

## Women in detention

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### Abstract

*Prison systems are rarely gender sensitive, and are even less so in conflict situations. When women are detained, it is crucial that international standards, applied with sensitivity to women's particular needs, are brought to bear. This article gives an overview of the relevant international law, as well as the gender-specific considerations that need to be taken into account when implementing it.*



More than half a million women and girls are held in penal institutions around the world, either as pre-trial detainees or having been convicted and sentenced. They represent between 2% and 9% of the global prison population.<sup>1</sup> The number of women held in relation to armed conflict is lower.<sup>2</sup>

In the main, women commit petty, non-violent offences such as theft and fraud; they come from impoverished and marginalized parts of society; and they tend to have a background of physical and emotional abuse, mental health problems, and alcohol or drugs dependency.<sup>3</sup> Women's imprisonment is closely related to poverty, both as the reason for the offence and because women often cannot afford legal services or payment of fines. Where women are unable to pay for a lawyer, or where legal processes are extremely slow, they may spend longer in pre-trial detention than the penalty for the crime itself. In many countries, the majority of female prisoners have been convicted of drug-related offences, but women are rarely major players in the drugs trade. Often they have been tricked into being drug couriers for small sums of money and sometimes do not understand the risks involved and the implications of the act.<sup>4</sup> Coercion may also have

been used to involve women in trafficking, and they may find themselves imprisoned for prostitution and breaking immigration rules. In some parts of the world, women may also be detained as a result of discriminatory laws and cultural practices, or tribal laws or traditions, rather than codified law.<sup>5</sup> Women detained for ‘crimes of honour’ or who are in custody for their own protection may remain in prison for long and indefinite periods. Women may also be held for crimes of which they are the victims, such as rape. Sometimes ‘protective custody’ is a misnomer for the arbitrary detention of victims of particular crimes, or simply when the threat of such a crime is present, or when women are held to ensure that they testify.<sup>6</sup>

The majority of women in custody in conflict areas are detained for ordinary crimes.<sup>7</sup> Female combatants held as prisoners of war are few in number because they are in the minority in armed forces and groups and are also less likely to be in frontline areas where they could be captured.<sup>8</sup> The number of women held for security reasons related to armed conflict or internal disturbances is also very small in comparison with that of men, mainly because they are less likely to be perceived as combatants or potential combatants.<sup>9</sup> Women may also be victims of kidnapping, whether by the state or by non-state forces, or be deprived of their liberty in situations of debt bondage or forced labour. In this article we will look at the situation of women held by the state, though these principles are also valid *mutatis mutandi* in the case of women held by non-state groups.

The prison service in many countries is generally not a priority area of governance and as a result is often ignored and/or underfunded, though, as the Special Rapporteur on the right to education has pointed out, ‘the availability of resources may affect the implementation of policy: they do not dictate that policy’.<sup>10</sup> However, conditions in post-conflict settings may be particularly poor and inhumane, often resulting from overcrowding. There may be little food and

1 Roy Walmsley, *World Female Imprisonment List*, International Centre for Prison Studies, Kings College London, 2006, p. 1.

2 ICRC, *Women and War*, Geneva, 2008, p. 22, available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0944> (last visited 11 March 2010).

3 Penal Reform International, *Penal Reform Briefing No. 3: Women in Prison – Incarcerated in a Man’s World*, London, 2008, p. 2.

4 Tomris Atabay, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, United Nations Office on Drugs and Crime, 2008, p. 90, available at <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> (last visited 1 April 2010).

5 Womankind Worldwide, *Taking Stock Update: Afghan Women and Girls Seven Years On*, London, 2008, p. 35, available at <http://www.womankind.org.uk/takingstockdownloads.html> (last visited 1 April 2010).

6 Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Dignity and Justice for Detainees Week: information note no. 5’, Geneva, 2008, p. 2, available at [http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention\\_infonote\\_5.pdf](http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_5.pdf) (last visited 1 April 2010).

7 Charlotte Lindsey, *Women Facing War*, ICRC, Geneva, 2001, p. 163, available at <http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/p0798> (last visited 1 April 2010).

8 *Ibid.*

9 *Ibid.*

10 Report of the Special Rapporteur on the right to education, Vernor Muñoz, *The Right to Education of Persons in Detention*, A/HRC/11/8, 2 April 2009, para. 12, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.8\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.8_en.pdf) (last visited 1 April 2010).

unclean water, and preventable disease may prevail.<sup>11</sup> Poor facilities and conditions affect both men and women, but women are particularly vulnerable.

While conditions of detention may not be discriminatory as such, not taking into account the special needs of women in a system primarily designed for men results in detention having a discriminatory impact on women.<sup>12</sup> Women in detention, especially mothers, have particular physical, vocational, social, legal, and psychological needs different from those of men.<sup>13</sup> International standards, applied with gender sensitivity, can ensure that they are treated appropriately and provided with acceptable conditions of imprisonment.

Both international humanitarian law and international human rights law contain treaty provisions and customary rules that are relevant to women in detention. Other branches of international law – such as international refugee law – may also be relevant. Finally, national law is the framework that is most commonly referred to in matters concerning detainees. The following analysis will focus on international humanitarian and human rights law, with which national law should be consistent in terms of states' obligation to implement their treaty commitments and to respect customary international law.

## International legal standards

Some international legal provisions in both human rights law and humanitarian law explicitly protect and promote women's rights. Both systems are based on the principle of non-discrimination, so all their provisions should be as applicable and accessible to women as they are to men. However, in practice, their application has focused on the public sphere, dominated by men, and neglected the private sphere where women live – and where the reasons for their detention often arise.

