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## Women in detention:

a guide to gender-sensitive monitoring



A Detention Monitoring Tool resource

## Women in detention: a guide to gender-sensitive monitoring

Penal Reform International and the Association for the Prevention of Torture (APT) would like to thank Tomris Atabay for authoring this paper.

This paper has been produced under Penal Reform International's project *Strengthening institutions and building civil society capacity to combat torture in 9 CIS countries*, in partnership with the Association for Prevention of Torture (APT) and with the financial assistance of the UK Government and the European Union under the European Instrument for Democracy and Human Rights (EIDHR).

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Cover illustration by John Bishop, based on an original illustration by Yara Kassem.

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ISBN 978-1-909521-03-2

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First published in 2013. Reprinted in 2013 and 2015.

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# I Introduction

This paper is addressed to monitoring bodies responsible for the external scrutiny of places of deprivation of liberty. It outlines the risks faced by women deprived of their liberty of being subjected to torture and ill-treatment and measures that can be taken to reduce such risks. The main focus of the paper is the situation of women in detention in the criminal justice system, though the discussion is in many cases equally relevant to women deprived of liberty in other contexts, such as psychiatric institutions and immigration detention facilities.

The paper focuses only on women. It does not include a discussion of the risks faced by men who may also be subjected to gendered violations, especially men who are perceived not to conform to socially accepted gender roles,<sup>1</sup> due to their sexual orientation or gender identity. An examination of the particular risks faced by lesbian, gay, bisexual and transgender (LGBT) persons deprived of their liberty, in general, is not developed in this paper, as it is felt that this topic requires a separate discussion. The paper also does not include a discussion of the risks women face in the private sphere or in the community, though the links between the wider context and places of deprivation of liberty is referred to as relevant, due to the intricate relationship between the two spheres. It is hoped that, in this way, the paper will contribute to the development of a holistic understanding of the issues that need attention.

The adoption of the UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)<sup>2</sup> represents an important step forward in recognising the distinct gender specific needs of women in the criminal justice system and introducing safeguards to respond to women's risk of ill-treatment and torture. The Bangkok Rules provide a key reference point for monitoring bodies in fulfilling their responsibilities in relation to women in detention.<sup>3</sup>

While detention centres holding asylum-seekers and other immigration detainees are not covered by the Bangkok Rules, many of the rules are also highly relevant to those settings. For example the UNHCR guidelines contain specific references to women asylum-seekers in detention, referring to the provisions of the Bangkok Rules.<sup>4</sup>

Monitoring bodies, while using the Bangkok Rules as a reference point for their work, should also be aware that the risks faced by women in prisons<sup>5</sup> is often a reflection of a wider lack of understanding, prejudicial attitudes and discriminatory practices in society. As noted in the preamble of the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice: "Violence against women is often embedded in and supported by social values, cultural patterns and practices. The criminal justice system and legislators are not immune to such values and thus have not always regarded violence against women with the same seriousness as other types of violence....."<sup>6</sup>

Thus, the high risk women face of ill-treatment and torture in places of deprivation of liberty is not an issue that can be resolved only by focusing on those places. The root causes of women's vulnerability in detention are often to be found outside the prison walls, though such vulnerability is intensified significantly in places of deprivation of liberty.

In addition to the particular vulnerability of women to torture and ill-treatment, especially gender based violence, women also have gender specific needs, which are rarely met in places of detention (e.g. special healthcare needs) or which are exacerbated dramatically by the mere fact of detention (e.g. women may be abandoned by their families once imprisoned, due to the stigma associated with women's imprisonment). The children of women prisoners represent an additional consideration in this

1 See CAT General Comment No. 2, CAT/C/GC/2, 24 January 2008, para. 22

2 Adopted by the UN General Assembly on 21 December 2010, A/RES/65/229

3 SPT had referred to the Bangkok Rules in a number of its country reports, recommending the States concerned to ensure that protection measures and conditions of detention in the country's prisons are compatible with the Bangkok Rules. See for example CAT Report on Sri Lanka, 8 December 2011, CAT/C/LKA/CO, para. 14; CAT Report on Belarus, 7 December 2011, CAT/C/BLR/C/O/4, para. 20

4 UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), Guideline 9.3, p. 37. <http://www.unhcr.org/505b10ee9.html>

5 Where the word "prison" is used, it is used to refer to all detention facilities, including police lock-ups, pre-trial detention facilities and prisons where sentenced prisoners are held.

6 A/RES/65/228, Annex, para. 3

context, taking into account that women are usually the primary carers of children and immense harm can be caused to dependent children, both if they are separated from their detained mothers or imprisoned with them. As such, there has been increasing recognition of the need to take into account the best interests of such children and to give preference to alternatives to detention and imprisonment in the case of women who are pregnant and mothers with dependent children, in line with the Bangkok Rules.

In specific circumstances the lack of attention to women's gender specific needs can be considered to amount to cruel, inhuman or degrading treatment or punishment or can evolve into cruel, inhuman or degrading treatment. The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) has specifically stated that "The scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment."<sup>7</sup> The SPT recommends that this broad approach is also reflected in the work of National Preventive Mechanisms (NPMs).<sup>8</sup>

The mandate of NPMs require that they examine regularly the treatment of persons deprived of their liberty, with a view to strengthening their protection against torture and other cruel, inhuman

or degrading treatment or punishment. NPMs are mandated to make recommendations to the relevant authorities with the aim of improving the treatment and conditions of persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations, and to submit proposals and observations concerning existing or draft legislation in this context.<sup>9</sup> It is important to underline that visits to places of detention enable NPMs to gain first-hand information, but they only constitute the first step of a holistic preventive strategy. In order to contribute to sustainable improvements NPMs are expected to go beyond the facts found in places of detention to try to identify possible underlying causes of the challenges faced.<sup>10</sup>

This paper aims to assist all monitoring bodies, and in particular NPMs, to ensure that their activities include gender-specific considerations, by outlining the particular risks women face of being subjected to torture or ill-treatment, the particular circumstances that increase such risks and what measures can be taken to prevent the torture and ill-treatment of women in all places of detention. Monitoring bodies are encouraged to use this paper in mainstreaming a gender perspective into their monitoring activities and in preparing thematic reports or reviews on women in detention.

7 SPT, First annual report, (February 2007 to March 2008), CAT/C/40/2, 14 May 2008, para. 12

8 Optional Protocol to the UN Convention against Torture Implementation Manual, Revised Edition, Inter-American Institute for Human Rights (IHR), Association for the Prevention of Torture (APT), (2010) p. 28 [http://www.apr.ch/content/files\\_res/opcat-manual-english-revised2010.pdf](http://www.apr.ch/content/files_res/opcat-manual-english-revised2010.pdf)

9 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Article 19

10 OPCAT Implementation Manual, Revised edition, op. cit. p. 234

## II Why should monitoring bodies look at this issue?

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The particular risks women face of ill-treatment and torture in detention has received limited attention to date. Efforts to reduce violence against women usually focus on the private sphere or the community, with less attention being given to gender based violence encountered by women deprived of their liberty. While torture and ill-treatment in detention, in general, has been an area of great concern, the gender-specific angle of the topic has not been adequately discussed or explored.

The Committee against Torture, in its General Comment No. 2, has underlined the lack of information in State reports on the implementation of the Convention with respect to women, and has emphasised that gender represents a key factor in torture prevention.<sup>11</sup>

Monitoring bodies can play an important role in filling this gap and encouraging their governments

to do so as well. They can do this by assessing the risk factors in the places where women are held, the safeguards, if any, which have been put in place by authorities and by making recommendations to their governments and all relevant key actors, in line with the provisions of the Bangkok Rules, to improve the protection of women against ill-treatment and torture.

In examining the risks women face, and within a holistic understanding of their prevention work, monitoring bodies can also go beyond the facts found in places of detention to try to identify possible root causes of problems. A problem encountered during a visit to a place of detention may be the result of external factors and it is therefore essential for monitoring bodies to also analyse the legal framework, criminal justice policies and practices.<sup>12</sup> Some examples of such an approach are provided in this paper.

