



Women In Prison

Africa Regional Initiative | 2019



WOMEN
IN
PRISON | EVIDENCE
ADVOCACY
REFORM



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Introduction

The Issue

There are more women in prison than ever before. Between 2000 and 2015, the number of women in prison increased by 50%, twice the rate of male prisoners.¹ This trend has also been observed across Africa, where women now constitute up to 6% of national prison populations.² Many African countries have experienced a growth of over 200% in their women prison populations in the last 20 years.³

Women in prison face unique challenges. They typically come from backgrounds of disadvantage, including mental illness, trauma, abuse, neglect, and domestic violence.⁴ In prison, they are vulnerable to mistreatment, including sexual assault.⁵ Because women make up a smaller percentage of the prison population than men, their specific needs are often neglected. And for the many women prisoners who are pregnant or primary caregivers, prison presents extreme challenges in health and childcare.⁶

These issues have reached the attention of the African Commission on Human and Peoples' Rights ("African Commission"). The African Commission Special Rapporteur on Prisons, in its 2012 report on Conditions of Detention and Policing in Africa ("Special Rapporteur") has observed that:

"There are several critical problems faced by women in prison – most are unmet in the prison environment. Women in prison have experienced victimization, unstable family life, school and work failure, and substance abuse and mental health problems. Social factors that marginalize their participation in mainstream society and contribute to the rising number of women in prison include poverty, minority group member, single motherhood, and homelessness.

While in prisons, women, like prisoners throughout the world, face specific pains and deprivations arising directly from their imprisonment. Women in African prisons are overwhelmingly poor and uneducated. They are frequently incarcerated for crimes such as murder and attempted murder, infanticide, abortion, theft and alcohol brewing (Sudan). Sexism is apparent in the criminalization and sentencing of certain conducts. For example, in many countries abortion – which

only women can obtain – is punished by life sentence. Once in prison, discrimination against women persists. Vocational and recreational programs are more often than not inadequate. Prisons often lack appropriate supplies to accommodate menstruating women."

Despite the scale of the problem, and the legal standards governing the treatment of women prisoners (see below), little is known about their treatment. At a recent international forum for advocates of women prisoners, hosted by the Vance Center in Bogota, Colombia,⁷ many advocates cited the lack of research and data as one of the main barriers to effective advocacy and law reform. The purpose of this report is to identify what is currently known about the treatment of women prisoners in several African jurisdictions – The Gambia, Kenya, Malawi, Nigeria, and Tanzania – and identify priorities for further research.

The Law

African regional human rights law contains ample protections for incarcerated women. These include provisions of the African Charter on Human and Peoples' Rights ("African Charter"), the African Charter on the Rights and Welfare of the Child ("ACRWC"), and the Protocol to the African Charter on the Rights of Women in Africa ("Maputo Protocol"). These instruments prohibit discrimination against women,⁸ affirm the rights of prisoners⁹ and the value of the family,¹⁰ and provide minimum requirements of criminal procedure.¹¹ Specifically, these instruments require that a mother of an infant or young child should not be imprisoned with her child,¹² must be considered for a non-custodial sentence,¹³ and that detained pregnant or nursing women must be provided "with an environment which is suitable to their condition and the right to be treated with dignity."¹⁴

These binding instruments are supplemented by several other instruments promulgated by the African Commission.¹⁵ These include:

- The Guidelines on Combating Sexual Violence and its Consequences in Africa ("GCSVA") call on the state to prevent "all forms of sexual violence and its

consequences,” and investigate and prosecute the perpetrators of sexual violence;¹⁶

- The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (“Luanda Guidelines”), which include specific protections for women, girls, and children accompanying mothers in pre-trial detention;¹⁷
- The Kampala Declaration and Plan of Action on Prison Conditions in Africa (“Kampala Declaration”), which together with the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa (“Ouagadougou Declaration”), calls for particular attention to be paid to improving the condition of women in prison;¹⁸
- The Principles on the Decriminalization of Petty Offences in Africa (“PDPOA”), which recognize that laws targeting petty offenses have a disproportionate effect on women, and that states must “provide alternatives to arrest and detention” for petty offenses;¹⁹ and
- The Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (“Robben Island Guidelines”), which call for women to be held in “appropriate and separate detention facilities”;²⁰ that complaints be properly investigated;²¹ and that prison staff be adequately trained.²²

These African legal mechanisms are consistent with the United Nations’ international standards for the treatment of prisoners. The United Nations Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”) set out detailed rules on the treatment of prisoners. The Mandela Rules call for women prisoners to be housed separately from male prisoners, prohibit discrimination, and contain special rules for the treatment of women prisoners and their children. Article 33 of the Luanda Guidelines calls on states to “[t]ake steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by” the Mandela Rules.

Crucially, the Mandela Rules are supplemented by the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (“Bangkok Rules”). The Bangkok Rules are the primary international legal standards for the treatment of women prisoners, and contain detailed provisions relating to admission, personal hygiene and

healthcare, safety and security, contact with the outside world, prison staff, juvenile women prisoners, special categories of prisoners, as well as non-custodial sentencing and research. The Bangkok Rules were adopted by the United Nations General Assembly in 2010.²³

This Report

This report provides an assessment of what is known by the legal and non-governmental organizations (“NGO”) communities about the treatment of women prisoners in five African countries – The Gambia, Kenya, Malawi, Nigeria, and Tanzania. In each country, one NGO working on the issue of women’s imprisonment, together with a local lawyer or lawyers, was asked to complete a survey (with the exception of Malawi, where the survey was completed by an NGO but not by local lawyers). NGOs were selected from a network of NGOs working on the issue of women’s imprisonment, following an international conference hosted by the Vance Center in July 2018.

Participating NGOs included:

- The Center for Human Rights Education, Advice and Assistance (“CHREAA”), Malawi
- The Faraja Foundation, Kenya
- The Institute for Human Rights and Development in Africa (“IHRDA”), The Gambia
- The Legal and Human Rights Centre (“LHRC”), Tanzania
- Prisoners’ Rehabilitation and Welfare Action (“PRAWA”), Nigeria

Participating law firms included:

- Torodo Chambers, The Gambia
- Bowmans (Coulson Harney LLP), Kenya
- Olaniwun Ajayi, Nigeria
- VELMA Law, Tanzania
- ARS Law & Advisories, Tanzania

The survey was based on regional and international legal standards concerning the treatment of women prisoners, and in particular, on the Bangkok Rules, the African Charter, and the relevant rules and guidelines issued by the African Commission.

This report is not a definitive account of the treatment of women prisoners in each country. Rather, it

represents a summary of what is currently known by a targeted group of practitioners who are considered well placed to observe. As reflected in this report's recommendations, the survey sought to identify issues for further research – issues where little is currently known, or where survey results suggest that the surveyed jurisdictions may be falling short of their international and regional obligations.

The NGO Community

The NGO community has a significant role to play. NGOs across Africa and around the world are vital in inspecting women's prisons, providing legal and other services to women prisoners, and advocating for reform. Some of the work of participating NGOs is highlighted throughout this report. Because of this work, NGOs in many cases have the most intimate knowledge of prison conditions, as well as the background and experiences of women prisoners.

In addition to this report, the Vance Center is currently working with another NGO, AdvocAid, in Sierra Leone on a detailed empirical study of women's incarceration in that country. The study involves in-depth interviews with women prisoners and other stakeholders. Importantly, the Sierra Leone study is intended to empower currently and formerly incarcerated women, and some of such formerly incarcerated women were involved in the research design. It is hoped that reports which identify areas for further research, such as this present report, might spur more empirical studies such as that currently being conducted in Sierra Leone. Detailed empirical data is crucial in informing any advocacy or reform strategy.

This report is one example of the work that NGOs can do in researching the issue of women's incarceration. The Vance Center will continue to work with NGOs in the African region and elsewhere to better understand the causes, conditions, and consequences of women's imprisonment and to improve advocacy for reform.

Acknowledgments

The Vance Center would like to acknowledge the law firm of Allen & Overy LLP and The Bank of New York Mellon for their work in analyzing survey results, and compiling and designing this report. The Vance Center would also like to thank the participating NGOs (IHRDA, the Faraja Foundation, CHREAA, PRAWA, and LHRC) for their participation in the survey, as well as the participating lawyers and law firms.

- ¹ There are more women in prison than ever before, *Across Women's Lives*, PENAL REFORM INTERNATIONAL: UNEQUAL JUSTICE (Apr. 2, 2018, 3:00 PM), <https://interactive.pri.org/2018/04/unequal-justice/index.html>.
- ² Med S. K. Kaggwa, *Report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa: 52nd Ordinary Session of the African Commission and People's Rights*, SPECIAL RAPPOURTEUR ON PRISONS, CONDITIONS OF DETENTION AND POLICING IN AFRICA ("Special Rapporteur") (Oct. 9-22, 2012), <https://www.achpr.org/sessions/intercession?id=144>.
- ³ Roy Walmsley, *World Female Imprisonment List*, INSTITUTE FOR CRIMINAL POLICY RESEARCH (Sept. 2017), http://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_prison_4th_edn_v4_web.pdf. In Malawi and Tanzania, however, the number of women prisoners has remained stable.
- ⁴ Catherine Heard, *Why are women prisoner numbers rising so rapidly?*, PENAL REFORM INTERNATIONAL: UNEQUAL JUSTICE (Nov. 9, 2017), <https://www.penalreform.org/blog/why-are-women-prisoner-numbers-rising-so-rapidly/>.
- ⁵ *Id.*
- ⁶ Kaggwa, *supra* note 2.
- ⁷ See *The Vance Center Convenes Global Workshop on Women in Prison*, CYRUS R. VANCE CENTER FOR INTERNATIONAL JUSTICE, July 2018, <https://www.vancecenter.org/the-vance-center-convenes-global-workshop-on-women-in-prison/>. The conference was co-hosted with Penal Reform International.
- ⁸ African Charter art. 2; Maputo Protocol art. 2.
- ⁹ African Charter art 5.
- ¹⁰ *Id.* at art. 18.
- ¹¹ African Charter arts. 6-7; Maputo Protocol art. 8.
- ¹² ACRWC art. 30.
- ¹³ *Id.*
- ¹⁴ Maputo Protocol art. 24.
- ¹⁵ Pursuant to art. 45 of the African Charter.
- ¹⁶ GCSVCA guidelines nos. 5-7, 9-10.
- ¹⁷ Luanda Guidelines, guideline no. 32.
- ¹⁸ Kampala Declaration article 5(d); Ouagadougou Declaration art. 2-4.
- ¹⁹ PDPOA principles nos. 6, 14.2.
- ²⁰ Robben Island Guidelines art. 36.
- ²¹ Robben Island Guidelines arts. 17-19.
- ²² Robben Island Guidelines arts. 45-46.
- ²³ For a detailed guide to the Bangkok Rules, see *Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders*, Toolbox on UN Bangkok Rules ("Bangkok Rules"), PRISON REFORM INTERNATIONAL (Oct. 2013), <https://cdn.penalreform.org/wp-content/uploads/2013/10/PRI-TIJ-Guidance-Document-on-Bangkok-Rules-October-2013.pdf>.



