



UNODC

United Nations Office on Drugs and Crime



Handbook on **Women and Imprisonment**

**2nd edition, with reference to the
United Nations Rules for the Treatment
of Women Prisoners and Non-custodial
Measures for Women Offenders
(The Bangkok Rules)**

CRIMINAL JUSTICE HANDBOOK SERIES

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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Introduction

Whom the *Handbook* is for

The present *Handbook* forms part of a series of tools developed by The United Nations Office on Drugs and Crime to support countries in implementing the rule of law and the development of criminal justice reform. It is designed to be used by all actors involved in the criminal justice system, including policymakers, legislators, prison managers, prison staff, members of non-governmental organizations and other individuals interested or active in the field of criminal justice and prison reform. It can be used in a variety of contexts, both as a reference document and as a training tool.

What the *Handbook* covers

The main focus of the *Handbook* is female prisoners¹ and guidance on the components of a gender-sensitive approach to prison management, taking into account the typical background of female prisoners and their special needs as women in prison (chapters 1 and 2).

Three special categories of female prisoners have been included in chapter 2 of the *Handbook*: pretrial detainees, foreign national women and girls in prison (sections 13.1, 13.2 and 13.3). These three groups were selected because their vulnerability and special needs are particularly pronounced due to the cumulative effects of their status and gender. However, it is important to note that, according to Convention on the Rights of the Child—a legally binding instrument that most States have ratified or acceded to—States should only deprive a child of his or her liberty as a measure of last resort and for the shortest possible period of time (Art. 37 (b) CRC). In addition, girls and boys deprived of their liberty should be dealt with by a specialized juvenile justice system that promotes alternative measures to formal judicial

¹The term “prisoner” is used to refer to all persons detained or imprisoned on the basis of, or allegation of, a criminal offence, including pretrial, under-trial detainees and convicted and sentenced prisoners.

proceedings and alternative measures to detention. Accordingly, the institutionalization of girls should be avoided to the maximum possible extent, and separate strategies and policies in accordance with international standards² need to be designed for the treatment and rehabilitation of this category of prisoners.³

The distinctive needs of minorities and indigenous peoples in terms of their access to gender and culture specific programmes and services are covered in chapter 2, as relevant. For more detailed guidance on the needs of women prisoners from ethnic and racial minority groups and indigenous peoples, as well as other groups, such as older women prisoners, women with disabilities and women under sentence of death, the reader should refer to the UNODC *Handbook on Prisoners with Special Needs*, which covers the needs of such prisoners, men and women. Reference will need to be made to both handbooks, when dealing with the situation of such categories of female prisoners.

In view of the significant rise in the rate of women's imprisonment in many countries worldwide, the *Handbook* also provides an overview of measures that could be taken to reduce the female prison population (chapter 3). It puts forward some recommendations, taking into consideration the most common offences which lead to women's imprisonment and the harmful effects of imprisonment on the social reintegration of a large majority of female offenders. It must be emphasized that this section of the *Handbook* does not provide a comprehensive examination of the reasons for the growing rate of women's imprisonment in different regions and countries, nor detailed guidelines on how this challenge may be addressed in different contexts. Neither does it provide a thorough overview of the impact of women's imprisonment on their children, though this is a key concern that is repeatedly highlighted in the *Handbook*. It covers some of the issues that stand out in relation to women's increasing imprisonment, and a number of measures that can reduce their rate of incarceration, when it does not serve the purposes of justice or social reintegration. By highlighting and drawing attention to some key issues, this chapter aims to generate further research and the development of policies and strategies to reduce the female prison population in different countries and regions worldwide. In this context, readers may also wish to consult the UNODC *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, the UNODC *Handbook on Restorative Justice Programmes* and the UNODC *Handbook on Strategies to Reduce Overcrowding in Prisons*, for further practical guidance.

Recognizing the shortage of information on the background and characteristics of women offenders in many countries, chapter 4 addresses the need for research, planning, evaluation, public awareness-raising and training. This area is considered essential to improve the knowledge base about women offenders, to develop strategies and policies to best meet the needs of women offenders and their children, and to

²In particular the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Guidelines for Action on Children in the Criminal Justice System.

³See Preamble, paragraph 16, United Nations Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (the Bangkok Rules)

raise the awareness of the public and criminal justice officials with a view to facilitating the implementation of such strategies and policies.

The *Handbook* does not offer guidance on all aspects of prison management which apply to the situation of all prisoners, including women.⁴ Therefore it should be used in conjunction with general prison management manuals and relevant international instruments covering the treatment of all prisoners.⁵

Why a handbook

Women continue to constitute a very small proportion of the general prison population worldwide.⁶ However, not only are their numbers increasing in tandem with the rise in the overall prison population in many countries, but studies in some countries have shown that the number of female prisoners is increasing at a faster rate than that of male prisoners. For example, in the United States the number of women serving sentences of more than a year grew by 757 per cent between 1977 and 2004—nearly twice the 388 per cent increase in the male prison population.⁷ In England and Wales the number of women in prison has more than doubled over the past decade, while the number of men has increased by half.⁸ Between 1984 and 2003, in Australia there was a 75 per cent increase in the imprisonment of men whereas women's imprisonment soared by 209 per cent.⁹ A similar trend was noted in Mexico, Bolivia, Colombia, Kenya, Kyrgyzstan, New Zealand between 1994 and 2004,¹⁰ and in a number of countries in Europe, such as Cyprus, Estonia, Finland, Greece and the Netherlands in the same years.¹¹ In Argentina, the number of female prisoners within the federal system increased by 193 per cent, while the male population grew by 111 per cent between 1990 and 2012.¹²

Toughening criminal justice policies worldwide has meant that a growing number of women are being imprisoned for petty offences. In some countries tough legislation

⁴The term “prisoner” is used to refer to all persons detained or imprisoned on the basis of, or allegation of, a criminal offence, including pretrial, under-trial detainees and convicted and sentenced prisoners.

⁵For example, the *Handbook* does not provide general guidelines on staff training, safety and security in prisons, principles that apply to prisoners' contact with the outside world, principles and practices relating to general health care in prisons, among many others. E.g. the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment and Basic Principles for the Treatment of Prisoners, in particular.

⁶Women usually constitute between 2 and 9 per cent of a country's prison population, although exceptionally the percentage may be higher. See Walmsley, R., *World Female Imprisonment List*, second edition, 2012, International Centre for Prison Studies, http://www.prisonstudies.org/images/news_events/wfil2ndedition.pdf

⁷Frost, N. A., et. al, *The Punitiveness Report, Hard Hit: The Growth in Imprisonment of Women, 1977-2004*, Institute on Women and Criminal Justice, May 2006, p. 9.

⁸Prison Reform Trust, *Bromley Briefings Prison Factfile*, April 2006, p. 4.

⁹Bastick, M., *Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners*, Discussion draft, Quaker United Nations Office, Geneva, July 2005, p. 3.

¹⁰*Ibid.*, p. 3.

¹¹*Women in Prison, A Review of the Conditions in Member States of the Council of Europe*, The Quaker Council for European Affairs, February 2007, p. 25.

¹²Cornell Law School's Avon Global Center for Women and Justice and International Human Rights Clinic, Defensoria General de la Nacion Argentina and the University of Chicago Law School International Human Rights Clinic, *Women in Prison in Argentina: Causes, Conditions and Consequences*, May 2013, p. 1.

for drug-related offences has had a significant impact on the numbers of women in prison and the rate of their increase. In countries where legislation derives from certain interpretations of religious laws, women are often discriminated against, and imprisoned for so-called moral crimes. Vulnerable and economically disadvantaged, women are increasingly likely to be detained pretrial, due to their inability to afford bail or the services of a lawyer. In many countries the proportion of women held in pretrial detention is equivalent to, or larger than that of convicted female prisoners. In some countries the rate is growing faster than that of male pretrial detainees, despite the principle set out in international instruments that “pretrial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim”.¹³

The majority of these women do not need to be in prison at all. Most are charged with minor and non-violent offences and do not pose a risk to the public. Many are imprisoned due to their poverty and inability to pay fines. A large proportion is in need of treatment for mental disabilities¹⁴ or substance dependence, rather than isolation from society. Many are victims themselves but are imprisoned due to discriminatory legislation and practices. Community sanctions and measures would serve the social reintegration requirements of a vast majority much more effectively than imprisonment.

Although research is unanimous in underlining the particularly detrimental effects of prison on women, their special needs are rarely taken into consideration during imprisonment. The fact that the proportion of male prisoners has always been vastly larger than that of women in the prison system has resulted in a general disregard to the gender-specific needs of women, as well as a denial of many services and opportunities, accessible to male prisoners. The failure of imprisonment to address the underlying factors leading to offending behaviour by women is reflected in the increasing rate of re-offending among women in some countries.

The change in the composition of the prison population has highlighted the shortcomings in almost all prison systems in meeting the gender-specific needs of women prisoners. With the increase of the female prisoner population worldwide, the necessity to bring more clarity to particular considerations which should apply to the treatment of female prisoners and ways in which they should be addressed in prison has acquired particular importance and urgency.

Recognizing the need to provide global standards with regard to the treatment of women offenders and prisoners, and taking into account a number of relevant

¹³United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by the General Assembly resolution 45/110 of 14 December 1990, Rule 6.1.

¹⁴The umbrella term mental disability is used to include major psychiatric disorders, e.g. schizophrenia and bipolar disorder; more minor mental health problems, often referred to as psychosocial disabilities, e.g. mild anxiety disorders; as well as intellectual disabilities, following the terminology used by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (See 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, Commission on Human Rights, Sixty-first Session, Economic, Social and Cultural Rights, UN Doc. E/CN.4/2005/51, 11 February 2005, para. 19). In this *Handbook* the term mental disability refers predominantly to psychosocial disabilities.

resolutions adopted by different United Nations bodies, which called upon Member States to respond appropriately to the needs of women offenders and prisoners, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) were adopted on 21 December 2010.

The Bangkok Rules do not replace, but rather complement, as appropriate, the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) in connection with the treatment of women prisoners and alternatives to imprisonment for women offenders. Therefore, all relevant provisions in those two set of rules continue to apply to all prisoners and offenders without discrimination. While some of the rules contained in the Bangkok Rules bring further clarity to existing provisions in the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules in their application to women prisoners and offenders, others cover new areas.

Prior to the adoption of the Bangkok Rules, the increasing requirement to address the situation of female offenders had been emphasized by the United Nations in various contexts. For example, in 1980 the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution on the specific needs of women prisoners,¹⁵ which recommended that (a) in the implementation of the resolutions adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, recognition should be given to the specific problems of women prisoners and the need to provide the means for their solution; (b) in countries where it is not yet done programmes and services used as alternatives to imprisonment should be made available to women offenders on an equal basis with male offenders; (c) that the United Nations, the governmental and non-governmental organizations with consultative status and all other international organizations should make continuing efforts to ensure that the woman offender is treated fairly and equally during arrest, trial, sentence and imprisonment, particular attention being paid to the special problems which women offenders encounter, such as pregnancy and child care.

With the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was endorsed by the General Assembly Resolution 55/59 on 4 December 2000,¹⁶ Member States of the United Nations declared that they committed themselves (a) to taking into account and addressing, within the United Nations Crime Prevention and Criminal Justice Programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men; (b) to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders.

¹⁵Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980, A/CONF.87/14/Rev. 1, Resolution 9, pp. 12-13.

¹⁶General Assembly, resolution A/RES/55/59, Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, 17 January 2001.

The United Nations General Assembly resolution on human rights in the administration of justice, adopted on 22 December 2003 called for increased attention to be devoted to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they can be addressed.¹⁷

The United Nations General Assembly resolution 61/143 on the intensification of efforts to eliminate all forms of violence against women, adopted on 19 December 2006, stressed that “ ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including arbitrary deprivation of liberty, whether occurring in public or in private life”, and urged States, among others, “[t]o review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles, including the principle of non-discrimination”; “[t]o take positive measures to address structural causes of violence against women and to strengthen prevention efforts that address discriminatory practices and social norms, including with regard to women who need special attention ... such as ... women in institutions or in detention...”, among others; and to provide training and capacity-building on gender equality and women’s rights for law enforcement personnel and the judiciary, among others.¹⁸

This *Handbook* aims to assist legislators, policymakers, prison managers, staff and non-governmental organizations to implement the provisions of the Bangkok Rules as well as the resolutions and recommendations of the United Nations to address the gender-specific needs of women prisoners. It also aims to increase the awareness about the profile of female offenders and to suggest ways in which to reduce their unnecessary imprisonment by rationalizing legislation and criminal justice policies, and by providing a wide range of alternatives to prison at all stages of the criminal justice process.

¹⁷General Assembly, resolution A/RES/58/183, Human rights in the administration of justice, 18 March 2004, para. 15.

¹⁸General Assembly, resolution A/RES/61/143, Intensification of efforts to eliminate all forms of violence against women, 30 January 2007, items 3, 8 (c), (f) and (m).

1.

The special needs of female prisoners

Women constitute a vulnerable group in prisons, due to their gender. Although there are considerable variations in their situation in different countries, the reasons for and intensity of their vulnerability and corresponding needs, a number of factors are common to most.

These include:

- The challenges they face in accessing justice on an equal basis with men in many countries;
- Their disproportionate victimization from sexual or physical abuse prior to imprisonment;
- A high level of mental health-care needs, often as a result of domestic violence and sexual abuse;
- Their high level of drug or alcohol dependency;
- The extreme distress imprisonment causes to women, which may lead to mental health problems or exacerbate existing mental disabilities;
- Sexual abuse and violence against women in prison;
- The high likelihood of having caring responsibilities for their children, families and others;
- Gender-specific health-care needs that cannot adequately be met;
- Post-release stigmatization, victimization and abandonment by their families.

1. Challenges in accessing justice

Although all individuals living in poverty face immense challenges in accessing justice in many countries worldwide, the difficulties women face are intensified by many factors directly related to their gender. The scope of this *Handbook* does not allow the examination of multiple layers of discrimination that women face in all spheres of life, that directly or indirectly, lead to their contact with, and extreme vulnerability in, the criminal justice system. These include discrimination in areas such as

education, employment, marriage, divorce, reproductive rights and mobility, among many others.

Key factors to note in the context of this *Handbook* are that many women in the criminal justice system are from poor and marginalized sectors of communities or from societies where the education of women is not the norm, due to role models imposed on the female gender, based on religion, custom or stereotypical perceptions of women's position in society. Thus a large majority of women who are detained not only do not have the economic means to hire a lawyer, but they are very often illiterate and unaware of their legal rights. This places them in a particularly vulnerable position, at risk of signing statements that have serious legal implications and of being open to coercion. At the very least, the lack of legal representation can lead to immense delays in the criminal justice process, and fewer chances of defendants being considered for bail, for example, taking into account women's caring responsibilities for their children and others. Recognizing that certain groups are more vulnerable when involved with the criminal justice system and should therefore be entitled to additional protection, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems include specific provisions on the implementation of the right of women to access legal aid (Guideline 9).

Women are also vulnerable to sexual abuse and other forms of violence in detention, which may be used to force them to confess to offences they have not committed. In some societies the interrogation by men is likely to intimidate women who have hitherto had scant contact with unrelated men. This also contains a threat of sexual abuse, whether or not such a threat is realized. There are numerous reports of illiterate and poor women signing statements (often with a thumbprint), the contents of which they do not understand. In some systems where there is over-reliance on confession as evidence, uncorroborated confessions can form the basis for conviction.

Non-resident foreign national women are especially vulnerable during this whole process, due to language barriers, lack of any social networks to assist them in most cases, even less awareness of legal rights in a foreign country and extreme vulnerability to abuse.

2. History of victimization and mental health-care needs

Female prisoners in the United States

According to one report, 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 in 1991.^a Another report states that 85 per cent of women prisoners have been physically or sexually abused at some time in their lives.^b

50 per cent of women in state prisons described themselves as a daily user of drugs, 25 per cent were under the influence of drugs at the time of the offence. Over 30 per cent said they had committed the offence which brought them to prison in order to obtain money to support their need for drugs (1998).^c

According to a study carried out by the Bureau of Justice Statistics in 2002 and 2004, mental health problems in prison were found to be much higher among women than men: 73 per cent of women and 55 per cent of men in state prisons; 61 per cent of women and 44 per cent of men in federal facilities; 75 per cent of women and 63 per cent of men in jails had mental health problems.^d

Female prisoners in Canada^e

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.

Two-thirds of federally sentenced women had children. Many of these women had tremendous concern over lost custody of one or more of their children and reported that contact with their children, regardless of their age, was essential to personal well-being.

Female prisoners in the United Kingdom

80 per cent of women prisoners suffer from diagnosable mental health problems^f

66 per cent are drug dependent or use alcohol to dangerous excess^g

50 per cent have experienced domestic violence^h

33 per cent have suffered from sexual assaultⁱ

Around one-third of women prisoners lose their homes, and often their possessions, whilst in prison^j

37 per cent say that they have attempted suicide at some time in their life^k

Female prisoners in Europe

It is estimated that in 2002, 75 per cent of women entering European prisons were problematic drug and alcohol users.^l Existing research also indicates that women prisoners are more likely to be addicted to harder drugs than male prisoners.^m

^dThe United States Bureau of Justice Statistics survey of State prison inmates for 1991, in National Institute of Justice Research in Brief, August 1998, p. 1.

^eInformation from New York State Governor's Office, cited in Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44, Addendum, Report of the mission to the United States of America on the issue of violence against women in state and federal prisons, United Nations Document, E/CN.4/1999/68/Add.2, 4 January 1999, para. 16.

^fBureau of Justice Statistics, Special Report "Women Offenders", December 1999, Revised 10.3.2000, p. 9.

^gSniffen, M. J, the Associated Press report, 7 September 2006.

^hCorrections and Conditional Release Act, Five-Year Review, Women Offenders February 1998, citing a survey conducted in 1990.

ⁱThe Howard League for Penal Reform, Press Release, 20 June 2006.

^jIbid.

^kIbid.

^lIbid.

^mPrison Reform Trust, Bromley Briefings Prison Factfile, April 2006, p. 16.

ⁿIbid.

^oWomen in Prison, A Review of the Conditions in Member States of the Council of Europe, op. cit., p. 12, citing "Healthcare Needs of Women in Prison": The Gap Between Policy and Implementation", MacDonald M. presentation at "What Works with Women Offenders", June 2005.

^pIbid., p. 12.

Widespread domestic violence against women and their sexual abuse prior to imprisonment have been documented in countries worldwide. Women who are admitted to prison are more likely than men to suffer from mental disabilities, often as a result of domestic violence, physical and sexual abuse.

Imprisonment generates new mental health problems or exacerbates existing ones. In most communities women are carers, sometimes the sole carers, of their families and the sudden change of their role from caregiver to “criminal” and isolation from loved ones usually have an intensely adverse effect on their mental well-being.

Consequently, research in some countries has found that mental disabilities among female prisoners are more common compared to male prisoners, and that women are much more likely than men to harm themselves or to attempt suicide, which highlights the need to provide appropriate mental health services oriented to the gender-specific needs of women offenders.¹⁹

Women’s mental health is likely to deteriorate in prisons which are overcrowded, where differentiation of prisoners based on a proper assessment is not made and prisoner programmes are either non-existent or inadequate to address the specific needs of women. The harmful effects on mental health are exacerbated when women do not feel safe, if they are supervised by male staff and feel at risk of further abuse.

3. Gender-specific health-care needs

Female 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 female prisoners often have greater primary health-care needs in comparison to men.²⁰ Their condition may become worse in prisons due to the absence of adequate medical care, lack of hygiene, inadequate nutrition and overcrowding. In addition, all women have gender-specific medical requirements and need to have regular access to specialists in women’s health care.

In many countries worldwide health care in women’s prisons encompasses a large number of children living with their mothers, as well as the medical care of pregnant women and nursing mothers, with which most prison services are not equipped to cope. (See also section 6, “pregnancy and women with children”.)

¹⁹ See for example, Laishes, J., *The 2002 Mental Health Strategy for Women Offenders*, Correctional Service Canada, 2002, pp. 6-7 (http://www.csc-scc.gc.ca/text/prgrm/fsw/mhealth/toc_e.shtml); Ross, H., Glaser, F., & Stiasny, S. (1988); Sex differences in the prevalence of psychiatric disorders in patients with alcohol and drug problems. *British Journal of Addictions*, 83, 1179-1192; Prison Reform Trust Factfile, p. 16, with information from Prison Service (June 2004) *Safer Custody News*, London, Prison Service; Rickford, D., *Troubled Inside: Responding to the Mental Health Needs of Women in Prison*, Prison Reform Trust, 2003, pp. 4 and 17.

²⁰ Möller, L., Stöver, H., Jürgens, R., Gatherer, A. and Nikogasian, H., eds., *Health in Prisons, A WHO Guide to the essentials in prison health*, WHO Europe (2007), p. 27.

Prison health services are usually ill-equipped, understaffed, under-resourced and too often isolated from other national health services.²¹ In many countries they encounter immense challenges in providing adequate basic health-care services. They are even less able to offer women the gender-specific medical care they need.

3.1 Sexual and reproductive ill-health

Violence against women, especially sexual violence, has numerous short- and long-term sexual and reproductive health consequences for victims. As such, women prisoners represent a high-risk group for sexual and reproductive health diseases, including cancer.

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 sexually transmitted infections (STIs) can greatly increase the risk of contracting HIV.²² Due to the typical background of female prisoners, which can include injecting drug use, sexual abuse, violence, sex work and unsafe sexual practices, a significant number of women are infected with STIs, including HIV and hepatitis, by the time they enter prison. Thus, the proportion of women in prison with STIs is relatively very high.²³

In some countries where tuberculosis is prevalent, such women will also be at higher risk of tuberculosis infection.

Women prisoners and health conditions in the Russian Federation

According to a study on women prisoners in the Russian Federation, between one third and one half of women arrive in prisons infected with STIs, syphilis in particular. Over 5 per cent of female prisoners are HIV positive. HIV is often accompanied with hepatitis C. Some 3-5 per cent of women suffer from active forms of tuberculosis. Other widespread health conditions include alcoholism, drug addiction, and somatic diseases such as cardiovascular and gynaecological problems.^a

Women prisoners and health conditions in South Africa^b

Imprisoned women in South Africa not only have conventional health-care needs but are often exposed to diseases such as tuberculosis, sexually transmitted infections, hepatitis B and C, as well as HIV/AIDS. Since it is not obligatory in South Africa to be tested for HIV/AIDS, existing statistics cannot indicate the percentage of infected women in South African prisons. However, the death rate due to natural causes increased from 0.09 per cent in 1990 to 3.73 per cent in 2003/04 in the general prison population in South African prisons.^c

Women prisoners and hepatitis C in Australia

Australian research examining the health of incarcerated parents found that 68 per cent of all mothers in prison are infected with hepatitis C, as compared to 42 per cent of fathers.^d

²¹ See WHO Europe, Declaration on Prison Health as part of Public Health, Moscow 24 October 2003.

²² Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 3. www.unodc.org/unodc/en/drug_demand_hiv_aids.html

²³ Ibid., p. 3.

Women prisoners and HIV in the United States

In the United States, in 2004, the overall HIV prevalence among imprisoned men was 1.7 per cent compared to 2.4 per cent among women. However, in some states, such as New York, the HIV prevalence was 14.2 per cent among women and 6.7 per cent among men.^e

Women prisoners and HIV in Brazil

Twenty per cent of the women prisoners tested for the AIDS virus at the Women's Penitentiary in São Paulo were found to be HIV-positive in 1997. A large proportion of these women is thought to have contracted HIV via shared injection equipment, a conclusion based on the high frequency of drug use within this population.^f

Women prisoners and HIV in Moldova

In Moldova in 2006, HIV prevalence among women in prison was 3 per cent, compared to 2 per cent among incarcerated men.^g

^eAlpern, Women and the System of Criminal Justice in Russia: 2000-2002. (The study states that the figures are estimated, since precise data on diseases of female prisoners in Russia are not available).

^fDr. Nicolien du Preez, College of Law, Department of Penology, University of South Africa, personal communication.

^gW. F. M Luyt, A critical view on HIV/AIDS in South African prisons within the framework of the Dublin Declaration on HIV/AIDS in prisons, 2005, p. 71-89.

^dWomen in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., p. 51, citing NSW Corrections Health Service; Inmate Health Survey Report; 2003.

^eWomen and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 3, with reference to United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Bulletin HIV in Prisons, 2004, November 2006, NCJ 213897.

^fHuman Rights Watch, Behind Bars in Brazil, Section XI Women Prisoners, 1998 (accessed at: www.hrw.org/reports98/brazil/Brazil-12.htm).

^gWomen and HIV in Prison Settings, op. cit. p. 3, with reference to Pinteilei L., 2007, Communication IHRC, Warsaw.

In some countries where abortions are criminalized, 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. For example, WHO reported that before the 2002 law change in Nepal, an estimated 20 per cent of the women prisoners nationwide were in jail for charges relating to abortion or infanticide.²⁴ Many women who had miscarriages, stillbirths, or induced abortions were jailed on charges of infanticide. In some countries, women and young girls continue to be imprisoned on charges of infanticide, concealment of birth or culpable homicide, following miscarriages, the death of their babies or due to illegal abortions. Such women may face the death penalty.

Given the perception of criminality surrounding their circumstances, such women's medical and psychological health-care needs, resulting from childbirth, stillbirth or abortion, are unlikely to receive any special attention in prison. Such women are at

²⁴David A. Grimes, Janie Benson, Susheela Singh, Mariana Romero, Bela Ganatra, Friday E. Okonofua, Iqbal H. Shah, Unsafe Abortion, the Preventable Pandemic in World Health Organisation, Sexual and Reproductive Health, 4, Journal Paper, Unsafe abortion, the preventable pandemic, p. 6.

particular risk of health complications during the period they spend in pretrial detention, immediately following an abortion or complication during delivery. Those who have recently given birth require post-natal care, but in many countries are unlikely to be included in treatment programmes, where they exist. See also section 6.2, “pregnant women and women with children in prison”.

3.2 Substance dependence

A large number of female prisoners worldwide are in need of treatment for substance dependence, though only a minority have access to treatment programmes. In addition, it is increasingly recognized that women have distinctive needs in relation to substance dependence treatment, though few programmes offer specialized services for them.

When drug dependence is untreated in prison, the likelihood of re-offending is high, either on drugs charges or due to theft or illegal sex work, often to finance the addiction.

Studies indicate that women with substance abuse problems are more likely than men to have experienced physical and/or sexual abuse.²⁵ A history of violent assault can increase the risk of substance use and post-traumatic stress disorder or other mental health problems. It has been reported that rates of post-traumatic stress disorder among women in substance abuse treatment range from 30 to 59 per cent.²⁶ Some findings have indicated that the odds of women with coexisting psychiatric disabilities being returned to prison within 12 months of release were increased by 58 per cent in comparison to women with only a substance addiction. (Compared to 40 per cent in men.)²⁷

Drug-dependent 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 United Kingdom, in the week following release, prisoners were 40 times more likely to die than the general population. In this period, immediately after release, most of these deaths (over 90 per cent) were associated with drug-related causes.²⁸ 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.²⁹

²⁵ UNODC, *Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned*, United Nations, New York, 2004, p. 9.

²⁶ *Ibid.*, p. 10.

²⁷ Messina, N., Predictions of prison-based treatment outcomes: a comparison of men and women participants, *American Journal of Drug and Alcohol Abuse*, February 2006.

²⁸ 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, p.1.

²⁹ Post-release support for women prisoners—processes of psychological and social transition, ARC Linkage Project LP0560398 (www.criminology.unimelb.edu.au/research/arc_grants/mentoringwomenprisoners), citing Graham A., 2003.

Research findings have suggested a need for further investigation into the gender-specific needs of substance dependent female offenders and the design of appropriate programmes to match,³⁰ and work in the area of gender and drug abuse has been carried out by UNODC, referred to in chapter 2, section 8.6. Research has consistently pointed to the need for a greater emphasis to be placed on promoting appropriate aftercare treatment for prisoners, regardless of their gender.

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.