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<sup>11</sup> CAT/C/GC/2, 24 January 2008, para. 22

<sup>12</sup> Optional Protocol to the UN Convention against Torture Implementation Manual, Revised Edition, op. cit. p. 235

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## III Concepts

### 1. Gender and gender mainstreaming

WHO describes “gender” as the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women.<sup>13</sup> While a person’s sex as male or female is a biological fact, which is the same in any culture, what that sex means in terms of a person’s gender role as a ‘man’ or a ‘woman’ in society can be quite different cross culturally.<sup>14</sup> In sociological terms ‘gender role’ refers to the characteristics and behaviours that different cultures attribute to the sexes.<sup>15</sup>

Inequalities based on gender are prevalent in all societies to different degrees, with women enjoying less power than men in most spheres of life. This unequal balance of power is exacerbated in societies where other factors, such as religious or cultural norms, assign women a lesser status. Such power imbalances and social or cultural attitudes or beliefs are most often intensified in closed environments, which mirror the outside society in a way which is all the more pronounced.

The term “gender mainstreaming” originated in United Nations policy language in 1997 when the Economic and Social Council of the UN (ECOSOC) agreed that ‘Mainstreaming a Gender Perspective into all Policies and Programmes of the United Nations System’ be performed. The Council defines gender mainstreaming as:

‘Integration of gender concerns into the analyses, formulation and monitoring of policies, programmes and projects, with the objective of ensuring that these reduce inequalities’<sup>16</sup>

The concept of gender mainstreaming is of key importance when applied to policies and programmes in places of deprivation of liberty. In these closed environments, where societal attitudes and power

structures are reflected in an intensified way, women’s powerlessness and sense of powerlessness is increased. At the same time, perhaps paradoxically, women’s gender specific needs are recognised to an even lesser extent than in society at large, due to the fact that places of deprivation of liberty, and in particular places of detention, are male dominated worlds with little recognition and understanding of gender related needs, with the exception, perhaps, of those needs which relate to child-birth and pregnancy.

Promoting gender mainstreaming in places of deprivation of liberty is a long-term process, which involves not only changing the attitudes, policies and practices in these places, but also in wider society, in order to achieve durable change. Nevertheless, changing specific laws, rules, policies, procedures and practices can have a real and immediate impact on the protection of women from torture and ill-treatment.

### 2. Discrimination and violence against women

The Convention on the Elimination of Discrimination Against Women (CEDAW), Article 1 describes the term “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The most extreme form of discrimination faced by women is gender-based violence, that is, “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual

<sup>13</sup> <http://www.who.int/gender/whatisgender/en/>

<sup>14</sup> Ann-Maree Nobelius (23 June 2004). “What is the difference between sex and gender?”. Monash University. <http://www.med.monash.edu.au/gendermed/sexandgender.html>. Retrieved May 10, 2012.

<sup>15</sup> Ann-Maree Nobelius (23 June 2004). “What is the difference between sex and gender?”. Monash University. <http://www.med.monash.edu.au/gendermed/sexandgender.html>. Retrieved May 10, 2012.

<sup>16</sup> E/1997/66, 12 June 1997



harm or suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>17</sup> Gender-based violence amounts to ill-treatment and depending on the circumstances and nature of the violence, to torture. One of the gravest forms of gender based violence is rape.

Women may be subjected to rape in places of deprivation of liberty as a means of coercion to elicit confessions, to humiliate and dehumanise them or merely to use the opportunity of their absolute powerlessness. Rape may also take place in the form of sexual services which women prisoners are forced to provide in return for access to goods and privileges or for enjoying their most basic human rights. In addition, sexual abuse of women by male prisoners may take place, sometimes with the complicity of prison guards.

It is widely recognized, including by Special Rapporteurs on Torture and by regional jurisprudence, that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials.<sup>18</sup> The International Criminal Tribunal for the former Yugoslavia decisions also recognise rape and other forms of sexual violence as torture when certain criteria are met.<sup>19</sup>

Women who are raped not only have to overcome the trauma and confront the potential pregnancy and other health consequences caused by this violent act, but also the shame which is associated with the act and the additional stigma which women who have been raped face in many societies, and especially those where discrimination against women is pervasive, due to cultural, traditional or religious norms. Many women who are raped in detention choose not to report their cases for this and other reasons, such as the lack of appropriate responses by the authorities to their complaints, as well as the fear of retaliation.

Custodial violence against women encompasses many acts, in addition to rape. These include threats of rape, touching, insults and humiliations of a sexual nature, using mechanical restraints on women in labour and virginity testing, among others. Other practices may amount to ill-treatment depending on the manner in which they are carried out, why they are carried out and their frequency. These practices are covered in more detail in Part IV.

Women are usually discriminated against in prisons also in many other ways, both due to their gender, as well as due to the fact that they constitute a minority in all prison systems of the world, making up between 2 and 9 per cent of the general prison population in the large majority of countries.<sup>20</sup> Thus, their distinctive needs are usually not taken into account in policy formulation and programme development and their special safety requirements are frequently ignored. While more attention may be given to their needs in prisons allocated exclusively to women, the lack of attention, at headquarters level, to strategies, policies, programmes and corresponding budgets, aiming to respond to women’s gender specific needs, are still largely reflected in such prisons. In addition, prisons which hold only women are generally located far away from the women’s homes, due to the small number of women prisoners. Therefore one of the primary needs of women – that of the maintenance of family links – is severely compromised.

Discrimination in accessing gender specific programmes and services and maintaining family links does not always constitute ill-treatment, but in certain circumstances such discrimination may evolve into ill-treatment.

17 CEDAW General Recommendation No. 19, para. 6

18 A/HRC/7/3, 15 January 2008, para 34. See also *Prosecutor v. Zdravko Mucic aka “Pavo”, Hazim Delic, Esad Landzo aka “Zenga”, Zejnil Delalic (Trial Judgement)*, IT-96-21-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 16 November 1998, paras. 480 to 493 for a detailed discussion of rape as torture and the international and regional bodies which have described it as such. available at: <http://www.unhcr.org/refworld/docid/41482bde4.htm> I [accessed 1 October 2012]

19 *Prosecutor v. Zdravko Mucic aka “Pavo”, Hazim Delic, Esad Landzo aka “Zenga”, Zejnil Delalic (Trial Judgement)*, IT-96-21-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 16 November 1998, para 496. It is important to note that the internationally accepted definition of rape does not restrict the act of rape to penetration by the sexual organ. See *ibid*, para. 478. available at: <http://www.unhcr.org/refworld/docid/41482bde4.htm> I [accessed 1 October 2012]; Crimes of sexual violence that can be prosecuted as rape in international criminal tribunals include oral sex and vaginal or anal penetration through the use of objects or any part of the aggressor’s body. See A/HRC/7/3, 15 January 2008, para 35

20 UNODC, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, 2014, p. 2

## IV Risk factors and measures to reduce risk

Women are at heightened risk in certain contexts, at certain times and as a consequence of certain policies, practices and conditions in places of detention. In addition, certain categories of women are particularly vulnerable. Some of the key factors that represent particular risks for women are discussed below.

### 1. Certain contexts which heighten risk

#### a. Societal context

Firstly, it is important to reiterate that the values and attitudes in society are reflected in prisons, which are microcosms of the outside world, made up of people who are part of that same society, sharing the same culture, values and prejudices. As the former Special Rapporteur on Torture has noted, a society's indifference to or even support for the subordinate status of women, together with the existence of discriminatory laws and a systematic failure to bring perpetrators to justice and protect victims, create the conditions which increase women's risk of being subjected to physical and mental suffering<sup>21</sup> in all spheres of life, including in prisons.

A typical example of such a societal attitude is when, in some countries, women who report violence to the police are often returned home without any action, because domestic violence is regarded as a family problem by society, including law enforcement officials. Where an investigation does take place States often fail to provide justice to victims, due to ineffective and unfair investigation mechanisms and deeply engrained attitudes that regard domestic violence as a private matter. Often victims are re-victimised, by the nature and methods of investigations.

