

Piet Hein van Kempen and Maartje Krabbe (eds.)

# Women in Prison

The Bangkok Rules and Beyond

# Femmes en prison

Les Règles de Bangkok et au-delà

INTERNATIONAL PENAL AND PENITENTIARY FOUNDATION  
FONDATION INTERNATIONALE PÉNALE ET PÉNITENTIAIRE

46



intersentia



# WOMEN IN PRISON

The Bangkok Rules and Beyond

# FEMMES EN PRISON

Les règles de Bangkok et au-delà

*Edited by*

P.H.P.H.M.C. VAN KEMPEN

M.J.M. KRABBE



intersentia

Cambridge – Antwerp – Portland

Intersentia Ltd  
Sheraton House | Castle Park  
Cambridge | CB3 0AX | United Kingdom  
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169  
Email: mail@intersentia.co.uk  
www.intersentia.com | www.intersentia.co.uk

*Distribution for the UK and Ireland:*  
NBN International  
Airport Business Centre, 10 Thornbury Road  
Plymouth, PL6 7 PP  
United Kingdom  
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331  
Email: orders@nbninternational.com

*Distribution for Europe and all other countries:*  
Intersentia Publishing nv  
Groenstraat 31  
2640 Mortsel  
Belgium  
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21  
Email: mail@intersentia.be

*Distribution for the USA and Canada:*  
International Specialized Book Services  
920 NE 58th Ave. Suite 300  
Portland, OR 97213  
USA  
Tel.: +1 800 944 6190 (toll free) | Fax: +1 503 280 8832  
Email: info@isbs.com

Women in Prison: The Bangkok Rules and Beyond  
Femmes en prison: Les règles de Bangkok et au-delà  
© The editors and contributors severally 2017

The editors and contributors have asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as authors of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Cover image © Lou Oates – Dreamstime.com

ISBN 978-1-78068-421-5  
D/2017/7849/16  
NUR 820

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

# CONTENTS

<i>Foreword</i> .....	v
<i>Avant-propos</i> .....	vii
<i>Acknowledgements</i> .....	ix
<i>Remerciements</i> .....	xi

## PART I. INTRODUCTORY SYNTHESIS AND ANALYSES

### 1<sup>ÈRE</sup> PARTIE. SYNTHÈSE ET ANALYSES INTRODUCTIVES

#### **Women in prison: a transnational perspective**

Maartje KRABBE & Piet Hein VAN KEMPEN .....	3
1. Introduction to this volume .....	3
1.1. Outline of this volume .....	4
1.1.1. Thematic chapters .....	4
1.1.2. National chapters .....	6
1.1.3. Present chapter .....	7
1.2. The definition of women in prison .....	7
2. Human rights framework .....	8
2.1. Introduction .....	8
2.2. International treaties relevant to women in prison .....	8
2.2.1. General human rights treaties .....	8
2.2.2. Specific human rights treaties .....	10
2.2.3. International human rights treaties on women .....	11
2.2.4. International instruments relevant to women in prison .....	12
2.2.5. The Bangkok Rules .....	13
2.2.5.1. Women's specific needs .....	13
2.2.5.2. Prevention of abuse .....	14
2.2.5.3. The protection of children's rights .....	14
2.3. International treaties and instruments: ratification, implementation and application .....	15
3. Statistics on women in prison and criminological factors .....	17
3.1. Introduction .....	17
3.2. Statistics on women in prison .....	18
3.3. Criminological factors .....	19

4.	Deprivation of liberty phase: future challenges . . . . .	21
4.1.	Introduction . . . . .	21
4.2.	Topical implementation issues . . . . .	21
4.2.1.	Health care . . . . .	21
4.2.2.	Children in prison . . . . .	22
4.2.3.	Searches . . . . .	24
4.2.4.	Prison design . . . . .	24
4.2.5.	Increasing numbers . . . . .	25
4.3.	Implementation beyond the Bangkok Rules. . . . .	28
4.3.1.	Access to legal advice. . . . .	29
4.3.2.	Programs and activities in prison . . . . .	29
4.3.3.	The right to express milk. . . . .	29
4.3.4.	Non gender-conforming persons. . . . .	30
4.4.	Extension of the Bangkok Rules. . . . .	30
4.4.1.	The keeping of records. . . . .	30
4.4.2.	Reproductive rights . . . . .	31
4.4.3.	The principle of separation . . . . .	32
4.5.	Increasing legal weight and scope of the Bangkok Rules . . . . .	32
5.	Conclusion. . . . .	33

## **Femmes en prison: une perspective transnationale**

	Maartje KRABBE & Piet Hein VAN KEMPEN. . . . .	35
1.	Introduction au présent volume . . . . .	35
1.1.	Résumé du présent ouvrage . . . . .	37
1.1.1.	Chapitres thématiques. . . . .	37
1.1.2.	Les chapitres nationaux. . . . .	39
1.1.3.	Le présent chapitre. . . . .	39
1.2.	Définition des femmes en prison . . . . .	40
2.	Le cadre des droits de l'homme . . . . .	40
2.1.	Introduction . . . . .	40
2.2.	Traités internationaux pertinents pour les femmes en prison . . . . .	41
2.2.1.	Les traités généraux relatifs aux droits de l'homme. . . . .	41
2.2.2.	Les traités spécifiques relatifs aux droits de l'homme . . . . .	43
2.2.3.	Les traités internationaux des droits de l'homme relatifs aux femmes. . . . .	44
2.2.4.	Instruments internationaux pertinents pour les femmes en prison . . . . .	45
2.2.5.	Les Règles de Bangkok. . . . .	46
2.2.5.1.	Les besoins particuliers des femmes. . . . .	46
2.2.5.2.	Prévention de la violence . . . . .	47
2.2.5.3.	La protection des droits de l'enfant . . . . .	48

2.3. Traités et instruments internationaux : ratification, mise en oeuvre et application .....	48
3. Statistiques relatives aux femmes en prison et les facteurs criminologiques .....	51
3.1. Introduction .....	51
3.2. Les statistiques relatives aux femmes en prison .....	52
3.3. Facteurs criminologiques .....	53
4. La phase de privation de liberté : les défis pour l'avenir .....	55
4.1. Introduction .....	55
4.2. Questions d'exécution thématique .....	55
4.2.1. Les soins de santé .....	56
4.2.2. Les enfants en prison .....	57
4.2.3. Les fouilles .....	58
4.2.4. Conception des prisons .....	59
4.2.5. Des chiffres en croissance .....	59
4.3. Exécution au-delà des Règles de Bangkok .....	63
4.3.1. Accès à des conseils juridiques .....	64
4.3.2. Programmes et activités en prison .....	64
4.3.3. Le droit de tirer du lait .....	65
4.3.4. Les transgenres .....	65
4.4. Extension des Règles de Bangkok .....	65
4.4.1. La tenue de dossiers .....	65
4.4.2. Les droits reproductifs .....	66
4.4.3. Le principe de la séparation .....	67
4.5. Poids et périmètre légal croissant des Règles de Bangkok .....	68
5. Conclusion .....	69

## PART II. THEMES

### 2<sup>ÈME</sup> PARTIE. THÈMES

#### **Women, crime and incarceration: exploring pathways of women in conflict with the law – The case of South Africa**

Lillian ARTZ, Yonina HOFFMAN-WANDERER & Kelley MOULT .....	73
1. Introduction .....	73
2. Background .....	75
2.1. Pathways and “context” .....	75
2.2. The state of prisons and imprisonment in South Africa .....	77
2.2.1. The female prison population .....	77
3. Methodology: “The Pathways Project” .....	79

4.	Socio-demographic findings . . . . .	81
4.1.	Age and race . . . . .	81
4.2.	Social factors . . . . .	82
4.2.1.	Family household: growing up . . . . .	82
4.2.2.	Family household: adulthood . . . . .	82
4.2.3.	Education . . . . .	83
4.2.4.	Employment . . . . .	83
4.2.5.	Marriage, sex and children . . . . .	84
4.2.6.	Drug and alcohol use . . . . .	84
4.3.	Offences . . . . .	85
4.3.1.	Family members in prison . . . . .	86
4.4.	Relevance of survey findings . . . . .	86
5.	Selected interview findings . . . . .	87
5.1.	Parenting . . . . .	87
5.1.1.	Dislocation and disrupted bonds with parents . . . . .	88
5.1.2.	Absent, transient or distant fathers . . . . .	89
5.2.	Traumatic events and significant losses . . . . .	91
5.3.	History of abuse . . . . .	92
5.3.1.	Child sexual abuse . . . . .	93
5.3.2.	Domestic violence . . . . .	96
5.4.	Care-taking and responsibility . . . . .	98
5.4.1.	Caring for children and its impact on crime . . . . .	100
5.4.2.	Motherhood and incarceration . . . . .	101
5.4.3.	Other care-taking responsibilities . . . . .	101
5.4.4.	Childhood responsibilities . . . . .	101
6.	Conclusion: the winding road to incarceration . . . . .	102

## **Variations and growth in the levels of female imprisonment**

	Roy WALMSLEY . . . . .	105
1.	Introduction . . . . .	105
2.	The prevalence of women within the total prison population . . . . .	106
3.	The female prison population rate . . . . .	108
4.	Growth in the levels of female imprisonment . . . . .	109
5.	Conclusions and the future . . . . .	112
6.	Annex of tables . . . . .	115

## **Protection of women in prison under the European Convention on Human Rights**

	Lech PAPRZYCKI . . . . .	119
1.	Introduction . . . . .	119
2.	Protection of female prisoners offered by the European Convention on Human Rights under articles 2, 3, 8 and 12 . . . . .	120

2.1. Protection of the right to life of prisoners under article 2 of the ECHR .....	120
2.2. Protection of female inmates under article 3 of the Convention. ....	121
2.3. Protection of female inmates under articles 8 and 12 of the Convention. ....	124
3. Protection of female inmates under article 14 of the Convention .....	130
4. Convergence of standards – soft international law as a source of inspiration for the European Court of Human Rights .....	131
5. Conclusion. ....	133

### **European standards relating to non-judicial protection of women in prison**

Hans-Jürgen BARTSCH .....	135
1. Introduction .....	135
2. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment .....	136
3. The European prison rules. ....	140
4. Conclusion. ....	141

### **Protection of women in prison in Asia: positive developments, weaknesses, opportunities and threats – perspectives from UNAFEI and its participating countries**

Tomoko AKANE. ....	143
1. Introduction .....	143
2. UNAFEI's 153 <sup>rd</sup> international seminar .....	143
3. Good practices for the implementation of the Bangkok Rules. ....	144
3.1. Risk assessment .....	145
3.2. Gender-specific health care. ....	145
3.3. Maintaining family relationships .....	146
3.4. Reintegration. ....	146
3.5. Pregnant and breastfeeding mothers. ....	147
3.6. Non-custodial measures .....	147
4. Implementation of the Bangkok Rules in Japan .....	148
4.1. Pregnant and breastfeeding mothers. ....	148
4.2. Gender-specific health care. ....	148
4.3. Non-custodial measures .....	148
4.4. Gender-specific health care and rehabilitation programs. ....	149
4.5. Treatment programs to prevent re-offending. ....	149
4.5.1. Treatment programs at a half-open prison. ....	149
4.5.2. Treatment programs at a traditional women's prison .....	150
5. Conclusion and recommendations .....	150



## **Implementation of the Bangkok Rules in Thai prisons**

Nathee CHITSAWANG .....	153
1. Introduction .....	153
2. Thai women prisoners: some general characteristics. ....	154
3. Difficulties of the female prisoners and the emergence of the “Bangkok Rules” .....	155
4. Implementation of the Bangkok Rules: what have we done so far? .....	157
5. The active improvements in Thai prisons .....	158
6. Conclusion. ....	160

## **The design of women’s prisons: an architectural perspective on gender-specific needs and realities of female prisoners and main requirements for improvement**

Alejo GARCÍA BASALO .....	161
1. Introduction .....	161
2. Background .....	161
3. The impact of the Bangkok Rules on architecture .....	164
4. The architecture of women’s prisons .....	167
5. Conclusion. ....	172

## **PART III. NATIONAL REPORTS**

### **3<sup>ÈME</sup> PARTIE. RAPPORTS NATIONAUX**

#### **Women in prison in Argentina**

Julio Enrique APARICIO, Roberto Patricio ORTENZI & Alejo GARCÍA BASALO .....	177
1. Introduction .....	177
1.1. The issue from a criminal perspective. ....	178
1.1.1. Quantification of women’s involvement in crimes .....	178
1.1.2. Characteristics of women’s involvement in crimes .....	178
1.2. The issue from a criminal law perspective .....	179
1.3. The issue from a prison perspective: brief statistical framework .....	181
1.4. Suitability of facilities. ....	181
1.5. Prison staff. ....	182
1.6. Contact with the family environment .....	182
1.7. Contact with the social environment .....	182
1.8. The issue from a post-release perspective. ....	183

2.	International and human rights framework . . . . .	183
2.1.	International organizations, treaties on human rights and conventions on women . . . . .	183
2.2.	Human and civil rights in the Argentine Constitution and in Argentine legislation . . . . .	185
2.2.1.	Legal framework governing detention and imprisonment of women in the Argentine Republic. . . . .	185
2.2.2.	Situation of women deprived of their liberty under the Argentine Constitution . . . . .	186
2.2.3.	Situation of women deprived of their liberty under the Argentine Criminal Code . . . . .	187
2.2.4.	Situation of women deprived of their liberty under Law 24660 . . . . .	188
2.2.5.	National legislation on violence against women . . . . .	188
3.	Statistics and criminological factors. . . . .	189
3.1.	Statistics on women in prison. . . . .	189
3.2.	Criminological factors. . . . .	191
4.	Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law and practice . . . . .	195
4.1.	Allocation . . . . .	195
4.2.	Specific groups . . . . .	199
4.2.1.	Minors . . . . .	199
4.2.2.	Mothers in prison. . . . .	200
4.2.3.	Foreign prisoners . . . . .	201
4.3.	Health care . . . . .	201
4.4.	Safety and security . . . . .	202
4.5.	Contact with the outside world . . . . .	203
4.6.	Rehabilitation of women prisoners . . . . .	203
5.	Conclusion. . . . .	203

## **Women in prison in Australia**

	Kat ARMSTRONG & Kathryn FARRAR . . . . .	205
1.	Introduction . . . . .	205
2.	International and human rights framework . . . . .	206
2.1.	International organisations. . . . .	206
2.2.	International and domestic human rights law . . . . .	206
2.2.1.	Treaties. . . . .	206
2.2.2.	International human rights instruments. . . . .	207
2.2.2.1.	United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) 2010. . . . .	207

2.2.2.2.	United Nations Standard Minimum Rules for the Treatment of Prisoners 1957/1977 . . . . .	208
2.2.2.3.	Judicial consideration . . . . .	208
2.2.3.	Enforcing fundamental human rights domestically . . . . .	209
2.2.4.	National human rights/civil rights. . . . .	210
2.2.4.1.	Victoria and Australian Capital Territory Human Rights Acts. . . . .	211
2.2.4.2.	Discrimination . . . . .	212
3.	Statistics on women in crime, in prison and criminological factors . . . . .	213
3.1.	Suspected women. . . . .	213
3.2.	Statistics on women in prison. . . . .	213
3.3.	Women's offending: pathways and characteristics. . . . .	216
3.3.1.	Women's pathways to offending. . . . .	217
3.3.2.	Prior imprisonment . . . . .	218
3.3.3.	Development during women's lives . . . . .	219
3.3.4.	Development over the years . . . . .	219
3.4.	Categories of crime in which women are involved . . . . .	220
3.5.	Criminological information on sentences . . . . .	222
3.5.1.	Unsentenced prisoners (on remand). . . . .	222
3.5.2.	Aggregate sentence length. . . . .	223
3.6.	Criminological reasons for women's imprisonment . . . . .	224
3.6.1.	Age . . . . .	224
3.6.2.	Drug use . . . . .	225
3.6.3.	Mental health and cognitive disability . . . . .	225
3.6.4.	Education and employment . . . . .	227
3.6.5.	Sexual assault, domestic/family violence and trauma. . . . .	227
3.6.6.	Homelessness . . . . .	228
3.7.	Indigenous women. . . . .	229
3.7.1.	Sentencing data for Indigenous women . . . . .	229
3.7.2.	Prison data for Indigenous women . . . . .	230
3.7.3.	Legislation and case law governing the sentencing of Indigenous women . . . . .	232
3.7.4.	Sentencing options for Indigenous women in Australia . . . . .	232
3.7.5.	Indigenous sentencing courts. . . . .	233
3.8.	Policy . . . . .	233
4.	Deprivation of liberty phase: conditions under which women are held in detention and prison. . . . .	234
4.1.	Allocation . . . . .	234
4.2.	Specific groups . . . . .	235
4.2.1.	Juveniles. . . . .	235
4.2.2.	Pregnant women and mothers . . . . .	236

