



WOMEN IN PRISON AND THE COVID-19 EPIDEMIC: IMPROVING THE GOVERNMENT RESPONSE TO PROTECT WOMEN IN PRISON

I. FOREWORD

In 2018, the [Vance Center for International Justice](#) convened the first international [conference](#) of women prisoners' advocates in Bogota Colombia, co-sponsored by Penal Reform International (PRI). Out of this conference was created the first ever global network of advocates for women prisoners: the **Women in Prison Network**. Connected via an online platform, the Network includes 45 individual advocates and 34 organizations from a total of 21 countries representing every continent. The Network is a safe space for advocates to share information and best practices, seek collaborations, and build capacity for improved monitoring and reporting of conditions in women's prisons worldwide.

In response to the Covid-19 outbreak, the Vance Center has mobilized its Women in Prison Network to assess government responses to the crisis in detention centers for women in 17 Global South countries from Africa, Asia and Latin America: Argentina, Bolivia, Brazil, Colombia, Indonesia, Kazakhstan, Kenya, Kyrgyzstan, Malawi, Mexico, Nigeria, Pakistan, Philippines, Sierra Leone, Thailand, The Gambia, and Venezuela.

Local organizations that are part of the Women in Prison network filled out a survey questionnaire prepared by the Vance Center and Penal Reform International seeking to elicit information on the government response to prevent and address the Covid19 pandemic in places of detention for women. The Vance Center partnered with a law firm in New York to produce the memorandum below that summarizes the survey responses and analyzes them in light of international and regional standards regarding the treatment of women in detention.

This memorandum is intended as a guide for conducting advocacy to improve the government response to the Covid19 pandemic in places of detention for women.

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- Penal Reform International – Central Asia, Kazakhstan and Kyrgyzstan
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II. INTRODUCTION

1. Opening Summary

The outbreak of the novel coronavirus, COVID-19, was first detected in Wuhan, China in December 2019. Over the past several months, the virus has spread across nearly every country and was declared a pandemic by the World Health Organization (WHO) on 12 March 2020. While the virus does not discriminate, systemic inequality can make certain individuals or populations more susceptible to the disease. Individuals in prisons, in particular, are likely to be more vulnerable to contracting coronavirus due to living in confined and crowded conditions for extended periods, generally low-standard of health care inside the prisons, and poor health status of people detained. As such, any response to tackling this public health crisis must be grounded with respect for human rights and be gender-focused. This report will discuss current government responses to COVID-19 in the Global South and their impact on women in prison.

The Vance Center for International Justice’s Women in Prison Project assembled a network of NGO advocates to complete a survey on how their governments have responded to the COVID-19 pandemic in their policies and practices regarding women’s incarceration. The survey focused on six key areas: healthcare, prison protocols and rules, children in prison with their mothers, rehabilitation and release, the criminal justice system, and prison staff. Using these survey responses, a team of White & Case



attorneys analyzed each country's actions and compared them to international law and regional standards regarding the treatment of women. While the report will identify global trends and make recommendations that are applicable on an international level, the analysis conducted is based on a review of the following countries: Argentina, Bolivia, Brazil, Colombia, Indonesia, Kazakhstan, Kenya, Kyrgyzstan, Malawi, Mexico, Nigeria, Pakistan, Philippines, Sierra Leone, Thailand, The Gambia, and Venezuela.

The report is structured into four main sections. First, this introduction will provide an overview of pertinent international standards and pulls together the key themes and recommendations in analyzing country-specific and regional responses to the COVID-19 situation. This is followed by a regional analysis of government responses in Asia, Latin America, and Africa. The regional summaries provide a brief overview of the regional standards of treatment of women in prison, analyze trends across the region noting similarities and differences between the countries, and discuss how the trends comply or diverge with legal standards while highlighting particularly good or bad practices. Furthermore, the report will provide best practice recommendations. Finally, appended to the report are summaries of the countries that were analyzed in preparation for this report based on the survey responses collected from the Vance Center's network.

2. International Standards

The UN General Assembly adopted the Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (the “**Bangkok Rules**”) in December 2010.¹ As the name implies, the Bangkok Rules explicitly address the different needs of women in prison and provide a comprehensive set of rights and protections for women prisoners and female prison staff. Additionally, the Bangkok Rules were the first international instrument to address the needs of children in prison with their parents. The basic principle of the Bangkok Rules provides that, “account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.”²

Many measures implemented by prisons in response to the COVID-19 pandemic potentially interact with the rights and protections of women prisoners enumerated in the Bangkok Rules. For instance, Rule 5 provides that, “[t]he accommodation of women prisoners shall have facilities and material required to meet women’s specific hygiene needs, including sanitary towels, provided free of charge and a regular supply of water to be made available for the personal care of children and women,” while Rules 10 and 11 further provide for gender-specific healthcare measures.³ Additionally, Rule 26 instructs that, “[w]omen prisoners’ contact with their families, including their children, and their children’s guardians and legal representatives shall be encouraged and facilitated by all reasonable means.”⁴ The Bangkok Rules provide guidance on a wide range of aspects of the prison regime –

¹ G.A. Res. 65/229, annex, the Bangkok Rules (Dec. 21, 2010).

² *Id.*, at Rule 1.

³ *Id.*, at Rule 5, Rule 10-11.

⁴ *Id.*, at Rule 26.



healthcare, rehabilitation programs, the training of prison staff and visiting rights – all of which are potentially implicated by various measures implemented in response to the coronavirus crisis.⁵

Although they apply more broadly, the following international standards also take into account the particular needs of female prisoners. The Standard Minimum Rules for the Administration of Juvenile Justice (the “**Beijing Rules**”) Rule 26.4 provides, “[y]oung female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.”⁶ The Commentary to Rule 26.4 of the Beijing Rules addresses “the fact that female offenders normally receive less attention than their male counterparts” and calls for “special attention to [female offenders’] particular problems and needs while in custody.”⁷ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the “**Nelson Mandela Rules**”) are often regarded by states as the primary source of standards relating to treatment in detention, and are the key framework used by monitoring and inspection mechanisms in assessing the treatment of prisoners.⁸ Particularly relevant to the COVID-19 response as it relates to women in prison, Rule 45 of the Nelson Mandela Rules provides:

“Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority... The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.”⁹

Finally, also relevant are the United Nations Standard Minimum Rules for Non-Custodial Measures (the “**Tokyo Rules**”), which exist “to promote the use of non-custodial measures” and directs Member States to “develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment.”¹⁰ The Tokyo Rules “shall be applied without any discrimination on the grounds of... sex... or other status.”¹¹

All international rules providing for the treatment of women in prison must be read against the background of the Convention on the Elimination of All Forms of Discrimination Against Women (“**CEDAW**”). In pertinent part, Article 2 of CEDAW provides, “States Parties condemn

⁵ *UN Bangkok Rules on Women Offenders and Prisoners Short Guide*, PENAL REFORM INTERNATIONAL, <https://cdn.penalreform.org/wp-content/uploads/2013/07/PRI-Short-Guide-Bangkok-Rules-2013-Web-Final.pdf>.

⁶ G.A. Res. 40/33, annex, the Beijing Rules (Nov. 29, 1985), at Rule 26.4.

⁷ *Id.*, at Commentary to Rule 26.4.

⁸ G.A. Res. 70/175, annex, the Nelson Mandela Rules (Dec. 17, 2015); *see also UN Nelson Mandela Rules (revised SMR)*, PENAL REFORM INTERNATIONAL, <https://www.penalreform.org/issues/prison-conditions/standard-minimum-rules/>.

⁹ G.A. Res. 70/175, annex, the Nelson Mandela Rules (Dec. 17, 2015), at Rule 45. “As referred to in other United Nations standards and norms” includes Rule 22 of the Bangkok Rules, which provides, “Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.”

¹⁰ G.A. Res. 45/110, annex, the Tokyo Rules (Dec. 14, 1990), at 1.1, 1.5.

¹¹ *Id.* at 2.2.



discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- ... (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.”¹²

Therefore, in order to comply with relevant international standard-setting instruments, measures taken in response to the coronavirus pandemic must take into account the specific needs of women in prison, particularly concerning female hygiene and social distancing measures.

3. Conclusions and Recommendations

The response to the COVID-19 pandemic across the Global South as it relates to women in prison has generally been patchy and inconsistent. Where actions have been taken, many appear to be targeted at the prison population in general, without proper consideration as to how the responses should be tailored to address the specific needs of women prisoners. Our key recommendation is, therefore, that all COVID-19 responses relating to the prison population should be properly considered, prior to and throughout implementation, to ensure that women prisoners are taken into account.

Further, it appears that many countries in the Global South are struggling to allocate the necessary resources and skills to provide an adequate response to the current crisis in their penal centers. Where this is the case, countries should consider partnering with international or national organizations, such as the Red Cross, which are able to provide additional support during these challenging times, particularly with respect to the provision of medical services, personal protective equipment, and training for prison staff and prisoners. If this is not done, there is a risk that well developed policies are not properly implemented and simply become empty and unfulfilled promises.

Our other key recommendations are:¹³

1. It is critical to avoid over-crowding in prisons during this pandemic, as this helps to slow the spread of the virus; shielding of particularly vulnerable prisoners such as pregnant women, those with young children, and those over 60 is also crucial. To support these aims,

¹² Convention on the Elimination of All Forms of Discrimination Against Women art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹³ A more detailed set of recommendations is set out in Chapter V below.



countries should:

- a. Implement early release or home detention schemes for those in pre-trial detention and for less serious offenders, especially where they are part of a vulnerable group.
 - b. Cease sending new prisoners to prison, or where this is necessary, ensure that they are able to be placed in quarantine for a period of 14 days prior to joining the general population.
 - c. Ensure that there is space within prisons to allow the most vulnerable populations to isolate.
2. Most countries have sensibly limited access to prisons for outside visitors to try and reduce the risk of COVID-19 entering prisons. However, it is critical to prisoners' mental health and legal rights that they are still able to communicate with the outside world. Countries should, therefore:
- a. Ensure there is adequate provision of phone and, if possible, video connections for prisoners to contact their families and legal counsel.
 - b. Provide such services for free so that they can be accessed by the most vulnerable prisoners.
 - c. Investigate methods to allow safe and socially distanced in-person access to legal counsel where necessary, and continued access to prisons by relevant NGOs and civil society organizations.
3. In addition to providing continued access to sources of communication during the lockdown, countries need to ensure there is continued access to proper and adequate medical care. This includes mental health services and maternity and neonatal care.
4. Countries need to ensure that adequate training is provided both to prison staff and prisoners on the dangers of COVID-19 and how to effectively stop its spread. Personal protective equipment and additional sanitary products should also be provided to prisoners and staff to help fight the spread of coronavirus. Again, such provisions should be made free of charge to ensure proper access to the most vulnerable prisoners.



III. ASIA REGIONAL SUMMARY

1. A Brief Overview of Regional Standards on the Human Rights of Women Prisoners

1.1. General Human Rights

In accordance with the Association of Southeast Asian Nations (“ASEAN”) Human Rights Declaration, female prisoners are entitled to basic human rights and fundamental freedoms.¹⁴

1.2. Non-Discrimination

Asian countries agreed to take measures to prevent discrimination against women, as well as to promote the full enjoyment of human rights and fundamental freedoms.¹⁵

1.3. Rights of Prisoners

Regional human rights standards provide that men and women have the right to liberty and cannot be subject to arbitrary detention without a legal warrant.¹⁶ They also provide that a detained person shall be entitled to: treatment with humanity and respect;¹⁷ separation from convicted persons in pre-trial detention;¹⁸ information on the reasons for their arrest and charge(s);¹⁹ the right to contact family members;²⁰ the right to medical examinations;²¹ the right to a trial within a reasonable time or release in criminal cases;²² and compensation in the event of arbitrary or unlawful arrest.²³

1.4. Access to Basic Necessities

Regional human rights standards provide that women should be provided with access to hygiene and basic necessities.²⁴

1.5. Violence Against Women

Regional human rights standards provide that countries should work on preventing violence against

¹⁴ ASEAN Human Rights Declaration (2012) ¶¶ 2-5.

¹⁵ Declaration on the Elimination of Violence against Women in the ASEAN Region (2004) ¶ 5.

¹⁶ League of Arab States, *Arab Charter on Human Rights*, 22 May 2004, Arts.3, 14.

¹⁷ *Id.*, Art. 20(1).

¹⁸ *Id.*, Art. 20(2).

¹⁹ *Id.*, Art. 14(3).

²⁰ *Id.*, Art. 14(3).

²¹ *Id.*, Art. 14(4).

²² *Id.*, Art. 14(5).

²³ *Id.*, Art. 14(7).

²⁴ *Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children* (2010) ¶ 9.



women and healing and reintegrating of victims and survivors.²⁵ The countries also agreed to provide victims/survivors of domestic violence with access to justice and legal assistance.²⁶

1.6. Medical Treatment

Regional human rights standards provide that countries should take measures to ensure that women have access to healthcare, including reproductive healthcare.²⁷ In the Dublin Declaration, Central Asian countries also agreed to provide quality gynecological and obstetrical care for HIV positive pregnant women in prisons;²⁸ to work on providing high-quality servicing on prevention, testing, treatment and care, as well as on eliminating mother-to-child transmission.²⁹ Additionally, the United Nations member states, including some of the Asian countries, agreed to ensure that women in prisons have access to healthcare and medical services in connection with drug dependence.³⁰

1.7. Preventing Overcrowding in Prisons

Taking into consideration, *inter alia*, that women may have particular needs, South Asian countries agreed to take measures to prevent overcrowding in prisons.³¹ The measures that the countries agreed to take include: resorting to non-custodial measures wherever possible; applying alternatives to custodial sanctions; and using pre-trial and under-trial detention less frequently and for shorter periods, allowing early release when justifiable.³²

2. **Conformity of Regional Trends to International and Regional Standards**

All of the six analyzed countries (Kazakhstan, Kyrgyzstan, Philippines, Thailand, Indonesia, and Pakistan) have implemented measures aimed at addressing the potential impact of the COVID-19 pandemic on the prison population. None of them, however, appears to have introduced extensive measures catering to the needs of women specifically. Instead, the majority of measures target prison populations in general. Below is an overview of the key COVID-19 response and prevention measures implemented across the relevant countries based on the corresponding survey responses.

²⁵ *Declaration on the Elimination of Violence against Women in the ASEAN Region* (2004) ¶¶ 4-6; *Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children* (2010) ¶ 7; *ASEAN Regional Guidelines on Violence against Women and Girls Data Collection and Use* (2018), at 12, 49.

²⁶ *Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children in the ASEAN* (2013) ¶ 3.

²⁷ *Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children* (2010) ¶ 8.

²⁸ *Dublin Declaration on HIV/AIDS in Prisons in Europe and Central Asia* (2004), Art. 2.

²⁹ *ASEAN Declaration of Commitment on HIV and AIDS: Fast-Tracking and Sustaining HIV and AIDS Responses to End the AIDS Epidemic by 2030* (2016) ¶¶ 4, 9, 11.

³⁰ *The United Nations Office on Drugs and Crime (“UNODC”) – Drug Dependence Treatment: Interventions for Drug Users in Prison* (2008), Chapters 2, 3, 5.

³¹ *Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia* (2010).

³² *Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia* (2010), Art. 4.



2.1. Implementation of Non-Custodial and Emergency Release Measures

Overcrowding in prisons generally leads to a lack of privacy, deteriorating conditions and sanitation. Failure to ensure that there is no overcrowding in prisons can thus be considered as a violation of basic human rights and fundamental freedoms, which women in prisons are entitled to.³³ Additionally, as a party to the *Dhaka Declaration on Reducing Overcrowding in Prisons*,³⁴ Pakistan has made international commitments to prevent and reduce overcrowding in its prisons. Under the Tokyo Rules and the Bangkok Rules, states are encouraged to opt for non-custodial measures, particularly with respect to women offenders, to the extent possible so as to foster a more just and humane penal system.³⁵

During the COVID-19 pandemic, overcrowding in prisons becomes an even more serious issue, as overcrowding may lead to the virus spreading more quickly.³⁶ Penal Reform International has recently highlighted that the Tokyo Rules “should guide responses to the coronavirus pandemic to prevent the dire consequences of the disease ‘rampaging through places of detention’”.³⁷

Most of the countries under review have broadly considered early release and non-custodial measures in the wake of the COVID-19 pandemic. However, only a few of them seem to have developed specific guidelines and plans for implementing such measures. From the list of the analyzed countries, Indonesia, Thailand, and Pakistan can be considered as better examples in adhering to the legal standards. These countries are engaging with the idea of implementing early releases, parole, and emergency releases due to COVID-19. Kazakhstan, Kyrgyzstan and the Philippines, however, have yet to take concrete steps in this direction (although in the latter such measures are under discussion by the government and other stakeholders).

Indonesia’s measures appear to be the most extensive. Approximately 30,000 inmates (of whom around 1,095 are women) are expected to be released on parole and the Attorney General has instructed the use of bail and home or city detention. On 24 March 2020, the Indonesian Ministry of Law and Human Rights issued a regulation suspending the admission of new detainees (i.e. those who have yet to be criminally convicted), but the position of new prisoners (i.e. those who have been criminally convicted) remains unclear. In addition, the Indonesian Government has announced that it is considering the release of certain categories of inmates, including those with comorbid illnesses or with disabilities, women generally and pregnant women specifically, juvenile

³³ ASEAN Human Rights Declaration (2012) ¶¶ 2-5.

³⁴ *Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia* (2010).

³⁵ UN General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules): resolution / adopted by the General Assembly, 2 April 1991, A/RES/45/110, Rule 1, Rule 21; UN General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), Preamble ¶ 9, Rules 57-62.*

³⁶ Penal Reform International recently noted that “overcrowding can be life-threatening with major health issues arising due to the poor detention conditions in overburdened prison facilities [...] today’s coronavirus pandemic is a grave reminder of these long-standing issues” (see Penal Reform International, *Global Prison Trends 2020*, available at <https://cdn.penalreform.org/wp-content/uploads/2020/04/Global-Prison-Trends-2020-Penal-Reform-International.pdf> (“Global Prison Trends 2020”), p. 13).

³⁷ *Global Prison Trends 2020*, p. 32.



inmates and elderly inmates aged over 60. As of 8 April 2020, however, these measures are yet to be effected. Similarly, in Thailand, women who are pregnant, over 60, or have underlying illnesses are expected to be prioritized in early-release initiatives. Pakistan has also considered non-custodial and emergency release measures for women prisoners, juvenile prisoners, and first-time offenders.

The Government of Kazakhstan has indicated that temporary emergency releases could be considered if warranted by the epidemiological situation, but such releases were not immediately contemplated or deemed necessary as of the date of the survey. In Kyrgyzstan and the Philippines, no non-custodial or emergency release measures appear to have been adopted.

2.2. Health of Women and Treatment of Women with Children

Under the applicable international and regional standards, women in Asian prisons have the right to adequate healthcare and medical treatment, including with respect to reproductive and mental health.³⁸

The prisons in Kazakhstan and Thailand have not suspended existing rehabilitation and specialized health care programs for women (such as treatments for substance abuse or HIV).³⁹ Rehabilitation programs in Kyrgyzstan also appear to be continuing as usual, although the survey responses indicate that programs involving visits and outside contacts could have been suspended. While Indonesian rehabilitation programs were suspended, the Philippines and Pakistan⁴⁰ did not have such programs widely available in prisons even prior to the outbreak.

In Pakistan, no specialized medical treatments are offered to women who are in prenatal and postnatal stages, apart from basic medical care. Pregnant prisoners in Thailand do not have prenatal or postnatal care, nor are they given any assistance whilst giving birth. Alternatives to childbirth, such as the option to undergo an abortion, are also not available. Further, the survey responses for Indonesia indicate that women in prisons are not provided with access to certain healthcare services; there seems to only be one regulation in place governing the specific treatment of women prisoners, which is limited to addressing the nutritional requirements of women who are breastfeeding, pregnant, and those with children. Information on the treatment of pregnant women was not available for Kazakhstan or the Philippines and no specific measures have been implemented for pregnant women in Kyrgyzstan.

In Kazakhstan and Kyrgyzstan, women with children are being placed in separate facilities from other prisoners. In Pakistan, however, women with children are generally kept in the same facilities. In Thailand, women who give birth in prisons have an option to send their children to live with their relatives six months after birth; it is unclear whether there are separate facilities for women

³⁸ Bangkok Rules, Rules 6-18; *Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children* (2010) ¶ 8; *Dublin Declaration on HIV/AIDS in Prisons in Europe and Central Asia* (2004), Art. 2; *ASEAN Declaration of Commitment on HIV and AIDS: Fast-Tracking and Sustaining HIV and AIDS Responses to End the AIDS Epidemic by 2030* (2016) ¶¶ 4, 9, 11; *The United Nations Office on Drugs and Crime (“UNODC”) – Drug Dependence Treatment: Interventions for Drug Users in Prison* (2008), Chapters 2-3, 5.

³⁹ Although educational rehabilitation programs were reported as suspended in Kazakhstan.

⁴⁰ Not all prisons in Pakistan offer rehabilitation programs to women.



with children, or whether children could stay with their mothers in prisons beyond the age of six months. Information is not available on how women with children are treated in the Philippines’.

Furthermore, with respect to reproductive rights, while the information available is limited, it seems that the countries are providing only basic medical treatment; there was no evidence of specialized prenatal or postnatal care being available for example. This falls short of the countries’ commitments under international and regional legal standards.

2.3. Restrictions on Visitations

All six countries have placed restrictions on in-person visitations and have in some manner made alternative visitation arrangements. While such restrictions appear to be warranted in light of the current epidemiological situation, not all countries have provided adequate alternative arrangements allowing women prisoners to maintain contact with the outside world.⁴¹ This is in breach of the standards that demand that prisoners have the right to contact family members and the outside world in general.⁴²

In this regard, Kazakhstan has the best practice, offering prisoners unlimited calls (including video calls) with relatives and lawyers free of charge. Kazakhstan has also not suspended visits made by monitoring organizations, NGOs and religious servants. In addition, the Kazakhstan Prison Service has held online livestreams to keep relatives informed about the epidemiological situation in prisons and the prison system’s response to the pandemic.

Similarly, in Kyrgyzstan, visits made by monitoring organizations can be carried out on a limited basis upon receipt of special permits; such visits have recently been granted to facilities in two regions (however, they have been denied in two other regions). However, information is not available on whether women prisoners have been provided with any phone or online communication opportunities in light of the visitation restrictions.

Alternative communication practices adopted in other countries, however, are arguably less than optimal for the purposes of maintaining the prisoners’ contact with the outside world. In these cases, it appears that alternative communication arrangements are either only just being rolled out or are affected by infrastructure shortfalls. In Thailand, a new initiative is being tested to allow prisoners to contact family members, but this is severely limited by the fact that it is only being tested on around 10 prisoners a month. In Indonesia, online communication facilities are being provided, although the infrastructure and facilities may be lacking in certain regions. It is also unclear whether access is provided free of charge. Furthermore, in Pakistan, family and lawyer visits may only be conducted over the phone. The calls are, however, chargeable, and no other communication platforms are provided.

