

Neglected needs:

Girls in the criminal justice system



**Toolbox
on UN
Bangkok
Rules**

Neglected needs: Girls in the criminal justice system

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1. Introduction

This Briefing Paper highlights the particular issues facing girls involved in criminal justice systems and makes recommendations for strengthening the protection of their rights. It first examines how girls face discriminatory treatment in terms of the types of offence for which they are detained, their access to fair trial guarantees, and the lack of suitable alternatives to detention. It then examines some of the specific challenges faced by girls in detention and the international and regional standards in place to address them focusing on: protection from violence; access to adequate healthcare; provision of rehabilitation and reintegration services; and access to effective remedy.

1.1 Particular issues facing girls involved in criminal justice systems

Girls are one of the most vulnerable groups involved in criminal justice systems because of their age, gender and small numbers.¹ There are still wide gaps in our knowledge and understanding of offending by girls, of their specific needs whilst in detention, and of what is effective in terms of gender-sensitive rehabilitation and social reintegration measures. They are far from being a homogenous group and their characteristics and needs vary considerably between countries. Despite this, we know that many of the issues they face are common across many countries and contexts and that they are often different challenges to those experienced by boys or adult detainees. These include the fact that they may be primary carers for children, whether their own or siblings; they have specific health, hygiene and sanitary needs; they are at a high risk of substance

abuse, self-harm, mental health issues, HIV and other sexually transmitted diseases; they may have experienced past physical, emotional or sexual abuse; and that they are at risk of violence whilst in detention.

1.2 Numbers

Although numbers have risen in recent years, girls still represent a very small minority of those involved in the criminal justice system and of the overall prison population. There is no clear explanation for this, however, we do know that girls commit far fewer offences than boys; have shorter criminal ‘careers’; are more likely to be diverted away from formal justice systems; and are usually detained for less serious offences carrying shorter sentences. At the end of 2012, there were more than 625,000 women and girls held in penal institutions throughout the world, either as pre-trial detainees or having been convicted and sentenced.² In about 80 per cent of prison systems, female prisoners constitute between two and nine per cent of the total prison population – although it is worth noting that the rate of female imprisonment is growing in all regions.

It is difficult to find data on prisoners that is disaggregated according to both gender and age. Nonetheless, we do know that in 2008 in Australia, girls comprised eight percent of all children in detention;³ in 2010 in the US, girls made up 13 per cent of all children in residential placement;⁴ in 2011 in England and Wales, they were less than six per cent of all children in detention;⁵ in 2005 in Sierra Leone, girls comprised less than ten per cent of all children in detention;⁶ and in Senegal in 2009, just five per cent of all children in detention were girls.⁷

1 The definition of a girl in this briefing paper refers to all females under the age of 18 in line with Article 1 of the UN Convention on the Rights of the Child (CRC). The definition of detention used in this paper comes from the UN Rules on the Protection of Juveniles deprived of their Liberty (the Havana Rules) 11b and is defined as: ‘any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority’. This includes detention at a police station, in court rooms, pre-trial and upon conviction. It can also include placement in social care institutions.

2 The International Centre for Prison Studies produces an annual World Female Imprisonment List which shows the number of women and girls held in penal institutions, as pre-trial detainees (remand prisoners) or having been convicted and sentenced, in 212 prison systems in independent countries and dependent territories. It is largely compiled from official figures. For more information see www.prisonstudies.org [accessed May 2013]

3 Richards K, *Trends & Issues in Crime and Criminal Justice*, No 416, Australian Institute of Criminology, May 2011. Available at www.aic.gov.au [accessed May 2013]

4 www.childtrendsdatabank.org [accessed May 2013]

5 Civitas, *Youth Crime in England and Wales*, 2012. Available at www.civitas.org.uk [accessed May 2013]

6 Advocaid, *Justice for Girls? Girls in conflict with the law and sexual exploitation in Sierra Leone*, 2011.

7 DCAF, *Security for all: West Africa’s good practices on gender in the security sector*, 2010.

1.3 The right to non-discrimination

Girls frequently end up in detention at the end point of a continuum of discrimination because of their age and gender and other compound grounds for discrimination such as ethnicity, poverty and disability.⁸ Once they are in conflict with the law, they are subject to discriminatory treatment because of their status as suspects or offenders and this contributes further to their marginal status in society. States that are party to the UN Convention on the Rights of the Child (CRC) have an obligation under Article 2 to: 'respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. States party to the International Covenant on Civil and Political Rights (ICCPR) have similar obligations under Article 24. Detainees – including girls – retain their human rights and fundamental freedoms, except for those limitations that are necessitated by the fact of detention.⁹

The UN Committee on the Rights of the Child is clear that the application of the non-discrimination principle of equal access to rights does not mean that children are treated in an identical manner but that special measures should be taken in order to diminish or eliminate conditions that cause discrimination.¹⁰ The UN Committee on the Rights of the Child has recognised that '[s]ince girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, eg in relation to prior abuse and special health needs'.¹¹ The UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) also state that '[y]oung 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 shall be ensured'.¹²

The adoption of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) in 2010 represents an important step forward in recognising the gender-specific needs of girls in the criminal

justice system and in providing the standards that should be applied in their treatment. They require that girl and women offenders are not '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 pre-trial and sentencing alternatives, shall be implemented wherever appropriate and possible'.¹³ They also state that, when imprisoned, '[i]n order for the principle of non-discrimination, embodied in Rule 6 of the Standard Minimum Rules for the Treatment of Prisoners 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'.

Yet girls in conflict with the law rarely receive the special attention that is needed and governments do not prioritise the resources required to respect, protect and fulfil their rights particularly with regard to protection, education, health, rehabilitation, reintegration and effective remedy. The default response is often to accommodate them in existing adult and male-oriented institutions with minimal consideration for or understanding of their specific circumstances. The challenge for states is to put in place special measures for girls in conflict with the law that take their distinctive needs into account so that they have equal access to their rights and are not treated unfairly.

Marginalised in the crowd: the treatment of female prisoners under 21 in Scotland

'At the very least they deserve separate accommodation and a separate regime and separate staff. They also deserve to have more people thinking about them. At the moment there is no-one in the Scottish Prison Service whose sole responsibility is the management and the care of young women under 21 years old. Until such people are appointed it is difficult to see that their treatment and conditions will improve....So these young women become marginalised in the crowd.'

Source: HM Inspector of Prisons, *Report on Young Offenders in Adult Establishments*, 2009. Available at www.scotland.gov.uk [accessed January 2014]

8 See the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2008, for a review of grounds for discrimination identified by the Committee on the Rights of the Child.

9 *Basic Principles for the Treatment of Prisoners* (1990), Principle 5.

10 CRC General Comment No.5 (2003): *General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, para. 12.

11 CRC General Comment No.10 (2007): *Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para. 40.

12 Beijing Rules, Rule 26(4).

13 Bangkok Rules, Rule 58.

2. Discrimination in the criminal justice system

This section highlights a number of areas where girls are treated unequally in the course of criminal justice proceedings. It focuses on the following key areas: the nature of offences girls are charged with; court decision-making concerning girls; inadequate access to fair trial guarantees; and the lack of suitable alternatives to imprisonment.

