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## Submission to the Working Group on discrimination against women and girls on human security of women and girls in the context of poverty and inequality

Penal Reform International (PRI) welcomes the opportunity to provide information to the Working Group for its upcoming report “Human Security of Women and Girls in the Context of Poverty and Inequality”. This submission is based on PRI’s work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people, including our practical human rights programmes in a number of regions and our work as a member of the global Campaign to Decriminalise Poverty and Status.

### Disproportionate criminalisation of women and girls living in poverty

Women represent a small but increasing proportion of people in prison worldwide: there are over 740,000 women and girls held in penal institutions throughout the world – making up 6.9% of the global prison population. The number of women and girls in prison worldwide has increased by nearly 60% since 2000, compared to a 22% increase among men in prison and general population growth of around 30% over the same period.<sup>1</sup> Most women in prison globally are charged or convicted for non-violent offences, and their imprisonment is often also related to poverty and the inability to pay fines or to afford bail. Many women are serving short prison sentences, despite a wealth of evidence showing that any period of imprisonment is damaging and disruptive for women and their families, especially any children.

Laws in many countries criminalise and lead to imprisonment for acts associated with poverty and survival with little connection to public safety, resulting in the poorest and most marginalised members of society being consistently over-represented in prisons and criminal justice systems. These laws disproportionately affect people who experience discrimination and social exclusion because of their economic or social status, including women and girls living in poverty, those who use drugs, are experiencing homelessness, informal traders, sex workers and members of the LGBTQ+ community.

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<sup>1</sup> Helen Fair and Roy Walmsley, *World Female Imprisonment List: fifth edition*, Institute for Crime & Justice Policy Research, 2022.

Drug-related offences have a disproportionate impact on women. In 2018, UNODC estimated that 35% of women in prison worldwide are imprisoned for drug offences, compared to 19% of men.<sup>2</sup> This proportion increases dramatically in Latin American and Asian countries, however. In Brazil, for example, 62% of women in prison in 2017 were there because of drug-related offences, compared to a quarter of men.<sup>3</sup> The reasons for women's involvement in illegal drug markets are complex and thread with violence, coercion, and situations of vulnerability. In most cases, for all their lives these women have been excluded from the basic services, protection and support that is expected from the state.<sup>4</sup> These intersecting vulnerabilities are compounded when women are detained and tried in a foreign country. Punitive drug laws that criminalise people who use drugs are also a major contributor to the detention of women and girls for drug-related offences.

Many countries also criminalise and imprison women and girls for 'status offences' which only or disproportionately apply to women, such as abortion, adultery, prostitution, and witchcraft.<sup>5</sup> For example, a law passed in Guatemala in March 2022 punishes abortion with up to 25 years in prison. The UN Working Group on Arbitrary Detention recently specifically recommended urgent reform of such laws<sup>6</sup> and the Inter-American Court of Human Rights, in a case involving El Salvador in 2021, established for the first time that healthcare staff can no longer refer women to law enforcement who come to the hospital seeking reproductive healthcare, including abortion.<sup>7</sup>

Ethnic minority and indigenous women are disproportionately represented in prisons and criminal justice systems in many countries. Indigenous women make up 60% of female prison populations in New Zealand and 48% in Canada. In the US, African American women were imprisoned at nearly twice the rate of white women in 2020 (a sharp decline from 2000 when Black women were six times as likely to be imprisoned); African American girls are also more than three times as likely, and Tribal girls are more than four times as likely as white girls to be incarcerated.<sup>8</sup> In Ireland, Traveller women are 18-22 times more likely to be imprisoned compared to their settled-majority counterparts (while Traveller males are 5-11 times more likely).<sup>9</sup>

## Human security of women and girls in detention

Women and girls in detention often do not have access to healthcare and other services that are gender-sensitive and respond to their specific needs and challenges, including the high proportion of women in conflict with the law who have experienced violence, trauma, or abuse. In Uganda,

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<sup>2</sup> United Nations Office on Drugs and Crime, *World Drug Report 2018*, p.9.

<sup>3</sup> Washington Office on Latin America, *Women Behind Bars for Drug Offences in Latin America: What the Numbers Make Clear*, November 2020.

<sup>4</sup> Giacomello, C. (2020), *Chapter 12 - The gendered impacts of drug policy on women: Case studies from Mexico*, in: Buxton, J., Chinery-Hesse, M & Tinasti, K. (Eds.), *Drug Policies and Development: Conflict and Coexistence*, August 2020, p. 206-245.

<sup>5</sup> Penal Reform International, *Submission to OHCHR on human rights violations related to accusations of witchcraft and ritual attacks, as well as stigmatisation*, September 2022, <https://www.penalreform.org/wp-content/uploads/2022/10/PRI-submission-to-OHCHR-on-accusations-of-witchcraft-and-ritual-attacks.pdf>.

<sup>6</sup> United Nations, *Report of the Working Group on Arbitrary Detention*, A/HRC/48/55, 6 August 2021, para. 18.