⁴¹ Penal Reform International notes that “[d]ecisions to limit or restrict visits need to bear in mind that contact is essential to the mental wellbeing of people in detention and can reduce levels of violence” (see Coronavirus Briefing Note, p. 6).

⁴² See UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules): resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175 (“Mandela Rules”), Rules 58-63; Bangkok Rules, Rules 27-26.



The Philippines' practices most notably falls short of international and regional standards as it appears to be the only country of the six to evidence gender inequality. It is reported that whereas “computers and telephones” are being allocated to male dormitory prisoners, “only one telephone,” is available for more than 1,000 female dormitory prisoners in Manila City Jail, demonstrating that women prisoners are particularly disadvantaged.

2.4. Isolation of Prisoners with COVID-19 Symptoms

All analyzed countries have implemented measures aimed at isolating prisoners who display symptoms of COVID-19. Specifically, in the Philippines, measures have been taken to identify vulnerable prisoners more susceptible to contracting COVID-19, to suspend the transfers of detainees and to monitor prisoners' temperatures regularly. In Pakistan, while female prisoners are kept in separate barracks, limited rooms are available in the prison hospital for those who have an underlying sickness or are part of a vulnerable category (i.e. elderly, in need of nursing or pregnant). While these isolation measures may be legitimate if introduced with the aim to protect prisoners' health, they should be introduced only when strictly necessary and subject to compliance with all requisite legal safeguards; importantly, prisoners placed in isolation should have “full access to means of contacting the outside world, and be able to participate in rehabilitation programs and socialize with other people – as far as possible”.⁴³

Compounded with the shortcomings in alternative visitation arrangements discussed in Section 2.3 above, it is important to note that the quarantining of women affected by COVID-19 might have a negative impact on their mental well-being. Little information was available to shed sufficient light on any applicable notification requirements or on any legal safeguards afforded to women placed in quarantine.

2.5. Additional Cleaning

Since the outbreak, additional cleaning and disinfection have been reported in the Philippines, Kazakhstan and Kyrgyzstan. In Indonesia, the only enhanced cleaning measure specifically identified is the spraying of disinfectant in certain prison areas. The information available does not indicate any additional cleaning or sanitation measures in Pakistan or Thailand. Even prior to the outbreak, hygiene in Thai prisons was reported as very poor.

2.6. Information Regarding COVID-19

In Kazakhstan, information is being provided through several channels. Female inmates are receiving training (with native language requirements taken into account) on the measures they can take to prevent the disease. In Thailand, by contrast, access to news is restricted; language barriers and a general lack of information were reported as a major problem. The authorities in the Philippines launched “information drives” for prisoners, but it is not clear what these cover and how adequately they have been implemented. In Kyrgyzstan, the staff of the Penitentiary Service is regularly conducting awareness-raising activities for the prevention of the coronavirus infection.

⁴³ Coronavirus Briefing Note, p. 7.



It is unclear whether any specific awareness-raising trainings are carried out in Indonesian prisons, although the Government indicated that information on the spread of COVID-19 and preventive measures should be communicated to prisoners. Based on the information available, no awareness-raising trainings are conducted in Pakistan, and prisoners are not being specifically informed of the risks relating to COVID-19 and any relevant prevention protocols.

2.7. Prisoners' Nutrition

All prisoners have a right to receive food of adequate nutritional value and wholesome quality,⁴⁴ and special attention needs to be afforded to the nutrition of pregnant and breastfeeding women, as well as children living with their mothers in prisons.⁴⁵ At the same time, inadequate nutrition of prisoners in many penitentiary systems persistently remains an area of particular concern among human rights advocates and other stakeholders, with amounts spent on food for prisoners being “alarmingly low”.⁴⁶

Although the survey responses indicate that half of the analyzed countries (i.e. the Philippines, Kyrgyzstan, and Kazakhstan) have put in place measures aimed at ensuring that the prisoners' nutritional needs are met amid the COVID-19 pandemic, the quality and range of foods or any immunity-enhancing nutritional supplements provided to prisoners in these countries remain unclear. For instance, as observed by Penal Reform International, the food budget allocated for each prisoner in Kazakhstan has recently been as low as EUR 1.41 per day.⁴⁷

In Indonesia, specific nutritional needs are routinely regulated in respect of pregnant women and women with children rather than women in general. However, no specific measures addressing prisoners' nutrition in view of the COVID-19 pandemic have been implemented. Additionally, the lack of such measures might be further exacerbated by the absence of measures aimed at replacing the necessities usually given to prisoners by their families. In these countries, there is, therefore, a real risk that standards are not being met.

2.8. COVID-19 Supplies

Only two of the analyzed countries, Kazakhstan and Kyrgyzstan, appear to have established stable supplies of protective equipment, disinfectants and other goods necessary in view of the COVID-19 pandemic to prisons, with such supplies provided to prison staff and prisoners free of charge.

In Thailand and the Philippines, supplies of personal protective equipment are generally insufficient and in Pakistan, only soap and disinfectants are being provided to prisoners free of charge. In Indonesia, inmates have not been provided with soap or hand sanitizers, and face masks have only been provided for at risk members of the prison staff. Indonesian prisoners commonly rely on their relatives for the provision of soap and other hygienic necessities, which puts them at

⁴⁴ Mandela Rules, Rule 22.

⁴⁵ Bangkok Rules, Rule 48.

⁴⁶ Global Prison Trends 2020, p. 14.

⁴⁷ Global Prison Trends 2020, p. 15.



particular risk in light of the visitation limitations introduced as a result of the pandemic.

Coupled with unsatisfactory sanitation practices and the high contagion of communicable diseases in prisons,⁴⁸ the lack of adequate protective and hygienic supplies might pose increased risks to prisoners' health and make them more susceptible to the COVID-19 infection. This is a likely breach of the standards which urge access to hygiene.⁴⁹

3. Conclusion

Overall, the information received from local advocates demonstrate that the measures adopted by the six surveyed Asian countries in the wake of the COVID-19 pandemic are predominantly of general application and not specifically tailored to the needs of women prisoners. This confirms the unfortunate trend of homogenous treatment of the male and female prison population observed by Penal Reform International.⁵⁰ The surveyed countries have by and large failed to provide information on any additional mental health and psychological support measures to be provided to women in light of the outbreak.

In some countries, advocates reported an alarming lack of basic protective and sanitation supplies, as well as inadequate cleaning practices. This poses risk to prisoners' health and safety. In this respect, Kazakhstan and Kyrgyzstan seem to maintain the most rigorous sanitation protocols.

Restrictions on visitation practices and quarantine measures may create additional challenges for prisoners' rights, given that monitoring organizations have been virtually denied access to prisons in all surveyed countries but Kazakhstan and Kyrgyzstan. Among the surveyed countries, only Kazakhstan appears to have introduced a comprehensive suite of alternative visitation and communication arrangements, allowing prisoners to maintain sufficient and regular contact with relatives and lawyers.

Finally, few of the countries have undertaken concrete steps to introduce emergency releases and actively implement non-custodial measures. This is the case despite the risks of overcrowding in prisons generally, which have become all the more acute in the context of the COVID-19 outbreak.

⁴⁸ As noted by Penal Reform International, “[c]ommunicable diseases are a particular concern [in prisons]” (as evidenced by infection rates for tuberculosis being between 10 and 100 times higher than in the community, and prisoners being five times more likely to be living with HIV than adults in the general population) (*see* Coronavirus: Healthcare and human rights of people in prison (Penal Reform International briefing note), available at <https://www.penalreform.org/resource/coronavirus-healthcare-and-human-rights-of-people-in/> (“Coronavirus Briefing Note”), p. 4).

⁴⁹ Such as Mandela Rules, Rules 15-18, and Bangkok Rules, Rule 5; see also the *Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children*.

⁵⁰ Penal Reform International recently observed that “[a]lmost ten years since their adoption, the UN Bangkok Rules on women prisoners and non-custodial alternatives for women remain largely unimplemented. The global female prison population doubled in twenty years, yet justice systems and institutions remain largely designed for a homogeneous male population” (*see* Global Prison Trends 2020, p. 4).



IV. LATIN AMERICA REGIONAL SUMMARY

1. A Brief Overview of Regional Standards on the Human Rights of Women Prisoners

1.1 General Human Rights

Women in prisons in all Latin American countries are entitled to basic human rights under the American Convention on Human Rights (“**ACHR**”) and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (the “**Americas Best Practices**”) adopted by the Inter-American Commission on Human Rights.⁵¹

1.2 Non-Discrimination

Regional human rights standards provide for states to implement measures to prevent all forms of discrimination against women and to promote the right of every woman to be free from any form of violence.⁵²

1.3 Rights of Prisoners

The Inter-American Commission on Human Rights adopted the Americas Best Practices to ensure proper conditions to detained persons, including, among others:

- Humane treatment;
- Equality and non-discrimination;
- Personal liberty;
- Principle of legality;
- Due process of law; and
- Judicial control and supervision of punishments.

1.4 Access to Basic Necessities

Regional human rights standards provide that women should have access to clean and sufficient sanitary installations that ensure their privacy and dignity.⁵³

⁵¹ See, generally, ACHR ; see, also, Americas Best Practices, Principle II.

⁵² Inter-American convention on the Prevention, Punishment and Eradication of Violence Against Women "**Convention of Belem do Para**" (1994), Arts. 6 and 2.

⁵³ Americas Best Practices, Principle XII.



1.5 Violence against Women

Regional human rights standards provide for the prevention of violence against women, including physical, sexual and psychological violence.⁵⁴

1.6 Medical Treatment

Regional human rights standards provide that persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being.⁵⁵

1.7 Preventing Overcrowding in Prisons

Regional human rights standards provide that all authorities should determine the maximum capacity of each place of deprivation of liberty according to international standards in order to avoid overcrowding. They also agree that the occupation of an institution over its maximum capacity shall be prohibited by law.⁵⁶

1.8 Specific COVID-19 Standards

On 10 April 2020, the Inter-American Commission on Human Rights adopted Resolution 1/2020 on Pandemic and Human Rights in the Americas (the “**COVID-19 Resolution**”), which provides further standards and recommendations and recognizes that women prisoners are particularly vulnerable of contracting COVID-19. In particular, the COVID-19 Resolution recommends that states: (1) “[t]ake measures to address overcrowding in prisons, including reassessing cases of preventive detention in order to identify those whose status may be converted to that of an alternative to incarceration, prioritizing people with greater health risks of possible COVID-19 contagion, chiefly older persons and women who are pregnant or lactating under Section C.45 of the Resolution; and (2) “[a]dapt the conditions of detention of people deprived of liberty, particularly concerning food, health, sanitation and quarantine measures to prevent COVID-19 contagion inside the prison.”⁵⁷

2. **Conformity of Regional Trends to International and Regional Standards**

All of the six countries analyzed (Colombia, Mexico, Argentina, Brazil, Bolivia, Venezuela) have implemented different measures with the purpose of diminishing the potential impact of the COVID-19 pandemic on the prison population. However, most of the countries have not introduced measures tailored to the specific needs of women. Below is an overview of the key COVID-19

⁵⁴ Convention of Belem Do Para, Art. 2.

⁵⁵ Americas Best Practices, Principle X.

⁵⁶ Americas Best Practices, Principle XVII.

⁵⁷ COVID-19 Resolution, Section C.47.



response and prevention measures implemented across the relevant countries based on information from local advocates and how they compare against international and regional standards.

2.1 Implementation of Non-Custodial and Emergency Release Measures

From the six countries, Argentina has implemented the most successful measures. The Argentine federal prison system prepared a list of 1,300 inmates deemed particularly vulnerable to contracting COVID-19 (including pregnant women, nursing mothers, the elderly and inmates that suffer from certain diseases) and sent this list to judges, prosecutors and public defenders so that these prisoners may be considered for early release or house arrest.

In Colombia, Decree 456 of 2020 aims to reduce the risk of contagion by sending certain prisoners home under house arrest but has had limited success. In Mexico and Brazil, courts have been encouraged to consider early release for non-violent offenders and to prioritize pregnant women and mothers, but no specific examples of guidelines or implementation were available for either country. Authorities in Bolivia and Venezuela have not adopted emergency pre-release measures in response to COVID-19.

The countries failing to implement these measures are in default with the following international and Latin American standards: (i) the Preamble of the Nelson Mandela Rules; (ii) Principles I and XVII of the Americas Best Practices; (iii) Article 5 of the ACHR; and (iv) the Preamble of COVID-19 Resolution.

2.2 Health of Women and Treatment of Women with Children

Across the region, prison conditions are generally unsafe and place inmates at a higher risk. No special care is being provided in most countries for particularly vulnerable women, including lactating, pregnant and elderly women. In Venezuela, children older than three years have been separated from their mothers and are living in unknown conditions.

Women are generally not receiving adequate care for preexisting conditions, including HIV and drug addiction. Drug treatments and self-harm prevention programs have stopped in Venezuela, with only HIV treatments still available. Brazilian authorities have generally suspended any health programs, including HIV and self-harm programs. In Colombia, most prisons do not meet minimum legal requirements for at least one doctor to be available to treat patients at any given time and most women prisoners reportedly have less access to mental health programs than previously.

It is clear that these countries need to adopt measures to improve healthcare in order to comply with international and regional standards, including the Bangkok Rules, the Nelson Mandela Rules and the COVID-19 Resolution.

Further, the right to humane treatment, which includes every person's right to physical, mental, and moral integrity, must be respected in order to comply with Article 5 of the ACHR.



2.3 Restrictions on Visitations

Most visitations have been prohibited in all six countries. Attorneys and legal representatives are still allowed to visit prisoners in Argentina, Bolivia, Brazil and Mexico but not in Colombia and Venezuela. Generally, criminal proceedings and hearings have been delayed across the region, even as some countries have attempted to implement virtual hearings.

Restrictions on visitations are also affecting the health and general wellbeing of women prisoners. Family visitations have been suspended in all six countries and mental health needs have not been addressed throughout. In Colombia, visits from psychologists and social workers are also prohibited and limited phone lines and associated high costs make it more challenging for prisoners to communicate. In Argentina and Mexico, women prisoners may still communicate with families through telephone and video calls. The National Justice Council in Brazil has recommended that prisoners be allowed to contact their families via telephone or other means of communication, but the implementation across Brazilian states has not been uniform. No alternative means of contact for prisoners and families have been provided in Bolivia and Venezuela.

Such restrictions may be in violation of a prisoner's right to be in contact with the outside world as established by the Nelson Mandela Rules and the Bangkok Rules, including the particularly acute need for women inmates to keep in contact with their families, children and legal representatives.⁵⁸ Contact through telecommunication, electronic, digital and other means must be further implemented in order to ensure that women prisoners can be in contact with the outside world.

2.4 Isolation of Prisoners with COVID-19 Symptoms

In Mexico and Argentina, women prisoners exhibiting symptoms of COVID-19 are reportedly isolated or transferred to a health center depending on the gravity of the symptoms and need for testing. Argentina is one of the few countries reportedly isolating new prisoners for 14 days at police stations before transferring them to prisons. Brazilian states have recommended and enforced various degrees of isolation measures, and prisoners with symptoms are generally placed in isolation and monitored by medical personnel. In Colombia, new prisoners are reportedly not being placed in quarantine before joining the rest of the prison population, which poses a risk to the greater prison population.

If properly implemented, these measures tend to comply with the international and regional standards and the specific need to avoid the spreading of the virus among the inmates and penitentiary workers.

⁵⁸ See Bangkok Rules, Rule 26.



2.5 Cleaning of Facilities

None of the six countries has implemented additional measures to clean prison facilities. In Brazil, reportedly certain prison cells were disinfected. Similarly, health and sanitary conditions in Venezuelan prisons are precarious and there is no evidence that additional measures have been implemented.

All countries analyzed fall short of complying with the applicable international and regional standards. Pursuant to Rule 22 of the Nelson Mandela Rules and Rule 5 of the Bangkok Rules, prisoners shall be provided with adequate food and hygiene supplies. Principle XI of the Americas Best Practices further provides that persons in prison have the right to food in such quantity, quality and hygienic conditions to ensure adequate and sufficient nutrition, and such food must be provided at regular intervals.

2.6 Information Regarding COVID-19

There is no evidence that any of the six countries have provided comprehensive information regarding COVID-19 to women prisoners. The governments in Bolivia, Mexico and Argentina have sought to raise awareness through COVID-19 prevention, identification and action protocols in the event an inmate experiences COVID-19 symptoms. In Brazil, the government also recommended such measures but reportedly some incarcerated women have not received information related to COVID-19 prevention and care. Women prisoners in Colombia have been offered limited information on what steps to take to prevent the spread of the virus. There is no evidence that women prisoners in Venezuela have received information related to COVID-19 and how to handle cases.

2.7 Prisoners' Nutrition

No steps have been taken in any of the six countries to address the specific nutritional needs of women prisoners in view of the COVID-19 pandemic, including any multivitamins or supplemented diets. Brazil has explicitly permitted the delivery of food to prisoners.

International and regional standards set that inmates have the right to food in such quantity, quality and hygienic conditions to ensure adequate and sufficient nutrition. Furthermore, the COVID-19 Resolution recommends that states adapt the conditions of detention of people deprived of liberty, particularly concerning food, health, sanitation and quarantine measures to prevent COVID-19 contagion inside the prison.

2.8 COVID-19 Supplies

Neither the Colombian, Bolivian nor Venezuelan governments have provided women prisoners with preventive supplies, such as soap, anti-bacterial gel, face masks, gloves or disinfectants. While women prisoners in Argentina have been partially provided with such supplies, masks and gloves have only been provided to prison staff. In Bolivia, prison staff have reportedly received adequate supplies but none have been provided for prisoners. In Mexico, women prisoners have received



masks and soap and social distancing measures have been implemented in prisons. Some Brazilian states have provided prisoners with protective gear but, as with other measures, such provision has not been uniform across all states. In Venezuela, families may deliver such supplies to imprisoned relatives, but the cost of these items is prohibitive for most families. In Colombia, families have been prohibited from delivering such items even though they are not for sale in prisons.

The lack of measures adopted by these countries violate both international⁵⁹ and regional standards.⁶⁰

3. Conclusion

Overall, the survey responses demonstrate that the measures adopted by the six surveyed Latin American countries in the wake of the COVID-19 pandemic fall short of international and regional standards. The surveyed countries have generally failed to provide adequate protective supplies and mental health support for women prisoners during the pandemic. Few of the countries have taken concrete steps to introduce emergency releases and actively implement non-custodial measures. Restrictions on visitation practices are creating additional challenges for women prisoners and their access to proper healthcare, nutrition and supplies. Such restrictions are also limiting access to the legal process in some countries.

⁵⁹ Nelson Mandela Rules, Rule 22; Bangkok Rules, Rule 5.

⁶⁰ Americas Best Practices, Principles X-XII; COVID-19 Resolution, Section 47.



V. AFRICAN REGIONAL SUMMARY

1. A Brief Overview of Regional Standards on the Human Rights of Women Prisoners

1.1. General Human Rights

In accordance with the Banjul Charter, female prisoners are entitled to human rights and basic freedoms.

1.2. Protection for Mothers and Expectant Mothers

The African Charter on the Rights and Welfare of Child (the “**Charter**”) provides special protections for pregnant women and mothers of young children.

The Charter aims to ensure that a non-custodial sentence is considered first when sentencing expectant mothers and mothers of young children and promotes establishing measures alternative to institutional confinement. The Charter also ensures that a child is not imprisoned with their mother.

The Charter emphasizes that the aim of the penitentiary system is reformation and social rehabilitation. The livelihood of expectant mothers and mothers of young children is not just confined to a single person, but extends to the child. The Charter emphasizes the importance of recognizing and maintaining that link.

Capital punishment is prohibited against expectant mothers and mothers of young children, per the Charter and The Protocol of the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the “**Protocol**”).

1.3. Non-Discrimination

The Banjul Charter mandates the elimination of every discrimination against women and ensures women and children receive the protections stipulated in international declarations and conventions. This is also echoed in the Protocol.

The Principles on the Decriminalization of Petty Offences in Africa (the “**Principles**”) recognizes that laws creating petty offences target or disproportionately impact vulnerable groups, including women. The Principles call on State Parties to recognize this and work to eliminate criminalization of petty offences.

The Guidelines on the Condition of Arrest, Police Custody, and Pre-Trial Detention in Africa (the “**Guidelines**”) state that using special measures with certain categories is not considered an act of discrimination and recognize that vulnerable groups, including women, require special protections.



1.4. Proper Prison Conditions

The Kampala Declaration and Plan of Action on Prison Conditions in Africa (the “**Declaration**”) addresses issues concerning prison conditions, remand prisoners, prison staff, and alternative sentencing.

The Declaration emphasizes the need for special treatment of vulnerable groups, including women, mothers, and babies. The Declaration recommends procedures that meet the specific needs of these groups and ensure their adequate treatment during an arrest, trial and detention.

The Guidelines provides that states must undertake steps to develop legislation, procedures, policies, and practices that protect the rights, special status, and distinct needs of women and girls who are subject to arrest, police custody, or pre-trial detention. The Guidelines also require states to establish laws and policies that provide for the needs and physical, emotional, social and psychological development of babies and children who are allowed to remain in the place of detention.

1.5. Health Care

The Protocol guarantees health care rights for women, including increased autonomy in reproductive health decisions and an end to female genital mutilation.

1.6. Prohibition of Torture

The Robben Island Guidelines (the “**RI Guidelines**”) aim to assist State Parties in meeting their national, regional, and international obligation to effectively prohibit the use of torture. The RI Guidelines mandate that states should ensure that vulnerable groups, including women, are held in separate and appropriate detention facilities.

2. **Conformity of Regional Trends to International and Regional Standards**

There appear to be some discrepancies among countries in terms of compliance with international and African standards. The countries surveyed were: Kenya, Malawi, Nigeria, Sierra Leone and the Gambia. Whereas Kenya and Nigeria seem to generally be operating in accordance with those standards, The Gambia, Malawi and Sierra Leone fall short in some aspects. In addition, where steps have been taken, they are often applied to the entire prison population and fail to take account of the specific needs of women prisoners.



2.1. Non-Discrimination and Consideration of the Needs of Vulnerable Persons

International and African standards mandate countries to take into account the distinctive needs of vulnerable populations.⁶¹ The Declaration calls on African countries to adopt “urgent and concrete measures” to improve conditions for vulnerable groups in prisons, specifically “women, mothers and babies.” Rule 28 of the Bangkok Rules requires “special accommodation for all necessary prenatal and postnatal care and treatment.”