In a society where such attitudes and prejudices exist, where perpetrators routinely avoid being held accountable for their acts, and where this is regarded as normal, in places of deprivation of liberty, where

the vulnerability of women is all the more acute and even minimal social controls absent, women are at heightened risk of ill-treatment and torture, including specifically gender-based violence.

#### b. Legislative context

A range of laws, including those not directly related to detention, have a significant impact on the risks women face. These may include: criminal and criminal procedure laws which discriminate against women<sup>22</sup> or which do not allow courts to take into account women's background and circumstances sufficiently in deciding pre-trial detention or sentences;<sup>23</sup> anti-human trafficking laws, which do not provide sufficient protection for victims and even require their prosecution and imprisonment, leading to secondary victimisation; legislation and rules governing prisons, which do not provide for the gender specific needs of women; laws on illegal migrants or asylum seekers, which pave the way to the routine detention of such people, and which do not take into account women's special needs and safety requirements; and laws and rules relating to confinement in psychiatric institutions and their management, which may not take into account women's particular vulnerability and needs.

Although changing legislation alone will not be sufficient to safeguard women against torture and ill-treatment, legislation is a key starting point. Changing attitudes, prejudices and discriminatory laws in society entails a long-term process. It needs coordinated efforts by civil society to lobby for change, including for legislative reforms, conducting public awareness campaigns and systematically reporting on the discrimination and violence experienced by women, including women in detention, and the harmful long-term consequences for the women themselves, their families and the community.

Monitoring bodies can, within the framework of a holistic approach to their work, and depending on their capacity and resources, have a key role to play in all of these activities. Their access to women deprived of their liberty and the information they can

<sup>21</sup> A/HRC/7/3, 15 January 2008, para. 29

<sup>22</sup> An extreme example of the way in which laws can impact on the risks women face is, where, in some countries, certain interpretations of religious laws are adhered to, and where the definition of rape is not clear in legislation, women who have been raped may be imprisoned for having had sexual intercourse outside marriage (referred to as *zina*). See, for example, UNODC, Afghanistan, Female Prisoners and their Social Reintegration, Atabay, T., 2007, p. 21

<sup>23</sup> See Bangkok Rules, Rules 57, 58, 60, 61, 62, 64 and 65.

gather on the impact of such laws on some of these women puts them in a unique position to develop recommendations to their governments, deriving from real experiences, to reform their laws in order to reduce the risks women face.

## 2. Certain times that heighten risk

### a. Police custody and pre-trial detention

All detainees are at heightened risk of torture or ill-treatment during the first period after arrest. This is the time when detainees are more likely to be coerced and pressurised to confess to criminal acts or provide information about such acts and persons. Women are vulnerable to sexual abuse and other forms of violence during this period, as has been documented on numerous occasions, including by SPT.<sup>24</sup>

In some societies where the role of women in public life and contact with men other than their family members are limited due to laws and attitudes that discriminate against women, the interrogation by men is likely to intimidate women and make them feel extremely vulnerable. This also contains a threat of sexual abuse, whether or not such a threat is realised. Women are also usually much more vulnerable than male detainees during this time, because the majority of women who confront the criminal justice system in countries worldwide have a lower educational and economic status than men (often dependent on their spouses) and are less aware of their legal rights. There are numerous reports of illiterate and poor women signing statements the contents of which they do not understand, while they are held by the police, due to abuse, coercion or fear of abuse.

The same risks faced in police custody continue in pre-trial detention, especially in systems where the authority responsible for pre-trial detention is not separate from the authority which is responsible for law enforcement. (e.g. the Ministry of Interior, which is responsible for security and the police service, rather than a Ministry of Justice with a civil status and culture).

In addition to considerations relating directly to the risk or fear of torture and ill-treatment, it is important also to note that the impact of being held in pre-trial detention, even for short periods, can be severe if the women suspects have dependent children, and in particular if they are the sole carers of the children. Even a mother's short period in prison may have

damaging, long-term consequences for the children concerned, causing immense worry to the mother at this time.

Monitoring bodies, taking the Bangkok Rules as a reference point,<sup>25</sup> can assess whether any or all of the following measures to safeguard women against ill-treatment and torture in police custody and pre-trial detention are in place, and make recommendations to improve such safeguards where they are insufficient: medical examinations by an independent healthcare professional on admission and on release or transfer to another facility; prompt access to legal counsel; prompt access to families; supervision by female staff and strict separation from male detainees; the existence of an independent, effective complaints mechanism and the regular monitoring of pre-trial detention facilities by monitoring bodies, which include women members.<sup>26</sup>

An important systemic safeguard, which would not only protect women from facing the risks in detention but also reduce the harm done by the detention, also taking into account the best interests of any children concerned, would be to use pre-trial detention only when strictly necessary for women, in line with the provisions of the Bangkok Rules, Rule 58, which requires that "...diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible." This is one example where the recommendations of monitoring bodies can go beyond the narrow focus of prisons to encompass legislation and practice in relation to the use of pre-trial detention by judicial authorities.

### b. Transit

Detainees are at particular risk of ill-treatment and torture during transit between different institutions by law enforcement officials, since this is a time when there are usually very little, if any, safeguards against abuse and prisoners are totally unprotected. Women prisoners are at heightened risk of sexual abuse during this period.<sup>27</sup>

Monitoring bodies should check whether measures are in place to protect women against torture and ill-treatment during transit. Such measures may include ensuring that female staff are responsible for the transport of women deprived of their liberty, or that at least women staff are also present during transport; the installation of CCTV cameras in vehicles used for transport, with a careful supervision of the use of such cameras and ensuring that independent and accessible complaints procedures are in place.

<sup>24</sup> See for example, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras, CAT/OP/HND/1, 10 February 2010, para 55; Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil, CAT/OP/BRA/1, 5 July 2012, para. 80

<sup>25</sup> Bangkok Rules, Rule 56

<sup>26</sup> Bangkok Rules, Rule 25 (3)

<sup>27</sup> See for example, Amnesty International, Mexico: Violence against women and justice denied in Mexico State, October 2006, Ref. AMR 41/028/2006, pp. 6-7

In all cases the training of staff on the prohibition of torture and ill-treatment, conducting independent investigations of complaints and bringing perpetrators to justice when ill-treatment occurs, are fundamental to the protection of all persons deprived of their liberty against torture and ill-treatment, including women. Monitoring bodies are advised therefore to look into the issue of staff training in institutions where women are held, using the Bangkok Rules<sup>28</sup> as a benchmark to assess the shortcomings and develop recommendations.

### 3. Certain policies and practices that heighten risk or cause physical or mental suffering

#### a. Inadequate safeguards and assessments on admission

Detainees' prompt access to family members and lawyers, following arrest, has long been recognised as one of the key safeguards against torture and ill-treatment. All prisoners are entitled to inform, or have informed, members of their family or other appropriate person of their choice of their imprisonment, promptly after arrest.<sup>29</sup> Experience worldwide has shown that women are especially vulnerable at the time of their admission to prison. Many women who come in confrontation with the criminal justice system are uneducated or illiterate and unaware of their rights. In many countries, being detained or imprisoned will entail a particular stigma in the case of women, which will add to their distress. Most women who are admitted to prison are mothers, and the separation from their children and their families can have a severely negative impact on their mental wellbeing.

Monitoring bodies need to pay special attention to the admission procedures of women prisoners and assess what assistance women are given at this time, with reference to the Bangkok Rules, which require prison authorities to provide them 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."<sup>30</sup>

Monitoring bodies should also take into account that the time of admission is the point when prisoners' risks and needs should be determined via individual assessments and check whether a gender sensitive risks assessment is carried out in the case of women being admitted to prisons, with reference to the provisions of the Bangkok Rules,<sup>31</sup> in order to ensure that their individual, gender-specific needs are provided for during their detention, thereby reducing the potential damage of imprisonment on their mental wellbeing and promoting their social reintegration.

