

# THE BANGKOK RULES



**UNODC**

United Nations Office on Drugs and Crime



**United Nations Rules  
for the Treatment of Women Prisoners  
and Non-custodial Measures  
for Women Offenders  
with their Commentary**





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**Resolution adopted by the General Assembly on 21 December 2010**

*[on the report of the Third Committee (A/65/457)]*

**65/229. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)**

*The General Assembly,*

*Recalling* the United Nations standards and norms in crime prevention and criminal justice primarily related to the treatment of prisoners, in particular the Standard Minimum Rules for the Treatment of Prisoners,<sup>1</sup> the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners,<sup>2</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>3</sup> and the Basic Principles for the Treatment of Prisoners,<sup>4</sup>

*Recalling also* the United Nations standards and norms in crime prevention and criminal justice primarily related to alternatives to imprisonment, in particular the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>5</sup> and the basic principles on the use of restorative justice programmes in criminal matters,<sup>6</sup>

*Recalling further* its resolution 58/183 of 22 December 2003, in which it invited Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and the ways in which they can be addressed,

*Considering* the alternatives to imprisonment as provided for in the Tokyo Rules, and taking into consideration the gender specificities of, and the consequent need to give priority to applying non-custodial measures to, women who have come into contact with the criminal justice system,

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<sup>1</sup> *Human Rights: A Compilation of International Instruments*, Volume I (First Part), Universal Instruments (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.

<sup>2</sup> Economic and Social Council resolution 1984/47, annex.

<sup>3</sup> Resolution 43/173, annex.

<sup>4</sup> Resolution 45/111, annex.

<sup>5</sup> Resolution 45/110, annex.

<sup>6</sup> Economic and Social Council resolution 2002/12, annex.

*Mindful* of its resolution 61/143 of 19 December 2006, in which it urged States to, inter alia, take positive measures to address structural causes of violence against women and to strengthen prevention efforts that address discriminatory practices and social norms, including with regard to women who need special attention in the development of policies to address violence, such as women in institutions or in detention,

*Mindful also* of its resolution 63/241 of 24 December 2008, in which it called upon all States to give attention to the impact of parental detention and imprisonment on children and, in particular, to identify and promote good practices in relation to the needs and physical, emotional, social and psychological development of babies and children affected by parental detention and imprisonment,

*Taking into consideration* the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,<sup>7</sup> in which Member States committed themselves, inter alia, to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders, and the plans of action for the implementation of the Declaration,<sup>8</sup>

*Calling attention* to the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,<sup>9</sup> as it relates specifically to women in detention and in custodial and non-custodial settings,

*Recalling* that, in the Bangkok Declaration, Member States recommended to the Commission on Crime Prevention and Criminal Justice that it give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners,

*Having taken note* of the initiative of the United Nations High Commissioner for Human Rights to designate the week from 6 to 12 October 2008 as Dignity and Justice for Detainees Week, which placed particular emphasis on the human rights of women and girls,

*Considering* that women prisoners are one of the vulnerable groups that have specific needs and requirements,

*Aware* of the fact that many existing prison facilities worldwide were designed primarily for male prisoners, whereas the number of female prisoners has significantly increased over the years,

*Recognizing* that a number of female offenders do not pose a risk to society and, as with all offenders, their imprisonment may render their social reintegration more difficult,

<sup>7</sup> Resolution 55/59, annex.

<sup>8</sup> Resolution 56/261, annex.

<sup>9</sup> Resolution 60/177, annex.

*Welcoming* the development by the United Nations Office on Drugs and Crime of the *Handbook for Prison Managers and Policymakers on Women and Imprisonment*,<sup>10</sup>

*Welcoming also* the invitation, contained in Human Rights Council resolution 10/2 of 25 March 2009,<sup>11</sup> to Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote greater attention to the issue of women and girls in prison, including issues relating to the children of women in prison, with a view to identifying and addressing the gender-specific aspects and challenges related to this problem,

*Welcoming further* the collaboration between the World Health Organization Regional Office for Europe and the United Nations Office on Drugs and Crime, and taking note of the Kyiv Declaration on Women's Health in Prison,<sup>12</sup>

*Taking note* of the Guidelines for the Alternative Care of Children,<sup>13</sup>

*Recalling* Commission on Crime Prevention and Criminal Justice resolution 18/1 of 24 April 2009,<sup>14</sup> in which the Commission requested the Executive Director of the United Nations Office on Drugs and Crime to convene in 2009 an open-ended intergovernmental expert group meeting to develop, consistent with the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules, supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings, welcomed the offer by the Government of Thailand to act as host to the expert group meeting, and requested the expert group meeting to submit the outcome of its work to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, subsequently held in Salvador, Brazil, from 12 to 19 April 2010,

*Recalling also* that the four regional preparatory meetings for the Twelfth Congress welcomed the development of a set of supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings,<sup>15</sup>

*Recalling further* the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,<sup>16</sup> in which Member States recommended that the Commission on Crime Prevention and Criminal Justice consider the draft United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders as a matter of priority for appropriate action,

1. *Takes note with appreciation* of the work of the expert group to develop supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings at its meeting, held in Bangkok from 23 to 26 November 2009, and of the outcome of the meeting;<sup>17</sup>
2. *Expresses its gratitude* to the Government of Thailand for having acted as host to the meeting of the expert group and for the financial support provided for the organization of the meeting;
3. *Adopts* the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, annexed to the present resolution, and approves the recommendation of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice that the rules should be known as "the Bangkok Rules";

<sup>10</sup> See World Health Organization Regional Office for Europe and United Nations Office on Drugs and Crime, *Women's Health in Prison: Correcting Gender Inequity in Prison Health* (Copenhagen, 2009).

<sup>13</sup> Resolution 64/142, annex.

<sup>14</sup> See Official Records of the Economic and Social Council, 2009, Supplement No. 10 (E/2009/30), chap. I, sect. D.

<sup>15</sup> See A/CONF.213/RPM.1/1, A/CONF.213/RPM.2/1, A/CONF.213/RPM.3/1 and A/CONF.213/RPM.4/1.

<sup>16</sup> Resolution 65/230, annex.

<sup>17</sup> See A/CONF.213/17.

4. *Recognizes* that, in view of the great variety of legal, social, economic and geographical conditions in the world, not all of the rules can be applied equally in all places and at all times; and that they should, however, serve to stimulate a constant endeavour to overcome practical difficulties in their application, in the knowledge that they represent, as a whole, global aspirations amenable to the common goal of improving outcomes for women prisoners, their children and their communities;
5. *Encourages* Member States to adopt legislation to establish alternatives to imprisonment and to give priority to the financing of such systems, as well as to the development of the mechanisms needed for their implementation;
6. *Encourages* Member States having developed legislation, procedures, policies or practices for women in prison or on alternatives to imprisonment for women offenders to make information available to other States and relevant international, regional and intergovernmental organizations, as well as non-governmental organizations, and to assist them in developing and implementing training or other activities in relation to such legislation, procedures, policies or practices;
7. *Invites* Member States to take into consideration the specific needs and realities of women as prisoners when developing relevant legislation, procedures, policies and action plans and to draw, as appropriate, on the Bangkok Rules;
8. *Also invites* Member States to collect, maintain, analyse and publish, as appropriate, specific data on women in prison and women offenders;
9. *Emphasizes* that, when sentencing or deciding on pretrial measures for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent;
10. *Requests* the United Nations Office on Drugs and Crime to provide technical assistance and advisory services to Member States, upon request, in order to develop or strengthen, as appropriate, legislation, procedures, policies and practices for women in prison and on alternatives to imprisonment for women offenders;
11. *Also requests* the United Nations Office on Drugs and Crime to take steps, as appropriate, to ensure broad dissemination of the Bangkok Rules, as a supplement to the Standard Minimum Rules for the Treatment of Prisoners<sup>18</sup> and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),<sup>19</sup> and to ensure the intensification of information activities in this area;
12. *Further requests* the United Nations Office on Drugs and Crime to increase its cooperation with other relevant United Nations entities, intergovernmental and regional organizations and non-governmental organizations in the provision of relevant assistance to countries and to identify needs and capacities of countries in order to increase country-to-country and South-South cooperation;
13. *Invites* specialized agencies of the United Nations system and relevant regional and international intergovernmental and non-governmental organizations to engage in the implementation of the Bangkok Rules;

<sup>18</sup> Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 of the Economic and Social Council.

<sup>19</sup> Adopted by General Assembly resolution 45/110 of 14 December 1990.

14. *Invites* Member States and other donors to provide extrabudgetary contributions for such purposes, in accordance with the rules and procedures of the United Nations.

*71st plenary meeting 21 December 2010*

## **Annex**

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

#### **Preliminary observations**

1. The Standard Minimum Rules for the Treatment of Prisoners<sup>20</sup> apply to all prisoners without discrimination; therefore, the specific needs and realities of all prisoners, including of women prisoners, should be taken into account in their application. The Rules, adopted more than 50 years ago, did not, however, draw sufficient attention to women's particular needs. With the increase in the number of women prisoners worldwide, the need to bring more clarity to considerations that should apply to the treatment of women prisoners has acquired importance and urgency.
2. Recognizing the need to provide global standards with regard to the distinct considerations that should apply to women prisoners and offenders and taking into account a number of relevant resolutions adopted by different United Nations bodies, in which Member States were called upon to respond appropriately to the needs of women offenders and prisoners, the present rules have been developed to complement and supplement, as appropriate, the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>21</sup> in connection with the treatment of women prisoners and alternatives to imprisonment for women offenders.
3. The present rules do not in any way replace the Standard Minimum Rules for the Treatment of Prisoners or the Tokyo Rules and, therefore, all relevant provisions contained in those two sets of rules continue to apply to all prisoners and offenders without discrimination. While some of the present rules bring further clarity to existing provisions in the Standard Minimum Rules for the Treatment of Prisoners and in the Tokyo Rules in their application to women prisoners and offenders, others cover new areas.
4. These rules are inspired by principles contained in various United Nations conventions and declarations and are therefore consistent with the provisions of existing international law. They are addressed to prison authorities and criminal justice agencies (including policymakers, legislators, the prosecution service, the judiciary and the probation service) involved in the administration of non-custodial sanctions and community-based measures.
5. The specific requirements for addressing the situation of women offenders have been emphasized at the United Nations in various contexts. For example, in 1980, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution on the specific needs of women prisoners,<sup>18</sup> in which it recommended that, in the implementation of the resolutions

<sup>20</sup> Above, No. 18

<sup>21</sup> Above, No. 19

adopted by the Sixth Congress directly or indirectly relevant to the treatment of offenders, recognition should be given to the specific problems of women prisoners and the need to provide the means for their solution; that, in countries where it was not yet done, programmes and services used as alternatives to imprisonment should be made available to women offenders on an equal basis with male offenders; and that the United Nations, the governmental and non-governmental organizations in consultative status with it and all other international organizations should make continuing efforts to ensure that the woman offender was treated fairly and equally during arrest, trial, sentence and imprisonment, particular attention being paid to the special problems which women offenders encounter, such as pregnancy and child care.