In 1995, the Fourth United Nations Conference on Women stated that women may be vulnerable to violence from public officials (including police, prison officials, and security forces) in both conflict and non-conflict situations, and called for gender-sensitive education and training for those officials.<sup>14</sup> It also called on governments not just to refrain from violating women's rights, but to work actively to promote and protect them.<sup>15</sup>

Through the determined efforts of civil society, particularly women's organizations, the vulnerability of women to extensive and appalling sexual abuse

11 OHCHR, *Rule of Law Tools for Post-Conflict States: Mapping the Justice Sector*, United Nations, Geneva, 2006, available at <http://www.ohchr.org/Documents/Publications/RuleoflawMappingen.pdf> (last visited 1 April 2010).

12 OHCHR, above note 6, p. 3.

13 *Ibid.*, p. 2.

14 Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women, Beijing, 15 September 1995, paras. 121, 124(g), and 232(i), available at [http://www.unesco.org/education/information/nfsunesco/pdf/BEIJIN\\_E.PDF](http://www.unesco.org/education/information/nfsunesco/pdf/BEIJIN_E.PDF) (last visited 1 April 2010).

15 *Ibid.*, para. 215.

in times of conflict – often occurring in situations where women were detained – began to receive attention. The Statutes of the *ad hoc* International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR respectively), established by the United Nations Security Council in 1993 and 1994 respectively, recognize rape in custodial and non-custodial situations as a crime against humanity under certain circumstances: that is, when rape is part of a widespread and systematic attack.<sup>16</sup> In a landmark decision in September 1998, the ICTR brought convictions for rape as being an act of genocide.<sup>17</sup> In February 2001, the ICTY brought convictions for rape, torture, and enslavement of women.<sup>18</sup> The Rome Statute of the International Criminal Court can bring similar prosecutions<sup>19</sup> and has stronger provisions to ensure the gender-sensitive application of international humanitarian and human rights law.<sup>20</sup>

These and other developments are much broader than the protection of women detainees. However, they are still relevant as a practical – and legal – demonstration of the gender-specific vulnerabilities of women in detention and the need not just to provide immediate improvements to their conditions of incarceration but also to strengthen advocacy about gender differences that result in women's rights being violated both in and out of detention.

## International humanitarian law

The guarantees of international humanitarian law provide women with what is often referred to as a 'two-tiered' system of legal protection. That is, women are afforded both general protection on the same basis as men and special protection for their needs as women. For example, Article 14 of the Third Geneva Convention requires that 'women shall be treated with all the regard due to their sex and shall in all circumstances benefit by treatment as favourable as that granted to men'. The provisions specific to women protect their privacy and modesty, and address medical and physiological needs mainly relating to pregnancy and childbirth. Any form of sexual violence is prohibited.<sup>21</sup>

16 Respectively, ICTY Statute, Art. 5(g), and ICTR Statute, Art. 3(g).

17 ICTR, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-1, Judgment, 2 September 1998.

18 ICTY, *The Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T, Judgment, 22 September 2001. Some of the women in this case were held in houses that served as brothels for soldiers and were subjected to almost constant rape and sexual assaults and other abuses. See also Human Rights Watch, *A Dark and Closed Place: Past and Present Human Rights Abuses in Foca*, 1998, and *Bosnia: Landmark Verdicts for Rape, Torture and Sexual Enslavement*, 2001.

19 See International Criminal Court, Rome Statute, Art. 3(g) and 4(e).

20 For example, *ibid.*, Art. 36(8) requires a 'fair representation of female and male judges' and other personnel who possess 'legal expertise on specific issues, including, but not limited to, violence against women and children'.

21 See GC I, Art. 12; GC II, Art. 12; GC III, Art. 14, 25, 88, 97, and 108; GC IV, Art. 14, 16, 21–27, 38, 50, 76, 85, 89, 91, 97, 124, 127, and 132; AP I, Art. 70 and 75–76; AP II, Art. 5(2) and 6(4).

## International human rights law

In international human rights law, treaties that are particularly relevant to the situation of women in detention are the International Covenant on Civil and Political Rights,<sup>22</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>23</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>24</sup> The first of these allows derogation from many of its provisions in times of emergency, subject to certain conditions. However, the right to life and the prohibitions on torture and cruel, inhuman, or degrading treatment or punishment, slavery, and retroactive criminal laws must be respected at all times and in all circumstances.<sup>25</sup> International human rights treaties are legally binding on parties, although in practice they are rarely implemented unless their provisions are included and enforced in domestic law.

International human rights law also has provisions that apply to men and women, as well as provisions specific to women.

## General provisions protecting detainees

Anyone deprived of their liberty by the state has the right to be treated with humanity and with respect for their dignity. States have a positive obligation to ensure detainees' enjoyment of their rights subject only to the restrictions that are unavoidable in a closed environment. This is a fundamental and universally applicable rule that, as a minimum, cannot be dependent on the material resources available and must be applied without distinction of any kind.<sup>26</sup>

## Torture

Torture is prohibited under both international humanitarian law and human rights law, as well as in most national legal systems. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture<sup>27</sup> but not cruel, inhuman, or degrading treatment or

22 United Nations General Assembly (UNGA) Resolution 2200 A (XXI), 16 December 1966.

23 UNGA Resolution 34/180, UN Doc. A/RES/34/180, 18 December 1979.

24 UNGA Resolution 39/46, UN Doc. A/RES/39/46, 10 December 1984.

25 Many of the provisions of international human rights law are also found in the three regional systems of human rights protection in Africa, the Americas, and Europe. Respectively, these are based on the African Charter on Human and Peoples' Rights (1981), the Inter-American Convention on Human Rights (1969), and the European Convention on Human Rights and Fundamental Freedoms (1950).