Executive Summary

Overall, results suggest that the jurisdictions surveyed are meeting some, but not all, of the standards established for incarcerated women under international and regional standards. Survey results also suggest that NGOs do not have full access to information about incarcerated women, and that such information is not always made public. This report provides recommendations to governments, NGOs, and donors to better understand and address pathways to prison and the impact of imprisonment on women and their children, as well as improve prison conditions to take into account women's particular needs and characteristics.

Section One: Alternatives to Incarceration

Survey results suggest that alternatives to incarceration are employed in at least some circumstances. Suspended sentences appear to be the most consistently available alternative, while the availability of diversionary measures, restorative justice, tribal processes and treatment programs varied across the countries surveyed. Surveys reported a mixed rate of compliance with regional and international legal standards with respect to whether sentencing authorities consider a woman's parental duties in determining the type and length of a sentence. Although most of the countries surveyed provided for such consideration in national law, responses suggested that these parental responsibilities are not always considered in practice.

Section Two: Capacity Building and Policies for Staff

Capacity building in the form of training and policy implementation appear to be either lacking, unpublicized, or in early stages of development in most of the jurisdictions surveyed. In many cases, NGOs – either working independently or together with state authorities – are involved in staff capacity building programs, such as developing guidelines or conducting staff training.

Section Three: Education and Work Opportunities for Prisoners

While various forms of training generally are provided by prisons in countries surveyed, survey results suggest disparity in practice as to whether prisons provide women with adequate access to vocational training and education, and in some cases it appears that women receive fewer opportunities than their male counterparts. It also appears that in some cases, women are unremunerated for compulsory work performed while in prison. In many countries, NGOs play an important role in providing vocational training and work opportunities for women prisoners.

Section Four: Gender-Specific Physical Health and Hygiene in Prisons

Survey results suggest that in many cases, prison physical health and hygiene conditions generally fall short of international standards. In most of the countries surveyed, respondents reported that prisoners lacked access to soap, towels, toothbrushes, toothpaste, and facilities for regular bathing. Moreover, most survey results suggested that prisons do not offer freely-accessible menstrual hygiene products such as pads and tampons to women. Additionally, survey results suggest an absence of accessible information on prisoners' access to preventive healthcare. On the other hand, NGOs reported that in most states, prison healthcare services are integrated into broader community services, in line with international standards.

Section Five: Safety and Abuse – Gender Separation

Most of the countries surveyed have implemented gender-specific staffing policies and measures to ensure that men and women are detained separately. In most cases, women prisoners are supervised by women staff and are either housed in entirely separate institutes, or different areas within the same prison.

Section Six: Children of Women Prisoners

Survey results suggest that imprisoned women are not always provided with time and assistance to arrange for care of their children outside of prison. Moreover, it was reported that most of the countries surveyed use a mandatory cut-off age, rather than an individual assessment process, to determine whether children remain with their mothers in prison. Additionally, although contact between mothers and their children within the prison environment is usually significant, detention facilities often fail to meet the basic needs of minors who reside with their mothers in prison. Finally, survey responses suggest that incarcerated women do not receive adequate prenatal and postnatal healthcare.

Section Seven: Contact with Family Outside Prison

Survey results suggest that detention facilities in most jurisdictions surveyed employ limitation of family contact as a disciplinary measure. Such limitation violates international and regional legal instruments, including the Bangkok Rules and the Robben Island Guidelines. Moreover, despite efforts to implement child-friendly visitations, prisons in the majority of the countries surveyed do not appear to facilitate interaction between incarcerated women and their families. Lastly, women – who are especially vulnerable to domestic violence – are not always consulted on whether they wish to allow visits from certain family members.

Section Eight: Legal Assistance, Inspections and Oversight

Survey results suggest that women prisoners are not always given comprehensive information about prison rules upon detention. In most of the jurisdictions surveyed, it was reported that women do not receive written copies of the regulations which govern their treatment in detention. Moreover, it was reported that in many of the countries surveyed, women prisoners do not always have access to legal aid. Additionally, while NGOs are permitted to perform some form of prison inspection in most of the jurisdictions surveyed, little is known about the internal handling of abuse claims.

Section Nine: Data and Research

Survey results suggest that at least some data regarding women prisoners is available throughout all jurisdictions surveyed. However, beyond basic data about the number of women in prison, there appears to be little consistency in the types of data collected. Furthermore, many respondents questioned whether data is accurate and current.



Methodology

This report analyzes data gathered from two surveys developed by the Cyrus R. Vance Center for International Justice (“the Vance Center”). The surveys were designed to assess domestic compliance in several African countries with international standards relating to the causes, conditions and consequences of women’s incarceration. Survey questions were closely aligned with standards set in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“Bangkok Rules”). The surveys also incorporated standards from other relevant international and regional instruments, including the African Charter on Human and Peoples’ Rights.²⁴ The first survey was addressed to NGOs working on the issue of women’s incarceration, and sought to elicit information on the practical application of regional and international standards as observed in respondents’ day-to-day work. The second survey was addressed to lawyers, and sought to elicit information on the alignment between formal domestic legislation and regulation, and international and regional standards.

Participants

The first of the two surveys was completed by NGOs in five jurisdictions: Kenya, Malawi, Nigeria, Tanzania, and The Gambia. One NGO was selected to participate from each country. The NGOs selected work with or advocate on behalf of women interacting with the criminal justice system. NGO participants were instructed to answer questions based on their own experiences with their jurisdiction’s justice and corrections systems. Participants were instructed not to conduct independent research.

Participant NGOs and jurisdictions were selected on the basis of their participation in a wider project advanced by the Vance Center (the “Women in Prison” project), which seeks to highlight the issue of women’s incarceration and build connections between civil society organizations across the globe. This project began with a conference in Bogota, Colombia in 2018, and also comprises an empirical pilot research project in Sierra Leone.

The second survey was completed by lawyers in the same jurisdictions (other than Malawi), Kenya, Nigeria, Tanzania and The Gambia.²⁵ Lawyers were instructed to answer survey questions based on their jurisdiction’s laws (including primary legislation and secondary regulation), as well as government information requests and publicly available information. Participants were instructed not to research beyond these sources. Results from both surveys were analyzed by the Vance Center together with the global law firm, Allen & Overy LLP and The Bank of New York Mellon.

Survey Components

Each survey was divided into nine subject areas:

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|---|--|
| 1. Alternatives to Custodial Sentencing. | 6. Children of Women Prisoners. |
| 2. Prison Staff Training. | 7. Contact with the Outside World. |
| 3. Vocational Training and Education. | 8. Legal Assistance, Inspections, and Oversight. |
| 4. Gender-Specific Physical Health and Hygiene. | 9. Data and Research. |
| 5. Safety and Abuse. | |

Limitations

This report provides an overview of what is known about women’s incarceration in the selected jurisdictions from the perspective of NGOs working in the field, and information available to local lawyers. The analysis does not purport to be an exhaustive analysis of women’s incarceration in any of the jurisdictions surveyed, or the African region more broadly. Nor does this report purport to speak for women prisoners themselves. Rather, this report provides a snapshot of NGO experiences and public information relating to the issue, assessed against international and regional standards. It is hoped that this report may identify “knowledge gaps”, and areas of particular concern for further inquiry in the surveyed jurisdictions and elsewhere.

²⁴ Other instruments included: 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 (“UNCROC”); the International Covenant on Civil and Political Rights (“ICCPR”); the International Covenant on Economic, Social and Cultural Rights (“ICESCR”); the United Nations Standard Minimum Rules for Non-Custodial Measures (“Tokyo Rules”); the United Nations Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”); the African Charter on the Rights and Welfare of the Child (“ACRWC”); the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (“Maputo Protocol”); the African Commission Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (“Luanda Guidelines”); the Kampala Declaration and Plan of Action on Prison Conditions in Africa (“Kampala Declaration”); the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa (“Ouagadougou Declaration”); the Principles on the Decriminalization of Petty Offences in Africa (“PDPOA”); and the African Commission Resolution on Guidelines and Measures for the Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (“Robben Island Guidelines”).

²⁵ Unfortunately, it was not possible to complete the second survey in Malawi.



Survey Results

Section One: Alternatives to Custodial Sentencing

1.1 Alternatives to Incarceration

Both the Ouagadougou Declaration and the Principles on the Decriminalization of Petty Offences in Africa recommend that State Parties to the African Charter should take measures to decriminalize certain petty offenses and measures to provide alternatives to arrest and detention for minor offenses that are not decriminalized.

In all jurisdictions surveyed, alternatives to incarceration are employed in at least some circumstances. Suspended sentences appear to be the most consistently available alternative, while the availability of diversionary measures, restorative justice, tribal processes and treatment programs varied across countries surveyed.

1.2 Diversionary Measures and Alternatives to Pre-Trial Custody

Rule 57 of the Bangkok Rules calls on Member States to develop gender-specific options for diversionary measures, and that pre-trial and sentencing alternatives be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.²⁶

Rule 58 of the Bangkok Rules further calls on Member States to give preference to diversionary measures and alternatives to pre-trial detention and sentencing in cases of women offenders, where possible and appropriate.²⁷

Rule 2.3 of the Tokyo Rules calls on Member States to provide a wide range of pre trial non custodial measures, taking into account the nature of the offense, the characteristics of the offender, and the need to protect society and avoid the unnecessary use of imprisonment.²⁸

Principle 14.2 of the PDPOA calls on state parties to "provide alternatives to arrest and detention" for women charged with committing petty offenses. Principle 1(a) of the Ouagadougou Declaration calls on states to apply "alternatives to penal prosecution such as diversion."

Diversion allows for a case to be addressed through alternative channels before it reaches the trial and conviction stage of the criminal justice process. It is an alternative to prosecution, and may be formally instituted through legislation or applied at the discretion of police or courts.

Responses suggest that diversion is rarely available to women who come into contact with the criminal justice system in the countries surveyed. In Tanzania, a formal diversion scheme was identified, but the local NGO reported that it was not generally applied to the cases of women coming into contact with the criminal justice system. These responses suggest a gap between diversion being available as a formal matter, and its application in practice.

In Kenya, the reverse situation was reported: although no formal diversion scheme was identified, the local NGO reported that diversion was available to some women. This aligns with the 2012 observation of the United Nations Office on Drugs and Crime ("UNODC") that Kenyan "Police and Prosecutors have sufficient discretionary authority to implement diversion. ... What is missing is a proper infrastructure and program framework."²⁹

No other respondents reported diversion measures being available in law or in practice.

Alternatives to pre-trial custody – including bail – were identified as being available in all jurisdictions. In Nigeria, where criminal law varies from state-to-state, the federal system and many states provide that a person is generally entitled to be released on bail.³⁰

1.3 Suspended and Deferred Sentences

Rules 8.1-8.2 of the Tokyo Rules encourage judicial authorities to provide a wide range of custodial measures, including suspended or deferred sentences.³¹ In sentencing prisoners, judicial authorities should take into consideration the rehabilitative needs of the offender, the protection of society, and the interests of the victim. Victims should be consulted where appropriate.

