

Penal Reform and Gender

International Centre for Prison Studies



Geneva Centre for the
Democratic Control of
Armed Forces (DCAF)

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About the Authors

The International Centre for Prison Studies seeks to assist governments and other relevant agencies to develop appropriate policies on prisons and the use of imprisonment. It carries out its work on a project or consultancy basis for international agencies, governmental and non-governmental organisations.

It aims to make the results of its academic research and projects widely available to groups and individuals, both nationally and internationally, who might not normally use such work. These include policy makers, practitioners and administrators, the media and the general public. Such dissemination will help to increase an understanding of the purpose of prison and what can be expected of it.

Editors

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The Gender and SSR Toolkit

This Tool on Penal Reform and Gender is part of a *Gender and SSR Toolkit*. Designed to provide a practical introduction to gender issues for security sector reform practitioners and policy-makers, the Toolkit includes the following 12 Tools and corresponding Practice Notes:

1. Security Sector Reform and Gender
 2. Police Reform and Gender
 3. Defence Reform and Gender
 4. Justice Reform and Gender
 5. Penal Reform and Gender
 6. Border Management and Gender
 7. Parliamentary Oversight of the Security Sector and Gender
 8. National Security Policy-Making and Gender
 9. Civil Society Oversight of the Security Sector and Gender
 10. Private Military and Security Companies and Gender
 11. SSR Assessment, Monitoring and Evaluation and Gender
 12. Gender Training for Security Sector Personnel
- Annex on International and Regional Laws and Instruments

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DCAF

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) promotes good governance and reform of the security sector. The Centre conducts research on good practices, encourages the development of appropriate norms at the national and international levels, makes policy recommendations and provides in-country advice and assistance programmes. DCAF's partners include governments, parliaments, civil society, international organisations and security sector actors such as police, judiciary, intelligence agencies, border security services and the military.

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The Office for Democratic Institutions and Human Rights (ODIHR) is the main institution for the OSCE's human dimension of security: a broad concept that includes the protection of human rights; the development of democratic societies, with emphasis on elections, institution-building, and governance; strengthening the rule of law; and promoting genuine respect and mutual understanding among individuals, as well as nations. The ODIHR contributed to the development of the Toolkit.

UN-INSTRAW

The United Nations International Research and Training Institute for the Advancement of Women (UN-INSTRAW) is the only UN entity mandated to develop research programmes that contribute to the empowerment of women and the achievement of gender equality worldwide. Through alliance-building with UN Member States, international organisations, academia, civil society, and other actors, UN-INSTRAW:

- Undertakes action-oriented research from a gender perspective that has a concrete impact on policies, programmes and projects;
- Creates synergies for knowledge management and information exchange;
- Strengthens the capacities of key stakeholders to integrate gender perspectives in policies, programmes and projects.

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ACRONYMS

CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSO	Civil Society Organisation
GBV	Gender-Based Violence
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
LGBT	Lesbian, Gay, Bisexual & Transgender
NGO	Non-Governmental Organisation
UN	United Nations
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
US	United States
WHO	World Health Organisation

Penal Reform and Gender

1 Introduction

The penal system is a vital part of the security sector. Any state run according to the rule of law must have a justice system that is able to impose sanctions, where appropriate, on those convicted. Most countries have an array of sanctions, ranging from warnings and community service to imprisonment. The penal system ensures that the law is enforced and respected. It also protects society by removing from circulation those who pose a serious threat of harm to others, deterring would-be offenders, rehabilitating offenders and showing society's disapproval of their acts. However, the discrimination that pervades justice systems in general is also found in many penal systems, as can be observed in their sentencing procedures and the way penalties are administered. Integrating gender issues – the different needs, rights and abilities of women, men, boys and girls – into penal reform processes will help build an effective penal system that is non-discriminatory, meets human rights standards, and promotes prisoners' rehabilitation.

This tool on penal reform and gender provides guidance on responding to gender issues within penal systems. It aims to assist those responsible for management, policy making or reform of prisons within their own countries; international and regional actors supporting prison reform; as well as parliamentarians, civil society organisations and others that play a role in overseeing and monitoring prisons.

2 What is penal reform?

Penal reform is the process of changing a penal system to bring it into line with the rule of law and the international human rights framework. It aims to ensure sanctions that are proportionate, non-discriminatory and rehabilitative. In particular, it aims to change prison institutions into places that respect individual human dignity, and ensure that those imprisoned are afforded their legal rights.¹ Developing civilian-run prisons that are linked to the national health and welfare systems and have strong local links to assist social reintegration and rehabilitation can make an important contribution to crime control and community harmony and stability.²

Penal reform involves changes to the whole sanctions system, including custodial and non-custodial practices. Poor countries usually provide few alternatives to either pre-trial detention or to prison sentences. Fines can be court-ordered sanctions in most countries, but many of those fined subsequently end up in prison because they cannot afford to pay the fines. Developed countries

usually have a range of alternatives to prison, including bail for those awaiting trial as well as sanctions such as supervision or community work for sentenced offenders.

