

Report of the Workshop

**ROLE OF THE UNITED NATIONS STANDARDS AND NORMS  
IN CRIME PREVENTION AND CRIMINAL JUSTICE IN  
SUPPORT OF EFFECTIVE, FAIR, HUMANE AND  
ACCOUNTABLE CRIMINAL JUSTICE SYSTEMS:  
EXPERIENCES AND LESSONS LEARNED IN MEETING THE  
UNIQUE NEEDS OF WOMEN AND CHILDREN, IN  
PARTICULAR THE TREATMENT AND SOCIAL  
REINTEGRATION OF OFFENDERS**

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## **FORWARD**

Ensuring that the rule of law applies equally to all segments of society—in particular with respect to vulnerable groups such as women offenders and children in conflict with the law—is a continuing challenge experienced throughout the world. On the basis of this recognition, Workshop 1 on the “Role of the United Nations standards and norms in crime prevention and criminal justice in support of effective, fair, humane and accountable criminal justice systems: experiences and lessons learned in meeting the unique needs of women and children, in particular the treatment and social reintegration of offenders” was convened on 13 April 2015 in Doha, Qatar within the framework of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice.

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI), a member of the United Nations Crime Prevention and Criminal Justice Programme Network (PNI), was responsible for the administration of this workshop as an official component of the Congress, and played the leading role in its organization and preparation. The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), as one of the PNI institutes, offered to take an active role in organizing Panel I on the treatment of women offenders. Additionally, UNAFEI offered to publish the report of the workshop.


The workshop aimed to describe the unique needs of women and children impacted by the criminal justice system, assess the status of implementation of relevant United Nations standards and norms, and develop effective strategies to ensure women offenders and children in conflict with the law receive fair and equal treatment that addresses their unique needs. The workshop, consisting of a panel on women offenders and a panel on children in conflict with the law, offered an opportunity for government representatives, experts and practitioners to exchange information on strategies and best practices for addressing the unique needs of women and children. The conclusions of the panel discussions, as summarized by the moderator, appear at the end of the Workshop Report, which is published herein.

The present publication is a compilation of the summary of all the presentations and discussions of the Workshop, and all the reference papers made available to the workshop. It is our great pleasure to publish this comprehensive report of the workshop to further disseminate its outcomes globally.

I would like to express my sincere appreciation to the moderator and all of the presenters and pannellists of the workshop—the 18 prominent experts from all over the world without whose strenuous contributions the workshop would not have been such an outstanding success. Furthermore, I would like to thank the UNODC and RWI for their leadership in organizing the workshop, and to all the individuals whose unselfish efforts behind the scenes contributed significantly to the realization of both the workshop and this publication.

Finally, I am convinced that this publication is essential reading material for all those who are interested in offender treatment and reintegration, including criminal justice practitioners, policy makers, and academics. I am also confident that it will serve as a valuable reference source for international, as well as local, training activities.

March 2016

A handwritten signature in black ink that reads "YAMASHITA, Terutoshi." The signature is written in a cursive, slightly slanted style.

YAMASHITA Terutoshi  
Director of UNAFEI

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# **INTRODUCTION**

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## **BACKGROUND PAPER FOR WORKSHOP 1**

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## **WORKSHOP 1 PROGRAMME**





Item 3 of the provisional agenda<sup>\*</sup>

**Successes and challenges in implementing comprehensive crime prevention and criminal justice policies and strategies to promote the rule of law at the national and international levels, and to support sustainable development**

**Workshop 1: Role of the United Nations standards and norms in crime prevention and criminal justice in support of effective, fair, humane and accountable criminal justice systems: experiences and lessons learned in meeting the unique needs of women and children, in particular the treatment and social reintegration of offenders<sup>\*\*</sup>**

## **Background paper**

### *Summary*

This background paper highlights issues for consideration by Member States when developing crime prevention and criminal justice strategies and measures that ensure the inclusion of gender and children-oriented perspectives, particularly with regard to the treatment, social reintegration and prevention of recidivism of women and children. The paper also provides an overview of the United Nations standards and norms in crime prevention and criminal justice that are relevant in addressing the unique needs of women and children in conflict with the law, in particular the treatment and social reintegration of offenders. It further presents national experiences and key lessons learned in meeting those needs, providing a set of specific recommendations for consideration during the Workshop.

## **I. Introduction**

1. An important function of the United Nations has been the development of a broad range of standards and norms in the area of crime prevention and criminal justice. Many of these instruments deal with the treatment of offenders and prisoners such as 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> the Basic

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<sup>\*</sup> A/CONF.222/1.

<sup>\*\*</sup> The United Nations Secretariat wishes to express its appreciation to the members of the United Nations Crime Prevention and Criminal Justice Programme network of institutes, especially to the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, for assisting in the organization of the Workshop.

<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> General Assembly resolution 43/173, annex.

Principles for the Treatment of Prisoners<sup>4</sup> and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).<sup>5</sup> In 2010, recognizing the need to provide global standards with regard to the distinct considerations that should apply to women prisoners and offenders, the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)<sup>6</sup> were adopted as a supplement to the Standard Minimum Rules for the Treatment of Prisoners.

2. Several standards and norms relating to the administration of justice for children in conflict with the law<sup>7</sup> have also been adopted, including the recent United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice,<sup>8</sup> which provide guidance to countries on how to develop and implement the necessary legal, policy and institutional frameworks for preventing and responding to violence against children in the field of crime prevention and criminal justice.

3. The above standards and norms represent important milestones in the treatment of women offenders and children in conflict with the law. However, despite these achievements, crime rates have escalated and there is an increased number of women offenders, while challenges in meeting the needs of children in conflict with the law persist worldwide. Hence, it is critical for Member States to develop crime prevention and criminal justice strategies and measures which ensure the inclusion of a gender and children-oriented perspective, particularly as regards their treatment and social reintegration and the prevention of recidivism. Equally important are the efforts to eradicate all forms of discrimination and violence against women and children at all levels of society, particularly when women and children enter in contact with the law.

4. More than 625,000 women and girls are held in penal institutions throughout the world, either as pretrial detainees or as convicted and sentenced persons.<sup>9</sup> Women in conflict with the law tend to be young, poor, undereducated and unskilled. It is recognized that women have been adversely affected by poverty, lack of empowerment, as well as social, economic and political marginalization and exclusion from the benefits of education, health and sustainable development. These challenges have placed them at higher risk of delinquency and violence. It is therefore crucial that States address the structural causes that contribute to women's incarceration, as well as the root causes and risk factors related to crime and victimization through social, economic, health, educational and justice policies.

5. The efforts to address these challenges should be linked to those related to the prevention and elimination of all forms of gender-based violence. Violence against women, in fact, is among the causal factors for women's involvement in criminal offences and subsequent imprisonment. In the report entitled "Pathways to, conditions and consequences of incarceration for women" (A/68/340), the Special Rapporteur on violence against women, its

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<sup>4</sup> General Assembly resolution 45/111, annex.

<sup>5</sup> General Assembly resolution 45/110, annex. See also the Kampala Declaration on Prison Conditions in Africa (Economic and Social Council resolution 1997/36, annex) and the basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex).

<sup>6</sup> General Assembly resolution 65/229, annex.

<sup>7</sup> The definition of "children in conflict with the law" includes children alleged of, accused of or recognized as having infringed the penal law as mentioned in article 40, paragraph 1, of the Convention on the Rights of the Child. See also General Comment No. 10 of the Committee on the Rights of the Child.

<sup>8</sup> General Assembly resolution 69/194.

<sup>9</sup> Roy Walmsley, "World female imprisonment list", 2nd ed. (London, International Centre for Prison Studies, 2012).

causes and consequences notes that there is a strong link between violence against women and women's incarceration, whether prior to, during, or after incarceration, and that evidence from different countries suggests that incarcerated women have been victims of violence prior to entering prison at a much higher rate than is generally acknowledged by the legal system. The report also notes that those women belonging to ethnic and racial minorities or victims of intimate violence or with histories of poverty, mental health problems, sexual victimization and/or substance abuse are much more prone to entering the criminal justice system than are male offenders or women in the general population.

6. Gender stereotypes<sup>10</sup> also play a significant role in women's involvement in the criminal justice system and in the way punishment for women offenders is administered. Gender stereotypes have been a source of substantive harmful effects on women offenders and prisoners, including patterns of increased sentencing and specific forms of physical, emotional and sexual violence, compared with male prisoners. Gender stereotypes associate women more with the private sphere and characteristics of submissiveness and weakness. Men, on the other hand, are traditionally seen as belonging to the public sphere and are associated with the characteristics of strength and assertiveness. That narrative holds that men are violent and women are peacekeepers. This is one of the cultural explanations for society's tendency to be unforgiving towards women offenders and for the persistence of the subconscious belief that women offenders need to be punished more than rehabilitated.

7. The adoption of punitive approaches seems to be the prevailing response to issues related to juvenile justice. This has led to an increasing number of children being drawn into the criminal justice system and deprived of their liberty. Research shows that the majority of detained children are awaiting trial and that a large proportion of these children are held for minor offences and are first-time offenders. Many of these children belong to groups that should not be institutionalized. These include children with mental health problems, children with substance abuse problems, children living and working on the streets, children in need of care and protection and unaccompanied migrant children (see A/HRC/21/25). In most cases, they are first-time offenders and/or have committed petty offences. It is therefore crucial that countries have in place appropriate measures to prevent detention, including through alternative measures to judicial proceedings such as diversion and restorative justice. Likewise, it is crucial that countries have in place proper measures to address the specific needs of children deprived of their liberty, in particular as relates to health-care services, hygiene and environmental sanitation, education, basic instruction and vocational training, rehabilitation and reintegration programmes. Children in conflict with the law, and especially children deprived of their liberty, face a high risk of violence, including as a result of public stigmatization and the prevalence of physical and psychological punitive approaches. Every child in conflict with the justice system must therefore be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, bearing in mind relevant international standards and norms in the field of crime prevention and criminal justice.

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<sup>10</sup> The term "gender" is not interchangeable with "women". Gender refers to both women and men, to their relations, the dynamic of their interactions and the distribution of power between them. See the guidance note for UNODC staff entitled *Gender mainstreaming in the work of UNODC* (Vienna, 2013), p. 13.

## **II. Relevant international standards on women offenders and prisoners and children in conflict with the law**

### **A. Women offenders and prisoners**

8. Historically, most prison facilities worldwide were designed primarily for male prisoners, ignoring the special needs of women, the number of whom in prisons has increased significantly over the years. Consequently, women have remained in a disadvantaged position with respect to their treatment during their interaction with the criminal justice system. The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) have been adopted with a view to improving the treatment of women prisoners at all levels of their encounter with criminal law while addressing the special gender needs that have gone unattended so far. They constitute a significant advancement in the recognition and guarantee of women's rights, as well as a crucial step forward towards a modern gender-based approach for rehabilitation and reintegration of women offenders. The Rules also provide for the involvement of non-governmental organizations in the design and implementation of pre- and post-release reintegration programmes and extend the gender perspective to activities of capacity-building for staff employed in women's prisons. Furthermore, they advocate the application of non-custodial measures for women offenders, particularly girl children in conflict with the law; reiterate the need to avoid institutionalization to the maximum extent possible for girl children in conflict with the law; and recognize the obligation to take into account the gender-based vulnerability of juvenile female offenders in all decision-making processes.

9. The first section (rules 1-39) of the Rules includes the rules of general application such as admission, allocation, registration, gender-specific health-care services and programmes. The second section (rules 40-56) refers to special categories of women and juvenile prisoners, addressing classification and individualization, gender-sensitive risks assessment, special care for women victims of violence or with a history of drug abuse, pregnant women, foreign nationals and minorities and indigenous peoples, and prisoners under arrest or awaiting trial. The third section (rules 57-66) entails non-custodial sanctions and measures, underlining the need for developing gender-specific options for diversionary measures and pretrial and sentencing alternatives; while the fourth section (rules 67-70) deals with the promotion of comprehensive and result-oriented research on the reasons, impact, and characteristics that force women to confront the criminal justice system.

10. Violence against women has an impact on women's contact with the criminal justice system and such violence may be a cause of women's involvement in criminal offences and subsequent imprisonment. With a view to assisting countries to strengthen their crime prevention and criminal justice responses to violence against women, in December 2010 the General Assembly adopted the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,<sup>11</sup> which represent a comprehensive framework to assist States to eliminate violence against women and to promote equality between men and women within the criminal justice system. The updated Model Strategies and Practical Measures provide a series of broad recommendations organized around the following themes: criminal law; criminal procedure; police, prosecutors and other criminal justice officials; sentencing and corrections; victim support and assistance; health and social services; training; research and evaluation; crime

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<sup>11</sup> General Assembly resolution 65/228, annex.

prevention measures; and international cooperation. It should be highlighted that this instrument specifically provides that in cases where women and girl victims of violence are charged with crimes, relevant national criminal procedure laws should ensure that claims of self-defence by women who have been victims of violence, particularly in cases of “battered woman syndrome”, are taken into account in investigations, prosecutions and sentences against them.<sup>12</sup>

## **B. Children in conflict with the law**

11. In the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,<sup>13</sup> adopted by the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Member States recognized the importance of preventing youth crime, supporting the rehabilitation of young offenders and their reintegration into society, protecting child victims and witnesses, including efforts to prevent their revictimization, and addressing the needs of children of prisoners.

12. All interventions aimed at children in conflict with the justice system should abide strictly by the principles and provisions of the Convention on the Rights of the Child<sup>14</sup> and other relevant international standards and norms. The Convention sets out the key principles that apply to, and should be reflected in, a juvenile justice system, as well as specific due process guarantees. Articles 37, 39 and 40 of the Convention pertain to children’s rights with respect to juvenile justice and, more generally, the criminal justice system as a whole. Other articles of the Convention set out the four leading principles that must be taken into account in addressing the situation of children in conflict with the law, namely, (a) the principle of non-discrimination, irrespective of a child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (art. 2 of the Convention); (b) the best interest of the child, which should be a primary consideration in all matters affecting the child (art. 3); (c) the child’s right to survival and development (art. 6); and (d) the right of the child to participate in decisions affecting him or her, and in particular, to be provided the opportunity to be heard in any judicial or administrative proceedings affecting him or her (art. 12).

13. The Convention on the Rights of the Child requires States to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law (art. 40, para. 3, of the Convention). This provision is regarded as imposing a progressive requirement upon States to establish a juvenile justice system which takes into account the child’s age and provides human rights and legal safeguards and to establish alternatives to judicial proceedings. Furthermore, the Convention requires States to establish a juvenile justice system with due process guarantees to be applied to all children under the age of 18 who are in conflict with the law; the system should promote the child’s reintegration and help the child to assume a

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<sup>12</sup> Battered woman syndrome is suffered by women who, because of repeated violent acts by an intimate partner, may suffer depression and are unable to take any independent action that would allow them to escape the abuse, including refusing to press charges or to accept offers of support (see para. 15 (k), including the footnote thereto), of the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.

<sup>13</sup> General Assembly resolution 65/230, annex.

<sup>14</sup> Adopted by the General Assembly in its resolution 44/25 of 20 November 1989; entered into force on 2 September 1990.



constructive role in society (art. 40, para. 1). The Committee on the Rights of the Child,<sup>15</sup> in its general comment No. 10 (2007) on children's rights in juvenile justice,<sup>16</sup> explains the need for a general and comprehensive policy of protecting the rights of children in conflict with the law based on the principles of the doctrine of comprehensive protection taking a restorative and educational approach, as it provides the best conditions for effective social rehabilitation and reintegration, preventing the recurrence of the behaviour. The Committee also analyses the necessity of specialized justice and treatment for children in conflict with the law to respect the principle of the best interests of the child.

14. The international normative framework related to children in conflict with the law also builds upon a series of United Nations standards and norms adopted throughout the years.

15. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)<sup>17</sup> represent the internationally accepted minimum conditions for the treatment of children who come in conflict with the law. They contain specific provisions covering various stages of juvenile justice and stress that placement of a child in conflict with the law in an institution shall always be a measure of last resort and be for the shortest appropriate period of time. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)<sup>18</sup> set forth standards for the prevention of crimes committed by children. They have a child-centred orientation and are based on the premise that it is necessary to offset conditions that adversely influence and impinge on the healthy development of the child. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty,<sup>19</sup> which advocate the least possible use of deprivation of liberty, provide specific principles that apply to all children in conflict with the law held in any form of detention and in any type of facility. They call for the separation of children from adults in detention and the classification of children according to their sex, age, personality and offence type. They also set forth special provisions covering various aspects of institutional life. Finally, the 1997 Guidelines for Action on Children in the Criminal Justice System<sup>20</sup> were adopted with the aim of implementing the provisions of the Convention on the Rights of the Child with regard to children in the context of the administration of juvenile justice and promoting the use and application of relevant standards and norms.

16. The Model Strategies and Practical Measures on the Elimination of Violence against Children in the field of Crime Prevention and Criminal Justice, recently adopted, aim at improving the effectiveness of the criminal justice system in preventing and responding to violence against children and of protecting children against any violence that may result from their contact with that system. The Model Strategies are grouped into three broad categories: (a) general prevention strategies to address violence against children as part of broader child protection initiatives; (b) strategies and measures to improve the criminal justice system's ability to respond to violence against children and effectively protect child victims; and (c) strategies and measures to prevent and respond to violence against children in contact with the justice system. They place a strong focus on the complementary roles of the justice system on the one hand, and the child protection, social welfare, health and education sectors,

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<sup>15</sup> Established pursuant to article 43 of the Convention to monitor progress made by States parties in implementing their obligations under the Convention.

<sup>16</sup> CRC/C/GC/10.

<sup>17</sup> General Assembly resolution 40/33, annex.

<sup>18</sup> General Assembly resolution 45/112, annex.

<sup>19</sup> General Assembly resolution 45/113, annex.

<sup>20</sup> Economic and Social Council resolution 1997/30, annex.

on the other, in creating a protective environment and in preventing and responding to violence against children.

17. Finally, the Bangkok Rules adopted special positive measures for children's rights in the following areas: (a) children admitted with their mothers in prison, (b) children that are about to be born (pregnant mothers), (c) breastfed children/infants, (d) children of imprisoned mothers/children visiting prisoners, (e) children living with a non-resident foreign-national woman prisoner, and (f) girl children in conflict with the law.

### **III. Meeting the unique needs of women and children, in particular treatment and social reintegration: national experiences**

#### **A. Women prisoners**

18. Even before the adoption of the Bangkok Rules in 2010, Thailand had been committed to addressing the specific needs of women in prisons and mitigating the impact on their families and children through the implementation of the Kamlangjai project, which provided assistance and opportunities to female prisoners while in prison and to those about to be released, and of the "Enhancing lives of female inmates" project aimed at raising the standards for the treatment of female prisoners.<sup>21</sup> Currently, Thailand is engaged in ensuring the widest use and application of the Bangkok Rules at the national level. In that framework, in March 2013 the Thai judiciary decided to apply the Bangkok Rules in court trials nationwide,<sup>22</sup> particularly with regard to their provisions related to alternatives to imprisonment. The Thailand Institute of Justice, in cooperation with Penal Reform International, launched the Toolbox on the United Nations Bangkok Rules, which includes a guidance document and index of implementation, a short guide to the Bangkok Rules, a free online course entitled "Women in detention: putting the United Nations Bangkok Rules in practice", and a guide to gender-sensitive monitoring of women in detention.<sup>23</sup>

19. In Afghanistan, a project run by the non-governmental organization Medica Afghanistan offers general legal advice to women and provides female prisoners with criminal defence in court. Since the project began, some 8,000 women have benefited from mediation, legal advice or criminal defence in court. About 2,000 women facing a court case were acquitted or received a sentence lower than what the State prosecutors had demanded thanks to the assistance provided in court.<sup>24</sup> In Kyrgyzstan, as part of the project entitled "Support to prison reform in the Kyrgyz Republic", jointly implemented by the European Commission and the United Nations Office on Drugs and Crime (UNODC), in the female prison in Stepnoe village a course on soy milk production as an income-generating activity was set up for women prisoners. Furthermore, UNODC provided support to the research project conducted by Penal Reform International entitled "Who are women prisoners? Survey results

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<sup>21</sup> Nathee Chitsawang, "Key issues of women prisoners: lessons learned from Thai prisons", in *Annual Report for 2012 and Resource Material Series No. 90* (Tokyo, Asia and Far East Institute for the Preparation of Crime and the Treatment of Offenders, August 2013), part two, Work Product of the 153rd International Senior Seminar "Treatment of Female Offenders", pp. 106-118.

<sup>22</sup> [www.nationmultimedia.com/national/Bangkok-Rules-for-women-convicts-30202577.html](http://www.nationmultimedia.com/national/Bangkok-Rules-for-women-convicts-30202577.html).

<sup>23</sup> Available at [www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/tools-resources/](http://www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/tools-resources/).

<sup>24</sup> Further information is available at [www.wunrn.com](http://www.wunrn.com).

from Kazakhstan and Kyrgyzstan”.

20. In Nigeria, the Kirikiri prison in Lagos is implementing a project on preventing HIV/AIDS among female prisoners based on the following elements:

- (a) the organization of peer education training to raise awareness of the prevention of HIV/AIDS among prisoners and prison personnel who act as caregivers;
- (b) the development, production and distribution of material to raise awareness;
- (c) the holding of pre- and post-test counselling sessions for prisoners and prison personnel;
- (d) the provision of relief materials for infected mothers and their babies; and (e) the provision of drugs to infected prisoners.<sup>25</sup> In Sierra Leone, the non-governmental organization AdvocAid has produced a handbook on the Bangkok Rules to assist prison officials, prisoners and civil society in promoting the enforcement of human rights standards for girls, women and their children in the criminal justice system.<sup>26</sup>

21. One of the interesting experiences in prison management and administration in the Latin American and Caribbean region is the New Model of Prison Management in the Dominican Republic, which covers 18 prisons: 14 for men and 4 for women. The self-assessment of the new Model noted the following results: a zero illiteracy rate after six months; inmates were actively participating in educational programmes and work, spiritual, sport and artistic activities; prisoners had access to computer schoolrooms in all centres and no cases of overcrowding; and well-trained and motivated prison staff at all levels. The Model is based on strict compliance with the international standards and norms related to the treatment of prisoners, including the Bangkok Rules, and other important elements such as mandatory participation in educational and rehabilitation programmes.

22. Under the framework of a UNODC project on prison reform, Panama has achieved significant results for the treatment of women prisoners. First, an inter-institutional working group to improve conditions for female prisoners was established. Then, a specialized programme focusing on the female inmates, designed in line with the Bangkok Rules, was implemented, and a special informative pamphlet for female inmates was prepared. Regarding education and training, the University of Panama opened a branch inside the female prison in Panama City, and more than 60 inmates are currently participating in different university studies. Furthermore, the number and the quality of reintegration activities for women have increased, including through new productive projects such as one on hydroponics. Prison staff have received gender and human rights training, and UNODC prepared an online self-paced course based on its *Handbook on Women and Imprisonment*.<sup>27</sup> Several lessons can be learned from the implementation of this project. First, the project showed that, because women make up a small percentage of the prison population and because the women prisoners rarely caused major incidents or problems, it was not easy for the authorities and prison staff to immediately see the importance of developing specific programmes and services for women prisoners. Second, the establishment of an

<sup>25</sup> For more information, see: [www.wunrn.com/news/2012/01\\_12/01\\_16/011612\\_women2.htm](http://www.wunrn.com/news/2012/01_12/01_16/011612_women2.htm).

<sup>26</sup> For more information, see: [www.advocaidsl.com/2011/12/09/advocaid-and-giz-producehandbook-on-un-standards-for-the-treatment-of-female-prisoners/](http://www.advocaidsl.com/2011/12/09/advocaid-and-giz-producehandbook-on-un-standards-for-the-treatment-of-female-prisoners/).

<sup>27</sup> *Handbook on Women Imprisonment*, Criminal Justice Handbook Series (United Nations publication, Sales No. E.14.IV.5).



inter-institutional working group was an excellent way to address female prisoners' problems and needs through a holistic and integrated approach. Further, a crucial element for the success of the project was the active involvement of the women prisoners in the design of the programmes and workshops. Likewise, it was crucial to work with female prisoners and prison staff in parallel so that prison staff would not feel that their own needs were not recognized or addressed. Finally, the successful implementation of the project also relied on the sharing of information about offences committed by women and prison conditions for women to sensitize criminal justice agents and community.

23. In Brazil, the Ministry of Justice, in cooperation with the Federal Prison Department, has established specialized schools for prison staff and postgraduate courses on prison management with a gender perspective. In Ecuador, on the basis of the country's Constitution, indigenous women have developed their own "rules for living together well", in line with indigenous justice principles, addressing the rehabilitation and reintegration of women offenders and children in conflict with the law. The rules ensure that no violence and discrimination will be used when exercising indigenous justice. In Haiti, the International Committee of the Red Cross, working in cooperation with the national prison administration, has just completed a new custody area in the civilian prison in the southern city of Les Cayes, one of the most overcrowded detention facilities in the country, where more than 600 people, including around 30 women, are being held. The new custody area had to be built as a matter of priority to give women the protection they required because of their special needs. The two new cells will accommodate some 30 women and will be equipped with renovated sanitary facilities and an improved electrical and air circulation system.<sup>28</sup>

24. After the adoption of the Bangkok Rules, several initiatives have been taken at the European level to bring relevant policies, strategies, programmes and training in line with the new instrument. In 2011, the Inspector of Prisons of Ireland published supplementary documentation to give guidance to the prison services on best practices for the management of women's prisons. In 2012, the United Kingdom of Great Britain and Northern Ireland developed and issued new criteria to evaluate conditions and improve the management of women's prisons;<sup>29</sup> while the European Organisation of Prison and Correctional Services (EuroPris) has started to organize workshops on "Education and training for values-driven work: future concepts" and on gender, for prison staff. The programme "Education for women offenders" has been successful in Europe. In Slovenia, women prisoners, who are few in number, have the possibility of attending programmes at outside educational institutions, and the national system provides educational opportunities for each prisoner according to her needs and wishes. In the Czech Republic, education for prisoners is guaranteed only to the end of the primary school level, while in Estonia education goes up to the secondary school level. In Belgium, in response to the need to offer to women prisoners a type of security system already in use with male prisoners, the first open prison for women will open in 2016, with room for 100 female prisoners.

25. In the light of the need to develop gender-specific programmes and measures in prisons to ensure equal access and equal rights for all prisoners, the European Institute for Crime Prevention and Control, affiliated with the United Nations, and the Scientific Institute of the

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<sup>28</sup> International Committee of the Red Cross, "Haiti: new custody area for women in Les Cayes prison", 21 May 2014. Available at [www.icrc.org/](http://www.icrc.org/).

<sup>29</sup> Caroline Pradier, "Penal reform and gender: update on the Bangkok Rules", in *Gender and Security Sector Reform Toolkit*, annex, Megan Bastick and Kristin Valasek, eds. (Geneva, Geneva Centre for Democratic Control of Armed Forces, 2008).

Medical Association of German Doctors launched the project “STRONG: Capacity-building on female prisoners with a history of violence and abuse” to identify existing European programmes and practices addressing women in prison who have experienced childhood, intimate partner or other forms of physical and sexual violence. The project has been implemented in Finland, Germany, Lithuania, Poland and Scotland. Based on the inputs gathered, a training programme for prison staff was developed with the aim of helping staff to better meet the needs of female prisoners who have experienced violence. In October 2012, a national seminar and three prison training sessions were organized in Finland in cooperation with the Training Institute for Prison and Probation Services to pilot the training material.

26. In the United States of America, in 2011 the organization Greenhope opened in New York City the Kandake House, a community residential facility that enables women offenders to carry out their sentence while remaining with their children. The facility can house up to 72 women, including 28 women with children, and takes a holistic, dynamic and flexible approach to the care of women offenders. It has an alumnae association of women who have successfully ended their involvement with the criminal justice system and can guide others. The recidivism rate among women assisted by Greenhope is less than 10 per cent, while the rate of successful parole completion is around 75 per cent, and the rate of job placement is 65 per cent.<sup>30</sup> In Australia, several good practices are in place in the management of the health of women prisoners, including the establishment of a dedicated facility in New South Wales for women with complex psychological issues. The facility provides the following services: provision for the timely and relevant health screening (i.e., breast checks, cervical screening and ultrasound scans); drug-free units; attending to the specific nutritional needs for women who report being pregnant and/or lactating; and a broad range of on-site medical services such as general medical assistance and psychiatry, dental, optical, podiatry and mental health assistance during imprisonment and upon release.<sup>31</sup>

27. States have taken different approaches to the issue of children whose mothers are the primary carers. In Poland and Spain, prisons have special units to allow pregnant women and mothers to stay with their children under the age of three. Similarly, in Kyrgyzstan, women who were incarcerated while pregnant can keep their young children with them until the age of three. Germany allows mothers to have their children with them in prison until the child reaches the age of six years, while Argentina and Italy allow for house arrest if certain conditions are met. Furthermore, Italy offers an alternative work programme for mothers with children under the age of 10 years. In Canada, a judge of the British Columbia Supreme Court, in December 2013, ruled that imprisoned mothers have the constitutional right to care for their newborn babies. The decision came as a result of a lawsuit brought by two former inmates on behalf of all women incarcerated in the province, and the suit centred on a programme for mothers of newborn babies at the Alouette Correctional Centre for Women in Maple Ridge, which was cancelled by the government of British Columbia in 2008. The court ruled that the decision was unconstitutional because it would separate mothers and babies during a critical bonding period.<sup>32</sup>

## **B. Children in conflict with the law**

28. Several lessons can be learned from the UNODC experience in improving detention conditions and the reintegration of child offenders. Good practices include, in particular, the

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<sup>30</sup> Further information is available at [www.greenhope.org](http://www.greenhope.org).

<sup>31</sup> L. Bartels and A. Gaffney, *Good Practice in Women's Prisons: A Literature Review* (Canberra, Australian Institute of Criminology, 2011).

<sup>32</sup> For further information, see [www.cbc.ca/1.2466516](http://www.cbc.ca/1.2466516).

adoption of a holistic approach and the involvement of all relevant stakeholders by facilitating coordination and collaboration between international, regional and national actors, including civil society organizations.

29. In its work to support the juvenile justice system in Jordan, UNODC partnered with non-governmental organizations which organized rehabilitation programmes for children in three juvenile centres together with staff training programmes. This partnership allowed all stakeholders to benefit from the expertise and prior experience of the non-governmental organizations in implementing similar projects in the country and helped to avoid pitfalls and increase efficiency. In Lebanon, UNODC supported the setting-up of a Youth Department in the Ministry of Justice and the strengthening of the prison administration for juveniles. The involvement of a wide range of partners was crucial to achieve results, starting with a detailed assessment of the existing situation, to legislative reform, followed by information and awareness campaigns, training programmes and study tours. A key lesson learned with respect to coordination and ownership was that various decrees, ministerial decisions and orders adopted by relevant national stakeholders contributed to the project's implementation. The participation of selected qualified adult prisoners in the rehabilitation programmes of young offenders not only contributed to the development of vocational training for juvenile detainees but also led to improved detention conditions of the adults concerned and opened up possibilities for introducing rehabilitation programmes for other adult prisoners. In Egypt, UNODC supported a juvenile correctional institution in the Marg area of Cairo, facilitating vocational and literacy training and setting up a cinema club, a barber shop, a gymnasium, a computer lab and a sports facility. The project reduced violence among children in detention and improved relationships with social workers. The project also improved the capacities of social workers to better handle difficult personalities and rehabilitation problems, and contributed to more positive attitudes towards social rehabilitation among public officials. A holistic implementation approach resulted in an integrated development model for the detention conditions covering both social and physical aspects. Coordination was equally crucial to the success of the project. The participation of all parties involved, including officials from the Ministry of Social Solidarity and the Ministry of Interior, correctional personnel, the children and youth in detention and UNODC, in conducting the assessment study was crucial in identifying the appropriate rehabilitation activities to improve the detention conditions. Effective coordination was achieved by placing the implementation of relevant activities under the authority of the Ministry of Social Security, while the participation of the Ministry of Interior in the planning and implementation of activities contributed to changing the attitudes of its personnel towards the social rehabilitation component.

30. Work by UNODC on the reform of the juvenile justice system in Afghanistan has highlighted the need to take the cultural context seriously. By training local trainers in Kabul, a group was formed of competent nationals, who could deliver the knowledge and skills they had gained to the trainees in their own language. Given the language proximity and similarity in cultural backgrounds, that resulted in a better understanding among trainees and easier access to new ideas.

31. Other important lessons can be drawn from the experiences of other countries that have developed and implemented innovative approaches to the issues of treatment and rehabilitation/reintegration of children in conflict with the law. Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine, for example, have established police juvenile reception centres, which have a broad range of functions, including temporary detention or shelter for

runaway children suspected of offending and illegal migrants under the age of 18. In Bangladesh, a local non-governmental organization, Aparajeyo-Bangladesh, promotes alternatives to pretrial detention in selected districts through its juvenile justice project. In that framework, social workers regularly visit target police stations to monitor children in conflict with the law and negotiate the release of children from police stations. The legal advisor and panel of lawyers represent the children in court and advocate for the release of the child on bail. In some cases, Aparajeyo provides funding for a bail bond if the child's parents cannot be located or cannot afford to pay. In 2000, India introduced a partnership approach for the management of children's institutions. One of the best examples is the Prayas Observation Home for Boys in Delhi. Prayas, a local non-governmental organization, made significant changes to the facility in Delhi, making it less prison-like and more child-friendly. Prayas has a team of counsellors and probation officers that assess the children and conduct family tracing and family reunification. All children participate in education and vocational training and regularly take part in recreational and cultural activities. In Nepal, the national police and the United Nations Children's Fund have developed an innovative juvenile justice training programme for officers who are to be assigned to the newly created juvenile police units. The programme is practical, rather than theoretical, focusing on the core skills, procedures and tasks that police need to know to deal with a child offender in a child-friendly way. Using case studies, the training programme encourages police trainees to follow special procedures and to develop solutions within the national context for the protection of children.

32. In South Africa, with regard to child offenders, the innovative one-stop Child Justice Centres prevent young people from being pushed from service to service and thereby getting lost in the system. The Child Justice Act 75 of 2008 envisages that one-stop Child Justice Centres will be established to streamline the entire justice process, from arrest to the formal court process. In Zambia, as part of the development of the Arrest, Reception and Referral Services centres, officials have received training in South Africa on a fairly wide and intensive basis, with the assumption that they would implement the training in the pilot projects. In Malawi, the Child Care, Protection and Justice Act states that the officer in charge of the police station has the power to caution and discharge a child offender with or without conditions. This may happen only if the offence committed was not serious, if there is sufficient evidence to prosecute the child, and if the child voluntarily admits responsibility for the offence.

## **IV. Conclusions and recommendations**

33. Member States ought to act with due diligence to prevent, respond to, protect against and provide redress for all forms of gender-based violence. As this type of violence has an impact on the incarceration rate of women, by acting with due diligence in preventing and responding to gender-based violence, Member States can significantly contribute to reducing the number of women offenders and prisoners. In addition, Member States should endeavour to address the structural causes that contribute to women's incarceration as well as the root causes and the risk factors related to crime and victimization. Likewise, Member States have an obligation to protect the rights of children in conflict with the law and ensure that they are deprived of their liberty only as a measure of last resort and for the shortest period of time.<sup>33</sup> Member States must protect the human rights and best interests of children, as called for in

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<sup>33</sup> See article 37 (b) of the Convention on the Rights of the Child and rule 13.1 of the Beijing Rules. See also A/CONF.222/RPM.1/1, para. 26; A/CONF.222/RPM.2/1, para. 16; and A/CONF.222/RPM.4/1, para. 23.

the Convention on the Rights of the Child and the Optional Protocols thereto,<sup>34</sup> and in other relevant United Nations standards and norms.

34. In addition to respecting the provisions of the international human rights framework, primarily the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, it is important that States address in an integrated and holistic way the close interrelation between gender stereotypes, violence, discrimination and the needs of women offenders and children in conflict with the law, guaranteeing their full reinsertion into society and the prevention of recidivism. That requires a range of strategies including providing active support, training and assistance to local actors and consulting and cooperating with prison staff in order to adapt policies and strategies to local needs.

35. The Bangkok Rules constitute an important achievement in providing a gender-based response to the needs of women offenders and prisoners. Since their adoption, several countries have adopted strategies, policies and programmes in line with this instrument, and efforts have been made to foster their use and application in the design and implementation of penal policies. The national experiences provide some general, key lessons upon which Member States can draw in meeting the needs of women prisoners.

36. First, it is crucial to recognize that even if women prisoners represent a minority of the prison population, they do have special needs that must be catered for. Secondly, it is important that policymakers and relevant authorities recognize that in many cases women who enter in contact with the criminal justice system are not violent offenders but that many of them are victims of mental and/or psychological abuse. Therefore, as advocated by the Bangkok Rules, national legal systems should provide for a proper system of gender-specific alternatives to sentencing for women offenders, particularly for pregnant women and women with child-care responsibilities, and should recognize women's histories of victimization when making decisions about incarceration. It is also crucial that countries address the structural causes that contribute to the incarceration of women, as well as the root causes and risk factors related to crime and victimization through social, economic, health, educational and justice policies. Furthermore, it is vital to equip women prisoners, both from an economic and an educational perspective, with skills that facilitate their reintegration into society after release, thus preventing recidivism. It should also be recognized that specific policy guidance on how to deal with foreign women prisoners should be developed, as they face additional problems, including receiving fewer visits and less support from their relatives, difficulties in understanding the local language or adapting to the local culture, and being uninformed of what is happening to their families while they are awaiting trial or serving a sentence abroad.

37. With regard to the treatment and social reintegration of children in conflict with the law, countries should recognize the need to integrate children's issues in their overall rule of law efforts, to pay particular attention to the issue of child justice and to take into consideration applicable United Nations standards and norms for the treatment of children in conflict with the law, particularly those who are deprived of liberty, and child victims and witnesses of crime, taking into account the gender, social circumstances and development needs of such children.

38. Nowadays, there are several good practices for the treatment and reintegration of children,

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<sup>34</sup> United Nations, *Treaty Series*, vols. 1577, 2171 and 2173, No. 27531.



in particular the adoption of a holistic approach and the involvement of all relevant stakeholders. The experience of countries also indicates that not enough attention has been given to the problem of girls in conflict with the law as, traditionally, the number of cases was not large. Therefore, their particular needs had not been sufficiently attended to prior to the adoption of the Bangkok Rules. Greater attention needs to be given to incorporating a gender perspective in the implementation of all goals set in the Bangkok Rules for juvenile female offenders. In particular, Member States should make sure that a broad range of alternative and educative measures are available at the pre-arrest, pretrial, trial and post-trial stages, in order to prevent recidivism and promote the social rehabilitation of female juvenile offenders. Applying mechanisms for the informal resolution of disputes is crucial. In all these decision-making processes, not only the family but also the child should be involved, to the extent that such processes operate in favour of the best interest of the child offender. The principle of minimum intervention must be respected at all times. Furthermore, in recognition of the consideration that no crime prevention or criminal justice reform strategy is complete without effective measures to address the problem of recidivism, it is important that a comprehensive strategy addressing children in conflict with the law takes into account effective social integration or reintegration programmes as essential means of preventing recidivism and increasing public safety.

39. The experience of the past years indicates that one of the most important developments in addressing the challenges of crime prevention and criminal justice has been the recognition of the role played by civil society and the relevance of community involvement. Throughout the years, community involvement has played a critical role in promoting the United Nations standards and norms in support of an effective, fair, humane and accountable criminal justice system. Community involvement approaches reduce opportunities for crime and victimization, promote a proactive problem-solving approach to local crime problems, and support social reintegration to women offenders and children in conflict with the law during their phase of re-entry into society, as well as the period starting from prosecution up to the release stage.

40. Effective efforts to address today's challenges in crime prevention and criminal justice, which take into account the particular vulnerabilities and risk factors for crime and the victimization of women and children, require effective partnerships among international organizations, Governments and civil society organizations, including indigenous and local communities, local and national governments, the business community, academia and the private sector. Nowadays, several community-based rehabilitation programmes have been developed based on mobilizing civil society for supporting valid initiatives of reintegration programmes for women offenders and children in conflict with the law.<sup>35</sup> Similarly, the involvement of the general public and the community in campaigns and relevant training programmes is crucial to combat attitudes that assign women and girls an inferior status and legitimize discrimination and violence against them, to dispel negative stereotypes on women offenders and children in conflict with the law and to systematize awareness-raising campaigns on zero tolerance for violence against women.

41. Furthermore, creating a non-discriminatory environment for women offenders and children in conflict with the law requires strengthened political commitment, leadership and intensive training for the professionals involved. Efforts should be made to ensure that

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<sup>35</sup> See UNODC, *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, Criminal Justice Handbook Series (Vienna, 2012).

relevant staff are carefully selected, trained and supervised. Likewise, authorities must encourage and recognize staff, particularly female staff, by establishing a gender responsive promotion policy.