6. The Seventh Congress, the Eighth Congress and the Ninth Congress also made specific recommendations concerning women prisoners.<sup>22</sup>
7. In the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,<sup>23</sup> adopted by the Tenth Congress, Member States committed themselves to taking into account and addressing, within the United Nations crime prevention and criminal justice programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men (para. 11); and to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders (para. 12). The plans of action for the implementation of the Vienna Declaration<sup>24</sup> contain a separate section (sect. XIII) devoted to specific recommended measures to follow up on the commitments undertaken in paragraphs 11 and 12 of the Declaration, including that of States reviewing, evaluating and, if necessary, modifying their legislation, policies, procedures and practices relating to criminal matters, in a manner consistent with their legal systems, in order to ensure that women are treated fairly by the criminal justice system.
8. The General Assembly, in its resolution 58/183 of 22 December 2003 entitled “Human rights in the administration of justice”, called for increased attention to be devoted to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they could be addressed.
9. In its resolution 61/143 of 19 December 2006 entitled “Intensification of efforts to eliminate all forms of violence against women”, the General Assembly stressed that “violence against women” meant any act of gender-based violence resulting in, or likely to result in, physical, sexual or psychological harm or suffering to women, including arbitrary deprivation of liberty,

<sup>22</sup> Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August–5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B, resolution 9.

See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E, resolution 6 (on the fair treatment of women by the criminal justice system).

See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. A.5 (Basic Principles for the Treatment of Prisoners (see also General Assembly resolution 45/111, annex)); and *ibid.*, sect. C, resolutions 17 (on pretrial detention), 19 (on the management of criminal justice and development of sentencing policies) and 21 (on international and interregional cooperation in prison management and community-based sanctions and other matters).

See A/CONF.169/16/Rev.1, chap. I, resolutions 1 (on recommendations on the four substantive topics of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders), 5 (on the practical implementation of the Standard Minimum Rules for the Treatment of Prisoners) and 8 (on the elimination of violence against women).

<sup>23</sup> See A/RES/55/59.

<sup>24</sup> *Ibid.*



whether occurring in public or in private life, and urged States to review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs discriminating against women or having a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they existed, complied with international human rights obligations, commitments and principles, including the principle of non-discrimination; to take positive measures to address structural causes of violence against women and to strengthen prevention efforts addressing discriminatory practices and social norms, including with regard to women in need of special attention, such as women in institutions or in detention; and to provide training and capacity-building on gender equality and women's rights for law enforcement personnel and the judiciary. The resolution is an acknowledgement of the fact that violence against women has specific implications for women's contact with the criminal justice system, as well as their right to be free of victimization while imprisoned. Physical and psychological safety is critical to ensuring human rights and improving outcomes for women offenders, of which the present rules take account.

10. Finally, in the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, adopted by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice on 25 April 2005,<sup>25</sup> Member States declared that they were committed to the development and maintenance of fair and efficient criminal justice institutions, including the humane treatment of all those in pretrial and correctional facilities, in accordance with applicable international standards (para. 8); and they recommended that the Commission on Crime Prevention and Criminal Justice should give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners (para. 30).
11. As with the Standard Minimum Rules for the Treatment of Prisoners, in view of the great variety of legal, social, economic and geographical conditions worldwide, it is evident that not all of the following rules can be equally applied in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in how they are applied, in the knowledge that they represent, as a whole, the global aspirations considered by the United Nations as leading to the common goal of improving outcomes for women prisoners, their children and their communities.
12. Some of these rules address issues applicable to both men and women prisoners, including those relating to parental responsibilities, some medical services, searching procedures and the like, although the rules are mainly concerned with the needs of women and their children. However, as the focus includes the children of imprisoned mothers, there is a need to recognize the central role of both parents in the lives of children. Accordingly, some of these rules would apply equally to male prisoners and offenders who are fathers.

## Introduction

13. The following rules do not in any way replace the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules. Therefore, all provisions contained in those two sets of rules continue to apply to all prisoners and offenders without discrimination.
14. Section I of the present rules, covering the general management of institutions, 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.

<sup>25</sup> Eleventh United Nations Congress on Crime Prevention and Criminal Justice (Bangkok, Thailand, 18-25 April 2005).

15. Section II contains rules applicable only to the special categories dealt with in each subsection. Nevertheless, the rules under subsection A, applicable to prisoners under sentence, shall be equally applicable to the category of prisoners dealt with in subsection B, provided they do not conflict with the rules governing that category of women and are for their benefit.
16. Subsections A and B both provide additional rules for the treatment of juvenile female prisoners. It is important to note, however, that separate strategies and policies in accordance with international standards, in particular the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>26</sup> the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),<sup>27</sup> the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty<sup>28</sup> and the Guidelines for Action on Children in the Criminal Justice System,<sup>29</sup> need to be designed for the treatment and rehabilitation of this category of prisoners, while institutionalization shall be avoided to the maximum possible extent.
17. Section III contains rules covering the application of non-custodial sanctions and measures for women and juvenile female offenders, including on arrest and at the pretrial, sentencing and post-sentencing stages of the criminal justice process.
18. Section IV contains rules on research, planning, evaluation, public awareness-raising and sharing of information, and is applicable to all categories of female offenders covered in these rules.

## **I. Rules of general application**

### **1. Basic principle**

*[Supplements rule 6 of the Standard Minimum Rules for the Treatment of Prisoners] Rule 1*

In order for the principle of non-discrimination embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.

### **2. Admission**

*Rule 2*

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.
2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

<sup>26</sup> Resolution 40/33, annex.

<sup>27</sup> Resolution 45/112, annex.

<sup>28</sup> Resolution 45/113, annex.

<sup>29</sup> Economic and Social Council resolution 1997/30, annex.

### 3. Register

[Supplements rule 7 of the Standard Minimum Rules for the Treatment of Prisoners] Rule 3

1. The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status.
2. All information relating to the children's identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children.

### 4. Allocation

Rule 4

Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.

### 5. Personal hygiene

[Supplements rules 15 and 16 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 5

The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.

### 6. Health-care services

[Supplements rules 22 to 26 of the Standard Minimum Rules for the Treatment of Prisoners]

#### (a) Medical screening on entry

[Supplements rule 24 of the Standard Minimum Rules for the Treatment of Prisoners] Rule 6

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

- (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling;
- (b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm;
- (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues;
- (d) The existence of drug dependency;
- (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.

*Rule 7*

1. If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.
2. Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.
3. Specific measures shall be developed to avoid any form of retaliation against those making such reports or taking legal action.

*Rule 8*

The right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times.

*Rule 9*

If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.

**(b) Gender-specific health care***Rule 10*

1. Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners.
2. If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.

*Rule 11*

1. Only medical staff shall be present during medical examinations unless the doctor is of the view that exceptional circumstances exist or the doctor requests a member of the prison staff to be present for security reasons or the woman prisoner specifically requests the presence of a member of staff as indicated in rule 10, paragraph 2, above.
2. If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.

**(c) Mental health and care***Rule 12*

Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in non-custodial settings.

*Rule 13*

Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.

**(d) HIV prevention, treatment, care and support***Rule 14*

In developing responses to HIV/AIDS in penal institutions, programmes and services shall be responsive to the specific needs of women, including prevention of mother-to-child transmission. In this context, prison authorities shall encourage and support the development of initiatives on HIV prevention, treatment and care, such as peer-based education.

**(e) Substance abuse treatment programmes***Rule 15*

Prison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.

**(f) Suicide and self-harm prevention***Rule 16*

Developing and implementing strategies, in consultation with mental health-care and social welfare services, to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialized support to those at risk shall be part of a comprehensive policy of mental health care in women's prisons.

**(g) Preventive health-care services***Rule 17*

Women prisoners shall receive education and information about preventive health-care measures, including on HIV, sexually transmitted diseases and other blood-borne diseases, as well as gender-specific health conditions.

*Rule 18*

Preventive health-care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community.

## **7. Safety and security**

*[Supplements rules 27 to 36 of the Standard Minimum Rules for the Treatment of Prisoners]*

### **(a) Searches**

#### *Rule 19*

Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.

#### *Rule 20*

Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

#### *Rule 21*

Prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.

### **(b) Discipline and punishment**

*[Supplements rules 27 to 32 of the Standard Minimum Rules for the Treatment of Prisoners]*

#### *Rule 22*

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

#### *Rule 23*

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

### **(c) Instruments of restraint**

*[Supplements rules 33 and 34 of the Standard Minimum Rules for the Treatment of Prisoners]*

#### *Rule 24*

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

### **(d) Information to and complaints by prisoners; inspections**

*[Supplements rules 35 and 36 and, with regard to inspection, rule 55 of the Standard Minimum Rules for the Treatment of Prisoners]*

*Rule 25*

1. Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation.
2. Women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid.
3. In order to monitor the conditions of detention and treatment of women prisoners, inspectorates, visiting or monitoring boards or supervisory bodies shall include women members.

**8. Contact with the outside world**

*[Supplements rules 37 to 39 of the Standard Minimum Rules for the Treatment of Prisoners]*

*Rule 26*

Women prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.

*Rule 27*

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

*Rule 28*

Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.

**9. Institutional personnel and training**

*[Supplements rules 46 to 55 of the Standard Minimum Rules for the Treatment of Prisoners]*

*Rule 29*

Capacity-building for staff employed in women's prisons shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities. Capacity-building measures for women staff shall also include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners.

*Rule 30*

There shall be a clear and sustained commitment at the managerial level in prison administrations to prevent and address gender-based discrimination against women staff.

*Rule 31*

Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.

*Rule 32*

Women prison staff shall receive equal access to training as male staff, and all staff involved in the management of women's prisons shall receive training on gender sensitivity and prohibition of discrimination and sexual harassment.

*Rule 33*

1. All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners.
2. Basic training shall be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to first aid and basic medicine.
3. Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

*Rule 34*

Capacity-building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, shall also be part of the curriculum.

*Rule 35*

Prison staff shall be trained to detect mental health-care needs and risk of self-harm and suicide among women prisoners and to offer assistance by providing support and referring such cases to specialists.

**10. Juvenile female prisoners***Rule 36*

Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.

*Rule 37*

Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.

*Rule 38*

Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.



*Rule 39*

Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

**II. Rules applicable to special categories****A. Prisoners under sentence****1. Classification and individualization**

*[Supplements rules 67 to 69 of the Standard Minimum Rules for the Treatment of Prisoners]*

*Rule 40*

Prison administrators shall develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and implementation towards those prisoners' early rehabilitation, treatment and reintegration into society.

*Rule 41*

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

- (a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high-security measures and increased levels of isolation can have on women prisoners;
- (b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process;
- (c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;
- (d) Ensure that those with mental health-care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.

**2. Prison regime**

*[Supplements rules 65, 66 and 70 to 81 of the Standard Minimum Rules for the Treatment of Prisoners]*

*Rule 42*

1. Women prisoners shall have access to a balanced and comprehensive programme of activities which take account of gender-appropriate needs.
2. The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.

3. Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.
4. Particular efforts shall be made to provide appropriate services for women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.

### **Social relations and aftercare**

*[Supplements rules 79 to 81 of the Standard Minimum Rules for the Treatment of Prisoners]*

#### *Rule 43*

Prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration.

#### *Rule 44*

In view of women prisoners' disproportionate experience of domestic violence, they shall be properly consulted as to who, including which family members, is allowed to visit them.

#### *Rule 45*

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

#### *Rule 46*

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

#### *Rule 47*

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

### **3. Pregnant women, breastfeeding mothers and mothers with children in prison**

*[Supplements rule 23 of the Standard Minimum Rules for the Treatment of Prisoners] Rule 48*

1. Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.

2. Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.
3. The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.

*Rule 49*

Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.

*Rule 50*

Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.

*Rule 51*

1. Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services.
2. The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

*Rule 52*

1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.
2. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.
3. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

**4. Foreign nationals**

[*Supplements rule 38 of the Standard Minimum Rules for the Treatment of Prisoners*]

*Rule 53*

1. Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign-national women prisoners to their home country, especially if they have children in their home country, shall be considered as early as possible during their imprisonment, following the application or informed consent of the woman concerned.