Because of the predominant place of prison in penal systems and the potential for abuse and torture in prisons, most penal reform activities focus on prison reform. Prisons are generally run by governments, although certain governments have contracted private companies to manage a number of their prisons.

Prisons in all countries of the world serve two functions: to hold pre-trial detainees and those convicted by a judicial process to serve prison sentences as punishment for their offences. In some countries, people are held in administrative detention that is outside judicial processes, and prisons may exist that are run by the security service outside of the regular prison system. People are also detained outside the penal system, such as in secure mental hospitals or immigration detention. Reform of these systems is not seen as part of penal reform, since such detention does not fall within the criminal justice system.

Penal reform activities are dependent on governments since they are the only ones that have the authority to impose sanctions and deprive people of their liberty. However, agents of reform can be non-governmental organisations (NGOs), lawyers, intergovernmental bodies, and other entities in the administration such as human rights commissions or coalitions.

Problems widely found in penal systems include:

Under-resourcing of the means to process non-custodial sanctions and measures so that imprisonment is imposed in cases where a non-custodial sanction might be more proportionate and less damaging.³

Over-use of pre-trial detention when release to await trial in the community would be more proportionate.⁴

Imprisonment when a health or welfare intervention would be more just and appropriate.⁵

Poorly trained and underpaid **prison staff**.⁶

Corruption that is deeply embedded in many systems and difficult to eradicate because of low staff pay, and lack of transparency and effective oversight mechanisms.

A range of human rights abuses in prisons including:

- **Overcrowding** – to be found in almost two-thirds of prison systems worldwide. At a minimum, this can mean three people cramped into a cell meant for one person, and, at the worst, that prisoners have to take turns lying down to sleep while fellow inmates tie themselves to the cell bars and sleep standing up.⁷
- **Scarcity of resources** so that buildings are insecure and crumbling, food and medicine are in short supply,

and some prisoners only survive through contributions brought in by their families.

- **Infectious diseases** that spread rapidly and increased rates of mental illness.⁸
- **Violence and brutality** by prison staff against prisoners and between prisoners, with stronger prisoners running the prisons and imposing their control by terrorising others, as well as widespread sexual violence.
- **Severe lack of both rehabilitative activities** and arrangements for re-integration into society on release.

Penal reform activities need to be appropriate to the context. Although justice systems have many common features, the sanctions system and the assumptions underlying the operation of prisons in any country are affected by the type of legal system in place, as well as by cultural, historical and socio-economic factors.

Penal reform can involve a wide range of actions such as:

- Transferring control of the prison from the military or the police to civilian authorities.
- Training prison staff to adopt an approach to prison management based on human rights.
- Convincing a prison administration that security could be ensured without the heavy iron bars covering cell windows, and that their removal would increase exposure to light and air and thus help prevent the spread of diseases.⁹
- Raising the minimum age of criminal responsibility so that child offenders are dealt with under the social welfare system rather than under the penal system.¹⁰
- Establishing a system of legal aid and advice for prisoners given by volunteers where trained lawyers and public financing are not available.¹¹
- Forming groups of citizens to visit prisons and report on abuses and treatment.

Obstacles to penal reform include:

- Political unpopularity of those who are seen as lawbreakers;
- Competition for resources from causes seen as more worthy of support;
- Low priority given to the penal system within the wider justice system;
- The closed nature of the prison system, which makes it easier to keep out the media and the public on security grounds, and thereby to conceal abuse.

The benefits of comprehensive reform of the penal system include better crime control and rehabilitation, which can directly increase community security, and enhance protection of the human rights and dignity of prisoners.

3 Why is gender important to penal reform?

Gender refers to the particular roles and relationships, personality traits, attitudes, behaviours and values that society ascribes to men and women. 'Gender' therefore refers to *learned* differences between men and women, while 'sex' refers to the *biological* differences between males and females. Gender roles vary widely within and across cultures, and can change over time. Gender refers not simply to women or men but to the relationship between them.

Gender mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels.¹²

For more information see Tool on SSR and Gender

3.1 For penal institutions to meet human rights standards

International and regional conventions on human rights prohibit inhuman and degrading punishment or treatment, and require that all persons deprived of their liberty be treated with respect for the dignity of the human person. These and international and regional laws on the administration of justice and prisons must be applied consistently with the prohibition of discrimination on the basis of sex. To meet these obligations there has to be an understanding of the importance of gender differences and a willingness to develop policies and adopt practices that ensure that the human rights of men, women, girls and boys are respected. Further, a number of penal standards set out specific obligations to address the needs of women prisoners.

