



**Promoting fair and
effective criminal justice**

**Submission to the UN Committee on the Elimination of
Discrimination against Women: Pre-session for the 60th Session**

12 June 2014

**Submission: List of themes to be taken up in connection with the
consideration of the Fourth periodic report of Kyrgyzstan**

Penal Reform International (PRI)¹ is submitting the following proposal for the list of themes to be taken up in connection with the consideration of the Fourth periodic report of Kyrgyzstan.

This submission draws on PRI's long-standing work on penal policies and prison conditions in Kyrgyzstan, primarily through its regional office based in Astana/ Kazakhstan, and the findings of a survey conducted by PRI in September 2013 with the valued permission of the Kyrgyzstani government.

The themes relate to women in the criminal justice system, and specifically address the link between violence against women and women offenders, gender-sensitive sentencing policies, provision of gender-specific health-care in prisons, discriminatory substance abuse treatment and specific needs of women following release (including due to previous domestic violence). The topics raised relate to Articles 2, 4, 5, 10, 11 and 12 of the Convention, and draw on the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, 2010 (referred to as the UN Bangkok Rules).²

Based on its experience and research PRI would like to suggest incorporation of the following questions, and provides explanatory facts and background below:

- 1) How does the implementation of the *National Strategy for Prison Reform* for the period of 2012-2016, adopted in May 2012, take into account gender-specific components with regard to non-custodial alternatives to imprisonment, conditions of detention, rehabilitation programmes and post-release support? (Institutional and policy framework, arts. 2, 4)
- 2) Do courts have the authority to consider mitigating and gender-specific factors when sentencing women offenders in line with Bangkok Rules 57 to 59 and 61, in particular taking into account any prior history of domestic and/ or sexual violence against

¹ Penal Reform International (PRI) is an independent non-governmental organisation with consultative status with ECOSOC that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.

² The UN Bangkok Rules were adopted by the UN General Assembly unanimously in December 2010; A/RES/65/229. Initiated by the Government of Thailand, the Rules filled a gap in international standards on gender-specific criminal justice systems for women, covering both non-custodial measures and sanctions and prison regimes. For the full text see www.penalreform.org/priorities/women-in-the-criminal-justice-system/international-standards/. For further guidance on the Rules see www.penalreform.org/wp-content/uploads/2013/10/PRI-TIJ-Guidance-Documents-on-Bangkok-Rules-October-2013.pdf

women who are charged with a violent offence against their partner or another male family member? (gender-sensitive sentencing policies and practices, arts. 2 and 5)

- 3) What measures are in place to address women prisoners' specific health-care needs, in particular gynaecological and preventive as well as mental health care in light of the particular characteristics and needs of this vulnerable group? (gender-specific health-care, arts. 2 and 12)
- 4) What steps will the State Party take in order to remedy the discrimination currently faced by women prisoners in accessing substance dependency treatment, given – as compared to male prisoners – they do not have access to a 'clean zone'? (Discrimination in access to substance abuse programmes, arts. 2 and 12)
- 5) What measures are in place in order to provide equal access to rehabilitation programmes for women, and gender-specific support following release, in particular addressing experiences of domestic violence prior to imprisonment and the resulting challenge to find safe accommodation? (Gender-sensitive reintegration support, arts. 2, 4, 5, 10 and 11)
- 6) What mechanisms are in place to ensure implementation of UN Bangkok Rule 57, of girls only being detained as a last resort and of regular reviews of the legality, necessity and proportionality of pre-trial detention of women suspects in line with Article 9 of the International Covenant on Civil and Political Rights?

Background

- 1) How does the implementation of the National Strategy for Prison Reform for the period of 2012-2016, adopted in May 2012, take into account gender-specific components with regard to non-custodial alternatives to imprisonment, conditions of detention, rehabilitation programmes and post-release support?**

Kyrgyzstan is committed to ongoing reform of its penal system through implementation of the National Strategy for Prison Reform for the period of 2012-2016 which was approved by the government in May 2012. It has a focus on legislative reform, improving conditions of detention, rehabilitation and on alternatives to imprisonment but lacks a gender-specific component.³

Women face disadvantages and discrimination in criminal justice systems in various regards. Their typically high level of poverty and dependency on male family members mean that they are often unable to pay fines, which are the most frequently employed alternative to imprisonment for minor, non-violent offences. Decisions on alternatives, both pre-trial and at the sentencing stage, often overlook the typical background of women offenders, their caring responsibilities, their history of domestic violence and the usually lower security risk they pose to society.⁴ Because women and girls are a minority in the prison population penal systems tend to overlook their specific backgrounds and needs and are almost invariably designed for the majority male prison population: from non-custodial alternatives, the architecture of prisons and its staffing, security procedures, provisions for health-care, family contact, work and rehabilitation programmes.

