

# Guidance Document

on the United Nations Rules on the Treatment of Women  
Prisoners and Non-custodial Measures for Women Offenders  
(The Bangkok Rules)



**Toolbox  
on UN  
Bangkok  
Rules**

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**Guidance Document: United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)**

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We promote alternatives to prison which support the reintegration of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

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**Thailand Institute of Justice (TIJ)** is a member of the United Nations Crime Prevention and Criminal Justice Programme Network of Institutes. It was established by the Royal Thai Government in 2011 with the primary objective to support the implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (or “the Bangkok Rules”), and related international standards and norms. TIJ also aims to promote the rights of those in contact with criminal justice system and to enhance all aspects of crime prevention and criminal justice development through evidence-based research and capacity-building activities.

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# INTRODUCTION

The adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) in December 2010 represented an important step forward in recognising the gender-specific needs of women in criminal justice systems and providing the standards that should be applied in the treatment of such women. Until their adoption, international standards had not properly reflected the specific needs of girls and women, both as for conditions of detention and with regard to alternatives to imprisonment. The Bangkok Rules are also the first international instrument which specifically addresses the needs of the children of women prisoners.

The challenge now is to ensure that these standards are put into practice. This means the incorporation of the Bangkok Rules into domestic legislation, sentencing policies and prison rules, and most importantly, the implementation of the Rules into practice around the world.

Many of the Rules do not require additional resources for their implementation, but a change in awareness, attitude and practices. One main investment needed is in training criminal justice actors on the Bangkok Rules and sensitising them to the typical backgrounds and needs of women offenders.

Much more data collection and research is also needed to understand the characteristics of women in conflict with the law, the most common reasons that lead women to commit offences, the impact on children of their mothers' confrontation with the criminal justice system and the most effective means of support to help women build positive, self-supporting lives in different regions and countries. The Bangkok Rules require such research in Rule 67, forming a key starting point to changing awareness and practices.

Finally, it is important to reiterate that the Bangkok Rules do not replace but supplement the Standard Minimum Rules for the Treatment of Prisoners (SMR) and the Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

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

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

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

The guidance draws on the official commentary on the Bangkok Rules<sup>1</sup> and brings together existing knowledge, international experience, good prison management practices and technical papers developed by UN bodies and other international organisations to assist policymakers, legislators and practitioners to implement the Rules in a way that is consistent with international standards. It also provides useful references and a resource list for more detailed information on specific issues.

There are **11 thematic chapters** which bring together the Rules relating to that theme. Each Rule is presented with its rationale, and with references to other relevant standards or resources. The document then provides detailed guidance on **how each Rule can be implemented** and **to which actors they are addressed**, at both legislative and practical levels. The structure of the publication largely follows the structure of the Bangkok Rules with a few exceptions for increased coherence and accessibility. **Examples of good practice** from countries worldwide are included to inspire solutions and to generate new thinking.

The *Guidance Document on the Bangkok Rules* is accompanied by the *Index of Implementation* (on CD-ROM or by download). The index consists of practical checklists developed for the key actors to which the Rules are addressed, and is designed to help assess the level of implementation. The two documents together provide the means for assessing and improving implementation where shortcomings are identified. Both form part of PRI's Toolbox on the UN Bangkok Rules.

<sup>1</sup> The official commentary on the Bangkok Rules was prepared by the UN Office on Drugs and Crime (UNODC) and agreed by the Inter-governmental Expert Group Meeting which developed the Bangkok Rules. The Inter-governmental Expert Group Meeting was held in Bangkok between 23-26 November 2009. (For further information see <[www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings1.html](http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings1.html)>).

# Non-custodial measures (Rules 57–66)

1



The section in the Bangkok Rules on non-custodial measures represents a supplement to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).<sup>2</sup> The 10 rules included here are grounded firmly on the principles and provisions expressed in the Tokyo Rules, interpreting them from a gender perspective and supplementing them in light of the increased knowledge about women in the criminal justice system, as well as the increasing numbers of women who are confronted with detention and imprisonment, since the adoption of the Tokyo Rules in 1990.

As the commentary to Rules 57-58 notes, “A considerable proportion of women offenders do not necessarily pose a risk to society and their imprisonment may not help, but hinder their social reintegration. Many are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and the community. Accordingly, women offenders should be treated fairly in the criminal justice system, taking into account their backgrounds and reasons that have led to the offence committed, as well as receiving

care, assistance and treatment in the community, to help them overcome the underlying factors leading to criminal behaviour. By keeping women out of prison, where imprisonment is not necessary or justified, their children may be saved from the enduring adverse effects of their mothers’ imprisonment, including their possible institutionalization and own future incarceration.”<sup>3</sup>

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

## 1.1 Alternatives to detention and imprisonment

### Rule 57

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

### Rule 58

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

### Rule 60

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

<sup>2</sup> General Assembly, Resolution 45/110, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, 14 December 1990, A/45/49.

<sup>3</sup> Bangkok Rules, Commentary to Rules 57-58.

## THE RATIONALE FOR RULES 57, 58 AND 60

- The Tokyo Rules, Rule 2.3, referred to in Rule 58 provides that:

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

- Rules 57, 58 and 60 derive from the general principle expressed in Rule 2.3 of the Tokyo Rules, elaborating on it, taking into account gender-specific considerations.

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

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

Rules 57, 58 and 60, and others included in this chapter, take account of the “*observance of human rights, the requirements of social justice and the rehabilitation needs of the offender*”, in the case of women offenders, in view of their typical backgrounds and their caring responsibilities. They recognise that many women are victims of gender-based violence, have mental health care needs or substance dependencies – the crimes they commit are often closely interrelated to these factors. Taking into account the requirements of social justice and the rehabilitative needs of the offender would mean that such women should receive assistance, support and treatment to overcome the psychological consequences of victimisation, be treated for mental disabilities and for substance dependencies, in order to help them build positive lives, away from crime in the future.

- Another factor, which is key to the observance of human rights, social justice and rehabilitation of the offender, is the consideration that must

be given to the caretaking responsibilities of women who commit offences. Criminal justice authorities need to take into account the impact of imprisonment of a mother on her child, or any other person, such as an elderly or disabled parent or relative, who they may be responsible to care for. In the case of children, the imprisonment of the mother can have a long lasting psychological, developmental impact, as well as providing the conditions for the child’s possible future criminalisation and imprisonment, as has been suggested by research in some countries.<sup>4</sup>

- These rules cover not only sentencing alternatives, but also alternatives to pre-trial detention. They take into account the fact that the pre-trial detention of women, even for short periods, can have a very significant and harmful impact on their children and families, especially if they are the sole or primary carers of their children, and urge authorities to give preference to alternatives to pre-trial detention in the case of women, where possible. They also take into account the enormous social and economic costs of the excessive, and very often unnecessary, use of pre-trial detention, which has been documented in research.<sup>5</sup> The rules are consistent with the provisions of Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), Rule 6 of the Tokyo Rules, and Principle 39 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, which limit the use of pre-trial detention to very specific circumstances.<sup>6</sup>

- The Tokyo Rules encourage the development of new non-custodial measures. Rule 2.4 provides that:

The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

- In line with these principles and taking into account the shortage of alternatives to imprisonment that respond specifically to the gender-specific needs of women offenders, in most societies, Rule 60 puts the responsibility on States to allocate adequate financial and human resources to the development of non-custodial measures and sanctions, which respond specifically to the most commonly encountered needs of women offenders in their particular jurisdiction.

4 See for example, *Submission by Friends World Committee for Consultation (Quakers) to the Committee on the Rights of the Child, Day of Discussion, Children Deprived of Parental Care*, Quaker United Nations Office, 2005, p3.

5 See for example, *The Socioeconomic Impact of Pre-trial Detention*, Open Society Justice Initiative, Open Society Foundations, UNDP, 2011 <[www.soros.org/initiatives/justice/articles\\_publications/publications/socioeconomic-impact-detention-20110201/socioeconomic-impact-pretrial-detention-02012011.pdf](http://www.soros.org/initiatives/justice/articles_publications/publications/socioeconomic-impact-detention-20110201/socioeconomic-impact-pretrial-detention-02012011.pdf)>.

6 Bangkok Rules, Commentary to Rules 57 and 58.



- Rule 60 makes specific reference to the need to develop women-only services, recognising research outcomes which show that drop out from treatment programmes is much lower in gender-specific programmes which provide women-only services.<sup>7</sup> As has been highlighted by the evaluation of services for substance-dependent women, “Women-only services provide the opportunity for women to be in a place of safety from male violence and to receive interventions tailored to their specific needs. Examples include gynaecological care, skills for negotiating safer sex and safer injecting and opportunities to discuss issues such as violence, pregnancy. Women-only services may also help women overcome the stigma and shame they experience about their substance use.”<sup>8</sup> In addition, treatment drop-out has been found to be less from programmes that offer women-only services, in the case of lesbian women.<sup>9</sup>
- Rule 60 also recognises the practical challenges which many women may face in participating in programmes, treatment and courses, due to their caring responsibilities and therefore requires that non-custodial measures and sanctions developed for women, should take account of the need to provide care for children.
- Relevant legislation, such as the criminal code and criminal procedure code, as well as other relevant laws should be reviewed and revised to ensure that judicial authorities have sufficient alternative options to pre-trial detention and imprisonment, which address gender-specific needs.
- *The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*<sup>11</sup> should provide additional guidance in developing appropriate responses to women in the criminal justice system, where appropriate.<sup>12</sup>
- Judicial authorities should be provided with all relevant information about the women offenders, including their caring responsibilities, history of victimisation, mental health care needs and substance dependencies, before they pass sentence, in order to take appropriate decisions. Such reports may be compiled by social services, and include an assessment of the probable impact of the mother’s detention on the children and other family members, and the arrangements for the children’s care, in the absence of the mother.
- States should allocate resources to the assessment and understanding, via data collection, research and collaboration with non-governmental organisations who work with women offenders, of the most common underlying factors which lead women to come in contact with the criminal justice system, in order to build a reliable knowledge base for the development of appropriate, targeted non-custodial measures and sanctions to respond to the needs of women offenders.
- States need to give due attention to strengthening administrative and financial capacity with a view to establishing a national system of non-custodial measures, which respond to the gender-specific needs of women offenders. They should create structures and mechanisms to implement alternatives to imprisonment, including restorative justice and alternative conflict resolution.
- Such programmes should offer care for children and women-only services, to enable maximum participation and best outcomes.
- Based on existing knowledge about the typical background of women offenders in countries worldwide, consideration should be given to

## PUTTING RULES 57, 58 AND 60 INTO PRACTICE

- Policymakers, legislators and criminal justice institutions should work together to develop policies and measures to reduce the imprisonment of women, as far as possible, in line with the provisions of the Tokyo Rules and the Bangkok Rules.

### Good practice: Judges to implement Bangkok Rules in sentencing women in Thailand

In March 2013, the Chief Judge at the Appeals Court of Thailand confirmed that judges have agreed to implement the Bangkok Rules’ provisions when sentencing female offenders, by taking into account their particular circumstances. He gave as an example the case of a woman who was not given a prison sentence because she had a three month old child who needed her care. The Corrections Department is also promoting alternatives to imprisonment during trial, especially for pregnant women or those with infants or bad health.<sup>10</sup>

7 See for example, UNODC, *Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned*, United Nations, New York, 2004, pp 2, 11-12, 49, <[http://www.unodc.org/docs/treatment/Case\\_Studies\\_E.pdf](http://www.unodc.org/docs/treatment/Case_Studies_E.pdf)>

8 Ibid. p53

9 Ibid. p12

10 See <[www.nationmultimedia.com/national/Bangkok-Rules-for-women-convicts-30202577.html](http://www.nationmultimedia.com/national/Bangkok-Rules-for-women-convicts-30202577.html)>

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

12 Bangkok Rules, Commentary to Rules 57 – 58.

the development of therapeutic programmes/ counselling for victims of domestic violence, human trafficking and sexual abuse, individualised and inter-disciplinary treatment for women with mental health care needs, evidence based treatment for women with substance dependencies, as well as educational and training programmes, to improve women's self-esteem and employment prospects. While responding to the needs of women, based on individual assessments and general research outcomes on the most common challenges faced by women

who confront the criminal justice system, such programmes should avoid gender stereotyping.

- The relevant provisions of the Bangkok Rules (in particular Rules 57 to 66), as well as national legislation developed on the basis of the Bangkok Rules, should be included in the training curriculum of criminal justice actors, including the police, prosecutors and judges, to ensure that the provisions of the Bangkok Rules are understood and implemented at all stages of the criminal justice system.

### Good practice: New strategy for female offenders in the UK

The Ministry of Justice of the UK developed new strategic objectives for female offenders, published in March 2013, which included the following key priorities, among others:

1. Enabling the provision of credible, robust sentencing options in the community that will enable female offenders to be punished and rehabilitated in the community where appropriate. [...]
2. Ensuring the provision of services in the community that recognise and address the specific needs of female offenders, where these are different from those of male offenders. [...]

The strategy would encourage and facilitate a whole system approach:

- (a) Working with partners within the criminal justice system – to ensure that the needs and profile of female offenders are recognised and understood by those working with them at all points of the criminal justice system. [...]
- (b) Working with partners outside the criminal justice system – to raise the profile of female offenders and factors associated with their offending, such as domestic violence and sexual abuse, mental health needs, and substance misuse problems. [...]

A new Advisory Board for female offenders was formed, chaired by the Minister of Justice. The Board is responsible for providing expert advice, working across government institutions and with key stakeholders.

For other strategic priorities outlined in the paper see good practice box under Rule 42.

In July 2013, a requirement that the particular needs of women offenders must be addressed in the provision of supervision and rehabilitation services was included in the Offender Rehabilitation Bill which would be given the force of law when enacted. As a result of the amendment, service providers are required to demonstrate that they understand and will respond to the particular needs of female offenders where these differ from those of men. This will include taking account of women's family and caring responsibilities.

See: Ministry of Justice, UK, Strategic Objectives for Female Offenders, March 2013 [www.justice.gov.uk/downloads/publications/policy/moj/strategic-objectives-female-offenders.pdf](http://www.justice.gov.uk/downloads/publications/policy/moj/strategic-objectives-female-offenders.pdf)

and

Prison Reform Trust: "The needs of women offenders recognised in law": [www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/192#\\_ftn1](http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/192#_ftn1)

## KEY ACTORS

- ▶ **Legislators/Parliamentarians**
- ▶ **Policymakers**
- ▶ **Criminal justice institutions (the police, prosecution service and judiciary)**
- ▶ **Probation services or social services**
- ▶ **Health care services in the community**

**Rule 62**

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

**RATIONALE FOR THIS RULE**

- UNODC and the World Health Organization (WHO), in the Discussion Paper, Principles of Drug Dependent Treatment emphasises and recommends the following:<sup>13</sup>
  - ▶ In general, drug use should be seen as a health care condition and drug users should be treated in the health care system rather than in the criminal justice system where possible.
  - ▶ Interventions for drug dependent people in the criminal justice system should address treatment as an alternative to incarceration, and also provide drug dependence treatment while in prison and after release. Effective coordination between the health/drug dependence treatment system and the criminal justice system is necessary to address the twin problems of drug use related crime and the treatment and care needs of drug dependent people.
  - ▶ Research results indicate that drug dependence treatment is highly effective in reducing crime. Treatment and care as alternative to imprisonment or commenced in prison followed by support and social reintegration after release decrease the risk of relapse in drug use, of HIV transmission and of re-incidence in crime, with significant benefits for the individual health, as well as public security and social savings. Offering treatment as an alternative to incarceration is a highly cost-effective measure for society.
- In its resolution on “*Alternatives to imprisonment as effective demand reduction strategies that promote public health and public safety*”,<sup>14</sup> adopted in March 2012, the Commission on Narcotic Drugs (CND), encouraged Member States, *inter alia*:
  - ..... working within their legal frameworks and in compliance with applicable international law, to consider allowing the full implementation of drug dependence treatment and care options for offenders, in particular, when appropriate, providing treatment as an alternative to incarceration, in order to help strengthen drug demand reduction policies while promoting both public health and public safety.<sup>15</sup>
  - ..... to promote coordination and cooperation between competent authorities, such as health, public security and justice authorities, as well as service providers, with a view to identifying and developing cost-effective, evidence-based approaches, including but not restricted to exploring or implementing, where appropriate and in accordance with national legislation, alternatives to prosecution and imprisonment for drug-using offenders.<sup>16</sup>
  - Research indicates that drug treatment in the community is more effective in reducing recidivism than drug treatment in prison.<sup>17</sup>
  - It is also now recognised that gender differences in substance dependence and related complications require different treatment approaches.<sup>18</sup> In addition, Member States of the UN have reached consensus on treatment strategy development that specifically includes references to gender.<sup>19</sup>
  - Studies have found that comprehensive or enhanced programming, which includes components such as women-only groups, childcare, prenatal care, women-focused topics, mental health programming, produces better outcomes for women in comparison with traditional mixed-gender programmes.<sup>20</sup>

<sup>13</sup> UNODC, WHO, *Principles of Drug Dependent Treatment, Discussion Paper*, March 2008, <[www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf](http://www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf)>.

<sup>14</sup> Commission on Narcotic Drugs, 9th plenary meeting, *Alternatives to imprisonment as effective demand reduction strategies that promote public health and public safety*, March 2012, Resolution 55/12, <[www.un.org/Docs/journal/asp/ws.asp?m=E/CN.7/2012/L.15](http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.7/2012/L.15)>.

<sup>15</sup> *Ibid.*, operative paragraph 1.

<sup>16</sup> *Ibid.* operative paragraph 3.

<sup>17</sup> For example, a comprehensive study conducted in the United States reported that adult drug courts reduced recidivism rates by 8.7 per cent; treatment in the community (without the leverage of drug courts) by 8.3 per cent and treatment in prison by 6.4 per cent. See Elizabeth K. Drake, Steve Aos and Marna G. Miller, Washington Institute for Public Safety, *Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State*, April 2009, <[www.wsipp.wa.gov/rptfiles/09-00-1201.pdf](http://www.wsipp.wa.gov/rptfiles/09-00-1201.pdf)>.

<sup>18</sup> See Bangkok Rules, Commentary to Rule 15, citing UNODC *Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case studies and lessons learned*, 2004, p23.

<sup>19</sup> See Bangkok Rules, Commentary to Rule 15, citing *ibid.*, referring to the Twentieth Special Session of the General Assembly, Devoted to Countering the World Drug Problem Together, 8-10 June 1998, paragraph 8 of the Declaration on the Guiding Principles of Drug Demand Reduction.

<sup>20</sup> UNODC, *Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned*, 2004, p91.

- Cognitive and behavioural treatment approaches have received scientific and clinical support for use in treatment programming for women.<sup>21</sup>
- Recent work on women's psychological development has recognised the central role of relationships in women's lives.<sup>22</sup> Helping women learn ways to develop and maintain healthy relationships, family education and therapy, childcare and parenting skills training are mechanisms to support women's need for connectedness and their network of relationships.<sup>23</sup> Thus, promoting and facilitating women's continued links with their families and children during their imprisonment is a key component of successful treatment outcomes.
- In its resolution "*Promoting strategies and measures addressing specific needs of women in the context of comprehensive and integrated drug demand reduction programmes and strategies*"<sup>24</sup> the CND recalled, *inter alia*, the General Assembly resolution 65/229 of 21 December 2010, in which the Assembly adopted the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, and called on the United Nations Member States to take a series of measures to develop and improve their drug treatment policies, programmes and services, to address the specific needs of women. Among other things, the CND:
  1. *Urges* Member States to consider incorporating female-oriented programmes in their drug policies and strategies;
  2. *Encourages* Member States to integrate essential female-specific services in the overall design, implementation, monitoring and evaluation of policies and programmes addressing drug abuse and dependence, where needed;
  3. *Recommends* that Member States consider and accommodate the specific needs of drug-dependent parents, including childcare and parental education;
  4. *Also recommends* that Member States, in designing, implementing and evaluating integrated drug prevention and treatment and HIV prevention programmes, take into account the needs of women who have experienced sexual and other violent trauma related to drug abuse;
  5. *Encourages* Member States to take into account the specific needs of women in the prevention, early detection and intervention, treatment and

care of drug dependence and drug-related diseases, including infectious diseases and psychiatric disorders, as well as related support services, including for rehabilitation, reintegration and recovery, and to consider designing those services using a multi-agency approach so as to include specific female-oriented measures, promoting effective modalities such as special group offerings for women in inpatient and outpatient settings, family-based treatment and extra occupational training for women as part of recovery activities. (...)

## PUTTING IT INTO PRACTICE

### *Legislative measures*

- Consideration should be given to reviewing and, where necessary, revising legislation to provide for alternatives to imprisonment for women who commit certain drug related offences, as well as to offer drug treatment services in the community for those who are drug dependent themselves.
- In order to encourage women's access to drug treatment programmes, for the purposes of crime prevention, legislation should also be reviewed and, where necessary, revised, to ensure that, where drug possession and use is an offence in criminal legislation, individuals (including women) who contact drug treatment centres in the community to undergo treatment for their drug dependence are not be treated as offenders (eg. are not at risk of any investigation or prosecution). In all cases the confidentiality of patients undergoing drug treatment should be protected by law.

### *Practical measures*

- Resources should be allocated to the understanding of the extent and particularities of drug dependence among women offenders.
- Effective coordination between the health/drug dependence treatment system and the criminal justice system should be established to divert women who have committed drug related offences and who are dependent on drugs themselves, to treatment programmes in the community.
- Ministries of Justice and Health should work together and collaborate with relevant civil society organisations and services in the community to develop gender sensitive drug treatment programmes for women, including pregnant

<sup>21</sup> Ibid. p91

<sup>22</sup> Ibid. p91

<sup>23</sup> Ibid. p91

<sup>24</sup> Commission on Narcotic Drugs, 9th plenary meeting, *Promoting strategies and measures addressing specific needs of women in the context of comprehensive and integrated drug demand reduction programmes and strategies*, March 2012, Resolution 55/5, <[www.unodc.org/documents/commissions/CND-Res-2011to2019/CND-Res-2012/Resolution\\_55\\_5.pdf](http://www.unodc.org/documents/commissions/CND-Res-2011to2019/CND-Res-2012/Resolution_55_5.pdf)>

women and women who are parents or guardians with children. Such programmes should offer women-only services, care for children of mothers, and include strategies to address trauma and mental health issues which are common among women.

- States should consider implementing, where needed, female oriented guidelines and quality standards in their drug policies in order to maximise coherence with existing activities, efficient allocation of resources and positive outcomes for drug-dependent women and their children.<sup>25</sup>
- The relevant ministries should allocate adequate resources for the development and effective functioning of such programmes and ensure that they are easily accessible to women both in urban and in rural areas and in different parts of the country. Where possible, treatment should be provided free-of-charge, at least, to indigent women.
- Measures should be taken to respect the confidentiality of patients, based on the fundamental principle of confidentiality in medical practice and taking into account the particular stigma drug dependent women may face in many communities.
- Drug treatment should be voluntary. The use of any long-term treatment for drug use disorders without the consent of the patient is in breach of international human rights agreements and ethical medical standards.<sup>26</sup> In a joint statement, issued in March 2012, on “Compulsory drug detention and rehabilitation centres”, United Nations entities called on States to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community.

In their statement they said, among other things, that:

“States increasingly acknowledge the concerns associated with these compulsory drug detention and rehabilitation centres, including their lack of effectiveness in preventing relapse, their high costs, and their potential negative impact on efforts to ensure universal access to HIV prevention, treatment, care and support. We note with appreciation that some countries are in the process of scaling down the number of such centres and building greater capacity for

voluntary, evidence-informed, community-based approaches. These positive steps are critical to expanding understanding and building support for an approach to drug dependence, sex work and child sexual exploitation that is based on available scientific and medical evidence, ensures the protection of human rights and enhances public health. We are committed to work with countries to find alternatives to compulsory drug detention and rehabilitation centres, including through technical assistance, capacity building and advocacy.

“Forms of support might include the following:

- sharing of information and good practices on voluntary, evidence-informed and community- and rights-based programmes for people who use drugs, those who engage in sex work, and children who have been victims of sexual exploitation;
- dialogue with policy-makers to increase support for voluntary, evidence-informed and rights-based treatment and programmes for drug dependence;
- multisectoral collaboration among law enforcement, health, judiciary, human rights, social welfare and drug control institutions to assist in developing frameworks of action to support voluntary and community-based services for people who use drugs, those who engage in sex work and children who have been victims of sexual exploitation;
- establishment of services to address the root causes of vulnerability (e.g. poverty, gender inequality and the lack of sufficient family and community support structures).”

For the full text of the Joint Statement, see:

[http://www.who.int/hiv/mediacentre/joint\\_statement\\_20120308.pdf](http://www.who.int/hiv/mediacentre/joint_statement_20120308.pdf)

Please refer to the resources listed in Appendix 2 for publications that can assist with developing drug dependence treatment programmes suitable for the needs of women, including UNODC Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned, United Nations, New York, 2004.

See: [http://www.unodc.org/docs/treatment/Case\\_Studies\\_E.pdf](http://www.unodc.org/docs/treatment/Case_Studies_E.pdf)

<sup>25</sup> As per Commission on Narcotic Drugs, 9th plenary meeting, *Promoting strategies and measures addressing specific needs of women in the context of comprehensive and integrated drug demand reduction programmes and strategies*, March 2012, Resolution 55/5, para 6 [www.unodc.org/documents/commissions/CND-Res-2011to2019/CND-Res-2012/Resolution\\_55\\_5.pdf](http://www.unodc.org/documents/commissions/CND-Res-2011to2019/CND-Res-2012/Resolution_55_5.pdf).

<sup>26</sup> UNODC, *From coercion to cohesion Treating drug dependence through health care, not punishment, Discussion Paper*, 2010, p9.

## KEY ACTORS

- ▶ Policymakers, including ministries of justice/interior and health
- ▶ Legislators/Parliamentarians
- ▶ Law enforcement and criminal justice institutions
- ▶ Social welfare agencies
- ▶ Health care services in the community
- ▶ NGOs

### Rule 64

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

## THE RATIONALE FOR THE RULE

- As the commentary to this rule notes, a series of recommendations, resolutions and, in the case of Africa, a charter, at the international and regional levels have urged States to restrict as far as possible the use of imprisonment in the case of pregnant women or mothers with small children. These include: the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Resolution 19 “Management of criminal justice and development of sentencing policies”;<sup>27</sup> Human Rights Council Resolution 10/2, dated 25 March 2009,<sup>28</sup> The African Charter on the Rights and Welfare of the Child, 1999, Article 30, the Council of Europe, Parliamentary Assembly Recommendation 1469 (2000), on Mothers and babies in prison, adopted on 30 June 2000<sup>29</sup> and the Human Rights Council Resolution on the Rights of the Child, adopted on 23 March 2012 at its 19th session,<sup>30</sup> which calls upon States:

To give priority, when sentencing or deciding on pre-trial measures for a pregnant woman or a child’s sole or primary care-giver, to non-custodial measures, bearing in mind the gravity of the offence and after taking into account the best interests of the child.

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

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

- The Convention on the Rights of the Child (CRC) requires States parties to base all decisions where children are involved, on the best interest of those children. (CRC, Article 3(1)).
- Taking these factors into account, and bearing in mind the fundamental principle of the Tokyo Rules, which is to move towards an increased use of non-custodial sanctions and measures, instead of imprisonment, it is clear that some of the first categories to prioritise for alternatives to imprisonment are pregnant women, breastfeeding mothers and mothers with small children.

## PUTTING IT INTO PRACTICE

- States should review their legislation with a view to including provisions that allow for courts to consider non-custodial measures and sanctions in the case of women offenders, who are pregnant or who have dependent children, who commit certain

<sup>27</sup> Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Resolution 19, *Management of criminal justice and development of sentencing policies*, Report of the 8th UN Congress on the Prevention of Crime and Treatment of Offenders, 1990, A/CONF.144/28/Rev.1.

<sup>28</sup> Human Rights Council Resolution 10/2, *Human rights in the administration of justice, in particular juvenile justice*, 25 March 2009, A/HRC/10/29, pp7-10.

<sup>29</sup> See Bangkok Rules, Commentary to Rule 64 for further details.

<sup>30</sup> Human Rights Council, 19th session, *Report of the HC on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)*, December 2011, para69(a), [www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-37\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-37_en.pdf).

categories of offences (e.g. non-violent) or who are assessed not to pose a danger to the public (e.g. they may have committed violent offences, but may still be low-risk, if the offence was committed against a partner who had abused them).

- When certain categories of offences are committed by a pregnant woman or a mother with a small child, sentences may be deferred, for example, until the child reaches a certain age and reviewed at that time, based on pre-established criteria, which should provide eligibility for the cancellation of imprisonment or reduction to a non-custodial sanction under certain conditions (e.g. not to commit an offence during that period).
- States where sentencing guidelines are used should review and amend the guidelines to ensure that courts only consider custodial sentences for pregnant women and women with dependent children when the offence was serious and violent, the woman represented a continuing danger, and after taking into account the best interests of the child or children.

## Good practices

### Legislation in Russia

In Russia the execution of a sentence may be postponed and then reduced or cancelled for pregnant women or women who have children under 14 years of age, with the exception of those “sentenced to imprisonment for terms longer than five years for grave and specially grave crimes.” (Criminal Code of the Russian Federation, Article 82)

### Legislation in Armenia

The specific circumstances of women may be taken into account in sentencing according to Article 62 of the Criminal Code, entitled “Circumstances mitigating liability and punishment”. These include being pregnant at the time of the offence or at the time of sentencing (Art 62(3); caring for a child under 14 years of age at the time of sentencing (Art 62(4)).<sup>31</sup>

Article 78 of the Criminal Code provides for the postponement or exemption from punishment of pregnant women or women with children under three years’ of age, except in the case of women convicted of grave and particularly grave crimes with a prison sentence of more than five years.<sup>32</sup>

### Legislation in Argentina

In Argentina amendments made to the Penal Code and Penal Procedure Code in 2009 allow for mothers with children under five years or with caring responsibilities for persons with disabilities, to serve their sentences at home under house arrest. This has led to a significant reduction of the number of mothers with children in prison.<sup>33</sup>

### South Africa: The Constitutional Court suspends the imprisonment of a mother, taking into account the best interests of her children<sup>34</sup>

In the case “M v. the State”, reported in September 2007, which involved an appeal by a woman who had been sentenced to four years imprisonment, the Constitutional Court suspended the portion of the sentence which had not yet been served, taking into account the interests of the offender’s three children, aged 16, 12 and eight.

The court ordered to suspend the mother’s imprisonment for four years on condition that she would not be convicted of an offence committed during the period of suspension, of which dishonesty was an element, and on condition that she complied fully with the order’s provisions.

The offender was placed under correctional supervision in terms of section 276(1)(h) of the Criminal Procedure Act 51 of 1977 for three years.

## KEY ACTORS:

- ▶ Legislators/Parliamentarians
- ▶ Policymakers
- ▶ Sentencing authorities
- ▶ Probation and/or social services

31 See Criminal Code of the Republic of Armenia at <[www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng](http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng)>.

32 Ibid.

33 See National Law No. 26472, approved on 17 December 2008, promulgated on 12 January 2009 and published on 20 January 2009, <[www.cndisc.gov.ar/doc\\_publicar/legales/ley\\_26472.pdf](http://www.cndisc.gov.ar/doc_publicar/legales/ley_26472.pdf)>.

34 See S v M, Constitutional Court decision 26 September 2007, Case CCT 53/06 [2007] ZACC 18; 2008 (3) SA 232 (CC), South Africa, Constitutional Court <[www.saflii.org/za/cases/ZACC/2007/18.html](http://www.saflii.org/za/cases/ZACC/2007/18.html)>.

## 1.2 Sentencing: taking into account mitigating factors

### Rule 61

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

### RATIONALE FOR THIS RULE

- Rule 61 represents an interpretation and reflection of Rules 3.3 and 7.1 of the Tokyo Rules, as they apply to women offenders. Taking into account the provisions of the Tokyo Rules, the rule puts an obligation on judicial authorities to use their discretion when sentencing women offenders, as provided by the Tokyo Rules, Rule 3.3, and to consider mitigating factors, which may be set out in a social inquiry report, provided in Rule 7.1 of the Tokyo Rules:

#### **Tokyo Rules, Rule 3.3:**

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

#### **Tokyo Rules, Rule 7.1:**

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

- As the commentary notes, this rule is of particular relevance to a significant proportion of women offenders who commit violent offences against their partners, as a consequence of long-term and systematic abuse by them, as well as to a large proportion of women who commit drug related offences, many of them due to coercion by their male partners, or because they agree to act as couriers (or drug mules), due to poverty

and their need to provide for their children, and often without sufficient understanding about the possible consequences of their actions.<sup>35</sup> Many such women are single mothers.

- As the commentary to this rule also notes: "Many offenders charged with drug offences could be dealt with more effectively by alternatives to imprisonment targeted specifically at the drug problem, rather than imprisonment. The major international instruments, including the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances<sup>36</sup> and the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations<sup>37</sup> recognise this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives, of which alternatives to imprisonment are a key part."<sup>38</sup>
- The rule calls on judicial authorities to consider these factors, together with the caring responsibilities of women offenders. Such information may be set out in social inquiry reports, as "information and recommendations that are relevant to the sentencing procedure" referred to in Rule 7.1 of the Tokyo Rules.
- The commentary also draws attention to the shortcomings of mandatory sentencing provisions, which do not allow sentencing authorities to use their discretion in sentencing, which would effectively prevent judges from putting into practice the provisions of the Bangkok Rules. As the commentary notes, the Human Rights Committee of the UN has expressed concern about mandatory sentencing provisions, as far back as 2000.<sup>39</sup> More recently there has been criticism at national levels and calls for the review of mandatory sentencing provisions in some jurisdictions.<sup>40</sup>

<sup>35</sup> Bangkok Rules, Commentary to Rule 61.

<sup>36</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, E/CONF.82.15. <[www.unodc.org/unodc/en/treaties/illicit-trafficking.html](http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html)>.

<sup>37</sup> General Assembly, 20th Special Session 'World Drug Problem', 8-10 June 1998, Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations, 8 September 1998, A/RES/S-20/3.1998.

<sup>38</sup> Bangkok Rules, Commentary to Rule 61.

<sup>39</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee: Australia*, 24 July 2000, A/55/40, paras. 498-528.

<sup>40</sup> For example, following a comprehensive review of mandatory sentencing in the United States, the United States Sentencing Commission concluded that mandatory minimum sentences were "excessively severe and are applied inconsistently." See *US study urges sentencing reform*, published 31 October 2011, <[www.upi.com/Top\\_News/US/2011/10/31/US-study-urges-sentencing-reform/UPI-13071320118822/](http://www.upi.com/Top_News/US/2011/10/31/US-study-urges-sentencing-reform/UPI-13071320118822/)>. In January 2012, in Ireland, the Law Reform Commission recommended, among other things, to review minimum sentences for drug offences, saying that current sentencing has resulted in a "bulge" of the prison population but has had little serious impact on those at the top of the illegal drugs trade, see <[www.thejournal.ie/judges-should-be-able-to-specify-minimum-terms-for-murder-says-law-reform-group-331585-Jan2012/](http://www.thejournal.ie/judges-should-be-able-to-specify-minimum-terms-for-murder-says-law-reform-group-331585-Jan2012/)>.



## PUTTING IT INTO PRACTICE

- Legislation should be reviewed and, where necessary revised, to ensure that courts are allowed a certain amount of discretion when sentencing women offenders, so that they can take into account various relevant factors, such as the crime history of the offender, her social circumstances, including any history of victimisation, her caretaking responsibilities, including whether she is a single mother, the reasons for committing the offence and the severity of the offence, among other factors deemed to be relevant to the commitment of the offence.
- In addition, taking into account the legal system of the particular jurisdiction, guidance for sentencing should be provided, which can take various forms<sup>41</sup> to encourage courts to favourably take into account women's background, circumstances and vulnerabilities, as well as their caretaking responsibilities, before passing sentence.
- Probation services or social services may be required to compile social inquiry reports in the case of some or all women offenders (depending on the availability of resources). For example, the preparation of such reports may be mandatory in the cases of women facing long sentences and all women who are pregnant and who have dependent children.
- Where it is not possible to have social inquiry reports due to resource limitations, courts should take the responsibility to inquire into the background, circumstances and caretaking responsibilities of women during the trial process.

### Good practice: New sentencing guidelines in the UK recommend lesser sentences for "drug mules"

The official sentencing guidelines for the courts in the UK, which came into force in February 2012, recommend a less punitive approach to the sentencing of "drug mules". The sentencing council, which prepared the guidelines, said it recognised that "drug mules" are often women

who have been coerced or exploited by organised criminals.

See [www.guardian.co.uk/society/2012/jan/24/drug-lighter-sentences-social-dealers?INTCMP=SRCH](http://www.guardian.co.uk/society/2012/jan/24/drug-lighter-sentences-social-dealers?INTCMP=SRCH)

## KEY ACTORS

- ▶ Policymakers
- ▶ Legislators/Parliamentarians
- ▶ Sentencing authorities
- ▶ Probation service
- ▶ Social welfare services

## 1.3 Post-sentencing dispositions

### Rule 63

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

### THE RATIONALE FOR THIS RULE

- Parole or early conditional release means the early release of sentenced prisoners under individualised post-release conditions. It can be mandatory when it takes place automatically after a minimum period or a fixed proportion of the sentence has been served, or it can be discretionary when a decision has to be made whether to release a prisoner conditionally, after a certain period of the sentence has been served.<sup>42</sup> Conditional release or parole is always accompanied by a general condition that the prisoner should refrain from engaging in criminal activities. However, this is not always the only condition imposed. Other conditions may be imposed on the prisoner, to the extent that these are appropriate for his/her successful social reintegration.
- The use of early conditional release (parole) can assist significantly with prisoners' social

<sup>41</sup> See for example, Council of Europe Recommendation No. R (92) 17 of the Committee of Ministers to Member States Concerning Consistency in Sentencing (Adopted by the Committee of Ministers on 19 October 1992 at the 482nd meeting of the Ministers' Deputies).

<sup>42</sup> UNODC, *Criminal Justice Assessment Toolkit, Custodial and Non-custodial Measures, Social Reintegration Tool*, March 2010, p25.

reintegration by enabling their gradual, planned resettlement, provided that released prisoners receive adequate support, assistance and supervision following release. The value of early conditional release in enabling the social reintegration of prisoners is recognised in the Tokyo Rules, Rule 9, as well as regional bodies such as the Council of Europe.<sup>43</sup>

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

## PUTTING IT INTO PRACTICE

- Assessment tools should be developed to ensure that all the relevant information about the prisoner helps to reliably determine the risks posed by the prisoner and her social reintegration needs.
- Bodies responsible for making parole decisions should be provided with information relevant to the social reintegration needs of the prisoner, in particular the potential benefits both to the prisoner and to her family, of reuniting and with information about any children the woman has inside or outside prison.

