



Ms. Claudia Mahler
Independent Expert on the enjoyment of all human rights by older persons
Office of the High Commissioner on Human Rights
OHCHR-UNOG CH-1211 Geneva 10, Switzerland
Via email: olderpersons@ohchr.org

March 22, 2021

Re: Submission to the call for contributions on older women – 2021

Dear Ms. Mahler,

The Women in Prison Network convened by the [Cyrus R. Vance Center for International Justice](#) respectfully makes this submission in response to the call for input on the thematic report on the human rights of older women.

Established in 2018, the [Women in Prison Network](#) includes 45 individual advocates, including formerly incarcerated women, and 34 organizations from a total of 21 countries representing every continent. The Network is a safe space for advocates to share information and best practices, seek collaborations, and build capacity for improved monitoring and reporting of conditions in women's prisons worldwide. It is the only global network of advocates for women in prison.

We thank the Independent Expert for recognizing the need to provide comprehensive recommendations on the human rights of older women. We write to provide information about the experiences of older women in the penal system, in prison, and post-release. We respectfully request that in its upcoming report, the Independent Expert includes information about discrimination older women face in the penal system, in prison, and after release as well as recommendations to address it.

Growing Number of Older Women in Prison

Despite the lack of data and comprehensive research available on older people in criminal justice systems, and even less on older women specifically, we know that in many jurisdictions, the number of older prisoners – both men and women - is increasing. For example, in England and Wales the number of sentenced prisoners over the age of 60 rose by 164%, and as of 2014, older people accounted for almost 14% of the prison population. Between 2000 and 2016, the female prison population in Brazil grew 656%.¹ In 2017, the female detention centers of 18 Brazilian states were overpopulated and the occupation rate of the female prison system in the period corresponded to 118.4%, which drew the attention of authorities and researchers and broadened the discussions on related topics, however the plight of older women in prison has not been included in this broadening. In 2017, 1.5% of all female prisoners in Brazil were over the age of 60, and as of April 2020 there were 434 incarcerated women in Brazil who were 60 or older.²

Since 2000, the female prison population worldwide has been steadily increasing,³ despite their growing presence in prisons, women in prison are still relatively neglected in both research and policy. There is little information about the specific pathways that lead women to prison and the consequences of prison on their lives. Moreover, responses in the criminal justice and penal systems are still largely designed for and by men and do not take into account the special characteristics of women who come into conflict with the law and how imprisonment exacerbates women's situation of vulnerability and marginalization. This situation is further compounded for older women who come into conflict with the law and are in prison.

Worldwide the number of older and female prisoners is growing, but older women are a minority within a minority and their needs are not being considered. The majority of prisoners are still young adults and male⁴ and penal policies and prisons are designed for the needs of this population and are not gender or age-sensitive.

Pathways to Prison based on Poverty and Discrimination

As with younger women, the pathways that may cause older women to be imprisoned differ from the pathways that men may experience. Older women may have been sentenced to imprisonment or remanded into custody later in life, or they may have grown older in prison

¹ According to Infopen Mulheres 2016, the female population in the early 2000's was 6,000 women, and in June 2016 hit the mark of 42,000 women. More information available at: http://antigo.depen.gov.br/DEPEN/depen/sisdepen/infopen-mulheres/infopenmulheres_arte_07-03-18.pdf.

² Depen, Attention to women and Specific Groups Division, Information nº63/2020/DIAMGE/CGCAP/DIRPP/DEPEN, available at http://www.susepe.rs.gov.br/upload/1588195416_SEI_MJ11429916Informao_final.pdf.

³ The Cyrus R. Vance Center for International Justice & AdvocAid, *Woman wahala na prison: Causes and consequences of women's imprisonment in Sierra*, August 2020, <https://www.vancecenter.org/wp-content/uploads/2020/08/Final-Woman-wahala-na-prison-web-version-.pdf>, at p. 15.

⁴ *Id.*; Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020*, May 2020, <https://cdn.penalreform.org/wp-content/uploads/2020/05/Global-Prison-Trends-2020-Penal-Reform-International-Second-Edition.pdf> at p. 21.

while serving a long sentence. Regardless of the age older women were when they were imprisoned, certain factors are more common among women who commit crimes compared to men, including mental health issues and substance abuse, and experiences of sexual or physical violence and abuse.⁵ The majority of women – of any age - who go to prison are poor and imprisoned for petty crimes.