4.2.3.	Culturally and linguistically diverse women .....	237
4.2.4.	Aboriginal and Torres Strait Island women .....	237
4.3.	Health care .....	238
4.3.1.	Medical screening .....	238
4.3.2.	Gender-specific health care in prison .....	238
4.3.3.	Specific problems pertaining to women in prison.....	239
4.4.	Safety and security .....	239
4.4.1.	Strip-searching .....	239
4.4.2.	Discipline and punishment.....	240
4.4.3.	Instruments of restraint.....	241
4.4.4.	Complaints procedure.....	241
4.5.	Contact with the outside world .....	242
4.5.1.	Contact with family .....	242
4.5.2.	Conjugal visits.....	243
4.6.	Staffing.....	243
4.6.1.	General staffing requirements .....	243
4.6.2.	Specific staffing problems in prisons .....	244
4.7.	Rehabilitation of women prisoners .....	244
4.7.1.	Access to programs and services .....	245
4.7.2.	Core programs .....	245
4.7.3.	Custodial infrastructure and classification.....	245
4.7.4.	Transition from prison to liberty.....	246
4.7.5.	Making rehabilitation of women prisoners effective and best practice.....	247
5.	Conclusion.....	248
6.	Appendix: legislation and regulations by jurisdiction in Australia .....	249

## **Women in prison in Austria**

	Wolfgang GRATZ.....	251
1.	Introduction.....	251
1.1.	Pre-trial detention .....	252
1.2.	Imprisonment.....	252
1.3.	Post-trial detention measures.....	253
2.	International and human rights framework.....	254
3.	Statistics and criminological factors.....	255
3.1.	Development of prison population .....	255
3.2.	Overview of the types of inmates in the Austrian correctional system .....	256
4.	Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law and practice .....	258
4.1.	Overview of the prison system.....	258

4.2.	Special provisions relating to imprisonment of women . . . . .	258
4.3.	General provisions of the Prison Act. . . . .	259
4.3.1.	Obligations of prisoners . . . . .	259
4.3.2.	Rights of prisoners . . . . .	259
4.3.3.	Complaints . . . . .	260
4.3.4.	Types of accommodation . . . . .	261
4.3.5.	Daily and weekly schedule . . . . .	262
4.3.6.	Visits. . . . .	263
4.3.7.	Telephone calls . . . . .	264
4.3.8.	Work in prison . . . . .	264
4.3.9.	Leave and interruptions of sentence . . . . .	266
4.3.10.	Electronic monitoring . . . . .	267
4.3.11.	Discharge on probation. . . . .	267
5.	Conclusion. . . . .	268
5.1.	General remarks. . . . .	268
5.2.	Trends . . . . .	269
5.3.	Bangkok Rules and Austria. . . . .	271

## **Women in prison in Brazil**

	Edmundo OLIVEIRA & Fabia MELO-FOURNIER . . . . .	273
1.	Introduction . . . . .	273
2.	International and human rights framework . . . . .	276
3.	Statistics and criminological factors. . . . .	278
4.	Conditions under which women are deprived of liberty, legal framework and practice . . . . .	284
4.1.	Allocation . . . . .	284
4.2.	Specific groups . . . . .	285
4.3.	Health care . . . . .	288
4.4.	Safety and security . . . . .	289
4.5.	Contact with the outside world . . . . .	291
4.6.	Training of staff. . . . .	292
4.7.	Classification and individualisation. . . . .	292
5.	Conclusion. . . . .	293

## **Women in prison in England and Wales**

	Michael SPURR . . . . .	295
1.	Introduction . . . . .	295
2.	International human rights framework. . . . .	296
3.	Statistics and criminological factors. . . . .	297
3.1.	Statistics on women suspected of a crime. . . . .	297
3.2.	Statistics on women in detention (Pre-trial and trial detention). . . . .	298

3.3.	Statistics on convicted women/women in prison .....	299
3.4.	Criminal career of women .....	301
3.5.	Categories of crimes in which women are involved .....	304
3.6.	Criminological information on sentences .....	307
3.7.	Criminological reasons for offending .....	307
3.7.1.	Mental health .....	307
3.7.2.	Alcohol use .....	308
3.7.3.	Drug use .....	308
3.7.4.	Abuse .....	309
3.7.5.	Children and families .....	310
3.7.6.	Accommodation and homelessness. ....	310
3.7.7.	Employability, employment and financial inclusion .....	311
3.7.8.	Training and skills .....	311
3.8.	Policy .....	311
4.	Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law and practice .....	313
4.1.	Allocation .....	313
4.2.	Specific groups .....	314
4.2.1.	Special facilities for juvenile female prisoners .....	314
4.2.2.	Special facilities for pregnant women .....	314
4.2.3.	Special facilities for mothers with children .....	315
4.2.4.	Breastfeeding prisoners .....	315
4.2.5.	Foreign national prisoners .....	316
4.3.	Health care .....	317
4.3.1.	Medical screening .....	317
4.3.2.	Gender-specific health care. ....	318
4.3.3.	Mental health .....	318
4.3.4.	Areas of development and best practice .....	318
4.4.	Safety and security .....	319
4.4.1.	Full searches .....	319
4.4.2.	Security categorisation of female prisoners .....	320
4.4.3.	Safer custody. ....	321
4.4.4.	Discipline and punishment. ....	321
4.4.5.	Restraint of female prisoners .....	322
4.4.6.	Complaint procedures .....	322
4.5.	Contact with the outside world .....	323
4.5.1.	Closeness to home .....	323
4.5.2.	Family contact. ....	323
4.5.3.	Conjugal visits. ....	324
4.6.	Training of staff. ....	324

4.7.	Rehabilitation of female prisoners . . . . .	325
4.7.1.	Classification and individualisation. . . . .	325
4.7.2.	Approved premises. . . . .	326
4.7.3.	Comprehensive pre- and post-release reintegration programmes: release on temporary licence . . . . .	326
4.7.4.	Rehabilitation of female prisoners: pre- and post-release reintegration programmes . . . . .	327
4.7.5.	Best practice . . . . .	329
5.	Conclusion. . . . .	330

## **Women in prison in Finland**

	Tapio LAPPI-SEPPÄLÄ . . . . .	333
1.	Introduction . . . . .	333
2.	International and human rights framework . . . . .	333
3.	Statistics on women in crime, in detention and in prison/ criminological factors. . . . .	334
3.1.	Duration of sentences . . . . .	337
4.	Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law. . . . .	337
4.1.	Prisoners' rights . . . . .	338
4.2.	Enforcement of sentences . . . . .	339
4.3.	Pregnant women. . . . .	340
4.4.	Health care . . . . .	340
4.5.	Safety and security . . . . .	341
4.6.	Contact with the outside world . . . . .	342
4.7.	Rehabilitation of female prisoners. . . . .	342
5.	Conclusion. . . . .	344

## **Femmes en prison en France**

	Cathérine PAUTRAT . . . . .	345
1.	Introduction . . . . .	345
2.	Cadre legal: normes internationales et de droits de l'homme . . . . .	347
2.1.	Organisations internationales. . . . .	347
2.2.	Instruments internationaux de droits de l'homme en ce qu'ils concernent spécifiquement les femmes . . . . .	347
2.3.	Droits de l'homme au niveau national / droits civils. . . . .	349
3.	Données statistiques des crimes commis par des femmes, des femmes en détention ou en prison / facteurs criminologiques (règles 67–70 Règles Bangkok) . . . . .	349
3.1.	Les femmes suspectées d'avoir commis un crime . . . . .	349

3.2.	Données statistiques des femmes en détention (en détention et en détention avant jugement) .....	350
3.3.	Données statistiques des femmes condamnées pour crimes / femmes en prison .....	351
3.4.	Carrière criminelle des femmes .....	352
3.5.	Catégories d'infractions commises par les femmes .....	353
3.6.	Informations criminologiques sur les peines pour femmes .....	355
3.7.	Facteurs criminologiques .....	356
4.	Privation de liberté: les conditions des femmes en détention et en prison, la législation pénale en vigueur et la pratique .....	357
4.1.	Affectation .....	357
4.2.	Groupes spécifiques .....	359
4.3.	Services médicaux .....	361
4.4.	Les soins de santé mentale .....	362
4.5.	Le traitement du VIH .....	362
4.6.	La prévention du suicide .....	363
4.7.	Les soins pour les femmes qui ont été victimes de violences sexuelles .....	364
4.8.	Sûreté et sécurité .....	365
4.9.	Contacts avec le monde extérieur .....	366
4.10.	Personnel pénitentiaire et formation .....	368
4.11.	Classification ou individualisation .....	368
5.	Conclusion .....	370

## **Women in prison in Germany**

	Rita HAVERKAMP & Axel BOETTICHER .....	373
1.	Introduction .....	373
2.	International and human rights framework .....	374
2.1.	International organisations .....	374
2.2.	International human rights treaties and conventions specifically concerning women .....	375
3.	National human rights/civil rights .....	378
4.	Statistics on women in crime in detention and in prison, as well as criminological factors .....	379
4.1.	Women officially suspected of crime .....	379
4.2.	Women convicted of crime .....	381
4.3.	Women in (pre-trial and trial) detention .....	383
4.4.	Women in prison .....	385
4.5.	Explanations, causes, criminological factors .....	386
5.	Criminal careers of women .....	387
5.1.	Introduction .....	387
5.2.	Development over the years .....	388



5.3.	Development during women's lives . . . . .	389
5.4.	Relation to the criminal career of men . . . . .	390
5.5.	Categories of crime in which women are involved . . . . .	391
5.6.	Relation of criminal involvement compared to men. . . . .	393
5.7.	Developments over the years . . . . .	393
5.8.	Criminological information on sentences . . . . .	394
5.8.1.	Unsuspended prison sentences . . . . .	394
5.9.	Relation to sentences applied to men . . . . .	396
5.10.	Development over the years . . . . .	397
5.11.	Criminological reasons . . . . .	399
5.12.	Policy . . . . .	400
6.	Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law and practice . . . . .	401
6.1.	Allocation . . . . .	402
6.1.1.	Gender-specific imprisonment. . . . .	402
6.1.2.	Special detention centers and prisons for women . . . . .	403
6.1.3.	Social therapy . . . . .	403
6.1.4.	Specific prisons for women . . . . .	404
6.2.	Specific groups . . . . .	404
6.2.1.	Juvenile prisoners. . . . .	404
6.2.2.	Mothers in prison. . . . .	405
6.2.3.	Pregnant women in prison . . . . .	406
6.2.4.	Foreign prisoners . . . . .	406
6.2.5.	Disabled prisoners . . . . .	407
6.3.	Health care . . . . .	407
6.3.1.	WHO principles of health care. . . . .	407
6.3.2.	Prison health care in Germany. . . . .	408
6.3.3.	Clinical diagnoses . . . . .	409
6.3.4.	Vaccinations . . . . .	410
6.3.5.	Right to treatment . . . . .	410
6.3.6.	Handling of drugs and drug addict prisoners . . . . .	410
6.3.7.	Rehabilitation . . . . .	411
6.4.	Safety and security . . . . .	411
6.5.	Contact with the outside world . . . . .	412
6.6.	Training of staff. . . . .	412
6.7.	Rehabilitation of women prisoners . . . . .	413
6.7.1.	Best practices . . . . .	413
6.7.2.	Gender mainstreaming . . . . .	414
6.7.3.	Work and education. . . . .	415
7.	Conclusion. . . . .	415

## **Women in prison in Greece**

Effi LAMBROPOULOU .....	417
1. Introduction .....	417
1.1. Sources, methods and limitations of the study .....	419
2. International and national human rights framework .....	421
2.1. International organizations and their impact on human rights of female prisoners in Greece .....	421
2.2. National legislation and human rights/civil rights .....	429
3. Facts and figures .....	430
3.1. Female suspects and those arrested by the police .....	430
3.2. Women in detention (pre-trial and trial detention) .....	432
3.3. Convicted women and women in prison convicted of crime .....	434
3.4. Criminal career and profile of female prisoners .....	440
3.5. Prison sentences and sentencing policy .....	446
4. Time in prison: treatment and human rights in action .....	450
4.1. Allocation of correctional facilities and general treatment policy .....	450
4.2. Treatment of specific groups .....	451
4.3. Health care in prison .....	455
4.4. Safety and security in prison .....	459
4.5. Contact with the outside world .....	465
4.6. Prison staff .....	468
4.7. Rehabilitation of female prisoners and aftercare .....	471
5. Conclusions and open issues .....	476

## **Women in prison in Ireland**

Mary ROGAN & Michael REILLY .....	479
1. Introduction .....	479
2. International and domestic human rights framework .....	479
3. Statistics and criminological factors .....	481
3.1. Women in detention .....	482
3.2. Reasons for involvement in crime .....	487
3.3. Policies to prevent the involvement of women in crime .....	489
3.4. The use of research and evidence in policy-making .....	490
3.5. Reoffending rates .....	490
4. Deprivation of liberty phase .....	491
4.1. Irish prisons .....	491
4.1.1. Overcrowding .....	491
4.1.2. Conditions .....	492
4.1.3. Activities .....	492
4.1.4. Allocation of women prisoners .....	493

4.2.	Health care .....	493
4.2.1.	Pregnant women, mothers who are breastfeeding and mothers with children .....	494
4.2.2.	Sexual abuse .....	495
4.2.3.	Self-harm .....	496
4.3.	Women from minority backgrounds .....	497
4.4.	Safety and security .....	498
4.4.1.	Discipline .....	499
4.4.2.	Complaints .....	500
4.5.	Contact with the outside world .....	502
4.5.1.	Conditions for visits .....	502
4.5.2.	The use of screened or “non-contact” visits .....	503
4.5.3.	The use of temporary release .....	503
4.6.	Training of staff .....	504
4.6.1.	Gender balance in staffing .....	504
4.7.	Rehabilitation of women prisoners .....	505
4.7.1.	Community alternatives for women .....	506
4.7.2.	Community return .....	508
4.7.3.	Proposed women’s centre .....	508
4.7.4.	Gender balance and staffing in the Probation Service .....	509
4.8.	Young female detainees .....	509
4.8.1.	Gender balance and staffing in the Irish Youth Justice Service .....	510
5.	Conclusion .....	510
5.1.	Recommendations for amendments to the Bangkok Rules .....	510

## **Femmes en prison en Italie**

	Franco DELLA CASA .....	513
1.	Introduction .....	513
2.	Cadre légal: normes internationales et droits de l’homme .....	514
2.1.	Organisation internationales .....	514
2.2.	Instruments internationaux de droits de l’homme concernant spécifiquement les femmes .....	514
2.3.	Droits de l’homme au niveau national .....	515
3.	Données statistiques relatives aux crimes commis par des femmes, des femmes en détention ou en prison / facteurs criminologiques (règles 67 à 70 des Règles de Bangkok) .....	516
3.1.	Femmes suspectées d’avoir commis un crime .....	516
3.2.	Données statistiques relatives aux femmes en détention (en détention et en détention avant jugement) .....	517
3.3.	Données statistiques relatives aux femmes condamnées pour crime / femmes en prison .....	518

3.4.	Carrière criminelle des femmes . . . . .	520
3.5.	Catégories de crimes commis par des femmes. . . . .	520
3.6.	Informations criminologiques sur les peines pour femmes. . . . .	521
3.7.	Facteurs criminologiques . . . . .	522
3.8.	Politique. . . . .	523
4.	Privation de liberté: les conditions des femmes en détention et en prison, la législation pénale en vigueur et la pratique . . . . .	524
4.1.	Affectation (règle N°56 des Règles de Bangkok) . . . . .	524
4.2.	Groupes spécifiques (règle N°55 des Règles de Bangkok) . . . . .	526
4.3.	Services médicaux . . . . .	528
4.4.	Sûreté et sécurité. . . . .	530
4.5.	Contacts avec le monde extérieur . . . . .	531
4.6.	Personnel pénitentiaire et formation. . . . .	533
4.7.	Classification ou individualisation. . . . .	535
5.	Conclusion. . . . .	537