42. In conclusion, bearing in mind the objective to meet the unique needs of women and children, in a more effective, fair and humane manner, pursuant to the relevant United Nations standards and norms, the Workshop may wish to consider the following recommendations:

- (a) Member States should recognize the special needs of women and children as victims of violence and criminalize all forms of violence against women and children;
- (b) Member States should consider developing and implementing policies and measures to protect victims, prevent the re-victimization of women and children and ensure reparation, in accordance with the requirements of due diligence;
- (c) Member States should adopt relevant policies and measures for women offenders and children in conflict with the law in line with the Bangkok Rules and relevant United Nations standards and norms applicable to the administration of justice for children;
- (d) Member States should promote the use of alternative measures to judicial proceedings, such as diversion and restorative justice, both for women and children offenders. The attention of civil society and the media should be drawn to the importance and relevance of using alternatives to imprisonment in the case of children;
- (e) Building on the successful outcomes of restorative justice programmes in some countries, Member States should ensure that more resources are invested in programmes that have a proven impact in reducing recidivism;
- (f) Member States should share information on good practices to reintegrate ex-prisoners and children who have been released from detention facilities into society and to build the capacity of correctional officers and child detention centre personnel with regard to rehabilitation and social reintegration approaches;
- (g) Member States should support awareness-raising and public participation in the identification of solutions to prison overcrowding and effective measures for the social reintegration and rehabilitation of offenders;
- (h) Member States should prioritize unrestricted access for all women and children deprived of their liberty to the various levels of formal education and should offer incentives to persons who studied while deprived of their liberty;
- (i) Member States should recognize that education for incarcerated women must take into account their specific conditions and situation which are often consequences of poverty and/or their family situation. Furthermore, the presence of babies and children in prisons must be taken into account so as to ensure that education includes not only women but addresses also the developmental needs of their children;

- (j) Member States should ensure that relevant training for women and child offenders takes into consideration their individual capacities and vocations, as well as market demand. In this regard, partnerships with the private sector should be pursued;
- (k) Member States should develop rehabilitation and social reinsertion activities and programmes for girls deprived of their liberty which are not based on traditional, gender-biased occupations.
- (l) Recognizing the specific problem of foreign women prisoners, who are at a particular disadvantage for a number of reasons, Member States should be encouraged to develop policy guidance on how to deal with such cases in line with the provisions of the Bangkok Rules. Particular attention should be paid to the situation of women migrants held in custody, typically on administrative grounds, who are either asylum-seekers or irregular immigrants awaiting adjudication of their claims;
- (m) Member States should consider establishing appropriate mechanisms to ensure prompt access to justice for women and children held as suspects;
- (n) Member States should ensure compliance with the principle that the deprivation of liberty of children should be used only as a measure of last resort and for the shortest appropriate period of time, as well as avoid, wherever possible, the use of pretrial detention for children, and provide support and services for children deprived of their liberty prior to and after release in order to promote their rehabilitation and reintegration into the community;
- (o) Member States should recognize the specific challenges of dealing with unaccompanied migrant children and should develop appropriate criminal justice strategies in line with existing international instruments;
- (p) Likewise, Member States should recognize the specific challenges of responding to crimes committed by minors against minors and should develop appropriate criminal justice strategies in line with existing international instruments;
- (q) Member States should establish within the juvenile criminal justice system specialized positions for judges, prosecutors and public defenders who are duly qualified in the administration of sentences.

43. Furthermore, the Workshop may wish to consider the following additional recommendations:

- (a) The Commission on Crime Prevention and Criminal Justice should be invited to complete the revision of the Standard Minimum Rules for the Treatment of Prisoners, in accordance with existing mandates;
- (b) UNODC should facilitate, in cooperation with the Office of the United Nations High Commissioner for Human Rights and its National Institutions Unit, a worldwide dissemination of the Bangkok Rules, produce gender-sensitive tools for the monitoring of prisons worldwide and facilitate the collection of data on prisoners disaggregated by gender;



- (c) UNODC should, in cooperation with relevant partners, conduct a global study on the status of children deprived of their liberty with a view to informing international and national policymakers on global trends and patterns with respect to the size and the characteristics of the phenomenon and to developing and implementing appropriate measures;
- (d) UNODC should provide comprehensive technical assistance, upon request by Member States, on how to reintegrate into society women and children who are deprived of their liberty.

**Thirteenth United Nations Congress on Crime Prevention and Criminal Justice  
Doha, Qatar**



**Workshop 1**

**“The role of the United Nations standards and norms in crime prevention and criminal justice in support of effective, fair, humane and accountable criminal justice systems: experiences and lessons learned in meeting the unique needs of women and children, in particular the treatment and social reintegration of offenders”**

**13-14 April 2015**

Organised by the United Nations Office on Drugs and Crime (UNODC) in cooperation with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI), Lund/Sweden, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Tokyo/Japan, the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), Helsinki/Finland, United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD), San José/Costa Rica, The International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), Vancouver/Canada, The International Centre for Crime Prevention and The College for Criminal Law Science of Beijing Normal University, (CCLS) Beijing/China, and the Thailand Institute of Justice (TIJ)

<b>Monday 13 April, Morning Session</b>	<p>10.00-10.30 ➤ <b>Opening</b> <i>Chairperson</i></p> <p>➤ <b>Opening remarks</b> <i>Ms. Claudia Baroni, United Nations Office on Drugs and Crime (UNODC), Vienna Austria</i></p> <p><i>Mr. Morten Kjaerum, Director, Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI), Lund, Sweden</i></p> <p><i>Mr. Yamashita Terutoshi, Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Tokyo, Japan</i></p> <p>➤ <b>Presentation of the workshop by the Moderator</b> <i>Prof. Yvon Dandurand, Fellow and Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), Vancouver, Canada</i></p>
<p><b>Panel I on “Women: treatment of offenders, rehabilitation and social reintegration</b></p>	
<p>10.30-10.50</p>	<p>➤ <b>Keynote speech by HRH Princess Bajrakitiyabha Mahidol of Thailand</b> Addressing the needs of women prisoners through effective and sustainable implementation of the United Nations’ Standards and Norms</p>
<p>10.50-12.30</p>	<p>➤ <b>Why the Bangkok Rules are needed and their implementation five years on</b> <i>Ms. Taghreed Jaber, Regional Director, Middle and Northern Africa Office, Penal Reform International (PRI), Amman, Jordan</i></p>

	<p>➤ <b>Implementation of the Bangkok Rules in Latin America — Best Practices</b>  <i>Ms. Maria Noel Rodriguez, Prison Reform Team Coordinator, UNODC-ROPAN</i></p> <p>➤ <b>A Critical Analysis of the Current Situation of Female Offenders in African Countries</b>  <i>Dr. Uju Agomoh, Executive Director, Prisoners Rehabilitation and Welfare Action (PRAWA), Nigeria</i></p> <p>➤ <b>Bridging the gap between incarcerated mothers and their children in Thailand: five years on after the adoption of the Bangkok Rules</b>  <i>Dr. Kittipong Kittayarak, Executive Director, Thailand Institute of Justice,</i></p> <p>➤ <b>A gender-informed approach to interventions for women offenders</b>  <i>Dr. Kelley Blanchette, Director General, Mental Health Branch, Correctional Service, Canada</i></p> <p>➤ <b>Women in the Context of Confinement: Impact of Penitentiary Reform Implemented at Female Corrections and Rehabilitation Centers of the Dominican Republic</b>  <i>Ms. Sandra Fernández, Academic Director, Regional Penitentiary Academy, Office of the Attorney General of the Dominican Republic</i></p>		
		12.30-13.00	➤ <b>Video on the Bangkok Rules</b>
	<b>Monday 13 April, Afternoon session (Panel I cont'd + Panel II)</b>	15.00-15.40	<p>➤ <b>What works to reduce re-offending? A distinct approach to the management of female offenders in the community in England and Wales</b>  <i>Ms. Sara Robinson, Deputy Director, National Probation Service, United Kingdom</i></p> <p>➤ <b>Capacity-Building of Female Correctional Officers: From the Perspective of Administration of Women's Prisons in Japan</b>  <i>Ms. Masako Natori, Director of Facilities Division, Ministry of Justice, Japan</i></p>
		15.40-16.20	<b>Discussion from the floor and wrap up of Panel I by the Moderator</b>

## Panel II on “Children: treatment of offenders, rehabilitation and social reintegration

- 16.20-16.40
- **Keynote Speech by Dr. Marta Santos Pais, Special Representative of the United Nations Secretary-General on Violence against Children (Recorded Video Message)**
- 16.40-18.00
- **Introducing the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice**  
*Ms. Alexandra Martins, Crime Prevention Officer - Justice for Children, Justice Section, Division for Operations, UNODC, Vienna*
  - **Implementing the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice**  
*Prof. Yvon Dandurand*
  - **The treatment and social reintegration of juvenile offenders in China**  
*Prof. Zhao Bingzhi, Dean of the Law School and College for Criminal Law Sciences, Beijing Normal University, Beijing, Peoples' Republic of China*
  - **The practice of dejudicialization in the Costa Rican criminal justice system**  
*Dr. Carlos Tiffer, Criminal Law Consultant, ILANUD, Costa Rica*
  - **Treatment of child offenders, rehabilitation and social reintegration: A case of Shikusa Borstal Institution, Kenya**  
*Mr. Horace Chacha, Chief Superintendent in charge of Chikusa Borstal Institution, Kenyan Prisons Service*

<b>Tuesday 14 April, Morning Session (Panel II cont'd)</b>	10.00-10.50	<p>➤ <b>Key issues on treatment, rehabilitation and social reintegration of juvenile offenders, as identified in an RWI study in the ASEAN countries</b> <i>Mr. Christian Ranheim, Head of Office, RWI's Indonesia country office, Jakarta, Indonesia</i></p> <p>➤ <b>The reintegration and social rehabilitation into the community of delinquent children: A Saudi empirical study</b> <i>Dr. Mohammed Hassan Al Sarra, Dean of Training College, Naif Arab University for Security Studies (NAUSS), Riyadh, Kingdom of Saudia Arabia</i></p> <p>➤ <b>Treatment of female juvenile offenders in Sweden</b> <i>Mr. Christer Isaksson, Director, Office for International Affairs, the Swedish Prison and Probation Service</i></p>
	10.50-11.30	<p>➤ <b>Discussion from the floor and wrap up of panel II by the Moderator</b></p>
	11.30-11.50	<p>➤ <b>Information briefing on the updating and revision process of the UN Standard Minimum Rules for the Treatment of Prisoners (SMRs)</b> <i>Ms. Valerie Lebeaux, Chief, Justice Section, UNODC</i></p>
	11.50-12.15	<p>➤ <b>Discussion from the floor</b></p>
	12.15-13.00	<p>➤ <b>Final and overall wrap up and remarks</b> <i>Prof. Yvon Dandurand, moderator</i></p> <p>➤ <b>Closing</b> <i>Chairperson</i></p>

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## **PAPERS AND CONTRIBUTIONS**

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### **PANEL 1**

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### **PANEL II**





## **PANEL I**

### **KEYNOTE ADDRESS**

Her Royal Highness Princess Bajrakitiyabha Mahidol of Thailand

### **PRESENTATIONS**

Penal Reform International

\* \* \*

Dr. Kittipong Kittayarak (Thailand)

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Ms. Maria Noel Rodriguez (UNODC)

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Dr. Uju Agomoh (PRAWA)

\* \* \*

Dr. Kelley Blanchette (Canada)

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Dr. Sandra Fernandez (Dominican Republic)

\* \* \*

Ms. Sara Robinson (United Kingdom)

\* \* \*

Ms. Masako Natori (Japan)



## **KEYNOTE ADDRESS**

### **ADDRESSING THE NEEDS OF WOMEN PRISONERS THROUGH EFFECTIVE AND SUSTAINABLE IMPLEMENTATION OF THE UNITED NATIONS STANDARDS AND NORMS**

*Her Royal Highness Princess Bajrakitiyabha Mahidol of Thailand\**

Excellencies,

Distinguished Delegates,

Ladies and Gentlemen,

It gives me a great honor and privilege to speak at Workshop 1 of the 13th UN Crime Congress this morning. First of all, I would like to congratulate the United Nations Office on Drugs and Crime, the Raoul Wallenberg Institute and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) and for their leading efforts in preparing this workshop.

The role of the United Nations standards and norms in crime prevention and criminal justice in support of fair and humane and accountable criminal justice systems has always been an inseparable part of the UN Crime Congress. So as we celebrate the 60th anniversary of the Congress here in Doha, this gives us an opportunity to reflect upon our achievements and to renew our commitments toward the future.

For many years, the United Nations has been active in developing and promoting standards, norms and guidelines in the field of crime prevention and criminal justice. Derived from the commitment of Member States to keep society safe, secure and humane, the UN standards and norms have stood the test of time as a global benchmark that guides national governments to strengthen the effectiveness of criminal justice systems and their responses to various forms of crime.

Through international consensus a significant number of standards and norms have been adopted by the UN General Assembly and the Economic and Social Council, and disseminated to practitioners globally. These instruments deal with a wide variety of issues ranging from juvenile justice, treatment of prisoners, violence against women and crime prevention and restorative justice. In keeping with the main theme of this Congress in taking an integrated approach, I hasten to add that these UN standards and norms should be viewed

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\* Ambassador Extraordinary and Plenipotentiary of the Kingdom of Thailand to the Republic of Austria.

in a larger context of the promotion and protection of human rights in the administration of justice as well.

Among various international standards and norms, the United Nations Standard Minimum Rules for the Treatment of Prisoners were the first instrument adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and subsequently approved by the UN Economic and Social Council in 1957. Since then, they have been an important guideline for the treatment of all prisoners and the key point of reference in designing and evaluating corrections laws and policies the world over.

After the adoption of the SMR, many additional standards and norms relevant to the treatment of offenders have continued to flourish. The Milan Congress in 1985, for example, gave birth to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, or the Beijing Rules. The Havana Congress in 1990, approved among many other things, the United Nations Standard Minimum Rules for Non-custodial Measures, or the Tokyo Rules, the Basic Principles for the Treatment of Prisoners, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Guidelines for the Prevention of Juvenile Delinquency, or the Riyadh Guidelines.

Despite this progressive development which suggested that the UN recognized various categories and conditions of offenders in light of the SMR, the fact remains that the overwhelming prison populations are male. In many countries, the number of male inmates takes up to 90 percent of national prison population. Therefore, correctional facilities in most places were originally designed and built primarily for male prisoners.

However, over the last few decades, the number of women in prison has dramatically increased worldwide. Although smaller in actual number, the percentage of growth in women prisoners is rising faster than that of their male counterparts. Nevertheless, statistics show that the crimes committed by women are less serious and usually non-violent.

Women prisoners are often referred to as the “forgotten population”. For a long time, the needs of women prisoners, which are very much specific and multi-dimensional, have been overlooked. These include personal hygiene, reproductive health needs, and higher risk to have psychological and mental problems. In most cases, women prisoners are also mothers with child rearing responsibilities, pregnant and breast-feeding mothers. The fact that prisons do not adequately respond to women’s specific needs has caused several challenges, including their vulnerability to re-victimization in prison settings.

Recognizing such gap, the government of Thailand initiated an effort to bring this issue into consideration of the United Nations. With support from many Member States, experts and the United Nations Office on Drugs and Crime, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, or the “Bangkok Rules”, were developed and presented to the international community for the first

time at the 12th Congress in Salvador. The Rules were subsequently adopted by the General Assembly in 2010.

The Bangkok Rules represent a significant achievement of the international community in addressing specific needs of women in the criminal justice system. The Rules take into account existing standards and norms such as the SMR and the Tokyo Rules, while incorporating elements of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. With the mainstreaming of gender sensitivity being the underlying principle, the Bangkok Rules are applicable to all categories of women deprived of their liberty, including untried or convicted women, as well as to women subject to non-custodial measures.

It should also be emphasized that the Bangkok Rules are not intended to replace prior existing standards and norms in anyway. On the other hand, they bring further clarity to existing provisions to ensure that the needs of women and girls in criminal justice systems are adequately and effectively addressed.

From Salvador to Doha, the Bangkok Rules journey is now back at the Crime Congress – this time – for a critical evaluation. At this workshop, we will see how the Bangkok Rules have contributed to the work of prison administration in addressing the treatment and social reintegration of women prisoners, and preventing their recidivism.

I believe we have come a long way in promoting the implementation of the Rules. Today we can find good practices in many correctional facilities around the world. Nevertheless, the Bangkok Rules are soft law which does not impose obligations on States to apply. In practice, the degree to which States implement standards and norms differs greatly from one jurisdiction to another. In essence, such flexibility is the very beauty of the UN standards and norms.

Although the application of standards and norms may vary due to the social and political context of different countries, I take this opportunity to underline some of the necessary key points in which countries should strive in achieving effective and sustainable implementation of the UN standards and norms on women prisoners.

**First**, efforts should be made to ensure that national legislations and policies are in line with the UN standards and norms. Relevant domestic laws and sentencing policies should emphasize rehabilitation and reintegration. Imprisonment of women should be considered as a last resort. The use of non-custodial measures and alternatives should be encouraged more in order to reduce overcrowding and stigmatization caused by imprisonment. Of equal importance is the government's commitment and financial support. This should be long-term in order to ensure the sustainability and effectiveness of fair and humane correctional practices.

*Second*, awareness of the importance of the UN standards and norms is crucial in boosting their implementation. Through capacity-building activities, criminal justice professionals should be given an opportunity to broaden their understanding. For instance, Thailand in cooperation with UNODC hosted the East Asia-Pacific Regional Meeting on the Implementation of the Bangkok Rules in Bangkok in 2013. The meeting was a great example of how countries in the region share their experiences on programmes and activities designed for women prisoners, while building a network of cooperation on this front.

In addition, training on gender sensitivity is also an important way to equip criminal justice practitioners with fundamental knowledge in implementing the Bangkok Rules. This kind of training is crucial because we need to build a positive attitude and mindset of correctional staff to be gender-sensitive when treating women offenders. Clearly, this is one of the key elements in achieving successful prison reform.

*Lastly*, the Bangkok Rules, as well as other UN standards and norms, have been used as a reference to develop technical tools for institutional staff. Currently there are a variety of practical tools and handbooks developed by the UNODC and non-governmental organizations. For instance, the Penal Reform International and Thailand Institute of Justice have jointly published the Guidance Document and the Index of Implementation of the Bangkok Rules as reference documents and resources. Also, the UNODC published several handbooks, including a “Handbook for prison managers and policymakers on women and imprisonment” of which the latest edition provides clear explanations and good practices with reference to the Bangkok Rules.

In speaking of the sustainable implementation of the UN standards and norms, I would be remiss not to mention the review of the Standard Minimum Rules for the Treatment of Prisoners. If anything, what the Bangkok Rules did at the 12th Congress was not only to galvanize the global attention on a particular category of prisoner, that is, women, but also to trigger critical momentum on a broader question of the review of the Standard Minimum Rules for the Treatment of Prisoners. As a result, the General Assembly mandated the Commission on Crime Prevention and Criminal Justice to establish the intergovernmental expert group to conduct such a review process so as to reflect the advancement in correctional science.

During the period of 2012 to 2015, the intergovernmental expert group, through its four meetings, took us from Vienna to Buenos Aires, and finally to Cape Town, where it finally completed its work. I am pleased to note that we now have the revised version of the SMR which shall be known as the “United Nations Standard Minimum Rules for the Treatment of Prisoners”, or the “Mandela Rules”, in honour of the legacy of the late President Nelson Mandela of South Africa. I hope that momentum can be gathered here in Doha for the new Mandala Rules to be approved by the Crime Commission and the General Assembly within this year.

In conclusion, I would like to emphasize that all UN standards and norms related to crime prevention and criminal justice are useful in assessing needs and gaps in legislation and practice. While a number of standards and norms have been adopted and several tools are made available, Member States should be urged to use these instruments in order to bring correctional practices into line with international standards and norms, and to fulfill their obligations in promoting and protecting the fundamental human rights of those behind bars.

I would like to take this opportunity to thank all those involved in organizing this important workshop, and look forward to the presentations and a lively and meaningful discussion today.

Thank you very much.

# **WHY THE BANGKOK RULES ARE NEEDED AND THEIR IMPLEMENTATION FIVE YEARS ON**

*Taghreed Jaber\**

As the introductory speaker, this presentation will set the scene by covering five key points introducing the background of the Bangkok Rules, the typical profile of women offenders and observations on the state of implementation:

## **I. THE BACKGROUND TO THE BANGKOK RULES**

There is a gap in the specific international standards on women offenders (the SMR only has a few provisions, and the Tokyo Rules are silent), gender-neutral systems globally. Due to the leadership of HRH Princess Bajrakitiyabha and the Government of Thailand, the Bangkok Rules were adopted in December 2010. From roughly 2000 to the beginning of 2013, the number of women in prison has increased by over 40 per cent.

## **II. TYPICAL, SPECIFIC CHARACTERISTICS OF WOMEN OFFENDERS/ PRISONERS**

Unique profile of women offenders and their corresponding needs:

- particular role of poverty and marginalisation for women offenders
- educational profile reflects discrimination in education in society
- high percentage are mothers, often sole or primary caretakers or lead a single-headed household
- high number have experienced violence in their lives, including sexual abuse
- as a consequence high rates of mental health illness, substance dependencies and susceptibility to self-harm and suicide among women prisoners
- typical offences committed by females are drug-related offences, property and other non-violent crimes
- violent female offenders often experienced extreme violence themselves, or respond to domestic violence
- higher percentage of first-time offenders
- lower recidivism rates
- greater stigmatisation than that faced by their male counterparts.

This specific profile is illustrated, for example, by PRI's research series '*Who are women prisoners?*' conducted in 2013-14 which involved surveying almost 1,200 women in prison in 3 regions and 6 countries (Armenia and Georgia, Kazakhstan and Kyrgyzstan, Jordan and

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\* Regional Director, Middle and Northern Africa Office, Penal Reform International (PRI), Amman, Jordan. The presentation during the workshop was delivered by Mr. Haitham Shibli, Research and Communication Manager, Penal Reform International.



Tunisia). The findings show commonalities across countries including poverty, discrimination and damaging long-term consequences from imprisonment.

Most women said that they were of very poor to average income, and 7 or 8 out of ten women had children. Economic offences (theft and fraud) were the most common offences women were charged with or convicted of (with the exception of Armenia). In Georgia, Kazakhstan and Kyrgyzstan around a third of convicted women were in prison for drug-related offences. The main consequences of imprisonment for women were loss of employment and housing, stigma, and family breakdown. Also, across all six countries, the women surveyed had extremely high rates of depression and insomnia.

### **III. PUSH FOR IMPLEMENTATION**

To date, implementation is still sporadic and not concerted. To assist in the implementation of the Rules, PRI has developed a set of resources, the ‘Toolbox on the UN Bangkok Rules’ (multilingual and free), together with the Thailand Institute of Justice, including a Guidance Document and Index of Implementation. Further resources to support states in implementation are a free online training course and a guide to gender-sensitive monitoring.

In line with the objective of the workshop to share good practice, two examples of efforts towards implementation from the Middle East North Africa region will be described. The participants will be briefly introduced to the available Toolbox on the Bangkok Rules, designed to assist different stakeholders in assessing their system and implementing a gender-sensitive one in line with the Rules and other international standards.

### **IV. OBSERVATIONS COMMON ACROSS COUNTRIES AND REGIONS**

Observations will be shared, drawing on PRI’s extensive work on the Bangkok Rules from the past five years, common to a variety of countries/regions, which will be the basis for the concluding recommendations:

- Extreme stigma of women in conflict with the law by their families
- Disparities in the provision of rehabilitation programmes for women prisoners in time, quality and variance
- Little understanding on how to design and deliver gender-sensitive non-custodial measures
- Need to holistically address mental health issues of women offenders and prisoners

### **V. RECOMMENDATIONS**

Our recommendations point to three issues that should be addressed in terms of additional research and pilot projects in order to create good practice in PRI’s view:

- a. Focus on initiatives to develop gender-sensitive alternatives to imprisonment;
- b. Addressing the mental health issues among women offenders;
- c. Countering the disparity in rehabilitation programmes for women prisoners and providing after-care.

# **BRIDGING THE GAP BETWEEN INCARCERATED MOTHERS AND THEIR CHILDREN IN THAILAND: FIVE YEARS ON AFTER THE ADOPTION OF THE BANGKOK RULES**

*Dr. Kittipong Kittayarak\**

It is my great pleasure to address the important topic of the treatment of pregnant women, nursing mothers and women with children in prison. First of all, I would like to express my sincere appreciation to the Raoul Wallenberg Institute, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) as well as other Programme Network Institutes for their hard work in preparing this workshop.

The issue related to treatment of pregnant women, nursing mothers and women with children in prison is one of the significant features of the Bangkok Rules.

## **I. OVERVIEW OF MOTHERS AND CHILDREN IN PRISON**

A large majority of women in prison worldwide are mothers or primary caretakers of children. This includes 87 per cent of women prisoners in Brazil, 80 per cent in the United States and Russia, 66 per cent in the United Kingdom, 82 per cent in Thailand and 78 per cent in Armenia and Georgia. Among these numbers, there are pregnant women, breastfeeding mothers and women with dependent child in prison. These particular groups of women require special attention regarding medical care, food, exercise and facilities. These requirements often pose challenges in prison administration.

As the population of women prisoners grows, the number of children affected by maternal imprisonment is therefore increasing. Statistics show that there are 221 children in Armenia, 486 children in Georgia, and 256 children in Thailand staying in prison with their mothers. However, there are no precise statistics on the total number of children living in prison with their mothers worldwide, and it is almost impossible to know how many children outside of prison are affected by imprisonment of their mothers. Therefore, children of imprisoned parents are often described as the “forgotten or hidden victims”.

## **II. IMPACT OF IMPRISONMENT ON INCARCERATED MOTHERS AND THEIR CHILDREN**

### **A. Difficulties Faced by Incarcerated Mothers**

Pregnancy and raising a child in prison is not an easy experience. Studies show that common problems faced by pregnant inmates include difficulties to catch up on missed sleep and missed meals due to the inflexibility of the prison regime.

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\* Executive Director of the Thailand Institute of Justice.

Also, pregnant women and breastfeeding mothers have specific health concerns related to prenatal, postnatal and child care in addition to standard health care. Some women face problems in getting access to appropriate and timely medical support during labour and after giving birth.

Stress and disruption of family links caused by imprisonment can lead to harmful effects on the progression of a pregnancy and generate negative emotional impacts on women prisoners, particularly in the case of foreign inmates who are imprisoned further away from their homes. This group of prisoner usually faces difficulties in receiving visitation and keeping in contact with their children and family. This might be due to the lack of economic means to travel, difficulties to make a telephone call due to different time zones or their families just simply do not want to contact them. This results in severe emotional impacts and may reduce rehabilitation and resettlement prospects of women prisoners.

### **B. Impact on Children**

On the other hand, research has found an association between the child problem behaviour and their experience in having a parent in prison. It has been indicated that children of imprisoned parents have twice the risk of developing behavioural problems and poor psychological health. They are also at greater risk of future imprisonment themselves.

Moreover, distressful impacts during childhood caused by imprisonment of their mothers can lead to life-long problems such as impairment of attachments to others, emotional maladjustment and personality disorders.

Therefore, there has been an international debate as to how the rights and welfare of children of imprisoned mothers shall be protected. While some suggest that children should be allowed to live with their mother in prison, some believe that the development of newborn babies can be retarded due to prison environment.

Despite diverse views, most have come to general consensus that the best interests of children should be the primary consideration. To ensure the best interest of the child, conditions and the quality of care in prison should be as close as possible to those outside. However, some countries are facing difficulties in providing appropriate care and facilities for children. In practice, countries around the world have different laws addressing how long children can stay with their mothers in prison, ranging from one month to six years.

## **III. RELEVANT INTERNATIONAL STANDARDS AND NORMS**

Regarding international standards and norms, the Standard Minimum Rules for the Treatment of Prisoners (or the “SMR”) adopted in 1955 has only general provision which requires that women’s institutions have special accommodation for pregnant women and breastfeeding mothers, and that arrangements should be made for children to be born in a hospital outside prison.

To supplement the SMR, the Bangkok Rules set out further important guidance in relation to treatment and support which should be provided to this group of prisoners. This includes, for

instance, prohibition of the use of shackles or restraints on pregnant women, provision of adequate food and healthcare and guidance on how to treat children of imprisoned mothers.

#### **IV. THE ROLE OF THAILAND IN PROMOTING THE TREATMENT OF WOMEN PRISONERS INCLUDING SPECIAL CATEGORIES OF WOMEN**

For many years, Thailand has attached great importance to the promotion of humane treatment of women prisoners. One outstanding initiative entitled the “Kamlangjai” (or “Inspire”) Project was established under the initiative of Her Royal Highness Princess Bajrakitiyabha Mahidol in 2006 with a focus on enhancing the quality of life of female inmates and babies born to incarcerated mothers. The Kamlangjai Project took partnership with several private sectors and organized a number of charity-based activities and vocational training for women prisoners to supplement the work of the Department of Corrections. As a result, the Kamlangjai Project has become a unique and effective model of public involvement.

After the success of the project, the Government of Thailand launched an international project entitled “Enhancing Lives of Female Inmates” in 2008 to raise awareness about the situations of women prisoners. Thailand proposed the development of a new set of UN international standards which specifically address the needs of women prisoners and women offenders. With international support, the Bangkok Rules were subsequently drafted and adopted in 2010.

Following the adoption of the Bangkok Rules, the Thailand Institute of Justice (or the “TIJ”) was established by the Government of Thailand in June 2011 to carry on its continuous commitment to promote humane treatment of women prisoners nationally and internationally.

#### **V. THAILAND’S EFFORTS IN PUTTING THE BANGKOK RULES INTO PRACTICE**

It has been almost five years since the adoption of the Bangkok Rules. What Thailand has learned is that to successfully put the Bangkok Rules into practices requires collective efforts from three main aspects. These include gender-sensitive law and policy, right-based correctional practices and support from the public. Despite our remaining challenges, I am very pleased to share with you some efforts and improvements Thailand has made in recent years.

##### **A. National Law and Policy**

At the national law and policy level, there are several ongoing efforts to review existing law and develop tools to facilitate the implementation of the Bangkok Rules.

First, about a week ago the Cabinet approved a proposal for amendment of the Penitentiary Act of Thailand. Such Act is dated 1936 and amended in 1980 while some of its provisions are found to be out-of-date. Therefore, the legislative review has been undertaken with a view to updating and ensuring that the national law and regulation are compliance with international standards. Substantial changes are expected to be made including insertions of some principles of

the Bangkok Rules particularly on the treatment of pregnant women, nursing mothers and women with children in prison.

Second, the TIJ in cooperation with the Department of Corrections of Thailand have developed an assessment tool containing a set of indicators aiming to assess compliance and gaps in implementing the Bangkok Rules in Thai correctional institutions. The assessment tool is based on the Index of Implementation of the Bangkok Rules jointly published by the TIJ and the Penal Reform International. The assessment tool has been pilot tested and will be used by the Department of Corrections in the future.

Another important initiative is the development of the gender sensitive investigation tool and methods to collect data on background and individual circumstances of women offenders such as number of children and history of victimization. The information will be collected in a gender sensitive manner and sent to the court for their consideration before giving any sentences to women offenders.

## **B. Correctional Practices**

With regard to prison operation, pregnant inmates are registered and have regular medical check-ups in a local hospital. They are transported to outside medical facilities to give birth with no restraints being used during transfers to hospitals, medical examinations, and delivering birth. Prisons also provide additional food to pregnant women to ensure that they receive adequate nutrition during pregnancy. Children can stay with their mothers up to the age of one. They also receive appropriate diet and regular check-ups at the community hospital. Many women correctional institutions also have programmes and activities appropriate to pregnant women.

However, the extent to which pregnant inmates are provided with appropriate and adequate care depends on financial resources and the physical design of each correctional facility. Female-only prisons are usually better equipped with necessary requirements such as mother and baby units and space for exercise. In contrast, women's units within male prisons are likely to face more difficulties and limitations in provision of care of pregnant inmates.

## **C. Public Involvement**

Public involvement is another key to success in improving lives of pregnant inmates and children in prison. It is also a great way to provide moral support for women behind bars and help them go through difficult times.

As mentioned earlier, the Kamlangjai Project is a unique model for public and private cooperation. A number of activities have been organized through partnerships with non-profit organizations and private sectors such as hospitals, universities, television stations, private companies, and department stores. These activities include, for instance, the “Quality Pregnancy” programme and the “Yoga in Prison” programme.

Furthermore, the Department of Corrections also works with faith-based organizations to organize several activities such as prison chorus and meditation programme, as part of the rehabilitation programme, with the purpose to enrich the lives of prisoners.

## **VI. WAY FORWARD**

Thailand, like many other countries, is facing many challenges in ensuring successful implementation of the Bangkok Rules. These common challenges include prison overcrowding and lack of financial resources and professional staff.

However, in moving forward we should aim to achieve an increase in the use of alternative forms of sentencing, including restorative justice approaches and community service, where the offence is not serious. This will help reduce the number of mothers in prison and the impact of maternal imprisonment on children.

Also, the prison regime should be flexible enough to respond to and accommodate specific needs of women and children in prison. Special programmes such as pregnancy care and child rearing programmes should be made available to enhance women's ability to raise their children.

Partnership between prison authorities and the private sector or non-governmental organizations should be encouraged as effective means to physically and mentally support women behind bars. Lastly and most importantly, we all as policy makers and practitioners should always remember that women who have failed as citizens can succeed as mothers. And we should ensure that prison can provide an opportunity for them to become a better parent.

# IMPLEMENTATION OF BANGKOK RULES IN LATIN AMERICA

## BEST PRACTICES

María Noel Rodríguez  
Prison Reform Team  
Coordinator  
UNODC -ROPAN



### Bangkok Rules, a gender perspective of female imprisonment

- ▶ On December 21st, 2010 the General Assembly adopted the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.
- ▶ Bangkok Rules provide guidance to States in order to adopt concrete measures to address the special needs and requirements of women prisoners or offenders.
- ▶ Rule 1: Basic principle, **no discrimination**: 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.

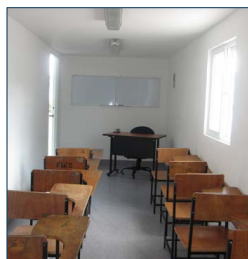
## Bangkok Rules implementation progress



- ▶ A specialized attention program for female inmates was designed and implemented in line with Bangkok Rules.
- ▶ Special informative pamphlets were prepared for female inmates.
- ▶ Prison statistics were improved by incorporating gender variables. Parental status is recorded upon admission.
- ▶ The number and quality of reintegration activities for women were increased (education, work, vocational training, productive projects), in order to facilitate the social reintegration and eliminate gender stereotypes.
- ▶ 63% of female inmates participated in reintegration activities.
- ▶ A branch of the University of Panama was open in the Female prison in Panama City and more than 60 inmates are enrolled in various university degrees. [\(video\)](#).



- ▶ Prison staff received gender and human rights training (including the publication of 500 copies of Bangkok Rules, study visits and workshops)
- ▶ UNODC prepared an online self-paced course based on the Women Imprisonment Handbook. [\(only in Spanish\)](#)
- ▶ Women prisoners are able to exercise conjugal visits on an equal basis with men.
- ▶ Cultural activities, such as: theater [“834, vidas detrás del muro”](#), and the book of poems “Mujeres en relieve”.
- ▶ Workshops on Human Rights and sexual and reproductive health .
- ▶ Two campaigns were launched :
  - ▶ “A book in prison, a window to freedom”
  - ▶ “Think before you act” [\(video\)](#)



## Review of legislation in line with Bangkok Rules

### Drugs issues:



- ▶ Act 9161 enables alternatives to imprisonment (home detention, probation, released with electronic monitoring) for women who introduce drugs into prisons, given some proof of vulnerability (poverty, caretaking responsibilities) ([video](#)).



- ▶ Reduction of sentences to people who traffic minor amounts of drugs (2014). ([nota informativa](#)).
- ▶ Pardon granted to people convicted of micro traffic (2008)

### Alternatives measures for mothers



- ▶ Home detention or suspended sentences for pregnant women or mothers with young children is a practice widely applied in Latin America. (Panama, Argentina, Uruguay, Colombia, Costa Rica).

## Housing for pregnant women and mothers with children



- ▶ Nursery and half way home, Female Federal Centre “Ntra. Sra. Del Rosario de San Nicolás” (Unit 31).
- ▶ Health programme to attend female prisoners’ children, Federal units.



- ▶ Nursery, Female Prison, San José, has a sector to host pregnant women and mothers with children under 3 years.
- ▶ Santa María Nursery, caters to children older than one year. This nursery is run by an NGO ([video](#)).



- ▶ Child Development Centre, Izalco Farm, San Salvador (150 children and their mothers). The centre was built by people deprived of liberty. ([video](#)).



- ▶ Nursery, Female Prison Chorrillo I, Lima. The Ministry of Education provides teachers, pedagogic materials, workshops for mothers, etc.



- ▶ Mother and Baby Unit “El Molino”, Montevideo, hosts mothers and children under 4 years.
- ▶ Nursery outside the prison “Pájaros pintados” to attend female prisoners’ children, staff’s children and kids from the local community

## SPECIAL PROGRAMMES

- ▶ ASSISTANCE PROGRAMME FOR ENGLISH-SPEAKING WOMEN PRISONERS, ARGENTINA
- ▶ PROGRAMMES TO REDUCE DRUG ADDICTION. ARGENTINA, COSTA RICA.
- ▶ “SERVICE DOG PRISON PROGRAMME”. EZEIZA, ARGENTINA.
- ▶ PROGRAMME “MY VOICE FOR YOUR EYES”, PANAMA.
- ▶ FACTORY PRISON (with the support of a private company) in Ciudad del Este, PARAGUAY.
- ▶ INDUSTRIAL CLOTHING WORKSHOP (with the support of trade unions), URUGUAY.
- ▶ PROGRAMMES TO STRENGTHEN THE CULTURAL IDENTITY, GUATEMALA.





## Coordination mechanisms and networking

- ▶ Inter-institutional Protocol to deal with female prisoners and ex offenders (Costa Rica).
- ▶ NGOs: [Colectivo Artesana](#) (Guatemala); NNAPes.
- ▶ Inter-institutional working group to improve female prisoners conditions (Panama).
- ▶ Regional Gender Programme (Conference of Ministers of Justice of Iberoamerica, COMJIB) <http://www.comjib.org/sites/default/files/PROGRAMA%20REGIONAL%20DE%20GENERO.pdf>
- ▶ Draft norms to facilitate the social-labor inclusion of female prisoners and ex offenders in Latin America (EUROSOCIAL-COMJIB-IJJO). These standards seek to promote the inclusion of the gender specific perspective in prison intervention to improve the processes of social and labour reinsertion of women prisoners and released women.

## Regional level

- ▶ Regional workshop on best practices in the implementation of Bangkok Rules, with the participation of Central American countries and NGOs. A regional roadmap was agreed to achieve a better and wider application of the Rules.

<http://www.unodc.org/ropan/en/IndexArticles/PrisonReform/October2014/regional-workshop-on-the-implementation-of-the-bangkok-rules-in-guatemala.html>


- ▶ Informative section on the UNODC website (Spanish only):

[http://www.unodc.org/ropan/es/PrisonReform/Reglas\\_de\\_Bangkok/presentacion.html](http://www.unodc.org/ropan/es/PrisonReform/Reglas_de_Bangkok/presentacion.html)



## Recommendations

- ▶ Inform, raise awareness, train and disseminate the Bangkok Rules among prison staff, justice officers, police agents, NGOs and the community.
- ▶ Establish or strengthen inter-agency working groups/networks to comprehensively address the needs of women in prison and ex offenders. These groups should include women deprived of liberty.
- ▶ Amend national legislation to adapt it to the Bangkok Rules, review the penalties of drug laws (based on the quantity and role of the offender), decriminalize minor criminal offences and set up programmes that address drug abuse from a gender specific perspective.
- ▶ Implement alternative measures to imprisonment for pregnant women and mothers. If not possible, create special units for mothers, nurseries and care programmes for the children of female prisoners, in coordination with the competent authorities.
- ▶ Create and promote opportunities for the exchange of experiences and regional coordination to achieve a better implementation of the Bangkok Rules.



Amanece...  
Y con la luz del alba  
Renacen los sueños  
Las esperanzas renovadas  
Dejándose escuchar  
El parloteo que viene y va  
Rompiendo el silencio matutino  
Voces de mujeres intensas  
Que anhelan a gritos "Libertad"

Por: Victoria Sofia Nethersole

# A CRITICAL ANALYSIS OF THE CURRENT SITUATION OF FEMALE OFFENDERS IN AFRICAN COUNTRIES

*Dr. Uju Agomoh \**

## I. INTRODUCTION

The ever-rising number of prisoners around the world has remained the most underscored fact in current discourse within the international penal sector. According to the International Centre for Prison Studies, the world prison population is rising at a higher rate than the total population. Between 1998 and 2013, the estimated world prison population has increased by 25-30%, while the world population has risen by over 20%.<sup>1</sup> Although women prisoners are a small minority of the total prison population, there has also been a noticeable rise in women's imprisonment in recent years.<sup>2</sup> In some countries the rate of this increase has been higher than that of male prisoners.<sup>3</sup>

Given their patriarchal nature, structures within many African countries present considerable challenges in the protection and respect for women's rights to equality while fuelling widespread gender-based discrimination throughout the region.<sup>4</sup>

Prisons are a reflection of the societies within which they are located. Thus, it is unsurprising that this discrimination is made manifest within the penal institutions whose facilities were historically built and run to cope with the needs of the male majority. Consequently, the small numbers of women prisoners were simply admitted to these prisons and expected to cope with the same routines and facilities as men regardless of their different and more complex needs.