2. Where a child living with a non-resident foreign-national woman prisoner is to be removed from prison, consideration should be given to relocation of the child to its home country, taking into account the best interests of the child and in consultation with the mother.

## **5. Minorities and indigenous peoples**

### *Rule 54*

Prison authorities shall recognize that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programmes and services. Accordingly, prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups.

### *Rule 55*

Pre- and post-release services shall be reviewed to ensure that they are appropriate and accessible to indigenous women prisoners and to women prisoners from ethnic and racial groups, in consultation with the relevant groups.

## **B. Prisoners under arrest or awaiting trial**

*[Supplements rules 84 to 93 of the Standard Minimum Rules for the Treatment of Prisoners]*

### *Rule 56*

The particular risk of abuse that women face in pretrial detention shall be recognized by relevant authorities, which shall adopt appropriate measures in policies and practice to guarantee such women's safety at this time. (See also rule 58 below, with regard to alternatives to pretrial detention.)

## **III. Non-custodial measures**

### *Rule 57*

The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.

### *Rule 58*

Taking into account the provisions of rule 2.3 of the Tokyo Rules, women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties. Alternative ways of managing women who commit offences, such as diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible.

### *Rule 59*

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

*Rule 60*

Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.

*Rule 61*

When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds.

*Rule 62*

The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.

**1. Post-sentencing dispositions***Rule 63*

Decisions regarding early conditional release (parole) shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social reintegration needs.

**2. Pregnant women and women with dependent children***Rule 64*

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

**3. Juvenile female offenders***Rule 65*

Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making.

#### **4. Foreign nationals**

##### *Rule 66*

Maximum effort shall be made to ratify the United Nations Convention against Transnational Organized Crime<sup>30</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>31</sup> to fully implement their provisions so as to provide maximum protection to victims of trafficking in order to avoid secondary victimization of many foreign-national women.

### **IV. Research, planning, evaluation and public awareness-raising**

#### **1. Research, planning and evaluation**

##### *Rule 67*

Efforts shall be made to organize and promote comprehensive, result-oriented research on the offences committed by women, the reasons that trigger women's confrontation with the criminal justice system, the impact of secondary criminalization and imprisonment on women, the characteristics of women offenders, as well as programmes designed to reduce reoffending by women, as a basis for effective planning, programme development and policy formulation to respond to the social reintegration needs of women offenders.

##### *Rule 68*

Efforts shall be made to organize and promote research on the number of children affected by their mothers' confrontation with the criminal justice system, and imprisonment in particular, and the impact of this on the children, in order to contribute to policy formulation and programme development, taking into account the best interests of the children.

##### *Rule 69*

Efforts shall be made to review, evaluate and make public periodically the trends, problems and factors associated with offending behaviour in women and the effectiveness in responding to the social reintegration needs of women offenders, as well as their children, in order to reduce the stigmatization and negative impact of those women's confrontation with the criminal justice system on them.

#### **2. Raising public awareness, sharing information and training**

##### *Rule 70*

1. The media and the public shall be informed about the reasons that lead to women's entrapment in the criminal justice system and the most effective ways to respond to it, in order to enable women's social reintegration, taking into account the best interests of their children.

<sup>26</sup> United Nations, Treaty Series, vol. 2225, No. 39574.

<sup>27</sup> Ibid., vol. 2237, No. 39574.

2. Publication and dissemination of research and good practice examples shall form comprehensive elements of policies that aim to improve the outcomes and the fairness to women and their children of criminal justice responses to women offenders.
3. The media, the public and those with professional responsibility in matters concerning women prisoners and offenders shall be provided regularly with factual information about the matters covered in these rules and about their implementation.
4. Training programmes on the present rules and the results of research shall be developed and implemented for relevant criminal justice officials to raise their awareness and sensitize them to their provisions contained therein.





**COMMENTARY TO THE UNITED NATIONS RULES FOR THE  
TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL  
MEASURES FOR WOMEN OFFENDERS (THE BANGKOK RULES)<sup>28</sup>**

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<sup>28</sup> This Commentary is not part of the Bangkok Rules. It was prepared by the United Nations Office on Drugs and Crime (UNODC) and it was approved by the Open-ended intergovernmental expert group meeting to develop supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings, held in Bangkok, Thailand from 23 to 26 November 2009.

## PART I

### RULES OF GENERAL APPLICATION

#### Rule 1

The principle of non-discrimination enshrined in Rule 6 of the SMR and the principle of individualization provided in Rule 63 (1) clearly imply that providing for the special needs of individuals is an essential element of putting into practice the principle of non-discrimination. Thus, taking action to eliminate discriminatory practice in the case of women prisoners requires taking account of special considerations, when applying SMR and these rules to women prisoners. This understanding is reflected in Principle 5 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which makes clear that special measures to address the particular needs of women prisoners and other special categories are not to be deemed discriminatory. It is also a reflection of Article 4, of the UN Convention on the Elimination of All Forms of Discrimination against Women.

#### Rule 2 (1)

Women, especially those who are illiterate, poor, those who have been violently victimized and who are the primary carers of their children and families, feel particularly vulnerable on first admission to prison. They are often unaware of their legal rights, are extremely distressed about what is happening to them and what impact that will have on their children. According to some studies prisoners are at heightened risk of self-harm and suicide during the initial period following admission to prison.<sup>33</sup> Facilities where new prisoners can spend their first 48 hours to help with transition to prison life, which have been introduced in a number of prisons in the UK, for example, should be provided to all prisoners, but are particularly important in the case of women prisoners, who are especially vulnerable to mental distress, and particularly during their first days of imprisonment.<sup>34</sup> The importance of a special reception area and procedures, which assists newly arrived prisoners to contact their families and to receive comprehensive information about the prison regime and where to seek help when in need, has been highlighted also by other literature, including WHO.<sup>35</sup> Foreign nationals, especially if non-resident, feel particularly vulnerable at this time and should receive the additional assistance to which they are entitled.

<sup>33</sup> According to the US Department of Justice, National Institute of Corrections research, 50% of prison suicides occur in the first 24 hours and 27% occur during the first 3 hours (Hayes, Lindsay, M., Project Director, National Centre on Institutions and Alternatives, U.S. Department of Justice, National Institute of Corrections, *Prison Suicide: An Overview and Guide to Prevention* (1995)); research published by the Royal College of Psychiatrists (UK) found that 17% of suicides in UK occurred during the first week of imprisonment, 28.5% within a month, 51.2% within three months and 76.8% within a year (Dooley, E., *Prison Suicide in England and Wales*, British Journal of Psychiatry, Royal College of Psychiatrists (1990)); research carried out in Canada revealed that those in the initial phase of imprisonment show the highest rate of suicide (John Howard Society of Alberta, *Prison and Jail Suicide* (1990)); according to research carried out by the UK NGO, Howard League for Penal Reform, in the UK 50% of those who take their own lives in prison do so during the first month. They point out that first night centres which have been put in place in a number of prisons in the UK have helped ease transition from the outside to prison life. The Howard League for Penal Reform's research shows that a dedicated wing, or unit, where all new prisoners spend their first 48 hours at the prison can prevent suicides.

<sup>34</sup> The Howard League for Penal Reform, 'Care, concern and carpets': How women's prisons can use first night in custody centres to reduce distress, (2006).

<sup>35</sup> Möller, L., Stöver, H., Jürgens, R., Gatherer, A and Nikogosian, H. eds., *Health in Prisons, A WHO guide to the essentials in prison health*, The World Health Organisation Europe (2007), p. 142.

**Rule 2 (2)**

Most women who face detention or imprisonment are mothers<sup>36</sup> and often primary carers of children. The sudden and often unexpected removal of the carer requires alternative care arrangements to be made in order to protect and provide for the children, taking into account their best interests in line with the provisions of the Convention on the Rights of the Child. The mother would also need to have access at this time to information and legal advice on alternative care arrangements and their long term implications. It is recognised that granting suspension of detention or sentence may not be possible in some jurisdictions, in which case, authorities are encouraged to use options such as home leave, immediately on detention to allow for the requisite arrangements in relation to caring responsibilities to be made.

**Rule 3**

This information, gathered in accordance with the purpose of detention, as well as with consideration for the mother's protection of privacy, will be valuable in assisting with contact between the mother and child living outside prison if required, as well as in gathering data about the parental status of women in prison, with a view to increasing knowledge about imprisoned mothers and improving the suitability and effectiveness of criminal justice responses to women offenders, while taking account of the best interests of their children. Mothers should receive information about the purposes for which this information is being collected and be encouraged to provide it, though many may have reasons for not wishing to disclose it, and their choice must be respected by the authorities.

**Rule 4**

All prisoners should be allocated, as far as possible, close to their homes or places of social reintegration, in order to facilitate communication with their families, as well as agencies and services used to enhance their social rehabilitation, in order to put into practice of Rules 79 and 80 of SMR, which provide that special attention should be paid to the maintenance and improvement of relations between the prisoners and their families. These Rules state that from the beginning of a prisoner's sentence, consideration should be given to his or her future after release. Prisoners should be encouraged and assisted to maintain or establish relations with agencies outside prison which may promote the best interests of his or her family and his own social rehabilitation. However, women are most often disadvantaged in their allocation, due to the small number of women's prisons in most countries and therefore experience immense challenges in maintaining contact with their families. In accordance with this rule, prison authorities should, to the extent possible, introduce the means to ensure that women are allocated closer to home or places where they can be in communication with agencies which can assist with their social rehabilitation. Given women's history with violence and exploitation, it should not be assumed that women's former residence is a preferred or safe place for her to be released to (e.g. due to past abuse or expected future stigmatization) and her allocation close to services that will assist with social reintegration should therefore take account of this factor.

**Rule 5**

Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels/pads, are of particular importance. These should be available to women under conditions in which they do not need to be embarrassed asking for them (for example either dispensed by other women or, better yet, accessible whenever needed). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers that the failure to provide such basic necessities can amount to degrading treatment.<sup>37</sup>

<sup>36</sup> UNODC Handbook for prison managers and policymakers on Women and Imprisonment (2008), pp.18-19.

<sup>37</sup> CPT Standards, 2006 Edition, Extract from the 10th General Report, CPT/Inf (2000) 13, para. 31.

## Rule 6

Rule 24 of the SMR provides that the medical officer should see and examine every prisoner as soon as possible after his or her admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures. The Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment (Principle 24) also provides that a proper medical examination should be offered to a detained or imprisoned person as promptly as possible after his or her admission to the place of detention or imprisonment, and thereafter medical care and treatment should be provided whenever necessary.