- Bodies responsible for making parole decisions should consider favourably the information provided on the woman's caretaking responsibilities and social reintegration needs. The prisoner should be provided with an opportunity to participate in the decision-making process.
- In jurisdictions where prisoners need to apply for early conditional release, they should be informed of this right, both at the beginning of their sentence and at the time when they become eligible to apply.
- Prison authorities, staff of the parole system, social services or other bodies responsible for the supervision of prisoners released on early conditional release should coordinate to ensure that released women receive assistance and support during the period of transition. Where relevant, they should work with health care services for any continuum of care the women may require, for example for treatment for substance dependence or mental health.

## KEY ACTORS

- ▶ **Prison authorities**
- ▶ **Parole boards or other bodies responsible for making early conditional release decisions (eg. the judiciary)**
- ▶ **Social services or other bodies responsible for the supervision of prisoners released on early conditional release**

## 1.4 Women who need protection

### Rule 59

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

### RATIONALE FOR THE RULE

- This rule is unique in that it covers the needs of a group of women who are neither offenders nor prisoners, but victims of violence. It has been included in the Bangkok Rules, because of the practice in some countries of using prisons as places of "protection" for victims of violence. It is therefore an extreme and vivid example of the thin line between victimisation and imprisonment, in the case of women.
- The rule recognises that, regrettably, many women may themselves feel forced to request this extreme form of protection, in preference to the abuses and violence they may face, either because they have already been raped and may be in danger of harm by the perpetrator or his relatives in order not to testify or because they may have overstepped the strict norms required by custom, tradition or religion, in some societies, putting them at risk of an "honour-based killing"

<sup>43</sup> See Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole) (Adopted by the Committee of Ministers on 24 September 2003).

or other forms of violence or because they may simply be escaping from systematic violence in their home. In some countries prisons may be used to protect victims of trafficking.

- The challenge faced here is to provide such women with the protection that they need, if they so request, while, on the other hand, to ensure that they do not, in effect, become prisoners, as well as being at risk of possible further abuse. This is not an easy tension to resolve. As quoted in the commentary to the rule,<sup>44</sup> the Working Group on Arbitrary Detention to the Commission on Human Rights<sup>45</sup> has expressed very clearly that "... recourse to deprivation of liberty in order to protect victims should be reconsidered and, in any event, must be supervised by a judicial authority, and that such a measure must be used only as a last resort and when the victims themselves desire it".<sup>46</sup>
- In most countries there are shelters or safe houses run by independent bodies, such as NGOs, as well as by social welfare services. The best option for the protection of such women would be to place them, temporarily, in such places, provided that they expressly wish to be protected in this way. Regrettably, the demand for safe houses is higher than the supply, which can mean that women may have to be placed in separate sections of detention facilities or prisons, on a temporary basis, to protect them.<sup>47</sup> It is of utmost importance that all such places are supervised by an independent judicial authority, as required by Rule 59 of the Bangkok Rules, and that no woman should be held in any such a place against her will.
- There is also a need to highlight the "temporary" nature of such measures in general, in order for them to be acceptable. States have the responsibility to "Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions" as required by the Declaration on the Elimination of Violence against Women, Article 4(f), quoted in the commentary to the rule.<sup>48</sup>

## PUTTING IT INTO PRACTICE

### Legislative measures

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

#### Good practice. Legislative measures to fight against "honour killings" in Turkey

On 26 September 2004, a new Penal Code was approved in the Turkish Parliament Grand National Assembly. The new Penal Code includes more than 30 amendments that constitute an important step towards gender equality and protection of sexual and bodily rights of women and girls in Turkey.

The new Penal Code takes a significant step forward in relation to "honour killings". In the previous Penal Code, a general article regulating cases of "unjust provocation" was often misinterpreted by judges to cover murders committed in the name of honour and was used to grant sentence reductions to perpetrators. In the reformed Penal Code, the article has been amended to only include "unjust acts" and in the justification of the article, it has been explicitly stated this amendment was made to prevent its application to honour killing cases. Furthermore, "killings in the name of customary law" have been defined as aggravated homicide in the new Penal Code. This provision does not encompass all honour killings, but still constitutes a significant advancement.

See: Women for Women's Human Rights (WWHR) website:

[www.wwhr.org/turkish\\_penalcode.php](http://www.wwhr.org/turkish_penalcode.php)

For the original text (in Turkish) of the Penal Code, see [www.tbmm.gov.tr/kanunlar/k5237.html](http://www.tbmm.gov.tr/kanunlar/k5237.html)

The Articles referred to are Articles 29 and 82.

### Practical measures

- States should also review their law enforcement and criminal justice practices to ensure that maximum protection is provided to victims of gender-based violence and that such women are not re-victimised in practice. For example, women who apply to the police for protection, due to fears of being killed or fleeing domestic violence, should not be sent back home, but offered protection while longer terms measures to resolve the problem are identified.
- States should allocate adequate financial and human resources to the establishment of adequate safe houses/shelters in the community managed by

<sup>44</sup> Bangkok Rules, Commentary to Rule 59.

<sup>45</sup> Replaced by the Human Rights Council in 2006.

<sup>46</sup> Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, Chairperson-Rapporteur, Louis Joinet, 16 December 2002, E/CN.4/2003/8, para65.

<sup>47</sup> In Afghanistan, for example, the Law on Prisons and Detention Centres, includes an article which allows heads of detention centers, with permission of the Ministry of Justice and written request by the individual to provide temporary shelter and protection in detention centers and prisons to those who have been seriously threatened and their safety are at serious risk (Article 53).

<sup>48</sup> Bangkok Rules, Commentary to Rule 59.

social services or by another relevant body, such as the ministry responsible for women or for human rights. They should also set up effective collaboration mechanisms with NGOs who run such shelters to ensure that women who need such protection are referred to these NGOs on a timely basis and with respect to the need for strict confidentiality.

- Where, in exceptional circumstances, women are detained in official places of detention for their protection, due to the lack of better alternatives, States should ensure that all measures are taken to ensure that such women are not treated as prisoners: (a) women should be free to leave whenever they wish, having received all information relevant to their situation, including the risks they may face if they leave; (b) such women should be held in strictly separate accommodation from the other prisoners; (c) staff responsible for their supervision and care should be properly trained to respond to these women's particular needs, recognising their vulnerability and the trauma that they may have experienced; (d) the women should be offered psycho-social assistance and legal aid; (e) places of such detention should be supervised regularly by an independent judicial authority.
- In all cases the women concerned must express a desire, in writing, to receive such measures of protection and they should be provided with all the information relating to the conditions of such places of protection, services provided and procedures for leaving them.
- The provision of such protection for victims should not mean that authorities are relieved of their responsibilities to address the underlying causes for the need to take such extreme measures to protect victims of violence in general, as well as the need to apprehend and bring to justice the perpetrators of any violence that may have already occurred in particular cases.

## KEY ACTORS

- ▶ Policymakers
- ▶ Legislators/Parliamentarians
- ▶ Law enforcement agencies
- ▶ Criminal justice institutions
- ▶ Prison authorities, where relevant
- ▶ NGOs

## 1.5 Children in conflict with the law/juvenile female offenders

### Rule 65

***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.***

### RATIONALE FOR THIS RULE

- The Convention on the Rights of the Child, Article 37(b) provides that “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.
- The Beijing Rules include detailed rules on how to deal with children in conflict with the law. They provide that the age of criminal responsibility should not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.<sup>49</sup> They encourage the diversion of children in conflict with the law from the criminal justice system<sup>50</sup> and avoiding institutionalisation to the greatest possible extent.<sup>51</sup>
- Rule 65 re-emphasises these principles, taking into account the fact that children are imprisoned too frequently and unnecessarily, as well as for longer periods than necessary. It has been estimated that no less than one million children are held in prisons worldwide.<sup>52</sup>
- In addition, girls face particular disadvantages in prisons, are especially vulnerable to abuse and have particular protection needs due to their age and gender. The social reintegration needs of a

<sup>49</sup> UN General Assembly, 96th plenary meeting, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, 29 November 1985, A/RES/40/33, Rule 4.1

<sup>50</sup> Beijing Rules, Rule 11

<sup>51</sup> Beijing Rules, Rule 18.1

<sup>52</sup> UNODC, UNICEF, *Manual for the measurement of juvenile justice indicators*, 2006, <[www.penalreform.org/resource/manual-measurement-juvenile-justice-indicators/](http://www.penalreform.org/resource/manual-measurement-juvenile-justice-indicators/)>, p1

large majority can much better be served in the community, with assistance provided to address the underlying causes of any offence committed and with constructive support offered by social services, probation services and others, as relevant, to help them build positive and crime-free lives, in full conformity with the Beijing Rules quoted below.

### Beijing Rules

#### Rule 1.3

Sufficient attention shall be given to positive measures that involve the full mobilisation of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

#### Rule 11.1

Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in Rule 14.1 below.

#### Rule 13.1

Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

#### Rule 13.2

Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

#### Rule 18.1

A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;

(h) Other relevant orders.

#### Rule 18.2

No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Juvenile female offenders may be pregnant or mothers, so in addition to the considerations outlined above, the provisions of Rule 64 should also be taken in to account when dealing with girls in conflict with the law.

## PUTTING IT INTO PRACTICE

### Legislative measures

- Legislation and/or sentencing guidelines should be reviewed and, as necessary, revised, to ensure that appropriate scope for discretion is allowed at all stages of criminal proceedings and at the different levels of juvenile justice administration, to direct juveniles 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, 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 imprisonment of girls to the absolute minimum necessary.
- Legislation should be reviewed and, where necessary revised, to include a sufficient number of special alternatives to pre-trial detention and imprisonment suitable to respond to the special needs of children in conflict with the law, including the particular needs of girls.

### Practical measures

- Social inquiry reports need to be made available to the courts about the child 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.
- Criminal justice actors who deal with the case of children should be appropriately trained and sensitised.
- States should invest in developing appropriate services and community measures suitable for children in conflict with the law. Mechanisms of coordination should be established between community services and criminal justice actors,

starting with the police, to ensure effective implementation of diversionary measures.

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

## KEY ACTORS

- ▶ Policymakers
- ▶ Legislators/Parliamentarians
- ▶ Criminal justice institutions/actors
- ▶ Probation services, social services and NGOs

## 1.6 Victims of human trafficking/foreign nationals

### Rule 66

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

### THE RATIONALE FOR THIS RULE

- As the commentary to this rule notes, the number of foreign national prisoners in countries worldwide has increased dramatically over the past years. This is partly the outcome of increasingly punitive measures being adopted against irregular migrants in many countries. Such persons sometimes include victims of trafficking, while they themselves are the victims of poverty, coercion and exploitation, at the hands of those running organised crime networks.
- The rule requires States to ratify *the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, and to put into practice its provisions. This Protocol emphasises the need to protect victims, prosecute perpetrators and for this purpose to increase capacity, training and international cooperation in the area of trafficking in persons.

For example, Article 6, paragraphs 3, 4 and 5 of the Protocol, provide that:

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

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

With reference to training, prevention and prosecution, Article 10 of the Protocol, provides, among others things:

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with nongovernmental organisations, other relevant organisations and other elements of civil society.
- It is clear that in countries where illegal migration and other acts such as sex work, even when a result of trafficking and coercion, are criminalised, the likelihood that trafficked victims will report their situation to the authorities is reduced significantly. The risk of prosecution and imprisonment or other punishment, therefore, can represent an additional barrier to already existing ones, which are the

fear of victims for their safety at the hands of their traffickers, and particularly the retaliation that they may face.<sup>53</sup> The responsibility of States parties to protect victims and assist them should preclude their prosecution and punishment.<sup>54</sup>

- The United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Human Trafficking<sup>55</sup> provide a number of elements on non-criminalisation of trafficked persons:

#### **Recommended principles**

##### Protection and assistance

7. Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

#### **Recommended guidelines**

##### Guideline 8

Special measures for the protection and support of child victims of trafficking

8. Ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

- Neither the United Nations Convention against Transnational Organized Crime nor the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children include an explicit obligation for States parties to refrain from criminalising victims of trafficking.<sup>56</sup> However, a number of non-binding guidelines (such as those recommended by the United Nations High Commissioner for Human Rights referred to above), action plans, declarations and resolutions (including, for example, General Assembly resolutions 55/67 and S-23/3) urge States to prevent trafficked persons from being prosecuted for their illegal entry or residence.<sup>57</sup> Such provisions are consistent with the recognition of the human rights abuses to which trafficked persons are subjected.<sup>58</sup> They are also consistent with the treatment of trafficked persons as victims

of crime, whether or not the persons responsible for the trafficking are identified, arrested, charged, prosecuted or convicted.<sup>59</sup>

- With regard to persons seeking asylum, who often are smuggled or trafficked, Article 31(1) of the 1951 Convention relating to the Status of Refugees states that member states “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”.<sup>60</sup>
- With regard to repatriating or deporting victims of human trafficking to their home countries, Article 7 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, also provides that:
  1. In addition to taking measures pursuant to Article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
  2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.
- Thus, for example, where non-national women who have testified in court against the perpetrators of trafficking are to be repatriated or deported to their home countries, the risk of retaliation they face in their own countries should be taken into account and, where necessary, temporary or permanent resident permits provided to such women, depending on the individual case and the extent of the risks faced, in line with Article 7 of the Protocol.
- Article 13, of the Convention of Council of Europe on Action against Trafficking in Human

<sup>53</sup> Bangkok Rules, Commentary to Rule 66.

<sup>54</sup> UNODC, *Toolkit to Combat Trafficking in Persons*, 2008, p103

<sup>55</sup> United Nations High Commissioner For Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, E/2002/68/Add.1.

<sup>56</sup> UNODC, *Toolkit to Combat Trafficking in Persons*, 2008, p104.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p137, <[www.refworld.org/docid/3be01b964.html](http://www.refworld.org/docid/3be01b964.html)>.

Beings,<sup>61</sup> quoted below, provides for a recovery and reflection period of at least 30 days for victims of human trafficking to recover from the trauma experienced and to decide whether or not to testify against their traffickers, after having received all information as to their rights and having reflected on possible risks they face.

Convention of Council of Europe on Action against Trafficking in Human Beings, Article 13(1):

Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

- Article 13 of the Convention of the Council of Europe fully complies with the requirements to protect victims of human trafficking set out in Articles 7 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, quoted above, and Article 8, which requires that States give due regard to the safety of victims of human trafficking when taking steps to repatriate them, and that such repatriation should preferably be voluntary.

## PUTTING IT INTO PRACTICE

- States should make every effort to ratify the *United Nations Convention against Transnational Organized Crime* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing that Convention, and incorporate their provisions into their domestic legislation.
- States should review and where necessary revise their legislation and practices to ensure that they

provide maximum possible protection for victims of human trafficking from further victimisation. Legislation and practices should ensure that:

- ▶ Trafficked persons are not detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination.<sup>62</sup>
  - ▶ Trafficked persons are not prosecuted for trafficking-related offences, such as holding false passports or working without authorization, even if they agreed to hold false documents or to work without authorization.<sup>63</sup>
  - ▶ Similarly, whether prostitution is legal or not, persons being trafficked into sexual exploitation should not be prosecuted, even if the person originally agreed to work in the sex industry.<sup>64</sup>
  - ▶ Trafficked persons are effectively protected from retaliation by traffickers, both before and after testifying against them, which may include providing the victims with permanent or temporary resident permits in the country of destination (both before and after testifying), as well as other protection measures, such as protecting their identity, including by providing them with a new identity where necessary.<sup>65</sup>
- In line with Guideline 2 of the United Nations Human Rights Principles and Guidelines on Human Rights and Human Trafficking, States and, where applicable, intergovernmental and non-governmental organisations, should consider: <sup>66</sup>
    1. Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.
    2. Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above.
    3. Ensuring cooperation between relevant authorities, officials and nongovernmental

61 Council of Europe, *Convention on Action against Trafficking in Human Beings, CETS No 197*, 16 May 2004, <[www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG](http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG)>.

62 UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, op. cit. Principle 7.

63 Ibid. and UNODC, *Toolkit to Combat Trafficking in Persons*, 2008, p103.

64 Ibid.

65 See Convention of Council of Europe on Action against Trafficking in Human Beings, Article 28(2)

66 UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, op. cit. Guideline 2: Identification of trafficked persons and traffickers



organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalised in order to maximise its effectiveness.

4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.
5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.
7. Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.

For further practical guidance on many other considerations and measures that relate to the development of appropriate responses to the challenges presented by human trafficking and the treatment of victims, see Toolkit to Combat Trafficking in Persons, which can be accessed at: [www.unodc.org/documents/human-trafficking/HT\\_Toolkit08\\_English.pdf](http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf).

## KEY ACTORS

- ▶ **Policymakers**
- ▶ **Legislators/Parliamentarians**
- ▶ **Law enforcement agencies**
- ▶ **Social welfare agencies**
- ▶ **NGOs**

# Non-discrimination of women prisoners (Rule 1)

2



Meeting the special needs of specific groups does not constitute discrimination. On the contrary, providing for special needs ensures that those groups who have such needs are not discriminated against in enjoying all their rights on an equal basis with others, in practice. This understanding is reflected in the SMR, where the principles of non-discrimination and individualisation of treatment represent two fundamental principles, set out specifically in Rules 6 and 63(1).<sup>67</sup> The rules require that each prisoner's individual needs should be taken into account and provided for, so that no prisoner experiences any discrimination in their treatment and the outcomes of their treatment. A simple example of this is the requirement to provide interpretation for foreign national prisoners who do not speak the language of the country in which they are imprisoned, when explaining the prison regulations and providing other essential information on admission. Without such interpretation, the prisoners would be discriminated against from the first day of their sentence, since they would be insufficiently informed about their rights and obligations during their time in prison.

Rule 1 of the Bangkok Rules re-emphasises this need in the case of all women prisoners, and represents the fundamental principle on which the Bangkok Rules are based.

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

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

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

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

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

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

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

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

## Basic principle

*Supplements rule 6 of the Standard Minimum Rules for the Treatment of Prisoners*

### Rule 1

***In 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.***

<sup>67</sup> Commentary to the Bangkok Rules, Rule 1

## THE RATIONALE FOR THIS RULE

- Rule 1 is based on the recognition that women prisoners are usually discriminated against, due to the fact that prisons and prison regimes are developed with the needs of the majority male prison population in mind. In addition, due to their small numbers, women are often housed in prisons far away from their homes, which hinder the maintenance of links with their families and children, with a particularly harmful effect on their mental wellbeing and social reintegration prospects. Therefore, in practice, it is difficult to apply the principle of non-discrimination, unless affirmative action is taken by prison administrators in order to ensure that women prisoners have equal access to all services and rights that male prisoners enjoy. Affirmative action requires taking initiatives and allowing for special considerations, when applying SMR to female prisoners.

## PUTTING IT INTO PRACTICE

- States and prison authorities have the responsibility to develop gender sensitive prison management policies in order to ensure that the gender-specific needs of women prisoners are taken into account in the entire management ethos and the treatment of prisoners.
- The gender sensitive prison management policies and practices should also take into account the specific needs and vulnerabilities of different groups of women prisoners, based on their ethnicity, race, nationality, sexual orientation, age or other “minority” status.
- It is advisable that all key stakeholders that should be involved in the treatment and rehabilitation of women prisoners participate in the development of such policies, within a comprehensive consultation process, in order to develop policies and initiatives that respond to women’s needs in a holistic manner, to ensure that they are sustainable and that the requisite budget to implement them are identified and allocated by the relevant stakeholders.
- The gender sensitive prison management approach must start from the admission of a woman to prison, continuing throughout her imprisonment, and must guide also her arrangements for release and post-release support requirements. The Bangkok Rules provide the guidance to prison authorities on how a gender sensitive prison management approach should be reflected in the prison regime, health care, prison activities and a range of other areas of prison management in the case of women prisoners, in practice.

- The introduction of gender sensitive prison management policies may include both legislative and practical measures, depending on the country and on the laws, regulations and policies that are already in place.

## KEY ACTORS

- ▶ **Ministry responsible for the prison system**
- ▶ **Ministries of Health, Education and Labour**
- ▶ **Prison authorities**
- ▶ **Prison staff responsible for the supervision and care of women prisoners**
- ▶ **Prison health care services**
- ▶ **Relevant health services in the community, including those providing mental health care and treatment for drug dependence**
- ▶ **Women’s organisations, including those working with ethnic, racial minority women, indigenous women and LGBTI women**
- ▶ **Other relevant civil society organisations/ NGOs**

# Admission, registration and allocation (Rules 2–4)

# 3



The Standard Minimum Rules (SMR), Rules 7 and 35, provide guidance on the registration and admission of all prisoners. Rule 7 places an obligation on prison authorities to ensure that there is a permanent legal record of everyone who is imprisoned. SMR Rule 35(1) requires that every prisoner on admission be “provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution”, and 35(2) provides that “if a prisoner is illiterate, the aforesaid information shall be conveyed to him orally”.

The rules on admission, registration and allocation of the Bangkok Rules introduce further requirements, to

take account of the particular vulnerability and special needs of women prisoners at the time of admission, and add a very important element to the whole process, in that they recognise the reality that most women committed to detention have children. Such children may be accompanying their mothers into prison or they may have been left outside. The rules are the first among all international standards, which provide important guidance on how to deal with the children of imprisoned mothers, fully in line with the Convention on the Rights of the Child (CRC), as well as regional instruments such as the African Charter on the Rights and Welfare of the Child (ACRWC). The Bangkok Rules also provide a positive requirement, for the first time, for prison authorities to make every effort to place women close to their homes – a requirement which is not specifically spelt out for all prisoners in the SMR, though implied.

## Admission

### Rule 2

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

## Register

*Supplements rule 7 of the Standard Minimum Rules for the Treatment of Prisoners*

### Rule 3

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

## THE RATIONALE FOR THESE RULES

### Admission

- All prisoners are entitled to inform, or have informed, members of their family or other appropriate person of their choice of their imprisonment, promptly after arrest (Body of Principles, Principle 16(1)). Every prisoner should be provided with written information about all the

regulations governing the treatment of prisoners of his/her category, on how to seek information and make complaints, among others, on admission to prison (SMR, Rule 35(1)). If the prisoner is illiterate this information should be provided orally (SMR, Rule 35(2)). If the detained or imprisoned person is a foreign national, his/her right to contact consular representatives should be clearly explained and facilities provided for him/her to either contact

consular representatives him/herself or ask the competent authorities to do so (Body of Principles, Principle 16(2)).

- All detainees and prisoners feel vulnerable on their first admission to prison and according to good prison management practices, prison staff working in the admission area should be specifically trained to fulfil their responsibilities to complete the admission procedure in a way which is both lawful and sensitive to the welfare and dignity of the human person. This would entail treating newly arrived prisoners with respect, explaining very clearly their rights and responsibilities, providing them facilities to contact their families and providing them information on how to access legal counsel, if requested.
- Experience worldwide has shown that women prisoners are especially vulnerable at the time of their admission and should be treated with special sensitivity during this period. Most women who are admitted to prison are mothers, and the separation from their children, as well as the rest of their family can have a severely negative impact on their mental wellbeing. In many countries, being detained or imprisoned will entail a particular stigma in the case of women, which will add to their distress. As the commentary to this rule notes, research shows that suicides in prison are particularly high in the initial period of detention/imprisonment and there is some evidence that this risk is higher in the case of women.<sup>68</sup> For example, the World Health Organization (WHO) has noted that: “[f]emale pre-trial inmates attempt suicide much more often than their female counterparts in the community and [than] their incarcerated male counterparts. Also the rates for completed suicides of women seem to be higher than those of men. They also have high rates of serious mental illness.”<sup>69</sup> According to WHO mental illness is a high risk factor for suicide.<sup>70</sup>
- Not only the mothers themselves, but the children of individuals who are detained or imprisoned suffer from the immediate consequences of the separation from their parents, and especially from their mothers, who are most often the primary carers of children.

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

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

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

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

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

### Register

- SMR, Rule 7, as well as other instruments, such as the Declaration on the Protection of All Persons from Enforced Disappearance, Article 10 and the Body of Principles, Principle 12 oblige prison authorities to keep an up-to-date registration book which must contain information about prisoners’ identity, the day and hour of their admission to prison and the reasons for their commitment to prison.
- Today, in countries worldwide dependent children are admitted together with their parents, usually their mothers, to prison. None of the above mentioned instruments include guidance on the procedures for admitting the children of imprisoned parents to prison.
- Rule 3 fills an important gap by providing guidance to prison authorities about how to deal with children being admitted to prison with their mothers, as well as what steps to take to ensure

68 As noted in the commentary to this rule, “According to the United States Department of Justice, National Institute of Corrections research, 50 per cent of prison suicides occur in the first 24 hours and 27 per cent occur during the first three hours; Hayes, Lindsay, M., *Prison Suicide: An Overview and Guide to Prevention*, Project Director, National Centre on Institutions and Alternatives, United States Department of Justice, National Institute of Corrections, 1995. Research published by the Royal College of Psychiatrists (UK) found that 17 per cent of suicides in UK occurred during the first week of imprisonment, 28.5 per cent within a month, 51.2 per cent within three months and 76.8 per cent within a year; Dooley, E., *Prison Suicide in England and Wales*, British Journal of Psychiatry, Royal College of Psychiatrists, 1990. Research carried out in Canada revealed that those in the initial phase of imprisonment show the highest rate of suicide; John Howard Society of Alberta, *Prison and Jail Suicide*, 1990. According to research carried out by the UK NGO, Howard League for Penal Reform, in the UK 50 per cent of those who take their own lives in prison do so during the first month. They point out that first night centres which have been put in place in a number of prisons in the UK have helped ease transition from the outside to prison life. The Howard League for Penal Reform’s research shows that a dedicated wing, or unit, where all new prisoners spend their first 48 hours at the prison can prevent suicides. See Bangkok Rules, Commentary to Rule 2(1)).

69 WHO, International Association for Suicide Prevention, Department of Mental Health and Substance Abuse, World Health Organisation, *Preventing Suicide in Jails and Prisons*, 2007, p7. <[www.who.int/mental\\_health/resources/preventingsuicide/en/index.html](http://www.who.int/mental_health/resources/preventingsuicide/en/index.html)>

70 Ibid. p2.

that women can maintain links with children outside prison, taking into account the provision of the CRC, Article 9(3):

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

- Registering children who are admitted to prison with their parents does not in any way imply that they may be treated as prisoners. (See Rule 49, which explicitly prohibits such children being treated as prisoners.)
- The purpose of such registration is to ensure that all those who are accommodated in prisons, whether a prisoner or not, are accounted for as an important safeguard against disappearances, and that the needs of such children are taken into account in prison policies and programmes. Such policies and programmes include the provision of adequate nutrition, health care, psycho-social support and other developmental needs of small children, as provided in Rule 51.
- The purpose of recording information and contact details of children outside prison is to enable prison authorities to contact children outside, in case of need, and also to assist women to maintain contact with their children outside on a regular basis.
- In this context, the Human Rights Council Resolution on the Rights of the Child, adopted in March 2012 emphasises the need to ensure that children outside prison or their legal guardians are also kept informed of the place of their parent's imprisonment, calling upon States:

Bearing in mind the best interests of the child, to keep children or their legal guardians informed of the place of imprisonment of their incarcerated parents or parental caregivers and, in advance, of any transfer, as well as of the progress of petitions for pardons, reports presented to bodies such as clemency commissions, and the reasoning behind the recommendations of these bodies to support or reject petitions.<sup>71</sup>

- The gathering of information about the children of imprisoned mothers, whether accompanying their mothers or not, is also extremely important in helping to increase general knowledge about imprisoned mothers and improving the suitability and effectiveness of criminal justice responses to women offenders, while taking account of the best interests of their children.

## PUTTING THEM INTO PRACTICE

### Admission

- Policies should be introduced to ensure that detained or imprisoned women with caretaking responsibilities are given the opportunity to arrange for the care of their children before being admitted to prison, so that the child/children receive the protection and care which is necessary for his or her well-being.
- In order for the mother to undertake this task, legislation may be introduced to grant such women a suspension of the sentence for an appropriate period.
- Alternatively the prison authorities may grant home leave to the woman concerned as soon as possible after admission.
- The woman concerned should also be given access to information on alternative care arrangements, for example in a children's home or social welfare facility, and what the long-term consequences of arranging for such care may be, including how she can keep in contact with her children, visiting arrangements for the children, taking into account CRC, Article 9(3) quoted above.
- In all such cases the best interests of the child/children should be paramount. Thus, if for example, the mother has abused her child and the child is deemed to be at continued risk, the mother's access to the child may be restricted or prohibited, in line with CRC, Article 9(1).

### Good practice

Sentenced prisoners in the Netherlands are given time between being sentenced and beginning their imprisonment in which to make alternative childcare arrangements for any children remaining outside prison.<sup>72</sup>

- Prison authorities should set up a special reception area for women being admitted to prison, where they are provided facilities to inform their family of their detention and place of detention.
- Prison staff should receive special training to deal professionally and sensitively with newly admitted women and where applicable, their children.
- Prison staff should provide newly admitted women with written information relating to their rights and obligations, the procedures that they must follow to enjoy their rights and fulfil their obligations and where to seek additional information, in a

71 Human Rights Council, 19th session, Resolution *Rights of the child*, 23 March 2012, A/HRC/RES/19/37, para 69(e)

72 Robertson, O., *Children Imprisoned by Circumstance*, Quaker United Nations Office, April 2008, p9.



language which they understand. Such information should be explained to them orally as well, in the case of illiterate and literate women, to ensure that they have understood the rules and to give them a chance to ask questions.

- Prison staff should also provide information on how to access legal counsel, and legal aid if necessary, and assistance with contacting lawyers or other legal aid providers, if the woman requires such assistance.
- The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the UN General Assembly at its 67th session on 20 December 2012, which are drawn from international standards and recognised good practices, aim to provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system. Guideline 9 lays out in more detail recommendations as for the implementation of the right of women to access legal aid.<sup>73</sup>
- Consideration may be given to providing facilities where new prisoners can spend their first 48 hours, or longer, to help with transition to prison life.

### Register

- Prison authorities should ensure that the procedures which relate to the registration of prisoners include the registration of any children accompanying their mothers in prison, with at least their names and their ages. This information, together with the findings of the medical examination required by Rule 9, should be used to develop prison policies and services to respond to

the needs of children in prison with their mothers, depending on their age, gender, health care needs and special nutritional requirements.

- Information should also be recorded, with the mother's permission, of any children the woman prisoner has outside prison, their address and custody or guardianship status.
- It is important that an explanation is given to the women about the purposes for which this information is being collected. While women should be encouraged to provide information about their children outside prison, they may have reasons for not wishing to disclose such information and they should never be forced to do so.
- It is equally important that the information about children of imprisoned mothers is kept confidential, which means that it should not be shared with any other person or institution, without the consent of the mother. It should also never be used in a way which may not be in the best interests of the children, in line with CRC, Article 16 which provides that:
  1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
  2. The child has the right to the protection of the law against such interference or attacks.

### KEY ACTORS

- ▶ Legislators/Parliamentarians
- ▶ Prison management
- ▶ Prison staff responsible for admission and registration procedures

## Allocation

### Rule 4

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

### THE RATIONALE FOR THIS RULE

- Research in countries worldwide indicate that one of the key factors that assist with prisoners' social reintegration is their ability to maintain links with their families. Such links can best be maintained if prisoners are not located far away from their homes. The requirement to allocate prisoners, as far as possible, and if the imprisoned persons so

request, close to their homes is reflected in the Body of Principles, Principle 20. Rules 79 and 80 of the SMR, underline the need to assist prisoners to maintain and improve relations with their families and to establish relations with agencies outside prison which may promote the best interests of his or her family and his own social rehabilitation.<sup>74</sup>

<sup>73</sup> UN General Assembly, 67th session, *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 20 December 2012. See [www.penalreform.org/priorities/global-advocacy/international-advocacy/legal-aid-principles-guidelines/](http://www.penalreform.org/priorities/global-advocacy/international-advocacy/legal-aid-principles-guidelines/) for more information.

<sup>74</sup> As noted in the Bangkok Rules, Commentary to Rule 4.

- However, women are most often allocated far away from their homes, due to the small number of women's prisons in most countries. Thus, this is an example of how women prisoners are often discriminated against, due to practical reasons. Recognising this disadvantage faced by women, the rule gives prison authorities the responsibility to make special efforts to accommodate women close to their places of residence, or the place where they would like to be eventually released.<sup>75</sup>
- Such an allocation must take into account the wishes of the woman concerned, because of women's typical history of domestic and other forms of violence. Some women may not wish to be allocated close to their homes, preferring to put a distance between themselves and a husband, partner or other person who may have been a perpetrator of such violence prior to imprisonment.

## PUTTING IT INTO PRACTICE

- Prison authorities should ensure that more attention is paid to the allocation of women, so that they can be located as close as possible to their homes.
- Governments and relevant ministries should consider the establishment of a larger number of small units to house women offenders that can be located close to places where most women prisoners come from.
- If resources do not allow for the above, consideration may be given to increasing the number of women's sections, attached to men's prisons, with the requisite staffing, facilities and services, taking into account the gender-specific needs of women prisoners, outlined in the Bangkok Rules, in order to be in a position to house women closer to their homes.

## KEY ACTORS

- ▶ **Policymakers**
- ▶ **Ministry responsible for prisons**
- ▶ **Prison authorities**

**Please also refer to Rules 6 to 9 on medical screening on entry to prison.**

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<sup>75</sup> Ibid.

# Hygiene and healthcare (Rules 5–18)

4



The SMR, adopted in 1957, cover health care services in prisons, under the heading “medical services”, which include Rules 22 to 26. These rules require that health care services in prisons should be organised in close relationship with the general health care services in the community; the availability of the services of at least one qualified medical practitioner with some knowledge of psychiatry in every prison; that prisoners who require specialist treatment should be transferred to specialised institutions or civil hospitals; and that hospital facilities in prisons should have all the necessary technical equipment, medical supplies and suitably trained staff. They require also the services of a qualified dental practitioner in all prisons.

Rule 24 covers medical examinations on admission, Rule 25 the responsibilities of the medical officer, which go beyond the care and treatment of individual prisoners, to inspecting the conditions and services in prison that impact on the health of prisoners.

The rules on women’s gender-specific health care needs are limited to pregnancy, pre- and post-natal care, how to deal with the birth of a baby and the establishment of nurseries in prisons for children staying with their mothers (Rule 23).

Since the adoption of SMR, standards and principles on the provision of general health care in prisons

have been developed, including, specifically, on the prevention, treatment and care of HIV and AIDS, which reached epidemic levels in many prisons systems in the last three decades. Knowledge about women prisoners’ typical health care needs has also increased significantly during this time. The Bangkok Rules, which take into account all of these developments, fill an important gap with their comprehensive coverage of the key hygiene and health care needs of women prisoners, as well as children staying with them in prison.

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

Personal Hygiene is covered in SMR, Rules 15 and 16, which do not explicitly refer to the special hygiene requirements of female prisoners. Prison authorities’ responsibilities in relation to the personal hygiene of women prisoners have been included in this chapter, due to the key role of hygiene in promoting health and preventing disease.

## Personal hygiene

*Supplements rules 15 and 16 of the Standard Minimum Rules for the Treatment of Prisoners*

### Rule 5

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

## THE RATIONALE FOR THIS RULE

- Prisoners’ ability to maintain their personal hygiene determines to a large extent their capacity to maintain their sense of human dignity and is an important pre-requisite to promote health and prevent disease. For this reason, in addition to water, prisoners need to be provided with soap, toothbrushes, toothpaste and towels, as a minimum, as required by SMR, Rule 15. SMR Rule 16 refers to the need to provide prisoners with facilities to care for their hair and in the cases of men, to be able to shave. However, the SMR

do not make any mention of women’s specific hygiene requirements. Women have distinctive hygiene needs, which also need to be met, so that women can maintain their human dignity and protect their health. As noted in the commentary to this rule, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers that the failure to provide basic necessities, such as sanitary pads, can amount to degrading treatment.<sup>76</sup>

76 CPT Standards, 2006 Edition, Extract from the 10th General Report, CPT/Inf (2000) 13, para31.

## PUTTING IT INTO PRACTICE

- Prison authorities and staff should ensure that women prisoners have regular access to hot water for the personal care of themselves and their accompanying children. This requirement is particularly important in the case of women involved in cooking, those who are pregnant, breast feeding, menstruating and, where possible, those going through menopause.
- In low-income countries where resources may not allow for the provision of a regular supply of hot water, women should at least have increased access to water in order to fulfill their hygiene requirements.

- Women should have easy access to hygiene articles, including soap, toothbrushes, toothpaste, towels and sanitary towels or pads, free-of-charge. A supply of sanitary pads may be provided, for example, each month together with other hygiene articles, to all women prisoners who menstruate. Additional pads, where needed, may be dispersed by women staff or they could be accessible from dispensing machines.

## KEY ACTORS

- ▶ Prison authorities
- ▶ Prison staff
- ▶ Prison health care services

## 4.1 Medical screening on entry

### 6. Health care services

*Supplements rules 22-26 of the Standard Minimum Rules for the Treatment of Prisoners*

#### (a) Medical screening on entry

*Supplements rule 24 of the Standard Minimum Rules for the Treatment of Prisoners*

#### Rule 6

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

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

#### Rule 7

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

#### Rule 8

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

#### Rule 9

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

## THE RATIONALE FOR RULES 6-9

### *Medical examinations: general/primary health care needs (Rule 6)*

- Both the SMR and the Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment require that a medical screening of all prisoners is undertaken promptly after admission to prison. As the commentary to the above rule underlines, it is vital that all prisoners undergo a medical examination and health screening on entry, on an individual basis. This is important (a) to ensure that the prisoner starts or continues receiving proper treatment for any health conditions immediately, taking into account the principle of continuity of care; and (b) to identify any signs of ill-treatment in previous detention/custody and take appropriate action.<sup>77</sup>
- The word “promptly” or “as soon as possible” is generally interpreted to mean the day of admission. The CPT has stated that the medical examination should be carried out on the day of admission, especially insofar as remand establishments are concerned, save for exceptional circumstances.<sup>78</sup>
- The SMR do not specifically mention the need to assess the gender-specific health care needs of women prisoners. For many women in low-income countries the health screening on entry to prison might constitute their first medical examination. As the commentary notes, “women prisoners, typically from economically and socially disadvantaged backgrounds, and many women in low-income countries suffer from a variety of health conditions which may be untreated in the community. In many countries women face additional discrimination and barriers in accessing adequate health care services in the community, due to their gender. Therefore women prisoners often have greater primary health care needs in comparison to men.”<sup>79</sup> In addition, women have gender-specific health care needs which, in the case of women prisoners, can include sexual and reproductive health problems stemming from their typical backgrounds, which put them at heightened risk. It is therefore of particular importance to diagnose any existing

health conditions from the beginning of their imprisonment and provide treatment, in order to prevent the exacerbation of their health problems during imprisonment.