This remains the practice in several African countries and has resulted in the neglect of the human rights of these inmates without much consideration for the various international standards and recommendations advocating for humane and equitable treatment for all. The African prison system has become synonymous with a host of challenges, such as overcrowding, abusive living conditions, deficits of good governance, funding, and other

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<sup>1</sup> Walmsley R., World prison population list, 10th edition. London: International Centre for Prison Studies. Available at: <[http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl\\_10.pdf](http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf)> [accessed 5 February 2015]. *This list was published with prison information available as of December 2013.*

<sup>2</sup> Bastick M, Townhead L., Women in prison: a commentary on the United Nations standard minimum rules for the treatment of prisoners. Geneva: Quaker United Nations Office; 2008. Available at: <<http://www.quino.org/geneva/pdf/humanrights/women-in-prison/WiP-CommentarySMRs200806-English.pdf>> [accessed 5 February 2015].

<sup>3</sup> Ibid.

<sup>4</sup> Women and Health: Today's Evidence Tomorrow's Agenda. Geneva: World Health Organization; 2009. Available at: <[http://whqlibdoc.who.int/publications/2009/9789241563857\\_eng](http://whqlibdoc.who.int/publications/2009/9789241563857_eng)> [accessed 5 February 2015].

resources;<sup>5</sup> while the plight of women prisoners within the region is an often ignored subject in governance, policymaking and research.<sup>6</sup>

The objective of this paper is to critically analyse how a continent in which prisons rank low on various lists of priorities has failed to adequately address the plight of incarcerated women. Guided by the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) as well as research reports on various African prisons, this paper will provide practical steps that can be taken to facilitate the improvement in the treatment and protection of female inmates in developing countries using measures that have been adopted by some jurisdictions.

## II. CONTEXT

The term ‘prisoner’ is defined as an individual who has been legally deprived of liberty and kept under involuntary confinement or custody as a punishment for a crime or while awaiting trial.<sup>7</sup> For the purpose of this paper, the term will be used to refer to awaiting trial/remand prisoners, convicted/sentenced prisoners, debtors, lifers, prisoners on death row, prisoners detained as ‘civil lunatics’ or ‘criminal lunatics’, etc.

The Nigerian Prison Service recognizes five forms or legal reasons for the incarceration of female prisoners, namely<sup>8</sup>:

- Women against whom a court of competent jurisdiction has decided a case. These are usually brought into prison with ‘Conviction Warrants’.
- Women whose cases are pending before courts and are brought into prison with ‘Remand Warrants’ issued by such courts. These may either be awaiting trial or awaiting sentence.
- Women committed as judgement debtors by the courts for whom the judgement creditor deposits feeding money with the prison authorities.
- Women members of the armed forces who commit offences prohibited by the military and civilian accomplices committed to prison through court martial.
- Women committed to prison by the Inspector-General of Police or Chief of Army Staff for acts detrimental to state security under Decree No 2 of 1984 (now repealed).

The fastest growing segment of the world’s prisoner population is female.<sup>9</sup> In Africa, typical examples can be seen in Seychelles (775%), Burkina Faso (304%), Sao Tome and

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<sup>5</sup>Sarkin, J., ‘Prisons in Africa: An evaluation from a human rights perspective’, International Journal on Human Rights. Available at: <[http://www.surjournal.org/eng/conteudos/getArtigo9.php?artigo=9,artigo\\_sarkin.htm](http://www.surjournal.org/eng/conteudos/getArtigo9.php?artigo=9,artigo_sarkin.htm)>.

<sup>6</sup> Ibid.

<sup>7</sup> The Merriam-Webster Dictionary, ‘Definition-Prisoner’. Available at : <[www.merriam-webster.com/dictionary/prisoner](http://www.merriam-webster.com/dictionary/prisoner)>.

<sup>8</sup>See Agomoh U and Ogun B (2000), ‘Manual for the Training of Prison Officer-Trainers on the United Nations Standard Minimum Rules for the Treatment of Prisoners’, PRAWA: Lagos, at pages 17-18.

<sup>9</sup> United States Department of State, (2012) ‘A Practical Guide to Understanding and Evaluating Prison Systems’, Washington: United States Department of State.

Principe (166.7%), Benin (158.6%), Sierra Leone (106.1%), Republic of Guinea (104.9%), Uganda (95%), Kenya (89.6%), Mauritius (79.5%), Burundi (73.1%), Nigeria (68.1%), and Ghana (53.8%).<sup>10</sup> In some countries the rate of this increase has been higher than that of male prisoners.<sup>11</sup> Furthermore, these offenders have unique needs, particularly when it comes to family considerations, causes for criminality, health care and psychology.<sup>12</sup>

Given the patriarchal nature of many African societies, women face various forms of discrimination that also play out within the continent's criminal justice systems. In general, African women have had fewer opportunities than men to access education and amass wealth or property. A lot of them, especially those originating from rural areas, are poorly educated, unaware of their rights in detention, unable to access and afford legal representation, post bail or pay fines.<sup>13</sup> As a result of this, they face immense difficulties when accessing mechanisms of justice within their various communities.

It is argued in some quarters that women are less likely to commit violent and serious crimes than men. Hence, they are less likely to receive long prison sentences. Available data within the African region present diverse results. Reports from recent years indicate that a significant number of female detainees in South Africa, Malawi and Zambia are held for murder or violent crimes against their partners.<sup>14</sup> This trend is not the same in countries such as Kenya, Botswana and Zimbabwe where women were more frequently arrested for non-violent crimes.<sup>15</sup> In Benin, Sierra Leone, Nigeria, the Democratic Republic of Congo (DRC) and Egypt, women are detained in place of their brothers, husbands, sons or boyfriends who are crime suspects<sup>16</sup> while in conservative religious countries like South Sudan, women are commonly detained for crimes such as adultery.<sup>17</sup> In addition to this, in some societies, women may also be detained as a result of discriminatory laws and cultural practices, or tribal laws or traditions, rather than codified law.<sup>18</sup>

Regardless of the nature of their crimes, research has consistently proven that a considerable percentage of women offenders in Africa were victims of various forms of violence, mental health problems, and alcohol or drugs dependency<sup>19</sup> even before their incarceration.<sup>20</sup> Sadly, their trauma is worsened by a number of critical problems within the

<sup>10</sup> Please refer to Appendix 1 for further information.

<sup>11</sup> United States Department of State, (2012) 'A Practical Guide to Understanding and Evaluating Prison Systems', Washington: United States Department of State.

<sup>12</sup> Ibid.

<sup>13</sup> Ackermann, M., (2014) 'Women in pre-trial detention in Africa: A review of the literature'. South Africa: Civil Society Prison Reform Initiative.

<sup>14</sup> Ackermann, M., (2014) 'Women in pre-trial detention in Africa: A review of the literature'. South Africa: Civil Society Prison Reform Initiative, p. 7.

<sup>15</sup> Ibid.

<sup>16</sup> Agozino B (2005) Nigerian Women in Prison. In J Sudbury (Ed) Global Lockdown: Race, Gender and the Prison-Industrial Complex. New York: Routledge; Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press.

<sup>17</sup> Ibid.

<sup>18</sup> Womankind Worldwide (2008), 'Taking Stock Update: Afghan Women and Girls Seven Years On'. London. p. 35. Available at: <<http://www.womankind.org.uk/takingstockdownloads.html>>. [Accessed 10 February 2015].

<sup>19</sup> Barzano, P. 2013. The Bangkok Rules: An International Response to the Needs of Women Offenders, United Nations Asia and Far East Institute, Resource Material Series No. 90, p. 82–3. Available at: <[http://www.unafei.or.jp/english/pdf/RS\\_No90/No90\\_11VE\\_Barzano.pdf](http://www.unafei.or.jp/english/pdf/RS_No90/No90_11VE_Barzano.pdf)> [accessed 2 February 2015].

<sup>20</sup> Penal Reform International, 'Penal Reform Briefing No. 3: Women in Prison – Incarcerated in a Man's World', London, 2008, p. 2; Also see: United Nations Special Rapporteur on Violence Against Women. 2013. Pathways to, Conditions and Consequences of incarceration for women, A/68/340, 21 August 2013, paragraphs 6 and 7, <[www.ohchr.org/Documents/Issues/Women/A-68-340.pdf](http://www.ohchr.org/Documents/Issues/Women/A-68-340.pdf)> [accessed 2 February 2015]; Tibatemwa-



region's penal institutions which disproportionately affect women and which threaten their rights to human dignity and security of person. These include concerns around reproductive health needs, mental disorders, increased vulnerability to abuse in prison, as well as harassment and attempts of exploitation by law enforcement officers.<sup>21</sup>

According to Medlicott, female imprisonment ought to be a specialised area of policy; instead what has transpired is that the women's prison population 'has been subsumed into the male population' with little differentiation between the two in terms of reform decisions.<sup>22</sup> This is probably because regardless of their high population growth rate, of the 99,0215 recorded incarcerated persons in Africa, 29,481 are women.<sup>23</sup> Based on this data, women only make up about 2.97 % of those incarcerated in Africa's already overstretched penal system, ensuring that their specific needs are seldom catered for.<sup>24</sup>

It is an accepted fact that the prison service in many countries is generally not a priority area of governance and as a result is often ignored and/or underfunded. However, it is also important to note that whenever the rights of women prisoners are discussed, more attention is placed on those in penal institutions to the detriment of those in police detentions.

In police detention, women are vulnerable to sexual abuse and other forms of violence which may be used to force confessions to offences they have not committed. With the use of an example in a report to the African Commission on Human and Peoples Rights, the Special Rapporteur on Prisons and Conditions of detention noted that the conditions for women held at police stations in Namibia were very poor, with poor ventilation and sleeping facilities.<sup>25</sup>

Apart from women held in police detention, another vulnerable group of imprisoned women are female combatants held as prisoners of war. These women 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>26</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>27</sup> But then, given the proliferation of intra-state conflicts in Africa, there is need for the rights of imprisoned women combatants to become another priority area in policy discourse and research.

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Ekirikubinza L (1999) Women's Violent Crime in Uganda. Kampala: Fountain Publishers; Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press.

<sup>21</sup> Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press.

<sup>22</sup> Quoted in Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press. This statement was actually made with reference to the United Kingdom. However, the author of this paper believes that it holds true even in the case of African countries.

<sup>23</sup> Calculated based on available prison data on <<http://www.prisonstudies.org/map/africa>>. [Accessed 18 February 2015].

<sup>24</sup> Ibid.

<sup>25</sup> ACHPR (2001) Prisons in Namibia. Report on a visit 17-28 September 2001. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>26</sup> Charlotte Lindsey, Women Facing War, ICRC, Geneva, 2001, p. 163, available at <<http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/p0798>> [Accessed 10 February 2015].

<sup>27</sup> Ibid.

### III. INTERNATIONAL LAW AND THE RIGHTS OF WOMEN PRISONERS

International law provides the necessary model, best practice and assessment framework for African prisons and their obligations to women prisoners. It is for this reason that this paper will commence the analysis of its subject matter with an overview of existing international standards.

In 1955, the First United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted the most recognised non-treaty text within the international legislative framework on detention. This text, known as the United Nations Standard Minimum Rules for the Treatment of Offenders (UNSMR) provides the basic guidelines to be observed by states in the fulfilment of their obligations with regard to incarcerated persons.<sup>28</sup> But then, as far as its specific application to women is concerned, the UNSMR addresses only the separation of women and men, the medical care of pregnant detainees and provisions for children to be imprisoned with their mothers.<sup>29</sup>

In 1988 and 1990, the UN adopted three additional instruments on imprisonment. They are: the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988),<sup>30</sup> the Basic Principles of the Treatment of Prisoners (1990),<sup>31</sup> and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (1990). Although they all attempted to fill existing gaps in the expected standards on the treatment of prison inmates, these three instruments failed to address the UNSMR's inadequacies with respect to the particular needs and vulnerabilities of women in detention.

The inadequate protection offered to women prisoners by these instruments did not deter international discourse on the issue which was debated at about five annual United Nations Congresses on the Prevention of Crime and Treatment of Offenders—from the Sixth Congress held in 1980 to the Eleventh Congress in 2005.<sup>32</sup> At the Tenth Congress, member states adopted the Vienna Declaration on Crime and Justice: Meeting the Challenges of the 21st Century,<sup>33</sup> in which they avowed to take into account and address, not only within the United Nations Crime Prevention and Criminal Justice Programme, but also at domestic level, any disparate impact of programmes and policies on women, and to develop recommendations relevant to the unique needs of female detainees.<sup>34</sup>

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<sup>28</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, <<http://www.refworld.org/docid/3ae6b36e8.html>> [accessed 2 February 2015].

<sup>29</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, Rules 8(a), 23 & 53, Available at: <<http://www.refworld.org/docid/3ae6b36e8.html>> [accessed 2 February 2015]

<sup>30</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, Principle 52. Available at: <<http://www.un.org/documents/ga/res/43/a43r173.htm>> [accessed 2 February 2015].

<sup>31</sup> Basic Principles of the Treatment of Prisoners, 45/111, 14 December 1990, Available at: <<http://www.un.org/documents/ga/res/45/a45r111.htm>> [accessed 2 February 2015].

<sup>32</sup> Barzano, P. (2013). The Bangkok Rules: An International Response to the Needs of Women Offenders. United Nations Asia and Far East Institute, Resource Material Series No. 90, p. 85. Available at: <[http://www.unafei.or.jp/english/pdf/RS\\_No90/No90\\_11VE\\_Barzano.pdf](http://www.unafei.or.jp/english/pdf/RS_No90/No90_11VE_Barzano.pdf)> [accessed 2 February 2015].

<sup>33</sup> The Vienna Declaration on Crime and Justice: Meeting the Challenges of the 21st Century, A/RES/55/59, 17 January 2001, Available at: <[http://www.unodc.org/pdf/crime/a\\_res\\_55/res5559e.pdf](http://www.unodc.org/pdf/crime/a_res_55/res5559e.pdf)> [accessed 2 February 2015].

<sup>34</sup> United Nations Economic and Social Council, Official Record, Supplement No. 10, Commission on Crime Prevention and Criminal Justice: Report on the Nineteenth Session (4 December 2009 and 17-21 May 2010),

In 2003 and 2008, the United Nations General Assembly called for states to acknowledge the problems faced by women in detention and to consider the impact of imprisoning women with child care duties, as well as babies or small children incarcerated with mothers.<sup>35</sup> At the 18th session of the Commission on Crime Prevention and Criminal Justice in 2009, a resolution submitted by the Government of Thailand was adopted, acknowledging as a premise to the Bangkok Rules that prison facilities are built primarily for males. It had therefore become necessary to address and accommodate female detainees' specific needs.<sup>36</sup>

In 2009, a group of experts from 25 countries, met in Bangkok to develop supplementary rules specific to the treatment of women in detention. At the 12th United Nations Congress on Crime Prevention and Criminal Justice held in 2010 in Salvador, Brazil, the inter-governmental expert group reported on the outcome of the Bangkok meeting and presented the draft version of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).<sup>37</sup> This was followed by the adoption of a draft resolution by the Economic and Social Council on 22 July 2010 and finally, on 21 December 2010, the General Assembly adopted the Bangkok Rules without a vote.<sup>38</sup>

The guiding objective for the adoption of the Bangkok Rules was not for it to replace the UNSMR, but rather to complement it with respect to the treatment of women prisoners and offenders. The Bangkok Rules sought to do this, either by providing clarification on certain UNSMR rules or by adding provisions that will ensure that the UNSMR standards effectively respect the rights of all prisoners without discrimination. The Bangkok Rules on the treatment of female prisoners are applicable right from the moment of pre-trial detention. It also addresses challenges faced by women in relation to physical and mental health care and the links between incarceration and prior victimisation.

In addition to the Bangkok Rules, several other international instruments advocating for the respect and protection of the rights of women may be applicable within the African penal system. They include: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT); the United Nations Convention on the Rights of the Child (CRC); among others.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) advocates for women's rights to equality, with specific focus on the exercise of

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E/CN.15/2010/30, p. 27 & 28, Available at:

<[http://www.unodc.org/documents/commissions/CCPCJ\\_session19/Draft\\_report/E2010\\_30eV1054137.pdf](http://www.unodc.org/documents/commissions/CCPCJ_session19/Draft_report/E2010_30eV1054137.pdf)> [accessed 2 February 2015].

<sup>35</sup> United Nations General Assembly Resolutions 58/183 of 22 December 2003 and 63/241 of 24 December 2008.

<sup>36</sup> Penal Reform International & Quaker United Nations Office. 2011. Briefing on the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), p. 2, Available at: <[http://www.penalreform.org/wp-content/uploads/2013/05/PRI-QUNO\\_English\\_1-1.pdf](http://www.penalreform.org/wp-content/uploads/2013/05/PRI-QUNO_English_1-1.pdf)> [accessed 2 February 2015].

<sup>37</sup> Penal Reform International & Quaker United Nations Office. 2011. Briefing on the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), p. 6, Available at: <[http://www.penalreform.org/wp-content/uploads/2013/05/PRI-QUNO\\_English\\_1-1.pdf](http://www.penalreform.org/wp-content/uploads/2013/05/PRI-QUNO_English_1-1.pdf)> [accessed 2 February 2015].

<sup>38</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Available at: <<http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf>> [accessed 2 February 2015].

civil rights. Currently, South Sudan, Sudan and Somalia are the only African states not to have signed or ratified CEDAW.<sup>39</sup>

The United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the accompanying Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment are authoritative umbrella texts that protect all persons against torture and ill treatment whilst deprived of their liberty. Its provisions are gender-neutral and must be applied to all incidents which fit the description of torture or other forms of ill-treatment listed in UNCAT.<sup>40</sup>

The guiding principles enshrined in the United Nations Convention on the Rights of the Child (CRC) are relevant to women in detention and mothers separated from their children through imprisonment; especially with respect to the fact that States Parties are expected to consider the child's best interest, as well as his or her right to family unity, before separating him or her from the parent.<sup>41</sup>

#### **IV. APPLICABILITY OF THE BANGKOK RULES TO THE SITUATION OF FEMALE OFFENDERS IN AFRICA**

Driven by the significant increase of female detainees worldwide,<sup>42</sup> the Bangkok Rules set out comprehensive guidelines and standards for the treatment of female prisoners. The instrument recognises women as a vulnerable group within the criminal justice system and aims to address the various problems affecting them.

The first Bangkok Rule which supplements Rule 6 of the United Nations Standard Minimum Rules on the Treatment of Offenders (UNSMR) emphasises the need for the practice of the principle of non-discrimination through adequate consideration for the distinctive needs of women prisoners and their children. However a critical review of the present conditions of several African prisons reveal diverse levels of structural, resource and institutional challenges which make it difficult for such obligations to be met. In some cases, and as will be pointed out in this section, African countries have managed to transform existing impediments into opportunities for innovation and best practices that can be replicated across the continent.

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<sup>39</sup> United Nations Convention on the Elimination of Discrimination against Women, 34/180, 18 December 1979, Available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>> [accessed 2 February 2015]; List of signatories available at: <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-8&chapter=4&lang=en)> [accessed 2 February 2015].

<sup>40</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/39/46, 10 December 1984, Available at: <<http://www.refworld.org/docid/3ae6b3a94.html>> [accessed 14 January 2015].

<sup>41</sup> United Nations Convention on the Rights of the Child, 44/25, 20 November 1989, Articles 5, 8, 9(1) and 16. Available at: <<http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>> [accessed 2 February 2015].

<sup>42</sup> Penal Reform International & Quaker United Nations Office. 2011. Briefing on the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), p. 2, [http://www.penalreform.org/wp-content/uploads/2013/05/PRI-QUNO\\_English\\_1-1.pdf](http://www.penalreform.org/wp-content/uploads/2013/05/PRI-QUNO_English_1-1.pdf) [Accessed 22 February 2014].

## **A. Humane Treatment during Inmate Admission and Registration**

### **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.

Women prisoners are especially vulnerable at the time of their admission due to a variety of factors, such as the trauma of separation from children, families and communities, past victimisation and fears for their safety, the particular stigma associated with their imprisonment, minimal experience of contact with state authorities, or low educational and economic status, among others. Although Rule 3 of the Bangkok Rules recommends the documentation of necessary information on the children of inmates during their registration process. Through preliminary research on the Rights of Children of Incarcerated Persons, PRAWA established that this practice is yet to be the norm in countries like Nigeria where the rights of such children remain an undiscussed subject.<sup>43</sup>

However, with respect to inmate admission, in many African countries there are Prison Reception Boards made up of the officer in charge of the prison (or his/her designate), prison officers drawn from the social welfare, medical, psychology, and vocational workshop departments who will interview the inmate usually within the first 24 hours of his/her admission into the prison. The purpose of this is to identify the risks and needs of the inmates and determine which cell/section of the prison the inmate will be accommodated and other programmes or services that will be made available to the inmate. Also, in some of the countries, the prison/correctional services have developed a Prisoners' Handbook containing information on the prison rules and regulations, and information on where the inmate can seek help when in need. The Kenyan Prison Service has such a Prisoners Handbook as well as big sign boards inside many of their prisons displaying the rights of the prisoners, courtesy of the Kenyan Human Rights Commission and others displaying some of the services provided by NGOs. PRAWA, under the Human Rights Training Integrated (HRTI) Project, assisted the Nigeria Prison Service to produce a Prisoners' Information Handbook on Rights and Responsibilities of Prisoners in the English language and five other major Nigerian local languages – Pidgin English, Ibo, Yoruba and Hausa. These were distributed by the Nigeria Prison Service to inmates along with posters and stickers on sensitising inmates on their 'Rights and Responsibilities' and on 'How to Access the Prison Complaints and Redress Mechanisms'. In the case of foreign nationals, many African countries do notify the respective consular offices of the detention of their national and they allow visits of such inmates by the consular representative.

## **B. Humane Treatment during Inmate 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

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<sup>43</sup>Osude U & Imoka U (2015), Respecting the Rights of Children of Incarcerated Person in Nigeria, Nigeria: PRAWA.



responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.

Many imprisoned women are mothers and usually primary caregivers for their children.<sup>44</sup> The small numbers of imprisoned women mean that there are fewer prisons for them, resulting in women often being imprisoned further away from their homes and having limited opportunity for interactions with their children.<sup>45</sup> This causes difficulties for the woman in maintaining her family ties and is especially a problem if she has dependent children.

The existence of very few women's prisons also results in the collective accommodation of women convicted for a wide range of offences in a prison with a high level of security, needed only for very few women. For example, Nigeria has 239 penal facilities<sup>46</sup> across its 36 states but only one exclusive female prison in KiriKiri Lagos State. This prison is a maximum security prison but is used for the custody of women prisoners within the Lagos metropolis regardless of their offence.

When a mother is imprisoned, her family will often break up, resulting in many children ending up in state care institutions or alternative care. Imprisonment far from home also complicates a woman's resettlement after release.

Recognising these challenges, in 2001, the Kenya Prison Service, under the country's prison reform process, commenced an open door policy that resulted in the use of a Remote Parenting System for inmate rehabilitation.<sup>47</sup> Given the sizeable percentage of single-parent prison inmates in Kenya, the system encourages the maintenance and improvement of family relations and the mental health of the inmates by providing them with the opportunity for unrestricted quality time with their children.

The Remote Parenting and Prison Open days occur every quarter at the end of the school terms. Currently, the law prohibits inmates from receiving visitors below the age of 18 years. Through the Remote Parenting System, the Kenya Prison Service (using the inmate contact information written on their arrest warrants) endeavours to inform members of the inmates' families of the date for the open days. On those days, prisoners are given the opportunity to discuss their children's performance in school through their academic reports and also advise them on the importance of leading crime free lives. This admirable practice is funded by the Kenya Prison Service. It encourages good behaviour and promotes the acceptance of the offenders by the nuclear family and the community at large, hence, positively impacting the smooth re-integration of offenders at the end of their incarceration.

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<sup>44</sup> Declaration on women's health in prison: correcting gender inequity in prison health. Copenhagen: World Health Organization Regional Office for Europe; 2009. Available from: <[http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0004/76513/E92347.pdf](http://www.euro.who.int/__data/assets/pdf_file/0004/76513/E92347.pdf)> [Accessed 20 February 2015].

<sup>45</sup> Vetten L & Bhana K (2005). The Justice For Women Campaign: Incarcerated Domestic Violence Survivors In Post-Apartheid South Africa. In J Sudbury (Ed.) *Global Lockdown: Race, Gender And The Prison Industrial Complex*. New York: Routledge.

<sup>46</sup> The Nigerian Prisons Statistics, June 2013. Available at: <<http://www.prisons.gov.ng/about/statistical-info.php>> [Accessed 20 February 2015].

<sup>47</sup> PRAWA, Compendium of Best Prison Practices. Available Online at: [www.prawa.org](http://www.prawa.org). [Accessed 20 February 2015].

## C. Humane Approach to Personal Hygiene

### Rule 5

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

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.

Women in prisons have more specific health issues than men; the most prominent are related to reproductive health such as menstruation, menopause, pregnancy and breastfeeding.<sup>48</sup> However, given the poor state of prison infrastructure in various African countries, women have little or no access to adequate facilities that can meet their accommodation or health needs. Most times, they are housed in prisons specifically built for male prisoners. A typical example can be seen in Uganda where the women's wing of the Masaka Prison was created from what were originally punishment cells for men who broke prison regulations.<sup>49</sup> These cells lacked proper ventilation and were cold.<sup>50</sup> During a visit to Abéché prison (Chad) at the end of May 2011 and in March 2012, women prisoners told Amnesty International delegates that to protect their privacy from male inmates and male prison guards, they waited until after dark or in the early morning to shower or go to the toilet.<sup>51</sup>

Apart from the poor accommodation facilities available for women prisoners, in several African countries like Zimbabwe, Chad, Ethiopia, Malawi, Mozambique, Nigeria and Uganda, these vulnerable individuals do not have easy access to sanitary towels and must either depend on others to supply the basic need or improvise with cloths, newspapers, tissues, pieces of blanket or prison uniforms.<sup>52</sup>

In a research report on Zimbabwe, women interviewed spoke of how once they had been locked up for the day, they chose not to change pads or use the waste buckets so as not to expose fellow inmates to the smell of blood.<sup>53</sup> They added that these buckets could also overflow and users become splashed with bodily waste when using them while babies who crawled about at night risked coming in contact with its contents.<sup>54</sup> According to Amnesty International, the lack of access to clean water and adequate sanitation facilities in Chadian prisons contributes to women's ill-health and also exposes children, infants and babies living with their mothers in the prisons to infections which can be life-threatening.<sup>55</sup>

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<sup>48</sup> Declaration on women's health in prison: correcting gender inequity in prison health. Copenhagen: World Health Organization Regional Office for Europe; 2009. Available at: <[http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0004/76513/E92347.pdf](http://www.euro.who.int/__data/assets/pdf_file/0004/76513/E92347.pdf)> [Accessed 7 February 2015].

<sup>49</sup> Tibatemwa-Ekirikubinza L (1999) Women's Violent Crime in Uganda. Kampala: Fountain Publishers.

<sup>50</sup> Ibid.

<sup>51</sup> Amnesty International, (2012) 'Chad: "We are all dying here" human Rights Violations in Prisons'. United Kingdom: Amnesty International Ltd.

<sup>52</sup> Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press. p. 137; Also see Amnesty International, (2012) 'Chad: "We are all dying here" human Rights Violations in Prisons'. United Kingdom: Amnesty International Ltd

<sup>53</sup> Samakaya-Makarati J (2003) Female Prisoners in Male Prisons. In C Musengezi & I Staunton (Eds) A tragedy of Lives: Women in Prison in Zimbabwe. Harare: Weaver Press.

<sup>54</sup> Ibid.

<sup>55</sup> Amnesty International, (2012) 'Chad: "We are all dying here" human Rights Violations in Prisons'. United Kingdom: Amnesty International Ltd.

In order to fill this gap, in some African countries, faith-based organisations provide donations of sanitary towels. In 2013, PRAWA introduced a public appeal campaign to generate individual support towards provision of sanitary towels for female prisoners in Nigeria. This scheme is currently running in Kirikiri Female Prison Lagos, Lagos State as a pilot and was extended to Suleja Prison in Abuja. The campaign is for the donation of 500 naira (approximately 3.2 USD) for the provision of a monthly supply for a female prisoner. There are awareness flyers on this initiative for the general public reflecting opportunity for one-off and regular donations. Water bore holes have also been constructed in few prisons to help address the problem of water shortage and high cost of purchasing of water. These have been constructed either by the government or as a constituency project of some of the elected legislators/politicians, for example, the construction of a water bore hole at Auchi prison in Edo State of Nigeria is one of such interventions.

#### **D. Humane Provision of Health Care Services, Mental Health Care and Substance Abuse Treatment Programmes**

*[Rules 6 to 17 Supplementing rules 22 to 26 of the UNSMR]*

Prisoners do not represent a homogeneous segment of society. Many have lived at the margins of society, are poorly educated and come from socioeconomically disadvantaged groups. They often have unhealthy lifestyles and addictions such as alcoholism, smoking and drug use, which contribute to poor general health and put them at risk of disease. The prevalence of mental health problems is very high: some prisoners are seriously mentally ill and should be in a psychiatric facility, not prison.

Women prisoners frequently suffer from mental health problems, among which post-traumatic stress disorder, depression and self-harming are regularly reported.<sup>56</sup> They suffer from mental health problems to a higher degree than for both male prisoners and the general population,<sup>57</sup> with rates as high as 90%.<sup>58</sup> Evidence shows that women prisoners are more likely to self-harm and commit suicide than male prisoners, while this is the opposite in the community.<sup>59</sup>

Communicable diseases such as HIV, hepatitis and tuberculosis are more prevalent in prisons than in the community.<sup>60</sup> Women are at greater risk than men of entering prison with sexually transmitted infections such as chlamydia, gonorrhoea, syphilis and HIV/AIDS, often as a result of past high-risk sexual behaviours including prostitution, sex work and being

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<sup>56</sup> Declaration on women's health in prison: correcting gender inequity in prison health. Copenhagen: World Health Organization Regional Office for Europe; 2009. Available at: <[http://www.euro.who.int/\\_data/assets/pdf\\_file/0004/76513/E92347.pdf](http://www.euro.who.int/_data/assets/pdf_file/0004/76513/E92347.pdf)> [Accessed 20 February 2015].

<sup>57</sup> Bastick M, Townhead L. Women in prison: a commentary on the United Nations standard minimum rules for the treatment of prisoners. Geneva: Quaker United Nations Office; 2008. Available at: <<http://www.quno.org/geneva/pdf/humanrights/women-in-prison/WiP-CommentarySMRs200806-English.pdf>> [Accessed 20 February 2015].

<sup>58</sup> Rutherford M. The Corston report and the government's response: the implications for women prisoners with mental health problems. London: Sainsbury Centre for Mental Health; 2008. Available at: <[http://www.scmh.org.uk/pdfs/scmh\\_corston\\_response.pdf](http://www.scmh.org.uk/pdfs/scmh_corston_response.pdf)> [Accessed 20 February 2015].

<sup>59</sup> Unequal, unfair, ineffective and inefficient: gender inequity in health. Why it exists and how we can change it. Final report to the WHO Commission on Social Determinants of Health. Geneva: World Health Organization; 2007. Available at: <[http://www.who.int/social\\_determinants/resources/csdh\\_media/wgekn\\_final\\_report\\_07.pdf](http://www.who.int/social_determinants/resources/csdh_media/wgekn_final_report_07.pdf)> [Accessed 20 February 2015].

<sup>60</sup> Health in prisons project. Copenhagen: World Health Organization Regional Office for Europe; 2011. Available at: <<http://www.euro.who.int/prisons>> [Accessed 20 February 2015].



victims of sexual abuse.<sup>61</sup> Because of the short sentences that women often serve, there is a high turnover rate in women's prisons which means that there is an intensive interaction between the prison, the community and wider society.<sup>62</sup>

#### Rule 6

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

- 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;
- Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm;
- The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues;
- The existence of drug dependency;
- Sexual abuse and other forms of violence that may have been suffered prior to admission.

The South African Correctional Services Act prescribes a health status examination of sentenced prisoners upon admission, which includes testing for contagious and communicable diseases.<sup>63</sup> A 2012 study conducted in two female prisons revealed that female respondents did not receive annual general medical check-ups, routine pap-smears or mammograms.<sup>64</sup> Access to health care was reported to be periodic and usually provided upon request by the detainee.<sup>65</sup> This notwithstanding, some African countries have introduced programmes to address the above recommendations of the Bangkok Rules. For example, the Zambia Prison Service has a comprehensive programme for screening, counselling and treatment of inmates which it is running in partnership with NGOs.

#### 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.

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<sup>61</sup> Jones CM, McCann M, Nugent Z. Scottish Prisons' Dental Health Survey 2002. Edinburgh: Scottish Executive; 2004. Available at: <<http://www.scotland.gov.uk/Publications/2004/02/18868/32855>> [Accessed 20 February 2015].

<sup>62</sup> Declaration on women's health in prison: correcting gender inequity in prison health. Copenhagen: World Health Organization Regional Office for Europe; 2009. Available at: <[http://www.euro.who.int/\\_data/assets/pdf\\_file/0004/76513/E92347.pdf](http://www.euro.who.int/_data/assets/pdf_file/0004/76513/E92347.pdf)> [Accessed 20 February 2015].

<sup>63</sup> Correctional Services Act (Act 111 of 1998) as amended, Section 5(b). Available at: <<http://www.dcs.gov.za/Publications/Legislation/DCS%20Act%20111%20of%202008.pdf>> [accessed 2 February 2015].

<sup>64</sup> Artz, L, Hoffman-Wanderer, Y & Moul, K. 2012b. Hard Time(s): Women's Pathways to Crime and Incarceration. Gender, Health and Justice Research Unit, University of Cape Town, p. 239. Available at: <[http://www.ghjru.uct.ac.za/pdf/hard\\_times.pdf](http://www.ghjru.uct.ac.za/pdf/hard_times.pdf)> [accessed 7 February 2015].

<sup>65</sup> Ibid.

An example of this is PRAWA's provision of trauma counselling and development of a checklist/protocol and a manual for prison health workers to use in the screening of inmates as well as provision of training for prison health workers<sup>66</sup> on this as well as conducting periodic medical outreach to prisons in partnership with Association of Christian Medical Doctors and Medical Students and Medix Frontiers (a student medical association in Nigeria).

#### 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.

Some countries have programmes addressing these issues that are provided either by the prison service, the health department or by NGOs. For example, since 2013 PRAWA introduced in Nigeria a faith-based drug abuse prevention and awareness programme targeting both inmates and prison officers. This intervention has proved to be very successful, facilitating joint initiatives between inmates and prison authorities on prevention of drug/substance abuse in prison. So far, this intervention has been implemented in the following seven states: Cross Rivers, Edo, Rivers, Delta, Ogun, Imo, and Enugu States covering over 30 prisons and reaching about 25 percent of the total inmate population in these prisons. PRAWA has also developed a simplified awareness manual for inmates and others (in and out-of-school youths). Giving the effect of substance abuse on crime, PRAWA also has introduced this same scheme in secondary schools in one of the states of Nigeria (Enugu State).

### **E. Women Prisoners and Humane Protection against Abuse and Violence**

#### Rule 7

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

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.

In many African prisons, as a result of resource inadequacy, services designed specifically for women to help them feel safe and supported on gender-specific issues, are

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<sup>66</sup>This initiative was funded by the International Rehabilitation Council for Torture Victims with funds from Oak Grants for implementation in the four prisons in Enugu State Nigeria (Nsukka, Oji River, Enugu and Ibitolu Prisons).

seldom provided.<sup>67</sup> Many women prisoners in Africa are not only victims of gender based violence before incarceration; given the poor level of security available in penal institutions, they are also victims of violence during incarceration.

According to the UNSMR, women should be kept separate from men. But then, dwindling prison capacity means that women have to be incarcerated with men in many African countries. In Chad, the lack of effective separation between women and men, and the presence of male security officers and prison staff in women prisoners' courtyards, jeopardized both the safety and security of women detainees.<sup>68</sup> During their visits, Amnesty International noted that even in prisons with separate accommodation for women, it was easy for men to move to and from women's courtyards and cells.<sup>69</sup> In Uganda women prisoners were only separated from their male counterparts at night.<sup>70</sup> In Natitigou Prison (Benin), women and men used the same toilet and shower facilities.<sup>71</sup>

Where women have no option but to share facilities, the limitations of separation and insufficient female wardens leaves them exposed to physical, sexual and psychological abuse from male prisoners which meagre numbers of staff cannot prevent and, indeed, sometimes participate in.<sup>72</sup> Women held in Tunisian prisons have been reported to be subjected to sexual violence, electric shocks, beatings, cigarette burns and food and sleep deprivation.<sup>73</sup> Tunisian prisons are not the only ones accused of physical abuse. Such reports have also been received from South Africa, Malawi, Uganda, and Namibia.<sup>74</sup>

It is worthy to note that in countries such as Namibia, Ethiopia<sup>75</sup>, the Gambia<sup>76</sup> and DRC (at least in one prison)<sup>77</sup>, women are guarded primarily by women. But this is not the case in police detention.<sup>78</sup> There have been reports of sexual violence against women during police

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<sup>67</sup> Women in prison: a review of the conditions in Member States of the Council of Europe. Brussels: Quaker Council for European Affairs; 2007. Available at: <<http://www.quaker.org/qcea/prison/Final%20Report%20Part1.pdf>> [Accessed 20 February 2015].

<sup>68</sup> Amnesty International, (2012) 'Chad: "We are all dying here" human Rights Violations in Prisons'. United Kingdom: Amnesty International Ltd.

<sup>69</sup> Ibid.

<sup>70</sup> ACHPR (2001) Prisons in Uganda. Report on a visit 11-22 March 2001. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>71</sup> ACHPR (2000) Prisons in Benin. Report on a visit 23-31 August 1999 Series IV, No. 6. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>72</sup> Nana Adaye-Amoakoh, 'Behind Closed Doors: Crimes against Women in Africa's Prisons', 2 May 2012, ThinkAfricaPress. Available at: <<http://thinkafricapress.com/gender/prison-crimes-women-africa>> [Accessed 2 February 2015].

<sup>73</sup> Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press.

<sup>74</sup> Ibid.

<sup>75</sup> ACHPR (2004) Prisons in Ethiopia. Report on a visit 15-29 March 2004. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>76</sup> ACHPR (1999) Prison in the Gambia. Report on a visit 21-26 June 1999, Series IV, No. 5. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>77</sup> OMCT (2006) Violence against Women in the Democratic Republic of Congo (DRC). Alternative report prepared for the Committee on the Elimination of Discrimination against Women, 36th session 7-25 August. Available at: <[http://www.omct.org/pdf/VAW/2006/CEDAW\\_36th/CEDAW36\\_DRC\\_en.pdf](http://www.omct.org/pdf/VAW/2006/CEDAW_36th/CEDAW36_DRC_en.pdf)> [Accessed 20 February 2015].

<sup>78</sup> Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press.

interrogations and/or detention in some countries such as Nigeria<sup>79</sup>, South Africa<sup>80</sup>, and Congo<sup>81</sup>.

In countries such as Egypt, humiliation is adopted as a method of torture against female relatives of suspected Islamist militants who are asked to strip naked and are then placed in closed rooms with naked male detainees.<sup>82</sup>

#### **F. Humane Treatment of 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.

Pregnant women rarely receive adequate ante-natal and post-natal care in prison. Prison services in the large majority of African countries are under-resourced and understaffed. Consequently, pregnant and breastfeeding mothers are not given enough and adequate food to meet the minimum level of nutritional requirements for themselves and their babies.<sup>83</sup>

In Botswana, the requirement for a healthy pregnancy, such as adequate nutrition, exercise, fresh air and reasonably sanitary conditions, were reported as not being met.<sup>84</sup> In countries such as the Central African Republic<sup>85</sup>, Benin<sup>86</sup>, Malawi<sup>87</sup>, Namibia<sup>88</sup>,

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<sup>79</sup>Agozino B (2005) Nigerian Women in Prison. In J Sudbury (Ed) Global Lockdown: Race, Gender and the Prison-Industrial Complex. New York: Routledge.

<sup>80</sup>Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press.

<sup>81</sup>OMCT (2006) Violence against Women in the Democratic Republic of Congo (DRC). Alternative report prepared for the Committee on the Elimination of Discrimination against Women, 36th session 7-25 August. Available at: <[http://www.omct.org/pdf/VAW/2006/CEDAW\\_36th/CEDAW36\\_DRC\\_en.pdf](http://www.omct.org/pdf/VAW/2006/CEDAW_36th/CEDAW36_DRC_en.pdf)> [Accessed 20 February 2015].

<sup>82</sup>Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press.

<sup>83</sup>Amnesty International, (2012) 'Chad: "We are all dying here" human Rights Violations in Prisons'. United Kingdom: Amnesty International Ltd.

