



Promoting fair and
effective criminal justice

BRIEFING: ACCESS TO JUSTICE

Discrimination of women in criminal justice systems

January 2012

Introduction

The circumstances in which women commit criminal offences are different from men. A considerable proportion of women offenders are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and the community.

Offences committed by women are closely linked to poverty and often a means of survival to support their family and children. The **profile and background** of women in prison, and the reasons for which they are imprisoned, differ significantly from those of men. Like men, women prisoners typically come from economically and socially disadvantaged segments of society, but drug users, lower-level property offenders, and sex workers are overrepresented.¹ In contrast to male prison populations, women mainly commit petty crimes, theft and fraud and studies have demonstrated that prior emotional, physical, and/or sexual abuse contributed to women's criminal behaviour.² Due to their economic status, they are particularly vulnerable to being detained because of their inability to pay fines for petty offences and/or to pay bail.

Women (and girls) comprise the **minority of prisoners** around the world, constituting an estimated two to nine per cent of national prison populations. However, the number of

¹ For example, in Moscow in 2001, 64 per cent of women in pre-trial detention had been charged with theft. In Croatia, 7.8 per cent of women were imprisoned for violent offences in 1998, with the rest having been convicted of property offences, crimes against public safety, traffic offences and offences relating to the authenticity of documents. In the Czech Republic in the same year the prosecution of over one third of all women involved property-related offences and another third involved economic crimes. In the same year women comprised 9 per cent of all violent criminal offenders. (UNODC, Handbook for Prison managers and Policymakers on Women and Imprisonment, 2008, page 89)

² For example, studies in the U. S. have demonstrated that "[o]ne of the most significant risk factors is prior victimization (*Women Offenders: Programming Needs and Promising Approaches*, National Institute of Justice, 1998). According to the 2002 Survey of Inmates in Local Jails, a national survey of jail inmates conducted every 5 to 6 years, 36% of female inmates reported they had been sexually abused in the past. (*Profile of Jail Inmates, 2002*, Bureau of Justice Statistics, 2004). (...) Furthermore, according to the 1998 National Council on Crime and Delinquency multidimensional study of girls in the California juvenile justice system, 92% of the juvenile female offenders interviewed in 1998 reported that they had been subjected to some form of emotional, physical, and/or sexual abuse (*Juvenile Justice Journal Volume VI, Number 1, Investing in Girls: A 21st Century Strategy*, Office of Juvenile Justice and Delinquency Prevention, 1999. (as quoted by National Criminal Justice Reference Service, US Department of Justice, <https://www.ncjrs.gov/spotlight/wgcjs/summary.html>))

imprisoned women has increased significantly in some countries, and at a greater rate than for men.

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, to facilities for healthcare, family contact, work and training. As a consequence, few prisons meet the specific needs of women prisoners, and often do not prepare them for release with gender-appropriate rehabilitation.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (**Bangkok Rules**)³ were adopted in December 2010 to rectify the lack of standards, however the international community still lacks awareness and commitment to implementation.

Gender roles result in a **particular stigma** attached to women in prison, and while spouses regularly support their husbands in prison and upon release as a matter of course, reciprocally women tend to be shunned by their spouse - and often even the whole family - if they are detained.

At the same time, women are often the sole or **primary caretaker** of young children, resulting in a particular impact of even short periods of detention on children and the wider family.

PRI would like to outline below the main issues arising in this context:

1. Gender-specific / status offences
2. Disadvantages during penal procedures
3. Non-custodial measures
4. Vulnerability to sexual abuse
5. Imprisonment / Detention
6. Girls in prison
7. Rehabilitation

1. Gender-specific / status offences

The term “status offences” refers to laws prohibiting certain actions to persons based on their sex, race, nationality, religion, age etc.

In many countries where criminal sanctions are used to curb sexual or religious “immorality”, offences such as adultery, sexual misconduct, violations of dress codes or prostitution **penalise women exclusively or disproportionately**. Some studies also suggest that females charged on moral or status offences are treated more harshly than males, presumably for having transgressed their gender role.

In some jurisdictions, women even face charges of adultery where there is clear indication that a rape occurred.