³ National Strategy for the Development of the Penal Execution (Prison) System of the Kyrgyz Republic for 2012-2016 Approved by the Government of the Kyrgyz Republic on 15 May 2012 (Decree No. 297), http://www.unodc.org/documents/centralasia/PrisonReform/National_Prison_Reform_Strategy_Unofficial_Translation.pdf

⁴ Penal Reform International, Briefing: Access to Justice - Discrimination of women in criminal justice systems, January 2012, accessible at: <http://www.penalreform.org/wp-content/uploads/2013/08/BRIEFING-Discrimination-women-criminal-justice.pdf>

Within an individual complaint in 2001 CEDAW established that discrimination against women encompasses ill-treatment that affects women disproportionately as well as detention conditions which do not address the specific needs of women (referring also to the UN Bangkok Rules).⁵ This is mirrored in a quote of a member of the British House of Lords: 'Treating as equal those who are unequal not only leads to further inequality, it also leads to injustice.' (Baroness Helena Kennedy)

2) Do courts have the authority to consider mitigating and gender-specific factors when sentencing women offenders in line with Bangkok Rules 57 to 59 and 61, in particular taking into account any prior history of domestic and/ or sexual violence against women who are charged with a violent offence against their partner or another male family member?

In Kyrgyzstan, a UN report noted that 70% of women convicted of killing a husband or other family member had experienced a "longstanding pattern of physical abuse or forced economic dependence".⁶

Links between severe abuse and violent crimes women commit against their partner or male family member were also established in other countries, suggesting that most women convicted of homicide had killed their partners in self-defence.⁷

In Kyrgyzstan, the number of convictions for murder or manslaughter was high compared to other countries, with 20% of women offenders sentenced for the murder or manslaughter of a male family member and a further 12% of murder of someone other than a male family member.⁸ Although representing only a small sample (27 women), the survey strongly indicated that at least half of them had experienced abuse by their partners or spouses, describing it as a frequent occurrence. Just five of these women (18%) had previous convictions, suggesting that the large majority had no prior history of offending or violence. At the same time, out of the 27 women with a respective conviction 15 (56%) cited self-defence or self-protection as the main reason for their offence.⁹

While no studies have been conducted to this end in Kyrgyzstan yet, research in other countries suggests that even systematic and long-term violence against a woman offender is rarely taken into account by courts sentencing women accused of violent crimes against their abuser as a mitigating factor or is considered an act of self-defence.

Besides violence suffered by a women defendant resulting in a violent offence against the abuser, relevant circumstances may include coercion to commit or abet an offence as well as the impact on children of the primary or sole caretaker being sentenced to imprisonment – in line with UN Bangkok Rule 61.¹⁰

⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Communication No. 23/2009, Inga Abramova v. Belarus, 27 September 2011, CEDAW/C/49/D/23/2009, available at www.unhcr.org/refworld/docid/4fd6f75a2.html.

⁶ Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to Kyrgyzstan, 28 May 2010, UN-Doc. A/HRC/14/22/Add.2, para. 26.

⁷ Report to the UN General Assembly by Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Pathways to, conditions and consequences of incarceration for women, 21 August 2013, UN-Doc. A/68/340, p. 5; Kraft-Stolar, Tamar, Brundige, Elizabeth, Kalantry, Sital and Getgen, Jocelyn E., From Protection to Punishment: Post-Conviction Barriers to Justice for Domestic Violence; Minnesota Advocates for Human Rights, Domestic Violence in Macedonia (1998). Survivor-Defendants in New York State, Cornell Legal Studies Research Paper No. 11-21, 7 June 2011, p. 3; Edlira Papavangjeli (2013), p. 11; see also Commentary to the UN Bangkok Rules, Rule 12.

⁸ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 14

⁹ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 14

¹⁰ See also Constitutional Court of South Africa, S. v. M., 26 September 2007, Ref. no. [2008] (3) SA 232 (CC) 261 - <http://www.saflii.org/cgi-bin/displ.pl?file=za/cases/ZACC/2007/18.html&query=%20M%20v%20S>

Relating to the sentencing stage, this Rule states that “courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and backgrounds.”¹¹

3) What measures are in place to address women prisoners’ specific health-care needs, in particular gynaecological and preventive health care as well as mental health care in light of the particular characteristics and needs of this vulnerable group?