It is vital that all prisoners undergo a medical examination and health screen on entry, on an individual basis, to ensure that the prisoner starts receiving proper treatment for any health conditions immediately. The medical practitioner carrying out such screening should ideally be independent from the prison authorities to ensure an impartial, objective examination report. Women prisoners, typically from economically and socially disadvantaged backgrounds, and many women in low-income countries suffer from a variety of health conditions which may be untreated in the community. In many countries women face additional discrimination and barriers in accessing adequate health-care services in the community, due to their gender. Therefore women prisoners often have greater primary health-care needs in comparison to men. For these reasons, a comprehensive screening of women on entry to prison is vital to ensure appropriate treatment. Such screening should be accompanied by the provision of information on primary healthcare and protection from infectious diseases.<sup>38</sup>

### Rule 6 (1)

Violence against women, especially sexual violence, has numerous short- and long-term sexual and reproductive health consequences for women. As such, women prisoners represent a high-risk group for sexual and reproductive health diseases. It is vital to diagnose any reproductive or sexual health diseases as early as possible and provide appropriate treatment. As regards testing for HIV, it is essential that informed consent is sought and secured non-coercively before HIV/AIDS testing or medical interventions are provided to prisoners and that the process of securing consent specifically allows prisoners to refuse such testing and treatments.<sup>39</sup>

<sup>38</sup> Medical examinations undertaken on entry to police detention facilities need not be as comprehensive as outlined in Rule 6, which applies primarily to pre-trial detention and prison facilities. The main purpose of medical examination in police detention is to provide any emergency medical care necessary and prevent ill-treatment and abuse, therefore to record the detainee's basic medical conditions and needs, and in particular whether or not he or she had any injuries on admission.

<sup>39</sup> UNODC, WHO, UNAIDS, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response, Lines, R. and Stöver, H., 2006, p. 19. See also Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison, Rule 3 and CPT 3rd General Report, CPT/INF (93) 12, para. 55.

**Rule 6 (2)**

The assessment should take into account the mental health history of the prisoner, drug and/or alcohol addiction and prior self-harm and suicide attempts, in determining risks. In a number of countries research indicates that women have much higher levels of mental health-care needs than men on entry to prison, are more likely to be addicted to drugs and have higher rates of self-harm attempts. In at least one country, research indicates higher levels of suicide among women prisoners in comparison to men. Research in some countries indicates that prisoners who commit suicide suffered from some form of mental disability or substance dependence (or both) on entry to prison. Studies of prisoner suicides have also indicated that long-term sentences, single-cell use, mental disabilities, substance abuse and a history of suicidal tendencies are associated with an increased suicide risk.<sup>40</sup> Research has also identified a higher prevalence of self-harm history among prisoners who commit suicide, compared to the general population, as well as higher levels of suicide “ideation” among self-harmers in prison.<sup>41</sup> Thus, prisoners who harm themselves may be considered at higher risk of attempting suicide than others.

**Rule 6 (3)**

It is important that the reproductive health history of women is recorded in their medical files to assist with determining any future treatment. Current reproductive health complications should receive the appropriate medical responses without delay. For example, women who have recently undergone abortions, experienced miscarriages or complications during delivery may need urgent medical attention. Those who have recently given birth require post-natal care and, often, counselling related to this circumstance.

**Rule 6 (4)**

Research in a number of countries has found that a large proportion of women entering prison have a drug dependency. Drug offences are one of the most common category of crimes committed by women and drugs are often key to women’s offending behaviour.<sup>42</sup> Some research also indicates that women prisoners are more likely to be addicted to harder drugs than male prisoners.<sup>43</sup> It is therefore important to diagnose any treatment needs for drug dependency on entry to prison, in order to provide the requisite healthcare services, as early as possible during detention and imprisonment, taking into account that drug dependency is a recognised underlying factor that can lead to conflict with the law and therefore to re-offending following release, if left untreated.

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<sup>40</sup> Matsching T., Frühwald S and Frottier P., Suicide behind bars, an international review, Klinische Abteilung für Sozialpsychiatrie und Evaluationsforschung, Universitätsklinik für Psychiatrie, AKH Wien, Österreich. Psychiatr Prax. 2006 Jan;33 (1):6-13.

<sup>41</sup> McArthur, M., Camilleri, P. and Webb, H., Strategies for Managing Suicide and Self-harm in Prisons, Australian Institute of Criminology, 1999, p. 1.

<sup>42</sup> For example, it is estimated that at least 75% of women arriving in prison in England and Wales have some sort of drug-related problem at the time of arrest and another estimation states that 75% of women entering European prisons are problematic drug and alcohol users (see WHO/Europe, Health in Prisons, A WHO guide to the essentials in prison health (2007) and Women in Prison, A Review of the Conditions in Member States of the Council of Europe, Quaker Council for European Affairs, p. 12, citing “Health Care Needs of Women in Prison”: The Gap Between Policy and Implementation”, MacDonald M. presentation at “What Works with Women Offenders”, June 2005).

<sup>43</sup> A Review of the Conditions in Member States of the Council of Europe, Quaker Council for European Affairs, p. 12.

**Rule 6 (5)**

The health screening on admission is essential to identify any signs of ill-treatment or torture in previous detention/custody and take appropriate action. Torture and abuse of prisoners in custody, immediately after arrest, is more common than during the period of imprisonment. During the initial period, suspects mostly find themselves in the hands of the officers in charge of investigating the crime of which they are accused. The officers therefore have an interest in obtaining a confession or other relevant information.<sup>44</sup> During this time, women are at particular risk of sexual abuse, including rape.<sup>45</sup>

**Rule 7**

Any woman who has been diagnosed as having been abused in previous custody or prior to that, (by prison staff or other prisoners) should be fully informed of her right to complain and adequate assistance shall be provided to her to enable her to proceed with her complaint if she wishes. The principle of confidentiality should be respected during this process and the woman concerned should receive the psychological support required by her situation, whether or not she chooses to complain. Psychological support may be provided by outside services, such as NGOs, in cooperation with prison authorities, especially when prison authorities do not have the capacity to provide for adequate and appropriate services. The provision of legal assistance to such women is essential. Such assistance may be provided by lawyers or qualified para-legal aid providers, at least in the first instance, in the absence of lawyers.

**Rule 8**

International standards guarantee the right to medical confidentiality for all individuals, including prisoners. Women may have particular safety and security concerns in relation to their reproductive health history, and therefore should never be coerced into giving information, which they feel may put them at risk. In this context women should have the right to refuse vaginal screening/hymen examination.

**Rule 9**

Many women worldwide who are admitted to prison are accompanied by their children, who may remain with them in prison, sometimes for long periods. It is vital to respect such children's right to the highest attainable standards of health, enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights and Article 24 of the Convention of the Rights of the Child, undertaking also a thorough health screening on their entry to prison and provide the requisite health care during the whole period of their stay in prison facilities. Wherever possible and in the best interests of the child, such screening should be undertaken in the presence of the mother.

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<sup>44</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Human Rights Council, Thirteenth Session, 9 February 2010, A/HRC/13/39, para. 52.

<sup>45</sup> For a discussion of custodial violence against women, see 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, paras 34-35 in particular. In para. 34 it is stated that "[c]ustodial violence against women very often includes rape and other forms of sexual violence such as threats of rape, touching, 'virginity testing', being stripped naked, invasive body searches, insults and humiliations of a sexual nature, etc. It is widely recognized, including by former 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. In a 1997 decision on a case of custodial rape the European Court of Human Rights acknowledged that 'rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim' and 'rape leaves deep psychological scars on the victims which do not respond to the passage of time as quickly as other forms of physical and mental violence'."

**Rule 10**

All women are entitled to treatment and care equivalent to that of community standards for their gender specific health-care needs. Due to the typical background of women in prison, risk factors and their health care needs as women, women's prisons require a gender-specific framework for health care which emphasizes reproductive and sexual health, mental health care, treatment for substance abuse and counselling victims of physical and sexual abuse.

Due to cultural reasons, and/or because of past negative experiences with men, including being subjected to sexual abuse or violence, women may not wish to be examined by a male medical specialist and may even feel re-traumatized by such an examination. This Rule takes into account this possibility, providing women with the right to request examination and treatment by a female medical specialist. Women should not have to provide a reason for such a request.

The rule recognises that in some circumstances an adequately qualified woman medical practitioner may not be available, especially in emergency situations. In these cases the presence of a woman member of staff should help prevent any perceived or real risk of harassment, and reassure the woman prisoner concerned.

**Rule 11**

The principle of confidentiality which applies to all medical examinations requires that patients should be examined individually, on their own, without the presence of any other person, unless specifically requested by the patient. In prisons, doctors may in exceptional circumstances request the presence of prison staff, if they feel at risk. Doctors should be advised by prison staff about the nature of the possible risks involved, in these cases, for the doctor to make an informed decision. However, in all cases security staff should be out of hearing of the patient and medical specialist.<sup>46</sup>

The presence of male staff in the examination and treatment of a woman prisoner may cause extreme distress and violates the right to privacy and should be avoided in all cases.

**Rule 12**

High levels of domestic violence and physical and sexual abuse against women prior to their imprisonment have been documented in countries worldwide. Women who are admitted to prison are more likely than men to suffer from mental health problems, often as a result of domestic violence, physical and sexual abuse. This Rule underlines the need to ensure that mental health care provided in women's prisons should be gender sensitive and interdisciplinary. Women's distinctive mental health-care and psychological support needs should be recognized, including for example, of those who demonstrate acute distress and depression due to isolation, separation from children, families and communities. Rule 12 expressly underlines that treatment should be individualized and aim to address the reasons that provoke distress, depression, as well as psychiatric problems, based on an integrated and holistic approach of counselling, psychosocial support and medication, if necessary. This Rule takes account of the reality that in many prison systems women prisoners' unique mental health-care

<sup>46</sup>The UN Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture, and other cruel, inhuman or degrading treatment or punishment, Principle 1 provides that "[h]ealth personnel, particularly physicians, charged with the medical care of prisoners and detainees, have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained." Confidentiality of medical examinations is one of the key principles which apply to the healthcare of all persons, including those in prison. The International Code of Medical Ethics of the World Medical Association (adopted in 1949, amended in 1968, 1983 and 2006), states that "[a] physician shall respect a patient's right to confidentiality. It is ethical to disclose confidential information when the patient consents to it or when there is a real and imminent threat of harm to the patient or to others and this threat." Thus the breaching of any confidentiality is exceptional and the decision to disclose any information due to real and imminent harm to the patient or others must be taken by the physician and /or with the consent of the patient.

needs are not adequately understood or treated, symptoms are addressed rather than the underlying reasons that lead to mental health problems. Too often women are prescribed medication to overcome their distress or depression, rather than being provided with psycho-social support, based on individual assessments. While counselling and treatment should be offered whether a woman is in pre-trial detention or sentenced, depending on the average length of time spent in pre-trial detention in each jurisdiction, long term treatment programmes may begin only if a woman is sentenced and therefore expects to stay a longer period of time in prison. Where possible and appropriate, treatment in the community, with adequate security measures, should be considered for such women, taking account of the negative impact of imprisonment on mental health.

### **Rule 13**

Women are particularly susceptible to mental distress and depression at certain times, for example on admission to prison, due to separation or loss, upon receiving negative information from home, following the delivery of a child, following the experience of any act of victimization or violence, during menopause, after separation from a child previously in the prison with her and prior to release. Thus the rule encourages the adoption of an institutional policy to ensure staff awareness and training to recognize symptoms of mental distress and to respond to needs in an appropriate manner, by responding to the women's need with understanding and referring them to specialised support, as necessary (e.g. psycho-social support services, including those provided by specialised organisations of civil society, non-governmental organisations, etc).

### **Rules 14**

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 diseases (STD) can greatly increase the risk of contracting HIV.<sup>47</sup> Due to the typical background of women prisoners, which can include injecting drug use, sexual abuse, violence, sex work and unsafe sexual practices, a significant number of women are infected with STD, including HIV and hepatitis, at the time they enter prison. Thus, the proportion of women in prison with an STD is relatively very high.<sup>48</sup> As such, HIV prevention, treatment and care in women's prisons, covered by these rules, are vital to protect women from HIV/AIDS and prevent the spread of the disease. Peer education has proven to be particularly successful in a number of jurisdictions.