³ In 1980 the 6th UN Congress on the Prevention of Crime and Treatment of Offenders recognised that women often do not receive the same attention and consideration as male offenders. However, it took until 2009 for the Crime Commission to task an expert group with the development of standards to explicitly address this gap.

Again, in some other countries detention is used as a **form of “protection”** for victims of rape, to protect the victim as well as to ensure that she will testify against her rapist in court. While in exceptional circumstances such measures may need to be taken for limited periods, every effort needs to be made to ensure protection involves means that do not involve detention. Such practice is further victimising women and deters them from reporting rape and sexual abuse, thereby allowing perpetrators to escape justice.⁴

In some countries, particularly in the developing world, most women will never come into contact with the formal justice system, but will be confronted with **informal justice systems**, which the community may perceive as more legitimate than formal courts and in tune with local customs. However, it is very difficult to apply human rights standards to informal justice systems and they rarely guarantee women's right to equality before the law. Rather, most informal justice systems are dominated by male elders or community leaders and tend to perpetuate discrimination against women, largely excluding women from decision-making and preserving patriarchal notions of how men and women should behave.

- Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council (13th session): “(...) in some countries, prolonged detention as such can become ill-treatment, as is the case for instance when women are detained for their ‘protection’ for up to 14 years because they are at risk of becoming victims of honour crimes.” The Special Rapporteur recommended in the context of his visit to Jordan in 2006 that “[f]emales (...) detained under the Crime Prevention Law for being at risk of becoming victims of honour crimes be housed in specific victim shelters where they are at liberty but still enjoy safe conditions.” (A/HRC/4/33/Add.3, para. 72 lit. (u))
- In her report to the Commission on Human Rights in 2003 the Special Rapporteur on violence against women, its causes and consequences, noted that “[p]rotective custody as a means of dealing with victims of VAW [violence against women] should be abolished. Any protection provided should be voluntary. Shelters should be opened and offer security, legal and psychological counselling and an effort to help women in the future. NGOs’ cooperation in this field should be sought.” (Report of the Special Rapporteur, Ms Radhika Coomaraswamy, Commission on Human Rights, Integration of The Human Rights of Women and the Gender Perspective, Violence Against Women, 6 January 2003, E/CN.4/2003/75, paras. 90 and 91.)
- The 2003 report of the Working Group on Arbitrary Detention to the Commission on Human Rights recalled its annual report in 2001 (E/CN.4/2002/77 and Add.1 and 2) and reiterated that “the Working Group had recommended, with regard to the detention of women who have been the victims of violence or trafficking, 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.” (Report of the Working Group on Arbitrary Detention to the Commission on Human Rights, 16 December 2002, UN Doc. E/CN.4/2003/8, para. 65.)

COUNTRY EXAMPLES

⁴ In the light of such practices, Rule 59 of the Bangkok Rules provides that “[g]enerally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organizations 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.”

In the **United States**, the Department of Justice found that women were overrepresented among low-level drug offenders who were non-violent, had minimal or no prior criminal history, and were not principal figures in criminal organisations or activities, but nevertheless received sentences similar to “high-level” drug offenders under the mandatory sentencing policies. From 1986 to 1996 the number of women sentenced to state prison for drug crimes increased ten-fold. Nationally one in three women in prison and one in four women in jail were incarcerated for violating a drug law. (Amnesty International, Women in Prison Factsheet, August 2005, citing Department of Justice, Bureau of Justice Statistics, Prisoners in 1997, www.amnestyusa.org/women)

Many women who find themselves in the criminal justice system in **Afghanistan** have been imprisoned for “moral crimes”. (...) Those that are imprisoned are not only victims of their social and economic circumstances, but also of an unfair criminal justice system, where males and patriarchal principles dominate. (...) Rape victims, who undergo virginity tests, which establish sexual intercourse, may be convicted of adultery, if they cannot prove that the act was not consensual. In order to prove that the act was forced, women may have to undergo forensic examinations to identify evidence of self-defense on the body. In the cases of elopement, the release of the detainee often depends on the result of the virginity test proving that the woman/girl did not have sexual intercourse with the man accompanying her. If not proven, the woman is usually accused of running away and adultery (*zina*) and sentenced to imprisonment. (...) In 2006 UNODC found that 50 per cent of women in Pul-e Charki Prison in Kabul were charged with or convicted of moral offences, including *zina* and running away from home, combined with *zina*, in particular. (UNODC, Afghanistan: Female Prisoners and their Social Reintegration, page 6, 25 and 40).