<sup>84</sup>Modie-Moroka T & Sossou M (2001) Women, Criminality and Multi-focal Empowerment Responses: Some Prospects for Botswana. Journal of Social Development in Africa 2(16): 5-30.

<sup>85</sup>ACHPR (2000) Prisons in the Central African Republic. Report on a Visit 19-29 June 2000 Series IV, No. 7. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>86</sup>ACHPR (2000) Prisons in Benin Report on a visit 23-31 August 1999 Series IV, No. 6. Special Rapporteur on Prisons and Conditions of Detention in Africa.

Zimbabwe<sup>89</sup> or Mozambique<sup>90</sup>, lack of nutritious food for imprisoned women has been reported. According to some reports, in Uganda, the government provides prisoners with clothing but does not extend this courtesy to their children, and some babies appeared to be getting the same food as their mothers.<sup>91</sup> On the contrary, in Rwanda a very innovative scheme was introduced whereby cows are reared in prison and the milk from the cows is given to the mothers with their babies in prison.

#### 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.

The African Commission on Human and People's Rights (ACHPR) reports<sup>92</sup>, and research has revealed, that children are imprisoned with their mothers in Benin, Ethiopia, South Africa, Mozambique, The Gambia, Sudan, Nigeria<sup>93</sup> and Uganda. While children may remain with their mothers until the age of 18 months in Ethiopia. A 2004 visit by the Special Rapporteur of the ACHPR on Prisons and Conditions of Detention in Africa noted that there were children as old as eight years in one Ethiopian women's prison—these children were not attending school.<sup>94</sup> The same was the case for children with their parents in prisons in Sudan.<sup>95</sup>

## **V. RECOMMENDATIONS**

Prisons are not only a reflection of the society within which they are located; their ability to effectively rehabilitate and care for inmates has a considerable impact on public health, social structures and societal crime rates. In democratic societies the law underpins and protects the fundamental values of society. To ensure the humane treatment of female prisoners in African countries, reform efforts have to commence from policies governing prisons and security agencies who have also been empowered to detain individuals. The operations of security agencies are strictly governed by existing rules and regulations, thus, there is a need for effective gender mainstreaming among African security agencies through gender-sensitive policies that recognise and address the special needs of female inmates and officers.

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<sup>87</sup>ACHPR (2001) Prisons in Malawi. Report on a visit 17-28 June 2001 Series IV, No. 9. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>88</sup>ACHPR (2001) Prisons in Namibia. Report on a visit 17-28 September 2001. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>89</sup>Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press.

<sup>90</sup>ACHPR (2001) Prisons in Mozambique. Report on the second visit April 4-14 Series IV, No. 8. Special Rapporteur on Prison and Conditions of Detention in Africa.

<sup>91</sup>Tibatema-Ekirkubinza L (1999) Women's Violent Crime in Uganda. Kampala: Fountain Publishers.

<sup>92</sup>ACHPR (2000) Prisons in Benin Report on a visit 23-31 August 1999 Series IV, No. 6. Special Rapporteur on Prisons and Conditions of Detention in Africa; ACHPR (2004) Prisons in Ethiopia on a visit 15-29 March 2004. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>93</sup>Osude U & Imoka U (2015), Respecting the Rights of Children of Incarcerated Person in Nigeria, Nigeria: PRAWA.

<sup>94</sup>ACHPR (2004) Prisons in Ethiopia on a visit 15-29 March 2004. Special Rapporteur on Prisons and Conditions of Detention in Africa.

<sup>95</sup>Vetten L., (2008) The Imprisonment of Women in Africa. In J Sarkin (Ed) Human Rights In African Prisons. South Africa: HSRC Press.

Legal reforms cannot be considered effective without adequate resources for the implementation of recommended standards. Resource inadequacy remains a major impediment in the quest for African penal reform. As shown in this paper, this inadequacy has further hindered the capacity of detention facilities to accommodate the needs of female prisoners. In many countries, the security sector remains one of the most funded sectors. However, since prisons are not considered among the traditional security institutions in African nations, they remain the least funded criminal justice sector organ. This paper maintains that there is a need for African countries to shed the past perception of prisons as instruments for retributive justice and embrace instead the understanding that penal institutions are rehabilitation facilities. This is a task that can be effectively implemented through collaboration between government and non-governmental organisations. Nevertheless, it falls on non-governmental organisations to drive this change by sensitising both policy makers and the public. A change in public perception will go a long way in influencing the government's disposition and commitment to combating the problem of resource inadequacy within penal institutions.

In November 2013 during its 21st Session, the African Committee of Experts adopted a General Comment to Article 30 of the African Charter on the Rights and Welfare of the Child which lays out a number of provisions ensuring 'special treatment' for pregnant women and mothers who are accused or convicted of criminal offences. The committee also mandated State's Parties to ensure that non-custodial sentences are always considered first for primary caregivers, pregnant women and mothers of young children for whom they must establish alternatives to detention. Although there is still little development within the continent in this area, these directives from the African Committee of Experts present a regional legal framework binding on states for the protection of children of incarcerated persons and their caregivers.

Given the poor state of prison health facilities there is a need for integration of the prison health care services into the national public health care system, while mental health care services are integrated into the primary health care system of African nations. This will ensure that prison inmates have access to services available within communities, in accordance with international human rights standards. Furthermore, the integration of mental health care into the primary healthcare system will tackle the issue of stigmatisation and criminalisation of mental health disabilities within African communities.

The management of prisons is primarily about the management of human beings, both staff and prisoners. There is a current consensus that safety and security in prisons depend on creating a positive climate which encourages the cooperation of prisoners.<sup>96</sup> This perception of security is called Dynamic Security and is believed to be especially suitable to the needs of female prisoners, due to the particularly harmful effects that high security measures can have on women to the detriment of their mental well-being and social reintegration prospects.<sup>97</sup>

In addition to the above-mentioned physical security techniques, there is also need for the development and adoption of clear policies and guidelines against the perpetuation of violence against inmates and sexual misconduct by staff in prisons. All forms of violence, sexual intercourse with prisoners and sexual touching should be criminalised with obligations

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<sup>96</sup>UNODC (2008), Handbook for prison managers and policymakers on Women and Imprisonment, Criminal Justice Handbook Series. New York: United Nations.

<sup>97</sup> Ibid.



placed on prison officers to report instances of abuse or sexual misconduct perpetrated by other staff in addition to both internal and external monitoring and oversight mechanisms. Finally, African prison officers need to be trained and sensitised in gender issues.

## **VI. CONCLUSION**

Regardless of their small numbers within the African penal system, the plight of female prisoners cannot continue to be an afterthought in an already over-burdened system. As the primary protection mechanism for its citizens, the state's inability to provide adequate rehabilitation services under humane conditions for female prisoners is a failure that must be addressed.

# APPENDIX 1

## PRISON DATA FOR FEMALE INMATES IN AFRICA<sup>98</sup>



S/N	COUNTRY	AVAILABLE PRISON DATA AS AT 18/02/2015			PAST PRISON DATA			RATE OF POPULATION INCREASE
		INMATE POPULATION (TOTAL)	FEMALE INMATE POPULATION (TOTAL)	FEMALE INMATE POPULATION (%)	YEAR	FEMALE INMATE POPULATION (TOTAL)	FEMALE INMATE POPULATION (%)	
1	Algeria	60000	600	1.0	2000	626	1.8	-4.2%
2	Angola	21634	80	2.7	1999	97	2.0	-17.5%
3	Benin	7247	362	5.0	2000	140	3.6	158.6%
4	Botswana	4124	136	3.3	2001	289	4.6	-52.9%
5	Burkina Faso	5976	101	1.7	2001	25	1.0	304%
6	Burundi	7793	374	4.8	2002	216	2.5	73.1%
7	Cameroon	25337	506	2.0	N/A	N/A	N/A	-
8	Cape Verde	1434	57	4.0	N/A	N/A	N/A	-
9	Central African Republic	845	69	8.2	N/A	N/A	N/A	-
10	Chad	4831	135	2.8	N/A	N/A	N/A	-
11	Comoros	206	4	1.9	N/A	N/A	N/A	-
12	Congo (Brazzaville)	1500	43	2.9	N/A	N/A	N/A	-
13	Cote d'Ivoire	8900	258	2.9	N/A	N/A	N/A	-
14	Democratic Republic of Congo	22000	660	3.0	N/A	N/A	N/A	-
15	Djibouti	550	30	5.5	N/A	N/A	N/A	-
16	Egypt	62000	2294	3.7	2002	2213	4.3	3.7%
17	Equatorial Guinea	1000	56	5.6	N/A	N/A	N/A	-
18	Eritrea	N/A	N/A	N/A	N/A	N/A	N/A	-
19	Ethiopia	93044	2605	2.8	2001/ 02	2034	3.3	28.1%
20	Gabon	3500	N/A	N/A	N/A	N/A	N/A	-
21	Gambia	914	28	3.1	N/A	N/A	N/A	-
22	Ghana	14728	220	1.5	2000	143	1.5	53.8%
23	Guinea Bissau	92	4	4.3	N/A	N/A	N/A	-
24	Kenya	53163	2817	5.3	2001	1486	4.2	89.6%
25	Lesotho	2401	84	3.5	2000	139	4.5	-39.6%
26	Liberia	1827	58	3.2	2001	N/A	5.0	-

<sup>98</sup> Available at: <[www.prisonstudies.org](http://www.prisonstudies.org)>.



27	Libya	6187	74	1.2	2004	387	3.3	-80%
28	Madagascar	18719	842	4.5	2003	650	3.4	29.5%
29	Malawi	12156	133	1.1	2001	91	1.3	46.2%
30	Mali	4963	149	3.0	N/A	N/A	N/A	-
31	Mauritania	1664	33	2.0	N/A	N/A	N/A	-
32	Mauritius	2233	140	6.3	2000	78	4.7	79.5%
33	Mayotte	163	2	1.1	N/A	N/A	N/A	-
34	Morocco	72816	1747	2.4	2002	1776	3.3	-1.6%
35	Mozambique	15663	610	3.9	1999	551	6.3	10.7%
36	Namibia	4314	116	2.7	2000	104	2.1	11.5%
37	Niger	7116	213	3.0	2006	183	3.2	16.4%
38	Nigeria	56785	1192	2.1	2000	709	1.9	68.1%
39	Republic of Guinea	2600	125	4.8	2002	61	2.0	104.9%
40	Reunion	1034	37	2.6	N/A	N/A	N/A	-
41	Rwanda	55618	3559	6.4	2002	2925	2.6	21.7%
42	Sao Tome and Principe	194	8	4.1	2002	3	2.3	166.7%
43	Senegal	8428	286	3.4	2000	183	3.7	56.3%
44	Seychelles	786	35	4.5	2002	4	2.7	775%
45	Sierra Leone	3792	136	3.6	2007	66	3.3	106.1%
46	Somalia	3450	N/A	N/A	N/A	N/A	N/A	-
47	South Africa	157824	3945	2.5	2000	3966	2.5	0.5%
48	South Sudan	7500	397	5.3	N/A	N/A	N/A	-
49	Sudan	19101	382	2.0	N/A	N/A	N/A	-
50	Swaziland	3616	94	2.6	2002	133	3.9	-29.3%
51	Tanzania	35301	1200	3.4	2005	1515	3.3	-20.8%
52	Togo	4287	137	3.2	N/A	N/A	N/A	-
53	Tunisia	2500	67	2.7	N/A	N/A	N/A	-
54	Uganda	41837	1757	4.2	2005	901	3.4	95%
55	Zambia	17038	170	1.0	2005	237	1.7	-28.3%
56	Zimbabwe	17484	314	1.8	2001	671	3.5	-53.2%

# **A GENDER-INFORMED APPROACH TO INTERVENTION FOR WOMEN OFFENDERS**

*Dr. Kelley Blanchette\**

## **I. THE HISTORY OF WOMEN'S CORRECTIONS IN CANADA**

The first Canadian federal correctional facility for women, the Prison for Women, opened in Kingston, Ontario in 1934. Within four years of its opening, the Archambault Commission became the first of many commissions to recommend its closure. The institution was repetitively criticized on numerous grounds, including: overly austere security measures, poor programming, and inability to adequately address the needs of Aboriginal and Francophone women. In fact, between 1938 and 1990, at least fifteen government reports had identified serious deficiencies in the services provided to women inmates. The Prison for Women was the only federal prison for female offenders. This was the subject of fundamental and widespread concern; many federally sentenced women were isolated from their families and social support networks and had greater difficulty preparing for release and reintegration into the community. Despite these concerns, the Prison for Women remained the only Canadian women's federal correctional facility for well over half a century. The last inmate was transferred out of the Prison for Women in May; it was officially closed on July 6, 2000.

In 1989, the Commissioner of Corrections called for a special Task Force to address longstanding concerns with the inequitable treatment of women offenders. Its principle mandate was to develop a comprehensive strategy for the management of federally sentenced women. The research and consultation conducted by the Task Force was largely qualitative and included surveys of both staff and women offenders, as well as comprehensive literature reviews. It was the first time in the Correctional Service of Canada's (CSC) history that the voices of women offenders were afforded such serious consideration in the development of strategic policy direction. In 1990, the Task Force published its report: *Creating Choices*. It represented a new definition of effective corrections for women offenders, reached through consensus by a broad range of correctional practitioners and government/non-government agencies. *Creating Choices* was, and continues to be, considered exceptional in its advent of a woman-centered approach to corrections.

The Task Force developed a holistic approach to corrections for women using five guiding principles: empowerment; meaningful and responsible choices; respect and dignity; supportive environment, and shared responsibility.

*Empowerment* acknowledges that the reduced life choices typically encountered by women offenders often leaves them feeling powerless and unable to make effective choices. As a result,

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they need assistance in gaining insight into their overall situation, identifying their strengths, and being supported and challenged to take positive action to gain control of their lives.

*Meaningful and Responsible Choices* highlights that women offenders need to have meaningful options which allow them to make responsible choices. Having the opportunity to make informed decisions will not only provide a sense of control and empowerment, but will also assist them in building their self-esteem and sense of self-worth.

*Respect and Dignity* stresses that mutual respect among women offenders and staff is crucial as is the importance of acknowledging the diverse needs and cultural identities of women offenders as an integral part of the whole person. By engaging with another in a respectful and dignified way, one is more likely to increase their level of self-respect and to respond to others in the same way.

*Supportive Environment* recognizes that a positive and supportive environment is deemed important for fostering personal development, encouraging the use of acquired skills, empowering women offenders to acknowledge their strengths, and promoting physical and psychological health. Furthermore, positive community support and assistance accessing resources are considered important to women's achieving greater self-sufficiency and autonomy.

*Shared Responsibility* emphasizes the shared responsibility society has in receiving women offenders back into the community and facilitating their successful reintegration, which includes development, implementation, monitoring and evaluating interventions for women offenders.

These principles drove specific recommendations to replace the Prison for Women with five regional facilities and an Aboriginal healing lodge. It was also recommended that these facilities be constructed and operated using a 'community-living' model, where the women offenders would reside in houses and be responsible for their daily meals, laundry, cleaning, and leisure time. The Task Force further called for the development of women-centered interventions, including therapy for survivors of abuse and mother-child programming.

In accordance with Task Force proposals, CSC opened five new facilities for federally sentenced women, as previously described. Operations and programming both within the institution and post-release have been amended. In particular, the implementation of a Women Offender Program Strategy (Federally Sentenced Women Program, 1994; Office of the Deputy Commissioner for Women, 2000) has provided an opportunity for participants to benefit from programs that were developed specifically to meet women's needs and styles of learning. For instance, a mother-child program is operational at all regional facilities, allowing young children to reside with their mothers on a full-time basis, while older children are permitted part-time residency. Additionally, in late 1999, an *Intensive Intervention Strategy (IIS)* was introduced for women offenders. The strategy provides a protocol for safe and secure accommodation for women classified as maximum-security and those with special needs, while emphasizing intensive staff intervention, programming, and treatment.

## II. GENDER-INFORMED POLICY

Correctional Service of Canada's policies are gender-informed and inclusive of four policies that are *specific* to women's sites (staff protocol in women offender institutions; intensive intervention strategy in women's institutions; institutional mother-child program; and case preparation and supervision of women offenders with children residing at a community-based residential facility). The policy statement on staffing in women offender institutions was promulgated to ensure that the dignity and privacy of incarcerated women are respected to the fullest extent possible, while maintaining safety and security. A second important objective of this policy is to ensure that the presence of men in women's prisons does not expose staff or inmates to vulnerable situations.

For example, the policy stipulates that only female staff will monitor women inmates who are under camera surveillance. Additionally, monitor screens are situated in security posts in such a way as to ensure the inmates' privacy. Likewise, frisk searches are conducted by female staff only, and strip searches are conducted, witnessed, and video-recorded by female staff only; they are always conducted in a private area, out of sight of others, by one female staff and in the presence of one female staff witness. Although escorts may be conducted by a man or a woman, due consideration is always given to the following factors prior to assigning a male escort: the nature of the escort, whether the inmate is comfortable being escorted by a male and whether the male is comfortable providing the escort. Finally, the policy also articulates that any staff member who has not received Women-centred training and who is required to work in a living unit will be escorted by a staff member who has received Women-centred training.

## III. CORRECTIONAL PROGRAMS

Correctional programs are aimed at addressing the risk and needs of women offenders in a gender and culturally appropriate manner. Programs for women must use an approach that is relevant in dealing with the multi-faceted needs of women offenders. In Correctional Service Canada, the Women Offender Correctional Programs (WOCP) and Aboriginal Women Offender Correctional Programs (AWOCP) are approaches that address emotional regulation needs, cognitive functioning and other problematic behaviours leading to crime (substance abuse, violence, etc).

Programs and interventions for women offenders should be based on the most up to date literature and empirical research in the area. This includes the correctional principles of Risk, Need, and Responsivity (RNR model; Andrews, Bonta, & Hoge, 1990). In brief, the *risk principle* posits that level of treatment should be matched to the risk level of the offender. More specifically, intensive services should be provided to higher risk offenders. The *need principle* distinguishes between criminogenic and non-criminogenic needs. Criminogenic needs are a subset of an offender's risk level. They are dynamic attributes of the offender that, when changed, are associated with changes in the probability of recidivism. Examples include substance abuse, antisocial attitudes, and lack of employment skills. Finally, the *responsivity* principle suggests that programs should be delivered in a style and mode that is commensurate with the learning style and personal characteristics of the offender.

Gender-informed program development and implementation is based on current research and expertise about women offenders. Appropriate programs for women integrate a number of gender-informed theories and methodologies in contemporary correctional services. Although some of these interventions incorporate traditional elements of evidence-based practice (e.g., cognitive-behavioural, skills-based methods), they also explicitly consider needs that are particularly salient to women, and are founded, at least in part, on theoretical models such as relational-cultural theory (Miller, 1986), feminist paradigms, and strengths-based approaches (Van Wormer, 2001). Recognizing the elevated rates of historical trauma amongst girls and women, these programs should be trauma-informed (Grella, 2008; Messina, Grella, Burdon, & Prendergast, 2007) and consider the gendered context (or “pathways”) of female offending (Salisbury & Van Voorhis, 2009; Simpson, Yahner, & Dugan, 2008). For a more comprehensive recent review of the conceptual and empirical foundations for gender-informed interventions, see Kerig and Schindler (2013).

#### **IV. SOCIAL PROGRAMS**

Social programs help offenders to identify pro-social lifestyles, to choose activities that will integrate them as productive members of society and law-abiding citizens. Women offenders are encouraged to participate in activities and social programs relevant to their interests and needs. Social programs allow for transfer of skills learned in correctional programs, teach women healthy ways of living, and introduce them to increased pro-social choices. Even though they do not directly target criminal behaviour, social programs, as identity building activities supportive of correctional and mental health interventions, play an essential role in CSC’s efforts to actively encourage offenders to become law-abiding citizens

The Social Integration Program for Women (SIPW) was developed to assist women offenders in preparing for their transition back into the community. It targets wellness, relationships, meaningful occupations and community functioning. SIPW is aimed at helping women identify their strengths and areas of their lives in need of improvement. As part of this program, participants are asked to set goals that will assist them in their reintegration. The program increases women's awareness of community resources and services which can assist them to overcome possible barriers to reintegration.

The goal of the mother–child program is to foster and promote stability and continuity for the mother–child relationship. Mothers who meet the eligibility criteria are allowed to keep their newborns and/or pre-school aged children with them in the institution. The best interests of the child is the pre-eminent consideration in all decisions related to the participation in the mother–child program. The safety and security as well as the physical, emotional, and spiritual well-being remain paramount in consideration of the best interest of the child. A new non-residency element of the mother–child program includes the “Child Link” initiative, which facilitates video visits for women with their children.

The Peer Support Program is an inmate-based program in which trained and qualified inmates provide peer support services to other inmates. The program also exists in the community allowing parolees to provide support to other parolees in the community.

## **V. MENTAL HEALTH SERVICES/INTERVENTIONS**

In the Canadian correctional system, women have greater mental health needs compared to both their male counterparts and women in the general Canadian population. In the federal system, research has demonstrated that 29% of women had a current mental health problem during admission (Correctional Service of Canada, 2009). Furthermore, women tend to have complex mental health difficulties and present with unique needs. For example, in the federal women offender population, 43% of women have engaged in self-injurious behaviour, and 75% of those women have attempted suicide (Derkzen, Booth, McConnell, & Taylor, 2012). Women's significant mental health concerns are often further compounded by issues such as historical trauma and substance abuse, creating a complex interplay of challenges for treatment providers in the criminal justice system.

In 2010, CSC launched its Mental Health Strategy. Considerable attention has been given to the increasing prevalence of mental health needs of women offenders, and the implications of this changing profile. Addressing the mental health needs of offenders promotes improved quality of life, reduces suffering, and respects basic human rights. Moreover, in Canada, it is a requirement under the law (Corrections and Conditional Release Act) to provide essential health care services and reasonable access to non-essential services. Furthermore, promotion of mental health stability may contribute to increased public safety either directly (i.e., by reducing mental health symptoms that are linked to an offender's offending cycle) or indirectly (i.e., by enabling participation in correctional programs to address those factors that support continued offending such as substance use, criminal attitudes, etc.).

Canadian federal correctional facilities for women are designed such that women classified as medium or minimum security live in house-style accommodation. Within the perimeter of each women's correctional facility, there is a Structured Living Environment (SLE) house. The SLE provides intermediate mental health care in a therapeutic environment for women with significant cognitive limitations and/or mental health concerns.

Dialectical Behaviour Therapy (DBT; Linehan, 1993) is offered to women in all the SLEs. DBT targets emotional dysregulation, unhealthy relationships and maladaptive behaviours, with the goal of fostering adaptive behaviours. In cases where the inmate's level of cognitive functioning is not conducive to interventions through DBT, a detailed individual Treatment Plan is devised under the lead of the chief of psychology or delegated mental health professional. These treatment plans are tailored specifically to the needs and cognitive abilities of the individual inmate. Treatment Plans through DBT as well as individual plans for those less cognitively capable are also offered to women classified as maximum security.

For women offenders with significant mental health needs requiring more acute care, psychiatric hospital care is also available.

## **VI. STAFF RECRUITMENT AND WOMEN-CENTRED TRAINING**

Staff working with women inmates should be carefully recruited and selected to ensure that all staff applying for positions with direct inmate involvement meet essential qualifications, including the ability to work in a women-centred environment. This means that they must demonstrate an understanding of issues that may be more salient, or specifically relevant to women inmates. As such, candidates in the selection processes should be assessed in terms of their knowledge, skills, and abilities as they pertain to working with women offenders.

Staff members who have been selected to work in women's correctional facilities should also be provided with Women-Centred training to ensure that they work in a gender-informed manner that facilitates their effectiveness in working with women. At minimum, this training should include elements of trauma-informed care, as well as the interplay between mental health, trauma, and addictions; recognition of the potential impacts of vicarious trauma; provide an understanding of women's unique needs and learning styles; and provide guidance on adherence to gender-informed policies and practices.

## **VII. RECOMMENDATIONS**

1. Correctional programs for women offenders should be gender-informed (i.e., inclusive of theory and research that is specific to women).
2. Social programs and other services for women offenders should consider their unique needs. Examples include mother-child initiatives, women's health issues, relational-cultural considerations (e.g., peer support programs).
3. All staff providing direct services to women offenders should be carefully screened and selected and should receive training on gender-informed care for women.
4. Correctional policies should consider application to both men and women. Where appropriate, policy exceptions or revisions should be made for women offenders. Gender-specific policies for women should be developed and implemented, as appropriate.



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# **WOMEN IN THE CONTEXT OF CONFINEMENT: IMPACT OF PRISON REFORM IN FEMALE CORRECTIONAL CENTERS OF THE DOMINICAN REPUBLIC**

*Sandra Fernández\**

## **I. CONCEPTUAL AND REGULATORY FRAMEWORK**

### **A. From Vengeful Justice to Restorative Justice**

Elio Gómez Grillo, in his presentation entitled “HISTORICAL DEVELOPMENT OF JAIL”, indicated that: “The Prison institution appears in history of humanity as a formula of exploitation of captive labor and nothing else (House of work).” Nowadays we are not looking to make the inmate an exploited worker but a repenting sinner (House of correction)”. On the other hand Tony Marshall talks about the transition, focusing on “Restorative justice is a process through which parties or individuals who have been involved and / or have an interest in a particular crime, solve collectively how to deal with the immediate consequences of this and its implications of the future.”

### **B. Impact of the International Community**

A tally of existing national and international instruments is presented from the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the United Nations Economic and Social Council in 1957, passing the Beijing Rules in 1985 by the Body of Principles for the protection of all persons under any form of detention or imprisonment of 1988, the Convention on the Rights of the Child in 1989, the Basic Principles for the Treatment of Prisoners of 1990, the Tokyo Rules of 1990, the Riad guidelines in early 1990, **Vienna Declaration on Crime and Justice in 2000, up to the Bangkok Rules “RULES OF THE UNITED NATIONS FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS” and its adoption in 2010.** The Bangkok Rules represent an important tool for equitable treatment of women in conflict with the law. For the applicability of the 70 rules, special programs have been designed obtaining excellent results.

## **II. DOMINICAN REPUBLIC PRISON MANAGEMENT MODEL**

The Management Model's main purpose focuses on reintegration as the main purpose of prison treatment. As a multidisciplinary team, the treatment area is comprised of professionals in the fields of education, psychology, medicine, psychiatry, sport, culture, social production and work together to achieve behavior modification and reduce recidivism through labor integration and social reintegration in a condition to meet the standards and laws.

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All prison staff are educated by the National Penitentiary School, before entering the system they have to go through rigorous recruitment and selection procedures. After passing the selection process they are included in training programs, established accordingly to the area of interest and targeted to the area of performance, automatically entering programs of continuing education and refreshing school education.

In our country, there are currently 18 CCRs of which 11 are run by women. The management team of the Model Prison Management is 60% women with a performance of regional dimensions.

### **III. PRISON TREATMENT PROGRAMS**

#### **A. Education: Main Aspect of Treatment**

The Model Prison Management facilitates the promotion and development of educational activities in Corrections and Rehabilitation Centers (RACs) at various levels and modalities. In this sense an education policy is supported by the Ministry of Education and supplemented by conducting technical and training courses provided by local institutions of vocational and technical training. Necessary institutional relations develop, both at the national and local levels (a private, government and civil society level), to achieve the support for technical assistance, logistical and financial support.

In order for detainees to access similar educational offer as to what's available in a free environment, in order to contribute effectively to their correction, rehabilitation and reintegration into society, the Model Prison Management provides, in RACs, an educational diversity that includes: formal education, technical, languages, computers, artistic, cultural, physical, recreation and sports and education in values.

Literacy training as a compulsory activity, formal education that includes basic, middle and high school levels, college education offered on site and virtual classroom modality, technical education currently offering 60 courses at this level, six different languages, computing is offered in a virtual room present at each center, special education for inmates with special conditions for learning, education in values that are keystones of the area of education:

1. **Mental Health** offers psychological and psychiatric consultations, individual therapies, group therapy, programs for reducing aggression, behavior modification, suicide prevention, hunger strike, psychiatric care program, anger management, stress management, grief therapy, traumatic stress therapies, drug addiction therapy, psychometric testing, qualification of conduct program and inside publication.
2. **Welfare** with the aim of bringing and strengthen the family unit with the following programs: family therapy, special rooms suitable for children's visits, adult visiting room, virtual visit room, reconciliation with the environment, community outreach, labor activities, activities in coordination with the Prison Ministry, assignment room to accompany their children to do their homework, home to family visits. It also has adequate space for conjugal or intimate visits and its procedure regulations, taking

consideration of the right of the inmate to have intimate contact with another person of their choice, within relationships available for life in confinement within the framework of dignity and respect.

3. **Productivity** to provide them tools with which they can earn a decent living when stepping out onto the free medium. Currently our centers have: chicken farms, greenhouses, crop in the open, pig farms, crafting of clothing items where all professional, service and security staff uniforms are made, electronics repair, crafting workshops where beds that are installed in facilities under construction are made, cabinetmaking workshop where school seats are built and repaired for the community and penitentiary centers, etc.
4. **Physical Education, Sports and Recreation** as relief therapy promoting intra- and extramural sports such as: volleyball tournaments, domino tournaments, basketball tournaments, physical education, recreation games.
5. **Art and Culture** as a mechanism of “0” leisure developing activities such as: creating theater groups, dance groups, choir, soloist, music classes, paintwork, artistic and cultural festival held every year. 2015 will be the seventh season.
6. **Physical Health** providing care to them through the programs: Healthy Life Style, Personal Hygiene Workshop, General Medicine and Specialty, Dentistry, Chronic Patients Program, Disease Control Program, Primary Care Unit, Program for food handling.
7. **Legal Aid** accompanying them in their legal process with a single file management subsystem, comprehensive information system, tracking cases, reports of Conduct for sentence execution Judges, control transfers, control inputs and outputs, as well as relapse control.

## **B. Special Programs**

### 1. Conduct Qualification Program. Good Practices for Rehabilitation

The Multidisciplinary team of professionals in the Corrections and Rehabilitations Centers perform three evaluations per year providing individualized and comparative data on the results provided by the women prisoners in each of the areas of treatment, also the monitoring of their behavior. The program objective is to induce permanent improvement of individual and collective behavior of persons deprived of liberty in the MGP. The results of these evaluations are publicly presented within accommodations and pavilions where the interns spend the night.

### 2. Free Environment and Family. Preparing for Reintegration

Once put in place and matured, the stages of observation and treatment the system introduces the concept “Free Medium” which enters into the stage of testing as part of good practice for reintegration. The aim of the Free Medium is to ensure execution of sentence in the framework of social and educational actions in accordance with the rights of persons deprived of liberty, oriented to an effective rehabilitation and social reinsertion. The Free Medium Unit is

responsible for regulating, monitoring and evaluating the implementation of plans in cases of: Pre-release period, Probation and Management Alternate measurements in prison.

3. Artistic and Cultural Festival

This activity was born in May 2009, allowing the development of artistic and cultural expressions of detainees that are inmates in the Corrections and Rehabilitation Centers of the Dominican Republic in the scheme of the New Model of Jail Management and part of incentives by the exhibition of good behavior, and also promotes healthy competition between them. *Desde su nacimiento, ha sido celebrada cada año, exhibiendo grandes avances y llegando a niveles profesionales de presentaciones que han sido presentadas en los escenarios más solemnes de nuestro país.*

4. Productive and Craft Fair

This activity takes place annually at the RACs in different settings nationwide. All RACs have in their execution Matrix to comply with annual participation fairs held locally with the recurrent date fixed for the anniversary of the center and national fairs that are held in the capital city, as the book fair, the agro-industrial fair, etc. In these shows, schools have the opportunity to showcase the products harvested and / or manufactured with the particularity that are the same inmates, which in turn serves as an opportunity for social reintegration.

5. Food Handling

They learn to establish the health requirements to be met by performers in food handling operations, while obtaining, receipt of raw materials, processing, packaging, storage, transportation and even marketing. All food handlers receive basic training in food hygiene to develop these functions and other training courses according to the schedule established by the health authorities. In addition a special medical examination before admission to any area of food processing must be performed, and every six months, among other requirements.

6. Healthy Lifestyles

It refers to a set of program activities for inmates in order to create healthy habits and to teach them to live with health conditions or situations that afflict. This program is developed with activities focused for inmates that have controlled or catastrophic illness and to protect healthy inmates from contagion, eliminating vectors and other actions.

7. Virtual Tours Program. An Equity Rehabilitation

Rehabilitation and Correction Centers currently hold approximately 5% of foreign inmates, also adding Dominican inmates with family members living in other countries or other areas outside of the site location. Prisoners in these conditions tend to suffer the ravages of loneliness and hopelessness on a larger scale, so, motivated to to offer all the same opportunities, we create for them spaces where they can share with their immediate surroundings so that it can become an element to strengthen programs to receive treatment and rehabilitation, family support through the tour. This program is being implemented.

8. Suggestions Mailbox. An Observatory for Continuous Improvement

As a way to detect and resolve situations in a transparent way to the collective but important for individuals, suggestions mailboxes have been installed, for both inmates and MGP staff,

allowing to express opportunities for improvement at any level. The objective is to analyze, empower and resolve, according to the possibilities, complaints or suggestions to the satisfaction of needs and expectations as a means of consolidating quality.

9. Infrastructure. A Distinguishing Element

Understanding that this issue is of central importance when trying to implement a model where equity plays its role, the Bureau of Prison Architecture where differentiating elements between women and men are discussed was implemented before construction of a CCR. This has allowed different factors involved in this issue such as universities, civil society and prison staff. Achieving the building of structures which takes into account the chronological and gender difference of inmates, creating wards for men, women and children with their particularities in line with the minimum requirements accepted by international organizations. The implementation of a new prison model based on the philosophy of respect for the human condition of persons deprived of liberty, rests on three fundamental pillars; Construction of new physical plant or adequacy of the same, human talent and application of the new system of prison management and security are tools to support the development of treatment for rehabilitation and successful reintegration.

# WHAT WORKS TO REDUCE RE-OFFENDING? A DISTINCT APPROACH TO THE MANAGEMENT OF FEMALE OFFENDERS IN THE COMMUNITY IN ENGLAND AND WALES

Sara Robinson<sup>\*</sup>

## I. WORKING WITH WOMEN IN THE COMMUNITY

### A. Summary of Policy Drivers

#### 1. Political Focus and Priority

The principles for working with women offenders in the community in England and Wales is derived from the Corston Report<sup>1</sup> 2007. The report was commissioned by the Home Secretary as a response to a high number of female suicides in custody at that time. The report reviewed the experiences of women across the UK criminal justice system and made a series of fundamental recommendations, most notably, that a ‘distinct approach’ to the management of women was required in order to redress the inherent inequalities in a criminal justice system designed primarily for men. A more detailed description of the ‘Corston model’ is provided in section B below.

#### 2. Legislation

There continues to be a strong political impetus for driving this policy area, with current Ministerial direction and leverage from a Cross Government Forum, led until recently by the Coalition Government Minister, Simon Hughes<sup>2</sup>. This political driver was recently enshrined in new UK legislation, which came into force on 1st February 2015 as part of the Government’s Transforming Rehabilitation Programme (TR)<sup>3</sup>. The Offender Rehabilitation Act 2015 places a new requirement on criminal justice delivery organisations to ‘*identify any specific rehabilitation and supervision activities that are intended to meet the particular needs of female offenders*’<sup>4</sup>.

#### 3. Accountability within the new structure of UK probation services

The TR programme has restructured the delivery of rehabilitative services across the probation and prison services, creating a mixed economy of public, private and third sector providers. Probation services are provided by the public sector National Probation Service (NPS), across 7 geographical divisions, and 21 Community Rehabilitation Companies (CRCs)<sup>5</sup>.

In order to ensure that the supervision of women as a distinct group maintains a high profile within the TR change programme, specific performance criteria have been included in the new contracts for Probation Providers and Private Sector Prisons. Similarly, service level

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<sup>1</sup> A review of women with particular vulnerabilities in the Criminal Justice System, Baroness Corston, 2007.

<sup>2</sup> Simon Hughes is currently Minister of State for Justice and Civil Liberties, April 2015.

<sup>3</sup> Transforming Rehabilitation: A Strategy for Reform, 2013.

<sup>4</sup> The Offender Rehabilitation Act 2015.

<sup>5</sup> The providers who now own the 21 CRCs are a mixture of private, voluntary and a public consortia. These consortia include charities and specialist services that meet the needs of female offenders.

agreement performance targets have also been set for all probation services and public sector prisons.

## **B. The Corston Report 2007**

As outlined, Baroness Corston's review of women in the criminal justice system was a response to a disproportionately high number of suicides by women in custody. The report investigated the experiences of women throughout all stages of the criminal justice system and identified that the reasons women enter the criminal justice system are often different to their male counterparts: for example high proportion of experiences of sexual and domestic abuse; a history of being in care; substance misuse and mental health issues. The impact of women going into custody was also identified as disproportionate for women, as women tend to be the primary carers for children rather than men.

The overall conclusion of this review was that the UK criminal justice system is a system designed for men, meaning that a different or 'distinct' approach is required to redress the imbalance and achieve equal outcomes for women. Specific recommendations were aimed at implementing the distinct approach for supervision in the community, and these recommendations have shaped development of the UK model for community based probation services.

## **C. UK Model – Towards a Distinct Approach**

### **1. The 'One Stop Shop' Delivery Model**

The model for the supervision of women offenders should be an holistic approach – a whole system multi-agency response to meeting the distinct needs of women, with interventions being delivered in 'one stop shop' style women's centres. The one stop shop model is part of a more co-ordinated approach to addressing women's offending related needs in the community. These are centres where women can access a range of different multi-agency services in one [safe], women only environment. These centres should be accessible to both women offenders and women at risk of offending in order to promote diversion from custody and community integration. A best practice example of a 'one stop shop' is the Asha Centre in Worcester, West Mercia<sup>6</sup>, where women can access the centre as part of a community based sentencing option.

### **2. Best Practice in the Delivery of Probation Services**

Commissioning arrangements for women's services should be structured to reflect this design. Women offenders should normally be supervised by female probation officers and given the opportunity to report for probation supervision within a women only environment. Best practice examples include probation officers being seconded in to work in local women's centres enabling the offenders to report into a women only environment, which is more conducive to meeting their rehabilitative requirements. Where this is not feasible probation offices should operate specific 'women only reporting times', in order to ensure that women can report for their supervision in a safe, female only environment. This is particularly important for women who have been victims of sexual and/or domestic abuse. Probation staff should receive specific training in working with women offenders in order to understand and respond to their particular needs and underpin good quality sentencing proposals in pre-sentence reports. Probation providers should work with local sentencers to inform them about the available sentencing options and specific interventions for women, in

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<sup>6</sup> See [www.ashawomen.org.uk](http://www.ashawomen.org.uk) and also, for further research and evidence into other alternatives to custody for women, please see the report "Equal but Different", October 2011, which highlights the work of Women's Community Projects like the Asha Centre.



keeping with Corston's recommendation that community based solutions should be the norm for non-violent women offenders.

### 3. Specific Criminal Justice Interventions for Women

Examples of specific interventions (sentencing options) for women in London include the Women's Programme (WP), the Women's Senior Attendance Centre (SAC) Requirement and Rehabilitation Activity Requirement (RAR). The WP is a cognitive behavioural group work programme delivered in a Probation Women's Centre and aimed at women who commit serious acquisitive type offences. The SAC is available to young adult women aged 18-24 years, who are sentenced to attend a number of hours of purposeful activity linked to their rehabilitative needs. A RAR may be similar in content to a SAC and are available in some parts of London where services have been commissioned from third sector providers of women's centres. Activities may also include mentoring either by peers or members of the community.

## **D. Informed Commissioning**

The provision of national common data sets is essential to inform commissioning decisions and facilitate ongoing research and evaluation into what works with women in the community. All UK providers of probation services must provide common minimal data sets linked to the national offender management case record system – 'Delius'. Delius enables us to reports on the following criteria for all women:

- Offence details
- Sentence type
- Personal information
- Risk (of serious harm) level
- Court reports
- Attendance records

The national offender assessment system (OASys) provides another view of each case, identifying the specific offending related needs of each individual across 13 criteria. OASys was developed jointly by the Probation and Prison Services and is a national system for assessing the risk and needs of an offender. It is designed to:

- Facilitate the assessment of the likelihood of reconviction
- Identify and prioritise offending relating needs
- Facilitate the assessment of risk of serious harm
- Assist with the management of risk of serious harm
- Facilitate sentence planning
- Measure change during supervision

This combined information from these data sets is used nationally to commission national interventions and regionally to commission local services.

## **E. Evaluation**

- ✓ We are still learning
- ✓ Building an evidence base to inform practice-longitudinal research with control groups.
- ✓ Independent validation

- ✓ Collation of common data sets
- ✓ Outcomes focus (not process) – 1) reduce re-offending 2) increased compliance 3) reduced custodial sentences 4) reduced harm 5) reduce cost. Times of austerity – principles of value for money and move towards pooled budgets.
- ✓ Service User Voice—what assists engagement/compliance?

## **F. Recommendations**

This paper has identified four key recommendations in taking forward a distinct approach to the supervision of women in the community by probation services.