## **Women in prison in the Netherlands**

Peter J.P. TAK . . . . .	539
1. Introduction . . . . .	539
1.1. Prisons for women . . . . .	539
1.2. The Bangkok Rules. . . . .	540
1.3. Research on women in prison . . . . .	540
1.4. Prison legislation . . . . .	541
2. International human rights framework. . . . .	542
2.1. International organizations. . . . .	542
2.2. International human rights treaties and conventions that specifically concern women . . . . .	542
2.3. National human rights/civil rights. . . . .	543
2.3.1. The Dutch Constitution. . . . .	543
2.3.2. Monistic system . . . . .	543
3. Statistics on women in crime, in detention and in prison and criminological factors. . . . .	544
3.1. Introduction . . . . .	544
3.1.1. Suspected women. . . . .	545
3.1.2. Women in (pre-trial and trial) detention . . . . .	545
3.1.3. Statistics on convicted women/women in prison . . . . .	546
3.2. Explanation of statistics. . . . .	548
3.3. Criminological factors. . . . .	549
3.4. Categories of crimes for which women are imprisoned . . . . .	550
3.5. Criminological information on sentences . . . . .	550
3.6. Criminological reasons . . . . .	550
3.7. Policy . . . . .	551

4. Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law. ....	551
4.1. Allocation .....	551
4.2. Specific groups .....	552
4.2.1. Introduction .....	552
4.2.2. Juvenile female prisoners .....	553
4.2.3. Pregnant women. ....	553
4.2.4. Birth .....	554
4.2.5. Babies in prison .....	554
4.2.6. Women with children .....	554
4.2.7. Foreign nationals, minorities and indigenous peoples. ....	555
4.3. Health care .....	556
4.3.1. Medical screening .....	556
4.3.2. Gender-specific health care. ....	556
4.3.3. Mental health care .....	556
4.3.4. HIV infected women .....	557
4.4. Safety and security .....	557
4.4.1. Searches of women. ....	557
4.4.2. Discipline and punishment. ....	558
4.4.3. Instruments of restraint. ....	558
4.4.4. Complaint procedures. ....	558
4.5. Contact with outside world. ....	559
4.6. Training of staff. ....	561
4.7. Rehabilitation of women prisoners .....	561
4.8. Aftercare .....	562
5. Conclusion. ....	562

## **Women in prison in New Zealand**

Warren YOUNG .....	563
1. Introduction .....	563
2. International and human rights framework .....	563
2.1. International human rights treaties and conventions .....	563
2.2. National human rights framework .....	564
2.3. Enforcement of rights .....	567
3. Women as offenders and prisoners .....	568
3.1. Indigenous offenders .....	572
4. The conditions under which women prisoners are held .....	572
4.1. Young offenders .....	573
4.2. Pregnant women. ....	574
4.3. Mothers with babies. ....	574
4.4. Foreign nationals .....	576

5.	Health care, safety, security and discipline .....	576
5.1.	Health care .....	576
5.2.	Safety and security .....	577
5.3.	Instruments of restraint .....	578
5.4.	Discipline .....	579
6.	Contact with the outside world .....	579
6.1.	Visits .....	579
6.2.	Phone calls .....	580
6.3.	Mail .....	580
7.	Training .....	580
8.	Rehabilitation and reintegration .....	581
8.1.	Classification .....	581
8.2.	Rehabilitation programmes within the prison .....	582
8.3.	Reintegration .....	583
9.	Conclusion .....	584

## **Women in prison in Poland**

	Lech K. PAPRZYCKI .....	585
1.	Introduction .....	585
2.	International and human rights framework .....	586
2.1.	International organizations .....	586
2.2.	International human rights treaties and conventions that specifically concern women .....	586
2.3.	National human rights/civil rights .....	587
3.	Statistics on women in crime, in detention and in prison/ criminological factors .....	587
3.1.	Suspected women .....	587
3.2.	Statistics on women in detention (pre-trial and trial detention) ...	588
3.3.	Statistics on convicted women/women in prison .....	589
3.4.	Criminal career of women .....	589
3.5.	Categories of crimes in which women are involved .....	590
3.6.	Criminological information on sentences .....	591
3.7.	Criminological reasons .....	592
3.8.	Policy .....	592
4.	Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law .....	593
4.1.	Allocation .....	593
4.2.	Specific groups .....	595
4.3.	Health care .....	598
4.4.	Safety and security .....	601
4.5.	Contact with the outside world .....	603

4.6. Training of staff.....	606
4.7. Rehabilitation of women prisoners .....	607
5. Conclusion.....	611

## **Women in prison in Portugal**

Raquel MATOS, Manuela IVONE CUNHA, Paulo MOIMENTA

DE CARVALHO, Raquel TAVARES & Luís DE MIRANDA PEREIRA..... 613

1. Introduction.....	613
2. International and human rights framework .....	615
2.1. International organisations.....	616
2.2. International human rights treaties and conventions that specifically concern women .....	617
2.3. National human rights/civil rights.....	619
3. Statistics and criminological factors.....	620
3.1. Women suspected of crime.....	620
3.2. Women in prison .....	621
3.2.1. Pre-trial and trial detention .....	622
3.2.2. Convicted women .....	622
3.3. Criminal career of women .....	623
3.4. Categories of crime perpetrated by women .....	624
3.5. Criminological information on sentences .....	627
3.6. Criminological reasons .....	630
4. Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law.....	631
4.1. Facilities for women in the Portuguese penitentiary system .....	631
4.2. Specific groups .....	632
4.2.1. Young women in prison .....	632
4.2.2. Pregnant women, breastfeeding mothers and mothers with children in prison .....	633
4.2.3. Foreign women prisoners and minorities.....	634
4.3. Health care .....	637
4.4. Safety and security .....	639
4.5. Contact with the outside world .....	639
4.6. Training of staff.....	640
4.7. Rehabilitation of women prisoners .....	641
5. Conclusion.....	642

## **Women in prison in Russia**

Yakov GILINSKIY..... 645

1. Introduction.....	645
----------------------	-----

2.	International and human rights framework . . . . .	647
2.1.	International organizations. . . . .	647
2.2.	National human rights. . . . .	647
3.	Statistics on women in crime, in detention and in prison/ criminological factors. . . . .	648
3.1.	Suspected women. . . . .	648
3.2.	Statistics on women being arrested . . . . .	649
3.3.	Statistics on convicted women . . . . .	649
3.4.	Criminal careers of women. . . . .	650
3.5.	Categories of crimes in which women are involved . . . . .	651
3.6.	Criminological information on sentences . . . . .	652
3.7.	Criminological reasons . . . . .	654
3.8.	Policy . . . . .	655
4.	Women in the Russian penitentiary system . . . . .	655
4.1.	Overview . . . . .	655
4.2.	Conditions in pre-trial detention centers . . . . .	655
4.3.	Conditions in prisons (penal colonies) . . . . .	656
4.4.	Allocation . . . . .	656
4.5.	Specific groups . . . . .	657
4.6.	Health care . . . . .	658
4.7.	Safety and security . . . . .	659
4.8.	Contact with the outside world . . . . .	660
4.9.	Training of staff. . . . .	660
4.10.	Rehabilitation of women prisoners . . . . .	661
5.	Conclusion. . . . .	661

## **Women in prison in South Africa**

	Lillian ARTZ. . . . .	663
1.	Introduction . . . . .	663
2.	International and domestic human rights framework. . . . .	665
2.1.	International human rights treaties and conventions that specifically concern women . . . . .	665
2.2.	Other international human rights instruments and guidelines that have been acknowledged in South Africa . . . . .	669
3.	Constitutional and national legislative framework of South Africa . . . . .	672
3.1.	The Constitution of South Africa. . . . .	672
3.2.	The Correctional Services Act of South Africa . . . . .	674
3.3.	The White Paper on Corrections . . . . .	675
4.	National statistics and criminological factors. . . . .	677
4.1.	Statistics on women in crime, in detention and in prison/ criminological factors . . . . .	677
4.1.1.	Basic population statistics. . . . .	677



4.1.2.	Correctional Services data .....	678
4.1.3.	What we can deduce about women and crime in South Africa .....	679
4.1.4.	Statistics on women in detention: pre-trial and sentenced prisoners .....	680
4.1.5.	Categories of crimes for which South African women are incarcerated .....	682
4.1.6.	Sentencing.....	683
4.1.7.	Criminological factors.....	685
4.2.	Deprivation of liberty: conditions under which women are held in detention .....	686
4.3.	Safety and security .....	688
4.3.1.	Searches of women.....	688
4.3.2.	Discipline and punishment of women and violation of prison regulations .....	688
4.3.3.	Specific issues relating to providing safety and security to women detainees and prisoners.....	689
4.3.4.	Complaint procedures.....	690
4.3.5.	Training of staff and rehabilitation of offenders.....	691
4.3.5.1.	Training .....	691
4.3.5.2.	Work and rehabilitation .....	692
4.3.6.	Health and mental health care .....	693
4.3.7.	Best practices .....	694
5.	Conclusion.....	695

## **Women in prison in Spain: their criminological and social invisibility**

	Ana I. CEREZO & José Luís Díez-Ripollés.....	697
1.	Introduction.....	697
2.	International and human rights framework .....	697
3.	Statistics and criminological factors.....	699
3.1.	Statistics.....	699
3.2.	Arrested women.....	700
3.3.	Convicted women .....	701
3.4.	Imprisoned women .....	701
3.5.	Categories of crimes in which women are involved .....	702
3.6.	Criminological information on penalties .....	704
3.7.	Criminal careers of women.....	707
3.8.	Criminological reasons .....	708
3.9.	Policy .....	710
4.	Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law and practice .....	710

4.1.	Prisons for women only.....	710
4.2.	Specific groups .....	711
4.2.1.	Minors .....	711
4.2.2.	Facilities for mothers .....	712
4.2.3.	Foreign female prisoners.....	713
4.2.4.	Roma female prisoners .....	715
4.2.5.	Female immigrants held in detention centers for foreigners.....	716
4.3.	Health care .....	717
4.3.1.	Drugs in prison.....	717
4.3.2.	Female victims of sexual assault or other forms of violence .....	717
4.3.3.	Health care for women in prison .....	718
4.4.	Safety and security .....	718
4.5.	Contact with the outside world .....	719
4.6.	Training of staff.....	719
4.7.	Rehabilitation of women prisoners .....	719
5.	Conclusion.....	721

## **Femmes en prison en Suisse: la situation des femmes prévenues et condamnées**

	André VALLOTTON & Manon JENDLY .....	723
1.	Introduction .....	723
2.	Cadre légal .....	724
3.	Données statistiques et éléments criminologiques sur la criminalité et la victimisation des femmes .....	726
3.1.	Femmes prévenues.....	726
3.2.	Femmes condamnées.....	726
3.3.	Nature des infractions .....	728
3.4.	Femmes privées de leur liberté.....	731
3.5.	Punitivité et nature des sanctions prononcées .....	732
3.6.	Victimisation.....	734
4.	Exécution des sanctions privatives de liberté, alternatives à l'enfermement et organes de contrôle .....	735
4.1.	Exécution des sanctions privatives de liberté en général .....	736
4.2.	Exécution des sanctions privatives de liberté pour les femmes .....	737
4.2.1.	Établissements et infrastructures .....	738
4.2.2.	Soins de santé .....	739
4.2.3.	Personnel pénitentiaire et formation.....	741
4.2.4.	Régime carcéral, prises en charge d'enfants dépendants et préparation à la sortie.....	742

4.3. Alternatives à l'enfermement .....	743
4.4. Organes de contrôle .....	743
5. Discussion et conclusion .....	744

## **Women in prison in Taiwan**

Li RONG-GENG .....	749
1. Introduction .....	749
2. International and human rights framework .....	750
2.1. International organizations .....	750
2.2. International human rights covenants .....	750
2.3. National human rights framework – constitutional rights of gender equality .....	752
3. Statistics on women in crime, in detention, and in prison: criminological factors .....	752
3.1. Suspected women .....	752
3.2. Women in detention .....	753
3.3. Statistics on convicted women and women in prison .....	754
3.4. Criminal career of women .....	755
3.5. Categories of crimes involving women .....	756
3.6. Criminological information on sentences .....	757
3.7. Criminological reasons .....	757
3.8. Policy .....	758
4. Deprivation of liberty phase .....	758
4.1. Allocation: gender segregation .....	758
4.2. Specific groups: juvenile women, pregnant women, breastfeeding women, and mothers with children .....	759
4.2.1. Juvenile women .....	759
4.2.2. Pregnant women .....	760
4.2.3. Breastfeeding mothers .....	760
4.2.4. Mothers with children .....	761
4.2.5. Foreign nationals .....	762
4.3. Health care .....	762
4.4. Safety and security .....	764
4.4.1. Searches within detention centers and prisons .....	764
4.4.2. Discipline and punishment .....	764
4.4.3. Instruments of restraint .....	765
4.4.4. Complaint .....	766
4.5. Contact with the outside world .....	767
4.6. Staff training .....	769
4.7. Rehabilitation of women prisoners .....	769
5. Conclusion .....	771

## **Women in prison in Thailand: implementation of the UN Bangkok Rules in the Thai criminal justice system**

Melanie OLIVER, Sudarak SUVANNANON & Phiset SA-ARDYEN	773
1. Introduction	773
2. International human rights framework	774
2.1. International organisations	774
2.2. International human rights instruments that specifically concern women	775
2.3. National human rights body	776
3. Statistics and criminological factors	778
3.1. Suspected women	778
3.2. Statistics on women in detention	778
3.3. Statistics on convicted women/women in prison	779
3.4. Criminal career of women offenders	780
3.5. Categories of crimes in which women are involved	780
3.6. Criminological information on sentences	780
3.7. Criminological reasons	781
3.8. Policy	782
4. Deprivation of liberty phase: conditions under which women are held in detention and prison, and applicable national penitentiary law and practice	782
4.1. Allocation	782
4.2. Specific groups	785
4.3. Health care	787
4.4. Safety and security	790
4.5. Contact with the outside world	791
4.6. Training of staff	792
4.7. Rehabilitation of women prisoners	793
5. Conclusion	795

## **Femmes en prison en Turquie**

E. Eylem AKSOY RETORNAZ	797
1. Introduction	797
2. Cadre légal: normes internationales et de droits de l'homme	797
3. Données statistiques et éléments factuels criminologiques	800
3.1. Carrière criminelle des femmes	801
4. Privation de liberté: les conditions des femmes en détention et en prison, la législation pénale en vigueur et la pratique	803
4.1. Admission	803
4.2. Mère et enfants en bas âge en prison	804
4.3. Étrangères	806

4.4.	Accès aux soins . . . . .	807
4.5.	Sûreté et sécurité . . . . .	809
4.6.	Procédures d'information et de plaintes . . . . .	811
4.7.	Prévention de la détenue contre la violence . . . . .	812
4.8.	Contact avec le monde extérieur . . . . .	812
4.9.	Personnel pénitentiaire et formation . . . . .	814
4.10.	Classification et individualisation . . . . .	814
5.	Conclusion . . . . .	816

## **Women in prison in the USA**

	Emilio C. VIANO . . . . .	817
1.	Introduction . . . . .	817
2.	International and human rights framework . . . . .	818
2.1.	International organizations . . . . .	818
2.2.	International human rights treaties and conventions that specifically concern women . . . . .	819
2.3.	National human rights/civil rights . . . . .	821
2.3.1.	Legislation at the state and national levels . . . . .	821
2.3.2.	Due process . . . . .	822
2.3.3.	Equal protection . . . . .	823
2.3.4.	Criminal sentencing . . . . .	823
3.	Statistics on women in crime, in detention and in prison/ criminological factors . . . . .	824
3.1.	Suspected women . . . . .	824
3.2.	Statistics on women in jail . . . . .	825
3.3.	Statistics on women in prison . . . . .	826
3.4.	Criminal careers of women . . . . .	827
3.5.	Categories of crimes perpetrated by women . . . . .	831
3.6.	Criminological information on sentences . . . . .	832
3.7.	Criminological reasons . . . . .	834
3.8.	Policy . . . . .	835
4.	Deprivation of liberty phase: conditions under which women are held in detention, and applicable national penitentiary law . . . . .	837
4.1.	Allocation . . . . .	837
4.2.	Specific groups . . . . .	839
4.2.1.	Juvenile female prisoners . . . . .	839
4.2.2.	Pregnant women and mothers with children . . . . .	841
4.2.3.	Immigrants, minorities and indigenous people . . . . .	845
4.2.4.	Lesbian, gay, bisexual, transsexual, and queer or 'questioning' persons in detention . . . . .	850

4.3. Health care .....	851
4.4. Safety and security .....	854
4.5. Contact with the outside world .....	856
4.6. Training of staff .....	858
4.7. Rehabilitation of women prisoners .....	859
5. Conclusion .....	865

## APPENDIX. THE BANGKOK RULES

### ANNEXE. RÈGLES DE BANGKOK

United Nations Rules for the treatment of women prisoners and non-custodial measures for women offenders (the Bangkok Rules) .....	869
------------------------------------------------------------------------------------------------------------------------------------------	-----

Règles des Nations Unies concernant le traitement des femmes détenues et les mesures non privatives de liberté pour les femmes délinquantes (Règles de Bangkok) .....	891
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

**PART I**  
**INTRODUCTORY SYNTHESIS**  
**AND ANALYSES**

**1<sup>ÈRE</sup> PARTIE**  
**SYNTHÈSE ET ANALYSES**  
**INTRODUCTIVES**

# WOMEN IN PRISON: A TRANSNATIONAL PERSPECTIVE

Maartje KRABBE\* & Piet Hein VAN KEMPEN\*\*

## 1. INTRODUCTION TO THIS VOLUME

Women are a minority in prison. Currently, of the 10.35 million prisoners worldwide, 6.8% is female<sup>1</sup> and their number is rapidly growing. Due to the comparatively low number of female inmates, prison policies have traditionally developed in response to the behavior of men. Little consideration has been given to the impact of those policies on women.<sup>2</sup> Research on women in prison demonstrates, however, that female prisoners diverge from their male counterparts in that (i) they generally end up in prison for different reasons<sup>3</sup> and, once in prison, (ii) they have other needs.<sup>4</sup> For example, women are more frequently incarcerated for drug-related offences and less for violent crimes than men, women have an increased sensitivity to a whole range of mental problems and women rarely need the excessive security measures that many male prisoners require.<sup>5</sup>

---

\* Dr M.J.M. Krabbe (PhD) is a lecturer and researcher at the Department of Criminal Law & Criminology at Radboud University, Nijmegen, The Netherlands. She is also a judge *ad litem* at the District Court of Gelderland, The Netherlands. She can be contacted at: m.krabbe@jur.ru.nl.