#### b. The nature and scope of medical examinations

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

Monitoring bodies should find out whether the medical examination of women on admission to prison include an examination of any sexual abuse and other forms of violence that may have occurred prior to admission, as required by the Bangkok Rules.<sup>32</sup> They should check whether a female doctor is made available to conduct such examinations, especially if this is specifically requested by the woman prisoner,<sup>33</sup> and where this is not possible, whether a female chaperone is used, if the detainee so requests.<sup>34</sup>

The Bangkok Rules, Rule 7 sets out the prison authorities' responsibilities in cases when the medical examination reveals that a woman prisoner has been subjected to ill-treatment or torture, including sexual abuse or rape, during previous custody.<sup>35</sup> Monitoring groups should examine whether the provisions of this rule are reflected in the legislation governing prisons, whether they are included in staff training and assess whether they are implemented in practice.

<sup>28</sup> Bangkok Rules, Rules 29 to 35

<sup>29</sup> Body of Principles, Principle 16 (1).

<sup>30</sup> Bangkok Rules, Rule 2

<sup>31</sup> Bangkok Rules, Rules 40 and 41

<sup>32</sup> Bangkok Rules, Rule 6 (e)

<sup>33</sup> Bangkok Rules, Rule 10 (2)

<sup>34</sup> Bangkok Rules, Rule 10 (2)

<sup>35</sup> See, PRI, Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 2013, page 44.



Medical examinations on admission are also crucial to assess women's gender specific healthcare needs and to develop healthcare programmes based on individual requirements in order to ensure that women's physical and mental health is protected and promoted during their period of detention. Therefore it is also important for monitoring bodies to examine policies and practices relating to healthcare screening on admission, in particular whether they include a determination of women's gender specific healthcare needs, with reference to the Bangkok Rules<sup>36</sup> and to develop recommendations to improve the scope and quality of such assessments, as necessary.

Medical examinations on admission to prison to detect any signs of sexual abuse or to determine sexual and reproductive healthcare needs should never be confused with virginity tests undertaken in some countries for entirely different purposes. Virginity tests represent a gross form of discrimination against women and are considered to be a form of custodial violence against women.<sup>37</sup> They should be explicitly prohibited.

Where such a practice may exist, monitoring groups should include an examination of legislation and practice relating to virginity tests in their preventive activities and recommend their prohibition in law and practice, where such tests are carried out.

In December 2011 a court in Cairo ordered forced virginity tests on female detainees in military prisons to be stopped. The court made the decision after a case was brought by a protester arrested during a protest in Tahrir Square. Human rights organisations had said the Egyptian military has used the practice widely as a punishment.<sup>38</sup>

### c. Not separating male and female prisoners

The Standard Minimum Rules for the Treatment of Prisoners (SMR) are 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.<sup>39</sup> In order to protect young girls in prison from sexual and other forms of abuse from older prisoners, juvenile female prisoners should be separated from adult women.<sup>40</sup>

In some countries there has been a move towards limited contact between men and women prisoners, following careful selection and subject to close supervision. 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.<sup>41</sup>

The examples below from SPT country visit reports demonstrate the different ways in which this requirement may not be applied and how prison staff may turn a blind eye to or be complicit in the sexual abuse of women prisoners.

"The Subcommittee observed that men and women in San Pedro Sula Prison were not held separately, women being a small minority. It noted the easy relations between men and women prisoners, and the presence of men in the women's cells. The Subcommittee had clear indications, on the basis of accounts corroborated by its own observations, that some women prisoners were working as prostitutes in the two prisons visited. .... The women's coordinator commented that the female prisoners did not wish to be separated from the male prisoners because they made a living from the products they sold during visits to male prisoners. When questioned by the Subcommittee, the coordinator said that the women are not sexually harassed by the men, since the general coordinator maintains order. The Subcommittee noticed that some of the women prisoners had been instructed in how to reply, and noted their apprehensiveness regarding certain subjects."<sup>42</sup>

"..... the women's quarters were separated from the men in that one had to go through a closed metal door to enter the women's quarters. The door was guarded by a male detainee guard in a green uniform. In practice, the delegation observed that on a number of occasions the male detainee guard and other men (including the chef de brigade) entered the women's quarters with no warning."<sup>43</sup>

<sup>36</sup> Bangkok Rules, Rule 6

<sup>37</sup> Human Rights Council, Seventh Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008, para. 34

<sup>38</sup> Egypt court stops virginity tests in military prisons, <http://www.bbc.co.uk/news/world-middle-east-16339398>

<sup>39</sup> SMR, Rule 8 (a)

<sup>40</sup> SMR, Rule 8 (d)

<sup>41</sup> The CPT Standards (2006), Extract from the 10th General Report [C\$PT/Inf (2000) 13], para. 24.

<sup>42</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras, CAT/OP/HND/1, 10 February 2010, para 259

<sup>43</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or degrading Treatment or Punishment to Benin CAT/OP/BEN/1, 15 March 2011, para 185

Monitoring bodies should therefore not only check whether women are being held separately from men, but whether this separation is enforced in practice. They should also assess the possibility of whether staff, including women staff, may be complicit in allowing or even facilitating interaction between women and men, without any safeguards, such as those referred to earlier.

#### d. Supervision by male staff / mixed gender staffing

Women are at risk of sexual abuse, if male staff are involved in their supervision, and especially if male staff are allowed to work in contact positions with female prisoners. Such actions may include, at best, spying on women when they are in their private accommodation areas, in showers and toilets, entering accommodation areas of women when they are in a state of undress, at worst, demanding sex in exchange for services and goods and rape as a matter of routine. Women who complain of abuse often receive no response from authorities and experience retaliation from male staff. Recognizing the vulnerability of women to sexual abuse, SMR prohibit any involvement of male staff in the supervision of women's prisons.<sup>44</sup>

However, this rule is not applied in many countries, sometimes due to a shortage of female prison staff, in other cases because of concerns for equal employment opportunities and in some because mixed gender staffing is regarded as a practice which can normalise prison life. In a small number of countries mixed gender staffing in women's prisons has been proven to bring "normalising" benefits. But the success of such an approach relies heavily on a sufficient number of staff with adequate training, the strict enforcement of safeguards, the effectiveness of confidential complaints' mechanisms and the existence of independent inspections. In societies where the "normal" is not what is desirable (e.g. where a culture of gender based discrimination and violence is prevalent), in systems where human rights violations in prisons are widespread and where human and financial resource restrictions hinder the adequate training of staff, the risks of such a policy are very high, with possible devastating consequences for the prisoners. For example, sexual abuse, including rape, by male staff in prisons in the U.S., where a mixed gender staffing policy is

implemented, has been documented and reported on numerous occasions.<sup>45</sup>

SMR are very clear on this issue, and the Bangkok Rules, which supplement the SMR, have not introduced any new provisions in relation to the gender of staff allowed to work in women's prisons. Monitoring bodies should be aware of this and use these rules as a reference point in their assessment of risk factors and recommendations. But if male staff are, nevertheless, allowed to work in women's prisons, contrary to the provisions of SMR and the Bangkok Rules and to recommendations by monitoring bodies, such bodies should check whether male staff are ever employed in positions responsible for the direct supervision of prisoners, whether they are allowed access to private areas, such as dormitories and sanitary areas or placed in a position where they can observe these areas, and make recommendations, at the very least, to bring such practices to an end, where they exist. They should also be aware that female staff do also abuse women prisoners, thus policies to protect women prisoners from violence are necessary also in prisons where women staff are responsible for the supervision of prisoners.

Monitoring bodies should also pay special attention to the recruitment and training of all staff who work in women's prisons, with reference to the Bangkok Rules<sup>46</sup> and women's access to independent and confidential complaints' mechanisms.<sup>47</sup> They should also try to assess whether women prisoners who report abuse are provided with protection, support and counselling, as required by the Bangkok Rules, while their claims are investigated by independent authorities.<sup>48</sup> Such examination should include the legislative framework governing prisons, as well as practice, where possible.

#### e. Searching policies and practices

Personal searches is a highly sensitive issue for all prisoners, but especially women because of their typical background, which may involve having been subjected to sexual violence. In all societies, but especially in societies where women have a subordinate role to men and where their sexuality is repressed or denied, being searched can be extremely humiliating and even traumatising if undertaken by the opposite sex.