26 UN Human Rights Committee, 'General comment no. 21', 1992, para. 3, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3327552b9511fb98c12563ed004cbe59?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3327552b9511fb98c12563ed004cbe59?Opendocument) (last visited 1 April 2010).

27 Article 1 of the Convention defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is

punishment. There is obviously a continuum between the two, and whether an act of ill-treatment should be regarded as torture or other cruel, inhuman, or degrading treatment depends to a degree on the circumstances and specific status of the victim.

The United Nations Special Rapporteur on torture has suggested that to the treaty definition should be added the criterion of powerlessness: ‘A situation of powerlessness arises when one person exercises total power over another, classically in detention situations’.<sup>28</sup> He emphasized that it is crucial to interpret the torture protection framework in the light of a wide range of human rights guarantees, particularly those developed to combat violence against women, which can provide valuable insights into the particular challenges posed by such violence. In addition, international criminal jurisprudence has broadened concepts of the acts that can be encompassed by the term ‘rape’ and has facilitated interpretation and application of gender-sensitive rules of evidence and procedure.<sup>29</sup>

## Non-treaty standards

Non-treaty standards are not legally binding, but their strength is that they offer practical measures to protect the rights of detainees and prisoners. They are equally applicable to all states, not only those that have become party to the treaties, and in some cases reflect standards required by international law.<sup>30</sup> There are a large number of these standards,<sup>31</sup> but the five sets of rules and principles outlined below are particularly relevant to women detainees.

The key non-treaty standard is the Standard Minimum Rules for the Treatment of Prisoners.<sup>32</sup> This is widely used by those managing, developing, and reforming prisons and prison systems, as well as by organizations undertaking formal visiting, monitoring, and inspection.<sup>33</sup> While not intended to describe a model system of penal management, and notwithstanding the great variety of legal, social, economic, and geographical conditions in different countries, the Rules serve to stimulate attempts to overcome practical difficulties in their application ‘in

suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’.

28 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak, UN Doc. A/HRC/7/3, 15 January 2008, para. 28, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement> (last visited 1 April 2010).

29 *Ibid.*, para. 71.

30 See Nigel S. Rodley, *The Treatment of Prisoners under International Law*, Oxford University Press, 1999, pp. 280–281.

31 For a detailed list and texts, see <http://www2.ohchr.org/english/law/> (last visited 11 March 2010).

32 Standard Minimum Rules for the Treatment of Prisoners, approved by the United Nations Economic and Social Council Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 (‘Standard Minimum Rules’), available at <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (last visited 1 April 2010).

33 See also Penal Reform International, *Making Standards Work: An International Handbook on Good Prison Practice*, 2nd edn, London, 2001, p. 7.

the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations'.<sup>34</sup>

The Standard Minimum Rules lay down the minimum standards for many aspects of prison life, including the need to maintain discipline. These are to be applied without discrimination on various grounds, including the sex of the prisoner,<sup>35</sup> and there are special provisions for pregnant women and nursing mothers.<sup>36</sup> Similarly, the provisions of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>37</sup> are to be applied without distinction of any kind, including sex, but with the stipulation that measures designed solely to protect the rights of women shall not be deemed discriminatory.<sup>38</sup>

The Standard Minimum Rules for Non-custodial Measures (also known as the Tokyo Rules) provide a set of basic principles to promote the use of non-custodial measures, community involvement in criminal justice, and a sense of responsibility among offenders.<sup>39</sup> They are particularly relevant to women deprived of their liberty, since many of their offences are for minor crimes that do not necessitate custodial sentences.

A new standard currently under discussion in the UN Commission on Crime Prevention and Criminal Justice is the Draft UN rules for the treatment of women prisoners and non-custodial measures for women offenders.<sup>40</sup> This does not seek to replace the Standard Minimum Rules or the Tokyo Rules but to supplement them, clarify their application, and recognize the specific needs of women prisoners.<sup>41</sup>

Finally, the United Nations Declaration on the Elimination of Violence against Women describes violence against women as encompassing but not limited to physical, sexual, and psychological violence occurring in the home, in the general community, and perpetrated or condoned by the state.<sup>42</sup> It sets out a number of steps that states should take, including the training of public officials to sensitize them to women's needs.<sup>43</sup>

34 Standard Minimum Rules, Art. 2.

35 *Ibid.*, Art. 6(1).

36 *Ibid.*, Art. 23.

37 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ('Body of Principles'), UNGA Resolution 43/173, UN Doc. A/RES/43/173, 9 December 1988, available at <http://www.un.org/documents/ga/res/43/a43r173.htm> (last visited 1 April 2010).

38 *Ibid.*, Principle 5.

39 United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), United Nations General Assembly Resolution 45/110, UN Doc. A/RES/45/110, 14 December 1990, available at <http://www2.ohchr.org/english/law/tokyorules.htm> (last visited 1 April 2010).

40 See Commission on Crime Prevention and Criminal Justice, 'Draft United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders', UN Doc. E/CN.15/2009/CRP.8, 9 April 2009, available at <http://www.unrol.org/doc.aspx?d=2914> (last visited 1 April 2010).