- In addition, data from countries around the world indicate that women entering prison are more likely than men to suffer from mental disabilities, that a large proportion of them have a drug or alcohol dependence, that many women have experienced sexual and physical abuse and violence in their lives prior to prison (or indeed in previous detention), which generate specific mental and physical health care needs.<sup>80</sup>

### *Sexually transmitted infections and blood-borne diseases (Rule 6(a))*

- Due to the typical background of women prisoners, which can include injecting drug use, sexual abuse, violence, sex work and unsafe sexual practices, a significant number of women are infected with sexually transmitted infections (STIs), HIV and hepatitis, at the time they enter prison. In addition, women have a particular physical vulnerability to HIV. Studies have shown that women are at least twice as likely as men to contract HIV through sex. The pre-existence of a STI can greatly increase the risk of contracting HIV.<sup>81</sup> Thus, the proportion of women in prison with an STI is relatively very high.<sup>82</sup>
- Ensuring that such diseases are diagnosed as soon as possible on admission is crucial to provide the medical care required to women who have been diagnosed with any disease as well as to prevent the spread of transmissible diseases.

### *Mental health care (Rule 6(b))*

- Widespread domestic violence against women and sexual abuse prior to imprisonment has been documented in countries worldwide. Women who are admitted to prison are more likely than men to have existing mental health care needs, often as a result of domestic violence, physical and sexual abuse.<sup>83</sup> Some women, who have experienced particularly severe violence, may be suffering from post-traumatic stress disorder.<sup>84</sup> Experience in some countries indicates that women prisoners may be more susceptible to

<sup>77</sup> Bangkok Rules, Commentary to Rule 6

<sup>78</sup> CPT Standards, 2006 Edition, Extract from the 3rd General Report [CPT/Inf (93) 12], para33, footnote 1

<sup>79</sup> Bangkok Rules, Commentary to Rule 6

<sup>80</sup> UNODC, WHO Europe, *Women's health in prison, Correcting Gender Inequity*, 2009, p9

<sup>81</sup> UNODC, *Women and HIV in Prison Settings*, p3, [www.unodc.org/documents/hiv-aids/Women%20and%20HIV%20in%20prison%20settings.pdf](http://www.unodc.org/documents/hiv-aids/Women%20and%20HIV%20in%20prison%20settings.pdf).

<sup>82</sup> *Ibid.*, p3.

<sup>83</sup> UNODC, WHO Europe, *Women's health in prison, Correcting Gender Inequity*, 2009, p27

<sup>84</sup> *Ibid.*, p.27

self-harm and suicides.<sup>85</sup> For example research published in 2009 in the UK found that suicide was 20 times more common among female prisoners than in the general female population, whereas research conducted among male prisoners in 2005 found that suicide was five times more common among male prisoners than in the general male population.<sup>86</sup> The report pointed to a “clear ‘gender gap’ in suicide for male and female prisoners”.<sup>87</sup> Experts explained this as follows: “One possible explanation ... is that females entering prison may have higher prevalence of risk factors associated with suicide, such as depression, previous self-harm and history of physical and sexual abuse. Substance misuse is a risk factor for prison suicides, and a systematic review has shown that the relative excess misuse in prisoners compared with the general population is higher for female inmates. Another explanation is that prison may specifically increase the vulnerability of females to suicide”.<sup>88</sup>

- Imprisonment can exacerbate existing mental health care needs, especially in the case of women, who feel the impact of separation from children, families and communities, particularly severely.
- The comprehensive and detailed screening of women on first admission to prison and regularly throughout their stay, covering health and trauma histories and current mental health status, among others, are key to providing the services appropriate in each case on an individualised basis.

### Reproductive Health (Rule 6(c))

- One of the key gender-specific health care needs of women is related to their reproductive health, including those relating to pregnancies, childbirth, recent abortions and any related

health complications. As confirmed by the Commission on Human Rights<sup>89</sup> in 2003, “sexual and reproductive health are integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.<sup>90</sup>

- Rule 6(c) also takes account of the fact that, in some countries where abortions are criminalised, women who have delivered a stillborn child, have not registered the birth or death of the child, have had a miscarriage or undertaken an illegal abortion may be detained or imprisoned on charges of concealment of childbirth, infanticide or homicide.<sup>91</sup> Women detained in relation to such “reproductive crimes” may be at heightened health risks during pre-trial detention, having recently experienced pregnancy, abortion, miscarriage or delivery in health- and possibly life-threatening circumstances.<sup>92</sup> Women who have recently undergone abortions, experienced miscarriages or complications during delivery may need urgent medical attention. Those who have recently given birth require post-natal care and, often, counselling related to this circumstance.<sup>93</sup>
- The Committee against Torture has identified reproductive decisions as a context in which women are particularly vulnerable<sup>94</sup> and has condemned the practice of attempting to obtain confessions as a condition of potentially life-saving medical treatment after abortion.<sup>95</sup>
- The CEDAW Committee’s General Recommendation 24 (20th Session, 1999) recommends: “When possible, legislation criminalising abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion.”<sup>96</sup> Recognising (and committing to deal with) “the health impact of unsafe abortion as a major public health concern”,

85 Ibid., p.29; See also reports of rising numbers of self-harm among women prisoners in the UK, where, government statistics revealed there were 10,446 cases of self-harm during 2009, rising to 12,663 in 2010. Analysis by NGO, Women in Prison (WiP), estimates that the figure is likely to rise above 13,000 – more than 35 a day. There are 4,100 women in prison in England and Wales, only 5% of all prisoners, yet they account for almost half of self-harm incidents, <[www.guardian.co.uk/society/2012/feb/11/women-prisoners-suffering-mental-health?INTCMP=SRCH](http://www.guardian.co.uk/society/2012/feb/11/women-prisoners-suffering-mental-health?INTCMP=SRCH)>.

86 The Royal College of Psychiatrists, *Study reveals rising suicide rate in female prisoners*, 2 February 2009, <[www.rcpsych.ac.uk/press/pressreleases2009/suicideinfemaleprisoners.aspx](http://www.rcpsych.ac.uk/press/pressreleases2009/suicideinfemaleprisoners.aspx)>.

87 Ibid.

88 Ibid.

89 The predecessor to the Human Rights Council (prior to 2006).

90 UN Economic and Social Committee, 60th Session, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, 16 February 2004, E/CN.4/2004/49, para 9, with reference to the Commission on Human Rights resolution 2003/28, preamble and para 6.

91 UNODC, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, 2006, p12.

92 Ibid., p74

93 Bangkok Rules, Commentary to Rule 6(c)

94 Committee Against Torture, General Comment 2, Implementation of article 2 by States Parties, 2007, CAT/C/GC/2/CRP.1/Rev.4, para 22.

95 See concluding observations on Chile by the Committee Against Torture (CAT/C/CR/32/5), para 6(j), in which the Committee expressed concern over “Reports that life-saving medical care for women suffering complications after illegal abortions is administered only on condition that they provide information on those performing such abortions.”

96 See General recommendations made by the Committee on the Elimination of Discrimination against Women <[www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx](http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx)>.

governments at the Fourth World Conference on Women decided they would “consider reviewing laws containing punitive measures against women who have undergone illegal abortions.”<sup>97</sup>

- The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, has recommended that, “...Where abortions are legal, they must be safe: public health systems should train and equip health service providers and take other measures to ensure that such abortions are not only safe but accessible. In all cases, women should have access to quality services for the management of complications arising from abortion. Punitive provisions against women who undergo abortions must be removed.”<sup>98</sup>
- Rule 6(c), supported by the recommendations by UN bodies and experts, places a positive obligation on prison managers and health care services to provide for the medical care required by women who have had an abortion prior to admission or who require special care because of a recent miscarriage or the delivery of a child or stillborn child, whatever the legal provisions in the particular jurisdiction. Such treatment should start with a medical screening of their health care needs on entry. The key importance of the principle of medical confidentiality and the independence of prison medical health services from the prison administration is demonstrated starkly in cases of this nature.

### **Substance dependency (Rule 6(d))**

- Drug related crime, including offences committed to acquire drugs, is one of the major driving forces behind offences committed in countries in all parts of the world today and a large proportion of prisoners are made up of people who have committed drug related offences.

- Worldwide statistics show that drug related offending is particularly high among women prisoners.<sup>99</sup> Notwithstanding the nature of their offence, a high proportion of women prisoners is drug or alcohol dependent and in need of treatment for their addiction.<sup>100</sup> In most countries women experience social, cultural and personal barriers to treatment entry in the community.<sup>101</sup> Under these circumstances prisons may provide an opportunity to address the substance dependence treatment needs of women prisoners, in a safe environment, away from the stigma associated with undertaking such treatment in the community.
- As the commentary to this rule explains, research also shows that “if drug dependence is not treated in prison, the chances of reoffending following release are very high”, while drug treatment in prisons has been found to reduce rates of recidivism significantly.<sup>102</sup>
- It is clear that the high proportion of substance dependent female prisoners, the absence of gender-specific, or even standard treatment programmes in most prisons, coupled with the particular difficulties they face after release put women at a high risk of reoffending, while continuing with their substance abuse, possibly with tragic results. (See the Rationale for Rules 45-47 in relation to the high levels of death from drug overdose among former prisoners following release).

### **Torture and ill-treatment, including gender-based violence (Rule 6(e))**

- As the commentary to this rule explains, the first period in police custody and pre-trial detention are the periods in which ill-treatment and abuse most commonly takes place in countries worldwide.<sup>103</sup> It is during this time, and in particular, during police custody that suspects may be subjected to ill-treatment in order to force them to confess to

97 Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, paras 106(j) and (k).

98 UN Economic and Social Committee, 60th Session, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, February 2004, E/CN.4/2004/49, para 30

99 For example, according to a comprehensive study in 2012, over 31,000 women across Europe and Central Asia are imprisoned for drug offences, representing 28 per cent of all women in prisons in these regions. In some countries, up to 70 per cent of female prisoners are incarcerated for drug offences; Harm Reduction International, *Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform*, Iakobishvili, E. 2012, p5; about one third of women prisoners in Canada were convicted of drug related offences (<[www.eurekalert.org/pub\\_releases/2011-05/smh-hrt053111.php](http://www.eurekalert.org/pub_releases/2011-05/smh-hrt053111.php)>). In March 2011, in Thailand, 57 per cent of women prisoners are imprisoned for drug related offences (Department for Corrections, Ministry of Justice, Thailand, website <[www.correct.go.th/eng/statistics.html](http://www.correct.go.th/eng/statistics.html)>. The majority of women are imprisoned for drug related offences in Argentina, Brazil, Bolivia, Chile (in Chile, together with theft), Colombia, Costa Rica, Ecuador, El Salvador (in El Salvador, together with extortion and theft), Honduras (together with kidnapping and homicide), Panama, Paraguay (in Paraguay, together with homicide), Peru, The Dominican Republic and Venezuela; Maria Noel Rodriguez, *Women in Prison, An Approach from the Gender Perspective*, in Carranza, E., (co-ordinator), *Crime, Criminal Justice and Prison in Latin America and the Caribbean*, 2010, pp.208-214.

100 Bangkok Rules, Commentary to Rule 15

101 Ibid.

102 For example, a study, which meta-analysed the cost and outcomes of prison based programmes, in the United States, Europe, Australia, Canada and New Zealand, found that the highest reduction in reoffending was achieved with the implementation of prison drug treatment programmes, with a 30 per cent reduction in rates of reoffending. See Matrix Knowledge Group, *The Economic Case for and Against Prison*, 2007.

103 Bangkok Rules Commentary to Rule 6(e). See for example Human Rights Council, Thirteenth Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, 9 February 2010, A/HRC/13/39, para 52.



crimes. Women are particularly vulnerable during this period, due to their gender.<sup>104</sup> Whereas both men and women may be raped or threatened to be raped, the fear of potential rape or actual rape among women, given profound cultural stigma associated with rape, can add to the trauma.<sup>105</sup>

- As noted by the former Special Rapporteur on Torture, “It is widely recognised, including by former Special Rapporteurs on torture and by regional jurisprudence, that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials”.<sup>106</sup>
- Also, as the Special Rapporteur on Torture has stated “international criminal tribunals, in their jurisprudence, have broadened the scope of crimes of sexual violence that can be prosecuted as rape to include oral sex and vaginal or anal penetration through the use of objects or any part of the aggressor’s body. This is crucial because in many countries rape is still defined as “carnal access”, reducing it to penetration with the male sexual organ. It is noteworthy that other forms of sexual violence, whether defined as rape or not, may constitute torture or ill-treatment and must not be dealt with as minor offences.”<sup>107</sup>
- The International Criminal Tribunal for Rwanda (ICTR) adopted a very broad definition of the crime of rape, which is defined as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive”.<sup>108</sup> The International Criminal Tribunal for the former Yugoslavia (ICTY) concurred with this definition.<sup>109</sup>
- According to definitions adopted by the ICTR and the ICTY, sexual violence, which includes rape, is considered to be any act of a sexual nature which is committed under circumstances which are coercive. [...] <sup>110</sup>
- Elements set out by the International Criminal Court (ICC), with reference to the Rome Statute, for the “crime against humanity of sexual violence” include, *inter alia*, the following: “The perpetrator

committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.[...]”<sup>111</sup> Obviously for the crime of sexual violence to be regarded as a crime against humanity other elements set out by the ICC need also to be present.

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

### **Responsibilities if ill-treatment and torture, including sexual violence is diagnosed (Rule 7)**

- The Declaration on the Elimination of Violence against Women adopted by the General Assembly in resolution 48/104, Article 4(c) proclaims that States should “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”. This obligation is reflected in Rule 7 of the Bangkok Rules.
- Rule 7 explains prisons authorities’ responsibilities if the medical examination does reveal that a woman prisoner has been subjected to ill-treatment or torture, including sexual abuse or rape, during previous custody. It underlines the woman’s right to seek recourse from judicial authorities and provides clear guidance as to what prison staff should do to ensure that such women are aware of this right and to take the necessary steps to assist them, if the woman wish to take legal action.
- The rule also recognises that in some circumstances and cultures, women may not

<sup>104</sup> Bangkok Rules Commentary to Rule 6(e). For a discussion of custodial violence against women, see Human Rights Council, Seventh Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, 15 January 2008, A/HRC/7/3, paras 34-35 in particular.

<sup>105</sup> United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, 9 August 1999, p39.

<sup>106</sup> Human Rights Council, Seventh Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008, para 34

<sup>107</sup> *Ibid.*, para 35, with reference to International Criminal Court, Elements of Crime, Article 8(2) (b) (xxii)-1 of the ICC Elements of Crime.

<sup>108</sup> *Prosecutor v. Jean Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 2 Sept. 1998. <[www.unict.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf](http://www.unict.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf)>

<sup>109</sup> See *Prosecutor v. Zdravko Mucic aka “Pavo”, Hazim Delic, Esad Landzo aka “Zenga”, Zejnil Delalic (Trial Judgement)*, IT-96-21-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 16 November 1998, para 478, <[www.unhcr.org/refworld/docid/41482bde4.html](http://www.unhcr.org/refworld/docid/41482bde4.html)>

<sup>110</sup> *Ibid.*

<sup>111</sup> The International Criminal Court, Elements of Crimes, Article 7(1) (g)-6 <[www.iccklamberg.com/Statute.htm#Article\\_7\(1\)\(g\)](http://www.iccklamberg.com/Statute.htm#Article_7(1)(g))>

wish to take legal action against the perpetrators of abuse and it is important that their wishes are respected.

- All victims of ill-treatment, torture, including specifically gender-based violence and torture, are likely to experience extreme and prolonged psychological damage and trauma, especially if they do not receive qualified and timely psychological support. In its decision on a case in 1997, the European Court of Human Rights acknowledged that “rape leaves deep psychological scars on the victims which do not respond to the passage of time as quickly as other forms of physical and mental violence”.<sup>112</sup> Added to this is the trauma of potential pregnancy and of having lost virginity and the fear of not being able to have children.<sup>113</sup>
- In addition, many infectious diseases can be transmitted by sexual assault, including sexually transmitted infections such as gonorrhoea, chlamydia, syphilis, HIV, hepatitis B and C, herpes simplex and *condyloma acuminatum* (venereal warts), *vulvovaginitis* associated with sexual abuse, as well as urinary tract infections.<sup>114</sup>
- Women who complain about their treatment are at risk of retaliation by law enforcement officials. They may receive threats of such retaliation before they make a formal complaint or afterwards, to force them to withdraw their complaints.<sup>115</sup> Such retaliation may include unjustified disciplinary punishments during their imprisonment, being denied basic rights and services, being strip searched unnecessarily, being transferred to prisons far away from their homes, among others.

### Medical confidentiality (Rule 8)

- The SMR do not provide any guidance on medical confidentiality, however it is a well-established principle that all patients in prison, similar to all patients in the community, have the right to medical confidentiality.
- The International Code of Medical Ethics of the World Medical Association (WMA) (adopted in 1949, amended in 1968, 1983 and 2006), states that “[a] physician shall respect a patient’s right to confidentiality. It is ethical to disclose confidential information when the patient consents to it or

when there is a real and imminent threat of harm to the patient or to others and this threat.”

- WMA Declaration of Lisbon on the Rights of the Patient<sup>116</sup> includes the following provisions on the right to confidentiality:
  - All identifiable information about a patient’s health status, medical condition, diagnosis, prognosis and treatment and all other information of a personal kind must be kept confidential, even after death. Exceptionally, descendants may have a right of access to information that would inform them of their health risks.
  - Confidential information can only be disclosed if the patient gives explicit consent or if expressly provided for in the law. Information can be disclosed to other health care providers only on a strictly “need to know” basis unless the patient has given explicit consent.
  - All identifiable patient data must be protected. The protection of the data must be appropriate to the manner of its storage. Human substances from which identifiable data can be derived must be likewise protected.
- The World Health Organization (WHO) Guidelines on HIV Infection and AIDS in Prisons (1999), Principle 31 underlines prisoners’ right to medical confidentiality as a general principle:
 

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

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

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

<sup>112</sup> Human Rights Council, Seventh Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3, 15 January 2008, para 34

<sup>113</sup> United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, 9 August 1999, p39

<sup>114</sup> *Ibid.*, p41

<sup>115</sup> See for example, Human Rights Watch, *Sexual Abuse of Women in United States State Prisons*, December 1996, which documents sexual violence against women prisoners in United States state prisons, including retaliation against women who complain.

<sup>116</sup> Adopted by the 34th World Medical Assembly (WMA), Lisbon, Portugal, September/October 1981 and amended by the 47th WMA General Assembly, Bali, Indonesia, September 1995 and editorially revised by the 171st WMA Council Session, Santiago, Chile, October 2005

notification in the community should be followed for prisoners.

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

- Thus the breaching of any confidentiality is exceptional and the decision to disclose any information due to real and imminent harm to the patient or others must be taken by the physician and/or with the consent of the patient.
- Medical confidentiality cannot be maintained in some specific circumstances, when, for example, prisoners with certain infectious diseases, such as tuberculosis or cholera, have to be separated from others to prevent the spreading of the disease. However, this does not mean that those patients forfeit their right to medical confidentiality in relation to health conditions other than those that require their separation. It should be reiterated that there is no medical reason to separate prisoners with HIV from others and such a practice is not recommended by WHO and the UN, as it may even be counterproductive.<sup>117</sup> Medical confidentiality can also not be maintained in other specific circumstances, such as when a woman is pregnant and needs to receive pre-natal care or when a prisoner has special dietary requirements (eg. for diabetes). In all cases, however, the breach of confidentiality must be limited only to the condition or disease in question.
- The prisoner must be informed by the prison doctor that medical confidentiality will be broken on a limited basis in these circumstances, in order to protect her or others' health, depending on the case.
- In addition to the general principle of medical confidentiality, there may be many reasons why women may not want to share information about their reproductive health history, in particular, with the authorities or prison health care personnel, especially in countries or societies where out of marriage pregnancies and childbirth may be a cause for stigmatisation, and in some societies may be considered criminal acts. Information about any abortions is particularly sensitive, due to its criminalisation in many countries.

### **Medical examinations of children being admitted to prison (Rule 9)**

- Rule 9 fills an important gap with regard to the admission of dependent children accompanying their mothers in prison.
- As the commentary underlines, States have the responsibility to respect the right of everyone within their jurisdiction to the highest attainable standards of health, as required by the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12. In addition, the Convention on the Rights of the Child, Article 24 provides that:
 

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

  - (a) To diminish infant and child mortality;
  - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution. (...)
- Women being admitted to prison are often from deprived backgrounds, with low levels of education and socio-economic circumstances. As mentioned earlier they may have mental health care needs, substance dependence, may have been in dysfunctional relationships, including being victims of domestic violence. The children of such mothers do not remain unaffected by their circumstances. They are likely to have existing primary health care and psychological support requirements on admission to prison.
- The health screening on entry is essential to assess the physical and psychological health care needs of children accompanying their mothers to provide the appropriate care and treatment during the children's stay in prison, in order to reduce the harmful impact of imprisonment on such children and to protect and promote their physical and mental wellbeing.

<sup>117</sup> See UNODC, WHO, UNAIDS, *HIV and AIDS in places of detention: A toolkit for policymakers, programme managers, prison officers and health care providers in prison settings*, 2008, pp93-94, [www.unodc.org/documents/hiv-aids/V0855768.pdf](http://www.unodc.org/documents/hiv-aids/V0855768.pdf)

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

## PUTTING THE RULES INTO PRACTICE

### *Medical examinations: general and primary health care (Rule 6)*

- Prison administrations should put in place measures to ensure that all women are offered a medical screening on admission to prison. The medical screening needs to be undertaken by qualified health care professionals, including a medical doctor and a psychologist.
- As with patients in the community prisoners' informed consent should be sought for undergoing medical examinations on admission.
- All questions relating to the health of a prisoner admitted to prison should be the exclusive responsibility of health care staff – that is, other staff should not ask questions relating to a prisoner's health during the assessment undertaken to determine risks and needs. (See **Rules 40 and 41** for further guidance).
- In some prisons, arranging a doctor to examine each prisoner immediately on admission may pose challenges, due to the large number of admissions or the size of the prison and number of patients the doctor must attend to. Under these circumstances the medical screening on admission may be undertaken by a qualified nurse, who will report to the doctor, who will then only see those prisoners who need urgent attention, as assessed by the nurse on first admission. The doctor should then give all new prisoners a full medical examination on the day after admission.<sup>118</sup>
- However, it may not be practical or advisable for this initial medical examination to fulfil all the requirements of the comprehensive screening set out in the Bangkok Rules. Unless there are immediate signs of acute need the assessment of mental health care needs, in particular, may be better conducted after the woman has settled into the prison and overcome the initial distress of being admitted to prison. Others may require the assistance of specialist health care services from the community. The screening on admission should include an examination to determine any urgent medical needs and primary health care needs, as well as an assessment of whether the woman has been subjected to ill-treatment or torture. A more comprehensive medical screening covering all medical needs, including mental health care needs, as outlined in Rule 6, may be then undertaken, within a week of admission. This should not, however, lead to any delay in continuing with treatment the woman may have been receiving prior to admission to the prison, in line with the principle of continuity of care.
- As the commentary to Rule 6 underlines it is important for the health care staff undertaking the health screening to be independent of the prison administration in order for them to be in a position to complete an impartial and objective medical report.<sup>119</sup>
- As with all medical examinations in the community, detention and prisons, it is vital that on entry medical screenings should be confidential. (See **Rule 8**)
- An individual and comprehensive health care plan should be developed for each woman based on the findings of the screening.<sup>120</sup>
- The health screening should be repeated at reasonable intervals while a woman is in prison.<sup>121</sup>

### *Sexually transmitted and blood-borne diseases (Rule 6(a))*

- Screening for STIs and blood-borne diseases should comprise an important component of the initial screening for all women prisoners, undertaken by qualified health practitioners.
- Voluntary HIV testing and counselling should be offered to all prisoners during medical examinations or physical check-ups. Health care staff should go further and, while keeping in mind the voluntary nature of the process, recommend HIV testing and counselling to prisoners with signs, symptoms or medical conditions that could indicate HIV infection, and to female prisoners who are pregnant. This should be done to assure

<sup>118</sup> Coyle, A., *A Human Rights Approach to Prison Management*, International Centre for Prison Studies, 2009, p45 and CPT Standards (2006), para 33.

<sup>119</sup> Bangkok Rule, Commentary to Rule 6

<sup>120</sup> WHO Regional Office for Europe, van den Bergh, B., Gatherer, A., Atabay, T., Hariga, F., *Women's health in prison, Action guidance and checklists to review current policies and practices*, 2011, p19.

appropriate diagnosis and, for those testing positive, access to necessary HIV treatment, care and support.<sup>122</sup> (See Rule 14)

- In order to ensure that prisoners give informed consent to HIV testing, health care providers must provide them with the information they require to understand the implications of HIV testing and counselling and follow-up procedures. Such information includes the reasons why HIV testing and counselling is being offered or recommended; the benefits and potential risks; the services available if the person tests positive (including whether or not antiretroviral therapy is available); the fact that prisoners have the right to decline the test; and an opportunity to ask the health care provider questions.<sup>123</sup>
- To give informed consent, prisoners must also understand the institutional consequences of a positive HIV test. In particular, they must be informed if internationally accepted principles and guidance will not be followed, and (a) whether the test result will not be treated confidentially; (b) whether they will be segregated if found to be HIV-positive, and (c) whether there is likelihood that they could be denied access to certain programmes, family visits or jobs.<sup>124</sup>
- Health care staff should be properly trained to provide testing and counselling and the process of obtaining informed consent.<sup>125</sup>

### **Mental health (Rule 6(b))**

- On-entry screening should include an examination of the prisoner's mental health by a qualified mental health practitioner, to determine her mental health care needs, including for example, the existence of any post-traumatic stress disorder. It may not be practical or advisable for the screening to determine mental health care needs to be undertaken immediately on the day of admission, due to the distress and confusion which a woman is likely to be experiencing on her first day in prison. A nurse may undertake an initial assessment for any urgent needs, including the continuation of any mental health care treatment already being received, and refer patients who need immediate attention to a mental health practitioner.

- A comprehensive screening may be undertaken within a week of admission after the woman has settled into her new environment.
- Those with mental health problems should be channelled into the least restrictive housing and receive appropriate individualised treatment from the outset of their imprisonment. (See Rules 12 and 13)
- Risk of suicide and self-harm should form an essential element of the assessments on admission, undertaken by a qualified mental health practitioner, and suitable support, counselling and treatment should be provided to women at risk. (See Rule 16)
- In cases where women are diagnosed to have severe mental health problems, such women should be diverted to specialised, suitable and acceptable community health care services, wherever possible, and legislation should be reviewed and revised to enable this process, as necessary.<sup>126</sup>
- In all cases the women themselves should be fully informed of the treatment offered, expected outcomes and any risks involved. The women should participate in decision-making regarding their treatment plan and the treatment should only be initiated following the patient's informed consent. Measures should be taken to provide access by persons with mental disabilities to the support they may require in exercising their legal capacity, as required by the Convention on the Rights of Persons with Disabilities (CRPD).<sup>127</sup> All measures that relate to the exercise of legal capacity should provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.<sup>128</sup> As noted by UNODC, "Admittedly, the implementation of supported decision-making processes is challenging in prisons, and especially where resources are scarce. On the other hand, there is particular risk of abuse in custodial settings, so adequate safeguards to protect prisoners with mental disabilities against treatment without free and informed consent are all the more vital. These realities represent additional strong arguments against imprisoning persons with mental disabilities, unless absolutely necessary."<sup>129</sup>

<sup>121</sup> Ibid., p19

<sup>122</sup> UNODC, UNAIDS, WHO Policy Brief, *HIV testing and counselling in prisons and other closed settings*, 2009, p4

<sup>123</sup> Ibid., p4

<sup>124</sup> Ibid., p4

<sup>125</sup> Ibid., p5

<sup>126</sup> SMR, Rule 82.

<sup>127</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, entered into force on 3 May 2008, Article 12.3, < <http://www.refworld.org/docid/4680cd212.html>>.

<sup>128</sup> Article 12.4.

<sup>129</sup> UNODC, *Handbook on Prisoners with Special Needs*, 2009, p34.

### **Reproductive health (See Rule 6(c))**

- The medical examination offered on entry should include a screening of women's reproductive health history, including recent pregnancies, childbirth, abortions and any related reproductive health complications, and ensure that appropriate treatment and care is provided from the outset of imprisonment, based on an individualised health care plan.
- As has already been mentioned, the prisoner's informed consent is required for all medical examinations. Women should not be forced to provide information about their reproductive health history, for example, recent pregnancies or abortions, in line with the underlying principles of medical confidentiality, which is reiterated in Rule 8.
- Where a woman has undergone an illegal abortion she should never be forced to provide information about the person who conducted the abortion as a condition for providing medical treatment. The policies of prison health care services should incorporate the needs of this group of women prisoners and provide the physical and psychological care such women need, on an impartial and non-discriminatory basis. Where necessary such women should be transferred to community hospitals for treatment.

### **Substance dependence (Rule 6(d))**

- Women being admitted to prison should be screened for substance dependency by qualified health specialists to ensure that appropriate treatment and care is provided to women with substance dependencies.
- The purpose and possible consequences of the screening, including the treatment and services available for drug dependency in the prison and the extent to which such treatment can remain confidential, should be explained to the women, whose informed consent to the screening should be sought before any examination is undertaken. If the woman decides not to undergo screening or disclose any dependencies, this should be noted in her medical file.
- Women who are found to be drug dependent should not be penalised. Their drug dependence should be treated as a health care problem and they should receive appropriate, voluntary treatment, from qualified health care practitioners to help them overcome their dependence and live positive and self-supporting lives following release. **(See Rule 15)**

### **Torture and ill-treatment, including sexual violence (Rule 6(e))**

#### Legislative measures:

- Domestic legislation should be reviewed and, where necessary, revised to ensure that torture is a criminal offence and that it includes explicitly custodial rape as a form of torture. In line with definitions of rape and sexual violence adopted by the International Criminal Court and International Criminal Tribunals for Rwanda and Former Yugoslavia, referred to earlier, the definition of rape should not be limited to vaginal or anal penetration by the sexual organ, and other forms of sexual abuse in places of detention should be included in legislation as forms of ill-treatment or torture, depending on their nature and severity.
- States should put in place measures to ensure that prisoners who become victims of sexual violence have access to an independent judicial assessment of their cases, and that they are provided with free legal assistance during this process.

#### Practical measures:

- Prison authorities and health care services should ensure that all medical examinations on admission include an examination for signs for any abuse or ill-treatment.
- Prison administrations should issue guidelines to prison staff on the steps to be taken when a woman complains of having been ill-treated or tortured when she is admitted to prison.
- Prison staff and prison health care staff should receive specific training on facilitating women who have been subjected to ill-treatment and torture, including sexual violence, to come forward and talk about their experience, as well as on responding to women who complain of ill-treatment and torture, in a sensitive and professional manner.
- If a woman complains of having been ill-treated, including by having been subjected to sexual violence, she should be examined as a priority. In such cases medical examinations should be undertaken immediately on admission to prison..
- Any woman complaining of ill-treatment and torture, including rape or other forms of sexual violence, should have the right to be examined by an independent health professional, due to the particular need for trust on the part of the victim and impartiality on the part of the doctor.

- The doctor should explain to the victim all possible medical and forensic options and should act in accordance with the victim's wishes. The duties of the physician include obtaining voluntary informed consent for the examination, recording of all medical findings of abuse and obtaining samples for forensic examination.<sup>130</sup>
- Whenever possible, the examination should be performed by an expert in documenting sexual assault. Otherwise, the examining physician should speak to an expert or consult a standard text on clinical forensic medicine.<sup>131</sup> Ideally, there should be adequate physical and technical facilities for appropriate examination of survivors of sexual violation by a team of experienced psychiatrists, psychologists, gynaecologists and nurses, who are trained in the treatment of survivors of sexual torture.<sup>132</sup>
- Where the alleged assault occurred more than a week earlier and there are no signs of bruises or lacerations, there is less immediacy in conducting a pelvic examination. Time can be taken to try to find the most qualified person to document findings and the best environment in which to interview the individual. However, it may still be beneficial to properly photograph residual lesions, if this is possible.<sup>133</sup>
- An additional purpose of the consultation after sexual assault is to offer support, advice and, if appropriate, reassurance. This should cover issues such as sexually transmitted infections, HIV, pregnancy, and permanent physical damage.<sup>134</sup> See also **Rule 25(2)** for further guidance.

#### ***If ill-treatment and torture, including sexual violence is diagnosed (Rule 7)***

- Women who have been victims of ill-treatment and torture, including sexual abuse and rape should be provided with a full and clear explanation as to their legal rights to make an official complaint about their treatment to independent judicial authorities. If the woman does not speak the language most commonly used in the prison, the explanation should be provided with the assistance of a qualified interpreter.
- Any decision whether to complain or not should be based on a fully informed understanding

of the procedures and possible outcomes of the complaints' procedure. Thus, the prison authorities must ensure that all women who have been subjected to abuse and ill-treatment are given full information about their rights and that they have access to legal counsel *before* they take any decision. They should never be coerced into not submitting complaints.

- Physicians responsible for assessing and documenting ill-treatment or torture have an ethical obligation to denounce acts of torture or cruel, inhuman or degrading treatment,<sup>135</sup> however, as noted in the WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment, "doctors should use their discretion in this matter, bearing in mind paragraph 68 of the Istanbul Protocol", which states: "In some cases, two ethical obligations are in conflict. International codes and ethical principles require the reporting of information concerning torture or maltreatment to a responsible body. In some jurisdictions, this is also a legal requirement. In some cases, however, patients may refuse to give consent to being examined for such purposes or to having the information gained from examination disclosed to others. They may be fearful of the risks of reprisals for themselves or their families. In such situations, health professionals have dual responsibilities: to the patient and to society at large, which has an interest in ensuring that justice is done and perpetrators of abuse are brought to justice. The fundamental principle of avoiding harm must feature prominently in consideration of such dilemmas. Health professionals should seek solutions that promote justice without breaking the individual's right to confidentiality. Advice should be sought from reliable agencies; in some cases this may be the national medical association or non-governmental agencies. Alternatively, with supportive encouragement, some reluctant patients may agree to disclosure within agreed parameters."
- If the woman decides to take legal action she should be assisted to access a lawyer, which should be provided to her free-of-charge, if she cannot afford to pay for a lawyer.

<sup>130</sup> United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, 9 August 1999, p39-40

<sup>131</sup> *Ibid.*, p40

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment, *Adopted by the 54th WMA General Assembly, Helsinki, Finland, September 2003 and amended by the 58th WMA General Assembly, Copenhagen, Denmark, October 2007*, recommendations to national medical associations, recommendation 9(1)

- In cases of sexual abuse where the victim does not wish the event to be known due to socio-cultural pressures or personal reasons, the physician who carries out the medical examination, investigative agencies and the courts have an obligation to cooperate in maintaining the victim's privacy.<sup>136</sup>
  - In all cases women should be provided with appropriate and professional psychological support, for as long as it is necessary, for them to overcome the trauma and for the psychological scars to be healed. Such treatment may be provided in cooperation with specialist services in the community and NGOs.
  - In all cases, appropriate laboratory tests should be undertaken and treatment prescribed for any sexual and reproductive health complications resulting from the incident. In appropriate cases women who have been exposed to a risk should be provided with post-exposure prophylaxis (PEP).
  - Measures should be put in place to protect women who have complained of ill-treatment and torture from retaliation by prison staff. These measures should include:
    - ▶ adherence to the principle of confidentiality during the whole process
    - ▶ proper supervision of women at risk
    - ▶ women prisoners' access to an independent and effective complaints mechanism
    - ▶ a clear policy against retaliation by staff and disciplinary procedures to hold those who threaten to retaliate or do retaliate to account
- Medical confidentiality (Rule 8)**
- The Ministry responsible for prisons and the Ministry of Health, in coordination with national medical associations, should develop clear guidelines on medical confidentiality, refusal to provide information on reproductive health history and the prohibition of vaginal examinations without the consent of the prisoner. Virginity tests should be prohibited, as a form of custodial violence.<sup>137</sup>
  - Prison authorities should make sure that prison rules and regulations relating to health care in prisons include the principle of medical confidentiality and the measures to ensure medical confidentiality as outlined below.
- Prison health care services should ensure that all medical records of prisoners, including those which relate to the findings of the initial medical examination on entry are kept confidential. The information should be recorded in separate medical files and be accessible only to health personnel. Health personnel may provide prison managers or judicial authorities with information that will assist in the treatment and care of the patient, if the prisoner consents.
  - This means that:
    - ▶ if disclosure of information is sought by a third party, then the patient must be made aware of it, and her consent to disclosure given in writing
    - ▶ information should not be disclosed without the patient's knowledge
    - ▶ personal information should be effectively protected: this would mean that if the information is held on a computerised database system, access to the database should be restricted to medical staff, with safeguards in place to ensure that others are unable to access the information; if the information is kept manually, the files should be locked up in a secure location, accessible only to medical staff
    - ▶ patients should be made aware that information will, of necessity be shared within the medical team and where necessary with health care services in the community (eg. if a prisoner has to be transferred to treatment in the community)
    - ▶ the principle of medical confidentiality applies to all medical staff, including nurses, psychologists, psychiatrists, pharmacists, therapists etc. All members of the medical team must work within the same ethical guidelines on confidentiality
    - ▶ Where interpreters are used, they should also be bound by the principle of medical confidentiality
  - No staff within a prison, with the exception of the health care staff, should have access to a prisoner's medical records or medical information. Even within the medical team only the doctor(s) and nurse(s) should have full access to all medical information.
  - In cases where withholding information about the prisoner's health may damage the prisoner's or others' health, the physician may take the decision to disclose only the minimum information required to protect the patient and/or others from imminent harm. The decision to disclose limited information to other parties should be made by the doctor responsible for the treatment of the prisoner

<sup>136</sup> United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, 9 August 1999, p39

<sup>137</sup> Human Rights Council, *Seventh Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3, 15 January 2008, para 34



and have the sole aim of preventing harm to the prisoner's or others' health (eg. when a woman has a painful infection of her reproductive organs and requires rest and care, the doctor needs only to tell the prison director that she has an infection and cannot participate in the usual prison regime, rather than disclosing the diagnosis). Similarly information can be disclosed to other health care providers only on a strictly "need-to-know" basis unless the patient has given explicit consent for fuller information to be shared.

- Prisoners, who are medically qualified, should not normally be required to participate in the medical care of other prisoners, as this would violate the principle of confidentiality, potentially exacerbate any discriminatory attitudes towards prisoners with certain illnesses, such as HIV, and the prisoners may use their knowledge for personal gain. Only in exceptional circumstances and in emergency situations where health care staff may not be immediately available or in low-resource countries where such staff may be unavailable on a routine basis, medically qualified prisoners be called upon to assist, provided that the patient consents.
- Written medical records should be locked away. Great care should be taken when computerising medical records, to avoid unauthorised access. In fact, it is advisable to seek professional expert advice before this is undertaken.
- All consultations with doctors should, wherever possible, take place in private consulting rooms, and never in the presence of other prisoners or non-medical staff, unless the woman being examined has specifically asked for a chaperone, in which case a female nurse or other health care staff, and if such is not available a female member of staff may be present. In such cases the chaperone should be out of hearing of the doctor and patient and the visual privacy and dignity of the women being examined should also be protected, taking into account the wishes of the patient herself. (See Rule 11)
- Prison health personnel should inform women prisoners that all medical information, including information on their reproductive health history will be regarded as confidential. The women should be requested to provide information about their reproductive health history on a voluntary basis. No woman should be forced to provide such information.
- No vaginal examination should be undertaken without the consent of the woman prisoner and virginity tests should be prohibited explicitly.