2.1 Gender-specific offences

Offending by girls is often closely related to their economic and social disadvantage arising from poor parenting, neglect or abuse and low levels of education.¹⁴ Poverty can be a contributing factor to committing an offence in the first place, particularly offences related to survival such as prostitution, begging or selling items such as tissues on the streets. Girls are often charged with gender-specific offences and are detained for reasons that are different than for boys. They are treated more leniently than boys for some offences but more harshly for offences which are atypical in terms of the normative conduct expected of a girl. Girls are judged 'not only for what they have done in terms of criminal offences, but for who they are and how they behave in general'.¹⁵ As a result there can be greater stigma attached to girls' offending than to boys', whose behaviour is more commonly explained in terms of age or youthful immaturity.¹⁶ This impacts on the way in which girls are perceived and treated within criminal justice systems and detention facilities, and is compounded by the fact that they are often shunned and unsupported by their families.

In many instances girls will receive preferential treatment from justice systems because of attitudes towards their gender. In Ethiopia, for example, research found that '[w]hen girls commit a crime it is

considered as more embarrassing. On the other hand, girls are considered to be more easily rehabilitated than boys. Therefore, girls who commit an offence tend to be 'handled' in the family rather than being referred to the police'.¹⁷ Research into how girls and boys are processed through the criminal justice system in the United Kingdom has found that 'at each key point in the system, girls and young women are less likely to receive the more serious of the options available (...). Compared to their male counterparts, they are more likely to receive a police warning, less likely to be prosecuted, and less likely to be referred to court'.¹⁸

On the other hand, girls are disadvantaged by rigidly defined gender roles and social control which can result in greater criminalisation than boys for certain offences. The type of offences for which girls are disproportionately or exclusively detained often reflect concerns about their moral conduct, and include for example prostitution, breaching dress codes, obtaining abortions, running away and being beyond parental control.¹⁹ Criminalisation of such behaviour can reflect unease at a girl's transgression of certain gender norms of behaviour.

Some countries go so far as to detain girls administratively with the alleged objective of protecting them. Such placement is often a consequence of a non-existent or poorly developed child protection system.²⁰ Research in juvenile rehabilitation centres in Afghanistan, for example, found that 14 per cent of girls who responded to a questionnaire were in detention as they were without shelter, rather than because they had committed a crime: '[i]n these cases detention appears to be used as a tool for protection and social control – no boys reported being in detention as a result of being lost or without shelter'.²¹

14 See, for example, the UN Special Rapporteur on Violence against Women's report, *Pathways to, conditions and consequences of incarceration for women*, 21 August 2013, A/68/340, para. 67. In the UK, the Youth Justice Board reviewed evidence regarding girls' risk factors and offending and concluded that it is a combination of factors including poverty, experience of violence, lack of education and lack of parenting which contribute to offending. See Youth Justice Board, *Girls and offending – patterns, perceptions and interventions*, 2009, p19.

15 Gelsthorpe L., *Sexism and the female offender*, Gower, 1989.

16 Gelsthorpe, L. and Sharpe, G., *Gender, Youth Crime and Justice*, 2004.

17 Save the Children (Sweden), *Report on diversion of children in conflict with the law to community-based programme centres in Ethiopia*, 2005.

18 Batchelor S and Burman M, 'Working with Girls and Young Women', in G McIvor (ed.) *Women Who Offend*, 2004, pp266-87.

19 See, for example, *"I Had To Run Away" The Imprisonment of Women and Girls for "Moral Crimes" in Afghanistan*, Human Rights Watch, 2012, which details how girls are convicted and imprisoned for crimes that usually involve flight from unlawful forced marriage or domestic violence. Some women and girls have been convicted of *zina*, sex outside of marriage, after being raped or forced into prostitution.

20 UNICEF, *Administrative detention of children: a global report*, 2011.

21 UNICEF, *Justice for Children: The situation for children in conflict with the law in Afghanistan*, 2008.

2.2 Access to justice

Governments are obligated under international human rights law to provide all children in conflict with the law with timely, professional and specialised legal assistance, that is free when a child and/or their family is unable to pay.²² Principle 9 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems encourages states to incorporate ‘a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice’. It also asserts that states should take active steps to ensure that ‘where possible, female lawyers are available to represent female defendants, accused and victims’.²³ Principle 10 demands special measures for children to promote their ‘effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system’. Under Principle 11, ‘[l]egal aid provided to children should be prioritised, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children’.²⁴

Girls may be particularly reliant on family members to assist with the financial costs associated with being a defendant in criminal proceedings and yet they are often abandoned by families because of the stigma associated with their offending.²⁵ Poverty and lack of support from families may mean they find it hard to pay for legal assistance themselves and often do not have adequate access to free legal assistance that is professional, competent and specialised. Poverty can also mean that girls in conflict with the law are unable to pay for fines for petty offences and to meet bail. They are highly unlikely to have secure full-time employment or to own or rent accommodation such that they can provide courts with financial sureties for bail. Lack of education may also mean they have a lack of awareness of their rights at all and of the mechanisms available to exercise them.

2.3 Alternatives to detention

According to the Convention on the Rights of the Child, in all actions concerning girls in conflict with the law, the best interests of the child shall be a primary consideration. This applies to all decisions taken as girls are processed through the criminal justice system, from the first point of contact with the police, to sentencing, to the provision of rehabilitation and reintegration services. While ‘best interests’ in this context has not been precisely defined, General Comment No. 10 of the Committee on the Rights of the Child states that ‘[t]he protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety’.²⁶

States are under an obligation to deal with children without resort to judicial proceedings in most cases²⁷ – provided that human rights and legal safeguards are fully respected. A child can only be arrested, detained or imprisoned as a measure of last resort and for the shortest possible time.²⁸ The Beijing Rules state that ‘[d]eprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response’.²⁹ Rule 65 of the Bangkok Rules states that ‘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’. What is often lacking is a serious attempt by criminal justice systems to take into account girls’ backgrounds and the reasons that have led to the offence committed and to provide the assistance required to help them overcome the underlying factors leading to criminal behaviour.

The number of girls in detention is small, but a considerable proportion of those who are detained do not pose a risk to society and their imprisonment is likely to hinder, rather than help, their rehabilitation and social reintegration. For girls who are also mothers, imprisonment can have a devastating

22 See, for example, Articles 37 and 40 of the CRC, Article 14 of the ICCPR, Rule 15 of the Beijing Rules, Rule 18 of the Havana Rules, and Guideline 10 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

23 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 9(52).

24 *Ibid.*, Principle 11 (35).

25 An extreme example of this kind of abandonment can be found in some families’ responses to girls who commit ‘moral crimes’ (for example, see *“I Had To Run Away”: The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan*, Human Rights Watch, 2012). However, family abandonment following involvement in the justice system is a phenomenon in many countries.

26 CRC General Comment No.10 (2007): *Children’s Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para. 10. See also CRC General Comment No.14 (2013) *The right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, para. 28.