Beyond general requirements of medical care for persons detained, women prisoners have different and greater primary healthcare needs in comparison to men. This is partly due to physiological differences, and partly because of their typical backgrounds, which can include drug use, physical or sexual abuse, sex work and unsafe sexual practices. HIV and other sexually transmitted and blood-borne diseases are more prevalent among female prisoners than their male counterparts, due to the combination of gender inequality, stigma and women’s vulnerability to contracting sexually transmitted infections and diseases.

Furthermore, health-care needs typically result from a history of poverty, malnutrition and inadequate medical care before admission to detention. Health conditions of women prisoners, even more so those from marginalised backgrounds, may have been untreated before admission due to discriminatory practices that prevent women from accessing adequate healthcare in the community.

Consequently, as the UN Special Rapporteur on violence against women noted, “The mere replication of health services provided for male prisoners is (...) not adequate.”¹² Rather, the UN Bangkok Rules require gender-specific healthcare services in women’s prison (Bangkok Rules, 6 to 18 and 48).

A survey conducted in Kyrgyzstan in 2013 showed that treatment for health problems was the most commonly identified pressing support requirement identified by the women prisoners (42% of the women surveyed – representing 43% of the convicted women at the time of the survey).

Furthermore, 38% of the women experienced depression as a consequence of their imprisonment. A third experienced fear, loneliness and anxiety, resulting in a high rate of insomnia.¹³ Over a quarter had attempted suicide and 29% had harmed themselves at some point in their life. A quarter of these women did so before imprisonment, while 15% attempted suicide and/ or harmed themselves whilst in prison and 7% both before and during imprisonment.¹⁴

Research in other countries shows that women who are admitted to prison are more likely than men to suffer from mental health problems,¹⁵ often as a result of previous domestic violence, physical and sexual abuse. Moreover, family break-ups and feelings of failure in their parental responsibilities have been found to cause women particular stress, feelings of guilt and anxiety. Researchers who focused on mothers noted that parental concerns had a significant impact on women’s experiences of incarceration, noting that “concerns about their children’s well-being, as well as their distress at separation, are the most salient features of incarceration

¹¹ Rule 64 reiterates the preference of non-custodial sentences for pregnant women and women with dependent children.

¹² Quoted in Rick Lines, The right to health of prisoners in international human rights law, *International Journal of Prisoner Health*, 2008, Vol. 4 Iss: 1, pp.3 – 53, p13.

¹³ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 18

¹⁴ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 18.

¹⁵ For example according to a study conducted by the Bureau of Justice Statistics in 2002 and 2004. See UNODC, *Handbook on Women and Imprisonment*, 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), March 2014, p. 9.

for women with children.”¹⁶ The increased stress levels may emanate from the fact that due to societal gender roles women have a higher sense of guilt for not fulfilling their role as mothers when detained and suffer more from the separation from their children. The Kyrgyzstan survey showed that 15 in 20 women prisoners at the time were mothers, 45% of these children were under 18 and 6% said that they did not know where their children were living.¹⁷

Addressing such causes of distress, and preventing suicide and self-harm constitute state obligations, resulting from safeguards protecting the right to life and dignity (due diligence). Furthermore, having a poor psychological state on release from prison was cited by around a third of women as a significant obstacle to their reintegration.¹⁸

4) What steps will the State Party take in order to remedy the discrimination currently faced by women prisoners in accessing substance dependency treatment, given – as compared to male prisoners – they do not have access to a ‘clean zone’?

In 2008 a planned methadone programme in women’s prisons fell victim to funding cuts, and as a result opioid substitution therapy (OST) was only available in men’s prisons.¹⁹ When finally established,²⁰ contrary to the programme provided in eight men’s prisons, no separate ‘clean zone’ was available with the programme for women, but those undergoing the treatment mixed freely with the other prisoners.²¹

This adverse treatment of women prisoners hinders their progress as compared to male prisoners in the same situation and therefore constitutes discrimination.