See Annex on International and Regional Laws and Instruments

Taking into account gender differences is important for human rights compliance because prisons are abnormal single-sex institutions based on coercion. Prison environments are conducive to sexual violence and are dangerous places for vulnerable people. In prisons for men, male rape and other forms of sexual exploitation are common.¹³ Prison staff are sometimes involved in corruption, torture, sexual violence and procuring prisoners for other prisoners to abuse.¹⁴ Young male prisoners are very vulnerable to such exploitation. Women prisoners can face sexual abuse from male staff. Prisoners who do not conform to traditional gender roles (e.g. gay, lesbian, bisexual and transgender prisoners) are at particular risk of violence.¹⁵ When in prison, minority and indigenous people face distinct forms of discrimination, which are often compounded for minority and indigenous women.¹⁶ Prison regimes that aim to minimise the differences between prison life and life in open society are more likely to reduce levels of violence

inside prisons. Good arrangements for family visits (including private family visits) are likely to defuse tension.

Much of prison life revolves around security procedures and in many systems the measures used to maintain security involve intrusive and humiliating procedures such as strip searching, internal searching, or forcing prisoners to squat on mirrors or urinate in front of prison staff to collect samples for detecting drug use.¹⁷ Searching by prison staff of the opposite sex is permitted in some systems. However, the need to protect prisoners from harassment and abuse can come into conflict with equal opportunity legislation that opens up all posts in prisons to both men and women. Dignity and respect are often compromised by aspects of prison life such as bathing and toilet facilities that offer no privacy because they are not closed off, and ill-fitting or dirty clothes for prisoners issued from a common pool.

Instituting gender-responsive policies and practices within the prison system can help prevent human rights violations and ensure an effective response if they do occur. If a state has inadequate policies and practices in place to deal with these matters it is not meeting its human rights obligations.

3.2 To ensure equitable penal policies that do not discriminate

Sentencing policies can be discriminatory. Women may be held in pre-trial detention unnecessarily and may face harsher sentencing because of a perception that only very 'bad' women commit crimes. Detention and sentencing policies can have a different impact on men and on women, particularly in cases where women are the main carers in the family unit. In some jurisdictions women are less likely to be given non-custodial sanctions because facilities that are available to men are not available to women.¹⁸ Lesbian and gay defendants may face discrimination in sentencing because of stereotyping and prejudice on the part of the judiciary. People from minority and indigenous groups tend to be disproportionately represented in the prison population.

Most prison systems do not provide equal outcomes for men and women. The proportion of women held in any prison system throughout the world varies between 2% and 9%.¹⁹ One consequence of this minority status is that prisons and prison systems and policies tend to be organised on the basis of the needs and requirements of male prisoners. The profile of women prisoners is different from that of male prisoners. Women are more often imprisoned for acquisitive crime and are less likely to be found guilty of serious violence, criminal damage and professional crime. Women are particularly vulnerable to being detained because of their inability to pay fines for petty offences and/or to pay bail. Women prisoners nearly always face a structural situation that is discriminatory. They are subjected to security levels grossly disproportionate to the risks they pose because the security requirements apply to the whole prison system and no special policies are deemed to be necessary for women. Because they are a minority, the training of prison staff usually neglects the special situation of women prisoners. As such, education and training programmes often focus on meeting the

requirements of male prisoners. The Special Rapporteur on prisons in Africa notes that in South Africa: 'In most of the prisons, vocational training for trades such as woodwork, metal work, steel work and building is given only to male inmates. In the Durban Female Correctional Centre, women are engaged in sewing and laundry only and, because there are few machines, not all of them participate.'²⁰

Sometimes the small number of women prisoners means there is only one women's prison for a whole country. Because women are more likely to be held far from their homes, it is difficult for their families to visit them, and so prison disproportionately affects their right to family life. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment notes that women 'are often held at a small number of locations (on occasion, far from their homes and those of any dependent children), in premises which were originally designed for (and may be shared by) male detainees. In these circumstances, particular care is required to ensure that women deprived of their liberty are held in a safe and decent custodial environment.'²¹

Lesbian, gay, bisexual and transgender (LGBT) people in prison also face discrimination. A study in the US shows that gay and lesbian young people in custody can be held in isolation ostensibly for their own protection. A court in Hawaii was given extensive evidence of assaults against such young prisoners.²²

'When I arrived at [the juvenile detention facility] they ripped the weave out of my hair, broke off my nails, wiped my makeup off, stripped me of my undergarments, and made me wear male underwear and clothes.'

