

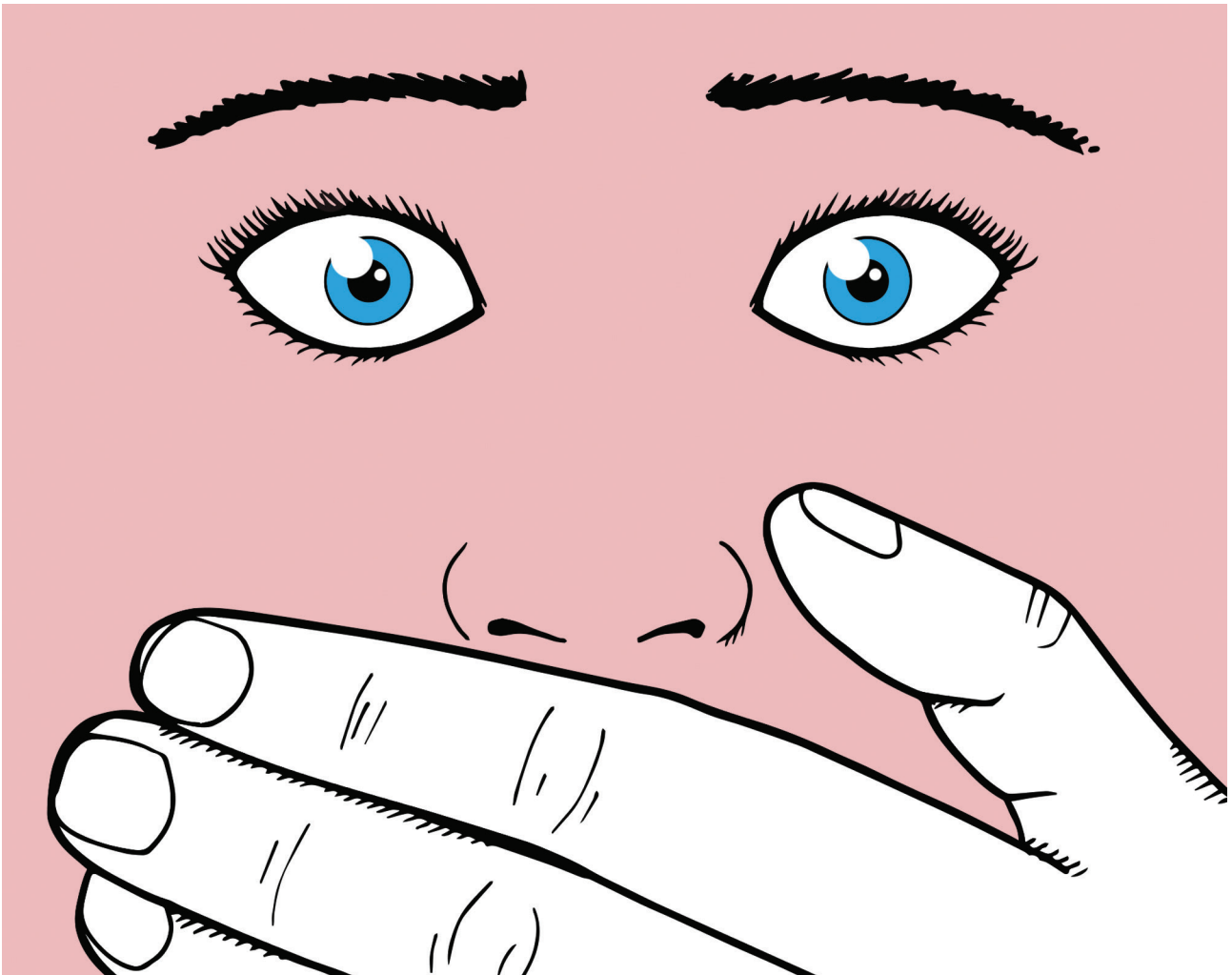


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Women in detention:

a guide to gender-sensitive monitoring



A Detention Monitoring Tool resource
Second edition

Incorporates the 2015 revised Standard Minimum Rules
for the Treatment of Prisoners (the Nelson Mandela Rules)