Suspended sentences were reportedly available for women offenders in all surveyed jurisdictions, and were typically provided for in legislation. For example, section 15 of the Kenyan Criminal Procedure Code allows a court, when it passes a sentence of not more than two years imprisonment, to suspend the sentence for a fixed period of time. In Nigeria, suspended sentences are permitted in federal law under section 460 of the Administration of Criminal Justice Act.

Although suspended sentences are reportedly available in Tanzania,³² survey results suggest that they are rarely awarded, due to a lack of “institutional capacity.”

1.4 Restorative Justice and Traditional Tribal Justice Processes

Restorative justice has been recognized as an alternative to incarceration in regional and international law. The Ouagadougou Declaration and Plan of Action on Accelerating Penal Reforms in Africa calls on states to recognize “restorative justice approaches to restore harmony within the community as opposed to punishment by the formal justice system,” as well as the “[u]se of traditional justice as a way of dealing with crime.”³³

In July 2002, the United Nations Economic and Social Council passed resolution 2002/12. The resolution calls for Member States to adopt restorative justice practices, namely processes “in which the victim and the offender, and where appropriate, any other individuals or community members affected by the crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.”³⁴ Restorative processes may include mediation, conciliation, conferencing and sentencing circles,³⁵ and could be used at any stage of the criminal justice system with the free and voluntary consent of the victim and the offender.³⁶

Restorative justice programs were reportedly accessible to women – at least at the formal level – in most of the surveyed jurisdictions, with the exception of Malawi. Furthermore, although not always provided for in legislation, NGOs reported that traditional tribal justice processes were accessible in Malawi, Nigeria, and Tanzania.

1.5 Drug Treatment Programs

Bangkok Rule 26 calls for authorities to improve “the provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programs in the community and women’s access to such treatment” so as to prevent crime and promote alternative sentencing.³⁷

Bangkok Rule 41 states that “essential information about women’s backgrounds, such as violence they may have experienced, history of mental disability and substance abuse” should be a factor in the allocation and sentence planning process.

Reported access to drug treatment programs varied across the jurisdictions surveyed. Although drug treatment programs were identified as being formally available as an alternative to imprisonment in Kenya and Tanzania,³⁸ NGOs reported that such programs were practically difficult or impossible to access.

1.6 Other Alternatives to Imprisonment

Under Part 6 of the Principles on the Decriminalisation of Petty Offences in Africa (“PDPOA”), States which are parties to the African Charter should decriminalize petty offenses in accordance with the principles of the PDPOA and other regional and international human rights standards.³⁹

Efforts to decriminalize petty offenses have been gaining traction in certain jurisdictions. Responses indicate that Kenya makes extensive use of community service orders and has a well-developed Probation and Aftercare System. In January 2018, Kenya launched the National Committee on Criminal Justice Reforms to review laws and policies that criminalize petty offenses and to make recommendations on their declassification and reclassification.

In 2015, the National Assembly of Nigeria enacted the Administration of Criminal Justice Act, which has been implemented by the Federal Capital Territory and almost half of the 36 Nigerian states. The Act includes an array of non-custodial measures for men and women, such as community service, probation orders and conditional release with or without payment of compensation for loss or injury.⁴⁰ Nigerian civil society groups have called for greater use of non-custodial measures for petty offenses, including prostitution.⁴¹

Finally, in Tanzania, community service, victims’ compensation, and extra-mural labor may be imposed in lieu of (or alongside) imprisonment.⁴² Furthermore, some women offenders may receive corporal punishment alongside, or instead of, a prison sentence.⁴³

1.7 Consideration of Parental Responsibilities in Bail and Sentencing

Rule 58 of the Bangkok Rules stresses that women offenders should not be separated from their families and communities without due consideration of their backgrounds and family ties.⁴⁴ Rule 64 states that non-custodial sentences for pregnant women and women with dependent children shall be preferred.⁴⁵

These provisions of the Bangkok Rules support the principle contained in Article 18 of the ACRWC that the State has a duty to “protect the family as the natural unit and basis of society.”⁴⁶ Article 30 of the ACRWC requires that states “ensure that a non-custodial sentence will always be first considered” in the sentencing of expectant mothers, and mothers of infants and young children.

Survey results suggest a mixed rate of compliance with regional and international legal standards with respect to whether sentencing authorities consider a woman’s parental duties. On one hand, most respondents could identify regulatory authority which allows for consideration of parental responsibilities in sentencing or pre-trial detention. For example, the Kenyan Sentencing Guidelines, issued by the Chief Justice of Kenya, require judges to consider a non-custodial sentence if a custodial sentence is likely to prejudice particularly vulnerable dependents and no injustice will result.⁴⁷ In Tanzania, a court has general discretion to consider any evidence “as it thinks fit” in arriving at a sentencing decision.⁴⁸ In Nigeria and The Gambia, it was reported that mothers are often released on bail.

However, the application of such provisions appears to be mixed. Responses from Malawi and Kenya suggest that, in practice, women’s parental responsibilities are not consistently accounted for at sentencing.

1.8 Preference for Custodial or Non-Custodial Options

Pursuant to Bangkok Rule 64, non-custodial sentences for pregnant women and women with dependent children should be preferred where possible and appropriate, with consideration for custodial sentences only when the offense is serious or violent, or the woman represents a continuing danger. In all cases, decisions should take into account the best interests of children.⁴⁹ This aligns with the directive in Article 18 of the African Charter, that “[t]he family shall be the natural unit and basis of society. it shall be protected by the State.”

In all jurisdictions surveyed, courts are reported to be vested with discretion to impose non-custodial sentences in cases of non-violent offending.⁵⁰ NGOs in Malawi and Nigeria indicated that non-custodial sentences were often preferred as the default option in sentencing of non-violent offenders, in compliance with international and regional standards. NGOs from Kenya and The Gambia reported that, in their experience, non-custodial options were not preferred for minor offenses, despite being available. Furthermore, NGOs from all jurisdictions surveyed, except for Tanzania, where the data was unclear, indicated that non-custodial options were rarely (if ever) considered in cases of violent offenses.⁵¹

²⁶ Bangkok Rule 57.

²⁷ Bangkok Rule 58.

²⁸ Tokyo Rule 2.3.

²⁹ Yvon Dandurand, *A Second Chance – Alternatives to Imprisonment and the Social Reintegration of Offenders in Kenya*, UNODC 24-25 (2012), www.researchgate.net/publication/235439041.

³⁰ See Administration of Criminal Justice Act 2015 § 158.

³¹ United Nations Standard Minimum Rules for Non-custodial Measures (“The Tokyo Rules”), Rules 8.1 and 8.2(g).

³² See Probation of Offenders Act [Cap 247 R.E. 2002] § 3, which allows for a probationary sentence where a sentencing judge considers “that, having regard to character, antecedents, home surroundings, health or mental condition of the offender or to the trivial nature of the offense or to any extenuating circumstances under which the offense was committed, it is expedient to release the offender on probation.”

³³ Ouagadougou Declaration 1(b)-(c).

³⁴ *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, United Nations, Economic and Social Council Resolution 2002/12, A/RES/2002/12 (July 24, 2002), <https://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf>.

³⁵ *Id.*

³⁶ *Id.* “Use of terms.”

³⁷ Bangkok Rule 62.

³⁸ See, e.g., the Kenyan Narcotic Drugs and Psychotropic Substances (Control) Act § 58; Kenyan Penal Code § 35.

³⁹ PDPOA, Part 6.

⁴⁰ Administration of Criminal Justice Act (2015),

https://www.policinglaw.info/assets/downloads/2015_Administration_of_Criminal_Justice_Act.pdf.

⁴¹ See, e.g., Emmanuel Uzodinma, *Why prostitution, other petty offence should be decriminalized – Stakeholders*, DAILY POST, May 6, 2019, <https://dailypost.ng/2019/05/06/prostitution-petty-offences-decriminalized-stakeholders/>.

⁴² See Community Service Act 2002; Tanzanian Penal Code [Cap 16 R.E. 2002] § 38; Prison Act 2002 § 73.

⁴³ Tanzanian Penal Code § 25.

⁴⁴ Bangkok Rule 40.

⁴⁵ *Id.* at Rule 64: “Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offense is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.”

⁴⁶ ACRWC art. 18.1: “The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.”

⁴⁷ *Sentencing Policy Guidelines*, The Judiciary of the Republic of Kenya, para. 7.19.6.

http://www.kenyalaw.org/ki/fileadmin/pdfdownloads/Sentencing_Policy_Guidelines_Booklet.pdf.

⁴⁸ Criminal Procedure Act [Cap 20 R.E. 2002] § 320.

⁴⁹ ACRWS art. 30. “States should provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of breaking the law.”

⁵⁰ See, e.g., the Nigerian Administration of Criminal Justice Act §§ 347-348; and the Tanzanian Probation of Offenders Act [Cap 247 R.E. 2002].

⁵¹ Responses from Tanzania indicated that one regional office of the respondent NGO had observed courts that were willing to consider non-custodial sentencing for violent offenders, while other regional offices had not.

Section Two: Capacity Building and Policies for Staff

Capacity building in the form of training and policy implementation appear to be either lacking, unpublicized, or in early stages of development.

2.1 Training Opportunities for Prison Staff

Under Rule 33 of the Bangkok Rules, prison staff working in women's prisons should be provided basic training on the main issues relating to women's health, in addition to first aid and basic medicine. Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the healthcare of children should also be provided to prison staff in order for them to respond appropriately in times of need and emergencies.

States have further obligations under African regional standards to ensure that prison staff do not mistreat women prisoners. Article 2 of the Maputo Protocol calls on states to "enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination," and to "integrate a gender perspective into their policy decisions." The Ouagadougou Declaration Principle 2 calls on states to provide "training courses and study visits for staff on best practices in prison management." Finally, the Robben Island Guidelines Article 45 call on states to "establish and support training and awareness-raising programs."

Survey results indicate that prison staff in most of the countries surveyed are provided with some capacity-building opportunities, such as training in personal safety, rehabilitation, women's health, gender sensitivity, prevention of discrimination and prevention of sexual harassment, in order to enable them to address the special needs of women in prisons. However, such opportunities appear to be limited and some respondents were unable to confirm specifics on what training is currently available for prison staff.

However, in Kenya, while there are limited training opportunities available to prison staff, legal and human rights organizations have developed training programs to enhance professionalism among prison staff.

NGO Spotlight: Mental Health Wellness Training

The Faraja Foundation together with the Kenya Prison Services has been conducting mental health wellness training for prison staff and has reached out to more than 7,000 officers in prisons from different regions in the country, including officers in the Maximum Women's Prison as well as prisons housing men.

Similarly, the Legal and Human Rights Centre in Tanzania has provided training to prison guards on human rights and gender issues.

2.2 Policies and Regulations Governing Prison Staff

Bangkok Rule 31 calls for the development and implementation of clear policies and regulations on the conduct of prison staff with the goal of providing maximum protection for women prisoners from gender-based physical or verbal violence, abuse and sexual harassment.

The GCSVA Guidelines 5-7 call on states to prevent "all forms of sexual violence and its consequences." Article 46 of the Robben Island Guidelines calls on states to "[d]evelop, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel."

Survey responses suggest that policies and regulations are present in some, but not all, surveyed states and are at varying degrees of implementation.