27 CRC, Article 40(3)(b).

28 CRC, Article 37(b).

29 Beijing Rules, Article 17.1(c).

impact on their own children's lives. For this group, non-custodial measures should be preferred wherever possible in line with international and regional standards such as the Preamble to the Bangkok Rules which emphasises that, 'when sentencing or deciding on pre-trial measures for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent'.³⁰

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, are drug- and/or alcohol-dependent, live in poverty, or suffer from the trauma 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.³¹

A girl in the UK talks about the reasons for her offending

'Both my parents were alcoholics – I said I wouldn't drink because of this but I started drinking in the end when I was 14 or 15. We had to move away from my dad who was violent. They wouldn't let me stay at my school as it was too far away. I had to move schools – I never liked the new school and I stopped going.'

Source: Williams, D., *Real bad girls: The origin and nature of offending by girls and young women involved with a county youth offending team and systemic responses to them*, Thesis University of Bedfordshire, 2009.

2.4 Recommendations for eliminating discrimination within the criminal justice system

Use evidence and data to inform policy

- States need to systematically collect data and research that is disaggregated by gender and age to fully understand the reasons why girls offend, the characteristics of girl offenders, and the differential 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 that is gender-specific and age-appropriate.

- In particular, states should allocate resources to collecting data and research regarding the most common underlying factors which lead girls to come in contact with the criminal justice system and which responses are suitable, in order to build a reliable knowledge base for the development of appropriate, targeted non-custodial measures and sanctions to respond to their needs.

Eliminate the use of gender-specific offences

- States should review legislation and remove so-called moral offences that discriminate against girls such as escaping from home, certain dress codes or having sex outside of marriage. These offences should be abolished and where necessary, the conduct should be addressed outside the justice system through multi-agency child protection mechanisms.

Strengthen fair trial guarantees for girls in conflict with the law

- 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. 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 peoples, (...) the dynamics of group activities, and the available measures for dealing with children in conflict with the (...) law'.³² The same applies to the police and their training should cover the physical, mental and social development of children, as well as the special needs of the most vulnerable children, which includes girls.³³

30 Other relevant provisions include Article 30 of the African Charter on the Rights and Welfare of the Child.

31 Bloom B, Owen B & Covington S, *Gender Responsive Strategies: Research Practice and Guiding Principles for Female Offenders*, National Institute of Justice, US Department of Justice, 2003.

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

33 *Ibid.*, para. 40.

Ensure detention is used as a matter of last resort

- Legislation should be reviewed and, where necessary revised, to include a sufficient range of alternatives to pre-trial detention and suitable responses taking the particular needs of girls into consideration. Resources should be allocated to developing appropriate alternatives to pre-trial detention and imprisonment for girls taking into account cases of girl offenders who are pregnant or who have dependent children, who commit certain categories of offences (eg non-violent), who may need special attention or treatment (eg psychiatric needs, drug or alcohol misuse), and/or who are assessed not to pose a danger to the public.
- Individual reports, sometimes called 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 or 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. Training should be provided to those who will be responsible for preparing such reports.

Use diversionary 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 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 juvenile cases 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.

Avoid the use of detention to protect girls

- 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.

- States should allocate adequate financial and human resources to the establishment of 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 girls who need such protection are referred to these NGOs on a timely basis and with respect for the need for strict confidentiality.
- Where, in exceptional circumstances (such as shortage of suitable accommodation), girls are accommodated in places of detention for their protection, states should ensure that they are not treated as prisoners and are held separately from adults and boys. They must be free to leave whenever they wish having received all information relevant to their situation (including the risks they may face if leaving); staff responsible for them must be properly trained and aware of their vulnerability and the trauma that they may have experienced; they must be offered psycho-social assistance and legal aid as required; and the place of detention must be subject to regular independent monitoring.

Good practice: Independent parliamentary enquiry into women in the penal system (UK)

During 2012, the All-Party Parliamentary Group on women in the penal system in the UK conducted an independent inquiry into girls and the penal system. The aim was to achieve real change in the lives of young girls in need and to bring about a reduction in the numbers of girls who entered the criminal justice system. It collated evidence from charities, statutory services and local authorities, examined national government policy, and heard oral evidence in parliament. At the end it made recommendations for reform across the social and penal system, including for local authorities to ensure that all those working with girls are aware of their different needs and have the resources and training to meet those needs; that the criminal justice system should not be used to solve social problems; and that the few girls who do require custody should only ever be held in secure children's homes with highly trained staff and therapeutic interventions to meet their needs.

Source: APPG Inquiry on Girls and the Penal System. Available at www.howardleague.org [accessed January 2014]

3. Responding to the special needs of girls in detention

The Convention on the Rights of the Child (CRC), the Beijing Rules and the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) contain many provisions which, together with the Bangkok Rules, provide guidance to governments to develop specific strategies and programmes to address the needs of girls if they have been placed in detention. The following section examines some of the most relevant issues and makes recommendations, based on these international standards, for measures that can address them.

3.1 Protection from violence

Article 19 of the CRC requires that states take effective legislative and other measures to protect children from violence. Children must also be protected from torture or inhuman and degrading treatment (Article 37) and their best interests should be a primary consideration in all matters affecting them (Article 3). Rule 36 of the Bangkok Rules states that ‘prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners’. In 2009, the UN Human Rights Council passed a resolution calling on states to ‘address the gender dimension of all forms of violence against children and incorporate a gender perspective in all policies adopted and actions taken to protect children against all forms of violence, acknowledging that girls and boys face varying risks from different forms of violence at different ages and in different situations’.³⁴ The Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice also provide useful guidance.³⁵

One vital aspect of protection is that girls are held separately from adults and from boys. Children in pre-trial detention should be held separately from children in post-trial detention. International and regional standards, including the CRC,³⁶ the International Covenant on Civil and Political Rights (ICCPR)³⁷ and the African Charter on the Rights and Welfare of the Child (ACRWC),³⁸ are clear that children must be separated from adults when deprived of their liberty, unless it is in the child’s best interests not to do so.³⁹ General Comment No.10 of the CRC states that: ‘There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being and their future ability to remain free of crime and to reintegrate’.⁴⁰

It is not unusual for girls to be held alongside boys. In Uganda, for example, there are often just one or two girls held alongside 20 or 30 boys in a facility albeit in a separate room at night.⁴¹ Girls in police detention are also at great risk of being held alongside adults. In Bangladesh for example the law does not even prescribe regulations for the eventuality of a girl being held overnight in a police station whilst it clearly states that a boy must be held separately from adults.⁴²

In very many countries, there is a lack of facilities specifically designed for girls because of the costs associated with building for such small numbers. One common response is for girls to be held alongside adult women prisoners and/or in facilities that are annexed to men’s prisons. However, it should be noted that the Committee on the Rights of the Child does not accept this economic argument and has recommended that even where States have low rates of female child offending, they should nevertheless ensure that there are appropriate facilities separate from adults.⁴³

34 UN General Assembly Resolution 63/241, *Rights of the Child*, 13 March 2009, A/RES/63/241, para. 27(k).

35 UN General Assembly Resolution 65/228, *Strengthening crime prevention and criminal justice responses to violence against women*, 31 March 2011, A/RES/65/228.