41 An expert group met to consider the draft Rules in February 2009 and will report to the Twelfth UN Congress on Crime Prevention and Criminal Justice, to be held in Brazil in April 2010.

42 Declaration on the Elimination of Violence against Women, UNGA Resolution 48/104, UN Doc. A/RES/48/104, 20 December 1993, available at [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.48.104.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.48.104.en) (last visited 1 April 2010).

43 *Ibid.*, Art. 4.

## Gender-specific considerations in detention

### Prison classification and placement systems

Prisons in many countries are overcrowded, and this is even more the case in women's prisons. Because of their smaller – but often increasing – numbers, women and girls in custody are more likely than men and boys to be held in unsuitable and often dangerous conditions.<sup>44</sup> If the specific needs of women and girls are to be met, it is essential that prison authorities develop and implement gender-specific classification and placement policies. These should acknowledge that women must be kept in separate quarters from men, and girls in separate quarters from boys. Juveniles under the age of 18 should not be kept in adult facilities, and untried prisoners should be kept separately from convicted prisoners.<sup>45</sup> Within a women's prison or section, mothers with children should be provided with separate accommodation for sleeping and dealing with the children to minimize the tensions that can arise because of the presence of children, such as the noise and other pressures (crying, illnesses, etc).<sup>46</sup>

However, in the vast majority of prisons worldwide, the same classification system is used for women as for men. Screening processes tend to take too little account of specific issues affecting a large proportion of female prisoners – such as a history of domestic violence, sexual abuse, parental responsibility – and of the actual security risk that women present, all of which should influence their placement within the prison system. Consequently, women are routinely over-classified in terms of the requisite level of security, and insufficient programmes and services appropriate for their needs are provided. Over-classification can often restrict access to available programmes until late in the sentence, potentially reducing their chances of successful re-entry into society.<sup>47</sup> Effective classification systems are even less likely to exist in conflict situations but, whenever possible, women detained in connection with an armed conflict or internal disturbance should be separated from those detained for ordinary crimes unrelated to the conflict.<sup>48</sup>

### Legal support and paralegals

Every detainee has the right to be presumed innocent until proven guilty<sup>49</sup> and to be represented by a lawyer of their choice, at public expense if necessary, and to have

44 For more information about girls in conflict with the law, see Human Rights Watch, 'Violence against girls in conflict with the law', 2003, available at <http://www.hrw.org/legacy/english/docs/2007/02/20/global15345.htm> (last visited 15 January 2010).

45 Standard Minimum Rules, Art. 8.

46 C. Lindsey, above note 7, p. 165.

47 Tomris Atabay, *Afghanistan: Female Prisoners and their Social Reintegration*, UN Office on Drugs and Crime, Vienna, March 2007, p. 74, available at [http://www.unodc.org/pdf/criminal\\_justice/Afghan\\_women\\_prison\\_web.pdf](http://www.unodc.org/pdf/criminal_justice/Afghan_women_prison_web.pdf) (last visited 1 April 2010).

48 C. Lindsey, above note 7, p. 164.

49 Standard Minimum Rules, Art. 84(6).



adequate time, facilities, and privacy to communicate with their lawyer.<sup>50</sup> Despite this, the reality is that publicly funded legal aid is frequently limited or non-existent. Women detainees often lack the resources to pay for legal representation, or there may not be lawyers available. Research has shown that defendants who have not been detained prior to their trial have significantly better chances of acquittal.<sup>51</sup> However, many women do not have the possibility of bail: they then face trial without legal representation, and without knowledge of the law and courts.

In a number of African countries, this has been addressed by the use of trained paralegals working under the supervision of a lawyer. The Paralegal Advisory Service Institute in Malawi, for example, uses paralegals trained in criminal law and procedure and in interactive learning techniques to empower people in prison to apply the law to their own case. Through Paralegal Aid clinics held in the prisons, detainees learn how to make an application for bail or a plea in mitigation. They are introduced to the principles of sentencing and learn how to appeal against a sentence.<sup>52</sup>

## Records

State detaining authorities are responsible for ensuring that the detention of an individual is lawful, and that treatment is consistent with international human rights standards. The proper keeping of records of each detainee is an essential tool in preventing human rights violations, including denial of due process,<sup>53</sup> torture, or enforced disappearance in custody. In the case of women, it is important for ensuring that gender-specific health and other needs are met.<sup>54</sup>

## Management

Women prisoners should be under the responsibility of a woman officer who has custody of the keys for that part of the institution<sup>55</sup> and should be attended only by

50 *Ibid.*, Art. 93; Body of Principles, Principle 18; International Covenant on Civil and Political Rights (ICCPR), Art. 14(3)(b), available at <http://www2.ohchr.org/english/law/ccpr.htm> (last visited 1 April 2010).

51 Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/2006/7, 12 December 2005, para. 66, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/166/48/PDF/G0516648.pdf?OpenElement> (last visited 1 April 2010).

52 For further information, see *The PLC Manual: A Manual for Paralegals Conducting Paralegal Advisory Clinics (PLCs) in Prison*, 2nd edn, Nanzikambe, Penal Reform International, and the Paralegal Advisory Service, Lilongwe, 2007, available at <http://www.penalreform.org/publications/plc-manual-manual-paralegals-conducting-paralegal-aid-clinics-prison-0> (last visited 1 April 2010).

53 See for example the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston: Addendum, Mission to Nigeria, UN Doc. E/CN.4/2006/53/Add. 4, 7 January 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/106/40/PDF/G0610640.pdf?OpenElement> (last visited 1 April 2010), para. 68, finding that, in Nigeria in 2005, 3.7% of an estimated prisoner population of 44,000 remained in prison because of lost case files.