### **The medical examination of children being admitted to prison (Rule 9)**

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

### **KEY ACTORS**

- ▶ **Policymakers, including the Ministry responsible for prisons and the Ministry of Health**
- ▶ **Legislators/parliamentarians**
- ▶ **Criminal justice institutions**
- ▶ **Prison authorities**
- ▶ **Prison health services**
- ▶ **Community health care services**
- ▶ **Prison staff responsible for admission and registration**

## 4.2 Gender-specific health care

### Rule 10

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

### THE RATIONALE FOR THIS RULE

- As explained in the introduction to this chapter and with reference to Rule 6, women in prison have specific health care needs, due their gender, as well as their typical backgrounds. The SMR have very limited provision for gender-specific health care needs of women, with a focus exclusively on pregnancy, pre- and post-natal care. In addition to these, women need to have access to general reproductive and sexual health care, mental health care, treatment for substance dependency and any menopausal symptoms, which require treatment. Women also have preventive health care needs, such as screening for breast and cervical cancer (see **Rule 18**) and access to education and information about preventive health care measures (See **Rule 17**).
- As noted in the commentary, the rule also recognises that “due to cultural reasons, and/or because of past negative experiences with men, including being subjected to sexual abuse or violence, women may not wish to be examined by a male medical specialist and may even feel re-traumatised by such an examination.”<sup>138</sup> Thus, women may wish to be examined and treated exclusively by female doctors and their wishes should be respected to the extent possible.

### PUTTING IT INTO PRACTICE

- Collaboration between prison and community health services should be an integral component of medical care provided in all prisons.<sup>139</sup>
- Prison health care services should develop specific policies relating to health care provision for women prisoners, in coordination with community health services and a mechanism

for cooperation between the ministry of health and prison health care should be established to effectively respond to the gender-specific health care needs of women.<sup>140</sup>

- A regular dialogue between ministers, senior staff and health staff should be developed to ensure that legislation and prison rules support treatment and care.<sup>141</sup>
- Specialists in women’s health care should be available for ongoing consultation in prisons, with arrangements in place for regular visits by gynecologists.
- Wherever possible, women should receive medical treatment from women nurses and doctors. If a female prisoner requests that she be examined or treated by a female physician or nurse, a female physician or nurse should be invited to the prison establishment, to the extent they are available, except for situations requiring urgent medical intervention. If this is not possible, there must be a female supervisor during her examination in line with the prisoner’s request. The prisoner should not be obliged to explain the reasons for her preference.<sup>142</sup> (See also Rule 11(2)).
- It is considered good practice to have a female chaperone present if an examination of a woman is carried out by a male doctor, whether or not the woman has requested a chaperone, in order to reassure and protect the woman against possible harassment or abuse, as well as protecting the doctor against any subsequent false accusations of harassment or abuse. The female chaperone could be a nurse or other health care staff.

<sup>138</sup> Bangkok Rules, Commentary to Rule 10(2)

<sup>139</sup> SMR, Rule 22. See also WHO Europe, Declaration: *Prison Health as part of Public Health*, Moscow, 24 October 2003, where delegates noted that penitentiary health must be an integral part of the public health system of any country and put forward a set of recommendations to improve healthcare services in prisons, based on this principle.

<sup>140</sup> WHO Europe Regional Office (Van den Bergh, B., Gatherer, A.), UNODC (Atabay, T., Hariga, F.), *Women’s health in prisons, Action Guidance and checklists to review current policies and practices*, 2011, p8.

<sup>141</sup> Ibid.

<sup>142</sup> See Bangkok Rules, Commentary to Rule 10.

## KEY ACTORS

- ▶ Ministry responsible for prisons
- ▶ Ministry of Health
- ▶ Prison authorities
- ▶ Prison health care services
- ▶ Community health care services

### Good practice: Medical services for women in the New Model Prison System of the Dominican Republic

Part of the health services are covered by the Ministry of Health and part by the Attorney General's Office, with some doctors being attached to the Ministry of Health and some to the Attorney General's Office. Many health care services are provided in prisons, but prisoners who require special treatment are transferred to hospitals. In the medical area of CCR No. 2 Najayo Mujeres (Women's Prison) eight specialist doctors are employed, including psychiatrists, gynaecologists, oncologists, dermatologists, among others. A well-equipped dental treatment centre staffed by a qualified dentist is also provided in this area. All prisoners have a dental check three times per year and they can also see the dentist in emergencies.

All prisons of the New Model Prison System, referred to as Centres of Correction and Rehabilitation (CCRs), including the women's CCRs, have a laboratory where specialists from the Ministry of Health are employed. They have the facilities to conduct various medical tests on site, such as full blood tests, pregnancy tests, tests for Hepatitis B and syphilis. HIV testing is voluntary. HIV positive prisoners receive treatment and a special diet.

The Psychological Service provides individual and family counselling and various types of therapy: eg. drug therapy, therapy for physical abuse and motivation therapy. Each prisoner who enters the system has to undergo a psychological needs assessment. In the women's prison there are two psychologists, who are the employees of the Attorney General's Office (responsible for the prison system).<sup>143</sup>

### Rule 11

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

## THE RATIONALE FOR THIS RULE

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

## PUTTING IT INTO PRACTICE

Medical confidentiality should be upheld during medical examinations, which means that staff or other prisoners should not be present during such examinations. Such examinations should take place on an individual basis in a properly equipped health care room partitioned off from the view of other staff or prisoners.

If exceptional circumstances exist – for example, if the woman prisoner is violent and staff are concerned about the doctor’s safety – the nature of the risk should be explained to the doctor and he/she should decide whether a member of staff is necessary during the examination. If the doctor specifically requests a member of staff to be present, women prisoners should never have to see a doctor in the presence of male staff. If an examination is undertaken in the presence of female staff, the staff member should be out of hearing of the patient and health practitioner.

<sup>143</sup> UNODC, Atabay, T., *The Prison System and Alternatives to Imprisonment in Selected Countries of the Organisation of Eastern Caribbean States, Barbados and the Dominican Republic*, 25 November 2010 (unpublished).

There may also be cases where the patients themselves may request a woman staff to be present, if the doctor undertaking the examination is a man. Such requests should be granted, with the proviso that the member of staff should be out of hearing of the doctor and patient.

## KEY ACTORS

- ▶ Prison authorities
- ▶ Prison health services

## 4.3 Mental health and care

### Rule 12

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

### Rule 13

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

### THE RATIONALE FOR RULES 12-13

- This rule fills an important gap in the SMR, which do not elaborate on the type of holistic and individualistic approach that should underpin mental health care provision for all prisoners.
- The rule should be read in conjunction with Rule 82(1) of SMR, which provides that persons with severe mental illnesses should not be held in prisons, but in specialised mental health institutions.
- The closed and coercive environment of prisons can exacerbate mental ill health and preference should be given, wherever possible, to non-custodial measures and sanctions in the case of women who already have mental disabilities. (See **Bangkok Rules, Rule 60**).
- As has been outlined in the commentary to this rule and previously, with reference to Rule 6(b), women prisoners have particular mental health care needs. These needs are likely to become more acute in prison settings, due to separation from children, families and communities and regimes that do not take account of women's gender-specific needs. Research indicates that women in prison have high rates of mental health problems such as post-traumatic stress disorder, depression, anxiety, phobias and neurosis.<sup>144</sup>
- In addition, high security prison conditions and regimes, where human contact with other prisoners and staff is usually further limited and where access to prison activities may also be restricted, represent an additional and serious risk to mental health. Women's mental distress may be increased by the practice of mixed gender supervision and searches, the aggressive climate and verbal abuse prevalent in some prison facilities.<sup>145</sup>
- As has been documented on numerous occasions, solitary confinement can provoke or worsen mental ill health.<sup>146</sup> The Istanbul Statement on the Use and Effects of Solitary Confinement recommends the absolute prohibition of solitary confinement in the case of prisoners with mental illness.<sup>147</sup>
- As the commentary notes, Rule 12 "takes account of the reality that in many prison systems women prisoners' unique mental health care needs are not adequately understood or treated, symptoms are addressed rather than the underlying reasons that lead to mental health problems. Too often women are prescribed medication to overcome their distress or depression, rather than being provided with psycho-social support, based on individual assessments."<sup>148</sup>
- With reference to a holistic approach to prison health care, WHO and UNODC recommend that

<sup>144</sup> UNODC, WHO, *Women's health in prison, Correcting gender inequity in prison health*, 2009, p27.

<sup>145</sup> See for example, UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Rashida Manjoo*, A/HRC/17/26/Add.5, June 2011, para 40.

<sup>146</sup> Istanbul Statement on the Use and Effects of Solitary Confinement, Adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul, <[www.refworld.org/docid/48db99e82.html](http://www.refworld.org/docid/48db99e82.html)>.

<sup>147</sup> Ibid.

<sup>148</sup> Bangkok Rules, Commentary to Rule 12.

“Promoting mental health and well-being should be key to a prison’s health care policy. The high rate of self-harm and indeed suicide among women in prison should alert prison governors to the urgent need for strategies and policies for protecting mental health in general and for assessing women who may be at risk. This area of health need demonstrates the importance of a whole-prison approach. All staff members need to be aware of their role and of how the environment and regimens inside prisons can be modified, positively and beneficially, with improvements in mental resilience among prisoners and staff members. Governors of prisons have an important leadership role here in working with senior staff members to create an ethos in the prison that is conducive to health.”<sup>149</sup>

- In addition, women are particularly susceptible to mental distress and depression at certain times.<sup>150</sup> Developing an institutional policy which deals with mental health and care issues in a holistic manner, recognising the key role played by all staff in assisting prisoners to maintain their mental wellbeing, is essential to tackle in a sensitive and informed manner the varying mental health support requirements of all women prisoners at different times. Staff awareness of factors that promote and harm mental wellbeing and a gender sensitive approach to women’s mental health care needs are essential components of such policies.

## PUTTING THEM INTO PRACTICE

- A comprehensive programme aiming to promote mental health in prisons should include the provision of a varied, balanced and flexible prison regime, including access to education, vocational training, recreation, family contact, physical exercise, a balanced diet and opportunities to participate in arts, among others.<sup>151</sup>
- Following the initial screening on entry an individual programme of treatment should be developed for those in need, by a qualified prison health care team, including a psychologist and where necessary a psychiatrist. Counselling and therapy should be offered as early as possible to those who appear to be at risk of developing mental disabilities.
- Treatment should be individualised and aim to address the reasons that provoke distress and depression, as well as psychiatric problems,

based on an integrated approach of counselling, psychosocial support and medication, if necessary. Medication should be used only when strictly necessary, in response to individual needs, rather than as a matter of routine.<sup>152</sup>

- Prisoners should be provided with full information about treatment options, risks and expected outcomes and they should participate in treatment planning and decision-making.
- Gender-sensitivity training should be provided to all staff working in women’s prisons, which should include awareness raising about times when women may feel particular distress.
- Prison health care policies and programmes should include training for all staff working in women’s prisons to respond appropriately to women’s needs, with understanding and sensitivity, and to take timely and accurate decisions on when to refer them to specialised support.
- Women with mental disorders are at high risk of abuse in custodial settings. They should be protected, with adequate safeguards and supervision. Such women should not be placed in solitary confinement, as isolation is almost certain to exacerbate their mental ill health.<sup>153</sup>
- Prison authorities should cooperate with services in the community, including NGOs and other community organisations working on mental health and women’s issues, to the maximum possible extent, to provide better services and programmes for women, while increasing their links with the outside world, which in itself can have an immensely beneficial impact on mental health.
- Prison authorities should develop policies and introduce measures that help maintain and improve women prisoners’ links with their families, including their children and others close to them. **(See Rule 26** for further guidance).
- All treatment plans should be reviewed at regular intervals.
- Where appropriate, in cases which require specialised treatment unavailable in prison, the women concerned should be referred to community health care services—if necessary,

<sup>149</sup> UNODC/WHO, *op. cit.*, p46.

<sup>150</sup> Bangkok Rules, *Commentary to Rule 13*

<sup>151</sup> For a list of activities and services which help promote the mental health of prisoners, see WHO Regional Office for Europe *Health in Prisons Project, Consensus Statement on Mental Health Promotion*, 1998, para 18.

<sup>152</sup> Bangkok Rules, *Commentary to Rule 12*.

<sup>153</sup> *Istanbul Statement on the Use and Effects of Solitary Confinement*, Adopted on 9 December 2007 at the *International Psychological Trauma Symposium*, Istanbul, <[www.refworld.org/docid/48db99e82.html](http://www.refworld.org/docid/48db99e82.html)>.

with a judicial decision. However, account should be taken of the reality that in many low resource countries mental health care in the community may be unavailable or highly inadequate and that mental health institutions may not be dissimilar to prisons, sometimes with worse conditions. Therefore, it is important to ascertain whether the mental health care outside prison and conditions in mental health institutions are adequate and meet the treatment and care needs of such women, and to ensure that such a transfer does not lead to a worsening of the conditions they are held in and the treatment they receive.

## KEY ACTORS

- ▶ Policymakers
- ▶ Legislators/ Parliamentarians
- ▶ Prison management
- ▶ Prison staff
- ▶ Prison health care services
- ▶ Community health care services

## 4.4 HIV prevention, treatment, care and support

### Rule 14

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

### THE RATIONALE FOR THIS RULE

- At the time that SMR were adopted in 1957, HIV was not a known health problem in the world.<sup>154</sup> Since then, and particularly since the 80s, HIV has become a major global health challenge. Today there is a large amount of information relating to HIV and AIDS, risk factors, modes of transmission, prevention, treatment and care. Today it is also well known that HIV/AIDS is prevalent in prison settings, often much more so than in the community and that prisoners constitute a high risk group in this context.<sup>155</sup>
- The importance of implementing HIV interventions in prisons was recognised early in the epidemic.<sup>156</sup> In 1993 WHO issued guidelines on HIV infection and AIDS in prisons.<sup>157</sup> More recently, WHO summarised the evidence on harm reduction in prisons<sup>158</sup> and, together with UNODC and UNAIDS, published a policy brief on the reduction of HIV transmission in prisons,<sup>159</sup> as well as a series of comprehensive Evidence for Action Technical Papers on interventions to address HIV in prisons. In 2006, a “Framework for an effective national response to HIV/AIDS in prisons” was jointly published by UNODC, WHO, and UNAIDS.<sup>160</sup> These documents emphasise that “all prisoners have the right to receive health care, including preventive measures, equivalent to that available in the community without discrimination”.<sup>161</sup>
- The combination of gender inequality, stigma and discrimination increases imprisoned women’s vulnerability to HIV infection. Most women in prison are from socially marginalised groups and are more likely to have been engaged in sex work

<sup>154</sup> It is not known how many people developed AIDS in the 1970s, or in the years before. “The dominant feature of this first period was silence, for the human immunodeficiency virus (HIV) was unknown and transmission was not accompanied by signs or symptoms salient enough to be noticed. While rare, sporadic case reports of AIDS and sero-archaeological studies have documented human infections with HIV prior to 1970, available data suggest that the current pandemic started in the mid- to late 1970s. By 1980, HIV had spread to at least five continents (North America, South America, Europe, Africa and Australia). During this period of silence, spread was unchecked by awareness or any preventive action and approximately 100,000-300,000 persons may have been infected.” See Mann J. M., *AIDS: A worldwide pandemic*.<sup>156</sup> In Current topics in AIDS, volume 2, edited by Gottlieb M.S., Jeffries D.J., Mildvan D., Pinching, A.J., Quinn T.C., John Wiley & Sons, (1989), <[www.avert.org/aids-history-86.htm](http://www.avert.org/aids-history-86.htm)>.

<sup>155</sup> See for example, UNODC, WHO and UNAIDS, *HIV and AIDS in places of detention, A toolkit for policymakers, programme managers, prison officers and health care providers in prison settings*, 2008, pp7-8.

<sup>156</sup> Harding, T.W., *AIDS in prison*, 28 November 1987, p1260-1263 (cited in UNODC, WHO, *HIV testing and counselling in prisons and other closed settings*, Technical Paper, 2009, p8).

<sup>157</sup> WHO, *Guidelines on HIV infection and AIDS in prisons*, 1993, Geneva, WHO/GPA/DIR/93.3.

<sup>158</sup> WHO Regional Office for Europe, *Status paper on prisons, drugs and harm reduction*, 2005, Copenhagen.

<sup>159</sup> WHO, UNODC, UNAIDS, *Policy brief: HIV transmission in prisons*, 2004, Geneva.

<sup>160</sup> UNODC, WHO, UNAIDS, *HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings. A Framework for an Effective National Response*, 2006, New York.

<sup>161</sup> WHO, *Guidelines on HIV infection and AIDS in prisons*, 1993, Geneva, WHO/GPA/DIR/93.3.

<sup>162</sup> UNODC, UNAIDS, *Women and HIV in prison settings*, 2008.

and/or drug use. Many have also been victims of gender-based violence or have a history of high-risk sexual behaviour.<sup>162</sup> All these factors make women a high risk group for sexually transmitted infections, including HIV. They are especially vulnerable in prison. Drug use, violence, stigma and discrimination, poor nutrition, early and unwanted pregnancies that women might have been exposed to will require a different set of psychological, social and health care approaches than those needed by men.<sup>163</sup>

- Often, very limited reproductive and pre and post-natal care services are available for women in prisons. In addition, antiretroviral therapy is often not available to prisoners, including to HIV-positive pregnant women to prevent mother-to-child transmission.<sup>164</sup> Children born in prison, especially to HIV-positive mothers, need particular care and attention. Prison diets often fail to provide an adequate level of nutrition to pregnant or breastfeeding mothers, which weakens their immune system.<sup>165</sup>
- For these reasons, the provision of treatment and care for STIs and HIV/AIDS should form a key component of gender-specific health care services in women's prisons. In developing responses to HIV/AIDS in penal institutions, it is also essential that programmes and services be responsive to the unique needs of women, including, for example, the needs of pregnant women and the prevention of mother to child transmission.
- While prison authorities have a central role in implementing effective measures and strategies to address HIV/AIDS, this task is not solely the responsibility of prison systems. Maximising the scope, quality, diversity, and effectiveness of prison-based HIV/AIDS prevention and care initiatives requires cooperation and collaborative action that integrates the mandates and responsibilities of various local, national, and international stakeholders.<sup>166</sup>
- Establishing effective working links between prison-based services and community services is essential in implementing a comprehensive HIV strategy in prisons. Such collaboration can improve the standards of care in prisons, support prison staff (including providing opportunities for

training), ensure that prison services reflect current national best practice, ensure the sustainability of prison programmes, and improve post-release follow-up for prisoners upon release.<sup>167</sup>

## PUTTING IT INTO PRACTICE

- The ministry responsible for prisons and the Ministry of Health should collaborate to develop national policies and strategies to address HIV/AIDS in prisons, including responding to the unique needs of women prisoners, within a coherent national framework.
- Collaboration between prison and community services should be developed, in order to promote quality and sustainability.
- Within this framework, prison health care services should develop comprehensive, gender-sensitive, HIV prevention, treatment, care and support for women in prison, in close cooperation with community health care services.
- Voluntary HIV testing and counselling should be offered to all women prisoners on admission and throughout their imprisonment. Women with HIV and AIDS should not be segregated due to their health status.<sup>168</sup>
- Gender-sensitive HIV prevention, treatment, care and support services should include the following components:<sup>169</sup>
  - ▶ Providing information on the transmission of STI and HIV, and ways to reduce those risks, as well as on testing, and treatment for STI
  - ▶ Providing voluntary confidential HIV testing and counselling services
  - ▶ Providing access to essential prevention commodities such as male and female condoms, sterile injecting equipment, and safe tattooing equipment
  - ▶ Diagnosing and treating sexually transmitted infections
  - ▶ Providing drug dependence treatment, including substitution therapy for opioid dependence
  - ▶ Providing appropriate diet and nutritional supplements

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> UNODC, WHO, UNAIDS, *HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response*, 2006, p13.

<sup>167</sup> Ibid., pp34-35/

<sup>168</sup> See UNODC, WHO, UNAIDS, *A toolkit for policymakers, programme managers, prison officers and health care providers in prison settings*, 2008, pp93-94.

<sup>169</sup> As set out in UNODC, UNAIDS, *Women and HIV in prison settings*, 2008; and UNODC, ILO, UNDP, *Policy Brief, HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, July 2012, p1

- ▶ Providing antiretroviral treatments, preventing and treating tuberculosis, other opportunistic infections and other blood-borne diseases such as hepatitis B and C
  - ▶ Providing access to reproductive health and family planning services
  - ▶ Care during pregnancy and delivery in appropriate settings and antiretroviral therapies to HIV positive pregnant women to prevent mother-to-child transmission
  - ▶ Providing post-exposure prophylaxis (PEP) to women who have been exposed to a risk; (See also **Rule 7**)
  - ▶ Care for children, including those born to HIV-infected mothers
  - ▶ Prevention of transmission through medical or dental services
  - ▶ Protecting staff from occupational hazards
  - ▶ Palliative care and compassionate release for AIDS and terminally ill patients
- The involvement of women prisoners in developing and providing health programmes and services increases the capacity of prisons to respond to HIV/AIDS. Health authorities in prison should encourage and support the development of peer-based education initiatives and educational materials should be designed and delivered by prisoners themselves. Prison authorities should also encourage the development and support of self-help and peer-support groups that raise the issues of HIV/AIDS from the perspective of the women in prisons themselves.<sup>170</sup>
  - Every effort should be made to involve NGOs in the development of HIV prevention, treatment, care and support programmes in prison, as well as to create links between prison programmes and community HIV prevention and treatment services.<sup>171</sup>
  - Prevention, treatment and care for HIV and AIDS should be provided within a general framework of health promotion and care. As noted by UNODC, the International Labour Organization (ILO) and the United Nations Development Programme (UNDP): “Protecting and promoting the health of detainees goes beyond simply diagnosing and treating diseases as they appear in individual detainees. It includes issues of hygiene, nutrition, access to meaningful activity, recreation and sport, contact with family, freedom from violence or abuse by other detainees and freedom from physical abuse,

torture and cruel, inhuman or degrading treatment at the hands of prison officers. Medical ethics should always guide all health interventions in closed settings, and therefore interventions should always be geared towards the best interests of the patient. All treatments should be voluntary, with the informed consent of the patient, and people living with HIV should not be segregated.”<sup>172</sup>

- For a comprehensive discussion of principles and recommendations to implement a framework at national level for HIV/AIDS prevention, care, treatment and support in prison settings, see:
  - ▶ UNODC, WHO, UNAIDS, *HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response*, 2006 ([www.unodc.org/documents/hiv-aids/HIV-AIDS\\_prisons\\_Oct06.pdf](http://www.unodc.org/documents/hiv-aids/HIV-AIDS_prisons_Oct06.pdf));
  - ▶ UNODC, ILO, UNDP, *Policy Brief, HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, 2012.

**See also Rule 34** on the training of institutional personnel.

## KEY ACTORS

- ▶ **Legislators/Parliamentarians**
- ▶ **Ministry responsible for prisons**
- ▶ **Ministry of Health**
- ▶ **Prison authorities**
- ▶ **Prison health care services**
- ▶ **Prison staff**
- ▶ **Community health care services, including women’s health services**
- ▶ **NGOs working on prisoners, women, drugs, STIs and HIV/AIDS**

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> UNODC, ILO, UNDP, *Policy Brief, HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, July 2012, p5.



## 4.5 Substance dependence treatment programmes

### Rule 15

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

### THE RATIONALE FOR THIS RULE

See Rationale for Rule 6(d).

Also please refer to the rationale for Rule 62 in Chapter 1, for further discussion about the gender differences in substance dependence and related complications and the requirement of different treatment approaches.

### PUTTING IT INTO PRACTICE

- Drug treatment services, which take into account the gender-specific needs of women prisoners should be established in women's prisons, in cooperation with community health care services. They should offer the same services as those in the community.
- Evidence based, non-compulsory treatment for drug dependence should be offered, centred on demand reduction activities and psycho-social support for the treatment of the negative psychological consequences of drug dependence.
- Components of the strategy may include:<sup>173</sup>
  - ▶ advice and information services
  - ▶ drug education; pharmacotherapies – detoxification, withdrawal and maintenance treatments, including opioid substitution therapy
  - ▶ harm reduction programmes
  - ▶ psychosocial programmes including family based initiatives – structured group work, counselling/psychotherapy and residential drug treatment;
  - ▶ rehabilitation programmes
  - ▶ drug free wings, combined with appropriate treatment
  - ▶ physical activity and sports programmes
  - ▶ support groups

- An effective demand reduction strategy will encompass a broad selection of these components. As prisoners will be at different stages of change in relation to their drug use and since 'treatment' should be matched to individual needs, a wide range of services is needed.<sup>174</sup>
- A multiagency approach involving a range of professionals, NGOs, community groups and prison staff is desirable. Effective demand reduction strategies require joint working and co-operation between prisons and external agencies.<sup>175</sup>

### Programme planning and development

- The following are some of the suggested components of a comprehensive approach to substance dependence programme planning and development, which may improve outcomes, as recommended by UNODC for all women,<sup>176</sup> and adapted to women prisoners here. For further recommendations please refer to: UNODC, *Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned*, United Nations, New York, 2004, available at [www.unodc.org/docs/treatment/Case\\_Studies\\_E.pdf](http://www.unodc.org/docs/treatment/Case_Studies_E.pdf).
  - ▶ Programme planning and development should be based on a careful needs assessment, with mechanisms built in to monitor achievement of objectives and outcomes. A comprehensive assessment should address areas particularly relevant for women, such as relationships, pregnancy, mental health problems including suicide, history of abuse and current domestic violence.
  - ▶ The experience of trauma and mental health problems are common among women with substance use problems. Services for women need to be aware of the impact of these problems and develop strategies to address these issues. **(See Rule 12)**
  - ▶ The risk of self-harm and suicide among drug dependent women, especially those who also have mental disabilities, is high. Treatment

<sup>173</sup> UNODC, *Drug Dependence Treatment: Interventions for Drug Users in Prisons*, p19.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

<sup>176</sup> As recommended in UNODC *Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned*, 2004, pp91-92.

services should include components which address such risks. (See Rule 16)

- ▶ Pharmacological interventions, such as opioid substitution therapy, for opioid dependence, particularly for pregnant, opioid-dependent women, can reduce illicit substance use and related problems, improve social functioning and result in better outcomes for new-borns of pregnant women. However, pharmacological interventions need to be offered in the context of providing gender-responsive psychosocial treatments and addressing other practical needs.
- ▶ Aftercare and social reintegration components, including activities that address skills development, employment and housing, are critical components of treatment for women, to prevent relapse following release.
- Women who are imprisoned for short periods, especially, may not be able to complete programmes offered in prisons, which increases the need for the continuation of care and support following release.

## KEY ACTORS

As many stakeholders as possible should be involved at the outset of the provision of drug dependence services. Including all stakeholders in the process will provide a forum in which concerns and problems (both actual and perceived) can be discussed. Stakeholder involvement will promote ownership and ‘buy in’ to the proposals. Stakeholders might include:<sup>177</sup>

- ▶ **Policymakers**
- ▶ **Legislators/Parliamentarians**
- ▶ **Prison managers**
- ▶ **Prison staff**
- ▶ **Health care services in the community and in prisons**
- ▶ **Providers of local and national drug treatment facilities in the community and in prisons**
- ▶ **Probation and/or social services**
- ▶ **NGOs involved in resettlement, rehabilitation, health and social care for prisoners and former prisoners**
- ▶ **Other specialist community services for former prisoners**

## 4.6 Suicide and self-harm prevention

### Rule 16

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

### THE RATIONALE FOR THIS RULE

- International studies indicate that suicide rates in prisons significantly exceed those in the general population.<sup>178</sup> In some countries rates of suicide have increased significantly in recent years, particularly in prisons that are overcrowded.<sup>179</sup>
- A number of studies have found that “the risk of suicide is particularly high in the first month a

prisoner spends in a new prison, with heightened risk during the first days”.<sup>180</sup>

- As the commentary on this rule notes, and has already been mentioned, research in some countries indicates that women may be at higher risk of harming themselves or attempting suicide in comparison to men in prison, due to the higher level of mental illness and substance addiction among women prisoners and the particularly

<sup>177</sup> As recommended in UNODC, *Drug Dependence Treatment: Interventions for Drug Users in Prison*, p18.

<sup>178</sup> Penal Reform International, *Penal Reform Briefing No. 2, Health in prisons: realising the right to health*, 2007, p3.

<sup>179</sup> For example in the UK, the Chief Inspector of Prisons expressed concern in 2007 that suicides in prisons had risen significantly, in England and Wales, to two a week, as a result of overcrowding; <[www.guardian.co.uk/uk/2007/jun/13/prisonsandprobation.ukcrime](http://www.guardian.co.uk/uk/2007/jun/13/prisonsandprobation.ukcrime)>, 13 June 2007. In France, which has one of the highest prisoner numbers in Europe, over a hundred prisoners committed suicide in 2010; NGOs say one prisoner tries to commit suicide every three days, and the chances of a suicide are 10 times higher inside a prison than outside. The EU has repeatedly warned France that its prisons are overcrowded, prisoners are denied some basic rights and hygiene, and eventually suicide cases will rise; Anustup Roy, Press TV, <[www.presstv.ir/detail/170279.html](http://www.presstv.ir/detail/170279.html)>, 16 March 2011. In Italy, overcrowding is held at least partly responsible for the high suicide rates in prisons, which is 15-17 times higher than on the outside. Italy’s prison population was at a post-war high with over 65,000 prisoners in a system designed to accommodate 43,000 in 2009. An association representing prison doctors, AMAPI, said that overcrowding in Italy’s prisons had created a “time bomb ready to explode,” while police and guard associations have warned that “we are at the limits of the respect of human rights”, <[www.lifeinitaly.com/node/15684](http://www.lifeinitaly.com/node/15684)> 23 December 2010.

<sup>180</sup> The World Health Organization Europe, Møller, L., Stöver, H., Jürgens, R., Gatherer, A. and Nikogosian, H. (eds.), *Health in Prisons, A WHO guide to the essentials in prison health*, 2007, p142. See also The Howard League for Penal Reform, *‘Care, concern and carpets’: How women’s prisons can use first night in custody centres to reduce distress*, 2006.

harmful impact of isolation from the community on the mental well-being of women.<sup>181</sup> Being a mother appears to protect women in the community against suicide, but this protection does not apply in prison if mothers are separated from their children.<sup>182</sup> Some research has indicated that whereas outside prison men are more likely to commit suicide than women the position is reversed inside prison.<sup>183</sup>

- The removal of items that may be used for suicide and the introduction of additional restrictions to reduce possibilities of suicide or self-harm, rather than providing support to address the cause of such acts are likely to worsen mental distress. In at least one prison system removing items with which women can harm themselves has, in some severe cases, resulted in women changing from cutting to the use of ligatures, an inherently more risky method of self-harm.<sup>184</sup>
- The majority of self-harm is to relieve feelings of anger, tension, anxiety or depression.<sup>185</sup> Self-harm in prisons can be associated with drug dependence, a history of alcoholism and with being a victim of violence.<sup>186</sup>
- The underlying causes for self-harm or suicide attempts require therapeutic responses, which highlights the need for a holistic approach.
- In some jurisdictions self-harm and suicide attempts are penalised, causing further distress and leading, most certainly, to the worsening of any mental health care needs. For example, in the United States prison regimes “routinely criminalise and punish behaviour that is symptomatic of illness, such as self-harm, attempted suicide, being noisy and refusing orders.”<sup>187</sup> The penalisation of self-harm is also common in some countries of Eastern Europe and Central Asia, where in certain circumstances it may even be regarded as a criminal offence.
- The evidence base around interventions for self-harm is still developing, with structured problem solving and interpersonal therapy showing some efficacy and specific treatments like dialectical behaviour therapy. There is also some evidence of the usefulness of supported self-help.<sup>188</sup>

## PUTTING IT INTO PRACTICE

- Developing strategies to prevent suicide and self-harm and to provide appropriate, gender-specific and individualised psychosocial and psychiatric support to those at risk need to form a comprehensive element of mental health care in prisons.
- The health screening undertaken on entry to prison and regular assessments are key components of self-harm and suicide prevention strategies.<sup>189</sup>
- In addition, staff need to be trained to detect risk of self-harm and suicide, and offer assistance, by providing support and referring such cases to specialists.<sup>190</sup> Post-admission supervision by well trained, sympathetic staff, throughout the period of imprisonment is an essential component of programmes to prevent suicides.<sup>191</sup> This should include the cultivation of the type of relationship between staff and prisoners that will facilitate the prisoner disclosing her distress if and when it arises.<sup>192</sup>
- As required by Rule 13, staff should also be aware of particular times when prisoners may be feeling high levels of stress, anxiety and depression, which may lead to self-harm and suicide.
- As recommended by WHO, and as also suggested in relation to Rule 2 on Admission, the reception area and procedures should be organised in such a way as to minimise mental distress. Wherever possible, facilities should be provided to enable prisoners to make early contact with their families. Procedures should ensure that all prisoners

<sup>181</sup> Bangkok Rules, Commentary to Rule 16.

<sup>182</sup> WHO, UNODC, *Women's health in prison, Correcting gender inequity in prison health*, 2009, p28.

<sup>183</sup> The Corston Report, A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System, Home Office, UK, 2007, p3.

<sup>184</sup> Corston Report, op. cit. p76.

<sup>185</sup> The Corston Report, op. cit. p76.

<sup>186</sup> Borrill J., Burnett R., Miller S., Briggs D, Weaver T., Maden A., 'Patterns of self-harm and attempted suicide among white and black/mixed race female prisoners', in *Criminal Behaviour and Mental Health*, 2003; 13(4); 229-40.

<sup>187</sup> Penal Reform International, Penal Reform Briefing No. 2, *Health in prisons: realising the right to health*, 2007, p4.

<sup>188</sup> The Corston Report, op. cit. p76.

<sup>189</sup> WHO, International Association for Suicide Prevention, *Preventing Suicide in Jails and Prisons*, 2007, p10.

<sup>190</sup> Ibid., p9.

<sup>191</sup> Ibid., p12

<sup>192</sup> Ibid., p13.

receive and understand the information given and that, so far as possible, the information is provided in accordance with their cultural traditions.<sup>193</sup>

- All acts of self-harm or attempted suicide should be approached from a therapeutic standpoint.
- Successful measures of support for prisoners have included peer support programmes, where prisoners are trained in peer support skills in order to monitor prisoners' distress, at critical times, for example, following admission to prison.<sup>194</sup> WHO and the International Association for Suicide Prevention (IASP) note that, "in some facilities, social support is provided through the use of specially trained inmate 'buddies' or 'listeners', which seems to have a good impact on the wellbeing of potential suicidal inmates, as they may not trust correctional officers but other inmates. Family visits may also be used as a means to foster social support, as well as a source of information about the risk for suicide of an inmate."<sup>195</sup>
- Research indicates that the majority of suicides in prisons occur when a prisoner is isolated from staff and fellow prisoners.<sup>196</sup> Therefore, placement in segregation or solitary confinement can increase the risk of suicide,<sup>197</sup> and should be avoided (see Rule 22 for the absolute prohibition of solitary confinement in the case of certain categories of women prisoners). WHO and IASP recommend suicidal prisoners to be housed in a dormitory or shared cell setting.<sup>198</sup>
- Prisoners may also use acts of self-harm as a means of protesting against poor prison conditions, and other forms of human rights violations. Under such circumstances prison managers need to address the cause of such acts of protest, rather than punishing those who take such extreme measures to draw attention to unsatisfactory or inhumane conditions. Criminalising such acts in legislation or applying

disciplinary measures, will only build up tension and resentment, while those with mental health care needs are left untreated and their mental health deteriorates.<sup>199</sup> Each incident of self-harm and attempted suicide should be treated as serious, rather than being regarded as "manipulative". Prisoners who undertake such acts should receive immediate medical treatment for any physical injuries and be given prompt access to specialised counselling and therapy.<sup>200</sup>

- As the commentary on this rule notes, "it must be emphasised that a fundamental element of strategies to reduce incidents of self-harm and suicide in prisons, is to create a prison environment, which promotes mental health. In parallel to the identification, and supervision of "at-risk" prisoners and the individual treatment provided to them, there is a need for prison managers and staff to take a proactive and positive approach to improve prison morale, in order to reduce incidents of self-harm and suicide."<sup>201</sup> A gender sensitive prison management approach, with maximum possible opportunities for women to maintain contact with their families and children, are essential components of such an approach.

For more guidance on the key components of a suicide prevention programme and good practice examples, see World Health Organisation, International Association for Suicide Prevention, *Preventing Suicide in Jails and Prisons*, 2007, available at [www.who.int/mental\\_health/resources/preventingsuicide/en/index.html](http://www.who.int/mental_health/resources/preventingsuicide/en/index.html)

## KEY ACTORS

- ▶ **Policymakers**
- ▶ **Prison authorities**
- ▶ **Prison health care services**
- ▶ **Prison staff**

193 The World Health Organization Europe, Møller, L., Stöver, H., Jürgens, R., Gatherer, A. and Nikogosian, H. (eds.), *Health in Prisons, A WHO guide to the essentials in prison health*, 2007, p142.

194 Australian Institute of Criminology, Mc Arthur, M., Camilleri, P. and Webb, H., *Strategies for Managing Suicide and Self-harm in Prisons*, August 1999, p4.

195 WHO, International Association for Suicide Prevention, *Preventing Suicide in Jails and Prisons*, 2007, p16.

196 Ibid.

197 Ibid.

198 Ibid.

199 UNODC, *Handbook on Prisoners with Special Needs*, 2009, p33.

200 Ibid.

201 Bangkok Rules, Commentary to Rule 16

## 4.7 Preventive health care services

### Rule 17

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

### THE RATIONALE FOR THIS RULE

- Access to awareness raising, education and information is a key component of preventive health care services in prisons, particularly taking into account the generally low education level and awareness among prisoners, who most often come from socially and economically deprived backgrounds. This is all the more true for women prisoners, who confront additional barriers to education and challenges associated with stigmatisation in accessing information and education about STIs and reproductive health issues.<sup>202</sup>
- Prisons provide an opportunity to raise the awareness of women on all of these issues and inform them on measures that they can take to reduce the risk of developing sexual and reproductive health problems.

### PUTTING IT INTO PRACTICE

- Women should be provided with written information materials on the main gender-specific health conditions, modes of transmission of STIs and blood borne diseases, risk factors and measures that can be taken to protect themselves

from these conditions. Such information should be provided in a language that is easy to understand and also in multiple languages, most commonly spoken in the prison.

- Women should be encouraged to ask questions, if they do not understand any of the information provided. Health care staff should be available to respond to such queries on a confidential basis.
- Information and education sessions should be provided on a regular basis on key issues, in cooperation with community health care services.
- Cooperation should be developed with NGOs in the community which work on the health care of women and such NGOs should be encouraged to run programmes in prisons to raise the awareness of women.