From interviews with a young transgender prisoner in the US ²³

State institutions are obliged to prevent discrimination. Ensuring that penal policies take account of gender helps to identify discrimination against women and girls as well as men and boys in prison, and shapes actions to eliminate it.

3.3 To achieve prisoners' reform and rehabilitation

Prisons do not hold a representative sample of the adult population in any country. Discrimination in society at large is reflected in prisons. Poor people and those from socially marginalised groups are much more likely to end up in prison. Most people who come into contact with the penal system as defendants or convicted individuals are from the most disadvantaged groups in society, often with backgrounds of violence and sexual abuse. Four out of five women in prison in Canada report that they have been abused in the past.²⁴ However, more resources are spent by society on processing them through the criminal justice system and on their subsequent imprisonment than on repairing the harm suffered by them in their earlier lives.

Penal systems must recognise the needs of the population they are dealing with and ensure that help is

provided for victims of violent past lives. Many of the women in prison will need substantial counselling help to enable them to deal with their past experiences. Many juveniles and young people in prison come from violent home backgrounds or have been brought up on the street in some form of gang culture.

Dealing with these problems is essential if people from such backgrounds are to move on to living their lives without committing crimes and inflicting violence on others. If such problems are not addressed, prisons will continue to let people onto the streets upon release who may have become even more brutalised and damaged by their prison experiences. Many who enter prison as minor lawbreakers may emerge as more hardened and dangerous after release.

3.4 To promote better public health

Prisons are unhealthy places and many of those sent to prison are in very poor health. Diseases such as HIV/AIDS and Hepatitis B and C are much more common amongst prisoners than in the general population because they constitute a high percentage of poor people with limited or no access to health care, as well as a relatively high number of illicit drug users. Poor health conditions in prisons and sexual violence or sexual activity amongst prisoners can lead to the transmission of such diseases. Policies to make condoms available in prisons have been recommended by WHO and UNODC, and have been adopted in some countries.²⁵ Curbing the prevalence of transmissible diseases in prisons is vital, not least because prisoners take their infections home with them to their partners and children on release.

Women in prison have particular health problems that require specific attention. In some countries the rates of mental illness amongst women prisoners are very high.²⁶ Many suffer from various gynaecological conditions that need treatment. Women may also come to prison pregnant. In many countries, a baby born in prison may be allowed to remain there with the imprisoned mother, as may very young children who accompany their mothers to prison. Prisons thus become responsible for the protection, health and development of these children in their earliest years.

Consequently, ensuring that prison health care policies and practices take into account the different health needs of women, girls, men and boys is integral to promoting better public health.

3.5 To promote equal treatment and participation of men and women as penal sector staff

Women working in prison systems as employees also face discrimination and violence. They are often restricted to working either with women prisoners or in administrative roles and their prospects of moving up the hierarchy are limited. In only a few countries do women have the same employment opportunities as men and become directors of large prisons holding male prisoners.

Reports from a number of countries suggest that women working in prisons for men are subjected to harassment and discrimination from their male colleagues.²⁷ Similar treatment is also often reported by gay and lesbian employees.

4 How can gender be integrated into penal reform?

However reform is conceived and carried out, attention is needed to ensure that gender matters are considered. Too often prison manuals and reform guidelines are silent on the level of gender-based violence (GBV) in prisons, the particular needs of women and juveniles, and the discrimination prevalent in prison systems across all regions of the world.

No prison or penal reform context is identical, and men and women in different places have different needs. The following are suggestions for the integration of gender issues into penal reform, which may be adapted to the specific context in which the reform is taking place. Some particular challenges and opportunities that may exist in post-conflict, transitional, developing and developed contexts are discussed in Section 6.

4.1 Ensure that penal policies are appropriate to both male and female prisoners

Most penal systems operate, or are expected to operate, according to the law and to operating procedures. Little scope is given for discretion and individualised treatment. Rarely do sentencing guidelines incorporate any recognition of gender differences and their implications. Governments do not always collect the data that would enable judgements to be made about whether policies are appropriate to the whole population. This is problematic considering how penal policies have often been designed to meet the needs of male prisoners. To ensure that policies are more appropriate and non-discriminatory, the penal system needs to be analysed specifically to see how it can deal fairly with all (see Box 1). Areas to consider are:

- Use of **pre-trial detention** – Are women detained on the basis of different criteria than those used for men – e.g. regarding the need for psychiatric reports or protection – when detention is not necessary? Are family responsibilities taken into account when pre-trial detention is being considered?
- Does **sentencing practice** reflect gender-based disparities? Could sentencing guidelines and advice to the judiciary include consideration of the social impact of the sentence on those with primary caring responsibilities? *The Russian Penal Code stipulates that a prison sentence for a pregnant woman, or a woman with a young child, convicted of a minor offence is automatically suspended until the child reaches the age of 14. If the woman concerned is not re-convicted in the interim period, the sentence is not activated.*²⁸