The lives of the vast majority of Afghans are ruled by customary law, which has survived for centuries, regardless of, and to a large extent due to, the country’s violent political and military history. In all regions of **Afghanistan** disputes and crimes are tried and resolved by a council of elders (*jirgas* or *shuras*). Afghans regard *jirga* decisions as the law and condemn those who refuse to accept these decisions. Such councils are made up exclusively of men. Women are unable to approach the informal justice mechanisms, without the assistance of a male relative, which severely limits their ability to raise certain issues with the local *jirgas*, even if they would so wish. (UNODC, Afghanistan: Female Prisoners and Their Social Reintegration, page 15)

“According to Article 277 of the **Egyptian** Penal Code, a man’s adulterous act is considered as such only if it takes place in the marital home, and he could face a sentence of six months in prison, while a woman would receive a sentence of two-year imprisonment. The Egyptian legal and human rights community took action on this issue, so that while social attitudes towards men’s adultery as compared to women’s are still distinct, the law reflects a more equal penalty.” (Dr. Sherifa Zuhur, Gender, Sexuality and the Criminal Laws in the Middle East and North Africa: A Comparative Study, February 2005)

Reporting on his mission to **Jordan** in June 2006 the Special Rapporteur on torture stated that he “is highly critical of the current policy of taking females under the provisions of the Crime Prevention Law into “protective” detention because they are at risk of becoming victims of an honour crime.” (Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council (13th session), A/HRC/4/33/Add.3, para. 39)

In **Iraq** “Criminal arrest and detention places [female] victims at risk of further abuse or being killed by their families upon release for dishonoring the family, and detention centers sometimes end up serving as protective shelters to prevent families from killing women and girls at risk of honor killing.” (Heartland Alliance, Iraq: Gender-Based Violence Prevention: Legal, Medical and Psychosocial Services, <http://www.heartlandalliance.org/international/wherewework/project-pages/iraq-gender-based-violence.html>)

GOOD PRACTICE

“As the result of a widespread campaign initiated and coordinated by women’s groups all around [**Turkey**], in 1996 Article 441 of the Penal Code regulating adultery by men and two years later, in 1998, Article 440 of the Penal Code regulating adultery by women were annulled by the Turkish Constitutional Court on grounds of violating the constitutional principle of equality before the law.” (Women for Women’s Human Rights – New Ways, The New Legal Status of Women in Turkey, Istanbul: WWHR-New Ways, 2002, p. 18)

Multi-Agency Risk Assessment Conferences are held in the **United Kingdom** in cases of domestic violence. Key agencies – police, probation, education, health, housing and the voluntary sector – work together on an individual victim’s case to share information. This means that they can build up a comprehensive picture of the abuse and agree action to support and protect domestic violence victims and their families. (Redefining Justice: Addressing the individual needs of victims and witnesses, Sara Payne, Victim, Support Services, UK, 2009)

3. Disadvantages during penal procedures

Women’s imprisonment is closely related to poverty, both because offences often relate to supporting their family and escaping poverty and because they lack access to financial resources in order to prevent detention.

The majority of offending and imprisoned women come from socially disadvantaged communities and groups. In many countries typical female offenders will be young, unemployed, have low levels of education and have dependent children. Typically, they lack information on their rights.

Discrimination against women in society results in unequal power relations and access to economic resources. As a result, women in conflict with the law depend on the willingness of male family members to spend resources on due process of law for them.