1. Ensuring political support is in place to drive strategy, behaviours and commissioning
2. A clear understanding of the particular experiences of women in the criminal justice system in order to develop a distinct approach to the management of women which is responsive to their needs
3. This response should be a whole system approach rooted in partnership with other agencies/providers who may be specialists in the field of women's services.
4. Building common data sets to enable evaluation of existing services/interventions and inform the commissioning of future provision.

## **Appendix A: The UK Probation Female Cohort<sup>7</sup>**

Numbers of women supervised by UK probation services:

- 22,000 female offenders currently supervised
- 16,700 Community Orders (76%)
- 3,000 pre-release supervision in custody (14%)
- 2,300 post-release supervision on licence (10%)
- Approximately 800 are assessed as high risk of serious harm

Common offences types:

1. Theft and handling – 30%
2. Fraud and forgery – 17%
3. Violence against the person – 7%
4. Other summary (magistrates courts only) offences -30%

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<sup>7</sup> Snapshot data provided by the National Probation Service England, March 2015.

# CAPACITY-BUILDING OF FEMALE CORRECTIONAL OFFICERS: FROM THE PERSPECTIVE OF ADMINISTRATION OF WOMEN'S PRISONS IN JAPAN

*Masako Natori\**

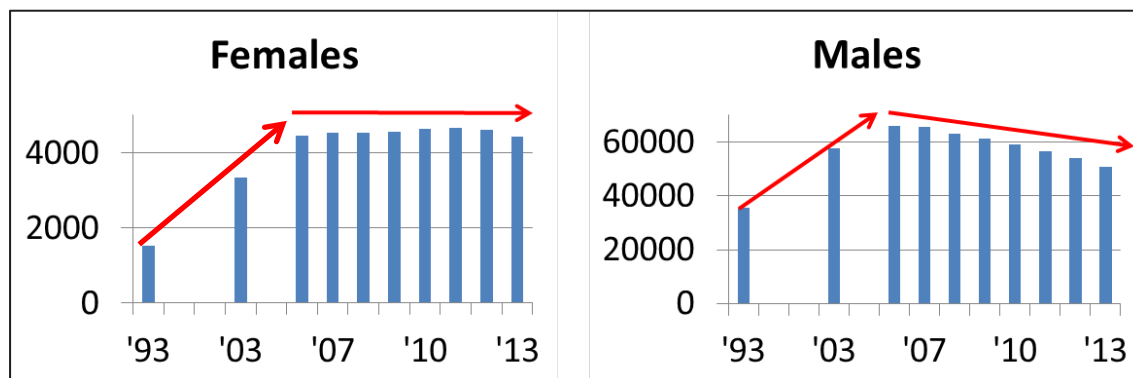
## I. INTRODUCTION

Correctional officers who work directly with inmates are the most important people for achieving the rehabilitation of offenders. Accordingly, we must establish working environments where female officers are properly trained and developed; where they gain professional knowledge and enhance their skills on the treatment of inmates; and where they work positively and sustainably. Doing so will directly impact the treatment of female inmates and will contribute to their successful rehabilitation.

## II. CURRENT STATUS OF FEMALE INMATES, WOMEN'S PRISONS AND FEMALE CORRECTIONAL OFFICERS IN JAPAN

### A. Number of Female Inmates and Offence Type in Japan

#### 1. Number of Inmates



At the end of 2014, there were 52,860 sentenced inmates in Japan nationwide. Out of that number, female inmates make up 8.3%. After rapidly increasing from 1993 to 2006, the total number of female inmates generally remained flat, while the number of male inmates has been decreasing in recent years. Currently, the population of female inmates is about 3 times what it was in 1993.

\* Director, Facilities Department, Ministry of Justice, Japan.

## 2. Offence Types

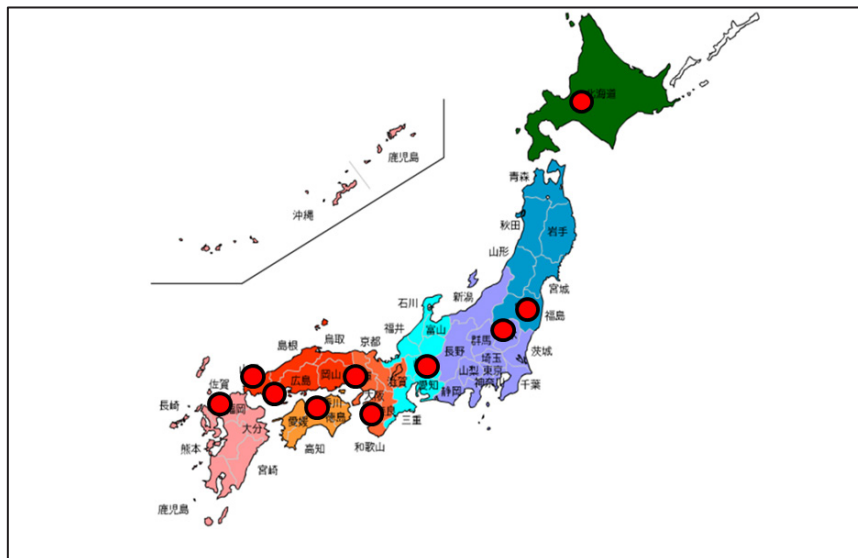


This graph shows the offence types in 2013. Theft and Stimulants Control Act violations totaled 80% of all offences committed by female offenders.

## 3. Characteristics

Recently, the proportion of elderly inmates is increasing in Japan. Therefore, treatment and reintegration of such inmates has become a great issue.

### B. Women's Prisons in Japan



There are 77 prisons in Japan nationwide. 10 are women's prisons. Twenty years ago, we only had 5 women's prisons, but to respond to the increasing number of female inmates, we have increased capacity to accommodate women. In 2013, the number of female inmates was 83% of their total capacity.

### C. Female Correctional Officers in Japan

#### 1. Number of Staff

There are 17,466 prison officers throughout Japan, and among them, only 1,419 are female, which make up 8% of all prison officers. In Japanese women's prisons, about 90% of prison officers are female.

#### 2. Recruitment

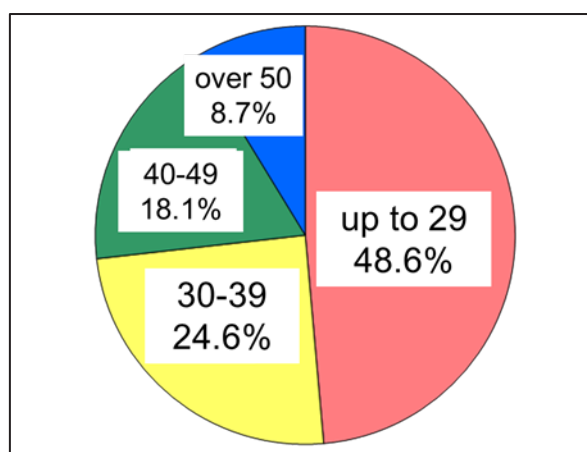
In Japan, all correctional officers start out as national government officials assigned to the Ministry of Justice. Firstly, newly appointed officers attend a 3-month basic training course at the Training Institute for Correctional Personnel, which is followed by 9 months of on-site training.

### 3. Promotion/Training

Those who wish to be promoted to a higher rank have opportunities to take the internal promotion exam. After passing the exam, training for senior officials is provided. The opportunities for promotion and participation in training programs are provided equally to male and female officers. Those who are capable and motivated female officers are promoted to leading positions, such as wardens or policy makers in the Ministry of Justice. However, since the number of female officers is still relatively low, we need to promote further measures for the capacity building and expansion of job categories and positions of female officers.

## III. CHALLENGES FACING FEMALE CORRECTIONAL OFFICERS IN JAPAN

### A. Age Composition



About 50% of female correctional officers are in their twenties, and 25% are in their thirties. This means that the majority of female correctional officers are from younger generations.

### B. Reasons Female Officers Quit Their Jobs Early

Why is the proportion of young female officers disproportionately high in Japan? This is because many female correctional officers do not continue their jobs after a few years. The number of female officers who quit within 3 years after recruitment is two times higher than that of male officers.

Why do female officers quit their jobs so early? One of the reasons is that they prioritize their private lives, such as marriage, child birth or raising children, over pursuing their careers. However, more than that, the characteristics of working at correctional facilities, such as long, irregular working hours or the burden of working with difficult inmates, puts a large amount of stress on female officers. In other words, the job of a correctional officer is not appealing to young women. The longer one continues to work as a correctional officer, and the higher one gets promoted to senior positions, the substance and the quality of work becomes more interesting and important, and to many, worthwhile and meaningful.

In addition, the skill of working with inmates is acquired through experience. Rehabilitation of offenders is an important duty of the state. This duty cannot be dismissed as

menial work which can easily be performed by anyone. Therefore, supporting young and in-experienced officers, and reducing the number of young women who quit, is most crucial for strengthening the entire correctional system.

#### **IV. EFFORTS TO IMPROVE WOMEN'S PRISON CONDITIONS**

##### **A. The “Marguerite Action” Business Model for Women's Prisons, Female Inmates and Female Officers**

In an effort to implement practical measures for both female officers and inmates, the initiative called the “Marguerite action” business model was adopted in January 2014. The “Marguerite action” seeks to create a good working environment in women's prisons, improve the treatment of female inmates, and encourage the long-term employment of female officers. Therefore, this action includes various measures, such as:

- Capacity building for female officers,
- Reducing overcrowding of women prisons,
- Enhancing the entrustment of administration to the private sector,
- Developing new educational programs and vocational training programs,
- Supporting measures for reducing repeat offences and smooth reintegration of female inmates, and so on.

##### **B. Capacity Building for Female Officers in the “Marguerite Action”**

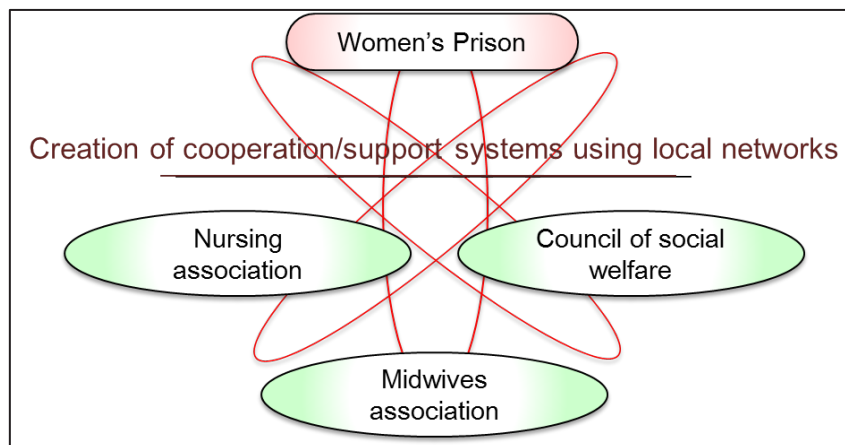
The following measures have been implemented in order to improve the working environment and capacity building for female officers participating in the “Marguerite action”:

- Preparation of a new recruitment plan to increase the number of female officers,
- Securing work-ready officers by promoting the re-employment of female officers who have resigned, and other mid-career workers,
- Improvement of training content for senior female officers,
- Offering more opportunities for promotion into administrative positions to female officers,
- Expansion of job categories for female officers, including placement in male prisons,
- Enhancing the opportunity to exchange opinions and information among officers in women prisons, and,
- Promoting public relations actively and improving the public image of female officers.

In addition to these measures, establishing flexible working hours taking into account the needs of female officers, offering more vacation time as well as reducing overtime, and establishing support systems for female officers with personal and professional concerns are essential.



### C. The Community Support Model Project for Women's Prisons



The Community Support Model Project for women's prisons launched in 2014 at three women's prisons in Japan. This project enables young officers to receive support and advice from local experts such as nurses, midwives, caseworkers, job assistance workers and other counselors in regards to female inmates' health conditions, pregnancy matters, family matters and reintegration into society. This project is assisted by well-known private groups and experts on women's welfare and medical care.

Although the project aims to improve the treatment of female inmates according to their gender-specific needs, there are additional benefits, such as developing cooperative relations between prisons and local communities and improvement of the knowledge and treatment skills of young officers. By involving these private groups, female officers come to realize the importance of work in women's prisons. As a result, the project brings about a virtuous cycle to enhance the pride and job satisfaction of female officers. Since it will be difficult to increase the number of staff immediately, it is necessary to rely on the cooperation and support of private groups, such as welfare services, medical services, private companies, and volunteers.

Recently in Japan, the Prime Minister is strongly promoting active roles for women in society. In line with this policy, the Ministry of Justice has also commenced various measures to support female officers. In order to address the increase of female inmates, we have implemented various measures for the improvement of facilities and accommodations within women's prisons. In addition, in order to complement the disproportionate age composition of female officers, we have fostered the involvement of the private sector and the cooperative relationship between prisons and local experts.

Furthermore, from fiscal year 2015 to 2018, we are aiming to decrease the turnover rate of female officers by half and improve the working environments of women's prisons. This will enable female officers to work with responsibility and pride. In addition, we are planning to implement comprehensive measures such as deploying 200 female officers, taking practical measures to reduce the burden of female officers' work, and providing detailed support systems for young female officers.

## **V. CONCLUSION**

The improvement of the working environments in women's prisons largely impacts the improvement of inmate treatment. Furthermore, improving women's prisons, which are the minority of Japan's prisons, will gradually impact the Japanese prison system as a whole. Japan's Correction Bureau is committed to continuing its efforts to improve the environment of women's prisons, to improve the treatment of female inmates and to improve the development of female correctional officers, through joint efforts by government, individual specialists and citizens.

## **PANEL II**

### **PRESENTATIONS**

Ms. Alexandra Martins (UNODC)

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Mr. Yvon Dandurand (ICCLR)

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Dr. Zhao Bingzhi (CCLS)

\* \* \*

Dr. Carlos Tiffer (ILANUD)

\* \* \*

Mr. Horace Chacha (Kenya)

\* \* \*

Mr. Christian Ranheim (RWI)

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Mr. Christer Isaksson (Sweden)

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Ms. Valerie Labaux (UNODC)



# **INTRODUCING THE UNITED NATIONS MODEL STRATEGIES AND PRACTICAL MEASURES ON THE ELIMINATION OF VIOLENCE AGAINST CHILDREN IN THE FIELD OF CRIME PREVENTION AND CRIMINAL JUSTICE**

*Alexandra Martins*<sup>\*</sup>

Violence against children is a widespread phenomenon affecting millions of children all over the world. Although all children have the right to be protected from violence, abuse and exploitation as set out in Article 19 of the Convention on the Rights of the Child (hereafter “CRC”), adopted 25 years ago, many children all over the world still lack the opportunity to grow up in a peaceful and non-violent environment, in which their rights to survival, development, and well-being are fully respected.

Considerable progress has been achieved in the past decades by a number of Member States in preventing and responding to violence against children, but much work still needs to be done. The challenges in protecting children from violence when in contact with the justice system are broad and need to be addressed.

As the topic of the paper is “Preventing and Responding to Violence against Children in Contact with the Justice system,” this platform will be used to briefly introduce a new international normative instrument called the *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*. This international normative instrument, which I will hereafter refer to as the “Model Strategies,” is based on international human rights instruments, such as the CRC, and all United Nations standards and norms in the field of justice for children.

The paper will be presented in three sections: i) Process leading up to the adoption of the “Model Strategies”; ii) Objectives and scope of the “Model Strategies”, and iii) Content of the “Model Strategies.”

In 2006, the United Nations Study on Violence against Children (hereafter “VAC”) acknowledged that violence against children is a widespread phenomenon affecting millions of children all over the world. No country is immune to this problem. The study highlighted the particularly high risk of violence faced by many vulnerable groups of children, including children who are in contact with the justice system as victims, witnesses or alleged offenders. It was suggested that criminal justice institutions could play a more effective role in preventing and responding to such violence.

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<sup>\*</sup> Crime Prevention Officer, Justice for Children, Justice Section, United Nations Organization on Drugs and Crime (UNODC).

In 2012, as a follow-up to the World Report on VAC, the Office of the High Commissioner for Human Rights, UNODC, and the Special Representative of the Secretary-General on Violence against Children, submitted a report to the Human Rights Council which focused specifically on violence against children within the juvenile justice system. The report elaborated the various risk and contributing factors to violence against children who are in contact with the justice system, and made a number of recommendations to prevent and respond to such phenomenon. This report caught the attention of the international community and served as the first step of a domino leading to the development of a new international normative instrument in this area.

In 2013, recognising the pressing need to address the issue of violence against children and, in particular, the role of the criminal justice system, in 2013, the General Assembly of the United Nations requested UNODC to develop a draft set of model strategies and practical measures on the elimination of violence against children in the field of crime prevention and criminal justice. UNODC, in close partnership with UNICEF, OHCHR and the SRSG on VAC, along with representatives from a number of NGOs active in this field, prepared the first draft and submitted it to Member States in a meeting hosted by the Government of Thailand in Bangkok, in February 2014. The draft text was revised by Member States, and approved by three policy-making bodies of the United Nations: the CCPCJ, the ECOSOC, and the GA. Its final adoption was made in December 2014.

Approval by the international community of the “Model Strategies” symbolized a strong recognition of this problem and the Member States’ commitment to take stronger action towards this unfamiliar yet urgent aspect of violence against children.

Whether a judge, prosecutor, law enforcement officer, or child protection professional, one must have asked oneself the following questions at least once in his or her career:

- ***Is the justice system doing everything it can to prevent violence against children?***
- ***Is the justice system responding to incidents of violence against children in an effective and appropriate manner?***
- ***Is the justice system dealing with children in contact with the law in a manner which reduces the risk that they may be further victimised or abused?***

Of course, the justice system is not the only system that has responsibilities of protecting children. Its responsibilities, however, are enormous and its role in the protection of children is absolutely crucial. Thus, the “Model Strategies” were developed to support a comprehensive, system-wide, and strategic approach in the field of crime prevention and criminal justice.

They have been developed not only to help States address the need for integrated violence prevention and child protection strategies, but also to acknowledge the complementary roles of the justice system on the one hand, and the role of child protection, social welfare, health and education sectors on the other, to create a protective environment in preventing and responding to violence against children.

The aims of the “Model Strategies” are twofold:

- 1) To improve the effectiveness of the criminal justice system in preventing and responding to violence against children and;
- 2) To protect children from any violence that may result from their contact with that system.

The “Model Strategies” were developed with a view to provide a practical framework to:

- To identify gaps in existing laws, policies and practices;
- To review and design national laws and policies;
- To set up institutions and mechanisms aimed to prevent and respond to VAC;
- To guide professionals in their day-to-day practice to effectively prevent and respond to VAC who are in contact with the justice system;

The “Model Strategies” are grouped into three broad categories:

- 1) General prevention strategies to address violence against children as part of broader child protection and crime prevention initiatives;
- 2) Strategies and measures to improve the criminal justice system’s ability to respond to crimes of violence against children and effectively protect child victims;
- 3) Strategies and measures to prevent and respond to violence against children in contact with the justice system.

Under each strategy there are a number of related “practical measures” that are named and listed rather than fully explained. Some of these measures are formulated in fairly general terms and will need to be refined, customized, and adapted to national or local circumstances.

Not all strategies will have the same level of priority in the context in which one may apply them. The seriousness and prevalence of various risk factors will be necessary when setting such level of priority.

Part I consists of three strategies. The first strategy relates to the prohibition, by law, of all forms of violence against children and the need to specifically criminalize certain serious forms of violence. This is because of the obvious importance of the existence of a sound legal framework which prohibits violence against children and empowers authorities to respond appropriately to incidents of violence. It is important to note that the strategy does not necessarily require the criminalization of all forms of violence. Rather, some forms of violence should not necessarily be defined as crime, and instead be prohibited through other means.

The second strategy is related to the implementation of comprehensive prevention programmes. Prevention of violence against children must be identified as a crime prevention priority, as prevention offers the greatest return in the long term. Hence, criminal justice agencies, working together with child protection, social welfare, health and education agencies and civil



society organizations, all have significant roles to play in developing effective violence prevention programmes.

Elements under this strategy include:

- The need to strengthen the existing child protection system and to help create a protective environment for children;
- The need to adopt measures to address the cultural acceptance or tolerance of VAC;
- The need to foster cooperation between justice and child protection systems;
- The need to address specific vulnerabilities of certain groups of children, such as children working or living on the streets, children with disabilities, children with substance abuse problems, etc...

The third strategy is related to promoting data collection, research, analysis and dissemination. The “Model Strategies” should be implemented through knowledge-based measures, programmes and interventions.

The second group of strategies in Part II focuses on how to enhance the ability and capacity of the criminal justice system to respond to violence against children and protect child victims. It also accentuates the role of the justice system in bringing perpetrators of violence against children to justice, protecting child victims of violence, and working closely together with other systems (education, welfare, child protection, health). In particular, the crucial importance of establishing detection and reporting mechanisms is heavily emphasized.

The third group of strategies relates to the measures required to prevent children from being victimized during their contact with the justice system (including the juvenile justice system). This is because of the heightened risk of violence faced by children alleged as, accused of, or recognised as having infringed the penal law. Considering that one important objective of the criminal justice system is the protection of children’s rights, violence against children within the justice system is an obvious step backward, and is counterproductive to any efforts of rehabilitation and reintegration of the child back into the society.

To address the particular relevance for legislators, criminal justice professionals, civil society, and academics who work in the area of juvenile justice, Part III of the “Model Strategies” deals with the prevention of and responses to violence against children alleged as, accused of, or recognized as having infringed the penal law.

Countless studies have revealed that children within the justice system, in particular those deprived of their liberty, are especially vulnerable to violence. The consequences of violence perpetrated against children when in contact with the justice system cannot be underestimated and needs thorough investigation and scrutiny. Higher possibility for further and bigger criminal activities in the future is only one of the many consequences that are overlooked.

Thus, the first strategy under Part 3 aims to reducing the number of children in contact with the justice system. There are several ways to limit the number of children in the juvenile justice system. This may involve avoiding the criminalization and penalization of children. It is quite common that criminal codes contain provisions criminalizing conduct only when committed by

child but not when committed by an adult. Examples are begging, vagrancy, truancy, runaways and other acts. Also, it is important to note that children with mental health problems and children with substance abuse problems are often over-represented in the criminal justice system and should instead be provided with appropriate care and protection. Another effective way of reducing the number of children in the justice system is through the use of alternative measures to judicial proceedings (diversion), which include the application of restorative justice.

The second strategy under Part III relates to preventing VAC associated with law enforcement and prosecution strategies. Elements under this strategy include ensuring that all arrests are conducted in conformity with the law, to limit the detention of children to situations in which these measures are necessary as a last resort, and to promote and implement alternative measures to detention.

It is well known that children face a significant risk of violence when they are deprived of their liberty, and the possible sources of violence in institutional settings are numerous. For this reason, a very important strategy has been drafted, which reflects a provision contained in Article 37(b) of the CRC. This consists of taking various measures to ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time. This may involve revising sentencing laws, rules, guidelines, and policies. For this strategy to be effective, however, other non-custodial sentencing options must be available, such as care, guidance, supervision orders counselling, and probation.

The fourth strategy focuses on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, which reflects a provision contained in Art. 37 (a) of the CRC. In many justice systems, children who have reached puberty are subject to punishments of extreme violence, including flogging, stoning, and amputation.

The fifth strategy relates to the prevention and responses to VAC in places of detention. As mentioned before, there is always a higher risk of violence against children who find themselves in detention. This strategy includes measures aimed to improve the conditions of detention and the treatment of children deprived of their liberty, as well as the need to adopt clear and transparent disciplinary policies and procedures. A key element under this strategy is to ensure that all alleged incidents of violence, including sexual abuse of children in a place of detention, are immediately reported and independently, promptly, and effectively investigated by appropriate authorities and, when sufficient evidence is found, effectively prosecuted.

The sixth strategy elaborates on the protection of and assistance to child victims of violence who are in the justice system. A crucial element under this strategy is the establishment of complaint mechanisms that are safe, confidential, effective and easily accessible for child victims of violence. It is also very important to protect children who report abuse from the risks of retaliation. Inevitably, in reality, very few children in the criminal justice system are actually in a position to denounce abusers who are in a position of power and authority over them. This is why it is so important to create a legal obligation for criminal justice professionals to report incidents of violence against children.

Finally, but not least, is the strategy to strengthen accountability and oversight mechanisms, which is deemed as one of the most important actions in child protection. Numerous studies have shown that violence against children in the justice system frequently remains unpunished. Such violence will not be effectively prevented unless strict measures are taken to put an end to this type of impunity. Any tolerance of violence against children within the justice system must be challenged by societal measures, such as awareness-raising programmes, education, and effective prosecution of violent offences committed against children within the justice system.

The last two strategies of Part III deal with the firm responses that should be given to all incidents of violence against children. The penultimate strategy is based on the crucial importance of providing children who report abuses and incidents of violence within the justice system with immediate protection, support, and counselling. A number of measures are proposed to help detect such incidents, and to enhance the protection and assistance offered to children who are victims of violence as a result of their involvement with the justice system as alleged or sentenced offenders. A crucial starting point is the establishment of complaint mechanisms for child victims of violence within the justice system that are safe, confidential, effective and easily accessible. Such complaint mechanisms should be accompanied, when needed, by counselling and support services. Existing complaint mechanisms should be thoroughly reviewed and tested.

Once complaint mechanisms are established it is also very important to protect children who report abuse, specifically taking into account the risks of retaliation. This can be done by adopting and enforcing policies that ensure that those allegedly implicated in violence against or ill-treatment of children are removed from any position of control or power, whether direct or indirect, over complainants, witnesses, and their families, and those conducting the investigation. Other practical and procedural measures must be installed to protect children who provide information or act as witnesses in proceedings related to a case involving violence within the justice system.

The last strategy of Part III consists of strengthening accountability and oversight mechanisms within the criminal justice system as a whole. It calls for timely and effective investigation and prosecution of offences involving violence against children within the justice system and aims to ensure that all public officials who are found to be responsible for violence against children are held accountable. Measures are included to promote transparency and public accountability as well as measures to enhance integrity and prevent corruption within the justice system.

Preventing and responding to violence against children in contact with the justice system forms a key component of UNODC's work in the area of Justice for Children, and the UNODC has led the project to develop and draft the "Model Strategies" with great hope. With the adoption of the "Model Strategies" by the General Assembly in December 2014, Member States can be guided by a powerful instrument to develop and implement the necessary legal and policy frameworks for preventing and responding to violence against children in the field of crime prevention and criminal justice.

In order to assist Member States in their implementation, UNODC and UNICEF have jointly developed a Global Programme on Violence against Children in the Field of Crime Prevention

and Criminal Justice, with the aim to strengthen the justice systems of Member States in this area and to facilitate a coherent response to the challenges of violence against children. As part of the United Nations Congress on Crime Prevention and Criminal Justice, it is our common and utmost responsibility to implement this new international normative instrument, breathing life into the “Model Strategies” to provide stronger and more effective protection for children involved with the justice system.

# **THE IMPLEMENTATION OF THE UNITED NATIONS MODEL STRATEGIES AND PRACTICAL MEASURES ON THE ELIMINATION OF VIOLENCE AGAINST CHILDREN IN THE FIELD OF CRIME PREVENTION AND CRIMINAL JUSTICE: THE CHECKLIST**

*Yvon Dandurand\**

In order to support Member States in the implementation of the “United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice”, UNODC has developed a “Checklist” to the “Model Strategies”.

It is a tool to help Member States undertake initial steps in assessing the readiness and capacity of a State’s justice system to protect children who are in contact with the justice system from all forms of violence. I will present the checklist briefly and suggest how it may be used as a basis for strategic planning for the elimination of violence against children.

Given the focus of the present panel on the experience of children in contact with the criminal justice system, I would also like to refer more specifically in my presentation to Part III of the Model Strategies, the part that deals with the prevention of violence against children within the justice system. I will therefore highlight some practical measures that could be taken by Member States to prevent and respond to violence against children who are in conflict with the law and, in particular, against children deprived of their liberty.

## **I. THE MODEL STRATEGIES**

As was mentioned the Model Strategies include three main parts corresponding to three very important aspects of any crime prevention and criminal justice strategy to eliminate violence against children. They are: (1) Implementing broad prevention strategies; (2) Ensuring appropriate and effective criminal justice response to incidents of violence against children; and (3) Eliminating violence during children’s contacts with the justice system.

The Model Strategies use a very broad definition of violence against children, essentially the same definition found in the Convention on the Rights of the Child. In total, it includes 17 main strategies and 47 related practical measures.

### **A. Many Ways to Use the Model Strategies**

The Model Strategies can be used to systematically review existing mechanisms and legislation to protect children against violence and to identify gaps. In fact, the Model Strategies can be used as a basis for developing a comprehensive plan to prevent and respond to violence against children. The checklist was effectively designed to assist this process.

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If you look at the checklist more closely, you will notice that it consists essentially of a number of questions that are logically prompted by the different measures included in the Model Strategies. I am not sure if you can see it clearly, but the screen shows a picture of a typical page of the checklist. This one deals with strategy 1, and two groups of practical measures: one dealing with the formal prohibition of violence, and the other, below, with the prohibition of various harmful practices. On the left-hand side, for each group of measures, there is a group of questions that the user is meant to try to answer as part of a quick assessment of the situation in his or her country. On the right-hand side, there is some reference material to put the questions into context and, when relevant, to refer the reader to other resources.

## **B. How to Use the Checklist**

How can one use the checklist? Agencies and actors responsible for the implementation of the Model Strategies can use the Checklist to quickly review their current capacity to prevent and respond to violence against children and to develop a comprehensive strategy and action plan to improve their response to such violence.

A first step in the implementation of the Model Strategies would usually consist of making a commitment to a strategic approach and identifying focal points with responsibility for initiating the strategic planning process. A second step involves a process through which key ministries and organizations that bear a level of responsibility for children's rights, welfare and protection are identified together with their respective roles, mandates and responsibilities. This then leads to systematic efforts to mobilize these agencies and engage them in a joint process of strategic planning. At a very early stage in the implementation process, and as a crucial stage in the strategic planning exercise, it will be necessary to systematically review the current situation and assess the present capacity of the justice system to respond to incidents of violence against children. This Checklist offers a quick reference tool to assist that very important part of the implementation process. At a later stage, the checklist can of course also be used to monitor progress in implementing reforms.

## **C. Elements of a Good Plan of Action**

Based on past experience with similar large-scale justice reform initiatives, it is fair to say that an effective plan of action should include the following:

- Clear priorities for action
- Well-defined responsibilities for the relevant institutions, agencies and personnel involved in implementing preventive measures
- Mechanisms for the appropriate coordination of preventive measures among government agencies and between governmental and non-governmental agencies
- Reliance of evidence-based methods for effectively identifying, mitigating and reducing the risk of violence against children
- Close interdisciplinary cooperation, with the involvement of all relevant agencies, civil society groups, local and religious leaders and, where relevant, other stakeholders

- Participation of children and families in policies and programmes for the prevention of criminal activities and child victimization

## **II. PREVENTING VIOLENCE AGAINST CHILDREN IN THE JUSTICE SYSTEM**

Now that I have introduced the Checklist, at least in general terms, and stressed the importance of good planning to ensure that the criminal justice system does all that it can to address the problem of violence against children, I would like to focus your attention for a few minutes on the question of preventing violence against children in contact with the justice system.

### **A. Victimization**

Studies reveal that children within the justice system, and in particular those deprived of their liberty, are especially vulnerable to violence. In 2012, the UNODC held a meeting of experts on the question, and the many risks of violence faced by children in contact with the justice system were identified.

Examples of violence against children in the justice system include: violence by staff, violence by adults or other young detainees in detention institutions, violence during arrest, interrogation, or in police custody, and violence as a sentence, such as corporal or capital punishment. The consequences of violence perpetrated against children when in contact with the justice system cannot be underestimated. It may increase the possibility for further criminal activity.

Modern psychology and physiology now inform us better than ever about the various serious impacts of traumatic experiences on the development of children and their future ability to function normally in society. We better understand the crucial importance of developing trauma-informed interventions for these children.

### **B. Protecting Children against Hardship During their Contacts with the Police and During the Justice Process**

There is a concern obviously for what happens to children in conflict with the law and how they are treated by law enforcement and the justice system. However, there are also some significant concerns about how the justice system treats children victims or witnesses of crime. Another instrument that has not been mentioned very often so far is the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime. As you can see, the Guidelines cover a number of important areas, including:

- The right to be protected against hardship at all stages of the criminal justice process
- The need to consider the best interest of the child
- The need to support and accompany children victims and witnesses throughout the process
- The need to ensure that process is fair and expeditious
- Precautions to be taken and the use of child sensitive methods during the investigation and the collection of evidence



- The need for procedural reforms, in part to introduce child-sensitive practices
- The importance of protecting against intimidation and retaliation
- The importance of providing information to victims and their parents in a timely manner

### **C. Strategies to Protect Children Victims or Witnesses of Crime**

There are many strategies that are essentially covered in both the Model Strategies and the Guiding Principles. They include:

- Providing assistance and support
- Expediting investigation and proceedings
- Ensuring child-sensitive medical examination
- Implementing child-sensitive procedures at the investigative stage

There is most definitely a heightened risk of violence faced by children in conflict with the law. The Model Strategies emphasize the need to prevent children from becoming involved in the criminal justice system. They propose a number of measures for mitigating the risk of violence against children at various stages of their contacts with that system.

In that regard, the Model Strategies emphasize the need to prevent children from becoming involved in the criminal justice system, and it introduces a number of measures for preventing the risk of violence against children at various stages of their contacts with that system. It recommends measures to limit the involvement of children in the justice system, prevent violence associated with law enforcement and prosecution activities, ensure that deprivation of liberty is only used as a measure of last resort, and prohibit violent, arbitrary or inhuman punishment of children. It contains a number of measures to detect, protect and assist children who are victims of violence as a result of their involvement with the justice system, including measures to prevent and respond to violence against children in places of detention.

Most importantly, the Model Strategies emphasize the crucial importance of establishing accessible, child-appropriate and safe procedures for children to complain about incidents of violence during their arrest or interrogation, while in custody, and at any stage of the criminal justice process.

Finally, as one would expect, the Model Strategies accord a great deal of importance also to oversight and accountability measures and their essential role in preventing violence against children within the justice system.

Considering that one important objective of the criminal justice system is the protection of children's rights, violence against children within that system thwarts its achievement and defeats any efforts of rehabilitation and reintegration of these children. It is also a sad thing to observe that many of the children in conflict with the law were themselves victims of abuse

or neglect; in many ways, children in conflict with the law are those very same children whom the child protection and crime prevention agencies failed to protect in the first place.

I hope that these few remarks were useful and that they will encourage you to familiarize yourself with the Model Strategies and to use the Checklist as soon as possible to determine how you can improve the current response of the justice system to violence against children.

# DEALING WITH JUVENILE OFFENDERS: SUCCESSFUL PRACTICES IN CHINA

*Dr. Zhao Bingzhi*\*

**Abstract:** China has been making efforts to develop and implement a comprehensive policy stressing the roles of family, school and social organization to deal with juvenile offenders since the early 1980s by taking specific measures such as establishing special chambers for juvenile offenses, conducting pre-trial social investigation to individualize punishment and treatment, providing special measures in interrogating juvenile suspects, sealing criminal records of juvenile offenders, and offering follow-up assistance and education. A number of practices have been proven successful by the continuous decrease in the number of juvenile offenders in recent years, and some have therefore been adopted into the new Criminal Procedure Law of the PRC and Amendment VIII to the Criminal Law of the PRC. Although they have been developed in the Chinese context, these practices might have reference value to other states too as they are based on fundamental international documents regarding child rights and juvenile justice.

## I. INTRODUCTION

China saw a rapid increase in juvenile offenders before the year 2008, and therefore took positive steps to analyze its causes and promote and change social, economic and cultural environments that make minors vulnerable to adverse enticements. Long-term efforts have brought China noticeable achievements, which are worthy of being shared for the purpose of preventing juvenile offenses and rehabilitating minor offenders. This article will, based on the statistical data of the China National Bureau of Statistics, make a brief introduction to the developments of juvenile offenses in the past 15 years in China, cite examples to illustrate the reform of juvenile justice in light of existing problems in juvenile legislation and judicial practice, and on this basis, summarize useful experience of China in dealing with juvenile offenses as well as Chinese reforms to juvenile criminal laws and procedural laws.

## II. THE DEFINITION OF JUVENILE OFFENDER AND ITS INCREASE IN PAST DECADE

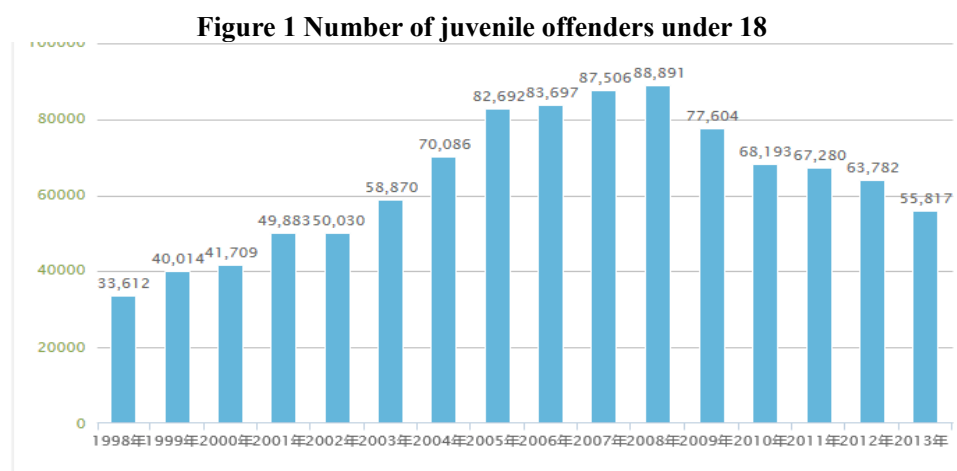
According to the UN Convention on the Rights of the Child adopted in 1989 and the *Law of the People's Republic of China on the Protection of Minors* enacted by the Chinese legislature in 1991, a minor is a person who is under the age of 18. Meanwhile, according to provisions of Article 17, the *Criminal Law of the People's Republic of China*, where a person who is over the age of 16 commits a crime, he/she shall be criminally responsible for that; and where a person who is over the age of 14 but under the age of 18 commits a crime, he/she shall be given a lesser or mitigated penalty. According to these provisions, it can be concluded that, in China, a juvenile offender (minor offender) is a minor who is over the age

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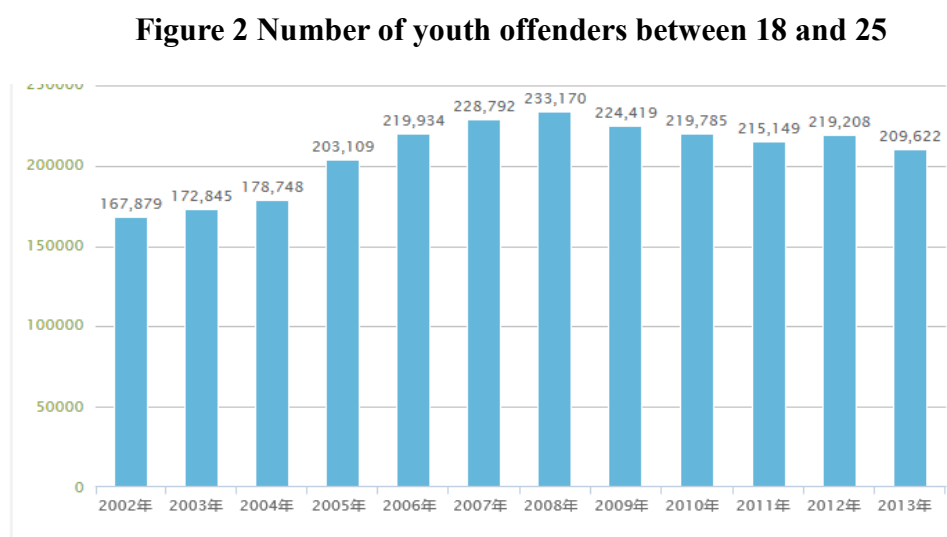
of 14 but under the age of 18 and who is found guilty by the people's court in a criminal procedure for reason of committing an act prohibited by the criminal law.

According to the China Statistical Yearbook 2014 of the National Bureau of Statistics, as shown in Figure 1 below, the number of juvenile offenders under the age of 18 who were tried by Chinese courts across the country first increased and then decreased rapidly in the 15-year period from 1998 to 2013. To be specific, in the decade from 1998 to 2008, it increased at the rate of 5,000 people or so per year, from more than 33,000 in 1998 to more than 88,000 in 2008; in the 5 years from 2008 to 2013; however, it decreased at the rate of 6,000 people or so per year, to no more than 56,000 in 2013.



**Source: Statistical Yearbook 2014**

As shown in Figure 2 below, the number of youth offenders in the age bracket of 18-25 exhibited almost the same tendency in the 11-year period from 2002 to 2013. It increased year by year from 2002 to 2008 from 167,879 in 2002 to 233,170 in 2008 and then decreased year by year thereafter to 209,622 in 2013.