Women in detention: a guide to gender-sensitive monitoring

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

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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,¹ 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)² 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.³

It should be noted that the Bangkok Rules were negotiated and adopted in the context of criminal justice, which is also reflected in their title. However, paragraph 14 of the 'Introduction' to the Bangkok Rules states that 'Section I of the present rules [Rules 1-39]

(...) is applicable to all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners, as well as women subject to 'security measures' or corrective measures ordered by a judge.'⁴ Moreover, the adoption of the Rules provides an informative basis for gender-sensitive treatment of women in detention more broadly.⁴ For example, the UNHCR guidelines on standards relating to the detention of asylum-seekers refer to the provisions of the Bangkok Rules.⁵

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 prisons⁶ 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.....'⁷

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 context, taking into account that

1. See UN Committee Against Torture 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. The Subcommittee for the Prevention of Torture (SPT) has 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. It should also be noted that the Bangkok Rules do not address the specific risks faced by LGBTI persons in detention. Please see PRI/ APT, *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, second edition, 2015.

5. UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 9.3, p37. <http://www.unhcr.org/505b10ee9.html>

6. 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.

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

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.⁸

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.'⁹ The SPT recommends that this broad approach is also reflected in the work of National Preventive Mechanisms (NPMs).¹⁰

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.¹¹ 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.¹²

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.

8. See, for example, African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 1 (on Article 30 of the African Charter on the Rights and Welfare of the Child) on 'Children of incarcerated and imprisoned parents and primary caregivers', 2013.

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

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

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

12. *OPCAT Implementation Manual*, Revised edition, *op. cit.* p234.

Why should monitoring bodies look at this issue?

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.¹³

The SPT notes in its eight annual report in 2015 that 'gender-specific perspectives have not been adequately discussed, and the particular risks of ill-treatment and torture faced by women in detention have received limited attention'. Examples of situations of concern found during its visits include: 'the use of sexual violence as torture, including against transgender persons; lack of adequate attention to their right to health care, including sexual and reproductive health rights; the precarious situation of pregnant women and their children living with them; non-compliance with the rule of separation of women and men; shortage of women custody staff; the practice of invasive searches, including in intimate parts

of the body, and the use of public nudity; discrimination in access to work, education and recreational activities; limitations on contact with relatives, including visits by intimates and contact with their children, as a form of punishment'.¹⁴

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.¹⁵ Some examples of such an approach are provided in this paper.

¹³. CAT/C/GC/2, 24 January 2008, para. 22.

¹⁴. Eighth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 26 March 2015, CAT/C/54/2, para. 63.

¹⁵. *Optional Protocol to the UN Convention against Torture Implementation Manual*, Revised Edition, *op. cit.* p235.

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.¹⁶ 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.¹⁷ In sociological terms 'gender role' refers to the characteristics and behaviours that different cultures attribute to the sexes.¹⁸

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'.¹⁹

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 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.

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 Rules²⁰ as a benchmark to assess the shortcomings and develop recommendations.

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 harm or suffering, threats of such acts, coercion and other deprivations of liberty.'²¹ 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

16. See <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/>

17. 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>. <accessed 24 November 2015>.

18. 'What is the difference between sex and gender?' Monash University, *op.cit.*

19. E/1997/66, 12 June 1997.

20. Bangkok Rules, Rules 29 to 35.

21. CEDAW General Recommendation No. 19, para. 6.

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 recognised, 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.²² 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.²³

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 the following chapter.

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.²⁴ 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.

The Committee on the Elimination of Discrimination against Women (CEDAW) established within an individual complaint in 2001 that discrimination against women encompasses ill-treatment that affects women disproportionately, as well as detention conditions which do not address the specific needs of women (referring also to the Bangkok Rules). In the case considered by the Committee, alongside other problematic conditions, the female arrestee had been held in a cold cell located underground, one of the two cells designated for women's housing in this prison facility, whereas male detainees were housed upstairs.²⁵

22. 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.refworld.org/docid/41482bde4.html> <accessed 24 November 2015>.

23. *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.html> <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.