### **Rule 15**

A large number of women prisoners worldwide are in need of treatment for substance addiction, though only a minority has access to treatment programmes, and especially to programmes designed for women offenders. When drug addiction is untreated in prison, the likelihood of re-offending is high, either on drugs charges or due to theft or illegal sex acts, often to finance the addiction.

In most countries, women experience social, cultural and personal barriers to treatment entry in the community. These include the significant stigma and shame associated with substance use and related problems among women, such as fear of losing custody of children, lack of partner and other family support to undertake treatment and lack of confidence about treatment. There is significant evidence that substance abuse is tied to both past histories of violence and trauma as well as mental health conditions.<sup>49</sup> In addition, it is increasingly recognized that women have distinctive needs in relation to substance abuse treatment, though few programmes offer specialized services for them. There is now increased knowledge and awareness that gender differences in substance use and related problems require different treatment approaches.<sup>50</sup>

<sup>47</sup> Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 3 [www.unodc.org/unodc/en/drug\\_demand\\_hiv\\_aids.html](http://www.unodc.org/unodc/en/drug_demand_hiv_aids.html).

<sup>48</sup> *Ibid.*, p. 3.

<sup>49</sup> Bloom B., Owen, B. Owen & S. Covington, *Gender Responsive Strategies: Research Practice & Guiding Principles for Female Offenders*. National Institute of Justice, US Dept. of Justice, USA, 2003.

<sup>50</sup> UNODC Drug Abuse Treatment Toolkit, *Substance abuse treatment and care for women: Case studies and lessons learned*, United Nations, New York, 2004, p. 23.



In addition, Member States of the UN have reached consensus on treatment strategy development that specifically includes references to gender.<sup>51</sup>

A gender sensitive approach to women's health care should therefore also take into account the need to provide specialized treatment programmes for women substance abusers. Harm reduction programmes may be considered in programmes responding to the needs of women with drug dependency.

### **Rule 16**

Research in some countries indicate that women may be at higher risk of harming themselves or attempting suicide in comparison to men in prison, due to the higher level of mental illness and substance addiction<sup>52</sup> among women prisoners and the harmful impact of isolation from the community on the mental well-being of women. These rules therefore provide for appropriate measures to safeguard against such acts.

All too often initiatives to prevent suicide consist only of technical solutions, such as the removal of items that may be used for suicide, the introduction of additional restrictions to reduce possibilities of suicide, which do not address the cause of mental distress, which lead to acts of suicide or self-harm. Such precautions may in many cases exacerbate the situation.

It must be emphasized that a fundamental element of strategies to reduce incidents of self-harm and suicide in prisons, is to create a prison environment, which promotes mental health. In parallel to the identification, and supervision of "at-risk" prisoners and the individual treatment provided to them, there is a need for prison managers and staff to take a proactive and positive approach to improve prison morale, in order to reduce incidents of self-harm and suicide.

### **Rule 17**

Women prisoners, typically from economically and socially disadvantaged backgrounds, and often uneducated and illiterate, will generally have received minimal education or awareness-raising about prevention from STDs and reproductive health conditions. It is therefore important to raise the level of knowledge and awareness among women in prison, in order to prevent the development of such diseases. Volunteers, health services from outside and NGOs may be constructively involved in providing such awareness raising and education. Consideration should also be given to giving access to condoms and dental dams to women prisoners, to prevent the spread of sexually transmitted diseases.

### **Rule 18**

Since all persons in prison, including women, enjoy the right enshrined in the International Covenant on Economic, Social and Cultural Rights, Article 12, to the highest attainable standard of mental and physical wellbeing, the preventive health services provided in prisons should be equivalent, at least, to those in the community, which means that women should receive all the preventive services, such as Papanicolaou test and screening for cancer, that are available in the community for their age group. Contraception should be available in prison on an equal basis as in the community, taking into account that contraceptive pills are not only used to prevent pregnancy, but also to treat other gender specific conditions, such as painful menstruation. The European Committee for the Prevention of Torture and Inhuman or Degrading Punishment has noted, "[t]he

<sup>51</sup> *Ibid.*, referring to the Twentieth Special Session of the General Assembly, Devoted to Countering the World Drug Problem Together, 8-10 June 1998, paragraph 8 of the Declaration on the Guiding Principles of Drug Demand Reduction.

<sup>52</sup> E.g. according to a study conducted by the Bureau of Justice Statistic in 2002 and 2004, mental health problems in prison were found to be much higher among women than men; in the UK, according to research published in 2006, 80 per cent of women prisoners were found to suffer from diagnosable mental health problems, 66 per cent were drug dependent or used alcohol to dangerous excess, 37 per cent had attempted suicide at some time in their lives (See UNODC Handbook on for prison managers and policy makers on women and imprisonment, 2008, p. 9).

fact that a woman's incarceration may – in itself – greatly diminish the likelihood of conception while detained is not a sufficient reason to withhold such medication.”<sup>53</sup>

Such provision should be available in all women's prisons irrespective of security level, so that women do not have to be transferred to prisons with higher security levels than necessary in order to receive preventive healthcare services.

### Rule 19

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

This rule underlines that, in accordance with the Human Rights Committee, General Comment referred to above, male members of staff should never be involved in the personal searches of women prisoners including pat down and frisk searches. All searches of women should be carried out by women.

The searches referred to in this rule, which should be carried out by women staff include visual strip searches, but different rules apply to invasive or body cavity searches in the case of both male and women prisoners, as explained below.

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, namely genitals, buttocks, breasts or undergarments. This definition distinguishes strip searches from more intrusive body cavity searches, which involve a physical inspection of the detainee's genital or anal regions.

Where permitted at all, internal (body cavity) searches and strip searches should only be carried out if absolutely and legally necessary, and never on a routine basis. No prisoner – regardless of gender – should be humiliated or be required to strip completely during a search. Such searches can be carried out by exposing parts of the body only in turn to protect, to the extent possible, the dignity of the individual being searched. Special sensitivity should be demonstrated in the case of women, however, because they are likely to feel the humiliation of undergoing intimate searches particularly.<sup>54</sup> The experience may be extremely distressing and traumatising if they have been victims of sexual abuse in the past.

All searches, but strip searches and body cavity searches in particular, should be undertaken in accordance with pre-established procedures.

<sup>53</sup> CPT Standards, 2006 Edition, Extract from the 10th General Report [CPT/Inf (2000) 13], para. 33.

<sup>54</sup> See 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, paragraph 35 and footnote 18, where reference is made to the broadening of the scope of crimes of sexual violence that can be prosecuted as rape. For instance, the Inter-American Court of Human Rights resorted to the international jurisprudence on rape to conclude that “the acts of sexual violence to which an inmate was submitted under an alleged finger vaginal ‘examination’ constituted sexual rape that due to its effects constituted torture.” See *Miguel Castro-Castro Prison v. Peru*, Inter-American Court of Human Rights judgement of 25 November 2006, para. 312.

Strip and Cavity Searches – recommended procedures:

- A. There should be a clear written policy explaining the legal grounds and specific procedures for conducting a strip or cavity search
- B. This search is ordinarily authorized in advance, in writing, by the chief executive officer
- C. A strip or cavity search should not be conducted if it is likely to cause injury to the inmate
- D. Cavity searches should only be conducted by a member of the medical staff. The World Medical Association (WMA) states that the medical practitioner conducting the search should not be the prison doctor. (See the WMA statement below)
- E. Cavity searches should be restricted to digital intrusion and the use of instruments such as anoscope, otoscope, vaginal speculum, nasal speculum, tongue blade, and simple forceps
- F. If an item is located, it may be removed if the removal is easily effected by means of one of the simple instruments noted in “E” above or digitally
- G. Strict documentation is to be maintained of the probable cause, authorizing official, witnesses, and findings of the inspection

*Statement on Body Searches of Prisoners, World Medical Association.*<sup>55</sup>

*“...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...”*

## **Rule 20**

This Rule takes account the World Medical Association (WMA) Statement on Body Searches, where WMA urges all governments and public officials with responsibility for public safety to recognize that invasive search procedures are serious assaults on a person’s privacy and dignity, and that they also carry some risk of physical and psychological injury. Therefore this rule recommends that to the extent feasible, without compromising public security, alternative methods should be used for routine screening of women prisoners.

## **Rule 21**

The emotional trauma experienced by the child, if searched without professionalism and sensitivity, can be immense. Mothers can be so distressed at seeing her child being handled without appropriate care that they have even refused to accept visits from their children in order to avoid putting them through the humiliating and potentially damaging experience of such practices. Children should not be strip searched except for exceptional circumstances. If they are to be strip searched, such searches should be carried out in line with established

<sup>51</sup> 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>).

procedures and following permission from the chief executive officer. Such searches should only be carried out in circumstances which do not violate the human rights and dignity of the child, as explained above.

It should be noted that visitors are not prisoners, and can therefore refuse to be searched and guardians of children (as well as the children themselves) can refuse children to be searched. In such cases the prison administration has the right to deny them entry to the prison.

### **Rule 22**

The international instruments make clear that solitary confinement is not an appropriate punishment other than in the most exceptional circumstances; whenever possible its use should be avoided and steps should be taken to abolish it. These instruments also acknowledge the fact that, potentially, periods of solitary confinement are prejudicial to the mental health of the prisoner. Principle 7 of the Basic Principles for the Treatment of Prisoners calls for "...efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use..." Thus solitary confinement should be used only in exceptional circumstances in the case of all prisoners, and for the shortest possible period of time. Rule 22 takes account of the best interest of the children, in line with the Convention on the Rights of the Child and calls on member States to avoid using solitary confinement on certain categories of women prisoners altogether in order to avoid causing possible health complications to those who are pregnant or penalizing their children in prison by separating them from their mothers.

### **Rule 23**

Total prohibition of family contact, especially of contact with children, has a very harmful impact on the mental wellbeing of women prisoners, as well as the children involved, and should therefore be avoided, unless the child has particular protection needs.

### **Rule 24**

Rules 33 and 34 of the SMR place strict restrictions on the use of body restraints on prisoners. Firstly restraints may never be used as punishment, secondly they may be used in cases where there is genuine justification to believe that the prisoner may attempt escape during transfers and thirdly, following instruction from a medical officer, due to the imminent danger of harm or self-harm by the prisoner concerned. Nevertheless, in some countries body restraints, such as shackles, are used on pregnant women during transfers to hospitals, gynaecological examinations and birth. This practice violates international standards. Moreover, shackling during labour may cause complications during delivery such as haemorrhage or decreased foetal heart rate. If a caesarean section is needed, a delay of even five minutes may result in permanent brain damage to the baby.<sup>56</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has stated that "[...] from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found."<sup>57</sup>

<sup>56</sup> 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. Shackles hamper a woman's ability to move to alleviate the pain of her contractions, which increases stress on the woman's body and may decrease the flow of oxygen to her fetus.

<sup>57</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Punishment, *The CPT Standards*, CPT/Inf/E (2002) 1 - Rev. 2006, Extract from the 10th General Report [CPT/Inf (2000) 13], para.27. In the U.S., in response to increasing concerns at the physical and psychological damage that can be caused by shackling during labour, there has been a move towards prohibiting shackling during labour and childbirth. In October 2008 the U.S. Bureau of Prisons policy, which applies to federal facilities in the U.S., barred the shackling of pregnant women, "except in the most extreme circumstances." Since 2000, four states - California, Illinois, Vermont and New Mexico - have passed legislation restricting the unnecessary use of restraints on pregnant women in prison. At the time of writing, New York and Texas had bills backed by legislative support waiting to become law. The New York "Anti Shackling Bill" prohibits state and local correctional authorities from using restraints on a pregnant female inmate who is being transported for childbirth, during labour and delivery, and in post-natal recovery.

