

## Women and Detention

**“Much more remains to be done to identify and address the pathways to women’s incarceration; to establish better, safer and more gender-sensitive conditions for women prisoners; to ameliorate the negative consequences of women’s imprisonment.”**

*Ms. Rashida Manjoo, Special Rapporteur on violence against women*

### **How many women are in prison?**

Globally, women represent between 2% and 10% of national prison populations but their numbers are increasing rapidly. In fact, throughout the world, women’s imprisonment is growing at a disproportionately higher rate than men.

### **Causes and consequence of women’s imprisonment**

Women are often imprisoned for economic, non-violent offences often linked to their financial situation or experience of violence. Poverty, persisting discriminatory laws, lack of enjoyment of economic, social and cultural rights and related obstacles in accessing justice, increase the likelihood of women being detained. For instance, women offenders often do not have the financial resources to pay for legal representation or alternatives to custodial sentences such as fines or to obtain bail.

In addition, women are disproportionately affected by so-called “moral” offences, such as adultery or extramarital sex, or for violations of dress codes, or witchcraft. Women and girls have also been imprisoned for running away from their homes, often to escape child and forced marriage, forced prostitution, or sexual or physical violence. A number of countries imprison women for obtaining abortions, including in cases of rape. Furthermore, women victims of so called crimes of honour, domestic violence or sex trafficking and sex workers have been administratively detained supposedly for their own protection or rehabilitation. In many countries, women’s political activism has given rise to arrests and detentions.

### **Specific needs and characteristics of women in the criminal justice system**

Empirical evidence shows that women have a heightened vulnerability to mental and physical abuse during arrest, questioning and in prison. Many women detainees face inhuman and degrading treatment during arrest, interrogation and in custody including stripped naked, threats of rape, touching, “virginity testing”, invasive body searches, insults and humiliations of a sexual nature or even rape. Once imprisoned, women may be subjected to several forms

of violence such as rape by other inmates and guards, forced into prostitution, touched in a sexual manner during frisks, watched while showering or using toilets and required to wear revealing prison uniforms.

Since the vast majority of prisoners are men, prison systems and prison regimes have historically been designed for men – from the architecture of prisons, to security procedures, to facilities for healthcare, family contact, work and training. As a consequence, a small number of prisons meet the specific needs of women prisoners. These prisons often do not provide gender-appropriate rehabilitation services including sexual and reproductive health, mental health services, substance abuse and counselling for victims of physical and sexual abuse, lack of which is often the cause of women offending in the first place.

Many problems women face after release from prison are similar to that of men, however women are likely to suffer particular discrimination and stigma. For example, female spouses often provide support to husbands in prison and upon release; women on the other hand tend to be shunned by their husband and are often rejected by their families. In some countries, they may even lose their parental rights.

The impact of imprisonment can be extremely severe if the prisoner is the primary carer of the children – a role that is still overwhelmingly held by mothers. Even a short period in prison may have damaging, long-term consequences for the children concerned. In many countries, because there are few female prison facilities difficulties arise in maintaining family relationships during custody, in violation of international standards.

Particular groups of women, such as pregnant women, girls, women with disabilities, women living with mental health problems, drug problems or HIV and AIDS, women who are detained in armed conflict, women who are foreign nationals or from indigenous and minority communities and lesbian, bisexual and transgender women have further needs specific to them.

### **International legal framework concerning women and detention**

For many years, international standards and national laws that addressed the rights of persons deprived of their liberty and States’ corresponding obligations were primarily designed for men. They also focused on the conditions – not the causes or consequences – of imprisonment.

To address the lack of standards providing for the specific characteristics and needs of women offenders and prisoners, in 2010, the UN General Assembly adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for

## Women Offenders (Bangkok Rules).

The Bangkok Rules together with other international standards obligate States to address the pathways that lead women to prison and the consequences of their incarceration. These include:

- States have a duty to address the causes that contribute to women's incarceration. In the **Vienna Declaration on Crime and Justice**, States agreed to the development of crime prevention strategies that address root causes and risk factors related to crime and victimization through social, health, educational and justice policies. For women offenders, these root causes may include poverty, caused by discrimination in education and employment, gender based violence and drug and alcohol addiction.