For example, a Human Rights Manual developed by IHRDA for The Gambian Prison Service in 2018 addresses issues jeopardizing the safety of women in prisons, and its implementation is currently in progress.

NGO Spotlight: The Gambian Human Rights Manual

The Human Rights Manual developed by IHRDA for the Gambian Prison Service in 2018 includes information relating to legal protection of women in The Gambia, such as the Gambian Constitution and the Women's Act of 2010. The manual defines and highlights forms of sexual, gender-based, and domestic violence ("SGBV"), and reminds prison staff that "reports of SGBV should be diligently investigated and prosecuted."

In addition, the Nigerian Prison Service is presently developing a gender policy that covers a wide range of issues relating to women in prison. Although the gender policy is yet to be completed, most of the policies around the protection of women in prison are considered to be already in practice, as detailed in that country's Prison Standing Order.

Section Three: Education and Work Opportunities for Prisoners

Access to vocational opportunity is generally considered to be an important tool for prisoners' rehabilitation, re-entry and reintegration into mainstream society. Fair work and educational programs provide women in prison with the opportunity to build useful skills for life after incarceration. While various forms of training generally are provided by prisons in the countries surveyed, survey results suggest disparity in practice as to whether prisons provide women with adequate access to vocational training and education, and in some cases it appears that women receive fewer opportunities than their male counterparts.

3.1 Opportunities for Education and Vocational Training

Rules 98-99 of the Mandela Rules provide that “[v]ocational training in useful trades shall be provided for prisoners able to profit thereby ... [within limits] prisoners shall be able to choose the type of work they wish to perform ... vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the prison.”⁵²

The African Charter Article 17 guarantees every citizen the right to education, a right which is reinforced by Article 12 of the Maputo Protocol.

NGO respondents reported a range of experiences with prison-based opportunities for education and vocational training. All countries, except for Malawi, reported at least some form of training. Women prisoners in Nigeria were reported to have access to vocational training programs in shoemaking, soap-making and tailoring.

In The Gambia and Kenya, NGOs were reported to play a leading role in such training: for example, the Faraja Foundation in Kenya offers courses in baking, knitting, hairdressing and dressmaking, while the African Prisons Project offers legal education classes.⁵³ In The Gambia, however, vocational training in information technology, plumbing and electrical work was reported as being available to men but not women.

3.2 Remunerated Work

Article 15 of the African Charter provides that “[e]very individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.” Rule 103 of the Mandela Rules calls on Member States to provide a system of equitable remuneration for the work of prisoners.⁵⁴ Systems of equitable remuneration must:

- *allow prisoners to spend at least part of their earnings on approved articles for their own use, and to send a part of their earnings to their family; and*

- *provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on her release.*

NGOs reported that prisons in Nigeria and Kenya provide women prisoners with opportunities for paid work. In Nigeria, women prisoners are given opportunities to acquire “entrepreneurial skills,”⁵⁵ such as bead making and tailoring. At the end of their prison terms, they receive a percentage of the profit on any sales of their products.

In Kenya, the Cabinet Secretary in charge of the Ministry of the Interior is empowered to make rules for the safe custody, management, hours, mode and type of labor carried out by prisoners and subsidiary legislation requires prisoners to engage in “useful work.”⁵⁶ In Kenya, there exists an initiative called Crime si Poa (“crime is not worth it”) through which women are able to produce and sell dresses and food items. The NGO there reported having observed that safety measures are always in place, and the work is performed during normal working hours. The work is sometimes compulsory, especially if there is high demand for the products. Prisoners receive a share of the profit and are able to use the funds while incarcerated, though payments are calculated per service rather than on an hourly basis.

3.3 Unpaid Labor

According to the Mandela Rules, “Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness ... [s]ufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day. Work in prison cannot be ‘of an afflictive nature.’”⁵⁷

Instances of unpaid labor performed by women prisoners were reported in Tanzania, The Gambia and Kenya. In The Gambia and Tanzania, NGOs reported that this included hard labor.

In Tanzania, unpaid labor may include agriculture, tailoring, construction of building, livestock keeping and others. The President of Tanzania has called for inmate labor to be used to supply prisoners with food.⁵⁸

In Kenya, the local NGO reported that women prisoners may perform unpaid domestic work for officers living in the prison facility, for example cleaning prison guards' offices or their own cells or other tasks such as working in the hair dressing salon and working in the canteen to prepare meals.

In Tanzania, section 65 of the Tanzanian Prisons Act, requires that women prisoners only be employed in labor "suitable for women." However, the local NGO reported that it is compulsory to work irrespective of gender or physical condition, and several complaints have been received from prisoners compelled to work despite being sick or disabled. Unpaid labor in Tanzanian prisons includes agriculture, tailoring, construction of buildings, and livestock keeping. The President of Tanzania has called for inmate labor to be used to supply prisoners with food.⁵⁹ It was also reported that in Tanzania hard labor is sometimes imposed on prisoners as a form of punishment, usually as part of the formal custodial sentence.

⁵² The Mandela Rules, Rules 98 and 99.

⁵³ Bringing dignity, hope and justice to prison communities in Africa, AFRICAN PRISONS PROJECT, <https://africanprisons.org/>

⁵⁴ The Mandela Rules, Rule 103.

⁵⁵ Mandela Rules, Rule 98(1) "so far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release."

⁵⁶ See section 74(1)(f) of the Kenyan Prisons Act.

⁵⁷ Mandela Rules, Rule 98.

⁵⁸ Tanzania president says prisoners should be kicked and made to work 'day and night', THE GUARDIAN (July 14, 2018, 8:32 PM), <https://www.theguardian.com/world/2018/jul/15/tanzania-president-says-prisoners-should-be-kicked-and-made-to-work-day-and-night>

⁵⁹ *Id.*

Section Four: Gender-Specific Physical Health and Hygiene in Prisons

Survey results suggest that in many cases, prison physical health and hygiene conditions generally fall short of international standards. In most of the countries surveyed, respondents reported that prisoners lack access to soap, towels, toothbrushes, toothpaste, and regular bathing. Moreover, most survey results suggested that prisons do not offer freely-accessible sanitary products such as pads and tampons to women. Additionally, survey results suggest an absence of accessible information on prisoners' access to preventive healthcare. On the other hand, NGOs in most countries surveyed reported that prison healthcare services are integrated into broader community services.

4.1 General Cleanliness of Prison Facilities

Rule 17 of the Mandela Rules provides that “all parts of an institution ... shall be properly maintained and kept scrupulously clean at all times” Prisoners must also have access to those “toilet articles” necessary to comport with basic standards of health and cleanliness,⁶⁰ and prison authorities must permit the use of bathing and shower installations “as frequently as necessary for general hygiene.”⁶¹

Respondents note that Kenya has made strides in ensuring its prison facilities remain “mostly clean.” Article 51 of the Kenyan Constitution provides that parliament shall enact legislation that promotes the humane treatment of persons detained, held in custody, or imprisoned. Subsidiary legislation under the Prisons Act directs prisons to guarantee that every room of a prison facility and the objects therein be kept clean. The onus of this requirement sometimes falls on the prisoners themselves, who must neatly arrange the articles in their cells and sweep the yards and passages of the prison as necessary.

Organizations in The Gambia and Nigeria describe prisons as “mostly unhygienic.” NGOs in Kenya and Malawi reported that prisoners have access to toilets “most of the time” while in Nigeria, it was reported that prisoners do not have adequate access to toilets. This reality falls short of the Mandela Rules that “sanitary installations [should be] adequate to enable every prisoner to comply with the needs of nature.”

Prisons in most countries surveyed do not provide freely-accessible soap, towels, toothbrushes, and toothpaste. In The Gambia, the NGO respondent noted that new government initiatives have focused specifically on prison cleanliness. Another respondent reported that upon visiting a prison in The Gambia, prison officials demonstrated that soaps and sanitary pads were kept in stock in prison facilities.

NGOs reported that prisons in Malawi, Nigeria and Tanzania do not make bathing and shower installations available to incarcerated women as frequently as necessary. In Malawi, prisoners receive bath and shower installations at an adequate temperature, but the same cannot be said for prisoners in Nigeria and Tanzania.

4.2 Access to Hygiene Products

Rule 5 of the Bangkok Rules states that facilities should meet women’s unique hygiene needs, including free sanitary towels and a regular supply of water for personal care.⁶²

NGOs in Kenya, Malawi, Nigeria and Tanzania reported that prisons do not offer freely-accessible sanitary products such as towels, pads, and tampons.

In Nigeria, civil society and faith-based organizations sometimes provide toiletries to inmates but NGOs deem such reliance “grossly inadequate.” Most Nigerian women prisoners have private arrangements in place to supply these items. In Tanzania, women prisoners have traditionally relied on family members to supply necessary hygiene products.

4.3 Access to Medical Testing and Professional Medical Care

Article 16 of the African Charter states that “[e]very individual shall have the right to enjoy the best attainable state of physical and mental health.” The Robben Island Guidelines Article 31 further call on states to ensure that “all persons deprived of their liberty have access to legal and medical services.”

The Bangkok Rules states that prisons should offer gender-specific healthcare services and preventive healthcare measures.⁶³ Women prisoners should receive Papanicolaou tests and breast cancer and gynecological screenings “on an equal basis with women of the same age in the community.”⁶⁴ If they request it, women prisoners should be examined by a woman physician or nurse, barring emergencies that demand an “urgent medical intervention.”⁶⁵ This standard aligns with section 32 of the

Luanda Guidelines, which state that persons in pre-trial detention be “offered gender specific health screening and care which accords with the rights to dignity and privacy.”

Rule 31 of the Mandela Rules states that a “physician, or, where applicable, other qualified healthcare professionals, shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed.”

For all the countries, survey results suggest that little is known about prisoner access to preventive health measures outlined by the Bangkok Rules, such as Papanicolaou tests, and breast cancer and gynecological screening. Only in Malawi was it reported that such measures met the same standard as that provided in the wider community.

NGOs in all countries other than Malawi reported that medical officers are not available to women prisoners on a daily basis, suggesting that Rule 31 of the Mandela Rules is not being widely complied with.

4.4 Health Services for Women with Children

Rule 28 of the Mandela Rules states that “there shall be special accommodation for all necessary prenatal and postnatal care and treatment.” Moreover, arrangements shall be made wherever practicable for children to be born in a hospital outside the prison⁶⁶ in those cases where young children are housed with their mothers after birth, the prison should maintain “internal or external childcare facilities staffed by qualified persons.”⁶⁷ These provisions align with Article 30 of the ACRWC, which requires that states should “provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law.”

Survey results suggest that prisons in the surveyed countries provide few specialized prenatal and postnatal healthcare services to women prisoners. In Kenya and Malawi, it was reported that no specialized prenatal or postnatal healthcare services are provided to women prisoners. In Tanzania, it was reported that women prisoners receive some prenatal and postnatal care from prison health services, and may be referred to other health services (including public healthcare facilities) for further care. In Nigeria, it was reported that women prisoners receive basic prenatal care from prison doctors, but do not receive specialized postnatal care.⁶⁸

4.5 Integration of Health Services in Prison with Surrounding Communities

Principle 5 of the Ouagadougou Declaration calls on states to “emphasize primary healthcare, hygiene education, nutrition and sanitation promotion in the prisons and link healthcare of prisoners with the Ministry of Health.”