Both Nigeria and Kenya comply with these standards, by providing separate accommodation for persons with vulnerabilities, including pregnant women, in the period of the pandemic. In addition, the possibility of release for at-risk women who do not pose a public safety threat has been made available in both countries.

Sierra Leone, Malawi and The Gambia do not meet their obligations for now, as no additional measures have been put in place so far to ensure that those that are in vulnerable conditions are protected from COVID-19. Further, no measures have been taken to address the needs of mothers or pregnant and nursing women in prison. However, the Gambian authorities are in the process of implementing measures to protect vulnerable prisoners⁶² and several bodies have advocated special measures for women (especially pregnant and breastfeeding women) in Malawi. Additionally, unlike other African countries, The Gambia is not housing incarcerated women with their children and has not enacted measures for pregnant, nursing, elderly, or at-risk women. Finally, it is of note that in Sierra Leone, when a woman enters prison with her child, her child will be quarantined with her. However, there are no additional measures to separate women with children from the general prison population.

2.2. Criminal Justice System

2.2.1. *Measures to Decrease the Prison Population*

The criminal justice system should limit pretrial detention, provide non-custodial measures, and expand the use of rehabilitation and release in order to avoid unnecessary imprisonment under both international standards⁶³ and African regional standards.⁶⁴

Again, the level of compliance varies among the countries surveyed. Kenya and Nigeria comply with these standards as they have taken measures for emergency releases of vulnerable persons, people who do not pose a threat to public safety, or people with minor crimes and petty convictions, albeit the numbers suggest that these policies may not be implemented equally to women prisoners. It is concerning that in Kenya only ten women (of 5,000 prisoners), and in Nigeria, only one woman

⁶¹ See Bangkok Rules, Rule 1; Nelson Mandela Rules, Art. 2; Banjul Charter, Art. 18(4); RI Guidelines, Part II.C.36; Rule of the Protocol on the Rights of Women in Africa; African Charter on the Rights and Welfare of the Child, Arts. 14, 19, 30.

⁶² There are no specific details regarding these measures at this time.

⁶³ See Tokyo Rules, Rule 2.3.

⁶⁴ See RI Guidelines, Part II.C.37; Kampala Declaration and Plan of Action on Prison Conditions in Africa, § 5d.



(out of 2,600 prisoners) have so far benefited from early release. This, in itself, does not establish gender-based discrimination, but is an area that should be considered and investigated further.

The Gambia and Malawi are in the process of adopting some release procedures including: temporary release for prisoners who do not pose a threat to public safety, plea deals, electronic surveillance and parole release of at-risk prisoners⁶⁵ and should thus soon be in compliance. Sierra Leone entirely fails to comply with the relevant standards.

Reducing overcrowding in prisons is of prime importance given the added imperative to reduce transmission of COVID-19. In this context, not only is it important that emergency release measures are made available to women in prisons but also that they be effectively applied to women. We also recommend that measures other than rehabilitation be considered for implementation such as limiting pre-trial detention⁶⁶ and expanding non-custodial sentencing (including community service). Kenya has suspended new entry in prisons, which may also be a commendable measure.

2.2.2. *Access to Legal Representation*

International standards require that prisoners be given opportunities to maintain contact with their families and the outside world.⁶⁷ African regional standards also provide such rights and particularly note the need to communicate with lawyers.⁶⁸ Whereas all countries have taken essential steps to limit the spread of the virus by suspending visits unless absolutely necessary, some fail to maintain ways for inmates to communicate with their families and lawyers in breach of the relevant standards.

In Nigeria, inmates do have free access to phones in order to contact families and legal representatives, and in-person visitation is allowed if necessary. In Kenya, prisoners may still use phones to contact their families, but it is unclear whether Kenya has provided alternative access to lawyers after suspending visits by legal counsels, and prisoners have to pay to use phones. The cost of using a phone to contact legal counsel likely restricts the access of the most vulnerable prisoners to this right. The Gambia has not been able to meet the standards yet, but the government hopes to install call centers at no cost to inmates and implement measures to keep families informed of the well-being of their incarcerated loved ones. In Sierra Leone, all but essential external visits to prisons have been suspended indefinitely. While there is a phone available for use in each correctional centers, poor network connectivity and lack of battery or phone credit create difficulties with this mode of communication. The government is nonetheless currently working to allow prisoners access to legal representation over the phone. However, there have also been incidents of lawyers being denied the required essential worker pass to travel across the country to

⁶⁵ There are no specific details regarding these measures at this time.

⁶⁶ See RI Guidelines, Part II.37.

⁶⁷ See Nelson Mandela Rules, Rule 58.

⁶⁸ See Protocol on the Rights of Women in Africa, Rule 6.



see clients. In Malawi, authorities do not provide for any remote contact. However, Malawi has placed no restrictions on visits by legal counsel.

Ensuring that there are operational phones or alternate facilities to allow women prisoners to contact families and legal representatives is fundamental to ensure compliance with international and regional standards. In particular, it seems important that women in prisons should not be denied their right to legal services in the face of measures properly taken to restrict the spread of COVID-19, either by a lack of appropriate services, or a requirement to pay for the services which may limit access to the most vulnerable prisoners. If phone calls are not available, authorities should provide alternative ways to allow contact between prisoners and their legal counsels (e.g. special right to visit, emails).

2.2.3. Alternative to physical trials

Kenya has enacted limited alternative measures to physical trials, including trial via video conference. In Nigeria, it is reported that every inmate is faced with the challenges of access to justice in terms of legal representation and incessant adjournment of cases.

The Chief Justice of The Gambia has instructed courts to adjourn cases until further notice. Currently, only bail application hearings and urgent matters are heard in-person in chambers, although it is planned that virtual hearings will soon be held.

Malawi and Sierra Leone have not adopted alternative measures to physical trials.

In all of the countries surveyed, only limited measures in relation to non-custodial sentencing; reduction of pre-trial detention; or expansion of probation, rehabilitation, or work-training programs have been put in place.



2.3. Prison Protocols and Rules

The surveyed African countries have made minimal adjustments to prison protocols in response to COVID-19.

Kenya has taken the most stringent measures. New prisoners are not permitted to enter correctional facilities and prison staff in Kenya are reportedly practicing social distancing and wearing protective equipment. If restrictions change and new prisoners are permitted, they will be screened and quarantined for 14 days. In Nigeria, additional training measures for prison officers have been announced, although there appears to be insufficient funding available to properly implement this policy.

Conversely, Malawi and Sierra Leone have reported no changes to search protocols. In Sierra Leone, prison staff are still carrying out searches without protective equipment. Inadequate dissemination of information and a general lack of awareness-raising has also been highlighted in Malawi and Sierra Leone.

In The Gambia, disciplinary segregation and solitary confinement are ongoing.

2.4. Visits to Prisons

Across the region, visits to prisons have been limited. However, the extent of such limitations and the availability of alternative options for female prisoners differs per country. Correctional facilities in Malawi still permit family visits once per week. The Gambia, Nigeria, Kenya, and Sierra Leone have prohibited external visits, but these countries have provided or will provide⁶⁹ female prisoners with phones to call their families. Correctional facilities in Kenya have implemented video conferencing as a means of communication between women prisoners and their families. However, unlike the other countries surveyed, Kenya charges a small fee for the use of phones. As a result, women prisoners in Kenya are reportedly suffering psychological effects as a result of the restricted contact with family members.

The prohibition on external visits also limits the availability of rehabilitative programs and external monitoring of prison conditions. There are a few notable exceptions. In Sierra Leone, civil society organizations are attempting to establish psychological support services over the phone. Further, prisons in the north of the country remain open to external visitors, so civil society organizations are able to carry out monitoring. In Kenya, in-house counsellors are available to offer psychological support and independent monitoring authorities are still permitted to enter correctional facilities.

⁶⁹ The Gambia intends to provide phones, but has not done this yet.



2.5. Healthcare

Under relevant international and African standards, prisoners should enjoy the same standards of health care as those available in the community⁷⁰ and mental health care shall be made available for women prisoners.⁷¹ While compliance with these standards is difficult to quantify and evaluate precisely, it appears that, overall, countries offer varying levels of health care to women inmates in relation to the COVID-19 pandemic.

The African countries surveyed are attempting to provide protective equipment for prisoners and prison staff, but assistance is still lacking. Malawi has not provided potable water, hand sanitizers, facemasks, gloves, or disinfectant. The government of Sierra Leone has not provided any protective equipment and all equipment available in correctional centers has been donated by civil society organizations. Kenya has provided inadequate equipment and charges prisoners for some of the equipment that is available, thereby limiting its availability to vulnerable prisoners (and compounding the issue of charging for access to phone calls referred to above). Nigeria and The Gambia have implemented measures to ensure access to nutritious food for female prisoners. In all other countries, access to nutritious food remains a concern.

In terms of equipment to prevent COVID-19 in prisons, no country indicated that it provides anything other than water and soaps. We would recommend that, where more efficient protective equipment such as masks becomes available, its distribution to inmates be strongly encouraged and provided free of charge in order to ensure that it is available to the most vulnerable prisoners.

As regards to trainings on hygiene measures for prevention of the disease, it is recalled that these should be provided to both women in prisons and prison staff. The Declaration indeed urges that prison staff be given access to appropriate training in order to improve conditions for prisoners. Some countries comply while others do not. Where COVID-19 training has been provided to staff, it has been largely inadequate. In Malawi, it has been reported that staff are lacking adequate emotional and psychological support. In Kenya, adequate information on COVID-19 is readily available and medical professionals, in collaboration with the Kenyan Red Cross, are providing training in prisons. The Gambia also provides adequate training against the spread of the virus to both staff and inmates. Nigeria has provided adequate training to inmates, but not staff. Sierra Leone only provides inadequate training to prison staff and Malawi offers no training whatsoever. Following Kenya's lead, reaching out to their national Red Cross or other similar agencies may be a solution for other countries that are struggling to provide the required training.

Some additional measures have been implemented for women prisoners in vulnerable categories⁷². In Kenya, vulnerable female prisoners are separated from the general prison population, and in Nigeria, additional measures are now taken when admitting vulnerable prisoners. The Gambia is

⁷⁰ See Nelson Mandela Rules, Rule 24.

⁷¹ See Bangkok Rules, Rule 12; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art. 5.

⁷² This includes women that are elderly or pregnant and have underlying health issues.



in the process of implementing special measures for vulnerable groups. This has not been prioritized in every country; Malawi, for example, has taken no additional measures in respect of vulnerable prisoners.

Only Nigeria, Kenya and The Gambia are able to implement quarantine measures for women that exhibit symptoms. Sierra Leone reported a lack of appropriate quarantining facilities in many correctional centers. A lack of sufficient facilities may also explain why Malawi does not provide for quarantine measures. In this context, to facilitate the implementation of quarantine measures in those countries, we would recommend increasing and strengthening measures aimed at reducing overcrowding in prisons.

Some countries have reported inconsistent access to medical services in their correctional facilities. For example, daily medical support is available in Kenya. While only one correctional facility in Sierra Leone has an on-call doctor, all other correctional facilities have nurses available to care for women prisoners. However, only Nigeria and Kenya provide regular access to emotional and psychological support to women in prisons during the pandemic. To the extent possible, Kenya's use of in-house counsellors is an option that could be followed by other countries. Alternatively, governments may consider organizing remote psychosocial support sessions for individuals and groups over the phone.

3. Conclusion

Although the response to COVID-19 varies within the region, African states have taken some steps to protect prisoners. However, very little has been done to protect women specifically.

With the exception of Sierra Leone, the states surveyed have taken steps to reduce prison populations. States have implemented strategies including early or temporary release. States are focusing on prisoners that do not pose risks to public safety, are elderly, or have health risks. These measures do not appear to consider the vulnerabilities of women, and the number of women released under these schemes suggests further consideration of the application of these policies to women is required.

Most states have prohibited external visitors, but phone calls are generally permitted, although Kenya continues to charge for the use of these services. As a result, women prisoners in Kenya have reportedly begun to suffer psychologically due to limited communication with family. Of the states surveyed, only Malawi continues to allow family visits, once per week. However, technological and connectivity problems and limited access to telephones complicate these changes and alternative visiting arrangements, especially for legal counsel, may need to be considered.

The region is lacking in its health care response. Prisoners do not have access to proper sanitation or protective equipment. All states have only provided prisons with soap and water to combat the virus. Other protective equipment, such as masks, is necessary to stop the spread of the virus. Furthermore, only Kenya and The Gambia have successfully provided both prisoners and prison staff with training about how to control the spread of the virus. Some states lack sufficient space to properly quarantine affected prisoners.



Finally, Kenya and Nigeria provide separate accommodation for vulnerable women prisoners and special care for women and children. The other states have not introduced measures to protect pregnant, at-risk, or elderly women.



VI. RECOMMENDATIONS

The response to the COVID-19 pandemic across the Global South as it relates to women in prison has generally failed to take into account the specific needs of women. The actions that have been taken are inconsistent, with some countries exhibiting best practices while others are failing to address the needs of women prisoners almost completely.

Many countries in the Global South are struggling to allocate the necessary resources and skills to implement suggested responses to the current crisis in their penal centers. Where this is the case, we recommend that those states consider partnering with international or national organizations, such as the Red Cross, which are able to provide additional support during these challenging times, particularly with respect to the provision of medical services, personal protective equipment, and training for prison staff and prisoners. Without the necessary support and funding, there is a risk that thoughtful policy suggestions are never properly implementing and simply remain unrealized promises.

Our key recommendations are below:

1. It is critical to avoid over-crowding in prisons during this pandemic, as it not only helps to slow the spread of the virus, but is also essential for compliance with international and regional standards. Prevention of overcrowding will help to shield particularly vulnerable prisoners such as pregnant women, those with young children, and those over 60 from the virus. Additionally, limiting pretrial detention, expanding the use of rehabilitation and release to avoid unnecessary imprisonment, and providing other non-custodial measures are necessary to comply with international standards such as those set forth in the Tokyo Rules. To support these aims, countries should:

- a. Implement early release or home detention schemes for those in pre-trial detention and for less serious offenders, especially where they are part of a vulnerable group. Argentina and Indonesia provide examples of best practices in this regard. Indonesia is expected to release around 30,000 inmates, 1,095 of which are women, suspend the admission of new detainees, and use the bail system. The Argentine federal prison system prepared a list of 1,300 inmates deemed particularly vulnerable to contracting COVID-19, including pregnant women and nursing mothers, and sent the list to judicial authorities so that the prisoners may be considered for early release or house arrest.

Argentina's practice of focusing on the specific needs of women, such as nursing mothers, when identifying prisoners for early release should be adopted in other countries. For instance, while Kenya and Nigeria have both released 5,000 and 2,600 prisoners, respectively, only 11 of those released across both countries were women. All COVID-19 response measures must be implemented equally for both male and female prisoners.

- b. Increase the use of pardons and amnesties for minor offenses, non-violent crimes, and vulnerable groups to reduce prison overcrowding. The Bolivian government has enacted an amnesty and pardon decree that applies to prisoners with disabilities or terminal illness and prisoners over 58 years old. However, only 3.36% of the prison population meets these



requirements. The Bolivian decree also contemplates amnesty measures for convicted women, including suspension, reduction and commutation of sentences.

- c. Cease sending new prisoners to prison, or where this is necessary, ensure that they are able to be placed in quarantine for a period of 14 days prior to joining the general population. Again, Argentina and Kenya provide models here. Kenya has suspended new entry into prison entirely, while Argentina isolates new prisoners for 14 days at police stations before their transfer to prison.
- d. Ensure that there is space within prisons to allow the most vulnerable populations to isolate. Isolation and quarantine measures to prevent the spread of the virus must be proportionate in time, based on the risk posed, and authorized by law in order to meet the standards set forth in the Nelson Mandela Rules. If unregulated, isolation measures could result in *de facto* confinement. Medical personnel should monitor women placed in isolation. As always, it is important to think specifically about the needs of women when identifying vulnerable populations.

Nigeria and Kenya have both implemented separate accommodations for persons with vulnerabilities, specifically including pregnant women. In Argentina, the decision to isolate an inmate is made by healthcare professionals and is communicated to the inmate's family. During isolation, the inmate's symptoms are closely monitored by medical professionals. Brazil has implemented similar measures. Kazakhstan has allocated special rooms for isolation of prisoners exhibiting symptoms of COVID-19 and all incoming prisoners are placed under a 15-day quarantine. Four isolation centers have been established in the Philippines for inmates that have tested positive for COVID-19 or are under investigation with mild to moderate symptoms.

2. Most countries have sensibly limited access to prisons for outside visitors to try and reduce the risk of COVID-19 entering prisons. However, it is critical to prisoners' mental health and legal rights that they are still able to communicate with the outside world. In many countries, visits by families are essential to supply prisoners with fundamental products such as sanitary items and medicine. Women separated from their children over a long period of time are particularly at risk of developing forms of anxiety and other mental health issues. Countries should, therefore:
 - a. Ensure there is adequate provision of phone and, if possible, video connections for prisoners to contact their families and legal counsel. Kazakhstan has exhibited best practices in this regard, as it offers prisoners free and unlimited phone and video calls to communicate with both families and legal counsel. In addition, Kazakhstan holds livestreams to keep relatives informed about the evolving situation and the prison's response. Where possible, other countries should try to emulate this example.
 - b. Provide such services for free so that they can be accessed by the most vulnerable prisoners. The charges that Kenya applies to access phone services has rendered them unavailable to many women, leading to an increased incidence of mental health issues.



- c. Investigate methods to allow safe and social distanced in-person access to legal counsel where necessary, and continued access to prisons by relevant NGOs and civil society organizations. Kazakhstan has also set a good example, by continuing to allow visits by monitoring organizations and NGOs. Countries also need to keep the restrictions imposed by the COVID-19 pandemic under constant review – it is crucial that all limitations on contact with the outside world should be proportionate, which includes being time limited and non-discriminatory.
3. In addition to providing continued access to sources of communication during the lockdown, countries need to ensure there is continued access to proper and adequate medical care. This includes mental health services and maternity and neonatal care.
 - a. In the Philippines, measures have been taken to identify vulnerable prisoners more susceptible to contracting COVID-19 and to monitor prisoners’ temperatures regularly, which are good examples of certain preventative practices.
 - b. For mental health support best practices, countries should turn to Sierra Leone and Kenya for guidance. Kenyan prisoners benefit from in-house counsellors for their mental health, while civil society organizations in Sierra Leone are attempting to establish psychological support services over the phone.
4. Countries need to ensure that adequate training is provided both to prison staff and prisoners on the dangers of COVID-19 and how to effectively stop its spread. Personal protective equipment and improved sanitary supplies should also be provided to prisoners and staff to help fight the spread of coronavirus. These resources should be provided free of charge to ensure proper access to the most vulnerable prisoners. Overall, there appears to be an alarming lack of basic protective and sanitation supplies across prisons in the countries surveyed; only Kazakhstan and Kyrgyzstan appear to have established stable supplies of protective equipment, disinfectants, and other goods, with such supplies provided to both prison staff and prisoners free of charge

As discussed above, we suggest that countries that are struggling to implement similar measures partner with national and international organizations such as the Red Cross for assistance. Kenya has exhibited best practices in this regard, partnering with the Kenyan Red Cross to make adequate information on COVID-19 readily available and to provide training in prisons in collaboration with medical professionals. Such partnerships could assist countries like Nigeria which have struggled to find funding to implement their new training measures and policies.

5. Though some countries have set up virtual hearings to move forward ongoing cases, the vast majority of criminal hearings and proceedings have been delayed or suspended. Countries need to implement alternative measures to guarantee inmates’ due process rights and access to justice, and to avoid hearings being postponed for the duration of the lockdown. For example, Kenya has enacted limited alternative measures to physical trials, including trial via video conference, whereas Nigeria has simply adjourned cases, thereby delaying access to justice and increasing the time that people are incarcerated prior to trial.



APPENDIX – SUMMARIES OF COUNTRY RESPONSES⁷³

Indonesia

Summary of Questionnaire Findings

The Indonesian government has issued various broad measures for prisons and for the operation of the criminal justice system in response to the outbreak of COVID-19. However, Indonesia has not taken actions that target the specific circumstances affecting, or the specific needs of, incarcerated women.

The broad measures put in place affecting healthcare in prisons include the “instruction” issued on 17 March 2020 by the Interim Directorate General of Corrections called *PAS-08.OT.02 TAHUN 2020 on the Prevention, Handling, Control, and Recovery of COVID-19 in Prisons and Detention Centres* (the “**Instruction**”). The Instruction sets out different measures according to two designated zones – “red” and “yellow” – the former for prisons/centers in areas with confirmed cases of COVID-19 and the latter for those without confirmed cases. The yellow zone measures focus on “prevention” and “handling”,⁷⁴ and the red zone measures focus on “control” and “recovery”.⁷⁵ Despite the Instruction, the survey responses indicate that access to various facilities and support are lacking even under non-pandemic circumstances and even with the existing government regulations. For example, recent research showed that inmates have to buy soap themselves and they lack access to certain services such as treatment for substance abuse, HIV, and mental health. Moreover, following the visitation restrictions put in place due to the outbreak, there are no measures to replace the basic necessities usually provided by families. As to the circumstances affecting women inmates specifically, while regulations exist addressing the nutrition of women who are breastfeeding, pregnant and those with children,⁷⁶ Indonesia has not issued specific measures for female inmates with regards to the outbreak. The Indonesian government has announced that it is considering the release of certain categories of inmates, such as those with comorbid illnesses, women generally and

⁷³ The findings summarized herein are wholly taken from the country specific responses to the Cyrus R. Vance Center for International Justice questionnaire regarding women in prison and coronavirus. Note that not all questions were answered in each questionnaire or to the same level of detail, and these summaries and related analysis are only based on responses received. We understand that further information is limited, particularly given the current inaccessibility of prisons in lockdown.

⁷⁴ Including: (a) facilities for handwashing, (b) regular sprays to disinfect areas including toilets, children's playrooms, and nursing rooms, (c) masks and gloves for staff (not prisoners), (d) entry restrictions for staff or visitors displaying symptoms, (e) isolating infected prisoners, (f) regular temperature checks, (g) medical checks for inmates/staff who have temperatures above 37.5° Celsius, and (h) restrictions on publishing the identity of staff/inmates with COVID-19.

⁷⁵ Including: (a) coordination between local government and local health services, (b) visiting restrictions for 14 days, (c) suspension of activities and treatment provided by external parties (e.g., rehabilitation programs), (d) restrictions on publishing the identity of prisoners under monitoring/treatment, (e) provision of food and medicine, (f) increased security with coordination between the military and police, (g) counseling or religious support for staff/inmates receiving treatment, and (h) increased coordination with health sectors and referrals to hospitals.