### KEY ACTORS

- ▶ **Policymakers**
- ▶ **Prison authorities**
- ▶ **Prison health care services**
- ▶ **Health care services in the community**
- ▶ **NGOs**

### Rule 18

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

### THE RATIONALE FOR THIS RULE

- The preventive health services provided in prisons should be equivalent to those in the community, in line with the right enjoyed by all men and women, including prisoners, to the highest attainable standard of mental and physical wellbeing, as provided by the International Covenant on Economic, Social and Cultural Rights, Article 12.<sup>203</sup> These include Papanicolaou tests and screening for breast and cervical cancer, which should be conducted as frequently as they are conducted in the community.

- Preventive health care services can also include the provision of contraceptive pills, which are not necessarily taken to prevent pregnancy, but also for other conditions, related to problematic menstruation, as explained in the commentary. Consideration also needs to be given to ensuring that women have access to condoms and dental dams to prevent the spread of sexually transmitted infections, as the commentary to Rule 17 notes.<sup>204</sup>
- In some systems, such services are only available in high security prisons, which means that women

<sup>202</sup> Bangkok Rules, Commentary to Rule 17

<sup>203</sup> Bangkok Rules, Commentary to Rule 18.

<sup>204</sup> See also WHO Regional Office for Europe, van den Bergh, B., Gatherer, A., Atabay, T., Hariga, F., *Women's health in prison, Action guidance and checklists to review current policies and practices*, 2011, pp8 and 14.

may have to be transferred to such prisons to receive the requisite services.<sup>205</sup> This practice is unacceptable, as being held in a security level higher than needed will give rise to other problems, in particular additional mental health care needs and possibly further separation from families and communities.

## PUTTING IT INTO PRACTICE

- Prison administrations and health services should ensure that women prisoners have access to preventive health care services, including regular screening for cervical cancer and breast cancer, by qualified health care professionals.
- Preventive health care services should be made available in all women's prisons. In cases where the requisite health care services cannot be provided in prisons, women should be transferred to community health care providers/hospitals to receive the screenings.
- Prison health services should establish close cooperation with community health care services to ensure access to preventive health care services for women.
- If women require contraceptive pills, for whatever reason, they should be able to discuss their requirements with a gynaecologist and be given access to such pills, if deemed necessary.
- Consideration should be given to ensuring that women are given access to condoms, especially where conjugal visits are permitted, and to dental dams<sup>206</sup> in all cases, to prevent the transmission of STIs.<sup>207</sup>

## KEY ACTORS

- ▶ **Policymakers**
- ▶ **Prison authorities**
- ▶ **Prison health care services**
- ▶ **Community health care services**

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205 Bangkok Rules, Commentary to Rule 18.

206 Dental dams are small, thin, square pieces of latex which help to reduce the transmission of STIs during oral sex by acting as a barrier to vaginal and anal secretions that contain bacteria and viruses; see <[http://brown.edu/Student\\_Services/Health\\_Services/Health\\_Education/sexual\\_health/safer\\_sex\\_and\\_contraceptives/dental\\_dams.php](http://brown.edu/Student_Services/Health_Services/Health_Education/sexual_health/safer_sex_and_contraceptives/dental_dams.php)>.

207 WHO, UNODC, UNAIDS, *Evidence for Action Technical Papers, Interventions to Address HIV in Prisons, Prevention of Sexual Transmission*, 2007, p5.

# Safety and security (Rules 19–25)

# 5



This chapter supplements the SMR rules which cover discipline and punishment (Rules 27 to 32); instruments of restraints (Rules 33 to 34); information to and complaints by prisoners (rules 35 and 36) and prison inspections (Rule 55). The provisions of the Bangkok Rules on safety and security are based on the understanding that security in prisons can be maintained and improved, by respecting the human rights of women prisoners and taking into account their gender-specific needs, as well as providing for the special needs of pregnant women, breastfeeding mothers and women with small children in prison. The Bangkok Rules strengthen provisions of SMR with their guidance on searching procedures, which are not covered in SMR, and with their focus on the particular safety requirements of women prisoners, taking into account their gender related vulnerabilities and needs, in relation to searching procedures, the

use of restraints, solitary confinement, complaints procedures and prison inspections.

The Bangkok Rules recognise that safety is perhaps the most important need that women prisoners have, without which the concept of “social reintegration” remains an abstract concept. The safety requirements of women prisoners are also covered elsewhere in the Bangkok Rules, such as the gender-sensitive screening procedure and classification system (Rules 40-41), in their re-emphasis of women’s separation from male prisoners as required by SMR, Rule 8(a), and the supervision of women prisoners by women staff (SMR, Rule 53), who should be specially trained to respond appropriately to the gender-specific needs of women prisoners (Bangkok Rules, Rules 29 and 33) and supplementary provisions relating to the protection of women prisoners from gender-based violence (Bangkok Rules, Rule 33).

### Safety and security

*Supplements rules 27-36 of the Standard Minimum Rules for the Treatment of Prisoners*

#### (a) Searches

##### Rule 19

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

##### Rule 20

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

### THE RATIONALE FOR RULES 19 AND 20

- The SMR do not provide any guidance on the personal searches of prisoners, including strip searches and invasive body searches (also referred to as cavity searches and intimate body searches). To a certain extent, this may be due to the fact that the clarity of Rule 53, with regard to the need to have only women staff assigned to work in women’s prisons (with the exception of specialist staff) meant that there was no need to add a rule underlining that searches of

prisoners should only be carried out by staff of the same gender. Since that time, it has become clear that there is a requirement for much more detailed guidance with regard to the carrying out of searches – which is one of the most sensitive and potentially traumatic issues relating to the treatment of prisoners.

- In some countries women are subjected to strip searches on a routine basis, sometimes in the presence of male staff, and may be humiliated during the process.<sup>208</sup> There have been reports of

<sup>208</sup> For example vaginal searches are reported to be routine in women’s prisons in Greece. Until 2011, prisoners who refused a vaginal examination on arrival were placed in a segregation unit for several days and made to take laxatives. Authorities said vaginal searches are now undertaken only in exceptional circumstances and are now done by trained doctors, rather than by nursing assistants. They say laxatives are no longer administered, but monitors from the European Committee for the Prevention of Torture (CPT) confirmed that the practice was still going on when they visited in January 2011. See Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 29 September 2009, CPT/Inf (2010) 33, paras. 91-93. <<http://www.cpt.coe.int/documents/grc/2010-33-inf-eng.pdf>> and Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 January 2011, CPT/Inf (2012) 1, paras. 50-51. <<http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.pdf>>. In France, strip searches are reported to be more or less routine, and prisoners’ letters complain about being made to adopt degrading positions; <[www.independent.co.uk/news/world/politics/forced-and-beaten-life-for-women-in-jail-6278849.html](http://www.independent.co.uk/news/world/politics/forced-and-beaten-life-for-women-in-jail-6278849.html)>. In November 2011, The Prison Service of



self-harming following inappropriate and inhumane treatment during searches,<sup>209</sup> which demonstrate the extent of the trauma that can be experienced by women whose right to human dignity is violated.

- The need for guidance on carrying out all personal searches has become all the more important in light of the increasing use of mixed gender staffing in some jurisdictions. However, issues that need to be considered relate not only to the same gender requirement, but also to the way in which searches are carried out, so that the dignity and health of the person being searched is protected.
- The principle that persons should only be searched by the same gender has been emphasised by the Human Rights Committee, General Comment 16 on Article 17 of the ICCPR, referred to in the commentary to the rule, as well as the regional instruments, such as Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXI and the European Prison Rules, 2006, Rule 54.5.
- The searches referred to in this rule include all personal searches, including pat down and frisk searches.
- Additional principles and rules apply to strip searches and invasive body searches, in line with the World Medical Association Statement on Body Searches of Prisoners,<sup>210</sup> quoted in the commentary to Rule 19, and below.
- A strip search refers to the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas. This definition distinguishes strip searches from invasive body searches, which involve a physical inspection of the detainee's genital or anal regions.<sup>211</sup>
- Decisions as to who may be allowed to carry out invasive body searches are difficult. On the one hand, searches should never be carried out in a way which may humiliate the woman or cause physical harm, while on the other, the involvement of medical staff in body searches contravenes

the principles of medical ethics, as any role of health care staff in disciplinary or other security measures is in contradiction with their professional and ethical obligations as enshrined in the UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- A number of international and regional standards and principles exist which may be referred to for guidance. The most authoritative guidance is provided by the World Medical Association in their Statement on Body Searches of Prisoners:<sup>212</sup>

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

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

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

The World Medical Association urges all governments and public officials with responsibility for public safety to recognise that such invasive search procedures are serious

Ireland was strongly criticised in a visiting committee report for forcing women prisoners to strip naked to be searched for drugs in the presence of male prison officers, <[www.rte.ie/news/2011/11/18/prison.html](http://www.rte.ie/news/2011/11/18/prison.html)>. In the United States, a 2009 report by the Office of the Inspector General found that male staff members were often accused of sexual misconduct stemming from pat searches and the Special Rapporteur on the violence against women, its causes and consequences reported that prisoners in the United States complained of intrusive body searches upon their return from therapy; Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/17/26/Add.5, paras 34 and 38.

209 In Victoria's largest women prison in Australia, it was reported that guards had said they had been "a second officer for a strip search which was not completed in accordance with procedures". One staff member said they had been ordered to treat a prisoner in a manner "which is in accordance with procedures but seems inhumane", and had to deal "with the consequence of that prisoner self-harming straight after you have completed the task". <[www.theage.com.au/news/investigations/documents-reveal-womens-prison-rules-flouted/2008/02/17/1203190653103.html](http://www.theage.com.au/news/investigations/documents-reveal-womens-prison-rules-flouted/2008/02/17/1203190653103.html)>.

210 Adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993 and editorially revised at the 170th Council Session, Divonne-les-Bains, France, May 2005. (<<http://www.wma.net/e/policy/b5.htm>>)

211 Bangkok Rules, Commentary to Rule 19

212 Adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993 and editorially revised at the 170th Council Session, Divonne-les-Bains, France, May 2005, <[www.wma.net/e/policy/b5.htm](http://www.wma.net/e/policy/b5.htm)>.

assaults on a person's privacy and dignity, and they also carry some risk of physical and psychological injury. Therefore, the World Medical Association exhorts that, to the extent feasible without compromising public security,

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

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

- The Council of Europe has noted that: "Body searches are a matter for the administrative authorities and prison doctors should not become involved in such procedures. However, an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring her/his involvement."<sup>213</sup>
- The CPT has stated: "A prison doctor acts as a patient's personal doctor. He should not carry out body searches or examinations requested by an authority, except in an emergency when no other doctor can be called in."<sup>214</sup>

## PUTTING THEM INTO PRACTICE

- Prison authorities should develop very clear policies and establish a clear set of procedures with regard to the searching of women prisoners, based on the principles of necessity and proportionality. The procedures should incorporate the points outlined below and should be legally binding.
- There should be a total prohibition of all personal searches, including pat-down searches, strip searches and invasive body searches of women by male staff.

- Staff awareness about women's particular sensitivity and vulnerability during searches should be raised, and their training should include search procedures and methods that comply with the requirement to protect the privacy and dignity of the person being searched.

### *Strip searches and internal body searches*

- If there is suspicion that a woman prisoner is concealing an illegal item in her body, alternative methods of screening should be used to detect the item. This may include using modern scanning technology or making arrangements to keep the prisoners under close supervision until such time as any forbidden item is expelled from the body.
- Strip searches and invasive body searches of women should only be carried out in very narrowly prescribed circumstances, if at all, which should be defined by law.
- Strip searches and invasive body searches should always be authorised by the chief executive officer, in writing, and the reason for the search should be put on record.<sup>215</sup>
- A strip or cavity search should not be conducted if it is likely to cause injury to the prisoner.<sup>216</sup>
- Strict documentation is to be maintained of the probable cause, authorising official, witnesses, and findings of the search.<sup>217</sup>

### *Strip searches*

- Staff need to be trained/qualified to carry out strip searches in a way that respects the dignity of the person being searched.
- No prisoner – regardless of gender – should be humiliated or be required to strip completely during a search. Such searches can be carried out by exposing only parts of the body in turn, to protect, to the extent possible, the dignity of the individual being searched. Special sensitivity should be demonstrated in the case of women, however, because they are likely to feel the humiliation of undergoing intimate searches particularly.
- Such searches should be carried out in a manner that provides privacy from other prisoners and staff members who are not required for the search.

<sup>213</sup> Council of Europe, Committee of Ministers, Recommendation Concerning the Ethical and Organisational Aspects of Health Care in Prison, No. R (98) 7, 8 April 1998, para 72.

<sup>214</sup> CPT Standards, 2006 Edition, Extract from the 3rd General Report [CPT/Inf (93) 12], para 73.

<sup>215</sup> Bangkok Rules, Commentary to Rule 19

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

### **Invasive body searches**

- In line with the Statement on Body Searches of Prisoners by the World Medical Association, as well as other principles and standards, referred to above, if invasive body searches are unavoidable they should be carried out either by a medically trained female staff who is not part of the regular health care service of the prison or by female staff with sufficient medical knowledge and skills to safely perform the search.
- This non-medical act may be performed by a physician to protect the prisoner from the harm that might result from a search by a non-medically trained examiner, if a medically trained staff member is not available or if there is an objective medical reason for the search to be carried out by a qualified physician or if the woman herself requests that the search be carried out by a physician. In such cases the search may be carried out by a physician who is not part of the regular health care staff of the prison.
- Invasive body searches should not be undertaken by the physician who will also subsequently provide medical care to the prisoner, in order not to compromise the physician's obligation to provide medical care to the prisoner by a requirement to participate in the prison's security system.

- The physician should explain to the prisoner that the usual conditions of medical confidentiality do not apply during this imposed procedure and that the results of the search will be revealed to the authorities.
- As far as possible, invasive body searches should be restricted to digital intrusion and the use of instruments such as anoscope, otoscope and vaginal speculum,<sup>218</sup> and the person carrying out the search should have sufficient medical training to use such instruments without causing any harm to the prisoner.
- If an item is located, it may be removed if the removal is easily effected by means of one of the instruments noted above or digitally.

### **KEY ACTORS**

- ▶ **Policymakers**
- ▶ **Legislators/Parliamentarians**
- ▶ **Prison authorities**
- ▶ **Prison staff**
- ▶ **Community health care services (if requested to provide a physician to carry out an internal body search)**

### **Rule 21**

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

### **THE RATIONALE FOR THIS RULE**

- As previously explained, neither the SMR, nor other international standards have paid adequate attention to the treatment of imprisoned women's children, whether staying with their mothers in prison or outside. Thus, Rule 21 provides important new guidance with regard to the searching of children, whether visiting their mothers in prison or staying in prison with their mothers.
- Contact with children via visits is of utmost importance to women prisoners, but the experience can be traumatic for both sides, especially for young children, if it is not handled with sensitivity and kindness.
- This rule provides important guidance relating in particular to the searching procedures of children, based on the principles of taking into account the best interests of the children. Such procedures

should not cause distress or trauma, which can lead to long-term damage in the case of children. Searching procedures should not discourage further visits.

### **PUTTING IT INTO PRACTICE**

- Prison authorities should establish procedures for the searching of visiting children and children living with their mothers in prison, which should clearly define in which circumstances children may be searched, by whom and in what way.
- Children staying with their mothers in prisons, should be searched only when justifiably necessary and with sensitivity.
- A pat-down search can be used to search visiting children. Reasons for the search should be explained to the child, who should be searched in full view of his/her mother.

218 Ibid.

- If allowed at all, strip searches should only be carried out on children in exceptional circumstances. There should be a clear written policy explaining the legal grounds and specific procedures for conducting a strip search of children – whether living with their mother in prison or visiting their mothers.
- Such searches should only be carried out in circumstances which do not violate the human rights and dignity of the child. That means that the search should be carried out in private, that the child should not be completely naked at any time and the child should have his/her guardian or mother with her/him.
- Children should never be subjected to invasive body searches.
- Clear channels of complaints should be established for visitors, including children, to apply to an independent body, if they feel that their human dignity and rights have been violated during searching procedures. Independent complaints mechanisms should be available to all prisoners as well, as provided in SMR, Rule, 36.
- Staff awareness on searching children should be raised and staff should be trained to carry out searches, professionally and with sensitivity, ensuring that the dignity and privacy of the children are protected.

## KEY ACTORS

- ▶ Prison authorities
- ▶ Prison staff responsible for prisoner and visitor searches

### (b) Discipline and punishment

*Supplements rules 27-32 of the Standard Minimum Rules for the Treatment of Prisoners*

#### Rule 22

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

### THE RATIONALE FOR THIS RULE

- The SMR Rule 32(1) provides that punishment by close confinement should never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it. Today, the involvement of doctors in certifying that prisoners are fit for a particular type of punishment is no longer compatible with the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>219</sup> Principle 4(b), which states:
 

It is a contravention of medical ethics for health personnel, particularly physicians to certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not

in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.
- A doctor who certifies that a prisoner is fit to stand solitary confinement violates this principle. But this principle should not exclude doctors attending to the medical needs of prisoners under solitary confinement or similar punishment.<sup>220</sup>
- There is no universally agreed definition of solitary confinement. The Istanbul Statement on the Use and Effects of Solitary Confinement defines solitary confinement as the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day.<sup>221</sup> The Special Rapporteur on Torture has used a similar definition, as “the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day.”<sup>222</sup> He has expressed particular concern at

219 UN General Assembly, 111th plenary meeting, *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 37/194, 18 December 1982, A/RES/37/194.

220 UNODC, *Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners*, prepared for the Inter-governmental Expert Group Meeting held on 31 January–2 February 2012 in Vienna, available at <[www.unodc.org/documents/justice-and-prison-reform/AGMs/Notes\\_and\\_comments-1250048-DMU\\_version.pdf](http://www.unodc.org/documents/justice-and-prison-reform/AGMs/Notes_and_comments-1250048-DMU_version.pdf)>.

221 Istanbul Statement on the Use and Effects of Solitary Confinement, Adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul, annexed to General Assembly, 63rd session, *Interim Report Special Rapporteur of the Human Rights Council Report on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, 28 July 2008, A/63/175.

222 General Assembly, 66th Session, *Interim Report Special Rapporteur of the Human Rights Council Report on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, 5 August 2011, A/66/268, para 26.

prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days.<sup>223</sup>

- Since the adoption of the SMR there has been an increasing application of solitary confinement, not only as punishment, but in a number of other circumstances and for prolonged periods.
- It has been convincingly documented on numerous occasions, as noted in the Istanbul Statement on the Use and Effects of Solitary Confinement, that solitary confinement, applied for whatever reason, can have extremely harmful psychological, and sometimes physiological, ill effects.<sup>224</sup> The Istanbul Statement recommends that “The use of solitary confinement in prisons should therefore be kept to a minimum”,<sup>225</sup> and that effort should rather be made to raise the level of meaningful social contacts for prisoners. The Istanbul Statement also stresses that the use of solitary confinement should be absolutely prohibited for mentally ill prisoners.<sup>226</sup> As outlined above, women are at particular risk of having existing mental health care needs on admission to prison or developing mental health problems in prison, which would mean that they constitute a high risk group in terms of susceptibility to the harmful psychological effects of solitary confinement.
- Recognising the potentially harmful impact of solitary confinement on all prisoners, the Basic Principles for the Treatment of Prisoners provide that:
  7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
- The Committee on the Rights of the Child has recommended that solitary confinement should not be used against children.<sup>227</sup>
- The Committee against Torture has recognised the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventive measure

during pre-trial detention, as well as a disciplinary measure.<sup>228</sup> The *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*,<sup>229</sup> Principle XXII, paragraph 3 (Measures of solitary confinement) prohibit the use of solitary confinement in punishment cells, except for exceptional circumstances, and strictly prohibits the imposition of solitary confinement on pregnant women; mothers who are living with their children in the place of deprivation of liberty; and children deprived of liberty.

- In 2011 the Special Rapporteur on Torture noted that “where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or punishment and even torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged”.<sup>230</sup>
- A measure which can have such a harmful impact on the wellbeing of all prisoners raises particular concerns if it is applied in circumstances where not only the prisoner concerned, but her child will also be affected and indeed penalised. In addition solitary confinement can have a particularly harmful impact on the mental wellbeing of the women themselves, due to women’s strong need for close contact with their children, as well as the health of pregnant women and women who have recently given birth, who need to receive appropriate pre- and post-natal care in suitable surroundings.

## PUTTING IT INTO PRACTICE

- Prison regulations/rules should be reviewed and, where necessary, revised to ensure that they clearly prohibit the use of close confinement/solitary confinement as a punishment in the case of pregnant women, women with infants and breastfeeding mothers in prison. Obviously, if

223 Ibid.

224 Istanbul Statement, op. cit. p23.

225 Ibid., p24.

226 Ibid., p25.

227 General Assembly, 63rd session, *Interim Report Special Rapporteur of the Human Rights Council Report on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, 28 July 2008, A/63/175, para 80; Committee on the Rights of the Child, Concluding observations on the third periodic report of Denmark, 4 February 2001, CRC/C/DNK/CO/3, para 59(a).

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

229 Inter-American Commission on Human Rights (IACHR), *Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, 13 March 2008, No. 1/08.

230 General Assembly, 66th Session, *Interim Report Special Rapporteur of the Human Rights Council Report on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, 5 August 2011, A/66/268, p2.

solitary confinement is prohibited as punishment, it is all the more unacceptable for it to be used when no disciplinary offence has been committed. Thus, this revision would in effect mean the total abolition of the use of solitary confinement in the case of pregnant women, women with infants and breastfeeding mothers.

- Prison staff should be trained to implement the rule and to respond in a gender sensitive and

constructive manner to rule breaking by women prisoners.

## KEY ACTORS

- ▶ Policymakers
- ▶ Legislators/Parliamentarians
- ▶ Prison authorities
- ▶ Prison staff

### Rule 23

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

## THE RATIONALE FOR THIS RULE

- Prohibiting contact between prisoners and their families as a disciplinary measure can harm prisoners' mental wellbeing significantly, without producing any benefits in disciplinary terms. Indeed, those prisoners who break prison rules will usually benefit from more family contact, rather than less. The European Prison Rules prohibit the total prohibition of family contact as a disciplinary sanction for all prisoners.<sup>231</sup>
- As explained earlier, women have a very strong need for regular contact with their families, especially if they have children outside prison. Total prohibition of contact between women prisoners and their families would constitute an extreme form of punishment on women, while also punishing their families, including their children. Such a prohibition would clearly not be in the best interests of the children involved, violating provisions of the CRC.
- There may be justification for such a prohibition only in exceptional circumstances, for example, when the child has particular protection needs due to past abuse by the mother.

## PUTTING IT INTO PRACTICE

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

## KEY ACTORS

- ▶ Policymakers
- ▶ Legislators/Parliamentarians
- ▶ Prison authorities
- ▶ Prison staff

### (c) Instruments of restraint

*Supplements rules 33-34 of the Standard Minimum Rules for the Treatment of Prisoners*

### Rule 24

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

## THE RATIONALE FOR THIS RULE

- Rules 33 and 34 of the SMR place strict restrictions on the use of body restraints on prisoners. Firstly restraints may never be used as punishment, secondly they may be used in cases

where there is genuine justification to believe that the prisoner may attempt escape during transfers and thirdly, following instruction from a medical officer, due to the imminent danger of harm or self-harm by the prisoner concerned.<sup>232</sup>

<sup>231</sup> Rule 60.4.

<sup>232</sup> Bangkok Rules, Commentary to Rule 24

- Regrettably, despite the fact that a risk that a woman may escape during labour, during birth and immediately after birth, cannot be reasonably justified, violating SMR, Rule 33, and despite pronouncements by medical specialists against the use of shackling during labour and childbirth,<sup>233</sup> the practice continues in some jurisdictions.<sup>234</sup>
- This rule, therefore, is extremely important in supplementing the SMR, making it very clear that using any kind of body restraint during labour, during birth and immediately after birth is not acceptable and is now explicitly prohibited by international standards.

## PUTTING IT INTO PRACTICE

### Legislative measures

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

### Practical measures

- Prison administrations should establish clear procedures with regard to the use of

body restraints, restricting their use to those circumstances outlined in SMR, Rule 33 and with clear rules that ensure that the use of restraints are applied strictly no longer than the time necessary, as required by SMR Rule 34.

- The procedures should clearly prohibit the use of all kinds of restraints on women during labour, child-birth and immediately after child-birth, as required by Rule 24 of the Bangkok Rules. Other measures may be taken to prevent escapes based on individual risk assessments, such as the close supervision of such women by staff of the same gender.
- Prison staff should be trained to implement these procedures.

## KEY ACTORS

- ▶ Policymakers
- ▶ Legislators/Parliamentarians
- ▶ Prison authorities
- ▶ Prison staff

## (d) Information to and complaints by prisoners; inspections

*Supplements rules 35 and 36 and, with regard to inspection, rule 55 of the Standard Minimum Rules for the Treatment of Prisoners*

### Rule 25

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

## THE RATIONALE FOR THIS RULE

- SMR, Rule 35 obliges prison authorities to educate and inform prisoners about their rights

as well as the applicable rules and regulations in prison, including those that relate to complaints procedures.

<sup>233</sup> See the reference made in the Commentary to Rule 24. In addition, Amnesty International has reported the concerns expressed by another physician, as follows: "Women in labor need to be mobile so that they can assume various positions as needed and so they can quickly be moved to an operating room. Having the woman in shackles compromises the ability to manipulate her legs into the proper position for necessary treatment. The mother and baby's health could be compromised if there were complications during delivery, such as hemorrhage or decrease in fetal heart tones. If there were a need for a C-section (caesarean delivery), the mother needs to be moved to an operating room immediately, and a delay of even five minutes could result in permanent brain damage for the baby. The use of restraints creates a hazardous situation for the mother and the baby, compromises the mother's ability postpartum to care for her baby and keeps her from being able to breast feed. (The concerns were expressed by Dr Garcia, who is an obstetrician and gynecologist at Northwestern University's Prentice Women's Hospital; her statement was provided to Amnesty International by Chicago Legal Aid to Incarcerated Mothers, December 1998, and was printed in "Not part of my sentence": *Violations of the Human Rights of Women in Custody*, AI Index: AMR 51/01/99, Amnesty International, March 1999.)

<sup>234</sup> For example, in the United States since 2000 14 states have banned shackling women prisoners while they are in labour, but efforts to halt the practice elsewhere, are opposed by jail administrators, <[www.thecrimereport.org/archive/2011-08-chained-and-pregnant](http://www.thecrimereport.org/archive/2011-08-chained-and-pregnant)> and <<http://ipsnews.net/news.asp?idnews=106119>>; see also "Va. House subcommittee rejects bill to restrict use of restraints on pregnant prison inmates", published 9 February 2012, <[http://article.wn.com/view/2012/02/09/Va\\_House\\_subcommittee\\_rejects\\_bill\\_to\\_restrict\\_use\\_of\\_restra\\_w/related\\_news](http://article.wn.com/view/2012/02/09/Va_House_subcommittee_rejects_bill_to_restrict_use_of_restra_w/related_news)>

- SMR, Rule 36 provides that prisoners should be able to complain about their treatment to the prison director, to prison inspectors, privately, as well as to the central prison authorities, independent judicial authorities, or other appropriate authorities, without censorship. Rule 36(4), states: “Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.” The Bangkok Rules, Rule 25(1) and (2) explain States’ responsibilities, specifically in the case of women prisoners who complain about sexual abuse – what the response should be and what support they should provide to the women. As noted in the commentary to this rule, the Rule is a reflection of States’ obligation under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 13) in this case, with reference to women prisoners.<sup>235</sup>
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 13 provides:
 

“Each State Party should ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps should be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”
- Sexual abuse can include rape, as well as coerced sexual activity by staff in return for granting women access to phone calls, visits or basic supplies such as food or soap.<sup>236</sup> The psychological consequences of abuse can be exacerbated by the prisoner’s inability to escape her perpetrators and the fear of retaliation if she reports the abuse.<sup>237</sup>
- Rule 25(3) supplements SMR, Rule 55 which provides for “regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority...”
- Implementation of international, as well as national rules about treatment of prisoners can be promoted and improved by regular, competent and intensive inspections.
- Inspections which look closely into prison regimes or examine them officially to ensure that policies and practice are in conformity with laws and regulations are an important safeguard for prisoners and staff alike.<sup>238</sup>
- By obliging States to ensure that the inspection bodies include women members, the rule ensures that women prisoners’ treatment is better assessed and their needs better understood. In addition, women prisoners are likely to feel more comfortable in expressing their concerns or discussing their needs with female members of the inspection bodies, particularly with regard to issues that are gender-specific.

## PUTTING IT INTO PRACTICE

- On their admission to prison, all women should be provided with written information, in a language they understand, on their rights to complain and procedures to make complaints to the prison director, to central prison authorities, to prison inspection bodies, judicial authorities or other competent authorities. The rules should also be explained orally to all women, including especially to those who are illiterate.
- In order to ensure that prisoners understand all their rights and obligations, including their right to complain about their treatment, the relevant provisions of the prison rules and regulations may be printed in pamphlets, which can be given to the prisoners immediately on admission to prison. Suitable illustrations of the rules and regulations can also be prepared and posted at strategic locations around the prison compound.
- In countries with several languages, it will be necessary to also make these posters and pamphlets in the local languages. In countries or prisons with significant populations of foreign prisoners, such pamphlets, posters and information materials should also take account of the language needs of the foreign prisoners.
- Complaints submitted to the central prison administration, judicial and other independent bodies should not be subject to censorship. There should be in place mechanisms and safeguards to ensure the confidentiality of such complaints.
- Prisoners should never be intimidated to prevent them from filing any complaints they may have about the prison system.

<sup>235</sup> Bangkok Rules, Commentary to Rule 25.

<sup>236</sup> See for example, UN Human Rights Council, *Report of the Special Rapporteur on violence against Women, its causes and consequences, Ms. Rashida Manjoo, Addendum–Mission to the United States of America*, 6 June 2011, A/HRC/17/26/Add.5, para34.

<sup>237</sup> Ibid.

<sup>238</sup> Penal Reform International, *Making Standards Work: an international handbook on good prison practice*, 2001, p167, para 1.



- Prison administrations should develop clear policies and procedures with regard to the correct response to complaints of abuse by all prisoners, including sexual abuse by women prisoners and staff should be trained in implementing the policies.
  - If a woman prisoner complains of abuse, her complaint should never be regarded as frivolous or groundless. Alleged sexual abuse is a very serious complaint, which may amount to ill-treatment or torture, depending on the case, and requires an independent investigation of the complaint in all cases. Independent investigation means that it should be carried out by judicial or other competent authorities (eg. parliamentary body) which is independent of the prison administration and the Ministry responsible for prisons.
  - Women prisoners who report abuse should be provided immediate protection. Such protection measures may include a leave of absence of the alleged perpetrator, if a prison officer, while the investigation is taking place. It is not advisable to transfer the woman to another prison, as this would almost certainly mean that she would be taken further away from her home, given the small number of women's prisons in most countries. Segregation is also not advisable, unless specifically requested, as this will be perceived and experienced as a punishment. If the woman complains of intimidation to withdraw her complaint or any form of retaliation, her complaints should be taken seriously and immediately addressed.
  - In order to protect such women against any intimidation or retaliation, there should be clear policies and mechanisms in place to employ disciplinary measures against prison staff that try to or do retaliate and it should be made very clear to all prison staff that such conduct will not be tolerated.
  - Women should be offered and given access to counselling during this time, by independent, qualified health care professionals, such as psychologists with experience of dealing with cases of gender-based violence.
  - Women prisoners who have been subjected to sexual abuse and especially those who have become pregnant as a result, should be given immediate access to qualified medical professionals so that they can discuss their pregnancy and options available to them. Such medical support can best be provided by community health services, specialising in sexual and reproductive health care. **See Rule 6(e)** for further guidance on conducting medical examinations of women who have been raped or been subjected to other forms of abuse, including the women's right to confidentiality.
  - Where appropriate, women who have been raped should be offered post-exposure prophylaxis (PEP), if also available in the community. (See also **Rule 14** on the prevention and treatment of HIV and AIDS)
  - If a woman who has been abused wishes to take legal action, States should ensure that they have access to legal aid. **See Rule 6(e)** for further guidance.
  - States should ensure that all official bodies responsible for the inspection of places of detention where women are held include women members. Indeed, effort should be made to include more women than men on inspection bodies which are responsible exclusively to examine places of detention where only women are being imprisoned. Where necessary legislative provisions on prison inspections should be reviewed and revised to include this requirement.
  - Independent bodies which carry out the monitoring of places of detention should also ensure that their membership includes a sufficient number of women. For example, in countries where National Preventive Mechanisms (NPMs) have been established, following the ratification of Optional Protocol of the Convention against Torture (OPCAT), there is a need to ensure that NPMs include women members.
  - Women members of all inspection and monitoring bodies should have the suitable background and qualifications to fulfil their responsibilities effectively (eg. psychologists, social workers, doctors and legal specialists).
- For further recommendations please refer to Penal Reform International, *Women in Detention: a Guide to Gender-Sensitive Monitoring*, 2013, available at [www.penalreform.org/resource/women-detention-guide-gendersensitive-monitoring/](http://www.penalreform.org/resource/women-detention-guide-gendersensitive-monitoring/)

## KEY ACTORS

- ▶ **Policymakers**
- ▶ **Legislators/Parliamentarians**
- ▶ **Prison authorities**
- ▶ **Prison staff**
- ▶ **Judicial authorities**
- ▶ **Prison health services**
- ▶ **Community health services**
- ▶ **Prison monitoring bodies, including NPMs, where they exist**

# Contact with the outside world (Rules 26–28)

# 6



Contact with the outside world is covered in three rules of the SMR, one of which is relevant specifically to foreign nationals (Rule 38). Rules 37 and 39 provide that prisoners should be “allowed to communicate with their family and reputable friends ... at regular intervals, both by correspondence and by receiving visits” and that they should be “kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorised or controlled by the administration.” The Bangkok Rules on contact with the outside world recognise women’s especially strong need to keep in contact with their families, particularly where children are involved, and the extremely harmful impact of isolation from families and communities on women prisoners. They address these factors and requirements, while taking into account the reality that most women are held far away from their homes

due to the small number of women’s prisons, and the challenges faced in maintaining contact with families and other loved ones. The Bangkok Rules also take account of the needs of children to keep in contact with their mothers, which is a topic that is not addressed in the SMR.

The rules also include the requirement for women’s access to legal counsel and the assistance that should be provided by prison authorities in enabling such contact, as necessary, which is an important aspect of the Bangkok Rules, expanding on the provision of access to legal representatives in SMR, where it is included only in relation to prisoners who are under trial (SMR, Rule 93). The Bangkok Rules are consistent with the Body of Principles and Basic Principles on the Role of Lawyers, adopted many years after the SMR,<sup>239</sup> both of which require all categories of prisoners to have access to legal counsel, as further discussed below.

## Contact with the outside world

*Supplements rules 37-39 of the Standard Minimum Rules for the Treatment of Prisoners*

### Rule 26

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

## THE RATIONALE FOR THIS RULE

### Family contact

- The legal basis for the protection of the family unit can be found in the ICCPR, Article 23, which provides:
  1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- This requirement is reflected in the SMR, Rule 37, which states that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits”.

- A large majority of women prisoners have a child or children outside prison and a great emotional need for regular contact with their children. The children also have the right and need for contact with their mothers, except for exceptional circumstances, for example, if the mother has been abusive. In this context, the Human Rights Council Resolution on the Rights of the Child, adopted in March 2012, calls upon States:<sup>240</sup>

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

<sup>239</sup> *Basic Principles on the Role of Lawyers* adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: resolution / adopted by the General Assembly*, 9 December 1988, A/RES/43/173.

<sup>240</sup> Human Rights Council, 19th session, Resolution *Rights of the child*, 23 March 2012, A/HRC/RES/19/37, para 69(c).

- Visiting arrangements is one of the areas in which women prisoners are usually discriminated against, due to the smaller number of women's prisons, resulting in women often being held further away from their homes than men. The situation can be particularly problematic in large countries, where huge distances need to be covered to reach the small number of women's prisons.
- This discrimination is compounded by the fact that women have a very strong need for regular contact with their families and especially their children. When such contact cannot be maintained women's mental wellbeing can be damaged and their prospects for social reintegration undermined.
- To eliminate this discrimination, to the extent possible, the Bangkok Rules, Rule 4, obliges States to take appropriate measures to ensure that women are not located far away from their homes.
- The rule also draws attention to the need for prison authorities to take measures to reduce the impact of separation from families and other loved ones, by introducing flexibility in the application of prison regulations and rules which apply to visits and other means of communication, to compensate for the disadvantage faced by most women.

### Access to legal counsel

- The ICCPR, Articles 9(3) and 14 set out the key safeguards and guarantees applicable during pre-trial, trial and appellate stages. Indigent detainees and prisoners are entitled to legal counsel provided by state authorities, free-of-charge, when the interest of justice so require.
- The SMR refer to the right to legal counsel only in the context of pre-trial detainees (Rule 93). However, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and Basic Principles on the Role of Lawyers, both require that all prisoners, whether pre-trial or sentenced, are given access to legal counsel:

Basic Principles on the Role of Lawyers:

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

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

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
- The Bangkok Rules, Rule 26, therefore fills an important gap in the SMR, by not limiting prisoners' access to legal counsel only to the pre-trial period, as well as adding additional responsibilities on prison authorities to provide women with special assistance. As the commentary to this rule notes,<sup>241</sup> women need particular assistance in accessing legal counsel due to their lower educational, social and economic status, and vulnerability to intimidation and coercion, in most societies. Recognising the specific circumstances and needs of women, the Beijing Declaration and Platform of Action (Article 63(a)) calls on governments to "ensure access to free or low cost legal services, including legal literacy, especially designed to reach women living in poverty".<sup>242</sup>
  - In line with the Bangkok Declaration and Platform for Action, prison authorities have a crucial role to play in reducing female prisoners' vulnerability in the criminal justice system by providing them with information about their legal rights, by enabling their access to lawyers or paralegal services, by providing facilities for meetings with lawyers, and, if required, interpretation services. NGOs and paralegal aid services also have a key role in assisting indigent women in the criminal justice system, especially in countries and communities where legal aid may be limited or unavailable.
  - Although the requirement to access legal counsel is certainly more acute in pre-trial detention, including during any appeals, women who have

<sup>241</sup> Bangkok Rules, Commentary to Rule 26

<sup>242</sup> Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, A/CONF.177/20(1995) and A/CONF.177/20/Add.1 (1995).

already been convicted may also need legal assistance, to help in applying for commutation or pardon, if they are under sentence of death, or in gaining early conditional release, depending on their circumstances. In addition, prisoners' communication with lawyers is not necessarily confined exclusively to the case which forms the basis for their imprisonment. Prisoners may need to contact lawyers in relation to other matters, some of which may be linked to their imprisonment – such as issues relating to their spouses (eg. divorce) and their children, or housing, employment or other issues.