36 CRC, Article 37(c).

37 ICCPR, Article 10(3).

38 ACRWC, Article 17.

39 CRC, Article 37(c); Beijing Rules, Rule 13.4; ICCPR Article 10(2)(b); UN Standard Minimum Rules on the Treatment of Prisoners, Rule 8(d).

40 CRC General Comment No.10 (2007): *Children’s Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para. 85.

41 Moore M, *Juvenile Detention in Uganda*, African Prisons Project, 2010.

42 Justice M Imman Ali/UNICEF, *Towards a Justice Delivery System for Children in Bangladesh*, 2010.

43 See, for example, UN Committee on the Rights of the Child, *Concluding Observations: Canada*, 27 October 2003, CRC/C/15/Add.215; UN Committee on the Rights of the Child, *Concluding Observations: Iceland*, 13 February 1996, CRC/C/15/Add.50; UN Committee on the Rights of the Child, *Concluding Observations: New Zealand*, 24 January 1997, CRC/C/15/Add.71; and UN Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, 15 January 1995, CRC/C/15/Add.34.

When there are very low rates of imprisonment of girls, it can be very difficult to ensure that girls in detention have sufficient contact with their peers and families. In Kazakhstan, very low numbers of girls are imprisoned – in September 2013, there were just two girls convicted to a sentence of imprisonment who were held in a unit within the grounds of a women’s prison but separated from them at all times.⁴⁴ They have school during the day but their only interaction is with each other and with their teacher, the head of their dormitory and an observer guard. Their families live in the north and west of the country over 1,000km away and they receive visits only about once a month. The level of isolation of these girls is extremely high.

Many girls in detention have experienced abuse prior to their involvement with the criminal justice system and another important aspect of protection is to identify and respond to this abuse. Research from the US found that 64 per cent of the 319 girls in the juvenile justice system in Florida reported past abuse.⁴⁵ Furthermore, girls respond differently from boys to the experience of abuse. Research, again from the US, has found that girls who come into contact with the justice system are more likely than boys to suffer from internalised responses to trauma in the form of depression, self-mutilation and substance use, as opposed to externalised responses to trauma in the form of aggression.⁴⁶

Few detention facilities holding girls have the resources and capacity to identify and respond to prior abuse. Instead their experiences within the justice system can exacerbate existing vulnerabilities and problems. In giving evidence to the UK’s All Party Parliamentary Group on Women in the Penal System in 2012, the Centre for Mental Health noted: ‘Most mixed custodial regimes (eg in secure training centres) can still be based on more male orientated need; some searching and control and restraint practices, for example, have been seen to be highly counterproductive for females with high histories of abuse and trauma leading to flashbacks and exacerbating distress’.⁴⁷

In some countries problems in the recruitment, training and oversight of law enforcement officials leads to girls in their care suffering new abuse. This is particularly the case where there is mixed-sex staffing. According to the UN Study on Violence against Children (2006), ‘Male staff often engage in ‘sanctioned sexual harassment’, including improper

touching during searches, or watching girls while they dress, shower, or use the toilet. Male staff also use their positions of authority to demand sexual favours, and are responsible for sexual assault and rape’. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment has emphasised that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials.⁴⁸

The risk of experiencing violence whether from peers, adults or law enforcement officials whilst in detention can be particularly high during police detention. A 19-year-old woman in England described to researchers how ‘she would always prefer to be in a prison cell than a police cell – she said that police staff were not watched as much so they could “get away” with more in terms of the language they used and also with regard to using physical force: “they would ram my arms up my back”’.⁴⁹

Effective complaint mechanisms and independent inspections and monitoring of detention facilities are a crucial tool for preventing violence and protecting girls in detention. These two issues are discussed in more detail at 3.7 and 3.8 below.

Special Rapporteur on Violence against Women reports on lack of separation of adults and girls in Papua New Guinea

‘The Special Rapporteur also visited the detention cells in the police station of Kundiawa, where she interviewed seven female detainees, including three minors. One 16-year-old girl had been detained for three months, a 15-year-old girl had been there for a month and another 15-year-old girl had arrived the night before. The three minors were sharing a small cell with four adult women, two of them suspected of murder. One of the 15-year-old girls had been detained for fighting in the street with an adult woman who was placed in the same cell as her, and who violently attacked her during the Special Rapporteur’s visit. Police officers reacted to the attack after the Special Rapporteur insisted that attention be paid to the screams that were emanating from the cell.’

Source: Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to Papua New Guinea (2013) A/HRC/23/49/Add.2, para 44.

44 PRI research conducted in September 2013 in Almaty Prison, Kazakhstan.

45 Vanessa Patino et al., *A rallying cry for change: Charting a New Direction in the State of Florida’s Response to Girls in the Juvenile Justice system* (2006) cited in Watson L and Edelman P, *Improving the Juvenile Justice System for girls: Lessons from the States*, 2012.

46 Simkins S and Katz S, ‘Criminalizing Abused Girls’, *Violence Against Women*, Vol 8, No 12, 2002, pp1474-1499. Cited in Nura Taefi, ‘The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child’, *International Journal of Children’s Rights*, Vol 17, No 3, 2009, pp345-376.

47 All Party Parliamentary Group on Women in the Penal System (UK), *Inquiry on Girls: From Courts to Custody*, 2012.

48 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 15 January 2008, A/HRC/7/3, para. 34.

49 Children’s Rights Alliance for England, *Speaking freely, children and young people in Europe talk about ending violence against children in custody*, 2013.

3.2 Recommendations for protecting girls in detention

Develop specific protection policies for girls in detention

- Prison authorities should develop specific protection policies and strategies for the supervision and care of girls, and produce guidelines for staff working in detention centres accommodating girls. The development of such policies, guidelines and programmes should be guided by the CRC, Bangkok Rules, Havana Rules and the Beijing Rules. They should include a framework for how allegations and disclosures of abuse shall be handled that provide the following:
 - (a) an initial investigation is undertaken within a short time limit such as 24 hours;
 - (b) disciplinary or criminal proceedings are pursued where appropriate;
 - (c) immediate steps are taken to ensure the child's safety, including, where necessary, suspending an accused staff member in cases of supervisor / guardian violence or separating the victim and aggressor in cases of inter-prisoner violence;
 - (d) the girl is fully informed of the procedures and has the right to participate and express her views;
 - (e) the girl receives all necessary support and assistance, including medical care and counselling and reassurance regarding sexually transmitted diseases, HIV and pregnancy;⁵⁰
 - (f) the girl's privacy and dignity are protected; and
 - (g) all responses are guided by the principle of the best interests of the child as the paramount consideration.

Separation from adults and from boys

- Prison authorities should ensure that girls are separated from boys and from men and women at all points of detention including during transportation to court/other facilities and during police and pre-trial detention. Girls held in pre-trial detention should be held separately from girls who have been convicted.
- In certain circumstances, the small numbers of girls being held in pre-trial detention may mean that separation from convicted girls is not in their best interest because they would in effect be held in isolation. Furthermore, where there are very small numbers of girls being imprisoned

it is essential that the few girls who do require imprisonment should not be held in prison at all but in a secure children's home with highly trained staff and therapeutic interventions.