44 SMR, Rule 53

45 'See for example, "Frequent and severe' sexual violence alleged at women's prison in Alabama", by Elizabeth Chuck, 23 May 2012 [http://usnews.nbcnews.com/\\_news/2012/05/23/11830574-frequent-and-severe-sexual-violence-alleged-at-womens-prison-in-alabama?lite](http://usnews.nbcnews.com/_news/2012/05/23/11830574-frequent-and-severe-sexual-violence-alleged-at-womens-prison-in-alabama?lite); "Sentenced to Rape—Behind Bars in America", by Ayalet Waldman and Robin Levi, November 10, 2011, based on their book *Inside This Place, Not of It: Narratives from Women's Prisons (Voice of Witness)*, 2011. <http://www.thedailybeast.com/articles/2011/11/10/sentenced-to-rape-behind-bars-in-america.html>; All too Familiar, Sexual Abuse of Women in U.S. State Prisons, Human Rights Watch (1996); Kim Shayo Buchanan, *Impunity: Sexual Abuse in Women's Prisons*, Harvard Civil Rights-Civil Liberties Law Review [Vol. 42], pp. 45-87

46 Bangkok Rules, Rules 29 to 35

47 SMR, Rule 36

48 Bangkok Rules, Rule 25 (1) and (2)

In some systems where male guards are responsible for supervising women or where a mixed gender staffing policy is implemented, women detainees may be searched by male staff. This may include pat-down searches or frisk searches, where the staff may use the opportunity to grope or touch women inappropriately and to sexually humiliate them. It may also extend to strip searches and invasive (or intimate) body searches.<sup>49</sup> In some countries women are subjected to strip searches on a routine basis in the presence of male staff, and may be humiliated during the process.

Even where only women staff are involved in the process, strip searches and invasive body searches can cause immense humiliation for the women being searched, if they are conducted arbitrarily and on a routine basis, and if the dignity and privacy of women being searched are not respected.

It is very important for monitoring bodies to check whether the provisions of the Bangkok Rules relating to this highly sensitive issue are applied in women's prisons. The Bangkok Rules, Rule 19 requires prison authorities to take effective measures to ensure that women prisoners' dignity and respect are protected during personal searches. The rule provides that searches of women are carried out only by "women staff who have been properly trained in appropriate searching methods and in accordance with established procedures."

Monitoring groups should also take into account that invasive body searches should either not be carried out at all or conducted only in exceptional circumstances prescribed by law, after all other means of investigation have been employed. Medical personnel are often requested to carry out such searches. Normally, healthcare personnel should not be involved in the search of prisoners, as searches are part of a prisons security procedures and physicians' responsibility to protect and promote the health of their patients may be compromised by their

involvement in such an act.<sup>50</sup> However, in exceptional cases, and especially when requested by the prisoner concerned, physicians' participation in invasive body searches may be justified, to prevent any harm to the prisoner during the search. In such cases the search may be carried out by a medical specialist other than the prison doctor, in line with the World Medical Association's Statement on Body Searches of Prisoners,<sup>51</sup> in order to protect the woman from any harm, while also not compromising the prison doctor's position of trust with the prisoner, given that the search is essentially a security issue, rather than a medical intervention.<sup>52</sup> The physician carrying out such a search should explain to the prisoner that the usual conditions of medical confidentiality do not apply and that the results of the search will be revealed to the authorities.

Alternatively, body cavity searches may be conducted by medically trained staff of the same gender that are not part of the regular health-care service of the prison or by prison staff with sufficient medical knowledge and skills to safely perform the search.<sup>53</sup>

Monitoring bodies should also ascertain whether every strip and invasive body search is recorded, with the reasons, outcomes and authorisation for the search.

The Bangkok Rules, Rule 20, urges the development of alternative screening methods, such as scans, to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches—a rule which monitoring groups should use as a reference point in their fact finding and recommendations.

## **f. Solitary confinement / disciplinary segregation**

It has been documented on numerous occasions that solitary confinement can have extremely harmful psychological, and sometimes physiological, ill

49 A strip search refers to the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas. Invasive body searches involve a physical inspection of the detainee's genital or anal regions.

50 See The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by General Assembly resolution 37/194 of 18 December 1982, Principle 3.

51 In line with the Statement on Body Searches of Prisoners, World Medical Association (Adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993 and editorially revised at the 170th Council Session, Divonne-les-Bains, France, May 2005. (<http://www.wma.net/en/30publications/10policies/b5/>), which states:

[...]. 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. [...]

52 See Statement on Body Searches of Prisoners, World Medical Association, adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993 and editorially revised at the 170th Council Session, Divonne-les-Bains, France, May 2005. (<http://www.wma.net/en/30publications/10policies/b5/>)

53 Ibid.

effects.<sup>54</sup> The Istanbul Statement recommends that “[t]he use of solitary confinement in prisons should therefore be kept to a minimum”<sup>55</sup> and absolutely prohibited for mentally ill prisoners, among others.<sup>56</sup> The Basic Principles for the Treatment of Prisoners encourages efforts to abolish solitary confinement as punishment, or to restrict its use.<sup>57</sup> The Committee against Torture has recognized the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventive measure during pre-trial detention, as well as a disciplinary measure.<sup>58</sup> More recently the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Special Rapporteur on Torture have raised similar concerns.<sup>59</sup> The Special Rapporteur has set out in detail the situations in which solitary confinement may amount to torture or cruel, inhuman or degrading punishment, including “when used as a punishment, during pretrial detention, indefinitely or for a prolonged period, for juveniles or persons with mental disabilities”.<sup>60</sup>

Women are at particular risk of having existing mental healthcare needs on admission to prison or developing mental health disorders in prison. Therefore they constitute a high risk group in terms of their susceptibility to the harmful psychological effects of solitary confinement, as one example below, of a highly publicised case in Canada, demonstrates.

In 2007 a 19-year-old woman prisoner with a mental disability committed suicide in Ontario, Canada while her guards stood outside her segregation cell door, watching and videotaping her. The guards had been instructed not to intervene after previous attempts at self-harm. She had spent her final year in solitary confinement, had been transferred 17 times among nine different prisons in five provinces with little treatment for her mental illness. A coroner’s inquest was on-going at the time of writing.<sup>61</sup>

In the case of women who are pregnant, breastfeeding mothers or women who have children with them in prison, solitary confinement harms not only the women’s mental wellbeing, but also that of their children, penalising the children as well, with possibly long-term harmful ill-effects. The health of pregnant women and women who have recently given birth can also be compromised. Taking into account these risk factors, monitoring groups should assess whether punishment by disciplinary segregation is used in the case of pregnant women, women with infants and breastfeeding mothers in prison, and develop recommendations to bring an end to such practices, with reference to the Bangkok Rules, Rule 22, which prohibits the use of solitary confinement as punishment for these categories of women. They should also bear in mind that a measure that is prohibited as punishment is all the more unacceptable when applied in situations where no disciplinary offence has occurred and formulate their recommendations on that basis.

Going further, and with reference to the Istanbul Statement and other international jurisprudence referred to above, they should also determine whether solitary confinement is used in the case of women with mental healthcare needs and a history of self-harm and suicide attempts, and recommend the prohibition of this practice in the case of these categories of women. (See also Section 4 (c)).