54 For further information, see Rachael Stokes, Mel James, and Jeff Christian, *Handbook on Prisoner File Management*, UN Office on Drugs and Crime, Vienna, 2008.

55 Standard Minimum Rules, Art. 53(1).

women officers. Male staff may carry out their professional duties in the premises set aside for women,<sup>56</sup> but should always be accompanied by a woman officer.<sup>57</sup> Where this is not feasible, the prison authorities should ensure a minimum of female personnel and develop clear policies and procedures that minimize the probability that female prisoners will be abused or ill-treated in any way. Such prevention policies should be applicable in all prisons.

## Family relationships and responsibilities

Prisoners can request to be held ‘reasonably’ near their usual place of residence. This is particularly important for women, given their roles in the community and their responsibilities as primary caregivers for children, sick and elderly relatives, and others. Exceptions may be appropriate where a woman needs to be protected from those who may have abused or exploited her and where this cannot be guaranteed other than by transfer.<sup>58</sup> Decisions to place women are often based on the concentration of resources in a small number of prisons for women, with the result that they may be located far away from their families and communities. This can be particularly problematic in large countries where huge distances need to be covered for family visits, or in conflict or post-conflict regions where security and safety concerns are ever present. Visiting is further compromised where public transport facilities are poor, expensive, or non-existent, or where women are not permitted to travel alone.

Women in cultures where imprisonment is regarded as particularly shameful generally receive fewer visitors than men. The family may reject the woman or be unaware of where she is being detained. Her male relatives may have been killed or displaced, or may have simply disappeared. Her husband may remarry. Yet visitors are essential for a detainee’s psychological wellbeing and are a way to obtain food, medicine, and other necessities when resources are scarce and adequate supplies are not being provided by the authorities.<sup>59</sup>

In these circumstances, prison management should be encouraged to facilitate as much contact as possible between the woman and her family through leave from prison, extended prison visits (including conjugal visits if allowed), telephone contact, letters, and other appropriate means.<sup>60</sup> Prison authorities should be flexible about the frequency and length of visits, particularly when visitors have travelled long distances, and should take account of school hours and standard working hours to enable children to visit out of school hours.<sup>61</sup>

56 *Ibid.*, Art. 53(3).

57 *Ibid.*, Art. 53(2).

58 T. Atabay, above note 4, p. 61.

59 ICRC, above note 2, p. 22.

60 OHCHR, above note 6, p. 4.

61 T. Atabay, above note 4, p. 61.

## Health

All prisoners, male or female, are entitled to medical care according to their needs. Because so many women detainees come from impoverished backgrounds, they are likely to suffer from a variety of health conditions when they enter prison. They may have been unable to pay for diagnosis or treatment, or they may have experienced discrimination and barriers in accessing healthcare services because of their gender. Consequently, female prisoners often have greater primary healthcare needs in comparison to men. This makes it vital for them to have proper health screening on entry to prison, and continuing access to medical and healthcare services during their detention.<sup>62</sup> Medical care in detention should be at least commensurate with that available in the community, and should be provided by female medical and health personnel whenever possible.

### *Reproductive health*

Women have specific health and hygiene needs related to reproductive health, which vary according to a woman's age and situation. These include, for example, sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels, all of which they should be able to access without embarrassment.<sup>63</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment considers that the failure to provide such basic necessities can amount to degrading treatment.<sup>64</sup> Women may also experience psychological and physical difficulties related to menopause and require specific medical services. Both medical and health workers and prison staff should be given training that sensitizes them to these issues and provides practical advice about how to be supportive of women prisoners concerning these matters.<sup>65</sup>

### *Ante-natal and post-natal care*

Pregnant women detainees have specific health needs and are entitled to adequate ante- and post-natal care. This care should be provided in the prison by appropriately qualified personnel, or at community hospitals or health centres when the prison is unable to provide these services directly. Pregnant and lactating mothers also have additional dietary requirements, a matter often not considered or catered for by prison authorities. As a result, the food provided may be insufficient to cover the nutritional requirements of pregnant and nursing mothers. In low-income

62 *Ibid.*, p. 49.

63 *Ibid.*, above note 4, p. 57.

64 European Committee for the Prevention of Torture, '10th General Report on the CPT's activities covering the period 1 January to 31 December 1999', CPT/Inf (2000) 13, 18 August 2000, para. 31, available at <http://www.cpt.coe.int/en/annual/rep-10.htm> (last visited 1 April 2010).

65 T. Atabay, above note 4, p. 53.

countries, the delivery of babies may be carried out in prisons in unhygienic conditions by staff with inadequate medical expertise, resulting in health complications for mother and baby. In some countries, body restraints such as shackles are used on pregnant women during transfers to hospitals, gynaecological examinations, and birth, even though this practice violates international standards.<sup>66</sup> Pregnant women who are victims of ill-treatment or held in inhumane conditions face the additional threat of miscarriage or permanent injury to themselves and their unborn child. Often, detaining authorities not only ignore their special needs but take advantage of their vulnerability to inflict severe physical and emotional pain on them.<sup>67</sup>

If possible, pregnant women and women with small children should not be detained at all, as prisons are not designed for them. However, where this does occur, the children are entitled to medical care and education as well as food and water, and they should not be treated as prisoners. The execution of pregnant women or mothers who have dependent children is prohibited.<sup>68</sup>