Well-trained and accountable staff

- Girls should be supervised exclusively by female staff who have been selected carefully to ensure they have the correct professional skills, and who have received special training in working with girls in a way that is sensitive to their emotional and developmental needs.
- Procedural rules should be in place for conducting searches of girls. Body searches should only be carried out as a last resort, and require authorisation by the supervisor on duty. They should be performed in a manner that maintains their privacy and dignity, by women staff who have been trained in appropriate search methods. Girls should never be required to be completely naked, but searches should be conducted in two steps (first upper and then lower body), and physical contact should be strictly limited. Alternative methods, such as scans, should be developed and applied wherever possible in order to avoid the harmful impact of physical searches.
- The use of any form of corporal punishment or physical violence by staff against a child in detention should be prohibited and sanctions imposed on staff for using violence against children in detention.
- Specific regulations should be drawn up concerning the use of disciplinary measures in all detention facilities where children are held. These must be in line with the Havana Rules and in particular must prohibit solitary confinement and restriction or denial of contact with family members as disciplinary measures. These regulations must be known about by children and staff.
- Any member of staff who is found to have bullied, abused or sexually abused a girl should be held to account and be subject to disciplinary or criminal procedures, depending on the nature and severity of the offence committed.

Regular independent monitoring and access to complaint mechanisms

- Prison authorities should ensure that girls have access to a confidential and independent complaints mechanism. Independent monitoring

⁵⁰ For more information on this point, see the *Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, OHCHR, 2004.

bodies should be established and must ensure that they include women members as part of visiting teams, and that detention facilities where girls are held are included in their programmes and subject to regular and unannounced visits. Their assessments should be gender and age-sensitive. For more on this issue, see 3.7 and 3.8 below.

Good practice: Developing legislation to protect girls in detention in the Philippines

In the Philippines, the Juvenile Justice and Welfare Act (2006) includes special provisions for the protection of female children:

Sec. 47. Female children – Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law.

Sec. 48. Gender-sensitivity training – No personnel of rehabilitation and training facilities shall handle children in conflict with the law without having undergone gender sensitivity training.

Source: Juvenile Justice and Welfare Act 2006 Republic Act No. 9344, 28 April 2006 (Philippines).

promotion, curative, rehabilitative and palliative services, but also a right to grow and develop to their full potential, and live in conditions that enable them to attain the highest standard of health by implementing programmes that address the underlying determinants of health'.⁵¹ The right to health of girls and women is also protected under the UN Convention on the Elimination of All Forms of Discrimination Against Women, which obligates States to 'take all appropriate measures to eliminate discrimination against women in the field of health care (...) including those related to family planning' under Article 12.

There is limited data and research regarding the status of girls' health while in detention. Despite this, certain common issues do emerge from the information available particularly concerning mental illness, sexual and reproductive health including pregnancy, physical and sexual abuse and substance and alcohol dependency.⁵² Given these common characteristics, a gender-sensitive framework for healthcare in detention should pay particular attention to these issues.⁵³

It is in the area of mental health that the differences between the health issues experienced by girls and by boys are most stark. In the United States, a study covering data on 1,400 young people in different juvenile justice settings (community-based programmes, detention centres and secure residential facilities) in 2006 found that 80 per cent of girls met the criteria for at least one mental health disorder, compared to 67 per cent of boys.⁵⁴ Girls are far more likely than boys to suffer with affective disorders (like depression) as well as anxiety disorders.⁵⁵ They are also at higher risk of harming themselves or attempting suicide in comparison to boys or adults. In the UK, a report by the Inspectorate of Prisons found that young women under 18 were twice as likely to injure themselves as adult women. In 2007, 89 per cent of girls under 18 in custody had self-harmed.⁵⁶ Yet too often self-harm is addressed with medication or even punishment. Studies suggest that mental illness among girls in prison often both causes and results from imprisonment.⁵⁷ The impact of separation from family and community can severely harm a girl's mental health, emotional well-being, self-esteem and social and life skills and abilities to varying extents, yet mental health issues are rarely addressed.

3.3 Access to gender-sensitive healthcare

Girls in detention have the same right to healthcare provision as other children in the community. Under Article 24 of the CRC, girls and boys in detention have the right 'to the enjoyment of the highest attainable standard of health (...) and to facilities for the treatment of illness and rehabilitation of health' that include quality health services, including prevention, promotion, treatment, rehabilitation and palliative care services. In a recent General Comment, the UN Committee on the Rights of the Child has interpreted the right to health 'as an inclusive right extending not only to timely and appropriate prevention, health

51 UN Committee on the Rights of the Child, General comment No.15 (2013): *The right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, para. 2.

52 See, for example, research from the UK in Douglas N and Plugge E, 'The health needs of imprisoned female juvenile offenders: the views of the young women prisoners and youth justice professionals', *International Journal of Prisoner Health*, Vol 4, No 2, June 2008, pp66-76.

53 The WHO/UNODC Kyiv Declaration on Women's Health in Prisons provides guidance on gender-specific aspects of healthcare, see *Correcting Gender Inequity in Prison Health*, Copenhagen, 2009.

54 Shufelt J and Coccozza J, *Youth with mental health disorders in the juvenile justice system: results from a multi-state prevalence study*, Research and Program Brief, National Center for Mental Health and Juvenile Justice, 2006. Cited in UNODC, *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, 2012.

55 Teplin L A et al., 'Psychiatric Disorders in Youth in Juvenile Detention', *Archives of General Psychiatry*, Vol 59, No 12, Cited in F T Sherman, *Making Detention Reform Work for Girls, A Guide to Juvenile Detention Reform*, Juvenile Detention Alternatives Initiative Practice Guides 5, Annie E. Casey Foundation, 2013.

56 HM Chief Inspector of Prisons for England and Wales, *Annual Report 2006-7*.

57 Penal Reform International, *Health in Prison: Realising the right to health*, PRI Briefing No.2, 2007(2).

The detention environment in many countries does not provide adequately for the specific health needs of girls, such as adequate nutrition, exercise and greater hygiene needs due to menstruation. As prison systems have been primarily designed for men, girls' health needs are often not even addressed by prison policy and procedure. This can result, for instance, in infrequent or absent health services including gynaecological provision for pregnant girls who are one of the most vulnerable groups in detention, due to the social stigmatisation to which they may be subjected and their inexperience of dealing with pregnancy. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has 'observed a tendency to overlook the personal hygiene needs of female detainees, including juvenile girls. For this population in custody, ready access to sanitary and washing facilities as well as provision of hygiene items, such as sanitary towels, is of particular importance. The failure to provide such basic necessities can amount, in itself, to degrading treatment.'⁵⁸

3.4 Recommendations for ensuring the right to health for girls in detention

Non-discrimination

- Gender-specific healthcare services that are at least equivalent to those available to girls in the community, should be provided to girls in detention.

