medical care are immediately referred to healthcare staff.
- Staff should be trained in first aid so that they can provide immediate assistance in urgent cases where healthcare staff are not accessible.
- Where children are allowed to stay with their mothers in prison, prison staff assigned to work in women's prisons should also receive basic training on children's rights, child development and the healthcare of children, in order for them to respond appropriately in times of need and emergencies.
- The training curriculum of prison staff should include capacity-building programmes on HIV and AIDS. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, should be included in the curriculum.
- As set out in "Technical Brief, HIV prevention, testing, treatment, care and support in prisons and other closed settings: a comprehensive package of interventions", occupational safety and health procedures on HIV, viral hepatitis and tuberculosis should be established for prison staff. Prison staff should receive information, education and training by labour inspectors and specialists in medicine and public health, enabling them to perform their duties in a healthy and safe manner.⁴¹⁰
- Prison staff should never be subject to mandatory testing and should have easy access to confidential HIV testing.⁴¹¹
- Prison staff should have free access to hepatitis B vaccination and easy access to protective equipment, such as gloves, mouth-to-mouth resuscitation masks, protective eyewear, soap, and search and inspection mirrors, and post-exposure prophylaxis (PEP) in cases of occupational exposure.⁴¹²
- Workplace mechanisms for inspecting compliance with applicable standards and reporting occupational exposures, accidents and diseases should also be established.⁴¹³

⁴¹⁰. UNODC, ILO, WHO, UNFPA, UNAIDS and UNDP, *Technical Brief, 2020 Update, HIV prevention, testing, treatment, care and support in prisons and other closed settings: a comprehensive package of interventions*, 2020.

⁴¹¹. Ibid.

⁴¹². Ibid.

⁴¹³. Ibid.

- Prison staff should also be trained to recognise mental healthcare needs and risk of self-harm and suicide among women in prison and to respond appropriately, by providing assistance and referring such cases to specialists.
- In light of the COVID-19 pandemic, WHO recommends that staff training should be included as an essential part of any preparedness plan for prisons and other places of detention and should include custodial staff in addition to healthcare personnel. The following themes are suggested for staff training: basic disease knowledge, including pathogen, transmission route, signs and clinical disease progression; hand hygiene practice and respiratory etiquette; appropriate use of, and requirements for, PPE; environmental prevention measures, including cleaning and disinfection.⁴¹⁴

⁴¹⁴ WHO Regional Office for Europe, *Preparedness, prevention, and control of COVID-19 in prisons and other places of detention, Interim Guidance*, 15 March 2020, p. 14.

Chapter 11

Research, planning, evaluation and public awareness raising



Research, planning, evaluation and public awareness raising

➔ Rules 67 to 70

The Nelson Mandela Rules do not include any Rules on research and planning. Other relevant standards, such as the Tokyo Rules and the Beijing Rules, include a separate section on research, planning, policy formulation and evaluation, recognising that the effectiveness of policies and programmes developed for the treatment and social reintegration of people in prison depend on the extent of their relationship with the reality on the ground in each jurisdiction and the evaluation of the impact of different interventions and approaches.⁴¹⁵

Neither the Nelson Mandela Rules nor the Tokyo Rules refer to the need to raise public awareness and to cooperate with the media to disseminate the results of research outcomes and information relevant to the issues they cover. Rule 70 of the Bangkok Rules represents a reflection of the increasing awareness of the key role the media and public opinion play in the formulation of policies in the field of criminal justice. It is based on the recognition that increased understanding of crime and crime control can allay fears and demands for harsh punishments. Training and sensitising criminal justice officials on the Bangkok Rules is also a fundamental requirement for the implementation of the rules, particularly where they relate to sentencing policies and alternatives to prison.