<sup>7</sup> 'Inter-American Court of Human Rights Orders El Salvador to Reform Policies That Criminalize Women for Accessing Reproductive Health Care', *Centre for Reproductive Rights*, 30 November 2021, <https://reproductiverights.org/inter-american-court-of-human-rights-orders-el-salvador-to-reform-policies-abortion/>.

<sup>8</sup> The Sentencing Project, *Incarcerated Women and Girls*, May 2022.

<sup>9</sup> Irish Penal Reform Trust and Maynooth University, *"Sometimes I'm missing the words". The rights, needs and experiences of foreign national and minority ethnic groups in the Irish Penal System*, 2022.

for example, PRI found that 19% of women convicted for murder and manslaughter had killed a male partner or family member in a context of domestic violence. Yet, these women have limited access to psychosocial services due to an absence of qualified health practitioners in women's prisons.<sup>10</sup> Research shows that criminal justice systems do not take into account the complexities of intimate partner violence in law or practice in cases where women have fatally attacked their abuser.<sup>11</sup>

It is well evidenced that in prison, sexual gender-based violence is often a reality for women particularly when they are held in a 'wing' of a male facility and have to use common areas (such as outdoor areas or to access water) or are supervised by male staff (including having to dress in cells in view or being watched by male guards). Body searches, medical examinations, or even going to the toilet or showering are known to be high risk situations for women in detention. There are even reported cases of women being used as prostitutes by prison guards, either inside the facility or taken out of the facilities at night and forced to work.<sup>12</sup>

Many countries still permit the imprisonment of pregnant woman, with laws remaining silent on the issue, despite the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) encouraging non-custodial sanctions for pregnant women. In recent years, there have been reports of women giving birth alone in prison cells, including in the US and Australia. In Sierra Leone, the death of a 17-month-old baby in a police cell with her detained mother in December 2021 led to calls for urgent review of all cases of pregnant women and women with young children detained in police stations and correctional facilities in the country.<sup>13</sup> In England, the death of a baby after an 18-year-old gave birth alone in her prison cell, and another incident where a woman who did not know she was pregnant gave birth to a still-born baby in a prison toilet, triggered investigations by the Prisons and Probation Ombudsman which identified key failings in healthcare provided to the women.<sup>14</sup>

Despite international standards that prohibit the use of shackles or other restraints during transfers to hospitals, gynaecological examinations and birth,<sup>15</sup> the practice persists in some limited places. In the US, at least 13 states fail to prohibit the shackling of detained pregnant women despite a prohibition in federal prisons. In Canada, where there is no specific legislation or policy in place to prohibit these practices, several women have reported being placed in solitary confinement or restraints like handcuffs and shackles while pregnant in prison.<sup>16</sup>

Ethnic minorities and indigenous women commonly face harsher treatment in prison compared to their white peers. A recent report detailed how Māori and Pacific women in New Zealand were

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<sup>10</sup> Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021.

<sup>11</sup> Penal Reform International, *Women who kill in response to domestic violence: How do criminal justice systems respond?*, 2016.

<sup>12</sup> See for example in Mozambique: <https://www.cipmoz.org/wp-content/uploads/2021/06/Sexual-Exploitation-1.pdf>; <https://www.macaubusiness.com/mozambique-ngo-exposes-sexual-exploitation-of-female-inmates-by-maputo-prison-guards/>.

<sup>13</sup> AdvocAid Sierra Leone, *AdvocAid Condemns Death of Baby in Police Station*, 27 December 2021.

<sup>14</sup> Prisons and Probation Ombudsman, *Baby Death at HMP Styal – PPO Report Highlights Shocking Circumstances of Baby Stillborn In Prison*, 10 January 2022, <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhkimgw/uploads/2022/01/Baby-B-Styal-Press-Release-Final-11.1.22.pdf>.

<sup>15</sup> UN Bangkok Rules, Rule 24; UN Nelson Mandela Rules, Rule 48 (2); CAT/C/USA/CO/2, para. 33; A/74/137, para. 22.

<sup>16</sup> Martha J. Paynter, *Reproductive (In)Justice in Canadian Federal Prisons for Women*, February 2022, p. 36.

disproportionately segregated in units used for control and punishment. In one women's prison, up to 78% of segregations were of Māori women, and 93% of segregations lasting 15 days or longer (a period defined as 'prolonged' and prohibited by the UN Nelson Mandela Rules as a form of torture or cruel, inhuman or degrading treatment or punishment) were of Māori or Pacific descent.<sup>17</sup>

## Recommendations to improve the human security of women and girls

1. Full implementation of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), including reduced use of imprisonment in favour of improved non-custodial measures for women, and the provision of gender-responsive healthcare, harm reduction services, and rehabilitation.<sup>18</sup>
2. Repeal or reform laws that criminalise acts associated with poverty and life-sustaining activities, status offences, and other offences that disproportionately impact poor and marginalised populations, including women and girls living in poverty.
3. Reform drug laws and policies to ensure they are gender-sensitive and respond to the particular backgrounds and needs of women and girls.<sup>19</sup>

## Promising practices for women's rehabilitation and reintegration

As a minority in prison populations, women face specific barriers in accessing programmes and services in prisons, with limited rehabilitation opportunities available to them. Programmes that do exist are often heavily gendered and do not cater for their particular backgrounds or needs, especially for women with multiple or overlapping needs such as girls, pregnant women, women with children in prison, foreign nationals, ethnic or racial minority and indigenous women, women with physical disabilities or mental healthcare needs, members of the LBGTQ+ community, and older women.