4. Safety in prisons

In many countries women are sexually abused and humiliated by law enforcement officials, including in prisons. Such abuse can range from subtle humiliation to rape. The former can include verbal abuse, improper touching during pat-down searches, frequent and unnecessary searching and spying on prisoners during showers and in living areas. Rape may take place in the form of sexual services which women prisoners are forced to provide in return for access to goods and privileges or to enjoying their most basic human rights. Sexual abuse of women by male prisoners may take place with the complicity of prison guards. Women who have been charged with or convicted of crimes against morality, as well as lesbian, bisexual or transgender women, are at particular risk. (See also UNODC *Handbook on Prisoners with Special Needs*, chapter on “lesbian, gay, bisexual and transgender (LGBT) prisoners”.)

Recognizing the vulnerability of women to sexual abuse, the United Nations Standard Minimum Rules for the Treatment of Prisoners prohibit any involvement of male staff in the supervision of women’s prisons.

However, this rule is not applied in many countries, sometimes due to lack of female prison staff, in other cases because of concerns for equal employment opportunities and in some cases because mixed gender staffing is seen as a component of the normalization of prison life. Unfortunately, this policy can bring with it a high level of real risk for women prisoners, especially when male staff are employed in positions where they have responsibility for the direct supervision of female inmates.

As has been noted by experts, even when there is no actual sexual abuse “[w]hen male officers treat women with disrespect, it has a different impact than having women officers act disrespectfully to male prisoners. Disrespect towards women by male officers is more likely to be sexual in content or implication, and in women who were traumatized by sexual abuse perpetrated by males, it is more likely to be

³⁰ Messina, N., Predictions of prison-based treatment outcomes: a comparison of men and women participants, *American Journal of Drug and Alcohol Abuse*, February 2006.

experienced as a “retraumatization.” [. . .] the mere presence of male officers in the housing units where the women toilet, shower, undress and sleep can constitute a retraumatization. The deprivation of privacy that is inherent in incarceration becomes much more of a deprivation than is necessary to accomplish the proper goals of incarceration. Previously traumatized women who might choose to avoid the gaze of males in order to create a safe place are forced to live in a situation where male officers are constantly present and might intrude on their most personal and private activities at any moment. The woman can develop a generalized fear, and this situation is quite likely to make her symptoms and disability worse and more long-lasting.”³¹

Torture and abuse of prisoners in custody, immediately after arrest, is more common than during the period of imprisonment. In some countries, where prisoners spend their pretrial detention in police custody, this period of vulnerability is extended. During this time, women are at particular risk of sexual abuse, including rape, which is used as a tool to coerce and control them and to force them to make confessions. Thus, in countries, where such practices are common, women may be suffering from both the effects of any previous violence and the trauma resulting from their treatment in police custody by the time they are admitted to prison.

In these circumstances prison authorities often fail to protect the human rights of prisoners under their care, with their lack of response to complaints by female offenders about sexual abuse in previous custody, their failure to carry out a medical examination³² and provide the vital legal and psychological support needed by the women. When complaints of sexual abuse or other forms of violence are ignored, the likelihood of custodial violence passing undetected by state authorities is increased, contributing to the lack of protection for women victims of such violence in prison.

Rape and other forms of sexual violence have devastating effects for the victims and are prohibited by international law. Such acts may constitute torture,³³ and there can be no question of the social reintegration of female offenders in prisons where they are sexually abused and where they do not feel safe.

5. Accommodation and family contact

The small number of female prisoners worldwide and the resource implications of building sufficient women’s prisons to ensure that women are imprisoned close to their homes, give rise to a situation in which women may either be housed in annexes

³¹Excerpt from testimony of Terry Kupers, M.D., M.S.P., in *Everson v. Michigan Department of Corrections* (case no. 00-73133, Feb. 16, 2001, U.S. Dist. Court, E. Dist. of Michigan, Hon. Avern Cohn, Judge) (citations omitted), in “Custody and Control, Conditions of Confinement in New York’s Juvenile Prisons for Girls, Human Rights Watch, American Civil Liberties Union, September 2006, p. 70.

³²The reference to medical examinations should not be confused with virginity tests, carried out in many countries, often without the consent of the woman concerned, and which do not necessarily prove or disprove rape. In general, women’s consent to medical examinations should be sought and complaints should not be disregarded in the absence of such consent.

³³Report of the Committee against Torture, A/51/44.

of male prisons, close to their places of residence, or in women's prisons, which are most often situated at a long distance from home. Being placed in annexes of male prisons may entail safety risks for the women. It also means that the special needs of female prisoners may not be taken into account, as the regime in the prison will be determined by the needs of the majority male prisoners. Most States have a combination of women's prisons and separate wings for women in men's prisons, which means that, in practice, many women are imprisoned a long distance from their homes, which reduces the possibility for family contact.

The situation can be particularly problematic in large countries, where huge distances need to be covered to reach women's prisons. In the Russian Federation, for example, there are only 40 female penal colonies for women and only three colonies for young girls. This means that women are often imprisoned at a very long distance from their homes. After receiving their sentences, female prisoners may have to travel thousands of kilometres to the places where they will be serving their prison terms. Sometimes travel to prison will take up to two months, with a number of stop-overs in transit prisons (collection stations of a number of regional pretrial facilities) on the way, where the prisoner may have to spend a week or more.³⁴ Although families can travel these distances in relatively short times, the distance and costs involved still pose a major obstacle to regular visits. Similar problems exist in many countries worldwide, particularly in Asia, Africa, Latin America and the United States.³⁵

It has been reported that in Eastern Europe and Central Asia there is a widespread practice of the requirement for visitors to make financial contributions to the prison authorities for their visits. The practice varies from country to country. In some jurisdictions payment is required both for short and for long visits,³⁶ in others payment is required only for long visits on a per day/per person basis.³⁷ The requirement to pay for visits has also been reported in other regions.³⁸ These financial contributions place an additional burden on families who also have to pay for transport, making it difficult for them financially to visit their relatives in prison, whether male or female. Since women prisoners suffer particularly from separation from their families, and they are more likely to be housed at a long distance from their homes,

³⁴Alpern, L., Women and the System of Criminal Justice in Russia: 2000-2002, www.mhg.ru/english/1F4FF6D.

³⁵For example, according to reports published in October 2007 Hawaii was holding 2,027 of its prisoners in private prisons in Arizona and Kentucky, thousands of kilometres away from their homes. This figure included 175 convicted female prisoners, held in a private prison in Kentucky. In October, discussions were underway to bring them back to Hawaii, to be housed in the Federal Detention Center on O'ahu, due to lack of prison space in the Women's Community Correctional Center in Kailua. It was reported that housing the women in Hawaii would double the cost of holding them in Kentucky, which is the reason why so many prisoners are transported out of Hawaii to be housed elsewhere. Prison reform advocates said most of the women were convicted of non-violent crimes, and some were single mothers. Some of the women prisoners were the sole caregivers for their children before they were sent to prison. Lawmakers and others had questioned the impact that long separations without visits may have on the children and families back in Hawaii. See Kevin Dayton, Advertiser Big Island Bureau, The Honolulu Advertiser, 17 October 2007 (<http://the.honoluluadvertiser.com/article/2007/Oct/17/In/hawaii710170413.html>).

³⁶In countries of Eastern Europe and Central Asia, there are generally two types of visits allowed prisoners: short visits, which are the usual visits which do not include an overnight stay and long visits where the visiting families can spend a night or more together with the prisoner in special units set aside in the prison for this purpose.

³⁷For example, in Kazakhstan the per night/per day rate is reported to be around \$3.

³⁸Annual Report on Women Prison Conditions in Sudan Omdurman women's prison, Kousti, Al Fashir, Marawi, Sudan Organisation Against Torture (SOAT), 2003, p. 11.

which means that the additional financial contributions may render the cost of visits impossible, these rules have a particular impact on female prisoners. It must generally be recognized that such rules appear to be based on the understanding that visits are a privilege rather than a right enjoyed by all prisoners, as reflected in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Rules 37 and 79, in particular) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Rules 26-28 and 43).

All women, but particularly women who have been charged with or convicted of crimes against morality, are at risk of being abandoned by their families, which means that they will lack the vital family support during their imprisonment and following release.³⁹

The disruption of family links has extremely harmful emotional consequences for women prisoners, especially if they are mothers, with a detrimental impact on their resettlement prospects.

See chapter 2, section 13.2, for the particular difficulties associated with non-resident foreign national prisoners' links with their families.

6. Pregnancy and women with children

6.1 Mothers in prison

Research from many countries has revealed that when fathers are imprisoned, generally the mother continues to care for the children. However, when mothers are imprisoned the family will often break up,⁴⁰ or as mothers are more often the sole or primary carers within a family, alternative carers will need to be found, which may include state welfare services/institutions. This results in large numbers of children being institutionalized, in state care. Research has also indicated that the children of imprisoned parents are at greater risk of future incarceration themselves.⁴¹ In the United Kingdom, for example, it has been estimated that of the 150,000 children who have a parent in prison, 75 per cent will go on to commit a crime.⁴² In many cases this is sadly a part of the continued cycle of institutionalization, since it is likely that the mothers themselves will have spent at least part of their childhood in

³⁹For example, research conducted by Penal Reform International in May 2013 in the South Caucasus found that the families had abandoned or spouses/ partners had left just over a quarter of women prisoners in Armenia and Georgia (Penal Reform International, *Who are Women Prisoners? Survey results from Armenia and Georgia*, September 2013).

⁴⁰Submission by Friends World Committee for Consultation (Quakers) to the Committee on the Rights of the Child, Day of Discussion 2005, *Children Deprived of Parental Care*, Quaker United Nations Office, 2005, p. 2.

⁴¹Submission by Friends World Committee for Consultation (Quakers) to the Committee on the Rights of the Child, Day of Discussion 2005, *Children Deprived of Parental Care*, Quaker United Nations Office, 2005, p.3, citing Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in United States State Prisons*, 1996, p. 20.

⁴²BBC News, "Support for Families of Prisoners", 24 September 2007.

state care. One study shows, for example, that in the United Kingdom “more than a quarter of women [prisoners] had been in care as a child”.⁴³

It is impossible to know exactly how many babies and young children are separated from their mothers worldwide, due to the imprisonment of the mother. An estimate has been made with regards to women and children in Europe. There are about 100,000 women in prison in European countries, and the Howard League for Penal Reform, a non-governmental organization in the United Kingdom, estimates that this means that some 10,000 babies and children aged under two are affected by this situation.⁴⁴ In the United States, it was estimated that there were a quarter of a million children whose mothers were incarcerated in 1998.⁴⁵

Research indicates that, globally, the majority of women prisoners are mothers. For example:

- In Brazil’s largest women’s prison, 87 per cent of women prisoners are mothers;⁴⁶
- In the United States, 80 per cent of women prisoners are mothers, with three-quarters having children under 18 years of age;⁴⁷
- In the Russian Federation, 80 per cent of convicted women are mothers;⁴⁸
- In the United Kingdom, 66 per cent of women prisoners are mothers, 55 per cent have at least one child under 16 years of age, and 34 per cent were single parents before going into prison;⁴⁹
- In Lebanon, 49 per cent of female inmates have children under 16, including 13 per cent with children under 10 plus a further 19 per cent with children under 5 years of age;⁵⁰
- In Rwanda, 45 per cent of female prisoners have children under 16 years of age, including 15 per cent with children under 10 plus a further 10 per cent with children under 5 years of age;⁵¹
- In Armenia and Georgia, 78 per cent of women prisoners are mothers. In May 2013, there were 486 children with mothers in prison in Georgia and 221 such children in Armenia;⁵²

⁴³Submission by Friends World Committee for Consultation (Quakers), op. cit., p. 3, citing report by Wedderburn, D., *The Report of the Committee on Women’s Imprisonment: Justice for Women: the Need for Reform* (Prison Reform Trust), 2000.

⁴⁴Cited in Council of Europe, *Parliamentary Assembly Recommendation 1469 (2000)*, adopted on 30 June 2000.

⁴⁵*Women in Criminal Justice*, Office of Justice Programmes, United States Department of Justice, 1998. www.ojp.usdoj.gov/reports/98Guides/wcjs98

⁴⁶Submission by Friends World Committee for Consultation (Quakers), op. cit., p. 1.

⁴⁷Ibid.

⁴⁸Ibid.

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Ibid.

⁵²Penal Reform International, *Who are Women Prisoners? Survey results from Armenia and Georgia*, September 2013

- In Thailand, 82 per cent of women in prison are mothers. Twenty percent have three children, 40 per cent have two children, and around one third have one child. About ten per cent have four or more children.⁵³

Children outside prison are a cause of great distress to their mothers, who worry about the separation, whether the child will be taken away from them or not and how they are being cared for. If there are a number of children and they are being looked after by different persons or institutions, this will be an additional cause for concern.

Studies of prisoners' children consistently report that "children experience a range of psychosocial problems during the imprisonment of a parent, including: depression, hyperactivity, aggressive behaviour, withdrawal, regression, clinging behaviour, sleep problems, eating problems, running away, truancy, poor school grades and delinquency."⁵⁴ Furthermore, "parental separation can be experienced as desertion or abandonment, which can compound distress for children."⁵⁵

Nevertheless, the rights and needs of dependent children left outside prison are rarely taken into account when taking decisions to detain or sentence their mothers. At the international level, the adoption of the Bangkok Rules represents an important step in this regard, as they require judicial authorities to take into account the best interests of children when taking decisions on pretrial measures to be applied to women suspects and when sentencing women offenders (See chapter 3).

6.2 Pregnant women and women with children in prison

Pregnancy and childbirth

Pregnant women rarely receive adequate ante- and post-natal care in prison. Prison health-care services in the large majority of countries worldwide are under-resourced and understaffed. Their capacity may be limited to trying to cope with serious health concerns in prisons, such as HIV, TB or malaria epidemics. Prisons are generally vastly overcrowded and hygiene is poor. The particular dietary requirements of pregnant women may not be considered or catered for by prison authorities, while the food provided may be insufficient to cover the nutritional requirements of pregnant women.

Particularly in low income countries the delivery of babies may be carried out in prisons, in unhygienic conditions, by staff with inadequate medical expertise, resulting in health complications.

⁵³Thailand Institute of Justice, Women Prisoners and the Implementation of the Bangkok Rules in Thailand, Atabay, T and Owen, B., draft report, June 2013 [unpublished at the time of writing]

⁵⁴Women in Prison, A Review of the Conditions in Member States of the Council of Europe, The Quaker Council for European Affairs, February 2007, p. 14, citing from "Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency Through the Life-Course", Murray J., and Farrington D., Institute of Criminology, University of Cambridge, *Journal of Child Psychology and Psychiatry*, 2005, p. 1.

⁵⁵Ibid., p. 14, citing "The Effects of Imprisonment on Families and Children of Prisoners", Murray J., in *The Effects of Imprisonment*, Liebling, A. & Maruna, S., Willan Publishing, 2005, p. 450.

In some countries body restraints, such as shackles, are used on pregnant women during transfers to hospitals, gynaecological examinations and birth. This practice violates international standards, including the Bangkok Rules.⁵⁶ Moreover, shackling during labour may cause complications during delivery such as haemorrhage or decreased fetal heart rate. If a caesarian section is needed, a delay of even five minutes may result in permanent brain damage to the baby.

Women with children in prison

One of the most difficult challenges involving the imprisonment of women is the question of how best to deal with women with babies. The separation of women from their children due to imprisonment has a traumatic and long-term effect on the mothers and their children. Children are a life-sustaining force for many prisoners and breaking the bond between the mother and child is punishment of the worst kind for the mother. Children, often traumatized and unable to comprehend the reasons for separation, are likely to suffer from acute emotional and developmental problems, as well as being at risk of inadequate care in under-resourced state institutions or by alternative carers.

Prisons, on the other hand, do not provide an appropriate environment for children to grow up in. Health services in prison, which are usually not geared towards children's healthcare needs, are inadequate to cope with the needs of babies and small children in a large majority of countries. Most often, children in prison cannot mix and communicate with children outside prison. Mothers are usually not allowed to spend enough time with their children. The harsh, punitive environment of prisons can permanently damage the psychological and mental well-being of children.

In the majority of countries mothers can keep their babies with them in prison up to a certain age, which differs from country to country, typically ranging from the age of one to six, but sometimes even longer. This, in effect, means that worldwide large numbers of children spend some of their most formative years in prison, probably with life-long psychological consequences.

During the separation, mothers may not see their children again or they may lose track of them, sometimes due to the cost involved in arranging visits to the prison, other times due to the rejection of the mother by the relatives taking care of the children or because the custody of the child might have been taken away from the mother.

Given that a large percentage of women in prison are mothers, this means that the consequences of their imprisonment stretch well beyond the harmful effects on themselves, but encompasses many children as well, increasing the possibility of their future incarceration.

⁵⁶The Bangkok Rules, Rule 24

7. Post-release reintegration

All prisoners face a range of difficulties during post-release reintegration. Resources and attention allocated to their social, psychological and health needs in preparing them for release and following imprisonment are generally very inadequate. Collaboration between prison authorities and civil, social and health services is often lacking. In addition, after release former prisoners suffer from discrimination in employment and education, due to their criminal record and stigmatization.

Although many problems women face during re-entry into society are similar to that 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. A study conducted in one country highlights well some of the practical difficulties women face after release from prison. In the United Kingdom, around one-third of women prisoners lose their homes whilst in prison as a direct or indirect result of imprisonment. This has a particular impact on women with children that have been taken into care. The loss of housing for women can make the task of regaining care of their children particularly difficult. If they do not have children in their care they are unlikely to be given priority status by housing authorities. However, if they do not have secure accommodation, then their children will not be placed back into their care.⁵⁷

Women are more likely than men to have received treatment for a mental health problem in prison and will be in need of continued psychiatric treatment or counselling after release.

Former prisoners experience high rates of drug-related accidents, overdose and death. The risk of renewed drug or alcohol abuse is high among all former prisoners, particularly during the early stages following release, when the myriad of difficulties associated with re-entry may lead to despair and relapse into former habits. The high rate of substance dependence among female prisoners may therefore pose a significant obstacle to successful reintegration.

In some countries women may not be able to leave prison unless they have a male guardian to collect them from prison, which might lead to their prolonged detention beyond the term of their sentence.

In some countries, women are at risk of murder by their families following release, if they have committed “moral offences”,⁵⁸ or they are victims of rape or other sexual

⁵⁷ Social Exclusion Unit, *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister, United Kingdom, 2002, pp. 138, 140.

⁵⁸ Depending on the country, a moral offence may include sex outside marriage, adultery and homosexual relations. Although not necessarily defined as such, “reproductive crimes”, such as concealment of birth, abortions, or other acts perceived or defined as infanticide, are also morality-based and can have some similar consequences for the women concerned, in terms of their relationship with their families.

abuse.⁵⁹ They may also be at risk of being returned to violent marriages or being forced to marry someone against their will. They are in need of special protection and support. In most cases, however, such protection (e.g. in safehouses) is vastly inadequate to cater for their needs. (See chapter 2, section 9, on concerns relating to protection measures.)

On release, trafficked women and women imprisoned in relation to their connection to organized crime may also face particular security concerns.

Pre-release preparation and post-release support policies and programmes are typically structured around the needs of men and rarely address the gender-specific needs of female prisoners, with targeted continuum-of-care in the community after release.

See chapter 2, section 13.2 for particular difficulties foreign national women face, if non-resident, or resident and liable for deportation.

⁵⁹The killing (so-called “honour killings”) of women who have committed “moral” crimes, which often include victims of rape or sexual abuse, by the male members of the family or community is widespread in many countries, especially in the Middle East and some countries in Asia.

2.

Management of women's prisons

1. Gender-sensitive prison management

United Nations Convention on the Elimination of All Forms of Discrimination against Women

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

The United Nations Standard Minimum Rules for the Treatment of Prisoners

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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

Principle 5 (2)

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.

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

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.

1.1 Eliminating discrimination

Prisons need to be managed within an ethical framework, guided by international standards developed to protect the human rights of prisoners and to ensure that prisoners' treatment aims to facilitate their social reintegration, as a priority.⁶⁰

These standards include the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), the Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment, the Basic Principles for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), among many other international and regional documents. They constitute the fundamental principles which are valid in all systems and prisons worldwide, and apply to all prisoners without discrimination.

However, 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, as mentioned earlier, due to their small numbers, women are often housed in prisons far away from their homes, which hinders the maintenance of links with their families and children, with a particularly harmful effect on their mental wellbeing and social reintegration prospects. Therefore, the Bangkok Rules require that affirmative action is taken by prison administrators to ensure that women prisoners have equal access to all services and rights that male prisoners enjoy, as well as being accorded additional rights and given access to other

⁶⁰For example, see Coyle, A., *A Human Rights Approach to Prison Management*, International Centre for Prison Studies, 2002, for guidance.

services and facilities, which respond to their gender-specific needs. Affirmative action requires taking initiatives and allowing for special considerations in the management and treatment of women offenders and prisoners.

This understanding is reflected in Rule 1 of the Bangkok Rules, which provides that:

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.

Principle 5(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also makes clear that special measures to address the particular needs of women prisoners are not in themselves discriminatory.

In order to ensure compliance with the principles of non-discrimination against women and girls required by the Bangkok Rules and other international instruments, those responsible for the management of women's prisons should act not only in compliance with SMR and the Bangkok Rules, but should also be guided by other standards, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Declaration on the Elimination of Violence against Women and the Convention on the Rights of the Child. Reference is made to some of these instruments in this *Handbook*, where relevant.

Among regional instruments relating to the treatment of prisoners, the European Prison Rules,⁶¹ revised in 2006, contain a number of rules relating to the treatment of women specifically, which have been noted in this *Handbook*.

1.2 Different needs and management style

In addition to ensuring that women prisoners are not discriminated against in practice—e.g. in maintaining links with their families, having access to prison activities etc.—there also needs to be an understanding that women prisoners have requirements that are very different to those of men. What is still lacking in most systems is the recognition that these different needs must be reflected in the management ethos of women's prisons, with changes being made to management style, assessment and classification, programmes offered, health care and the treatment of women with children.

The need for a gender-sensitive approach to female prisoners has been underlined by penal reform experts in countries worldwide. For example, a national survey

⁶¹ Recommendation Rec (2006)2 of the Council of Europe, Committee of Ministers to Member States on the European Prison Rules, Adopted by the Committee of Ministers on 11 January 2006.

conducted in the United States during 1993 and 1994 pointed to the need of a different style of management for women prisoners.⁶² The establishment of a gender-sensitive penal system and conducting gender-sensitivity training for law enforcement officials were key recommendations made by a Nigerian NGO in 2006.⁶³ Studies in Russia⁶⁴ and India⁶⁵ underline requirements for gender sensitivity in the management of women's prisons, and an "urgent need to rethink women's prisons without the male prison as a reference point".⁶⁶ The need for a gender-sensitive approach in managing women's prisons underpins all of the rules contained in sections I and II of the Bangkok Rules.

The following have been identified as some of the requisite ingredients for a gender-sensitive management style in women's prisons:⁶⁷

- The recognition of the different needs of women;
- A capacity and willingness by prison staff to communicate openly with prisoners and a less authoritarian manner;
- Skills such as active listening, patience in explaining rules and expectations;
- Awareness of emotional dynamics, and the capacity to respond firmly, fairly and consistently.

There also needs to be recognition of and corresponding provisions for the multiple needs of women who are foreign nationals or who are members of racial or ethnic minorities and indigenous peoples, taking into account the provisions of the Bangkok Rules⁶⁸ (see sections 7 and 11 for some discussion on the rehabilitation needs of racial and ethnic minorities and indigenous peoples, and section 13.2 for foreign national women).⁶⁹

Such a management style and approach needs to complement activities and services which address the specific needs of female prisoners, relating to their mental and psychological well-being, care and concerns for their children, particular health and hygiene requirements, among others.

⁶²Morash et al., op. cit., p. 4.

⁶³Agomoh, U.R, Ogozor, E.N., *The State of Women Prisoners in Nigeria: Assessment of Problems and Options*, PRAWA, Nigeria, Paper presented at the 11th International Conference on Penal Abolition (ICOPAXI), held in Tasmania, Australia, February 9-11 2006.

⁶⁴Alpern, *Women and the System of Criminal Justice in Russia: 2000-2002*.

⁶⁵Shankardass, R.D., Roy, N. and Seshadri, V., *Workshop on New Models of Accessible Justice: The India Experience (Special Focus on Women and Juveniles)*, National Commission for Women, Penal Reform International and Penal Reform and Justice Association, 2000, Gurgaon, India.

⁶⁶Shankardass, R.D., "Where the Mind is Without Fear and the Head is Held High", *Mental Health and Care of Women and Children in Prison in Andhra Pradesh*, p. 21.

⁶⁷Morash et al., op. cit., p. 4.

⁶⁸Bangkok Rules, Rules 53-55

⁶⁹For further detail, also see chapters 3 and 4 of the UNODC *Handbook on Prisoners with Special Needs*, which address ethnic and racial minorities and indigenous peoples and foreign national prisoners, respectively.

The components of gender-sensitive prison management should include:

- Taking affirmative action to counter-balance discrimination encountered by women prisoners, due to their small numbers;
- Adopting a gender-sensitive management style;
- Recognizing the different needs of female prisoners, including those from different cultural backgrounds, and providing programmes and services that address these needs.

In order to ensure that gender sensitivity becomes an integral element of the management of women's prisons, the responsibility for research, evaluation, policy formulation and implementation of policies relating to female prisoners should be the responsibility of a central department responsible for women's prisons, with female senior staff (see chapter 4).

Measurable criteria should be developed to evaluate the success of the management of women's prisons and such evaluation should be undertaken on a regular basis, both by the prison service itself, as well as by independent bodies.

2. Staff

United Nations Convention on the Elimination of All Forms of Discrimination against Women**Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

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

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.

See Section 8.10, for the provisions of the Bangkok Rules on health-care training for prison staff.

See also United Nations Standard Minimum Rules for the Treatment of Prisoners, Rules 46-55

The qualities of the prison director and other staff are key to the successful management of prisons. The role staff can play in establishing and maintaining a secure, safe, well ordered and humane prison, with a regime conducive to the rehabilitation of prisoners, is to a large extent more important than the material conditions of imprisonment, provided that the latter meet the basic needs of prisoners.

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 overprotection. 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.

In most prison systems there is a need to ensure that capacity-building of female staff comprises a key component of policy and programme development and delivery, to enable staff to address the special social reintegration requirements of female

prisoners, as well as to empower female staff within the prison service. Staff assigned to supervise women prisoners should receive training relating to the gender-specific needs of female prisoners, as well as approach and style of management. Topics covered throughout this *Handbook* should be included in their training.

Female prison staff should be employed in senior positions with key responsibility for the development of policies and strategies and delivery of programmes for female prisoners.

In order to combat discrimination and sexual harassment in the workplace, there needs to be a clear commitment at managerial level that discrimination will not be tolerated. Women staff need to be made aware of different types of sexual harassment and recognize such actions by male staff to be against international, and in most cases also national, law. Women staff should be in a position to make complaints without fear of retaliation, when such acts 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 authorized to monitor compliance with human rights standards and national law in prisons.

Female prison staff need psychological support

"Many of the women inmates and employees suffered from trauma, and generally it originated in childhood. I had fifty descriptions of childhood experiences from inmates and employees, most describing severe childhood abuse and/or abandonment...."^a

[...]

"The employees, many of them severely traumatized themselves in childhood although less so than inmates, were vulnerable to secondary traumatization by working so closely with inmates. The cumulative traumatic effect on the employees, working with no support or training and under a hostile administration, appeared to easily account for the difficulties of the employees with alcohol and drug abuse, emotional outbursts, and difficulty coming to work. It could also have accounted for much of their violence."^b

^aMorgan E., *The Violence of Women's Imprisonment, A View from the Inside*, in Cook, S. and Davies, S. (eds.), *Harsh Punishment, International Experiences of Women's Imprisonment*, Boston, 1999, p. 41.

^bIbid., pp. 41-42.