### *Mental health care*

Research has shown that women have much higher levels of mental healthcare needs than men on entry to prison, often as a result of domestic violence, and physical and sexual abuse. Once in detention, proportionately more female prisoners suffer psychological distress than their male counterparts. As pointed out above, they are more likely to experience rejection by their families and by society in general. Women's mental health is likely to deteriorate in prisons that are overcrowded, where appropriate classification and placement systems are not implemented, and where prisoner programmes are either non-existent or inadequate to address the specific needs of women.<sup>69</sup> These factors may help explain why the level of self-harm and suicide among women detainees is much higher than for men. Studies of prisoner suicides have indicated that long-term sentences, single-cell use, mental disabilities, substance abuse, and a history of suicidal tendencies are all associated with a higher suicide risk.<sup>70</sup> Effective assessment of needs is key to the effective management of any prisoner, particularly those at high risk of self-harm. Prison authorities should have self-harm and suicide prevention strategies, one aspect of which is closer supervision of women identified as being at risk. While medication may be appropriate in some cases, it should not be the sole means of assisting women to overcome their distress or depression. Women should be offered psychosocial support to address the underlying reasons that led to their

66 *Ibid.*, pp. 19–20.

67 C. Lindsey, above note 7, p. 172.

68 ICCPR, Art. 6(5); AP I, Art. 76(3); AP II, Art. 6(4).

69 T. Atabay, above note 4, p. 10.

70 *Ibid.*, p. 55.

mental health problems. These women should not be treated as requiring a higher level of security.<sup>71</sup>

### *Substance abuse*

A high proportion of women prisoners are drug or alcohol dependent and are in need of treatment for their addiction. In most countries, women experience social, cultural, and personal barriers to entering treatment in the community. These include the significant stigma and shame associated with substance-related problems among women, and may be compounded by fear of losing custody of their children, lack of partner and other family support, and lack of confidence about treatment. Under these circumstances, prisons may provide a good opportunity to address the addiction needs of these women in a safe environment. Such a programme may consist *inter alia* of the establishment of therapeutic communities in prisons, with a comprehensive package of treatment including medication, counselling, and continuation of care following release.<sup>72</sup>

There is now increased knowledge and awareness that gender differences in substance use and related problems require different treatment approaches. A gender-sensitive approach to women's health care should therefore also take into account the need to provide specialized treatment programmes for female substance abusers that address the specific causes of female addiction. When drug addiction is untreated in prison, the likelihood of re-offending is high, either on drugs charges or through theft or illegal sex work undertaken to finance the addiction.<sup>73</sup>

Drugs are one of the main reasons for prison security measures such as internal body searches and restrictions of visits or home leave. These measures can be particularly punitive for women. A balance has to be found between humane treatment and making efforts to ensure that prisons are free from illicit drugs, while providing care and treatment.<sup>74</sup>

### *HIV/AIDS*

In many countries a significant percentage of women prisoners are infected with sexually transmitted diseases, including HIV.<sup>75</sup> The Quaker UN Office has noted that 'Women in prison are at particular risk of HIV infection, in part due to their

71 *Ibid.*, p. 52.

72 *Ibid.*, p. 54.

73 *Ibid.*, p. 13.

74 World Health Organization Regional Office for Europe, *Women's Health in Prison: Correcting Gender Inequity in Prison Health*, Copenhagen, 2009, para. 44, available at <http://www.euro.who.int/Document/E92347.pdf> (last visited 16 March 2010).

75 Megan Bastick and Laurel Townhead, *Women in Prison: A Commentary on the UN Standard Minimum Rules for the Treatment of Prisoners*, Quaker United Nations Office, Geneva, June 2008, p. 66, available at <http://www.quono.org/geneva/pdf/humanrights/women-in-prison/WiP-CommentarySMRs200806-English.pdf> (last visited 1 April 2010).

vulnerability to sexual exploitation, and to receiving inadequate treatment if infected with HIV or suffering from AIDS'.<sup>76</sup> HIV/AIDS prevention, treatment, and care programmes should be available. These should be tailored to address the particular risks to women arising from drug use, sex work, and unsafe sexual practices. They should also be responsive to the unique needs of women and address, for example, the prevention of mother-to-child transmission. Health authorities in prison should encourage and support the development of peer-based education initiatives, and educational materials should be designed and promoted by prisoners themselves. Prison authorities should also encourage the development and support of self-help and peer-support groups that raise the issues of HIV/AIDS in prisons themselves. Every effort should be made to involve non-governmental organizations in the development of HIV prevention, treatment, care, and support programmes in prison, as well as to create links between prison programmes and community HIV prevention and treatment services.<sup>77</sup>

Capacity-building programmes on HIV should also be included as part of the regular training curricula of prison staff.

## Sexual abuse

In many countries, women are sexually abused and humiliated by law enforcement officials. Such abuse can range from subtle humiliation to rape. The former can include verbal abuse, improper touching during pat-down searches, frequent and unnecessary searching, and spying on prisoners during showers and in living areas. The impact of strip-searches on women is disproportionately greater than on men, as women detainees as a group present a higher incidence of previous sexual assault than the general community and their male counterparts.<sup>78</sup> For women especially, there are no clear-cut boundaries between physical, psychological, sexual, and social violence. Any violence perpetrated on women, by definition vulnerable in detention, always carries the threat of sexual aggression.<sup>79</sup> During arrest and/or while in detention, women are all the more exposed to the risk of ill-treatment where there is a lack of transparency in the arrest and detention arrangements, and especially where they are unable to have access to a lawyer (either because they are denied this right or because they are unable to afford legal fees).