## g. The inappropriate and unjustified use of restraints

The use of mechanical restraints on prisoners is another highly sensitive issue. Being restrained is humiliating to all prisoners and if restraints are used unjustifiably and for prolonged periods the requirement to treat prisoners with dignity is violated.<sup>62</sup> The SMR place strict restrictions on the use of body restraints on prisoners.<sup>63</sup> Nevertheless, in some countries body restraints, such as shackles, are used on pregnant women during transfers to hospitals, gynaecological examinations and birth,<sup>64</sup>

54 Istanbul Statement on the Use and Effects of Solitary Confinement, Adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul, Annexed to the Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175, 28 July 2008, p. 23

55 Ibid., p. 24

56 Ibid., p. 25

57 The Basic Principles for the Treatment of Prisoners, Principle 7

58 UN Doc/ A/63/175, 28 July 2008, para. 80. See also UN Doc/A/66/2685, August 2011, interim report prepared by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, p. 2

59 21st General Report of the CPT, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1 August 2010 – 31 July 2011 (<http://www.cpt.coe.int/en/annual/rep-21.pdf>); Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2011, A/66/268, (<http://www.un.org/Docs/journal/asp/ws.asp?m=A/66/268>)

60 Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2011, A/66/268, para. 81

61 See, “Our prison system was not designed for women”, by Dawn Moore, Associate Professor in the Carleton University Department of Law. The Ottawa Citizen October 20, 2012 <http://www2.canada.com/ottawacitizen/news/archives/story.html?id=5daf68b9-4ba7-4090-8d78-cf191c6d362d&p=3> and <http://www.cp24.com/news/key-recommendations-from-the-jury-at-the-ashley-smith-inquest-1.1600932>

62 As required by ICCPR, Article 10

63 SMR, Rules 33 and 34



despite pronouncements by medical specialists against the use of shackling during labour and childbirth.<sup>65</sup> CPT has stated that “[...] from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found.”<sup>66</sup>

Monitoring groups should ensure that their fact finding activities include an examination of the use of restraints on women, in particular on women who are in labour, who are giving birth and who have just given birth, with reference to the Bangkok Rules, which explicitly prohibit the use of instruments of restraint on these categories of women.<sup>67</sup>

## **h. Inadequate provision for gender specific hygiene, sexual and reproductive healthcare**

Poor conditions and services, exacerbated by overcrowding in many prisons, have a serious impact on the mental and physical wellbeing of all prisoners, including women. As this paper focuses only on those needs that are unique to women or which women experience much more acutely than men, two particular issues deserve being singled out. These are women's gender specific hygiene and healthcare requirements.

Women need to have regular access to water, especially in the case of women who are menstruating, who are going through menopause, who are pregnant or who have children with them in prison. Women also need to have ready access to sanitary towels/pads, free-of-charge, and without being embarrassed to have to ask for them.<sup>68</sup> CPT considers that the failure to provide basic necessities, such as sanitary pads, can amount to degrading treatment.<sup>69</sup>

Particularly in resource poor countries the special hygiene requirements of women and any children with them in prison can be severely compromised. They may also be discriminated against, as in the examples from Benin, referred to in an SPT country visit report:

“The delegation observed a woman in police custody with her 8 month old naked baby... The cell smelt overpoweringly of urine and faeces. The woman explained that there was no bucket for sanitation in the cell, as the police indicated that they would allow the woman out to use the toilet; however, she had called in vain at night and the baby had defecated in the corner of the cell. The woman had no means of cleaning the cell. Flies buzzed in the cell and the baby had several mosquito bites. In the morning the staff had come and taken her to the toilet near the cell. The delegation also observed a second cell (5m x 4.4m with a height of 2.7m) in which five men were detained. This cell had access to running water as well as a separate area with a toilet and a shower.”<sup>70</sup>

“In [the] prison....there were four buildings in which detainees slept, but approximately 60 women, including babies and young children and all the female adolescent detainees, slept outside for lack of space. ....The conditions outside were extremely harsh and unhygienic, particularly for those women with young babies or for pregnant women.”<sup>71</sup>

Monitoring groups should always check whether women's special hygiene requirements are being provided for and whether the accommodation of pregnant women, breastfeeding mothers and women with dependent children take into account their and their children's special hygiene needs. Monitoring groups can go further and, using the Bangkok Rules as a reference point, encourage the use of alternatives to imprisonment in the case of such categories of women, in order to protect the women from conditions which, in some countries, amount to inhuman and degrading treatment and taking into

64 For example, in the U.S. since 2000, while 14 states have banned shackling women prisoners while they are in labour, efforts to halt the practice elsewhere are opposed by jail administrators. (see: <http://www.thecrimereport.org/archive/2011-08-chained-and-pregnant> and <http://ipsnews.net/news.asp?idnews=106119>); see also “Va. House subcommittee rejects bill to restrict use of restraints on pregnant prison inmates”, By Associated Press, Published: February 9, <http://aponline.org/page/10/>

65 For example, the American College of Obstetricians and Gynecologists and the American Public Health Association have condemned the practice of shackling, recognising that it compromises women's health and causes severe pain and trauma. The Center for Reproductive Rights points out that unrestrained movement is critical during labour, delivery, and the post-delivery recovery period. (See Shackling of pregnant women and girls in correctional systems, NCCD Center for Girls and Young Women, ([http://www.nccdglobal.org/sites/default/files/publication\\_pdf/shackling.pdf](http://www.nccdglobal.org/sites/default/files/publication_pdf/shackling.pdf)). Amnesty International has reported the concerns expressed by an obstetrician and gynecologist at Northwestern University's Prentice Women's Hospital; in “*Not part of my sentence: Violations of the Human Rights of Women in Custody*,” AI Index: AMR 51/01/99, Amnesty International, March 1999.)

66 The European Committee for the Prevention of Torture and Inhuman or Degrading Punishment, The CPT Standards, CPT/Inf/E (2002) 1–Rev. 2006, Extract from the 10th General Report [CPT/Inf (2000) 13], para. 27.

67 Bangkok Rules, Rule 24

68 Bangkok Rules, Rule 5

69 CPT Standards, 2006 Edition, Extract from the 10th General Report, CPT/Inf (2000) 13, para. 31.

70 Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or degrading Treatment or Punishment to Benin CAT/OP/BEN/1, 15 March 2011, para 114

71 Ibid. para. 185

account the best interests of the children, as required by the Bangkok Rules and CRC.<sup>72</sup>

Women's gender specific health rights, including specifically their reproductive and sexual health rights, are very often violated in prisons. These may include women's lack of access to preventive healthcare services focusing on gender specific healthcare needs (e.g. cervical and breast cancer screening), as well as services to treat sexually transmitted infections (STI), including voluntary testing, treatment and care for HIV/AIDS to which women are particularly vulnerable,<sup>73</sup> and despite the reality that women in prison comprise a high risk group for having acquired STI, due to their typical background, which may include experience of sexual violence, sex work and drug use. Pre- and post-natal care and healthcare services during delivery are also usually extremely inadequate.

It is also important to note that medical examinations themselves can be experienced as inhuman and degrading in certain circumstances, for example, when a woman requests to be examined and treated by female healthcare specialists and her wishes are not granted for unjustifiable reasons. Women prisoners' right to medical privacy and dignity during examinations may also be denied with the presence of security staff (sometimes male) during intimate examinations. For women who have been victims of gender based violence such practices can cause immense distress and humiliation.

Monitoring bodies should assess whether gender-specific healthcare services, at least equivalent to those available in the community, are being provided to women prisoners, in line with the requirements of the Bangkok Rules.<sup>74</sup> They should also check if when a woman requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse is made available, to the extent possible, except for situations requiring urgent medical intervention, and where a male medical practitioner undertakes the examination, a woman staff member is present during the examination.<sup>75</sup> Monitoring groups should also determine whether Rule 11 of the Bangkok Rules is being applied. This rule prohibits the presence of non-medical staff during medical examinations, but provide that, if exceptionally it is necessary for non-medical staff to be present, for justified security reasons or because

the woman requests a female chaperone, "such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality."<sup>76</sup>

## **i. Inadequate provision for family contact**

A key problem many women prisoners face is that the location of their place of detention is often far away from their homes, due to the small number of women prisoners and the corresponding small number of women's prisons. This means that their families face challenges in maintaining contact with them. The disruption of links with their communities, families and especially their children can cause immense worry and distress to the women, many of whom are the primary carers of their children. In some countries where prisoners' access to food is inadequate and where prisoners rely on their families for food, women prisoners can be severely disadvantaged. In addition, where conjugal visits are allowed, women prisoners usually do not enjoy the same rights as those of men. This is one of those areas where women prisoners are discriminated against in most prison systems, with very adverse consequences on the mental wellbeing of women prisoners. This disadvantage may be exacerbated in systems where disciplinary punishments include the reduction or prohibition of family contact.