**Rule 25**

Rule 35 of the SMR provides that each prisoner is given clear written and if necessary also oral information on complaints procedures on admission to prison, while Rule 36 provides for a confidential complaints mechanism and guarantees prisoners' right to complain both to prison and independent authorities on a confidential basis. The rule does not explicitly refer to complaints of abuse and the protection of prisoners who do allege ill-treatment, but the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Article 13, provides that "[e]ach State Party should ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps should be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given." It is of utmost importance that women who have been subjected to any form of abuse in pretrial detention or prison should be able to complain without fear of retaliation by staff, confidentially, to the central prison administration, judicial authorities and independent inspectors, and that they should receive legal aid or assistance to do so. Women who claim to have been abused should be confident that they will be provided immediate protection and supervision, while their claims are investigated, and later on, if required, in line with the provisions of the Convention against Torture. Rule 25 therefore provides guidance to prison authorities in the application of the Convention against Torture. It takes account of the fact that women are particularly vulnerable to abuse in prison settings, but that they are often afraid of making complaints due to fears of retaliation. It is included to add an additional safeguard for women against violence and ill-treatment in prison settings.

Rule 25(3) supplements SMR, Rule 55, which provides for the regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. The inclusion of women members on inspection bodies/monitoring boards will help ensure that the provision of services addressing women prisoners' specific needs are properly inspected by a person of the same gender, as well as encouraging the receipt of complaints from women prisoners, who may feel inhibited in coming forward if all members of the monitoring body were to be male.

**Rule 26**

SMR underlines the need for all prisoners to have contact with their families. This Rule emphasizes particularly the importance for women prisoners of the maintenance of family links, whether in pre-trial detention or following sentence. It also recognises the particular need women prisoners have in accessing legal assistance, due to their lower educational, economic and social status in most societies, as well as due to abandonment by families on imprisonment experienced by many women in different countries, and therefore encourages prison authorities to assist them in obtaining legal assistance.

The rule emphasizes the flexibility that needs to be demonstrated by prison administrations in applying visiting rules to women prisoners, in order to safeguard against the harmful impact of separation from families and children, in view of the fact that many women are imprisoned far away from their homes. This flexibility may, for example, include extending the length of visits, particularly when visitors have travelled long distances to visit. Other considerations should also apply, such as taking account of the hours when children may visit their mothers without having to miss school.

**Rule 27**

This Rule aims to prevent discrimination suffered by women in some countries where conjugal visits are not allowed to women in prison or are allowed on a much more restricted basis than to male prisoners.

**Rule 28**

This Rule takes account of mothers' and their children's emotional need for close physical contact and the requirement for a child-friendly environment for children visiting their mothers, to reduce the trauma and distress suffered by the children in these circumstances. Generally, open contact between mother and child should be permitted, taking account of the best interest of the child. The conditions of visits are of utmost importance, so that visits are experienced as a positive experience, rather than discouraging further contact. Making an effort to enable imprisoned women to meet with their families in a friendly and comfortable environment will have a significant impact on the number of visits they receive and the quality of those visits, affecting the social reintegration prospects of women prisoners.

**Rules 29-30**

Recognising the vulnerability of women to sexual abuse, the SMR prohibit any involvement of male staff in the attendance and supervision of women prisoners. These Rules are based on the premise provided by the SMR that women staff will be employed to attend and supervise women prisoners, thus increasing safety and enhancing the rehabilitative environment. Increasing the capacity, morale and job satisfaction of women staff would enable them to perform their duties effectively, which impacts on the success of women prisoners' social reintegration. Prison authorities should base their personnel and training policies on Article XV of the Recommendation on the Selection and Training of Personnel for Penal and Correctional Institutions adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders.<sup>58</sup>

**Rule 31**

Rule 54 of the SMR prohibits the use of force by prison staff, except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. It provides that officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution. Rule 31 adds further provisions relating to the use of force, taking into account women's gender specific needs of protection from varying forms of violence. For example, in some systems it has been reported that sexual services by prisoners may be required before they are accorded their most basic human rights, such as access to food and essential services. This Rule therefore explicitly prohibits sexual misconduct and abuse, which can amount to torture or ill treatment. Obviously such a prohibition is all the more vital in systems that have a policy of mixed gender staffing.

**Rule 32**

This Rule aims to ensure that women prison staff have equal opportunities to advance in their careers as male staff, taking account of provisions of the Convention on the Elimination of all forms of Discrimination against Women, Article 11, and with the aim of improving the gender sensitive supervision and treatment of women prisoners. SMR prohibits the involvement of male staff in the supervision of women's prisons. Nevertheless, even when not directly employed in the supervision of women prisoners, male staff in senior positions are involved in various aspects of the administration of women's prisons. This rule aims to ensure that such staff are trained in the principle of non-discrimination and are made aware of the total prohibition of sexual harassment against women staff and prisoners. Obviously, in systems where mixed gender staffing is used, the implementation of this rule becomes all the more important.

<sup>58</sup> See A/CONF.6/1.

**Rule 33**

This Rule takes account of the need to train prison staff in the gender specific treatment and supervision needs of women prisoners in order to ensure the effective management of and the promotion of rehabilitation in women's prisons. It also recognizes the reality that prison staff are typically the first responders to prisoners' and/or their children's health problems, including in emergencies, when prisoners or their children may be harmed and need immediate attention and other emergencies. In many systems prison medical specialists will not be readily available to respond in such circumstances. Training of prison staff on basic health care relevant to women and children and how to apply first aid in emergency situations, is therefore important to ensure that women and children receive immediate basic health care and are referred to specialists by prison staff without delay, as required.

**Rule 34**

This Rule complements other measures, provided in Rule 17, taking into account women's distinctive needs, which include protection from stigma and discrimination due to their HIV status.

**Rule 35**

This Rule complements Rule 16 to ensure effectiveness of the protection of women prisoners against suicide and self-harm, recognising the central role of prison staff in detecting those at risk and providing timely assistance.

**Rules 36-39**

Juvenile female prisoners referred to in this section include the age group referred to in the "United Nations Rules for the Protection of Juveniles Deprived of their Liberty" (1990), Rule 11 (a), which specifies that a juvenile is every person under the age of 18, adding that this is the age limit below which it should not be permitted to deprive a child of his or her liberty.

Recognizing the special needs of juvenile female prisoners, Rules 36-39 aim to provide guidance to prison authorities in providing for these needs. In this context it should be noted that Rule 26.4 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) states that "...young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment should be ensured..." Accordingly, the Beijing Rules recognize the fact that the disadvantages faced by women prisoners, in comparison to their male counterparts, are even more acute in the case of juvenile female prisoners, as a result of their very small numbers in most prison systems. They may not be separated from adult prisoners, due to the lack of special facilities for juvenile female prisoners, and thereby their safety is put at risk.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 18 which applies to juveniles under arrest or awaiting trial, provides that

"The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

( b ) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention."

Thus in general juveniles in pre-trial detention should be offered educational and vocational programmes appropriate to their age, where possible. Juvenile female prisoners are likely to have even less access to suitable educational and vocational training facilities than either adult women or juvenile male prisoners, due to their small numbers. Any programmes provided for juveniles are likely to have been developed to address the needs of boys.

The provision of appropriate education and vocational training programmes may be problematic for a variety of reasons, including the shortness of pre-trial detention periods in some jurisdictions, but States should make every effort to prevent a break particularly in the education of juveniles during this period, in line with Article 28, 1 (a) and (d) of the Convention on the Rights of the Child. In any case, pre-trial detention should be used only in exceptional circumstances, in line with Rule 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the principles outlined in Convention on the Rights of the Child Article 40, 3 (b) and 4.

Juvenile female prisoners are unlikely to have access to gender sensitive health care or counselling for physical or sexual abuse suffered prior to imprisonment. Pregnant girl prisoners comprise one of the most vulnerable groups in prisons, due to the social stigmatization to which they may be subjected, their inexperience of dealing with pregnancy and the lack of adequate facilities for pregnant juvenile female prisoners.

## **PART II**

### **RULES APPLICABLE TO SPECIAL CATEGORIES**

#### **A. PRISONERS UNDER SENTENCE**

##### **Rule 40-41**

Rule 69 of SMR provides that, "...as soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment should be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions..." Rule 63 of the SMR emphasizes the need for a flexible system of classification, and underlines that the same level of security does not need to apply to all prisoners in one institution. Also in line with the principle that the security measures to which prisoners are subject should be the minimum necessary to achieve their secure custody, it states that "...open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners..."

However, once again, women are often discriminated against in the application of this principle, due to one or a combination of a series of factors. Firstly, since the same classification instruments are used for women and men in the vast majority of prisons worldwide, despite women's different needs and circumstances, information about a history of domestic violence, sexual abuse, and parental responsibility are areas in which screening is lacking for women. As a result classification and screening procedures do not provide essential information about the women, which may increase the probability of their placement in a higher security level than appropriate, while reducing possibilities of providing suitable prisoner programmes matching individual needs. A further problem is that "needs" are often assessed as risk factors during assessments, which can mean that prisoners with mental disabilities may be seen as requiring a higher level of security, rather than the opposite. Such misclassification affects women more so than men due to the higher level of mental health problems among women offenders. High security levels are inappropriate for the housing of prisoners with mental disabilities and will almost invariably further exacerbate existing mental health-care needs. Furthermore, due to the limited accommodation available for women prisoners, in a number of countries they are housed in security levels not



justified by their risk assessment undertaken on admission. Therefore this rule emphasizes the need to develop gender sensitive assessment and classification methods for women prisoners.

#### **Rule 42**

The requirement included in the SMR to apply individual treatment according to the needs of prisoners (SMR 69), implies that programmes should be available in prisons designed specifically for women prisoners, taking into account their gender specific needs, aiming to address the underlying factors that led to their offence and to cope with the challenges they face as women in prison. The current Rule spells out this requirement more clearly and offers some guidance on what measures might be taken to enable women to participate in activities on an equal basis to men.

This Rule also takes account of the gender specific needs of women prisoners, including pregnant women and women with children, as well as the typical background of women prisoners, which increases their need for appropriate, individualized psycho-social counselling and support.

Gender sensitive programmes offered to women prisoners to address the underlying causes that led to their offences and to assist in strengthening their confidence, self assurance and parenting skills may include therapeutic programmes, self-help groups and consultation dealing with substance abuse, mental health, history of abuse and domestic violence; parenting programmes, including child visitation programmes and parent education; and special programmes to build confidence and life skills. Programmes to assist women to live independent lives may include programmes to develop administrative skills, bookkeeping, computer skills, painting and decorating, cooking/catering, horticulture, hairdressing, gardening, women's health, childcare, dressmaking, embroidery managing income generating community projects and the use of micro-credit facilities.

Programmes offered should also include others which are not traditionally considered as appropriate for women, due to gender stereotyping.