**Source: Statistical Yearbook 2014**

### III. CAUSES OF THE INCREASE AND REFORMS

The increase in the number of juvenile offenders in China is due to quite complicated social and economic causes, such as the lack of education on the part of their parents who are migrant workers, the influence of bad associations due to early dropout from school, etc. However, the legislative and judicial reasons are not to be neglected, either. In the early 1980s, juvenile offenders have already caught the public attention across the country, but corresponding legislation still has the following problems now in the early 21st century. Firstly, the criminal law of China has only 2 particular provisions for the minor offenders, namely, an offender under the age of 18 shall be given a lesser or mitigated penalty (Paragraph 2, Article 17) and an offender who is under 18 shall not be sentenced to death. In other circumstances, the juvenile offenders are subject to the same criminal provisions as the adult offenders are. Secondly, the criminal procedural law of China fails to provide for any special procedures for minor offenders,. Thirdly, the laws and regulations aimed to protect the rights of minors are scattered, hard to operate and, in some areas, still found wanting. For such legislative reasons, the judicial practice also gives rise to many problems. For example, imprisonment is given too much, while penal servitude and surveillance, too little; the application of fines greatly deviates from the distribution of the offenses to which the penalty is applicable; probation is used too little and sees a wide regional disparity; supervision is poor in community corrections and therefore impairs the effect of punishment, etc. For all these reasons, the effect of criminal punishment is not satisfying, hence the quite high level of recidivism.

In view of the abovementioned problems, China began to conduct reforms and experiments of high relevance, for example, to set up teen courts within the people's courts. In fact, the history of teen courts in China dates back to 1984, when the people's court of Changning District, Shanghai established the first collegiate bench for criminal cases involving minors and took the first step of historical importance. So far, all four levels of the people's courts in China have set up special trial organizations for juvenile offenders or had designated personnel to handle juvenile offenses. Moreover, some grassroots and intermediary people's courts have, taking into account the reality of their trial work and their local conditions, innovatively established a cross-district/county model where jurisdiction is designated and offenders are tried in a centralized manner, in order to optimize and scientifically deploy trial resources for teen courts. By November 2014, 2,253 teen courts, 1,246 collegiate benches, 405 juvenile criminal tribunals and 598 comprehensive tribunals have been put in place across China, forming a pattern of diversified trial organizations for juvenile offenders.

The teen courts adopt trial systems and working mechanisms that are dedicated to the cases involving minor offenders, such as roundtable trials, social investigation, sealing the records of minor offenses, in-trial education, psychological evaluation and intervention, extended assistance, and protection of minor offenders in appearance and testifying, etc. In practice, some distinctive trial models have taken shape in various regions, such as the collegiate bench model created by the people's court of Changning District, Shanghai, the comprehensive trial model originated by the people's court of Tianning District, Changzhou City, Jiangsu Province, and the designated jurisdiction and centralized trial model launched by Lianyungang City, Jiangsu Province, etc.

Over the past three decades, the juvenile courts across the country have accumulatively tried more than 1.5 million minor offenders. Through correction of the teen courts, most of

the juvenile offenders have showed repentance and been able to reintegrate into the society as law-abiding, self-supporting citizens. In addition, a considerable proportion of them have successfully gone off into the universities or vocational schools of various kinds and become useful people in society. Since 2002, the rate of recidivism among juvenile offenders has stayed at 2% or so, far lower than that of all offenders.

For another example, Save the Children of the UK and the People's Government of Panlong District, Kunming City, Yunnan Province jointly launched a judicial diversion initiative for juvenile offenders in 2002. According to the principle of "centering on education while supplementing it with punishment", that initiative strove to avoid putting minor offenders in prison in applying both the procedural rules and the substantive laws and to use non-custodial approaches in the proceedings and the non-imprisonment penalties in punishment with conditions attached and to the highest extent possible, thus diverting juvenile offenders from the custodial judicial procedures. In environments such as communities, families and schools, the minor offenders are subject to surveillance (probationers), correction (persons who are given non-custodial penalties), and assistance and education (persons who are given non-criminal penalties), etc. that help them get back to the right course of life.

The judicial diversion project has scored an eye-catching achievement so far. According to statistics, the project successfully dealt with more than 700 juvenile offenders in Panlong District, Kunming City from 2002 to 2006. Of the 53 minor offenders who were followed up by "appropriate adults", 2 are now attending colleges and 20 more are continuing their study in middle schools. It can be said that judicial diversion is not only effective prevention of minor offenses, but also an effective probe into the perfection of minors' judicial protection in China.

The procedures for judicial diversion are detailed as follows:

1. In the stage of investigation, the police shall, before interrogating the minor offenders for the first time, advise the appropriate adults to appear, find out the truth and provide social investigation reports and opinions on how to deal with the case. In the case that an offender is released on bail, if the offender is not involved in a new criminal act but the original criminal act indeed constitutes a criminal offense, the police shall shorten the length of proceedings and as soon as possible refer the case to the prosecutor's office for review so that the latter can make a decision to prosecute or not to prosecute the offender in question, or the police may directly enter into a decision to deregister the case and urge the offender's parents to tighten control and education of the offender. In the case that an offender is under the age of criminal responsibility and his/her act is too petty to be criminalized, the police shall release the offender immediately after giving him/her education and at the same time notify the appropriate adults and the community concerned to educate the offender or help in such efforts.

2. In the stage of prosecution, where a minor suspect put on bail by the prosecutor's office is not involved in any new criminal acts during that period, his/her offense is petty, and he/she pleads guilty of his/her own accord, the prosecutor's office may decide not to prosecute him/her, or where the case indeed needs to be referred to the court for trial, the prosecutor's office may prosecute the offender without taking him/her into custody and advise the court to give a lesser penalty; where the prosecutor's office decides not to prosecute the offender, it shall notify the offender's appropriate adult and community in

writing for assistance and education purposes.

3. In the stage of trial, where a minor defendant can or should be exempted from criminal penalty according to law, the court shall enter into a decision not to give him/her a criminal penalty; where the defendant is already in custody during the proceedings and shows so much repentance as to plead guilty voluntarily, the court shall put him/her on probation on conditions attached thereto.

4. In the stage of community supervision, assistance and education, which is particularly important to divert minor offenders from the judicial process, Panlong District provided clearly and concretely for the roles and responsibility in community supervision, assistance and education so that all minor offenders are provided with timely and rigorous community supervision, assistance and education, whether they are diverted from the police, the prosecutor's office or the court.

The Swedish Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) has also had a long history of cooperating with the prosecutor's offices in China to promote juvenile judicial reform. For example, RWI signed a partnership agreement on the theme of "reducing pre-trial detention" with the People's Procuratorat in Haidian District, Beijing in 2007, with a view to ensuring the rights protection for criminal suspects by decreasing the cases and shortening the length of pre-trial detention and with the reduction of minor suspects detained as a starting point. In the period of 2011-2013, RWI again entered into cooperation with the People's Procuratorat in Haidian District with respect to the juvenile offenders' trial procedures under the new criminal law. According to the memorandum of understanding on cooperation 2014-2016 between RWI and the Department of International Cooperation, the Supreme People's Procuratorat, the People's Procuratorat of Haidian District has already launched the juvenile judicial reform program in partnership with RWI. The program places emphasis on the implementation of the conditional non-prosecution system and the perfection of social support systems. All these projects have made important contributions to the reform of the juvenile justice system in China.

#### **IV. SUCCESSFUL EXPERIENCES AND THEIR CODIFICATION**

It can be said that the judicial reforms in practice have achieved a considerably ideal effect, which finds direct expression in the ongoing decrease in the number of juvenile offenders since 2008. From a macro perspective, the beneficial experience of China in addressing the juvenile offenses can be summarized into four points as follows:

1. Maximizing the rights of the teenagers, that is, maximizing the interest of the children, including giving top priority to the interest of children in making national policies and dealing with concrete children's affairs, etc;
2. Giving priority to the protection of children's rights, that is, giving preference to the protection of children's rights where legal rights conflict or concurrence arises;
3. Centering on education while supplementing it with punishment, that is, giving the juvenile offenders the lesser or mitigated penalty or putting them on probation where possible in an effort to enhance the effect of correction, avoid the negative effect of penalties and promote reintegration into society;



4. Coordinating efforts of the competent government departments, judicial organs, social groups, schools, families, urban residents' committees and villagers' committees shall all take part in and have responsibility for the prevention of juvenile offenses and the correction of juvenile offenders, with a view to creating a sound social environment for the growth and correction of minor offenders.

Meanwhile, the legislature shall gradually incorporate the useful practices into the legislation. For instance, the legislature of China made the following revisions to the Criminal Law's Amendment VIII, which was put into effect on May 1, 2012:

1. According to the provisions of Paragraph 1, Article 100 of the Criminal Law of China, "a person who has been given a criminal penalty according to law shall report, and shall not conceal, his/her criminal record at the time of being enlisted into the army or being employed." This is the so-called "obligation of reporting criminal records". To the contrary, Amendment VIII added a second paragraph which goes to the effect that a person who is under the age of 18 and is given a penalty lesser than a prison term of 5 years can be exempted from the reporting obligation stated in the preceding paragraph, that is, a minor who has committed a petty crime is exempted from reporting his/her criminal record on the occasions aforesaid.
2. Amendment VIII revises the recidivism rules by providing in Article 6 that "where an offender who has been given imprisonment or more severe penalty again commits a crime that is subject to a penalty of imprisonment or a more severe one within 5 years after serving the sentence given to him/her for the previous offense or after being pardoned for the previous offense, he/she shall be deemed to be a recidivist that shall be given an aggravated penalty, except in the case the offender commits the crime involuntarily or is under the age of 18 when committing the crime."
3. With respect to the conditions of probation, Article 72 of the Criminal Law of China provided, before promulgation of the Amendment VIII, that "where an offender is given a sentence of penal servitude or a prison term of no more than 3 years, if, in view of the circumstances of his/her crime and the level of his/her repentance, the application of probation to him/her will not result in his/her doing harm to society again, the offender may be given a probation." Amendment VIII, furthermore, provides in Article 81 that "where an offender is given a sentence of penal servitude or a prison term of no more than 3 years, if he/she meets the following conditions concurrently, he/she may be given a probation: (1) the circumstances of his/her offense are relatively minor; (2) he/she shows signs of repentance; (3) he/she will not generate risks of recidivism; (4) the application of probation will not have significant adverse effect on the community in question...and, in particular, if the offender is under the age of 18, is a pregnant woman or is over the age of 75, he/she shall be given a probation without conditions attached thereto." Amendment VIII further revises Article 76 of the original Criminal Law of China, providing that probationers shall be subject to community correction.
4. There are still some other useful practices that have been incorporated into the judicial interpretations, instead of the legislation. For example, with the criminalization of juvenile offenders, the *Interpretations for Several Issues on the Application of Specific Laws in Trying Criminal Cases Involving Minors* issued by the Supreme People's

Court on December 12, 2005 provides in Article 6 that, where a person who is over the age of 14 but under the age of 16 occasionally have sex with an underage girl in minor circumstances and without incurring severe consequences, he/she may not be deemed to have committed a crime; in Article 7 that, where a person who is over the age of 14 but under the age of 16 uses mild violence or threat to exact a small amount of money or property without incurring harm to the victim, he/she may not be deemed to have committed a crime; and in Article 9 that, where a person who is over the age of 16 but under the age of 18 attempts or discontinues to commit theft, he/she may not be deemed to have committed a crime.

5. With respect to the sentencing of minor offenders, Amendment VIII provides in Article 13 that life imprisonment can be given only to a minor offender who has committed an extremely severe crime, and shall in principle not be given to a minor offender who is more than 14 years old but less than 16 years old. In Article 18, Amendment VIII provides that, with respect to the commutation and parole of minor offenders, the criteria may be moderately eased in comparison with those for adult offenders.
6. The *Criminal Procedural Law of the People's Republic of China* as amended in 2012 and put into effect on January 1, 2013 provides for the criminal procedures for juvenile offenders in Chapter I, Volume 5. Firstly, it solidifies and perfects the original legal provisions concerning minor offenders, such as the compulsory defense throughout the proceedings, the practice of jailing, managing and educating minor offenders separately and the in camera trial system, etc.
7. Secondly, it codifies the criminal policies concerning minor offenders, including mainly the guidelines of “education, reforming and redemption”, the principle of centering on education and supplementing it with punishment and the strict restrictions on the application of custodial measures, etc.
8. And finally, it adds some new content, such as social investigation, participation of appropriate adults, conditional non-prosecution and sealing of criminal records, etc.

## V. CONCLUDING REMARKS

Mr. Liang Qichao, a forerunner of democracy in China, once said that, if the youths are intelligent, affluent and powerful, then the country will be intelligent, affluent and powerful accordingly. Youths are indeed the future of a nation. So in dealing with minor offenses, we shall always adhere to the concept of “education, reforming and redemption” and strive to create the most favorable conditions for them to express their remorse and reintegrate into society. That’s the end of my speech. Thank you!

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# **PRÁCTICA DE LA DESJUDICIALIZACIÓN PENAL JUVENIL EN COSTA RICA<sup>†</sup>**

*Prof. Dr. Carlos Tiffer\**

## **ABSTRACT**

La ponencia tiene como objetivo constatar una buena práctica, las formas de desjudicialización o la adopción de medidas alternativas a la actuación judicial en la justicia penal juvenil costarricense. Buena práctica inspirada en las reglas y normas del sistema de Naciones Unidas sobre prevención del delito y justicia juvenil. Se inicia explicando la desjudicialización y diversificación de la reacción penal juvenil como indicadores de una moderna y adecuada política criminal del Estado Democrático. Se exponen los fundamentos de la desjudicialización inspirados en la Convención de los Derechos del Niño, la Opinión Consultiva OC 17 del 2002 de la Corte Interamericana de Derechos Humanos y las Reglas de Naciones Unidas sobre Justicia Juvenil. Se presentan los fines de la desjudicialización como la reinserción social y evitar las reincidencias delictivas. Para continuar exponiendo las formas legislativas de medidas alternas a la judicialización formal previstas en Costa Rica, exponiéndolas en dos niveles. Un primer nivel que cubre la remisión, el criterio de oportunidad, la desestimación y el archivo fiscal; y un segundo nivel centrado en la conciliación, la suspensión del proceso a prueba y la reparación de los daños. Para concluir con la presentación de la práctica del uso de estas medidas alternas exponiendo datos estadísticos desde el año 2000 hasta el año 2012. Por último se presentan los comentarios finales.

## **I. LAS FORMAS DE DESJUDICIALIZACIÓN Y DIVERSIFICACIÓN DE LA REACCIÓN PENAL JUVENIL COMO INDICADORES DE POLÍTICA CRIMINAL**

Una de las características del modelo de justicia precisamente es limitar la intervención de la justicia penal, lo cual se logra a través de la desjudicialización. Ya que la desjudicialización, nos lleva a la vigencia de dos principios; la intervención mínima y la subsidiariedad. Si bien debe entenderse la Justicia Juvenil dentro del marco de la prevención especial positiva, esta política criminal para estar acorde con los principios del Derecho Penal moderno<sup>1</sup> deben fundamentarse en la idea de la intervención mínima o sea limitar al máximo la intervención del Estado por medio de la ley penal, de ahí que la política criminal de un Estado con respecto a jóvenes infractores debería tener pretensiones modestas. Es decir, promover la diversificación de las reacciones penales, esto identifica a la política criminal de un Estado moderno. Esta

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<sup>†</sup> Artículo basado en la ponencia del autor en el Workshop 1, Panel II, UN Crime Congress, Doha, Qatar, 13 de abril de 2015.

\* ILANUD, Costa Rica.

<sup>1</sup> Aunque desde la época de la Escuela de la Defensa Social se abogaba por las estrategias de desestigmatización, desinstitucionalización y su rechazo al modelo de tratamiento como consecuencia político criminal. Ver Kaiser (Günther). *Introducción a la criminología*, 7ª Edición, Madrid, Editorial Dykinson, 1988, p. 26.

diversificación nos lleva a la justicia restaurativa, porque estamos proponiendo un modelo de justicia restaurativa, precisamente como una alternativa a la justicia tradicional, y para que exista esta alternativa, debe existir la posibilidad de diversificar la reacción penal.

Las razones jurídicas y sociales que se exponen en pro de la desjudicialización son dos básicamente: Primero, que la desjudicialización es una forma de practicar los principios de humanidad, de proporcionalidad, de igualdad y de eficiencia que debe buscar el sistema penal. Segundo, que se debe considerar que todos los sistemas de represión y corrección por medio una política criminal fuerte y severa resultan insatisfactorios <sup>2</sup>. Esto es precisamente el cuestionamiento que hace la justicia restaurativa, de los modelos de justicia que se centran en una finalidad puramente retributiva. Máxime tratándose de jóvenes y adolescentes para quienes la penalización de los conflictos en la mayoría de los casos en vez de ser una solución a los problemas, por el contrario los aumenta. Esto debido a que los adolescentes se encuentran en una etapa de formación de su personalidad y la conducta delictiva muchas veces es solo una manifestación de un período de crisis de juventud y desarmonía con la madurez. La justicia restaurativa precisamente, busca el equilibrio social y la vigencia de este tipo de justicia, ha adquirido mayor vigencia, en el ámbito de la justicia penal juvenil, no solo por los fines de prevención especial positiva que antes mencionamos, sino por la condición especial de los sujetos destinatarios de estas leyes.

La desjudicialización favorece a todos. Al **adolescente** por cuanto por este medio se reducen las posibilidades de estigmatización e institucionalización que significa someterse a un proceso penal. A la **comunidad**, ya que por este medio se promueve la participación de los sectores sociales que pueden convertir realmente en efectivo la idea de la resocialización y de la reeducación de los adolescentes, y hacer efectivo los fines de la prevención especial. También favorece a la **víctima**, ya que de una manera más real se puede lograr una forma de reparación de los daños o recuperación de los derechos del ofendido por el delito, es una posibilidad de enfrentar al autor y la víctima que puede tener un gran potencial educativo para el adolescente. Aquí precisamente, convergen los tres actores principales del modelo de justicia restaurativa que antes mencionamos: el autor, la víctima y la comunidad. Los cuales, deben de buscar formas de acuerdos o conciliaciones, dentro de la justicia ordinaria, que les permita solucionar el conflicto que se encuentra a la base de todo delito.

Por último, la desjudicialización favorece también la reducción de los costos de la **administración de la justicia** que siempre serán insuficientes y deficientes para la prestación de un servicio público eficiente y de calidad, porque generalmente los sistemas de administración de justicia, tienden por razón de los costos a reducir y hasta eliminar los derechos y las garantías procesales de los jóvenes y adolescentes. Uno de los objetivos de los programas de justicia restaurativa no es sólo la reconciliación entre el autor y la víctima, sino que también, es reducir la intervención formal del sistema penal, lo que conlleva evidentemente a la reducción de sus costos. De ahí que, para la vigencia de la Justicia Restaurativa, se requiera una política criminal acorde con los fines de esta justicia. En donde se encuentren presentes las formas de desjudicialización y de diversificación de la reacción penal.

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<sup>2</sup> Ibid, p. 52.

## II. FUNDAMENTOS DE LA DESJUDICIALIZACIÓN

La idea de la desjudicialización no solamente está vinculada con la justicia restaurativa, sino que tiene un rango supranacional. La Convención de los Derechos del Niño, en su artículo 40.3.b establece:

*“Los Estados Partes tomarán todas las medidas apropiadas para promover el establecimiento de leyes, procedimientos, autoridades e instituciones específicas para los niños de quienes se alegue que han infringido las leyes penales... **siempre que sea apropiado y deseable, la adopción de medidas para tratar a esos niños sin recurrir a procedimientos judiciales, en el entendimiento de que se respetarán plenamente los derechos humanos y las garantías legales.**”*

También este principio establecido en la Convención de Derechos del Niño, ha sido reconocido por la jurisprudencia de la Corte Interamericana de Derechos Humanos. En la opinión consultiva OC-17 del 2002, estableció:

*“**Son plenamente admisibles, los medios alternativos de solución de controversias, que permitan la adopción de decisiones equitativas, siempre que se apliquen, sin menoscabo de los derechos de las personas. Por ello, es preciso que se regule con especial cuidado la aplicación de estos medios alternativos, en los casos en que se hallan en juego los intereses de los menores de edad**”. Párrafo 135.*

Estas disposiciones son fruto de una corriente doctrinal, que aboga por la desjudicialización en la resolución de conflictos, principalmente de índole penal, y se busca la aplicación efectiva en el derecho penal juvenil, con una orientación restaurativa y menos retributiva. Así, la “filosofía subyacente a la labor de promover alternativas consiste en reducir en la mayor medida posible el número de niños y adolescentes privados de libertad, y no en ampliar el número de individuos sujetos a diversas normas de control penal”<sup>3</sup>. Es claro que en una gran mayoría de casos la no intervención judicial es la mejor respuesta para jóvenes que se encuentran en conflicto con la ley penal. La desjudicialización es la búsqueda de soluciones por otros medios, diferentes a la tradicional forma de intervención jurídico-penal. Precisamente es aquí en donde los principios de la justicia restaurativa, como una justicia alternativa, adquieren plena vigencia.

Si no es posible todavía eliminar del todo la intervención penal, sobre todo tomando en cuenta las condiciones económicas, sociales y políticas de los países de Centroamérica, al menos debemos reducir o minimizar la intervención de los medios de control formal. Para ello se debe en primer lugar, definir estrategias claras de persecución penal, sobre todo en el caso del Ministerio Público. Aunque también es relevante que las autoridades jurisdiccionales y penitenciarias, se encuentren orientadas dentro de esta filosofía de justicia restaurativa. La no intervención o minimización de los operadores del sistema nos lleva a plantearnos un modelo de Justicia en donde lo protagónico sea la comunidad, la escuela, la familia, las asociaciones, etc. Este modelo de justicia en una fase de elaboración se refleja claramente no sólo en el artículo

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<sup>3</sup> Carranza (Elías). “Criminalidad ¿Prevención o promoción?” San José, EUNED, 1994, p. 107.

mencionado de la Convención de los Derechos del Niño sino en las Reglas Mínimas de las Naciones Unidas para la Administración de la Justicia de Menores<sup>4</sup>:

*Art. 1.3. Con el objeto de promover el bienestar del menor, a fin de reducir la necesidad de intervenir, con arreglo a la ley y de someter a tratamiento efectivo, humano y equitativo al menor que tenga problemas con la ley, se concederá la debida importancia a la adopción de medidas concretas que permitan movilizar plenamente todos los recursos disponibles, con inclusión de la familia, los voluntarios y otros grupos de carácter comunitario, así como las escuelas y otras instituciones de la comunidad.*

Las orientaciones consagradas en el artículo 1º de las Reglas de Beijing se refieren a la política social en su conjunto. Tienen por objeto promover el bienestar del joven, en la mayor medida posible, lo que permitirá reducir al mínimo el número de casos en que haya de intervenir el sistema de justicia penal juvenil y a su vez reducirá al mínimo los perjuicios que normalmente ocasiona cualquier tipo de intervención judicial y particularmente la penal. Estas medidas de atención de los jóvenes con fines de prevención del delito constituyen requisitos básicos de política pública de juventud.

El destacado aporte de una política social constructiva respecto del joven puede desempeñarse entre otras cosas en la prevención del delito y la delincuencia juvenil. La justicia de menores es parte importante de la justicia social (1.4 Beijing) y se requiere perfeccionar la justicia social, particularmente la destinada a los jóvenes de manera continua para que esté acorde con la evolución del sistema de justicia juvenil.

En el mismo sentido se pronuncian también las Directrices de las Naciones Unidas para la prevención de la delincuencia juvenil:

*Art. 2, Para tener éxito, la prevención de la delincuencia juvenil requiere, por parte de toda sociedad, esfuerzos que tiendan a garantizar un desarrollo armónico de los adolescentes, que respete y promueva su personalidad a partir de la primera infancia.*<sup>5</sup>

La idea de la desjudicialización nos lleva al tema de la despenalización, es decir, al tema de reducción de la intervención del Estado en los conflictos penales. Más tratándose de jóvenes y adolescentes en los cuales la penalización de los conflictos en la mayoría de los casos en vez de ser una solución a los problemas, por el contrario los aumenta. Esto debido a que los adolescentes se encuentran en una etapa de formación de su personalidad y la conducta delictiva

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<sup>4</sup> Reglas de las Naciones Unidas para la Administración de Justicia de Menores, (Reglas de Beijing), Aprobadas por la Asamblea General de las Naciones Unidas mediante Resolución N° 40/33, de 29 de noviembre de 1985, por recomendación del Octavo congreso de las Naciones Unidas sobre prevención del delito y tratamiento del delincuente; artículo 17. b) y c).

<sup>5</sup> Directrices de las Naciones Unidas para la prevención de la delincuencia juvenil (Directrices de Riad). Aprobadas por la Asamblea General de las Naciones Unidas mediante Resolución N° 45/112 por recomendación del Octavo congreso de las Naciones Unidas sobre prevención del delito y tratamiento del delincuente. Artículo 2.



muchas veces es solo una manifestación de un período de crisis de juventud y desarmonía con la madurez.

Por último, como ya se ha mencionado, también la desjudicialización favorece la reducción de los costos de la *administración de la justicia*. Por lo que desde un punto de vista económico, también es importante apoyar la desjudicialización.

Resumiendo algunos argumentos relevantes para apoyar la idea de la desjudicialización a favor de jóvenes y adolescentes que podemos mencionar, son los siguientes:

- La socialización se produce en la comunidad, y no por medios formales de control como lo son las instancias judiciales.
- La justicia penal es cara, selectiva, estigmatizante e inconveniente para jóvenes que se encuentran en proceso de formación.
- La judicialización produce un efecto distorsionado en la comunidad, el pensar que el delito por este medio se elimina, lo cual sabemos que esto no es cierto.
- Un argumento ético, ¿por qué responder al delito en forma drástica y violenta, si es posible y conveniente utilizar otras formas?

Al contrario del derecho penal de adultos tradicional, el modelo de justicia penal juvenil se caracteriza por la acentuación en resolver el menor número de conflictos en un nivel judicial, de ahí que las medidas desjudicializadoras forman parte fundamental de él. La diversificación de la intervención penal obliga a que en determinados casos la posible intervención penal sea referida a otros órganos de control informal por medio de la remisión y la conciliación entre autor y víctima o bien, la suspensión del proceso a prueba.

Como hemos expuesto anteriormente, los fundamentos para estrategias de desjudicialización, encuentran su base en la Convención de los Derechos del Niño y las Directrices de Naciones Unidas, tanto las Reglas para la Administración de Justicia, como para la Prevención de la Delincuencia Juvenil. También resulta relevante como fundamento, la interpretación que al respecto ha realizado la Corte Interamericana de Derechos Humanos. Lo anterior resulta relevante ya que, para implementar una justicia más restaurativa en los países de Centroamérica, independientemente de las limitaciones y obstáculos que se pueden encontrar, en las leyes internas de cada país, existe un fundamento internacional que perfectamente puede ser utilizado por defensores, fiscales y jueces, para poner en vigencia estrategias de desjudicialización.

También resulta necesario dejar establecido en este apartado, que la idea de la justicia restaurativa como una alternativa para la solución de los conflictos, puede perfectamente realizarse a través de la desjudicialización. Ya que como posteriormente indicaremos, para que estas formas de desjudicialización tengan vigencia, resulta necesario, no sólo la participación de los tres actores fundamentales, víctima, infractor y comunidad, sino sobre todo una actitud de resolver el conflicto generado por el delito, mitigando las consecuencias negativas del proceso y de la eventual sanción. Para lo cual se requiere fomentar una cultura de diálogo y de negociación. Esto último es necesario si se quiere realmente implementar prácticas restaurativas.

Precisamente esta última cultura de arreglo y solución pacífica de los conflictos, es lo que hace falta fomentar en países como los centroamericanos. De ahí que la justicia restaurativa, como una alternativa y sobre todo respetando las garantías judiciales, sea una muy buena opción para esta cultura de diálogo y negociación. En concreto no sólo de política criminal se requiere para implementar la Justicia Restaurativa, sino también de justicia social y una cultura de paz.

### III. FINES DE LA DESJUDICIALIZACIÓN PENAL JUVENIL

La Justicia penal tradicional de los adultos, pese a fines declarados como la rehabilitación o la resocialización, está caracterizada más bien por la retribución. El autor debe pagar por el hecho. O en algunos casos el castigo por el castigo, sin tener realmente programas efectivos para cumplir con esos fines declarados. Lo que convierte la justicia penal actual, principalmente de adultos, en una justicia centralizada en el castigo, principalmente en la pena de prisión. Dicho de otra forma, una justicia penal fundada en la prevención general.

Al establecer un sistema diferente al tradicional de los adultos, cuando es un joven o adolescente el autor del delito, se debe iniciar con la tarea de levantar el velo que imperaba en los sistemas “punitivos” tutelares y aceptar que pese a sus conductas delictivas los adolescentes que han delinquido, siguen siendo **sujetos de derechos** y no meros objetos de castigo. Derechos que no sólo involucran las garantías legales para los jóvenes, sino muy particularmente las garantías sociales, como el derecho a la educación, familia, vivienda, en fin el derecho al desarrollo de su personalidad en un ambiente sano. Es a partir de este nuevo paradigma, de entender a los adolescentes como sujetos de *derechos integrales* que se puede entender también la desjudicialización como una manifestación de un reducido control jurídico penal sobre las conductas de los jóvenes, o de un control penal formal solo cuando sea *necesario*. Sólo si tenemos este postulado presente podremos responder a “*el para qué de la desjudicialización*”, cuyas respuestas representan los fines y metas por alcanzar. Dentro de un enfoque en el que está estrechamente relacionada la política social y la política criminal del Estado.

Los fines de la desjudicialización, los cuales coinciden completamente con los programas de la justicia restaurativa, pueden presentarse en dos grandes niveles: Los fines generales y los fines específicos. Posteriormente haremos una comparación entre los fines de la justicia restaurativa, a efecto de demostrar la coincidencia de ambos objetivos y la compatibilidad de ambos modelos de justicia juvenil.

#### A. Fines Generales

- ***Reducir la afectación social, moral y psicológica que significa el proceso penal***

Uno de los objetivos fundamentales de establecer formas de desjudicialización, es fijar y fomentar acciones sociales necesarias que le permitan al joven o adolescente su permanente desarrollo personal e impedir el alejamiento de su familia, lo cual a su vez contribuye al proceso de educación sin la estigmatización que significa el proceso penal y eventualmente una sanción.

Así se debe procurar que el adolescente no se vea afectado social, moral y psicológicamente con el proceso penal. Se considera inconveniente someter al joven o adolescente a un proceso que, de seguro, le causará problemas de carácter psicológico o social. La crítica de la teoría del

etiquetamiento respecto del efecto estigmatizado es una de las justificaciones más frecuentes y correctas para implementar la desjudicialización en un programa alternativo o como renuncia total a la persecución jurídico penal<sup>6</sup>.

La desjudicialización también busca evitar la sanción formal y concretamente la imposición de una sanción privativa de libertad. De ahí que también es una forma de reducir el uso de la sanción privación de libertad lo mismo que el aislamiento y la separación de su familia y los grupos a los que pertenece el joven.

*“La gran ventaja de la desjudicialización frente a las sanciones es que evitan en gran medida la desintegración y estigmatización del delincuente, reconociéndolo y respetándole al mismo tiempo su personalidad”<sup>7</sup>.*

- ***Brindar mayor efectividad de los postulados o principios establecidos en la legislación***

Tradicionalmente las legislaciones se caracterizan por normas enunciativas de derechos o postulados teleológicos que se refieren a fines como por ejemplo la reinserción social, la rehabilitación, el interés superior del niño, etc. Sin embargo, son pocos los casos en los cuales estos fines se llevan a la práctica. Es decir, las leyes se convierten en leyes enunciativas, de hermosos principios pero que en la práctica no tienen vigencia o aplicación. Es por esto que se conoce una lamentable tradición latinoamericana, de la dicotomía entre lo que la ley dice y lo que se hace, es decir entre la teoría y la práctica, sea o judicial o administrativa.

Por medio de la desjudicialización y particularmente la remisión a programas de carácter social y la conciliación, realmente se estaría cumpliendo con los principios rectores de una protección integral, de la búsqueda de la formación y la reinserción del adolescente en su familia y en la sociedad. La desjudicialización significa convertir en efectivos los derechos de los jóvenes y los adolescentes.

La desjudicialización vista desde esta perspectiva además es una forma para promover la participación de las organizaciones no gubernamentales y la comunidad en los programas orientados a los fines de la protección de los derechos del adolescente, e igualmente de salvaguardar los intereses de las víctimas. Especialmente resulta de relevancia la desjudicialización, ya que son cada vez más escasos los programas públicos de prevención del delito. Además, la complejidad social de un joven “tipo” infractor penal requerirá asistencia y ayuda que no siempre los programas públicos le pueden dar<sup>8</sup>. Es decir, para cumplir con estos

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<sup>6</sup> Albrecht (Peter - Alexis). *“El derecho penal de menores.”* Barcelona. PPU, 1990, 587. Traducción al castellano de Juan Bustos Ramírez.

<sup>7</sup> Kaiser (Günter). Op. cit. p. 197.

<sup>8</sup> Cuando nos referimos a un infractor tipo, estamos indicando el que coincide con el perfil social elaborado por el suscrito y que tienen las siguientes características: Sexo masculino, mayor de 15 y menor de 18 años. Reside primordialmente en las zonas marginales urbanas. Retraso escolar de 4 años o más. Trabaja en actividades que no requieren calificación laboral. Contribuye al sostenimiento del grupo familiar. El padre o la madre son desempleados o subempleados. Proviene de una familia que es incompleta o desintegrada con ausencia del padre. Conviven el mayor tiempo fuera de su núcleo familiar, con grupos igualitarios. Presenta adicción a drogas livianas y fuertes. Muestra problemas de socialización o integración con grupos diferentes al que pertenece. Estos factores pueden provenir de los criterios de selección de las instancias de control formal penal.

finis se requiere de la participación efectiva de la comunidad. Que es precisamente uno de los actores principales de la justicia restaurativa.

- ***Reducir los costos del aparato judicial y administrativo***

Es por todos conocido, y pareciera que no requeriría mayor explicación que el funcionamiento de la administración de la justicia en todos los países es cada vez más costoso, además que la justicia, y en particular la justicia juvenil, no siempre es una prioridad en el orden de gasto de los gobiernos<sup>9</sup>. Estos costos están relacionados con el aparato policial, las fiscalías, las defensas públicas, la judicatura y el sistema penitenciario. Además de los gastos en el personal de apoyo, tanto administrativo como profesional y los gastos operacionales de todo el sistema de justicia penal. Siempre resulta oportuno hacerse la siguiente pregunta: ¿Si se están utilizando correctamente los recursos públicos? La respuesta a esta interrogante debería estar orientada en los efectos, es decir, si estos recursos económicos públicos están produciendo los efectos deseados, apartar a los adolescentes del delito y evitar las reincidencias. Sabemos que lamentablemente no es así. De ahí que, si los recursos son limitados y se utilizan mal, es decir, no logrando los efectos deseados, lo más conveniente es que el Estado redefina su estrategia para utilizar correctamente los recursos públicos.

Con la desjudicialización y la utilización de mecanismos como la remisión y la conciliación, se busca reducir los costos de la administración de la justicia, por medio de iniciativas públicas y privadas que, con toda seguridad, tendrán más éxito con los jóvenes, que la justicia tradicional. Consiste también en promover por medio de la desjudicialización, una justicia más participativa, que involucre a la comunidad en la búsqueda de las soluciones del delito.

Otro argumento importante para favorecer la desjudicialización es el siguiente: Es conocido también que la mayoría de delitos que cometen los adolescentes son los delitos de bagatela, como por ejemplo delitos contra la propiedad, hurtos, faltas, lesiones leves. En una segunda categoría se ubicarían los delitos de una mediana peligrosidad (delitos con penas menores de 3 o 5 años) y son menos frecuentes los delitos graves, como los sexuales, violentos, o contra la vida. Esta mayoría de delitos generalmente ínfimos no son razón suficiente para poner a funcionar todo el costoso aparato de la administración de justicia, atendiendo al aforismo “*De minimis non curat pretor*” (“Los jueces no conocen de las cosas pequeñas”). Es decir, aplicar correctamente la ley penal sólo para los casos que realmente lo ameritan y no para casos insignificantes. De ahí que deberíamos aplicar medidas desjudicializadoras o dejarlas como posibles en principio en todos los delitos de bagatela. Además contar con la intervención de otras instancias formales (por ejemplo con instrucciones de conducta) para los delitos de mediana peligrosidad. Y solo dejar el proceso formal para los delitos graves, por las exigencias instrumentales y simbólicas respecto

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<sup>9</sup> Por ejemplo, en Costa Rica solo para iniciar el primer año de aplicación de la Ley de Justicia Penal Juvenil (1996), el Poder Judicial solicitó al Ministerio de Hacienda la suma de 720 millones de colones; igualmente el Ministerio de Justicia gastó la suma de 110 millones de colones para acondicionar las instalaciones del llamado Centro de Detención Juvenil San José. Estos dos datos nos reflejan que a nivel judicial y administrativo al Estado costarricense en el primer año de vigencia de la ley ha gastado la suma de 830 millones de colones (\$3.400.000.<sup>00</sup>) y probablemente quizá más que esa suma de dinero, ya que se requiere una investigación específica sobre los costos de la Justicia Juvenil para determinar realmente cuantos son sus verdaderos costos. Sobre todo en 15 años de vigencia que lleva esta ley en Costa Rica.

del sistema que tienen que ser puestas en consonancia con los controles estatales socialmente organizados.

Es decir, tomando en cuenta también esta realidad del delito, en la gran mayoría de las infracciones cometidas por los adolescentes, delitos contra la propiedad, es posible implementar programas de reparación que fomenten una justicia más restaurativa y que tendrá mejores efectos de reinserción social en los jóvenes. Lo que desde luego implicaría también, menores costos para la administración de justicia.

- ***Involucrar a la comunidad en las soluciones de la delincuencia juvenil***

La idea generalizada que tiene la comunidad de los jóvenes delincuentes, resulta casi siempre negativa. La opinión pública se orienta con la idea de reprimir con penas severas a estos grupos. Para fundamentar estas posiciones tan radicales, se esgrimen argumentos simplistas y prejuicios, que tratan de demostrar la creciente *inseguridad ciudadana* y altas tasas de criminalidad. Por ejemplo se argumenta que porcentualmente la criminalidad aumenta año a año, y que los delitos de bagatela se transforman en delitos graves<sup>10</sup>. Como responsables de este “aumento” de criminalidad e inseguridad generalmente se les atribuye a los jóvenes, principalmente de las zonas urbanas marginales.

Sin embargo, estos datos deben de manejarse con mucha cautela, pueden tener efectos distorsionadores y alarmista infundados. En realidad no hay que fijarse sólo en el aumento de las tasas porcentuales de delincuentes. Sino también en lo que eso significa, con relación al aumento de la población del país, con relación a la implementación de políticas internas y externas, así como tomar en cuenta los profundos cambios sociales, los periodos de crisis económicas, las guerras, y los eventos naturales, entre otros<sup>11</sup>. Además no resulta cierto en muchos casos, que los jóvenes cometan más delitos, o delitos más graves que los adultos. Por el contrario, los porcentajes de la comisión de delitos por lo menos en Costa Rica, en relación a los adultos, en muchos casos no supera el 10% y, si efectivamente hay un aumento del delito, lo más probable es que todos los sectores y grupos etarios en una sociedad, contribuyan a ese aumento y no específicamente las personas menores de edad.

No se pueden interpretar los aumentos estadísticos al margen de muchos otros factores, como por ejemplo las cifras negras de la delincuencia, los estudios de reincidencia, la relación entre el delito y pobreza, lo mismo que la relación droga y delito<sup>12</sup>.

Podríamos resumir diciendo que, pese a que deben de existir comunidades o sociedades más tolerantes que otras, la mayoría proponen *soluciones* tradicionales al problema de la delincuencia en general y en particular a la delincuencia juvenil. Esta respuesta tradicional se concreta en la idea de *endurecer* el sistema penal y esto significa: aumentar e incluso militarizar a la policía, aumentar y endurecer las penas y aumentar el número de personas detenidas<sup>13</sup>, junto con la disminución de las garantías judiciales, acompañadas de políticas criminales como la reducción

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<sup>10</sup> Albrecht (Peter - Alexis). Op. Cit. pp. 21–22.

<sup>11</sup> Ibid. p. 23.

<sup>12</sup> Ibid. p. 30.

<sup>13</sup> González (Daniel). “*Delincuencia Juvenil y Seguridad Ciudadana*”. En: Ciencias Penales. Revista de la Asociación de Ciencias Penales de Costa Rica. San José, N° 13, año 9, julio 1997, p. 112.

de la edad de la responsabilidad penal, toques de queda y prisión preventiva automática para delitos graves.

Estas respuestas tradicionales y negativas de las comunidades, producto de una distorsión del fenómeno delictivo, podrían reducirse y hasta eliminarse con una desjudicialización con intervención comunal. Que les permita a las comunidades reconocer que la mayoría de jóvenes delincuentes son recuperables, capaces de cumplir tareas o trabajos de utilidad pública en beneficio de todos. Además también sería una forma de *educar* a la población en los derechos de los jóvenes delincuentes y aumentar la conciencia solidaria necesaria en toda comunidad.