Under the revised Mandela Rules, medical services in women’s prisons “should be organized in close relationship to the general health administration of the community or nation”⁶⁹.

NGOs reported that in most countries, prison healthcare services are integrated into wider community healthcare services. This results from public ownership of prison healthcare facilities. For example, in Nigeria, when a particularly severe medical problem arises, women prisoners are transported to hospitals outside the prison. In Kenya, prisons permit NGOs to provide specialized healthcare services, such as medication and clinical counseling, to inmates whose conditions demand special attention. The integration of prison healthcare services in Kenya is codified in Section 29 of the Prisons Act, which mandates that at least one medical officer oversee healthcare facilities in each prison. In Tanzania, women are provided with healthcare in public hospitals.

⁶⁰ Mandela Rules, Rule 18: “Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.”

⁶¹ Mandela Rules, Rule 16: “Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.”

⁶² Bangkok Rule 5 (“Personal Hygiene”): “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.”

⁶³ *Id.* at 10: “Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners.”

⁶⁴ *Id.* at 18: “Preventive health-care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community.”

⁶⁵ *Id.* at 10: “If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention.”

⁶⁶ Mandela Rules, Rule 28 “In women’s institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison.”

⁶⁷ Mandela Rules, Rule 29) “Where children are allowed to remain in prison with a parent, provision shall be made for ... [i]nternal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent.”

⁶⁸ Note, however, that under Nigerian government regulations, nursing mothers must receive a cot or cradle. See Clause 476 of the Nigerian Prisons Standing Order.

⁶⁹ Mandela Rules Rule 24(2).

Section Five: Safety and Abuse – Gender Separation Issues

Most countries have implemented gender-specific staffing policies and measures to ensure that men and women are detained separately. Women prisoners are usually supervised by women staff and are either housed in entirely separate institutions or different areas within the same facility.

A recent (2012) report of Med S.K. Kagwa, the African Commission Special Rapporteur on Prisons, Conditions of Detention and Policing noted that:

“While some prison systems provide separate facilities for the incarceration of women, in most countries, women are imprisoned in the same facilities as men. Even in cases where women are incarcerated separately, these facilities experience violence and abuse akin to that found in male facilities. Moreover, women prisoners are particularly vulnerable to sexual abuse by prison guards whether in women’s or mixed prisons.⁷⁴”

5.1 Housing Of Men And Women Prisoners

Article 32 of the Luanda Guidelines asks that women in pretrial detention “[b]e held separately from male detainees.” Article 36 of the Robben Island Guidelines calls on states to “take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.”

These provisions align with Rule 11(a) of the Mandela Rules, which states that “[m]en and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate.”

Women prisoners are housed at a disadvantage to their male counterparts because of the relatively small proportion of women prisoners and the limited resources available for building and managing women’s prisons.⁷¹ Oftentimes, women prisoners are housed in facilities annexed to male prisons, which may entail safety risks, or in facilities that are located far from home, reducing family contact.⁷²

Survey results suggest that all countries have implemented measures to ensure that men and women prisoners are detained separately, either housing men and women in entirely separate institutions or housing men and women in separate areas within the same institution.

5.2 Men Supervising Women Prisoners

Article 32 of the Luanda Guidelines calls on states to ensure that women in pre-trial detention “only be searched by female law enforcement officials, and in a manner that accords with women’s or girls’ dignity.”

Bangkok Rule 31 calls for prisons to develop and implement clear policies and regulations to govern the conduct of prison staff in order to protect women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment.

The Mandela Rules forbid male staff from entering the portion of the institution set aside for women, unless accompanied by a woman officer.⁷³ The Mandela Rules also provide that women prisons shall be under the authority of a responsible woman officer, and women prisoners shall be attended and supervised only by women officers, except that male staff members such as doctors and teachers should not be precluded from carrying out their professional duties.⁷⁴

Most countries surveyed have implemented some form of gender-specific staffing policies. Women prisoners are generally attended and supervised only by women staff, with certain exceptions made for non-custodial staff such as teachers and doctors. In addition, with the exception of Tanzania, male prison staff are generally forbidden from entering women’s quarters unless accompanied by women officers or guards.⁷⁵

⁷⁰ African Commission on Human and Peoples’ Rights – Sessions. <https://www.achpr.org/sessions/interession?id=144>

⁷¹ United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, with their Commentary, at pgs. 23, 41, A/RES/65/229, UNODC (Mar. 16, 2011), https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

⁷² *Id.*

⁷³ Mandela Rules 81(2).

⁷⁴ Mandela Rules 81(1), (3).

⁷⁵ The Prisons Act, 1967 [No. 34 of 1967] Part XI, Training and Treatment of Prisoners, Section 62 *Women prison officers at prisons for female prisoners*, at pg. 22 (Aug. 9, 1967), <https://tanzilii.org/tz/legislation/act/1967/33/>. Section 62 of the Prisons Act in Tanzania provides that any prison or any portion of a prison used for detaining, training or treating women prisoners shall have sufficient numbers of women officers. Tanzania does, however, report instances of women prisoners being impregnated while in prison.

Section Six: Children of Women Prisoners

Survey results suggest that imprisoned women are not always provided time and assistance to arrange for care of their children outside prison. Moreover, rather than performing individual assessments, prisons in most jurisdictions establish a mandatory cut-off age for children to remain with their incarcerated mothers. Additionally, although contact between mothers and children is generally significant, detention facilities often fail to meet the basic needs of minors who reside with their mothers in prison. Finally, survey responses suggest that incarcerated women do not receive adequate prenatal and postnatal healthcare.

6.1 Alternative Childcare Arrangements

*The ability to make alternative care arrangements for children impacts the welfare of both incarcerated mothers and their children outside prisons. The African Charter on the Rights and Welfare of the Child states that generally, parents shall have the primary responsibility for the upbringing of their children, and states shall assist parents in child-rearing.*⁷⁶

*The Luanda Guidelines Article 32 asks that women in pre-trial detention with childcare responsibilities “be permitted prior to or on admission to make arrangements for those children.” Rule 2.2 of the Bangkok Rules calls on states to allow women with caretaking responsibilities to make arrangements for their children prior to or on admission to prison, including by allowing for reasonable suspension of detention.*⁷⁷

Several survey responses outlined opportunities and services to assist sentenced women to make arrangements for their children’s care.

In The Gambia, it was reported that social welfare services are involved in the care of sentenced women and their children. Women with childcare responsibilities are often released on bail, or housed in a prison annex within the country’s social welfare department. The consent of sentenced women prisoners is generally required in any decisions made regarding their children’s care.

Section 30 of the Kenya Prisons Act provides that mothers are entitled to make arrangements for their children’s care outside prison. In line with this provision, most incarcerated mothers in Kenya receive time or assistance to make arrangements for their children. Assistance is provided through the courts and the Prison Welfare Office. Further support is provided by civil society. For example, children of imprisoned mothers are committed into the Nest’s care by the Children’s Court and receive care from the time that their mothers are imprisoned. They are housed in the Children’s Home and receive holistic care and formal education for the

time their mothers are imprisoned. To date, the Nest has cared for approximately 100 children – ranging from newborns to 17-year-olds. In order to maintain the bond between the children and their imprisoned mothers, the Nest claims to ensure the children regularly visit their mothers in prison.⁷⁸

In Tanzania, NGOs reported that women prisoners are not always provided time and assistance to arrange for childcare. It was further reported that due to poor prison infrastructure in Tanzania, mothers are encouraged to leave their children in the care of relatives, and in some instances under the care of religious institutions or leaders. Tanzanian legislation requires social welfare officers to determine where the child of an imprisoned mother should be housed, once the child is no longer breastfeeding.⁷⁹

6.2 Children in Prisons

The ACRWC Article 30 requires states to ensure “that a mother shall not be imprisoned with her child.” The Luanda Guidelines – citing General Comment 1 of the African Committee of Experts on the Rights and Welfare of the Child – call on states to “establish laws and policies to provide for the needs and physical, emotional, social and psychological development of babies who are allowed to remain in the place of detention.” This is in line with General Comment 1 of the African Committee of Experts on the Rights and Welfare of the Child.

The Bangkok Rules, along with other international law instruments, address the question of whether children can take up residence with their incarcerated mothers and if so, up to what age this should be allowed.⁸⁰ Such decisions shall ideally be based on individual assessments and the best interests of the children.⁸¹

Reports indicate that in many circumstances children are housed with their mothers in prisons.⁸² Rather than making individual assessments, prisons in most jurisdictions surveyed impose a mandatory, non-discretionary cut-off age to determine whether

children may remain with their mothers. However, notwithstanding the cut-off age imposed, practice appears to deviate in some cases. Section 30 of the Kenya Prisons Act provides that a child shall only be permitted to remain in prison until it attains the age of four years or until arrangements for his/her proper care outside prison are concluded, whichever shall be the earlier. In practice, it is reported that an extended stay is permitted if no one can take care of a child outside of the prison.

While the Nigerian Prisons Standing Order provides for the care of infants born into prison and states that infants at breast or below 18 months may be received into prison with their mother, it is silent on the cut-off age or means of determining whether the child should be with the mother after that point. It is reported that in some cases children are allowed to remain with their mothers in prison after the age of 18 months. Survey responses suggest that these cases are most likely where there is no other suitable family member to care for the child.

Section 25 of the Tanzanian Prisons Act 1967 allows for an infant child of a woman prisoner to be received into prison with his/her mother. During such time, prisons are required to take “all measures ... to ensure that the child receives the required child care in the form of adequate diet, nutrition and child healthcare.”⁸³

However, section 144(3) of the Tanzanian Law of the Child Act of 2009 requires that prisons notify a District Social Welfare Officer once a child in prison with his/her mother ceases breastfeeding. At this point, the officer must determine the “most suitable place for the child,” which may be with the other parent, a guardian, a “fit person,” or an “approved residential home.” In practice, however, a local NGO reported that children of up to five years’ of age have been known to continue living with their mothers in prison, particularly when they are born in prison and there is no appropriate relative to care for them.

6.3 Contact Between Mothers and Children

*Bangkok Rule 26 stresses the importance of encouraging and facilitating women prisoners’ contact with their families, including their children. When children are residing in prisons, mothers shall be allowed “maximum possible opportunities” to spend time with them.*⁸⁴

All jurisdictions surveyed reported that children in prison with their mothers were afforded opportunities to spend time with their mother. Except for Tanzania, such opportunities were described as “significant”, and arose from the fact that children were housed in the same facilities as their mothers, and they would spend each night together.

6.4 Accommodations for (or Restrictions on) Children in Prison

The ACRWC Article 30 requires states to ensure “that a mother shall not be imprisoned with her child.” The Luanda Guidelines – citing General Comment 1 of the African Committee of Experts on the Rights and Welfare of the Child – call on states to “establish laws and policies to provide for the needs and physical, emotional, social and psychological development of babies who are allowed to remain in the place of detention.” This is in line with General Comment 1 of the African Committee of Experts on the Rights and Welfare of the Child.