11.1 Research, planning and evaluation

➔ Rules 67 to 69



Rule 67

Efforts shall be made to organise and promote comprehensive, result oriented research on the offences committed by women, the reasons that trigger women's confrontation with the criminal justice system, the impact of secondary criminalization and imprisonment on women, the characteristics of women offenders, as well as programmes designed to reduce reoffending by women, as a basis for effective planning, programme development and policy formulation to respond to the social reintegration needs of women offenders.



Rule 68

Efforts shall be made to organise and promote research on the number of children affected by their mothers' confrontation with the criminal justice system, and imprisonment in particular, and the impact of this on the children, in order to contribute to policy formulation and programme development, taking into account the best interests of the children.

⁴¹⁵ For instance, the UK National Offender Management Service (NOMS) commissioned a Rapid Evidence Assessment in 2015 to review the recent research evidence base globally for what interventions, services or approaches effectively reduce reoffending, particularly violent reoffending, in women detainees. Lynn Stewart et al., *Effective interventions for Women offenders: A Rapid Evidence Assessment*, NOMS, 2015, assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/448859/effective-interventions-for-women-offenders.pdf.



Rule 69

Efforts shall be made to review, evaluate and make public periodically the trends, problems and factors associated with offending behaviour in women and the effectiveness in responding to the social reintegration needs of women offenders, as well as their children, in order to reduce the stigmatization and negative impact of those women's confrontation with the criminal justice system on them.



Why they are important

While a considerable amount of research has been conducted since the adoption of the Standard Minimum Rules for the Treatment of Prisoners in 1955 on the causes of crime, the characteristics of individuals in conflict with the law, the impact of imprisonment and non-custodial measures, and the impact of specific programmes on recidivism rates, it is only since the early 2000s that such research has started to focus on gender in the criminal justice system, and the differences between women and men's backgrounds and social reintegration needs.

Rules 67-69 of the Bangkok Rules are therefore of great importance in underlining the need for research on a variety of issues relating to women's contact with the criminal justice system and have likely been instrumental in the growing body of such research since their adoption, much of which is referenced in this document. The aim is to ensure that interventions, strategies and policies are evidence-based and promote women's social reintegration based on a deeper understanding of their often very complex pathways to the criminal justice system,⁴¹⁶ as well as to ensure more nuanced and gender-sensitive responses to the needs of women to increase their effectiveness.

The Rules also draw attention to the need for research on the situation of children whose mothers are imprisoned, which has been highlighted in a number of studies and publications since the adoption of the Rules but needs more attention globally.⁴¹⁷



Putting them into practice

- Policymakers and criminal justice authorities should take all necessary measures and allocate resources to ensure that research and data collection is integrated into their work relating to women and the children of women in the criminal justice system.
- This would mean that data collection on the offences committed by women, the characteristics of women (e.g., their education and employment levels, economic and social circumstances, nationalities etc), the number of children that they have, their ages and their circumstances following their mothers' imprisonment (e.g., whether they are with their mothers in prison and if outside, arrangements for their care) should be part of the daily work of criminal justice agencies and, where relevant, social services in the community.
- Resources should also be allocated by policymakers to conduct research on other issues, such as the most common factors that lead women to commit offences, the impact of imprisonment and non-custodial sanctions on women, and the impact of mothers' imprisonment on children.
- The special healthcare needs of women in prison, including in particular their mental healthcare needs, drug dependencies, treatment outcomes and relapse rates following release, are other important areas where more information is needed for planning and policy formulation.

⁴¹⁶. See for instance PRI's series of research from 2013-2014 into Who are Women Prisoners? Survey Results from Armenia and Georgia, Kazakhstan and Kyrgyzstan, Jordan and Tunisia, www.penalreform.org/resource/women-prisoners-survey-results-jordan-tunisia/; www.penalreform.org/resource/women-prisoners-survey-results-kazakhstan-kyrgyzstan/; www.penalreform.org/resource/women-prisoners-survey-results-armenia-georgia/; also Chontit Chuenurah and Min Jee Yamada Park, 'Women Prisoners in Southeast Asia: Their Profiles and Pathways to Prison', *Korean Journal of Correctional Discourse* 교정담론, Volume 10, Issue 3, 2016.