24. UNODC, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, 2014, p2.

25. UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Communication No. 23/2009, Inga Abramova v Belarus*, 27 September 2011, CEDAW/C/49/D/23/2009, available at www.unhcr.org/refworld/docid/4fd6f75a2.html.

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.

The revised Standard Minimum Rules for the Treatment of Prisoners clarify in Rule 2(2)²⁶ that 'prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings' and that '[m]easures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory'.

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 suffering²⁷ 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 women²⁸ or which do not allow courts to take into account women's background and circumstances sufficiently in deciding pre-trial detention or sentences;²⁹ 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

26. The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the UN Commission on Crime Prevention and Criminal Justice on 22 May 2015, endorsed by the Economic and Social Council on 9 September 2015, UN-Doc. E/RES/2015/20 and adopted by UN General Assembly Third Committee on 5 November 2015, UN-Doc. A/C.3/70/L.3 (at the time of printing this Resolution was pending adoption by the plenary of the UN General Assembly.)

27. A/HRC/7/3, 15 January 2008, para. 29.

28. 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 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, p21.

29. See Bangkok Rules, Rules 57, 58, 60, 61, 62, 64 and 65.

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 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 the SPT.³⁰

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. (eg. 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 and the revised Standard Minimum Rules as a reference point,³¹ 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.³²

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,³³ in particular where male and female prisoners are not separated and where female prisoners are transported by male staff. An inspection in the UK, for example, found that 'escort vans may carry a mixture of men, women and children, sometimes all three together'.³⁴

In China, however, the Escorting Rules issued by China's Supreme People's Court provide for transfers to be conducted with female-only escorts. Moreover, male and

30. 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.

31. Bangkok Rules, Rule 56, Revised Standard Minimum Rules.

32. Bangkok Rules, Rule 25 (3).

33. See for example, Amnesty International, *Mexico: Violence against women and justice denied in Mexico State*, October 2006, Ref. AMR 41/028/2006, pp6-7.

34. HM Inspectorate of Prisons, UK, *Report on an unannounced inspection of HMP & YOI New Hall*, 8 – 19 June 2015, p11.

female defendants are not allowed to ride in the same vehicle.³⁵ In India too, separate conveyances should be used for male and female prisoners, and female detainees need to be escorted by female guards or police officers, although these provisions are limited to under-trial prisoners.³⁶

Lack of consideration of women's hygiene needs, compounded by the long transit times that result from the small number of women's prisons and their remote locations, may also represent a risk of inhumane or degrading treatment. The UK inspection body, for instance, reported that – for all adult prisoners – only a 'few were offered a 'comfort break' to use a toilet. Instead prisoners were offered a liquid absorbing gel-bag to use in their tiny cell while the van was on the move'. Where women and boys travelled with adult men, men were routinely dropped off first, resulting in long transport times for women prisoners.³⁷

While international safeguards provide little guidance on transport, Rule 73(2) of the revised Standard Minimum Rules states that '[t]he transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited'.

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 careful supervision of the use of such cameras; and ensuring that independent and accessible complaints procedures are in place.

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.³⁸ 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'.³⁹

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,⁴⁰ 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 includes an examination of any sexual abuse and other forms of violence that may have occurred prior to admission, as

35. Cheng Lei, Lü Xiaogang, and Chen Jianjun, *Research Report on the Treatment of Women Detainees in China – Using the Bangkok Rules as the Starting Point of Analysis*, 2014, p13.

36. Bureau of Police Research and Development, Ministry of Home Affairs, *Model Prison Manual for the Superintendence and Management of Prisons in India*, 2003, paras. 9.21 and 22.61, available at <http://bprd.nic.in/writereaddata/linkimages/1445424768-content%20%20chapters.pdf> <accessed 24 November 2015>.

37. HM Inspectorate of Prisons, UK, *A thematic review by HM Inspectorate of Prisons, Transfers and escorts within the criminal justice system*, December 2014, p5.

38. Principle 16 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and Rule 58, revised Standard Minimum Rules for the Treatment of Prisoners.