The Bangkok Rules place responsibility on the authorities to make special efforts to accommodate women close to their places of residence or the place where they would like to be eventually released.<sup>77</sup> They also require prison authorities to make a special effort to facilitate links between women prisoners and their families, and to ensure that women have the same right to conjugal visits as men.<sup>78</sup> Monitoring groups should assess whether such an effort is being made by the prison authorities in their countries and develop recommendations to ensure that women are accommodated closer to their homes, in line with the Bangkok Rules. They should also check whether, in cases where this cannot be done, prison authorities have introduced any measures which compensate for the disadvantages faced by women and make recommendations, where such measures have not been introduced. For example authorities may assist with transportation; if prisoners have access to telephones, they may increase the telephone calls

<sup>72</sup> Bangkok Rules, Rule 64

<sup>73</sup> 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 (STI) can greatly increase the risk of contracting HIV. (Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 3. [http://www.unodc.org/documents/hiv-aids/Women\\_in\\_prisons.pdf](http://www.unodc.org/documents/hiv-aids/Women_in_prisons.pdf))

<sup>74</sup> Bangkok Rules, Rule 10 (1)

<sup>75</sup> Bangkok Rules, Rule 10 (2)

<sup>76</sup> Bangkok Rules, Rule 11

<sup>77</sup> Bangkok Rules, Rule 4

<sup>78</sup> Bangkok Rules, Rules 26–28

female prisoners are allowed to make to their families and they may allow the extension of the length of visits, among other measures.<sup>79</sup>

Monitoring groups should also determine whether disciplinary sanctions include prohibition of family contact and with reference to the Bangkok Rules<sup>80</sup> develop recommendations to bring an end to this measure in legislation and practice.

#### **j. Inappropriate decisions to separate dependent children from their mothers in prison**

Dependent children are allowed to stay with their mothers until a certain age determined by law in most countries, though the age at which they must be removed from prison varies. The removal of dependent children from prison, without a proper assessment of the best interests of the children concerned and of alternative care arrangements outside prison, can have grave consequences both for the mother and the child, causing immense suffering and worry to the mother and probable long-term emotional, developmental and possibly physical harm to the child. The Bangkok Rules, for the first time, introduced international standards with respect to the decision-making process on removing children from prison, in addition to rules, which relate to the treatment of such children in prison. They require that decisions are made to remove children from prison on a case-by-case basis, based on individual assessments, always taking into account the best interests of the children concerned and never without having ensured that satisfactory care arrangements have been made outside prison.<sup>81</sup> The SPT has, for example, raised concerns about non-compliance with this rule in its report on Brazil:

“The SPT was concerned by allegations received that mothers with children in prison were deprived of their right to keep custody of their child after the age of two, who in some cases had been put up for adoption.

“The SPT recommend that decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children, and be based on careful individual assessment.\* The SPT further requests the State party to

provide clarification on the practice of placing children for adoption, and on the application of child custody legislation in these situations.”<sup>82</sup>

*\*Bangkok Rules, rules 49 and 52.*

Monitoring groups should include an examination of the laws and practices relating to the permission for dependent children to stay with their mothers in prison and the removal of such children from prison in their countries, with reference to the Bangkok Rules, Rules 49 and 52, and make recommendations to revise legislation and change practice in line with the requirements of the Bangkok Rules, where necessary.

#### **k. Detention for protection**

In some countries women are detained in prisons for their own protection against gender based violence. These include women who have been raped and may be in danger of harm by the perpetrator or his relatives in order not to testify, women who may have overstepped the strict norms required by custom, tradition or religion, putting them at risk of an “honour based killing”. In some countries prisons may be used to protect victims of trafficking.

In principle using prisons as a means of protection is not the right solution for these circumstances, penalising the victim or potential victim, and, in the absence of other measures to bring a long term solution to such practices, providing only a short-term response to the complex problem. In some countries women are held for prolonged periods for their protection, which, as such, can become ill-treatment, as noted by the Special Rapporteur on Torture, in the case of Jordan, for example, where women may be detained for up to 14 years because they are at risk of becoming victims of honour crimes.<sup>83</sup>

The best option for the protection of such women would be to place them, temporarily, in shelters or safe houses run by independent bodies or social welfare services, provided that the women expressly wish to be protected in this way.<sup>84</sup> Regrettably, the demand for safe houses is higher than the supply, which can mean that women may have to be placed in separate sections of detention facilities or prisons, on a temporary basis, to protect them.<sup>85</sup>

<sup>79</sup> See PRI, Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 2013, p71.

<sup>80</sup> Bangkok Rules, Rule 23

<sup>81</sup> Bangkok Rules, Rule 52

<sup>82</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil, CAT/OP/BRA/1, 5 July 2012, paras, 120, 121

<sup>83</sup> A/HRC/7/3, para. 43, with reference to the report of the Special Rapporteur to Jordan in June 2006, A/HRC/4/33/Add.3, paras. 39 and 72

<sup>84</sup> Bangkok Rules, Rule 59

<sup>85</sup> In Afghanistan, for example, the Law on Prisons and Detention Centres, includes an article which allows heads of detention centers, with permission of the ministry of justice and written request by the individual to provide temporary shelter and protection in detention centers and prisons to those who have been seriously threatened and their safety are at serious risk. (Article 53)

Recognising the reality of the need for such protection in some countries and the additional risks it may entail for such women, the Bangkok Rules provide that “..... 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.”<sup>86</sup> In the longer term, States have the responsibility to develop comprehensive, legal, political and administrative measures to protect women from violence and prevent the re-victimisation of women, in order for such extreme measures not to be necessary.<sup>87</sup>

In countries where such practices exist, monitoring bodies can be instrumental in identifying such women, especially those who have been detained for prolonged periods, examining their circumstances, and assisting with measures to enable their protection in other ways, by facilitating links between NGOs and women’s groups who run shelters, by developing recommendations to change specific laws which allow perpetrators to avoid justice, while their victims seek protection.

## 4. Certain categories of women who are at heightened risk

### a. Girls

Girls comprise one of the most vulnerable groups in detention, due to their age, gender and small numbers. Most prison systems around the world lack specific policies and programmes to accommodate for their unique needs, including their needs for protection. Where mixed gender staffing is used, serious abuse by male staff in juvenile girl prisons has been reported, demonstrating the extent of girl prisoners’ vulnerability.<sup>88</sup> Girls may also be abused by older women and female staff. The Bangkok Rules, Rule 36 puts explicit responsibility on prison authorities to “put in place measures to meet the protection needs of juvenile female prisoners.”

Monitoring groups should assess whether special measures are in place to protect girls from ill-treatment and torture, which include: ensuring that the accommodation of girls is strictly separated from boys and from adult male and female prisoners; that they are supervised by women staff who are carefully selected and who have received special training; that they are properly supervised, to prevent abuse by other prisoners or members of staff and have access to a confidential and independent complaints’ mechanism.<sup>89</sup>

### b. Victims of Human Trafficking and sex workers

In many countries victims of human trafficking are imprisoned, on charges of prostitution, illegal entry, illegal residence or work, despite international conventions which require States to protect and not to re-victimise victims of human trafficking.<sup>90</sup> Such women are particularly vulnerable in detention due to their background in sex work and prejudicial perceptions about their perceived promiscuity. Similar concerns apply to sex workers, for the same reasons. The vulnerability of victims of human trafficking is exacerbated by their foreign nationality and in many cases their lack of knowledge of the language of the country in which they are imprisoned. Their lack of social networks and inability to communicate further isolates them, makes it difficult for them to understand the internal rules and codes, whether formal or informal, of their place of detention and increases their vulnerability to coercion and abuse, including specifically sexual abuse.

The United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Human Trafficking provides for the non-criminalisation of trafficked persons.<sup>91</sup> UNHCR has underlined that “[t]he prevention of trafficking or re-trafficking cannot be used as a blanket ground for detention, unless it can be justified in the individual case ..... Alternatives to detention, including safe houses and other care arrangements, are sometimes necessary for such victims or potential victims, including in particular children.”<sup>92</sup>

<sup>86</sup> Bangkok Rules, Rule 59

<sup>87</sup> Declaration on the Elimination of Violence against Women, Article 4 (f)

<sup>88</sup> See for example, “Custody and Control, Conditions of Confinement in New York’s Juvenile Prisons for Girls,” Human Rights Watch, American Civil Liberties Union, September 2006

<sup>89</sup> See PRI, Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 2013, p96.