The psychosocial support needs of female staff should also be addressed, alongside those of prisoners, taking account of the reality that in many countries female staff themselves may come from similar backgrounds to those of women prisoners, with a history of violence, abuse and addictions, which under pressure of working in prisons can translate into extreme stress, emotional trauma and unprofessional behaviour. Training staff to recognize mental distress in prisoners (see section 8.4), as well as themselves, and providing specialist support, would go a long way towards ensuring that the environment in prison is less tense, more stable and safe.

Such actions targeting female staff should be complemented by training on gender sensitivity, prohibition of discrimination and sexual harassment in the workplace in the training of male staff.

3. Allocation

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

Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

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

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.

One of the key factors that assist with prisoners' social reintegration is their ability to maintain links with their families. Contact with families can best be facilitated if prisoners are located close to their homes. However, women are most often allocated far away from their homes, due to the small number of women's prisons in most countries. Taking this disadvantage faced by women prisoners into account, the Bangkok Rules place an obligation on prison authorities to make special efforts to allocate women to prisons close to their places of residence or their place of social rehabilitation, in consultation with the women concerned. It is of utmost importance that the preferences of the women prisoners are taken into account, since some may not wish to be close to their homes, where a husband, partner or other person who may have been a perpetrator of violence prior to their imprisonment, may still be residing.

Due to the limited number of women's prisons, prison authorities may not have the option of fully implementing this provision. The responsibility of putting this rule into practice should, therefore, be shared by the relevant ministries, who might consider establishing a larger number of smaller facilities to accommodate women prisoners, with a geographic distribution that would allow for all women to be housed close to their places of residence.

Where the construction of new facilities for women is not possible due to resource considerations, consideration may be given to increasing the number of women's sections, attached to men's prisons, though ensuring that the staffing, facilities and services provided comply with the provisions of the Bangkok Rules.

Such decisions need to be taken within a holistic strategy, which foresees the reduction of women's imprisonment, in line with the requirements of the Bangkok Rules, discussed in chapter 3.

4. Admission and registration

United Nations Standard Minimum Rules for the Treatment of Prisoners

35. (1) Every prisoner on admission shall 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.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

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

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.

3. Register

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.

See also United Nations Standard Minimum Rules for the Treatment of Prisoners, Rules 7 and 35

All prisoners feel vulnerable at the time of their admission to prison. Prison staff responsible for the admission process should be specifically trained to fulfil their responsibilities in a professional and sensitive way, with respect to the human dignity of newly admitted prisoners. They should treat such prisoners with respect, explain

their rights and responsibilities, provide them with facilities to contact their families and with information on how to access legal counsel and apply for legal aid, if requested.

Women prisoners are especially vulnerable at the time of their admission due to a variety of factors, such as the trauma of separation from children, families and communities, past victimization and fears for their safety, the particular stigma associated with their imprisonment, minimal experience of contact with state authorities, or low educational and economic status, among others. Prison staff should receive special training to deal appropriately with newly admitted women and, where applicable, their children.

More specifically, prison staff should provide newly admitted women with information, in writing, relating to their rights and obligations, the procedures that they must follow to enjoy their rights and to fulfil their obligations, and where to seek additional information. Such information should be explained orally as well to all newly admitted women, or at least to those who are illiterate. Foreign national women or any others who do not speak the language most commonly spoken in the prison should be provided such information in a language they understand. Foreigners should be further informed of their right to contact their consular representatives. Newly admitted women should also be given information on how to access legal counsel and legal aid, if necessary. Assistance with contacting lawyers or other legal aid providers should be offered, where required.

Taking into account that most women are mothers and many have dependent children, it is very important to ensure that women have the time to arrange for the care of their children before they are admitted to prison. This may require the judicial authorities to allow for a brief period of suspension of the sentence while women make arrangements for their children, which would be the best option. Where this cannot be done, prison authorities may grant women a short period of home leave immediately following admission for this purpose.

Prison authorities need to keep an up-to-date register containing information about prisoners' identity, the day and hour of their admission to prison and the reasons for their commitment to prison.⁷⁰ Dependent children may be admitted together with their mothers to prison in most countries around the world, and may stay in prison for some years before they must be removed. It is important that prison authorities register children admitted to prison with their mothers to ensure that all those who are accommodated in prisons, whether a prisoner or not, are accounted for. The information recorded should include, as a minimum, the names of the children, their ages and, if not accompanying the mother, their location. Registering children admitted to prison is a key safeguard against disappearances. It can also ensure that the needs of such children are taken into account in prison policies and programmes (See section 12.2).

Information about children outside prison will be valuable in facilitating continued contact between mothers and such children if required.

⁷⁰SMR, 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.

An up-to-date register which includes information about the children of imprisoned mothers is also an important element of gathering data about the parental status of women in prison with a view to increasing knowledge about the situation of female prisoners who are mothers, and to improving the suitability and effectiveness of criminal justice responses to female offenders while taking account of the best interests of their children.

Information about children of imprisoned mothers must be kept confidential. This means that such information should not be shared with any other person or institution without the consent of the mother. It should also not be used in a way which may not be in the best interest of the child.⁷¹

5. Assessment and classification

United Nations Standards Minimum Rules for the Treatment of Prisoners

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. 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.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. 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 shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

⁷¹In line with the Convention on the Rights of the Child, article 16.

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

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 security measures to which prisoners are subject should be the minimum necessary to achieve their secure custody.

However, once again women are often discriminated against in the application of this principle, due to one or a combination of the following factors:

- Due to the limited accommodation available for female prisoners, in a number of countries they are housed in security levels not justified by their risk assessment undertaken on admission.
- 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, discussed in chapter 1, 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.
- A further problem is that "needs" are often assessed as risk factors during assessments, which can mean that prisoners with mental disabilities may be seen as requiring a higher level of security,⁷² rather than the opposite. Such

⁷²Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., p. 13.

misclassification affects women more so than men due to the higher level of mental health problems among female offenders. High security levels are inappropriate for the housing of prisoners with mental disabilities and will almost invariably further exacerbate existing mental health-care needs. (See sections 8.2 and 8.4.)

Overclassification of women prisoners

In a women's prison with 4,000 prisoners, all were classified as high risk, even though the prison director said that only six prisoners actually met the criteria.^a

^aNicholas McGeorge, Friends World Committee for Consultation, personal communication following a visit to Lard Yao Prison, Bangkok, Thailand, April 2005.

GOOD PRACTICE

Russian Federation

Since 2004, due to amendments to the criminal code, women prisoners no longer serve sentences in high security regimes.^a

^aWomen in Prison, A Review of the Conditions in Member States of the Council of Europe, The Quaker Council for European Affairs, February 2007, Part 2, Country Report: The Russian Federation.

Prison administrators can increase the success rate of the social reintegration of female prisoners significantly by introducing classification methods and tools that address gender-specific needs and circumstances.

The gender-sensitive risk assessment and classification of prisoners should:

- Take into account the very low risk most women prisoners pose to others and the particularly harmful effects high security measures and increased levels of isolation can have on them;
- Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disabilities and drug abuse, as well as parental and other caring responsibilities to be taken into account in the allocation and sentence planning process;
- Ensure that women's sentence plans include programmes, which match their gender-specific needs;
- Ensure that those with mental health-care needs are housed in the least restrictive accommodation and receive appropriate treatment, rather than being placed in higher security levels, purely due to their mental health problems.

6. Safety and security

United Nations Declaration on the Elimination of Violence against Women

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

[...]

(c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

[...]

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

Convention against torture and other cruel, inhuman or degrading treatment or punishment

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

United Nations Standards Minimum Rules for the Treatment of Prisoners

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

[...]

(d) Young prisoners shall be kept separate from adults.

53. (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.

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

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.

It is now generally acknowledged that safety and security in prisons depend on creating a positive climate which encourages the cooperation of prisoners. External security (preventing escapes) and internal safety (preventing disorder) are best ensured by building positive relationships between prisoners and staff. This is the essence of dynamic security, which should be employed both in men's and women's prisons.

The concept of dynamic security includes:

- Developing positive relationships with prisoners
- Diverting prisoners' energy into constructive work and activity
- Providing a decent and balanced regime with individualized programmes for prisoners

An emphasis on dynamic security in women's prisons is especially suitable to the needs of female prisoners, due to the particularly harmful effects high security measures can have on women to the detriment of their mental well-being and social reintegration prospects. Creating a positive climate in prisons and using disciplinary measures only when strictly necessary should comprise essential components of a gender-sensitive approach to prison management.

Another fundamental requirement is to take account of women's special protection needs in prisons, as a safe environment is what women in prison need above all else. Under international law, the rape of a woman in custody by an agent of the State may constitute torture for which the State is held directly responsible. Other forms of sexual abuse or serious physical abuse committed against women, such as the deliberate use of intimate searching, groping and threats, also amount to torture or ill-treatment if carried out by an agent of the State. States are responsible for protecting women from all forms of sexual abuse and violence in prisons, and ensuring that perpetrators of such acts are brought to justice.

One of the first steps to ensure women's safety is to introduce a gender-sensitive screening procedure and classification system, as mentioned in section 3. A careful differentiation of women, based on the risk they pose to themselves and others is an essential component of the classification on entry to prison.

6.1 Separation and supervision of women

The United Nations Standard Minimum Rules for the Treatment of Prisoners is very clear that, as a matter of principle, women deprived of their liberty should be held in accommodation which is physically separate from that of male prisoners, in order to protect them against sexual harassment and abuse.

In order to protect young girls in prison from sexual and other forms of abuse from older prisoners, girl prisoners should be separated from adult women. (See also section 11.3, “girls in prison”.)

There should also be recognition of the fact that older women may be intimidated and threatened by younger women, while they themselves may abuse younger women housed in adult prisons. Thus, particularly in prison systems where dormitory accommodation is provided, a differentiation by age, as well as on the basis of risk assessments, is likely to be beneficial in minimizing such risks.

In some countries there has been a move towards limited contact between men and women prisoners, following careful selection and subject to close supervision. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has noted that, “some States have begun to make arrangements for couples (both of whom are deprived of their liberty) to be accommodated together, and/or for some degree of mixed gender association in prisons. The CPT welcomes such progressive arrangements, provided that the prisoners involved agree to participate, and are carefully selected and adequately supervised”.⁷³ Such arrangements may bring some normality to prison life and enable female prisoners to participate in a larger variety of prisoner programmes. They must never be made, however, without the consent of the female prisoners concerned, and unless the prison administration is in a position to undertake the requisite selection and supervision of prisoners to guarantee their safety.

Another key principle which aims to prevent the sexual abuse of women prisoners is reflected in the rule that female staff must supervise women prisoners, with male staff being allowed to enter the prison establishment only when strictly necessary and only in the presence of female staff (SMR, Rule 53). The Bangkok Rules, which supplement the SMR, have not introduced any changes to this principle.

Specialist staff, such as male medical staff and teachers should not be prevented from carrying out their duties, however, in line with rules and procedures set out in legislation and regulations and subject to adequate safeguards being in place to prevent any abuse.

It should also be noted that female staff may also be responsible for the abuse, including sexual abuse, of women prisoners, and measures taken for the protection of female prisoners should take account of this risk. In systems where female staff

⁷³The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards (2006), Extract from the 10th General Report [CPT/Inf (2000) 13], para. 24.

are subordinated to male staff (whatever their official rank), where adequate safeguards are not in place and/or where corruption is rife, women staff may also facilitate or will not prevent male staff's entrance into women's detention centres or prisons for the purposes of sexual abuse, which underlines the vital importance of the need for capacity-building, training, psychosocial support to staff, highlighted in section 2, "staff".

There should be clear policies and guidelines in place relating to use of force, violence and sexual misconduct by staff in prisons, aiming to provide maximum protection to women prisoners. All forms of violence, sexual intercourse with prisoners and sexual touching should be criminalized to prevent rape and other forms of abuse. Prison officers should be obliged to report instances of abuse or sexual misconduct perpetrated by other staff. Retaliation by staff against other staff who complain of such acts should be prevented, for example, by vigorous monitoring, disciplinary measures and independent investigations, as relevant.

Staff should receive training in the area of sexual misconduct and be sensitized in gender issues.

These steps are vital in all cases, but especially in States which apply a policy of mixed gender staffing.

Mixed gender staffing

Concerns relating to mixed gender staffing in women's prisons have been mentioned in chapter 1, section 4. In at least one country which has a policy of mixed gender staffing, it has been asserted that the employment and career opportunities of female staff would be curtailed if the United Nations Standard Minimum Rules, Rule 53 were to be applied since there are only a small number of women's prisons.⁷⁴ However, since prison rape and sexual abuse is almost exclusively carried out by men there is a need to consider whether allowing women to work in men's prisons should automatically mean that male staff should also be allowed to supervise female prisoners. The employment of women in men's prisons has its advantages in terms of creating employment opportunities for woman staff, in changing the male dominated culture of the prison system and, as asserted by many prison experts, having a calming and positive effect on men. The employment of men in women's prisons however, carries particular risks that outweigh any advantages. Positive discrimination for female prison staff in this case would be a much preferred option, providing employment opportunities for them in men's prisons, but not vice versa.

In a small number of countries mixed gender staffing in women's prisons has been proven to bring benefits by normalizing prison life. But it must be recognized that

⁷⁴ See Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44, Addendum, Report of the mission to the United States of America on the issue of violence against women in state and federal prisons, UN Document, E/CN.4/1999/68/Add.2, 4 January 1999, para. 56. The United Nations Human Rights Committee has also expressed concern about male prison officers guarding women in United States prisons. Official Records of the General Assembly, Fiftieth Session, Supplement No. 40 (A/50/40), vol. I, paras. 285, 299.

such an approach relies heavily on a sufficient number of staff with adequate training (including in gender sensitivity), the existence of, and strict enforcement of safeguards, rules and procedures, the effectiveness of confidential complaints mechanisms and the existence of independent inspections. In systems where human rights violations in prisons are prevalent, where safeguards are not applied, where human and financial resource restrictions hinder the adequate training of staff, and a culture of discrimination and violence against women may be prevalent in society, the risks of such a policy are very high, with possible devastating consequences for the prisoners.

United Nations Standard Minimum Rules are very clear on this issue. But if male staff are, nevertheless, allowed to work in women's prisons, they should never be employed in contact positions, responsible for the direct supervision of prisoners. They should not be allowed access to private areas, such as dormitories and sanitary areas or be placed in a position where they can observe these areas. Strict procedures and safeguards should be in place to protect women from any intimidation, abuse and violence.

Female prisoners in transit

Female prisoners are at particular risk of abuse by staff during prison transfers and transfers between pretrial detention facilities and courts. Adequate safeguards should be in place to protect women during this time, for example by ensuring that women prisoners are escorted by female staff in these particular situations. In addition, CCTV cameras may be installed in vehicles used for transport, which should be carefully supervised. Independent, confidential and accessible complaints' procedures are also key to the protection of women in detention, including during the period of transfer.

6.2 Prisoner complaints

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall 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 shall 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.

United Nations Standard Minimum Rules for the Treatment of Prisoners

Information to and complaints by prisoners

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

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

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.

It is of utmost importance that women who have been subjected to any form of abuse in police custody, prior to being admitted to prison, in pretrial detention or prison should be able to complain without fear of retaliation by staff, confidentially, to the central prison administration, judicial authorities and independent inspectors. Clear mechanisms should be in place to enable complaints to be submitted without delay to the relevant authorities and female prisoners should be informed about their right to complain by prison staff, as well as receiving written information about rules and procedures relating to complaints. The competent authorities should act on such complaints swiftly and impartially, conduct a thorough investigation of the alleged acts and bring perpetrators to justice. Investigations of such complaints should be undertaken by independent bodies.

Women who claim to have been abused should be provided immediate protection and supervision, while their claims are investigated, and later on, if required. Complete isolation is not recommended as segregation is likely to be experienced as punitive and increases the risk of self-harm and suicide. In addition, segregation does not necessarily provide protection. Women in isolation may be abused by prison guards or other prisoners with the complicity of prison guards. Safeguards should be in place to prevent any retaliation by prison staff. A possible measure of protection

may be to grant a leave of absence to the alleged perpetrator, if a prison officer, while the investigation is taking place.

Women should be offered counselling during this time by independent, qualified health-care professionals, such as psychologists with experience of dealing with cases of sexual violence.

Some women prisoners may become pregnant as a result of rape in police custody or prison. Such women should be given immediate access to qualified medical professionals, so that they can discuss their condition and options available to them. Such medical support can best be provided by appropriate community health services, with the requisite expertise and specialization.

6.3 Searches

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

Rule

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.

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.

United Nations Human Rights Committee, General Comment

Article 17 of the International Covenant on Civil and Political Rights guarantees all persons' right to privacy. The Human Rights Committee, in its General Comment 16 on article 17 stated that "[s]o far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex" (see HRI/GEN/1/Rev.3, part I).

European Prison Rules

54.4 Persons being searched shall not be humiliated by the searching process.

54.5 Persons shall only be searched by staff of the same gender.

54.6 There shall be no internal physical searches of prisoners' bodies by prison staff.

54.7 An intimate examination related to a search may be conducted by a medical practitioner only.

Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas

Principle XXI: Bodily searches, inspection of installations and other measures

[...] Bodily searches of persons deprived of liberty and visitors to places of deprivation of liberty shall be carried out under adequate sanitary conditions by qualified personnel of the same sex, and shall be compatible with human dignity and respect for fundamental rights. In line with the foregoing, Member States shall employ alternative means through technological equipment and procedures, or other appropriate methods.

Intrusive vaginal or anal searches shall be forbidden by law. [...].

Statement on Body Searches of Prisoners, World Medical Association^a

[...]. 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 recognize that such invasive search procedures are serious 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.

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

Principle 3

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Position Statement of the International Council of Nurses on Nurses' Role in the Care of Detainees and Prisoners^b

[...] Nurses employed in prison health services do not assume functions of prison security personnel, such as restraint or body searches for the purpose of prison security.

^aAdopted 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>)

^bAdopted by the International Council of Nurses in 1998, reviewed and revised in 2006 and 2011. (<http://www.icn.ch/publications/position-statements>)

Individual prisoners, particularly those subject to medium or maximum security restrictions, may have to be personally searched on a regular basis to make sure that they are not carrying items which can be used in escape attempts or to injure other people or themselves, or items which are not allowed, such as illegal drugs. The intensity of such searches will vary according to circumstances.

Male members of staff should never be involved in the personal searches of female prisoners, such as pat down and frisk searches. All searches of women should be carried out by female staff, who should be trained to protect the dignity of the prisoner being searched.

In some prison systems, strip searches and intimate body searches (also referred to as invasive body searches, body cavity searches or internal searches) are conducted frequently without justification, causing humiliation and distress to those being searched. The Bangkok Rules are explicit in requiring that alternative methods of searching should be developed to replace strip searches and intimate body searches. Accordingly, it is desirable that intimate body searches are removed altogether, as they undermine the personal dignity of prisoners and are invariably very distressing, if not traumatizing, experiences. In many cases it may be sufficient to keep a prisoner under close surveillance and wait for any suspected illicit object to be naturally expelled, as suggested by WHO.⁷⁵ Alternative screening methods, such as scans may also be introduced.⁷⁶ Where permitted at all, internal searches and strip searches should only be carried out if absolutely and legally necessary, and never on a routine basis.

Only female staff should be present during strip searches, which should be carried out in a private room. No prisoner—regardless of gender—should be humiliated and be required to strip completely during a search. Special sensitivity should be demonstrated in the case of women, however, since they are likely to feel the humiliation of undergoing intimate searches particularly. The experience may be extremely distressing and traumatizing if they have been victims of sexual abuse in the past.

⁷⁵Møller, L., Stöver H., Jürgens R., Gatherer, A. and Nikogasian, H., (eds.), *Health in Prisons, A WHO Guide to the essentials in prison health*, WHO Europe, 2007, p. 36.

⁷⁶See Bangkok Rules, Rule 20 and commentary, European Prison Rules, Rule 54, where attention is drawn to the WMA Statement on Body Searches, adding that, Rule 54.6 does not preclude the possibility of using modern technology to scan a prisoner's body.

The World Medical Association (WMA) has made clear that if, in exceptional circumstances, intimate body searches are required, they must be carried out by a person who has sufficient medical knowledge to ensure that the person being searched is not harmed.

The involvement of physicians and nurses in intimate body searches is a complex issue. On the one hand, there is a need to consider the risk of injury if the search is not performed by a person with relevant medical skills, while on the other, such searches are non-medical acts which are the responsibility of prison security services. While the European Prison Rules prescribe that an intimate examination related to a search may only be conducted by a medical practitioner, the World Medical Association states that such searches may either be conducted by prison staff with sufficient medical knowledge and skills to safely perform the search or by a physician, depending on the circumstances and the wishes of the prisoner.⁷⁷ In either case, the obligation of the prison doctor or nurses to provide medical care to the prisoner should not be compromised by an obligation to participate in the prison's security system, including prisoner searches.

Given the above, and where a search is absolutely necessary, intimate body searches may be carried out by a female staff member who is not part of the regular health care services of the prison, but who is either medically trained or has sufficient medical knowledge and skills to safely perform the search. Alternatively, an external medical practitioner (a female practitioner, if preferred by the prisoner) may conduct such a search. In the case of a male medical practitioner, a female member of staff should be present to supervise the process.

In all cases where there is an objective medical reason for the search to be carried out by a qualified physician or where the prisoner herself requests that the search be carried out by a physician, the search should be carried out by a physician who is not part of the regular health-care staff of the prison.

GOOD PRACTICE

International instruments recommend that there should be a detailed set of procedures, which staff should follow when carrying out personal searches.

These procedures:

- Should clearly define the circumstances in which such searches are allowed;
- Should ensure that prisoners are not humiliated by the searching process, for example, by having to be completely naked at any time;

⁷⁷ European Prison Rules, Rule 54.7 (the commentary to the rules further clarifies that this practitioner must not be the prison doctor); World Medical Association, Statement on Body Searches of Prisoners.

- Should stipulate that prisoners should be searched by staff of the same gender and be out of view of staff of the opposite gender;
- Strip searches and intimate body searches should either not be carried out at all or only in exceptional circumstances defined by law;
- If genuinely justified, intimate body searches may be carried out by a female staff member who is not part of the regular health-care service of the prison, but who is either medically trained or has sufficient medical knowledge and skills to safely perform the search;
- Alternatively, such searches may be carried out by an outside medical practitioner—of the same sex if the prisoner so wishes—in particular if there are objective medical reasons for the search to be conducted by a physician or if the prisoner requests to be examined by a physician.

Staff should demonstrate sensitivity when searching the infants of mothers in prison and children visiting female prisoners. As a general rule, a pat-down search can be used to search children. Reasons for the search should be explained to the child, taking into account his/her age. The child should be searched in full view of his/her mother. During the searching of personal belongings of infants and children (such as underwear, baby food, feeding bottles, diapers, etc.) care should be taken to cause minimal distress to the child and mother and to act in compliance with hygiene rules. In some systems, women prisoners have given up receiving visits from their children due to the extreme anxiety caused by their searching.

Children should never be subjected to invasive body searches.

6.4 Body restraints

United Nation Standard Minimum Rules for the Treatment of Prisoners

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

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

Rule 24

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

Instruments of restraint should always be used as a last measure and for the shortest possible period of time in the case of all prisoners, without distinction. They should never be used as punishment. The use of irons and chains is prohibited at all times. The use of restraints on pregnant women during medical examinations, transport to hospital to give birth, during and immediately after birth is unacceptable. Other means of security should be used at these times, such as close supervision by a female member of staff. The Bangkok Rules explicitly prohibit the use of restraints during labour, birth and immediately following birth.

6.5 Disciplinary segregation

United Nation Standard Minimum Rules for the Treatment of Prisoners

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

[...]

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

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

Rule 22

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

Disciplinary segregation/solitary confinement should always be used as a last resort for all prisoners and for the shortest possible period of time. Prison administrators should demonstrate sensitivity to the distress caused by isolation on female prisoners, the particular risk of self-harm and suicide among women, and use this measure only in exceptional circumstances.

Using disciplinary segregation as a punishment for attempted suicide or self-harm, apparently as a means of protection, is unacceptable. Other means of protection and treatment, under the supervision of a mental health specialist should be employed in such cases. (See also section 8.7, “suicide and self-harm prevention”.)

Rule 22 of the Bangkok Rules takes account of the best interest of children, in line with the Convention on the Rights of the Child, prohibiting the use of solitary confinement on pregnant women, women with infants and breastfeeding mothers altogether, in order to avoid causing possible health complications to those who are pregnant or penalizing children in prison by separating them from their mothers. For the use of disciplinary segregation and restraints on prisoners with mental disabilities, see chapter 1 of the UNODC *Handbook on Prisoners with Special Needs* (“prisoners with mental health-care needs”).

7. Prisoner activities and programmes

United Nations Convention on the Elimination of All Forms of Discrimination against Women

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

[...]

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

[...]

United Nations Standard Minimum Rules for the Treatment of Prisoners

Work

71. (1) Prison labour must not be of an afflictive nature.

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

(4) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.

(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

[...]

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

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

Rule 42

1. Women prisoners shall have access to a balanced and comprehensive programme of activities, which take account of gender appropriate needs.

[...]

All prisoners should have access to a balanced and comprehensive programme of activities, resembling as far as possible the variety of activities available in the outside world—a requirement which is spelt out in the Bangkok Rules specifically in relation to women prisoners.

The type and quality of prisoner activities and programmes, and the level of prisoners' access to them, underpin the success of social reintegration efforts in prisons. Activities provided for prisoners should enable them to live positive, crime-free lives after release by increasing their job skills and improving their education, while also protecting their mental well-being. Research indicates that steady employment following release is one of the most important factors that prevent recidivism, together with strong family ties and support.

7.1 Work and vocational training

Female prisoners, typically from marginalized and disadvantaged sectors of society, are likely to have suffered particularly from discrimination prior to imprisonment. They are less likely to have been employed than men at the time of imprisonment. In a majority of cases they commit an offence due to poverty. Many are unable to end violent relationships due to the lack of economic freedom. By providing women with adequate and equal opportunities for vocational training in prisons, and thereby assisting them to gain employment after release, prison authorities can make an immense contribution to the social reintegration of women prisoners.

Nevertheless, female prisoners are often discriminated against in the area of work and vocational training. Women housed in the annexes of male prisons may be given little or no access to activities, due to their small numbers. The lack of childcare facilities/nurseries in prisons may also hinder women with small children from participating in prison activities.

Programmes that women may have access to typically comprise activities deemed suitable for the female gender, such as sewing and cleaning. This means that prisons continue to impose role models on women which exist in society, thereby failing to help them overcome the restrictions imposed by stereotypical perceptions. Nevertheless, account should also be taken of the fact that in some societies it may be difficult for women to find jobs in fields which are perceived as male occupations only. Therefore, there is a need to maintain a balance between the different types of vocational training offered. The training and work provided should correspond to market demands and aim to increase women's real chances of earning a living wage after release.

Possible areas of vocational training for female prisoners could include:

Administrative skills, bookkeeping, computer skills, painting and decorating, electro-technology, cooking/catering, horticulture, hairdressing, gardening, women's health, childcare, dressmaking, embroidery, managing income, generating community projects and the use of micro-credit facilities.

Possible ways of compensating for the lack of training staff and resources:

- Where separate workshops cannot be provided for women prisoners living in the annexes of men's prisons, prison administrations may arrange a rotation system enabling women to benefit from workshops provided for male prisoners,

at separate times to men. Female members of staff should supervise any activities undertaken in the male section of the prison to ensure the safety of the women at all times.

- Selected groups of prisoners, with requisite vocational skills may run skills training programmes, ideally following a training of trainers, conducted, for example, by NGOs. This activity will: (a) provide more women prisoners with job skills; (b) improve the confidence of those who are trained as trainers and undertake the training; (c) develop peer group support among prisoners.
- Prison authorities may develop partnerships with outside services and NGOs to improve vocational training provided to women in prison, while enabling them to establish links with organizations that can assist them on release. Contact with outside organizations and services will bring additional benefits to all prisoners, and especially women, who suffer particularly from isolation. A policy of cooperation between prison administrations and organizations and services of civil society is recommended by the United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 80.