39. Bangkok Rules, Rule 2.

40. Bangkok Rules, Rules 40 and 41.

required by the Bangkok Rules.⁴¹ They should check whether a female doctor is made available to conduct such examinations, especially if this is specifically requested by the woman prisoner,⁴² and where this is not possible, whether a female chaperone is used, if the detainee so requests.⁴³

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.⁴⁴ 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.

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 Rules⁴⁵ 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.⁴⁶ 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.⁴⁷

c. Not separating male and female prisoners

The revised 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.⁴⁸ 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.⁴⁹

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.⁵⁰

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.⁵¹

41. Bangkok Rules, Rule 6 (e), see also Rule 30 of the revised Standard Minimum Rules for the Treatment of Prisoners.

42. Bangkok Rules, Rule 10 (2).

43. Bangkok Rules, Rule 10 (2).

44. 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, p44.

45. Bangkok Rules, Rule 6.

46. 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.

47. 'Egypt court stops virginity tests in military prisons', *BBC*, 27 December 2011, <http://www.bbc.co.uk/news/world-middle-east-16339398> <accessed 24 November 2015>.

48. Revised Standard Minimum Rules, Rule 11 (a).

49. Revised Standard Minimum Rules, Rule 11 (d).

50. *The CPT Standards* (2006), Extract from the 10th General Report, CPT/Inf (2000) 13, para. 24.

51. *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.

...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.⁵²

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.

Recognising the vulnerability of women to sexual abuse, the revised Standard Minimum Rules prohibit any involvement of male staff in the supervision of women's prisons.⁵³ 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 USA, where a mixed gender staffing policy is implemented, has been documented and reported on numerous occasions.⁵⁴

The revised Standard Minimum Rules are very clear on this issue, and the Bangkok Rules, which supplement the revised Standard Minimum Rules, 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 the revised Standard Minimum Rules 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. They should 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 Rules⁵⁵ and women's access to independent and confidential complaints' mechanisms.⁵⁶ 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.⁵⁷ 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

52. 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.

53. Revised Standard Minimum Rules, Rule 81.

54. See for example, 'Frequent and severe' sexual violence alleged at women's prison in Alabama', *NBC News*, 23 May 2012, <http://usnews.nbcnews.com/news/2012/05/23/11830574-frequent-and-severe-sexual-violence-alleged-at-womens-prison-in-alabama?lite> <accessed 24 November 2015>; 'Sentenced to Rape—Behind Bars in America', *The Daily Beast*, 10 November 2011 <http://www.thedailybeast.com/articles/2011/11/10/sentenced-to-rape-behind-bars-in-america.html> <accessed 24 November 2015>; *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], pp45-87.

55. Bangkok Rules, Rules 29 to 35.

56. Revised Standard Minimum Rules, Rule 56 (3) and 57 (1).

57. Bangkok Rules, Rule 25 (1) and (2).

their sexuality is repressed or denied, being searched can be extremely humiliating and even traumatising if undertaken by the opposite sex.

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.⁵⁸ 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 and the revised Standard Minimum Rules (Rules 50-52) relating to this highly sensitive issue are applied in women's prisons. They require for searches to be governed by law and regulations which take into account international standards and norms and respect the principles of necessity and proportionality. They also provide that searches must be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched (Rule 50). Rule 19 of the Bangkok Rules mirrors these principles, requiring prison authorities to take effective measures to ensure the protection of women prisoners' dignity during searches. Rule 51 of the revised Standard Minimum Rules explicitly emphasises that searches should not 'be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy'.

Monitoring groups should take into account that invasive body searches (strip and body cavity 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.⁵⁹

The Bangkok Rules (Rule 20) urge 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.⁶⁰

Where searches are applied, Bangkok Rule 19 provides that they are carried out only by 'women staff who have been properly trained in appropriate searching methods and in accordance with established procedures'.⁶¹

Medical personnel are often requested to carry out such searches. Normally, healthcare personnel should not be involved in the searching of prisoners, as searches are part of prison security procedures and physicians' responsibility to protect and promote the health of their patients may be compromised by their involvement in such an act.⁶² 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,⁶³ in order to protect the woman from any harm, while 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.⁶⁴ 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 'appropriately trained by a medical professional in standards of hygiene, health and safety'.⁶⁵

Monitoring bodies should also ascertain whether appropriate records of searches are kept, in particular that every strip and invasive body searches is recorded, including the reasons for the search, the identities of those who conducted them, any outcomes, and authorisation for the search, in line with Rule 52 of the revised Standard Minimum Rules.