Women in Kenya, for example, commit offences of a petty nature, often tied to poverty, in order to provide for themselves or their families. Discriminatory inheritance laws deny older women the right to their husband's land once he passes and they are often disinherited from the husband's estate. This combined with low employment opportunities, often leaves older women invisibilized and without the resources to provide for themselves resulting in them committing petty economic offenses in order to survive.⁶

In Kenya, local cultural practices and traditions maintained by older women often lead to conflict with the law resulting in imprisonment. This happens for example, in cases of older women practicing FGM, brewing of local liquors, and in the sending of minors to the city as domestic help. Low literacy and education levels among older women exacerbate their vulnerability. Older women are more likely to be ignorant of newer norms and standards when it comes to these cultural practices leading them to come into conflict with the law. Additionally, discriminatory stereotypes of older women result in them being victims of allegations of witchcraft, which is illegal in Kenya. As older women often have no property under their names and their families have migrated to the cities, alternatives to pretrial detention, such as bail, are not accessible to them and thus they are remanded to prison to await trial. Furthermore, older women often lack the resources to seek out legal assistance when they are detained leaving them to remain in pretrial detention for longer periods than necessary.⁷

Special Considerations for Older Women in Prison

The United Nations has found that older persons in prison are a special needs population.⁸ The United Nations High Commissioner for Human Rights has also urged that older prisoners be given special consideration.⁹ This entails special consideration in regards to access to justice, providing suitable accommodation and health care to address the diverse needs of an older prison population, and taking into account the additional needs and support that older prisoners may have upon release.¹⁰ Specifically, special mobility arrangements within facilities

⁵ The Cyrus R. Vance Center for International Justice & AdvocAid, *Woman wahala na prison: Causes and consequences of women's imprisonment in Sierra* at p. 15.

⁶ Clean Start Kenya in response to a questionnaire from the Vance Center on the experiences of older women in prison.

⁷ *Id.*

⁸ United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs (Criminal Justice Handbook)*, United Nations, 2009, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf at p. 123.

⁹ United Nations Economic and Social Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. E/2012/51, <https://undocs.org/E/2012/51> at paragraph 60.

¹⁰ *Id.*

and cells, special protection against violence and extortion within prison structure, and age-appropriate educational and vocational opportunities should be provided.¹¹

Safe conditions of detention for older women prisoners need to take into account their specific needs related to menopause or cognitive limitations associated with conditions like dementia and chronic, disabling and terminal illnesses.¹² Additionally, the specific and additional healthcare needs of older women prisoners need to be considered, this includes additional preventative healthcare measures such as for breast and gynecological cancer and other gender and age-specific health conditions as required by the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.¹³

Some countries such as Colombia have recognized that in relation to penal matters, older persons “deserve special respect, protection and guarantee of their fundamental rights by penitentiary and prison policy.”¹⁴ The prison system in Kenya has also identified older prisoners as persons with special needs whose needs must be accommodated with special consideration. This includes measures such as additional medical care, separate and adequate accommodation, a specialized diet to meet additional nutritional needs, as well as specialized attention to specific health-care needs.¹⁵ In Brazil, the law related to criminal cases involving older persons gives priority to the processing of cases in which a person aged 60 years and older appears as a party¹⁶ and the Penal Code considers an age of 70 or above as a mitigating circumstance.¹⁷ In addition, Brazilian law requires that women and those older than 60 be detained in proper establishments, appropriate to their personal conditions, which means that prison facilities need to be adapted in order to guarantee appropriate living, services and circulation spaces for the elderly. Despite this recognition, advocates lament that older women prisoners are not afforded special consideration as urged to by the High Commissioner.

¹¹ *Id.* See also: the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Rule 2 (“measures to protect and promote the rights of prisoners with special needs are required...”), Rule 4, Rule 13, and Rule 15; and, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle I, Principle II, Principle XII, and Principle XIX.

¹² United Nations Economic and Social Council, *Report of the United Nations High Commissioner for Human Rights* at paragraph 60.

¹³ United Nations Rules for the Treatment of Female Prisoners and Non Custodial Measures for Women Offenders (Bangkok Rules), UN Doc. A/RES/65/229, 16 March 2011, <http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>, Rules 17 and 18.

¹⁴ Constitutional Court, Judgment T-388 of 2013 available at <https://www.corteconstitucional.gov.co/relatoria/2013/t-388-13.htm>.

¹⁵ See the Mandela Rules, Rule 2, Rule 13, Rule 15, Rule 22, and Rule 25; Bangkok Rules, Rule 18; and, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle II, Principle X, Principle XI, and Principle XII.