#### **Rule 43**

The principle referred in this rule is applicable to all prisoners. However, the small proportion of women prisoners worldwide and the resource implications of building sufficient women's prisons to ensure that women offenders are imprisoned close to their homes, give rise to a situation in which women may either be housed in annexes of male prisons, close to their places of residence or in women's prisons, which are most often situated at a long distance from home. Being placed in annexes of male prisons may entail safety risks for the women. Most States have a combination of women's prisons and separate wings for women in men's prisons, which means that, in practice, many women are imprisoned a long distance from their homes, which reduces the possibility for family contact. The situation can be particularly problematic in large countries, where huge distances need to be covered to reach women's prisons. The disruption of family links has extremely harmful emotional consequences for women prisoners, especially if they are mothers, with a detrimental impact on their resettlement prospects. Rule 44 therefore requires prison authorities to remedy this disadvantage by finding ways in which to encourage and facilitate visits to women prisoners. Measures to be considered may include: (1) where possible assisting with transportation, especially where visits to mothers are concerned; (2) extending the length of visits, when families confront difficulties in visiting due to the long distances involved, lack of resources and transport; (3) providing overnight accommodation for families traveling a long way, free-of-charge; (4) if prisoners have access to telephones, increasing the telephone calls women prisoners are allowed to make to their families, if they are unable to visit due to the long distance; (5) Reducing or eliminating charges for phone calls, where possible; (6) never prohibiting family visits as a disciplinary measure in response to rule breaking by women prisoners; (7) granting prison leave to the greatest extent possible on medical, educational, occupational and family grounds; and do this as soon as and as frequently as possible, taking into account risk factors and family circumstances related to the prisoner concerned; (8) developing cooperation with social services and NGOs to assist with contact between women prisoners and their families; (9) developing other

means of enhancing communication with families, such as via taped, videoed or e-mail messages. It must be emphasized that prison visits should always be free-of-charge in the case of all prisoners.

#### **Rule 44**

This Rule aims to protect women from visits from those who may have abused or exploited them in the past and who the prisoners themselves do not wish to have contact with.

#### **Rules 45-47**

These Rules take account of the particular support requirements of women during their social reintegration and re-entry to society, following release. Although many problems women face during re-entry are similar to those of men, the intensity and multiplicity of their post-release needs can be very different. Women are likely to suffer particular discrimination after release from prison, due to social stereotypes. They might be rejected by their families and in some countries they may lose their parental rights. If they have left a violent relationship, women will have to establish a new life, which is likely to entail economic, social and legal difficulties, in addition to the challenges of transition to life outside prison. Women are likely to have particular support requirements in terms of housing, reunification with their families and employment, and will need assistance. Women are more likely than men to have been treated for a mental health problem in prison and will be in need of continued psychiatric treatment or counselling after release. Former prisoners experience high rates of drug-related accidents, overdose and death. The risk of renewed drug or alcohol abuse is high among all former prisoners, particularly during the early stages following release, when the myriad difficulties associated with re-entry may lead to despair and relapse into former habits. The high rate of substance addiction among women offenders may therefore pose a significant obstacle to successful reintegration. Pre-release preparation and post-release support policies and programmes are typically structured around the needs of men and rarely address the gender specific needs of women offenders, with targeted continuum-of-care in the community after release. These rules aim to emphasize prison authorities' responsibilities in ensuring that women receive the maximum possible support during this time, to ensure their effective resettlement and care and to reduce rates of re-offending.

It should be recognised, however, that prison authorities on their own cannot ensure that the multiple support requirements of former women prisoners are met, and need the full cooperation of outside agencies and services, to fulfil the provisions of this rule, while such agencies and services need adequate human and financial resources from relevant authorities to be able to implement their responsibilities.

#### **Rule 48**

The SMR provide very little guidance on meeting the special needs of pregnant women, breastfeeding mothers and women with children in prison. There is no guidance provided on the treatment of the children themselves. In view of the number of women in prison who are pregnant or who have dependent children living with them, it has become essential to provide more detailed guidance and rules as regards their treatment, in order to ensure that both the women's and the children's psycho-social and health-care requirements are provided for to the maximum possible extent, in line with the provisions of international instruments. Programmes for birthing companions, where they are available in the community, should also be made accessible to women in prison.

#### **Rules 49-52**

Viewpoints as to whether children of imprisoned mothers should stay with them in prison, and for how long,

vary among specialists, with no consensus. Countries worldwide have very different laws as to how long children can stay with their mothers in prison. Nevertheless, there is general consensus that, in trying to resolve the difficult question of whether to separate a mother from her child during imprisonment, and at what age, the best interests of the child should be the primary consideration, in line with the Convention on the Rights of the Child, Article 3. Issues to take into account should include the conditions in prison and the quality of care children can expect to receive outside prison, if they do not stay with their mothers. This principle would imply that prison authorities should demonstrate flexibility and take decisions on an individual basis, depending on the circumstances of the child and family, and on the availability of alternative care options in the community. These rules recognize that applying rigid policy in all cases, where circumstances vary immensely, is all too often not an appropriate course of action. They emphasise that, in order to prevent any physical or psychological harm to children who do remain with their mothers in prison, the environment in which they are brought up in prison should be as close as possible to a normal environment outside prison and that the healthcare of children, which would include their regular vaccinations, should be provided for. They also emphasize the need for continued communication between the mother and the child following separation to prevent as far as possible the psychological damage caused by separation. Where possible, extended visits of the child to the mother and/or home leave for the mother in order to settle the child with the carer outside prison should be part of the planned separation process.

### **Rules 53 (1)**

Foreign national prisoners may be either resident or non-resident in the country of imprisonment. Both groups face particular difficulties. This is particularly salient given the disproportionate number of women caught up in international drug trafficking. The SMR provides limited guidance as to the treatment of foreign national prisoners. Rule 38 of the SMR covers foreign nationals' right to contact with their diplomatic or consular representatives, while rules 41-42 of the SMR deal with rights in relation to the practice of religion. In view of the fact that the number of foreign national prisoners is rising dramatically worldwide, including the number of foreign national women in prison, and taking into account the particularly vulnerable status, especially of non-resident foreign national women in prison settings, Rule 53 aims to provide further guidance to prison authorities in their treatment of foreign national women prisoners.

Where possible, and if the prisoner so wishes, a foreign national woman prisoner should be given the opportunity to be transferred to her home country to serve her prison sentence. It should be noted that "transfer" is completely different to "deportation", the former aiming to assist with the social reintegration of offenders and reduce the harmful effects of imprisonment, whereas the latter is experienced as a punitive measure undertaken in addition to the prison sentence and most often against the will of the prisoner concerned.

The transfer of prisoners is possible when both countries have signed the relevant prisoner transfer treaty. In order for a transfer to take place and for it to serve the purposes of social reintegration, the prisoner must express a desire to serve the sentence in his or her home country.<sup>59</sup> The requirement that prisoners must consent to the transfer ensures that transfers are not used as a method of expelling prisoners or as a means of disguised extradition.<sup>60</sup>

A transfer will obviously alleviate all the additional difficulties foreign nationals face in prison, and assist with their social reintegration. This is particularly important in the case of women who may have family and children in their home countries, and will therefore suffer the sense of isolation associated with imprisonment more

<sup>59</sup> On 15 February 2007, the EU justice and home affairs ministers agreed to allow transferring convicted EU prisoners to serve their sentences in their home countries, without their consent, contravening this principle.

<sup>60</sup> Explanatory notes on the model agreement on the transfer of foreign prisoners, Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, UN Doc. A/CONF. 121/10, 25 April 1985, note 14.

intensely than their national counterparts. Transferring prisoners to serve their sentences in their own countries, if they so wish, should be considered as early as possible after a sentence has been passed. Prisoners should be given clear and full information about their right to request a transfer and the legal consequences of a transfer, to enable them to make an informed decision about their situation. Guidance on the issue of transfer of prisoners is provided by the Model Agreement on the Transfer of Foreign Prisoners adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.<sup>61</sup>

### **Rule 53 (2)**

This rule takes into account the fact that the children of non-resident foreign national women are unlikely to have an appropriate carer in the country of imprisonment, and therefore requires that authorities consult with the woman prisoner in making arrangements for the transfer of the child back to the home country, if this would be in the best interest of the child. The mother should be enabled and encouraged to contact consular officials (where available) to discuss and facilitate appropriate arrangements for the child, including the possibility of the child's reunification with family members in the country of origin. In cases where the nationality of the child is in doubt, the assistance of consular officials and of the office of the UN High Commissioner for Refugees should also be sought.

### **Rule 54**

Programmes that address both the gender specific needs of women members of minority groups or indigenous peoples, as well as their cultural, spiritual and religious requirements, are lacking in the large majority of prison systems. Prison authorities should work together with indigenous and minority community groups who work with women to develop programmes suitable to the needs of women minority or indigenous offenders. The provision of culturally relevant programmes is important both in itself and to ensure that these groups are not indirectly discriminated against in their consideration for early conditional release in some jurisdictions, due to their failure to fulfil a requisite number of prisoner programmes because of the unavailability of appropriate programmes.

Involving community organizations in programme design and delivery is valuable in maintaining links between prisoners and the outside world, easing resource pressures and improving prison atmosphere. In the case of minority groups and indigenous peoples, continuing contacts with the community is likely to be of particular importance, due to their sense of alienation and isolation within the system, and the higher level of distress experienced as a result of breaking ties with the community in some cultures.

Particular care should be taken in taking decisions on removal of children of indigenous women. Decisions about removal of indigenous children should include the recognition of the impact of past oppression and child removal policies on the children, their mother, their family and their community. If an indigenous child is removed, the child should be placed with members of its own family or its kinship within the community.

### **Rule 55**

This Rule takes account of the fact that the reintegration and post-release support requirements of women from minority groups and indigenous peoples are likely to be different and possibly more intense in comparison to those who are from the majority group. Due to their particular economic and social marginalization and the discrimination they face in most societies, released minority and indigenous offenders are likely to need special help with housing, social welfare, employment and health care. Therefore, it is vital that prison authorities

<sup>61</sup> See Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, 2006, V.05-91037.

coordinate with social services in the community with respect to preparation for release and post-release support. Prison authorities should try to ensure that any treatment undertaken for health problems, such as substance abuse or mental health, is continued and/or monitored after release. Where probation services exist they will have an important role to play in assisting in all these areas. It is particularly advisable to cooperate with organizations of civil society providing support to minority groups and indigenous peoples to facilitate culture and gender sensitive assistance to be provided to released women prisoners during the difficult period of transition from prison to liberty.

## **B. PRISONERS UNDER ARREST OR AWAITING TRIAL**

### **Rule 56**

Women under arrest or awaiting trial have specific safety requirements, due to their especially vulnerable status. Women are at risk of abuse particularly during this period, when sexual abuse and other forms of violence may be used, *inter alia*, as a means of coercion to extract confessions. Therefore it is vital that prison authorities ensure that policies and rules aiming to safeguard prisoners against abuse are applied vigorously during women's pre-trial detention period.

## **PART III**

### **NON-CUSTODIAL MEASURES**

#### **Rule 57-58**

A considerable proportion of women offenders do not necessarily pose a risk to society and their imprisonment may not help, but hinder their social reintegration. Many are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and the community.<sup>62</sup> Accordingly, women offenders should be treated fairly in the criminal justice system, taking into account their backgrounds and reasons that have led to the offence committed, as well as receiving care, assistance and treatment in the community, to help them overcome the underlying factors leading to criminal behaviour. By keeping women out of prison, where imprisonment is not necessary or justified, their children may be saved from the enduring adverse effects of their mothers' imprisonment, including their possible institutionalization and own future incarceration.

Since a large proportion of women have mental health-care needs, are drug and/or alcohol dependent, suffer from the trauma of domestic violence or sexual abuse, diverting them to a suitable gender appropriate treatment programme would address their needs much more effectively than the harsh environment of prisons.<sup>63</sup>

<sup>62</sup> Recognising the discrimination faced by women in all spheres of life, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979, and entered into force as an international treaty on 3 September 1981. In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made on the basis of sex...in the political, economic, social, cultural, civil or any other field". The Convention covers the elimination of discrimination against women in political, public, economic and social life, in access to education, employment, healthcare, including provision for reproductive healthcare, among others, and gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (Article 3).