⁷⁶ *Peraturan Pemerintah No. 32, 1999*: Art. 20(1) – Prisoners and juvenile offenders who are ill, pregnant or breastfeeding are entitled to receive additional food in accordance with doctors’ instructions; Art. 20(3) – Children of women prisoners who are born or raised in prisons are entitled to additional food until the age of two in accordance with doctors’ instructions.



pregnant women specifically, juvenile inmates, elderly inmates (above 60 years old) and those with disability,⁷⁷ but this is not yet effected as of 8 April 2020.

On changes to prison protocols and the rules affecting female inmates, the survey responses indicate that there are many unknown aspects. For example, it is unknown if (a) adequate awareness-raising and information sharing measures exist, (b) changes to search protocols are in place, (c) changes regarding discipline and punishment are in place, (d) decisions to limit/prohibit visits were promptly and clearly communicated to female inmates and their families, (e) specific measures for visitation where that remains allowed exist, (f) measures to guarantee continued access to families and/or legal representatives for relocated prisoners exist, (g) visits by independent monitoring bodies have been suspended, and (h) measures to keep families informed of inmates' well-being exist. Moreover, it is unknown if prison staff have received any or adequate training or protective gear to handle the outbreak, or if they have themselves received healthcare. As to the prison protocols known to have been effected, these include suspension of visitation (with visits by legal representatives potentially affected as a result), suspension of services provided by external parties in red zones (e.g., rehabilitation services), and the provision of online communication facilities (although the infrastructure/facilities may be lacking in certain regions).

Finally, Indonesia has not adopted any measures relating to the criminal justice system that specifically consider women or their circumstances. However, Indonesia has taken a number of broad measures that impact women. First, pursuant to the *Decree of the Minister of Law and Human Rights No. 10/2020*, approximately 30,000 inmates will be released through parole.⁷⁸ Approximately 1,095 women from facilities throughout Indonesia will benefit from this measure. Second, the Attorney-General has issued *Letter No. B-049/A/SUJA/03/2020*, which instructs the use of bail and home or city detention. Additionally, on 24 March 2020, the Ministry of Law and Human Rights issued a regulation suspending the admission of new detainees (i.e., those who have yet to be criminally convicted),⁷⁹ but the position of new prisoners (i.e., those how have been criminally convicted) is unclear. Third, the Supreme Court has issued *Circular Letter No. 2/2020* allowing criminal trials to proceed via videoconference. Fourth, the Police has issued *Telegram Letter No. ST/1100/IV/Huk.7.1./2020* regarding the investigation of COVID-19 related crimes,⁸⁰ some of these measures, the survey responses warn, could threaten the right to freedom of expression and violate certain principles of criminal law.

Conformity of Measures with International Standards

As noted by the summary above, while Indonesia has put in place regulations protecting the rights of prisoners (both generally and specifically, in light of the COVID-19 outbreak), it has only put in place very minimal and generic regulations ensuring the protection of the rights of women in prison and their children

⁷⁷ <https://koran.tempo.co/read/nasional/451509/pemerintah-cegah-penjara-jadi-pusat-penularan-corona?>

⁷⁸ These are inmates who have served two-thirds of their sentence by 31 December 2020 and to whom *Government Regulations No. 99/2012* do not apply. Additionally, parole is only available for inmates who are convicted of drug-related crimes if the sentence is under 5 years of imprisonment.

⁷⁹ Detainees refer to individuals who are kept in jail despite not having been convicted of a crime. These are commonly individuals who are unable to obtain sufficient funds to post bail and therefore cannot be released from jail pending trial on criminal charges.

⁸⁰ For example, spreading false news, defaming the President and the government, crimes related to price gouging and hoarding medical supplies (especially surgical masks and hand sanitizer), and crimes related to quarantine violations.



(based on the survey responses, there seems to only be one regulation in place governing the specific treatment of women prisoners, namely *Peraturan Pemerintah No. 32, 1999: Article 20(1)*, which is only limited to addressing the nutritional requirements of women who are breastfeeding, pregnant and those with children). The Mandela Rules prescribes that its requirements be applied impartially and without discrimination, taking into account the specific needs of the prisoners (Rule 2 of the Nelson Mandela Rules). In order to implement the non-discriminatory principle of the Nelson Mandela Rules, the Bangkok Rules recognizes the necessity for the implementation of specific rules and standards which takes into account the distinctive needs of women prisoners (Bangkok Rules Preliminary Observations and Rule 1 of the Bangkok Rules) while Rule 10 of the Bangkok Rules prescribes specific requirements regarding the treatments of juvenile female prisoners. Furthermore, the lack of specific regulations governing the treatment of women in prison may violate CEDAW and the lack of comprehensive regulations relating to the treatment of children in prison is also in contravention of the spirit of the Beijing Rules.

In addition to the lack of specific regulations governing the treatment of women and female juvenile prisoners, based on the Indonesia survey responses, the implementation of existing regulations which may affect the treatment of women prisoners may also be lacking and inconsistent with what such regulations prescribed. For example, the Instruction prescribes certain requirements and procedures to be implemented by prisons (including women prisons) to minimize the spread of COVID-19. However, based on the survey responses noted above, such requirements are not met, for example, inmates are not provided with soap, hand sanitizers and other necessities, as well as access to certain healthcare services. As such, it is also unlikely that other general requirements regarding adequacy of prison facilities, including those relating to health and habitability (*e.g.* Rule 28 of the Nelson Mandela Rules and Rule 6 of the Bangkok Rules on adequate health care facility and services and Rules 15 and 16 of the Nelson Mandela Rules and Rule 5 of the Bangkok Rules on personal hygiene). Furthermore, the survey responses indicate that basic necessities of prisoners (including female prisoners) are often not provided by the prison authorities and are typically provided by the prisoners' families. As all visitation services (including visitations by families, legal representatives and independent monitoring bodies) are currently suspended, basic necessities of female prisoners (including those prescribed under the Nelson Mandela Rules and the Bangkok Rules), access to legal advice (Rule 2 of the Bangkok Rules) and communication facilities with families of female inmates (Rule 26 of the Bangkok Rules), are very likely not provided adequately (in fact, the survey responses indicate that internet communication infrastructure in prisons is lacking). The Indonesia survey responses also indicate that the implementation of various requirements of the the Bangkok Rules is still unknown. These include, among others, various requirements set out in Section 6 of the Bangkok Rules on health care services facilities and services, Section 7 of the Bangkok Rules on safety and security and Section 9 of the Bangkok Rules on prison/ institutional personnel and training. Furthermore, the survey responses are silent regarding the existence of mechanisms to which women prisoners can report prison complaints or human rights violations as prescribed under Rule 25 of the Bangkok Rules.

On the positive side, the Indonesia survey responses indicate that that women and men prisons are located in separate facilities in accordance with Rule 11 of the Nelson Mandela Rules, the nutritional requirements of pregnant women, breastfeeding mothers and mothers with children in prison are prescribed under an existing regulation as required by Rule 48 of the Bangkok Rules (the implementation of this regulation however, is unknown) and the identity of prisoners with COVID-19 is required to be kept confidential under the Instruction, in accordance with Rule 8 of the Bangkok Rules on confidentiality of medical information (again, the actual implementation of this requirement is not known). In light of the COVID-19



pandemic, Indonesia seems to have also implemented measures (as described in the summary above) to speed up trial process (including conducting trials via video-conference) and to minimize detention and admission of new prisoners, in line with the spirits of Rule 58 of the Bangkok Rules and Rule 2.3 of the Tokyo Rules.

In conclusion, Indonesia seems to fall short of implementing the requirements of the various international standards relating to the treatments of women prisoners (including female juvenile prisoners) with the lack of specific, comprehensive regulations relating to such treatments, and when regulations that govern the treatments of prisoners in general (including female and juvenile female prisoners) are already put in place, the survey responses indicate that such regulations are frequently not implemented, disregarded or violated.

Conformity of Measures with Regional Standards

There are no regional standards in Asia specifically for the treatment of women in prisons. Nevertheless there exists various standards amongst Asian countries for the advancement of women rights / human rights, non-discrimination of women and treatment of prisoners in general. Our analysis compares the Indonesia survey responses in light of such standards.

As noted above, the survey responses indicate that Indonesia's approach to women prisoners have fallen short of international standards in many aspects – the same can be said in respect of the regional standards. The lack of specific regulations governing the treatment of women in prison (including the lack of specific measures taken in light of the COVID-19 pandemic for women who have underlying illnesses or are in vulnerable categories such as the elderly and women who are nursing or pregnant or women in prison with their children) could be said to contravene the ASEAN Human Rights Declaration (November 2012) which prescribes that the rights of women and vulnerable and marginalized groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms and that motherhood and childhood are entitled to special care and assistance. It also appears from the survey responses that the Indonesian government have not been adequately protecting prisoners from the spread of COVID-19 in prisons – the survey responses mention that inmates have not been provided soap or hand sanitizers in light of the COVID-19 outbreak, and face masks have only been provided for the staff under risk. Indonesia could do more to implement measures to enhance the welfare of the women population in prisons in line with the spirit of the Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children. This includes measures such as providing prisoners the same level of medical care available to the general population, including transfers to medical facilities for specialized care if required.

Indonesia has, however, taken measures in their criminal justice system to release inmates through parole and to adopt non-custodial measures as to reduce the number of people in prison in the wake of the COVID-19 emergency (as mentioned in the summary above). This is a welcome step that is in line with the Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia and is evidence that Indonesia has taken some measures which benefit women in prisons.



Kazakhstan

Summary of Questionnaire Findings

On 16 March 2020, the President of Kazakhstan announced the State of Emergency. Following his announcement, the Ministry of Internal Affairs (the “MIA”) and the General Prosecutor’s Office issued an order authorizing a number of restrictive and preventive measures for Kazakhstan’s prisons in light of the COVID-19 outbreak, including the delivery of masks, gloves and other supplies, as well as enhanced sanitation and cleaning. The MIA has additionally expanded the scope of nutritious foods and vitamins/supplements for prisoners (including women in prisons). The prisons also provide trainings for women on the measures they can take to prevent the disease, taking into consideration their native language and other communication barriers.

As of 13 April 2020, no cases of COVID-19 were identified in Kazakhstan’s prisons. Special rooms have been allocated for isolation of prisoners exhibiting symptoms of COVID-19. All incoming prisoners in Kazakhstan are placed under a 15-day quarantine per the procedures established prior to the COVID-19 outbreak.

As of 13 April 2020, there were 18 women with children in Kazakhstan’s prisons. Such women are located in separate buildings. The Government refused to allow temporary emergency releases, although it indicated that such releases could in principle be considered if warranted in view of the epidemiological situation.

The prisons did not suspend any rehabilitation and specialized health care programs for women (such as substance abuse treatment, HIV treatment) because of COVID-19. Educational and recreational activities, as well as vocational schools, however, were suspended. Additionally, no family members or even lawyers can visit the prisoners; however, the prisoners are provided with an opportunity of unlimited calls and video calls with relatives/lawyers free of charge.⁸¹ International monitoring organizations, non-governmental organizations (“NGOs”) and religious servants (e.g. imams) are allowed to visit prisons subject to compliance with sanitary and epidemiological requirements. A special call center has been established, and regular livestreams are being held, for the purposes of informing prisoners’ relatives, lawyers, monitoring organizations and NGOs of the epidemiological situation in prisons and related measures.

Conformity of Measures with International and Asian Standards

Overall, we believe that the measures introduced by the MIA and the Government of Kazakhstan are in line with the international standards for treatment of prisoners (and women prisoners in particular) set out

⁸¹ We note that this approach is in line with the preferred practices identified by Penal Reform International. See *Coronavirus: Healthcare and human rights of people in prison* (Penal Reform International briefing note), available at <https://www.penalreform.org/resource/coronavirus-healthcare-and-human-rights-of-people-in/> (the “**Briefing Note**”), p. 6 (noting that “[w]hile restrictions on face-to-face or contact visits for people in detention can be legitimate to prevent COVID-19 outbreaks in facilities, authorities bringing in such measures need a comprehensive and transparent decision-making policy. In case of restrictions, these need to be proportionate to the goal of preventing (or responding to) an outbreak. Contact visits must be replaced by increased means and opportunities of contacting the outside world, for example, by phone, emails or video calls”).



in the Nelson Mandela Rules, the Tokyo Rules and the Bangkok Rules. We note, however, that the MIA did not identify whether any changes have been made to the regimes of solitary confinement or continuation of other disciplinary segregation in light of the COVID-19 pandemic.⁸² In addition, the MIA did not indicate whether any specific guarantees would be afforded to women placed under quarantine in case they exhibit COVID-19 symptoms, including with respect to notification rights and the right to access information and communicate with the outside world.⁸³ We also understand that no particular measures have been taken to broaden the scope of application of non-custodial measures.⁸⁴

⁸² See Bangkok Rules, Rules 22-23 (stating, *inter alia*, that punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison).

⁸³ See Bangkok Rules, Rules 26-28 (generally providing that women prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means). As noted by Penal Reform International, "[w]here isolation is necessary [...] authorities should put in place a regime so people can benefit from meaningful human contact. They should have full access to means of contacting the outside world, and be able to participate in rehabilitation programs and socialize with other people – as far as possible" (see PRI Note, p. 7).

⁸⁴ See Bangkok Rules, Rules 57-62 (generally encouraging the use of non-custodial measures in cases involving women offenders). See also p. 11 of the PRI Note, stating that "[e]arly release, parole and other non-custodial alternatives [...] should be put in place as an urgent measure to reduce risks".



Kyrgyzstan

Summary of Questionnaire Findings

The Decree of the Chairman of the State Penitentiary Service of the Kyrgyz Republic (GSIN) dated 16 March 2020 provides for the establishment of an operational headquarters and other measures in order to oversee, contain and mitigate the impact of the spread of coronavirus within the penitentiary system. Based on the questionnaire, many procedures or practices appear to be focused on the protection and the prevention of the spread of COVID-19 by visitors and penitentiary staff. Employees and visitors are provided with disinfectants, as well as with medical masks, and medical workers are provided with protective suits and necessary medical devices. Further, specialists have been brought in to properly train staff on actions to prevent the spread of the virus.

With respect to the prison population, as of 17 April 2020, no cases of COVID-19 were reported in prisons of Kyrgyzstan. The general prison population (including new prisoners, who historically were and continue to be quarantined), as with the general population of Kyrgyzstan, was placed under quarantine due to COVID-19 health pandemic. Thus, any physical contact, visitors (other than in connection with investigative and procedural action) or reception of perishable food are prohibited or strictly limited. However, hygienic and soap-detergents, as well as medicines, are accepted without restriction and the questionnaire states that food supplies, medicines and other essential medical drugs are available in sufficient quantities in the institutions of the State Penitentiary Service. The decree has been extended to events held on penitentiary property - the holding of cultural, sports and other public events on the territory of the penitentiary system are prohibited. Operational headquarters discussed the necessity of plans to work with tuberculosis treatment, life imprisonment, convicts of extremism and terrorism, but it was not clear if they had been implemented. It should also be noted that, under the GSIN's Decree, no specific measures have been implemented for pregnant and nursing women; however, women with child have been separated, together with the children, from other prisoners. Further, the questionnaire contains contradictory information as to whether rehabilitation programs have been halted.

As regards the prison premises, with the help of the Sanitary and Epidemiological Supervision under the Ministry of Health, residential areas, offices and dormitories are being cleaned and disinfected on a daily basis. Moreover, Penitentiary Service Staff have been trained to raise awareness amongst prisoners for the prevention of COVID-19 infection (awareness-raising activities, how to wash hands for example). Other government measures include the preparation of facilities for isolation and treatment of the special contingent in case of infection.

Concerning the criminal justice system, no measures have been taken to adopt non-custodial measures, reduce pre-trial detention or to reduce the number of people in prison during this time and no emergency releases. Because of the COVID-19 outbreak, only urgent cases are considered by courts and Supreme Court is closed during quarantine.

Conformity of Measures with International and African Standards

Many of the measures enacted under the GSIN's Decree run contrary to the regional standards espoused by ASEAN in addition to international standards. The isolation measures implemented under the Decree – specifically the decision to restrict all visitors, and ban all cultural, sports or other public events on



penitentiary property – will prevent female prisoners from maintaining social, cultural and familial ties. It is notable that the importance of allowing women (including female prisoners) to interact meaningfully with both family and community have been established as essential under both the *Declaration of the Advancement of Women in the ASEAN Region* and the League of Arab States’ *Arab Charter on Human Rights*. Further, the decision to halt the country’s court system will actively restrict access to justice, and prevent the Kyrgyzstan judicial system from releasing prisoners to address issues of overcrowding. Again, this is inconsistent with the standards set out for the region, specifically those established under the *Declaration on the Elimination of Violence against Women and the Elimination of Violence Against Children in the ASEAN*, and the *Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia*. The inability to fight issues of overcrowding is especially relevant in light of the COVID-19 crisis, given that social distancing and isolation are critical in the fight against the spread of infection. The GSIN’s Decree makes no provision to fight overpopulation via the early release of prisoners – indeed, their decision to halt the judicial system directly fights this goal. Finally, it should be noted that the GSIN’s Decree intentionally does not provide for differential treatment of prisoners based on physical or mental health background. The United Nations Office on Drugs and Crime’s *Drug Dependence Treatment: Interventions for Drug Users in Prison* reminds policymakers that “‘Prisoners’ are not a homogenous group. Women, young people, prisoners with disabilities, those with mental health problems, the elderly, migrants, minority ethnic groups and lesbian, gay and bisexual prisoners all have specific needs in relation to ensuring they are able to access ‘equivalent’ healthcare and medical services”. The need for differential treatment is also set out in the Nelson Mandela Rules, which indicates that “measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory”. The importance of providing for differential treatment, especially as it relates to a healthcare crisis, has not been reflected in the GSIN’s Decree.

While many of the restrictions put in place under the GSIN’s Decree actively contradict both ASEAN and international standards, it should be noted that some are consistent. The League of Arab States’ *Arab Charter on Human Rights* emphasizes the importance of family. While isolation measures prevent female prisoners from seeing outside family members, the prison does permit women with young children to reside together. Under the Decree, these family units have been allowed to stay together, and have been isolated separately from other prisoners. Additionally, the *Arab Charter* stresses the importance of occupational health and safety – a focus that is mirrored by the decision to provide prison employees with disinfectant, medical masks and additional training.



Pakistan

Summary of Questionnaire Findings

1. The Criminal Justice System: In light of the COVID-19 outbreak in Pakistan, several measures are currently under discussion, particularly about measures where the criminal offender joins a rehabilitation program, sentencing alternatives, non-custodial measures, the reduction of pre-trial detention, and emergency (temporary) releases, some of which will be beneficial to women. To curb the spread of the virus, restrictions have been placed on in-person court hearings and visitations. Visitation rules have been suspended, and family and lawyer visits may only be conducted over the phone. The calls are however chargeable (and no other communication platforms were provided). As a precaution, new prisoners are put in quarantine, particularly in overcrowded prisons, and visits by independent monitoring bodies have been temporarily suspended. It appears that the Pakistani government does not raise adequate awareness, conduct preventative training with respect to hygiene measures, or provide information about COVID-19 in women prisons. It is also unclear whether communication barriers, such as language barriers, are accounted for. However, in terms of the search protocols, such as body and dormitory searches, for existing prisoners, preventative measures have been taken. Women in quarantine remain unable to participate in rehabilitation programs. Meanwhile, no changes have been adopted regarding discipline and punishment, as solitary confinement is still ongoing. With that said, it is not clear whether the women in prison are being treated more harshly than the men.

2. Healthcare Rules and Protocols: The Pakistani government has taken some measures relating to the healthcare of women in prison. The government has facilitated provision of the necessary equipment to prevent COVID-19 such as potable water, hand sanitizers, soap, facemasks, gloves, and disinfectant. However, besides soaps and disinfectants, no other items are provided free of charge to the prisoners. As for preventative measures, while female prisoners are kept in separate barracks, limited rooms are available in the prison hospital for those who have an underlying sickness or are part of a vulnerable category, *i.e.* elderly, nursing or pregnant. The decision to quarantine new prisoners involves health professionals. Emotional and psychological support is available for the prisoners but only in the central prisons. Women who exhibit viral symptoms are placed in quarantine considering factors such as the extent of their symptoms and travel history. Their health is also monitored by health professionals during their quarantine. The prison staff, including both the custodial staff and healthcare staff, have received adequate training on the virus and how to handle suspected cases. However, no emotional and psychological support is available for the staff. Both the prison staff and the medical staff are provided with extremely limited protective and medical equipment. Some issues have been reported concerning the level of staffing due to COVID-19 (but there have been no reports of prison staff being infected with the virus to date). However, this may point to an issue in reporting, rather than lack of cases. Ultimately, it would appear that Pakistan is not completely catering for the individual needs of women.

3. Mothers and Children in Prison: With regards to children in prison with their mothers, it is unclear whether any measures have been taken in light of the COVID-19 outbreak. Mothers with children are kept in the same barracks as other prisoners. Furthermore, it does not appear that children are being separated from their mothers. In terms of healthcare for children within the prison, the basic services are provided through the designated health staff. Specific measures have however been adopted for pregnant and nursing women. During an emergency, prisoners are transferred to hospitals outside of prison. Released prisoners



are quarantined on a case-by-case basis, depending on whether there are known positive cases within the prison. With regards to rehabilitative work and training programs, it appears that there are no reported changes nor a noticeable impact on women in prison. Currently, the government is considering the remission of prisoners, including women and children, based on some preconditions in the law.

Conformity of Measures with International Standards

There are various rules and instruments enumerating international standards for how women should be treated in prisons. On the other hand, the Bangkok Rules consist of a comprehensive list of the rights and protections for women prisoners and female prison staff. On the other hand, the Tokyo Rules and the Nelson Mandela Rules are applicable to all, regardless of gender.

1. The Criminal Justice System: Pursuant to Rule 2(1) of the Bangkok Rules, “[n]ewly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand...”. Moreover, under Rule 26 of the Bangkok rules, “[w]omen prisoners’ contact with their families, including their children, and their children’s guardians and legal representatives shall be encouraged and facilitated by all reasonable means.” According to the questionnaire, Pakistani prisons have facilitated contact with family and legal support through phone calls. However, it appears that the women prisoners have not been informed of the developments regarding potential changes to their imprisonment, including non-custodial measures, being considered by the government/stakeholders due to COVID-19.

It would appear that Pakistan is in violation of Rule 45 of the Nelson Mandela Rules, which denotes the prohibition of the use of solitary confinement and similar measures in cases involving women and children. This is referred to in other United Nations standards and norms in crime prevention and criminal justice, yet women prisons in Pakistan are still being subjected to solitary confinement on the prisoners, even during the COVID-19 pandemic. However, the remainder of prison protocols and rules covered within the Pakistan questionnaire appear to be case specific to the COVID-19 pandemic. Therefore, there are no further international standards that would be applicable to the remainder of information provided within the Pakistan questionnaire relating specifically to prison protocols and rules.