Rule 6(1) of the UN Standard Minimum Rules for the Treatment of Prisoners and Articles 2(1) (in conjunction with Articles 7 and 10) of the Convention on Civil and Political Rights, to which Kyrgyzstan is a state party,²² prohibit discrimination, including discrimination based on sex.²³

Article 2 (f) and (g) and Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women require states “to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” and specifically “to repeal all national penal provisions which constitute discrimination against women”.

5) What measures are in place in order to provide equal access to rehabilitation programmes for women, and gender-specific support following release, in particular addressing experiences of domestic violence prior to imprisonment and the resulting challenge of finding safe accommodation?

All former prisoners will experience challenges when being released from prison, yet women face different and additional obstacles, which need to be addressed in a gender-sensitive way preparing them for release and following discharge from prison.

¹⁶ Artz, L., Hoffman-Wanderer, Y., and Moul, K., *Hard Time(s): Women’s Pathways to Crime and Incarceration*, Cape Town: GHJRU, University of Cape Town, 2012, p. 167.

¹⁷ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 11

¹⁸ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 22

¹⁹ Ed. Claudia Stoicescu, Harm Reduction International, *The Global State of Harm Reduction 2012: Towards an integrated response*, 2012, p. 129.

²⁰ The programme ‘Atlantis’ was established in Stepnoye prison in 2009, providing a six month long treatment for up to 12 women at a time on a voluntary basis.

²¹ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 17.

²² Accession on 7 Oct 1994.

²³ Human Rights Committee, General Comment No. 21 on Article 10 (Humane treatment of persons deprived of their liberty) (1992).

While loss of housing and employment will be a common feature for all prisoners upon release, women tend to be more affected by increased stereotypes vis-à-vis women prisoners, including being 'shunned' and rejected by their families. If they have left a violent relationship, women will have to establish a new life, which is likely to entail additional economic, social and legal difficulties.

Usually, the small proportion of females in prison populations results in fewer educational and training opportunities for women prisoners, and those that are available are less varied and of poorer quality than those offered to male detainees.²⁴ Furthermore, in many prisons the types of activities offered to women as part of rehabilitation programmes are gendered,²⁵ traditionally thought appropriate for women. While skills taught to men are generally framed in terms of preparation for employment on release those taught to women rarely are. Where they are not mirroring domestic work conventionally conducted by women in the household, they equip for the most low-paid jobs in the economy. This reinforces women's dependency on men and the inability to find employment with sufficient income following release.

The low levels of education and vocational skills, which has been identified as a common feature amongst women prisoners, if unaddressed during their prison term, will remain an even bigger challenge than prior to arrest. Women are likely to have faced discrimination in the labour market, which will be exacerbated following imprisonment.

Moreover, the lack of attention for women's particular health issues in many prisons, not least reproductive and preventive health-care needs, may result in a particularly poor state following their release. Mental health problems, typically higher amongst the female prison population, are likely to have worsened in prison rather than improved, and they may have long-term consequences due to isolation and the higher rate of self-harm and suicide.²⁶

The 2013 survey of women prisoners in Kyrgyzstan showed that a percentage as high as 40% identified finding accommodation following discharge as an anxiety. At the same time 38% of the women stated that they had experienced domestic violence prior to their imprisonment – a figure likely to reflect under-reporting. 19% of the women surveyed reported that they had been sexually abused once or twice, 4% had experienced such abuse many times.²⁷

It is therefore crucial that post-release support for women prisoners takes into account the possible need for protection upon release. Options of safe (voluntary!) accommodation should be provided following discharge until more permanent solutions can be found.

Furthermore, 90% of the women prisoners surveyed in Kyrgyzstan stated that they lacked registration documents required to access social welfare, medical, educational and legal services, jeopardising their reintegration following release.²⁸ Post-release programmes should therefore urgently address this problem.

Employment was raised as a priority by 60% of women prisoners surveyed, highlighting the obstacle of a criminal record in particular. 56% of the women who had been imprisoned previously had experienced obstacles after the last release from prison.²⁹ At the same time, survey results showed that 75% of the women prisoners were either single, divorced, separated or widowed,³⁰ pointing to a high percentage having to be either self-sustaining or depending on their family's support.

²⁴ Rashida Manjoo, (A/68/340), para. 68

²⁵ See for example Rashida Manjoo (A/68/340), para. 68; see also Report of the Special Rapporteur on the right to education, Vernor Muñoz, The right to education of persons in detention, 2 April 2009, UN-Doc. A/HRC/11/8, para. 51.