58. 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.

59. Revised Standard Minimum Rules, Rule 52 (1).

60. *Ibid.*

61. See also Revised Standard Minimum Rules, Rule 52.

62. 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. See also Rule 46 (1), Revised Standard Minimum Rules.

63. In line with Rule 52 (2) of the revised Standard Minimum Rules and 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/e/policy/b5.htm>), 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. [...]

64. Revised Standard Minimum Rules, Rule 52 (2). See also *Statement on Body Searches of Prisoners*, World Medical Association, *op.cit.*

65. See *Statement on Body Searches of Prisoners*, World Medical Association, *op.cit.*

f. Solitary confinement / disciplinary segregation

It has been documented on numerous occasions that solitary confinement can have extremely harmful psychological, and sometimes physiological, ill effects.⁶⁶ The Istanbul Statement recommends that '[t]he use of solitary confinement in prisons should therefore be kept to a minimum'⁶⁷ and absolutely prohibited for mentally ill prisoners, among others.⁶⁸

The Committee against Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Special Rapporteur on Torture, have all recognised the harmful physical and mental effects of prolonged solitary confinement and have expressed concern about its use.⁶⁹

In light of increasing concern about solitary confinement, the revised Standard Minimum Rules have introduced, for the first time, explicit guidance and limitations on the use of this practice. They require authorisation by law or regulation of 'any form of involuntary separation from the general prison population,(...) including policies and procedures governing the use and review of, admission to and release from any form of involuntary separation' (Rule 37). The Rules define solitary confinement as 'confinement of prisoners for 22 hours or more a day without meaningful human contact' and prohibit its indefinite or prolonged use (in excess of 15 days) (Rules 43 and 44).

Beyond this absolute prohibition, the Rules clarify that 'solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and only pursuant to the authorization by a competent authority' (Rule 45(1)). Furthermore, the Rules call on measures to alleviate the potential detrimental effects of separated confinement for the prisoners concerned (Rule 38(2)).

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.⁷⁰

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.⁷¹ The revised Standard Minimum Rules place strict restrictions on the use of body restraints on prisoners.⁷² They prohibit the use of instruments of restraint which are inherently degrading or painful, and as a sanction

66. 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, p23.

67. *Ibid.*, p24.

68. *Ibid.*, p25.

69. UN Doc. A/63/175, 28 July 2008, para. 80; UN Doc/A/66/2685, August 2011; 21st General Report of the CPT, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; UN Doc. A/66/268, 5 August 2011; see also Principle 7 of the Basic Principles for the Treatment of Prisoners.

70. See, 'Our prison system was not designed for women', by Dawn Moore, Associate Professor in the Carleton University Department of Law. *The Ottawa Citizen*, 20 October 2012, available at: <https://manitmirror.wordpress.com/2012/10/20/ottawa-citizen-our-prison-system-was-not-designed-for-women/> <accessed 24 November 2015> and <http://www.cp24.com/news/key-recommendations-from-the-jury-at-the-ashley-smith-inquest-1.1600932> <accessed 24 November 2015>.

71. As required by the ICCPR, Article 10.

72. Revised Standard Minimum Rules, Rules 43 (2), 47-49 and 76(c).

for disciplinary offences. Other instruments of restraint may only be used when authorised by law and for specific objectives (e.g. precaution against escape, if other methods fail to prevent harm from prisoner or others). Furthermore, they should be imposed only when no lesser form of control would be effective to address the risks posed, and the method ought to be the least intrusive available and they should be removed as soon as possible. Training needs to be provided in the use of instruments of restraint, but also on control techniques which would obviate their need or reduce their intrusiveness.⁷³

Additionally, the Bangkok Rules prohibit the use of instruments of restraint on women during labour, during birth and immediately after birth.⁷⁴