Con la Convención de Naciones Unidas sobre Derechos del Niño se pone en evidencia, tanto que la condición material de la infancia resulta directamente dependiente de su condición jurídica, cuanto el hecho que la ley es demasiado importante como para que no sea preocupación de la sociedad<sup>14</sup>. La participación de la comunidad resulta fundamental en cualquier programa de justicia restaurativa. Sin embargo también hay que reconocer, que dicha participación es uno de los aspectos más complejos y difíciles para la vigencia de la justicia restaurativa. También es posible señalar experiencias positivas de participación comunal y local, como el caso de la provincia de Cartago en Costa Rica y el programa de suspensión del proceso a prueba, que es un ejemplo claro de responsabilidad comunitaria<sup>15</sup>.

- ***Reducir la discriminación que produce el sistema penal***

Si bien es cierto la investigación criminológica no ha demostrado, que exista una directa conexión de causas entre las condiciones de marginalidad social y delincuencia, lo cierto es que las condiciones sociales influyen en el pronóstico delictivo. También es cierto que la mayoría de la *clientela* de la delincuencia juvenil registrada e institucionalizada, pertenece a los grupos sociales económicamente débiles de la sociedad.

Lo anterior confirma la idea de que el sistema penal es discriminatorio y especialmente para los jóvenes. Esto debido a que con las ideas de “protección y asistencia” de modelos de justicia juvenil como el tutelar, las desigualdades producidas por el sistema de control formal serán siempre mayores, al nivel de judicializar solo a los grupos de niños y jóvenes pobres. A pesar de la superación del modelo tutelar a nivel legislativo, siempre los sectores socialmente estigmatizados serán los objetos del control formal. Lo que forma parte de otro importante fenómeno que es el proceso de criminalización, que tan solo menciono en este trabajo.

De ahí que la desjudicialización ayude a reducir la discriminación o trato desigual del sistema de justicia, además disminuye el fenómeno de la criminalización de sectores socialmente

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<sup>14</sup> García Méndez (Emilio). “*Legislaciones Infanto - Juveniles en América Latina*”. En: La niñez y la adolescencia en conflicto con la ley penal. El nuevo derecho penal juvenil. Un derecho para la libertad y la responsabilidad. San Salvador, CEE /ILANUD /UNICEF /PNUD /PRODERE Edinfodoc /Cooperazione Italiana /Ministerio de Justicia de El Salvador. Editorial Hombres de Maíz, 1995, p. 37.

<sup>15</sup> Ver sobre experiencias prácticas sobre justicia restaurativa en Costa Rica, en Arias Madrigal, Doris. 2006. “Reflexiones teóricas y prácticas sobre la reparación del daño y la justicia restaurativa”. En: “*Justicia Restaurativa en Costa Rica: Acercamientos Teóricos y Prácticos*.” Primer Congreso de Justicia Restaurativa. San José. Comisión Nacional para el Mejoramiento de la Administración de Justicia. pp. 164-185.



marginados. Aunque también debería de cuestionarse, si la desjudicialización con intervención social, no aumentaría las redes de control formal no judicial de los sectores más pobres de la sociedad. Por lo que la desjudicialización de los problemas legales de los jóvenes con o sin intervención, debería ser de tal forma que no se convierta en una ampliación de las redes de los controles sociales y produzca precisamente los que queremos evitar, la estigmatización y negación de oportunidades para los jóvenes. En todo caso, aún reconociendo que las formas de desjudicialización podrían ser también una forma de control social, evidentemente se trata de un control reducido y con menores efectos dañinos, que el control jurídico-penal.

En todo caso, hay que decir que actualmente, el sistema penal y muy particularmente las sanciones, se aplican de manera restrictiva porque se limitan a determinados grupos de delinquentes o al ámbito de determinados delitos. Por lo tanto debería promoverse un desplazamiento del control formal penal, por medidas desjudicializadoras, (con intervención o sin ella) especialmente para casos leves<sup>16</sup>.

Se podría considerar como criterio paralelo a todos los expuestos, que la desjudicialización consiste en rescatar y dar plena vigencia al principio de *humanidad*, o mejor dicho en cuanto al respeto y garantía de los derechos humanos de los jóvenes. Así se puede afirmar como lo hace Kaiser, por ejemplo “*que la desjudicialización es superior en humanidad, y en efectividad en relación con las penas*”<sup>17</sup>. Es decir, frente a los dos controles formales, resulta más beneficioso para los adolescentes, el control social que puede ejercerse a través de la desjudicialización.

## **B. Fines Específicos**

La desjudicialización también cumple con los fines especiales de prevención que desde mi punto de vista son los más importantes en un sistema de justicia juvenil. Sin pretender agotar estos fines, ni tampoco que el orden aquí expuesto signifique una importancia jerárquica, vamos a presentar a manera de ejemplo algunos de estos fines de prevención especial, que se cumplen por medio de la desjudicialización. Lo cual no lleva a las finalidades u objetivos de los programas de justicia restaurativa.

- ***Conservar al máximo posible el ritmo normal diario, de estudio, de trabajo y el entorno social del joven***

Este fin buscado con la desjudicialización consiste en que el adolescente conserve, si lo tiene, su ritmo diario normal de estudio, de trabajo y el entorno social, pese a encontrarse sujeto a un proceso penal o pese el haber sido acusado de infringir una ley penal. Los órganos de persecución penal deberían en todo caso cuestionarse si es conveniente para el cumplimiento de fines educativos, ejercer la acusación penal. O si por el contrario sería más conveniente remitir al joven a programas educativos, que no afecten su vida cotidiana, esto en especial para la mayoría de delitos, cometidos por los jóvenes, que, como observamos, son de bagatela.

En primer lugar la desjudicialización procura tener un efecto directo en la persona del adolescente, de tal forma que la reacción institucional no sea igual de violenta, o más violenta que la misma conducta delictiva. Pero además busca reducir al máximo la intervención del sistema penal mediante sanciones de ejecución ambulatorias, que a la vez tienen la positiva

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<sup>16</sup> Kaiser (Günter). Op. cit. p. 198.

<sup>17</sup> Ibid. p. 194.



consecuencia de que en muchos casos, el joven no será sustraído de la supervisión de sus padres o responsables, ni de su comunidad, ni de la vida regular que llevaba antes de la comisión del delito. Se cumplen mucho mejor los objetivos educativos del sistema de justicia juvenil, en el tanto no se requiera de la institucionalización que pudiera significar la imposición de una sanción formal.

- ***Permitirle al joven una comprensión de su conducta delictiva***

En los viejos modelos sobre legislación de menores (doctrina de la situación irregular) los jóvenes o adolescentes no eran considerados responsables, por el contrario se trataba de sustraerlos del proceso penal, por la idea que eran penalmente irresponsables, ya que teóricamente no podían cometer delitos. Sólo se les consideraba objeto de protección.

Con la Convención de Naciones Unidas sobre los Derechos del Niño, se establece que sí es posible la atribución de una responsabilidad penal atenuada en el caso que los jóvenes cometan una infracción tipificada por la ley como delito<sup>18</sup>.

Para la realización de este fin se debe presumir “*iuris tantum*”, que los jóvenes poseen la capacidad de comprender los actos delictivos, son personas con derechos pero también con responsabilidades cuando afectan los derechos de otros. Actualmente sería muy difícil sostener que los jóvenes tienen una incapacidad generalizada, o una falta de capacidad para comprender la ilicitud del hecho<sup>19</sup>. Como consecuencia de estos postulados, los modelos de justicia penal juvenil integran en sus normas los principios de responsabilidad, tipicidad y culpabilidad.

Sin embargo, eso no significa que se les pueda someter a la jurisdicción penal de adultos, puesto que aún se encuentran en proceso de desarrollo y formación de la personalidad. Y además están excluidos de todo sistema penal los niños cuya edad es menor al límite de imputabilidad penal, pues se presume que, estos niños no tienen capacidad para infringir las leyes penales<sup>20</sup>.

Junto con el fin represivo del derecho penal juvenil (la justicia juvenil no pierde su carácter de derecho penal), se debe procurar el fin pedagógico, es decir que el joven comprenda su conducta delictiva. Esto tiene importancia dentro de un modelo de responsabilidad, para que el joven fortalezca también el respeto por los derechos humanos y las libertades fundamentales de terceros. La desjudicialización con intervención, como podría ser la conciliación, la reparación de daños a la víctima, el enfrentamiento entre autor y víctima, son sin lugar a duda medios

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<sup>18</sup> Convención sobre los Derechos del Niño. Aprobada por Costa Rica por la Ley N° 7184, de 18 de julio de 1990. Publicada en La Gaceta N° 149 de 9 de agosto de 1990, artículo 40 inciso 1: Los Estados parte reconocen el Derecho de todo niño de quien se alegue que ha infringido leyes penales, o a quien se acuse o declare culpable de haber infringido esas leyes a ser tratado de manera acorde con el fomento de sus sentido de la dignidad y el valor, que fortalezca el derecho del niño por los derechos humanos y las libertades fundamentales de terceros, y en la que se tenga en cuenta la edad del niño y la importancia de promover la reintegración del niño y de que este asuma una función constructiva en la sociedad.

<sup>19</sup> Sin que lo anterior signifique que en un caso particular, al menor de edad no se le pueda aplicar las atenuaciones por trastornos mentales transitorios o permanentes como a los mayores de edad. Tiffer Sotomayor (Carlos). “*Ley de Justicia Penal Juvenil. Comentada y concordada, con exposición de motivos del proyecto de ley e instrumentos internacionales.*” Editorial Jurídica Continental. 2011.

<sup>20</sup> Convención sobre los Derechos del Niño. Aprobada por Costa Rica por la Ley N° 7184, de 18 de julio de 1990. Publicada en La Gaceta N° 149 de 9 de agosto de 1990., artículo 40 inciso 3°.

mucho más eficaces para lograr que el joven comprenda la ilicitud de su conducta y la afectación de derechos de terceros. Además que debe buscarse como objetivo central, que el adolescente continúe una vida futura sin la comisión de delitos.

- ***Entender la delincuencia juvenil como un “episodio de juventud”***

Hay que considerar que opiniones calificadas<sup>21</sup> informan que los adolescentes y los jóvenes atraviesan por una etapa de inmadurez, en la cual el realizar algunas conductas prohibidas estimula la definición de su personalidad y marca el paso a la edad adulta, “el delito en los jóvenes entre los 12 y 18 años es una conducta *normal* debido a un periodo de crisis de juventud y desarmonía con la madurez, ya que se encuentran en una fase transitoria y con perturbaciones de adaptación. Además, la delincuencia juvenil no es una manifestación sólo de las clases sociales más pobres, ni de los sujetos estigmatizados socialmente”<sup>22</sup>.

Habría que revisar críticamente la conducta de la generación actual de adolescentes para observar que esta conducta delictiva de los jóvenes no tiene grandes diferencias en cuanto a los adolescentes de los años noventa, ochenta, setenta o sesenta. ¿O es que los jóvenes de la generación actual son más proclives al delito que los de las generaciones pasadas? Si bien es cierto hay algunas particularidades en cada generación, la adolescencia se caracteriza por ser siempre un período de adaptación, que con mucha facilidad puede llevarnos hacia la estigmatización de los grupos de adolescentes como *jóvenes problema* y de ahí es muy fácil llegar a la idea de que éstos jóvenes son delincuentes. Lo que realmente se diferencia, son las formas de comisión del delito y los contextos socioculturales que a cada generación le corresponde vivir. Adaptación que, precisamente es parte del proceso de desarrollo en que se encuentran los adolescentes y que la mayoría de ellos supera normalmente y sin entrar en conflicto con la ley penal.

Lo anterior nos debería de llevar a la conclusión de que muchos de los que actualmente somos adultos, también hemos pasado por un período de adaptación y que solo en algunos casos podemos hablar de “crisis” en la adolescencia, y esto no significó un obstáculo para que la mayoría se integrara socialmente. Sin necesidad de que la adolescencia hubiera significado el inicio de una carrera delictiva, esto debería justificar que la reacción y la intervención judicial sea la menos posible, ya que los delitos (por lo menos la gran mayoría) son productos de lo que podríamos denominar *trance de juventud*. Además de este carácter episódico y de trance en el desarrollo de la personalidad, por el que atraviesan los jóvenes, no hay que dejar de mencionar que en el caso centroamericano, se presentan particularidades muy importantes, tales como conflictos armados, guerras civiles, gobiernos dictatoriales y autoritarios, una historia de discriminación para sectores sociales como indígenas y afrocaribeños. Por lo que actualmente, estas sociedades de la mayoría de los países centroamericanos, se encuentran inmersas en contextos de alta violencia y delitos graves, con problemas de corrupción pública y privada, y una criminalidad vinculada a las actividades del narcotráfico. Todo esto hace que, a parte de la crisis individual por la que pueden atravesar los adolescentes, se le agregue un fenómeno de crisis social.

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<sup>21</sup> Kaiser (Günther). Op. cit. pp. 190, Dünkel, Frieder (2010), Ostendorf, Heribert (2011).

<sup>22</sup> Tiffer Sotomayor (Carlos). “Prevención y delincuencia juvenil”. En: La Nación. Domingo 28 de septiembre de 1997, p. 15.

Por medio de la desjudicialización y la intervención mínima se posibilita la idea que la participación de un adolescente en un hecho delictivo sea sólo un *episodio* en el desarrollo completo de sus vidas.

#### IV. FORMAS LEGISLATIVAS DE LA DESJUDICIALIZACIÓN PENAL JUVENIL EN COSTA RICA

Las formas de desjudicialización previstas en la legislación costarricense se pueden dividir en dos niveles:

- Primer nivel:
  - A. Remisión
  - B. Archivos fiscales
  - C. Desestimaciones
  - D. Criterio de oportunidad
- Segundo nivel:
  - A. Conciliaciones
  - B. Suspensión del proceso a prueba
  - C. Reparación integral del daño
  - D. Ejecución condicional

#### V. PRÁCTICA DE LA DESJUDICIALIZACIÓN EN COSTA RICA<sup>23</sup>



<sup>23</sup> Crédito: Imagen tomada de Google.

### 5.1. Delitos denunciados en el Ministerio Público 2000-2012 en Costa Rica

AÑO	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
TOTAL ADULTOS (2.136.056)	110.363	115.757	118.034	132.900	141.294	143.413	142.791	157.438	187.543	245.158	249.203	234.041	158.121
TOTAL NIÑOS (160.355)	10.837	11.703	12.259	12.193	11.494	9.953	9.863	9.921	11.951	15.585	16.718	16.962	10.916
PORCENTAJE RELACIÓN NIÑOS/ADULTOS (7.5%)	9.81%	10.10%	10.38%	9.17%	8.13%	6.94%	6.90%	6.30%	6.37%	6.35%	6.70%	7.24%	6.90%

**5.2. Cantidad de adolescentes denunciados en materia penal juvenil 2000-2012 en Costa Rica**

Año	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>TOTAL</b>	<b>10.837</b>	<b>11.703</b>	<b>12.259</b>	<b>12.193</b>	<b>11.494</b>	<b>9.953</b>	<b>9.863</b>	<b>9.921</b>	<b>11.951</b>	<b>15.585</b>	<b>16.718</b>	<b>16.962</b>	<b>10.916</b>

**5.3. Remisiones 2003-2012 en procesos contra adolescentes en Costa Rica**

Año	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Totales Absolutos	673	657	662	566	508	486	494	517	454	451

**5.4. Archivos Fiscales 2003-2012 en procesos contra adolescentes en Costa Rica**

Año	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Totales Absolutos	128	155	147	149	189	101	148	267	298	28

#### 5.5. Desestimaciones 2003-2012 en procesos contra adolescentes en Costa Rica

Año	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Totales Absolutos	5352	5224	5307	5362	5247	7072	10034	11334	10935	6774

#### 5.6. Sobreseimientos definitivos 2003-2012 en procesos contra adolescentes en Costa Rica (\*criterios de oportunidad incluidos)

Año	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Totales Absolutos	4106	4832	2520	3045	5931	7367	4280	4025	3147	4397

#### 5.7. Sobreseimientos provisionales 2003-2012 en procesos contra adolescentes en Costa Rica

Año	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Totales Absolutos	118	137	54	62	41	10	39	61	24	55

**5.8. Conciliaciones 2003-2012 en procesos contra adolescentes en Costa Rica**

Año	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Totales Absolutos	547	713	786	808	834	769	279	236	331	440

**5.9. Suspensión del Proceso a Prueba 2003-2012 en procesos contra adolescentes en Costa Rica**

Año	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Totales Absolutos	315	363	459	560	495	673	379	537	713	544



### 5.10. Frecuencia de adolescentes sentenciados entre el año 1998-2012 en Costa Rica

Sanción impuesta			Menores condenados		
			Tipo de sentencia		
Año	Sentenciados	Condenatoria	%	Absolutoria	%
1998	360	246	68.3	114	31.7
1999	450	297	66.0	153	34.0
2000	363	226	62.3	137	37.7
2001	442	262	59.3	180	40.7
2002	<u>273 ≤</u>	303	64.1	170	35.9
2003	525	280	53.3	245	46.7
2004	678	309	45.6	369	54.4
2005	602	252	41.8	350	58.1
2006	644	236	36.6	408	63.3
2007	532	231	43.42	301	56.57
2008	554	<u>184 ≤</u>	33.21	370	66.78
2009	465	202	43.44	263	56.56
2010	578	290	50.17	288	49.83
2011	<u>670 ≥</u>	<u>337 &gt;</u>	50.29	333	49.71
2012	592	302	51.01	290	48.99

### 5.11. Práctica sancionatoria en Costa Rica (1998-2012)

AÑO	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Amonestación y advertencia	61	39	31	36	25	19	26	26	23	43	18	26	29	22	13
<b>Libertad asistida</b>	<b>71&lt;</b>	<b>136</b>	<b>102</b>	<b>126</b>	<b>157</b>	<b>119</b>	<b>179</b>	<b>146</b>	<b>149</b>	<b>133</b>	<b>103</b>	<b>110</b>	<b>151</b>	<b>189&gt;</b>	<b>135</b>
Prestación de servicio a la comunidad	19	23	28	27	17	17	22	8	12	5	2	-	4	2	2
Reparación de daños	2	3	0	0	0	3	1	1	0	1	-	-	5	2	-
Orden de orientación y supervisión	30	28	24	14	30	38	25	35	22	12	8	8	13	16	11
Internamiento domiciliario	4	1	0	3	0	3	1	0	0	1	1	-	-	1	-
Internamiento en tiempo libre	0	1	0	0	0	5	3	1	5	1	-	-	-	-	-
<b>Internamiento en centro especializado</b>	<b>53</b>	<b>56</b>	<b>40</b>	<b>48</b>	<b>68</b>	<b>74</b>	<b>48</b>	<b>34</b>	<b>25&lt;</b>	<b>33</b>	<b>50</b>	<b>54</b>	<b>88</b>	<b>99</b>	<b>129&gt;</b>
Internamiento con ejecución condicional	6	10	1	8	6	2	4	1	0	2	2	4	-	6	12
<b>TOTAL</b>	<b>246</b>	<b>297</b>	<b>226</b>	<b>262</b>	<b>303</b>	<b>280</b>	<b>309</b>	<b>252</b>	<b>236</b>	<b>231</b>	<b>184</b>	<b>202</b>	<b>290</b>	<b>337</b>	<b>302</b>

## **VI. COMENTARIOS FINALES**

Una intervención judicial excesiva, afecta el proceso de desarrollo y muy probablemente influye en las reincidencias delictivas. Para que la desjudicialización sea una práctica en los sistemas de justicia juvenil, se requiere de una concepción de un Estado Democrático que promueva la incorporación familiar y social de los adolescentes, no su exclusión. También los sujetos procesales que intervienen, fiscales, jueces y defensores, deben incorporar un derecho penal mínimo y subsidiario. Además, se requiere un compromiso interinstitucional público y privado, con la participación de la comunidad. La desjudicialización favorece la reducción de la sanción privativa de libertad y consecuentemente la disminución de adolescentes privados de libertad.

De la estadística presentada, se observa que el porcentaje de delitos cometidos por los niños en comparación con los adultos es de un promedio de 7.5% y que contrario a lo que la opinión pública cree, por lo menos del periodo 2000-2012 las denuncias presentadas contra personas menores de edad han disminuido. También encontramos que la práctica de la desjudicialización tiene plena vigencia, ya que se utilizan formas de desjudicialización como la remisión, los archivos fiscales, las desestimaciones y sobreseimientos desde un inicio del primer contacto de los adolescentes con el sistema de justicia. El promedio de uso de la remisión en el periodo estudiado fue de 546,8 casos, mientras que los archivos fiscales fue de 161 casos. Importante señalar es que la desestimación es la forma de desjudicialización que más se ocupa con un promedio de 7.264,1 casos y los sobreseimientos definitivos fueron un promedio de 4.365 casos, mientras que los sobreseimientos provisionales fueron un promedio de 60,1 casos. También las formas de desjudicialización denominadas alternativas al juicio, como por ejemplo la conciliación en el periodo estudiado se utilizó en un promedio de 602,2 casos. Mientras que la suspensión del proceso a prueba se utilizó en un promedio de 503,8 casos. En Costa Rica falta vincular estas medidas desjudicializadoras con programas de prevención del delito y reinserción social específico para adolescentes, con el objetivo de reducir las reincidencias delictivas.

Con respecto a la práctica sancionatoria, se observa que en el periodo estudiado la sanción impuesta a personas menores de edad en su mayoría consiste en la libertad asistida, mientras que la sanción más drástica de internamiento en centros especializados no superó del año 1998 al 2009 el número de 100 casos, mientras que se observa una tendencia de aumento a partir del año 2010, 2011 y 2012. El principal problema de Costa Rica se encuentra en el ámbito de ejecución o cumplimiento de la sanción, que es precisamente en donde debe materializarse los fines socioeducativos de las sanciones. Ese es el principal desafío del país.

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# **TREATMENT AND SOCIAL REINTEGRATION OF OFFENDERS: CASE STUDY OF SHIKUSA BORSTAL INSTITUTION**

*Horace Chacha*\*

## **I. BACKGROUND**

Shikusa Borstal Institution is a Youth Corrective Training Centre that caters for boys in conflict with the law between the ages of 15-17 years. This institution was established in 1963 by an Act of Parliament (Cap 92 Laws of Kenya). There are only two such institutions in Kenya—Shikusa and Shimo La Tewa Borstal. The institution is under the Prisons Department and draws its mandate from the Constitution of Kenya 2010, cap 92, the Children's Act 2001, the Probation Act cap 62 and cap 90 Laws of Kenya, United Nations Standard Minimum Rules for the Treatment of Prisoners (UN-SMR), the Rules on the Protection of Juveniles Deprived of their Liberty (RPJDL), and the African Charter on the Rights and Welfare of the Child (ACRWC).

Boys are committed for sentences of 3 years' training and rehabilitation through children's courts in consultation with the case probation officers who also plan the after-care programme. Through and aftercare guidelines are formulated for the reintegration of boys.

### **Statistics**

- Capacity 225 boys
- Average population 340
- 132 Members
- Range of crimes:
- Theft related 50%>, Sexual related 20%<
- Assaults <10%, Drugs 5%>, Others 15>
- Average annual admissions 260
- Average annual discharges 240

### **Key stakeholders**

- Criminal justice agencies (Probation department, Judiciary, Police)
- Children department and social services

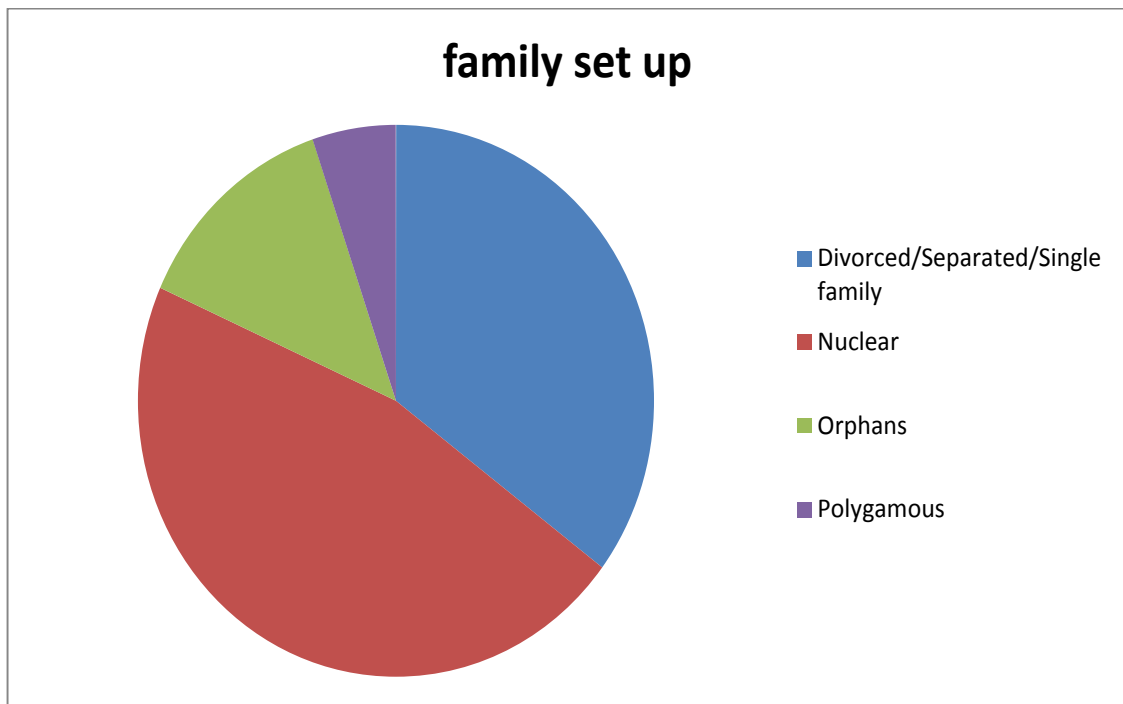
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\* Chief Superintendent in Charge of the Shikusa Borstal Institution, Kenyan Prisons Service, Kenya.

- Non-Governmental Organizations (R.W.I)
- Community
- Offenders.

**Causes of Crime in relation to family  
Family Information Breakdown**

S/NO	FAMILY TYPE	NUMBER	Percentage%
1	Divorced/Separated	108	35.3%
2.	Nuclear	142	46.4%
4.	Orphan	40	13.1%
5	Polygamous	16	5.2%
	Total	306	100%



Juvenile offending has a number of underlying characteristics, such as poverty, education disadvantage, child abuse, lack of family support and drug/alcohol problems. Those who offend tend to be marginalized with regard to their families, their community and/or society in general. Efforts to prevent offending must involve engaging with young people at all levels.

It is very difficult to know which risks actually cause young offenders to be involved in crime, and of course, this varies between individuals unless one is influenced by protective factors. The assumption was that most young offenders that offended came from broken or dysfunctional families, but we realized that approximately 46% come from the nuclear family (Both parents are alive).

It's true that presence of multiple risk factors increases the likelihood of someone committing an offence; the extent to which those risk factors can be said to cause the offending cannot only be determined by the family background. But at the population level, the best information we can produce is a study of risk factors for offending, and an understanding that the more risk factors an individual possesses, the more likely they are to commit offences.

## II. REHABILITATION PROGRAMS

The rehabilitation of boys admitted into the institution starts at the very beginning of the admission process right from the reception board to discharge.

### A. Composition of Reception Board

- Superintendent in-Charge of the institution
- Technical personnel
- Welfare officer
- Spiritual leaders



- Human Rights Officer
- Documentation officers

The process begins from admission of young offenders in custody up to and including community re-integration. At first the reception board was not adequately addressing offender needs, so we started one to ensure that on admission the young offender is introduced to and welcomed to the Borstal environment. At this stage his expectations are addressed, fears are allayed, and treatment and the opportunities available for training are considered. Both spiritual and social counselling to stabilize the inmate in the new environment commence at this point, the inmate is introduced to his rights, obligations, the disciplinary requirements and procedures, the complaints mechanisms available and authorities both internal and external and the rules of the institution, his management plan is developed with a view to identifying the most suitable rehabilitation program for placement and start of the reintegration process.

## **B. Assessment and Classification**

Assessment facilitates accommodation and allocation programs for young offenders. Where applicable, specific risk tools are also used to measure the extent of substance abuse, violence and sexual offence. Currently most of our resources target young offenders with moderate risks and needs who are less likely to re-offend unless intensive rehabilitation is given.

The rehabilitation regime comprises several intervention mechanisms that are employed to provide purposeful and corrective measures or activities for young offenders. These measures challenge prisoners' offending behaviour, providing them with basic education to tackle illiteracy, empowering them with knowledge, and work skills for support and sustainability once they are released from the institution.

## **C. Literacy Education**

This is offered to enhance and accelerate the literacy levels such as literacy and numerical courses before placement in various courses.

## **D. Vocational Training**

This is offered to young offenders where various forms of vocational apprenticeship such as upholstery, carpentry, tailoring, metal work, polishing and masonry among others. We have begun assessment of these courses, and we developed new courses to be in line with other market oriented trades such as barber shop, car wash and shoe shining.

## **E. Formal Education**

We have class 7 and 8 and form one and two; this is to give prisoners who want to pursue education the opportunity to do so. A number of prisoners are registered yearly for different levels of national examinations, KCPE and KCSE. The curriculum for formal education is the same used by mainstream schools and colleges. The examination is accredited by the national government just like that outside of the prison set up.

Boys who attend secondary education in Kenya are aged 13-15 years. Taking consideration of the fact that there was no established system in place, we started secondary education to cater for boys who fall in the age category. The system of education is the same as the one used in the mainstream schools. Most of the young offenders who are discharged from the institution (approximately 66%) transit back smoothly to the society. Formal education is significantly

contributing to prisoners' rehabilitation and creating an enabling environment for their community resettlement. Computer literacy classes are also offered to boys interested in Information and Communication Technology.

#### **F. Psychosocial Programs**

We offer counselling services to target specific behaviours. These are strategies to prevent and address the underlying problems. We also provide support to those with mental health problems and provide addiction and counselling programmes for those with alcohol or drug problems. Specialized treatment programs are offered to target needs in:

- Pro-social thinking
- Anger and emotional management
- Substance abuse treatment
- Managing and overcoming violence
- Sexual offending treatment

#### **G. Recreation Facilities and Services**

We have a wide range of recreational facilities and services of particular interest to young people, and we have made it easily accessible. In addition, the boys are involved in designing and running of these programs.

#### **H. Sports and Positive Entertainment**

Sport as a co-curricular activity is undertaken in the institution. Boys take part in indoor and outdoor sporting activities. To date many activities/sporting programmes have increased tremendously. Some of the activities are volleyball, football basketball, handball, athletics and tug of war.

Boys are encouraged to take part in daily exercises and at least take part in one sport. Inter-house competition is done weekly and crowned by end of quarter completion where individuals and teams are awarded. Boys are also involved in inter-primary competitions with other mainstream schools; they also play friendly matches with the local youth groups, polytechnics and churches.

#### **I. Importance of Sports to the Borstal Boys**

- It makes participants mentally, physically and socially healthy.
- It enhances chances of boy's placement to best performing schools in academic and sports in the region and nationally.
- It results in professional utilization of the boy's talent in the future, e.g., some boys are employed by premier league clubs.
- It inculcates adherence to rules and regulations governing a given sport which directly translates to real life.

#### **J. Music Festival**

Music is part of our extra-curricular activities that is meant to nurture boys' talents as well as inculcate competitiveness and teamwork. This helps boys in the reintegration process upon release. The Institution choir participated in the inter-primary schools which included mainstream schools from the Zonal level to the national music festivals held on 3rd August 2014 at Kenya School of Government, Mombasa county.

#### **K. Importance of Music Festival to Borstal Boys**

- It helps boys to discover their talents and making temporary improvement on the same.
- It leads to purposeful interaction between Borstal boys, music participants and other primary school pupils
- It helps them manage their leisure time prudently by composing, practising and rehearsing of songs.
- It exposes boy's creative talents and abilities to the outside world, hence opening up sponsorship opportunities from different organizations, e.g, Faraja trust.
- It enhances academic exchange programmes during residential music events.
- It is a form of entertainment to participants, the entire Borstal community, surrounding community, thus creating cohesive social interaction.
- It creates opportunities for the boys to give back to the community by participating during public holidays and graduation ceremonies.

#### **L. Significance of Music to the Participants**

- Helps improve health and behavioural outcomes of those who participated by providing social experiences as well as addressing problematic attitudes and perceptions.
- Music interventions are a means of building resilience and supporting well-being and preventing delinquency.
- Helps boys promote identity development through life skills acquisition which is an essential component to a peaceful co-existence in the society upon their release; hence very few reoffend as compared to non-music participants.

#### **M. President's Award**

It's an award for young people to help them develop psychological, intellectual and physical activities. Boys are involved in social responsibility by engaging in volunteer activities to help build communities; this is done to encourage contact with the outside world and also to encourage good discipline while in the institution.

The President's Award Kenya (P.A.K) is an exciting self-development programme available to all adolescents transitioning into adulthood; the participants are usually of the ages between 14-25 years.

The programme is open to all young persons who join it voluntarily and offer their service and skill voluntarily for the benefit of humanity. They also undertake a lot of expeditions and adventurous journeys as a requirement for them to develop resilience and endurance as they work as a team. Residential projects undertaken by the participants enable them to contribute their service and skills for the benefit of unfamiliar persons who need that kind of assistance.

It enhances lifelong communication skills, problem solving, decision making, critical and creative thinking, negotiation and presentation skills as participants take part in challenging activities in their expeditions and residential projects with other participants drawn from varied backgrounds and levels.



#### **N. The Impact of Award and Transition to the Mainstream Schools and Reoffending**

We have found that boys who are involved in the President's Award Programme are more engaged in both community and church activities and report significantly less serious delinquency as well as problems of drinking and risky sexual behaviour; they seem to minimize risky behaviours at home or in school.

The program helped deter delinquency by reducing unstructured time, providing incentive to conform and creating avenues for attachment to pro-social peers and adults. Most of the time available is focused on school programs. President's Award participants transition to secondary and tertiary institutions as follows:

**President's Award Transition Rate Tabulation 2011-2014**

YEAR	LEVEL	P.A POPULATION	TRANSITION	TRANSITION RATE
2011	BRONZE	56	53	95%
	SILVER	-	-	-
	GOLD	-	-	-
2012	BRONZE	71	67	94%
	SILVER	36	33	92%
	GOLD	7 (primary)	6 (secondary)	86%
2013	BRONZE	71	67	94%
	SILVER	36	32	89%
	GOLD	6 (primary)	6 (secondary)	100%
2014	BRONZE	69	65	94%
	SILVER	48	44	92%
	GOLD	10 (primary)	9 (secondary)	90%

**O. Interpretation**

From the above tabulation it is evident that P.A-K holders and participants do transition at a higher rate cumulatively of about 92% from primary to secondary school. Those in secondary schools within the region report back to the institution to finish other levels (programme continuation).

**Comparison of PA-Award participant's transition rate with the transition rate of Non-P.A boys**

YEAR	BORSTAL BOYS	CASE POPULATION	TRANSITION	RATE
2012	P.A-Holders	56	40	71%
	NON-PA	160	51	32%
2013	P.A-holders	113	95	84%
	Non-P.A	210	70	33%
2014	P.A-Holders	125	86	69%
	Non-P.A	170	58	36%

### III. ANALYSIS

The transition rate for pupils in Kenya's primary schools to secondary schools stands at 74% according to a UNDAF-UNICEF Report. The orderly and disciplined self-routine by the participants is transmitted into their area of study leading to marked academic improvement and high achievement by Borstal boys on the national examination and therefore guaranteed continuation of their studies when they are released. Over 98% of alumni who were in primary education furthered their education and are currently in good high schools. The P.A-K Borstal boy's transition rate cumulatively for three years is 75% as compared with the transition rate of non-P.A Borstal boys which stands at 34% and also the mainstream schools with a rate of 74%. Borstal P.A participants depict a 40% higher margin of continuing with their educational and other training programmes than non-P.A Borstal boys.

#### A. Reintegration Processes

We have strengthened family and community-based support by putting in place measures to provide families with the opportunity to learn about child development and child care,

promote parent-child relationships, make parents aware of young people and encourage their involvement in family and community-based activities.

#### **B. Visitation**

Mentoring and linking families with appropriate support is important in helping families to cope with children's risky behaviour as well as promote the favourable development of the child, secure his best interest and ensure views are taken into account. We ensure parents visit the boy several times and also come and pick up their son during release to promote child-parent relationship

#### **C. Open Day/Parents' Day**

The institution organizes open days and parents' day for family visits to enable young offenders to meet with family members and establish family relationships; parents monitor their children's performance as well as address some of their urgent needs; Facilitate and promote prisoners' family contact and relationships during the incarceration of the child since most offenders offended against their parents and close relatives; Strengthens support system as young offender's parents have an opportunity to advise their children as well as give them psychological and emotional support for moral and social upbringing during absence of parents; Promotes acceptability of parent by nuclear family and community at large which consequently leads to smooth reintegration of offenders and the community as well as reduces stigmatization; Enables young offenders to monitor their children's performance in school and provides guidance on career related issues to them where this may become necessary.

#### **D. Communication**

We facilitate boys making phone calls immediately when they are admitted to the institution to inform the parents and relatives that the boy arrived safely. Furthermore, we make calls on a weekly basis to ensure that the boys maintain their family contacts and initiate the reconciliation process. In addition we also allow the offenders to call the victims as part of reconciliation.

#### **E. Discharge**

Law governing the institution provides for a board of visitors. This board is mandated to review cases of boys, with the intention of offering early discharge from the institution to serve the remaining period in the community. The board meets four times in a year and considers cases of boys who have stayed in the institution for more than 12 months. The board gets recommendations from the institution's officers, probation officers, the community, families and, most importantly, the victims are consulted and their fears and roles in reintegration are addressed. Upon early release the boys are placed under the supervision of probation officers. Before discharge boys are taken through pre-release counselling and life skills training. In addition, depending on their needs, provisions are made for help in continuance of formal education and vocational skills gained. The government provides school fees and tools for discharged boys in order to ensure successful completion of rehabilitation and to prevent reoffending.



#### **IV. RECOMMENDATIONS**

- Divert boys from the institutions through use of non custodial rehabilitation (Restorative justice)
- Capacity enhancement and building of Institution staff in best practices in juvenile offenders management
- More resources to be provided for reintegration and aftercare services
- Open young-person prisons to cater for boys who attain the age of 18 while at the institution
- Enhance the use of modern communication methods in maintaining family contact (video links, video conferencing)
- Review and amendment of laws dealing with juvenile offenders to conform to UNRPJ and international standards on treatment of offenders (Revised Cap 92 will be in place by September 2015)

#### **V. CONCLUSION**

Shikusa Borstal Institution was established to shield juvenile offenders from contamination and abuse by adult offenders. Together with other criminal justice agencies and non-state actors it helps in crime prevention, community safety and social reintegration through various programs offered to offenders. New crime trends like cybercrime, terrorism and the increase in sexual offenders will pose unique challenges to the institution but will add more linkages, cooperation with international partners and additional resources earmarked for the institution by the government. As a result, these challenges will be faced with optimism and confidence.

# KEY ISSUES ON TREATMENT, REHABILITATION AND SOCIAL REINTEGRATION OF JUVENILE OFFENDERS AS IDENTIFIED IN AN RWI STUDY IN THE ASEAN COUNTRIES

*Christian Ranheim\**

## I. INTRODUCTION

Combined, the 10 member states of the Association of South East Asian nations (ASEAN) comprise 3.3% of this planet's entire land area. Its citizens, however, make up almost 10% of humanity. Home to more than 600 million people — more than 100 million more than the EU — it is a young population. Almost 30% are between 5 and 19 years old. The combined high number of youth and a relatively high percentage of youth unemployment in the region have by many been seen as a formula for increased unrest, violence and juvenile crime.<sup>1</sup>

After having worked with juvenile justice related capacity building in Asia for several years, the Raoul Wallenberg Institute for Human Rights and Humanitarian Law wanted to delve deeper into the effects of the youth bulge in ASEAN member states thus contributing to the limited regional based juvenile justice research. Some of the questions we had were: *Is there really a sharp increase in juvenile delinquency in ASEAN countries as reported by news media? How do the governments respond to juvenile delinquency? Is juvenile crime a ticking bomb towards social unrest and instability in South East Asia? How are the juveniles in conflict with the law treated and rehabilitated? Are there common trends in the region?*

Through commissioning of a baseline report on the state of juvenile justice in ASEAN countries, we wanted to find the answer to some of these questions. The study is freshly printed, and I am happy to be able to present the results of the study for the first time here today.

The report has been drafted by 10 independent experts with responsibility for each of the ASEAN member states. Thus, it is pertinent to point out that this is neither an official ASEAN report nor a report drafted or endorsed by any member state. Relevant ASEAN bodies and state representatives have, however, been consulted and have been supportive of our research.

Each researcher drafted a narrative report and collected statistics loosely based upon the UNICEF and UNODC Juvenile Justice Indicators.<sup>2</sup>

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\* Head, Indonesia Office, Jakarta, Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI).

<sup>1</sup> ILO: Global Employment Trends for Youth 2013: A generation at risk

[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_212423.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_212423.pdf)

<sup>2</sup> [www.unodc.org/pdf/criminal\\_justice/Manual\\_for\\_the\\_Measurement\\_of\\_Juvenile\\_Justice\\_Indicators](http://www.unodc.org/pdf/criminal_justice/Manual_for_the_Measurement_of_Juvenile_Justice_Indicators).