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

## PUTTING IT INTO PRACTICE

### Family contact

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

### Legislative measures

- Prison regulations or rules should be reviewed and revised either to increase the number of visits/letters/telephone calls women prisoners are allowed or to ensure that prison authorities have the authority to increase the number of visits/letters/telephone calls at their own discretion.
- Prison regulations or rules should be reviewed and revised to ensure that prison authorities have the authority to grant prison leave to the greatest extent possible on medical, educational, occupational and family grounds; and that they can do this as soon as and as frequently as possible, following imprisonment, taking into account risk factors and family circumstances related to the prisoner concerned.<sup>243</sup>

### Practical measures

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

### Good practice: Weekend parole in Samoa

In a regional meeting on the Bangkok Rules in February 2013, it was reported that a weekend parole system was introduced in Samoa. Both male and female prisoners, who do not pose a security risk, can spend the weekend with their families. Since the majority of female prisoners are not regarded as a flight risk, they are reported to receive this opportunity quite frequently. In addition, on special days (e.g. Easter, Fathers' and Mothers' Days) prisoners on weekend parole can spend an extra day with their families.<sup>244</sup>

<sup>243</sup> As also recommended by the Council of Europe, Committee of Ministers, Recommendation on Prison Leave, 1982, No. R (82) 16, 1 and 2.

<sup>244</sup> UNODC Report, East-Asia Pacific Regional Meeting on the Implementation of the Bangkok Rules, Bangkok 19 to 21 February 2013, UNODC/JSDO/BKEGM/2013/1, 14 March 2013, para 61

### Access to legal counsel

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

- Prison authorities should also assist women to contact relevant NGOs and paralegal aid services to assist women in the criminal justice system, especially in countries and communities where legal aid may be limited or unavailable.

### KEY ACTORS

- ▶ Policymakers
- ▶ Legislators/Parliamentarians
- ▶ Prison authorities
- ▶ Prison staff responsible for managing/supervising visits and coordinating with NGOs and legal aid services
- ▶ Legal aid services and paralegal services
- ▶ NGOs

### Rule 27

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

### THE RATIONALE FOR THIS RULE

- Conjugal visits allow prisoners to be visited by one person, usually a spouse or a long term partner, for a period of up to three hours. The couple spend the visit in private in a small unit which contains, as a minimum, a bed and a shower with other sanitary facilities.<sup>245</sup> Less formal versions of such visits take place in some countries of Latin America.<sup>246</sup>
- In addition to the disadvantage faced by most women due to their accommodation far away from their homes, in some countries where conjugal visits are allowed, women encounter further discrimination, in that they are not allowed such visits on an equal basis as men.
- Conjugal visits are recognised as good practice, as they can help maintain the close emotional bonds between partners and spouses, allowing for a limited normalisation of relationships and the maintenance of family links, despite the limits placed on family life by the imprisonment of one partner.

### Practical measures

- Prison authorities should establish accommodation suitable for conjugal visits in women's prisons, with a bed, bedding, sanitary facilities, table and chairs, and a pleasant, non-institutional environment, where women can spend time with their spouses or partners in private.
- Prison authorities should ensure that the prison regime allows for women to enjoy their right to conjugal visits, in practice, on the same basis as for men.

#### Good practice: Conjugal visits for women prisoners in the Latin America region

Women have the right to conjugal visits in Argentina, Brazil, Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala (only married women), Honduras, Mexico, Panama, Paraguay (only married women), the Dominican Republic,<sup>247</sup> Uruguay and Venezuela.

See: Maria Noel Rodriguez, 'Women in Prison, An Approach from the Gender Perspective', in Carranza, E., (co-ordinator), *Crime, Criminal Justice and Prison in Latin America and the Caribbean*, 2010.

### PUTTING IT INTO PRACTICE

#### Legislative measures

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

### KEY ACTORS

- ▶ Policymakers
- ▶ Legislators/Parliamentarians
- ▶ Prison authorities

<sup>245</sup> Coyle, A., *A Human Rights Approach to Prison Management*, International Centre for Prison Studies, 2009, p102.

<sup>246</sup> Ibid.

<sup>247</sup> UNODC, Atabay, T., *The Prison System and Alternatives to Imprisonment in Selected Countries of the Organisation of Eastern Caribbean States, Barbados and the Dominican Republic*, 25 November 2010 (unpublished).

## Rule 28

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

### THE RATIONALE FOR THIS RULE

- SMR provide for regular contact between visitors and their families, via visits and other means, but do not specify the conditions of visits, including whether they should be open or closed (i.e. allowing contact between the prisoner and his/her family or not).
- International good prison management practices favour open visits in the case of all prisoners, with the exception of a small number of prisoners who have been identified as a security risk based on their individual risk assessments.<sup>248</sup> Open visits are especially important in the case of visiting children and their mothers, as emphasised by the Human Rights Council Resolution of March 2012, para 69(c), quoted above in relation to Rule 26.<sup>249</sup>
- In many countries around the world, the conditions of visits are extremely poor. For example, in some countries prisoners and visitors are separated by a wire mesh and have to shout at each other to be heard, due to the distance between them and because of other visitors trying to make themselves heard at the same time. In most systems prisoners can only see their visitors through a glass panel and talk to them via a telephone, without any contact, even where children are involved. These precautions are not necessarily based on individual security risk assessments.
- Such practices, which do not provide for any contact between the prisoners and their visitors, and where the conditions do not generate a positive visiting experience, undermine the purpose of visits, which should be to encourage and maintain contacts between families and prisoners. In the case of mothers and their children this is all the more important, since children may be traumatised by the whole visiting experience, if they cannot touch their mothers and be reassured of their mother's love and concern via close contact. If the environment where visits take place is a cold, institutional space with staff that do not treat children any differently than adults, this is also likely to have a negative impact on the children's experience of the visit.

- As the commentary to this rule notes,<sup>250</sup> a pleasant visiting experience will not only have a positive impact on the mental and emotional wellbeing of the mother and her children, but also encourage further contact, affecting the social reintegration prospects of female prisoners. The implementation of this rule also ensures that the rights of children are protected and promoted in line with CRC Article 9, para 3.

### PUTTING IT INTO PRACTICE

#### Legislative measures

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

#### Practical measures

- Staff should be specially trained for conducting visits in an atmosphere of human dignity.
- Visits involving children should take place in an environment that is not hostile in terms of the physical surroundings and staff attitudes. The visiting room should be furnished and decorated to create a warm environment. Play areas should be established for visiting children to make the visit less intimidating for the child, while enabling parents to have some privacy.
- Children may be tired and restless during visits, especially if they have travelled long distances and have to wait for extended periods before they can see their mothers. Staff should show understanding.

### KEY ACTORS

- ▶ Legislators/Parliamentarians
- ▶ Prison authorities
- ▶ Prison staff

<sup>248</sup> Coyle, A., *A Human Rights Approach to Prison Management*, International Centre for Prison Studies, 2009, p45 and CPT Standards (2006), p98

<sup>249</sup> Human Rights Council, 19th session, Resolution *Rights of the child*, 23 March 2012, A/HRC/RES/19/37

<sup>250</sup> Bangkok Rules, Commentary to Rule 28

# Prisoner rehabilitation (Rules 40–47)

7





Rules applicable to prisoners under sentence, which include all the rules which relate to prisoner rehabilitation, are contained in Part II of SMR, under the heading of ‘Rules applicable to Special Categories’. This part of the SMR begins with a list of guiding principles that are fundamental to the treatment of sentenced prisoners, set out in Rules 56 to 64. These rules underline that:

- prison systems shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation (SMR Rule 57)
- the purpose and justification of a sentence of imprisonment is ultimately to protect society against crime and that this can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is able to lead a law-abiding and self-supporting life (SMR Rule 58)
- the institution should utilise all the remedial, educational, and other forms of assistance and should seek to apply them according to the individual treatment needs of the prisoners (SMR Rule 59)
- the regime of the institution should seek to minimise any differences between prison life and life at liberty and that the treatment of prisoners should not emphasise their exclusion from the community, but their continuing part in it (Rules 60 and 61) and the need to individualise treatment and to apply a flexible system of classification (SMR Rule 63)

The general principles also emphasise the importance of post release support to prisoners by “governmental or private agencies capable of lending the released

prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.” (Rule 64)

The subsequent rules in that section provide the details of how these principles should be put into practice, in the way in which prisoners are treated, in their education and recreation, access to remunerated and meaningful work, in the maintenance of social relations and assistance with aftercare. It must be emphasised that, while all of these provisions apply particularly to sentenced prisoners, this does not mean that pre-trial prisoners should not be offered work and education and access to other regime activities. This is an important point, since today pre-trial detainees spend months and years in prison in countries worldwide and it would be totally counter-productive to deny them access to education, work and other prison programmes, if they wish to participate. Regrettably this is a practice that is widespread, which is made worse by the fact that pre-trial detainees are also often held in much worse conditions than sentenced prisoners, despite the requirement that they should be presumed innocent under international law until a final judgment and sentence is passed.

The part relating to prisoner rehabilitation in the Bangkok Rules follow the structure of the SMR, and are placed in Part II “Rules applicable to Special Categories”, Section A, “Prisoners under sentence”. The rules contained in this section supplement the SMR with their gender perspective, taking into account the specific social reintegration requirements of women prisoners, outlined in previous chapters. Once again, it must be emphasised that the regime activities that are accessible to sentenced women prisoners, should also be offered to pre-trial women prisoners.

## Prisoners under sentence

### 1. Classification and individualization

*Supplements rules 67–69 of the Standard Minimum Rules for the Treatment of Prisoners*

#### **Rule 40**

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

## Rule 41

**The gender sensitive risk assessment and classification of prisoners shall:**

- (a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women prisoners;**
- (b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process;**
- (c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;**
- (d) Ensure that those with mental health care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.**

## THE RATIONALE FOR THESE RULES

- SMR, Rule 67 underlines that the purpose of classification shall be to separate from others those prisoners who are likely to exercise a bad influence on others and divide up the prisoners into classes, in order to facilitate their treatment with a view to their social rehabilitation. Rule 68 provides that "So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners."
- Rule 69 of SMR provides that, "...as soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment should be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions..."
- Rule 63 of the SMR emphasises the need for a flexible system of classification, and underlines that the same level of security does not need to apply to all prisoners in one institution. Also in line with the principle that the security measures to which prisoners are subject should be the minimum necessary to achieve their secure custody, it states that "... open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners...."<sup>251</sup>
- However, as the commentary to these rules note, "women are often discriminated against in the application of this principle, since the

same classification instruments are used for women and men in the vast majority of prisons worldwide, despite women's different needs and circumstances. Information about a history of domestic violence, sexual abuse, and parental responsibility are areas in which screening is lacking for women. As a result classification and screening procedures do not provide essential information about the women, which may increase the probability of their placement in a higher security level than appropriate, while reducing possibilities of providing suitable prisoner programmes matching individual needs."<sup>252</sup>

- In addition, risk assessments often wrongly assess needs as risk factors, which can mean that mental health care needs may be included in factors which lead to the requirement of a higher security level, rather than the opposite.<sup>253</sup> This may have a more significant impact on the classification and subsequent treatment of women, in comparison to men, due to the higher level of mental health problems among women offenders.<sup>254</sup>

## PUTTING THEM INTO PRACTICE

- Prison administrators should develop and implement gender-sensitive risk assessment and classification methods addressing the gender-specific needs and circumstances of women prisoners.
- Such tools and methods should be developed by a team of qualified specialists, including social workers, psychologists and medical specialists, and be used to undertake the risk assessment

<sup>251</sup> Bangkok Rules, Commentary to Rules 40-41.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> Ibid.

of all women being admitted to prison. The tools should take account of women prisoners' typical backgrounds, the types of offences they usually commit, the high level of mental health care needs among women due to past victimisation, high levels of substance dependence, parental and other caring responsibilities.

- The tools and methods should ensure that all medical assessments are undertaken only by health care staff, who should comply with the principle of medical confidentiality (see **Rule 8**). Health care staff may, however, share limited information with the prison director and staff responsible for developing sentence plans, on a "need-to-know" basis, in order to ensure that the women's sentence plans match their needs,
- Prison authorities should allocate women to prisons or sections of prisons which match their risks and needs, based on the principle of accommodating all women in the least restrictive environment and lowest security level necessary, taking into account the generally low risk posed by women prisoners, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women prisoners.
- In developing the sentence plans of women prisoners, prison authorities should take into account the women's backgrounds, including any violence they may have experienced, existence of any mental health care needs or substance dependence, as well as parental and other caretaking responsibilities.

### Good practice: Classification in the Philippines

It was reported in a meeting on the Bangkok Rules in February 2013 that the classification of prisoners admitted to prison in the Philippines includes a five-day orientation period during which prisoners are interviewed by a psychologist, social worker, teacher, medical doctor and chaplain. Their reports inform the classification, by the sixth day, as low, medium or high security. A case coordinator is tasked with the development of individual treatment programmes for each prisoner, according to their skills and capabilities. Drug offenders are offered a separate treatment programme, including participation in a therapeutic community. However, no specific information was provided on gender-specific approaches in this classification procedure.<sup>255</sup>

- Prison authorities should house women with mental health care needs in accommodation which is at the lowest possible security level. The sentence plan of such women should include appropriate, individualised treatment, delivered by qualified mental health care specialists in close cooperation with community health care services.

### KEY ACTORS

- ▶ Policymakers
- ▶ Prison authorities
- ▶ Social workers
- ▶ Psychologists
- ▶ Medical doctors
- ▶ Prison staff responsible for assessment and classification
- ▶ Prison staff responsible for rehabilitation programmes

## 2. Prison regime

*[Supplements rules 65, 66 and 70-81 of the Standard Minimum Rules for the Treatment of Prisoners]*

### Rule 42

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

<sup>255</sup> UNODC Report, East-Asia Pacific Regional Meeting on the Implementation of the Bangkok Rules, Bangkok 19 to 21 February 2013, UNODC/JSDO/BKEGM/2013/1, 14 March 2013, paras.39 and 47

## THE RATIONALE FOR THIS RULE

- As the commentary to the rule explains,<sup>256</sup> this rule supplements the requirements expressed in the SMR, to develop individualised rehabilitation programmes for all prisoners. It explains that the prison regime in women's prisons should not only be comprehensive and balanced, but also respond to the gender-specific needs of women prisoners. Offering prisoners a comprehensive and balanced programme of activities is an essential component of a holistic prison management approach and the normalisation principle, which requires that life inside prison should resemble as far as possible the positive elements of life outside the prison. Ensuring that the regime responds to the gender-specific needs and circumstances of women prisoners is essential to promote their social reintegration, which is a requirement both of ICCPR<sup>257</sup> and SMR.<sup>258</sup> This does not in any way mean that women should only be offered activities which are deemed to be suitable for the female gender-based on stereotypical perceptions (eg. sewing and cooking).
- One of the most obvious gender-specific needs which should be taken into account is the specific needs of pregnant women, nursing mothers and women with small children. Unless there is sufficient flexibility in the prison regime, women who are breastfeeding, for example, may not be able to participate in all the activities which would benefit them, due to breastfeeding times. Similarly, unless there are childcare facilities in the prison to take care of children while their mothers participate in activities, then the mothers with children in prison may be disadvantaged.
- The rule underlines also the importance of offering pregnant women, breastfeeding mothers and women with small children with educational programmes to improve their knowledge about pregnancy and develop their parenting skills, taking into account that many women in prisons will not have had an opportunity to receive such education given the socially and economically disadvantaged backgrounds of a large majority.

- The rule also singles out another of the most important needs of many women, which is the psycho-social support requirements of those who have been victims of abuse and violence. The rule recognises the reality that a large majority of women in prison are victims of domestic violence and many are victims of sexual abuse,<sup>259</sup> and that their experience will negatively affect their prospects of social reintegration, unless appropriate support and counselling is provided.

## PUTTING IT INTO PRACTICE

- A balanced and comprehensive programme of activities which respond to the gender-specific needs of women prisoners, should include education programmes (at least literacy, primary and secondary school education) depending on individual needs, vocational training, meaningful and remunerated work, recreation and sport activities, as required by SMR, as well as programmes that are particularly relevant to women prisoners, such as programmes to develop parenting skills, education on gender-specific health care and pregnancy.
- Women who need psycho-social support or counselling due to victimisation and sexual abuse should be offered counselling by qualified mental health care professionals from the community health care services.
- Other psycho-social support and therapy programmes may be offered in cooperation with NGOs or agencies in the community, which may include art therapy, dance therapy or other types of group therapy programmes. Such programmes can help women with low self-esteem (which is a characteristic of those who have been subjected to abuse) to be empowered to express themselves, helping them to gain their self-confidence and heal deep wounds.

<sup>256</sup> Bangkok Rules, Commentary to Rule 42

<sup>257</sup> Article, 10(3)

<sup>258</sup> Rule 58

<sup>259</sup> For example, in the United States according to a report published in 1998, more than 43 per cent of women prisoners (but only 12 per cent of men) had suffered from physical or sexual abuse before their admission to prison. Another report published in 1999 states that 85 per cent of women prisoners in the United States had been physically or sexually abused at some time in their lives. In Canada, according to a report published in 1998, 82 per cent of the 102 women surveyed at the Prison for Women and 72 per cent of the 68 women surveyed inside provincial prisons reported being survivors of physical or sexual abuse. In the UK a report published in 2006 reports that 50 per cent of women in prison have experienced domestic violence and that 33 per cent have suffered from sexual assault. (See UNODC, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, 2006, pp8-9).

## Good practices:

### Yoga students to instructors in Thailand

In Thailand, yoga and Tai Chi practices were introduced to improve the health of women prisoners. Ten women prisoners from Ratchaburi Central Prison were trained as instructors, and hence enabled to continue to hold regular yoga classes. It was also arranged for them to travel to Koh Samui women's prison to extend yoga classes to this prison. The project helped to improve the mental wellbeing of the prisoners, but also increased the morale of the prison staff and built better relationships between prisoners themselves and between prisoners and staff.<sup>260</sup>

### Drama therapy in a woman's prison in Lebanon

In Lebanon, the initiative of an actress and drama therapist led to a six-months project in the Baabda women's prison, where about 70 women are held. Several times a week, the drama therapist spent an afternoon with interested women encouraging them to talk about their experiences. The project was due to culminate in February or March 2012, with a theatrical performance based around the women's own stories. According to interviews with the prisoners who had taken part in the project and the actress/therapist who led it, the project had empowered the women and for the first time given them an opportunity to express themselves.

See: 'Lebanon's women prisoners find freedom behind bars', Catriona Davies, CNN, 11 January 2012 <http://edition.cnn.com/2012/01/11/world/meast/lebanon-womens-prison/index.html>

- Prison authorities should ensure that the prison regime is flexible enough to allow for the full participation of pregnant women, breastfeeding mothers or women with children in all activities on an equal basis with others. This would mean that, for example, a woman who needs to breastfeed her baby or a mother who wants to attend to her sick child, will be allowed to do these during scheduled activities, without any negative consequences.
- Where possible, and where there are a sufficient number of pregnant women and breastfeeding mothers, separate programmes may be arranged for them, to take account of their specific needs. (See also Chapter 8.)
- Childcare/nursing facilities should be established in women's prisons, as required by SMR, Rule 23(2), so that children accompanying their mothers can be taken care of in these facilities while their mothers participate in activities and programmes. Such facilities may be established in cooperation with NGOs. Mothers should be allowed to spend the maximum possible time with their children in such facilities.

### Good practice: New strategy for female offenders in the UK

The Ministry of Justice of the UK developed new strategic objectives for female offenders published in March 2013, which included the following key priority, among others:

Tailoring the women's custodial estate and regimes so that they reform and rehabilitate offenders effectively, punish properly, protect the public fully, and meet gender-specific standards, and locate women in prisons as near to their families as possible. [...]

A review was announced in January 2013 to examine the existing capacity of prisons where women were held, distances from home, and the future composition of the prison estate so as to improve women's access to relevant opportunities and regimes for their rehabilitation needs. In announcing the review, the Ministry of Justice recognised that it was crucially important that there was appropriate accommodation that met the needs of female prisoners, and that the accommodation had the right design, location and facilities.

See good practice box under Rules 57, 58 and 60 for the other priorities outlined in the strategy paper.

See: Ministry of Justice, UK, Strategic Objectives for Female Offenders, March 2013 <http://www.justice.gov.uk/downloads/publications/policy/moj/strategic-objectives-female-offenders.pdf>

## KEY ACTORS

- ▶ Policymakers
- ▶ Prison authorities/staff
- ▶ Social workers
- ▶ Psychologists
- ▶ Medical doctors

<sup>260</sup> Napaporn Havanon et al. 'Using Participatory Action Research to put the Bangkok Rules into practice – The Thai Prison Case study', Research under the auspices of the Inspire Project under the Initiative of HRH Princess Bajrakitiyabha, 2012, p49; and additional information received during research undertaken by the Thailand Institute of Justice in 2013 [report unpublished at the time of writing]

## Social relations and aftercare

Supplements rules 79–81 of the Standard Minimum Rules for the Treatment of Prisoners

### Rule 43

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

### Rule 44

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

## THE RATIONALE FOR RULES 43 AND 44

- These rules complement Rule 26 on prisoners' contact with their families, emphasising in particular the key importance of visits in the social reintegration of women prisoners. See the rationale for Rule 26.
- Rule 44 is based on the recognition that a significant proportion of women in prison have experienced domestic violence, including sexual violence and rape, from male members of their families, partners or spouses, and being visited by the perpetrators of such violence is likely to cause distress and fear, rather than having a positive impact. By ensuring that women prisoners are properly consulted as to who may visit them, introduces an important consideration, which is not explicitly covered by the SMR.

## PUTTING THEM INTO PRACTICE

- Prison authorities may consider implementing some or all of the following measures to encourage and facilitate visits to women prisoners:
  - ▶ Where possible assisting with transportation, especially where visits to mothers are concerned
  - ▶ Establishing special days where all families can visit together and initiating special events, which may be organised in cooperation with NGOs, with expenses covered by the prison administration

- ▶ Extending the length of visits, when families confront difficulties in visiting due to the long distances involved, lack of resources and transport
- ▶ Providing overnight accommodation for families traveling a long way, free-of-charge
- ▶ Developing cooperation with social services and NGOs to assist with contact between women prisoners and their families
- ▶ Developing other means of enhancing communication with families, such as via taped, videoed or e-mail messages
- It must be emphasised that prison visits should always be free-of-charge in the case of all prisoners.
- Prison Regulations and Rules should include the requirement to consult with women prisoners when compiling lists of people who can visit them and this rule should be strictly applied in practice.

## KEY ACTORS

- ▶ **Policymakers**
- ▶ **Prison authorities/staff**
- ▶ **Prison staff responsible for rehabilitation/ social workers**

**Rule 45**

***Prison authorities shall utilise options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.***

**Rule 46**

***Prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organizations, shall design and implement comprehensive pre- and post-release reintegration programmes which take into account the gender-specific needs of women.***

**Rule 47**

***Additional support following release shall be provided to released women prisoners who need psychological, medical, legal and practical help to ensure their successful social reintegration, in cooperation with services in the community.***

**THE RATIONALE FOR THESE RULES**

- SMR, Rule 64, states that “The duty of society does not end with a prisoner’s release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.” This principle is further emphasised in Rules 80 and 81. Rule 80 provides that: “From the beginning of a prisoner’s sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.” Rule 81 outlines the way in which these agencies can provide assistance to former prisoners, in close collaboration with each other and prison authorities, starting from the beginning of a prisoner’s sentence.
- Pre-release preparation and post-release support policies and programmes are usually developed to respond to the needs of men and rarely address the gender-specific needs of women offenders. Bangkok Rules, Rule 46 fills a gap by underlining the need for relevant agencies and prison authorities to take into account the gender-specific needs of women prisoners, in designing appropriate pre- and post-release programmes, taking into account the different and additional support requirements of women during their resettlement. As the commentary to Rules 45-47 notes,<sup>261</sup> although many problems women face during re-entry are similar to those of men, the intensity and multiplicity of their post-release needs can be very different. Women are likely to suffer particular discrimination after release from prison, due to social stereotypes. They might be rejected by their families and in some countries they may lose their parental rights. If they have left a violent relationship, women will have to establish a new life, which is likely to entail economic, social and legal difficulties, in addition to the challenges of transition to life outside prison. Women are likely to have particular support requirements in terms of housing, reunification with their families and employment, and will need assistance.
- These rules also draw attention to the specific support that women are likely to require in terms of legal, medical and psycho-social assistance.
- Legal assistance may relate to divorce, trying to regain parental rights, to get housing and employment, among others.
- Women are more likely than men to have been treated for a mental health problem in prison and may be in need of continued psycho-social support and counselling after release.<sup>262</sup> The high rate of substance addiction among women offenders may also pose a significant obstacle to successful reintegration<sup>263</sup> and any treatment started in prison will need to be continued and the situation of released women monitored.
- Drug addicted former prisoners are also at a higher risk of death resulting from overdose, compared to the general population. For example, according to research carried out in the UK, in the week following release, prisoners were 40 times more likely to die than the general population. In

<sup>261</sup> Bangkok Rules, Commentary to Rules 45-47.

<sup>262</sup> Ibid.

<sup>263</sup> For example, according to a study conducted in Canada, female prisoners who did not participate in a drug treatment programme after their release were 10 times more likely to return to prison within one year than other prisoners. The researchers noted that drug-using offenders were twice as likely to have unstable housing in the community, were less able to manage stress, were hospitalized more often for mental health issues and had higher recidivism rates than do non-substance-abusing women. Many of them had experienced trauma in their lives, such as childhood, physical or sexual abuse, or domestic abuse, which may have contributed to their substance abuse and mental health issues. (‘Higher return to prison for women without drug abuse programs’, Toronto, 31 May 2011 <[www.eurekalert.org/pub\\_releases/2011-05/smh-hrt053111.php](http://www.eurekalert.org/pub_releases/2011-05/smh-hrt053111.php)>.

this period, immediately post-release, most of these deaths (over 90 per cent) were associated with drug related causes.<sup>264</sup> In Australia, where former prisoners have death rates ten times that of the general population, with over half of these deaths being heroin related, women appear to be especially susceptible. Female ex-prisoners were 27 times more likely to die an unnatural death than their counterparts in the general population.<sup>265</sup>

- All of these factors need to be taken into account to ensure that the resettlement of released women prisoners is successful and that they are able to rebuild their lives in a positive manner following release.

## PUTTING THEM INTO PRACTICE

- Prison services should consider establishing, if not already done so, a special unit with responsibility for the resettlement of prisoners. Such units should work in close cooperation with the families of prisoners, probation services, or relevant social welfare agencies and NGOs in the community to plan and prepare for women prisoners' release.
- In all cases the preparation for release should begin early, following the admission of a woman to prison, in order for women's sentence plans to take into account their post-release social reintegration requirements from the beginning of their sentence. In addition, pre-trial detainees or women who have appealed their conviction or sentence may be released unexpectedly by a court order, without prior knowledge of the prison administration, or they may be transferred to another prison. Early preparation will ensure that any health care treatment is not disrupted, in line with the continuity of care principle, and that other assistance necessary is provided on release.
- Prison services should develop a policy and guidelines in relation to women prisoners' preparation for release and post-release support, in cooperation with probation services, where they exist, as well as relevant social welfare agencies, NGOs working on prisoners' issues and especially women prisoners, other community groups which work on women's issues, as well as housing and health care services in the community. The policy and guidelines should set out the typical challenges faced in the particular jurisdiction, areas in which women need special support and assistance during their resettlement, what measures can be taken to provide such support and which agencies and organisations are responsible or willing to assist in this process.
- Ministries responsible for justice/prisons, social welfare and health care should establish a budget and make funds available for the successful social reintegration of women's prisoners, by providing the requisite financial support to the above mentioned agencies. Basic assistance, such as medical care and housing assistance should be offered free-of-charge, taking into account the special needs of certain groups, such as older women or women with disabilities.
- As suggested for Rule 26, prison regulations or rules should be reviewed and revised to ensure that prison authorities have the authority to grant prison leave to the greatest extent possible on medical, educational, occupational and family grounds; and that they can do this as soon as and as frequently as possible, following imprisonment, taking into account risk factors and family circumstances related to the prisoner concerned.
- Prison authorities should in practice grant home leave to women prisoners, as often as possible and as early as possible following their admission to prison.
- Prison authorities should transfer women to open prisons, to halfway houses and other community-based programmes and services for former prisoners, at the earliest possible opportunity, to enable the women to gradually re-establish relationships, to seek assistance with employment, housing and other practical or legal matters, in preparation for their eventual release.
- Women prisoners should be provided with clear and comprehensive information in a language they understand, covering the support which they can receive following release and the agencies responsible. Where necessary individual women should be referred to the relevant social welfare and housing agencies, directly by the prison service unit responsible for resettlement and the women provided with the full list of appointments which have been made for them. As a minimum, financial assistance for transport should be provided to enable women to travel to their place of social reintegration.
- Where necessary, the resettlement unit of the prison service should assist women prisoners in re-establishing contact with their families. Social welfare agencies or probation services should assist with rebuilding relationships, where necessary and desirable.

<sup>264</sup> Singleton, N., Pendry, E., Taylor, C., Farrel, M and Marsden, J. *Drug-related mortality among newly released prisoners*, Home Office, Research, Development and Statistics Directorate, London, 2003, p1.

<sup>265</sup> 'Post-Release support for women prisoners – processes of psychological and social transition', ARC Linkage Project LP0560398, citing Graham A, 'Post-Prison Mortality: Unnatural death among those Released from Victorian Prisons Between January 1990 and December 1990', 2003, *Australian and New Zealand Journal of Criminology*, vol. 36, no. 1, 94-108.



- Practical measures should be put in place to ensure that women who have been victims of violence in their relationships or community not to have to return to the same house or community on release.
- Prison health care services should ensure that the principle of continuity of care is applied to women who are released from prison, similar to the application of this principle to women who are admitted to prison (See the rationale for **Rule 6**). This means that any health care treatment received prior to admission is continued, as necessary, throughout imprisonment (subject to regular reviews) and any treatment which needs to continue following release is continued after a woman is released from prison. Prison health services, which should ideally be integrated with the public health services,<sup>266</sup> should, in any case, work closely with health care services in the community to ensure that women who are in need to continue any treatment, psycho-social, psychiatric or counselling support and care following release from prison, receive the continuum of care necessary.
- Prison health care services should refer such women (and their children, where necessary) to health care services in the community and provide them with all the necessary medical information, including the type and length of treatment the woman may have received during imprisonment, to the community health care services on a confidential basis and with the consent of the prisoner. The women should be informed about this procedure and be given a copy of their medical files.
- If a woman has substance dependencies, has received treatment for such dependencies and requires continued treatment and monitoring, she should be referred to relevant drug treatment services in the community. In all cases women who have had dependencies should be monitored in the community, to ensure that they receive the support they require, to prevent a relapse following release.
- Women who require legal assistance should be provided with the contact details of legal aid services and relevant NGOs in a language they understand.

## KEY ACTORS

- ▶ **Ministries responsible for criminal justice and prisons, social welfare and health care**
- ▶ **Prison services**
- ▶ **Prison unit/staff responsible for resettlement**
- ▶ **Prison health care services**
- ▶ **Probation services**
- ▶ **Social welfare services**
- ▶ **Health care services in the community**
- ▶ **Relevant NGOs**
- ▶ **Families of prisoners**
- ▶ **Other community groups working on women's issues**

266 WHO, Declaration on Prison Health as Part of Public Health, adopted in Moscow on 24 October 2003.

# Pregnant women, breastfeeding mothers and mothers with children in prison (Rules 48–52)

8



The SMR include the following provisions in relation to pregnant women, breastfeeding mothers and mothers with children in prison.

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

The Bangkok Rules supplement the SMR with much more detailed guidance on the type and nature of the support and services that should be provided to these categories of women and their children, taking into account not only their health care and nutritional needs, but also the emotional and developmental needs of the children. The Bangkok Rules also, for the first time, provide international standards on the decision-making process in relation to allowing children to stay with their mothers in prison and to the removal of children from prison, which are sensitive and complex processes, which many countries are struggling to deal with in their prison related policies.

*Supplements rule 23 of the Standard Minimum Rules for the Treatment of Prisoners*

#### **Rule 48**

- 1. Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.**
- 2. Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.**
- 3. The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.**

#### **THE RATIONALE FOR THIS RULE**

- In view of the growing number of women, including pregnant women, breastfeeding mothers and women with children staying with them in prisons in countries worldwide, since the adoption of SMR, this and other additional rules included in the Bangkok Rules, introduce further important guidance to ensure that the nutritional and other health care needs of pregnant women and breastfeeding mothers, as well as the developmental and health care needs of dependent children, are included in prison policies, programmes and budgets.
- The rule also draws attention to a particular group of women whose needs may go unnoticed, but who also require post-natal support and care. These are women who have given birth shortly before their admittance to prison, but whose children have remained outside. The significance

of Rule 6(c) is highlighted here, where women are encouraged to provide information about their reproductive health histories, including any recent pregnancies, so that prison policies and programmes can include the post-natal care requirements of these women.

- Another important issue the rules draw attention to is the requirement to allow women who want to breastfeed their children, to do so, as breastfeeding is important for the emotional and physical health of the child, and can be extremely beneficial for the mother in fulfilling her need to bond with her child, and impacting positively on her prospects of social reintegration. In any case, the principle of taking into account the best interest of the child, as required by CRC, should always be paramount, which would imply that if there is no medical reason for a woman not to breastfeed her children her child, she should be allowed to do so.

## PUTTING IT INTO PRACTICE

- Prison authorities and prison health care services should develop policies and programmes to respond to the health care needs of pregnant women, breastfeeding mothers and children living with their mothers in prison and ensure that adequate financial and human resources are allocated to implement them.
- Pregnant women, breastfeeding mothers and other women who have recently given birth should be examined regularly by a qualified health care practitioner, who should draw up a programme of health and diet for each woman. The nutritional and other health care requirements should be provided by the prison authorities. The women should be given individual information about their health care plans, and consulted as to their problems and needs.
- Written information should be provided to all such women about the key issues about pregnancy, giving birth and health care following the delivery of the baby, including what they can do to improve their and their children's health and how to prepare for delivery. Such information should be provided in multiple languages, including those languages

most frequently spoken among women prisoners, in the particular prison. It should be explained orally to illiterate women.

- Prison authorities should ensure that pregnant women and breastfeeding mothers are accommodated in cells/dormitories, with adequate hygiene and sanitary facilities, regular access to hot water, to ventilation, fresh air and heating. Such women should have access to regular exercise.
- Prison rules and practices should never discourage mothers from breastfeeding their babies, if there is no medical reason for doing so. The application of a flexible prison regime, provided in Rule 42(2), to allow for mothers to breastfeed their children is important also in this respect.

## KEY ACTORS

- ▶ Policymakers
- ▶ Prison authorities
- ▶ Prison staff
- ▶ Prison health care services
- ▶ Community health care services

### Rule 49

***Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.***

### Rule 50

***Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.***

### Rule 51

- 1. Children living with their mothers in prison shall be provided with ongoing health care services and their development shall be monitored by specialists, in collaboration with community health services.***
- 2. The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.***

### Rule 52

- 1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.***
- 2. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.***
- 3. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.***

## THE RATIONALE FOR THESE RULES

- Rules 49 to 52 address the sensitive and difficult topic of dependent children of imprisoned mothers. They address considerations relating to letting children to stay with their mothers in prison, how such children should be treated when in prison, how decisions should be taken to remove such children from prison when they come to a certain age and the need for continued contact between the mother and the child following removal. These rules, as well as others included in the Bangkok Rules, represent the consideration, for the first time, of the situation of dependent children living with their mothers in prison, by universally agreed UN standards.
- In the large majority of prison systems worldwide dependent children can stay with their mothers up to a certain age, ranging from six months to six years.<sup>267</sup> This, in effect, means that a large number of children worldwide spend some of their most formative years in prison, probably with life-long psychological consequences.
- There are no reliable statistics at the current time as to the number of children staying with their mothers in prison, which in itself highlights very clearly the lack of attention that has been paid to the situation and needs of this particularly vulnerable group.
- The uniqueness of the people referred to by these rules is that they are not prisoners. Paradoxically, perhaps partly due to this reason, prison policies, programmes, staff training and budgets rarely take into account adequately the needs of these children.
- Rule 52 draws attention to the fact that in most prison systems laws relating to the maximum age until which children can stay with their mothers in prison are applied rigidly, without due consideration having been given to the individual circumstances and needs of each child. Little attention is paid to the immense psychological and developmental implications of separating children from their mothers automatically, without a proper assessment of a variety of relevant factors, when a child reaches a certain age.

In this context, it should be noted that the Committee on the Rights of the Child, Day of General Discussion – Report and Recommendations (30 September 2011) also included the following recommendations:

Recommendation 33: “(...) the Committee recommends that decisions on whether the best interests of the child are better respected by having the child live with the incarcerated parent or outside the detention facility should always be made on an individual basis.”

Recommendation 37: “The Committee recommends that State parties give due consideration to circumstance in which the best interests of the child may be better fulfilled by having him/her live with the incarcerated parent. In doing so, due consideration to the overall conditions of the incarceration context and particular need for parent-child contact during early childhood should be taken into full account. Furthermore, it is recommended that such decisions be made with the option for judicial review and with full consideration for the best interests of the child... “

- The Human Rights Council Resolution on the Rights of the Child, adopted in March 2012 calls upon States:<sup>268</sup>

To ensure that the best interests of the child should be a primary consideration in relation to the question of whether and how long children of imprisoned mothers should stay with them in prison, and emphasizing the responsibility of the State to provide adequate care for women in prison and their children.
- Research has indicated that the children of imprisoned parents are at greater risk of future imprisonment themselves, as referred to earlier. Some statistics indicate that children who grow up in care are significantly more likely to end up in prisons.<sup>269</sup> Taking such risks into account, it is clear that decisions taken during these formative years of the children can have an immense impact on their future, including, probably, on the rate of criminality in the country concerned.
- The CRC obliges States parties to ensure that all children enjoy the rights outlined in that convention, ranging from registration at birth to protection from abuse, provision of health care and education, among many others. Article 3 in particular provides that:
  1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

<sup>267</sup> Robertson, O., *Children Imprisoned by Circumstance*, Quaker United Nations Office, April 2008, pp43-44.

<sup>268</sup> Human Rights Council, 19th session, Resolution *Rights of the child*, 23 March 2012, A/HRC/RES/19/37, para 69(b)

<sup>269</sup> For example in England and Wales 50 per cent of offenders under the age of 25 had grown up in care and it is estimated that if a child grows up in care at any point, he/she is 13 times more likely to end up in prison than anybody else, see ‘Breaking up women prisoners and children is damaging’, 2 December 2011, <[www.islingtontribune.com/news/2011/dec/%E2%80%98breaking-women-prisoners-and-children-damaging%E2%80%99](http://www.islingtontribune.com/news/2011/dec/%E2%80%98breaking-women-prisoners-and-children-damaging%E2%80%99)>.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Taking into account the dependency of imprisoned mothers on State provision for the care and upbringing of their children in prisons, it is very clear that States have a special responsibility to ensure that children imprisoned with their mothers enjoy all their rights under the CRC, with the only restrictions being those that are unavoidable due to their loss, to a certain extent, of freedom of movement and choice in their daily lives.