²⁶ Suicide attempts are more prevalent compared to women outside of prison, and compared to men in pre-trial detention. (See for example WHO/ ISAP, Preventing suicide in jails and prisons, 2007)

²⁷ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 19

²⁸ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 23

²⁹ PRI Survey in Kazakhstan and Kyrgyzstan', 2013, pp. 20, 22

³⁰ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p. 11

This finding should be seen in the context of a 2009 UN report on Kyrgyzstan which noted a disproportionate impact of poverty on women “visible in the rising levels of poverty among women, growing prevalence rates and new manifestations of violence against women, a widening rural/urban divide, rising unemployment, a resurgence of patriarchy and tradition and a deterioration in women’s access to public services, including social welfare and health services.”³¹

Women’s imprisonment is closely linked to poverty, both directly and indirectly. While the rate of women as family heads is increasing, they face discrimination at the labour market, inequalities of salaries and lack of protection by labour laws³². Typically, if employed at all prior to imprisonment, a high percentage worked in precarious/uncertain types of work such as part-time and temporary labour.

In order to address former women prisoners’ disadvantages in reintegration, being disproportionately affected by discrimination in society, in education and access to the labour market, measures should be put in place in line with UN Bangkok Rules 43 to 47.

6) What mechanisms are in place to ensure implementation of UN Bangkok Rule 57, of girls only being detained as a last resort and of regular reviews of the legality, necessity and proportionality of pre-trial detention of women suspects in line with Article 9 of the International Covenant on Civil and Political Rights?

As of September 2013, there were 135 women in remand prison and five girls under 18 held in pre-trial detention facilities located around the country. Women in pre-trial detention are often held in very poor conditions and lack complaints mechanisms. There are also a number of women held in police station custody (temporary isolators) whilst their case is being investigated, which can sometimes take up to three months.³³ While PRI does not work on individual cases the organisation is concerned about reports by local human rights organisations of exceeding length of pre-trial detention, for in the case of Shakhida Amanbayeva who was released in May 2014, with serious health issues, after 3.6 years in remand prison beyond the legal time limit of 1 year.

While it was not possible to conduct PRI’s survey also amongst pre-trial detainees in Kyrgyzstan due to delays in obtaining permission, research results from other countries indicate that the non-custodial alternatives to pre-trial detention³⁴ tend not to be gender-specific, but tailored to the male majority of suspects and offenders.

The Kyrgyzstani Criminal Procedure Code does include a provision for women who are pregnant or have children under 14 years to have their sentences deferred until the children reach 14 provided they are first-time offenders and are not convicted of a ‘grave’ offence. While this provision has to be positively noted, also in the context of the best interests of the children concerned, other aspects potentially prejudicial for women suspects’ access to non-custodial measures instead of imprisonment should be examined.

³¹ Report of the Special Rapporteur on Violence against Women, Mission to Kyrgyzstan, Summary, May 2010, A/HRC/14/22/Add.2, para. 28.

³² Surt Association, Women integration and prison, published by Aurea Editores S.L, June 2005, p. 23.

³³ PRI Survey in Kazakhstan and Kyrgyzstan (2014), p.

³⁴ International standards require a reasonable suspicion that the person has committed the offence, but furthermore imprisonment must be necessary and proportionate to prevent them from absconding, committing another offence or interfering with the course of justice during pending procedures. Prison on remand is not legitimate where the objective can be achieved through other, less intrusive measures, such as bail, seizure of travel documents, requirement to appear before the court as and when required, order not to interfere with witnesses, periodic reporting to police or other authorities, electronic monitoring or curfews.

For example, in some countries mothers are more likely to be imprisoned because the alternatives are regarded as unsuitable because of the lack of childcare facilities.³⁵ Women may also be unable to meet 'standard' bail obligations like regular reporting to authorities, because transport to the respective police station is not affordable or feasible, or because reporting times would jeopardise caretaking responsibilities, for example conflicting with times at which mothers need to pick up their children from school.

Women suspects also are often more vulnerable to being detained, as frequent financial dependency on male family members leaves them unable to pay for legal representation, fines for petty offences and/or to pay bail.

However, a shortage of alternatives suitable for women and meeting their needs deprives them of access to such alternatives. UN Bangkok Rule 57 therefore calls on states to reduce the imprisonment of women by using non-custodial measures instead of pre-trial detention wherever possible, and taking into account women's history of victimisation and care-taking responsibilities.

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³⁵ Kathleen Marshall, Scotland's Commissioner for Children and Young People, Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland, 2008, p 4.