Gender-specific treatment

- Girls should be subject to an individual gender-sensitive health assessment on their admission to detention in order to determine their risks and needs. This should be in accordance with Rule 6 of the Bangkok Rules and include careful, comprehensive and detailed screening, including of their socioeconomic and educational background, mental health and trauma histories, current health status and detection of signs of ill-treatment and torture including sexual abuse. Such an assessment should be subject to informed consent and medical information should be kept confidential.
- Girls who are pregnant or have just given birth should receive the same quality of pre- and post-natal care as adult prisoners and women in the community. According to Rule 39 of the Bangkok Rules, '[t]heir 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'. 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 pregnancy at a young age.

- Girls in detention should have regular access to gynaecologists and receive education on preventive healthcare issues in cooperation with services in the community by way of written and oral information.
- Girls should have access to age- and gender-specific programmes and services such as counselling for sexual abuse or violence in line with Rule 38 of the Bangkok Rules. They should also have access to comprehensive mental healthcare and substance dependency treatment in line with Rules 12 and 15. Specialised services for girls are best delivered by the civil/community healthcare services or at least in collaboration with them.
- Detention authorities should establish clear procedures for responding to self-harm and clear rules for supervision and other measures where a girl is considered to be at risk of suicide or self-harm. Such risk 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 girls at risk in line with Rule 16 of the Bangkok Rules.
- As far as possible, girls receiving medical attention should have continuity of care upon release.
- In line with Rule 5 of the Bangkok Rules, girls should have access to sanitary towels free of charge and a regular supply of water for personal care.

Well-trained and accountable staff

- In line with Rule 35 of the Bangkok Rules, prison staff should be trained to detect mental healthcare needs and risk of self-harm and suicide among girls in detention, and to offer assistance by providing support and referring such cases to specialists. They should also be given basic training on the main issues relating to girls' health in addition to first aid and basic medicine.

⁵⁸ European Committee for the Prevention of Torture, *CPT Standards 2006*, CPT/Inf/E (2002) 1 – Rev. 2006, para. 30.

3.5 Rehabilitation and reintegration

The primary purpose of any response or sanction to offending by girls, including their detention, must be the rehabilitation and reintegration of the child. When girls are detained, they should be given the maximum support possible for their rehabilitation and reintegration, and this should begin from the first moment of their arrival in a facility. This should include the care, protection and individual assistance – social, educational, vocational, psychological, medical and physical – that they may need. Each girl should be assessed, and interventions should be tailored to her individual needs and circumstances.

One of the many challenges of effective rehabilitation and social reintegration is that girls in prison are often drawn from groups of society who are extremely poor, have disrupted and chaotic family lives and low levels of education, have lived on the streets, been addicted to illegal drugs or alcohol, and have no reliable family or social network. Release from detention can be difficult or even dangerous where girls have been rejected by their families, especially if they have been convicted of ‘moral crimes’. If they have no family to return to, they will need particular support in terms of housing, education and assistance particularly if they are also mothers.

A core element of rehabilitation and reintegration is encouraging and maintaining contact with family and friends. Regular visitors are essential for a girl detainee’s psychological wellbeing and are a way to obtain food, medicine and other basic necessities when adequate supplies are not provided by the authorities. Regular visitors can help girls to develop a network of support for the moment of release. However, given so many girls in detention have experienced abuse, it is vital that they are also able to refuse to see visitors.

To ensure that children are able to be placed near their families, the Havana Rules encourage States to decentralise institutions.⁵⁹ Yet the small number of facilities for girls can mean that maintaining contact with families and friends is very difficult because of distances to be travelled, inadequacies in transport, and cost. This leads to isolation which can have serious social and psychological effects and inhibit rehabilitation and reintegration. In a study in Eastern Europe, Central Asia and South Caucasus, it was found that only 15 per cent of juveniles were

incarcerated in institutions close to where their family lived. The situation for girls was found to be particularly bad due to the scarcity of institutions for them. Consequently, some girls held were in institutions located more than 2,000km from their families.⁶⁰

Education and enhancing employment opportunities is an important focus for rehabilitation and reintegration efforts. It can ensure that life chances are not permanently damaged, especially as some girls will have had limited access to education. The Havana Rules outline the basic principle that girls in detention should receive the same standard of education as their peers in the community.⁶¹ Furthermore, every child should have the right to receive vocational training in occupations likely to prepare him or her for future employment.⁶²

In many countries girls generally have lower levels of education than boys. UNESCO estimates that 57 per cent of out-of-school children of primary age in developing countries are girls.⁶³ Even girls who do enrol in school may attend irregularly due to other demands on them, and the fact that their education may not be prioritised. Girls are more likely to repeat years, to drop out early and to fail key subjects, and in most countries girls are less likely to complete the transition to secondary schooling. Early marriage and pregnancy impede girls’ right to education, and are a primary cause of school drop-out for girls.⁶⁴ Girls in conflict with the law have often failed at school, have low levels of education, or have not attended formal schooling at all. Lack of education can be linked to the onset of offending and also linked to the persistence of offending into adulthood, especially as it affects future employment opportunities.

Both boys and girls experience lack of adequate access to education in detention. The Special Rapporteur on the right to education has commented that: ‘[t]here is no guarantee of access to education for all children in detention, and even fewer possibilities of an adaptable and pertinent child-oriented education. The juvenile justice system has been unable to provide sufficient quantity and quality of training and education to the children detained’.

59 Havana Rules, Rule 30.

60 Sergeyeva V, ‘Penal Reform International’s activities in the area of juvenile justice’ in *Kids Behind Bars*, Defence for Children (DCI), 2005, p108.

61 Detailed standards for the education to be provided to children in detention can be found in the Havana Rules, Section E.

62 Havana Rules, Rule 42, Standard Minimum Rules for the Treatment of Prisoners 66(1) and 71(5); and Beijing Rules, Rule 26.1 and 26.2.

63 See www.unesco.org/education

64 See, for example, CEDAW Committee, Concluding Observations of the Committee to End All Forms of Discrimination against Women, Uganda, October 22, 2010, para. 31.

Observations from a Workshop on the education of minors deprived of their liberty in Africa

- A. The issue of minors deprived of their liberty in Africa and of their rights, including their right to quality education, is widely overlooked, if not neglected or negated, by a majority of actors at national and international levels.
- B. The few stakeholders identified seem to act in isolation from each other without real coordination at national or regional levels. Interventions rarely involve advocacy; they are, rather, focused on providing detainees with direct assistance and prioritise basic needs other than education.
- C. There is great vagueness on the scope of the phenomenon in Africa: data is poor and few studies have been conducted.