⁴¹⁷. See for example Manfred Nowak, *UN Global Study on Children Deprived of Liberty*, 2019. Section on Children living in prisons with their primary caregivers, p. 11; ACERWC and PRI, *A short guide to General Comment No.1: Children of incarcerated and imprisoned parents and primary caregivers*, 2014.

- Research on practices and conditions which impact the health of women in prison (e.g., solitary confinement, disruption of family links) are also of key importance to introduce evidence-based improvements to practices and conditions to improve the social reintegration prospects of women in prison.
- Other areas of research should focus on special categories of women in prison – including their backgrounds, the impact of imprisonment and non-custodial sanctions and measures, their specific needs and to what extent their needs are being addressed.
- Academic institutions and NGOs may also be encouraged to undertake research into the areas above as well as other areas relevant to women's contact with the criminal justice system, to deepen and broaden the knowledge base on which to base policies.
- All research should be carried out in compliance with internationally accepted ethical principles. Any research on healthcare should follow the principles of medical ethics.
- All databases which store research findings should be effectively protected. In addition, all healthcare data should be stored in an anonymous way (i.e., the identities of women should not appear in the database).
- Policymakers and criminal justice institutions should ensure that regular internal and independent evaluations of policies and programmes are carried out to assess outcomes, modify/change them where necessary and replicate and disseminate good practice examples.
- Research and data collection is valuable only if the information is used to adjust and improve existing policies and programmes or to develop new ones. Therefore, links should be established between those responsible for carrying out research and those responsible for formulating policies and plans. This may be in the form of a shared database where the technology and resources allow or the regular submission of data and research results to relevant policymaking and planning units. These may be supplemented by regular meetings among all relevant actors, including policymakers and criminal justice actors, to discuss outcomes, facilitate consultation and a participatory approach and raise awareness on a constant basis.



PROMISING PRACTICE

PRI has been conducting various research on the backgrounds and characteristics of women who come into contact with the criminal justice system to inform evidence-based policy. For example, between 2013 and 2015, PRI carried out research in South Caucasus (Armenia and Georgia)⁴¹⁸, Central Asia (Kazakhstan, Kyrgyzstan),⁴¹⁹ the Middle East and North Africa (Jordan, Tunisia)⁴²⁰ and Uganda⁴²¹ (where the survey was carried out by PRI's partner, the Foundation for Human Rights Initiative). The findings provide important facts and figures illustrating national and regional characteristics of women in contact with the law which can enable states and other stakeholders to identify priority areas where women offenders will benefit most from changes to law, policies and practice. In 2016, a study was produced by Linklaters LLP for PRI which examined how women who have killed their abusers following prolonged domestic abuse are treated in law and before the courts, covering nine jurisdictions.⁴²² In 2020, a study by Linklaters LLP for PRI examined the case law around women accused of drug-related offences across 18 jurisdictions, which provides a basis for the development of policy guidance and recommendations to legislators and sentencing authorities.⁴²³

⁴¹⁸. PRI, *Who are women prisoners? Survey results from Armenia and Georgia*, 2013.

⁴¹⁹. PRI, *Who are women prisoners? Survey results from Kazakhstan and Kyrgyzstan*, 2014.

⁴²⁰. PRI, *Who are women prisoners? Survey results from Jordan and Tunisia*, 2014.

⁴²¹. Foundation for Human Rights Initiative and PRI, *Who are women prisoners? Survey results from Uganda*, 2015.

⁴²². Linklaters LLP and PRI, *Women who kill in response to domestic violence: How do criminal justice systems respond?*, 2016.

⁴²³. PRI, Linklaters LLP and IDPC, *Sentencing of women convicted of drug-related offences*, 2020.