\*\* Dr P.H.P.H.M.C. van Kempen (PhD) is Full Professor of Criminal Law and Criminal Procedure Law, and Chair of the Department of Criminal Law & Criminology at Radboud University, Nijmegen, The Netherlands. He is also a Justice *ad litem* at the Court of Appeal, 's-Hertogenbosch, The Netherlands, and Secretary General of the International Penal and Penitentiary Foundation. He can be contacted at: p.h.vankempen@jur.ru.nl. Note by authors: the original language of this text is English.

<sup>1</sup> R. Walmsley, *World Prison Population List 2015* (11<sup>th</sup> edn), World Prison Brief, Institute for Criminal Policy Research, London, United Kingdom.

<sup>2</sup> F. Dünkel, C. Kestermann & J. Zolondek, *International study on women's imprisonment*, Greifswald: University of Greifswald, 2005, p. 3.

<sup>3</sup> See section 3 (statistics and criminological factors) of the national chapters in Part III of this volume.

<sup>4</sup> See section 4 (deprivation of liberty phase) of the national chapters in Part III of this volume.

<sup>5</sup> For offences committed by women see section 3 of this contribution; mental health and security of women in prison are discussed in section 4.



The fact that prison systems are male-oriented, in combination with the different needs of female prisoners, raises questions as to the efficiency of current systems. Generally, prison policy has to work towards the goals of imprisonment, such as serving a sentence (including retribution), rehabilitation, re-socialization and deterrence (general and special prevention), and incapacitation. Yet the approach to attain these goals may be different in the case of women.<sup>6</sup> Meanwhile, not only efficiency matters require attention with regard to women in prison, human rights concerns may be raised as well. Women in prison are a vulnerable minority. Other (or more) than men, they may have to deal with hygiene needs related to reproductive health, motherhood, lack of financial resources, intimidating male staff, abusive (ex-)partners and other gender-specific matters.

The 2010 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)<sup>7</sup> – the central theme of this volume – address both human rights matters and efficiency issues relevant to women in prison. The Bangkok Rules, for example, prohibit the use of instruments of restraint on women in labor (human rights), but also promote non-custodial measures for women, in order to fuel re-socialization (efficiency). Contained in a General Assembly resolution, the Bangkok Rules enclose soft law, in the words of the resolution “global aspirations ... addressed to prison authorities and criminal justice agencies.” However, as this volume demonstrates, many of the Bangkok Rules have already been implemented on a global level. Unfortunately, there are still numerous rules that require urgent attention. Although a large part of this volume is dedicated to the implementation of the Bangkok Rules, other themes relevant to women in prison are addressed as well. For example, the international human rights framework applicable to women in prison and global statistics on women in prison.

## 1.1. OUTLINE OF THIS VOLUME

### 1.1.1. *Thematic chapters*

A thematic approach to women in prison is presented in Part II of this volume. Why do women end up in prison? This question is the subject of an extensive and multi-method study by Artz, Hoffman-Wanderer & Moulton. The basis of their chapter is a research project that took place among 55 female prisoners in two South African prisons. Although the study reveals that there are many different

<sup>6</sup> Cf. F. Dünkel, C. Kestermann & J. Zolondek, *International study on women's imprisonment*, Greifswald: University of Greifswald, 2005, p. 14.

<sup>7</sup> GA Res. 65/299 (16 March 2011). The Bangkok Rules are included in full in Part IV of this volume.

“pathways” to prison, several shared features were collected, such as a history of child abuse, domestic violence, poverty, mothering and responsibility for others, and addiction. These features turned out to be interrelated, together shaping a so-called criminogenic context. Criminal behavior by women is a response to this context, according to the authors. The purpose of their study is to contribute to more effective and appropriate correctional policies for women.

Considering facts and figures on women in prison, Walmsley’s chapter contains valuable information. His contribution focuses on three categories of numbers, the first being the prevalence of women within the total prison population. Walmsley demonstrates that on average 6.5% (2014) of the world prison population is female. The second number discussed by Walmsley is the so-called female prison population rate. This number demonstrates the total of women in prison compared to the population as a whole. Walmsley shows that of every 100,000 of the world population, an average of 144 persons is in prison, of which 9 or 10 are women. The third number addressed in Walmsley’s contribution is the growth in levels of female imprisonment between 2000 and 2013. Here, he displays a remarkable average growth of 40%. This means that the female prison population has risen much more sharply than the overall prison population, which rose about 20%–25% during a similar period. For each of the three average numbers discussed by Walmsley, substantial regional differences exist. In his conclusion, Walmsley suggests several policy changes based on these figures, and points out areas for further research.

Bartsch discusses two regional instruments relevant to the protection of women deprived of their liberty: the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Prison Rules in their revised version of 2006. Women imprisoned in a Council of Europe member State can rely on the protection of these instruments. The instruments contain rules and, in the case of the CPT, standards on topics such as accommodation, hygiene and infants of female prisoners. With the European Committee for the Prevention of Torture (also CPT), the European Convention for the Prevention of Torture includes a non-judicial preventive mechanism, which complements the *ex post facto* control of the European Court of Human Rights.

As to this *ex post facto* control of the European Court of Human Rights, Paprzycki provides an inventory of typical complaints that are brought to the European Court of Human Rights by inmates under Articles 2, 3, 8 and 12 of the European Convention on Human Rights (ECHR). He describes the European Court’s reactions to these complaints and discusses the possible implications of these reactions for female prisoners. He argues, for example, that – since the Court has urged that lack of access to toilet paper may raise issue under Article 3 of the Convention – insufficient supply of sanitary towels may be considered a degrading execution of imprisonment under this provision. Paprzycki also

briefly discusses the possibilities for female prisoners of interim measures, under Article 39 ECHR. In addition, he touches upon the protection of female inmates under Article 14 of the Convention, and the relevance of soft international law (such as the Bangkok Rules) as a source of inspiration for the European Court of Human Rights.

Akane's contribution is an account of a seminar on 'The Treatment of Female Offenders', organized by the United Nations Asia and Far East Institute (UNAFEI). At this seminar, participants – from Bangladesh, Brazil, Jamaica, Japan, Jordan, Kenya, Mexico, Nepal, Nigeria, the Philippines, Samoa, Thailand and Singapore – shared good practices on the implementation of the Bangkok Rules. They discussed topics such as gender-sensitive risk assessment, gender-specific health care, maintaining family relationships, reintegration in society, pregnancy and breastfeeding in prison, and non-custodial measures. The article concludes with a list of key recommendations, most of which can be traced back to the standards imposed by the Bangkok Rules.

Chitsawang provides an overview of the implementation of the Bangkok Rules in Thailand so far. He describes what the Thai authorities have done to implement these Rules and which challenges lie ahead. Major problems in implementing the Bangkok Rules are overcrowded prisons and the male-oriented design of the correctional facilities. On top of that, the negative attitude of the women prison officers towards female inmates has to be changed. Nevertheless, Chitsawang demonstrates that Thailand is trying in every possible way to facilitate the successful implementation of the Bangkok Rules. For example, by adapting the domestic rules on body searches, childcare, health care and family visits.

If female prisoners differ from their male counterparts, they also need different buildings. This is the central thesis in García Basalo's chapter on 'The Design of Women's Prisons'. In his contribution García Basalo describes the Bangkok Rules that relate to prison design, and explores their consequences on the architecture of women's prisons. He argues in favor of women's prisons with a friendly, residential-like layout, where the privacy of the individual inmate is guaranteed. Security in a women's prison, according to García Basalo, should not be based on fear of escape or riots, but on protecting women against self-harm. Consequently, women's prisons should be built to accommodate such a security model. As to the design of the visiting areas, García Basalo holds that this design should contribute to social reintegration after prison life.

#### *1.1.2. National chapters*

The national chapters are based on an extensive questionnaire on women in prison to which professionals from 23 countries from Africa (North and South), America, Asia, Europe and Oceania responded in 2014 and 2015. The reporting States are: Argentina, Australia, Austria, Brazil, England and Wales, Finland, France, Germany, Greece, Ireland, Italy, The Netherlands, New Zealand, Poland,

Portugal, Russia, South Africa, Spain, Switzerland, Taiwan, Thailand, Turkey and the United States of America (USA).

Each of the national chapters contains a similar structure. After a brief introduction, an account is provided of the international and human rights framework applicable to women in prison in the reporting State. Subsequently, statistics and criminological factors on women in prison are provided. Finally, each chapter describes the actual conditions of women in prison, before offering conclusions.

### 1.1.3. *Present chapter*

The present chapter – which constitutes Part I of this volume – follows the basic structure of the chapters on national systems set out above. Section 2 of this chapter provides an account of the international and human rights framework relevant to women in prison. Next, the applicability of this framework on women in prison in the respondent States is discussed. Section 3 offers statistics on women in prison, mostly by referring to the World Female Imprisonment List 2015<sup>8</sup> and the World Prison Population List 2015.<sup>9</sup> In addition, several criminological factors relevant to women in prison are discussed in this section. Future challenges regarding the theme of women in prison feature in section 4. Four subjects are discussed: topics that need immediate attention from governments (4.2), opportunities for implementation beyond the requirements of the Bangkok Rules (4.3), areas relevant to women in prison that have not been included in the Bangkok Rules (4.4), and increasing the legal weight and scope of the Bangkok Rules (4.5). Throughout section 4 the relationship between international (human rights) standards and practice is addressed. The section also contains information on various strengths and weaknesses of domestic systems. Although the overview offered is based on the information provided in the national chapters and thematic contributions of this volume, additional materials have been included when of supplementary value.

## 1.2. THE DEFINITION OF WOMEN IN PRISON

Due to the great variation of legal categories that refer to deprivation of liberty, this chapter takes the theme of women in prison to be understood in a broad sense. The types of prisons covered by the present chapter therefore include both regular prisons and special prisons, such as psychiatric units. In a procedural

<sup>8</sup> R. Walmsley, *World Female Imprisonment Brief 2015* (3<sup>rd</sup> edn), World Prison Brief, Institute for Criminal Policy Research, London, United Kingdom.

<sup>9</sup> R. Walmsley, *World Prison Population List 2015* (11<sup>th</sup> edn), World Prison Brief, Institute for Criminal Policy Research, London, United Kingdom.

sense, ‘women in prison’ refers both to women in pre-trial and trial detention (all forms of detention prior to imprisonment based on a criminal conviction, e.g. police custody, remand) and to women in prison (imprisonment based on a criminal conviction).

## 2. HUMAN RIGHTS FRAMEWORK

### 2.1. INTRODUCTION

Generally, rules on women in prison can be derived from three categories of sources: international treaties, international instruments and domestic law. These sources provide either provisions on people in general, general provisions on protecting detainees, general provisions on protecting women or specific rules on women in prison. Below, these source categories are addressed separately: section 2.2 discusses treaties, section 2.3 other international instruments (such as the Bangkok Rules). The impact of the international framework on women in prison in the respondent States is discussed in section 2.4. Also, a few words in this section are devoted to the fundamental rights in national constitutions and bill of rights in the respondent States. Domestic rules and policies relevant to women in prison, and their conformity with international rules, are discussed in section 4 of this contribution.

### 2.2. INTERNATIONAL TREATIES RELEVANT TO WOMEN IN PRISON

Three types of international treaties are relevant to women in prison: general human rights treaties, specific international human rights treaties (e.g. on torture) and international human right treaties on women in general.

#### 2.2.1. *General human rights treaties*

It is remarkable how little attention there is for women in the general human rights treaties, let alone for women in prison. Article 10 of the UN International Covenant on Civil and Political Rights (ICCPR) holds a general provision, containing that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. Where Article 10 expressly recognizes juveniles as a category that demands specific human rights protection, it does not do so for women or girls. The General Comment on Article 10 underlines that persons deprived of their liberty: (i) may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, (ii) are entitled to the same respect for dignity as

free persons, and (iii) enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.<sup>10</sup>

That persons deprived of liberty should be able to enjoy the protection of human rights, subject to the restrictions that are unavoidable in a closed environment, finds wide recognition in other international sources.<sup>11</sup> Consequently, it can be held that women in prison should be able to enjoy the protection of human rights, subject to the restrictions that are unavoidable in a closed environment.<sup>12</sup> This covers not only the rights contained by the ICCPR, but also rights issued by other agreements, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and rights set forth by regional human rights treaties, such as the African Charter on Human and Peoples' Rights (ACHPR), the American Convention on Human Rights (ACHR), the ASEAN Human Rights Declaration, the European Convention on Human Rights (ECHR) and the European Social Charter (ESC). Rights that may be of special relevance to women in prison are: the right to life,<sup>13</sup> the prohibition on torture and degrading treatment,<sup>14</sup> the right to respect for privacy and family life,<sup>15</sup> the right to marry,<sup>16</sup> the right to work,<sup>17</sup> the right to health<sup>18</sup> and the right to education.<sup>19</sup>

<sup>10</sup> Office of the High Commissioner of Human Rights, CCPR General Comment No. 21: Article 10 (humane treatment of persons deprived of their liberty), para. 3.

<sup>11</sup> Rule 3 of the Mandela Rules (2015), Principle 5 of the UN Basic Principles for the Treatment of Prisoners (1990), Rules 2 and 5 of the European Prison Rules (2006), Principle 8 of Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008) and the Second Recommendation on Prison Conditions in the Kampala Declaration on Prison Conditions in Africa. See also: ECtHR, *Hirst v. United Kingdom*, Grand Chamber, Judgment, 6 October 2005, Appl. no. 74025/01, para. 69.

<sup>12</sup> This includes a positive obligation of States to treat prisoners with dignity and respect for their rights under the present convention. The wording of General Comment 21, para. 3 is "Article 10, paragraph 1, imposes on States parties a positive obligation". Indeed, positive obligations have been assumed under Art. 10 of the ICCPR, see P.H.P.H.M.C. Van Kempen, 'Positive obligations to ensure the human rights of prisoners' in P.J.P. Tak & M. Jendly (eds), *Prison policy and prisoners rights/Politiques pénitentiaires et droits des détenus*, Nijmegen: Wolf Legal Publishers, 2008, p. 21–44, at 26–27; see also p. 21–44 for an overview of positive obligations of States towards prisoners in general.

<sup>13</sup> Art. 6 ICCPR, Art. 4 ACHPR, Art. 4 ACHR, Art. 11 ASEAN Human Rights Declaration, and Art. 2 ECHR.

<sup>14</sup> Art. 7 ICCPR, Art. 5 ACHPR, Art. 5 ACHR, Art. 14 ASEAN Human Rights Declaration, and Art. 3 ECHR.

<sup>15</sup> Art. 17 ICCPR, Art. 18 ACHPR, Art. 11 ACHR, Arts 19 and 21 of the ASEAN Human Rights Declaration, and Art. 8 of the ECHR.

<sup>16</sup> Art. 17 ACHR, Art. 19 ASEAN Human Rights Declaration, and Art. 12 ECHR.

<sup>17</sup> Art. 6 ICESCR, Art. 15 ACHPR, Art. 6 ACHR Additional Protocol on Economic, Social and Cultural Rights, Art. 27 ASEAN Human Rights Declaration, and Art. 1 ESC.