GOOD PRACTICE

NGO support to female prisoners in the United Kingdom

An NGO in the United Kingdom, Women in Prison, visits all women's prisons to hold surgeries on education, training and employment issues. Targeted one-to-one packages of support are available to women who want to access college, voluntary work or employment after release. Support can include arrangement of voluntary work placements, job search and interview advice, accredited training on email and the internet.^a

^aWomen in Prison website: www.womeninprison.org.uk.

7.2 Education

Due to the role models society imposes on women or due to discriminatory traditional customs, in many cultures young girls are not given equal access to education. As a result, the majority of women prisoners worldwide, and especially those in low-income countries, are likely to have minimal education or to be illiterate. Education is an important means of helping women gain self-confidence and independence. Prisons may be the first chance for such women to learn how to read and write, or to receive basic education. Education will not only improve these women's life and job skills, but will also help them overcome low self-esteem, which is prevalent in many victims of violence, especially if such violence has been systematic.

Prison authorities should ensure that suitable education is provided to female prisoners as a matter of priority. In all circumstances, but especially where resources and possibilities are scarce, cooperation with education services in the community and NGOs should be sought.

Where resources are inadequate, peer education, by selected prisoners with the requisite education levels, may be considered, at least to run literacy and basic education classes.

GOOD PRACTICE

NGO Support to Female Prisoners in Nigeria

Prisoners Rehabilitation and Welfare Action (PRAWA) conducted weekly literacy and support circle programmes in the Female Prison Kirikiri Lagos to encourage confidence building, self-esteem and improved communication skills amongst female prisoners. Alternatives to violence training workshops and training in life planning skills were also conducted for ex-prisoners and others in the community by PRAWA. Community-based dress and soap-making workshops were available for female prisoners in Lagos and Enugu by PRAWA, and a knitting workshop for female ex-prisoners was provided by the Society for the Welfare of Women Prisoners (SWEWP) in Enugu.^a

^aHuman Rights and Vulnerable Prisoners, PRI Training Manual, No. 1, p. 76.

NGO Support to Female Prisoners in Afghanistan

Afghan Women's Education Centre (AWEC) provided education and vocational training to women prisoners in Pul-e Charki Prison, Kabul. Classes, which were held five days a week, include Basic Health Education, Literacy Classes, First Aid, Handicrafts and Tailoring. AWEC also conducted monthly workshops on a variety of subjects, such as gender issues, human rights, violence against women, women's rights and Islam, civil rights of women, HIV/AIDS prevention measures. It also organized family visits and monitored the situation of prisoner children placed in orphanages or with relatives.^a

^aUNODC, *Afghanistan, Female Prisoners and their Social Reintegration*, op. cit., pp. 36-38.

7.3 Gender and culture specific programmes

United Nations Standard Minimum Rules for the Treatment of Prisoners

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end 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 not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

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

Rule 42

[...]

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.

Rule 54

Prison authorities shall recognize 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.

European Prison Rules, 2006

25.4 Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4.

The requirement included in SMR to apply individual treatment according to the needs of prisoners, implies that programmes should be available in prisons designed specifically for women prisoners, taking into account their age and other personal characteristics and needs, aiming to address the underlying factors that led to their offence and to cope with their gender-specific difficulties faced as women in prison. The needs of women who require psychosocial support, especially those who have been subjected to various types of abuse, have been highlighted in the Bangkok Rules. This requirement is also included in the European Prison Rules adopted in 2006.

Such programmes may include:

- Psychosocial support, therapeutic programmes, self-help groups and consultation dealing with substance abuse, mental health, history of abuse and domestic violence;
- Parenting programmes, including child visitation programmes and parent education;
- Programmes to build confidence and life skills.

In one study ingredients considered essential for success were cited as:⁷⁸

- Staff characteristics
- Comprehensiveness in approach
- Pertinence to women's own interests

⁷⁸Morash et al., op. cit., pp. 8-9.

- Opportunity for participants to form supportive networks with female peers
- The individualized structure responding to multiple gender-specific experiences, including victimization and negative relationships with men
- Parenting
- A safe environment was considered to be critical for women with histories of abuse.

The positive influence of peer support, including via courses and self-help groups run by prisoners, has been underlined particularly by research on women prisoners, and especially in relation to victims of domestic violence. Therefore, prisoners who have completed certain programmes themselves should be encouraged to work alongside specialist staff running gender-specific programmes for women. They may also be encouraged to establish their own self-help groups, under supervision of specialist staff. Therapeutic and educational programmes targeting women prisoners who have a history of violence and abuse will not only help them overcome the devastating effects of the abuse itself, but will also improve their relationship with other prisoners and staff, while vastly improving their chances of successful transition to life outside prison on release.

The principle of individualization also requires that programmes and services offered to women prisoners take into account the specific needs of women prisoners from different ethnic, religious and cultural backgrounds. Every effort should be made to develop programmes which address the gender and culture specific needs of ethnic and racial minority groups and indigenous peoples to ensure that they are not discriminated against in the implementation of the individualization principle. Such programmes and services are best developed in consultation with women prisoners themselves and the relevant groups in the community. The additional benefit of cooperation with community groups would be to contribute to the maintenance of links between these groups of women and their peers outside prison.

As a general rule prison administrations should make every effort to involve local civil agencies and non-governmental organizations in providing activities for women prisoners.

7.4 Physical education and sports

Women often have less access than men to sports facilities in prisons. Engaging in physical activities and, where possible, training in sports are simple and effective ways of preventing the development of psychosocial disabilities such as depression, while maintaining physical health and encouraging team work.

Prison authorities should make every effort to provide women with equal access to sports as men.

- When women are housed in the annexes of men's prisons, where possible a separate gym for female prisoners should be established.

- If resource restrictions hinder this course of action, then a rotation system may be applied, allowing female and male prisoners to use the sports facilities at separate times. Mixed gender association during sports activities may also be considered, provided that the prisoners are willing and adequate supervision is provided to avoid any safety risks.
- Where sports facilities are not available, due to resource constraints, gardens and yards should be used to the maximum possible extent to enable prisoners to take exercise.
- Cooperation with sports clubs and community sports services, which may provide training and sports equipment, could be a way of reducing resource pressures and establishing constructive links between civil society and prisoners.

Please see also section 13.2, “foreign national women” and the UNODC *Handbook on Prisoners with Special Needs*, for guidance on prison activities and programmes in the case of foreign national prisoners and ethnic and racial minorities and indigenous peoples.

8. Health care

8.1 Healthy prison environment

Prisoners’ right to health is a fundamental human right recognized by numerous international instruments. The right to health encompasses the right to proper health care, equivalent to that in the community, as well as the underlying right to live in an environment which does not generate disease and mental disabilities.⁷⁹ In all cases, prison health policies should ensure that prison conditions and services are designed to protect the health of all prisoners. They should recognize that providing the underlying determinants of health, such as adequate space, nutrition, clean drinking water, sanitation, heating, fresh air, natural and artificial light, is key to the protection of the physical and mental well-being of all prisoners. The provision of purposeful activities and mental stimulation, as well as contact with the outside world, is also vital in this context. All such policies should include consideration for the gender-specific health-care needs of women prisoners, reflected in all aspects of prison management in general, as well as health-care provision specifically, as a prerequisite for the protection of women prisoners’ mental and physical health.

By providing a healthy and positive prison environment, prison authorities may prevent many health conditions from arising or deteriorating, thereby making savings on medical costs.

⁷⁹ See United Nations Commission on Human Rights (2005), Report of the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, United Nations document E/CN.4/2005/51, para. 45, which states “[a]s well as an entitlement to healthcare, the right to health includes an entitlement to the underlying determinants of health, including adequate sanitation, safe water and adequate food and shelter”.

International Covenant on Economic, Social and Cultural Rights

Article 12

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Basic Principles for the Treatment of Prisoners

Principle 9

Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

United Nations Convention Against All Forms of Discrimination against Women, Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

[...]

United Nations Standard Minimum Rules for the Treatment of Prisoners

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

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

Rules on the health care of women prisoners included in the Bangkok Rules are quoted under the relevant headings of this chapter.

8.2 Medical screening on entry

Basic Principles for the Treatment of Prisoners

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

United Nations Standard Minimum Rules for the Treatment of Prisoners

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)**Rule 6**

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

- (a) 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;
- (b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm;
- (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues;
- (d) The existence of drug dependency;
- (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.

Rule 7

1. 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.

2. 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.

3. 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.

It is vital that all prisoners undergo a medical examination and health screen on entry, on an individual basis. This is important (a) to ensure that the prisoner starts receiving proper treatment for any health conditions immediately; (b) to identify any signs of ill-treatment in previous detention/custody and take appropriate action.

For many women in low-income countries the health screening on entry to prison might constitute their first medical examination. 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 deterioration of medical problems during imprisonment. As with all medical examinations in the community, detention and prisons, it is vital that on entry medical screening should be confidential.

The cases of women who are diagnosed to have suffered from sexual abuse or other forms of violence during prior detention should be referred immediately to the competent judicial authority for investigation. Prison authorities should help such women in accessing legal counsel, and where necessary, legal aid, as well as providing them with specialized psychological support. Such support may best be provided in cooperation with specialist services in the community and NGOs. The victim's informed consent should be sought to any steps to be taken by the authorities, after a careful explanation of all procedures.

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 the adherence to the principle of confidentiality during the process, the proper supervision of women at risk, guaranteeing women prisoners' access to an independent and effective complaints' mechanism and a clear policy against retaliation by staff, including disciplinary procedures to bring those who threaten to or do retaliate to justice.

It is essential that on-entry screening should include an examination of the prisoner's mental health. Those with mental health problems should be identified and channelled into the least restrictive housing and receive appropriate treatment from the outset of their imprisonment. (See section 8.4, "mental health and care".) Risk of suicide and self-harm should also form an essential element of the assessments on admission, and suitable support, counselling and treatment should be provided to women at risk. (See section 8.7, "suicide and self-harm prevention".)

The initial medical screening should also cover screening for STIs, which are prevalent among women prisoners, as discussed in chapter 1, section 3, and appropriate treatment provided. Depending on risk factors, prisoners may also be offered voluntary testing for HIV, with pre- and, if necessary, post-test counselling, but it is essential that informed consent is sought and secured non-coercively before HIV/AIDS testing or medical interventions are provided to prisoners and that the process of securing consent specifically allows prisoners to refuse such testing and treatments.⁸⁰

⁸⁰ UNODC, WHO, UNAIDS, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response, Lines, R. and Stöver, H., 2006, p. 19. See also Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison, Rule 3 and CPT 3rd General Report, CPT/INF (93) 12, para. 55.

The medical examination should record the reproductive health history of the prisoner, 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. (See section 12, for the special health-care needs of pregnant women and nursing mothers.)

All prisoners have the right to medical confidentiality, which is a principle that applies to all aspects of health care, including the medical screening on admission. If a prisoner does not want to share information about his or her medical history, this wish should be respected, though it should be explained to the prisoner that all information relating to their health status will be kept confidential and only be used where relevant to the health care provided to them in prison. In this context, the right of women prisoners not to share information and not to undergo screening in relation to their reproductive health history has been underlined by the Bangkok Rules, recognizing the multiple reasons why women may wish to keep such information confidential, including because of the stigmatization associated with sexual acts outside marriage.

If the prisoner is accompanied by a child, the child should also undergo a health screening, ideally undertaken by a child health specialist, to determine any treatment needs. A health-care plan should be drawn up by the prison health service, and suitable health care equivalent to that in the community, including regular vaccinations, should be provided.

8.3 Gender-specific health care

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

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.

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.

Women's prisons require a gender-specific framework for health care which emphasizes reproductive and sexual health, mental health care, treatment for substance abuse and counselling victims of physical and sexual abuse.

Collaboration between prison and civil health services should be an integral component of medical care provided in all prisons.⁸¹ Primary health-care should be accessible to all prisoners (men and women) according to their needs. Primary health-care teams should be able to recognize and treat a range of chronic conditions, including disorders of the reproductive system of women.⁸² Prisoners requiring specialist care should be referred to specialist health-care providers and regular visits from civil health-care professionals to prisons should be arranged. Specialists in women's health care should be available for ongoing consultation, with arrangements in place for regular visits by gynaecologists.

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. The prisoner's preferences should also be taken into consideration in the medical establishment she is referred to. If these are 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.

Medical confidentiality is essential with respect to all prisoners, and this rule should be upheld during medical examinations, which means that staff should not be present during such examinations, unless exceptional circumstances exist and the doctor specifically requests a member of staff to be present. If it is absolutely necessary for prison staff to be present during medical examinations, women prisoners should never have to see a doctor in the presence of male staff.

8.4 Mental health and care

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

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.

⁸¹ See 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 health-care services in prisons, based on this principle.

⁸² A WHO Guide to the essentials in prison health, WHO Europe, 2007, op. cit., pp. 24-27.

Mental health is a positive sense of well-being, rather than just an absence of mental disability. In all cases, the emphasis of prison mental health care should be on promoting the mental well-being of all prisoners. As the WHO Consensus Statement on Mental Health Promotion in Prisons underlines, “[w]hile it may be difficult to contemplate the existence of positive mental health among prisoners, prisons should provide an opportunity for prisoners to be helped towards a sense of the opportunities available to them for personal development, without harming themselves or others”.⁸³ A comprehensive programme aiming to promote mental health in prisons, should include the provision of a varied and balanced prison regime, including access to education, vocational training, recreation, family contact, physical exercise, a balanced diet, opportunities to participate in arts, among others.⁸⁴ Counselling and therapy should be offered as early as possible to those who appear to be at risk of developing mental disabilities.

Due to the prevalence of mental health-care needs among female offenders, the provision of adequate, gender-sensitive and interdisciplinary mental health care should comprise an essential component of their rehabilitation programme. Women’s unique mental health care and psychological support needs should be recognized, including, among others, of those who demonstrate acute distress and depression due to isolation, separation from children, families and communities. Treatment should be individualized and aim to address the reasons that provoke distress or 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, which is the case in many prison systems.

GOOD PRACTICE

Mental Health and Care of Women and Children in Prison in Andhra Pradesh, India

The NGO, Penal Reform and Justice Association (PRAJA) implemented a one year project in 2000-2001 in two women’s prisons in Andhra Pradesh, with support from Penal Reform International (PRI). The aim of the project was to address the problem of the lack of adequate and organized information about women and children in prison; to analyse professionally the effects of incarceration on women and children in prison, particularly on their mental health and personal development; to suggest constructive programmes and better prison practices in women’s prisons and to explore alternatives to prison for women offenders.^a Selected social workers (who later became counsellors) worked on the project under supervision of PRAJA and PRI over a period of one year to fulfil the above objectives. One of the findings of the project was that “ideas about the mental health needs of women generally and the needs of women in prison needed a radical review and update. The intellectual nourishment of those who were regarded as specialists in the field seemed in need of revision, to be based on the circumstances and reality that surrounded women’s lives rather than on clinical (medical) causative factors constructed by the specialists”.^b The project suggested that any

⁸³WHO Regional Office for Europe Health in Prisons Project, Consensus Statement on Mental Health Promotion in Prisons, 1998, para. 3.

⁸⁴For 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.

focus on planning women's mental health (particularly in India) had to go beyond the clinical, epidemiological "illness areas" model and into the "distress areas" model that would cover women's overall social experiences of everyday living.^c

^aShankardass, R. D., *Where the Mind is Without Fear and the Head is Held High, Mental Health and Care of Women and Children in Prison in Andhra Pradesh*, PRAJA, PRI, 2001, p. 16.

^b*Ibid.*, p. 21.

^c*Ibid.*, p. 11.

The mental health-care needs of offenders whose offences were known to be related to their mental disability, such as women who have killed their newborn babies due to post-natal depression, should be included in treatment provided.

Prisoners should be provided with full information about treatment options, risks and expected outcomes and they should participate in treatment planning and decision making.

Women with mental disabilities are at high risk of abuse in custodial settings. They should be protected, with adequate safeguards and supervision.

Staff awareness of factors that promote and harm mental well-being and a gender-sensitive approach to women's mental health-care needs are essential components of the provision of positive mental health care in women's prisons. Staff should be made aware of times when women may feel particular distress, for example, of the acute psychological and physical difficulties menopause may cause for women in prison, and be sensitive to their situation and provide support.

For comprehensive discussion and guidance on prisoners with mental health-care needs, men and women, please see the UNODC *Handbook on Prisoners with Special Needs*, chapter on "prisoners with mental health-care needs".

8.5 HIV prevention, treatment, care and support

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

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.

As mentioned in chapter 1, section 3.1 women prisoners are a high risk group for sexually transmitted infections, including HIV. In developing responses to HIV/AIDS

in penal institutions, it is essential that programmes and services be responsive to the unique needs of women, including, for example, prevention of mother-to-child transmission. Tailored programmes addressing gender-specific issues need to be formulated to respond to the challenges encountered by women in prisons—in particular, programmes targeted at women who face multiple vulnerabilities and who are living with HIV.⁸⁵

Providing comprehensive HIV prevention, treatment, care and support for women in prisons

It is critical that prison systems provide access to a comprehensive package of interventions, including:

- Providing information on modes of HIV transmission and ways to reduce those risks, on testing, and treatment;
- Providing access to essential prevention commodities such as male and female condoms, sterile injecting equipment, and safe tattooing equipment;
- Providing voluntary confidential HIV testing and counselling services;
- Diagnosing and treating sexually transmitted infections;
- Providing drug dependence treatment, including substitution therapy for opioid dependence;
- Providing appropriate diet and nutritional supplements;
- 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 having been exposed to a risk;
- Care for children, including those born to HIV-infected mothers; and
- Palliative care and compassionate release for AIDS and terminally ill patients.

Source: Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC

The involvement of women prisoners in developing and providing health programmes and services increases the capacity of prisons to respond to HIV/AIDS. For example, 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.⁸⁶ Every effort should be made to involve non-governmental organizations 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.⁸⁷

⁸⁵Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 6.

⁸⁶Women and HIV in Prison Settings, op. cit., p. 5.

⁸⁷Ibid., p. 6.

8.6 Treatment for substance dependence

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

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.

As already mentioned, a high proportion of women prisoners are drug or alcohol dependent and are in need of treatment for their addiction. In most countries women experience social, cultural and personal barriers to treatment entry in the community. These include the significant stigma and shame associated with substance use and related problems among women, such as fear of losing custody of children, lack of partner and other family support to undertake treatment and lack of confidence about treatment. Under these circumstances prisons may provide an opportunity to address the substance addiction treatment needs of women prisoners, in a safe environment, away from the stigma associated with undertaking such treatment in the community. Such a programme may include the establishment of therapeutic communities in prisons, with a comprehensive package of treatment including medication, counselling and continuum of care 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.

In addition, there is now increased knowledge and awareness that gender differences in substance use and related problems require different treatment approaches,⁸⁸ and Member States of the United Nations have reached a consensus on treatment strategy development that specifically includes references to gender.⁸⁹ A gender-sensitive approach to women's health care should therefore also take into account the need to provide specialized treatment programmes for female substance abusers.

A study conducted by UNODC, found that comprehensive programming that acknowledges gender differences, which provides women-only services and gives attention to pre-natal and childcare, parenting skills, relationships, mental health problems and practical needs could improve treatment outcomes. Programmes are also needed to address trauma and concurrent disorders, due to high rates of trauma and concurrent mental health problems among women.⁹⁰ The study also noted that pregnant and parenting women have unique needs that require approaches that are non-judgmental, comprehensive and coordinated.⁹¹

⁸⁸ UNODC, *Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned*, United Nations, New York, 2004, p. 23.

⁸⁹ *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.

⁹⁰ *Ibid.*, p. 90.

⁹¹ *Ibid.*, p. 92.

Readers may wish to refer to the UNODC *Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned*, United Nations, New York, 2004, for further guidance.

8.7 Suicide and self-harm prevention

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

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.

Developing strategies to prevent suicide and self-harm and to provide appropriate, gender-specific and individualized psychosocial and psychiatric support to those at risk need to form a comprehensive element of mental health care in prisons. Health-care and social welfare services should be closely involved in the development of such strategies, which should adopt a holistic approach to the prevention self-harm and suicide. 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.

The health screening undertaken on entry to prison and regular assessments are key components of self-harm and suicide prevention strategies. The prevention of such acts also depends to a large extent on proper supervision and the ability of prison staff to identify prisoners at risk and refer them to mental health specialists without delay.

Staff should be aware of particular times when prisoners may feel high levels of stress, anxiety and depression, which may lead to self-harm and suicide. According to the United Kingdom NGO, the Howard League for Penal Reform, for example, in the United Kingdom 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 United Kingdom 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. The organization emphasizes that such facilities are particularly important in the case of female prisoners, who are especially vulnerable to mental distress, and particularly during their first days of imprisonment.⁹² The importance of a special reception area and procedures which assist newly arrived prisoners to contact their families and to receive comprehensive information

⁹²The Howard League for Penal Reform, "Care, concern and carpets": How women's prisons can use first night in custody centres to reduce distress, 2006.

about the prison regime and where to seek help when in need, has been highlighted also by other literature, including WHO specifically.⁹³

Other means 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.⁹⁴

GOOD PRACTICE

Australia: Peer support to prevent suicide and self-harm^a

In South Australia's Mount Gambier prison, a specially trained and supported group of prisoners are on call 24 hours a day to listen to and support other inmates. In Western Australia, regular meetings occur between prison administrators and peer support prisoners.

^aMc Arthur, M., Camilleri, P. and Webb, H., *Strategies for Managing Suicide and Self-harm in Prisons*, Australian Institute of Criminology, August 1999, (www.aic.gov.au), p. 4.

In some systems self-harm and suicide attempts are penalized, which is unacceptable and exacerbates mental distress even further.

It must be emphasized that a fundamental element of strategies to reduce incidents of self-harm and suicide in prisons is to create a prison environment which is not harmful to the mental well-being of prisoners. 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.

For further guidance, please also refer to the UNODC *Handbook on Prisoners with Special Needs*, chapter on "prisoners with mental health-care needs".

8.8 Preventive health-care services

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

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.

⁹³Møller, L., Stöver, H., Jürgens, R., Gatherer, A. and Nikogosian, H. (eds.), *Health in Prisons, A WHO guide to the essentials in prison health*, The World Health Organization Europe, 2007, p. 142.

⁹⁴Mc Arthur, M., Camilleri, P. and Webb, H., *Strategies for Managing Suicide and Self-harm in Prisons*, Australian Institute of Criminology, August 1999, (www.aic.gov.au), p. 4.

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.

Preventive health care should form a key component of health-care strategies and policies in prisons, where the risk of disease is often higher than in the outside community. Imprisonment provides an opportunity to educate women, many of whom may be unaware of preventive measures, due to their generally low socio-economic status. Female prisoners should receive education and booklets about preventive health-care measures, including from HIV, STIs, blood-borne diseases and health conditions relating specifically to women. Special courses on preventive health care and reproductive health should comprise elements of rehabilitation programmes on offer in women's prisons.

Preventive health-care measures of particular relevance to women, such as pap smears and screening for breast and cervical cancer, available in the outside community, should also be offered to women deprived of their liberty. Contraception should be available in prison on an equal basis as in the community, taking into account that contraceptive pills are not only used to prevent pregnancy, but also to treat other gender-specific conditions, such as painful menstruation. As the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment has noted, “[t]he fact that a woman’s incarceration may—in itself—greatly diminish the likelihood of conception while detained is not a sufficient reason to withhold such medication.”⁹⁵

8.9 Hygiene**United Nations Standard Minimum Rules for the Treatment of Prisoners**

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

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

European Prison Rules, 2006

19.7 Special provision shall be made for the sanitary needs of women.

⁹⁵CPT Standards, 2006 Edition, Extract from the 10th General Report, CPT/Inf (2000) 13, para. 33.

The maintenance of sanitary conditions in prisons is important in preventing illness and disease while maintaining human dignity. In this context, female prisoners have special hygiene requirements which prison authorities are obliged to provide for.

Dormitories and rooms used for accommodation of female prisoners must have facilities and materials required to meet women's special hygiene needs. Hot water should be available for the personal care of children and women, in particular women involved in cooking, those who are pregnant, breast feeding, menstruating and, where possible, for those going through menopause. In low-income countries where resources may not allow for the provision of a regular supply of hot water, such women should at least have increased access to water in order to fulfill their hygiene requirements.

Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items are of particular importance. These should be available to women under conditions in which they do not need to be embarrassed asking for them (for example either dispensed by other women or, better yet, accessible whenever needed). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers that the failure to provide such basic necessities can amount to degrading treatment.⁹⁶

8.10 Health and staff training

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

Rule 33

[...]

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.

⁹⁶Ibid., para 31.

The Bangkok Rules include a number of rules which relate to the training of staff, including in relation to health-care issues. Rules 33 (2)—35, in particular, cover the training of staff working in women's prisons on the basics of gender-specific health care and first aid, as well as 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. Whereas the rules do not intend to suggest that any staff other than health-care staff should be involved in the treatment of women prisoners or their children, they recognize 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, especially in emergencies. In such cases, immediate and appropriate action is essential. The training of staff on the basics of women's health-care needs, first aid and the basics of child health care will enable them to understand symptoms of health problems, including what needs urgent attention, apply first aid, as appropriate, and refer prisoners and their children to specialists.

In this context, capacity-building programmes on HIV should also be included as part of the regular training curricula of prison staff. In addition to HIV 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 also be part of the curriculum.⁹⁷ Women prisoners are at high risk of acquiring HIV/AIDS, as discussed earlier, and the stigma and discrimination associated with HIV is particularly intense in the case of women. Such training will enable staff to take the necessary measures for the prevention of transmission of HIV/AIDS in prison, including to protect themselves, and to respond correctly and with sensitivity to women prisoners' questions and concerns on such issues. It will also enable them to treat women living with HIV in a non-discriminatory and professional way.

Staff have an important role to play in providing a supportive and healthy environment in prisons, which ensures that the harmful effects of imprisonment on the mental well-being of female prisoners are minimized. Such an environment relies on the establishment of positive relationships between prisoners and staff, the willingness of staff to listen to prisoners' problems and complaints and to respond clearly and fully to prisoners' questions regarding all aspects of prison life, including medical care, as far as possible. Prison staff should also be trained to detect 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.

See section 12 for the special health-care needs of pregnant women and nursing mothers.

⁹⁷Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 6.

9. Access to legal assistance

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

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

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.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems^a

Principle 10. Equity in access to legal aid

32. Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age appropriate measures.

Guideline 6. Legal aid at the post-trial stage

46. States should ensure that imprisoned persons and children deprived of their liberty have access to legal aid. Where legal aid is not available, States shall ensure that such persons are held in prison in conformity with the law.

47. For this purpose, States should introduce measures:

- (a) To provide all persons, on admission to the place of imprisonment and during their detention, with information on the rules of the place of imprisonment and their rights under the law, including the right to confidential legal aid, advice and assistance; the possibilities for further review of their case; their rights during disciplinary proceedings; and procedures for complaint, appeal, early release, pardon or clemency. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities to which prisoners have regular access;
- (b) To encourage bar and legal associations and other legal aid providers to draw up rosters of lawyers, and paralegals, where appropriate, to visit prisons to provide legal advice and assistance at no cost to prisoners;
- (c) To ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment, including when facing serious disciplinary charges, and for requests for pardon, in particular for those prisoners facing the death penalty, as well as for applications for parole and representation at parole hearings;
- (d) To inform foreign prisoners of the possibility, where available, of seeking transfer to serve their sentence in their country of nationality, subject to the consent of the States involved.

Guideline 9. Implementation of the right of women to access legal aid

52. States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:

- (a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice;

[...]

^aAdopted with resolution 67/187 of the United Nations General Assembly on 20 December 2012,. A/RES/67/187

The challenges and disadvantages faced by many women in the criminal justice system have been described in chapter 1, section 1. These were recognized at the international level with the adoption of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems in December 2012. These principles and guidelines include a number of specific provisions that require special measures to be taken to facilitate women's access to legal aid, and for an active policy to be pursued to incorporate a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid. 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, 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.⁹⁸

⁹⁸For further guidance on paralegals, see United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 14.