¹⁶ Brazilian Statute of the Elderly – Law nº 10.741 of October 1st, 2003, article 71 which states that the priority in the processing of suits and proceedings and in the execution of procedural remedies in which persons at the age of 60 or more may act as litigant, is guaranteed, in any instance. Its fifth paragraph also determines that special priority shall be guaranteed to those over 80 years old. Available at

[http://www.planalto.gov.br/ccivil_03/leis/2003/l10.741.htm#:~:text=LEI%20No%2010.741%2C%20DE%201%2C%BA%20DE%20OUTUBRO%20DE%202003.&text=Disp%C3%B5e%20sobre%20o%20Estatuto%20do%20Idoso%20e%20d%C3%A1%20outras%20provid%C3%A2ncias.&text=Art.,a%2060%20\(sessenta\)%20anos](http://www.planalto.gov.br/ccivil_03/leis/2003/l10.741.htm#:~:text=LEI%20No%2010.741%2C%20DE%201%2C%BA%20DE%20OUTUBRO%20DE%202003.&text=Disp%C3%B5e%20sobre%20o%20Estatuto%20do%20Idoso%20e%20d%C3%A1%20outras%20provid%C3%A2ncias.&text=Art.,a%2060%20(sessenta)%20anos).

¹⁷ Brazilian Criminal Code - Decree nº. 2,848 of December 7, 1940. Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm.

In general, older women prisoners are held in the same conditions and physical spaces as younger women and overcrowding of prisons is common. Prison infrastructure does not take into account the physical limitations and ailments of older women. A recent report by civil society on the state of the Colombian penal system found that Colombian prisons had no adequate or specialized care for older female prisoners. They also found that older women prisoners in Colombia did not receive adequate food to meet their needs, and similar to all women in prison, they were subject to cruel, inhuman and degrading mistreatment or punishment.¹⁸ Furthermore, the physical infrastructure of prisons in Colombia means that there is no permanent supply of water and electricity. Similarly, in Brazil, water rationing is a reality in 70.8% of the São Paulo state prison units. Women need to have regular access to water, especially those who are menstruating and who are older.¹⁹

Older female prisoners in Colombia also reported that they had different needs from the rest of the female population that were not being met such as the lack of adequate sleeping pads or blankets. One prisoner stated that, “We are two hundred and sixty (260) inmates and we have capacity for 208, they are sleeping on the floor and not in a proper way because the mats do not help much, as the mat and the floor are practically the same, there are no pillows or blankets and older women in our yard are also subject to these conditions.”²⁰

In Kenya, it is reported that oftentimes toilet facilities, which are shared, are too low for older women to easily bend down to utilize them.²¹ In Brazil it is reported that 69% of the state's prison units are overcrowded and many elderly people living in prison have mobility difficulties and thus need the assistance of younger prisoners in order to move around, bathe, and use the bathroom, among other daily living activities.

The harsh living conditions and the lack of adequate infrastructure in these prison environments constitute a scenario of constant violation of rights for all women in prison, and heightened violations in the case of older women in prison who have additional needs that are not being met.

Specific social and psychological needs of older women in prison are also not being addressed. Participation in recreational activities may be difficult for older women due to health or mobility problems.²² General negligence of older women's specific psychosocial needs is common in prisons in Kenya.²³

¹⁸ The full report is available at <https://www.humanas.org.co/vii-informe-de-la-sociedad-civil-al-estado-de-cosas-inconstitucional-del-sistema-penitenciario-y-carcelario/>.

¹⁹ See Bangkok Rules, Rule 5. Older adults naturally have a lower volume of water in their bodies and their ability to conserve water is reduced leading them to be at an increased risk for dehydration. See informational page on dehydration provided by the Mayo Clinic at: <https://www.mayoclinic.org/diseases-conditions/dehydration/symptoms-causes/syc-20354086>.

²⁰ *Id.* at p. 26.

²¹ Clean Start Kenya in response to a questionnaire from the Vance Center on the experiences of older women in prison.

²² Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020* at p. 25.

²³ Clean Start Kenya in response to a questionnaire from the Vance Center on the experiences of older women in prison.

Additionally, existing reintegration and support programs may not be suitable to the needs of older women upon their release.²⁴ Rehabilitation programs often focus on work and vocational training which may not be relevant for older women. In Colombia, although older persons in prison are exempt from working they are still required to participate in occupational activities. These occupational activities, however, are frequently based on gender stereotypes and include activities such as sewing, cooking, and makeup among other activities; activities that have little relevance to the actual labor market and to the needs of older women once they are released. This results in women, and in particular, older women remaining economically vulnerable upon release from prison.