Under Rule 37 of the Bangkok Rules, “[j]uvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.” Moreover, under Rule 60 of the Bangkok Rules, “[a]ppropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women’s contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programs to improve employment prospects. Such programs shall take account of the need to provide care for children and women-only services.” It is unclear whether the current rehabilitative work and training programs are provided in an equal manner to male prisoners, however, the questionnaire does note that COVID-19 has not had an impact on existing programs.

With regards to rehabilitation and release, the Bangkok Rules and Tokyo Rules contain multiple rules addressing the ideal methods of facilitating the process. For example, Rule 40 of the Bangkok Rules



provides, “[p]rison administrators shall develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and implementation towards those prisoners’ early rehabilitation, treatment and reintegration into society.” Moreover, Rule 45 of the Bangkok Rules provides, “[p]rison authorities shall utilize options such as home leave, open prisons, halfway houses and community-based programs and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.”

Similarly, Article 8.1 of the Tokyo Rules provides, “[p]rison authorities shall utilize options such as home leave, open prisons, halfway houses and community-based programs and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.” Article 9.1 of the Tokyo Rules further provides, “[t]he competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.” It appears that the remission of prisoners, particularly women and juvenile prisoners, is currently under discussion and the authorities are considering reintegration measures; no details have been provided. Moreover, it appears that there are no or very limited community-based resources available to released prisoners.

With regards to non-custodial measures, Rule 61 of the Bangkok Rules provides, “[w]hen sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and typical backgrounds.” Moreover, Article 63 of the Bangkok Rules provides, “[d]ecisions regarding early conditional release (parole) shall favorably take into account women prisoners’ caretaking responsibilities, as well as their specific social reintegration needs.” According to the questionnaire, it does appear that non-custodial measures are currently under discussion among stakeholders. Moreover, it is on the agenda of civil society as an advocacy component to reduce the overcrowding in prisons. Emergency release measures, such as the temporary release of prisoners who do not pose a threat to public safety, plea deals, electronic surveillance, etc., are also being considered. It appears that non-custodial and emergency release measures will be prioritized for women prisoners, juvenile prisoners, and first time offenders. If implemented, these measures would ensure that Pakistan becomes compliant with the aforementioned standards.

2. Healthcare Rules and Protocols: Healthcare is arguably the most important sector during the COVID-19 crisis, and prisoners are a vulnerable population given their living conditions. In order to provide adequate healthcare for the prisoners, there should be external assistance. According to Article 22 of the Tokyo Rules, there should be a link and clear communication between the services, social development, welfare agencies and other branches of the criminal justice system, both governmental and non-governmental in fields such as health, housing education and labor in order to facilitate proper services for prisoners. The prisons in Pakistan are working with the government, as the government has provided necessary equipment through concerned departments to prevent COVID-19 in prisons. Rule 6 of the Bangkok Rules highlights some of the healthcare requirements for women in prison and any accompanying children including mental and physical health screening upon entry, medical confidentiality rules and gender specific healthcare. However, it is unclear whether female prisoners in Pakistan receive such



treatment upon entry to prison. The questionnaire does mention, however, that prisoners are automatically placed in quarantine upon entry during the COVID-19 crisis.

Rule 24 of the Nelson Mandela Rules provide that healthcare for prisoners is a state responsibility and that the prisoners should have the same standards of healthcare that are available to the rest of the community, free of charge. Rule 12 provides that mental healthcare and rehabilitation programs should be made available for women prisoners with mental healthcare needs. The questionnaire states that mental health services are available for female prisoners in Pakistan, though this service is only available in the central prisons and not in all prisons across the country. Article 13 of the Tokyo Rules encourages that various group therapy and specialized treatments should be developed to meet the needs of the offenders. Rule 25 of the Nelson Mandela Rules also highlight the need for improving the mental healthcare of the prisoners. Mental health is important for rehabilitation of prisoners, which is why it is mentioned in almost all of the international standards.

According to the Tokyo Rules, treatments should be conducted by professionals, which has been the case in Pakistan with the COVID-19 crisis, as the questionnaire states that health professionals are involved in making the decisions for the prisoner's isolation and continue monitoring them. Rule 27 of the Nelson Mandela Rules provides that prisons should ensure access to medical treatments and have the prison hospital equipped and staffed, with clinical decisions made by the health professionals. In the case of Pakistan, there is a hospital prison where limited rooms are made available for those who are considered to be in the vulnerable category. However, the prison has reported some shortage in staff and medical equipment during the COVID-19 crisis. Moreover, Rule 14 of the Bangkok Rules provides that authorities should be encouraged to develop initiatives on HIV treatment, prevention and care. Rule 24(2) also mentions the importance of continuous treatment of HIV and other infectious disease in prisoners. The prison department in Pakistan is working in coordination with the Health Department, through an integrated program for HIV, Hepatitis B/C and tuberculosis, to ensure the screening of inmates during the COVID-19 outbreak.

Rule 22 of the Nelson Mandela Rules provide that every prisoner should be provided with "*food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.*" Although food is routinely provided to the female prisoners in Pakistan, there is no mention of type or condition of the food, nor has there been any mention of a change in the diet during the COVID-19 crisis. Furthermore, according to Rule 58 of the Nelson Mandela Rules, prisoners should be allowed to communicate with their family through telecommunication means. In Pakistani prisons, women are able to stay connected with their family members and children using the telephone, even if they are quarantined.

Rules 32 – 33 of the Bangkok Rules relate to the training of the female prison staff on various elements, such as gender-specific needs of female prisoners, with basic training on healthcare, both for women and children. Moreover, Rule 75(2) of the Nelson Mandela Rules provides that all staff shall receive training tailored to their specific role and duty. Although it is unclear what kind of training the staff in women's prisons in Pakistan have received, it is mentioned in the questionnaire that both the health staff and the custodial prison staff have received adequate training to handle suspected COVID-19 cases. Article 16 of the Tokyo Rules provides that the staff should receive appropriate training and instructions, and in the case of COVID-19 in Pakistani prisons, the staff was given adequate training. Furthermore, according to various international standards, the women's prisons should be under the authority of female staff members and no



male staff should enter the female prison, aside from doctors, teachers, etc. However, it is unclear whether that is the case with the staff in women's prisons in Pakistan.

3. Mothers and Children in Prison: It appears that Pakistan would not meet the first limb of the international standard set out in Rule 28 of the Nelson Mandela Rules, which specifies that women's prisons should provide special accommodation for all necessary prenatal and postnatal care and treatment. It is unclear if special accommodations are provided for those categories, nor does it appear that Pakistani prisons provide such prenatal and post-natal services. Instead, as discussed in the section above, basic medical services are provided. Pakistan does however satisfy the second limb of the international standard set out in Rule 28 of the Nelson Mandela Rules, which specifies that Arrangements must be made wherever practicable for children to be born in a hospital outside the prison, as Pakistan allows prisoners to be transferred to hospitals outside of the prisons in cases of emergency. However, it is unclear whether Pakistan abides by the other standard set out in Rule 28 that if a child is born in prison, such a fact will not be mentioned in the birth certificate.

Moreover, Article 42(2) of the Bangkok rules provides that “[t]he regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.” Women prisons in Pakistan afford no such facilities or activities to pregnant and nursing women, nor to women accompanied by children. Additionally, Rule 43(2) of the Bangkok rules indicates, “[p]articular efforts shall be made to provide appropriate programs for pregnant women, nursing mothers and women with children in prison.” However, there are no such programs in place for the aforementioned categories of women in the prisons.

Pakistan also fails to meet the requirements set out in Rules 2 and 11 of the Nelson Mandela Rules and Rule 1 of the Bangkok Rules, which provide that: “[i]n order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory”; that “[t]he different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment” and that “[i]n order for the principle of non-discrimination embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules” respectively. In the case of Pakistan, mothers accompanied by children are kept in the same barracks as the rest of the prison population, which results in a violation. Pakistan is not taking into account their special and individual needs and the fact that their children accompany them, which requires their segregation from the remainder of the prison population under the aforementioned international standards.

Pursuant to Rule 2 the Bangkok Rules, “prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.” Furthermore, pursuant to Rule 3 of the Bangkok Rules, “(i) the number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying



the mother, their location and custody or guardianship status. (ii) All information relating to the children's identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children." It is not completely clear from the questionnaire provided on Pakistan whether women prisons follow and abide by such standards.

Conformity of Measures with Asian Standards

In addition to the international standards, there are regional standards generally discussing the rights of women and prisoners across Asia. These include the Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia (the "**Dhaka Declaration**"), the Declaration On The Elimination Of Violence Against Women In The ASEAN Region (2004), Declaration on the Elimination of Violence against Women and the Elimination of Violence Against Children in the ASEAN (2013), the Dublin Declaration on HIV/AIDS in Prisons in Europe and Central Asia (2004) (the "**Dublin Declaration**"), and the United Nations Office on Drugs and Crime ("**UNODC**") – Drug Dependence Treatment: Interventions for Drug Users in Prison (2008), and the Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children (2010) ("**Ha Noi Declaration**").

1. The Criminal Justice System: It appears that Pakistan may be in violation of Article 4 of the Declaration On The Elimination Of Violence Against Women In The ASEAN Region (2004), which provides that "[t]o enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors, including measures to investigate, prosecute, punish and where appropriate rehabilitate perpetrators, and prevent re-victimization of women and girls subjected to any form of violence, whether in the home, the workplace, the community or society or in custody". Pakistan does not allow women who are quarantined in prison to participate in rehabilitation programs, which violates an element envisaged within the aforementioned regional standard. The remainder of prison protocols and rules covered within the Pakistan questionnaire appear to be case-specific to the COVID-19 pandemic.

With regards to non-custodial measures, Article 1 of the Dhaka Declaration generally provides that imprisonment "*is a sanction or measure of last resort, it shall only be used when the seriousness of the offence would make any other sanction or measure clearly inadequate,*" particularly pre-trial detention, which "*shall be used only in accordance with international standards and norms which dictate that the application of pre-trial detention occurs in a transparent and rational manner.*" Moreover, Article 4(a) of the Dhaka Declaration provides that minor offenses should be diverted from the criminal justice system and that non-custodial measures should be used whenever possible. Lastly, under Article 4(e) of the Dhaka Declaration, early release, whether conditional or not, and including parole, should be utilized whenever possible and justifiable to do so. While Pakistan does not appear to be in compliance with the aforementioned provisions at this time, the questionnaire does indicate that such measures are currently being discussed by stakeholders.

Article 5(b) of the Dhaka Declaration provides that legal services "*shall be made available in all prisons and at all stages of the criminal justice system.*" Though the questionnaire states women prisoners may contact their legal counsel via telephone, it does not indicate whether such counsel is available in all prisons and at all stages. Lastly, it appears that the available regional standards primarily focus on women as victims of crimes (such as human trafficking and domestic violence) and not as perpetrators of crimes. Therefore,



there is little to no information regarding how female prisoners are treated, including rehabilitation and release.

2. Healthcare Rules and Protocols: The regional standards are also very keen on ensuring that female prisoners are treated without discrimination and receive proper healthcare. Article 2 of the Dublin Declaration provides that prisoners living with HIV/AIDS have a right to maintain and promote their health and states have a responsibility to provide quality gynecological and obstetrical care for HIV positive pregnant women in prison. Pakistan has provided treatment of HIV prisoners and has continued providing them through the COVID-19 crisis, albeit in a limited capacity. The UNODC highlights that “prisoners” are not a homogenous group and that the term includes women, juvenile prisoners, prisoners with disabilities, those with mental health problems, and the elderly, each with specific needs. Thus, prisons must ensure that they are able to access equivalent healthcare and medical services. Furthermore, Article 4 of the Dhaka Declaration provides that those with addictions and health issues, both mental and physical, must be treated.

Article 8 of the Ha Noi Declaration aims to “*promote education and information activities to reduce the prevalence rate of HIV and AIDS among women and children and facilitate their access to HIV and AIDS treatment and care*”. Moreover, the Declaration on the Elimination of Violence against Women and the Elimination of Violence Against Children in the ASEAN (2013) provides that victims/survivors should be provided with access to healthcare services, including counseling and peer-to-peer support mechanisms. As mentioned previously, prisons in Pakistan have provided healthcare and mental care services. However, healthcare services and equipment are limited and may not be available to everyone; mental healthcare services are only available to those in central prisons. According to Amnesty International Coverage (2020) earlier this year, a Pakistani judicial inquiry commission highlighted the limited access to healthcare in prisons, reporting that 1,823 inmates are suffering from Hepatitis, 425 from HIV, and 173 from tuberculosis and all were contracted in prison. The regional standards do not appear to discuss the rights, protections or training of the prison staff.

3. Mothers and Children in Prison: It appears that Pakistan is in violation of the concept envisaged in Chapter Five of the UNODC – Drug Dependence Treatment: Interventions for Drug Users in Prison (2008), which provides that “[e]quality is not about treating everyone the same but about taking account of individual need and circumstance. Sometimes we need to go beyond (i.e. treat people unequally) in order to ensure equal opportunities as we don’t all start out equal.” Moreover, the Dhaka Declaration provides that “[s]pecial arrangements shall be made to keep young offenders out of adult prisons as well as other closed institutions.” However, individual needs of women in prison with their children are not accounted for. Women with children are kept in the same barracks as the rest of the prisoner population. Furthermore, no specialized medical treatments are offered to women who are in prenatal and postnatal stages, apart from the basic medical care.

Additionally, the UNODC takes into account that women tend to be the primary caretakers of children and so their first concern upon entering prison will most likely be the care of their children. Despite that, it is noted that many women have been through negative experience regarding official involvement in the care of their children. It is therefore imperative for Pakistani prisons to take into account the individual needs of women who are accompanied by their children in prison. Such factors should be considered as part of the design and delivery of services to women in prison.



Philippines

Summary of Questionnaire Findings

The *Bureau of Jail Management and Penology* (“**BJMP**”) has issued a series of advisories to prison wardens recommending certain precautionary measures be taken in response to COVID-19 (“**Advisories**”).⁸⁵ The Advisories included a direction that all wardens strictly observe an absolute prison lockdown from 20 March 2020. Since the lockdown, information regarding the extent to which the Advisories have actually been implemented has been limited. Moreover, there have not been any measures observed in Philippines which are gender specific or directly relate to the protection or consideration of women prisoners.

The Advisories include general directions and recommendations regarding, non-exhaustively: (i) carrying out information drives, temperature monitoring, masks sanitation, site cleaning and disinfection of facilities; (ii) initial screening areas for new prisoners; (iii) implementing a contingency plan for food supply; (iv) designated isolation areas for infected prisoners; (v) identifying vulnerable prisoners more susceptible to contracting COVID-19; and (vi) suspension of transfers of detainees. All visitation activity has moved to e-visitation, including for families, legal representatives and external health workers (for example, support via video conferences with mental health professionals has been offered to prisoners and staff).

Four isolation centres have been established in the Philippines for inmates that have been confirmed positive for COVID-19 or are under investigation with mild to moderate symptoms. No information regarding access or communication with the families or legal representatives is known. As of 8 April 2020 the centres housed 17 persons. As of 17 April 2020, the BJMP has reported nine cases of detainees and 10 cases of personnel testing positive to COVID-19. It has been observed that some prisons are trying to outsource PPE, suggesting there may be limited, if not insufficient, equipment available at some facilities.

Philippine law enforcement has been granted broad discretion to enforce public health measures during community quarantine.

Conformity of Measures with International Standards

The observation in the Philippines that no gender specific measures have been directed or implemented suggests that the distinctive needs of women have not been taken into account. This approach is inconsistent with the basic principles of the Bangkok Rules and Nelson Mandela Rules, which provide that prison administrations should take account of the individual needs of prisoners including the distinctive needs of women.

Conformity of Measures with Asian Standards

The regional standards have fewer and less detailed provisions on the treatment of women in prisons specifically. In spite of this, the lack of any gender specific measures in the Philippines appears to fall short of regional expectations. The *Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia*, for

⁸⁵ BJMP COVID-10 Advisory #1 to #10, available at <https://www.bjmp.gov.ph/>.



example, describes women as having ‘particular needs and characteristics’⁸⁶, while the United Nations Office on Drugs and Crime *Drug Dependence Treatment: Interventions for Drug Users in Prison*⁸⁷ document provides an illustrative list of gender specific issues to consider.⁸⁸ The list is wide-ranging and includes the fact that women prisoners are statistically more likely to have mental health problems, to self-harm and to have drug addictions. The survey response does not indicate that any issues of this nature are covered by the Advisories. Nor does it demonstrate the BJMP more broadly engaging with the principle that women should benefit from measures catering to their specific needs.

Additionally, the *Dublin Declaration on HIV/AIDS in Prisons in Europe and Central Asia* urges governments to provide “quality gynaecological and obstetrical care for HIV positive pregnant women in prison”.⁸⁹ As noted above, the survey response indicates that HIV treatment was unavailable prior to the COVID-19 crisis, and so it appears unlikely that it is available now.

Finally, the regional standards urge equal treatment of men and women. By way of example, *the ASEAN Human Rights Declaration* states that “Every person is entitled without discrimination to equal protection of the law. The rights of women [...] are an inalienable, integral and indivisible part of human rights and fundamental freedoms.”⁹⁰ Although no guideline relating the right of equal treatment to the specific context of prisons was found, there is equally nothing to indicate that prisoners should be excluded from this right. In light of this, the situation in Manila City Jail (as reported in the survey) appears deficient: whereas “computers and telephones” are allocated to male dormitory PDLs, “only one telephone” is available for more than 1,000 female dormitory PDLs.

⁸⁶ Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia, Preamble, ¶ 3.

⁸⁷ Although this is not a document specific to Asia, it does include some Asian country case studies.

⁸⁸ United Nations Office on Drugs and Crime *Drug Dependence Treatment: Interventions for Drug Users in Prison*, pages 76-77.

⁸⁹ Dublin Declaration on HIV/AIDS in Prisons in Europe and Central Asia, Art. 2.

⁹⁰ Dublin Declaration on HIV/AIDS in Prisons in Europe and Central Asia, Art. 4.



Thailand

Summary of Questionnaire Findings

1. Healthcare, Children in Prison with their Mothers: Access to enough equipment to prevent COVID-19 in women prisons, such as face masks, is an issue because of the high population of prisoners. Basic hygiene levels are also unsatisfactory – for example, toilets are unsafe. Prisoners are not provided with sufficient information on the COVID-19 pandemic, how the prison is addressing the issue or how to prevent its spread – access to news is restricted and language barriers, especially in respect of prisoners from Myanmar, is a major problem. Hospitals do provide trainings on COVID-19 to certain prisoners and staff, which they pass on to other prisoners, but these are limited. In terms of specialized health care programs, doctors usually perform general check-ups and provide medication but because of the suspension of all visitation due to COVID-19, medication is now delivered by prison staff. Many prisoners have tuberculosis and require medical care but service is slow and often unjust, as there is a lack of healthcare professionals and thorough screenings. Prisoners thus feel these programs are insufficient and not well-controlled. Generally, there is very limited assistance for women in prison with children and in particular, for women who are pregnant. Most pregnant prisoners do not have prenatal or postnatal care, nor any assistance whilst giving birth. Women prisoners are given the option to send their babies to live with their family six months after birth. However, many prisoners are not prepared to keep their children due to the social stigma of giving birth in prison. Often, they will choose to leave their babies at an orphanage or similar home. Alternatives to childbirth, such as the option to undergo an abortion, are not available.

2. Prison Protocols and Rules: There are existing early-release initiatives for prisoners who are over 60 years old, pregnant, or have any existing illnesses, and similar initiatives for those who have been arrested but are awaiting trial for non-violent / petty crimes. Further, measures to ease overcrowding in prisons have been taken to specifically prevent the spread of COVID-19 – these include separating prisoners who are exhibiting symptoms, and allowing a temporary suspension or reduction of jail sentence for certain inmates. The foregoing initiatives are subject to safeguards (e.g. regularly reporting or the use of EMT bracelets). Generally, families are not able to initiate communication with prisoners but there is a new communication initiative currently being tested on around 10 prisoners per month, allowing prisoners to reach out to family members through ‘Line’, a communication application. Prisoners are also allowed to write letters to their families, but this is a longer process as letters are monitored by prison staff.

3. Criminal Justice System, Prison Staff, Rehabilitation and Release: The government has imposed prison sentences for certain violations of the emergency decree relating to the COVID-19 pandemic passed between 5 April and 12 April 2020 – those arrested have been confined to individual quarantine cells. There are general concerns about prison staff as they often misuse their power, and more training and supervision needs to be implemented to prevent this. Encouragingly, existing rehabilitation programs are continuing at this time, but more careful screenings and reporting requirements are required. The methadone rehabilitation center does not allow methadone to be taken home, which may be an issue for prisoners who are quarantined. There is thus a concern that people will return to using drugs if they cannot receive the right medication. It is not clear if there have been any changes to other rehabilitative work and training programs as a result of COVID-19 but there is a general concern that the prison system is becoming stricter and moving towards a military prison system under the current Thai government. There are no formal pre- or post-release programs and this acts as a barrier to re-integrating prisoners with society once released.



There are also no community based services to help prisoners following release but survey respondents do recommend that such initiatives be put in place.

Conformity of Measures with International and African Standards

1. Healthcare, Children in Prison with their Mothers: Generally, women prisons in Thailand are not operating in line with international standards such as the Nelson Mandela Rules, as they fail to provide adequate COVID-19 prevention equipment and the safety of prisoners and staff is not ensured. Furthermore, the unhygienic state of women prisons goes against Rules 15 and 17 of the Nelson Mandela Rules 15 and 17 and Rule 5 of the Bangkok Rules.

In terms of access to news and information on COVID-19, female inmates in Thai prisons are not provided with sufficient information about the pandemic and therefore Rule 63 of the Nelson Mandela Rules, which requires prisoners to be kept regularly informed of important news, and Rule 17 of the Bangkok Rules, which requires women prisoners to receive education about preventive health-care measures, are not met. Although limited training on COVID-19 is provided to certain prisoners and staff, this is not sufficient to satisfy the international standards. Rule 80(2) of the Nelson Mandela Rules is also not met, as an interpreter should be used to address language barrier issues in respect of non-Thai prisoners.

Encouragingly, prior to the COVID-19 pandemic, Rules 24, 30 and 31 of the Nelson Mandela Rules were generally satisfied as prisoners received access to standard healthcare services such as medication and regular check-ups from healthcare professionals. However, during the pandemic, it seems daily access to healthcare professionals where needed is not ensured, nor the continuity of treatment and this is concerning.

Under Rule 52(2) of the Bangkok Rules, children should only be separated from their mothers in prison where alternative care arrangements for the child have been identified, which appears to be met in Thai prisons. However, the requirements for adequate pre- and post-natal care under Rule 28 of the Nelson Mandela Rules and Article 12(2) of CEDAW are clearly not fulfilled, as most pregnant prisoners do not have sufficient care.