Although these requirements are more acute in pretrial detention, they also apply to women who have already been convicted, to assist them in lodging appeals against their conviction and/or sentence, in applying for commutation or pardon, if they are under sentence of death, or in gaining early conditional release, depending on their circumstances. Women prisoners may also require legal aid when filing requests or complaints in relation to their treatment and the conditions of their imprisonment, including when facing serious disciplinary charges.

See also section 13.1 “pretrial detainees” and chapter 3, section 1, “legal assistance on arrest”.

GOOD PRACTICE

Working with NGOs to improve legal safeguards in Malawi^a

Paralegal Advisory Service Institute (PASI) was set up by four NGOs in 2000, in Malawi, with the support and assistance of Penal Reform International. PASI represents a unique partnership between the prison service and NGOs. Working closely with the prison administrations, PASI aims to do three things:

1. Link up the criminal justice system by improving communication, cooperation and coordination between the prisons, courts and police.
2. Increase legal literacy, helping prisoners to understand the law and how it affects them.
3. Provide legal advice and assistance, enabling prisoners to apply the law and to help themselves.

From the outset of their activities in 2000, PASI has targeted particularly cases involving vulnerable groups in prisons, including young offenders, women, prisoners with mental disabilities and prisoners with terminal illness to assist in their early release. It is estimated that the number of prisoners in pretrial detention was reduced by around 25 per cent between 1996-99 and 2004. Many criminal justice stakeholders believe that PASI has played an instrumental role in the reduced remand population size.

Working with NGOs to improve women’s access to justice and the conditions of their imprisonment in Sierra Leone:^b

Within the context of the devastating social and economic consequences of an 11-year conflict in Sierra Leone, which ended in 2002, women face marginalization in the country’s legal system, leading to their unnecessary and excessive detention and imprisonment. Women’s imprisonment is closely related to poverty, both as a reason for their offences and because women most often cannot afford legal services or to pay fines or bail. Women are often abandoned by their families once arrested due to the social stigma or simply because of distances, leaving them with no one to advocate for them or to assist.

Though there are efforts to provide some legal aid services, the need for legal representation and advice remains acute, especially in the provinces. The overwhelming majority of detainees still go without representation: many months if not years are spent on remand, prisoners face excessive sentences, appeals are not lodged and wrongful convictions go without redress.

AdvocAid, an NGO founded in 2006, aims to strengthen access to justice, education and reintegration for women in prison.

AdvocAid assists women in custody through:

- Offering legal representation to women imprisoned for debt defaulting and other offences
- Helping women facing trial to understand the court procedures
- Running literacy classes for women in prison across Sierra Leone in partnership with EducAid, an educational charity
- Publicizing instances of malpractice carried out by the police authorities with regard to the detention of female suspects with depending infants
- Providing legal representation for girls and women who face the death penalty
- Releasing periodic reports on the situation of women in custody

In this respect, AdvocAid works and collaborates with other organizations in the field, such as: the Centre for Accountability and Rule of Law, the Death Penalty Project, the African Prison's Project Defense for Children, Prison Watch and others.

^aSee Msiska, Clifford W., National Coordinator, Paralegal Advisory Service Institute, The Role of Paralegals in the Reform of Pretrial Detention: Insights from Malawi, for further details. (Contact: cmsiska@penalreform.org or pas-msiska@sdpn.org.mw)

^b See website: <http://www.advocaidsl.com/about/>

10. Contact with the outside world

United Nations Standard Minimum Rules for the Treatment of Prisoners

37. 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.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

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

Rule 23

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

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.

Rule 27

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

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.

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.

European Prison Rules, 2006

60.4 Punishment shall not include a total prohibition on family contact.

Adequate contact with the outside world is an important component of strategies to reduce the harmful effects of imprisonment and assist with social reintegration of all offenders. One of the key elements of successful social reintegration has been identified as strong family ties and support from partners. In low-income countries and in harsh or restrictive prison environments, where activities and programmes provided in prisons may be lacking, contact with family, friends and organizations of civil society may be the main means of reducing the risk of alienation, other desocializing effects of imprisonment and mental disabilities among prisoners.

10.1 Maintaining family links

Separation from families and children has a particularly detrimental effect on women. As discussed in chapter 1, section 6.1, a large majority of women prisoners worldwide are mothers. In many countries women are the main caretakers of the family or single mothers. They are likely to suffer particularly from separation and worry about the well-being of their family members and children.

Unfortunately, since women prisoners are often housed at a long distance from their homes, due to the limited number of female prisons, they are likely to receive fewer visits from their families compared to their male counterparts. However, the special needs of women to have access to their families and children are rarely taken into account in regulations relating to prison visits. In fact, women may be further disadvantaged in some countries, for example, where conjugal visits are allowed. In a number of such countries women are discriminated against, in that they are not allowed such visits on an equal basis with men.

Adopting a gender-sensitive management approach and devising policy on this basis has already been recommended in section 1. Measures to be introduced within such a framework could include the introduction of visiting rules that match the needs

of female prisoners, especially those who are mothers, as well as the elimination of any discrimination between men and women in terms of their visiting rights.

What can be done to maintain family links?

- Encourage visits to female prisoners, and where possible assist with transportation, especially where visits to mothers are concerned. Never charge for prison visits;
- Extend the length of visits when families confront difficulties in visiting due to the long distances involved, lack of resources and transport;
- Provide overnight accommodation for families travelling a long way, free-of-charge;

GOOD PRACTICE

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

- Ensure that visits with children are always open (allowing contact) and special rooms are available that provide informal communication in a pleasant and comfortable environment;
- If prisoners have access to telephones, increase the telephone calls female prisoners are allowed to make to their families if they are unable to visit due to the long distance;
- Never prohibit family visits as a disciplinary measure in response to rule breaking by female prisoners;
- Where conjugal visits are allowed, ensure that women are not discriminated against in the exercise of this right;
- Grant prison leave to the greatest extent possible on medical, educational, occupational and family grounds; and do this as soon as, and as frequently as possible, taking into account risk factors and family circumstances related to the prisoner concerned;⁹⁹
- Develop cooperation with social services and NGOs to assist with contact between women prisoners and their families.

⁹⁹Council of Europe, Committee of Ministers, Recommendation on Prison Leave, No. R (82) 16, 1 and 2.

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.

GOOD PRACTICE

Remote Parenting Dates in Kenya

Thika Women's Prison in Kenya began holding "Remote Parenting Days" in 2007. The officer in charge of the prison said that the introduction of the Remote Parenting Day aimed to speed up the rehabilitation process of prisoners, who were traumatized when out of touch with their families. They planned to organize the event on a monthly basis. The idea was borrowed from China after officers from the Kenya prison administration conducted a study visit to the country.^a

Italy: NGO helping to maintain links between children and parents in prison^b

Bambinsenzaresbarre (BSS) is an NGO which works with imprisoned parents at San Vittore and their children on the outside. BSS acts as a mediator between the outside and the inside.

In the case of women prisoners, BSS is usually involved in the following two steps:

1. Dealing with the woman's immediate concerns such as where the child is and by whom s/he is being looked after;
2. Working with the mother, discussing her relationship with the child and how the mother can maintain the relationship as well as possible whilst in prison.

Following imprisonment, often the imprisoned mother will not get to see the child for a long time and BSS can help prepare the mother for the meeting and the child's reaction to seeing her, such as being angry or confused. For the imprisoned fathers there is not usually the same emergency situation as when the mother is imprisoned. Often the parents separate when the husband goes to jail and this results in a difficult, but different situation. BSS works at mediation for the family.

Whether the mother or father is imprisoned, if the child remains with his or her own family then BSS can also help prepare for visits. If the child is in an institution, then BSS can liaise with the institution responsible for the child and inform them about the visit procedures and stress the importance of the meeting for both the parent and the child.

^aThe impact of parental imprisonment on children, by Robertson, O., Women in Prison and Children of Imprisoned Mothers Series, Quaker United Nations Office, April 2007, p. 27 and Opiyo, P., "Joy amid despair: Women's Prison hosts families of inmates" *East African Standard*, 3 January 2007.

^bThe Quaker Council for European Affairs country report on Italy, accessed at <http://qcea.quaker.org/prison/Country%20Reports/Italy%20Report%20-%20per%20Final.pdf>.

10.2 Conditions during prison visits

Conditions in which visits are conducted are of great importance to maintaining social links and for preserving prisoners' self-respect. 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. Children and their belongings should be searched with sensitivity.
- It is considered good practice to allow for physical contact during visits and to resort to the physical separation of visitors only in exceptional situations. There should be no restrictions especially to physical contact between mothers and their children.
- Children may be tired and restless during visits, especially if they have traveled long distances and have to wait for extended periods before they can see their mothers. Staff should show understanding.
- Parents may want time together without the interruption of their children. Providing play areas for visiting children is a way of making the visit less intimidating for the child, while enabling parents to have some privacy.

Making an effort to enable imprisoned women to meet with their families in a friendly and comfortable environment will have a significant impact on the number of visits they receive and the quality of those visits, affecting the social reintegration prospects of female prisoners.

10.3 Contacts with the community

One of the most important and useful ways of maintaining links between prisoners and the outside world, is enabling community participation in the daily activities of prisoners, as far as practicable. In this way, life in prison can be brought closer to resembling normal life, as recommended by international instruments, while the burden on prison authorities in fulfilling their obligation to provide a varied and balanced regime, as well as other services, is lightened. For those prisoners who have no family or relatives, or whose family and relatives are unable to visit, contact with community agencies may be the only means by which they will have some personal communication with the outside world, which is an essential component of rehabilitation.

Involving the community in prison activities is also a good way of increasing public awareness about prisons and encouraging public support to efforts made by prison authorities to improve the quality of prison regime and services provided to prisoners. (See also section 13.2, “foreign national women”.)

11. Preparation for release and post-release support

United Nations Standard Minimum Rules for the Treatment of Prisoners

60. (2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

80. 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.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

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

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 45

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

Rule 46

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

Rule 47

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

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.

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 process of preparation for release and resettlement begins in prison and continues after release and there is a need for continuity of assistance spanning this period. This requires close liaison between social agencies and services, as well as relevant community organizations and prison administrations during sentence.

In addition, there needs to be a programme of assistance to prepare for release close to the date of release (often starting 1-2 months prior to the release date), to ensure that the social, psychological and medical support needs of the prisoner are met and continue uninterrupted after prison. Activities undertaken in prison need to be linked to services outside to ensure continuum of care and monitoring of released prisoners. Former prisoners should be able to complete any educational and vocational training courses, as well as any medical treatment started in prison.

The obstacles, and their intensity, encountered in post-release reintegration by women in different countries and cultures may vary immensely. Due to the particular gender-related difficulties women are likely to face following imprisonment, prison authorities should cooperate with probation services, social welfare departments and NGOs to design comprehensive pre- and post-release reintegration programmes for women.

Assistance provided should cover housing and employment needs, taking into account the parental status and caring responsibilities of the women, parenting skills, psychological support and continued treatment for any substance addiction and other health problems.

The maintenance of family links throughout the period of imprisonment is highly important in the context of social reintegration. Encouraging and, where necessary, assisting with such contact will help protect the mental well-being of women prisoners and will almost certainly contribute to the post-release support provided to the women by their families. Efforts to support and strengthen relationships between the released prisoner and her family members (as well as others who may have been caring for her children) are also important to minimize the difficulties likely to be encountered following release, due to the different expectations of both sides.

Ethnic and racial minorities and indigenous peoples, often from socio-economically marginalized backgrounds, are likely to need specific help with housing, social welfare, employment and health care following release. It is vital that prison authorities coordinate with social services in the community with respect to their preparation for release and post-release support. It is also advisable that prison authorities cooperate with organizations of civil society providing support to minority groups and indigenous peoples to facilitate culture sensitive assistance to be provided to released prisoners during the difficult period of transition from prison to liberty.

Prison authorities should utilize options such as open prisons and half-way houses, to the maximum possible extent for female prisoners, to ease their transition from prison to liberty and to re-establish contact between female prisoners and their families at the earliest possible stage.

Where early conditional release (parole) is discretionary, the cases of women prisoners should be considered favourably, unless there are particular risks or exceptional circumstances involved. Consideration may be given to revising prison laws and regulations to apply more liberal conditions for the granting of remission and parole in the case of mothers, in line with the gender-sensitive management policy suggested in section 1.

GOOD PRACTICE

Post Release Support by NGO in the United Kingdom

An NGO in the United Kingdom, Women in Prison, provides practical help to enable women prisoners to manage their responsibilities for home and family outside and to prepare for release. Advice, advocacy and support is available in custody and after release for as long as needed. NGO workers can advise on housing, accessing legal rights, managing tenancies, rent arrears, housing benefit and refer to other specialist organizations.^a

Mediating between families and prisoners in Afghanistan

In Afghanistan many women prisoners are rejected by their families due to the offences they have committed, especially if these comprise so-called "moral crimes", and it is very difficult for women who have been abandoned by their families to survive on their own in the community due to social stigmatization, as well as economic difficulties. In order to help women return to their families, lawyers and social workers of NGOs, such as Medica Mondiale and Afghan Women's Educational Centre, have been mediating between the prisoners and their families, often resulting in the released women being accepted back by their families.^b

^aWomen in Prison website: www.womeninprison.org.uk.

^bUNODC, *Afghanistan, Female Prisoners and their Social Reintegration*, op. cit., p. 36.

Sometimes women may be unable to return to their families, since they will have been abandoned due to their imprisonment. The prison authorities should work closely with community support agencies and NGOs to help former women prisoners find suitable accommodation and jobs, and to settle back into their communities.

It is vital that continued support is provided to women with a history of abuse and domestic violence. During preparation for release prison authorities should establish contact and exchange information with community services, including probation services, NGOs and other social and psychological support services to ensure ongoing support to women at risk. Legal assistance should be provided as necessary.

All prisoners should be made aware of the risk of drug-related death in the immediate post-release period as a result of drug overdoses. All prisoners with drug addictions should be linked into ongoing after-care with community-based services immediately on release from prison. This should be part of a comprehensive and integrated approach to treatment in prison and the community.

In addition, the establishment of community centres, providing assistance with health, education and legal matters to women could be a way of providing ongoing assistance to female former prisoners who are disadvantaged due to economic, cultural and social factors.

In some countries rape victims or those who have been convicted of “moral offences” may face the risk of murder on release from prison, by the male members of their families (so-called “honour killings”). They should be provided protection. Prison authorities should collaborate with specialized community services, where they exist, and relevant NGOs to assist such women after release. They may need to be accommodated in confidential shelters while suitable housing is found. As a minimum, shelters should incorporate facilities and expertise to provide psychosocial support and legal advice to former prisoners. Care should be taken that protection provided to prisoners should not be in the form of, or in practice amount to, an extension of imprisonment. Protection should be provided on a voluntary basis, ideally in shelters or safe-houses managed by community services or NGOs, or with a joint management arrangement. Rule 59 of the Bangkok Rules provides specific guidance on this topic:

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

In this context, the Special Rapporteur on violence against women, its causes and consequences, has also noted that:

“States should establish, strengthen or facilitate support services to respond to the needs of actual and potential victims, including appropriate protection, safe shelter, counselling, legal aid, health-care services, rehabilitation and reintegration into society.” “Protective custody as a means of dealing with victims of VAW [violence against women] should be abolished. Any protection provided should be voluntary. Shelters should be opened and offer security, legal and psychological counselling and an effort to help women in the future. NGOs’ cooperation in this field should be sought.”¹⁰⁰

The detention of women as a means of protection is also relevant in other contexts (see chapter 3, section 3).

¹⁰⁰ Report of the Special Rapporteur, Ms Radhika Coomaraswamy, Commission on Human Rights, Integration of The Human Rights of Women and the Gender Perspective, Violence Against Women, 6 January 2003, E/CN.4/2003/75, paras. 90 and 91.

12. Pregnant women and women with children in prison

International Covenant on Economic, Social and Cultural Rights

Article 10

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

United Nations Convention against All Forms of Discrimination Against Women

Article 12

[...]

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

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

Principle 5 (2)

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. [...]

Convention on the Rights of the Child

Article 7 (1)

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

Article 3 (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.

Article 6 (2)

States Parties shall ensure to the maximum extent possible the survival and development of the child.

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.

United Nations Standard Minimum Rules for the Treatment of Prisoners

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 practical 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.

In its General Comment 28, the Human Rights Committee stated that “pregnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times, and in particular during the birth and while caring for their newborn children” and required states parties to report on facilities and medical and health care for imprisoned mothers and their babies.^a

^aHuman Rights Committee, General Comment 28 on the equality of rights between men and women, Para 15, U.N. Doc. HRI/GEN/1/Rev.7 at 153 (2004).

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

Rule 42

[...]

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.

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.

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.

See also **Council of Europe, Parliamentary Assembly Recommendation 1469 (2000) on mothers and babies in prison**, adopted on 30 June 2000.

Pregnant women and women with dependent children should not be imprisoned unless absolutely necessary. Appropriate legislation should be in place and sentencing guidelines for courts should underline this principle. If they are imprisoned, the State takes on the responsibility to provide adequate care for the women and their babies (see also chapter 3, section 4.3).

12.1 Pregnant women, nursing mothers and women with children in prison

The pre- and post-natal care provided should be equivalent to that available outside prison.

Pregnant women should be transferred to civilian hospitals for childbirth. If the baby is born in prison, delivery should be undertaken by a medical specialist in facilities suitable for childbirth. Wherever the birth takes place, it should be registered immediately, but the fact that the baby was born in prison should not be mentioned on his or her birth certificate.

Security measures applied when taking pregnant women to hospital and during childbirth should be the minimum necessary. As already mentioned, the restraining of pregnant women during examinations, transport to and back from hospital, childbirth and immediately following childbirth is unacceptable.

Breastfeeding mothers should be able to breastfeed their babies in a comfortable environment and the prison regime should be made flexible for pregnant women, breastfeeding mothers and women with dependent children in prison. This would mean, for example, that a woman who needs to breastfeed her baby or attend to her sick child should be allowed to do so during scheduled activities and make up for any time lost at a later time (e.g. for an education programme which needs regular attendance). In addition, there should be a nursery in the prison, staffed with professional nurses who can take care of the children when mothers take part in prison activities. Women should never be discouraged to breastfeed their children, unless there is a medically justifiable reason to do so.

Special programmes should be developed to respond to the particular needs of pregnant women, nursing mothers and women with children in prison, such as health care, nutrition and parenting skills, among others.

Pregnant or nursing women should receive advice on their diet under a programme to be drawn up and monitored by a suitably qualified prison physician. Appropriate food must be provided for babies, children and breast-feeding mothers, free of charge, including milk, high protein products and adequate amounts of fresh fruit and vegetables. Arrangements must be made for storing such products adequately.

The medical and nutritional needs of women who have recently given birth, but whose babies are not with them in prison, should be included in treatment programmes.

12.2 Children living with their mothers in prison

The debate as to whether children of imprisoned mothers should stay with them in prison, and for how long, continues. Viewpoints vary among specialists, with no consensus having been reached. Countries worldwide have very different laws as to how long children can stay with their mothers in prison. Nevertheless, there is general consensus that, in trying to resolve the difficult question of whether to separate a mother from her child during imprisonment, and at what age, the interests of the child should be the primary consideration. Issues to take into account should include the conditions in prison and the quality of care children can expect to receive outside prison, if they do not stay with their mothers. This principle would imply that prison authorities should demonstrate flexibility and take decisions on an individual basis, depending on the circumstances of the child and the family. Applying rigid rules in all cases, where circumstances vary immensely, is all too often not an appropriate course of action.

On admission to prison the number and personal details of children accompanying their mothers should be recorded.

During the time which they spend in prison, children should be provided with ongoing good quality primary health-care services and their development monitored by a prison psychologist and specialists in child development (e.g. on regular visits from community health-care services). The environment provided for the child's upbringing should be as close as possible to that of a child outside prison, with a nursery staffed by specialists who can take care of the child while separated from his or her mother. They should have adequate play and exercise facilities. Mothers should be provided with the maximum possible opportunities to spend time with their children. The availability of nurseries in prisons is also important to ensure that women with children can participate in prison activities and programmes on an equal basis with other prisoners.

The prison administration should collaborate with health clinics for vaccinations and periodic examinations of children for administering their vaccinations and monitoring their physical development.

Children living in prison should never be treated as prisoners themselves. They should not be subjected to disciplinary punishments. In principle they should be free to leave the prison and participate in outside activities, provided their mothers allow them and in compliance with security considerations. Mechanisms should be in place to protect children from all forms of physical and psychological abuse in prisons.

GOOD PRACTICE

Bulgaria: Kindergarten for children living in prison

“The prison had a special department for newborn babies. The kindergarten comprised of four rooms, including a lavatory, a room for changing and washing the babies, a kitchen and a dormitory. This unit was new and was in a perfect condition: clean, spacious, sunny (with glass windows), with appropriate furniture (many closets), an area to play with toys and a small veranda where mothers could walk with their babies. On the day of the IHF delegation visit there were three babies and their quite young mothers were taking care of them spending the whole day there (they sleep in the same place), an activity that equals inmates’ working day.”^a

United States: Nursery for infants and their imprisoned mothers, with special programmes

The Children’s Centre at the Bedford Hills Correctional Facility in New York, United States, houses a nursery, where babies of women involved in the prison programmes are cared for until they are 1 year old. When there is certitude that mother and baby can leave together, an extension to 18 months is granted. The Children’s Center promotes parenting skills and serves the infants living at the institution and the inmates’ children living outside the prison. Approximately 75 mothers are involved with the Children’s Center at one time. Over the course of a year, it serves 700 women. Most women are involved in the programme from 1 to 5 days each week. The purpose of the programme is to help inmates “learn to be mothers,” with a focus on meeting the women’s mental health needs. Other focus areas are relationships with family, transition to the community, and parenting. A case management approach is used to match women’s needs to particular activities and services. Programming is bilingual, and many activities are culturally specific. The employment of inmates as coordinators, most of whom were previously in the programme themselves, is a unique feature.^b

Latvia: Children’s home for children of mothers in prison

The women’s prison is semi-closed and there is a children’s home located in a separate building on prison grounds, where children stay until the age of four. Imprisoned women are allowed to stay with their children all the time until the age of one, and then are allowed to meet their children twice a day for 1.5 hours. Once children reach the age of four they are either placed in the care of relatives or in other children’s homes, which house 8-10 children on any given day.

Within a project funded by the Soros Foundation-Latvia, the children’s home cooperates closely with the Social Paediatric Centre and has started an innovative parenting skills programme for women prisoners.^c

India: Crèches and nursery schools for prisoners’ and prison officials’ children

Prisons in Karnataka state, India, have set up crèches and nursery schools attended by children imprisoned with their parents, children of prison officials and children living close to the prison. These joint facilities prevent duplication of provision (one crèche for prisoners’ children, another for everyone else) or the creation of crèches with very small numbers of users (there were just 29 children living with their mothers in Karnataka’s prisons in 2006). The scheme helps to mitigate the problem of children living in prison becoming socially isolated by allowing them to mix with children from the surrounding area. However, crèche supervisors (who include imprisoned mothers) will need to ensure that children from one group (e.g. prisoners’ children) are not stigmatized by those from another.^d

Cambodia: NGO support to pregnant women and mothers in prison

In 2003, the NGO, Cambodian League for the Promotion and Defense of Human Rights (LICADHO) started an Adopt-A-Prison Project to assist babies, children and pregnant women in prison. The programme aims to facilitate individuals and organizations in providing assistance to these vulnerable groups in prison. In October 2006 13 individuals and organizations were partners in the project and were helping to support 10 prisons that had prisoners with children living with them. During 2005-2006, the Adopt-A-Prison Project provided food, materials and medical assistance to children, their parents and pregnant women living inside Cambodia's prisons. The project is also concerned with the lack of education and developmental opportunities provided to incarcerated children, and is planning a second phase to develop solutions to this problem.^e

Spain: Family cell units for prisoners with children

A prison in Aranjuez, Spain, offers family units for children and their imprisoned parents (both parents), where families can stay together, enabling the children to bond with their imprisoned parents. The spacious units provide a child-friendly environment with a nursery school and a playground outside. A typical room is approximately 14 square meters (150 square feet), with walls covered with pictures of Mickey Mouse, Donald Duck and family photos. There is a double bed, a crib full of toys, a small bathroom and windows facing outside prison. A doctor comes twice a week. The children can stay in prison up to the age of 3. After that the children are removed and put with relatives or with social services, and their parents go back to regular cells.^f

^ePlaces of Detention in Bulgaria, Report from the visit of the delegation of human rights NGOs to places of detention in Bulgaria on 27 and 28 September 2004, International Helsinki Federation for Human Rights, 2005, p. 47. The information relates to Sliven prison, which is the only prison for women in Bulgaria.

^bMorash et al., op. cit., p. 8.

^cWomen in Prison in Central Europe, Overview and Statistics, PRI Information package, Latvia.

^dQuaker United Nations Office, The Impact of parental imprisonment on children, Women in Prison and Children of Imprisoned Mothers Series, Robertson, O., April 2007, p. 32.

^eLICADHO, Prison Conditions in Cambodia, 2005 and 2006: One day in the life..., January 2007, pp. 32-33.

^f"Spanish prison offers family cell units for inmates with children", The Associated Press, Monday, February 5, 2007, Aranjuez, Spain.

The removal of the child from prison should be undertaken with sensitivity, only following an individual assessment as to the suitability of removal and when alternative care arrangements for the child have been identified. After children are separated from their mothers and placed in an institution, with family or relatives, women prisoners should be given the maximum possible opportunity to meet with their children, to reduce the mental distress of the mothers and the emotional trauma of the child, as well as to protect the children from developmental problems. Interim arrangements, such as overnight visits, may be considered during the first period following separation in order to enable the child and mother to gradually get used to separation.

The responsibility of the State to care for the child does not end with the placement of the child in an orphanage or with the relatives of the prisoner. In line with article 9 (3) of the Convention on the Rights of the Child, the responsibility of the State extends to enabling the child to have regular contact with his or her mother, to ensure that the adverse effects of separation on the emotional development of the child are minimized. This obligation is reflected in Rule 52(3) of the Bangkok Rules.

Practical measures to enable regular contact between the mother and child may include providing financial assistance to cover the cost of travel to the prison, as well as minimizing bureaucratic procedures.

13. Special categories

13.1 Pretrial detainees

International Covenant on Civil and Political Rights

Article 10

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

United Nations Standard Minimum Rules for the Treatment of Prisoners

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners," hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

[...]

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, 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.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

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

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.
2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.
3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)**Rule 56**

The particular risk of abuse that women face in pretrial detention shall be recognized 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.)

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems**Principle 3****Legal aid for persons suspected of or charged with a criminal offence**

20. States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.
21. Legal aid should also be provided, regardless of the person's means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.
22. Children should have access to legal aid under the same conditions as or more lenient conditions than adults.
23. It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.

Guideline 4**Legal aid at the pretrial stage**

44. To ensure that detained persons have prompt access to legal aid in conformity with the law, States should take measures:

(a) To ensure that police and judicial authorities do not arbitrarily restrict the right or access to legal aid for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular in police stations;

(b) To facilitate access for legal aid providers assigned to provide assistance to detained persons in police stations and other places of detention for the purpose of providing that assistance;

(c) To ensure legal representation at all pretrial proceedings and hearings;

[...]

(e) To provide every person, on admission to a place of detention, with information on his or her rights in law, the rules of the place of detention and the initial stages of the pretrial process. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in each detention centre; [...]

The key principle which should be applied to all detainees who have not yet been convicted and sentenced by a court of law is that they should be considered innocent and be treated as such, until such sentence is passed. But in practice women are often discriminated against in the application of this principle due to the limited accommodation available for female prisoners, which can lead to untried women being held with convicted prisoners in many countries, contrary to SMR Rule 85 (1) and being subjected to the same regime as convicted prisoners. Again, since many women prisoners are held in a higher security level than necessary, due to the limited number of women's prisons, this means that many untried women, who still retain their status of innocence, are held in high security conditions. This practice is unacceptable.