Nevertheless, in some countries body restraints, such as shackles, are used on pregnant women during transfers to hospitals, gynaecological examinations and birth,⁷⁵ despite pronouncements by medical specialists against the use of shackling during labour and childbirth.⁷⁶ The 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.⁷⁷

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 and the revised Standard Minimum Rules, which explicitly prohibit the use of instruments of restraint on these categories of women.⁷⁸

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.⁷⁹ The CPT considers that the failure to provide basic necessities, such as sanitary pads, can amount to degrading treatment.⁸⁰

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. ”⁸¹

“ 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. ”⁸²

73. Revised Standard Minimum Rules, Rule 43 (2), Rules 47-49 and Rule 76 (c).

74. Bangkok Rules, Rule 24; see also revised Standard Minimum Rules, Rule 48 (2).

75. For example, in the USA 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>) <accessed 24 November 2015>; see also 'Va. House subcommittee rejects bill to restrict use of restraints on pregnant prison inmates', By Associated Press, Published: February 9, <http://apvonline.org/page/10/> <accessed 24 November 2015>.

76. 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 <accessed 24 November 2015>.). 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.)

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

78. Bangkok Rules, Rule 24, revised Standard Minimum Rules, Rule 48 (2).

79. Bangkok Rules, Rule 5.

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

81. *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.

82. *Ibid.* para. 185.

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 account the best interests of the children, as required by the Bangkok Rules and CRC.⁸³

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,⁸⁴ 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.⁸⁵ 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.⁸⁶ 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 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'.⁸⁷

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.⁸⁸ 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 treated by a woman physician or nurse, a woman the same right to conjugal visits as men.⁸⁹

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 female prisoners are allowed to make to their families and they may allow the extension of the length of visits, among other measures.⁹⁰

⁸³. Bangkok Rules, Rule 64.

⁸⁴. 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, p3.)

⁸⁵. Bangkok Rules, Rule 10 (1).

⁸⁶. Bangkok Rules, Rule 10 (2).

⁸⁷. Bangkok Rules, Rule 11.

⁸⁸. Bangkok Rules, Rule 4.

⁸⁹. Bangkok Rules, Rules 26 – 28, revised Standard Minimum Rules, Rule 58 (2).

⁹⁰. 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.

Monitoring groups should also determine whether disciplinary sanctions include prohibition of family contact and with reference to the Bangkok Rules⁹¹ 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.⁹² The SPT has, for example, raised concerns about non-compliance with this principle 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.”⁹³

*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 to persuade them not to testify, and 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.

Women can be 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.⁹⁴ Using detention as a means of (alleged) ‘protection’ is a particularly gross form of discrimination. It penalises the victim or potential victim rather than the perpetrator, further victimises women, and deters them from reporting rape and sexual abuse.

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.⁹⁵ 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.⁹⁶

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.’⁹⁷ In the longer term, States have the responsibility to develop comprehensive, legal, political and administrative measures to protect women from violence and prevent

91. Bangkok Rules, Rule 23, Revised Standard Minimum Rules, Rule 43 (3).

92. Bangkok Rules, Rule 52, Revised Standard Minimum Rules, Rule 29.

93. 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.

94. 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.

95. Bangkok Rules, Rule 59.

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

97. Bangkok Rules, Rule 59.

the re-victimisation of women, in order for such extreme measures not to be necessary.⁹⁸

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. Studies have found that the vast majority of girls in detention have experienced abuse prior to their involvement with the criminal justice system.⁹⁹

Due to the small numbers of girls in detention, 'many countries do not make special arrangements or provide segregated facilities for them',¹⁰⁰ but often girls are held alongside boys and/or in facilities with mixed staff, resulting in a risk of exposure to violence, including sexual violence.¹⁰¹ In police stations, this risk is generally high – and regulations on the separation sometimes only cover prisons but not police stations. Girls may also be abused by older women and female staff.

Alternatively, 'to ensure their segregation from men and boys, girls risk being held in isolation or detained far away from home'.¹⁰² The impact of separation from family and community can severely harm a girl's mental health, emotional well-being, self-esteem, social and life skills and abilities to varying extents, yet mental health issues are rarely addressed.