Rape of women in detention can be either the deliberate policy of a repressive government or the result of indifference and failure to take sufficient preventive measures.<sup>80</sup> Rape or transactional sex may take place in the form of

76 Quaker United Nations Office, 'Submission to Committee on the Elimination of Discrimination Against Women: eliminating discrimination against women in prison', Geneva, 4 January 2005, p. 11, available at <http://www.quino.org/geneva/pdf/20050104CEDAW.pdf> (last visited 1 April 2010).

77 T. Atabay, above note 4, p. 54.

78 OHCHR, above note 6, p. 3.

79 C. Lindsey, above note 7, p. 171.

80 Joan Fitzpatrick, 'The use of international human rights norms to combat violence against women', in Rebecca J. Cook (ed.), *Human Rights of Women: National and International Perspectives*, University of Pennsylvania Press, Philadelphia, 1994, p. 544.

sexual services that women prisoners are forced to provide to male prisoners and male staff in return for access to goods and privileges. Sexual abuse of women by male prisoners may take place with the complicity of prison guards. Women who have been charged with or convicted of crimes against morality, as well as lesbian, bisexual, or transgender women, are at particular risk.<sup>81</sup> Rape and transactional sex leave psychological scars and increase the risk of sexual exploitation, unwanted pregnancy, HIV, and other sexually transmissible diseases.

Women subjected to sexual violence either during or before their imprisonment should be offered assessment, professional advice, and counselling by an appropriately qualified medical officer, or health or other worker, such as a psychologist. Survivors of sexual violence may need several individual interviews before they are ready to tell of their experience, and some may never be able to speak about it at all, though silence should not be taken as an indication that nothing has happened.<sup>82</sup>

## Children of women detainees

### *Dependent children outside prison*

Many women in detention are mothers of children under 18 years of age and are more frequently than men the heads of single-parent families.<sup>83</sup> The effects of even a short period of custody can be particularly devastating for any woman, particularly those who are sole carers for their children.<sup>84</sup> There is a high risk of losing accommodation and employment upon prison entry. When mothers are imprisoned and the family breaks up, alternative carers need to be found, often at short notice. Extended families perhaps most commonly fulfil this role, and also state institutions including foster care and institutional placement. This leads to large numbers of children being institutionalized. Research has indicated that the children of imprisoned parents are at greater risk of future incarceration.<sup>85</sup> A woman whose children have been placed in the care of the state or another person usually cannot reclaim custody unless she has accommodation and the means to support her family. This can result in extended or permanent dislocation of families.<sup>86</sup> Detaining and sentencing authorities rarely take the rights and needs of dependent children into account.<sup>87</sup>

81 T. Atabay, above note 4, p. 14.

82 C. Lindsey, above note 7, pp. 175–176.

83 Report of the Special Rapporteur on the right to education, above note 10, p. 15.

84 Laurel Townhead, *Pre-trial Detention of Women and its Impact on their Children*, Quaker United Nations Office, Geneva, February 2007, available at <http://www.quono.org/geneva/pdf/humanrights/women-in-prison/WiP-pretrial-detention200702-English.pdf> (last visited 1 April 2010); Oliver Robertson, *Children Imprisoned by Circumstance*, Quaker United Nations Office, Geneva, April 2008, available at <http://www.quono.org/geneva/pdf/humanrights/women-in-prison/200804childrenImprisonedByCircumstance-English.pdf> (last visited 1 April 2010).

85 T. Atabay, above note 4, p. 17.

86 OHCHR, above note 6, p. 2.

87 T. Atabay, above note 4, p. 19.

### *Dependent children residing in prison*

Only limited statistics exist globally about the number of children living in detention with their mothers.<sup>88</sup> The ‘best interest of the child’ principle is generally regarded as a sound basis for a decision to permit children to live with their mothers in prison. There are no rules in international instruments about whether children can stay with their parents in detention or the age up to which they can do so.<sup>89</sup> As a result, many countries have developed policies that specify an age; these policies often allow children up to two years old, but children up to twelve years old are permitted in some jurisdictions, such as Mexico. Some children are in detention facilities because they were with their parents when the latter were taken into custody/internment and no other arrangement is feasible.<sup>90</sup> But children in prison are unlikely to be able to mix with children outside prison or have access to community facilities such as shops, markets, animals, and open spaces. Moreover, health services in prison are usually not geared towards children’s healthcare needs, and education and play materials are generally limited. The restricted and often harsh, punitive environment of prisons can permanently damage the psychological and mental wellbeing of children there.<sup>91</sup> As said above, ideally, pregnant women and women with small children should not be detained but, where this does occur, the children are entitled to medical care and education as well as food and water, and they should not be treated as prisoners.