## II. FINDINGS

This now brings us to the findings of the report, and I would like to highlight five key conclusions made.

### A. What Are the Facts?

Nearly all researchers conducting the country studies for this report stated that it had been difficult to obtain reliable and up-to-date statistical data on the situation of children in conflict with the law. Furthermore, there is no set list of indicators applied for juvenile justice reporting within ASEAN, which makes it difficult to compare figures across the region. Access to data and streamlining of indicators clearly need to improve to ensure transparency and possibilities for future research.

### B. Juveniles in the Region Are Mostly Law Abiding

The fear of an increasing number of juveniles in conflict with the law in ASEAN countries has sparked concerns throughout the region. Until today, it has been difficult to verify whether the concerns are justified. Our study confirms that crime is on the rise. The number of juveniles brought into formal contact with the criminal justice system, however, remains surprisingly low: we estimate that approximately 70 000 juveniles are formally charged with an offence each year in ASEAN member states. Comparatively, this number is far lower than, for example, the USA — in which numbers from 2010 show that a staggering 1,4 million children were charged annually.<sup>3</sup> There is a lack of complete EU statistics, but in a study conducted by the European Commission in 2014, 8 out of the 28 member states reported 134 000 children charged with a criminal offence.<sup>4</sup>

When assessing the figure, it is, however, important to keep in mind that juvenile crime traditionally is heavily underreported.<sup>5</sup> Cases of minor crime are often dealt with locally, which may be even more common in Asia where many tend to live in tightly knit communities where crimes are more likely to be resolved without contact with the formal criminal justice system.

### C. Those Who Are Not Law Abiding Mostly Commit Less Serious Crimes

In line with international research, crimes committed by youth in the ASEAN region are mostly within the category of theft. The highest percentage we recorded was in the Philippines with 68% and Singapore with 63%. After theft, figures of other crimes vary quite considerably. It does, however, seem common that violent property crime and drug related crimes are high on the statistics. In particular Thailand reports extremely high percentages of drug related crimes (45.51%).

For those countries that provide gender relevant statistics, it is obvious that male delinquency is much higher than female. The Indonesian juvenile prison population in January 2015 consisted of 2% females, which we believe is indicative also for other countries.

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<sup>3</sup> In comparison, the population of the USA is only half that of ASEAN member states. “Juvenile Offenders and Victims: 2014 National Report”, *National Center for Juvenile Justice* p.151.

<sup>4</sup> “Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 Member States of the European Union”, *European Commission* 2014, p.4. The report summary finds that in 8 out of the 28 members states of the EU alone, the number of children charged was 134,477.

<sup>5</sup> Finkelhor and Omrod “Factors in the Underreporting of Crimes Against Juveniles”, *Child Maltreatment, Sage Journals*, August 2001 6: 219-229.

#### **D. The Legal Framework Is Improving — Implementation Is the New Challenge**

The country reports indicate that *all* countries within the region have recently installed, or are in the process of installing, a distinct legislative framework for juvenile justice. This is compatible with international standards and a very positive development.

7 out of 10 states have legally recognised diversion procedures. The remaining 3 states are in the process of drafting such a framework — some in cooperation with UNICEF.

The actual *implementation* of juvenile diversion appears to be a more complex issue. Some of our researchers reported a very high application of either diversion or alternative measures. As an example, police in Brunei estimated that 90% of cases reported to the justice system are solved without a judicial proceeding. The Philippines reported that 39% of all reported cases were diverted, while Thailand, on the other hand, had a very low percentage of use of official diversion.

Does the study specify how those going through diversion or alternative measures are treated? Not in detail or in figures, although the narrative reports can give us some guidance. A common observation is that diversion is not used to its fullest potential for several reasons:

- Lack of formal programs
- Lack of funding
- Lack of competence and knowledge
- Lack of facilities

Institutional arrangements for implementation of diversion differ throughout ASEAN. While some countries apply traditionally based procedures such as mediation in village councils, others maintain strict control over the mediation process.

If one looks at figures again, our study shows that while approximately 70 000 juveniles are charged with a criminal offence annually, an estimated 16 000 children are deprived of their liberty after having received a criminal sentence at any given time within the region. Again, to our knowledge, this is the first time such figures have been presented for the ASEAN region. In the USA, the figure of juveniles deprived of liberty was around 70 000 according to a report from 2010, while 21 out of 28 countries in the EU in 2012 reported that 8700 juveniles were detained.<sup>6</sup>

#### **E. Rights Denied?**

Juveniles in conflict with the law are especially vulnerable in facing a large, formal justice system comprised of adults. International instruments thus recognise the importance of providing legal or other professional counsel to represent the interest of the child at all phases of the proceedings. Disappointingly, this appears to be one of the weakest parts of the juvenile justice systems in the region. Although most national laws afford some form of legal representation, this is for several countries not implemented in practise. Some report that it is due to the lack of lawyers. As examples, the Lao Bar Association had in 2013 around 150

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<sup>6</sup> “Juvenile Offenders and Victims: 2014 National Report”, National Center for Juvenile Justice, p. 188, “Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 Member States of the European Union”, *European Commission* 2014.

members while Cambodia had around 800. While this may be amended by training of paralegals or use of other professionals, our researchers reports that such programmes lack funding and that representatives thus are either not available or do not fulfil the required competence to work with juveniles.

### **III. CONCLUSIONS**

ASEAN countries are diverse in terms of population, geography, social development and culture. This is reflected in the findings of the report, and one should thus be careful when drawing conclusions. Some trends do, however, appear general: On a positive note – all ASEAN member states have, or will soon have, specialised legislation on juvenile justice. Furthermore, the number of juveniles in conflict with the law in the region as a whole remains remarkably low.

While most countries have regulations outlining diversion processes, these are not always used to its fullest potential due to a number of factors, and prisons are still being used to a much higher extent than required. The situation for detained children is not conducive to secure full rehabilitation, and incarceration together with adults is still common in several ASEAN countries.

### **IV. RECOMMENDATIONS**

We believe that increased regional cooperation within ASEAN and bilaterally between states would be imperative to strengthen standard setting and sharing of best practises. The main recommendations of the RWI study are to:

- Work towards a set of ASEAN Guidelines on the promotion and protection of juvenile justice that are compatible with the CRC and other international juvenile justice standards;
- Develop an ASEAN system for collecting and publicly reporting statistics on juvenile justice based on recognised UNODC and UNICEF indicators;
- Strengthen regional forums for juvenile justice in order to share best practices;
- Support regional juvenile justice ‘think-tanks’ and strengthen cooperation on juvenile justice related research and education, and
- Create a regional monitoring and evaluation mechanism based on international juvenile justice standards.

# Treatment of female juvenile offenders in Sweden

Christer Isaksson  
Office for International Affairs  
Swedish Prison and Probation Service

## International perspective

- Great variations as to when a person is responsible for his offending
- Great variations in the alternatives for handling/helping juvenile offenders
- In many countries very young boys and girls are put in prison
- In some countries there are several agencies, kinds of institutions, to take care of young offenders – in other countries not so many
- In most countries far more young men than girls are offending
- In many countries this means that there are more alternatives for handling boys than girls
- In many countries the stigma attached to offending, to having been put into institutions, is different for girls – harsher, more restricting – e.g. shelters needed
- In Sweden comparatively few are treated within the prison system but in special institutions for young offenders with much more staff and specialists available

## Government Assignment about young offenders 2013-2016

”The Prison and probation service shall conduct a special effort during the execution of young clients sentence, taking measures designed to prevent recurrence of criminal offences”

150 million skr.

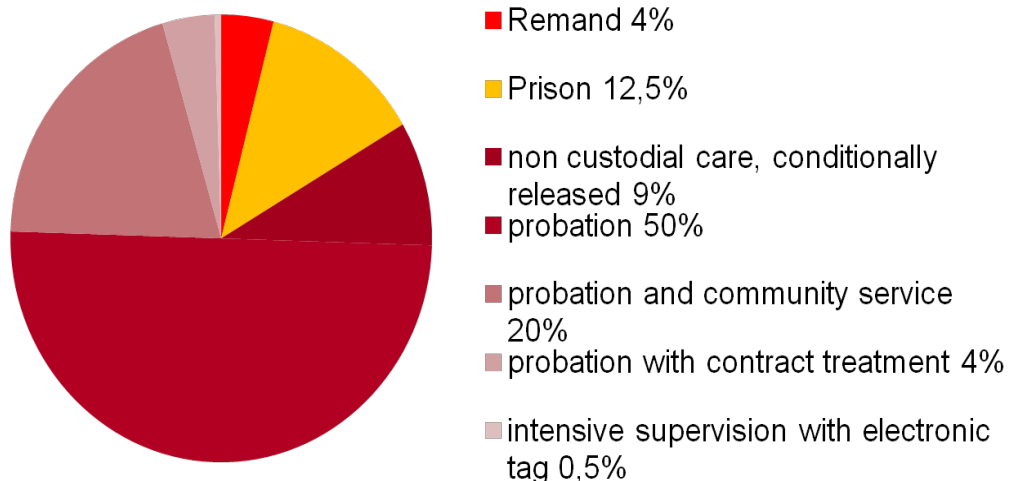
## Young offenders

- Age of criminal responsibility 15 years
- Persons under 18 rarely receive custodial sentences – special legislation, special institutions
- **Young offender is less than 21 years old when entering remand, prison or non custodial care**
- (max until the age of 24)



## Young offenders

- Every day there are close to 2,000 young people in prison and probation service. About 180 of them are women.



## The young offenders

- The majority have been subject to previous social interventions
- 70% have some sort of addiction problems.
- 53% live in metropolis
- 86 % Swedish nationals
- 70 % live with their parents

(Source: Client mapping in 2013)

## The female young offender

- Often a background of abuse. Physical or sexual or harassment in general
- Many see themselves as “the inferior sex”
- Many female offenders have been subjected to prostitution
- Drug abuse

## The young offenders - the crimes

- 60% of young people are convicted of violent crimes, the most common is robbery.
- 35% are convicted of drug-related crime, and nearly as many for acquisitive.
- Average penalty if custodial sanction 10 months, if non custodial sanction 1 year.

## The young female offenders – the crimes

- Most common crimes are drug related crimes
- Second most common is theft of some kind
- In third place comes violent crimes – although among older women there is a tendency, not very prominent, towards more violent crimes

## Reactions to drug abuse and offending in the Swedish society

- In Sweden there are 7 institutions, SIS, for giving treatment and care for offenders of the age 15-17, 56 places.
- In 2014, 40 boys were placed in these institutions, only one girl
- Some girls with an offending behavior are placed in psychiatric care instead of any of the other kinds of institutions. Reason for this may be drug abuse, self harming behavior or – of course – other psychiatric problems

## What works according to science?

- The principle of Risk -high risk of recurrence – many efforts
- No difference mandatory or voluntary

### Multimodal operations

- Therapeutic treatment of social problem solving and anger control
- Professional mentors
- Education
- Efforts related to work
- ADHD investigation and treatment
- Drug treatment

## Early efforts

- Early investigation of – risk, needs and susceptibility
- Motivate to treatment early
- Study early
- Specialist departments for young

## Efforts in Prison

- Small specialized departments for 100 young offenders – today only about 10 young girls in prison
- Special cognitive treatment programs
- ADHD-investigation
- Cooperation with other authorities like employment agency or social services
- The female prisoners are relatively few which means less institutions for them, often far away from home

## Efforts in probation service

- Specialized probation officers
- More treatment programs
- Intensified probation - The lay probation officer and/or Professional Mentor or coach?
- Network?
- Cooperation with other authorities like employment agency or social services  
Employment agency or healthcare located with probation service

## Conclusions

- Female juveniles slightly different picture than for men – more abused, sexual components, low self esteem
- More empirical data on male juveniles – adjust treatment programs to match
- Fewer females – fewer places for good treatment – adjust!
- Early and broad approach to treatment is vital
- Other alternatives than imprisonment for juveniles is always preferable
- Postponing entry into prison gives better prognosis, is more humane and cost effective

# **THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS**

## **– AN UPDATED BLUEPRINT FOR PRISON MANAGEMENT IN THE 21ST CENTURY –**

*Valerie Labaux\**

### **I. WHY AND HOW WAS THE REVIEW PROCESS OF THE SMRS INITIATED?**

The Standard Minimum Rules for the Treatment of Prisoners (1955)<sup>1</sup> constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners, and have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world. In recognition of the advances in international law and correctional science since 1955, however, the General Assembly decided, in 2011, to establish an open-ended intergovernmental Expert Group to review and possibly revise the SMRs. Civil society and relevant United Nations bodies were equally invited to contribute to the process.

### **II. HOW DID THE REVIEW PROCESS OF THE SMRS PROCEED?**

In the course of three meetings (2012-14) closely accompanied by the UN Office on Drugs and Crime (UNODC), the intergovernmental Expert Group, made progress in identifying thematic areas and specific rules for revision, while closely adhering to the overall parameters of the revision process determined by the General Assembly: (i) Any changes to the rules should not lower any of the existing standards but should improve them so as to promote safety, security and human conditions for prisoners; and (ii) The revision process should maintain the existing scope of application of the SMRs.

At its 4th meeting held in Cape Town, South Africa, in March 2015, the Expert Group reached consensus on all of the rules opened for revision. In May 2015, the Commission on Crime Prevention and Criminal Justice (CCPCJ) endorsed the revised rules and submitted the entire set of the revised SMRs for approval by the Economic and Social Council (ECOSOC) and subsequent adoption by the General Assembly as the “UN Standard Minimum Rules for the Treatment of Prisoners”.

### **III. WHY ARE THE RULES TO BE KNOWN AS THE NELSON MANDELA RULES?**

The 4th meeting of the Expert Group recommended the revised SMRs to be also known as the Nelson Mandela Rules in order to honour the legacy of the late President of South

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<sup>1</sup> As adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.



Africa, Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace. Nelson Mandela International Day (18 July) was further recommended to be also utilised to promote humane conditions of imprisonment, raise awareness about prisoners' being a continuous part of society and value the work of prison staff as a social service of particular importance.

#### **IV. WHICH AREAS OF THE STANDARD MINIMUM RULES HAVE BEEN REVISED (OVERVIEW)?**

After a careful analysis of the advances in international law, correctional science and best practices since 1955, the Expert Group opted for targeted revisions of the Standard Minimum Rules in the nine thematic areas as listed below. Altogether, around 35% of the rules have been revised and/or relocated.

#### **V. WHICH AREAS OF THE STANDARD MINIMUM RULES HAVE BEEN REVISED (HIGHLIGHTS)?**

##### **A. Prisoners' Inherent Dignity and Value as Human Beings**

§ refer to Rules 1 to 5 of the UN SMRs

Part I, which is applicable to all categories of prisoners, now includes an extended set of five "Basic Principles", which outline the overall spirit under which the rules should be read. Some of these principles have been relocated, in amended form, from Part II.A, which is reserved for sentenced prisoners. Other fundamental principles have been added in reflection of advances in international law. These include, in particular, an obligation to:

- treat all prisoners with the respect due to their inherent dignity and value as human beings;
- prohibit and protect prisoners from torture and other forms of ill-treatment; and to
- ensure the safety and security of prisoners, staff, service providers and visitors at all times.

##### **B. Vulnerable Groups of Prisoners**

§ refer to Rules 2(2), 5, 39(3) and 109-110 of the UN SMRs

The impartial application and the prohibition of discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property and birth included in the old version of the SMRs have been expanded to include "any other status". Importantly, putting into practice the principle of non-discrimination has been interpreted to include an active obligation to:

- take account of the individual needs of prisoners, in particular the most vulnerable categories;

- protect and promote the rights of prisoners with special needs; and to
- ensure that prisoners with physical, mental, or other disabilities have full and effective access to prison life on an equitable basis, and are treated in line with their health conditions.

### **C. Medical and Health Services**

§ refer to Rules 24-27, 29-35 of the UN SMRs

The revised rules emphasise that the provision of health care for prisoners is a State responsibility, and add significant detail to the overall principles, scope and composition of health-care services in prisons. Duties and prohibitions of health-care professionals are enhanced in line with the principle that their relationship with prisoners is governed by the same ethical and professional standards as those applicable to patients in the community. More specifically, these include:

- ensuring the same standards of health care that are available in the community and providing access to necessary health-care services to prisoners free of charge without discrimination;
- evaluating, promoting, protecting and improving the physical and mental health of prisoners, including prisoners with special health-care needs;
- adhering to the principles of clinical independence, medical confidentiality, informed consent in the doctor-patient relationship and continuity of treatment and care (incl. for HIV, tuberculosis, other infectious diseases and drug dependence);
- an absolute prohibition of health-care professionals from engaging in torture or other forms of ill-treatment, and an obligation to document and report cases of which they may become aware.

### **D. Restrictions, Discipline and Sanctions**

§ refer to Rules 36-39, 42-53 of the UN SMRs

Explicit reference is made to the principle that no use of restriction or disciplinary punishment may amount to torture or other forms of ill-treatment, and that all general living conditions continue to apply to prisoners subjected to disciplinary sanctions. New provisions further define and restrict the use of solitary confinement as well as the use of instruments of restraint, regulate searches of prisoners and cells, and clarify the role of health-care professionals in the context of disciplinary proceedings. In particular, the revised rules:

- define (prolonged) solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact (for more than 15 consecutive days), and restrict the use of solitary confinement as a measure of last resort to be used only in exceptional circumstances;

- prohibit indefinite or prolonged solitary confinement, the placement of a prisoner in a dark or constantly lit cell, the reduction of a prisoner's diet or drinking water as well as the use of instruments of restraint which are inherently degrading or painful, such as chains or irons;
- provide detailed guidance on searches of prisoners and cells as well as on the legitimate use of instruments of restraint in line with the need to ensure security and safety in the prison as well as the respect for the inherent human dignity of prisoners;
- confirm that health-care professionals should pay particular attention to involuntarily separated prisoners, but exclude their involvement in the actual imposition of disciplinary sanctions;
- encourage prison administrations to use, to the extent possible, conflict prevention, mediation or other alternative dispute resolution mechanisms to prevent or resolve conflicts.

## **E. Investigation of Deaths and Torture in Custody**

§ refer to Rules 6-10, 68-72 of the UN SMRs

Independent investigations are now foreseen in all cases of custodial death as well as in other situations of serious concern. For transparency and accountability purposes, the information to be registered for all prisoners has been expanded, as have been the notifications which the prison administration must give to prisoners or outside parties in far-reaching situations. More specifically, the revised rules:

- specify information to be entered in the file management system upon admission of every prisoner and in the course of imprisonment, and clarify that these shall be kept confidential;
- detail the right of prisoners or outside parties (family or designated contact persons) to be notified about imprisonment, transfer to another institution, serious illness, injury or death;
- require any custodial death, disappearance or serious injury of a prisoner to be reported to a competent authority independent of the prison administration mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases;
- require similar procedures whenever an act of torture or other ill-treatment may have been committed in prison, irrespective of whether a formal complaint has been received.

## **F. Access to Legal Representation**

§ refer to Rules 41, 54-55, 58-61, 119-120 of the UN SMRs

The right to be visited by and consult with a legal advisor which was restricted to untried prisoners and for the sole purpose of their defence in the original SMRs, has been extended to

all prisoners and to any legal matters in the revised rules. A qualified right of prisoners to have access to legal advice has further been established in case of disciplinary proceedings. Finally, a new rule provides guidance on entry and search procedures applicable to visitors. Accordingly, prison administrations are required to:

- inform prisoners, upon admission, about authorized methods of seeking access to legal advice, including through legal aid schemes;
- provide adequate opportunity, time and facilities to all prisoners to be visited by and communicate with a legal advisor of their own choice, or to a legal aid provider, on any legal matter without delay, interception or censorship and in full confidentiality;
- grant prisoners the right to defend themselves in person or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges;
- abstain from search and entry procedures for visitors which are degrading or in any way less protective than those outlined for searches of prisoners and cells.

#### **G. Complaints and Inspections**

§ refer to Rules 54-57, 83-85 of the UN SMRs

The revised rules strengthen the right of prisoners or their legal advisors to safely submit requests or complaints regarding their treatment, all of which shall be promptly dealt with by the prison administration and replied to without delay. An important advance has been achieved in the field of monitoring and inspections in the form of a two-fold system of regular internal and external inspections of prisons and penal services. More specifically, the new provisions:

- extend the right to file complaints to a prisoner's relatives or any other person who has knowledge of the case when a prisoner or his or her legal advisor are not able to do so;
- require the implementation of safeguards to ensure that requests and complaints can be submitted in a safe and, if so requested, confidential manner, without any risk of retaliation, intimidation or other negative consequences;
- establish a twofold system for regular inspections consisting of internal or administrative inspections conducted by the central prison administration and external inspections conducted by a body independent of the prison administration.
- grant prison inspectors key entitlements to effectively assume their tasks, including access to prison(er) records, unannounced visits at their own initiative as well as private and fully confidential interviews with prisoners and prison staff.

## H. Terminology

§ updated throughout the UN SMRs

The revised content of the SMRs also replaced outdated terminology, which was no longer acceptable in light of recent advances in international law, and to ensure the consistent use of terminology throughout the document. In particular, revisions under this thematic area focused on:

- updating health-related terminology;
- rendering the revised rules a gender-sensitive document.

## I. Staff Training

§ refer to Rules 75-76 of the UN SMRs

The revised rules provide detailed guidance on tailored staff training to be delivered both upon admission as well as in-service with a view to give all prison staff the ability and means to carry out their complex duties in a professional manner. Prison staff who are assigned specialised functions should benefit from training with a corresponding focus. Induction training should include theoretical and practical tests for admission into the prison service, and should cover the following subjects, at a minimum:

- relevant national legislation, regulations and policies as well as international or regional instruments which are to guide the work and interaction of prison staff with prisoners;
- overall rights and duties of prison staff in the exercise of their functions, including respect for the human dignity of prisoners and the prohibition of torture or other forms of ill-treatment;
- security and safety, including dynamic security as well as the use of force and instruments of restraint, with due consideration of preventive and defusing techniques; and
- first aid, addressing the psychological needs of prisoners as well as social care and assistance.

## VI. WHAT IS THE ROLE OF THE UNODC IN PROMOTING THE APPLICATION OF THE NELSON MANDELA RULES?

Within the UN system, the UNODC is the custodian of the international standards and norms in crime prevention and criminal justice, including the UN SMRs, and has therefore acted as Secretariat throughout the SMR review process. Building on its mandate to assist Member States, upon request, to apply these standards and norms in practice, the UNODC has built extensive experience in providing technical guidance and implementing assistance programmes in the field of prison reform. More recently, the UNODC has developed a strategic approach to address global prison challenges, which envisages an enhanced

engagement in (i) reducing the scope of imprisonment; (ii) improving prison conditions and prison management; and (iii) supporting the social reintegration of offenders upon release.<sup>2</sup>

Given the above, the UNODC is ideally placed to assist Member States in applying the Mandela Rules in practice. Accordingly, it has been requested to ensure broad dissemination of the Mandela Rules, to design guidance materials and to provide technical assistance and advisory services to Member States in the field of penal reform, in order to develop or strengthen penitentiary legislation, procedures, policies and practices in line with the Rules.

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<sup>2</sup> <http://www.unodc.org/unodc/en/justice-and-prison-reform/tools.html?ref=menu>side.

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## WORKSHOP REPORT

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### REPORT OF COMMITTEE I: WORKSHOP I

#### **Role of the United Nations standards and norms in crime prevention and criminal justice in support of effective, fair, humane and accountable criminal justice systems: experiences and lessons learned in meeting the unique needs of women and children, in particular the treatment and social reintegration of offenders**

##### **Proceedings**

1. At its 1st meeting, on 12 April 2015, the Thirteenth Congress elected by acclamation Roberto Rafael Campa Cifrián (Mexico) as Chair of Committee I. At its 1st meeting, on 13 April 2015, Committee I elected by acclamation Mark Rutgers van der Loeff (Netherlands) as Vice-Chair and Jeanne Mrad (Lebanon) as Rapporteur.

2. At its 1st to 3rd meetings, on 13 and 14 April 2015, Committee I held a general discussion on agenda item 3, entitled “Successes and challenges in implementing comprehensive crime prevention and criminal justice policies and strategies to promote the rule of law at the national and international levels, and to support sustainable development”. For its consideration of the item, the Committee had before it the following documents:

- (a) Background paper on workshop 1, on the role of the United Nations standards and norms in crime prevention and criminal justice in support of effective, fair, humane and accountable criminal justice systems: experiences and lessons learned in meeting the unique needs of women and children, in particular the treatment and social reintegration of offenders (A/CONF.222/10);
- (b) Discussion guide (A/CONF.222/PM.1);
- (c) Reports of the regional preparatory meetings for the Thirteenth Congress (A/CONF.222/RPM.1/1, A/CONF.222/RPM.2/1, A/CONF.222/RPM.3/1 and A/CONF.222/RPM.4/1).

3. The workshop was moderated by Yvon Dandurand, fellow and senior associate at the International Centre for Criminal Law Reform and Criminal Justice Policy. Keynote speeches were delivered by Princess Bajrakitiyabha Mahidol of Thailand, and by Marta Santos Pais, Special Representative of the Secretary-General on Violence against Children, via recorded video message. Presentations were made by the following panellists: Haitham Shibli, Penal Reform International; Kittipong Kittayarak, Thailand Institute of Justice; Maria Noel Rodriguez, United Nations Office on Drugs and Crime (UNODC); Uju Agomoh, Prisoners Rehabilitation and Welfare Action of Nigeria; Kelly

Blanchette, Mental Health Branch, Correctional Service Canada; Sandra Fernández, Regional Penitentiary Academy, Office of the Attorney General of the Dominican Republic; Sara Robinson, National Probation Service of the United Kingdom; Masako Natori, Ministry of Justice of Japan; Alexandra Martins, UNODC; Zhao Bingzhi, Beijing Normal University; Carlos Tiffer, Latin American Institute for the Prevention of Crime and the Treatment of Offenders; Horace Chacha, Shikusa Borstal Institution, Kenyan Prisons Service; Christian Ranheim, Raoul Wallenberg Institute of Human Rights and Humanitarian Law; and Mohammed Hassan Al Sarra, Naif Arab University for Security Sciences.

4. The 1st and 3rd meetings, on 13 and 14 April, were chaired by Roberto Rafael Campa Cifrián (Mexico), and the 2nd meeting, on 13 April, was chaired by Mark Rutgers van der Loeff (Netherlands).

5. At the 1st meeting, introductory remarks were made by a representative of the Secretariat, the Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and the Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

6. At the 2nd meeting, statements were made by the representatives of the United States, Azerbaijan, Canada, Saudi Arabia, Switzerland, Thailand, Turkey, Paraguay, Pakistan, Indonesia and South Africa. Statements were also made by the observers for Quaker United Nations Office and Penal Reform International, as well as by two individual experts.

7. At the 3rd meeting, statements were made by the representatives of Slovenia, Canada, Thailand, the United States, Mauritania and Spain. The observer for the European Union also made a statement.

### **General discussion**

8. The keynote speaker, opening the panel discussion on “Women: treatment of offenders, rehabilitation and social reintegration”, recalled the various United Nations standards and norms developed through the years, particularly those related to the treatment of prisoners, and recent international developments in promoting the fundamental rights of women prisoners, including the adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). Reference was made to the current status of the implementation of those standards at the national level, and it was noted that the status of implementation varied from one country to another. The importance of fair, humane and gender-sensitive treatment for the rehabilitation of women prisoners and offenders for their successful reintegration into the community was also highlighted.

9. The first panellist presented the results of surveys undertaken by Penal Reform International in a number of countries on the characteristics of women prisoners and women offenders and the impact of imprisonment on women. Reference was made to a series of technical assistance tools developed to assist countries in implementing an integrated approach to meet the needs of women offenders and prisoners. The second



panellist illustrated the impact of imprisonment on incarcerated mothers and their children and presented the experience of Thailand in enhancing mother-child relations, medical care and living conditions for pregnant women, nursing mothers, women with children in prison and foreign women prisoners. He emphasized the need for developing gender-sensitive national laws and policies and promoting human-rights-based correctional practices, as well as for ensuring support from the public for penal policies related to women prisoners and women offenders. The panel then heard about the progress made in Latin America in implementing the Bangkok Rules. Examples of gender-sensitive policies and practices from different countries in that region were provided. The fourth panelist analysed the situation of women in prison or pretrial detention in Africa, highlighting practical measures to improve the treatment and protection of women prisoners in developing countries. In the fifth presentation, experiences from the federal correctional system of Canada in the treatment of women prisoners and offenders were presented, including gender-responsive and tailored policies and programmes based on gender-specific assessments, gender-responsive staffing models and redesigned prison infrastructure, as well as correctional and social programming and mental health treatment for women. The prison management model of the Dominican Republic was then presented, in particular its special programmes for the treatment of women prisoners and for the preparation for the reintegration of women prisoners into society. The panel also heard about experiences from the probation services of England and Wales in the supervision of women offenders in the community, where a number of gender-sensitive and women-specific offender management and social reintegration services were available, based on a multiagency approach. The final presentation illustrated the situation of women offenders, women's prisons and female prison officers in Japan, along with measures taken to address the increased number of female inmates, secure the stable employment of female prison officers, build their capacity and improve their working environment.

10. During the discussion, several speakers reflected on the situation of women in prisons in different parts of the world and the challenges they faced in that regard, and detailed their respective national experiences in dealing with women prisoners and offenders. It was recognized that the number of women in prisons was increasing at a higher rate than the population of male prisoners was. The unique situation of older women in prisons, as well as of prisoners with disabilities, was highlighted. It was noted that women were in prison mostly for offences related to drug trafficking and minor offences and that many had a history of victimization, especially violence. In that regard, a project developed by the European Institute for Crime Prevention and Control, affiliated with the United Nations, addressing women in prison who had experienced childhood, intimate partner or other forms of physical and sexual violence, was mentioned. Participants listed challenges related to women in prison and, in that respect, mention was made of the difficulties of women with children in maintaining relationships with their children, which increased their suffering and had a major impact on the children. Participants agreed women, and emphasized that a holistic approach was needed, combined with a strategy that involved all relevant stakeholders, including communities. Participants shared best practices and agreed that gender-specific rehabilitation and reintegration programmes had a greater impact on women, and that such programmes needed to be evidence-based and adjusted to the specific needs of

women, based on assessment and ongoing data collection. Others highlighted the importance of the transparency and openness of prisons, combined with monitoring to ensure that rights were respected. Success stories could be shared on how the use of the media could be beneficial with regard to changing the stigma still faced by women prisoners.

11. The panel on “Children: treatment of offenders, rehabilitation and social reintegration” was opened by the Special Representative of the Secretary-General on Violence against Children, who delivered a keynote speech via video link. She recalled the most relevant standards and norms related to children in conflict with the law and noted how there was still a serious governance gap between the normative frameworks that such instruments provided and their implementation. She also referred to the situation of children living in violent contexts, children with mental health problems deprived of their liberty and girls deprived of their liberty, underlining the importance of the recently adopted United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice<sup>1</sup> in protecting the rights of such children.

12. The first presentation focused on the provisions contained in the Model Strategies and Practical Measures and the work of UNODC to support the implementation of that new instrument, including the joint UNODC-UNICEF Global Programme on Violence against Children in the Field of Crime Prevention and Criminal Justice. Recent activities to assist countries in implementing the Model Strategies and Practical Measures, and in particular the UNODC checklist to facilitate assessments and measures to bring justice systems into compliance with the new legal instrument, were the focus of the second presentation. The panel then heard about the initiatives undertaken by China in dealing with children in conflict with the law, which stressed the role of family, school and social organizations and the reforming of relevant laws, policies and practices based on international instruments and standards. The focus of the fourth presentation was on good practices concerning alternatives to judicial proceedings from the Costa Rican juvenile justice system, including remission, plea bargains, dismissals and the closing of case files, reconciliation processes, suspension of proceedings and redress for damages. The fifth panellist illustrated the experiences of Kenya in dealing with children in conflict with the law, in particular the Shikusa Borstal Institution, which provided programmes to ensure that offenders were prepared for a crime-free life upon release and to allow their smooth reintegration into the community. During the panel, the findings of a recent baseline study on juvenile justice systems conducted by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in the Association of Southeast Asian Nations region were shared. The study identified common trends, best practices and main challenges throughout the region regarding treatment, rehabilitation and social reintegration of juvenile offenders. The seventh presentation focused on the experience of Saudi Arabia with regard to the rehabilitation and social reintegration of children in conflict with the law into the community, analysing the risk factors for children coming into conflict with the law and then presenting an overview of the different mechanisms available to the community for care and rehabilitation. The final

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<sup>1</sup> General Assembly resolution 69/194.

presentation, focusing on the treatment of young female offenders, illustrated the philosophy of the Swedish prison system of using prison as a last resort for that type of offender, an approach that was one of the most effective measures for facilitating rehabilitation and social reintegration.

13. A representative of the Secretariat provided an update on the revision of the standard minimum rules for the treatment of prisoners that had been mandated by the General Assembly in 2010.

14. During the discussion, there was broad agreement among participants on the high value of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice as a powerful tool for Member States to protect the rights of children in contact with the justice system and to effectively prevent and respond to incidents of violence. One speaker commended UNODC for having developed, with the United Nations Children's Fund (UNICEF), a global programme on violence against children in the field of crime prevention and criminal justice, and encouraged Member States to provide funding. Delegates referred to progress achieved to date by national Governments in promoting the rights of children in contact with the law and protecting them from violence. Several speakers expressed support for the outcome of the revision process of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which had been finalized by the Intergovernmental Expert Group Meeting at its fourth meeting, held in Cape Town, South Africa, in March 2015, and recommended the revised set of Rules for endorsement by the Commission on Crime Prevention and Criminal Justice at its twenty-fourth session.

## **Conclusions**

15. The conclusions of the discussions, as summarized by the moderator on behalf of the Chair, are as follows:

- (a) Member States should adopt or amend legislation, policies and measures for women offenders and children in conflict with the law in line with relevant United Nations standards and norms and provide adequate funding for their implementation;
- (b) Member States are invited to mainstream a gender perspective into criminal justice systems with programmes that take into account the histories of women offenders, including victimization history and related mental health issues;
- (c) Member States are encouraged to review relevant national legislation, policies, procedures and practices to effectively prevent and respond to violence against children who are alleged offenders or victims or witnesses of crime;
- (d) To improve the effectiveness of the criminal justice system in preventing and responding to serious forms of violence against children, the complementary roles of the justice system and the child protection, social welfare, health and education sectors should be recognized;

- (e) Member States should promote the use of alternative measures to judicial proceedings both for women and children. The principle that deprivation of liberty of children should only be used only as a measure of last resort and for the shortest appropriate period of time should be respected. Likewise, whenever possible, the use of pretrial detention for children should be avoided;
- (f) Member States should develop gender-specific health care within prisons, taking into account sexually transmitted diseases; mental health-care needs, including risk of suicide and self-harm; pregnancies and related reproductive health issues; the existence of drug dependency; and sexual abuse and other forms of violence;
- (g) Proper measures should be in place to address the specific needs of children deprived of their liberty, in particular as relates to health-care services and hygiene;
- (h) Member States are invited to develop and implement trauma-informed programmes and interventions for women prisoners and children in conflict with the law;
- (i) Member States should minimize the use of imprisonment for pregnant women and mothers with young children. If imprisonment is unavoidable, services such as nurseries, mother-child units, nursing care and formal education for the children of women prisoners should be provided, and cooperation with relevant organizations, including non-governmental organizations, the private sector and the community, should be encouraged;
- (j) UNODC, in cooperation with UNICEF and the Office of the United Nations High Commissioner for Human Rights (OHCHR), is invited to develop guidance for countries on how to determine and interpret the best interests of the children of incarcerated mothers;
- (k) Member States should develop gender-specific rehabilitation and reintegration treatment programmes, both in institutions and in the community, including during the aftercare phase, taking into account the special treatment needs of women, such as substance abuse, lack of adequate education, and victimization history;
- (l) Member States should provide support, programmes and services for children deprived of their liberty prior to and after release in order to promote their rehabilitation and reintegration into the community;
- (m) Rehabilitation and reintegration programmes for women prisoners and children deprived of their liberty should be implemented in coordination with relevant non-governmental organizations, the private sector and the community;
- (n) Member States should develop policy guidance on how to deal with women offenders from minority groups, including foreign nationals and indigenous women;
- (o) Member States should strengthen the use of evidenced-based research in the implementation of strategies related to women offenders and children in conflict

with the law. In particular, Member States are encouraged to incorporate gender variables into their criminal justice statistics and develop case management databases with gender-specific data. Furthermore, they are invited to develop a system for collecting and reporting juvenile justice data and statistics, in particular on the status of children deprived of their liberty, and to contribute to the undertaking of an in-depth global study on children deprived of liberty, in line with General Assembly resolution 69/157;

- (p) Member States should raise awareness of and disseminate relevant international instruments and standards and norms, including the Bangkok Rules and the Model Strategies and Practical Measures, to all relevant criminal justice officials, non-governmental organizations and the community;
- (q) In view of the importance of public support and participation in the development of penal policies, strategies and programmes related to women prisoners and children in conflict with the law, efforts should be made to ensure such support and participation;
- (r) Member States are encouraged to strengthen their training and capacity-building activities for criminal justice personnel based on relevant international instruments and standards and norms;
- (s) Member States should design effective national strategies for the promotion of female corrections officers to leadership and managerial roles in the treatment of women offenders;
- (t) Member States should promote the sharing of good practices in the treatment and social reintegration of women offenders and children in conflict with the law at the regional and international levels;
- (u) UNODC should continue providing assistance and support to countries, upon request, to implement the Bangkok Rules and the Model Strategies and Practical Measures. Member States are invited to make full use of the tools developed by UNODC;
- (v) Member States are encouraged to provide financial and other resources to strengthen the technical assistance capacity of UNODC to address the needs of women prisoners and offenders, as well as to protect all children who are in contact with the justice system from violence, including through the implementation of the UNODC-UNICEF Global Programme on Violence against Children in the Field of Crime Prevention and Criminal Justice;
- (w) The Commission on Crime Prevention and Criminal Justice is invited to endorse the revision of the Standard Minimum Rules for the Treatment of Prisoners, in accordance with existing mandates, with a view towards the final adoption of the revised set of rules by the General Assembly.



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## **ANNEX**

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### **List of Participants (Moderators, Speakers and Panellists)**

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### **Photographs**





## List of Participants (Moderators, Speakers and Panellists)

### Workshop Moderator

Prof. Yvon Dandurand

Fellow and Senior Associate  
International Centre for Criminal Law  
Reform and Criminal Justice Policy  
(ICCLR)  
Vancouver, Canada

### Opening Remarks

Ms. Claudia Baroni

United Nations Office on Drugs and  
Crime (UNODC)  
Vienna, Austria

Mr. Morten Kjaerum

Director  
Raoul Wallenberg Institute of Human  
Rights and Humanitarian Law (RWI)  
Lund, Sweden

Mr. Terutoshi YAMASHITA

Director  
United Nations Asia and Far East  
Institute for the Prevention of Crime and  
the Treatment of Offenders (UNAFEI)  
Tokyo, Japan

### PANEL I

#### Keynote Speech

HRH Princess Bajrakitiyabha Mahidol

Ambassador Extraordinary and  
Plenipotentiary of the Kingdom of  
Thailand to the Republic of Austria

#### Canada

Dr. Kelley Blanchette

Director General  
Mental Health Branch  
Correctional Service Canada

#### Dominican Republic

Ms. Sandra Fernandez

Academic Director  
Regional Penitentiary Academy  
Office of the Attorney General of the  
Dominican Republic

#### Japan

Ms. Masako Natori

Director of Facilities Division  
Ministry of Justice  
Tokyo, Japan

**Nigeria**

Dr. Uju Agomoh

Executive Director  
Prisoners Rehabilitation and Welfare  
Action (PRAWA)  
Enugu, Nigeria

**Thailand**

Dr. Kittipong Kittayarak

Executive Director  
Thailand Institute of Justice  
Bangkok, Thailand

**United Kingdom**

Ms. Sara Robinson

Deputy Director  
National Probation Service  
United Kingdom

**PRI**

Mr. Haitham Shibli

Research and Communication Manager  
Penal Reform International (PRI)

**UNODC-ROPAN**

Ms. Maria Noel Rodriguez

Prison Reform Team Coordinator  
Regional Programme Office in Panama  
(ROPAN)  
United Nations Office on Drugs and  
Crime (UNODC)

**PANEL II****Keynote Speech**

Dr. Marta Santos Pais

Special Representative of the United  
Nations Secretary-General on Violence  
against Children

**Kenya**

Mr. Horace Chacha

Chief Superintendent in Charge  
Shikusa Borstal Institution  
Kenyan Prisons Service

**Sweden**

Mr. Christer Isaksson

Director  
Office for International Affairs  
Swedish Prison and Probation Service

**CCLS**

Prof. Zhao Bingzhi

Dean of the Law School and College for  
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## PHOTOGRAPHS



The Congress Workshop



Opening remarks by the UNODC





Panellists of the Congress Workshop



Presentation by a Workshop Panellist