<sup>63</sup> Bloom B., Owen, B. Owen & S. Covington, *Gender Responsive Strategies: Research Practice & Guiding Principles for Female Offenders*. National Institute of Justice, US Dept. of Justice, USA, 2003.

The impact of being held in pre-trial detention, even for short periods, can be severe if the prisoner is the sole carer of the children. Even a short period in prison may have damaging, long-term consequences for the children concerned and should be avoided, unless unavoidable for the purposes of justice, in line with Article 9 (3) of the ICCPR as well as with Rule 6 of the Tokyo Rules, and Principle 39 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, which limit the use of pre-trial detention.

Research has indicated that restorative justice can be effective in the social reintegration of women in some cultures. The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters<sup>64</sup> should provide additional guidance to member States in developing appropriate responses to women in the criminal justice system, where appropriate.

In order to fulfil the provisions of these Rules, judicial authorities need to have the necessary information available in order to take appropriate decisions. They may be required, for example, to consider reports compiled by social services on the probable impact of the mother's detention on the children and other family members, and the arrangements for the children's care, in the absence of the mother.

In addition, States need to give due attention to strengthening administrative and financial capacity with a view to establishing a national system of non-custodial measures, creating structures and mechanisms to implement alternatives to imprisonment, where possible, including restorative justice and alternative conflict resolution.

#### **Rule 59**

In some countries detention may be used as a form of protection for victims of rape, to protect the victim as well as to ensure that she will testify against her rapist in court. This practice is unacceptable, further victimising women and putting them at risk of further abuse. Most importantly, this practice deters women from reporting rape and sexual abuse, thereby allowing perpetrators to escape justice.

In relation to the detention of women for purposes of protection, specifically, the 2003 report of the Working Group on Arbitrary Detention to the Commission on Human Rights stated: "In its annual report for 2001 (E/CN.4/2002/77 and Add. 1 and 2), the Working Group had recommended, with regard to the detention of women who have been the victims of violence or trafficking, that recourse to deprivation of liberty in order to protect victims should be reconsidered and, in any event, must be supervised by a judicial authority, and that such a measure must be used only as a last resort and when the victims themselves desire it."<sup>65</sup>

A number of other forms of custody, to "protect" women or to protect others' security are used in other countries, which are covered by this rule. Although in exceptional cases such custody may be justified for limited periods due to the lack of more appropriate alternatives, every effort needs to be made for the development of protection means which do not involve imprisonment, to enable authorities not to have to resort to this unacceptable and discriminatory practice. Where such detention is used, it should always be subject to supervision by an independent judicial authority and the women involved should be provided access to legal counsel in making such decisions.

<sup>64</sup> Endorsed by the UN Economic and Social Council in 2002.

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

In this context, note should also be taken of the UN Declaration on the Elimination of Violence against Women, Article 4, which provides:

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

f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;”

### **Rule 60**

This Rule recognizes the absence of gender specific alternatives to prison in most societies, which hinders the effective implementation of non-custodial sanctions and measures in the case of many women offenders, underlining the need to develop gender sensitive alternatives to prison, tailored to meet the specific requirements of women offenders, in order to reduce re-offending.

### **Rule 61**

This rule takes account of the typical background of many women offenders. A significant proportion of women who commit violent offences commit them against their husbands or partners in response to systematic abuse. A large number of women offenders worldwide are imprisoned for minor drug related offences, often as a result of manipulation, coercion and poverty. If involved in drug trafficking, women are often minor players, their criminal offences often being an outgrowth of their own addiction or due to poverty and other pressures. A significant number of women are used as drug couriers to smuggle drugs across borders for small sums of money. They come from poor countries and sometimes do not understand the risks involved and implications of the acts they agree to perform.

Many offenders charged with drug offences could be dealt with more effectively by alternatives to imprisonment targeted specifically at the drug problem, rather than imprisonment. The major international instruments, including the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances<sup>66</sup> and the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations<sup>67</sup> recognize this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives, of which alternatives to imprisonment are a key part.

Rule 61 therefore calls specifically for provisions to allow judges to take account of the circumstances of the offence committed, as well as the caring responsibilities of the women involved, in decision-making and calls on Member States to consider removing mandatory sentencing policies in order for the judicial authorities to be in a position to use their discretion during sentencing.

<sup>66</sup> UN Doc. E/CONF.82.15.

<sup>67</sup> A/RES/S-20/3 of 8 September 1998.

The Human Rights Committee of the UN has expressed specific concern that mandatory sentencing can lead to the imposition of punishments that are disproportionate to the seriousness of the crimes committed, raising issues of compliance with various articles of the ICCPR.<sup>68</sup> In addition, many studies have found that mandatory sentences are not an effective sentencing tool: that is, they constrain judicial discretion without offering any increased crime prevention benefits.

### Rule 62

This Rule takes account of the lack of adequate drug treatment programmes in most communities, which are designed specifically for women and the challenges women face in accessing such treatment, including due to the lack of childcare facilities in the community. A study conducted by UNODC, found that comprehensive programming that acknowledges gender differences, which provides women-only services and gives attention to pre-natal and childcare, parenting skills, relationships, mental health problems and practical needs could improve treatment outcomes. Programmes also needed to address trauma and concurrent disorders, due to high rates of trauma and concurrent mental health problems among women.<sup>69</sup> The study also noted that pregnant and parenting women have unique needs that require approaches that are non-judgmental, comprehensive and coordinated.<sup>70</sup>

### Rule 63

This Rule is based on the premise that imprisonment is particularly harmful to the social reintegration of women, as well as to their children and other members of their families. Therefore, prison authorities are encouraged to make maximum possible use of post-sentencing dispositions, such as early conditional release, in the case of women, and especially women who have caring responsibilities or who have special support needs (such as treatment/continuum of care in the community), in order to assist with their social reintegration to the maximum possible extent. Additional measures that can be taken by authorities, is to consider women prisoners for pardoning, as a priority, taking into account their caring responsibilities, when appropriate.

### Rule 64

Prisons are not designed for pregnant women and women with small children. Every effort needs to be made to keep such women out of prison, where possible and appropriate, while taking into account the gravity of the offence committed and the risk posed by the offender to the public. Recognizing this reality, the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders determined that “the use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories.”<sup>71</sup> The African Charter on the Rights and Welfare of the Child, 1999, Article 30: Children of Imprisoned Mothers, provides that States Parties to the Charter “should undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and should in particular: (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers; (b) establish and promote measures alternative to

<sup>68</sup> Concluding observations of the Human Rights Committee: Australia. 24/07/2000. A/55/40, paras.498-528. (Concluding Observations/Comments).

<sup>69</sup> UNODC Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned, United Nations, New York, 2004, p. 90.

<sup>70</sup> UNODC Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned, United Nations, New York, 2004, p. 92.

<sup>71</sup> Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Resolution 19 “Management of criminal justice and development of sentencing policies”, Report of the 8th UN Congress on the Prevention of Crime and Treatment of Offenders, 1990, UN Doc. A/CONF.144/28/Rev.1.



institutional confinement for the treatment of such mothers. The Council of Europe, Parliamentary Assembly Recommendation 1469 (2000), on Mothers and babies in prison, adopted on 30 June 2000, also recommended the development and use of community-based penalties for mothers of young children and the avoidance of the use of prison custody. Most recently, in its Resolution 10/2, dated 25 March 2009, entitled “Human rights in the administration of justice, in particular juvenile justice”, the Human Rights Council emphasized that, when sentencing or deciding on pretrial measures for a pregnant woman or a child’s sole or primary carer, priority should be given to non-custodial measures, bearing in mind the gravity of the offence and after taking into account the best interest of the child.

Taking into account the provisions of the Tokyo Rules 3.3, which provide that “[d]iscretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law”, Member States are urged to take legislative measures to implement the measures referred to in this rule, as necessary.

### **Rule 65**

This Rule is based on the principle expressed in Article 37 (b) of the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). All children, and female children in particular, are extremely vulnerable in detention. Imprisonment is likely to have a very harmful impact on children’s psychological and intellectual development, which is why international standards are unanimous in calling for the reduction of the imprisonment of children in conflict with the law to the absolute minimum.

### **Rules 66**

Foreigners are vastly overrepresented in the criminal justice system of many countries, particularly those with a large migrant labour force. The rise in their numbers can partly be attributed to the increasingly punitive measures being adopted against “aliens” in many countries. Trafficked women find themselves behind bars, having been convicted of crimes against public morality, prostitution or breaking immigration rules, although they themselves are the victims of poverty, false promises, coercion and exploitation.

Trafficked persons are sometimes treated as criminals rather than as victims, whether in States of destination, transit or origin. In States of destination, they may be prosecuted and detained because of irregular migration or labour status. Alternatively, immigration authorities may simply deport them to the State of origin if their immigration status is irregular. Trafficked persons returning to their State of origin may also be subjected to prosecution for using false documents, having left the State illegally, or for having worked in the sex industry. Criminalization limits the trafficking victims’ access to justice and protection and decreases the likelihood that they will report their victimization to the authorities. Given the victims’ existing fears for their personal safety and of reprisals by the traffickers, the added fear of prosecution and punishment can only further prevent victims from seeking protection, assistance and justice.<sup>72</sup>

UNODC, as the custodian of the UN standards and norms relating to criminal justice and crime prevention, and based on its mandate to operationalise such standards and norms, should advocate for the ratification of these Conventions.

<sup>72</sup> Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings, UNODC, 2006, p. 103.

## **PART IV**

### **RESEARCH, PLANNING, EVALUATION AND PUBLIC AWARENESS-RAISING**

#### **Rules 67-68**

These Rules recognize the limited information available on women in the criminal justice system worldwide, which hinders the development of effective policies and implementation of programmes to respond to women offenders' needs fairly and effectively. The utilization of research as a basis for an informed policy formulation in responding to the gender specific circumstances and needs of woman offenders is an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and effectiveness of the criminal justice system in both delivering justice and enabling the social reintegration of woman offenders, and avoiding as far as possible the negative impact of women's confrontation with the criminal justice system on their children. The research should be based on accurate data collection, and where this poses challenges, should seek means to improve data collection methods, as well as harmonisation of data collection. Access to information should also be improved based on principles of transparency and in order to make the widest possible use of available data.

#### **Rule 69**

The process of planning should particularly emphasize a more effective and equitable system for the delivery of necessary services in prisons and in the community, as relevant to women offenders. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of women offenders and their children and an identification of clear-cut priorities. In that connection, there should also be a coordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

#### **Rule 70**

This Rule recognizes the limited nature of reliable data and public awareness on women offenders worldwide, the impact of imprisonment on their children, as well as the important role played by information sharing on research outcomes and good practices in the effectiveness of the delivery of justice to women offenders. It also recognizes the key role played by the media in disseminating information on matters relating to women prisoners and offenders. It also recognizes the importance of making available to the media and to those with a professional responsibility in matters concerning women reliable and up-to-date data, in order to enhance and improve the effective implementation of relevant policies and programmes, while receiving public support for them.

The rule also recognises the urgent need to train relevant criminal justice officials in the provisions of these rules and sensitise them to the situation and needs of women in the criminal justice system. Criminal justice officials should be regularly informed of the outcomes of new research in order to keep them abreast of new findings and developments so that they can make informed decisions in their dealings with women offenders.

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