2. Prison Protocols and Rules: In favoring women who are pregnant, over 60, or have underlying illnesses, Thailand's early-release initiatives are in line with Rule (2) of the Nelson Mandela Rules and the ASEAN Human Rights Declaration, as these initiatives recognize the vulnerabilities of such prisoners. However, sexual harassment is a problem in Thai prisons, and the failure to address this issue is not in line with the Declaration on The Elimination of Violence Against Women in the ASEAN Region.

Thailand's measures to ease overcrowding in prisons to prevent the spread of COVID-19 is a positive step. In line with the Tokyo Rules, there are initiatives in place to encourage the adoption of non-custodial measures such as the suspension or reduction of jail sentences, and avoid imprisonment where it is not deemed necessary. However, the terms of such initiatives are not clear and should be more transparent.

Both the Bangkok Rules (Rule 26) and the Nelson Mandela Rules (Rule 58(1)) encourage the facilitation of prisoners' regular communication with their families and friends. Although attempts have been made to satisfy these rules, current measures in Thai prisons are inadequate and should be improved to be in line with international standards.



Prisoners can file complaints and request for visits by the Ombudsman and the National Human Rights Commission of Thailand (“**NHRCT**”), the latter of which is the independent body responsible for receiving complaints. However, members of the NHRCT have reported difficulty visiting certain prisoners or prisons despite their official capacity.⁹¹ This is not in line with the Rules 54, 56 and 57 of the Nelson Mandela.

3. Criminal Justice System, Prison Staff, Rehabilitation and Release: The concerns raised about staff in women prisons in Thailand demonstrate that further suitable training is required, and that Rules 75 and 76 of the Nelson Mandela Rules are not met. Having effective staff is even more crucial in light of the outbreak of COVID-19 and the need to manage it within women prisons.

Rule 15 of the Bangkok Rules appears satisfied, as there are rehabilitation programs in Thai prisons for women substance abusers. However, continuity of treatment and care has not been ensured in light of COVID-19 and thus Rule 24(2) of the Nelson Mandela Rules is not satisfied.

Rules 46 and 47 of the Bangkok Rules and Rule 87 of the Nelson Mandela Rules encourage the provision of pre- and post-release reintegration programs but these are not formally provided to female prisoners in Thailand. Moreover, the lack of community-based services to assist a prisoner following release goes against Rule 90 of the Nelson Mandela Rule and Rules 10.4, 17.1 and 18.4 of the Tokyo Rules, which encourage societal support. This is also not in line with the guidance set out in a publication released by the United Nations Office on Drugs and Crime titled ‘*Drug Dependence Treatment – Interventions for Drug Users in Prison*’, which highlights the importance of developing ‘pathways’ into community services for prisoners post-release.

Conclusion

Overall, the practices adopted by women prisons in Thailand, particularly in light of COVID-19, are poor and not sufficiently in line with international and regional standards.

⁹¹ FIDH Publication, *Behind the Walls: A Look at Conditions in Thailand’s Prisons after the Coup*, February 2017: https://www.fidh.org/IMG/pdf/rapport_thailand_688a_web.pdf



Argentina

Summary of questionnaire findings

The federal prison system in Argentina has undertaken a series of measures to prevent the spread of COVID-19 among female inmates. These measures include providing free access to drinking water, alcohol gel sanitizer and soap. As a result of high demand, however, complaints have been registered regarding a shortage of these items for the female prison population at large. Moreover, while masks and gloves have been provided to prison staff, these supplies have not been provided to the general female prison population. In addition to providing protective gear and supplies, the Argentine federal prison system has sought to raise awareness through COVID-19 prevention, identification and action protocols in the event an inmate experiences COVID-19 symptoms. These campaigns are conducted in Spanish and are supplemented in English for female inmates that do not speak Spanish.

Female inmates who present symptoms of COVID-19 are isolated within their respective prison units or transferred to an offsite health center depending on the gravity of the symptoms. The decision to isolate an inmate is made by prison healthcare professionals at the unit and communicated to the inmate's family and the unit's security professionals so that she may be transferred to an onsite or offsite health center. During isolation, an inmate's symptoms are monitored by medical personnel. In addition to isolating female inmates that exhibit COVID-19 symptoms, the Argentine federal prison system has adopted measures to limit outside access to prisons, including the suspension of non-urgent outside treatment and family visits (including conjugal visits). Visits from lawyers and legal representatives, as well as the receipt of packages, are permitted provided the relevant protocols are satisfied. Moreover, access to videoconferencing has been made available in some prisons while telephone cards have been delivered to inmates to facilitate communication during the COVID-19 pandemic.

Regarding new admissions, female prisoners are first held at police stations for 14 days where they undertake a swab test to determine whether they have contracted COVID-19. Upon completion of the 14-day evaluation period and confirmation that the inmate tested negative for COVID-19, she may enter the federal prison system. Female prisoners held together with minor children are segregated from the general prison population.

Finally, the Argentine federal prison system has prepared a list of 1,300 inmates deemed particularly vulnerable to contracting COVID-19 (including pregnant women, nursing mothers, the elderly and inmates that suffer from certain disease) that has been forwarded to judges, prosecutors and public defenders so that these prisoners may be considered for early release or house arrest. Requests in relation to pregnant women and nursing mothers have intensified and only a few cases have been rejected (in particular, those relating to women who have committed serious crimes). To the extent women on the list remain in custody, their medical care has been reinforced.

Importantly, COVID-19 procedures enacted by the Argentine prison system are being finalized in accordance with Argentinian laws and to date no complaints have arisen regarding due process violations.

Conformity of measures with International and Latin American Standards



1. Health care. Consistent with Principle II of the Americas Best Practices, Argentina has sought to provide adequate medical care and make available medical personnel and access to free treatment in relation to COVID-19. Consistent with Principle X of the Americas Best Practices, Argentina's measures include programs for COVID-19 health education and prevention. While standard mental healthcare is available throughout the Argentine federal prison system, following the enactment of COVID-19 measures (particularly the suspension of visitation rights), mental health consults and care have increased within prisons straining their capacity to provide mental health services. Any resulting failure may be viewed as a violation under Rules 12 and 16 of the Bangkok Rules, which prescribe that mental healthcare must be provided to prisoners.

Consistent with Principle II of the Americas Best Practices, Argentina's response has included measures exclusively enacted to protect pregnant women and nursing mothers from COVID-19 (including, commendably, efforts to transfer them to safer environments through either prison release or house arrest). The list elaborated by Argentine prison system identifying 1,300 prisoners at risk of contracting COVID-19 does not appear to explicitly account for children held in prison together with their mothers, signifying a potential violation of Rule 9 of the Bangkok Rules, which prescribes that children held in prison with their mothers must also undergo health screening.

In addition, the above-mentioned failures of the Argentine prison system to comply with international standards would also likely constitute failures under the COVID-19 Resolution, including (1) Argentina's failure to effectively implement COVID-19 prevention and care measures throughout the Argentine prison system as a result of the supply shortages noted above, which would likely be viewed as a violation under Section C.47 of the COVID-19 Resolution, and (2) the Argentine prison system's potential failure to provide adequate mental healthcare, which would likely constitute a violation of Section C.47's requirement to "[ensure] that all prison units have medical care available."

2. Hygiene products. Consistent with Principle XXII of the Americas Best Practices, Argentina's measures include the provision of products that may be considered basic in light of the COVID-19 pandemic, including alcohol gel sanitizer. However, the Argentine prison system's efforts may be viewed as deficient in important aspects, particularly with respect to its inability to provide all female prisoners with drinking water, alcohol gel sanitizer and soap as a result of the increased demand for these products during the pandemic and its inability to provide masks and gloves for the female prison population at large (while providing masks and gloves to prison staff). This failure may be viewed as running in contravention of (i) the concept of equality and non-discrimination under Principle II to the extent that a portion of the female population has received these supplies while others have not, (ii) the requirement to provide adequate medical care under Principle X and (iii) the requirement to provide basic personal hygiene products under Principle XII.

3. Visits by Families and Legal Counsel. It has been noted that visits from prison monitoring or supervising bodies have not occurred since 20 March 2020 and that other prisoner visits have been restricted. These measures must be balanced with Principle II of Americas Best Practices, which prescribes that persons deprived of liberty must also have the right to maintain their guarantees and exercise their fundamental rights, although Principle II also recognizes that the exercise of those rights may be temporarily limited or restricted by law.



4. Criminal Justice System. Further investigation may be required to determine the existence of other violations. For example, the practice of isolating new prisoners at police stations may require examination to determine whether these police stations have implemented the COVID-19 measures enacted by the Argentine prison system or otherwise comply with international and regional prison standards for female detainees. Other violations include the failure to translate COVID-19 protocols into languages other than English, which may be deemed discriminatory in relation to non-Spanish and non-English speaking prisoners under Principle II of the Americas Best Practices as well as Rule 2 of the Nelson Mandela Rules.



Bolivia

Summary of questionnaire findings

1. Health care access for women in prison. Bolivia has implemented a quarantine across the country, including its prisons. Specifically, all visits by family members and friends have been restricted. Attorneys' visits are still permitted but are subject to additional biosecurity measures. These restrictions on visitors appear to be impacting women prisoners' access to adequate food and medicine as many prisoners depend on family members for such provisions. Additionally, HIV-positive women prisoners may not be receiving their medication because the quarantine has created nationwide shortages of certain medicines. While attorneys reportedly have been bringing supplies for women prisoners, the impact of these restrictions is likely higher for the many women who do not have access to an attorney or live far from their cities of origin. Visits are also necessary for the implementation of any course or educational training and for access to regular, non-urgent, medical care such as prenatal and postnatal medical assistance. The government appears not to have provided alternative solutions such as online training or medical consultations by videoconference.

Health conditions in prisons are usually precarious. While the government has provided training on COVID-19 to prison staff, including maintenance and medical personnel, whether such training is adequate or includes any psychological support is unknown. According to media reports, prison staff have adequate supplies, including protective and medical materials. Women prisoners have received educational information on COVID-19 including preventable hygiene measures but do not appear to have received any personal protective gear. The government appears not to have taken any measures to provide specific medical care or protection from COVID-19 for particularly vulnerable prison populations, particularly children and pregnant or lactating women. As of late April, there have been no cases of infected prisoners or prison staff, nor any problems related to a decrease in the number of prison personnel available.

2. Women prisoners' access to justice. The government has enacted an amnesty and pardon decree (*Decreto Supremo de Indulto y Amnistía*) in response to the COVID-19 emergency that applies to prisoners with disabilities or terminal illnesses and prisoners over 58 years old (only 3.36% of the prison population). The decree contemplates amnesty measures for convicted women, including suspension, reduction, and commutation of sentences in an effort to reduce prison overcrowding. As the decree excludes several offenses and sentences, only a small portion of women prisoners may benefit from it. Authorities have not adopted emergency pre-release measures in response to COVID-19, but instead continue to implement the already existing Criminal Procedure Abbreviation Law No. 1173 (*Ley de Abreviación Procesal Penal N° 1173*). There is no data on how many women have benefited from the Pardon or Amnesty Decree or the Criminal Procedure Abbreviation Law No. 11736. There is also no data on how many women in pretrial detention have been affected by lack of or restricted access to legal advice or deferral of criminal proceedings. There is no available information on whether freed women need to be quarantined or whether any steps are being taken to reintegrate them, such as assistance with health care, housing, or food, though assistance from community and church organizations is available.

Initially, measures limiting access to prisons and the reduced functioning of the judicial and penal system led women to miss hearings and meetings with their attorneys. Due to efforts and recommendations from civil society and international organizations, the Plurinational Constitutional Court (*Tribunal*



Constitucional Plurinacional) and the Supreme Court of Justice (*Tribunal Supremo de Justicia*) ruled that criminal hearings are a priority and must be conducted virtually. It appears that trials are starting to take place virtually, with the Judicial Branch administering the videoconference platform. Authorities are not taking measures to increase or give priority to alternative mechanisms to preventive detention and alternative measures to the deprivation of liberty for women, including pregnant or lactating women, nor children.

Conformity of measures with International and Latin American Standards

1. Non-Discrimination. In accordance with international standards, Bolivia should, pursuant to the principle of non-discrimination, ensure that prison administrations take into account the individual needs of prisoners, in particular those of women and children who are the most vulnerable in a prison setting.^{92,93} While measures are reportedly in place to free elderly women and women with health issues, authorities are not implementing these measures yet. Similarly, authorities are not taking steps to apply or prioritize alternative mechanisms to preventive detention and the deprivation of liberty for women, including pregnant or lactating women, nor children.

2. Healthcare. Further, pursuant to the Nelson Mandela Rules, women in prison should benefit from “special accommodation for all necessary prenatal and postnatal care and treatment.”⁹⁴ In line with this, the COVID-19 Resolution has urged States to consider alternative incarceration and prioritize people with greater health risks, including pregnant or lactating women.⁹⁵ Bolivian authorities are reportedly not providing any special accommodations for pregnant or lactating women prisoners and quarantine measures resulting in reduced prison visits and services are further curtailing access to prenatal and postnatal care. According to COVID-19 Resolution, quarantine measures that limit “contact, communications, visits, release and educational, recreational or employment-related activities” should be “taken very carefully after a strict review of proportionality.”

In light of the constraints imposed on external visits in the context of the quarantine, Bolivian authorities have offered no alternative solution to ensure the “permanent availability of suitable and impartial medical

⁹² Nelson Mandela Rules, Rule 2. In addition, Principle X of the Americas Best Practices dictates that special measures shall be taken “to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, such as: the elderly, women, children, persons with disabilities, people living with HIV-AIDS, tuberculosis, and persons with terminal diseases.” Moreover, children’s rights to protection as minors are covered under the Article 19 of the ACHR.

⁹³ The COVID-19 Resolution recommended States to “[i]ncorporate the gender perspective from an intersectional approach in all State responses to contain the pandemic, taking into account the different contexts and conditions that enhance the vulnerability to which women are exposed”, such as deprivation of liberty. IACHR, “The IACHR calls on Member States to adopt a gender perspective in the response to the Covid-19 pandemic and combat sexual and domestic violence in this context”, Press release No. 074/20 (1 April 2020), available at https://www.oas.org/en/iachr/media_center/PReleases/2020/074.asp.

⁹⁴ Bangkok Rules, Rule 28; Rule 28 of the Nelson Mandela Rules. *See also*, Americas Best Practices, Principle X (“In women’s or girls’ institutions there shall be special accommodation, as well as adequate personnel and resources for pre-natal and post-natal care and treatment of women and girls.”); Convention on the Rights of the Child, New York, 20 November 1989, Art. 24(d).

⁹⁵ On 31 March 2020, the IACHR further recommended States “to evaluate as a priority the possibility of granting alternative measures”. IACHR, “The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their family in the face of the COVID-19 pandemic”, Press release No. 066/20 (31 March 2020), available at https://www.oas.org/en/iachr/media_center/PReleases/2020/066.asp (emphasis added).



personnel” to provide “adequate” medical care for women and children,⁹⁶ as recommended by the Americas Best Practices. The Inter-American Commission on Human Rights has similarly resolved that all prison units should have available medical care, along with conditions regarding food, health and sanitation that are adapted to prevent contagion.⁹⁷

Limited access to prisons under the quarantine also results in limited educational training and resources for the women and children in prison, not adhering to Principle XIII of the Americas Best Practices, which states that “[p]ersons deprived of liberty shall have the right to education, which shall be accessible to all, without any discrimination, with due consideration to cultural diversity and special needs.”⁹⁸

4. Criminal Justice System. As there is currently no information on whether the Bolivian government is taking any measures to reintegrate freed women and their children into society and to provide for basic services, these women may be more vulnerable to violence at home or on the street and should receive adequate services and protections.⁹⁹ Similarly, given the quarantine measures and the reduction of prison visits, women prisoners may have fewer venues to report any violence experienced in prison.

⁹⁶ In accordance with Principle X of the Americas Best Practices, persons deprived of liberty’s right to health includes the enjoyment of “adequate” medical care, “permanent availability of suitable and impartial medical personnel”, “and special measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, such as [women and children]”.

⁹⁷ The COVID-19 Resolution.

⁹⁸ *See also*, Principle X of the Americas Best Practices: “Where children of parents deprived of their liberty are allowed to remain in the place of deprivation of liberty, the necessary provisions shall be made for a nursery staffed by qualified persons, and with the appropriate educational, pediatric, and nutritional services, in order to protect the best interest of the child.”

⁹⁹ On 31 March 2020, the IACHR further reiterated its recommendations in the COVID-19 Resolution, raising concerns about violence in prison and recalling that States “have a duty to adopt concrete actions to respect and promote” the rights to life and security of persons deprived of liberty. Indeed, Article 8(d) of the Convention of Belem do Para states that “The State Parties agree to undertake progressively specific measures, including programs: [...] to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children”.



Brazil

Summary of questionnaire findings

The response of the Brazilian prison system to the COVID 19 pandemic has not been uniform given that the regulation of Brazilian prisons is governed by Brazilian state laws. Brazil is comprised of 26 states and the Federal District, with prison populations and resources varying from state to state. While federal guidelines relating to hygiene and other measures have been issued by the Brazilian National Penitentiary Department, the adoption of these recommendations by Brazilian states varies. The Brazilian National Justice Council (“NJC”) and the Brazilian regional and federal courts have also issued guidelines that affect the female prison population. It has been noted that Brazilian prisons are chronically overcrowded and do not always adhere to basic sanitary standards.

To combat the spread of COVID-19, the NJC has recommended that reinforced sanitary and hygiene measures be taken, such as ensuring that running water, liquid soap, masks and disinfectant are available to prisoners and penitentiary workers. Penitentiary workers are advised to use masks and gloves when testing inmates. The Brazilian states, however, have not uniformly provided individual protection gear, including goggles, surgical masks, other masks and gloves. In addition, a number of isolation measures were recommended and enforced to various degrees by the Brazilian states: Prisoners who exhibit COVID-19 or other flu-like symptoms are generally placed in isolation and monitored by medical personnel. While the isolation of pregnant, elderly or chronically ill women was recommended, measures to isolate at risk groups vary from state to state. For example, in the Federal District at risk groups are held separately from the general prison population, while no such similar measure has been enforced in the State of Rio de Janeiro. In addition, the majority of Brazilian states have enacted measures to quarantine new female inmates prior to joining the general prison population.

With respect to visitation rights, the Brazilian states first enacted measures barring visitors that exhibited flu-like symptoms. Subsequently, all visitations were suspended, with the exception of visits by attorneys and legal representatives, which are permitted so long as safety protocols are observed, including the use of masks and disinfectants. These measures, which are temporary, were taken in accordance with guidelines promulgated by the World Health Organization and the Brazilian national health ministry. In light of the suspension of visitation rights, the NJC has recommended that inmates be able contact their families via the telephone or other forms of tele-communication. The Brazilian states have not enacted programs to address mental health issues that can arise in connection with the COVID-19 pandemic, while HIV programs, self-harm treatment and other health assistance programs have been suspended.

In order to alleviate the overcrowding of prisons during the CIOs, various courts in Brazil, the NJC and the Brazilian Justice Ministry have issued recommendations regarding the sentencing of offenders to probation, house arrest and open prison regimes, particularly in the case of teenagers, pregnant and nursing mothers and mothers of children under the age of 12. Judges have also been urged to consider early release for non-violent offenders, prioritizing pregnant women and mothers. No measures, however, have been undertaken to assist with the re-integration of these women into society. Moreover, rehabilitation and other assistance programs have been suspended.



Conformity of measures with Brazil's Measures and Recommendations and Latin American Standards

The recommendations issued by the Brazilian National Justice Council, as well as by Brazilian courts to protect women in prison in light of the COVID-19 pandemic comply with certain recommendations of the Americas Best Practices, although the recommended measures have not been uniformly implemented in all the Brazilian states. The following measures have been enacted in compliance with Americas Best Practices:

- Consistent with Principle XII, which establishes that inmates shall have access to basic personal hygiene products and water for bathing or showers, the NJC has recommended certain sanitary and hygiene measures in connection with the COVID-19 pandemic, such as ensuring that running water, liquid soap, masks, alcohol sanitizers, medicine, food and other basic hygiene products are available to the inmates. Such material and equipment have been provided by public agencies in accordance with the judicial *habeas corpus* No. 143,641. Also, consistent with Principle XII, prison cells were disinfected in certain Brazilian states.
- Consistent with Principle XVIII, which establishes that persons deprived of liberty shall have the right to receive and dispatch correspondence and maintain contact with their families, the NJC recommended that inmates have the ability to contact their families via telephone or other forms of tele-communications and the majority of the states authorized the delivery of food, hygiene items and medication to inmates.
- Consistent with Principle XII, which establishes that installations shall take into account the special needs of the sick, persons with disabilities, children, pregnant women or breastfeeding mothers, and the elderly, the NJC has recommended the isolation of pregnant, elderly or chronically ill women and several Brazilian courts have recommended house arrest as an alternative to incarceration for COVID-19 at risk groups.
- Consistent with Principle IX, which establishes the right to a medical examination following admission to the place of imprisonment, and with Principle X, which ensures the right to health, in the majority of the Brazilian states, such as Bahia, São Paulo and Rio Grande do Norte, inmates admitted to prison units are placed in quarantine for COVID-19 pre-screening. Only after this period, are new prisoners transferred to the common pavilion.

Notwithstanding the foregoing, Brazil's measures and recommendations may be considered insufficient in many aspects. Most importantly, it is not possible to ascertain whether the COVID-19 recommendations have been effectively implemented throughout the Brazilian states. In Rio de Janeiro, for example, despite the above mentioned recommendations, according to the organization *Elas Existem*, there is a lack of cleaning and personal hygiene products, which would constitute a violation of Principle X and XII. Moreover, although the NCJ has recommended the implementation of COVID-19 information campaigns, certain incarcerated women in Rio de Janeiro, for example, have not received information relating to COVID-19 prevention and care.



In addition, the inexistence of programs or recommendations related to mental health care, as well as the suspension of non-urgent treatments, may be considered inconsistent with Principle X, which establish that persons deprived of liberty shall have the right to the highest possible level of mental and social well-being, including psychiatric care. This lack of care could also be considered a violation of Article 5 of the ACHR and to Article 4 of the Convention of Belem do Para, which establish the right to physical, mental, and moral integrity.

With respect to restrictions on visits, Principle II establishes that persons deprived of liberty have the right to exercise their fundamental rights, while Principle XVIII establishes the right to maintain direct and personal contact through regular visits. Accordingly, the suspension of all visitations across all 26 states and the Federal District may be considered a violation of this principle. While Principle II recognizes that the exercise of these rights may be temporarily limited or restricted by law, any such restrictions must be adopted with balance. It is also important to note that in Brazil no alternative measures have been adopted to specifically mitigate the negative impact of the suspension of visits.