11.2 Raising public awareness, sharing information and training

➔ Rule 70



Rule 70

1. The media and the public shall be informed about the reasons that lead to women's entrapment in the criminal justice system and the most effective ways to respond to it, in order to enable women's social reintegration, taking into account the best interests of their children.
2. Publication and dissemination of research and good practice examples shall form comprehensive elements of policies that aim to improve the outcomes and the fairness to women and their children of criminal justice responses to women.
3. The media, the public and those with professional responsibility in matters concerning women prisoners and those in contact with the law shall be provided regularly with factual information about the matters covered in these rules and about their implementation.
4. Training programmes on the present rules and the results of research shall be developed and implemented for relevant criminal justice officials to raise their awareness and sensitize them to their provisions contained therein.



Why it is important

Generally, the public is not well informed about the circumstances that lead to offending behaviour, the characteristics of people in conflict with the law and the harmful impact of imprisonment. A public who is better informed about the most common factors that lead to women coming into contact with the law, the difficulties most have faced in their lives, the consequences for their children when they are imprisoned, and their particular social reintegration needs, is more likely to support efforts to minimise, to the extent possible, the imprisonment of women, as recommended by the Bangkok Rules. The understanding and cooperation of the public is also key for the effective implementation of non-custodial measures and sanctions, as well as to reducing the stigma faced by women who commit offences.

Training and sensitising criminal justice officials on the Bangkok Rules to increase their understanding of the typical backgrounds of women and their social reintegration needs helps to ensure that criminal justice responses to women take account of their gender-specific needs and the best interests of their children.



Putting it into practice

- Policymakers should put in place practical measures to ensure that the outcomes of the data collection and research, required by Rules 67-68, are made available to the public. This can be achieved in various ways, for example, by placing such information on the website of the relevant ministries and by cooperating with the media to ensure that new data and research outcomes are published.
- Other useful means may include appointing press officers, improving media access to statisticians and academics, and using new technology to communicate statistical information to the press.

- Policymakers and criminal justice institutions should also cooperate closely with relevant NGOs in disseminating information about women in the criminal justice system, and their children, and in awareness raising and training programmes undertaken by such NGOs.
- Relevant ministries and criminal justice institutions should review the training curricula for their staff and revise them to incorporate the provisions of the Bangkok Rules.
- Special training programmes on the Bangkok Rules, supported by other training materials developed on the basis of the Bangkok Rules, should be developed for the police, prosecutors, judges and public defenders where relevant, in addition to the training of prison staff required by Rules 29-35.

Key actors and rules which require their action

Key actors:

1 Policymakers, including relevant ministries

2 Legislators and parliamentarians

3 Law enforcement and criminal justice actors

4 Prison authorities and prison staff

5 Prison healthcare services

6 Prison staff responsible for rehabilitation, social workers and social welfare officers

7 Probation and parole services, social welfare and child welfare agencies

8 Healthcare services in the community

9 Prison monitoring bodies

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Key actors:

- 1** Policymakers, including relevant ministries
- 2** Legislators and parliamentarians
- 3** Law enforcement and criminal justice actors

- 4** Prison authorities and prison staff
- 5** Prison healthcare services
- 6** Prison staff responsible for rehabilitation, social workers and social welfare officers

- 7** Probation and parole services, social welfare and child welfare agencies
- 8** Healthcare services in the community
- 9** Prison monitoring bodies

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Additional resources

PRI's Toolbox on the UN Bangkok Rules

UN Bangkok Rules on Women Offenders and Prisoners: a short guide

This short, illustrated guide to the Bangkok Rules covers: the profile of women prisoners and why international standards were needed; who the Rules protect; what the Rules say; and who should be involved in their implementation.

www.penalreform.org/resource/united-nations-bangkok-rules-women-offenders-prisoners-short

Guide to the rehabilitation and social reintegration of women prisoners: Implementation of the Bangkok Rules