Even where the special needs of older women in prison are being met, it is important to consider whether continued detention of older persons is necessary and appropriate. The High Commissioner has suggested that “there may be little justification for many older persons’ continued incarceration in the prison system in certain instances. Instead, alternative forms of punishment may be preferable based on the financial, practical, and human rights considerations involved.”²⁵ The management of older people in prison, including those with chronic or terminal illnesses, also puts a major strain on prison staff who are usually not trained to deal with their complex needs or to deal with the death of older people in prison and on often limited prison resources due to the need for specialized equipment and staff.²⁶

COVID-19 and its effect on older women in prison

The failure to treat older women in prison as a special needs population has become even more apparent during the COVID-19 pandemic. Several United Nations entities, including the Office of the High Commissioner for Human Rights and the United Nations Office on Drugs and Crime, have called for the most high-risk prisoners, such as older persons and those sentenced for minor, non-violent offences, with specific consideration given to women and children, to be released from prison in order to mitigate the risk of contracting COVID-19. Authorities in Colombia have not heeded this advice and older women and other high-risk prisoners have been forced to remain in detention centers without proper sanitary and social distance measures needed to prevent COVID-19 infections.

Women in prison in Colombia have reported that COVID-19 tests are not provided, even in cases where severe symptoms are present. In one such case, an older woman, who had complained several times of symptoms related to COVID-19 and requested treatment from prison officials, was denied a COVID-19 test and any subsequent treatment. This woman

²⁴ Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020* at p. 25.

²⁵ United Nations Economic and Social Council, *Report of the United Nations High Commissioner for Human Rights* at paragraph 61.

²⁶ Penal Reform International & Thailand Institute of Justice, *Global Prison Trends 2020* at p. 25. See also Mandela Rules, Rule 24, Rule 25, Rule 27, and Rule 76 (2); and, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle X and Principle XX.

ultimately died from pneumonia caused by COVID-19; she was never isolated from other prisoners.²⁷

In Brazil, the National Justice Council (*Conselho Nacional de Justiça*) issued recommendations aiming to protect the right to life of those at higher risk from COVID-19, including older women in prison. The Council recommended a reassessment of pretrial detentions and recommended granting early release for at-risk populations. However, a collective habeas corpus brought by the Public Defender of the State of São Paulo, as well as Offices from other states seeking to protect the rights of elderly people incarcerated during the Covid-19 pandemic due to their greater vulnerability to the virus, was denied.²⁸ Moreover, most prison facilities in Brazil do not have sufficient and regular distribution of hygiene kits, and according to a survey by the Public Defender's Office of the State of São Paulo, 69% of interviewed prisoners said they did not receive soap every time they needed it. Overcrowding in the prisons also makes it impossible for incarcerated elderly people to comply with the Health authorities' recommendation of social distancing. Furthermore, and most troublingly during the pandemic, most units in the São Paulo state prisons do not even have doctors on staff. Many medical teams are composed only of nursing assistants and 77.28% of prison units in the state do not have a minimum health team in place.

Women in prison have complex health needs with disproportionate rates of underlying health conditions compared to women in the community, particularly older women. This fact, coupled with overcrowded and unhygienic prison conditions in many corners of the globe, puts all women, but especially older women, at greater risk of contracting COVID-19.

The experiences of older women in prison is an example of how various cross-cutting problems – in this case both age and gender – simultaneously affect the rights of persons in prison and how their human rights are often not guaranteed both prior to and during their imprisonment.

Recommendations

We respectfully request that the Independent Expert:

- Urge governments to follow the recommendations of the United Nations High Commissioner for Human Rights and other UN entities to release older women from prison in order to mitigate their risk of contracting COVID-19;
- Recommend that the population of older women in prison be included in discussions of legislation and policy framework as regards criminal justice reform to ensure that their special conditions of vulnerability are properly addressed;
- Urge governments to ensure that prison facilities have the adequate staff and resources to provide for the health and hygiene needs of older women in prison;

²⁷ Corporación Humanas Colombia in response to a questionnaire from the Vance Center on the experiences of older women in prison.

²⁸ Available at: <https://www.defensoria.sp.def.br/dpesp/Repositorio/40/Documentos/HC%20COLETIVO%20-%20IDOSOS-AS%20-%20CORONAVIRUS%20-%20FINAL.docx>.

- Recommend that states develop guidelines addressing the special needs of older prisoners, particularly older women in prison;
- Emphasize the need for a gender and age sensitive approach to criminal justice.

Respectfully,

The Cyrus R. Vance Center for International Justice
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Clean Start Kenya
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