Source: Report on Education of Minors Deprived of Liberty in Africa | Workshop IDAY (2011)

Even though there have been improvements in some countries, for the most part they received inadequate education, ill-suited to their needs'.⁶⁵ Girls held in adult prisons often do not have any access to education at all. In Sierra Leone, researchers spoke with eight girls who had experienced adult prison: 'they did not appear to be suffering from harsh treatment and generally appeared to be being looked after by the older women. However they received no schooling by the establishments and the majority appeared to be suffering psychologically (...). Three of the girls were acutely missing school. One said she felt she was wasting her time in jail, another said she felt bad that she was not in education anymore'.⁶⁶

The sort of vocational training that is offered in detention facilities can reinforce gender stereotypes. In Italy for example, the Special Rapporteur on violence against women noted that vocational training courses 'are largely based on stereotyped roles of men and women, including pizza-making and carpentry work for boys and cooking for girls'.⁶⁷

Girls often do not have equal access to leisure and play activities as required in international standards.⁶⁸ A report on conditions of detention for children in Tanzania found that: 'In many facilities the outside space is reserved for boys; for example, girls in one

Retention Home were locked up for the whole day in their rooms with no access to outside space for exercise'. A report on conditions of detention for young men and women under 21 in Scotland found that: 'Recreation facilities for the young women are practically non-existent. There is not even a television in one of the recreation rooms. For the young men there is satellite television, pool, table tennis, and electronic games. Hardly any young women attend Physical Education, and when they do the sessions are held with adults'.⁶⁹

The individual needs of girls must be addressed by rehabilitation programmes covering a range of problems, such as alcohol or substance dependency, mental or psychological conditions, anger and aggression, any one of which, or in combination, may have led to an offence being committed. Yet the low numbers of girls in prisons and the fact that often they are serving short sentences means that rehabilitation and reintegration services, if they exist at all, are often under-utilised and staff may not have specialised training or experience in working with this particular group. In many prisons, the same classification system is used for girls and for boys. These tend to overlook the specific issues affecting girls that must be addressed as part of the rehabilitation and reintegration process, such as a history of abuse. Girls are often held in overly secure settings which do not reflect the security risk they pose because of a lack of suitable alternatives. Such 'over-classification' can impact on their access to rehabilitation programmes.

Empirical research on the effectiveness of rehabilitation and reintegration programmes specifically designed for girls in the criminal justice system is sparse, perhaps reflecting the lack of programmes overall. The research that is available, such as Oregon's Guidelines for Effective Gender-Responsive Programming for Girls (developed in 2002), suggests that it is good practice for girls to be treated with an approach based more upon building relationships than that used with boys since their risk factors for reoffending are different, with poor parenting and a dysfunctional family environment being greater influences. These Guidelines state that girls respond better to one-to-one work whereas boys respond better to group work; girls place an emphasis on communication for relationship development; and they compete for attention not personal power, unlike boys. A literature review of effective interventions for girls who offend in the United Kingdom defined a number of key principles that should be in place:⁷⁰

65 Special Rapporteur on the right to education, *The right to education of persons in detention*, 2 April 2009, A/HRC/11/8, para. 42.

66 Advocaid, *Justice for Girls? Girls in conflict with the law and sexual exploitation in Sierra Leone*, 2011.

67 Report of the Special Rapporteur on violence against women, its causes and consequences, *Mission to Italy*, 15 June 2012, A/HRC/20/16/Add.2, para. 33.

68 See, for example, the Havana Rules, Rule 4(47) and the Standard Minimum Rules for the Treatment of Prisoners, Rule 21(2).

69 HM Inspectorate of Prisons, *Report on Young Offenders in Adult Establishments*, 2009.

70 Patton P and Morgan M, *How to Implement Oregon's Guidelines: for effective gender responsive programming for girls*, Oregon Criminal Justice Commission, 2002.

- gender-specific programmes
- interventions that are relevant to girls' lives
- holistic approaches that address multiple needs
- interventions which recognise the importance of relationships
- understanding and recognition of girls' experience of violence and victimisation
- approaches which emphasise girls' strengths not weaknesses.⁷¹

3.6 Recommendations for effective rehabilitation and reintegration for girls in detention

Enabling contact

- When being allocated to a facility, a girl's caretaking responsibilities as well as the availability of appropriate programmes and services should be taken into account in line with Rule 4 of the Bangkok Rules.
- Girls should be held in small and local facilities that are close to their family and friends to enable regular visits. This will incur costs but these can be mitigated against the longer term benefits in reducing re-offending. If visitors do have to travel long distances then they should be allowed to have longer visiting hours.
- Visits with children should allow physical contact with the children and take place in a suitable setting.
- Girls should be properly consulted as to who is allowed to visit them in line with Rule 44 of the Bangkok Rules.

Assessment and planning for rehabilitation and reintegration

- Girls in detention should be assessed and classified to ensure appropriate and individualised planning for their rehabilitation and reintegration into society, acting at all times in their best interests. Such assessment and classification should take into account the level of risk they pose as well as essential information concerning a history of mental illness, substance dependency and any caretaking responsibilities. Sentence plans must match their gender-specific needs in line with Rule 41 of the Bangkok Rules.

Ensuring access to rehabilitative activities

- Prison authorities should ensure that girls are given the same access to leisure and play activities, education and vocational training programmes as boys, which in turn should be equivalent as far as possible to those available to children outside prison in line with Rule 37 of the Bangkok Rules.
- Prison authorities should work closely with national bodies/ministries responsible for education and vocational training, as well as NGOs, in delivering gender-specific programmes for girls' rehabilitation and social reintegration. Such programmes should be mainstreamed and sustainable rather than ad-hoc ventures.
- Detention facilities should adopt specialised substance dependency prevention and rehabilitation programmes that are age- and gender-specific in line with Rule 54 of the Havana Rules and Rule 15 of the Bangkok Rules.

Good practice: Providing rehabilitation and reintegration programmes in Russia and England

In the Russian Federation, the government established the Social Rehabilitation Centre for Women and Girls in 2007 for those released from prison and those sentenced to non-custodial measures. The Centre provides legal advice, psychological counselling and training, assistance with finding employment, as well as training in computer literacy.⁷²

In England, the NGO Young Women's Trust (formerly Platform 51) provides a range of gender-specific services and activities for girls and women some of whom have had experience of the penal system. The On Track programme works with girls under 16 who have disengaged from education or have been excluded from school. Many of them have experienced family breakdown or been in the care of the State, had contact with the police or lack stable accommodation. The project receives referrals from the local authority and other agencies working with children. Platform 51 works holistically with the girls and their parents to improve outcomes for them. It provides an alternative education which aims to develop the girls' skills, improve their self-esteem and self-worth and help them to see their own potential rather than just addressing their problems.⁷³

⁷¹ Williams D, *Real bad girls: The origin and nature of offending by girls and young women involved with a county youth offending team and systemic responses to them*, Thesis, University of Bedfordshire, 2009.

⁷² See *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, UNODC, 2002.

⁷³ www.youngwomenstrust.org

3.7 Access to effective remedy and monitoring

Children deprived of their liberty have the right to complain about their conditions, treatment and care through access to mechanisms that are safe, child-sensitive, gender-sensitive, effective and easily accessible. Complaints mechanisms can take many different forms and children should have access to avenues of complaint both within and outside the justice system. At a national level, complaints may be made to internal bodies with responsibility for the police station or detention facility where the child has been detained. Complaints may also be made to external independent bodies such as ombudspersons or National Human Rights Institutions as well as to judicial bodies. There is an important link between complaints procedures and monitoring bodies and children should also have the right to speak in confidence to inspectors of detention facilities from independent monitoring bodies who should have powers to act upon their complaints. Children should also have access to make complaints to international human rights bodies such as the UN Committee against Torture and the UN Committee on the Rights of the Child; as well as to regional bodies such as the African Committee of Experts on the Rights and Welfare of the Child, the Special Rapporteur on Prisons and Conditions of Detention in Africa, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; and the Inter-American Commission on Human Rights.