This is reflected in particular vulnerability to being deprived of their liberty, for reasons including an **inability to pay for legal representation, fines for petty offences or to meet financial and other bail or sentencing obligations.**

GOOD PRACTICE

In 2000, a Paralegal Advisory Service (PAS) was set up by four NGOs in **Malawi**, with the support and assistance of Penal Reform International. PAS represented a unique partnership between the prison service and NGOs. Working closely with the prison administrations, PAS aimed to improve communication, cooperation and coordination between the prisons, courts and police; to increase legal literacy, helping prisoners to understand the law and how it affects them; and to provide legal advice and assistance, enabling prisoners to apply the law and to help themselves. From the outset, PAS particularly targeted cases involving vulnerable groups in prisons, including women. (Msiska, Clifford W., National Coordinator, Paralegal Advisory Service, The Role of Paralegals in the Reform of Pre-trial Detention: Insights from Malawi)

In **Afghanistan** UNIFEM developed a paralegal programme in partnership with the MOJ, Ministry of Interior (MOI), MOWA, Afghan Women’s Network and Kabul University, to increase the legal information and support available to women in more remote areas of Afghanistan. (United Nations Development Fund for Women (UNIFEM), Paralegal Programme Proposal, November 2006.)

4. Non-custodial measures

A considerable proportion of women offenders do not necessarily pose a risk to society and their imprisonment may not help, but hinder their social reintegration. Accordingly, the criminal justice system should take into account their backgrounds and reasons that have led to the offence committed and provide the assistance required to help them overcome the underlying factors leading to criminal behaviour.

However, in most societies gender-specific alternatives to prison tailored to meet the specific requirements of women offenders, in order to reduce re-offending, are lacking, hindering the effective implementation of non-custodial sanctions and measures in the case of many women offenders.

The Bangkok Rules therefore provide, in Rule 57, that “[g]ender-specific options for diversionary measures and **pretrial 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.”

For example, research has indicated that restorative justice can be effective in the social reintegration of women in some cultures. Since a large proportion of women have mental healthcare needs, are drug- and/or alcohol-dependent, or suffer from the trauma of domestic violence or sexual abuse, diverting them to a suitable gender-appropriate treatment programme would address their needs much more effectively than the harsh environment of prisons.⁵

The impact of being held in pre-trial detention, even for short periods, can be severe if the prisoner is the sole carer of the children - a role still overwhelmingly held by mothers. Even a short period in prison may have damaging, long-term consequences for the children concerned and should be avoided, unless unavoidable for the purposes of justice.

By keeping women out of prison, where imprisonment is not necessary or justified, their children may be saved from the enduring adverse effects of their mothers’ imprisonment, including their possible institutionalisation and own future incarceration.

- Rule 64 of the Bangkok Rules stresses that non-custodial sentences for pregnant women and women with dependent children should 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.”
- The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters⁶ provide guidance to states in developing appropriate responses to women in the criminal justice system, where appropriate.
- The African Charter on the Rights and Welfare of the Child, 1999, in Article 30 (Children of Imprisoned Mothers), provides that States Parties to the Charter “should undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and should in particular: (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers; (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers.”
- The Council of Europe, Parliamentary Assembly Recommendation 1469 (2000), on mothers and babies in prison, adopted on 30 June 2000, also recommended the development and use of community-based penalties for mothers of young children and the avoidance of the use of prison custody.
- In its Resolution 10/2 on “Human rights in the administration of justice, in particular juvenile justice”, dated 25 March 2009, the Human Rights Council emphasised that, when sentencing or deciding on pre-trial measures for a pregnant woman or a child’s sole or primary carer, priority should be given to non-custodial measures, bearing in

⁵ Bloom B., Owen, B. Owen & S. Covington, Gender Responsive Strategies: Research Practice & Guiding Principles for Female Offenders. National Institute of Justice, US Dept. of Justice, USA, 2003.

⁶ Endorsed by the UN Economic and Social Council in 2002.

mind the gravity of the offence and after taking into account the best interest of the child.