Article 20(1) of the CRC is pertinent in this context:

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

- The CRC, Day of General Discussion, Report and Recommendations of the Committee on the Rights of the Child (30 September 2011), also included the following recommendation:<sup>270</sup>
  34. The Committee recommends that State parties ensure the provision of sufficient social services at an adequate quality, including, health and educational facilities, to children living with incarcerated parent(s).
- The Guidelines for the Alternative Care of Children, adopted by the United Nations on 18 December 2009, provide detailed guidance to policymakers, legislators and practitioners on making alternative care arrangements for children who cannot remain with their mothers in prison or who are being considered for removal from prison, based on the principle of promoting and protecting the best interests of the children. The guidelines require, *inter alia*, that:
 

Decision-making on alternative care in the best interests of the child should take place through a judicial, administrative or other adequate and

recognised procedure, with legal safeguards, including, where appropriate, legal representation on behalf of children in any legal proceedings. It should be based on rigorous assessment, planning and review, through established structures and mechanisms, and should be carried out on a case-by-case basis, by suitably qualified professionals in a multidisciplinary team, wherever possible. It should involve full consultation at all stages with the child, according to his/her evolving capacities, and with his/her parents or legal guardians.....<sup>271</sup>

Assessment should be carried out expeditiously, thoroughly and carefully. It should take into account the child's immediate safety and well-being, as well as his/her longer-term care and development, and should cover the child's personal and developmental characteristics, ethnic, cultural, linguistic and religious background, family and social environment, medical history and any special needs.<sup>272</sup>

## PUTTING THEM INTO PRACTICE

### *Legislative provisions for allowing children to stay with their mothers in prison*

- In taking decision whether to allow children to stay with their mothers in prison the best interests of the child should be the primary consideration, in line with the CRC, Article 3. This principle would imply that legislation should allow flexibility in decision-making and competent authorities (eg. judicial authorities, child welfare services and prison authorities) should take decisions on an individual basis, depending on the circumstances of the child and family, and on the availability of alternative care options in the community.
- Relevant legislation may need to be reviewed and revised. For example, the legislation may provide an indicative age when a mother's and her child's circumstances should be considered, with a view to assessing whether the child's removal from the prison would be in the child's best interests. However, legislation should ensure that maximum flexibility is allowed in taking such decisions, which should always be based on and justified by individual assessments.
- Alternatively, assessments may be undertaken on the advice of the specialist staff/team responsible for the care and wellbeing of the child or at regular intervals (eg. yearly), which will also need to be explained in the country's domestic legislation.

<sup>270</sup> Committee on the Rights of the Child, Day of General Discussion – Report and Recommendations of the Day of General Discussion on ‘Children of Incarcerated Parents’, 30 September 2011, <[www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDRreport.pdf](http://www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDRreport.pdf)>.

<sup>271</sup> UN General Assembly Resolution, Guidelines for the Alternative Care of Children, 18 December 2009, A/RES/64/142, para 57.

<sup>272</sup> Ibid., para 58.

### **The treatment of children living with their mothers in prison**

- Staff training, prison policies and programmes should ensure that the children staying with their mothers in prison are never treated as prisoners.
- Effort should be made to eliminate as far as possible the differences between life in prison and outside prison for such children.
- Prison nurseries<sup>273</sup> for children should be furnished and decorated in a way which promotes mental wellbeing and reduces the negative impact of institutional starkness, for example, by using bright colours, pictures and fabrics, and by providing play areas and toys. Such efforts should also include maximum possible cooperation with NGOs working on children's, women's and prisoners' issues.
- Mothers should be allowed to spend the maximum possible time with their children. Ideally mothers should be able to spend the night with their children in the same accommodation area and spend as many hours as possible with their children during the day. They should also be encouraged and enabled to take part in prison activities, during which time children should be cared for by qualified staff and nurses.<sup>274</sup>

### **The health care of children living with their mothers in prison**

- Children living with their mothers in prison should be examined by a child health care specialist at the time of their admission (**see Rule 9**). A health and nutritional programme should be drawn up for each child at this time.
- Thereafter their health and development should be monitored by qualified child health care specialists, in close collaboration with community health care services. Services provided should include the children's regular vaccinations and any other preventive health care and treatment provided for children in the community.
- The psychological/emotional needs of such children should be closely monitored to assess any adverse effects of living in a closed institution and measures taken to reduce the negative psychological impact of institutionalisation, based on individual needs.

### **The removal of a child from prison**

- Where an indicative age is provided in the country's national law as a guideline for the consideration of a child's removal from prison, when the age of a child reaches that age a thorough assessment should be undertaken to decide whether his/her removal from prison would be in his/her best interests.
- Where no guideline is provided in legislation or other relevant rules, such assessments may be undertaken on the advice of the team of child specialists responsible for the care and wellbeing of the child in prison or at regular intervals specified in law (eg. yearly).
- Child welfare agencies should have primary responsibility for assessing the advantages and disadvantages of removing a child from prison. The assessment should be undertaken in coordination with the health care specialist who has been responsible for the health care of the child in prison, the prison social worker and psychologist, who has been involved in the child's developmental care.
- Issues to take into account should include: the conditions in prison; the quality of care children receive in prison and what quality of care they can expect to receive outside prison; and the remaining length of sentence of the mother. The child, if capable of forming his or her own views, the mother and other family members/relatives outside prison should be consulted during the decision-making process.<sup>275</sup>
- The decision to remove a child from prison should only be undertaken when satisfactory alternative care arrangements have been identified.<sup>276</sup>
- Information should be provided to the mother and the child about the alternative care arrangements and how the mother and child will be able to keep in contact with each other following their separation.<sup>277</sup>
- The actual separation should be undertaken with sensitivity and kindness.
- Once a child has been removed from prison and placed with other family members, relatives or an institution for children, prison authorities and those responsible for the child's continued upbringing should work in cooperation to ensure that the child

273 Established according to SMR, Rule 23(2).

274 In line with SMR Rule 23(2).

275 The child should participate in the decision-making process, as per CRC, Article 12, reiterated by the Committee on the Rights of the Child, Day of General Discussion—Report and recommendations (30 September 2011) Rec. 41

276 See UN General Assembly Resolution, Guidelines for the Alternative Care of Children for further guidance.

277 Ibid., para 64.

can visit his/her mother as frequently as possible and that the mother is allowed frequent home leave to visit her child, unless exceptional security considerations exist.<sup>278</sup>

See Quaker United Nations Office, *Children of (Alleged) Offenders: Revised Framework for Decision-Making*, by Holly Mason-White and Helen F. Kearney, for a discussion of this topic in detail and covering all the decision-making points in the criminal justice process [www.quno.org/geneva/pdf/humanrights/women-in-prison/201203draft\\_framework\\_col.pdf](http://www.quno.org/geneva/pdf/humanrights/women-in-prison/201203draft_framework_col.pdf) (English)

## KEY ACTORS

- ▶ **Policymakers**
- ▶ **Legislators/Parliamentarians**
- ▶ **Prison administration**
- ▶ **Prison health care services**
- ▶ **Prison social worker and psychologist**
- ▶ **Child welfare agencies**
- ▶ **Services in the community responsible for the care of children**
- ▶ **Community health care services**
- ▶ **The family/relatives of the mother and child**

### **Other rules which apply to children living with their mothers in prison or which have a direct impact on the children of women in the criminal justice system and prisons:**

**Rule 2** on admission

**Rule 3** on registry

**Rule 5** on personal hygiene

**Rule 9** on health screening on admission

**Rule 14** on HIV prevention, treatment, care and support

**Rule 21** on searches

**Rule 23** on disciplinary sanctions

**Rules 26 and 28** on visits

**Rule 33(3)** on the training of institutional personnel

**Rule 42(2) and (3)** on the prison regime

**Rule 53(3)** on foreign nationals

**Rules 57, 60, 61, 63 and 64** on sentencing and non-custodial measures

**Rules 68 and 70** on research and evaluation

For further guidance see resources under 'Children of Imprisoned Parents' in Appendix 2:

<sup>278</sup> See Committee on the Rights of the Child, Day of General Discussion—Report and recommendations (30 September 2011), Recommendation 39; UN GA Resolution A/RES/64/142, Guidelines for the Alternative Care of Children, para 82



**Special  
categories  
(Rules 36–39, 53–56)**

**9**



This chapter covers the special, additional needs of women under arrest or awaiting trial, juvenile female prisoners (girls), foreign national women and minority groups and indigenous peoples.

The rules on women under arrest and awaiting trial focus on the particular vulnerability of female pre-trial detainees and provide detailed guidance on their protection needs. The SMR do not cover this aspect of pre-trial detention, though since their adoption there is increasing data, documented by UN bodies and others, about the increased risk of all prisoners to ill-treatment and torture during the period prior to conviction and sentencing, including on the gender-based violence faced by women detainees.<sup>279</sup> Thus, the Bangkok Rules, fill an important gap with their specific provisions aiming to prevent gender-based violence in pre-trial detention, to provide the requisite support to victims and to bring perpetrators to justice.

The SMR include no specific provisions covering juveniles, except for Rule 8(d) which requires young prisoners to be kept separate from adults. There are separate instruments that cover the treatment of children in conflict with the law, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, among others. Though these instruments do not address the needs of girls in a detailed manner, the former

provides some guidance to ensure that girls are not discriminated against and that their special needs are taken into account in their treatment. (Beijing Rules, Rule 26.4). The Bangkok Rules add further, more detailed provisions.

The rights of foreign national prisoners are covered in a limited way in the SMR, which are supplemented by the provisions of the Bangkok Rules, focusing on the special needs of non-national women and their children. These rules should be read in conjunction with Rule 66, included in Chapter 1, which provides for the protection of victims of human trafficking, and which requires that victims of human trafficking are not imprisoned.

SMR do not explicitly refer to the rights and needs of minority groups and indigenous peoples, with the exception of the possible relevance of the rules on freedom of religion (Rules 41-42) and requirements for interpreting (Rules 30(3) and 51(2)), to some members of these groups. Thus, the Bangkok Rules supplement the SMR both in terms of their recognition of the distinctive needs of these categories of prisoners, as well as because of their understanding of the additional needs and challenges faced by female members of these groups. The guidance provided will be of immense value in a number of countries, where minority groups and indigenous peoples are vastly overrepresented in prisons.

## 9.1 Prisoners under arrest or awaiting trial

*Supplements rules 84-93 of the Standard Minimum Rules for the Treatment of Prisoners*

### Rule 56

***The particular risk of abuse that women face in pretrial detention shall be recognised by relevant authorities, which shall adopt appropriate measures in policies and practice to guarantee such women's safety at this time. (See also rule 58 below, with regard to alternatives to pretrial detention.)***

### THE RATIONALE FOR THIS RULE

- The SMR, Rules 84 to 93 cover the special provisions which apply to the treatment and rights of prisoners under arrest or awaiting trial, consistent with their un-convicted status and therefore the presumption of their innocence. These rules cover the special privileges this category of prisoners should enjoy, as well as

their right to inform immediately their families of their detention, to receive visits from them, their right to apply for free legal aid and to receive visits from their legal advisers, among others. The rules do not make specific reference to the particularly vulnerable status of pre-trial detainees and any measures to protect them from ill-treatment and abuse.

<sup>279</sup> See for example Human Rights Council, *Seventh Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3*, 15 January 2008.

- All prisoners are particularly vulnerable during the pre-trial detention period, due to their unconvicted status. During this time pressure may be exerted on them to confess to crimes which they may or may not have committed and it is during this time that the risk of being subjected to ill-treatment or torture is particularly high. Therefore, it is essential that relevant ministries and prison authorities put in place measures to protect these prisoners and ensure that such measures are applied in practice.
- Rule 56 takes account of women's particular risk of abuse, in particular sexual abuse, during this period, because of their gender,<sup>280</sup> and other typical vulnerabilities, such as lack of education and legal awareness, which can increase their susceptibility to intimidation and coercion. It underlines the responsibility of States to put measures in place to protect women from any abuse or sexual harassment or violence during this period.
- In this context it is worth noting that the UN Committee against Torture expressed concern, in a 2011 country report, "about reported acts or threats of violence, including sexual violence, by inmates and public officers, in places of detention (Arts. 2, 11 and 16)", and recommended "the State party to take prompt and effective measures to combat prison violence more effectively in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok rules). The State party should also establish and promote an effective mechanism for receiving complaints of sexual violence and ensure that law enforcement personnel are trained on the absolute prohibition of sexual violence, as a form of torture, and on how to receive such complaints."<sup>281</sup>
- The rule also draws attention to Rule 58, which urges States to give preference to diversionary measures and alternatives to pre-trial detention in the case of women offenders, where possible and appropriate.

## PUTTING IT INTO PRACTICE

- Medical examinations should be undertaken promptly after admission to pre-trial detention facilities, as required by the SMR, Rule 24, the Body of Principles, Principle 24 and the Bangkok Rules, Rule 6(e). This should not be confused with virginity tests undertaken in some countries, which is considered to be a form of custodial violence against women,<sup>282</sup> and should be prohibited – see **Rule 8**.
- Medical examinations should be carried out by a medical doctor independent of the prison service, answerable to the Ministry of Health. Indeed, according to SMR Rule 91, an untried prisoner should be allowed to be visited and treated by his/her own doctor if there are reasonable grounds for such a request and if the prisoner is able to pay any expenses incurred. This applies also to the initial medical examination on entry, particularly when a woman claims to have been abused (eg. in police custody) prior to her pre-trial detention.
- If the woman requests to be examined by a female doctor, her request should be fulfilled, unless access to a female doctor is impossible promptly following admission. In such cases a female chaperone may be used, if the detainee so requests.<sup>283</sup>
- Similarly medical examinations should be undertaken when and if prisoners are convicted and transferred to prisons, to determine whether any ill-treatment has taken place during the pre-trial detention period (**See Rule 6(e)**), and if so, for appropriate action to be taken.
- A pre-trial prisoner should have immediate access to legal counsel and in any case not later than 48 hours from the time of arrest or detention.<sup>284</sup> She should be informed of this right promptly after arrest and be provided with reasonable facilities for communicating with legal counsel.<sup>285</sup> If the detained woman does not have access to legal counsel, prison authorities should assist them with making such contact and legal counsel should be assigned to the detainee, if she cannot

<sup>280</sup> See for example, Report of the Committee against Torture to the General Assembly, 44th session (1–19 November 2010), Forty-sixth session, (9 May–3 June 2011), A/66/44, paras. 15 and 19; Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/17/26/Add.4, 2 May 2011, para 33

<sup>281</sup> Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, Belarus, CAT/C/BLR/CO/4, 7 December 2011, para 20.

<sup>282</sup> Human Rights Council, Seventh Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008, para 34

<sup>283</sup> WHO, UNODC, *Women's Health in Prisons, Correcting gender inequality in prison health*, 2009, p. 44.

<sup>284</sup> Principle 7. *Basic Principles on the Role of Lawyers* adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>285</sup> UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: resolution / adopted by the General Assembly*, 9 December 1988, A/RES/43/173., Principle 17; SMR, Rule 93

<sup>286</sup> Body of Principles, Principle 18, SMR, Rule 93

afford a lawyer.<sup>286</sup> As mentioned earlier, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted in December 2012, aim to provide guidance to States on the fundamental principles on which a legal aid system should be based and to outline the specific elements required for an effective and sustainable national legal aid system. Guideline 9 lays out in more detail recommendations as for the implementation of the right of women to access legal aid.<sup>287</sup>

- A pre-trial prisoner should be allowed to inform immediately her family of her detention and be given facilities for communicating with family and friends, and for receiving visits from them.<sup>288</sup> Such visits may be subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.
- Women should be separated from men, as provided in SMR, Rule 8(a).
- Women prisoners should be supervised by women staff only, as provided in SMR, Rule 53.
- Clear policies and guidelines should be introduced, relating to the use of force, violence and sexual misconduct by staff; and such policies should include the requirement to conduct an independent investigation of allegations of ill-treatment and torture.<sup>289</sup>
- All allegations of torture and ill-treatment, including sexual violence in detention, should be investigated promptly, effectively and impartially, and the perpetrators should be prosecuted and convicted in accordance with the gravity of the acts, as required by Article 4 of the Convention on Torture.<sup>290</sup>
- Staff working in women's prisons should receive training on the prohibition of torture and ill-treatment, including sexual misconduct. Even where the principle of employing only women staff in women's prisons, as required by SMR, are applied, it should not be assumed that abuse does not and will not take place. Women staff have also been reported to abuse women prisoners, by implementing excessive disciplinary measures,<sup>291</sup> as well as sexually abusing prisoners.<sup>292</sup>
- A functioning, effective and independent monitoring mechanism should be put in place. This may entail a review and revision of relevant legislation to allow for the establishment of independent monitoring bodies, as well as practical measures to facilitate the establishment of an independent monitoring system.
- Countries which have not ratified OPCAT are encouraged to ratify it and to set up National Preventive Mechanisms (NPMs), as required by its provisions, to strengthen measures to protect all prisoners, including women and girls, from any kind of ill-treatment and abuse.

## KEY ACTORS

- ▶ **Parliamentarians, judiciary (re monitoring of prisons)**
- ▶ **Legislators**
- ▶ **Ministry responsible for pre-trial detention facilities**
- ▶ **Prison authorities responsible for pre-trial detention facilities**
- ▶ **Prison staff employed in pre-trial detention facilities**
- ▶ **Independent monitoring bodies**

287 UN General Assembly, 67th session, *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 20 December 2012. See [www.penalreform.org/priorities/global-advocacy/international-advocacy/legal-aid-principles-guidelines/](http://www.penalreform.org/priorities/global-advocacy/international-advocacy/legal-aid-principles-guidelines/) for more information.

288 SMR, Rule 92 and Body of Principles, Principles 16 and 19

289 See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 12, 13 and 19.

290 Report of the Committee against Torture to the General Assembly Forty-fifth session (1–19 November 2010), Forty-sixth session, (9 May–3 June 2011), UN Ref: A/66/44, p.24, para 15.

291 For example, in Serbia the extraordinary discipline imposed in the women's prison, which was even harsher than in prisons for men, was reported in February 2012. The commentator noted: "Ladies are leading prisons, including the educators, and only women are working in these institutions, playing the role of little 'kapo'". <[www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2012/02/06/feature-03](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/02/06/feature-03)>.

292 For example, a report from the UK reported the routine abuse of women prisoners by predatory female staff, who required sexual services from prisoners. According to the report, some inmates complied, in return for cigarettes and other treats, but many of the younger, more vulnerable women were pressurised, with staff preying on their vulnerability. One prisoner described being strip-searched by female officers as akin to being forced to strip off in front of men. See 'Female ex-inmates talk about prison abuse', Eric Allison, Guardian, 18 July 2009, <[www.guardian.co.uk/society/2009/jul/18/female-inmate-prison-sexual-abuse](http://www.guardian.co.uk/society/2009/jul/18/female-inmate-prison-sexual-abuse)>.

## 9.2 Juvenile female prisoners

### Rule 36

**Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.**

### Rule 37

**Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.**

### Rule 38

**Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.**

### Rule 39

**Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.**

## THE RATIONALE FOR THESE RULES

- Juvenile female prisoners referred to in this section include the age group referred to in the “United Nations Rules for the Protection of Juveniles Deprived of their Liberty” (1990), Rule 11(a), which specifies that a juvenile is every person under the age of 18.<sup>293</sup>
- Juvenile female prisoners or girls comprise one of the most vulnerable groups in prisons, due to their age, gender and small numbers. While the proportion of girls in prison remains very small, recent figures suggest that their numbers are increasing in some countries,<sup>294</sup> though most prison systems around the world lack specific policies and programmes to accommodate for their unique needs.
- Juvenile female prisoners are likely to come from problematic socio-economic backgrounds, may have been involved in sex work and may have substance dependencies and related mental health care needs, all of which may be overlooked due to their age. Relationship issues with family members and partners are far more likely to be an important factor in comparison to boys, with individual offences often linked to personal conflicts, leading to theft or assault. Girls are also more susceptible to post-traumatic stress and other emotional disorders, and dysfunctional relationships can provide fertile ground for mental health problems. Where efforts to address the underlying causes of their offences are lacking, imprisonment is almost certain to exacerbate existing vulnerabilities and problems.
- All juvenile prisoners, and especially female juvenile prisoners, are at high risk of abuse in prisons. Where mixed gender staffing has been applied, serious abuse by male staff in juvenile girl prisons has been reported, demonstrating the extent of girl prisoners' vulnerability.<sup>295</sup> Abuse might take place under the guise of restraint procedures, by frequent and routine strip searching, by the use of force, sexual abuse, and rape under the guise of consensual sex.<sup>296</sup> A large proportion of girls in prison have experienced some form of violence or abuse in the past, which makes them especially susceptible to additional trauma upon being assaulted by an adult while in prison. Reports indicate that girls who have been previously sexually abused or exploited may be particular targets of prison staff, similar to adult women in the same position, which causes them to relive the trauma of the earlier experience(s).<sup>297</sup>

<sup>293</sup> Bangkok Rules, Commentary to Rules 36-39

<sup>294</sup> For example, in the UK, there was an overall increase in juvenile custodial sentences of 56 per cent between 1992 and 2006, but an increase of 297 per cent in custodial sentences for girls; see Tim Bateman, Nacro youth crime section, *Review of provision for girls in custody to reduce reoffending*, 2008. In Jamaica, a breakdown of the statistics, in terms of gender, indicates that the number of girls being imprisoned have trebled since 2001, while twice as many young boys are being locked up for various breaches; see <[www.jamaica-gleaner.com/gleaner/20070923/lead/lead1.html](http://www.jamaica-gleaner.com/gleaner/20070923/lead/lead1.html)>.

<sup>295</sup> See for example, *Custody and Control, Conditions of Confinement in New York's Juvenile Prisons for Girls*, Human Rights Watch, American Civil Liberties Union, September 2006.

<sup>296</sup> As has been stressed by the former Special Rapporteur on Torture, among others, “it is crucial to bear in mind that under such circumstances [of detention] it can never be argued that a woman has “consented” to a sexual relationship, even if this appears to be the case.” See A/HRC/7/3, 15 January 2008, para 42.

<sup>297</sup> Ibid.

- As required by the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 18, quoted in the commentary to these rules, as well as SMR, Rule 77(1), education is of particular importance in the case of juvenile prisoners, as a break in education, due to imprisonment, may have a long lasting and very harmful impact on their whole lives, potentially reducing their ability to lead crime-free lives on release. However, due to their small numbers girls' specific needs are usually ignored in prison policies and programmes, including in relation to access to education, as well as vocational training and health care, suitable to their age and gender.
- The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 26.4 draws specific attention to the attention that needs to be given to young female offenders.<sup>298</sup>

“...young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment should be ensured...”
- The CRC, Beijing Rules and the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) contain many other articles and rules which, together with the Bangkok Rules, provide guidance to prison authorities to develop specific strategies and programmes to address the needs of this special group.
- The topic of informed consent to medical treatment in the case of juveniles in detention is complex and not adequately explored. CRC, Article 12 calls on States parties to assure to children who are capable of forming their own views the right to express those views freely in all matters affecting them. Due weight should be given to the children's wishes according to age and maturity.
- The General Comments of the Committee on the Rights of the Child add some interpretative comment on the CRC.
- General Comment 4 (2003) on *Adolescent health and development in the context of the Convention on the Rights of the Child* notes that “...States parties have not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development” (para 3) and states that parents and others legally responsible for the child “have an obligation to take into account the adolescents' views, in accordance with their age and maturity, and to provide a safe and supportive environment in which the adolescent can develop” (para 7). It further states: “Before parents give their consent, adolescents need to have a chance to express their views freely and their views should be given due weight, in accordance with article 12 of the Convention. However, if the adolescent is of sufficient maturity, informed consent shall be obtained from the adolescent her/himself, while informing the parents if that is in the ‘best interest of the child’ (Article 3).” (para 32).
- The Havana Rules include specific guidance on informed consent to medical treatment in the case of juveniles in detention:
  55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorised and carried out by qualified medical personnel.
  56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

## PUTTING THEM INTO PRACTICE

### *Policies for juvenile female prisoners*

See **Rule 65** which requires preference to be given to non-custodial measures in the case of all juveniles, and in particular girls, due to their particular vulnerability and special needs.

- Prison authorities, in cooperation with child protection agencies, should develop specific policies and strategies for the supervision and care of juvenile female prisoners, and produce guidelines for staff working in prisons accommodating juvenile female prisoners. The development of such policies, guidelines and programmes should be guided by the CRC, the Bangkok Rules, UN Rules for the Protection of Juveniles Deprived of their Liberty and the Beijing Rules.

<sup>298</sup> As referred to in the Bangkok Rules, Commentary to Rules 36-39

- Specialists, such as social workers, child psychologists and health care workers, as well as relevant NGOs, families of imprisoned girls and the girls themselves, should be consulted in the development of such policies and strategies.

### **Measures to meet the protection needs of juvenile female prisoners**

- Prison authorities should ensure that the accommodation of juvenile female prisoners is strictly separated from boys and from adult male and female prisoners.
- SMR Rule 53, which requires the supervision of women's prisons by women staff, should be strictly applied in juvenile female prisons.
- The staff of all juvenile prisons, and in particular those of female juvenile prisons should be selected carefully, to ensure that staff appointed to work with juvenile female prisoners are of sound moral character and have the appropriate professional requirements, as a first step towards preventing the abuse of children in their care.
- Staff of female juvenile prisons should receive special training to fulfil their tasks in a manner that is sensitive to the emotional and developmental needs of juvenile female prisoners.
- Prison authorities should ensure that juvenile female prisoners are properly supervised to prevent abuse by other prisoners or members of staff.
- Prison authorities should ensure that juvenile female prisoners have access to a confidential and independent complaints mechanism and that written and oral information is given to them on admission to prison, in a language that they understand, on how to make complaints.
- All complaints by prisoners in relation to abuse, sexual abuse and other forms of alleged violence should be taken seriously and investigated by an independent body and those who have complained should be protected from retaliation by staff. (**See Rule 7** for guidance).
- Any staff who is found to have bullied, abused or sexually abused female juvenile prisoners should be subject to disciplinary or criminal sanctions, depending on the nature and severity of the offence committed.
- States and independent monitoring bodies should ensure that prisons where juvenile female prisoners are held are included in the programmes of prison inspectors and independent monitoring bodies, referred to in Rule 25(3).

### **Rehabilitation programmes**

- Prison authorities should ensure that juvenile female prisoners are given access to education and vocational training programmes available to juvenile male prisoners, which in turn should be equivalent to that available outside prison.
- Prison authorities should work closely with national bodies/ministries responsible for education and vocational training, as well as NGOs in delivering appropriate programmes for juvenile female prisoners.
- Prison authorities should encourage and facilitate the maintenance of family links, as an essential component of the rehabilitation of juvenile prisoners, including girls, unless specific circumstances, such as abuse by parents or other members of their families, require that the children should be protected from their families. Families should also be encouraged to actively participate in the social reintegration of their children.

### **Health care and Special Programmes**

- Imprisoned children, including girls, should be offered the same medical care and advice offered to their age group in the community. In addition, taking into account the inherently harmful impact of imprisonment, particularly on vulnerable groups, such as children, girls should be offered psychological support to reduce the potentially damaging impact of imprisonment on their social reintegration.
- Similar to all female prisoners, a gender-sensitive assessment of juvenile female prisoners should be undertaken on their admission to prison, with the participation of a specialist in child psychology, in order to determine their risks and needs. (**See Rule 6**)
- Prison authorities/prison health care services should work together with national health services and other relevant services in the community and NGOs to develop gender-specific programmes and services for juvenile female prisoners, such as counseling for sexual abuse or violence, by specialists in child psychology, based on individual needs.
- Prison authorities/prison health care services should ensure that all juvenile female prisoners receive education on women's health care issues. Such education can be provided by way of written information about the key aspects of gender-specific health care and by organising classes and group work, in cooperation with services in the community.

- Prison authorities/prison health care services should make arrangements for juvenile female prisoners to have regular access to gynecologists, similar to adult female prisoners. Juvenile female prisoners, who are pregnant or have just given birth should receive the same quality of pre- and post-natal care as adult female prisoners and women in the community. In addition, special attention should be paid to their medical and psychological requirements, due to their age and physical and mental vulnerability, taking into account the stigma which may be associated with an early pregnancy.
- As with all health care services in prisons, the specialised services required by women and girl prisoners are best delivered by the civil/ community health care services, or at least in close collaboration with them, as per SMR Rule 22(1).
- Before any treatment takes place the child and his/ her parent or legal guardian should be informed of the purpose, nature, expected outcome and any risks associated with the treatment offered, as well as the possible consequences of not having treatment. Decisions should always take account of the wishes of the children, with due regard to their age and maturity.

### KEY ACTORS

- ▶ Ministry responsible for prisons, ministries of education and health
- ▶ Prison authorities
- ▶ Prison staff responsible for the supervision and care of juvenile female prisoners
- ▶ Specialist staff, including child psychologists, social workers, teachers, health care staff
- ▶ Health care services in the community
- ▶ NGOs

## 9.3 Foreign nationals

*Supplements rule 38 of the Standard Minimum Rules for the Treatment of Prisoners*

### Rule 53

- 1. Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign-national women prisoners to their home country, especially if they have children in their home country, shall be considered as early as possible during their imprisonment, following the application or informed consent of the woman concerned.**
- 2. Where a child living with a non-resident foreign-national woman prisoner is to be removed from prison, consideration should be given to relocation of the child to its home country, taking into account the best interests of the child and in consultation with the mother.**

### THE RATIONALE FOR THIS RULE

- As the commentary notes, the SMR provide limited guidance as to the treatment of foreign national prisoners, in Rules 38 and 41-42, covering the issues of foreign prisoners' right to contact with their diplomatic representatives and their right to practice their religion.
  - The number of foreign national prisoners has grown dramatically since the adoption of the SMR, comprising over 50 per cent of the total prison population in some countries. The number of foreign national women prisoners has also increased significantly in many countries.
  - Foreign national women may be resident in the country of imprisonment or non-resident. Those who are non-resident, particularly, are likely to be more susceptible to the distress of isolation, compared to other women. They may have little or no family contact, including with their children.
- Their feeling of isolation will be exacerbated if they do not speak the language most commonly spoken in the prison. Women who are single parents or the sole carers of the family are likely to be extremely worried about the welfare of their children, particularly if the children are in the prisoners' home country, if for example, the woman had left her home country on a temporary basis (e.g. as a drug mule).
- As the commentary to this rule notes, a transfer may alleviate all the additional challenges foreign nationals face in prison, and assist with their social reintegration. This is particularly important in the case of women who may have family and children in their home countries.
  - As the commentary to this rule notes, a key principle included in the *Model Agreement on the transfer of foreign prisoners and recommendations for the treatment of foreign prisoners*, is that, in order for a transfer to serve the purposes of social



reintegration, rather than being experienced as an additional punitive measure, prisoners should express a desire to serve their sentences in their home countries.<sup>299</sup> This principle is set out in Article 7 of the Model Agreement, as follows:

A transfer, to either the country of nationality or of residence, should be effected only with the expressed free will of the prisoner.

- Regrettably, this principle is not always applied in existing bilateral and multinational agreements.<sup>300</sup>
- Rule 53(2) is based on the recognition that when the removal of the children of non-resident foreign national women from prison is to be undertaken it is unlikely that an appropriate carer can be found in the country of imprisonment. Therefore the rule requires that authorities consult with the woman prisoner in making arrangements for the transfer of the child back to the home country, if this would be in the best interest of the child.

## PUTTING IT INTO PRACTICE

- Where bilateral or multinational agreements for transferring foreign national prisoners to their home country are in place, foreign national women who are non-resident in the country of imprisonment and whose country is party to such agreements, should receive comprehensive and clear information in a language they understand about the possibility of transfer to their home country. The women should receive information on how to apply for a transfer, the requirements for a transfer and the consequences of a transfer, including the consequences for any children who are with them in the country of imprisonment.
- Foreign national women who are considering to apply for a transfer to their home country should be assisted in accessing legal counsel to discuss their situation and be provided with legal aid, if they cannot afford a lawyer themselves.
- Transferring prisoners to serve their sentences in their home country should be considered as early as possible after a sentence has been passed.
- No prisoner should be transferred to her home country where a risk of ill-treatment or torture exists.<sup>301</sup> Furthermore, a transfer should in no case lead to an aggravation of the situation of the prisoner.<sup>302</sup>

- In considering a transfer in the case of women who have testified against the main perpetrators of drug trafficking (if, for example, the woman acted as a “drug mule”) or against the perpetrators of human trafficking (if the woman was a victim of human trafficking), decision makers should take account of the risk such women face in their home country, never transfer such women without their consent and ensure that safeguards are in place to protect them from retaliation. (See **Rule 66** with regard to the requirement not to imprison victims of human trafficking for trafficking related offences).
- If a non-resident foreign national woman continues to serve her sentence in the country of imprisonment with an accompanying child, and when the removal of the child (or children) from prison is being considered, consideration should be given to relocating the child to his/her home country, provided that alternative caring is available to him/her in the home country and taking into account other individual circumstances. Such decisions should always be taken on an individual basis, in full consultation with the mother, and in communication with family members, relatives or agencies which will take care of the child/children after their return to their country.

## KEY ACTORS

- ▶ **Policymakers**
- ▶ **Legislators/Parliamentarians, if bilateral and multinational transfer agreements need to be enacted**
- ▶ **Prison authorities in the country of imprisonment and in the home country of the prisoner**
- ▶ **Prison staff responsible for resettlement/ social workers**
- ▶ **Child protection and welfare agencies in the country of imprisonment and the home country of the prisoner**

<sup>299</sup> Bangkok Rules Commentary to Rule 53

<sup>300</sup> For example, on 15 February 2007, the EU justice and home affairs ministers agreed to allow transferring convicted EU prisoners to serve their sentences in their home countries, without their consent, contravening this principle. See Bangkok Rules, Commentary to Rule 53.

<sup>301</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3

<sup>302</sup> Model Agreement on the transfer of foreign prisoners and recommendations for the treatment of foreign prisoners, Seventh United Nations congress, on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, A/CONF. 121/10, 25 April 1985, para 19.

## 9.4 Minorities and indigenous peoples

### Rule 54

**Prison authorities shall recognise that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programmes and services. Accordingly, prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups.**

### THE RATIONALE FOR THIS RULE

- The SMR do not contain any specific rules on the treatment of prisoners who are members of minority groups or indigenous peoples, although Rules 41 and 42 on prisoners' right to practice their own religion may apply to such groups in some countries.
- Since the adoption of the SMR, there has been a significant increase in the proportion of ethnic and racial minorities and indigenous peoples in prisons. Such groups are overrepresented in the prisons of some jurisdictions.<sup>303</sup>
- The number and proportion of women from ethnic and racial minority groups and indigenous women are also increasing, in tandem with the general increase of members of these groups in prison. In some countries, their rate of increase is significantly higher than that of their male counterparts. The UN Division for the Advancement of Women has noted that, "in many countries, racialised women, including indigenous women, represent the fastest growing segment of the prison population."<sup>304</sup> The numbers of indigenous women in prison are increasing at a particularly rapid rate compared to non-indigenous women, as well as to both indigenous and non-indigenous men.<sup>305</sup>
- In the United States, African American women are eight times more likely, and Latina women three times more likely, to be imprisoned than white women. Two thirds of women in state and federal prisons are African American or Latina.<sup>306</sup> In Spain, Roma women, who comprise 1.4 per cent of the Spanish population, represent 25 per cent of women prisoners.<sup>307</sup>
- Indigenous women in prison are likely to come from particularly disadvantaged circumstances. For example, it has been noted that Australian Aboriginal women are imprisoned at a younger age than non-Aboriginal women; they generally have lower levels of education and employment; alcohol, drug abuse and violence are a greater problem for them and reportedly play a greater role in their offending; and they also suffer from a greater incidence of past physical and sexual abuse.<sup>308</sup> According to a survey conducted in Canada among female prisoners, abuse was found to be more widespread in the lives of Aboriginal women: overall, 90 per cent reported physical abuse and 61 per cent identified sexual abuse.<sup>309</sup>
- Indigenous women are likely to be imprisoned particularly long distances from their homes and communities. In some countries indigenous women are unlikely to receive either family visits or phone calls because of the high costs these impose on impoverished communities living at great distance from the prison.<sup>310</sup>
- The lack of attention and resource allocation to the special needs of minority groups and indigenous peoples can be reflected in the poor range of rehabilitation programmes addressing the specific requirements of such groups. The lack of equal access to prisoner programmes or the lack of appropriate programmes for minority groups

303 For example, in the United States, black people are imprisoned for all offences at 7.09 times the rate of white people. In Australia the rate of imprisonment of indigenous peoples was 12 times higher than the rate of non-indigenous imprisonment in 2005. Aboriginals represented 18 per cent of the federal prison population, although they accounted for 3 per cent of the general Canadian population in 2006. The Roma minority is overrepresented in the criminal justice system in a number of countries in Eastern Europe, though most countries in Europe do not provide prison population statistics by ethnicity and race and therefore exact proportions cannot be determined. (See UNODC, *Handbook on Prisoners with Special Needs*, 2009, p58).

304 UN Division for the Advancement of Women, "Report of the Expert Group Meeting Gender and Racial Discrimination", 21-24 November 2000, Zagreb, Croatia, cited in Bastick, M and Townhead, L., *Women in Prison: A Commentary on the UN Standard Minimum Rules for the Treatment of Prisoners*, p99.

305 Bastick, et al., op. cit., p99.

306 Stanford, A.F. *More than just words: women's poetry and resistance at Cook County Jail*, 2004, 30(2) *Feminist Studies*, p278.. cited in Bastick, et al, op. cit., p99.

307 Cruz Blanco, *Las cárceles se llenan de mujeres* in *El Pais.es*, 2001, quoted in Taylor, R., *Women in prison and children of imprisoned mothers*, 2004, Quaker United Nations Office, Geneva, p15, cited in Bastick, et al, op. cit., p. 99.

308 Bastick, et al., op. cit., p. 99.

309 Corrections and Conditional Release Act, 5 Year Review, Women Offenders February 1998, citing a survey conducted in 1990.

310 Bastick, et al, op cit., p. 99, with references to data from Canada and Mexico.

and indigenous peoples may lead to further disadvantages. Since the review and reduction of security levels take account of programmes completed, prisoners from these groups can be disadvantaged and held in a higher security level than necessary for longer periods.<sup>311</sup>

- Women are doubly disadvantaged, since programmes suitable for their specific needs, taking into account both their gender, as well as their culture and traditions as members of ethnic and racial minority groups or indigenous peoples, are rarely offered. Thus such women may have to participate either in mainstream programmes for women or special programmes designed for the indigenous or minority male prison population, neither of which is likely to be entirely suitable to their needs.<sup>312</sup> A parole board in one country observed that often the only way for an indigenous prisoner to access programmes was to transfer to another prison, sometimes long distances from the offender's community. This added to cultural and community dislocation. The extent to which a prisoner had engaged in programmes while in prison was a consideration for the parole board in its determinations. The lack of indigenous-specific programmes and services in prisons could cause delays in being released on parole.<sup>313</sup>

## PUTTING IT INTO PRACTICE

- In prisons with a large number of women prisoners who are members of ethnic and racial minorities and indigenous peoples, the establishment of a multidisciplinary and multicultural team, representing the major services may be considered to advise management, devise strategy, ensure that policies are implemented and monitor outcomes.
- Most minority and indigenous prisoners are likely to have been disadvantaged in terms of work experience and education. Many will have been unemployed at the time of arrest. Therefore providing women from these groups with an opportunity to gain job skills and education should be considered a key component of their social reintegration requirements.