Finally, with respect to the recently promulgated COVID-19 Resolution many of Brazil's successes and failures in complying with the aforementioned international standards may be observed with respect to the COVID-19 Resolution. For example:

- the NJC and the Brazilian Justice Ministry recommendations regarding the sentencing of offenders to probation, house arrest and open prison regimes, particularly in the case of teenagers, pregnant and nursing mothers and mothers of children under the age of 12, may be viewed favorably in the light of the requirement under Section C.45 of the COVID-19 Resolution to “[t]ake measures to address overcrowding in prisons, including reassessing cases of preventive detention in order to identify those whose status may be converted to that of an alternative to incarceration, prioritizing people with greater health risks of possible COVID-19 contagion, chiefly older persons and women who are pregnant or lactating.”
- the NJC's recommendations imposing restrictions on the intake of women into Brazilian prisons as well as on visitation rights and meetings with attorneys, may be viewed as consistent the requirement of Section C.47 of the COVID-19 Resolution to “[a]dapt the conditions of detention of people deprived of liberty, particularly concerning food, health, sanitation and quarantine measures to prevent COVID-19 contagion inside the prison.”
- Brazil's previously noted failure to effectively implement COVID-19 prevention and care measures throughout the Brazilian state prisons would likely be viewed as a violation of the aforementioned requirement under Section C.47 as well as Section C.47's requirement to “[ensure] that all prison units have medical care available.”

Likewise, the suspension of all visitations across all 26 states and the Federal District may be considered disproportional to the threat posed in violation of the requirement under Section C.48 to “(...) ensure that all measures to limit contact, communications, visits, release and educational, recreational or employment-related activities are taken very carefully after a strict review of proportionality.”



Colombia

Summary of questionnaire findings

Women in prison in Colombia are facing serious resource scarcities. According to the questionnaire, female prisoners receive a kit four times a year that contains the following items: two rolls of small toilet paper, one bar of soap, one pack of sanitary pads, one razor for shaving, one deodorant, a toothbrush, and toothpaste. The Government of Colombia in the midst of the health emergency has failed to provide additional sanitary items, such as soap, anti-bacterial gel, face masks, gloves, and disinfectant. Potable water is also in limited supply, and no steps have been taken to improve inmate nutrition with multivitamins or supplemented diets. Though the items listed above are often unavailable for sale or otherwise not supplied in prison, families of women in prison have been prohibited from delivering these items. No additional measures have been taken to protect other vulnerable imprisoned women such as lactating and pregnant women and women over 60 years old. In most prisons, vulnerable women continue to share the same spaces with other inmates and no special care or diet is given to them despite increased needs.

Additionally, healthcare services in prison are inadequate. Most prisons do not meet minimum legal requirements for at least one doctor to be available to treat patients at any given time. Furthermore, women in prison are offered limited information on what steps to take to prevent the spread of the virus, and are limited in their ability to take certain steps, such as washing their hands regularly, due to interrupted water supply. Poor healthcare services are particularly concerning in light of the fact that prisoners are not placed in quarantine upon entering the prison, leading to heightened risks of contagion. Colombia's efforts to reduce the risk of contagion by sending certain prisoners home under house arrest per Decree 456 of 2020 have had limited success. Very few prisoners are eligible for temporary release as there is a list of nearly 100 crimes that preclude eligibility, including theft and drug-related crimes.

Access to mental health programs and support networks in prison is also problematic. Women in prison have less access to mental health programs during the pandemic than they did previously. Prior to the pandemic, psychologists, social workers, and lawyers were allowed to enter the prisons to provide appropriate counseling and services. At the moment, however, such visits are prohibited due to the health emergency crisis associated with COVID-19. In addition to being unable to communicate with counselors and lawyers, women in prison also have a difficult time communicating with family members because of limited phone lines and high costs associated with calls. Family visits and conjugal visits have also been suspended in accordance with measures adopted by the Ministry of Justice. Moreover, criminal proceedings and hearings have been delayed and in some cases suspended, affecting both women in preventive detention and in prison. Although a few virtual rooms have been set up in some of the prisons to hold hearings, there are not enough rooms to carry out daily scheduled hearings for all women in prison.

Conformity with Regional and International Standards

1. Non-Discrimination. The questionnaire does not suggest that Colombia has failed to meet regional or international standards with respect to gender equality or non-discrimination for women due to their



particular needs¹⁰⁰ or separation of categories¹⁰¹. Prisons in Colombia seem to be providing adequate attention to admission procedures for women and children.¹⁰² The facilities are receiving only one or two women daily and they are isolating them in a cell to disinfect their clothes, shoes and hands before allowing their entrance. That said, newly incarcerated women are not placed into strict quarantine for the recommended two-week period. In addition, children living in prison with their mothers are cared for by appointed family members or guardians. Children who did not have anyone to take care of them other than their mother, were sent to the *Instituto Colombiano de Bienestar Familiar*¹⁰³. With respect to the separation of categories, the questionnaire suggests that Colombia has prisons for women only as well as prisons for both men and women. In the latter, women are kept in separate parts of the prison.

2. Healthcare. However, the questionnaire suggests that Colombia is not compliance with regional standards on healthcare, in particular.¹⁰⁴ We were not able to determine through the questionnaire whether appropriate medical screening on entry is taking place. The physical well-being of inmates is at risk due to inadequate access to doctors, risk of exposure to coronavirus from newly incarcerated women, and shortages of sanitary items, water, and nutritional supplements.

According to the questionnaire, the health-care in general in Colombian women prisons is precarious, thus mental health-care including rehabilitation programs are not comprehensive or completely available to women prisoners with mental health-care needs. Moreover, there is only one psychologist per facility to provide adequate attention to approximately 2,000 women. HIV prevention programs have been completely suspended and will continue to be suspended until preventive measures to reduce the spread of coronavirus COVID-19 are lifted.

Relatedly, in light of water shortages, Colombia has also deviated from regional standards with respect food and drinking water¹⁰⁵ as well as hygiene¹⁰⁶ because interrupted water supplies prevent women from washing their hands and bodies regularly. Further, the water provided is not potable and many prisons do not even sell it. Though Colombia's Constitutional Court has ordered that all persons deprived of liberty must have water, this is yet to be verified. Although sanitary towels are given free of charge, these are provided only on a quarterly basis and regular supply of water is scarce.¹⁰⁷

No special accommodations have been made to ensure the physical well-being of pregnant women, even though the right to health should be understood in the context of providing special measures to this high-risk group. Colombian prisons fail to meet the international standards for pregnant or breastfeeding women prisoners as they do not provide advice on their health and diet, adequate or timely food, healthy

¹⁰⁰ Americas Best Practices, Principles II and XII; Convention of Belem do Para, Art. 6; Bangkok Rules, Rule 1.

¹⁰¹ Americas Best Practices, Principle XIX; Nelson Mandela Rules, Rule 11.

¹⁰² Bangkok Rules, Rule 2.

¹⁰³ (ICBF) is a governmental entity that works for the prevention and comprehensive protection of early childhood, childhood, adolescence and the well-being of families in Colombia, paying special attention to those in conditions of threat, non-compliance or violation of their rights, reaching more than 8 million Colombians with their programs, strategies and care services with 33 regional offices and 214 centers throughout the country.

¹⁰⁴ Americas Best Practices, Principle X (*Health*).

¹⁰⁵ Americas Best Practices, Principle XI (*Food and Drinking Water*).

¹⁰⁶ Americas Best Practices, Principle XII (*Accommodation, Hygiene and Clothing*).

¹⁰⁷ Bangkok Rules, Rule 5.



environment or regular exercise opportunities.¹⁰⁸ Although such vulnerable women are mostly isolated in other areas of the prison, no exceptional measures are provided to them in normal or special circumstances such as the current health emergency.

3. Due Process Standards and Criminal Justice System. The questionnaire suggests that Colombia may not be in compliance with regional due legal process standards.¹⁰⁹ Though some prisons have made efforts to set up virtual hearings, many criminal hearings and proceedings have nevertheless been delayed or suspended due to insufficient rooms for holding such proceedings. For example, in one prison in Bogotá there is only one office for holding virtual hearings, which can accommodate up to three hearings at a time, but there are nearly 800 women in need of hearings in this prison. Women in prison also lack access to their lawyers, as counsels are prohibited from visiting.

4. Vulnerable Groups. In accordance the COVID-19 Resolution, both women and persons deprived of liberty are considered vulnerable groups, which requires their countries to pay special attention to their needs. As mentioned above, the questionnaire suggests that Colombia is failing to ensure that the measures taken to address the pandemic prioritize (i) the human right to health; (ii) the right to personal safety; and (iii) other economic, social, cultural and environmental rights, such as access to drinking water, nutritious food, and access to means of cleaning and mental health support. Moreover, the measures taken by the Colombian Government to address, treat and contain the pandemic do not seem to take into consideration different approaches to ensure that the rights of vulnerable groups are respected.¹¹⁰ Although the COVID-19 Resolution mentions that pregnant or lactating women imprisoned should be prioritized when reassessing cases of preventive detention¹¹¹, the questionnaire suggests that the Decree issued to allow the temporary release of prisoners is based on the crimes they committed.

5. Allocation. With respect to allocation although women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation¹¹², they have been threatened to be transferred to other cities far from their families if they protest or organize some sort of rebellion. This threat of transfer has created fear among them causing them to isolate and avoid talking about the treatment received within the prisons.

6. Visits by Families and Legal Counsel. It seems that women prisoners' contact with their families, children or children's guardians is not encouraged or facilitated by all reasonable means¹¹³ nor are they allowed to exercise the rights of conjugal visits on an equal basis with men.¹¹⁴ In some prisons, between one or two public phones are available for every 500 women. These phones allow the women only to receive calls from their families; however not all of them are able to receive such call. Most of the prisons do not have this modality in their public phones, which allow the prisoners to receive family calls, and instead charge them for making calls to their families. The amount charged is highly expensive in

¹⁰⁸ Bangkok Rules, Rule II.A.3; Nelson Mandela Rules, Rule 28.

¹⁰⁹ Americas Best Practices, Principle V (*Due Process of Law*). See also Convention of Belem do Para, Art. 4. ACHR, Art. 7, Section 5 (*Right to Personal Liberty*) and Art. 8 (*Right to a Fair Trial*).

¹¹⁰ COVID-19 Resolution, Art. 38.

¹¹¹ COVID-19 Resolution, Art. 45.

¹¹² Bangkok Rules, Rule 4.

¹¹³ Bangkok Rules, Art. 8.

¹¹⁴ Nelson Mandela Rules, Rule 58; CEDAW, Art. 2.



comparison to the cost of making calls outside of prison. In a specific prison in Medellín, women are charged to make and receive calls. Moreover, due to the health emergency conjugal visits have been completely suspended. To mitigate the negative impacts that such suspension has on the prisoners, the competent authorities made some rooms available for virtual visits. However, the majority are located in areas of the prison where men are permitted and the few that are in areas available to women are not enough to allow all of them to obtain such virtual visits.



Mexico

Summary of questionnaire findings

Consequently, measures had to be taken in response to the COVID-19 pandemic that affecting women in prison and in the criminal system. For instance, women got masks and individual soap for free, in addition to antibacterial gel available for common use. Prison authorities have implemented the standards assumed by the “Sana Distancia” days on a permanent basis, have raised awareness regarding the necessity of maintaining hygiene in the dormitories and common areas, and have informed both women in prison and prison staff about the symptoms and precautions against COVID-19. In case a women presents symptoms related to COVID-19, she will be isolated and, in the event, that there are no resources for taking care of her, she will be transferred to a hospital to perform a laboratory test.

With regard to inspections inside the prison, external access is currently not allowed, except for legal counsels, in order to keep a better control of those who enter to the prison facilities. Phone calls and video calls have been authorized to allow women to contact their relatives, according to the “Sana Distancia” standards. These restrictions have an impact on women who are imprisoned. The Federal Women’s Center #16 reported to be attending the protocol to avoid new inmates, except for women condemned and, in addition to keep female inmates in a different area than the general population.

Mothers with children in prison are being treated as a priority group, just as pregnant and breastfeeding women. Authorities and enforcement judges have been instructed to grant early freedom when women fulfil the applicable requirements, or to opt for house arrest before entering prison centers.

Finally, some state governments such as Sonora, Baja California, Chihuahua, Puebla y Yucatán have taken criminal-administrative measures for those people found guilty for crimes related to COVID-19 such as violation of self-insolation order, quarantine violation or travel restrictions, among other. These measures have fines up to 36 hours of arrest.

Conformity of measures to International and Latin American Standards

1. Healthcare and Hygiene. Regarding the medical attention and hygiene conditions of women’s prisons due to the COVID-19 epidemic, it is possible to determine that the applicable international standards and recommendations issued in the COVID-19 Resolution have been met in Mexico. However, there is not enough information to determine whether the principles established by the international regulations have been followed in cases where symptoms have occurred.

The international standards have established, in a generic way that people deprived of personal liberty will have the right to health, in three aspects: physical, mental and social. In particular, the Mexican State has gradually adopted the necessary concerns and precautions appropriate in health, in terms of providing general surgical services and special services of psychology, psychiatry and dentistry. In addition, in the particular case of the woman, special medical attention is provided during the pregnancy such as gynecological, obstetric and pediatric emergency services to them.

In addition, necessary supplies have been provided free of charge to inmates. Women have been constantly provided antibacterial gel and, when possible, masks. There is also greater cleanliness in the dorms and in the common areas. However, with regard to women’s nutritional health in prison and their mental health



care no specific action has been taken. It may be necessary to modify the attention that has been given to attend these issues, such as modifying the daily prison menu. In particular, although health measures have been taken, the diet of the inmates has not changed, nor the medical care of their mental health, an issue that certainly differs from applicable international standards.

Further, Mexican authorities have complied with international standards. Campaigns have been implemented to promote the “Sana Distancia” program, as well as sensitize women to the current pandemic situation. Nevertheless, the penitentiary system in Mexico does not have enough resources, which means that the inmates’ accommodation is barely close to the international limits, regardless of the measures taken because of the COVID-19.

2. Children. The Americas Best Practices establish that children shall not be separated from their parents who are in prison. In Mexico, the women who get pregnant during their conviction in prison have the right to live with their children until they are 6 years old. Additionally, the inmates’ children who remain in prison receive pediatric medical attention, basic and preschool education until the 6 years of age, as well as, they are treated as priority group. These measures comply with the applicable international standards.

3. Prison staff. The Americas Best Practices establish that the prison systems for women shall have special facilities, with appropriate staff and resources to attend pregnant and post-partum women. In Mexico, women have been placed in areas where there is less risk for them.

4. Non-discrimination. Inmates are still treated with equity and no discrimination. The only fundamental right that we might say that has been partially limited is the right to assembly which applies to the general prison population.

5. Allocation. In accordance with Principle XIX of the Americas Best Practices, women have been separated and some of them have been relocated to other prisons in order to protect their health, since it has been identified some COVID-19 cases in nearby prisons.

Further, Mexican authorities are adjusting the means of deprivation of liberty. House arrest or equivalent are being privileged in order not to fill prisons and to avoid massive contagion. The National Penal Execution Law already anticipated such mechanisms, in accordance with Principle III of the Americas Best Practices.

In the case of the women who cannot modify their pretrial detention measure and have to stay in prison during the confinement, the prison staff has been instructed to follow specific protocols in suspected COVID-19 cases.

6. Visits by Legal Counsel. In accordance with the Principle X of the Americas Best Practices and the COVID-19 Resolution, communications with legal counsels are still permissible to the extent that they do not constitute a risk to the safety of any of the parties.



Venezuela

In light of the COVID-19 pandemic, Venezuela declared a national state of emergency on 12 March 2020. According to official information, there has been no case of COVID-19 in Venezuelan prisons, be it from inmates or staff.

In essence, Venezuela's response to the COVID-19 pandemic falls short of both international and regional standards protecting women prisoners, both in general and after the COVID-19 outbreak. In particular, Venezuela needs to adopt measures to improve health care and accommodation, prison protocols and contact with the outside world, the criminal justice system, and protection of prison personnel. Indeed, the only measure that Venezuela has taken to address the risk of a COVID-19 outbreak in prison and to protect women prisoners is to ban any visit and new admission from people or inmates coming from outside the prisons.

Conformity of measures with International and Latin American Standards

In view of the survey responses, it is apparent that Venezuela has not taken the measures necessary to protect women in prisons from the pandemic, nor to preserve their human rights outlined in the applicable international and regional standards.

1. Health care and Accommodation. Venezuela's measures in the context of COVID-19 fall short of the standards relating to health care and accommodation. Specifically, they are in contravention of both international standards under Rule 22 of the Nelson Mandela Rules and Rule 5 of the Bangkok Rules, and regional standards under Principles X-XII of the Americas Best Practices and paragraph 47 of the COVID-19 Resolution. Indeed, women in prison have not been provided with any preventive supplies (such as anti-bacterial gel, soap, face-masks, gloves or disinfectants), nor with adequate nutritious food. While their families seem to be able to bring such resources to the prison gates, the average cost of these items is disproportionately high in view of the national minimum wage, and it is thus very likely that inmates would not have access to such resources through their families.

Moreover, specialized programs such as drug dependence treatment and self-harm prevention have stopped, HIV treatment being the only one still available. In the same vein, no specific protection appears to have been granted to vulnerable categories of prisoners or children living in prison. Finally, children older than 3 years old have been separated from their mothers without proper individual assessment, and it is unknown whether their actual living conditions meet the relevant standards.

2. Prison protocols and Visits by Families and Legal Counsel. Venezuela's response to the pandemic also seems to flout the principles described above regarding prison protocols and adequate contact with the outside world. While it may be legitimate to restrict visits to limit the risk of contagion, Venezuela has imposed a blanket prohibition on any visits from the outside, without any coordination with healthcare experts, without any consideration of a more nuanced or balanced approach, and without any advance warning to or communication with the prisoners. This blanket prohibition directly contradicts the recommendation at paragraph 48 of the COVID-19 Resolution and the extremity of the measures fall foul



of the regional standards imposed under Principle XVIII of the Americas Best Practices and international standards under Rule 58 of the Nelson Mandela Rules and Rule 26 of the Bangkok Rules.

Importantly, Rule 58 of the Nelson Mandela Rules specifically encourages the use of telecommunications, electronic and digital means of communication; yet, this standard is being ignored. Inmates have not been provided with alternative means to contact their families, the clandestine possession of mobile phones or the use of mobile phones that are kept in custody by the prison staff being the most common options for communicating with the outside world. Additionally, in contravention of Rule 26 of the Bangkok Rules and Principle XVIII of the Americas Best Practices, no specific measures are known to have been taken to ensure contact with their legal advisors, which could greatly affect their right to a fair trial, granted under Article 8 of the ACHR. In contravention of the standard of regularity imposed by Rule 83 of the Nelson Mandela Rules, independent monitoring by external bodies has been overwhelmingly limited in Venezuelan prisons, with the Red Cross being granted access to two male prisons on only two occasions.

3. Criminal Justice System. In Venezuela, where the penitentiary system was already congested before the COVID-19 pandemic, compliance with the standards relating to the criminal justice system is almost non-existent. No action has been taken to address overcrowding (flouting the Preamble of the Nelson Mandela Rules; Principles I and XVII of the Americas Best Practices; Article 5 of the ACHR; and the Preamble of the Covid-19 Resolution), to reduce pre-trial detention, or to adopt non-custodial measures or emergency releases for women most at risk and/or convicted for minor or non-violent offenses, specifically failing to abide by the Preamble of the Nelson Mandela Rules, Rule 6 of the Tokyo Rules, and Rule 64 of the Bangkok Rule. In addition, criminal court proceedings have been paralyzed, the authorities having adopted no measures to ensure the continuation of cases through other means. This inaction contradicts the IACHR's recommendation in the COVID-19 Resolution that states refrain from suspending appropriate legal proceedings. Such situation is particularly detrimental to prisoners awaiting sentencing and deprives all affected detainees from their right to a fair trial (Article 8 of the ACHR) and their right to judicial protection (Article 25 of the ACHR). For those inmates who are eligible to be released, there is no quarantine requirement, nor have any measures been implemented to facilitate their re-integration following their liberation.

4. Prison Protocols and Rules. Venezuela has not acted in accordance with the international standards relating to prison staff or the regional standards recommended in the COVID-19 Resolution. Specifically, failing to adhere to Rules 1 and 75 of the Nelson Mandela Rules, prison personnel who were working inside the prisons on 13 March, have not been able to leave the facilities since then, and lack emotional and psychological support, medical assistance, and adequate equipment such as protective gear. Moreover, falling foul of the COVID-19 Resolution, women prison personnel has not been trained on COVID-19 and how to handle suspected cases.

Finally, Venezuela does not appear to have implemented any mechanisms to enable women prisoners to report human rights violations or file complaints, as recommended by the COVID-19 Resolution.



Kenya

Summary of Questionnaire Findings

As a result of a government decree, no new prisoners are entering prisons; if the ban is lifted new prisoners will be screened by the medical team and quarantined for 14 days. In addition, Kenya has adopted non-custodial measures and measures for emergency release to reduce the number of people in prison. For instance, almost five thousand prisoners (of which 10 were women) with convictions for petty offences or those with less than 6 months left on their sentence have been released.

Special rooms have been set up in police stations to increase social distancing. Isolation rooms have also been set up in prisons, and if any COVID-19 cases are confirmed medical professionals are responsible for isolating cases. All visitations to prisons were suspended for 30 days as a result of a Presidential directive; this was extended for a further 30 days on 13 April 2020. Prisoners may still contact their families via phones but any phone calls are subject to a small fee. No legal representatives are permitted to visit the prisons, but it is reported that independent monitoring authorities are still allowed to enter. Rehabilitation activities have been interfered with as stakeholders are not allowed to enter prisons. Restricted access to legal counsel and postponement of trials have also impacted women in pre-trial detention. Limited alternative measures such as video conferencing have been put in place. As a result of these measures it has been reported that some women have been psychologically affected by the lack of access to family members.

The government and organizations working within prisons have provided female prisoners with equipment to prevent the spread of COVID-19 including facemasks and gloves. Hand washing stations have also been set up. The majority of protective equipment donations are available free of charge whilst others need to be purchased. In addition, people with underlying health conditions or in vulnerable categories such as the elderly, pregnant women, or women with children have been separated from the general prison population. Access to medical, including psychological, support continues to be provided daily, although prisons have been reported to be restricted to only using in-house counsellors as movement in and out of the prison by members of the public is restricted. Information on COVID-19 is readily available and adequate, and the medical team and the Kenyan Red Cross are reportedly providing training in prison for prevention of the disease. It has been reported that prison staff practice social distancing and wear protective equipment including gloves and masks, although neither the equipment nor the training provided to staff is adequate.