GOOD PRACTICE

In 2007 the Constitutional Court of **South Africa** ruled that “the best interests of the child are paramount in all matters concerning the child on sentencing of primary caregivers of young children.” The Court, upon appeal by a mother of three children aged 16, 12 and 8, suspended the portion of the four-year prison sentence the woman had not yet served: “Ms Cawood’s [a social worker] report indicates that all three boys rely on M. as their primary source of emotional security, and that imprisonment of M. would be emotionally, developmentally, physically, materially, educationally and socially disadvantageous to them. In Ms Cawood’s view, should M. be incarcerated, the children would suffer: loss of their source of maternal and emotional support; loss of their home and familiar neighbourhood; disruption in school routines, possible problems in transporting to and from school; impact on their healthy developmental process; and separation of the siblings.” The court ordered to suspend for four years M’s imprisonment (of 45 months) on condition that she would not be convicted of an offence committed during the period of suspension, of which dishonesty was an element, and further on condition that she complied fully with the order’s provisions. (Constitutional Court of South Africa, *S. v. M.*, 26 September 2007, Ref. no. [2008] (3) SA 232 (CC) 261)⁷

In **Russia**, federal legislation allows for mothers of children under the age of 14 and pregnant women who have been convicted of less serious offences to have their sentences deferred, shortened or revoked. Female prisoners who are pregnant or who have young children and who are imprisoned for less serious offences may have their sentences deferred until their children have reached the age of 14. (Russian Federation: Fourth periodic report to the UN Committee against Torture, July 2004, (CAT/C/55/Add.11)

In **Thailand**, in mid-2005, women prisoners comprised 17.2 per cent of the overall prison population, which was an exceptionally high proportion in comparison to other countries worldwide. The ratio of female prisoners convicted of drug-related offences had risen to 88 per cent of the total female prison population. The government responded to the situation with the implementation of the Narcotic Addict Rehabilitation Act, which stipulates diversion from prosecution and compulsory treatment for drug abusers. As a result the prison population was reported to show a decreasing trend. By 2005 Thailand was deploying a drug policy which included comprehensive demand reduction strategies, together with strict control and penalties for suppliers, in addition to diversion and treatment for drug addicts. (UNODC, Handbook for prison managers and policymakers on Women Imprisonment, 2008, page 93)

5. Vulnerability to sexual abuse

In many regards, women have a **heightened vulnerability** to mental and physical abuse during arrest, questioning and in prison.

Women prisoners are at particular risk of rape, sexual assault and humiliation. In addition to open assault, they are vulnerable to sexual misconduct by prison staff of all forms, improper touching during searches, and being watched when dressing, showering or using the toilet occur, which the Special Rapporteur on Violence Against Women describes as “sanctioned sexual harassment”. Custody, for many women, includes ill-treatment, including threats of rape, touching, “virginity testing”, being stripped naked, invasive body searches, insults and humiliations of a sexual nature or even rape.

Moreover, the **impact** of, for example, strip-searches on women is disproportionately greater than on men, as women detainees as a group present a higher incidence of previous sexual assault than both the general community and their male counterparts.

⁷ <http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZACC/2007/18.html&query=%20M%20v%20S>

Further, there are cases of **dependency** of prisoners upon prison staff which leads to increased vulnerability to sexual exploitation, as it drives them to 'willingly' trade sex for favours.

Adequate protection and oversight mechanisms are lacking while prisoners who are abused or exploited by prison staff usually have little opportunity of escaping from the abuser. Women are particularly afraid of making complaints due to fears of **retaliation** and the **stigmatisation** of sexual abuse.

- The report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council in 2008 noted: "In many countries male staff work in "contact positions" with women detainees and this situation increases their risk of being sexually assaulted since male officers may take advantage of routine pat-frisks to touch a woman's breasts, thighs, vagina etc. They may also abuse their responsibilities regarding surveillance in order to watch women prisoners when naked. Physical violence can entail rapes of women detainees, but the abuse of women by male staff can also be more subtly disguised. For instance, they may offer women special privileges or goods otherwise hard to obtain. Equally, they may threaten to deny them access to their entitlements. It is crucial to bear in mind that under such circumstances it can never be argued that a woman has 'consented' to a sexual relationship, even if this appears to be the case." (HRC 13th session), A/HRC/7/3, 15 January 2008, paragraph 42)

6. Imprisonment / Detention

Due to the smaller number of women prisoners, they are usually being housed in annexes to male prisons, often inadequately separated from the male population and subject to an increased risk of overcrowding. Fewer women prisons also mean greater distances from their homes and families, resulting in disadvantages in receiving visits and increased isolation. In some countries, conjugal visits are not allowed to women in prison or are more restricted than for male prisoners. Moreover, female prisoners are often over-classified or detained in a facility that does not correspond to their classification and where fewer or no programmes are offered with regard to rehabilitation and reintegration. They usually have few opportunities for transfer and little access to a true minimum security institution.