<sup>18</sup> Art. 12 ICESCR, Art. 16 ACHPR, Art. 10 ACHR, Art. 29 ASEAN Human Rights Declaration, and Arts 3 and 11 of ESC.

<sup>19</sup> Art. 13 ICESCR, Art. 17 ACHPR, Art. 13 ACHR, Art. 31 ASEAN Human Rights Declaration, and Art. 1 ESC.

Also applicable to women in prison are the general anti-discrimination provisions, embedded in several human rights treaties.<sup>20</sup> These provisions demand that States ensure equal rights to men and women. Although these provisions may benefit detained women in many areas (*e.g.*, equal pay for work, equal access to a lawyer), anti-discrimination clauses bear a looming danger of *identical* treatment. Because prison policies have traditionally been developed in response to the behavior of men, male prisoners have a system that is adapted to them, while women prisoners have not. Consequently, identical treatment may in effect result in unequal treatment: women may have work shifts that are too heavy, they may not acquire the necessary nutrients when pregnant and they may have nowhere to turn in case of sexual harassment.

These broadly acknowledged human rights are generally not gender-specific,<sup>21</sup> nor prison-oriented. Nevertheless, it is important to realize that these rights also apply to women in prison. In our view, it is equally important to stress that the obligation to treat all persons deprived of their liberty “with humanity” may require other approaches for women than for men, considering the differences between them. To put it differently: the requirement of humane treatment is not gender neutral.

Only on the odd occasion do general human rights treaties directly refer to women in the criminal justice system. Article 6(5) of the ICCPR, which prohibits the execution of pregnant women, is a rare example of such a reference.

### 2.2.2. *Specific human rights treaties*

Several specific human rights treaties include references to women in prison, or are otherwise relevant to women in prison. Below treaties on torture, war, children and labor are briefly discussed.

Both the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) may be of special relevance to women in prison. This is particularly so because ‘degrading treatment’ may be defined differently in the case of women. Both Conventions have monitoring bodies to examine the treatment of persons deprived of their liberty. The European Committee for the Prevention of Torture (also CPT) has issued recommendations on the treatment of female prisoners in its 10<sup>th</sup> annual report.<sup>22</sup>

<sup>20</sup> Art. 3 ICCPR, Art. 3 ICESCR, Art. 2 ACHPR, Art. 1 ACHR, Arts 1 and 2 ASEAN Human Rights Declaration, Art. 14 ECHR, but also Art. 15 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), an international human rights treaty that specifically concerns women, discussed below.

<sup>21</sup> Exceptions are some rules on pregnancy/maternity; Art. 8 ESC, for example.

<sup>22</sup> Doc. CPT/Inf (2000) 13, paras 21–33. Parts of this report are discussed in the following sections.

Article 14 of the 1949 Third Geneva Convention relative to the treatment of prisoners of war (Geneva Convention III) is a non-discrimination provision which states that “Women shall be treated with all the regard due to their sex”. According to the General Comment on Article 14, this means that the different needs of women relating to working conditions and food should be taken into account, women should be protected from sexual assault,<sup>23</sup> pregnant women should enjoy special treatment and mothers with infants should be granted early repatriation.<sup>24</sup>

Article 3 of the 1989 UN Convention on the Rights of the Child (CRC) imposes the obligation upon States to give the best interests of the child primary consideration in all actions concerning children. Consequently, decisions on the incarceration of a child with an imprisoned parent should be based on the best interests of the child as well.<sup>25</sup> Other CRC provisions that may be of relevance to women in prison are Article 9 (separation of a child from its parents should be in the best interest of the child), Article 18(2) (obligation of the State to assist those responsible for children in care-taking) and Article 24 (obligation of State to ensure pre- and post-natal care and to provide information on breastfeeding).

Finally, the International Labour Organisation (ILO) has initiated many conventions relevant to women who are working mothers while in prison, such as the 1981 Workers with Family Convention and the 2000 Maternity Protection Convention.<sup>26</sup>

### 2.2.3. *International human rights treaties on women*

The 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) contains no provision expressly concerned with women in prison. Some provisions may, however, be relevant to women deprived of their liberty. Article 3 CEDAW, for example, includes the obligation of the State to ensure the full development and advancement of women. Articles 11 and 12 CEDAW require States to eliminate discrimination against women in the fields of, respectively, work and health care.

The CEDAW’s regional counterparts occasionally do refer to women in prison. Article 24(b) of the 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) contains the obligation of the State to ensure the right of pregnant or nursing women

<sup>23</sup> Provisions on separate use of dormitories and sanitary installations (Arts 25 and 29 of Geneva Convention III) were, among others, adopted to ensure the prevention of sexual assault.

<sup>24</sup> General Comment on Article 14 of Geneva Convention III (1960).

<sup>25</sup> This is also the rationale reflected by the CPT and in the Bangkok Rules. See Doc. CPT/Inf (2000) 13, para. 29 and Rule 49 of the Bangkok Rules.

<sup>26</sup> For an overview of ILO Conventions, see [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/genericdocument/wcms\\_230305.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_230305.pdf) (last visited July 2016).



in detention by providing them with an environment which is suitable to their condition, and the right to be treated with dignity. Article 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará) requires States to take special account of women deprived of their liberty when adopting the duties of States under the Convention. The 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence refers to women in prison in Article 3, which states that ‘violence against women’ includes the arbitrary deprivation of liberty of women.

#### 2.2.4. *International instruments relevant to women in prison*

The category of international instruments relevant to women in prison refers to international standards that are not legally binding upon States (‘soft law’) but offer practical measures to protect the rights of detainees and prisoners. International instruments may, however, be morally binding, at least on those States that cast a positive vote. In addition, they may reflect binding international law,<sup>27</sup> and they may be used in the interpretation of binding international law.<sup>28</sup>

Before the introduction of the Bangkok Rules in 2010, several international instruments were – and still are – of major importance to women in prison: the 2015 UN Standard Minimum Rules for Prisoners (the Mandela Rules),<sup>29</sup> the 2006 European Prison Rules (drawn up by the Council of Europe),<sup>30</sup> and the 1990 UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). The first two instruments contain provisions of particular relevance to women on the following subjects: allocation (female prisoners must be detained separately from men),<sup>31</sup> female hygiene,<sup>32</sup> women’s special needs (such as psychological, medical and vocational needs),<sup>33</sup> labor, nursing and children,<sup>34</sup> prison staff,<sup>35</sup> solitary confinement,<sup>36</sup> instruments of restraint<sup>37</sup> and the right to issue a

<sup>27</sup> J. Ashdown & M. James, ‘Women in detention’, *International Review of the Red Cross*, vol. 92, nr. 877, 2010, p. 123–41, p. 128.

<sup>28</sup> As is illustrated by the thematic chapter by Paprzycki in this volume; see also the chapter by Bartsch.

<sup>29</sup> The Rules were introduced in 1955, and reviewed in 1977 and 2015. During the last review, the Rules were dubbed ‘The Mandela Rules’.

<sup>30</sup> The first version of these Rules was adopted in 1973.

<sup>31</sup> Rule 18.8 European Prison Rules; Rule 11 Mandela Rules.

<sup>32</sup> Rule 19.7 European Prison Rules.

<sup>33</sup> Rules 34.1 and 34.2 European Prison Rules.

<sup>34</sup> Rule 34.3 European Prison Rules; Rules 28 and 29 Mandela Rules.

<sup>35</sup> Rules 81.3 and 85 European Prison Rules; Rule 81 Mandela Rules.

<sup>36</sup> Rule 45(2) Mandela Rules.

<sup>37</sup> Rule 48(2) Mandela Rules.

complaint.<sup>38</sup> The 2010 Bangkok Rules built upon this pre-existing framework by complementing the standing provisions. Being the first international instrument specifically to address the issue of women in prison, the Bangkok Rules can be viewed as a milestone.

### 2.2.5. *The Bangkok Rules*

The Bangkok Rules are addressed to criminal justice agencies and prison authorities.<sup>39</sup> Roughly, the Rules contain three, sometimes overlapping, focal points: (i) women's specific needs, (ii) the prevention of abuse, and (iii) the protection of children's rights.

#### 2.2.5.1. Women's specific needs

Female prisoners have different needs and, as a consequence, require different treatment than male prisoners. Women frequently have a crucial care-taking role in the family and community.<sup>40</sup> Therefore, a non-custodial sentence (Rules 57–62) is often desirable in order to keep the family together, and to ensure that the young and the elderly are taken care of. However, if confinement is the only option, care-taking responsibilities should be a factor of importance in sentencing (Rule 61) and parole decisions (Rule 63). Frequent visits from relatives should be made available (Rule 4 and Rules 26–28), since they are beneficial both to the female prisoner's possibilities for reintegration and to her mental health while in prison.<sup>41</sup> All the more so because, in general, women prisoners are more prone to depression and self-harm than their male

<sup>38</sup> Rule 56 Mandela Rules. Other international instruments relevant to women in prison are: the UN Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974), the UN Declaration on the Elimination of Violence against Women (1993), the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the UN Basic Principles for the Treatment of Prisoners (1990) the ASEAN Declaration on the Advancement of Women in the ASEAN Region (1988), and the ASEAN Declaration on the Elimination of Violence Against Women and Elimination of Violence against Children in ASEAN (2004). Of particular relevance may also be the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (2012), especially guideline 8, which aims to protect women. The problem of female asylum seekers in detention is addressed in detail in the national chapters on the USA and South Africa in Part III of this volume.

<sup>39</sup> Bangkok Rules, GA Res. 65/299 (16 March 2011), Preliminary Observation 4.

<sup>40</sup> The CPT reports that women in prison are primary caretakers of children and others; see Doc. CPT/Inf (2000) 13, para. 28.

<sup>41</sup> J. Ashdown & M. James, 'Women in detention', *International Review of the Red Cross*, vol. 92, nr. 877, 2010, p. 123–41, at 132.

counterparts,<sup>42</sup> an issue that prison mental health care should tune into (Rules 12, 13, 15 and 42(2)). Women prisoners have different health risks (Rules 6–18) and hygiene issues (Rule 5) than men, and thus also need specific physical health care. Since women prisoners are more likely to harm themselves than others, women prisons benefit from an alternative security system (Rules 40 and 41).<sup>43</sup> Rules 43–47 contain provisions that aim to ease the transition from prison to liberty for women, by stimulating social relations and offering special programs.

#### 2.2.5.2. Prevention of abuse

In the male-dominated world of incarceration, female prisoners are extremely vulnerable to (sexual) abuse.<sup>44</sup> The Bangkok Rules hope to reduce this abuse through screening for prior (sexual) abuse on entry (Rule 6(e)) and taking appropriate measures (counseling, legal action) when a history of (sexual) violence is detected (Rule 7). Training of (female) staff (Rules 29–35), special rules on searches (Rules 19 and 20), medical examinations (Rules 10 and 11) and a specific procedure in case of abuse in prison (Rule 25) should further decrease the risk of (sexual) violence. Prison authorities are also responsible for the protection of the female prisoner against retaliation by the sexual aggressor once abuse is reported (Rule 7(3) and Rule 25(1)). Rule 56 requires authorities to adopt measures in order to prevent abuse during pre-trial detention.

#### 2.2.5.3. The protection of children's rights

Another central topic in the Bangkok Rules is the protection of children's rights, sometimes through protecting the rights of their mothers. In general, custodial sentences for pregnant women and women with dependent children should be avoided (Rule 64). However, if incarceration is necessary, children can stay with their mother (Rules 49–51). There is no age limit for such a stay, but the

<sup>42</sup> Megan Bastik & Laurel Townhead, *Women in prison: a commentary on the U.N. Standard Minimum Rules for the Treatment of Prisoners*, Geneva: Human Rights and Refugees Publications, 2008, p. 75–76; E. Player, 'Remanding women in custody: concerns for human rights', 70(3) *Modern Law Review* 402–26 (2007), p. 417–18; F. Dünkler, C. Kestermann & J. Zolondek, *International Study on Women's Imprisonment*, Greifswald: University of Greifswald, 2005, p. 26–40.

<sup>43</sup> See the thematic chapter in Part II of this volume by García Basalo. Only a few types of female offenders probably need a higher level of security than the rest. These categories consist of women with mental health problems and women who were convicted for violent crimes; see Karen Lahm, 'Official incidents of inmate-on-inmate misconduct at a women's prison: using importation and deprivation theories to compare perpetrators to victims', 29(3) *Criminal Justice Studies* 1–18 (2016).

<sup>44</sup> Cf. Kim Shayo Buchanan, 'Impunity: sexual abuse in women's prisons', 42(1) *Harvard Civil Rights-Civil Liberties Law Review* 45–87 (2007); the author signals a general sexual abuse problem in USA prisons and opts for a change in prison culture.

cohabitation should always be in the best interest of the child. Childcare facilities must be arranged in order to enable women to participate in prison activities (Rule 42(2)). The Bangkok Rules promote a proper diet for pregnant and breastfeeding women (Rule 48), and a ban on the use of instruments of restraint around the time of delivery (Rule 24). When children are not in prison with their mother, contact between mother and children should be facilitated by the prison authorities (Rules 26–28). Cutting off family contact may not be imposed as a disciplinary sanction (Rule 23), and punishment by close confinement is prohibited in the case of pregnant women, breastfeeding mothers and mothers with infants (Rule 22). A child that used to stay in prison with the mother has maximum visiting rights after it leaves the facility (Rule 52(3)).

The Bangkok Rules also contain rules applicable to specific groups of prisoners: juvenile females (Rules 36–39 and Rule 65), foreign nationals (Rules 53 and 66), and minorities and indigenous peoples (Rules 54 and 55). The final sections of the Bangkok Rules call for more research on the subject of women in prison (Rules 67–70).

### 2.3. INTERNATIONAL TREATIES AND INSTRUMENTS: RATIFICATION, IMPLEMENTATION AND APPLICATION

Most of the 23 reporting States have ratified international and relevant local human rights agreements that bear on women in prison, and have implemented their standards.<sup>45</sup> Considering this implementation, some States employ a monist system (international agreements are automatically part of the domestic legal order),<sup>46</sup> while other States have a dualist system (implementation legislation is necessary to incorporate international agreements<sup>47</sup>).<sup>48</sup> A dualist system may be detrimental to the individual, for he or she cannot invoke rights that have not yet been implemented through domestic legislation. However, when dualist States omit to implement an international agreement, they tend to claim that domestic law sufficiently complies with the agreement and that implementation is not necessary.<sup>49</sup> Consequently, monism or dualism aside, most international human rights relevant to women seem to be directly enforceable at a national level, at least in theory, either directly or through domestic legislation.

<sup>45</sup> Reporting States that leave many legislative powers to a sub-national level mention difficulties in gathering a complete overview (Germany, Switzerland).

<sup>46</sup> E.g. France, Greece, The Netherlands, New Zealand, Portugal and Turkey.

<sup>47</sup> E.g. Australia, Brazil, Germany, Great Britain, Italy, Poland and the USA.

<sup>48</sup> The distinction between monism and dualism is not one of opposing systems. A monist system can have dualist traits (The Netherlands) and a dualist system can have monist characteristics (Germany).

<sup>49</sup> See, e.g., the national chapters on the USA and Italy in Part III of this volume.

Apart from domestic enforcement of international human rights, there is also the option of international enforcement mechanisms. Several of these bodies accept claims from individuals, such as the Human Rights Committee (monitoring body of the ICCPR), the Committee against Torture (monitoring body of the CAT), and the Committee on the Elimination of Discrimination against Women (monitoring body of the CEDAW). Enforcement mechanisms are also available at a regional level: the European Court of Human Rights (ECtHR), the African Court of Human Rights (ACtHR) and the Inter-American Court of Human Rights (I-ACtHR)). However, the I-ACtHR is not open to individual complaints.<sup>50</sup> Considering both the international and the regional enforcement mechanisms available, Taiwan (against its will) and the USA (by its own choice) seem to be the only respondent States where a woman in prison cannot issue a complaint with a supranational body.<sup>51</sup>

Only a few States signal particularities in the field of ratification and implementation of international human rights agreements. The USA has not ratified the CEDAW,<sup>52</sup> nor the Convention of Belém do Pará. Taiwan, not being recognized by the UN as an independent State, and accordingly not a UN member either, generally is in a difficult position when it comes to international agreements.<sup>53</sup> However, despite its divergent status, Taiwan has managed to implement several important international conventions, such as the ICCPR and the CEDAW. A few respondent States indicate that the Bangkok Rules are largely unknown by their governments.<sup>54</sup> Specific challenges to the implementation of the Bangkok Rules in domestic law and policies are discussed in section 4 of this contribution.