<sup>90</sup> UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: <http://www.unhcr.org/refworld/docid/4720706c0.html> [accessed 20 October 2012], Articles 6 – 8 and 9 (b)

<sup>91</sup> United Nations High Commissioner For Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1 (2002), Principle 7

<sup>92</sup> UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), Guideline 9.4, p. 38. <http://www.unhcr.org/505b10ee9.html>



If and when victims of human trafficking and sex workers are detained, for whatever reason, the detaining authorities need to take measures to protect them against ill-treatment and torture, including gender based violence. They should also ensure that those who do not speak the language most commonly spoken in the prison are provided with interpretation services on admission and when required during their detention, and ensure that they receive all information relating to the place of detention, rules and regulations, their rights and obligations and access to independent complaints' procedures in a language that they understand.

Monitoring bodies can play a key role in identifying such women at risk and taking action to ensure that their safety is protected, while at the same time recommending that their governments ratify the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime", and to put into practice its provisions, as required by the Bangkok Rules.<sup>93</sup>

### **c. Women with mental healthcare needs**

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.<sup>94</sup> Imprisonment generates new mental health problems or exacerbates existing ones, especially where women's gender specific needs are not met and links with their families are disrupted. In addition, it is not uncommon for women with mental disabilities to be housed in a higher security level than necessary, since their needs may be regarded

as risks, which can be extremely harmful to their mental wellbeing, worsening their condition. Women with mental disabilities are highly vulnerable to abuse, since they may not have the psychological makeup to protect or defend themselves, may not be able to determine when certain boundaries are being violated and their complaints may not be believed or taken seriously. Women in psychiatric institutions face similar risks.

Monitoring groups should check whether the provisions of the Bangkok Rules on mental health in women's prisons are being applied to ensure that the risks faced by women with mental healthcare needs are reduced and their mental wellbeing is protected. These include a thorough individual assessment of mental healthcare needs on admission to prison<sup>95</sup> and the provision of individualised, gender-sensitive mental health treatment for those in need.<sup>96</sup> Women who are diagnosed with mental healthcare needs should be housed in the least restrictive environment possible and should never be placed in solitary confinement.<sup>97</sup> During sentencing alternatives to detention should be preferred, wherever possible, for women with mental healthcare needs, enabling them to be treated in the community, rather than subjecting them to the harmful impact of imprisonment on mental health.<sup>98</sup>

### **d. Other groups that are at heightened risk**

Other women, who are particularly vulnerable to ill-treatment and torture, include women with disabilities, foreign national women, ethnic and racial minorities, indigenous peoples and lesbians.<sup>99</sup>

<sup>93</sup> The Bangkok Rules, Rule 66

<sup>94</sup> UNODC, Handbook for Prison Managers and Policymakers on Women and Imprisonment, p. 10

<sup>95</sup> Bangkok Rules, Rule 6

<sup>96</sup> Bangkok Rules, Rule 12

<sup>97</sup> Istanbul Protocol, op. cit. p.24

<sup>98</sup> Principles for the protection of persons with mental illness and the improvement of mental health care make clear that persons with mental disabilities should have the right to be treated and cared for, as far as possible, in the community in which they live. (Principles for the protection of persons with mental illness and the improvement of mental health care, Principle 7.1)

<sup>99</sup> For detailed guidance on the treatment of these groups in prison and alternatives to detention, see UNODC Handbook on Prisoners with Special Needs and UNODC Handbook for Prison Managers and Policymakers on Women and Imprisonment. (<http://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>; [http://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](http://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf))

## V What qualities do monitoring bodies need to engage in this issue?

Having the right composition, expertise and experience among members of monitoring groups is important to ensure that risks women face are identified in a gender-sensitive manner and solutions explored/ actions taken to reduce and eliminate such risks in an informed way.

The first important rule is that monitoring bodies should be composed in a gender-inclusive manner, meaning that their members should include women.<sup>100</sup> In addition, monitoring groups should include female doctors and psychologists. There should be at least some members who have experience of dealing with post-traumatic stress disorder and other trauma experienced by women who have experienced violence, including especially sexual violence. It is highly desirable that all members are trained to deal with sexual violence and other sensitive gender-specific issues. They need to be able to ask the right questions using gender-sensitive language.

All members should be fully aware of the provisions of key international instruments which aim to protect women from violence and discrimination and to ensure that women's gender specific needs are met in places of detention.

Monitoring groups should also include female members of those ethnic and racial minorities, indigenous peoples or foreign nationals which comprise a significant proportion of the women prison population in their countries. These groups of women face particular challenges and multiple vulnerabilities, which can be better understood and dealt with by members of their own groups. They should also include at least some members who have knowledge of child psychology, in order to ensure that interviews with girls are conducted in a child and gender sensitive manner and the responses and recommendations are professional.

### Recommended further reading:

This list includes only some key documents referred to in this paper and is not exhaustive.

PRI Guidance Document and Index of Implementation on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 2013.

<http://www.penalreform.org/resource/bangkok-rules-guidance-document-index-implementation>

UNODC Handbook for Prison Managers and Policymakers on Women and Imprisonment, Atabay, T., New York, 2nd edition, 2014

[http://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](http://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf)

Report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment of punishment, Manfred Nowak, 15 January 2008, A/HRC/73

International Centre for Prison Studies, "Penal Reform and Gender" in *Gender and Security Sector Reform Toolkit, Update on the Bangkok Rules*, Eds. Megan Bastick and Kristin Valasek, Geneva: DCAF, OSCE/ODIHR, UN-INSTRRAW, 2008, Update 2012.

AdvocAid, *United Nations Rules for the Treatment of Female Prisoners*, 2011. <http://www.advocaidsl.com/wp-content/uploads/2011/03/AdvocAid-Bangkok-Rules-training-booklet-Nov-11.pdf>

Penal Reform International, Submission to the UN Working Group on Discrimination against Women in Law and Practice, January 2012

United Nations Office on Drugs and Crime and World Health Organization, *Women's Health in Prison: Action Guidance and Checklists to Review Current Policies and Practices*, 2011, Brenda van den Bergh and Alex Gatherer, WHO Regional Office for Europe; Tomris Atabay and Fabienne Hariga, United Nations Office on Drugs and Crime [http://www.euro.who.int/\\_data/assets/pdf\\_file/0015/151053/e95760.pdf](http://www.euro.who.int/_data/assets/pdf_file/0015/151053/e95760.pdf)

A number of relevant publications by the Quaker United Nations Office Geneva (QUONO) can be accessed at:

<http://www.quno.org/areas-of-work/women-prison>

100 Bangkok Rules, Rule 25 (3)



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# Detention Monitoring Tool

Addressing risk factors  
to prevent torture  
and ill-treatment



## About this paper

This paper is part of PRI/APT's Detention Monitoring Tool, which aims to provide analysis and practical guidance to help monitoring bodies, including National Preventive Mechanisms, to fulfil their preventive mandate as effectively as possible when visiting police facilities or prisons.

The tool seeks to support such bodies in addressing systemic risk factors that contribute to an environment where torture or other ill-treatment occur. It includes:

**Thematic papers:** these analyse broader themes that will benefit from a comprehensive monitoring approach, examining regulations and practices throughout the criminal justice process with a systemic lens, such as gender, sexual orientation or institutional culture.

**Factsheets:** these provide practical guidance on how monitoring bodies can focus on a number of systemic issues that are particularly high risk factors for torture or ill-treatment, such as body searches or the working conditions of prison staff.

All resources in the pack can be found online at [www.penalreform.org](http://www.penalreform.org) and [www.appt.ch](http://www.appt.ch). Also available in Russian, Arabic, French and Spanish.

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ISBN 978-1-909521-03-2