### Education and vocational training

Women in prison are generally young, poor, and unemployed, with little education and few basic skills.<sup>92</sup> The UN Special Rapporteur on the right to education recently noted that, since women’s educational needs are different from those of men, equal treatment and equal opportunities would not necessarily lead to similar results. It is important that the training and work provided should correspond to market demands and aim to increase women’s real chances of earning a living wage after release.<sup>93</sup> However, although education is an important means of helping women gain self-confidence and life skills and of reducing their chances of re-offending, a lack of research and information on their particular educational needs remains. In many states, the quality and range of programmes is poorer than for those provided for men and, where they are offered, they often reflect traditional female roles such as sewing, kitchen duties, beauty care, and handicrafts.<sup>94</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

88 Report of the Special Rapporteur on the right to education, above note 10, p. 15.

89 C. Lindsey, above note 7, p. 163.

90 *Ibid.*

91 T. Atabay, above note 4, p. 21.

92 Report of the Special Rapporteur on the right to education, above note 10, p. 16.

93 T. Atabay, above note 4, p. 75.

94 Report of the Special Rapporteur on the right to education, above note 10, p. 17.



Punishment has observed that female detainees are all too often ‘offered activities which have been stereotyped as “appropriate” for them ... whilst male juveniles are offered training of a far more vocational nature’.<sup>95</sup> Furthermore, male detainees are often offered a wider variety of recreational and educational programmes and income-generating projects than women and have more opportunities to go outside the prison for external work programmes.<sup>96</sup> This reflects a more general trend whereby, because female prison populations are smaller, there is a lack of programmes designed or adapted specifically for women. The accelerated growth of the female prison population has led to a corresponding decrease in female prisoners’ access to educational and other rehabilitative programmes.<sup>97</sup>

## Redress

### Complaints mechanisms

Every prisoner has the right to make complaints to the detaining authorities and to external inspectors, which should be responded to without undue delay unless the complaint is ‘evidently frivolous or groundless’.<sup>98</sup> Perceptions of what constitutes ‘frivolous’ often differ considerably, however, between the authorities and women detainees. All complaints should be taken seriously, and investigated promptly and impartially. Particularly in cases of alleged sexual abuse, it is essential that the investigation is carried out by women.

Women alleging sexual abuse should receive immediate protection and supervision during the investigation and for as long as needed. However, complete isolation may be viewed as punitive and can compound the original abuse.<sup>99</sup>

### Documentation of human rights violations

Where women’s rights are abused in or by their detention, it is important that an accurate and factual record is kept. This may be done by the prisoner herself, her legal representative, or an independent civil society or professional organization. Even if there are no or only limited local remedies available through national laws and courts, there may be organizations (such as Amnesty International or Human Rights Watch) that can use the information immediately. In all cases, but especially in situations where the rule of law has broken down, it is important that records

95 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The CPT standards – ‘Substantive’ sections of the CPT’s General Reports*, CPT/Inf/E (2002) 1 – Rev. 2004, Strasbourg, September 2004, p. 65, available at <http://www.cpt.coe.int/en/documents/eng-standards.pdf> (last visited 1 April 2010).

96 C. Lindsey, above note 7, p. 201.

97 M. Bastick and L. Townhead, above note 75.

98 Standard Minimum Rules, Art. 36(4).

99 T. Atabay, above note 4, p. 38.

have been kept so that prosecutions can be brought and remedies sought, using national, regional, or international systems in the longer term.

There are many civil society organizations in all parts of the world dealing with human rights documentation, and many of them provide training, advice on monitoring, and documentation and software to facilitate these tasks. Their umbrella organization is the Human Rights Information and Documentation Systems, International (HURIDOCs), based in Switzerland.<sup>100</sup>

## Using international mechanisms for obtaining redress

The main international resources are those afforded by the UN human rights machinery. These take many forms,<sup>101</sup> but the most accessible are the thematic mechanisms (or UN Special Procedures), which examine human rights issues and report to the UN Human Rights Council. Some are particularly relevant to women in detention. They include those dealing with violence against women, torture and ill-treatment, enforced or involuntary disappearance, arbitrary detention, human rights defenders, and the rights to the highest attainable standard of health, food, and education respectively.

Anyone can submit reliable and factual information to the Special Procedures experts at any time through the Office of the High Commissioner for Human Rights. The case will then be raised with the authority concerned and made public, with the authority's response, if any, in the mechanism's annual report. The identity of those submitting the information is not made public. Standard questionnaires for several of the mechanisms are available online.<sup>102</sup> The mechanisms also carry out a small number of country visits each year and issue a public report on each visit.<sup>103</sup>

## Conclusion

Prison systems are rarely gender sensitive, and are even less so in conflict situations, where resources may be more limited and other concerns may prevail. As the majority of prisoners are usually men, prisons in most countries are designed for the needs of men, and women's prisons are often incorporated into the same

100 See <http://www.huridocs.org> (last visited 16 March 2010).

101 See OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, New York and Geneva, 2008, p. 153, available at <http://www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx> (last visited 1 April 2010).

102 See <http://www2.ohchr.org/English/bodies/chr/special/themes.htm> (last visited 16 March 2010) for a list and links to the websites of Special Procedures.

103 In addition, all three regional human rights regimes – the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, and the Council of Europe – have mechanisms that can protect the rights of detainees. Information can be obtained from their respective websites: <http://www.cidh.oas.org>; <http://www.achpr.org>; and [http://www.echr.coe.int/echr/Homepage\\_EN](http://www.echr.coe.int/echr/Homepage_EN) (last visited 16 March 2010).

premises. However, in many countries the rates of female imprisonment are growing significantly, often because of an increased use of imprisonment to punish offences that were previously subject to non-custodial sentences.<sup>104</sup> As a result, pressures on already overstretched prison systems are mounting, leading to overcrowding and resources being even more strained. For most women offenders, community sanctions and non-custodial sentences are a far more appropriate response than incarceration, and some countries are identifying alternative schemes. When women are detained, it is crucial that international standards, applied with sensitivity to their particular needs, are brought to bear. The growing number of women in prison in many countries brings urgency to tackling the serious problems they face: the reasons for their detention, their treatment in custody, and the challenges awaiting them when they are released.

104 OHCHR, above note 6, p. 2.