- Does the system of **non-custodial sanctions** work well for women? Are they proportionately represented in such sanctions? ²⁹
- Does the prison population include substantial numbers of people with a **background of experiencing gender-based violence**? Would they be better dealt with in the health or welfare system?
- Does the **record-keeping** of the administration enable conclusions to be drawn about the treatment of different groups? Are all statistics broken down to show sex and age? Is this data made available to the public, the media and parliament so that groups concerned with women, LGBT people and children can assess the treatment these groups are accorded?

4.2 Ensure oversight and complaints mechanisms address gender

Introducing external monitoring and control is a key strategy for raising the standards in prisons and ensuring better treatment of prisoners. A competent body independent of the prison administration should be able to inspect the conditions of imprisonment, assess whether there is ill-treatment and report to a government entity that has the power to act on their findings. Effective complaints machinery is also a basic requirement. These mechanisms are essential because prisons are a closed world, holding some of the most vulnerable people in any society, and those who work in prisons have significant power over prisoners.

Oversight and complaints mechanisms fail to fulfil their role, however, if they are not sensitive to gender and discrimination and fail to identify and report on GBV.

Effective monitoring

Introducing a national monitoring or inspection system can:

- Help protect prisoners from abuse and ill-treatment, including gender-based violence.

- Promote a culture of respect where all prisoners, regardless of their sex, sexual orientation or origin, are treated with dignity.
- Create a climate where abuses such as GBV are exposed and not shrouded in a culture of impunity.
- Help protect men and women prison staff from false accusations through independent evaluations of complaints against them.

Inspection mechanisms can take different forms:

- Specially appointed judges
- Civil society organisations
- Specially appointed prison inspectors
- Human rights commissions
- International monitoring bodies

Not all inspection mechanisms are effective and not all pay appropriate attention to gender issues. Outsiders visiting prisons can easily be kept away from what the prison officials do not want them to see, especially matters relating to GBV, to which prison officials often close their eyes. Prisoners who have been victims of violence can be punished for speaking to inspectors. Compliant prisoners may be chosen to meet the inspectors and give them a rosy view. Civil society organisations, dependent on government support and funding, may not carry out the task adequately because of fears that their funding and recognition will be endangered if they speak out frankly about what they find, or because they lack the training or expertise needed to uncover sensitive issues such as rape.

To ensure effective inspection procedures that take gender into account:

- Those undertaking an inspection must be able to communicate with and gain the confidence of all prisoners. Inspection teams should, therefore, include men and women.
- Inspectors must have unrestricted access to all parts of the prison at all times so that no prisoners can be kept out of sight.
- Inspectors must have the right to carry out unannounced visits and be immediately admitted.

Box 1

External review of women's imprisonment in Australia

The Anti-Discrimination Commission of Queensland, Australia, carried out a review of women's imprisonment to establish how far the Department of Corrective Services met the requirement to provide corrective services 'through the humane containment, supervision and rehabilitation of offenders' without discrimination. The Commission concluded that:

- Security classification instruments and procedures could result in women being over-classified.
- The best interests of children are not considered, either in sentencing, or in prison.
- Mental health issues are often ignored.
- Women from indigenous groups face particular discrimination.

The report made a number of recommendations including better training for staff on non-discrimination and establishing an independent inspectorate reporting to Parliament.³⁰

This process demonstrates the advantages of having an independent body – with a concern for combating discrimination – review the penal system. A comparable review was carried out in England and Wales by a Member of Parliament. It recommended women's centres as an alternative to custody, and small local custodial units housing 20-30 women to gradually replace the system of women's prisons.³¹ Such external reviews will often come up with more radical recommendations for change than an internal review process.

Box 2 HM Chief Inspector of Prisons for Scotland: inspecting prisons for humanity, decency and respect

In order to make clear that he was independent and that he based his standards for imprisonment in the international human rights framework, the Chief Inspector of Prisons for Scotland commissioned a new set of inspection standards covering three areas:

- Safety
- Decency, humanity and respect for legal rights
- Opportunities for self-improvement and access to services and activities

Below is an extract of the *Standards Used in the Inspection of Prisons in Scotland* as regards searches and family visits.

Outcome

Prisoners are treated with respect by prison staff.

Standard

Security measures such as searching are carried out with regard to the protection of human dignity.

Indicators

- Prisoners are only subjected to body searches by officers of the same sex
- Body searches are not carried out in a humiliating way
- Strip-searching is never conducted on a routine basis and is only carried out for a good reason
- Prisoners are present when their cells or personal property are being searched

Outcome

Good contact with family and friends is maintained.