Even less acceptable is the practice of automatically classifying pretrial detainees as high risk prisoners. It has been reported, for example, that in some countries individuals on remand are automatically classified as "maximum security" prisoners, with corresponding restrictions on personal property and visiting entitlements, among others, which impacts on the sentenced women with whom they are housed.¹⁰¹ "The presence of remand prisoners effectively means that medium and minimum security prisoners may serve their sentences in an environment that is more onerous than is necessary for their classification status."¹⁰² The high security classification of persons who have not been convicted of a crime is unacceptable in all cases, but has a particularly harmful impact on women, who experience high levels of distress when placed in high security conditions, including restrictions on visits from families.

¹⁰¹Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., p. 84.

¹⁰²Beyond Bars Alliance NSW, Submission to the Anti Discrimination Commissioner for an Inquiry into the Discrimination Experienced by Women Within the Criminal Justice System in New South Wales, 2005, at <http://www.sistersinside.com.au/media/NSWADCreport.pdf> (accessed 20 July 2005) p. 8-9, cited in Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., p. 84.

- Pretrial detainees and convicted prisoners should be accommodated separately. If exceptional circumstances hinder the strict application of the rule of separating untried prisoners from the convicted, then prison administrators must ensure that a different regime applies to those who have not yet been convicted. This would mean that such women should enjoy all the rights which pretrial detainees enjoy, in terms of visiting rules, personal property, access to outside medical care, food, etc, outlined in SMR, Rules 84-93. Every effort should be made, in particular, to ensure that women's contact with their families and children is not disrupted beyond that which is necessary.
- The key requirement of pretrial detainees is immediate and regular access to legal counsel. Prison staff should assist prisoners both in accessing lawyers and in facilitating their meetings with lawyers. Women, often illiterate, lacking in confidence, less aware of their rights and with psychosocial disabilities in many cases, are in particular need of such assistance.
- Social workers or other appropriate staff members should receive training on the requirements for eligibility for legal aid and assist women in accessing legal aid wherever a woman cannot afford a lawyer herself. Such assistance should also be offered in cases which are particularly urgent or complex, the potential penalty particularly severe or where the woman is particularly vulnerable, notwithstanding the financial means of the woman concerned.
- In addition, female pretrial detainees have special safety requirements, due to their especially vulnerable status. Women are at risk of abuse particularly during their pretrial detention period, when sexual abuse and other forms of violence can be used as a means of coercion to extract confessions. Therefore it is vital that policies and rules that have been outlined in section 6, Security and safety, are applied vigorously in pretrial detention facilities.
- Women detained in relation to "reproductive crimes" may be at heightened health risks during pretrial detention, having recently experienced pregnancy, abortion, miscarriage or delivery in health- and possibly life-threatening circumstances. Their special health-care needs should be addressed, and where necessary they should be transferred to community hospitals for treatment.

13.2 Foreign national women¹⁰³

United Nations Standard Minimum Rules for the Treatment of Prisoners

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

¹⁰³Please refer to chapter 4 of the UNODC *Handbook on Prisoners with Special Needs* for more comprehensive guidelines and suggestions relating to the treatment of foreign national prisoners, men and women. Please also refer to the UNODC *Handbook on the International Transfer of Sentenced Persons* for specific guidance on issues relating to the transfer of foreign prisoners.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

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

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.

Council of Europe, Committee of Ministers, Recommendation No. R (84) 12 Concerning Foreign Prisoners²

13. Foreign prisoners, who in practice do not enjoy all the facilities accorded to nationals and whose conditions of detention are generally more difficult, should be treated in such a manner as to counterbalance, so far as may be possible, these disadvantages.

Vienna Convention on Consular Relations

Article 36

Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

Model agreement on the transfer of foreign prisoners and recommendations for the treatment of foreign prisoners^b

[Extracts]

Annex I

I. General principles

1. The social resettlement of offenders should be prompted by facilitating the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence at the earliest possible stage. In accordance with the above, States should afford each other the widest measure of co-operation;

[...]

7. A transfer, to either the country of nationality or of residence, should be effected only with the expressed free will of the prisoner.

[...]

13. The person transferred for the enforcement of a sentence passed in the sentencing State may not be tried again in the administering State for the same act upon which the sentence to be executed is based.

II. Procedural regulations

[...]

18. The period of deprivation of liberty already served by the sentenced person in either State shall be fully deducted from the final sentence.

19. A transfer shall in no case lead to an aggravation of the situation of the prisoner.

^aAdopted by the Council of Europe, Committee of Ministers on 21 June 1984 at the 374th meeting of the Ministers' Deputies.

^bSeventh 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.

Foreign national prisoners may be either resident or non-resident in the country of imprisonment. Both groups face particular difficulties.

Prison authorities should demonstrate sensitivity towards the needs of foreign national women, due to their particular vulnerability. 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 prisoner's home country.

If they are awaiting trial, their anguish will be increased by factors such as limited understanding of the legal system, lack of information about the precise charges against them, and the sentence they face, and problems with accessing appropriate legal counsel. If they have suffered sexual abuse or other forms of violence, for example, as victims of human trafficking or as migrant domestic workers, they will feel extremely vulnerable, fearing further ill-treatment.

- Prison authorities must ensure that all foreign prisoners, resident and non-resident, have immediate and regular access to their consular representatives (unless the prisoner explicitly opposes such contact), legal counsel and interpreters, equal access to information in a language they understand, as well as prison activities and other services.
- If the prisoners' regular communication with their family and relatives is difficult due to their residence in another country, prison authorities should provide additional means to compensate for this disadvantage. These may include increasing foreign nationals' rights to use the telephone, enabling them to call at hours that take into account time differences, allowing for longer visits, to compensate for infrequency. Where resources allow, financial assistance to cover travel and telephone costs should be considered.
- Legal assistance, counselling and medical services, disciplinary hearings and complaints mechanisms should all take into account the language requirements of foreign national prisoners, and interpretation provided as necessary.
- The provision of language courses should be a priority for those who have linguistic needs, and especially those who have been sentenced to long prison terms.
- Additional measures need to be taken to ensure that foreign national prisoners have access to activities and programmes—especially non-resident foreign national prisoners, who do not speak the language of the majority prison population—by providing interpreting services, where necessary, as well as, for example, by encouraging peer support and self-help groups to be formed among foreign nationals of the same nationality. The placement of foreign nationals of the same country close to each other should also be considered, following consultation with the prisoners.
- NGOs supporting foreign national prisoners should be encouraged to visit prisons and implement appropriate programmes. The contact details of such organizations should be made available to prisoners. The support of community organizations will be extremely beneficial to prison administrations, which are usually not in a position to address all the needs of foreign national prisoners.
- The transfer of non-resident foreign national women prisoners to their home countries, especially if they have children in the home country, should be considered as early as possible during their imprisonment, provided that the

prisoner so wishes, and provided the transfer does not entail any human rights risks for the prisoner. The possibility and consequences of serving their sentence in their own country should be fully explained to foreign national prisoners and decisions taken on the basis of the prisoner's full consent.

- Where a child living with a non-resident foreign-national woman prisoner is to be removed from prison, consideration should be given to relocating the child to his or her home country, taking into account the best interests of the child. Such decisions should always be taken in consultation with the mother, and depending on the age and development of the child, also in consultation with the child.¹⁰⁴
- Resident foreign national prisoners who face deportation when they have completed their sentences will face further separation from their families, which entails an additional punishment for such persons, especially if they are mothers. Where national legislation rules that foreign prisoners are to be deported, prison authorities and consular representatives should make every effort to assist with access to legal counsel to help with any appeals process, and when deportation is inevitable, with obtaining necessary documents, travel arrangements, and facilitating communication between prisoners and relatives in the home country to the maximum possible extent. Organizations of civil society can provide valuable assistance during this process, aiding contact between prisoners and distant family members, helping resolve a myriad of problems and explaining procedures.

13.3 Girls in prison

Convention on the Rights of the Child

Article 3

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..

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

¹⁰⁴The child should participate in the decision-making process, as per article 12 of the Convention on the Rights of the Child.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) 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;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

[...]

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

United Nations Standard Minimum Rules for the Treatment of Prisoners

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

[...]

(d) Young prisoners shall be kept separate from adults.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

Rule 26.4

Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

Commentary to United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth UN Congress on the Prevention of Crime and Treatment of Offenders. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, *inter alia*, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

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

Introduction, paragraph 16:

Subsections A and B both provide additional rules for the treatment of juvenile female prisoners. It is important to note, however, that separate strategies and policies in accordance with international standards, in particular the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Guidelines for Action on Children in the Criminal Justice System, need to be designed for the treatment and rehabilitation of this category of prisoners, while institutionalization shall be avoided to the maximum possible extent.

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.

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.

Girls in conflict with the law¹⁰⁵ are often detained in prisons, frequently together with adult female prisoners, due to a lack of appropriate responses to the situation of children, and in particular girls in conflict with the law. Although this *Handbook* does not cover the setting-up of separate juvenile justice institutions to respond to the social reintegration requirements of girls in conflict with the law, it is important to note that separate strategies and policies in accordance with international standards¹⁰⁶ need to be designed for the treatment and rehabilitation of this category, even when the numbers are limited. The institutionalization of children in conflict with the law, including girls, should be used only as a measure of last resort and for the shortest appropriate period of time in line with article 37 (b) of the Convention on the Rights of the Child (CRC). Similar provisions are also contained in Rule 13.1 of the Beijing Rules and Rule 65 of the Bangkok Rules.

In light of the reality that in many countries, girls in conflict with the law are detained in prisons¹⁰⁷ this section provides some guidance on the treatment of girls in prison and safeguards that must be in place to protect them from abuse and the harmful

¹⁰⁵ Girls alleged as, accused of or recognized as having infringed the penal law, as per Convention on the Rights of the Child (CRC), Art. 40.

¹⁰⁶ These should include the CRC and others referred to in the introduction of the Bangkok Rules, quoted in the box above.

¹⁰⁷ For example, in the United Kingdom, the total number of custodial sentences for children rose by 56 per cent between 1992 and 2006; those imposed on girls increased by 297 per cent. (See Nacro and CfBT Education Trust, Literature Review, Review of provision for girls in custody to reduce reoffending, prepared by Nacro youth crime section, February 2009. Report available on www.cfbt.com); in the United States, the proportion of girls among incarcerated children grew from about 12 percent in the mid-nineties to 15 percent in 2003. American Civil Liberties Union, Custody and Control: Girls in the Juvenile Justice System. (<https://www.aclu.org/womens-rights/custody-and-control-girls-juvenile-justice-system>).

impact of imprisonment to the maximum possible extent, in line with the provisions of the Bangkok Rules.

The disadvantages faced by women prisoners, in comparison to their male counterparts, are even more acute in the case of girls, as a result of their very small numbers in most prison systems. Often, due to the lack of special facilities for girls, they are not separated from adult prisoners, thereby putting their safety at risk. Girl prisoners are further likely to have even less access to suitable educational and vocational training facilities than either adult women or boys, due to their small numbers. Any programmes provided for children in prison are likely to have been developed to address the needs of boys. Girls are unlikely to have access to gender-sensitive health care or counselling for physical or sexual abuse, which may have been suffered prior to imprisonment. Pregnant girl prisoners comprise one of the most vulnerable groups in prisons, due to the social stigmatization to which they may be subjected, their inexperience of dealing with pregnancy and the lack of adequate facilities for pregnant girls.

All the topics discussed in this *Handbook* apply to girl prisoners. In addition, there needs to be awareness of their especially vulnerable status, as well as their special needs due to their age, and additional measures need to be taken to ensure their safety and prevent discrimination against them.

Girl prisoners should always be held separately from adult prisoners, unless it is considered in the best interests of the child not to do so, in line with a number of international treaties and instruments including article 37 (c) of the CRC, article 10 (2) (b) of the ICCPR, Rules 13.4 and 26.3 of the Beijing Rules, Rule 29 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) and Rule 8 (d) of the SMR. General Comment No. 10 of the CRC Committee on the Rights of the Child explicitly sets out the reason for the separation of children from adults, as follows: “There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate”, adding that “The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, “unless it is considered in the child’s best interests not to do so”, should be interpreted narrowly; the child’s best interests does not mean for the convenience of the States parties...”¹⁰⁸

Girls should also be separated from boys, and be supervised only by female staff as a safeguard against abuse. 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. 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).

¹⁰⁸ CRC, Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 85.

Such acts are prohibited by Art. 19 of the CRC and other international law, and States have the responsibility to ensure maximum protection of persons under their care, especially children. The employment of male staff in prisons where girls are held is unacceptable. It should additionally be recognized that female staff have also been known to abuse prisoners under their care, and juvenile female prisoners are particularly vulnerable. All safeguards, including accessible and confidential complaints procedures, independent investigations, protection to prisoners from retaliation, should be in place, as well as regular and independent monitoring of prisons, in order to prevent abuse and bring perpetrators to justice when it takes place.

Girl prisoners should have the same access to education and vocational training as boys in prison, which in turn should be equivalent to that available outside prison.

In addition, girls should have access to gender-specific programmes and services, such as counselling for sexual abuse or violence, by specialists in child psychology. They should receive education on women's health care and regular access to gynecologists, similar to adult female prisoners.

Pregnant girl prisoners should receive all the support and medical care, outlined in section 12, but with additional sensitivity to their vulnerable status due to their age. Girl prisoners may be at a greater risk of health complications during pregnancy. It is essential that their health condition is monitored by a medical specialist.

14. Monitoring women's prisons

United Nations Standard Minimum Rules for the Treatment of Prisoners

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

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

Rule 25

[...]

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 regular inspection of prisons both by the authority responsible for the administration of prisons as well as external, independent inspectors and monitoring bodies is extremely important in the implementation of international, as well as national, rules on the treatment of prisoners. Such inspections ensure that policies

and practice are in conformity with laws and regulations and are an important safeguard for prisoners against the violation of their rights.

The SMR provide for the regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Rule 25(3) of the Bangkok Rules supplements this rule by requiring that monitoring bodies responsible for inspecting places of detention where women are held include female members. This requirement is based on the understanding that the provision of services addressing women prisoners' specific needs may be better evaluated by a person of the same gender. The inclusion of female members in the monitoring team may also encourage women prisoners who have grievances, but who feel inhibited in talking to male members of monitoring bodies, to come forward. The likelihood of such inhibition is particularly high when grievances are related to sexual abuse.

In addition, the Bangkok Rules themselves represent a key reference point for monitoring bodies in fulfilling their responsibilities in relation to women in prison.

The relevant authorities should ensure that all monitoring and inspection bodies, whether internal or external, include women members, whenever such bodies visit places of detention where female prisoners are held. The monitoring bodies should undertake a comprehensive assessment of prisons, taking into account gender-specific considerations outlined in this *Handbook* and with reference to the provisions of the Bangkok Rules.

3.

Reducing the female prison population by reforming legislation and practice: suggested measures

The growing number of female prisoners highlights the need to review legislation, policies and practices that lead to the increased imprisonment of women, which has an adverse impact, not only on the women themselves, but on their families and most specifically on a large number of children.

As a first step, account needs be taken of the most common reasons for women's detention and imprisonment worldwide and for the growth of the female prison population.

The offences for which women are imprisoned differ considerably from those of men:

- The majority of women prisoners are held for non-violent offences;
- When women are convicted of violent offences they are likely to have committed the crime against their male partners or someone close to them. Violent offences are often committed against the person who has abused a woman;
- A large proportion of women are held for drug-related offences. Many are drug addicts themselves. When drug trafficking is involved, it is likely that the women have been used as drug couriers for small sums of money;
- Other frequent offences committed by female prisoners include property crimes, such as theft and fraud, sometimes referred to as crimes of poverty;
- In countries where legislation derives from various interpretations of religious laws, women are imprisoned for “crimes against morality”, including “adultery” and “fornication”. Although laws may appear to be gender neutral, such charges are more often brought against women. In addition, in many cases trial procedures do not meet the requirements of international standards: women are discriminated against during trial proceedings and convicted of “moral offences”, even though many may be victims themselves.

In addition:

- Increasingly punitive criminal justice policies, coupled with the economically disadvantaged status of women, have led to an increase in the number of women held in pretrial detention in many countries.

- The number of foreign national women in the criminal justice system of many countries is growing, due to the increase in human trafficking and migration.

It is evident from the above and the typical background of women in the criminal justice system, described in chapter 1, that the profile of female prisoners is quite different to that of men. Their backgrounds, offences they commit, their caring responsibilities and the particularly harmful effects of imprisonment on women need to be taken into account in devising criminal justice policies, in order to ensure that women are not imprisoned unnecessarily and unjustifiably, putting pressure on the scarce resources of prison systems worldwide.

It cannot be adequately emphasized that a large majority of female offenders do not pose a risk to society and their imprisonment does not help, but hinders their social reintegration. Many are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation experienced at the hands of their husbands, family and the community. What most female offenders need is to 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 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 strictly 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.

"I think if 90 per cent had some alternative, they would turn around and be made into worthwhile citizens and not be a drain on society as they are as incarcerated inmates."

A prison administrator in the United States.^a

^aNational Institute of Justice, Research in Brief, August 1998, p. 6.

Women's rate of imprisonment can be decreased by introducing legislative reforms aiming to reduce the prison population as a whole, which could include the decriminalization of certain acts, the removal of mandatory sentencing, which does not allow for discretion, based on the circumstances of the offence, vulnerability and caring responsibilities of the offender, and the more frequent use of alternatives to prison.

Due to the non-violent nature of most crimes committed by women and the minimal risk most female offenders pose to the public, they are ideal candidates for non-custodial sanctions and measures.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems include other specific provisions applicable to women, taking into account their gender-specific needs. They require that States introduce an active policy of improving women's access to justice, by incorporating a gender perspective into all policies laws, procedures, programmes and practices relating to legal aid; making available, as far as possible, female lawyers to represent women defendants; and providing legal aid to female victims of violence.

Changes to legislation and the implementation of legislation should aim to:

- Ensure that women enjoy equal rights with men during trial procedures, in law and practice, and are accorded all guarantees set out in articles 9 (3) and 14 of ICCPR.
- Ensure that a gender perspective is incorporated into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality in access to justice.
- Keep out of prison those who have committed minor and non-violent offences and those who are in need of medical or psychiatric treatment.
- Reduce the numbers of pregnant women and mothers with dependent children in prison to a minimum.
- Ensure that the circumstances of the offence and the vulnerability of the offender be taken into account during sentencing (e.g. the commission of murder against a violent partner, husband or family member; drugs offences, where women have been used as drug couriers).
- Ensure that a wide range of alternatives to pretrial detention and imprisonment are available in legislation.
- Ensure that women are not discriminated against in the application of alternatives to pretrial detention and prison, due to their vulnerable social and economic status. Homelessness, substance abuse, lack of employment and lack of a supportive family should never be seen as risk factors, but rather as social challenges that need to be addressed with support from welfare agencies and the community, in order to help prevent re-offending.
- Bring discriminatory legislation, as well as the discriminatory application of seemingly gender-neutral legislation, in line with international standards.
- Protect victims of human trafficking and migrant workers from further victimization.

Clearly the problems relating to women's imprisonment go far deeper and are too complex to be eradicated only by the measures suggested above. To achieve sustainable success, legislative measures and a change in criminal justice policies need to be accompanied by interventions to eliminate all forms of violence against women, and discriminatory attitudes in all spheres of society, with awareness-raising, education and training, in parallel to law reform.

Nevertheless, much can be achieved by applying gender-sensitive criteria to criminal justice policies, legislation and practice, as suggested below.

1. Legal assistance on arrest

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems**Principle 3****Legal aid for persons suspected of or charged with a criminal offence**

20. States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.

21. Legal aid should also be provided, regardless of the person's means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.
22. Children should have access to legal aid under the same conditions as or more lenient conditions than adults.
23. It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.

Guideline 9

Implementation of the right of women to access legal aid

52. States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:
 - (a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice;
 - (b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;
 - (c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where requested or required.

The International Covenant on Civil and Political Rights, articles 9 (3) and 14 set out the key safeguards and guarantees applicable during pretrial, trial and appellate stages. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules guarantee detainees' right to legal counsel immediately after arrest and during the entire criminal justice process. Indigent detainees and prisoners are entitled to legal counsel provided by state authorities, free-of-charge. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, while reiterating and providing further guidance on these rights, also require that legal aid be provided, regardless of the defendant's financial means, "if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty."¹⁰⁹ In addition, those who are vulnerable must also be provided with access to legal aid.¹¹⁰

The Beijing Declaration and Platform of Action¹¹¹ (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".

¹⁰⁹United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 3, paragraph 21

¹¹⁰Ibid., Principle 3, para. 23

¹¹¹Beijing Declaration and Platform of Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1.

States have an obligation to ensure that women are given access to justice on an equal basis with men, and in line with universally accepted principles, set out in ICCPR, among others. In order to counterbalance the disadvantaged status of women in the criminal justice system, described in chapter 1, section 1, States should also consider taking positive action to improve women's access to justice, as provided by the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and recommended by the Beijing Declaration and Platform for Action.

Suggested key measures:

- Recognizing the particular vulnerability of women in the criminal justice system, States should take measures to ensure that indigent female suspects have access to low cost or free legal aid services, immediately on arrest, at least on an equal basis as indigent men and that, as far as possible, female lawyers are made available to them;
- Gender sensitivity and criteria for eligibility for legal aid should form part of the training of law enforcement officials and staff of pretrial detention facilities. Staff should be required to, and be in a position to, assist all female detainees with sensitivity, demonstrating particular care and patience in the case of illiterate or uneducated women, to understand their legal rights, by providing full explanation in a language that they can understand, and help them in accessing legal counsel, paralegal aid services or relevant NGOs;
- Such assistance should also be offered in cases which are particularly urgent or complex, where the potential penalty is particularly severe or where the woman is particularly vulnerable, notwithstanding the financial means of the woman concerned.

2. Diversion from prosecution

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable noncustodial measures, as appropriate.

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

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 pretrial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.

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.

Since a large proportion of women have mental health-care needs, are drug and/or alcohol dependent, suffer from the trauma of domestic violence or sexual abuse, diverting them to a suitable treatment programme would address their needs much more effectively than the harsh environment of prisons. In addition, the harmful impact of a woman's imprisonment on her dependent children and/or other family members or relatives for whom she might have caring responsibilities, should be taken into account in cases where the woman concerned does not represent a danger to the public.

The police, prosecutors and courts should have an array of options available to them to divert offenders from prosecution and they should be encouraged to use them for women who, in a vast majority of cases, do not pose a risk to the public.

Such options may include:

- Absolute or conditional discharge
- Verbal sanctions
- An arbitrated settlement
- Restitution to the victim or a compensation order
- Community service order
- Victim offender mediation
- Family group conference
- Another restorative process, such as sentencing circles.

The findings about the background and problems of women offenders included in "A Review of the Conditions in Member States of the Council of Europe", of the Quaker Council for European Affairs, indicated that "there could be particular benefits from family group conferencing and circle sentencing. The majority of women offenders are the mothers of children under 16 years old and are generally the sole or main carers. By enabling victims, the women offenders, their families and the community to meet and agree both on how best to repair the harm and on how to re-integrate the offenders into society and support their children, the outcomes are more likely to stop further offending and reduce the possibility of their children in turn becoming offenders".¹¹²

¹¹²Women in Prison, A Review of the Conditions in Member States of the Council of Europe, Executive Summary, The Quaker Council for European Affairs, February 2007, p. 8.

3. Pretrial detention

International Covenant on Civil and Political Rights

Article 9 (3)

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

6. Avoidance of pretrial detention

6.1 Pretrial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pretrial detention shall be employed at as early a stage as possible. Pretrial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

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

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

See also the **United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)**, Rules 57 – 58 quoted earlier.

In many countries a large proportion of women are in pretrial detention, awaiting their trials, sometimes for years and beyond the sentence matching the offence with which they are charged. Where alternatives to pretrial detention, other than monetary bail,¹¹³ are rarely applied, and where access to legal assistance is minimal, those who cannot afford to pay for bail or legal counsel are held in custody for prolonged periods awaiting their trials. Those who are most affected are the poor and disadvantaged. As such, women constitute a part of the growing numbers of prisoners in pretrial detention in many countries. They are more likely to be unable to pay the surety required for bail, due to their economic disadvantage in most societies. A majority of women offenders are illiterate and less aware of their legal rights.

¹¹³The term “monetary bail” is used to refer to the requirement of the temporary placement of cash in the possession of a court to guarantee that the accused will conform to the conditions set for pretrial release.

Women in pretrial detention

In **Nigeria** of 777 women prisoners, 577 were pretrial detainees in 2005. The pretrial period could last from 1 to 15 years.^a

In **Malawi** 65 per cent of women prisoners were on remand in 2001, which was considered to be low in comparison to other countries in Africa.^b

In **India** more than 70 per cent of the female prison population was under trial in 1999.^c Many spent 4-5 years in pretrial detention for offences which carried a far lesser maximum prison sentence.

Similar figures applied to **Bolivia** (77 per cent), **Mexico** (44.6 per cent), **Colombia** (53.5 per cent) and **Rwanda** (50-75 per cent) according to figures published in 2005.^d

South Africa: Women in pretrial detention, bail and poverty^e

On 28 February 2007, there were 3,559 female prisoners of whom 1,087 were awaiting trial and 2,472 were sentenced. Research undertaken by the Judicial Inspectorate of Prisons^f showed that approximately a quarter of awaiting-trial females had been granted bail but remained in detention because they did not have the money to pay for bail. Some of these women's bail was less than \$28. Of sentenced women, approximately a quarter received a fine as an alternative to imprisonment. The courts had found that these women posed no danger to society, but again it was a case of their poverty that kept them in prison since they were unable to pay the fines imposed.

^aAgomoh, U.R., Ogbozor, E.N., *The State of Women Prisoners in Nigeria: Assessment of Problems and Options*, PRAWA/Nigeria, paper presented at the 11th International Conference on Penal Abolition (ICOPAXI), held in Tasmania, Australia, 9-11 February 2006.

^bPrisons in Malawi, 17 to 28 June 2001, Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, Series IV, No. 9, African Commission on Human and Peoples' Rights, p. 6.

^cShankardass, R.D., Roy, N., Seshadri, V., *Workshop on New Models of Accessible Justice: The India Experience (Special Focus on Women and Juveniles)*, the National Commission for Women, Penal Reform International and Penal Reform and Justice Association, 2000, India, p. 5.

^dWomen in Prison, A commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., pp. 82-83.

^eDr. Nicolien Du Preez, College of Law, Department of Penology, University of South Africa, personal correspondence.

^fJudicial Inspectorate, op. cit. (n 4) 7.

The impact of being held in pretrial detention, even for short periods, can be more severe for women than men, particularly if the woman is the sole carer of the children. A woman living in insecure or rented accommodation is likely to lose it when she goes to prison.¹¹⁴ She is also likely to lose her job if she was employed.¹¹⁵ It is often difficult or impossible for such women to regain custody of their children.¹¹⁶ Therefore, even a short period in prison may have damaging, long-term consequences for the women and children concerned.

¹¹⁴Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., p. 85.

¹¹⁵Ibid., p. 85.

¹¹⁶Ibid., p. 85.

3.1 Detention as a means of protection

In some countries where extra-marital sex (*zina*) comprises a criminal act, victims of rape and girls who have run away from home to escape forced marriages are held in pretrial detention during which time their cases are investigated to determine whether consensual sex outside of marriage took place.¹¹⁷ In others, detention may be used as a form of protection for victims of rape as well as to ensure that the victim will testify against her rapist in court. A number of other forms of custody to “protect” women or to “protect others’ security” are used in other countries. Although in exceptional cases, such custody may be justified for limited periods due to the lack of more appropriate alternatives, every effort needs to be made for the development of protection means which do not involve imprisonment in order to enable authorities not to have to resort to this unacceptable and discriminatory practice. Where such detention is used, it should always be voluntary and subject to supervision by an independent judicial authority. The women involved should be provided access to legal counsel in making such decisions. All in all, however, these practices are unacceptable, further victimizing women and putting them at risk of further abuse. Most importantly, such practices deter women from reporting rape and sexual abuse, thereby allowing perpetrators to escape justice. The provisions of the Bangkok Rules, Rule 59 in relation to this topic has been referred to earlier, in the context of women who may be at risk of violence following release (see chapter 2, section 11).