This tool, developed in collaboration with the Thailand Institute of Justice, is designed for use by prison management, staff, policymakers and others involved in the criminal justice process, including legislators, judges and law enforcement officials. It aims to provide practical guidance on improving existing rehabilitation programmes and services and designing new ones, looking at different country contexts and taking into account location-specific challenges and opportunities.

www.penalreform.org/resource/guide-to-the-rehabilitation-and-social-reintegration-of

Online course, 'Women in detention: putting the UN Bangkok Rules into practice'

A self-paced online course combining analysis of the Rules, interactive assessments and application of the Rules to real life situations, with a certificate issued at completion. The e-course was developed with Human Rights Education Associates.

www.penalreform.org/resource/women-detention-putting-bangkok-rules-practice

Neglected needs: Girls in the criminal justice system

This paper examines the specific challenges faced by girls in contact with the criminal justice system and makes recommendations for strengthening the protection of their rights. It explores how girls face discriminatory treatment in terms of the type of offences for which they are detained, their access to fair trial guarantees, and the lack of suitable alternatives to detention. Co-published with the Inter-agency Panel for Juvenile Justice (IPJJ).

www.penalreform.org/resource/neglected-girls-criminal-justice-system

Women in detention: a guide to gender-sensitive monitoring

This guide introduces the UN Bangkok Rules and other relevant sources of international law to bodies monitoring places of detention, including National Preventive Mechanisms, and provides guidance on assessing risk factors and making recommendations to improve the protection of women against torture and other cruel, inhuman or degrading treatment or punishment. Co-published with the Association for the Prevention of Torture (APT).

www.penalreform.org/resource/women-detention-guide-gendersensitive-monitoring

Women in prison: mental health and well-being – a guide for prison staff

This guide, co-published with the Prison Reform Trust, is written to help understand how life in prison can affect a person's mental health, with a focus on women. It describes how to recognise the signs of poor mental health and how best to respond. It also includes a checklist based on international human rights standards aimed to help with the implementation of key aspects of prison reform and advocacy initiatives in line with international standards and norms.

www.penalreform.org/resource/women-in-prison-mental-health-and-well-being

Sentencing of women convicted of drug-related offences

This report is based on multi-jurisdictional research by Linklaters LLP for PRI, assessing the sentencing of women of drug-related offences across 18 countries. Drug policies are known to have a disproportionate impact of women and criminal justice systems generally ignore the complex and unique pathways of women who are convicted of drug-related offences. Co-published with IDPC.

www.penalreform.org/resource/sentencing-of-women-convicted-of-drug-related-offences

Punitive drug laws: 10 years undermining the Bangkok Rules

This briefing paper analyses the concrete ways in which punitive drug legislation has impacted upon the achievement of the Bangkok Rules and offers several recommendations on how to translate the commitments set in the Bangkok Rules into drug policy. Jointly published with IDPC, CELS, WOLA, Dejusticia and WHRIN.

www.penalreform.org/resource/punitive-drug-laws-10-years-undermining-the-bangkok

10-point plan: Gender-sensitive drug policies for women

Drawing on the two previous resources, as well as findings from an expert meeting held in London in February 2020, this model for reform details how policy makers and criminal justice practitioners can respond effectively and positively to reduce the unnecessary imprisonment of women for drug-related offences in line with international standards. Jointly published with IDPC.

www.penalreform.org/resource/10-point-plan-gender-sensitive-drug-policies-for-women

Gender-sensitive community service and probation: Model for reform

The model for reform documents the overall experiences and findings of a pioneering, multifaceted project that focused on the experiences of women completing non-custodial sentences in Kenya. It lays out 10 key steps to take when replicating the project in an international context, in order to introduce a gender-sensitive approach to non-custodial sentences.

www.penalreform.org/resource/gender-sensitive-approach-model-reform

The Tools available in multiple languages at www.penalreform.org.

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All resources are in English unless other languages are listed.

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