Standard

Family visits are given high priority in terms of frequency, duration and quality and are not restricted as part of any disciplinary or control process.

Indicators

- Family members are able to take part in the induction system for new prisoners
- Family members receive clear and helpful information about the visits system and there are special arrangements for transport to the prison if public transport is inadequate
- Arrangements for booking visits are transparent, easily understood and inexpensive
- Most prisoners can have a weekly visit of at least one hour
- Visits are not cancelled for administrative or for non-emergency operational reasons
- Time spent by the visitors with the prisoner is not reduced by long administrative procedures on entry
- Basic visit entitlements are not related to assessments of prison behaviour
- Closed visits are only imposed when there is strong evidence of abuse – not as a punishment – and their imposition is regularly reviewed
- If visitors are banned, the reasons are made clear, the decision can be appealed against and is reviewed at regular intervals
- Efforts are made to hold prisoners as near to their home area as possible
- If a prisoner is transferred the family is given adequate notice

These standards demonstrate how prison standards can take into account the differential impact of imprisonment on different groups, such as male and female prisoners. Standards should also seek to measure improved treatment of women and vulnerable groups, and any reduction in GBV as outcomes.

- Inspectors need to have received special training in the appropriate treatment of women, children in prison with their mothers, and other groups with particular needs.
- Inspection teams should include specialists with health expertise.

Effective complaints procedures accessible to all

Without a properly established and independent complaints procedure, prisoners are at the mercy of the prison authorities and have no way of seeking redress for abuse. This especially applies to GBV, where prisoners may be particularly stigmatised for complaining. In general, complaints mechanisms need to have the confidence of the prisoners.

To ensure effective complaints procedures that take into account gender:

- It should be possible to make confidential complaints.
- Prisoners must be protected from reprisals for complaining and the system should not contain disincentives to complain, such as punishment for making complaints that are not proven or are deemed to be 'false and malicious'.
- The existence of the complaints system and the way to access it should be publicised and known to all prisoners. Many systems have notices pinned up around the prison giving details of how to communicate with the complaints investigator or ombudsman's office.

- Prisoners should have easy access to the complaints machinery, both orally and in writing. Where the prison population is diverse, the information should be available in the relevant languages. Measures must be taken to ensure that non-literate prisoners understand and can access complaint mechanisms.

4.3 Eliminate discrimination in the way prisons are run

Reduce inappropriate levels of security

The comparatively small number of prisons for women means that there is often limited accommodation, and types of accommodation, for women prisoners compared to those available to male prisoners. For example, in a region where there might be four men's prisons of different security classifications, there may be just one women's prison. Where this is the case, that one prison's regime will be determined by the maximum security requirement. This means that women prisoners are particularly likely to be held according to a security classification that is stricter than could be justified by any assessment of the risk that they pose.³²

Further, security rules and procedures designed for male prisoners are often applied to women, although women's offences are less likely to involve violence and women often behave differently in prison. A recent report on women in prison in England and Wales concluded:

*'Levels of security in prison were put in place to stop men either escaping or uniting together to overthrow the authority of the jail. Women do not act in this way. Of course some women abscond but generally they simply go home because they cannot bear the separation from their children.'*³³

Prison reform includes ensuring that conditions in prison should be only as restrictive as is necessary for safe custody of prisoners and a well-ordered community life in the prison. It is not appropriate to have generic security rules that apply to all prisons, regardless of whether they hold men or women.

Different rules should be drafted for men's and women's prisons including those that apply to:

- Security measures in the buildings and around the perimeter, such as bars, barbed wire, high walls and armed guards
- Treatment of visitors and arrangements for family visits
- Procedures to be followed when women temporarily leave the prison – e.g. to go to hospital
- Arrangements for day release, day parole and home leave

Provide appropriate activities for women and other excluded groups

Many prisons provide no activities for any of the prisoners, men or women. In those that do, women often have access to the most limited opportunities, sewing being the most common activity.³⁴ Prisoners who are especially vulnerable, such as those with HIV/AIDS and those held in units for special protection from other prisoners, often also miss out on education and other activities.

Activities in women's prisons should be designed for the population that they hold. Basic education will be needed for many. However, the main objective should be to offer activities that help women to come to terms with their pasts and become more independent and self-sufficient. Such an approach can be adopted in all countries, whatever their resource level. In poorer countries, literate prisoners can teach others and volunteers from civil society groups can be involved. Training in agriculture and in making commodities that can be sold in the market will help women to be self-sufficient on release. Being self-sufficient after release is especially important for women from countries where imprisonment can bring such shame that no reconciliation with the family is possible.