Bangkok Rule 48 emphasizes children’s entitlement to adequate and timely food, a healthy environment, and regular exercise opportunities in prisons. In addition, Bangkok Rule 9 extends the requirement of health screening to any child accompanying a woman prisoner. While the provision of living conditions adequate for children’s physical, mental, spiritual, moral, and social development is primarily the responsibility of parents, the United Nation Convention on the Rights of the Child recognizes the role of states in providing material assistance and support programs in case of need.

Survey responses suggest that in many instances, prisons are failing to meet the basic needs of children residing with their mothers in prison.

NGOs reported that play and exercise facilities are in place in some but not all prisons in The Gambia, Nigeria, and Kenya, and not in prisons in Malawi.

In Tanzania, section 144(1) of the Law of the Child Act of 2009 provides that where a mother is in prison with her child under any circumstances, all measures shall be taken by the prison authorities to ensure that the child receives the required child care in the form of adequate diet, nutrition and child healthcare including immunization. However, survey results raise questions about the extent to which the law is carried out in practice.

In Kenya, NGOs reported that prisons have not historically provided daytime facilities for children. However, at Langata Women’s Prison, the Faraja Foundation has built a daycare center where children spend time away from the cells during the day and join their mothers in the evening. The daycare center provides children with nutritious food as well as play and learning facilities. Kenya further maintains an open-door policy, allowing NGOs and the public to introduce children’s programs into prisons, supplementing the services provided by the institutions.

NGOs reported instances where children in prison are subject to discipline, punishment, and restrictions on freedom. Such treatment contravenes Rule 49 of the Bangkok Rules, which provides that “[c]hildren in prison with their mothers shall never be treated as prisoners.” Notably, NGOs reported that children staying with their mothers are prevented from leaving prisons in Malawi and Kenya. In Nigeria, it was reported that children housed in prisons are permitted to leave only when taken into an orphanage or the custody of family members. In Malawi children residing in prisons are reportedly subject to disciplinary punishment from prison authorities.

NGOs in the other countries surveyed did not report comparable programs being available. Furthermore, the survey results indicate that prisons are generally ill-equipped to assess and treat child-specific health issues, both when being admitted and on an ongoing basis.⁸⁵ Many respondents were unsure whether the standards the Bangkok Rules, such as pediatric screening, psychological and mental health services, individualized nutrition, and healthcare provided at the same standard as the rest of the community, were being met. This suggests further inquiry is urgently needed to monitor this issue.

6.5 Pregnancy, Labor, and Delivery in Prisons

Under the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, pregnant or nursing women, including women in detention, are entitled to special protection that attends to their unique condition and their right to be treated with dignity.

Rule 28 of the Mandela Rules encourages states to make arrangements wherever practicable for women to give birth in a hospital outside prisons. Finally, Rule 24 of the Bangkok Rules provides that “instruments of restraint shall never be used on women during labor, during birth and immediately after birth.”

NGOs reported that prisoners leave prisons to give birth in all cases in The Gambia and Kenya, in some cases in Nigeria, and only where there are medical complications in Tanzania. Prisoners in Malawi, by contrast, reportedly give birth in prisons.

NGOs in The Gambia and Kenya reported that prisons comply with the Bangkok Rules’ standard that instruments of restraint not be used during birth or labor, or immediately after birth.

Tanzanian law (section 70 of the Prisons Act, 1967) provides that any person receiving medical treatment – including women during birth, during labor, and immediately after labor – cannot be confined or restrained unless a medical officer certifies “that such prisoner is fit to be so confined or restrained.” Survey responses from Tanzania, however, suggest that little is known about whether this procedure is observed, or how frequently such certification is given.

Likewise, the Nigerian Prisons Standing Order expressly prohibits the use of handcuffs and wrist cuffs on women except where violent or unruly conduct is considered to be likely, and as a precaution against escape during a transfer. In Nigeria, it was reported that in some cases women are not restrained during birth or during labor, but in other instances they are handcuffed to the hospital beds during and after labor, for example to prevent them from escaping, as the hospitals are usually outside of the prison grounds.

6.6 Accommodations for Pregnant Women

The Maputo Protocol urges states to take appropriate measures to establish and strengthen existing health and nutritional services for women during pregnancy and while they are breast-feeding.⁸⁶ Rule 28 of the Mandela Rules call on prisons to accommodate women’s special needs for prenatal and postnatal care. The Bangkok Rules extensively supplement the standards provided in the Mandela Rules. Bangkok Rule 48, for example, stresses women’s entitlement to receive qualified advice on health and diet. In addition, the United Nations Convention on the Rights of the Child and African Charter on the Rights and Welfare of the Child stress the importance of prenatal and postnatal healthcare to the provision of the highest attainable standard of healthcare services to children.⁸⁷

Survey responses suggest that women prisoners in many of the countries surveyed do not receive healthcare at the standard required by international and regional instruments. In Nigeria, respondents observed that pregnant prisoners are attended by and receive routine drugs from prison medical doctors, but do not necessarily receive specialized postnatal healthcare. Non-governmental entities – such as churches and NGOs – are often the sole providers of prenatal and postnatal care to prisoners.⁸⁸ In Tanzania, prisoners have access to public healthcare facilities, and may receive various onsite treatment and counseling in their prisons house health facilities. However, it is not clear whether such care covers specialized prenatal and postnatal services.⁸⁹ Prisons in Malawi and Kenya do not provide any relevant health services before or after childbirth. In The Gambia, the Social Welfare covers pregnant women prisoners, but it is unclear whether such care meets the standard required by international and regional instruments.

6.7 Accommodations for Nursing Women

Article 24 of the Maputo Protocol urges states to “ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.” Mandela Rule 23 also calls for the provision of nurseries where nursing infants are allowed to remain in prisons.

Respondents reported that nursing facilities are generally provided in prisons in Tanzania, Nigeria, and Kenya with varying degrees of quality.

The Faraja Foundation reported that Langata Women Maximum Security Prison in Kenya houses a separate nursery, where mothers stay for up to three months while nursing their babies and receive hot water, “moderately” good food, and a baby cot.

In Nigeria, the Lagos Kirikiri Female Prison contains a crèche. Clause 476 of Nigerian Prisons Standing Order, requires that every imprisoned mother be provided with a cot or cradle, but it is not known whether this requirement is followed in practice.

In Malawi and The Gambia, it was reported that prisons do not provide nursing facilities.

⁷⁶ See ACRWC, art. 20.

⁷⁷ See Bangkok Rule 2.2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

⁷⁸ See www.thenesthome.org. This information has not been independently verified.

⁷⁹ Law of the Child Act 2009 (Tanzania) § 144(3).

⁸⁰ Other relevant rules and regulations include Guidelines for the Alternative Care of Children, United Nation Convention on the Rights of the Child (“UNCROC”), and International Covenant on Economic, Social and Cultural Rights (“ICESCR”).

⁸¹ See Bangkok Rules 49 and 52. See also UNCROC, art. 3, and ACRWC, art. 4.

⁸² In Nigeria, such instances were reported to be rare.

⁸³ Law of the Child Act (Tanzania) 2009 § 144(1).

⁸⁴ See Bangkok Rule 50.

⁸⁵ Bangkok Rule 9.

⁸⁶ Maputo Protocol, art. 14.

⁸⁷ UNCROC, art. 24, and ACRWC, art. 14.

⁸⁸ In addition, the respondent noted that facilities for postnatal care are in place in some institutions, but was unable to verify the adequacy of these facilities.

⁸⁹ A law firm respondent in Tanzania noted regulations providing that medical officers may, whenever they consider advisable or necessary to the health of any prisoner, recommend that the diet of the prisoner be increased.

Section Seven: Contact with Family Outside Prison

Survey results suggest that detention facilities in most jurisdictions surveyed employ limitation of family contact as a disciplinary measure. Such limitation violates international and regional legal instruments, including the Bangkok Rules and the Robben Island Guidelines. Moreover, despite efforts to implement child-friendly visitations, prisons in the majority of the countries surveyed do not appear to facilitate interaction between incarcerated women and their families. Lastly, women – who are especially vulnerable to domestic violence – are not always consulted on whether they wish to allow visits from certain family members.

The African Charter on Human and Peoples' Rights establishes the family as the "basis of society" and affirms the role of the State to protect the "physical health and moral" of family units.⁹⁰

The Bangkok Rules provide that "Women prisoners' contact with their families, including their children ... shall be encouraged and facilitated by all reasonable means."⁹¹

7.1 Prohibition of Family Contact as a Disciplinary Tool

Article 18 of the African Charter provides that "the family shall be the natural unit and basis of society. It shall be protected by the State." Article 31 of the Robben Island Guidelines calls on states to "ensure that all persons deprived of their liberty ... have the right to be visited by and correspond with family members," while Article 32 of the Luanda Guidelines calls on states to ensure that women in detention "be provided with the facilities necessary to contact their families."

According to the Bangkok Rules, "Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children."⁹²

Most respondents stated that domestic prisons use prohibition of family contact as a disciplinary measure.

Notwithstanding the general position that such prohibition should not be used as a disciplinary tool, respondents noted that as a legal matter, prohibition of family contact may be expressly or implicitly sanctioned.

Clause 375 of the Nigerian Prisons Standing Order expressly prohibits a prisoner undergoing cell confinement from receiving a visitor or a letter, or writing a letter during such period. An exception applies where the visitor is the woman's legal adviser, or where the visitor is in the prison in order to pay a prisoner's fine.

Sections 51 and 52 of the Kenya Prisons Act provide that prisoners may be segregated and confined in a separate cell from other prisoners. It is not clear if such separation also includes separation from family visitation.

7.2 Facilitating Contact with Families

Bangkok Rule 43 provides that, in order to ensure the "mental well-being and social reintegration" of prisoners, [family] visits are to be "encouraged ... and facilitated."⁹³ Furthermore, "visits involving children shall take place in an environment that is conducive to a positive visiting experience ... and shall allow open contact between mother and child."⁹⁴

The Mandela Rules provide that "Prisoners shall be allowed, under necessary supervision, to communicate with their family ... at regular intervals ... [b]y correspondence ... and ... [b]y receiving visits."⁹⁵ Under the United Nations Convention on the Rights of the Child, a child has a right to "maintain personal relations and direct contact on a regular basis" with a parent they are separate from.⁹⁶

With exceptions as noted below, respondents report very limited use of specific measures by states that might facilitate contact between imprisoned women and their families.

Where they exist, reported measures include child-friendly visiting rooms, free or inexpensive phone calls on certain occasions or free or inexpensive mail materials and services. Also, all respondents reported that visiting family members are not charged a visitors' fee.

In Kenya, "child friendly" visitations were introduced at Langata Prison in 2017 and have since spread to other prisons in the country. Some prisons in Kenya allow prisoners to prepare and share meals with visiting family members, while other prisons have "open fun days" on

which up to five (and more by request) family members can spend the day with the prisoner. Even where open fun days have not been implemented, prisoners are allowed to be in a separate visitation space with their families.

While NGOs from all the surveyed countries reported that families are allowed to visit prisoners, visiting times are always restricted, limited sometimes to only an hour, to only once a month, only on the weekend or not at all where “security reasons” apply. Physical separation

between visitors and prisoners appears to be required frequently, and visitors may not be allowed to enter prisoners’ rooms. One respondent reports that visitors meet prisoners “in the center of the prison.”