The 2003 report of the Working Group on Arbitrary Detention to the Commission on Human Rights had provided similar guidance:¹¹⁸

“In its annual report for 2001 (E/CN.4/2002/77 and Add.1 and 2), the Working Group had recommended, with regard to the detention of women who have been the victims of violence or trafficking, that recourse to deprivation of liberty in order to protect victims should be reconsidered and, in any event, must be supervised by a judicial authority, and that such a measure must be used only as a last resort and when the victims themselves desire it.”

Suggested key measures:

- In line with the United Nations Standard Minimum Rules for Non-custodial Measures, Rule 6 and the Bangkok Rules, Rules 57 and 58, female suspects, who typically do not pose a risk to society, should not be detained pretrial unless exceptional circumstances are present.
- It is important that the authority that must decide whether to impose or continue pretrial detention has a wide range of alternatives at its disposal, in addition to monetary bail. The following alternatives may be considered:
- To appear in court on a specified day; not to:

¹¹⁷ See for example, UNODC, *Afghanistan: Female Prisoners and their Social Reintegration*, op. cit. pp. 24, 25.

¹¹⁸ Report of the Working Group on Arbitrary Detention, Chairperson-Rapporteur, Louis Joinet, Commission on Human Rights, 16 December 2002, UN Doc. E/CN.4/2003/8, para. 65.

engage in particular conduct,
leave or enter specified places or districts, or
meet specified persons;

- To remain at a specific address;
- To report on a daily or periodic basis to a court, the police or other authority;
- To surrender passports or other identification papers;
- To accept supervision by an agency appointed by the court;
- To submit to electronic monitoring.
- In deciding whether to detain a woman during trial proceedings, courts should take into account her parental status and other caring responsibilities (such as elderly members of the family, parents with disabilities, etc). Courts may be required, for example, to consider reports compiled by social services on 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.
- Where extra-marital sex comprises a criminal offence, women suspected of having committed this act should not be held pretrial as a matter of course, as they are in some countries, while their cases are being investigated. Those claiming to have been raped or have escaped forced marriages should be referred to NGOs and other organizations that assist such persons and to shelters, without delay.
- Pretrial detention should not be used as "protective custody". Other means of protection, for example, in shelters managed by independent bodies, NGOs or other community services, should be used.
- Where in exceptional circumstances, detention facilities must be used to protect women at risk of violence, this may only be undertaken if the women concerned explicitly wish such protection. Such women should never be treated as prisoners and should be free to leave the detention facility when they wish. Their detention should be subject to supervision by a judicial authority, and every effort should be made to transfer such women to more appropriate facilities, such as shelters or safe houses, as soon as possible.

4. Sentencing

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

8. *Sentencing dispositions*

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

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

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.

See also Rules 57 – 58, quoted earlier.

4.1 Considering mitigating factors in sentencing and alternatives to imprisonment

The toughening of sentencing policies has led to the growth in prison populations in many countries worldwide and in particular to a disproportionate increase in the imprisonment of women. The faster increase in the rate of women's imprisonment in some countries, in comparison to men, may be accounted for by the much higher proportion of non-violent offences among women prisoners—offences for which they would not have been imprisoned in the past—coupled with their economic and social vulnerability in most societies. Women are generally less likely than men to be able to afford fines, and in some jurisdictions their economic, social and mental vulnerability may be assessed as risk factors, rendering them ineligible for consideration for non-custodial sanctions and measures.

Women imprisoned for non-violent offences

In the United Kingdom 41 per cent of sentenced female prisoners were held for drug-related offences in 2002.^a 18 per cent were imprisoned for theft and fraud. More women were sent to prison in 2002 for shoplifting than any other crime. They accounted for nearly a third of all women sentenced to immediate custody in 2002.^b The rise in the female prison population was explained by a significant increase in the severity of sentences, rather than an increase in crime rates.^c For example, at the Crown Court 8 per cent of women convicted of motoring offences went to prison in 1991. By 2001, that proportion had increased to 42 per cent. A woman convicted of theft or handling stolen goods was twice as likely to be sentenced to a prison term by the Crown Court in 2002, compared to 1991. At magistrates' courts, the chances of a woman receiving a custodial sentence had risen seven-fold.^d

In the United States, the number of women convicted of property offences in State courts increased by 44 per cent between 1990 and 1996; the proportion of women imprisoned for drug-related offences rose by 37 per cent, with conviction for possession increasing by 41 per cent.^e In 1996 convictions in State courts for violent offences constituted 8.4 per cent of offences committed.^f

In Moscow in 2001, 64 per cent of women in pretrial detention had been charged with theft.^g In Croatia, 7.8 per cent of women were imprisoned for violent offences in 1998, with the rest having been convicted of property offences, crimes against public safety, traffic offences and offences relating to the authenticity of documents.^h In the Czech Republic in the same year the prosecution of over one third of all women involved property-related offences, another one third involved economic crimes. In the same year women comprised 9 per cent of all violent criminal offenders.ⁱ

^gPrison Reform Trust, Factfile, July 2004, p. 10.

^hIbid., p.10.

ⁱIbid., p.10.

^jIbid., p. 10.

^kBureau of Justice Statistics, Special Report, Women Offenders, Dec. 1999, Revised 10/3/2000, p. 5.

^lIbid.

^mMoscow Centre for Prison Reform (www.prison.org).

ⁿWomen in Prison in Central Europe, Overview and Statistics, Penal Reform International, Women in Prison information pack.

^oIbid.

Most of these offenders do not pose a risk to the public. They could be dealt with much more effectively and at less expense to the State if they were sentenced to non-custodial sanctions. Crimes of poverty, such as theft and other property offences, are unlikely to be reduced by imprisoning women, often single mothers or sole carers of their families, causing the further impoverishment of the family, possible loss of a job and accommodation, and the less likelihood of the offender to find employment following release, due to her criminal record. In addition, women often commit crimes due to other underlying factors, such as substance addiction and psychosocial disabilities. Such problems are much better treated in the community than in prisons, where mental health is likely to deteriorate.

Account should also be taken of the fact that a significant proportion of women who commit violent offences commit them against their husbands or partners in response to systematic abuse. A large number of women offenders worldwide are imprisoned for minor drug related offences, often as a result of manipulation, coercion and poverty. If involved in drug trafficking, women are usually minor players, their criminal offences often being an outgrowth of their own addiction or due to poverty and other pressures. A significant number of women are used as drug couriers to smuggle drugs across borders for small sums of money. They come from disadvantaged backgrounds and sometimes do not understand the risks involved and implications of the acts which they agree to perform. The Bangkok Rules, Rule 61 provides specifically for mitigating factors to be taken into account when sentencing women, even where the offence may have been violent or may be considered a grave offence according to national law (e.g. drug trafficking).¹¹⁹

¹¹⁹The interpretation of the rule has been made with reference to the official commentary on the Bangkok Rules, prepared by UNODC and agreed by the Inter-governmental Expert Group Meeting which developed the Bangkok Rules in 2009. The Inter-governmental Expert Group Meeting was held in Bangkok between 23-26 November 2009 (for further information see: <http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings1.html>).

Suggested key measures:

- In line with Rule 8 of the Tokyo Rules, legislators should ensure that a range of non-custodial measures and sanctions are available in legislation as alternatives to imprisonment, including ones which take into account the gender-specific needs of women, as required by the Bangkok Rules, Rule 57.
- Judicial authorities should be encouraged to impose alternatives to imprisonment in the cases of female offenders who do not pose a risk to the public, taking into consideration their rehabilitative needs, caring responsibilities, and the particularly harmful impact of imprisonment on women.
- As recommended by Rule 8.2 of the Tokyo Rules, sentencing authorities may dispose of cases in the following ways:
 - Verbal sanctions, such as admonition, reprimand and warning;
 - Conditional discharge;
 - Status penalties;
 - Economic sanctions and monetary penalties, such as fines and day-fines;
 - Confiscation or an expropriation order;
 - Restitution to the victim or a compensation order;
 - Suspended or deferred sentence;
 - Probation and judicial supervision;
 - A community service order;
 - Referral to an attendance centre;
 - House arrest;
 - Any other mode of non-institutional treatment;
 - Some combination of the measures listed above.
- Investment should be made in devising suitable alternatives for female offenders, in order to combine above measures with interventions to address the most common problems underlying offending behaviour in women, such as therapeutic courses and counselling for victims of domestic violence and sexually abuse, suitable treatment for those with mental disabilities, among others.

4.2 Drug-related offences

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

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.

See also Rule 61, quoted earlier.

In many countries offenders who are imprisoned for drug-related offences make up a large proportion of the prison population, including women. In part this is a result of national and international efforts to combat the trafficking in illicit drugs. However, women are rarely major players in the drugs trade. As mentioned earlier, women are often used as drug couriers; they come from disadvantaged backgrounds and sometimes do not understand the risks involved and implications of the acts they agree to perform.

Drug couriers in the United Kingdom

In the United Kingdom, 19 per cent of the female prison population constituted foreigners at the end of June 2005.^a 80 per cent of them were held on drug offences.^b Women selected for the task of acting as drug couriers were typically in their 30s with several children depending on them. They were serving 6-15 year sentences.

Mandatory sentencing and drug offences in the United States

In the United States, the Department of Justice found that women were overrepresented among low level drug offenders who were non-violent, had minimal or no prior criminal history, and were not principal figures in criminal organizations or activities, but nevertheless received sentences similar to “high level” drug offenders under the mandatory sentencing policies. From 1986 to 1996 the number of women sentenced to state prison for drug crimes increased ten-fold. Nationally one in three women in prison and one in four women in jail were incarcerated for violating a drug law.^c

Women imprisoned for drug offences in Europe and Central Asia

According to research conducted in 2012,^d 28 per cent of the 112,000 women prisoners in Europe and Central Asia, were in prison for drug offences. In some countries, up to 70 per cent of women prisoners were incarcerated for drug offences. Countries with the highest incarceration percentage of women for drug offences were Latvia (68 per cent), Portugal (47.6 per cent), Estonia (46 per cent), Spain (45.5 per cent), Greece (43.7 per cent), Italy (42.9 per cent), Sweden (41 per cent) and Georgia (34 per cent). Southern Europe was the subregion with the highest percentage of females imprisoned for drug offending (over 42 per cent), followed by Eastern Europe (over 27 per cent) and Eurasia (over 24 per cent). Russia imprisoned almost 20,000 women for drugs—more than double the total number of women in prison in all the countries of the European Union combined.

Female drug offenders in Thailand

Over 80 per cent of women in prison in Thailand were convicted of drug offences as of October 2012.^e

Female drug offenders in Argentina

In the Federal System of Argentina, 55.75 per cent of the women who took part in a survey conducted in 2012 had been accused or convicted of drug offences.^f

^aPrison Reform Trust, Factfile, April 2006, p. 15.

^bLyon, J., Director, Prison Reform Trust, Guardian, 27 April 2006.

^cAmnesty International, Women in Prison Factsheet, August 2005, citing Department of Justice, Bureau of Justice Statistics, Prisoners in 1997. (www.amnestyusa.org/women)

^dInternational Harm Reduction Association, Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia and the Need for Legislative and Sentencing Reform, 2012

^eDepartment of Corrections of Thailand statistics

^fCornell Law School's Avon Global Center for Women and Justice and International Human Rights Clinic, Defensoria General de la Nacion Argentina and the University of Chicago Law School International Human Rights Clinic, Women in Prison in Argentina: Causes, Conditions and Consequences, May 2013, p. 1

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 Substances¹²⁰ and the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations¹²¹ recognize this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives,¹²² of which alternatives to imprisonment are a key part. The Commission on Narcotic Drugs (CND) in its resolution 55/12 of 16 March 2012, entitled “Alternatives to imprisonment for certain offences as demand reduction strategies that promote public health and public safety”,¹²³ took note, inter alia, that “some Member States have adopted measures as alternatives to prosecution and imprisonment for drug-using offenders, and that such measures have included, among other things, specific legal procedures, community service and drug-use monitoring with consequences for non-compliance”, and noted that “such measures have been shown to reduce recidivism rates, facilitate rehabilitation and, at the same time, conserve human and financial resources, rebuild families and help to reconstitute the social fabric”.

That resolution encouraged Member States to, inter alia “... 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”.

In some countries, diversion from the criminal justice system for illicit drug users is formalized through drug education and treatment programmes for first time offenders.

A review of policies and legislation relating to drug-related offences needs to be undertaken in many countries, in order to reduce the number of drug users sent to prison, the overall prison population and levels of prison overcrowding. Sentencing laws and practices for non-violent drug-related offences should place emphasis on non-custodial sanctions and measures, aiming to treat drug addiction. Such a reform policy would affect the sentences of a large proportion of women who are in prison for drug-related crimes, but whose imprisonment does not serve the purposes of justice or reintegration.

Suggested key measures:

- Harsh sentencing for drug trafficking offences needs to be reviewed, ensuring that significant distinctions exist between sentences foreseen for major players in the narcotics trade and between small players, such as women being used as drug couriers.

¹²⁰UN Doc. E/CONF.82.15.

¹²¹A/RES/S-20/3 of 8 September 1998.

¹²²See Boister, N., *Penal Aspects of the UN Drug Conventions*, Kluwer, The Hague, 2001.

¹²³E/2012/28, E/CN.7/2012.18.

- Consideration should be given to depenalizing certain non-violent drug offences, such as possession and use of drugs.¹²⁴
- Mandatory sentences for drug offences should be removed. Judges should be allowed to use discretion in sentencing to prevent the re-victimization of women who fall victim to drug traffickers. The courts should have the power to consider mitigating circumstances and the character or the criminal histories of those convicted of drug offences.
- Community-based substance abuse programmes should be more widely utilized in the case of drug dependent offenders, who could undergo treatment for their addiction, as part of an alternative sanction, while continuing to live in the community with supervision, instead of being imprisoned.
- The provision of gender-sensitive, women-only substance abuse treatment programmes in the community and women's access to such treatment, including by ensuring adequate provision for children of women undergoing treatment, should be improved.

GOOD PRACTICES

The United States and Australia: Drug Treatment Courts

For those offenders whose addiction and record of criminal behaviour are more entrenched, drug treatment courts, in use in United States and Australia, offer an intensive therapeutic approach to addressing addiction and associated criminal activity as an alternative to imprisonment. Drug treatment courts provide close monitoring by the judge and drug treatment court multidisciplinary team, a treatment plan, with reinforcement and reward, including reduction of time in the program for compliance, and sanctions, including short jail terms, for non-compliance. Successful completion usually requires a specific term in which the participant remains drug free and completion of the goals set in of the treatment plan.

Guyana: Reducing sentences for drug-related offences and using community sanctions

In Guyana, where young people and women were being imprisoned due to harsh laws for possession of drugs, including for small amounts, the government approved new legislation in 1999, the narcotics and psychotropic substance amendment bill. This bill allows courts to exercise discretion in imposing fines of 17 dollars and community service not exceeding 6 months for possession of not more than 5 grams of marijuana for personal use. Under the earlier law a person was fined up to 275 dollars and sentenced to 5-10 years' imprisonment. The problem of drug-related offences is thus being dealt with effectively and rehabilitation is being carried out simultaneously.⁹

⁹Shankardass, R.D., Roy, N. and Seshadri, V., Workshop on New Models of Accessibly Justice: The India Experience (Special Focus on Women and Juveniles), National Commission for Women, Penal Reform International and Penal Reform and Justice Association, 2000, p. 10.

¹²⁴Recommended also in the context of HIV/AIDS control strategies in prisons. See UNODC, WHO, UNAIDS, op. cit., p. 16

4.3 Pregnant women and mothers

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

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.

African Charter on the Rights and Welfare of the Child, 1999

Article 30: Children of Imprisoned Mothers

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (c) establish special alternative institutions for holding such mothers;
- (d) ensure that a mother shall not be imprisoned with her child;
- (e) ensure that a death sentence shall not be imposed on such mothers;
- (f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

As explained in chapter 1, prisons are not designed for pregnant women and women with children. Every effort needs to be made to keep such women out of prison, taking into account the gravity of the offence committed, the risk posed by the offender to the public and the best interests of the children concerned. If the imprisonment of a woman who has dependent children is unavoidable, the woman should not be imprisoned before alternative care arrangements have been made for the children. The Bangkok Rules include specific provisions on these issues in Rule 64, as well as in Rule 2, paragraph 2 on admission.

In this context, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offender also recommended that women offenders should be “treated fairly and equally during arrest, trial, sentence and imprisonment, particular attention being paid to the special problems which women offenders encounter, such as pregnancy and child care...”, noting that “deinstitutionalization is an appropriate disposition for most women offenders to enable them to discharge their family

responsibilities.”¹²⁵ The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders determined that “the use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories.”¹²⁶

GOOD PRACTICE: SOUTH AFRICA

The Constitutional Court suspends the imprisonment of a mother, taking into account the best interests of her children^a

In a case 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 8.

The judge explained his decision as follows: “Ms Cawood's [a social worker] report indicates that all three boys rely on M as their primary source of emotional security, and that imprisonment of M would be emotionally, developmentally, physically, materially, educationally and socially disadvantageous to them. In Ms Cawood's view, should M be incarcerated, the children would suffer: loss of their source of maternal and emotional support; loss of their home and familiar neighbourhood; disruption in school routines, possible problems in transporting to and from school; impact on their healthy developmental process; and separation of the siblings.”

The court ordered to suspend for four years M's imprisonment (of 45 months) on condition that she would not be convicted of an offence committed during the period of suspension, of which dishonesty was an element, and further on condition that she complied fully with the order's provisions.

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

Judges in Thailand agree to implement the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) during sentencing^b

In March 2013, the President of the Appeals Court announced that most judges in Thailand had agreed to take into account the circumstances of female offenders when sentencing them. The President cited and endorsed a case in which a female offender was spared a prison sentence because she had a three-month-old child who needed her care.

^aIt must be noted that in these examples, it is not certain that the woman concerned will not be imprisoned when her child reaches the age of 14, but her behaviour will be taken into account at the time of the review of her sentence and if she has committed no further offences during the relevant period an alternative sentence, such as limitation of freedom, may replace the original sentence or the sentence may be cancelled.

^bAs reported on 23 March 2013 (http://thainews.prd.go.th/centerweb/newsen/NewsDetail?NT01_NewsID=WNSOC5603250010005)

¹²⁵Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Resolution 9, Specific needs of women prisoners, A/CONF.87/14/Rev.1.

¹²⁶Eighth United Nations 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 United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990, UN Doc. A/Conf.144/28/Rev. 1.

Suggested key measures:

- Appropriate guidelines should be developed for courts whereby they would 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.
- 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).
- If the imprisonment of a woman with dependent children is unavoidable, alternative care arrangements should be made for the children before the mother is imprisoned.

GOOD PRACTICE

Legislation targeting pregnant women and women with children^a

In Kazakhstan women's sentences can be suspended, if they have a child of up to 14 years, except for those who have been sentenced to 5 years and over, for grave or especially grave offences. (Criminal Code of the Republic of Kazakhstan, article 72)

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)

^aIt must be noted that in these examples, it is not certain that the woman concerned will not be imprisoned when her child reaches the age of 14, but her behaviour will be taken into account at the time of the review of her sentence and if she has committed no further offences during the relevant period an alternative sentence, such as limitation of freedom, may replace the original sentence or the sentence may be cancelled.

5. Discriminatory legislation and trial procedures

The Universal Declaration of Human Rights

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Civil and Political Rights

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Convention on the Elimination of All Forms of Discrimination against Women

Article 2

States Parties condemn the discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, undertake:

- (a) To embody the principle of equality of men and women in their national constitutions and other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Declaration on the Elimination of Discrimination against Women**Article 1**

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

Article 2

All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

(a) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;

(b) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

Article 7

All provisions of penal codes which constitute discrimination against women shall be repealed.

In some countries, legislation deriving from certain interpretations of religious laws and traditions result in discrimination against women and their imprisonment, sometimes in large numbers, often in violation of such countries' international obligations and own constitutions.

Offences of "immoral conduct" have had a particular impact on the size of the female prison population in some countries. Often, although laws relating to "moral offences" may appear gender-neutral, they are invoked much more often against women than men. Where such laws exist, usually discrimination in the application of such laws is compounded by discriminatory trial proceedings. For example, the testimony of a victim of violence may not be considered as evidence and the testimony of women may have half the value of that of men, based on religious principles. Thus, although both men and women can be guilty of adultery, for example, women are much more likely than men to be penalized for this "moral offence", due to women's vulnerable status and criminal proceedings which discriminate against them. A cause for particular concern is that where "adultery" and "fornication" are criminal offences and rape is not clearly defined in the criminal code, victims of rape may be detained and imprisoned on charges of "adultery" or "fornication", leading to their further victimization.

Under such laws, women are also imprisoned for running away from home, often trying to escape forced and child marriages or domestic violence. Laws on divorce, which discriminate against women on religious grounds in some countries, also lead to the imprisonment of women on charges of adultery.

Women imprisoned for moral crimes

In 1992, Human Rights Watch found that between 50 and 80 per cent of all female detainees interviewed in Pakistan were imprisoned under the Hudood Ordinances, which cover the offences of “adultery”, “fornication” and “rape”, among others.^a By 2005 informed estimates suggested that tens of thousands of cases under the Hudood laws were under process at various levels in Pakistan’s legal system.^b

In 2006 UNODC found that 50 per cent of women in Pul-e Charki Prison in Kabul were charged with or convicted of moral offences, including zina and running away from home, combined with zina, in particular.^c

^aHuman Rights Watch, *Double Jeopardy*, 1992, p. 18 (The Hudood establish the conditions under which Islamic Law can be applied for certain crimes. Hudood (singular: “hadd” meaning limit) punishments carry mandatory sentences under Islamic Law).

^bHuman Rights Watch World Report, 2006, p. 296.

^cUNODC, *Afghanistan: Female Prisoners and their Social Reintegration*, op. cit. p. 40. (The offence of zina, refers to all sexual relations outside of marriage).

Suggested key measures:

- Discriminatory legislation which does not respect the equal rights of women undermines the fundamental human rights of women. Such laws need either to be abolished or reviewed and brought into line with international human rights instruments such as article 2 of the Universal Declaration of Human Rights and articles 2 and 3 of the International Covenant on Civil and Political Rights, as required by article 2(2) of ICCPR, article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women and articles 2 and 7 of the Declaration on the Elimination of Discrimination against Women.
- Similarly, the disparate application of seemingly gender-neutral legislation needs to be reviewed and safeguards put in place to ensure, through law and other appropriate means, the practical realization of the principle of non-discrimination against women.
- Discriminatory trial proceedings, which place a higher value on the statement of men and which do not grant women equal entitlement to all minimum guarantees set out in ICCPR, need to be brought in line with the principles of non-discrimination set out above and with article 14 of ICCPR in particular, which guarantees all persons the right, in full equality, to a fair trial.
- In countries where “adultery” and “fornication” comprise criminal acts in particular, the offence of rape should be clearly defined as a separate article in legislation and stringent safeguards put in place to prevent victims of rape being penalized under articles that prohibit adultery and fornication.

The failure of States to protect women’s human rights, including their sexual and reproductive health rights, may also lead to the imprisonment of women in some countries, on charges of abortion, infanticide and homicide, as explained earlier.

The right to sexual and reproductive health

As confirmed by the Commission on Human Rights 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”.^a

“.....reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community. The promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning.”^b

[...]

“.....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.”^c

CEDAW Committee General Recommendation 24 (20th Session, 1999), recommends: “[w]hen possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion.”^d

Recognizing (and committing to deal with) “the health impact of unsafe abortion as a major public health concern”, Governments at the Fourth World Conference on Women decided they would “consider reviewing laws containing punitive measures against women who have undergone illegal abortions.”^e

^aThe right of everyone to the enjoyment of the highest attainable standard of physical and mental health Report of the Special Rapporteur, Paul Hunt, 16 February 2004, UN Doc. E/CN.4/2004/49, para. 9.

^bThe International Conference on Population and Development Programme of Action, Cairo (A/CONF.171/13, chap. I, sect. 1), Chapter VII, Para 7.3, cited in Report of the Special Rapporteur, Paul Hunt, UN. E/CN.4/2004/49, 16 February 2004, para. 18.

^cReport of the Special Rapporteur, Paul Hunt, U.N. E/CN.4/2004/49, 16 February 2004, para. 30.

^dGeneral recommendations made by the Committee on the Elimination of Discrimination against Women. (www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm)

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

Although the full examination of these issues and their impact on the size of the female prison population, are beyond the scope of this *Handbook*, human rights considerations would require States to review their legislation relating to the reproductive health rights of women, to ensure that women are not put in a position to resort to acts defined as illegal in national legislation, including abortions, or that they are not convicted of offences such as homicide or infanticide, for apparently having had abortions, miscarriages or having delivered stillborn babies. In this context, the requirements to ensure that all suspects, including indigent women, have access to justice, and are accorded the right to be tried in accordance with the requirements of ICCPR, articles 9(3) and 14 in particular, takes on added significance.

6. Foreign national women

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

Rule 66

Maximum effort shall be made 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 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 United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking^a

Recommended Principles on Human Rights and Human Trafficking

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.

8. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.

Recommended Guidelines on Human Rights and Human Trafficking

Guideline 2: Identification of trafficked persons and traffickers

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

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.

^aText presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1).

Foreigners are vastly overrepresented in the criminal justice system of countries which have a large migrant labour force, and the alarming rise can partly be attributed to the increasingly punitive measures being adopted against “aliens” in many countries. As such, trafficked women find themselves behind bars, having been convicted of crimes against public morality, prostitution or breaking immigration rules, although they themselves are the victims of poverty, false promises, coercion and exploitation. In some countries, particularly in the European Union, a large proportion of foreign national women have been convicted on drugs charges, many of them small players in the drugs trade, as described in section 4.2 above.

Punitive immigration laws in some countries have led to the imprisonment of immigrant workers whose status is illegal or persons trying to escape abusive situations. Generally from extremely impoverished backgrounds, unaware of their legal rights and vulnerable to abuse, migrant female domestic workers comprise a particularly vulnerable group. They may be imprisoned for offences such as fornication and pregnancy, (including, for example, when apparently raped by their employers), fleeing their places of employment, for reporting their employers for physical and sexual abuse and prostitution, among others.

Detained domestic workers may be routinely denied prompt access to their consular officials. Interpreters are often not provided during interrogation by the police. Sentences can be based on the signing of confessions which the foreign national does not understand.

Trafficked persons are sometimes treated as criminals rather than as victims, whether in States of destination, transit or origin. In States of destination, they may be prosecuted and detained because of irregular migration or labour status. Alternatively, immigration authorities may simply deport them to the State of origin if their immigration status is irregular. Trafficked persons returning to their State of origin may also be subjected to prosecution for using false documents, having left the State illegally, or for having worked in the sex industry. Criminalization limits the trafficking victims' access to justice and protection and decreases the likelihood that they will report their victimization to the authorities. Given the victims' existing fears for their personal safety and of reprisals by the traffickers, the added fear of prosecution and punishment can only further prevent victims from seeking protection, assistance and justice.¹²⁷

Suggested key measures:

- States should ensure that legislation and practice provide maximum possible protection for foreign women, such as victims of human trafficking and migrant domestic workers, from further victimization.
- States should not prosecute trafficked persons 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.
- Whether prostitution is legal or not, States should not prosecute persons for being trafficked into sexual exploitation, even if the person originally agreed to work in the sex industry.
- Immigration offences should be decriminalized. International law dictates that persons who break immigration laws, if detained, should not be held together with prisoners charged with or convicted of criminal offences. Immigration detainees should be held in separate facilities, designed for this purpose offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified and specially trained personnel.¹²⁸

¹²⁷ UNODC, *Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings*, 2006, p. 103.

¹²⁸ 7th General Report [CPT/Inf (97) 10], para. 29.

- In accordance with international law, all foreign national detainees should have access to their consular representatives, legal counsel and interpreters immediately after arrest. All interrogations should be carried out in the presence of a lawyer and interpreter.
- Foreign national women should not be disadvantaged in consideration for alternatives to prison due to their nationality and/or gender, at pretrial and sentencing stage.
- Police, prosecutors and courts should take into account the parental status of foreign national women in deciding arrest, pretrial detention, imprisonment and deportation. Considerations should include whether or not the offender has any dependent children in the country of arrest or home country, whether or not she is a single mother or the sole carer of the family, among others. Measures and sanctions imposed should take into account the best interest of the children and their especially vulnerable status, as well as the particular difficulties foreign national women face in prison, with priority being given to alternatives to imprisonment, wherever possible.