In developed countries, programmes in women's prisons should be oriented towards building confidence and self-esteem, overcoming past traumatic experiences and current addictions, enabling women to access the services to which they are entitled in the community outside prison and establishing the basis for them to earn a legal living.

4.4 Ensure prison treatment is appropriate to the particular needs of men and women

Improving family contact

Family contact is very important when designing gender-responsive penal reform. It is important for male prisoners because it helps them maintain a link with the outside world and a relationship with their family and children, if they have them. For female prisoners, it can be even more important, as in most societies women have primary care-giving responsibilities for the family. Female prisoners are more likely than male prisoners to have been the sole or primary carer for young children and other family members, such as older relatives, prior to imprisonment. It is estimated that in the European Union, 700,000 children are separated from an imprisoned parent every year.³⁵ Separation from children greatly increases the anguish of imprisonment for mothers, and child-friendly visiting arrangements are very important. However, because there are far fewer women's prisons, women tend to be imprisoned further away from their families and therefore generally receive fewer family visits.

Family contact is also important to prison management and prisoner rehabilitation. Prisoners who maintain family ties while in prison display fewer disciplinary problems, have better physical and mental health, are more likely to reintegrate successfully into the community upon release and less likely to re-offend.³⁶

In a number of countries, the legal framework requires contact between pre-trial prisoners and their families and friends to be approved by the prosecuting or judicial authorities. Where they are permitted, restrictive conditions can apply, such as direct supervision by staff, very short contact durations and a prohibition on physical contact.³⁷ In many prison systems visiting arrangements for sentenced prisoners are a low priority. Visits can be infrequent and held in conditions that do not permit physical contact. Prisoner and visitor have to shout to each other through a Perspex screen or stand on either

Box 3

Abolition of internal physical searches of female prisoners ⁴⁶

In the women's remand prison in Moscow, it was the practice to carry out an internal physical search of every woman prisoner on admission. This practice was justified on security grounds to ensure that no illegal or forbidden articles were brought into the prison. In reality, it was used as a means of subduing new prisoners and of impressing upon them from the outset the need to conform. The United Kingdom partners working on the prison improvement project were shocked and convinced their Russian partners that there were no security justifications for this practice and that it constituted a gross personal violation. In addition, it was far more disruptive to the running of the prison and to the health of the prisoners than any concern about drugs being smuggled into the prison. After the first year of the project, the Russian partners agreed to cease these automatic searches and to use them only in individual cases where there was an identified security need. Statistical evidence suggests that criminal activity has decreased rather than increased since this change took effect.

Another reform was to ensure that female staff unlocked women's cell doors. Under Russian prison rules a male must be present when cells are opened, but staff were persuaded that only women should open women's cells and be the first persons to enter them, although male staff members could be present in the corridor.

side of a grille. In Mauritius' women's prison in 2001, women were separated from their children by a glass panel, an aspect of prison life which women found particularly distressing.³⁸ In its visit to Ireland in 2002, the CPT found in one prison that 'the visiting facilities offered no privacy and became very noisy when several prisoners received visits at the same time.'³⁹ Some systems do not permit children to visit at all.

Improving arrangements for visits should be a high priority in gender-responsive penal reform. The following should be considered:

- Prisoners should be held as near to home and family as possible.
- Where prisoners must be held far from home, the model found in countries of Central Asia, Eastern Europe and North America (Canada and California) of three-day family visits in an apartment in the prison or the prison grounds should be considered.
- Opportunities to visit prisoners should be as extensive and flexible as possible.
- The frequency and quality of visits should not be dependent on behaviour and modified or otherwise affected as punishment.
- Visitors should be treated with respect and security measures should not be degrading and humiliating.
- There should be no form of screen or physical barrier separating prisoners and their visitors, unless there is a compelling reason for this in the particular prisoner's case, and any such restrictions should be regularly reviewed. In particular, physical contact with children should be permitted.
- Visiting facilities should be comfortable, welcoming and allow for privacy and positive activities.
- Prisoners should not be required to wear distinguishing and demeaning clothing during visits.
- Family visiting days should be encouraged in women's prisons. At Emu Plains prison in New South Wales, Australia, on weekends and public holidays visitors are allowed into the prison from 08.30 until 11.30 with a break for lunch, and then from 12.30 to 15.30.
- Private "conjugal visits" are commonplace for male prisoners in many regions of the world. Prison authorities must make sure that female prisoners have access to conjugal visits equal to that of male prisoners. WHO recommends that condoms be made available for family visits in prison 'without a

complicated or demeaning procedure to obtain them, such as having to request them from staff.'⁴⁰

Preserving human dignity

The requirement that all prisoners be treated with humanity and with respect for their dignity is a fundamental and universally applicable rule. It applies to all elements of prison life, including such intimate matters as personal appearance and the performance of bodily functions. Matters to do with bodily privacy are very important for men and women in certain cultures. Prisoners must not have to expose themselves naked, particularly to people of the opposite sex. Arrangements for security and mixed gender staffing must take this into account.