No respondent from any jurisdiction reported that prisoners were allowed to leave prison to visit family members, nor did any respondent report that prisons provided free accommodation for visiting family members.

⁹⁰ African Charter at 18.1; See also ACWRC at 18.1.
⁹¹ *Id.* at 26.
⁹² *Id.* at 22.
⁹³ *Id.* at 43.
⁹⁴ *Id.* at 28; See also Luanda Guidelines 32(b)(iv).
⁹⁵ The Mandela Rules, Rule 58(1).
⁹⁶ UNCROC 9(3).

Respondent lawyers reported various statutory and regulatory authorities with varying degrees of specificity which regulate family contact and visits:

- Regulation 45 of the Prisons Regulations and Clause 375 of the Nigerian Prisons Standing Order provides that Prisoners awaiting trial shall be given reasonable assistance including the provision of writing materials and access to telephones, to communicate with their relatives, legal advisers, or friends for conducting correspondence in connection with their defense. Clause 160 of the Nigerian Prisons Standing Order provides that visits to convicted prisoners shall take place between 09:00 to 14:00 hours on Saturdays and Sundays, while visits to unconvicted prisoners shall take place between 09:00 to 14:00 hours Mondays through Fridays. The Superintendent in-charge is permitted to allow visits at some other time than that prescribed by the Standing Order.
- Generally, the Kenya Prisons Act provides detailed rules for categories of prisoners and the visitation rights they enjoy depending on the prisoner’s “stage” (ranging from first to fourth plus “special stage”). These rules specify that prisoners are entitled to write and receive one letter within a period ranging from two to four weeks and to receive one 20 – 30 minute visit every two to four weeks or to write and to receive one letter in lieu of such visit.
- An ex-prisoner is not permitted to visit a current prisoner without written consent from the Commissioner of Prisons. The subsidiary legislation to the Kenya Prisons Act provides for visiting hours and letters to which prisoners are entitled. There is no provision for prison leave, phone calls or accommodation for visiting families.
- In Tanzania similarly detailed rules are available whereby a convicted prisoner shall be allowed to receive a visit from not more than two persons for a period of 15 minutes once every four weeks. Prisoners are allowed to write and receive letters once every two weeks as provided under the regulations and the cost of postage is borne by the government. Visits are also allowed (i) on admission to prison, (ii) prior to transfer from one prison to another or (iii) if dangerously ill. Other significant restrictions noted include (x) prisoners under punishment of confinement in a separate cell are not allowed to receive a visit, (y) former prisoners are not allowed to visit a prisoner except with permission in writing from a prison officer in charge; and (z) visits are to take place within the sight and hearing of the prison officer.

7.3 Limitations on Visits from Family Members

Article 18 of the African Charter provides that “the family shall be the natural unit and basis of society. It shall be protected by the State.” Article 31 of the Robben Island Guidelines calls on states to “ensure that all persons deprived of their liberty ... have the right to be visited by and correspond with family members,” while Article 32 of the Luanda Guidelines calls on states to ensure that women in detention “be provided with the facilities necessary to contact their families.”

Bangkok Rule 44 provides that “in view of women prisoners’ disproportionate experience of domestic violence, they shall be properly consulted as to whom, including which family members, is allowed to visit them.”⁹⁷

According to the survey results, excepting The Gambia and Kenya, women prisoners are not always consulted (and in some cases are never consulted) on whether they wish to allow visits from certain family members. Such a consultation may be particularly relevant, for example,

where a family member may have previously committed domestic violence. One respondent noted that, for safety reasons, women are consulted in order to determine whether they know the visitor and wish to accept the visit. Consultation may be employed as a security measure when a death has occurred and the prisoner feels threatened by the victim’s family.

The only relevant legal regime identified was Section 57 of the Kenya Prisons Act providing that a prison officer detailed to supervise visits shall demand the name and address of every visitor to a prisoner and, when he has any grounds for suspicion, he may search or cause to be searched male visitors and may direct a woman officer to search women visitors, but such search shall not be in the presence of any prisoner or of another visitor; and, in the case of any visitor refusing to be searched, such visitor shall be ordered to leave the prison.

⁹⁷ Bangkok Rule 44.

Section Eight: Legal Assistance, Inspections and Oversight

Survey results suggest that women prisoners are not always given comprehensive information about prison rules upon detention. In most of the jurisdictions surveyed, it was reported that they do not receive written copies of the regulations which govern their treatment in detention. Moreover, many survey respondents reported that women prisoners do not always have adequate access to legal aid. Additionally, while NGOs are permitted to perform some form of prison inspection in most jurisdictions, little is known about the internal handling of abuse claims.

8.1 Information Given or Made Available to Women Upon Admission to Prison

The Bangkok Rules explicitly state that adequate attention should be given to admission procedures to ensure information about the rules and regulations of the prison in question is provided to women prisoners.⁹⁸ Further, the information provided must be delivered in a language that the prisoner understands.⁹⁹ Principle 14 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment provides that “a person who does not adequately understand or speak the language used by the authorities ... is entitled to promptly receive in a language which he understands the information ...”¹⁰⁰

Survey results suggest that compliance with these standards vary between the jurisdictions surveyed. In Malawi, it was reported that women prisoners are not provided with a written copy or oral explanation of the regulations that govern their treatment within the prison. In The Gambia, responses suggest that women are at least given an oral explanation, but not always a written explanation of prison regulations and procedures.

In Nigeria, a written copy of the regulations is provided in some cases, and an oral explanation of the regulations is provided in other cases. The Nigerian Prison Service provides inmates with a handbook containing details of their rights and obligations while in custody.

In Kenya, respondents reported that women prisoners are not given a written copy of the regulations governing their treatment, but they receive an oral explanation of the regulations in some cases. Further, the Kenyan Prisons Service, through stakeholders such as the Kenyan National Commission on Human Rights, the United Nations Office of the High Commissioner on Human Rights and the Faraja Foundation, have collaborated on an initiative to strengthen human rights information in prisons. Human Rights Desks have been placed in maximum security prisons to facilitate oral explanations of prisoners’ rights, and paralegal services

and additional training have also been implemented. Further, signage and newsstands or billboards have been installed at most prisons to facilitate an understanding of prisoners’ rights.¹⁰¹

In Malawi and Kenya, NGOs reported that women prisoners are not provided with an explanation of how to make inquiries or complaints concerning their treatment. This is despite the fact that in Kenya, the right to make a complaint is enshrined in legislation.¹⁰² In The Gambia, it was reported that such information is provided in all cases, while in Nigeria, survey results suggest that such information is provided only in some cases.

It is not clear whether incarcerated women were provided with information on how to access general legal assistance. NGOs in The Gambia and Kenya reported that such information was provided in at least some cases, while in Malawi it was reported that such information was not provided to women.

NGOs in The Gambia and Kenya reported that information on regulations, complaints mechanisms and legal assistance is always translated to a language the prisoner can understand. In The Gambia, officers often use local languages that are widely spoken in the country. In Kenya, the right to make complaints is provided under Section 65 of the Prisons (Prisons Council) Rules 1963 and is provided in English and Kiswahili.

In Nigeria, NGOs reported that in some instances, information was not provided to women prisoners in a language they were able to understand.

NGO Spotlight: Translating Prison Information

In Nigeria, PRAWA has worked with the Nigerian Prison Service to translate written information into three of Nigeria’s most widely spoken languages, including Pidgin English.

Clause 14 of the Nigerian Prisons Standing Order mandates every prisoner be informed of their rights and privileges, length of sentence, type of labor and restrictions of labor within 24 hours of admission.

However, survey responses suggest that it is not known whether this provision is always complied with.

8.2 Access to Legal Counsel

Article 7 of the African Charter provides that every person has “the right to defense, including the right to be defended by counsel” of their choice. Article 8 of the Maputo Protocol further provides for “effective access by women to judicial and legal services, including legal aid.” These standards are reinforced by Article 27 of the Robben Island Guidelines, which calls on states to “ensure that all persons deprived of their liberty are brought promptly before a judicial authority have the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.”

*The Bangkok Rules provide that during admission procedures, prisoners must be informed of their ability to access legal advice, as well as the ability to access consular representatives in the case of foreign nationals.*¹⁰³

Survey responses suggest that incarcerated women’s access to legal counsel varied across the jurisdictions surveyed. Tanzania reported that free, accessible and confidential mechanisms are provided only in some cases, while in Malawi such mechanisms are unavailable.

Article 50 of the Kenyan Constitution grants an arrested person the right to have an advocate assigned to them by the state at state expense if a substantial injustice would otherwise result, and they must be informed of this right promptly. Rule 59 of the Kenyan Prison (Prison Council) Rules 1963 requires that a prisoner who has given notice of appeal; is subject to a repatriation order; or who intends to conduct any civil or criminal litigation; is entitled to “reasonable facilities to see his advocate concerning the appeal in the sight, but not in the hearing, of a prison officer.” Similarly, Tanzanian Regulations allow a woman prisoner to be visited by a legal adviser, and the visit shall take place within the sight but not the hearing of a prison officer. In practice, in Kenya women tried for murder always receive free legal representation from government counsel, although the cases tried with government counsel require longer periods of hearings because the appointed counsel serves many different clients at the same time. Stakeholders from different NGOs have also supported women in special cases where the woman in question has financial limitations.¹⁰⁴

In The Gambia, in most cases, women prisoners are provided with free, accessible and confidential ways to

contact legal counsel. State counsel and some NGOs, such as the Female Lawyers Association, are available to provide pro bono legal services to women who cannot afford to pay for lawyers.

8.3 Access to NGOs to Inspect and Visit Prisons

Principle 4 of the Ouagadougou Declaration recommends prisons be subject to “independent inspection mechanisms, including the national medical and civil society groups.”

Principle 29 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment provides that “places of detention shall be visited regularly by qualified and experienced persons ... distinct from the authority directly in charge of the ... place of detention ...” Rule 83 of the Mandela Rules calls on states to ensure that there are “[e]xternal inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.

Other than in Tanzania, NGOs in all jurisdictions surveyed reported that NGOs were able to carry out some form of prison inspection, although generally only with prior permission of the prison administration. In The Gambia, it was reported that civil society organizations such as IHRDA have often been allowed to visit the prisons and provide assistance to inmates and/or make assessments of prison conditions.

In Tanzania, local NGOs are generally not permitted to inspect prisons independently. One exception to this is Tanzania’s national human rights institute, the Commission for Human Rights and Good Governance. Other NGOs, including the LHRC, have been permitted to accompany the Commission on its inspections, but have not been allowed to inspect prisons separately.

8.4 Investigations of Claims of Abuse

Articles 17-19 of the Robben Island Guidelines call for states to “ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment”; “ensure that whenever persons who claimed to have been or appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated”; and that “investigations into all allegations of torture or ill-treatment shall be conducted promptly, impartially and effectively.”

Rule 7 of the Bangkok Rules calls on states to ensure that women prisoners are informed of their rights to seek recourse from judicial authorities and be fully informed of the procedures and steps involved. If the woman prisoner chooses to take action, appropriate staff must be immediately informed and the case must be referred to the competent authority for investigation. Further, the prison authorities must help the woman prisoner obtain access to legal assistance with the matter.