In line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), for the vast majority of women that come into contact with the criminal justice system, community-based alternatives that provide assistance, support and treatment are the most effective way of helping them build positive lives away from crime in the future.<sup>20</sup>

The Sustainable Development Agenda through SDG 16 recognises that development efforts are closely linked with the justice sector. To employ a development-led approach to the rehabilitation and reintegration of offenders, initiatives must focus not only on changing the behaviour and improving the situation of an individual (e.g., through housing or employment) but also consider the impact on their community and wider society.

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<sup>17</sup> Sharon Shalev, *First, Do No Harm: Segregation, restraint, and pepper spray use in Women's prisons in New Zealand*, New Zealand Human Rights Commission, November 2021.

<sup>18</sup> See, for example, PRI's interactive map showcasing promising practices towards implementation of the UN Bangkok Rules: <https://www.penalreform.org/issues/women/bangkok-rules/bangkok-rules-map/>.

<sup>19</sup> For more details see Penal Reform International & International Drug Policy Consortium, *10-point plan: Gender-sensitive drug policies for women*, 2021.

<sup>20</sup> See 10 key principles for gender-sensitive rehabilitation programmes in: PRI & Thailand Institute of Justice, *The rehabilitation and social reintegration of women prisoners*, 2019, pp. 48-49, <https://www.penalreform.org/resource/guide-to-the-rehabilitation-and-social-reintegration-of/>.

The following initiatives illustrate how targeted interventions with an integrated multi-agency approach that focus on addressing discrimination and social exclusion can contribute to improved security for women and girls in contexts of poverty and inequality that come into contact with the criminal justice system. For more examples see PRI's recent submission to UNODC on reducing reoffending through rehabilitation and reintegration.<sup>21</sup>

### Working in partnership for women's rehabilitation in Georgia

In Georgia, PRI has worked with local partner organisations to deliver rehabilitation and support services to women in prison (and their children) who have experienced violence, stigma, and discrimination. Aimed to empower women through improved access to psychosocial, legal, and medical support services, as well as enhance their opportunities for rehabilitation and protection, the range of interventions is designed to break the chain of violence and inequality experienced by women in prison, which can begin prior to their offending and continue post-release. As part of this, PRI opened a day nursery at the women's prison in Tbilisi (where young children up to the age of three live with their mothers) and the Women in Business Association (GAWB) organises vocational training courses and business education for women in prison and formerly imprisoned women. Upon completion of the business education course, the women prepare their business plans and GAWB provides small start-up grants. GAWB has also established a shelter to accommodate formerly imprisoned women who are experiencing homelessness, to provide a safe place to live until they can support themselves. The project also pays for medicine and health services for beneficiaries if state programmes do not cover the costs. To date, the project has reached over 600 beneficiaries, including 40 children of imprisoned women.

### Economic empowerment through targeted community sentences in Kenya<sup>22</sup>

In 2014–2016, PRI, together with the Kenya Probation and Aftercare Service, implemented an innovative project with a development-led approach to tackle poverty, inequality and gender disempowerment and disrupt the poverty-prison cycle. The project sought to reduce the unnecessary use of imprisonment (and its negative effects on families and communities, including being unable to pay for food or school fees, stigmatisation, and for women in prison, greater chance of losing their home, livelihood, partner, and access to their children) in favour of community service orders which involved economic empowerment. Entrepreneurial training was provided alongside a small investment to allow individuals to open a basic business, so that they could support themselves and their families, thereby reducing reoffending. Probation officers worked closely with individuals to identify what kind of investment would help. To address stigma, the project also improved public awareness and understanding of community service through court open days and engagement with the media to increase positive coverage of community-based sentences in the press.

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<sup>21</sup> PRI, *Submission to UNODC on reducing reoffending through rehabilitation and reintegration*, August 2022, [https://www.penalreform.org/wp-content/uploads/2022/10/PRI-submission-to-UNODC-on-reducing-reoffending\\_August-2022.pdf](https://www.penalreform.org/wp-content/uploads/2022/10/PRI-submission-to-UNODC-on-reducing-reoffending_August-2022.pdf).

<sup>22</sup> Penal Reform International, *Excellence in Training on Rehabilitation in Africa (ExTRA) Project, Community service as an alternative to imprisonment: Pilot project final evaluation*, 2016.

## Penal Reform International briefing note

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