- The Bangkok Rules note that the principle of non-discrimination requires States to address the unique challenges that women prisoners face and to take into account their gender-specific needs.

- The principle of non-discrimination also requires States to take into account and address the disparate impact of criminal justice strategies on women and children. This includes reconsidering harsh penalties including the death penalty that disproportionately impact on female offenders. For example, so called "adultery offences" have resulted in gendered disparity in the application of the death penalty in some countries. Furthermore, in many countries, minimum sentencing regulations for drug-related offences regardless of the level of participation in the crime have led to gendered disparity in prison population.

- States also have a duty to provide alternatives to incarceration available to women offenders on an equal basis with male offenders. For instance, male offenders who commit serious offences such as murder may often escape imprisonment by entering into plea-bargaining deals, deals which are not offered to low level offences such as shoplifting or prostitution.

- They must also take into consideration the gender specificities of, and the consequent need to give priority to applying non-custodial measures to, women who have come into contact with the criminal justice system. The Bangkok Rules require States to develop gender-specific diversionary measures and pretrial and

sentencing alternatives to incarceration that take into account the history of victimization of many women and their caretaking responsibilities.

- States are obligated to provide women prisoners with programs and services that enable them to effectively reintegrate in society on an equal basis with men. This means non-discriminatory access to education, vocational training, meaningful and remunerated work, and recreational activities, including activities which take account of gender-specific needs. For instance, women's activities should not be gendered, providing only activities that are deemed suitable for the female gender, such as sewing, cooking and cleaning. The training and work provided should correspond to market demands and aim to increase women's real chances of earning a wage after release.

- The Bangkok Rules requires States to provide services and programs that facilitate the rehabilitation and reintegration of **former** women prisoners. This includes developing and implementing comprehensive pre- and post-release reintegration programs which take into account the gender-specific needs of women. For instance, former women prisoners who may be at risk of murder by their families following release, for example if they have committed "moral offences" or are victims of rape or at risk of being returned to violent marriages or being forced to marry someone against their will, should be provided with special protection and support such as safe houses.

### The work of OHCHR

OHCHR through its field presences actively advocates States to implement the Bangkok Rules and its provisions as well as to adopt a gender-sensitive approach to women offenders. Through the monitoring of detention facilities, OHCHR provides recommendations towards the improvement of prison conditions for women, prevention of torture and other cruel, inhuman or degrading treatment or punishment. OHCHR also supports the implementation at the national level of recommendations emanating from the human rights mechanisms.

### Normative Standards and further reading

- [Committee on the Elimination of Discrimination against Women \(CEDAW\) General Recommendation No. 19 \(1992\), 24 \(1999\), 26 \(2008\), 28 \(2010\)](#)
- [Human Rights Committee, General Comment No.28: Equality of rights between men and women \(2000\)](#)
- [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#)
- [United Nations Standard Minimum Rules for the Treatment of Prisoners](#)
- [United Nations Standard Minimum Rules for Non-custodial Measures \(The Tokyo Rules\)](#)
- [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(Bangkok Rules\)](#)
- [Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century \(Vienna Declaration\), G.A. Res. 55/59, ¶ 25 \(Jan. 17, 2001\)](#)
- [UN Office on Drugs and Crime, Handbook for Prison Managers and Policymakers on Women and Imprisonment 81 \(2008\)](#)
- [Tenth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF.187/12, Women in the Criminal Justice System, \(Mar. 2, 2000\)](#)
- [Pathways to, conditions and consequences of incarceration for women, Report of the Special Rapporteur on violence against women, its causes and consequences, GA/68/340](#)
- [International Centre for Prison Studies, World Female Imprisonment List](#)