Girls find it very difficult to access complaints mechanisms when in detention to obtain redress and reparations for violations of their rights. They are expected to use complaints procedures that have been developed for use by adults and are not adapted to their evolving capacity and development, age, gender and degree of vulnerability. They may be afraid to make a complaint out of fear of negative consequences of complaining against staff with whom they are in contact daily. They may be unaware that they have grounds for complaint and consider, for example, that the use of violence as punishment is a common and widespread practice. Perhaps most significantly, they may lack trust and confidence that their complaints will be believed and fairly assessed; this may be the case particularly in cases of sexual exploitation and abuse which can be associated with stigma, shame and secrecy. They are at risk of retaliation by law enforcement officials which could include unjustified disciplinary punishment, being strip-searched and being transferred to facilities far from their families.

Complaints can be very reliant on written text which means that girls with poor educational backgrounds cannot easily use them. Complaints mechanisms themselves are often flawed and lack independence – and they have insufficient human and financial resources to carry out adequate investigations. Criminal prosecutions and disciplinary proceedings arising from children’s complaints are rare.

The international standards are clear that independent inspections and monitoring of detention facilities by qualified bodies should take place on a regular basis, at times unannounced, with full access to the facilities, and freedom to interview children and staff in private. These monitoring bodies should have the capacity to evaluate treatment and conditions, and to investigate any allegations in a timely manner. Such bodies can include ombudspersons, independent commissions, members of the public, or police review boards. They should not be attached to the detention facility concerned. Their reports should be available to the assessor and/or to the public.

Where girls are being detained, then women staff should participate in the investigations as required by Rule 25 (3) of the Bangkok Rules and other standards such as OPCAT. All members of monitoring bodies should be aware of the specific needs of girls and of the Bangkok Rules as a framework for assessing whether their particular needs are being met. It is highly desirable that all members are trained to deal with sexual violence and other sensitive gender-specific issues. They need to be able to ask the right questions using gender-sensitive language.⁷⁴

Monitoring groups should assess whether special measures are in place to protect girls from ill-treatment and torture, which include: ensuring that the accommodation of girls is strictly separated from boys and from adult male and female prisoners; that they are supervised by women staff who are carefully selected and who have received special training; that they are properly supervised to prevent abuse by other prisoners or members of staff; and have access to a confidential and independent complaints mechanism.⁷⁵

⁷⁴ For more guidance on monitoring and inspection, see Penal Reform International and the Association for the Prevention of Torture, *Women in detention: a guide to gender-sensitive monitoring*, 2013; and Penal Reform International, *Independent monitoring mechanisms for children in detention*, Justice for Children Briefing 2, 2012.

⁷⁵ Penal Reform International and the Association for the Prevention of Torture, *Women in detention: a guide to gender-sensitive monitoring*, 2013.

3.8 Recommendations for strengthening access to effective remedy

- Prison authorities should ensure that girls have access to a confidential and independent complaints mechanism and that written and oral information on how to make complaints is given to them on admission to prison in a language that they understand.
 - All complaints in relation to abuse, sexual abuse and other forms of alleged violence should be taken seriously and promptly investigated by an independent body, and those who have complained should be protected from retaliation by staff and provided with free legal assistance.
 - Independent monitoring bodies should be established and must ensure that they include women members as part of visiting teams and that detention facilities where girls are held are included in their programmes and subject to regular and unannounced visits. Their assessments should be gender and age-sensitive.
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4. Conclusions

Treating girls who are offenders and prisoners differently from their male counterparts is not unfair or discriminatory. In fact the reverse is true. Girls who offend and who are in detention have distinctive needs that must be identified and addressed so that they receive treatment that is neither better nor worse than that received by boys, but that is equitable. An important first step for policy-makers is to research and identify the background,

characteristics and social reintegration needs of girl offenders and to use this to inform legislation and policies in a gender-sensitive way. It is hoped that this paper demonstrates the need for gender-specific policies that respond to the needs of girls and that the recommendations it contains can be a source of inspiration for law and policy makers to develop a proportionate and gender-sensitive response to offending by girls.

Resources

PRI has a range of resources to provide you with further information and practical advice on protecting girls, women and children in the criminal justice system.

Resources on children in the criminal justice system

Training resource:

Protecting children's rights in criminal justice systems

(2013). Based on international and regional standards, this training manual provides a practical approach to addressing issues that arise for children in criminal justice systems, such as arrest, diversion, trial procedures, proportionate sentencing and reintegration, as well as the treatment of children at risk and children who are victims and witnesses.



Briefing papers (2012-3): This series of factsheets provides information on a number of important aspects of justice for children. The current briefing paper is the sixth in the series, with the previous instalments as follows:

1. *African Committee of Experts on the Rights and Welfare of the Child*
2. *Independent monitoring mechanisms for children in detention*
3. *Children with parents in conflict with the law*
4. *The minimum age of criminal responsibility*
5. *The right of children deprived of their liberty to make complaints*

Ten Point Plan for Fair and Effective Criminal Justice for Children (2011): This strategy document, developed by PRI and IPJJ, focuses on ways that law and policy-makers and criminal justice practitioners can respond effectively and positively to children in contact and in conflict with the law.

Resources on women in the criminal justice system

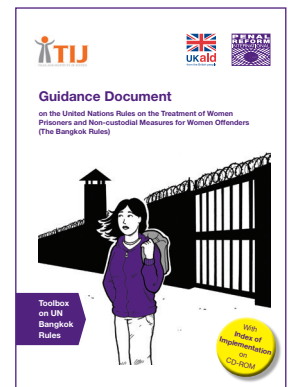
PRI's Bangkok Rules 'Toolbox for Implementation' contains the following resources.

Guidance document (2013):

A guide to each Bangkok Rule, suggested measures for implementation at policy and practical level, with examples of good practice to inspire new thinking.

Index of Implementation

(2013): A comprehensive checklist for an assessment of implementation of the Rules, structured for different actors. Can be used in developing policies and strategies.



Both documents are jointly published with the Thailand Institute of Justice.

E-course (2013): A self-paced, free online course combining analysis of the Rules, interactive assessments and application of the Rules to real life situations, with a certificate issued at completion.

A guide to gender-sensitive monitoring (2013): A guide to help bodies monitoring places of detention incorporate a gender perspective into their work and address violence against women and girls in detention. Jointly published with the Association for the Prevention of Torture.

E-bulletin: A quarterly round-up of information on women in the criminal justice system, the Bangkok Rules and activities by PRI and others on the Rules. Sign up by emailing info@penalreform.org.

Access to justice – discrimination against women in criminal justice systems (2012): This briefing paper maps concerns relating to the discrimination of women as alleged offenders in the justice system (online only).

All resources are available online at www.penalreform.org

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