Conformity of Measures with International and African Standards

1. Non-Discrimination: Central to most international standards regarding rights of women prisoners is the principle of non-discrimination.¹¹⁵ African regional standards also reflect this emphasis on non-discrimination.¹¹⁶ There is no evidence that Kenya's response to COVID-19 has disproportionately affected women prisoners. Under the non-discrimination principle, providing for the distinctive needs of women prisoners shall not be regarded as discriminatory.¹¹⁷ Kenya's establishment of separate accommodation for

¹¹⁵ See, e.g., Bangkok Rules, Rule 1; Nelson Mandela Rules, Rule 2; Tokyo Rules, Rule 2.2.

¹¹⁶ See The Protocol on the Rights of Women in Africa, Art. 2; Banjul Charter, Art. 18-3.

¹¹⁷ See, e.g., Bangkok Rules, Rule 1; Guidelines on the Conditions of Arrest, Police Custody, and Pre-Trial Detention in Africa, Principle 30.



vulnerable populations such as pregnant women or women with children is consistent with this principle, although it is concerning that only ten (of 5,000 prisoners) benefiting from early release for petty offenses were women. However, this, in itself, does not establish gender-based discrimination.

2. Criminal Justice System: The criminal justice system should provide non-custodial measures in order to avoid unnecessary imprisonment under both international standards¹¹⁸ and African regional standards.¹¹⁹ Further, laws creating petty offenses are inconsistent with the principles of equality before the law and non-discrimination, as outlined in the Principles on the Decriminalization of Petty Offences, since they have a disproportionate economic and gendered impact. By releasing prisoners with convictions for petty offenses, Kenya has therefore demonstrated compliance with these standards at least temporarily.

3. Prison Protocols and Rules: (1) Kenya's protocol to have a medical team screen new prisoners is consistent with the rule on medical screening on entry to prison.¹²⁰ (2) By separating vulnerable prisoners from the general prison population, Kenya has also complied with the rule to pay special attention to vulnerable prisoners under the international standards¹²¹ as well as African regional standards.¹²² (3) Regarding the rule on keeping prisoners informed regularly of important news,¹²³ Kenya demonstrated compliance by providing readily available and adequate information regarding COVID-19 to prisoners.

4. Visits by Families and Legal Counsel: International standards require that prisoners be given the opportunity to maintain contact with their families and the outside world.¹²⁴ African regional standards also provide such rights, and particularly note the need to communicate with lawyers.¹²⁵ Kenya has complied with these rules in part, as prisoners may still use phones to contact their families, but it is unclear whether Kenya has provided alternative access to lawyers after suspending visits by legal counsels. More could also be done to reduce the cost of these alternative services in order to provide increased access to the most vulnerable prisoners.

5. Healthcare: prisoners should enjoy the same standards of health care as those available in the community¹²⁶ and mental health care shall be made available for women prisoners.¹²⁷ Kenya has provided not only daily access to medical and psychological support, but also with the help of the Kenyan Red Cross training to prevent COVID-19, hence complying with these standards.

Conclusion

Kenya has demonstrated compliance with most international standards and African regional standards regarding the rights of incarcerated women. Kenya has also taken a number of positive steps that other countries could follow. For instance, in order to reduce the density in prison, Kenya has not only suspended

¹¹⁸ See Tokyo Rules, Rule 2.3.

¹¹⁹ See RI Guidelines, Part II.C.37.

¹²⁰ See Bangkok Rules, Rule 6.

¹²¹ See Protocol on the Rights of Women in Africa, Rule 8.

¹²² See RI Guidelines, Part II.C.36; Protocol on the Rights of Women in Africa, Rule 8.

¹²³ See Nelson Mandela Rules, Rule 67.

¹²⁴ See Nelson Mandela Rules, Rule 58.

¹²⁵ See Protocol on the Rights of Women in Africa, Rule 6.

¹²⁶ See Nelson Mandela Rules, Rule 24.

¹²⁷ See Bangkok Rules, Rule 12.



new entry but also released prisoners convicted of petty offenses. Moreover, Kenya has separated vulnerable prisoners from the rest, maintained a daily access to medical support, and provided information and training related to COVID-19.



Malawi

Summary of Questionnaire Findings

With regard to healthcare, the government has provided water and soap to female prisoners in response to COVID-19 free of charge. However, the government has not provided items like potable water, hand sanitizers, face masks, gloves, or disinfectants, and prison authorities have not implemented measures to ensure that women in prison have access to adequate nutritious food, vitamins, and supplements. There have not been any additional measures taken for people who have underlying illnesses or are in vulnerable categories, or to ensure that women have access to mental health care in light of the outbreak. For example, no measures have been taken for women who are in prison with their children or who are pregnant or nursing.

Additionally, with respect to protocols and rules in women's prisons, there is not adequate awareness-raising and information sharing regarding COVID-19. Prison authorities have not implemented changes to search protocols within the prison (including body searches and searches of dormitories), and no changes have been adopted regarding discipline and punishment. While visitations have been limited, family visits are allowed once per week, and no limitations have been placed upon visits by lawyers or legal representatives.

Measures have not been taken in the criminal justice system to adopt non-custodial measures or reduce pre-trial detention (so as to reduce the number of people in prison in the wake of the COVID-19 emergency), although they are being advocated for by NGOs. Authorities are in the process of adopting measures for emergency releases (e.g. temporary releases for people who do not pose a threat to public safety, plea deals, electronic surveillance, parole release of prisoners most at risk such as the elderly and those with underlying health conditions). However, no measures have been taken to lift barriers to re-entry for prisoners who are released, such as access to health care, housing, and food assistance programs, and release directly to family instead of to a halfway house.

There has not been training for prison staff on the disease and how to handle suspected cases. Staff lack adequate emotional and psychological support, as well as adequate healthcare or adequate equipment. However, there have not been any issues with levels of staffing reported due to COVID-19, and there have not been any reported cases of prison staff becoming infected with COVID-19.

Conformity of Measures with International Standards

1. Non-Discrimination: Women's prisons in Malawi are generally not operating in accordance with international standards with respect to their response to COVID-19. While CEDAW Article 2 requires state parties "to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women," it is clear that women's prisons in Malawi still fall short in adopting legislation to adequately address the discrimination women are facing in the response of prisons to COVID-19.

2. Prison Protocols and Rules: First, prisons have not adequately taken into account the distinctive needs of women prisoners. As provided for in Rule 1 of the Bangkok Rules, "prison administrations shall take account of the individual needs of prisoners." The Nelson Mandela Rules provide that, "prison



administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings.” However, there have not been any additional measures taken for people who have underlying illnesses or are in vulnerable categories as a result of the COVID-19 outbreak, and the prison has not taken measures to properly update its protocols to address the COVID-19 outbreak (i.e. by implementing changes to search protocols within the prison).

This is especially apparent in that there have been no measures taken in Malawi prisons to address the needs of mothers or pregnant and nursing women in prison. Such a lack of measures in this area is in violation of Rule 28 of the Bangkok Rules, which requires there to be “special accommodation for all necessary prenatal and postnatal care and treatment.”

3. Criminal Justice System: However, a positive step the Malawi prisons are taking is that authorities are in the process of adopting measures for emergency releases (i.e. temporary releases for people who do not pose a threat to public safety, plea deals, electronic surveillance, parole release of prisoners most at risk such as the elderly and those with underlying health conditions). Such policies help to address the individual needs of prisoners and care for the most vulnerable in the prison population, in accordance with the aforementioned international standards. However, such a policy could be improved by additionally adopting measures to lift barriers to re-entry for prisoners who are released.

Conformity of Measures with African Standards

1. Healthcare: Conditions for women prisoners in Malawi are generally not in accordance with African standards. While Malawi has provided soap and water in women’s prisons and limited each prisoner to one visitor per week, no protective equipment has been made available, and no measures have been taken to reduce overcrowding. Women’s prisons in Malawi have also not taken any steps to raise awareness of COVID-19 among prisoners or to train prisoners on hygiene measures for prevention of the disease.

Several bodies have advocated special measures for women—especially pregnant and breastfeeding women. The Kampala Declaration, for example, calls on African countries to adopt “urgent and concrete measures” to improve conditions for vulnerable groups in prisons, specifically including “women, mothers and babies.” Malawi has not adopted any special measures for children who are in prison with their mothers, such as segregation from the general prison population, nor has it taken any specific measures for pregnant and nursing women.

2. Criminal Justice System: Several organizations have advocated reducing the population of women in African prisons in general by limiting pre-trial detention¹²⁸ and expanding non-custodial sentencing (including community service).¹²⁹ These changes are particularly important given the added imperative to reduce transmission of COVID-19. Nevertheless, Malawi has not made any changes to adopt non-custodial measures; reduce pre-trial detention; or expand the use of probation, rehabilitation, or work-training programs. The emergency release procedures mentioned above would be a positive step if fully implemented.

¹²⁸ See RI Guidelines, § II.37.

¹²⁹ Kampala Declaration and Plan of Action on Prison Conditions in Africa § 5d.



The Kampala Declaration also urges that prison staff be given access to appropriate training in order to improve conditions for prisoners. Malawi has not given prison staff any training on how to handle suspected cases of COVID-19 among inmates.

Conclusion

While Malawi has taken the positive step of working to adopt measures for emergency release, it has not demonstrated compliance with many international standards and African regional standards regarding the rights of incarcerated women. Malawi has not adequately addressed the needs of the women prisoners who remain in prison. For instance, Malawi should adopt special measures for pregnant and nursing women, adequately train prison staff and prisoners on proper COVID-19 responses and hygiene practices, and implement proper changes to its search protocols.



Nigeria

Summary of Questionnaire Findings

In terms of COVID-19 prevention and healthcare, women in prisons are provided equipment to prevent the spread of COVID-19 free of charge (although no specific equipment has been listed in the questionnaire). Additional care is given when admitting people who have underlying illnesses to Custodial Centers or placement in quarantine. A system of quarantine has been put in place for any woman that is exhibiting COVID-19 symptoms and for all new prisoners. Women are provided with sufficiently nutritious meals. Measures are also in place to ensure the continued provision of healthcare within the prison for children in prison with their mothers and for pregnant and nursing women. Furthermore, all inmates and staff are being educated on how to deal with COVID-19, including prevention measures and common symptoms. It is, however, reported that staff are not provided with adequate equipment such as protective gear and that the training received may not be adequate.

In terms of prison protocols and rules that have been modified due to the pandemic, women in prison are no longer able to participate in rehabilitation programs. Further, visits have been put on hold in coordination with health authorities, and phone calls, which are free of charge, are encouraged. Lawyers can visit only if necessary. Visits by independent monitoring bodies have also been temporarily suspended.

As regards changes to the criminal justice system, most of the punishments for offences relating to COVID-19 regulations in the different states have options for fines and non-custodial measures. The Federal Government of Nigeria initiated releases of inmates by granting pardon and amnesty to 2,600 inmates (but to only one woman) and regional states are instigating similar measures. Persons that are older or have health issues are prioritized for release (after going through the necessary risk assessment processes) as part of the measures to address the COVID-19 outbreak and reduce the numbers in Custodial Centers. The Survey however reports that every inmate is faced with the challenges of access to justice in terms of legal representation and incessant adjournment of cases.

Conformity of Measures with International and African Standards

Nigeria seems to be operating generally in accordance with international standards with respect to its response to COVID-19 in relation to women in prison. Indeed, Nigeria has adopted a number of unique protections specific to the needs of women in prison.

1. Healthcare: Nigeria has adequately acknowledged the unique needs of women in prisons, in conformity with Rule 1 of the Bangkok Rules, whereby “prison administrations shall take account of the individual needs of prisoners,” and Article 2 of the Nelson Mandela Rules, which provides that “prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings.”

As explained above, the Survey states that with respect to healthcare, women have been provided with free equipment to help prevent the spread of COVID-19 in prisons and quarantine measures are implemented.



Women are also provided with “meals taken as ration” that are “nutritive enough”. Additionally, there are additional measures being taken for people who have underlying illnesses or are in vulnerable categories. Moreover, measures have been adopted for pregnant and nursing women in Nigerian prisons in response to the COVID-19 crisis. According to the Survey, in accordance with the Banjul Charter, measures have also been taken for the care of children who are in prison with their mother, and healthcare is provided for the child within the prison. The Survey responses also state that mental health care and medical care are still being provided to women in prisons in Nigeria. This will likely suffice to establish that Nigeria is operating at the appropriate legal standard set out in Rules 13 and 26.2 of the Beijing Rules.

2. Prison Protocols and Rules: Based on the answers to the Survey, Nigeria is taking essential steps to limit the spread of the virus by suspending visits unless absolutely necessary (such as visits from legal representatives). In addition, Section 32 of the Guidelines states that women shall “be provided with the facilities necessary to contact their families, including their children, their children’s guardians and legal representatives”, which we understand from the Survey to mean that women in Nigerian prisons do have access to phones in order to contact families and legal representatives.

Changes to discipline have also been made in Nigeria so that solitary confinement and other disciplinary segregating are not continuing at this time. This puts Nigeria squarely even with the Rule 45 standard.

In terms of regional standards, the Declaration explicitly states that, “the state should provide sufficient material and financial resources for staff to carry out their work properly”. However, it seems that whilst Nigeria has stated that staff will be trained in relation to the COVID-19 response, it has taken limited tangible actions regarding this training and support for prison staff based on the responses to the Survey.

3. Criminal Justice System: According to the Survey responses, Nigeria is looking to expand non-custodial measures programs during the COVID-19 crisis. Moreover, it does not appear that women would be prohibited from taking advantage of these programs in violation of Rule 2.2 of the Tokyo Rules. This also appears to comply with Article 30(a) of the Banjul Charter.

In addition, measures such as releasing older women and those who have health issues as well as emergency releases for those who do not pose a public safety threat have been made available to women inmates. Authorities are also considering early conditional releases and paroles among other non-custodial options to reduce prison populations.

It appears that all of these measures are being made available to women in prison in Nigeria. However, it is concerning that only one woman (out of 2,600 prisoners) has been released so far under these new provisions.

Conclusion

Nigeria has demonstrated compliance with many international and African regional standards in its response to the COVID-19 pandemic. The positive steps that other countries could follow include providing women with free equipment to help prevent the spread of COVID-19 and the implementation of additional measures for people who have underlying illnesses or are in other vulnerable categories. Finally, while other countries should follow Nigeria’s example of limited visits while still allowing contact with legal



representatives, it is concerning that only one woman out of 2,600 prisoners has been released through Nigeria's new conditional release and parole protocols implemented to reduce prison populations.



Sierra Leone

Summary of Questionnaire Findings

In Sierra Leone, the Government has not provided resources or protective equipment for prisoners or prison staff in light of COVID-19, and prison staff have not received adequate training on how to handle suspected cases. Civil society organizations (CSOs) have donated protective materials such as gloves, masks, soap, hand sanitizer, thermometers, Veronica Buckets, water tanks, and hand washing stations. Correctional centers do not currently have measures in place to ensure that women prisoners have adequate and nutritious food. Senior management at Freetown Female Correctional Centre, the largest correctional facility in the country, has reached out to CSOs for assistance in this regard. Even before COVID-19, women's prisons in Sierra Leone depended on CSOs to provide food and other essential supplies for prisoners.

All but essential external visits to prisons in Sierra Leone have been suspended indefinitely. It is assumed that this decision was made in coordination with health authorities, but it was nevertheless made abruptly and not communicated promptly or clearly to women prisoners or their families. There do not appear to be measures in place to keep families informed of the wellbeing of women prisoners. There is one phone available in each correctional center, but poor network connectivity and lack of battery or phone credit make this mode of communication difficult. In response to COVID-19, the UNDP has issued mobile phones and phone credit for use by prisoners and staff at all correctional centers. It is possible that some lawyers may still be able to visit their clients, but this is not certain. There have been incidents in which lawyers were denied the required essential worker pass to travel across the country to see clients. Likewise, CSOs and social workers are unable to enter many correctional centers to provide physical and psychological support. Most rehabilitative and training programs for women prisoners were provided by CSOs; therefore, such programs have been indefinitely suspended. At present CSOs are only able to monitor conditions in prisons located in the north of the country and are attempting to establish psychological support services and legal representation over the phone.

Prison quarantining practices are inconsistent across the country. Some correctional centers have designated quarantine spaces that were used during the Ebola outbreak. However, not all correctional centers are thus equipped, and overcrowding is serious concern. CSOs have not been able to monitor quarantining procedures, but it is assumed that, where necessary, a prisoner will be quarantined for two weeks and monitored daily by a nurse. Only the Freetown Female Correctional Centre has an on call doctor. Some correctional centers quarantine new prisoners before they join the general population. Where a woman enters prison with her child, her child will be quarantined with her. There have been no additional measures implemented for women with children, pregnant or nursing women, women with underlying illnesses, or women who are otherwise vulnerable. As of yet, there has been no attempt to reduce prison populations through measures such as early release, emergency release, or non-custodial sentences. It does not appear that the Government has supplied educational resources to correctional facilities in light of COVID-19. Women prisoners are receiving public information through radio and/or television where available. Currently, in the north of the country where external visits are still permitted, women prisoners are receiving up-to-date information from CSOs.



Conformity of Measures with International and African Standards

1. Healthcare: In failing to provide additional COVID-19 related measures to women who have underlying illnesses or are in vulnerable categories, Sierra Leone may be in breach of its obligation under Article 18(4) of the Banjul Charter, which provides that the aged and disabled shall have the right to special measures of protection in keeping with their physical needs. Additionally, overcrowding and lack of appropriate quarantining facilities is an issue in many correctional centers.

Further details are required on the nature of quarantining facilities in correctional centers in order to ensure that Article 32(b)(vi) of Guidelines on the Conditions of Arrest, Police Custody, and Pre-Trial Detention in Africa is being complied with. This provision protects women who are pregnant, breastfeeding, or accompanied by infants from close confinement.

Correctional centers are also struggling to provide adequate and nutritious food, which is a right for the children of women prisoners per Article 14(2)(c) of the African Charter on the Rights and Welfare of the Child. Finally, it cannot be certain the Sierra Leone has met its obligation under Article 14(2)(f) to develop preventive health care. Only one correctional facility has an on-call doctor, and the Government has not provided specific educational materials in light of COVID-19.

2. Criminal Justice System: As of March 2020, all but essential visits to correctional centers were indefinitely suspended, and lawyers have been denied essential worker passes to travel across the country to visit clients. CSOs are currently trying to obtain clearance for clients to access legal representation over the phone. Without access to legal counsel, prisoners will be denied their right to legal services in breach of the Guidelines on the Conditions of Arrest, Police Custody, and Pre-Trial Detention.

Additionally, there are currently no alternatives to non-custodial sentencing, and fines are the only alternative to incarceration in Sierra Leone. Given the need for adequate quarantining facilities and social distancing where necessary, the lack of alternatives to pre-trial detention not only violates Articles 6(a), 25(a), and 32(b) of the Guidelines, but also means that overcrowding poses a particularly significant health risk to women prisoners in light of COVID-19. Furthermore, it violates the right of women with caretaking responsibilities for children be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

3. Prison Protocols and Rules: As external visits have been suspended, there do not appear to be measures in place to keep families informed of the well-being of their loved ones. This is contrary to Article 40 of the Guidelines and violates the Kampala Declaration, which provides for prisoners' rights to develop links with their families. In light of the suspension of external visits, Sierra Leone should seek to provide alternative means of monitoring by independent bodies to ensure compliance with regional and international standards, such as permitting telephone interviews with CSOs or providing reports to CSOs.

Finally, according to the questionnaire, prison staff have received some training on COVID-19 and how to handle suspected cases, but this training was largely inadequate.

Conclusion



Sierra Leone is in breach of many international and African standards. In particular, Sierra Leone is violating those standards calling for the increased use of non-custodial measures and for specialized protections for women and other vulnerable groups. Many of these breaches existed before the COVID-19 pandemic and have only been exacerbated by prisons' responses to the outbreak.



The Gambia

Summary of Questionnaire Findings

Since the outbreak of the COVID-19 pandemic, The Gambia has implemented certain measures in its women's prisons in order to ensure the safety of the prison staff and inmates. The government provides equipment free of charge to prevent the spread of COVID-19 including water and soap. Additionally, prisons have implemented training on hygiene and prevention measures for both staff and inmates taking into account both language and other communication barriers. The government provides prison staff with protective gear and there are no reported cases of staff having COVID-19.

Authorities are in the process of implementing measures to ensure those with underlying conditions and who are in vulnerable conditions are protected from the COVID-19. Women who are exhibiting symptoms are quarantined after consultation with the Ministry of Health and Social Welfare. Health professionals monitor all inmates and some women may be quarantined whether or not they are exhibiting symptoms. The family members of women who are exhibiting symptoms are notified of their status. No specific measures have been enacted for pregnant or nursing women or elderly or at-risk women.

Prisons now prohibit any visitors to the facilities, including independent monitoring bodies, in order to prevent the spread of COVID-19. The government will implement alternative measures to mitigate the impact of the visitor prohibition. The government hopes to install call centers at no costs to inmates and implement measures to keep families informed of the well-being of their incarcerated loved ones. The use of disciplinary segregation and solitary confinement continues. There is no information available regarding changes to rehabilitative work and training programs.

Finally, the Ministry of Justice is working to release prisoners with minor crimes to decrease prison populations. Additionally, the Chief Justice instructed courts to adjourn cases until further notice. Currently, only bail application hearings and urgent matters are heard in person in chambers. Virtual hearings will soon be held. Moreover, law enforcement officials may arrest and prosecute any person who hoards or gouges prices of essential commodities. A violation under the Act carries a fine of D500,000.

Conformity of Measures with African Standards

1. Prison Protocols and Rules: The recommendations in the Kampala Declaration and Plan of Action on Prison Conditions include, among other things, that (a) prisoners be given the opportunity to maintain communications with the outside world, (b) special attention should be paid to vulnerable prisoners and (c) non-governmental organizations should be supported in their work with these prisoners. The Gambia has not yet been able to meet these recommendations; however, if and when installed, the proposed call centers will help facilitate outside communications with families, legal aid and non-governmental organizations.

The Kampala Plan of Action also recommends that (a) a country should provide sufficient material and financial resources for staff to carry out their work properly, (b) each country should have an appropriate training program for prison staff to which UNAFRI should be invited to contribute and (c) there should be a national or sub-regional institution to deliver this training program. As stated above, the Gambia has current training in place with respect to COVID-19, though it is not clear what all is included in the program.



Conclusion

The Gambia has taken a number of positive steps in other response to COVID-19 that other countries could follow. In particular, the provision of equipment free of charge to prevent the spread of COVID-19 including water and soap and the implementation of training on hygiene and prevention measures for both staff and inmates. Additionally, other countries should also consider following The Gambia's lead by installing no-cost call centers and releasing certain prisoners to decrease prison populations.