- Prison authorities should consult with the prisoners concerned and collaborate with indigenous and minority community groups who work with women to develop programmes suitable to the needs of female minority or indigenous offenders. Involving community organisations in programme design and delivery is valuable in maintaining links between all prisoners and the outside world, easing resource pressures and improving prison atmosphere. In the case of minority groups and indigenous peoples, continuing contacts with the community is likely to be of particular importance, due to their sense of alienation and isolation within the system, and the higher level of distress experienced as a result of breaking ties with the community in some cultures. In addition, community organisations can provide the specialised culturally relevant programmes addressing the needs of women belonging to their ethnicity, race or descent.
- Parole decisions or decisions to lower the security level of women from minority groups or indigenous peoples should not rely on the completion of a certain number of programmes by such women, if no appropriate programmes, responding to their specific needs were accessible to them. In all cases, such decisions should be based on individual assessments by qualified staff, rather than on the number of programmes completed.

## KEY ACTORS

- ▶ **Prison authorities/staff**
- ▶ **Prison staff responsible for rehabilitation/ social workers**
- ▶ **Parole boards or other bodies responsible for parole decisions**
- ▶ **Community groups working with minorities and indigenous peoples**

<sup>311</sup> Bangkok Rules, Commentary to Rule 54

<sup>312</sup> For example, an Australian inquiry observed that Aboriginal women had to use either services for indigenous men or mainstream services for women, neither of which were appropriate. See Bastick, M., op. cit. p. 73, citing Jonas, W., *Social Justice Report, Aboriginal and Torres Strait Islander Social Justice Commissioner*, 2002, p168).

<sup>313</sup> Aboriginal Customary Laws Discussion Paper, Project 94, Law Reform Commission of Western Australia, December 2005, p261.

**Rule 55**

***Pre- and post-release services shall be reviewed to ensure that they are appropriate and accessible to indigenous women prisoners and to women prisoners from ethnic and racial groups, in consultation with the relevant groups.***

**THE RATIONALE FOR THIS RULE**

- As the commentary notes, “due to their particular economic and social marginalisation and the discrimination they face in most societies, released minority and indigenous offenders are likely to need special help with housing, social welfare, employment and health care.”<sup>314</sup> Mainstream post-release support, where it exists, may not take into account the special cultural needs of such groups during this difficult period of reintegration.
- Discriminatory attitudes and treatment may be prevalent in social welfare, housing and employment agencies, as well as in probation services.<sup>315</sup>
- Stigmatisation of indigenous women may be particularly marked following their release and they may be rejected or ignored by their communities, which increases their likelihood of re-offending.<sup>316</sup>

**PUTTING IT INTO PRACTICE**

- Policymakers should invest in studies and assessments to determine the typical challenges faced by women prisoners who are members of minority groups or indigenous peoples when released from prison and the most successful measures that have assisted with their social reintegration, at least where the number or proportion of such prisoners are significant.
- Prison authorities should coordinate with social services in the community with respect to preparation for release and post-release support of women from minority groups and indigenous women.
- Prison health services should make every effort to ensure that any treatment undertaken for health problems, such as substance abuse or mental health, is continued and/or monitored after release, in close cooperation with services in the community. They should refer women who need to continue with any treatment, to the relevant health care services, providing the women the address and contact details of the health service/ agency which will be responsible for arranging the continuation of their treatment.

- Where probation services exist, prison authorities/ service responsible for social reintegration should work closely with them, to ensure continuum of care and support in the community following release.
- Where links between the prisoner and her family have been disrupted due to long distances from home or the stigma faced by the woman due to her imprisonment, prison services should make every effort to re-establish contact and, where necessary, to work with relevant NGOs or probation services, to assist with reunification.
- Prison authorities and probation services should cooperate with organisations of civil society/ community groups representing or providing support to minority groups and indigenous peoples to facilitate culture and gender sensitive assistance to be provided to released women prisoners during the period of transition from prison to liberty.

**KEY ACTORS**

- ▶ **Policymakers**
- ▶ **Prison authorities**
- ▶ **Prison staff responsible for resettlement/ social workers**
- ▶ **Prison health care services**
- ▶ **Social services in the community**
- ▶ **Health care services in the community**
- ▶ **Probation services**
- ▶ **NGOs and other community groups working to support minority groups and indigenous peoples**

<sup>314</sup> Bangkok Rules, Commentary to Rule 55

<sup>315</sup> UNODC, *Handbook on Prisoners with Special Needs*, 2009, p63.

<sup>316</sup> *Ibid.*

# Institutional personnel and training (Rules 29–35)

# 10



The nine rules included in the SMR on institutional personnel cover the selection of staff, their appointment on a full-time basis, with civil service status, their adequate remuneration, their education and training, including in-service training, the employment of specialist staff, the qualities and responsibilities of the prison director and the requirement for one or more medical doctor, depending on the size of the institution. Rule 54 covers the restrictions placed on the use of force by staff and the use of firearms, while also requiring prison staff to receive special training to restrain aggressive prisoners. One rule relates to women prison staff.

SMR Rule 53 requires that:

- (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.
- (2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

- (3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

The seven rules included in the Bangkok Rules on institutional personnel add key supplementary provisions to these rules, with special focus on eliminating the discrimination women prison staff face in many prison services in access to training and to senior positions, and the special training women staff need to receive on the human rights and special needs of women prisoners, including the prohibition of gender-based violence against women prisoners. In line with the “whole prison” approach of the Bangkok Rules, these rules also require staff employed in women’s prisons to receive training and awareness raising on specific health care issues, including the basic health care of children.

### Institutional personnel and training

*Supplements rules 46-55 of the Standard Minimum Rules for the Treatment of Prisoners*

#### **Rule 29**

***Capacity-building for staff employed in women’s prisons shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities. Capacity-building measures for women staff shall also include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners.***

#### **Rule 30**

***There shall be a clear and sustained commitment at the managerial level in prison administrations to prevent and address gender-based discrimination against women staff.***

#### **Rule 31**

***Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.***

#### **Rule 32**

***Women prison staff shall receive equal access to training as male staff, and all staff involved in the management of women’s prisons shall receive training on gender sensitivity and prohibition of discrimination and sexual harassment.***

**Rule 33**

1. **All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners.**
2. **Basic training shall be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to first aid and basic medicine.**
3. **Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.**

**Rule 34**

**Capacity-building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, shall also be part of the curriculum.**

**Rule 35**

**Prison staff shall be trained to detect mental health care needs and risk of self-harm and suicide among women prisoners and to offer assistance by providing support and referring such cases to specialists.**

**THE RATIONALE FOR RULES 29–35**

- These rules relate primarily to the capacity building of women staff that should be responsible for the management and supervision of women's prisons, as provided by SMR, Rule 53. As noted in the commentary to Rule 32 "Nevertheless, even when not directly employed in the supervision of women prisoners, male staff in senior positions are involved in various aspects of the administration of women's prisons."<sup>317</sup> Therefore some of the provisions of these rules also apply to male staff in senior management and administrative positions.
- As the commentary also notes, where a policy of mixed gender staffing is implemented, which in itself is not recommended either by SMR or the Bangkok Rules, the provisions of some of these rules become all the more important. Such rules include in particular Rule 31 and Rule 32.
- The rules recognise that in many prison systems staff assigned to supervise women prisoners receive no special training to help them deal with the particular needs of women prisoners. In the male dominated, hierarchical prison environment, female prison staff may face unfair competition as well as discrimination. Often they have less authority and decision-making power, and they themselves may suffer from sexual harassment and discrimination in their workplaces. Women face difficulties in achieving promotions, due to stereotypical perceptions and discrimination. Such problems are exacerbated by additional pressures most women face in combining job and family demands.
- The rules aim to address these challenges by ensuring that prison authorities pay special attention to the capacity building of women staff and ensure that they are not discriminated against in their access to training and senior positions in the prison service. They recognise that women staff, once properly trained, are in a much better position to develop appropriate and effective policies and strategies for the supervision, care and rehabilitation of women prisoners, than their male counterparts, due to their better understanding of women's gender-specific requirements and vulnerabilities.
- Rule 54 of the SMR prohibits the use of force by prison staff, "except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations". It provides that the use of force must be "no more than is strictly necessary" and staff who use force must report the incident immediately to the director of the institution. The Code of Conduct for Law Enforcement Officials,<sup>318</sup> Article 3, states that "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty". Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,<sup>319</sup> Principle 4 provides that "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

<sup>317</sup> Bangkok Rules, Commentary to Rule 32

<sup>318</sup> UN General Assembly, *Code of conduct for law enforcement officials*, 5 February 1980, A/RES/34/169

<sup>319</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

- Rule 31 adds further provisions relating to the use of force, taking into account women's gender-specific needs of protection from sexual abuse and ill-treatment, due to women's particular vulnerability to such violence of all forms.<sup>320</sup> It is important to note that such ill-treatment may appear to be consensual (eg. when women are forced to provide sexual services in return for enjoying their rights or to gain access to particular services). Therefore the rule is of particular significance to ensure that the investigations on "use of force" should include the identification of sexual misconduct, which might appear consensual, but in reality cannot be so due to the totally unequal balance of power in the relationship. This should be the premise on which all sexual relationships between staff and prisoners should be viewed/investigated.
- Rules 33 to 35 cover the training of staff working in women's prisons on the gender-specific needs, and human rights of prisoners, as well as their main health care needs, first aid and the basic health care in relation to children staying with their mothers in prison. They represent the Bangkok Rules' holistic approach to prison management, including prison health care, recognising that, in many prison systems specialist health care staff are not always or immediately available to respond to all the health care needs of prisoners, as well as the fact that all staff need to be aware of the key issues relating to women's and their children's health care in order to be in a position to incorporate such knowledge into their treatment of the women under their care.
- These rules also recognise that in all prison systems, regular staff, rather than health care staff will be the first to have to respond to women's and their children's health care requirements, including problems and emergencies, where immediate action will be needed. The training of women staff on the basics of women's gender-specific health care needs, first aid and the basics of children's health care will enable them to respond appropriately and refer such women or children to specialists immediately, when necessary. This does not mean that regular staff should in any way be responsible for providing any treatment which goes beyond an emergency response, in the absence of any advice from health care specialists.
- Rules 34 and 35 provide further details on the need for staff working in women's prisons to be trained on issues relating to HIV transmission, prevention, treatment and care, the stigma and discrimination women with HIV face, the mental

health care needs of women prisoners, as well as their risk of self-harm and suicide, due to the particular concern in relation to HIV and mental health care needs among women prisoners, as discussed earlier. They complement Rules 6(a) and (b), 12, 14, 16 and 17.

## PUTTING THEM INTO PRACTICE

### *Capacity building*

- In developing their personnel and training policies prison authorities should be guided by Article XV of the Recommendation on the Selection and Training of Personnel for Penal and Correctional Institutions adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders.<sup>321</sup> Training should be based on the SMR, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Basic Principles for the Treatment of Prisoners, Convention on the Rights of the Child (CRC), United Nations Rules for the Protection of Juveniles Deprived of their Liberty, as well as other UN instruments, standards and norms with relevance to the treatment of prisoners. Training resources developed by the Office of the High Commissioner for Human Rights (OHCHR), United Nations Office on Drugs and Crime (UNODC), and other UN agencies on specific topics, such as HIV and AIDS in prison settings, can be used or adapted for use in different contexts. (See **Appendix 2: Resources**)
- In addition, prison authorities, in cooperation with civil society organisations working on women's issues, should develop special training programmes for all staff assigned to supervise female prisoners on the human rights of women prisoners, with specific components on their special social reintegration requirements. The training should be guided by the provisions of SMR and the Bangkok Rules. The current document may supplement the SMR and the Bangkok Rules, in trainings or in developing additional training materials.
- Prison authorities should ensure that female prison staff have the same level of access to all trainings, as their male counterparts.
- The capacity building of women staff should aim to empower them within the prison service in order for them to take up senior positions with responsibility to develop strategies, policies and programmes for the management of women's prisons, and the rehabilitation of women prisoners.

<sup>320</sup> Bangkok Rules, Commentary to Rule 31

<sup>321</sup> A/CONF.6/1, as per Bangkok Rules, Commentary to Rules 29-30.



### **Combating discrimination and sexual harassment against women staff**

- The prison administration needs to make clear its commitment to eliminating discrimination and sexual harassment against women in the prison service. This commitment should be made clear in the prison service's vision and strategic plans, and be reflected in the policies of the prison service.
- Prison services should also review their recruitment procedures, training programmes and access to them, rules for promotion and salary levels to ensure that legislation, regulations, rules and policies do not provide any legal basis for discrimination against women staff in practice.
- The principle of non-discrimination should be included in the training of all staff.
- Women staff should be in a position to make complaints without fear of retaliation, when discrimination of sexual harassment against them take place. There should be complaints procedures in place for women staff to be able to bring their situation to the attention of senior staff, as well as of independent inspectors and other competent authorities authorised to monitor compliance with human rights standards and national law in prisons.

### **Awareness raising and training on basic health care**

- The training of staff assigned to work in women's prisons should include basic training on the main issues relating to women's health in order for staff to be in a position to provide immediate assistance, where a doctor is not available, and ensure that those who need medical care are immediately referred to health care staff.
- Staff should be trained in first aid so that they can provide immediate assistance in urgent cases where health care staff are not accessible.
- Where children are allowed to stay with their mothers in prison, prison staff assigned to work in women's prisons should also receive basic training on children's rights, child development and the health care of children, in order for them to respond appropriately in times of need and emergencies.
- The training curriculum of prison staff should include capacity-building programmes on HIV. In

addition to HIV/AIDS prevention, treatment, care and support. Issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, should be included in the curriculum.

- As set out in UNODC, ILO, UNDP's "Policy Brief, HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions", occupational safety and health procedures on HIV, viral hepatitis and tuberculosis should be established for prison staff. Prison staff should receive information, education and training by labour inspectors and specialists in medicine and public health, enabling them to perform their duties in a healthy and safe manner.<sup>322</sup>
- Prison staff should never be subject to mandatory testing and should have easy access to confidential HIV testing.<sup>323</sup>
- Prison staff should have free access to hepatitis B vaccination and easy access to protective equipment, such as gloves, mouth-to-mouth resuscitation masks, protective eyewear, soap, and search and inspection mirrors, and to post-exposure prophylaxis in cases of occupational exposure.<sup>324</sup>
- Workplace mechanisms for inspecting compliance with applicable standards and reporting occupational exposures, accidents and diseases should also be established.<sup>325</sup>
- Prison staff should also be trained to recognise mental health care needs and risk of self-harm and suicide among women prisoners and to respond appropriately, by providing assistance and referring such cases to specialists.

### **KEY ACTORS**

- ▶ **Ministry responsible for prisons**
- ▶ **Ministry of Health**
- ▶ **Prison authorities**
- ▶ **Prison health care services**
- ▶ **All prison staff involved in the administration of women's prisons and supervision of women prisoners**
- ▶ **Community health care services**
- ▶ **NGOs, including civil society organisations working on women's issues**

<sup>322</sup> UNODC, ILO, UNDP, *Policy Brief, HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, 2012, p4.

<sup>323</sup> Ibid.

<sup>324</sup> Ibid.

<sup>325</sup> Ibid.

**Research, planning,  
evaluation and public  
awareness-raising  
(Rules 67–70)**

**11**



The SMR do not include any rules on research and planning. Other relevant standards developed in later years, such as the Tokyo Rules and the Beijing Rules, both include a separate section on research, planning, policy formulation and evaluation, recognising that the effectiveness of policies and programmes developed for the treatment and social reintegration of prisoners depend on the extent of their relationship with the reality on the ground in each jurisdiction and the evaluation of the impact of different interventions and approaches. It appears that the need for some rules and guidance on research, planning, policy formulation and evaluation, was being felt and understood to a greater extent by the time the Tokyo Rules and Beijing Rules were adopted.

Neither the SMR nor the Tokyo Rules refer to the need to raise public awareness and to cooperate with the media to disseminate the results of research outcomes and information relevant to the issues they cover. Rule 70 of the Bangkok Rules represents a reflection of the increasing awareness of the key role the media and public opinion play in the formulation of policies in the field of criminal justice. It is based on the recognition that the higher the level of ignorance about crime and crime control, the stronger are fears and higher the demands for harsh punishments.<sup>326</sup> The training of criminal justice officials on the Bangkok Rules and their awareness raising and sensitisation are also a fundamental requirement for the implementation of the rules, particularly where they relate to sentencing policies and alternatives to prison.

## 11.1 Research, planning and evaluation

### Rule 67

***Efforts shall be made to organise and promote comprehensive, result oriented research on the offences committed by women, the reasons that trigger women's confrontation with the criminal justice system, the impact of secondary criminalization and imprisonment on women, the characteristics of women offenders, as well as programmes designed to reduce reoffending by women, as a basis for effective planning, programme development and policy formulation to respond to the social reintegration needs of women offenders.***

### Rule 68

***Efforts shall be made to organise and promote research on the number of children affected by their mothers' confrontation with the criminal justice system, and imprisonment in particular, and the impact of this on the children, in order to contribute to policy formulation and programme development, taking into account the best interests of the children.***

### Rule 69

***Efforts shall be made to review, evaluate and make public periodically the trends, problems and factors associated with offending behaviour in women and the effectiveness in responding to the social reintegration needs of women offenders, as well as their children, in order to reduce the stigmatization and negative impact of those women's confrontation with the criminal justice system on them.***

### THE RATIONALE FOR THESE RULES

- While a considerable amount of research and studies have been conducted on the causes of crime, the characteristics of offenders, the impact of imprisonment and non-custodial measures and the impact on specific programmes on recidivism rates, since the adoption of the SMR,

it is only since the early 2000s that such research and studies have started to focus on gender in the criminal justice system, and the differences between women and men's backgrounds and social reintegration needs. In addition, regrettably, much of this research applies to western countries.

<sup>326</sup> See for example, Tapio Lappi-Seppala, *Enhancing the Community Alternatives – Getting the Measures Accepted and Implemented*, 2002, p95. See: UNAFEI 121st International Training Course Visiting Experts' Papers <[www.unafei.or.jp/english/pages/RMS/No61.htm](http://www.unafei.or.jp/english/pages/RMS/No61.htm)>.

- Rules 67-68 are therefore of great importance in underlining the need for research on a variety of relevant issues relating to women's confrontation with the criminal justice system. The aim is to ensure that strategies and policies respond more appropriately and assist with such women's social reintegration based on facts and a deeper understanding of the often very complex reasons that lead women to end up in the criminal justice system and the requirement for a more nuanced and sensitive response to these needs, to increase their effectiveness. The rules also draw attention to the need to undertake such research on the situation of children whose mothers are imprisoned, which is an even less explored area that needs much more attention.
- Rule 69 is based on the understanding that the evaluation of interventions, programmes and approaches aiming to assess their level of success or failure, is also fundamental to developing, adjusting, improving policies and programmes, in way that is evidence-based. This is also a very much neglected area in relation to all prisoners, but particularly in relation to women and even more specifically in relation to the children of imprisoned mothers.

## PUTTING THEM INTO PRACTICE

- Policymakers and criminal justice authorities should take all necessary measures and allocate resources to ensure that research and data collection is integrated into their work relating to women and the children of women in the criminal justice system.
- This would mean that data collection on the offences committed by women, the characteristics of women offenders (eg. their education and employment levels, economic and social circumstances, nationalities etc), the number of children that they have, their ages and their circumstances following their mothers imprisonment (eg. whether they are with their mothers in prison and if outside, arrangements for their care) should be part of the daily work of criminal justice agencies and where relevant social services in the community.
- Resources should also be allocated by policymakers to conduct research on other issues, such as the most common factors that lead women to commit offences, the impact of imprisonment and non-custodial sanctions on women, and the impact of their mothers' imprisonment on children.
- The special health care needs of women prisoners, including in particular their mental health care needs, drug dependencies among women, treatment outcomes and relapse rates following release, are other important areas where more information would be beneficial for planning and policy formulation.
- Research on practices and conditions which impact on the health of women prisoners (eg. solitary confinement, disruption of family links) are also of key importance to introduce evidence based improvements to practices and conditions in order to improve the social reintegration prospects of women in prison.
- Other areas of research should focus on special categories of women prisoners – including their backgrounds, the impact of imprisonment and non-custodial sanctions and measures, their special needs and to what extent their needs are being addressed.
- Academic institutions and NGOs may also be encouraged to undertake research into the areas above as well as other areas, relevant to women's contact with the criminal justice system, to deepen and broaden the knowledge base on which to base policies.
- All research should be carried out in compliance with internationally accepted ethical principles. Any research on health care should be in compliance with the principles of medical ethics.
- All databases which store research findings should be effectively protected. In addition, all health care data should be stored in an anonymous way (i.e. the identities of women should not appear in the database).
- Policymakers and criminal justice institutions should ensure that regular internal and independent evaluations of policies and programmes are carried out to assess outcomes, modify/change them where necessary and replicate and disseminate good practice examples.
- Research and data collection is valuable only if the information is used to adjust and improve existing policies and programmes or to develop new ones. Therefore links should be established between those responsible for carrying out research and those responsible for formulating policies and plans. This may be in the form of a shared database where the technology and resources allow or the regular submission of data collection and research results to the relevant policymaking and planning units. These may be supplemented by regular meetings among all relevant actors, including policymakers and criminal justice actors, to discuss outcomes, facilitate consultation and a participatory approach and raise awareness on a constant basis.

## KEY ACTORS

- ▶ Policymakers
- ▶ Criminal justice institutions
- ▶ Prison authorities
- ▶ Ministry of Health
- ▶ Prison health care services
- ▶ Prison specialist staff
- ▶ Probation, parole services and/or social services in the community
- ▶ Research institutions
- ▶ Academic institutions
- ▶ Community health care services
- ▶ NGOs
- ▶ The media

## 11.2 Raising public awareness, sharing information and training

### Rule 70

1. *The media and the public shall be informed about the reasons that lead to women's entrapment in the criminal justice system and the most effective ways to respond to it, in order to enable women's social reintegration, taking into account the best interests of their children.*
2. *Publication and dissemination of research and good practice examples shall form comprehensive elements of policies that aim to improve the outcomes and the fairness to women and their children of criminal justice responses to women offenders.*
3. *The media, the public and those with professional responsibility in matters concerning women prisoners and offenders shall be provided regularly with factual information about the matters covered in these rules and about their implementation.*
4. *Training programmes on the present rules and the results of research shall be developed and implemented for relevant criminal justice officials to raise their awareness and sensitize them to their provisions contained therein.*

### THE RATIONALE FOR THIS RULE

- Generally the public is not well informed about the circumstances that lead to offending behaviour, the characteristics of offenders and the harmful impact of imprisonment. As the commentary to this rule notes, they are even less well informed about the particular situation of women offenders and the long-lasting impact of women's imprisonment on the women themselves and their children.<sup>327</sup> A public who is better informed about the most common factors that lead women to break the law, the victimisation that most have confronted in their lives, the consequences for their children, when they are imprisoned, and their particular social reintegration needs, is more likely to support efforts to minimise, to the extent possible, the imprisonment of women, as recommended by the Bangkok Rules. The understanding and cooperation of the public is also key for the effective implementation of non-custodial measures and sanctions, as well as to reducing the stigma faced by women who commit offences.
- Rule 70(4) covers another key area, which is the need to sensitise and train criminal justice officials on the Bangkok Rules, and to increase their understanding about the typical background of women offenders and their social reintegration needs, in order to ensure that criminal justice responses to women take account of their gender-specific needs and the best interests of their children.

<sup>327</sup> Bangkok Rules, Commentary to Rule 70.

## PUTTING IT INTO PRACTICE

- Policymakers should put in place practical measures to ensure that the outcomes of the data collection and research, required by Rules 67-68, are made available to the public. This can be achieved in various ways, for example, by placing such information on the website of the relevant ministries and by cooperating with the media to ensure that new data and research outcomes are published.
- Other useful means may include: appointing press officers, improving media access to statisticians and academics, and using new technology to communicate statistical information to the press.
- Policymakers and criminal justice institutions should also cooperate closely with relevant NGOs in disseminating information about women in the criminal justice system, and their children, and in awareness raising and training programmes undertaken by such NGOs.
- Relevant ministries and criminal justice institutions should review the training curricula for their staff and revise them to incorporate the provisions of the Bangkok Rules.
- Special training programmes on the Bangkok Rules, supported by other training materials developed on the basis of the Bangkok Rules, should be developed for the police, prosecutors, judges and public defenders where relevant, in addition to the training of prison staff, required by Rules 29-35.

## KEY ACTORS

- ▶ **Policymakers**
- ▶ **Criminal justice institutions**
- ▶ **Research institutions**
- ▶ **The media**
- ▶ **NGOs**

# Appendices

# A



**KEY ACTORS AND RULES WHICH REQUIRE THEIR ACTION**

Rule No.	Policymakers, including relevant ministries	Legislators/ Parliamentarians	Law enforcement/ criminal justice actors	Prison authorities/ prison staff	Prison health care services	Prison staff responsible for rehabilitation/ social workers/ social welfare officers	Probation and parole services, social welfare and child welfare agencies	Health care services in the community	Prison monitoring bodies
1	✓			✓	✓	✓		✓	
2		✓		✓					
3		✓		✓					
4	✓			✓					
5				✓	✓				
6	✓	✓	✓	✓	✓		✓		
7	✓	✓	✓	✓	✓		✓		
8	✓	✓		✓	✓		✓		
9	✓	✓		✓	✓		✓		
10	✓			✓	✓		✓		
11				✓	✓				
12	✓	✓		✓	✓		✓		
13				✓	✓		✓		
14	✓	✓		✓	✓		✓		
15	✓	✓		✓	✓	✓	✓		
16	✓			✓	✓				
17	✓			✓	✓		✓		
18	✓			✓	✓		✓		
19	✓	✓		✓			✓		
20	✓	✓		✓					
21				✓					
22	✓	✓		✓					
23	✓	✓		✓					
24	✓	✓		✓					
25	✓	✓	✓	✓	✓		✓	✓	
26	✓	✓		✓		✓			
27	✓	✓		✓					
28		✓		✓					
29	✓			✓					
30	✓			✓					
31	✓			✓					
32	✓			✓					
33				✓	✓		✓		
34				✓	✓		✓		
35				✓	✓		✓		



Rule No.	Policymakers, including relevant ministries	Legislators/ Parliamentarians	Law enforcement/ criminal justice actors	Prison authorities/ prison staff	Prison health care services	Prison staff responsible for rehabilitation/ social workers/ social welfare officers	Probation and parole services, social welfare and child welfare agencies	Health care services in the community	Prison monitoring bodies
36	✓			✓					
37	✓			✓		✓			
38	✓			✓	✓			✓	
39	✓			✓	✓			✓	
40	✓			✓	✓	✓			
41	✓			✓	✓	✓			
42	✓			✓	✓	✓			
43	✓			✓		✓			
44	✓			✓		✓			
45	✓			✓					
46	✓			✓	✓	✓	✓	✓	
47	✓			✓	✓	✓	✓	✓	
48	✓			✓	✓			✓	
49	✓	✓		✓	✓	✓	✓	✓	
50	✓			✓		✓			
51	✓			✓	✓	✓		✓	
52	✓	✓		✓	✓	✓	✓		
53	✓	✓		✓		✓	✓		
54				✓		✓	✓		
55	✓			✓	✓	✓	✓	✓	
56	✓	✓		✓					✓
57	✓	✓	✓				✓	✓	
58	✓	✓	✓				✓	✓	
59	✓	✓	✓	✓					
60	✓	✓	✓				✓	✓	
61	✓	✓	✓				✓		
62	✓	✓	✓				✓	✓	
63			✓	✓			✓		
64	✓	✓	✓				✓		
65	✓	✓	✓				✓		
66	✓	✓	✓				✓		
67	✓		✓	✓	✓	✓	✓	✓	
68	✓		✓	✓		✓	✓		
69	✓		✓	✓	✓	✓	✓	✓	
70	✓		✓	✓					

## Toolbox on UN Bangkok Rules

### Other resources in PRI's Toolbox on the UN Bangkok Rules

#### ■ Index of Implementation

The Index (available on CD Rom with this publication or by download) is a comprehensive checklist for an assessment of implementation of the Bangkok Rules, structured for different actors. Can be used in developing policies and strategies. Co-published with the Thailand Institute of Justice.

#### ■ Briefing on the discrimination of women in the criminal justice system

The briefing maps concerns relating to the discrimination of women as alleged offenders in the justice system, indicates references by human rights bodies, and gives examples of concerning practices as well as good practice in the following areas: gender-specific/ status offences, disadvantages during penal procedures, non-custodial measures, vulnerability to sexual abuse, imprisonment/ detention, girls in prison and rehabilitation.

#### ■ Guide on gender-sensitive monitoring

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.

#### ■ Online course, 'Women in detention: putting the UN Bangkok Rules into practice'

A self-paced online course combining analysis of the Rules, interactive assessments and application of the Rules to real life situations, with a certificate issued at completion

#### ■ Briefing on girls and detention

This Briefing will examine the nature of the challenges faced by girls in detention, the international and regional standards in place to address them and makes recommendations for States and civil society for strengthening the rights of girls who are held in detention.

#### ■ PRI 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](mailto:info@penalreform.org)

Tools available in multiple languages at [www.penalreform.org](http://www.penalreform.org)

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## General and women in the criminal justice system

### Penal Reform International Resources

■ Compendium of Comparative Prison Legislation, 2008

[English](#)

■ Making Law and Policy Work, 2010

[English](#), [French](#), [Spanish](#)

■ Making Standards Work, An International Handbook on Good Prison Practice, 2001

[English](#), [French](#), [Farsi](#), [Spanish](#), [Russian](#), [Arabic](#)

■ Briefing No. 3: Women in Prison, 2008

[English](#), [Arabic](#), [French](#)

### Other Resources

■ Coyle, A, International Centre for Prison Studies, A Human Rights Approach to Prison Management, Handbook for Prison Staff, Second Edition, 2009

[English](#)

■ Gender and Security Sector Reform Toolkit, Editor(s): Megan Bastick, Kristin Valasek DCAF, OSCE/ODIHR, UN-INSTRAW, 2008

[English](#), Arabic, French, Indonesian, Montenegrin, Russian

(See tools on Justice Reform and Gender and Penal Reform and Gender)

■ Quaker United Nations Office (QUNO), Women in prison: A commentary on the UN Standard Minimum Rules for the Treatment of Prisoners M. Bastick & L. Townhead, June 2008

[English](#)

■ Other QUNO publications on women in prison:

[English](#)

■ UNODC Handbook for Prison Managers and Policymakers on Women and Imprisonment, New York, 2008

[English](#)

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## Non-custodial measures

### Penal Reform International Resources

■ Making Community Service Work: A Resource Pack from East Africa, 2012

[English](#)

### Other Resources

■ International Centre for Prison Studies, Guidance Note 15, Developing alternative sentences

[English](#)

■ Stern, V., Developing Alternatives to Prison in East and Central Europe and Central Asia, A Guidance Handbook, International Centre for Prison Studies, King's College London, May 2002

■ UNODC Handbook of basic principles and promising practices on Alternatives to Imprisonment, New York, 2007

[English](#), [French](#)

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## Health care and gender

■ World Health Organization Regional Office for Europe, and United Nations Office on Drugs and Crime Women's Health in Prison: Correcting Gender Inequity in Prison Health, Copenhagen, 2009 (Kyiv Declaration on Women's Health in Prison)

[English](#), [French](#), [Russian](#)

■ Women's health in prison, Action guidance and checklists to review current policies and practices. World Health Organization Regional Office for Europe, United Nations Office on Drugs and Crime, van den Bergh, B., Gatherer, A (WHO Regional Office for Europe), Atabay, T. and Hariga F. (United Nations Office on Drugs and Crime), 2011

[English](#), [Russian](#)

## Suicide and self-harm

■ World Health Organization, International Association for Suicide Prevention (IASP), Preventing Suicide in Jails and Prisons, 2007

[English](#), [French](#), [Spanish](#), [Italian](#), [Swedish](#), [other languages](#)

## Drug treatment and HIV

■ UNODC Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned, United Nations, New York, 2004

[English](#)

■ UNODC, WHO, Principles of Drug Dependent Treatment, Discussion Paper, March 2008

[English](#)

■ UNODC-WHO Joint Programme on Drug Dependence Treatment and Care, May 2009

[Arabic](#), [Chinese](#), [English](#), [French](#), [Russian](#), [Spanish](#)

■ UNODC, From Coercion to Cohesion: Treating Drug Dependence Through Health care, not Punishment, Discussion Paper, Gerra, G., UNODC, Drug Prevention and Health Branch, and Clark, N. WHO, Department of Mental Health and Substance Abuse, 2010

[English](#)

■ UNODC, WHO, UNAIDS (2006) HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response, New York, 2006

[Arabic](#), [Chinese](#), [English](#), [French](#), [Portuguese](#), [Russian](#), [Spanish](#)

■ UNODC/UNAIDS, Women and HIV in Prison Settings [English](#), [Spanish](#), [Russian](#), [Arabic](#), [Bahasa Indonesia](#), [Portuguese](#)

■ UNODC, UNAIDS, WHO Policy Brief, HIV testing and counselling in prisons and other closed settings

[English](#), [Arabic](#)

■ UNODC, ILO, UNDP, Policy Brief, HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions, July 2012

[English](#)

■ **Other publications on Drug Treatment and Care:** [English](#)

■ **Other publications on HIV and Drug Use in prison settings:**

[English](#)

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## Torture and ill-treatment

### Penal Reform International Resources

■ Women in detention: a guide to gender-sensitive monitoring, 2013

[English](#), [Georgian](#), [Russian](#), [Spanish](#)

■ Institutional culture in detention: a framework for preventive monitoring, 2013

[English](#), [Georgian](#), [Russian](#)

### Other Resources

■ UN Office of the High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”), 2004

[English](#)

For other languages see [Human Rights Education Associates Library](#) (Arabic, Azeri, Catalan, Chinese, English, French, Georgian, Hungarian, Indonesian, Korean, Portuguese, Russian, Serbian, Spanish, Turkish)

■ The Torture Reporting Handbook, Giffard, C, Human Rights Centre, University of Essex, 2000

[Farsi](#)

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## Human trafficking

■ UNODC International Framework for Action to Implement the Trafficking in Persons Protocol (2010)

[Arabic](#), [Chinese](#), [English](#), [French](#), [Russian](#), [Spanish](#)

■ UNODC Toolkit to Combat Trafficking in Persons (October 2008)

[Arabic](#), [Chinese](#), [English](#), [French](#), [Russian](#), [Spanish](#)

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## Justice for children

### Penal Reform International Resources

■ Juvenile Justice Training Manual, Penal Reform International/UNICEF, 2007

[English](#)

■ Stuck in the margins: Discrimination and Girls in Detention, (to be published in 2013)

[English](#)

■ Ten-Point Plan for Fair and Effective Criminal Justice for Children, 2013

[Arabic](#), [English](#), [French](#), [Russian](#), [Spanish](#), [Turkish](#)

[Other PRI publications on justice for children](#)

### Other Resources

■ UNODC, UNICEF, Manual for the measurement of juvenile justice indicators, 2006, p. 1

[English](#), [French](#), [Spanish](#), [Russian](#)

[Other UNODC publications on justice for children](#)

See also “Prison Monitoring” below.

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## Prisoners with special needs

### Penal Reform International Resources

■ Training Manual No.1: Human Rights and Vulnerable Prisoners, 2004

[English](#), [Farsi](#), [French](#), [Spanish](#)

### Other Resources

■ UNODC Handbook on Prisoners with Special Needs, Atabay, T., New York, 2009

[English](#)

## Children of imprisoned parents

### Penal Reform International Resources

■ Justice for Children Briefing No. 3: Children with Parents in Conflict with the Law, 2012

[English](#), [Russian](#)

■ Submission to Committee on the Rights of the Child Day of General Discussion, 30 September 2011

[English](#)

### Other Resources

■ Committee on the Rights of the Child, Day of General Discussion – Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents” (30 September 2011)

[English](#)

■ Quaker United Nations Office, Children Imprisoned by Circumstance, Robertson, O., April 2008

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■ The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre (2011), Children of imprisoned parents, Editors: Peter Scharff-Smith and Lucy Gampell

[English](#)

■ United Nations Guidelines for the Alternative Care of Children (General Assembly Resolution A/RES/64/142, adopted on 18 December 2009)

[Arabic](#), [Chinese](#), [English](#), [French](#), [Russian](#), [Spanish](#)

■ Quaker United Nations Office, Orphans of Justice, In search of the best interests of the child when a parent is imprisoned: A Legal Analysis, Tomkin, J., August 2009

[English](#), [French](#), [Spanish](#)

■ Quaker United Nations Office, Children of (Alleged) Offenders: Revised Framework for Decision-Making, by Mason-White, H. and Kearney, Helen F., March 2012

[English](#)

■ Quaker United Nations Office, Collateral Convicts: Children of incarcerated parents, Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011, Robertson, O., March 2012

[English](#)

The above and other QUNO publications on children of imprisoned mothers can be accessed at the [QUNO website](#).

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## Prison monitoring and assessments

### Penal Reform International Resources

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

[English](#), [Georgian](#), [Russian](#), [Spanish](#)

■ Developing an advocacy approach for monitoring and reporting on conditions of detention, 2011

[English](#)

■ Training Manual: Independent Monitors of Juvenile Detention Facilities, 2011

[English](#), [Russian](#)

■ Safeguarding Children in Detention: Independent Monitoring Mechanisms for children in detention in Middle East North Africa, 2011

[English](#)

### Other Resources

■ Gender and Security Sector Reform Toolkit, Editor(s): Megan Bastick, Kristin Valasek, DCAF, OSCE/ODIHR, UN-INSTRAW 2008

[English](#), Arabic, French, Indonesian, Montenegrin, Russian

See tools on Parliamentary Oversight of the Security Sector and Gender, Civil Society Oversight of the Security Sector and Gender and SSR Assessment and Monitoring and Evaluation and Gender.

■ UNODC, Criminal Justice Assessment Toolkit

[English](#)

■ UNODC, Gender in the Criminal Justice System Assessment Tool, Criminal Justice Assessment Toolkit, 2010

[English](#), [Spanish](#), [Russian](#), [French](#))

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ACRWC	African Charter on the Rights and Welfare of the Child
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
IASP	International Association for Suicide Prevention
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
LGBTI	Lesbian, gay, bisexual, trans/transgender and intersex people
NGOs	Non-governmental organisations
NPMs	National Preventative Mechanisms, under OPCAT
OPCAT	Optional Protocol to the Convention against Torture
PRI	Penal Reform International
SMR	The Standard Minimum Rules for the Treatment of Prisoners
STIs	Sexually transmitted infections
UNODC	United Nations Office on Drugs and Crime
WHO	World Health Organization
WMA	World Medical Association

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