At the same time, more often than not **prison infrastructure and personnel** are oriented towards a male prison population, overlooking the specific needs of female detainees. The lack of female staff to attend and supervise women prisoners and the lack of training on their specific needs aggravate disadvantages faced by female prisoners.

Women prisoners have greater primary **healthcare needs** in comparison to men. Special health conditions of women (even more so those from economically and socially disadvantaged backgrounds) may have been untreated before admission due to discrimination in accessing adequate healthcare services in the community. Due to the typical background of women prisoners, which can include injecting drug use, sexual abuse, violence, sex work and unsafe sexual practices, a significant number of women are infected with STDs, including HIV and hepatitis, at the time they enter prison.

Also, women who are admitted to prison are more likely than men to suffer from mental health problems⁸, often as a result of previous domestic violence, physical and sexual

⁸ E.g. according to a study conducted by the Bureau of Justice Statistic in 2002 and 2004, mental health problems in prison were found to be much higher among women than men; in the UK, according to research published in 2006, 80 per cent of women prisoners were found to suffer from diagnosable mental health problems, 66 per cent were drug-dependent or used alcohol to dangerous excess, 37 per cent had

abuse, and examination by male doctors may put them at risk of re-traumatisation. According to research women prisoners 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 addiction and the harmful impact of isolation from the community on the mental well-being of women.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the **Bangkok Rules**)⁹ were adopted in December 2010 in order to rectify the lack of attention to the needs of female prisoners and gender-sensitive non-custodial alternatives to imprisonment. However, awareness about these standards and progress in their implementation is still lacking.

- The Committee on the Elimination of Discrimination against Women, *Inga Abramova v Belarus*, recently took up the issue of female prison staff and explicitly referred to the Bangkok Rules: “In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution. No male member of staff shall enter the part of the institution set aside for women unless accompanied by a woman officer. Women prisoners should be attended and supervised only by women officers.”¹⁰ (Communication No. 23/2009, UN Doc. CEDAW/C/49/D/20/2008 (2011))
- The WHO/UNODC Kyiv Declaration on Women’s Health in Prisons provides guidance on gender-specific aspects of healthcare: Correcting Gender Inequity in Prison Health (Copenhagen, 2009)¹¹
- On body searches, the Statement on Body Searches of Prisoners, World Medical Association provides important guidance, even though it lacks a gender-specific threshold: “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.” (adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993; editorially revised at the 170th Council Session, May 2005)

attempted suicide at some time in their lives (See UNODC Handbook for prison managers and policy makers on women and imprisonment, 2008, p. 9).

⁹ UN-Doc A/C.3/65/L.5, adopted by the UN General Assembly on 21 December 2010 (A/RES/65/229)

¹⁰ The Committee found that Belarus’ treatment of Inga Abramova constituted discrimination and sexual harassment, in violation of articles 2(a)-2(b), 2(e)-2(f), 3 and 5(a) of CEDAW, read in conjunction with article 1 and the Committee’s General Recommendation No 19. In reaching its determination, the Committee also took into account rule 53 of the Standard Minimum Rules for Treatment of Prisoners and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders. In reaching its views, the Committee reiterated that failure of detention facilities to adopt a gender-sensitive approach to the specific needs of women prisoners constitutes discrimination, within the meaning of article 1 of CEDAW. - See decision at <http://www2.ohchr.org/english/law/docs/CEDAW-C-49-D-23-2009.pdf>