Some States mention reservations to treaties, most of which have little relevance to women in prison. Australia has made a reservation to Article 10(2) of the ICCPR (demanding the segregation of prisoners on remand and sentenced prisoners, and the segregation of adults and minors). This reservation may disproportionately affect women, because women are remanded in custody at a

<sup>50</sup> The I-ACtHR operates through a system of petitions and a special commission, see Art. 61 ACHR.

<sup>51</sup> See P.H.P.H.M.C. van Kempen, 'Pre-trial detention in national and international law and practice' in P.H.P.H.M.C. van Kempen (ed.), *Pre-trial detention: human rights, criminal procedural law and penitentiary law, comparative law*, Antwerp: Intersentia, 2012, p. 3–46, at 10–11.

<sup>52</sup> For more information on the implementation of the CEDAW on a global level, see Anne Hellum & Henriette Sinding Aasen (eds), *Woman's human rights: CEDAW in international, regional and national Law*, Cambridge: Cambridge University Press, 2015.

<sup>53</sup> On the difficult position of Taiwan, see P.H.P.H.M.C. van Kempen, 'Pre-trial detention in national and international law and practice' in P.H.P.H.M.C. van Kempen (ed.), *Pre-trial detention: human rights, criminal procedural law and penitentiary law, comparative law*, Antwerp: Intersentia, 2012, p. 3–46, at 9.

<sup>54</sup> See the national chapters on Australia and Germany in Part III of this volume.

higher rate in Australia than men, and the facilities to detain female prisoners have less capacity to house the women in a segregated area.<sup>55</sup>

Although *ratification* and *implementation* of international human rights may raise few problems, the *application* in practice of international standards is less transparent and therefore more complex to evaluate. Likewise, the *effective access to justice* to enforce the rights of women in prison is challenging to grasp. The Russian application of international standards is generally described as bad. Although Russia is party to the relevant international, European and Asian agreements, human rights are often violated, human rights organizations are being undermined by the Government and Russia is a front runner when it comes to violations of the European Convention on Human Rights.<sup>56</sup> The chapter on South Africa reports a general disparity between law and practice, and refers to several critical reports by international monitoring bodies. So does the chapter on Greece. As for Turkey, despite its monist system and the ratification of the CEDAW, courts refuse to acknowledge that this Convention can be directly invoked by individuals. Challenges regarding the implementation and application of international rules specifically relevant to women in prison are discussed in section 4 of this contribution.

On a national level, most reporting States mention some sort of constitutional text, or texts, incorporating enforceable fundamental human rights. This legislation usually contains provisions on women in general, but not on women in prison.

### 3. STATISTICS ON WOMEN IN PRISON AND CRIMINOLOGICAL FACTORS

#### 3.1. INTRODUCTION

Statistics on women in prison in a specific State do not necessarily offer information on a country's conformity with human rights norms. Studying and comparing statistics may, however, provide insights as to which policies lead to lower prison rates.<sup>57</sup> Criminological factors considering women in prison may also shed light on other aspects that influence these rates. Still, gathering data and comparing figures run into quite a few obstacles. With regard to the collection of data, several reporting States indicate that data on certain topics was not

<sup>55</sup> See the national chapter on Australia in Part III of this volume.

<sup>56</sup> See the national chapter on Russia in Part III of this volume. See also European Court of Human Rights, *Annual Report 2014*, p. 177, available at [http://www.echr.coe.int/Documents/Annual\\_Report\\_2014\\_ENG.pdf](http://www.echr.coe.int/Documents/Annual_Report_2014_ENG.pdf) (last visited July 2016).

<sup>57</sup> Compare thematic chapter by Walmsley in Part II of this volume.

available to researchers,<sup>58</sup> or not available at all.<sup>59</sup> As to comparing data, it is not always clear how numbers are made up. For example, are women on temporary or conditional release counted as imprisoned persons? Do figures include both criminal detention and administrative (e.g. immigration) detention? And is the length of the imposed sentence similar to the length of the actual time spent in prison? In sections 3.2 and 3.3 below, statistics on women in prison are discussed first, then information on a number of criminological factors is provided.

### 3.2. STATISTICS ON WOMEN IN PRISON

Most figures in this section have been extracted from the *World Female Imprisonment List 2015* (3<sup>rd</sup> edition)<sup>60</sup> and the *World Prison Population List 2015* (11<sup>th</sup> edition).<sup>61</sup> These lists offer the most comparable set of figures on a world scale. If figures are *not* taken from the World Lists, this is indicated in the footnotes. The numbers in the World Lists include both pre-trial detainees/remand prisoners and those who have been convicted and sentenced. The present subsection discusses three numbers:

- the female prison population rate (the number of women in prison per 100,000 of the national population);
- the prevalence of women within the total prison population; and
- the changes in female prison population levels over time.

The world's highest female prison population rate (per 100,000 of the national population) is 66.4 (Thailand). The lowest is less than 1 (several countries in Africa). Of the reporting States, which include Thailand, the second highest rate occurs in the USA (64.6) and the third highest rate in Russia (36.9). The lowest rates can be found in European Union member States: Ireland (2.7), France (3.2) and Italy (3.5). When comparing entire continents, the lowest median levels can, again, be found in Africa (a median of 2.5 per 100,000) and the highest in the Americas (a median of 12.15). The middle median levels apply to Asia

<sup>58</sup> See, e.g., the national chapter on Greece, which indicates that data on sentencing policy are only available to certain legal practitioners.

<sup>59</sup> See, e.g., the national chapter on Greece, on the unwillingness of the Government to facilitate the gathering of data and to support research financially; the national chapter on South Africa, on the lack of correctional services data; the national chapter on Ireland, on its generally poor record with the collection, publication and accessibility of data on criminal justice issues; and the national chapter on Russia, on the lack of data in general.

<sup>60</sup> R. Walmsley, *World Female Imprisonment Brief 2015* (3<sup>rd</sup> edn), World Prison Brief, Institute for Criminal Policy Research, London, United Kingdom.

<sup>61</sup> R. Walmsley, *World Prison Population List 2015* (11<sup>th</sup> edn), World Prison Brief, Institute for Criminal Policy Research, London, United Kingdom.

(7.5), Europe (5.4) and Oceania (5.65). Thailand, the USA and Russia thus have relatively high rates compared to the median of their continents, while Ireland, France and Italy have fairly low rates, compared to other European countries. All the above figures on female prison population rates are in line with the general (including men and women) prison population rates of these countries (*i.e.*, Thailand has a relatively high number of prisoners per 100,000, while Ireland has a relatively low number).

As to the prevalence of women within the total prison population, female prisoners generally constitute between 2% and 9% of the total prison population. The highest percentages can be found in Asian countries (median level of 6%), while the lowest apply in Africa (median level of 2.8%). Of the reporting States, the proportion of female prisoners is highest in Thailand, where women make up 14% of the total prison population. South Africa has the lowest proportion (2.5%). However, both countries seem to be in the middle bracket, compared to other prevalence percentages of female prisoners in their respective continents.

Of the 10.35 million prisoners worldwide, more than 700,000 (6.8%) are women and girls. This number has increased by about 50% since 2000, a sharper increase than seen in male prison population levels over the same period (18%). This remarkable rise cannot be explained in terms of the growth in national population levels, which rose only 20% between 2000 and 2014. The increase in female prison population levels does demonstrate great differences between continents.<sup>62</sup> Nevertheless, the overall increase in female prison populations worldwide calls for serious attention to the subject of women in prison, and underlines the great relevance of the Bangkok Rules.

### 3.3. CRIMINOLOGICAL FACTORS

The criminological factors addressed below are:

- the causes of criminal behavior of women;
- the types of crimes that are prevalent among women; and
- the sentences imposed on women.

Various studies demonstrate that women's pathways to prison can be identified by several shared features, such as a history of child abuse, sexual abuse, domestic violence, poverty, low level of education, minimum employment histories compared to male prisoners, mothering<sup>63</sup> and responsibility for others, mental

<sup>62</sup> See the thematic chapter by Walmsley in Part II of this volume.

<sup>63</sup> However, contrary evidence exists that mothering can have a pro-social effect on women, steering them away from criminal behavior: see Carolyn Yule, Paul-Philippe Paré & Rosemary Gartner, 'An examination of the local life circumstances of female offenders: mothering, illegal earnings and drug use', 55(2) *British Journal of Criminology* 248–69 (2015), p. 266.



health problems and addiction.<sup>64</sup> Whether caused by a hopeless situation or by domestic policies, the fact is that most crimes for which women are convicted happen to be economic in nature (drugs crimes, embezzlement, theft) rather than violent. Many respondent States mention drugs crimes – more specifically drug smuggling – as (one of) the largest category of crimes committed by women.<sup>65</sup> Other economic crimes, such as theft, fraud and embezzlement, seem to have a high occurrence as well.<sup>66</sup> In most reporting States violent crimes make up for a small percentage. An exception seems to be France, where wilful violence is the number one crime committed by women. Also in The Netherlands, about 50% of the women have been convicted for violent crimes. This does not necessarily mean that French and Dutch women are more violent. The figures may also

<sup>64</sup> Most of these causes are mentioned in the thematic chapter by Artz, Hoffman-Wanderer & Moulton in Part II of this volume. A more elaborate representation of the same study, by the same authors, can be found in *Hard time(s): women's pathways the crime and incarceration*, Cape Town: Gender, Health and Justice Research Unit, University of Cape Town, 2012. The causes of criminal behavior of women are also mentioned in several national chapters in Part III of this volume, e.g. in the national chapter on Australia. Additional studies indicate similar causes, see, e.g.: Gillian Hunter & Polly Radcliffe, 'Are magistrates doing justice to women?', 92:1 *Criminal Justice Matters* 34–35 (2013); Sital Kalantry, *Women in prison in Argentina: causes, conditions, and consequences*, Public Law and Legal Theory Working Papers, Chicago Unbound, 2013, p. 15–17; J. Ashdown & M. James, 'Women in detention', 92 (877) *International Review of the Red Cross*, 123–41 (2010), p. 123, and the report series *Who are women prisoners?* by Penal Reform International, published between 2013 and 2015 on women in Jordan, Tunisia, Kazakhstan, Kyrgyzstan, Uganda, Armenia and Georgia, at [http://www.penalreform.org/?s=who+are+women+prisoners&pri\\_resources=1](http://www.penalreform.org/?s=who+are+women+prisoners&pri_resources=1) (last visited July 2016). For specific information on addiction, see Megan Bastik & Laurel Townhead, *Women in prison: a commentary on the UN Standard Minimum Rules for the Treatment of Prisoners*, Human Rights and Refugees Publications, 2008, p. 76, which underlines that women may be more likely than men to enter prison with drug problems.

<sup>65</sup> See the national chapters on Argentina, Brazil, Portugal, Spain, Taiwan, Thailand and the USA. Drugs crimes also consist of a large category in: France, The Netherlands, Russia. See also J. Ashdown & M. James, 'Women in detention', *International Review of the Red Cross*, vol. 92, nr. 877, 2010, p. 123–41, at p. 123. In Argentina, Brazil, Costa Rica, and Peru, more than 60% of women convicts are behind bars for drug-related offences. This number seems to be increasing. In Argentina, e.g., the population of women incarcerated for drug offences climbed by 271% between 1989 and 2008, and by 290% in Brazil between 2005 and 2013. See Luciana Boiteux, *Incarceration of women for drugs offences*, The Research Consortium for Drugs and the Law, 2015, p. 3. For other studies on South America see, e.g.: C. Giacomello, *Women, drug offenses and penitentiary systems in Latin America*, International Drug Policy Consortium, 2013, and Sital Kalantry, *Women in prison in Argentina: causes, conditions, and consequences*, Public Law and Legal Theory Working Papers, Chicago Unbound, 2013, p. 12–13. In Thailand, 80% of the female prison population has been convicted for a drugs crime; see *Women prisoners and the implementation of the Bangkok Rules in Thailand*, Thailand Institute of Justice, 2014, p. 25. For other figures on Asia and on Europe, see *Cause for alarm: the incarceration of women for drug offences in Europe and Central Asia and the need for legislative and sentencing reform*, Harm Reduction International, 2012. For a global view see L. Turquet, *Report on the progress of the world's women 2011–2012: in pursuit of justice*, New York: UN Women, 2011, p. 62.

<sup>66</sup> See the national chapters on Australia, Finland, Italy, Poland, Russia, South Africa and Turkey.

be explained by criminalization and prosecution policies in these States. As to the general line in sentencing, women seem to be less likely to be convicted to imprisonment than men, and if convicted their sentences seems to be short in duration.<sup>67</sup>

## 4. DEPRIVATION OF LIBERTY PHASE: FUTURE CHALLENGES

### 4.1. INTRODUCTION

Although the Bangkok Rules can be qualified as a significant step relative to the treatment and protection of women in prison, there are still topics in this area that may need additional regulation. Below, an overview is provided of current areas requiring improvement. Topical implementation issues are discussed in section 4.2. Section 4.3 looks at opportunities for implementation beyond the requirements of the Bangkok Rules. The extension of the Bangkok Rules to other subject matters features in section 4.4. Finally, section 4.5 provides suggestions on how to increase the scope and the legal weight of the Bangkok Rules. Several of the suggestions set out below are presented in the thematic and national chapters of this volume. Others have been derived from different sources (literature, case law, reports), or can be inferred from the verbatim text of the Bangkok Rules.

### 4.2. TOPICAL IMPLEMENTATION ISSUES

A number of issues in the field of women in prison require the urgent attention of governments. These are: health care, the conditions of children in prison, searches, prison design and the increasing number of women in prison.

#### 4.2.1. *Health care*

According to Rule 10 of the Bangkok Rules and the CPT standards,<sup>68</sup> gender-specific healthcare services, at least equivalent to those available in the

<sup>67</sup> See the national chapters on Argentina, Germany, Italy, The Netherlands, New Zealand, Portugal, Spain, Taiwan and the USA. Austria indicates that women are not often convicted to prison sentences, but when they are, this is because they committed a serious crime, so they are incarcerated for a longer period of time. Finland indicates there is no difference in gender when it comes to the duration of prison sentences. France indicates that women are convicted both to more shorter sentences and more maximum sentences than men.

<sup>68</sup> Doc. CPT/Inf (2000) 13, para. 32.

community, shall be provided to women prisoners. Several of the responding States mention poor health care in female prisons.<sup>69</sup> The problems mentioned are: lack of medical screening on entry;<sup>70</sup> poor hygiene standards;<sup>71</sup> lack of standardized tests;<sup>72</sup> lack of adequate mental health care;<sup>73</sup> lack of medical staff;<sup>74</sup> lack of special care for prisoners with serious illnesses or handicaps;<sup>75</sup> a lower level of care in prison than in the community;<sup>76</sup> delay when seeking access to appropriate health services;<sup>77</sup> prison healthcare systems that are run by prisoners (which may raise confidentiality issues);<sup>78</sup> and poor health care in general.<sup>79</sup> Hopefully the elaborate catalogue of health standards in the Bangkok Rules (Rules 6–18 and, specifically on mental health, Rules 12, 13, 15 and 42(2)) will be an incentive for governments to improve the health conditions of women in prison.

#### 4.2.2. *Children in prison*

The majority of women in prison seem to be mothers.<sup>80</sup> According to the Bangkok Rules, the CPT and the CRC, whether children can stay with their mothers in prison depends on what is best for the child.<sup>81</sup> Few States *a priori*

<sup>69</sup> For an overview on the research of women's health care in prisons on a global level, see Brenda J. van den Bergh, Alex Gatherer, Andrew Fraser & Lars Moller, 'Imprisonment and women's health: concerns about gender sensitivity, human rights and public health', 89 *Bulletin of the World Health Organization* 689–94 (2011).

<sup>70</sup> See the national chapters on Finland and Spain.

<sup>71</sup> See the national chapters on Turkey and Russia.

<sup>72</sup> See the national chapters on Australia, Brazil, Italy and Turkey.

<sup>73</sup> See the national chapters on Poland, Spain, Taiwan and Thailand. A study among 883 Taiwanese female prisoners reveals that priority concerns pertain to mental health care in prison. See Yu-Shu Chen, Yung-Lien Lai & Chien-Yang Lin, 'Dimensions and predictions of treatment needs for female inmates: an exploratory study in Taiwan', 37(2) *International Journal of Comparative and Applied Criminal Justice* 119–42 (2013), p. 127. See also Sofia Gullberg, *State of the estate: women's prison report on the women's custodial estate*, London: Women in Prison, 2013, pp. 22–23. The report mentions mental health care as an area of primary concern in the UK.

<sup>74</sup> See the national chapter on Turkey.