Available studies confirm that girls are far more likely than boys to suffer with affective disorders (like depression) as well as anxiety disorders.¹⁰³ As a consequence, girls

are at higher risk of harming themselves or attempting suicide in comparison to boys or adults.¹⁰⁴

As prison systems have been primarily designed for men, girls' health needs are often not even addressed by prison policy and procedure. This can result, for instance, in infrequent or absent health services, including gynaecological provision for pregnant girls who are one of the most vulnerable groups in detention, due to the social stigmatisation to which they may be subjected and their inexperience in dealing with pregnancy.¹⁰⁵

Girls are even more 'unaware of their rights, and even fewer have access to safe, effective and child- and gender-sensitive counselling, reporting and complaints mechanisms to address incidents of violence'.¹⁰⁶

Rules 36 to 39 of the Bangkok Rules specifically address juvenile female prisoners, recognising the need for special protection of girl prisoners, the obligation of equal access to education and vocational training, the need for age- and gender-specific programmes and services, the relevance of health care including regular access to gynaecologists, and the special challenges for pregnant 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.¹⁰⁷

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.¹⁰⁸ Such women are particularly vulnerable in detention due to

98. Declaration on the Elimination of Violence against Women, Article 4 (f).

99. PRI/IPJJ, *Neglected Needs: Girls in the criminal justice system*, p10.

100. Special Representative of the Secretary-General on violence against children, *Safeguarding the rights of girls in the criminal justice system*, 2015, p5.

101. 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.

102. Special Representative of the Secretary-General on violence against children, *Safeguarding the rights of girls in the criminal justice system*, 2015, p6, quoting A/HRC/21/25, Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system, 27 June 2012, para. 45.

103. Teplin L A et al., 'Psychiatric Disorders in Youth in Juvenile Detention', *Archives of General Psychiatry*, Vol 59, No 12, Cited in F T Sherman, *Making Detention Reform Work for Girls, A Guide to Juvenile Detention Reform*, Juvenile Detention Alternatives Initiative Practice Guides 5, Annie E. Casey Foundation, 2013.

104. See, for example, HM Chief Inspector of Prisons for England and Wales, *Annual Report 2006-7*.

105. PRI/IPJJ, *Neglected Needs: Girls in the criminal justice system*, p13.

106. Special Representative of the Secretary-General on violence against children, *Safeguarding the rights of girls in the criminal justice system*, 2015, p4.

107. 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.

108. 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)

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.¹⁰⁹ 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.'¹¹⁰

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.¹¹¹

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.¹¹² 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 prison¹¹³ and the provision of individualised, gender-sensitive mental health treatment for those in need.¹¹⁴ 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.¹¹⁵ Alongside other limitations to the use of this practice, the revised Standard Minimum Rules provide that solitary confinement should be prohibited for 'prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures'.¹¹⁶

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.¹¹⁷

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, transgender women and lesbians.¹¹⁸

¹⁰⁹.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.

¹¹⁰.UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, Guideline 9.4, 2012, p38. <http://www.unhcr.org/505b10ee9.html> <accessed 24 November 2015>.

¹¹¹.Bangkok Rules, Rule 66.

¹¹².UNODC, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, p10.

¹¹³.Bangkok Rules, Rule 6.

¹¹⁴.Bangkok Rules, Rule 12.

¹¹⁵.Istanbul Protocol, *op. cit.* p24.

¹¹⁶.Revised Standard Minimum Rules, Rule 45 (2); see Chapter 3 f.

¹¹⁷.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).

¹¹⁸. 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*.

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.¹¹⁹ 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.

¹¹⁹. Bangkok Rules, Rule 25 (3).

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
https://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-INSTRAW, 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

A number of relevant publications by the Quaker United Nations Office Geneva (QUNO) can be accessed at:
<http://www.quno.org/areas-of-work/women-prison>

Second edition

Incorporates the 2015 revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).



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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 and www.apt.ch. Also available in Russian, French and Spanish. Please check online for other language versions.

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