For more details and recommendations on issues relating to foreign national prisoners, please refer to the UNODC *Handbook on Prisoners with Special Needs*, chapter on “foreign national prisoners”.

For foreign national prisoners under sentence of death, see the UNODC *Handbook on Prisoners with Special Needs*, chapter on “prisoners under sentence of death”.

For guidance on combating human trafficking and the protection of women within this context, see United Nations Convention against Transnational Organized Crime adopted in Palermo, Italy in 2000 (the Palermo Convention), and the two Protocols which supplement the Convention: United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and The Protocol against the Smuggling of Migrants by Land, Sea and Air (the Palermo Protocols).

For guidance on practical measures to combat trafficking, see the UNODC *Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings*, 2006. (http://www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf).

4.

Research, planning, evaluation and public awareness-raising

1. Research, planning and evaluation

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

Research, planning and evaluation

Rule 67

Efforts shall be made to organize 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 organize 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.

Although a significant amount of research on the characteristics and backgrounds of offenders exists, including on the causes of crime and the impact of social reintegration initiatives on reducing reoffending, such research is generally limited to Western countries and does not include any particular focus on women offenders. In recent years, perhaps due to the increasing female prison population, the need to take into account gender in the criminal justice system has started to be recognized as an important prerequisite for the development of policies which address the

social reintegration needs of women more effectively. The use of research as a basis for informed policy formulation in responding to the gender-specific circumstances and needs of woman offenders is key to ensuring that policies and strategies aimed at reducing the imprisonment of women and meeting their social reintegration needs are relevant and effective. Research on children of imprisoned parents is an even less developed field, though the need to take into account the negative impact of women's confrontation with the criminal justice system on their children is also gradually starting to be acknowledged. The Bangkok Rules recognise the limitations of the data available on all of these issues and require States "to organize and promote comprehensive, result oriented research"¹²⁹ in this field to contribute to policy formulation and programme development to respond to the social reintegration needs of women offenders, taking into account the best interests of the children.¹³⁰ In this context, the Bangkok Rules also highlight the need to evaluate and make public the trends 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.

Taking into account the provisions of the Bangkok Rules, policymakers and criminal justice authorities should ensure that research and data collection on women suspects and offenders, as well as the children of such women, are integrated into their daily work and that resources are allocated for this purpose.

Such research may cover the following:

- Trends in the imprisonment of women;
- Offences committed by women;
- The characteristics and background of women offenders, including any history of abuse;
- The most common factors that lead women to commit offences;
- The health-care needs of women prisoners, including their mental health-care needs and substance dependencies;
- The number of dependent children affected by women's imprisonment, including their circumstances following their mothers imprisonment;
- The impact of imprisonment and non-custodial sanctions on women;
- Practices and conditions in prison which impact on the health and mental well-being of women prisoners;
- All the above in relation to special categories of women prisoners, such as ethnic and racial minorities, indigenous people, foreign national women and LGBT women, among others.

It is of utmost importance that all research is undertaken in compliance with internationally accepted ethical principles, and where relevant, with the principles of medical ethics.

¹²⁹The Bangkok Rules, Rule 67

¹³⁰The Bangkok Rules, Rules 67- 68

Such research should be based on accurate data collection, and where this poses challenges, authorities should seek means to improve their data collection methods, as well as the harmonization of data collection. Access to information should be based on principles of transparency in order to make the widest possible use of available data, though always respecting the principles of confidentiality with respect to the personal identities of women and children covered by such research.

Academic institutions and non-governmental organizations should also be encouraged to undertake research on the areas above, as well as others, to complement official research and data collection.

The process of planning should emphasize a more effective and equitable system for the delivery of necessary services in prisons and in the community to women offenders. For this purpose, there should be comprehensive and regular assessments of the effectiveness of services and programmes available to women and their children in the community and prisons.

2. Raising public awareness and training

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

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 limited nature public awareness about the background and characteristics of women offenders and the impact of imprisonment on their children, can have a negative impact on the effectiveness of policies and programmes that aim to reduce the imprisonment of women and to improve their social reintegration, be it in the community or in prisons. The support of the public is extremely important in the successful implementation of prison reform strategies, especially where they involve a review and revision of legislation and policies to reduce imprisonment, in favour

of non-custodial measures and sanctions. Information sharing on research outcomes and good practices on the effectiveness of the delivery of justice to women offenders plays an important role in raising public awareness.

The Bangkok Rules therefore require that authorities make available to the media and to those with a professional responsibility in matters concerning women reliable and up-to-date data, in order to enhance and improve the effective implementation of relevant policies and programmes, while receiving public support for them.

The dissemination of information may be enhanced through the appointment of press officers, the regular publication of statistics and research findings on official internet sites as well as via cooperation with relevant NGOs in awareness raising activities.

In order for strategies and policies to be implemented, the actors who are central to their implementation, i.e. criminal justice officials, need to be trained on the provisions of the Bangkok Rules and sensitized to the situation and needs of women in the criminal justice system. To this end, existing training materials should be reviewed and revised to bring them in line with the provisions of the Bangkok Rules, and additional training, conferences and seminars organised for the police, prosecutors, judges and prison staff.

Criminal justice officials should be regularly informed of the outcomes of new research in order to keep them abreast of new findings and developments so that they can make informed decisions in their dealings with women offenders.

Annex 1. Management of women's prisons: key recommendations

Prison management	<p>Ensure that prison management is gender-sensitive, including the following components:</p> <ul style="list-style-type: none">• Taking affirmative action to counter-balance discrimination encountered by women prisoners;• Adopting a gender-sensitive management style;• Recognizing the different needs of female prisoners and providing programmes and services that address these needs. <p>Ensure that the multiple needs of women from ethnic and racial minority groups and foreign national prisoners are taken into account in programming.</p>
Staff	<p>Employ senior female prison staff in key positions;</p> <p>Build the capacity of female staff and provide them with special training on the needs of female prisoners;</p> <p>Provide psychosocial support to female staff;</p> <p>Develop a clear policy against discrimination and sexual harassment in the workplace;</p> <p>Train male staff on gender sensitivity, sexual misconduct and discrimination issues.</p>
Allocation	<p>Make every effort to allocate women prisoners close to their homes, taking into account the wishes of the women concerned.</p>
Admission and registration	<p>Provide newly admitted women prisoners with information about their rights and obligations, in writing and orally, at least to those who are illiterate, and in the case of those who do not speak the language most commonly spoken in the prison, with the assistance of an interpreter. Inform foreign national prisoners of their right to contact their consular representatives and facilitate such contact.</p>

Admission and registration (continued)	<p>Treat newly admitted women prisoners professionally and sensitively, with respect to their human dignity.</p> <p>Inform newly admitted women prisoners of their right to contact lawyers, provide them information about legal aid services, and facilitate contact, where required.</p> <p>Register children being admitted to prison with their mothers, and note the names, addresses and contact details of children outside prison, with the permission of the mother.</p> <p>Keep information about the identity of children of women in prison confidential, sharing such information with third parties only with the mother's permission.</p>
Assessment and classification	<p>Develop a gender-sensitive risk assessment and classification system, which:</p> <ul style="list-style-type: none"> • Takes into account the very low risk most women offenders pose to others and the particularly harmful effects of high security measures have on them; • Takes into account women's backgrounds, such as experience of domestic violence, as well as their caring responsibilities, in their allocation and sentence planning process; • Ensures that women's sentence plans include programmes which meet their gender-specific needs; • Ensures that those with mental disabilities are housed in the least restrictive accommodation and receive treatment.
Safety and security	<p>Accommodate all female prisoners in accommodation which is physically separate from that occupied by men.</p>
Separation and supervision	<p>Ensure that women prisoners are supervised by female staff.</p> <p>If, contrary to the above recommendation, male staff are allowed to work in women's prisons, they should never be employed in contact positions responsible for the direct supervision of prisoners and safeguards should be stringently applied.</p> <p>Introduce clear policies and guidelines relating to sexual misconduct by staff in prisons, aiming to provide maximum protection to women prisoners.</p>
Prisoner complaints	<p>Establish clear and confidential prisoner complaints mechanisms, and ensure that the investigations of allegations of sexual misconduct and other forms of ill-treatment and torture are undertaken promptly and impartially by an independent authority, and that safeguards are in place to protect prisoners who complain from retaliation.</p> <p>Ensure that women who allege to have been ill-treated or tortured are given access to legal aid and offer such women counselling by independent, qualified health-care professionals.</p>

Searches	<p>Ensure that male members of staff are never involved in the personal searches of female prisoners, and that strip or intimate body searches are either not undertaken at all, or only in exceptional circumstances prescribed by law.</p> <p>If an intimate body search is unavoidable, it should preferably be undertaken by an external medical practitioner. At the very least, a medically trained female staff member, who is not part of the regular health-care service of the prison, may undertake the search.</p> <p>Make efforts to eliminate intimate body searches altogether by using alternative means of screening.</p> <p>Ensure that staff are trained to undertake the searches of children with sensitivity, and that policies are in place to never subject children to intimate body searches.</p>
Body restraints	<p>Reduce to a minimum the use of body restraints.</p> <p>Never use body restraints on pregnant women during medical examinations, transfer to hospital, birth and immediately after birth.</p>
Disciplinary segregation	<p>Reduce to a minimum the use of disciplinary segregation.</p> <p>Never use disciplinary segregation in the case of pregnant women, breastfeeding mothers and women with children in prison.</p> <p>Develop therapeutic strategies to prevent suicide and self-harm.</p>
Suicide and self-harm attempts	<p>Develop a reception area and induction programme for new arrivals, which provide a supporting environment, encourages and facilitates contact with families and friends and ensures that all new entries are fully familiarized with the prison regime, including where to seek help when in need.</p> <p>Never punish prisoners for self-harm and suicide attempts.</p>
Prisoner activities and programmes	<p>Provide female prisoners equal access to work, vocational training and education as men.</p> <p>Introduce specific programmes that address the underlying factors that lead to criminal behaviour in women, such as:</p> <ul style="list-style-type: none"> • Programmes addressing substance abuse issues; mental health; history of abuse and domestic violence. <p>and</p> <ul style="list-style-type: none"> • Programmes that address women's gender-related difficulties, such as: parenting and child visitation programmes; programmes to build confidence and life skills.

Prisoner activities and programmes (continued)

Find creative ways to compensate for resource problems, such as using a rotation system for classes and enabling peer education and skills training. Increase civil society participation in activities.

Take into account the multiple gender-specific and cultural/linguistic/religious/spiritual needs of foreign national women and members of racial and ethnic minorities and indigenous peoples, in designing programmes and enabling such groups' access to them.

Sports and recreation

Ensure that women have equal access as men to sports and recreational facilities in prisons.

Health care

Ensure that prison conditions and services are designed to protect the health of all prisoners, recognizing that providing the underlying determinants of health is key to the protection of the physical and mental wellbeing of all prisoners.

Ensure that prison health services are not isolated from civil health-care services, and that collaboration between the two (and ideally integration of the two) forms part of prison health service management strategies and policies.

Ensure that prisons have properly trained primary health-care teams.

Introduce a gender-specific framework for health care in women's prisons, which emphasizes reproductive and sexual health, mental health, treatment for substance abuse and counselling victims of violence.

Undertake comprehensive health assessments on admission, covering primary health-care needs, gender-specific health-care needs, mental health-care needs and substance dependence. Ensure that the health screening includes an assessment of ill-treatment or torture, including sexual abuse, prior to admission. Offer HIV testing on a voluntary basis, with pre- and post-test counselling.

In developing responses to HIV/AIDS in penal institutions, to ensure that programmes and services are responsive to the unique needs of women, including, for example, prevention of mother to child transmission.

Develop specialized treatment programmes for women with drug dependencies, taking into account their gender-specific needs.

Develop strategies for suicide and self-harm prevention in consultation with health-care and social welfare services.

Ensure that preventive health-care measures of particular relevance to women are available.

	<p>Ensure that the specific hygiene needs of women are met, including adequate sanitary facilities for the personal care of women with children, those who are pregnant, breastfeeding and menstruating.</p> <p>Provide staff training in basic medicine and first aid, including for children, as well as on HIV prevention, treatment, care and support.</p> <p>Ensure that child health-care specialists are accessible, when required.</p>
Hygiene	<p>Ensure that women's accommodation includes facilities and materials required to meet women's special hygiene needs, and that women are provided with hygiene items, including sanitary towels, free-of-charge.</p>
Access to legal assistance	<p>Provide information to offenders about their legal rights.</p> <p>Taking account of the particular challenges faced by many women in accessing justice, ensure that assistance is provided to female prisoners to contact lawyers, paralegal services and relevant NGOs, and provide facilities for meetings with lawyers, and if required interpretation services.</p> <p>Cooperate with NGOs and paralegal aid services in assisting indigent women in the criminal justice system, especially in countries and communities where legal aid may be limited or unavailable.</p>
Contact with the outside world	<p>Adopt measures and rules that match the particular needs of women for contact with their families and children. Take measures to compensate for the difficulties in undertaking family visits. (See section 10.1 for suggestions).</p> <p>Consult with prisoners as to who should be allowed to visit them.</p> <p>Allow open contact during visits as a general rule, with the exception of prisoners who have been assessed as a security risk only. Always allow contact visits (open visits) where children are involved.</p> <p>Develop contact with the community.</p> <p>Train staff to conduct visits in an atmosphere of human dignity and provide a child-friendly environment for visits.</p> <p>Ensure that the conditions in which visits take place are conducive to a positive visiting experience.</p> <p>Never prohibit visits as a disciplinary punishment.</p>

Preparation for release and post-release support

Cooperate with probation services, social welfare agencies and NGOs to design comprehensive and coordinated pre- and post-release reintegration programmes for women. Programmes should enable women to complete any educational or vocational training courses, and health-care programmes, including substance addiction treatment programmes in the community.

Develop gender and culture specific pre- and post-release support programmes for ethnic and racial minority women and indigenous women, in consultation with relevant community groups and the women themselves.

Utilize options such as open prisons and half-way houses to the maximum possible extent for female prisoners.

Consider revising prison legislation and regulations to apply more liberal conditions for the granting of remission and parole in the case of women prisoners (especially mothers), in line with a gender-sensitive management policy.

Ensure that protection is provided to women at risk after release, in cooperation with community protection agencies and NGOs.

Pregnant women and women with children in prison

Pregnant and nursing women

On admission to prison, record the number of women's children, their personal details and locations (if outside prison).

Provide pre- and post-natal care equivalent to that available in the community.

Ensure that post-natal care is provided to women who have recently given birth, but who do not have their babies with them in prison;

Ensure that pregnant women are transferred to civilian hospitals for childbirth.

Never use body restraints on pregnant women during transport to hospital to give birth, during birth and immediately after birth.

Women with children in prison

Ensure that the development of children in prison is supervised by primary health-care providers and a prison psychologist, and monitored by specialists in child development.

Establish nurseries in prisons where mothers can spend time with their children and which allow for mothers to participate in prison activities and programmes.

Provide other facilities and activities for the children of imprisoned mothers.

Never treat children in prison as prisoners.

Prepare the mother and child for separation and undertake the removal of the child from prison with sensitivity. Take decisions on separation on an individual basis, taking into account the best interests of the child and only after alternative care arrangements for the children have been made.

After children are separated from their mothers provide women prisoners the maximum possible opportunity to meet with their children.

Pretrial detainees

Accommodate pretrial detainees and convicted prisoners separately. If exceptional circumstances hinder the strict application of this rule, then prison administrators must ensure that a different regime applies to those who have not yet been convicted.

Recognize the particularly vulnerable status of female pretrial detainees and put in place measures to ensure that they are protected to the maximum possible extent. (See Safety and security above.)

Assist women prisoners to access lawyers, legal aid, para-legal aid services and relevant NGOs, in order to ensure that they have access to justice.

Taking into account that women detained in relation to "reproductive crimes" may be at heightened health risks during pretrial detention, ensure that their special healthcare needs are addressed, and where necessary transfer them to community hospitals for treatment.

Foreign national women

Ensure that all foreign prisoners have regular access to their consular representatives, legal counsel and interpreters, equal access to information in a language they understand, as well as prison activities and other services.

Compensate for difficulties in family contact, e.g. by increasing the number of phone calls the women are allowed, allowing longer visits, etc.

Provide language courses to foreign nationals who do not speak the language most commonly spoken in the prison.

Encourage NGOs and other community support to foreign national prisoners, as well as peer support and self-help groups to be formed among foreign national women of the same nationality, to reduce the impact of isolation.

Consider the transfer of non-resident foreign national women prisoners to their home countries, especially if they have children in that country, as early as possible, if the offender so wishes and if there is no risk of harm to the prisoner.

**Foreign national women
(continued)**

If the child of a non-resident foreign national woman is to be removed from prison, consider transferring the child back to his or her home country, in consultation with the mother, consular representatives and the child, depending on his or her age.

Assist resident foreign national women who face deportation with access to legal counsel for any appeals process and with deportation procedures, as relevant.

Please also refer to the UNODC *Handbook on Prisoners with Special Needs, Foreign National Prisoners*.

Girls in prisons

Separate strategies and policies in accordance with international standards need to be designed for the treatment and rehabilitation of children, including girls in conflict with the law, even when the numbers are limited.

When girls in conflict with the law are imprisoned:

- Take into account the particularly vulnerable status of girls prisoners in the development and implementation of prison management policies and programmes.
- Separate girl prisoners from adults and from boy prisoners.
- Do not assign male staff to supervise girl prisoners or to places where they might get in direct contact with them. Recognizing that female staff may also abuse girl prisoners, put in place and enforce stringent safeguards and procedures to protect girl prisoners.
- Ensure that girl prisoners have equal access to education and vocational training as boy prisoners, as well as gender-specific programmes and consultations delivered by specialists in child psychology.
- Ensure that girls in prison have access to gender-specific health care and provide pregnant girl prisoners with special support and care.

Monitoring prisons

Ensure that regular internal and external (independent) monitoring of prisons is undertaken, and that the membership of monitoring bodies includes women whenever women's prisons are being assessed.

Ensure that monitoring bodies responsible for inspecting prisons where women are held assess prison conditions, services and the treatment of prisoners from a gender perspective, with reference to the Bangkok Rules.

Annex 2. Reducing the female prison population: key recommendations

General

Incorporate a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice.

Legal assistance on arrest

Recognizing the particular vulnerability of women in the criminal justice system, take measures to ensure that indigent female suspects have access to low-cost or free legal services, immediately on arrest, on an equal basis as indigent men;

Offer legal aid services also in cases which are urgent and complex, where the potential penalty is particularly severe, or where the woman is particularly vulnerable, notwithstanding the financial means of the woman concerned.

Include gender sensitivity in the training of law enforcement officials and staff of pretrial detention facilities.

Diversion from prosecution

Provide a wide range of options for police, prosecutors and courts to divert women who have committed minor and non-violent offences from prosecution, to suitable treatment or restorative justice programmes.

Pretrial detention

Do not detain women in pretrial detention, unless absolutely necessary.

Provide for a range of alternative options other than monetary bail, to ensure that women (and men) who cannot afford the financial security requirements of bail are not detained solely due to their poverty.

Take into account the parental status and other caring responsibilities of women and the interests of their children and families when deciding pretrial detention.

Pretrial detention (*continued*)

In countries where extra-marital sex (*zina*) is a criminal offence, do not detain suspects in pretrial detention while their cases are investigated. Victims of rape and other forms of sexual abuse or violence should be referred to appropriate services.

Do not use pretrial detention as a form of protective custody. Other forms of protection, such as shelters, should be used.

Sentencing

Considering mitigating factors in sentencing and alternatives to imprisonment

Ensure that the circumstances of the offence and the vulnerability of the offender are taken into account during sentencing (e.g. the murder of a violent husband or partner).

Provide a wide range of alternatives to imprisonment for minor and non-violent offences, in legislation.

Encourage judicial authorities to impose alternatives to imprisonment in the cases of female offenders who do not pose a risk to the public, taking into consideration their rehabilitative needs, caring responsibilities, and the particularly harmful impact of imprisonment on women.

Develop gender-sensitive alternatives to prison, taking into account the most common needs of female offenders, such as counselling for victims of domestic violence.

Drug-related offences

Review policies and legislation relating to drug-related offences. Consider depenalizing certain drug offences, provide alternatives for others.

Ensure that significant distinctions exist between sentences foreseen for major players in the narcotics trade and small players, such as women being used as couriers.

Remove mandatory sentences for drug-related offences and allow judges to use discretion in sentencing to prevent the re-victimization of women who fall victim to drug traffickers.

Develop gender-sensitive drug dependence treatment programmes in the community for purposes of crime prevention, diversion from the criminal justice system and as an alternative to imprisonment.

Pregnant women and mothers

Develop guidelines for courts whereby they would only consider custodial sentences for pregnant women and women with dependent children only when the offence was serious and violent and the woman represented a continuing danger, after taking into account the best interests of the child (or children) and ensure that alternative care arrangements are made for the children concerned before the mother is imprisoned.

Discriminatory legislation and trial procedures

Bring all discriminatory legislation in line with the requirements of international standards and instruments, such as the Universal Declaration of Human Rights, ICCPR, CEDAW and the Declaration on the Elimination of Discrimination against Women.

Similarly, review the disparate application of seemingly gender-neutral legislation and put in place safeguards to ensure, through law and other appropriate means, the practical realization of the principle of non-discrimination against women.

Bring discriminatory trial proceedings, which do not grant women equal entitlement to all minimum guarantees set out in ICCPR, in line with the principle of non-discrimination guaranteed by international law, and article 14 of ICCPR in particular, which guarantees all persons the right, in full equality, to a fair trial.

In countries where extra-marital sex (*zina*), comprises a criminal act in particular, the offence of rape should be clearly defined as a separate article in legislation and all safeguards put in place to prevent victims of rape being penalized under articles that prohibit “adultery” and “fornication”.

Foreign national women

Take into account the different circumstances and needs of resident and non-resident foreign national women;

Ensure that legislation and practice provides maximum possible protection for foreign women, such as victims of human trafficking and migrant workers, from further victimization.

Do not prosecute trafficked persons for trafficking-related offences and prostitution.

Decriminalize immigration offences and never detain persons who have broken immigration laws alongside prisoners charged with criminal offences.

Ensure that foreign national women are not disadvantaged in consideration for alternatives to prison due to their nationality and gender.

Ensure that police, prosecutors and courts take into account the parental status and other caring responsibilities of foreign national women in deciding arrest, pretrial detention, imprisonment and deportation.

Annex 3. Research, planning, evaluation and public awareness-raising: key recommendations

Research, planning and evaluation

Ensure that research and data collection on women in conflict with the law, as well as on the children of such women, are integrated into the daily work of criminal justice institutions and that resources are allocated for this purpose.

Encourage academic institutions and non-governmental organizations to undertake research on women in the criminal justice system, to complement official research and data collection.

Ensure access to information, based on principles of transparency, though always respecting the principle of confidentiality with respect to the women and their children.

Ensure that the process of planning takes into account the findings of such research and data collection and emphasizes a more effective and equitable system for the delivery of services in prisons and in the community to women offenders.

Undertake comprehensive and regular assessments of the effectiveness of services and programmes available to women and their children in the community and prisons. Adjust and improve them based on the findings to reduce the imprisonment of women and to improve their prospects of social reintegration.

Raising public awareness and training

Make available to the media and to those with a professional responsibility in matters concerning women reliable and up-to-date data on women in the criminal justice system in order to improve the implementation of relevant policies and programmes, while receiving public support for them.

Review and revise existing training materials for criminal justice officials to bring them in line with the provisions of the Bangkok Rules, and conduct additional training, conferences and seminars for the police, prosecutors, judges and prison staff.

Raising public awareness and training (*continued*)

Ensure that criminal justice officials are regularly informed of the outcomes of new research in order to keep them abreast of new findings and developments so that they can make informed decisions in their dealings with women offenders.



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- Convention on the Elimination of All Forms of Discrimination against Women 1981
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
- Convention on the Rights of the Child 1989
- United Nations Convention against Transnational Organized Crime, 2000
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

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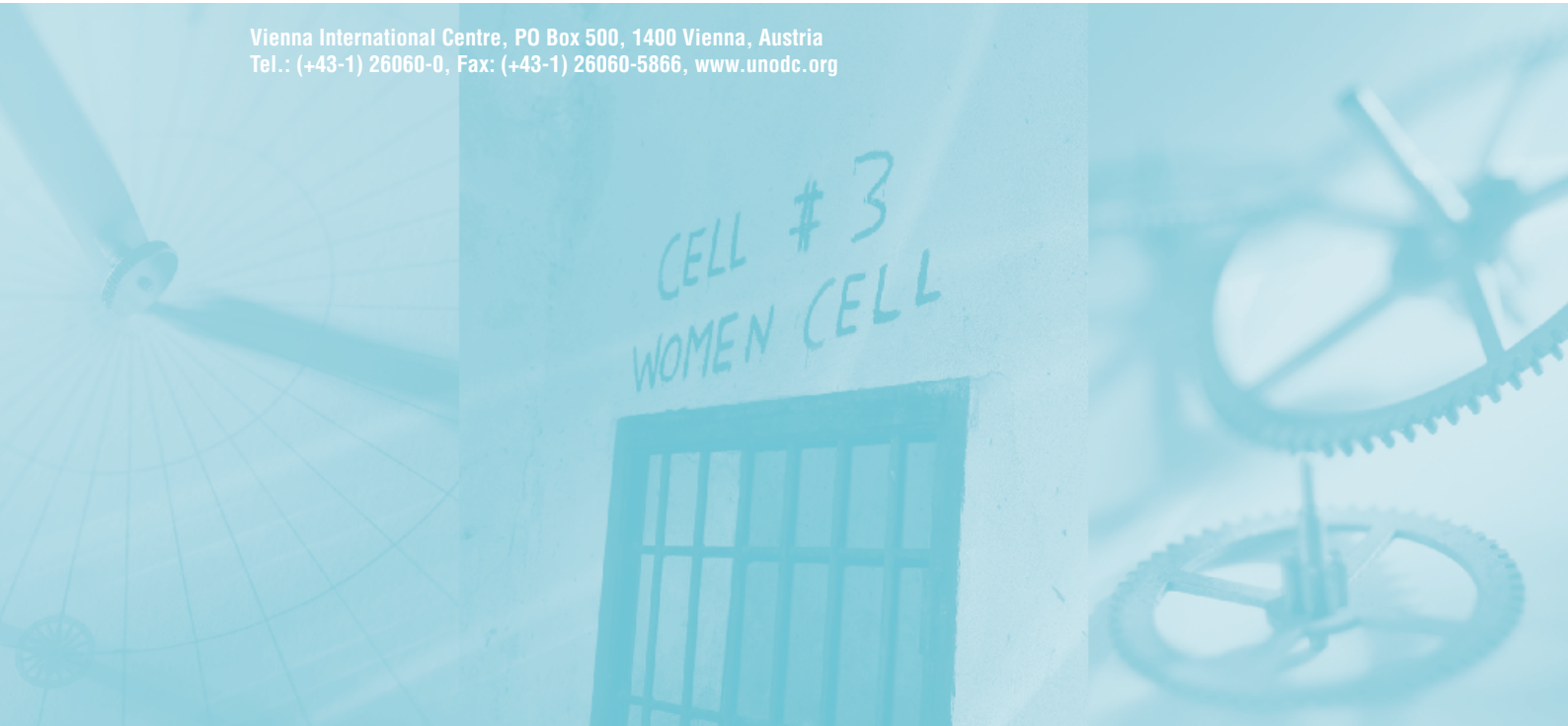




UNODC

United Nations Office on Drugs and Crime

Vienna International Centre, PO Box 500, 1400 Vienna, Austria
Tel.: (+43-1) 26060-0, Fax: (+43-1) 26060-5866, www.unodc.org



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