¹¹ www.euro.who.int/Document/E92347.pdf

- It is good practice to allow longer visiting hours if the visitors have to travel a long distance. In some prison systems special rooms and houses are provided for the prisoners to meet their long-term visitors in an atmosphere that allows for more privacy and intimacy. This is particularly important for visits with all the family, including children. In normal circumstances and where special security considerations do not apply, families need to be able to sit down together within sight but out of hearing of prison staff. (UNODC, Handbook for Prison Managers and Policymakers on Women and Imprisonment, 2008, page 61)

COUNTRY EXAMPLES

In a women's prison in **Thailand** with 4,000 prisoners, all were classified as high-risk, even though the prison director said that only six prisoners actually met the criteria. (Nicholas McGeorge, Friends World Committee for Consultation, personal communication following a visit to Lard Yao Prison, Bangkok, Thailand, April 2005)

GOOD PRACTICE

In the **Russian Federation**, since 2004, due to amendments to the Criminal Code, women prisoners no longer serve sentences in high-security regimes. (Women in Prison, A Review of the Conditions in Member States of the Council of Europe, The Quaker Council for European Affairs, February 2007, Part 2, Country Report: The Russian Federation)

In two mother and baby units out of the 13 which exist in the **Russian Federation**, convicted women prisoners live in joint accommodation with their babies and may do so until the baby reaches the age of three (with some flexibility if the mother is due for release within a year). After this the child goes into the care of family members or the appropriate welfare authorities. However, upon release women who wish to be reunited with their children face barriers as they are required to prove that they can provide financial support and accommodation. (Alla Pokras, Penal Reform International, Presentation to the conference *Gender, Geography and Punishment in Comparative Perspective*, held in Oxford (UK), as part of a programme funded by the UK Economic and Social Research Council, 23 June 2010)

A **Latvian** women's prison is semi-closed and there is a children's home located in a separate building on prison grounds, where children stay until the age of four. Imprisoned women are allowed to stay with their children all the time until the age of one, and then are allowed to meet their children twice a day for 1.5 hours. Once children reach the age of four they are either placed in the care of relatives or in other children's homes, which house eight-10 children on any given day. Within a project funded by the Soros Foundation-Latvia, the children's home cooperates closely with the Social Paediatric Centre and has started an innovative parenting skills programme for women prisoners. (Handbook for Prison Managers and Policymakers on Women and Imprisonment, UNODC, 2008)

In **Nigeria**, Kirikiri prison in Lagos has been organising a project on preventing HIV/AIDS among female prisoners in the light of global statistics that more than 20 million women are infected worldwide, and Sub-Saharan Africa having the highest figure. The project used peer-education training to create awareness and promote prevention of HIV/AIDS among inmates and prison personnel who act as care givers, developed materials to create awareness, offered pre- and post-test counselling sessions for inmates and prison personnel and provided relief materials such as beverages for infected mother and their babies. The project also provided palliative drugs to infected inmates. (Survey of United Nations and other Best Practices in the Treatment of Prisoners in the Criminal Justice System, Proceedings of the workshop held at the Twelfth United Nations - Congress on Crime Prevention and Criminal Justice, Salvador, Brazil, 12-19 April 2010, page 98)

7. Girls in prison

Due to their small numbers, juvenile female prisoners are likely to have even less access to **suitable educational and vocational training** facilities than either adult

women or juvenile male prisoners. Any programmes provided for juveniles are likely to have been developed to address the needs of boys.

Also, juvenile female prisoners are even more unlikely to have access to gender-sensitive - and age-appropriate - **healthcare** or counselling for physical or sexual abuse suffered prior to imprisonment.

Pregnant girl prisoners comprise one of the most vulnerable groups in prisons, due to the social stigmatisation to which they may be subjected, their inexperience of dealing with pregnancy and the lack of adequate facilities for pregnant juvenile female prisoners.

- A provision for equal access to such programmes for girl prisoners is enshrined in the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules): *Rule 26.4*: "...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 Commentary to United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) on Rule 26.4 refers to resolution 9 of the Sixth UN Congress on the Prevention of Crime and Treatment of Offenders calling for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. It also recalls the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.
- Rule 65 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("Bangkok Rules") states: "Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making."