The Bangkok Rules expand upon Rule 57 of the Mandela Rules which provides that “[e]very request or complaint shall be promptly dealt with and replied to without undue delay.”

Survey responses suggest that very little is known about the handling of abuse claims in the jurisdictions surveyed; and in many cases, where information is known, there are grounds for concern.

In Malawi, complaints of abuse, including sexual abuse, are not investigated promptly. In Nigeria and Kenya, complaints of abuse, including sexual abuse, are in some cases investigated promptly. In Nigeria, there have been several instances of women being impregnated while in prison, but no reliable information or explanations have been given for these occurrences.¹⁰⁵

⁹⁸ Bangkok Rule 2.

⁹⁹ *Id.*

¹⁰⁰ *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*, Principle 14, G.A. Res. 43/173, at pg.3 (Dec. 9, 1988), <https://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf>

¹⁰¹ U.N. High Commissioner for Human Rights, *HUMAN RIGHTS AND PRISONS, A Pocketbook of International Human Rights Standards for Prison Officials*, HR/P/PT/11/Add. 3, (2005) https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Publications/training11Add3en.pdf&action=default&DefaultItemOpen=1;

Kagwiria Mbogori, Kenya National Commission on Human Rights, *Human Rights, The Elusive Mirage?*, The Fourth State of Human Rights Report: Post Promulgation 2010-2014, <http://www.knchr.org/Portals/0/StateOfHumanRightsReports/4th%20SHR%20Report.pdf>.

¹⁰² Prisons (Prisons Council) Rules 1963 § 65.

¹⁰³ *Supra* note 102.

¹⁰⁴ CLEAR Kenya, the charitable arm of the Kenya Christian Lawyers' Fellowship, <http://clearkenya.org/>; Legal Resources Foundation Trust (LRF), <http://www.lrf-kenya.or.ke/>; Kituo Cha Sheria – Legal Advice Centre; <http://kituochasheria.or.ke/>.

¹⁰⁵ See, e.g., an investigation by Amnesty International, reported at <https://reliefweb.int/report/nigeria/nigeria-children-and-women-face-sexual-violence-borno-prisons>.

Section Nine: Data and Research

Survey results suggest that at least some data regarding women prisoners is available throughout all jurisdictions surveyed. However, beyond basic data about the number of women in prison, there appears to be little consistency in the types of data collected. Furthermore, many respondents questioned whether data is accurate and current.

The Preamble to the Bangkok Rules directs that Member States should “collect, maintain, analyze and publish, as appropriate, specific data on women in prison and women offenders.”

Bangkok Rule 69 calls on states to “review, evaluate, and make public periodically the trends, problems, and factors associated with offending behavior in women as well as their children, in order to reduce the stigmatization and negative impact of those women’s confrontation with the criminal justice system on them.”

The Bangkok Rules state that prisons should keep accurate records in order to ensure reliable data. Rule 3 directs prison facilities to keep confidential records on the personal details of the children of women inmates at the time of admission, including the children’s location and custody or guardianship status.¹⁰⁶ In an effort to “take into account the best interests of the children,” Rule 68 calls for efforts to be made to promote public research on how women’s imprisonment affects the lives of their children, and calls on policymakers to use such research to develop programs to mitigate the detrimental impact.

Maintaining data enables international bodies to monitor not only the number of women prisoners worldwide, but their reasons for imprisonment and any relevant trends, to name a few of the various potential benefits of data. Further, understanding the cause of incarceration and the demographics of prison populations allows leaders and communities to better address problems in their criminal justice systems, including where applicable the disproportionate prosecution of certain women or crimes. Moreover, data collection on the social reintegration needs of women offenders can help legislators and community organizations tailor programs that help ensure that women are adequately prepared for life after prison.

9.1 Data on Women Prisoners Generally

All respondents observed that their jurisdictions maintain data on the number of women in prisons, though few consider such data to be “comprehensive and reliable” and the majority of respondents consider data to be available only “in some cases.” In Tanzania, it has been reported that while there may be a mechanism for the collection of data, as a practical matter data is not

collected because of logistical challenges in the working environment. Finally in some cases, even if data is collected it is not made public.

Beyond the numbers of women prisoners, in all countries, more granular data is not consistently available regarding factors such as (i) the number of children affected by their mother’s confrontation with the criminal justice system; (ii) any recent increases; (iii) the types of offenses committed; (iv) average length of time in prison; or (v) the number of children housed in prison accommodation.

Data on rates of physical and sexual abuse of women prisoners appears to be very limited, which highlights the particular vulnerability of women in prison. One respondent in Nigeria noted that because abuse of prisoners has been denied by prison officials, there are no records or data on the abuse of women prisoners.

9.2 Reliability of Data

Even where data is available, respondents raised questions around the extent to which such data is valid or current. One respondent in Nigeria characterizes data on numbers of women and children in prison as “especially unreliable” because of its limited breadth. In particular, the respondent noted a lack of clarity regarding the classification of children and whether the available data distinguishes between those children who are in prison because their mothers have committed a crime and those children in prison who have themselves committed a crime. Data is reported in multiple cases as being at least over five years old.

9.3 Sources of Data

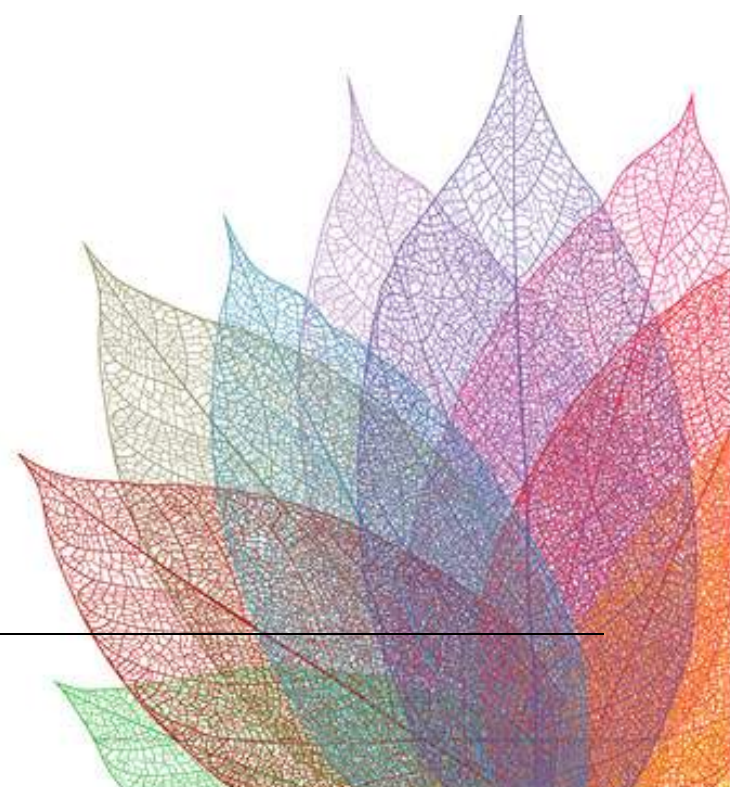
Sources of data range from public sources, data that is available by special consultation with prison authorities and data that is maintained by NGOs.

Certain jurisdictions maintain data through national administrative offices or prison authorities, though in some cases such data has been reported as somewhat dated, as noted above. In Malawi, it is reported that comprehensive and reliable data on women in prison is available through Prison Headquarters daily figures

which allows for monitoring of numbers and trends. Similarly, daily data collected and stored by the Nigerian Prison Service and the PRAWA survey provides Nigerian authorities comprehensive and reliable data on trends regarding the number of women in prison. The Kenya National Bureau of Statistics has data up to and including 2012.¹⁰⁷ Likewise in Tanzania, data obtained from the Prison service was collected in 2013 and 2014.¹⁰⁸

Data is also available through NGOs, for example through the World Prisons Brief, regarding prison statistics in Kenya.

¹⁰⁶ Bangkok Rule 3 supplements Rule 7 of the Mandela Rules.
¹⁰⁷ Kenya National Bureau of Statistics (KNBS), *Convicted Prison Population By Age and Gender, 2008-2012* (July 1, 2017), <https://www.knbs.or.ke/download/convicted-prison-population-by-age-and-gender-2008-2012>.
¹⁰⁸ Prison Force of Mainland Tanzania, Ministry of Interior Dar es Salaam, 2013-2014, <http://magereza.go.tz/docs/Ripot%20ya%20wafungwa%202013%20na%202014.pdf>.





Recommendations

To the governments:

1. Provide training to prison officials on both domestic and international law and standards concerning the treatment of women prisoners and women's rights generally.
2. Provide training to judges, lawyers, prosecutors, social workers and other justice operators on regional and international standards on the treatment of women prisoners and women in conflict with the law.
3. Ensure that women prisoners are fully aware of their rights under domestic and international law. Provide oral and written explanation of prison rules to women upon entry in correction facilities.
4. Conduct a formal audit of whether domestic laws and practices regarding women in conflict with the law and women prisoners comply with international and regional standards and take steps to align local legal frameworks and practices with these standards.
5. Provide comprehensive, gender sensitive and accessible drug treatment and mental health programs. These programs should be available to women prisoners and also women in conflict with the law which may not result in imprisonment.
6. Increase access to health and hygiene services for women prisoners. Provide specialized healthcare services for pregnant and nursing mothers and children in prison with their mothers.
7. Increase use of non-custodial measures for petty crimes, particularly for women who are pregnant and/or care for small children.
8. Develop and implement clear guidelines to prevent and address sexual and other forms of abuse of women prisoners, including clear, confidential and efficient channels for NGOs and prisoners to report abuse.
9. Ensure that women prisoners have access to necessary hygiene products and an adequate supply of water and cleaning supplies.
10. Provide adequate prenatal and postnatal care to women prisoners.
11. Ensure that children in prison with their mothers are provided with appropriate health, nutritional and educational care.
12. Collect detailed, comprehensive, up to date, and reliable data on women prisoners, causes of imprisonment and impact on society and make it available to the public.
13. Continue to allow local and international NGOs access to prisons housing women prisoners, and remove any barriers that NGOs face when communicating with prisoners.

To local and international NGOs:

1. Provide know-your-rights campaigns for women prisoners.
2. Share best practices and lessons learned in implementing international and regional standards on the rights of women prisoners.
3. Engage in research on pathways to prison, conditions in prisons and consequences of imprisonment for women and make data publicly available.
4. Increase data driven advocacy for the improvement of the treatment of women prisoners and women in conflict with the law.
5. Increase partnership with prison services on training of women prisoners and prison personnel.
6. Continue to support women prisoners with the provision of hygiene products, adequate health and educational and vocational services while at the same time stepping up advocacy for the government to improve access to these services.
7. Engage in further research on whether the specific needs of children in prison with their mothers are being met.

To the international community:

1. Support local NGOs in monitoring and reporting on prison conditions.
2. Support research on women incarceration by NGOs and/or academic institutions.
3. Where appropriate support governments in improving prisons conditions for women and data collection on women imprisonment.

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