<sup>75</sup> See the national chapter on Turkey.

<sup>76</sup> See the national chapter on Germany.

<sup>77</sup> See the national chapters on Australia and Thailand.

<sup>78</sup> See the national chapter on Greece. Compare Rule 8 of the Bangkok Rules: "*The right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times.*".

<sup>79</sup> See the national chapters on Russia, South Africa and the USA.

<sup>80</sup> South Africa reports that mothers constitute about 84% of the female prison population. Argentina reports that 9 out of 10 female prisoners are mothers. The CPT reports that women in prison are primary care-takers of children and others. See Doc. CPT/Inf (2000) 13, para. 28.

<sup>81</sup> This best interest rule can be found in Rule 49 of the Bangkok Rules, Doc. CPT/Inf (2000) 13, para. 29 and, for a more general phrasing, Art. 3(1) CRC.

do not allow for children in prison.<sup>82</sup> Most States seem to adhere to the best interest rule, in combination with a formal or informal age limit from one year old up to approximately six years old.<sup>83</sup> There is, however, no international rule prescribing an age limit.<sup>84</sup> Moreover, it is questionable whether such an age limit is always in the best interest of the child. Especially in cases where children have special needs (a physical or mental handicap), an age limit may lead to unfair results. The Constitutional Court of Italy has considered the absolute character of such an age limit<sup>85</sup> illegitimate, and has extensively interpreted the set limit to include handicapped children of any age.<sup>86</sup> In line with this judgment, it may be beneficial to both mother and child if States did not focus on a specific age limit but primarily tuned in to the best interests of the child. Age would then be only one of many factors determining this best interest.

Another consequence of the best interest rule is that it implies a duty for prison facilities to make the environment suitable for children.<sup>87</sup> In the words of the CPT, “[t]he goal should be to produce a child-centered environment, free from the visible trappings of incarceration, such as uniforms and jangling keys”.<sup>88</sup> Rule 51(2) of the Bangkok Rules – taking into account the different standards of living worldwide – prescribes that the environment provided for children in prison shall be as close as possible to that of a child outside prison. However, it is difficult to get an idea of the actual situation of children in prison. Most of the respondent States seem to do well on paper. Nevertheless, the actual suitability of the prison environment for children seems to differ from State to State. Italy and Turkey may be mentioned as opposite extremes. The chapter on Turkey in Part III of this volume reports that children lack proper food and hygiene. Moreover, there are no beds, clothes and toys. Italy, on the other hand, reports all kinds of facilities, and describes children’s quarters painted in lively colors and decorated with animal images.<sup>89</sup> All in all, the situation of children in prison worldwide is an issue that requires the utmost attention from governments,

<sup>82</sup> See, e.g., the USA (unless the child is born in prison), Singapore and Japan (the last two are addressed in the thematic chapter by Akane).

<sup>83</sup> See, e.g. Brazil, Finland, France, Ireland, Italy, Mexico, Nepal, The Netherlands, New Zealand, Poland, Spain, Turkey and the United Kingdom (Mexico and Nepal are addressed in the thematic chapter by Akane). Only Argentina mentions specific legislation that allows pregnant women and women with young children to serve detention or prison time through house arrest. In Taiwan, it is prohibited to incarcerate pregnant women.

<sup>84</sup> C. Lindsey, *Women facing war*, Geneva: ICRC, 2001, p. 163.

<sup>85</sup> Albeit not in the context of a prison sentence but in the context of house arrest.

<sup>86</sup> See the national chapter on Italy for a more elaborate discussion on this case.

<sup>87</sup> See the thematic chapter by Bartsch in Part II of this volume.

<sup>88</sup> Doc. CPT/Inf (2000) 13, para. 29.

<sup>89</sup> This great variety in the level of facilities is confirmed by a UN publication, which also concludes that appropriate facilities for children are often lacking in prisons: see Megan Bastik & Laurel Townhead, *Women in prison: a commentary on the UN Standard Minimum Rules for the Treatment of Prisoners*, Geneva: Human Rights and Refugees Publications, 2008, p. 104.

not only through legislation and policy, but also through control mechanisms, since children are not in a position to address maltreatment through internal complaint procedures or external redress mechanisms.

#### 4.2.3. Searches

Considering the importance of the prevention of abuse of female prisoners, searches are a sensitive issue. According to Rule 50 of the Mandela Rules, searches in prison should be in accordance with the principles of necessity, proportionality and legality.<sup>90</sup> Furthermore, the Bangkok Rules require that searches are guided by necessity (e.g. no physical search when a scan is possible) and are performed by specifically trained female staff (Rules 19 and 20). Some States report practices that are not in conformity with the above standards, such as systematic searches (instead of searches based on an individual risk assessment)<sup>91</sup> and disproportionately invasive searches.<sup>92</sup> Considering the history of sexual abuse among a large number of female prisoners,<sup>93</sup> and the risk of reliving their traumas due to abusive searches,<sup>94</sup> ending these practices is paramount. If this goal cannot be attained through legislation, policy and control mechanisms, it may, in some instances, be necessary to install a new round of female staff, trained in accordance with the Bangkok Rules, to effectuate a change in prison culture.

#### 4.2.4. Prison design

The Bangkok Rules on the allocation of female prisoners (Rule 4), hygiene standards (Rule 5), health issues (mainly on the prevention of self-harm and suicide, and issues related to reproductive health)<sup>95</sup> and especially Rule 41 on a gender-sensitive risk assessment,<sup>96</sup> all have consequences for the design of

<sup>90</sup> See also the following cases featuring searches in prison and the implications of the principles of proportionality and necessity: ECtHR, *El Shennawy v. France*, no. 51246/08, 20 January 2011, para. 38; and ECtHR, *Khider v. France*, no. 39364/05, 9 July 2009, para. 127.

<sup>91</sup> The USA and Greece.

<sup>92</sup> See the national chapters on Greece, Turkey and the USA. See, on sexual abuse during searches, Kim Shayo Buchanan, 'Impunity: sexual abuse in women's prisons', 42(1) *Harvard Civil Rights-Civil Liberties Law Review* 45–87 (2007), p. 45.

<sup>93</sup> See section 3.3 on criminological factors.

<sup>94</sup> See the national chapter on the USA.

<sup>95</sup> See, e.g., Rules 6, 9 and 16 of the Bangkok Rules.

<sup>96</sup> Women generally pose a low security threat to others and a high security threat to themselves compared to men. This is reflected in the Bangkok Rules on risk assessment. Only a few types of female offenders probably need a higher level of security than the rest. These categories consist of women with mental health problems and women who were convicted for violent crimes. See Karen Lahm, 'Official incidents of inmate-on-inmate misconduct at a women's prison: using importation and deprivation theories to compare perpetrators to victims', 29(3) *Criminal Justice Studies* 214–31 (2016).

women's prison facilities. However, since prisons are often built for men, the design of these institutions rarely meets the above requirements of the Bangkok Rules that are based on the needs of women. The implications of and possible solutions to this problem are discussed in detail in the thematic chapter by García Basalo (which is summarized in the introduction to this chapter).<sup>97</sup> Considering these implications and solutions, it is paramount for governments to reserve funds to invest in the renovation and construction of female prisons.

#### 4.2.5. *Increasing numbers*

Although women in prison are a minority that on average – but certainly not in every case – receives relatively short sentences, bringing down the number of women in prison should still be a priority. Female imprisonment has a high financial and social cost,<sup>98</sup> and its effects are often negative.<sup>99</sup> What is more, the female prison population has increased dramatically over the last decade, which makes the problem of female imprisonment even more urgent. The inventory below provides several suggestions to bring the numbers down:<sup>100</sup>

- Decriminalization or a different focus in prosecution policy may be effectuated in relation to some of the smaller crimes. Women are generally in prison for a relatively short time, usually for the smaller, non-violent crimes. In order to reduce the number of women in prison, governments could consider decriminalizing some of these crimes (e.g. the use of narcotic drugs), or focus on the instigators of certain social problems instead of on the victims (e.g. prosecute drug dealers instead of drug users).<sup>101</sup>
- Pre-trial detention could be used more sparingly. Although international human rights law does not set a standard as to which crimes provide a reason for detention, detention must be proportionate (reasonable relative to the crime of which the detainee is suspected and to the risks averted by detention) and necessary (detention may only be applied if all less severe avenues are

<sup>97</sup> See also the thematic chapter by Chitsawang on the implications of this problem in Thailand.

<sup>98</sup> The social cost of female imprisonment is also stressed by the CPT in Doc. CPT/Inf (2000) 13, para. 28.

<sup>99</sup> See the point below, 'Prison sentences could be avoided for the lowest-level criminality.'

<sup>100</sup> Four of these points (the second, third, fourth and fifth) have been based on the suggestions at the end of the thematic chapter by Walmsley in Part II of this volume.

<sup>101</sup> On the use of decriminalisation and prosecutorial discretion in the case of drugs, this guide to policy reform – by a working group of government officials and experts in the areas of gender, human rights and drug policy from 10 Latin-American countries – may be of interest: *Women, drug policies and incarceration: a guide to policy reform in Latin America and the Caribbean* (2016), at <http://www.wola.org/sites/default/files/WOLA%20WOMEN%20FINAL%20ver%2025%2002%201016.pdf> (last visited July 2016). This guide advises decriminalising the possession of drugs (p. 26) and the cultivation of crops (p. 30), and the use of prosecutorial discretion in the case of small-scale dealers (p. 27).

inadequate to control the suspect).<sup>102</sup> Since women predominantly commit relatively small, economic crimes, these criteria may not be met in the case of many female offenders. Unfortunately, many women still spend time in mandatory pre-trial detention for minor drugs crimes.<sup>103</sup> In addition, when considering the grounds for pre-trial detention recognized by international human rights law,<sup>104</sup> it seems these grounds may arguably be less applicable in the case of women. The risk of absconding may, for example, be absent where the female suspect has a family to take care of.

- Prison sentences could be avoided for the lowest-level criminality. Short-term sentences have a disastrous effect on female convicts. There are only disadvantages. The sentences are too short to allow them to enroll in professional training/gather professional experience/get treatment for an addiction or other (mental) health problem. And once the convicted woman returns to society, she is likely to have lost her job, house, children and/or social relations. In some instances, she may even be stigmatized and shut out by her community.<sup>105</sup> All in all, she finds herself in a situation that is worse than the circumstances that drove her to criminal behavior in the first place, with no new skills to face her problems.<sup>106</sup>
- More use could be made of non-custodial sentences.<sup>107</sup> Although non-custodial sentences have many advantages, especially in the case of young mothers,<sup>108</sup>

<sup>102</sup> P.H.P.H.M.C. van Kempen, 'Pre-trial detention in national and international law and practice' in P.H.P.H.M.C. van Kempen (ed.), *Pre-trial detention: human rights, criminal procedural law and penitentiary law, comparative law*, Antwerp: Intersentia, 2012, p. 3–46, at p. 34.

<sup>103</sup> Cf. Pien Metaal & Coletta Youngers, *System overload: drug laws and prisons in Latin America*, Washington, DC/Amsterdam, 2011, p. 91 at [https://www.tni.org/files/tni-systems\\_overload-def.pdf](https://www.tni.org/files/tni-systems_overload-def.pdf) (last visited September 2016).

<sup>104</sup> See for these grounds and the grounds applied by several States worldwide P.H.P.H.M.C. van Kempen, 'Pre-trial detention in national and international law and practice' in P.H.P.H.M.C. van Kempen (ed.), *Pre-trial detention: human rights, criminal procedural law and penitentiary law, comparative law*, Antwerp: Intersentia, 2012, p. 3–46, at 35–37.

<sup>105</sup> See the national chapters on Brazil and the USA.

<sup>106</sup> See, on the downward spiral induced by short-term sentences, Pien Metaal & Coletta Youngers, *System overload: drug laws and prisons in Latin America*, Washington, DC/ Amsterdam, 2011, p. 97 at [https://www.tni.org/files/tni-systems\\_overload-def.pdf](https://www.tni.org/files/tni-systems_overload-def.pdf) (last visited September 2016) and Gillian Hunter & Polly Radcliffe, 'Are magistrates doing justice to women?', 92:1 *Criminal Justice Matters* 34 (2013).

<sup>107</sup> The preference for these types of sentences is addressed in Rules 57–62 of the Bangkok Rules. For good practices on non-custodial sentences for women, see Ruby Moshenska, *International good practice: alternatives to imprisonment for women offenders*, London: Prison Reform Trust, 2013.

<sup>108</sup> Imprisonment of a parent can have detrimental effects on a child. See David Murphy & P. Mae Cooper, *Parents behind bars: what happens to their children?*, Child Trends, 2015, p. 6–8 at <http://www.childtrends.org/wp-content/uploads/2015/10/2015-42ParentsBehindBars.pdf> (last visited September 2016); Rebecca Vallas, Melissa Boteach, Rachel West & Jackie Odum, *Removing barriers to opportunity for parents with criminal records and their children:*



these measures also give rise to problems that should be confronted. For example, it may be challenging for a mother of young children to leave the house. Another problem with a non-custodial sentence is that the fulfillment of economic needs and access to programs (education, addiction, mental health) may not be possible.<sup>109</sup> However, Rules 60 and 62 of the Bangkok Rules aim to avert such difficulties. All things considered, governments should be alert not to impose non-custodial measures as a quick fix for the problem of overcrowded prisons. Instead, non-custodial measures should be well-thought-through, enabling women to participate in programs that may increase the chances of their successful reintegration.<sup>110</sup>

- Sentences could in many cases be shorter. This is not the responsibility of the courts alone but also of the legislator and the prosecution. In a number of countries a woman convicted even of a low-level drugs offence receives a long sentence simply because it is a drugs offence.<sup>111</sup>
- In line with Rule 61 of the Bangkok Rules, sentencing policy could focus more on specific mitigating factors and/or complete defenses that are relevant in the case of female offenders. The care-taking role, lack of criminal record, non-severity of the crime and typical background of the female defendant could be taken into account. Likewise, it is important to realize that many women are *forced* into crime by men (e.g. drug trafficking, prostitution).<sup>112</sup> In such a case, a duress defense could be applicable. Finally, when an abused woman strikes back ('battered women syndrome'), she can rely on several defenses or mitigating factors, depending on the situation and the jurisdiction.<sup>113</sup>
- In accordance with Rule 63 of the Bangkok Rules, early release programs could be introduced (or used more frequently).

---

*a two generation approach*, Center for American Progress, 2015, p. 3 at <https://cdn.americanprogress.org/wp-content/uploads/2015/12/09060720/CriminalRecords-report2.pdf> (last visited September 2016). For a more elaborate study on this subject, see Joseph Murray, Catrien C.J.H. Bijleveld, David P. Farrington & Rolf Loeber, *Effects of parental incarceration on children*, Washington, DC: American Psychiatric Association, 2014.

<sup>109</sup> Compare the national chapters on Argentina and Australia.

<sup>110</sup> See the thematic chapter by Akane in Part II of this volume.

<sup>111</sup> On mass imprisonment based on disproportional penalties for relatively small drugs crimes, see Luciana Boiteux, Luciana Peluzio Chernicharo & Camila Souza Alvez, 'Human rights and drug conventions: searching for humanitarian reason in drugs law' in Beatriz Caiuby Labate & Clancy Cavnar (eds), *Prohibition, religious freedom and human rights: regulating traditional drug use*, Berlin/Heidelberg: Springer, 2014, p. 1–23, with references to Pien Metaal & Coletta Youngers (2011) and David Bewley-Taylor et al. (2005 and 2009).

<sup>112</sup> For an overview of research on involvement by force of women in drug trafficking, see Jennifer Fleetwood, *Drug mules: women in the international cocaine trade*, Basingstoke: Palgrave Macmillan, 2014, p. 72. This specific study, though, nuances the involvement of force in these cases.

<sup>113</sup> Linklaters LLP for Penal Reform International, *Women who kill in response to domestic violence: how do criminal justice systems respond?*, Report, 2016.