GOOD PRACTICE

In the **United Kingdom**, the All-Party Parliamentary Group on women in the penal system has initiated an independent inquiry on girls and the penal system aiming to bring about a reduction in the number of girls who enter the criminal justice system. The inquiry is focusing on policy and practice regarding girls and investigating the decisions that route girls away from or into the criminal justice system. It is looking at how the police and the courts deal with girls who come into contact with the criminal justice system and the different approaches to working with girls, both nationally and internationally. The All Party Parliamentary Group is collating evidence from charities, statutory services and local authorities, examining national government policy and will hear oral evidence in parliament over the coming year.

(<http://www.howardleague.org/appg-inquiry/>)

8. Rehabilitation

Although many problems women face 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 particular discrimination after release from prison, due to **social stereotypes**. They might be rejected by their families and in some countries they 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.

In many countries, the risk of losing their accommodation and employment upon detention is higher for women, and women offenders are confronted with increased **stigmatisation** as in most societies they contravene 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-specific.

While a general requirement to apply individual treatment according to the needs of prisoners is enshrined in Rule 69 of the UN Standard Minimum Rules on the treatment of prisoners, pre-release preparation and post-release support policies and programmes are typically structured around the needs of men and rarely address the gender-specific needs of women offenders, with targeted continuum-of-care in the community after release.

Rehabilitation programmes should be designed and made available in prisons specifically for women prisoners, taking into account their gender-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.

➤ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“Bangkok Rules”):

Rule 45: Prison authorities shall utilize 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.

➤ Commentary to the Draft UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders on Rule 42: “Gender sensitive programmes may include therapeutic programmes, self-help groups and consultation dealing with substance abuse, mental health, history of abuse and domestic violence; parenting programmes, including child visitation programmes and parent education; and special programmes to build confidence and life skills. Programmes to assist women to live independent lives may include programmes to develop administrative skills, bookkeeping, computer skills, painting and decorating, cooking/catering, horticulture, hairdressing, gardening, women’s health, childcare, dressmaking, embroidery managing income generating community projects and the use of micro-credit facilities.”

COUNTRY EXAMPLES

In **Afghanistan** many women prisoners are rejected by their families due to the offences they have committed, especially if these comprise so-called “moral crimes”, and it is very difficult for women who have been abandoned by their families to survive on their own in the community due to social stigmatisation, as well as economic difficulties. (UNODC, Afghanistan, Female Prisoners and their Social Reintegration, p. 36.)

GOOD PRACTICE

Prisoners Rehabilitation and Welfare Action (PRAWA) in **Nigeria** conducts weekly literacy and support circle programmes in the Female Prison Kirikiri Lagos to encourage confidence building, self-esteem, and improved communication skills amongst female prisoners. Alternatives to violence training workshops and training in life planning skills are also conducted for ex-prisoners and others in the community by PRAWA. Community-based dress- and soap-making workshops are available for female prisoners in Lagos and Enugu by PRAWA, and a knitting workshop for female ex-prisoners is provided by the Society for the Welfare of Women Prisoners (SWEWP) in Enugu. (Human Rights and Vulnerable Prisoners, PRI Training Manual, No. 1, p. 76)

In **Afghanistan** legal advisers from *Medica Afghanistan* offer mediation services to assist women and girls after being released from prison as many of them experience rejection or threats, being perceived as casting shame upon the family. At the same time, living alone is not an easy option for women in Afghanistan, where it is almost unthinkable to live outside the field of family relations. The mediation between the affected women and their relatives is aimed at easing the process of reintegration.

(<http://www.medicamondiale.org/projekte/afghanistan/rechtshilfe-fuer-afghaninen/?L=1>)

End/
PRI, January 2012

Penal Reform International (PRI) aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims. PRI also works for the prevention of torture and ill-treatment and for a proportionate and sensitive response to women and juveniles in conflict with the law, and promotes the abolition of the death penalty and the implementation of humane alternative sanctions. PRI is an international non-governmental organisation with Consultative Status at the United Nations Economic and Social Council (ECOSOC) and the Council of Europe, and Observer Status with the African Commission on Human and People's Rights and the Inter-Parliamentary Union. - To receive our **monthly newsletter** please sign up at <http://www.penalreform.org/keep-informed>.