- As far as foreign women are concerned, improvement of international legal cooperation relative to the transfer of execution of the sentence might help, if sentences are reduced in the home country. And if reduction is not possible, the transfer of execution of the sentence may at least improve the situation of imprisonment for the woman concerned (e.g. closer to relatives, able to speak official language of the institution).
- Governments should invest in national programs that look into the criminogenic context (a history of child abuse, sexual abuse, domestic violence, etc)<sup>114</sup> of women in prison, to prevent women from *ending up* in prison.
- Governments should invest in prison programs that tune in to the criminogenic context of women in prison,<sup>115</sup> in order to prevent women from *returning to* prison once released.
- Powers within the State must cooperate. Crime prevention usually lies with the Ministry of Justice, while a multi-departmental and multi-stakeholder policy to prevent women from starting on the downward slope would probably be more effective.<sup>116</sup>

#### 4.3. IMPLEMENTATION BEYOND THE BANGKOK RULES

Although the Bangkok Rules do not feature the word *minimum* in the official title<sup>117</sup> – compare the UN Standard *Minimum* Rules for Prisoners and the 1990 UN Standard *Minimum*<sup>118</sup> Rules for Non-custodial Measures – the Rules do provide some sort of minimum standard. According to section 11 of the preliminary observations to the Bangkok Rules, “it is evident that not all of the following rules can be equally applied in all places and at all times”. Consequently, the Bangkok Rules represent “global aspirations ... leading to the common goal of improving outcomes for women prisoners”. However, the preliminary observations to the Bangkok Rules could also encourage governments to go *beyond* these global aspirations in order to improve outcomes for women prisoners. Such encouragement is currently not included.<sup>119</sup> Nevertheless, several provisions of the Bangkok Rules should invite governments to implement legislation or directives that offer more protection than the standards imposed by the Bangkok

<sup>114</sup> See section 3.3 on criminological factors.

<sup>115</sup> Drug problems and mental health problems in particular seem to be prevalent among female prisoners. See, e.g., the national chapters on Greece and Spain on drugs problems in prison, and the national chapters on Argentina, Italy and South Africa on suicide and self-harm.

<sup>116</sup> This suggestion was made at the end of the national chapter on Ireland in Part III of this volume.

<sup>117</sup> Official title of the Bangkok Rules: The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

<sup>118</sup> Emphasis added.

<sup>119</sup> Cf. the final recommendations in the national chapter on Ireland in Part III of this volume.

Rules. This protection could, amongst other things, pertain to the subjects of access to legal advice, programs and activities in prison, the right to express milk and non gender-conforming persons.

#### 4.3.1. *Access to legal advice*

Rule 2(1) grants women access to legal advice upon admission to prison. However, in many jurisdictions effective access to this right is absent: women lack resources to pay for legal assistance, or there are simply no lawyers available.<sup>120</sup> Consequently, Rule 2(1) of the Bangkok Rules requires refinement by national governments (e.g. through effective legislation on financial compensation for hiring a lawyer), in order for women prisoners to effectuate this access to legal advice.

#### 4.3.2. *Programs and activities in prison*

Another provision where governments could go beyond the minimum standard is Rule 42(1), which reads, “Women prisoners shall have access to a balanced and comprehensive programme of activities, which take account of gender-appropriate needs.” The effectiveness of this Rule for women in prison is at least partly dependent on how governments define “taking account of gender-appropriate needs”. Several national chapters – and the CPT – indicate that these needs are often translated to a whole range of “womanly activities”, such as cleaning and sewing.<sup>121</sup> However, education and professional experience that correspond with market demands will probably be more effective in increasing the chances of reintegration of female prisoners. Consequently, governments could transcend the minimum standard of the Bangkok Rules by developing not so much gender-appropriate programs, but rather gender-empowerment programs.

#### 4.3.3. *The right to express milk*

Rule 42(3) of the Bangkok Rules prescribes that “Particular efforts shall be made to provide appropriate programs for pregnant women, nursing mothers and women with children in prison.” However, in order to participate in programs, nursing mothers must have the opportunity to express milk. Consequently,

<sup>120</sup> J. Ashdown & M. James, ‘Women in detention’, 92 (877) *International Review of the Red Cross* 123–41 (2010), p. 131.

<sup>121</sup> Cf. the national chapters on Finland, France, Germany, South Africa, Switzerland and Turkey. These ‘womanly activities’ are also an area of concern to the CPT: Doc. CPT/Inf (2000) 13, para. 25.

governments could develop additional regulation on the supply of breast pumps in prison and on the use of these pumps (how often can they be used, where can they be used, etc). These additional regulations should provide women in prison with the same rights to express milk as working mothers outside prison. The enabling of the right to express milk is in line with the government's obligation to promote breastfeeding in general.<sup>122</sup>

#### 4.3.4. *Non gender-conforming persons*

One may wonder to what extent the Bangkok Rules are applicable to non gender-conforming persons, *i.e.* persons who are neither male nor female. Generally, this category of prisoners is severely mistreated and discriminated against, both by staff and by fellow prisoners.<sup>123</sup> Consequently, if the Bangkok Rules can offer relevant<sup>124</sup> protection to non gender-conforming persons, they should be applied. This extensive application is in line with section 12 of the preliminary observations to the Bangkok Rules, which establishes that some of the Rules are equally applicable to male prisoners.

### 4.4. EXTENSION OF THE BANGKOK RULES

Several subjects could be added to the contents of the Bangkok Rules. Discussed below are the introduction of provisions on the keeping of records, reproductive rights and the principle of separation.

#### 4.4.1. *The keeping of records*

It is remarkable that the Bangkok Rules do not contain any provisions on the keeping of records. Especially in the case of women, an adequate system of confidential records is an important tool in preventing human rights violations.<sup>125</sup> What is more, records may provide information on the prison's compliance with the Bangkok Rules. Consequently, by introducing a rule on record keeping, the Bangkok Rules may invigorate themselves. On the other hand, the lack of such a rule may partially be overcome by the fact that the Bangkok Rules do call for

<sup>122</sup> Art. 24(e) CRC. See also Rule 48(2) of the Bangkok Rules: 'Women prisoners shall not be discouraged from breastfeeding'.

<sup>123</sup> See the national chapters on Ireland and the USA in Part III of this volume.

<sup>124</sup> *E.g.*, there is no relevance in subjecting a former male to a pap-smear, but it may be relevant for a former female to have a regular mammogram.

<sup>125</sup> J. Ashdown & M. James, 'Women in detention', 92 (877) *International Review of the Red Cross* 123–41 (2010), p. 131. Records on disciplinary measures or on complaints by detainees, for example.

regular monitoring by inspectorates (Rule 25(3)), and by the introduction of Rules 6–10 (prisoner file management) during the 2015 review of the Mandela Rules. Still, a provision containing a reference to Rules 6–10 of the Mandela Rules in the Bangkok Rules and some gender-specific requirements on record keeping (for example on prior sexual abuse)<sup>126</sup> may be desirable.

#### 4.4.2. *Reproductive rights*

Although the Bangkok Rules contain provisions on pregnancy and children, rules on reproduction (*e.g.* conception, contraception, abortion) are absent. Reproductive rights are guaranteed through various instruments, such as Article 16(e) CEDAW, Article 12 ECHR, and Article 14 of the Maputo Protocol.<sup>127</sup> In principle, women in prison should be able to enjoy reproductive rights, unless restrictions are unavoidable due to the closed environment.<sup>128</sup> Certain topics relating to reproductive rights may be sensitive, or sometimes even illegal, in specific States. Still, the Bangkok Rules could be extended, with a provision supporting women in exercising their reproductive rights within the legal limits of the State at issue. The necessity of such a provision may be even more apparent in the light of the reported violations of reproductive rights<sup>129</sup> and the limited possibility of conjugal visits in the reporting States.<sup>130</sup>

<sup>126</sup> Compare the current Rule 7 of the Mandela Rules, with a focus on visible injuries and ill-treatment in general.

<sup>127</sup> The CPT also stresses that the equivalence of care requires that the so-called “morning after” pill and/or other forms of abortion at later stages of a pregnancy, which are available to women in the community, should also be available under the same conditions to women deprived of their liberty: see Doc. CPT/Inf (2000) 13, para. 32.

<sup>128</sup> See section 2.2.2 on general human rights treaties. This line of reasoning has also been employed in relation to reproductive rights in cases where detained women desired IVF treatment. See, *e.g.*, ECtHR, *Dickson v. United Kingdom*, Grand Chamber, Judgment, 4 December 2006, Appl. no. 44362/04, para 67; and the Australian case of *Castles v. Secretary to the Department of Justice* [2010] VSC 310 (9 July 2010), para. 108 (the focus in this latter case was on the right to health).

<sup>129</sup> See the national chapter on the USA in Part III of this volume. The chapter discusses the reproductive injustice done to many young women in US prisons, convicted to long prison sentences for drug-related offences. The USA chapter also sheds light on the ineffectiveness of the 14<sup>th</sup> Amendment (the right to terminate a pregnancy). Women in prison can rarely enjoy this right, because they have to pay for their own abortions and cannot bear the costs. The USA national chapter also reports that women prisoners were compelled to have an abortion.

<sup>130</sup> Female prisoners are not entitled to conjugal visits in England and Wales, Greece, Ireland, Italy, New Zealand and several states in the USA. Female prisoners have limited possibilities for conjugal visits in Austria, Poland, Taiwan and Turkey. The Bangkok Rules do not phrase conjugal visits as an absolute right but as a right that must be exercised on an equal basis with men (Rule 27). Conjugal visits are, however, important not only to exercise reproductive rights, but also to maintain family relationships, which is paramount to successful reintegration after prison.

#### 4.4.3. *The principle of separation*

There is no reference to the principle of separation (men must be separated from women, adults from minors, and pre-trial detainees from convicted detainees) in the Bangkok Rules. Although this principle features in other international instruments – such as Rule 11 of the Mandela Rules, which the Bangkok Rules are meant to complement – a restatement of this principle and some elaboration on its implications may be desirable. First, because the principle of separation is yet another means to prevent abuse, one of the focal points of the Bangkok Rules. Second, because problems, emerging as a result of the application of this principle, may be overcome by additional regulation. Since the principle of separation requires that women stay in female units, and because women are a minority in prison, each State has relatively few of these units. This means that women are often placed in a unit that is not in the proximity of family and other relations. Imprisonment at a remote location has a negative effect on maintaining family and other social relations, and will eventually hamper the woman prisoner's reintegration.<sup>131</sup> The Bangkok Rules could encourage governments to compensate in situations where a woman is imprisoned far from home, e.g. by refunding visitors' travel expenses, or allowing for extra visiting or Skype time. In addition, governments should take into account that due to the often limited amount of prison space for females, additional efforts may be necessary to apply the other principles of separation (separation of adults from minors, and separation of pre-trial detainees from convicted detainees), which require four *separate* female quarters in order to fulfill international obligations.<sup>132</sup>

#### 4.5. INCREASING LEGAL WEIGHT AND SCOPE OF THE BANGKOK RULES

Previous sections demonstrate that the Bangkok Rules comprise soft law and that they can be characterized as minimum standards. In order to increase the authority of the Bangkok Rules, the content of those Rules must be institutionalized. This can be realized through the implementation of the Bangkok Rules in national jurisdictions, in law, policy and through application by domestic courts. On an

<sup>131</sup> E.g., Australia, Argentina, France, Italy and Turkey acknowledge that they are faced with this problem. In Finland this problem does not manifest itself; however, the separation principle is not always applied in Finnish prisons.

<sup>132</sup> See F. Dünkel, C. Kestermann & J. Zolondek, *International study on women's imprisonment*, Greifswald: University of Greifswald, 2005, p. 11 and 15, on the problematic consequences of the application of the principle of separation.

international level, international courts, like the ECtHR,<sup>133</sup> the I-ACtHR and the ACtHPR, could reinforce the Bangkok Rules by using them in the application of convention provisions. What is more, contracting parties to treaties relevant to women in prison might integrate references to the Bangkok Rules in the General Comments on the treaty provisions. A next step to increase the legal weight of the Bangkok Rules could be a convention, or a Protocol to CEDAW or to regional human rights treaties, which then should include at least the most crucial standards relative to women in prison. Last but not least, governments should reserve funds to realize the above objectives.

As to the scope of the Bangkok Rules, these Rules are primarily concerned with the deprivation of liberty phase, *i.e.* conditions under which women should be held in detention and prison. The Rules only slightly touch upon causes of offending by women and the problems that women face after release from prison. These two issues may well be interrelated (after release women run into the same problems that caused them to commit a crime in the first place), and it is therefore laudable that Rule 67 calls for more research-based policy on these topics. However, instruments other than the Bangkok Rules (on reducing root causes of female imprisonment, for example, or on social reintegration of female prisoners) may be necessary to achieve a more integral – or holistic – approach to women in prison.

## 5. CONCLUSION

Women in prison are a rapidly increasing minority. Prison systems, however, have traditionally been designed with the behavior of men in mind. Consequently, women in prison run into a whole range of problems. These problems do not contribute to realizing the objectives of a prison sentence. On the contrary, women often return from prison to worse conditions than those that caused them to commit crimes in the first place, resulting in a downward spiral of crime and incarceration. The Bangkok Rules aim to break this spiral, by introducing rules that reflect the specific needs of women in prison. Being the first international instrument on this subject matter, the Bangkok Rules can be viewed as a milestone.

<sup>133</sup> It can be inferred from the thematic chapters by Paprzycki and Bartsch that the ECtHR employs CPT standards for the interpretation of convention provisions. The Bangkok Rules could be used for the same purpose. In fact, the ECtHR recently referred for the first time to the Bangkok Rules in *Korneykova and Korneykov v. Ukraine*, Judgment, 24 March 2016, Appl. no. 56660/12, paras 91 and 129. In this case the ECtHR found several violations of Art. 3 ECHR, constituting behavior contrary to the Bangkok Rules and other sources of international law (CEDAW, CRC, WHO recommendations and CPT reports).

The present chapter has demonstrated that although most of the 23 reporting States seem to have ratified and implemented the international agreements relevant to women in prison, domestic policy is not always in accordance with these rules. Current areas of major concern are: health care, the conditions of children in prison, searches, prison design and the increasing number of women in prison. Several suggestions have been made to bring this number down. Some of these suggestions refer to the general profile of female prisoners (a hopeless background that leads to the commission of small economic crimes for which a short prison sentence is imposed). Other recommendations suggested in this chapter pertain to opportunities for implementation beyond the requirements of the Bangkok Rules, the extension of the Bangkok Rules to other subject matters, and suggestions on how to increase the legal weight and scope of the Bangkok Rules. Although many challenges lie ahead when it comes to improving the situation of women in prison, this volume displays involvement in the topic by many specialists of various nationalities all over the world. In that sense, all contributions in the following chapters are hopeful.

# FEMMES EN PRISON: UNE PERSPECTIVE TRANSNATIONALE

Maartje KRABBE\* & Piet Hein VAN KEMPEN\*\*

## 1. INTRODUCTION AU PRÉSENT VOLUME

Les femmes en prison sont une minorité. Aujourd'hui, sur les 10,35 millions de détenus dans le monde, 6,8 % sont des femmes.<sup>1</sup> Leur nombre augmente rapidement. Étant donné le nombre relativement faible de détenues, les politiques pénitentiaires sont traditionnellement élaborées en réponse au comportement des hommes. L'impact de ces politiques sur les femmes suscite jusqu'à présent peu d'intérêt.<sup>2</sup> Les recherches menées sur les femmes en prison démontrent cependant que les détenues se distinguent de leurs homologues masculins en ceci (a) qu'elles sont généralement emprisonnées pour des raisons différentes<sup>3</sup> et qu'une fois emprisonnées, (b) elles ont d'autres besoins.<sup>4</sup> Les femmes sont par exemple plus souvent incarcérées pour des infractions liées aux stupéfiants que pour des délits violents, elles sont sans cesse plus sensibles à une vaste gamme

---

\* Dr M.J.M. Krabbe (Ph.D.) est maître des conférences et chercheur au Département de droit pénal et Criminologie à l'université Radboud, Nijmegen, Pays-Bas. Elle est également juge *ad litem* au Tribunal de Gelderland, Pays-Bas. Elle peut être contactée à l'adresse suivante : m.krabbe@jur.ru.nl.

\*\* Dr P.H.P.H.M.C. van Kempen (Ph.D.) est Professeur titulaire de droit pénal et de droit de procédure pénale, mais aussi Président du département de droit pénal et criminologie à l'université Radboud, Nijmegen, Pays-Bas. Il est également juge *ad litem* à la cour d'appel de La Haye, Pays-Bas et Secrétaire général de la Fondation internationale pénale et pénitentiaire. Il peut être contacté à l'adresse suivante : p.h.vankempen@jur.ru.nl.

<sup>1</sup> R. Walmsley, *Liste de la Population Carcérale Mondiale 2015* (onzième édition), World Prison Brief, Institute for Criminal Policy Research, Londres, Royaume-Uni.

<sup>2</sup> F. Dünkel, C. Kestermann & J. Zolondek, *International study on women's imprisonment*, University of Greifswald, 2005, p. 3.

<sup>3</sup> Voir section III (facteurs statistiques et criminologiques) des chapitres nationaux dans la partie III.

<sup>4</sup> Voir section IV (la phase de privation de liberté) des chapitres nationaux dans la partie III.