'We strip ourselves each day in front of persons unknown to us and we are told that that is the way we lived back home so what are we complaining about. At home we do have a sense of 'laaj' (shame and dignity) and it is assumed that when we come here as prisoners we have lost all the fine emotions that a woman as woman has.'

A woman prisoner in India ⁴¹

To be treated with respect for their dignity, prisoners must be able to keep themselves clean and carry out bodily functions in private. The CPT standards on women in prison state: 'Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels and tampons, are of particular importance. The failure to provide such basic necessities can amount, in itself, to degrading treatment.'⁴²

Matters to be considered include:

- Arrangements for privacy when people are required to remove their clothing
- Privacy in toilets and showers
- Use of privacy locks on cell doors
- Provision of hygiene items for women
- Minimising indignity in the way urine and other samples are collected for drug-testing

Prisoners must only be subjected to personal physical searches when necessary and then as unobtrusively as possible. Searches by personnel of the opposite sex are controversial.⁴³ The CPT standards specify that: 'Persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender.' The Supreme Court of Canada ruled in 1993 that female staff may frisk male prisoners and look into their cells without warning but did not allow male staff to frisk women prisoners.⁴⁴

Female prisoners are likely to find strip searches particularly traumatic, and policies regarding strip-searching should be separately and carefully formulated as regards female prisoners.⁴⁵ Strip-searches must never be imposed as punishment. Where the strip-searching of a woman is deemed justified in particular circumstances, male staff members should never be present (see Box 3).

4.5 Prevent and respond to gender-based violence in prison

Prisons should be run according to the rule of law. Thus, staff should never assault or harass prisoners and have a duty to ensure that prisoners are safe and protected from violence inflicted by other prisoners. In many countries, prison staff are rarely prosecuted for abuses of the law. Whilst it is important to ensure that crimes against prisoners are dealt with through the justice system, preventive measures should also be in place.

Such measures include:

- Appropriate legislation (see Box 4)
- Well-trained and competent management
- Oversight of prisons by independent outside bodies

- Effective complaints machinery
- Protocols for response and investigation (see Box 5)
- Staff training
- Medical services accountable to the health authorities rather than to the prison administration

4.6 Ensure access to health care for male and female prisoners

Health care is a particularly important aspect of prison life. Prison populations everywhere contain an over-representation of people from the most marginalised groups in society, with poor health, chronic untreated conditions and mental health problems. Many of those who engage in activities with high health risks, such as injecting drugs and commercial sex work, end up in prison. Rates of hepatitis B and C are much higher in prison than outside.⁵¹ Rates of HIV infection in prison can be 75 times higher in prison than in the outside society.⁵² For example, while prisoners represent only 0.01% of the total Spanish population, they account for 7% of AIDS diagnoses.⁵³ Women in prison come from backgrounds of violence and abuse in much higher proportions than male prisoners. Rates of mental illness are higher amongst female prisoners than amongst male prisoners. Children in prison often come from disturbed family backgrounds where abuse is common.⁵⁴ Within prisons, health risks are high, including exposure to sexual and other forms of violence.

'There are 22 of us in our cell, and two of my cell mates have juveniles as 'wives'. They got them by bribing the Prison Officers at the main gate. These juveniles agreed to have sex with these men because they had no clothes and no blanket, and they were hungry. One day these boys started to cry and refused to have sex. The

Box 4 Legislation on prison rape in the United States

A 2000 survey of inmates in seven US men's prison facilities showed that 21% of the inmates had experienced at least one episode of pressured or forced sexual contact and at least 7% had been raped.⁴⁷

In the US, an organisation called Stop Prisoner Rape has been campaigning for years against this abuse. The founder, Steve Donaldson, was himself gang-raped when he was held in a jail in Washington DC in 1973 for protesting against the US bombings in Cambodia. In 2003, 30 years later, the Prison Rape Elimination Act was signed into law. The law calls for the gathering of national statistics on rape in US prisons, the development of guidelines for states about how to deal with prisoner rape, the establishment of a review panel to hold annual hearings and the provision of grants to states to combat the problem. Steve Donaldson died in 1996. He had been infected with HIV as a result of having been raped in prison.⁴⁸

An evaluation of the first three years after the Act became law shows considerable progress in work to reduce prison rape through:

- Developing policies (rather than secrecy and denial)
- Prevention (through more considered location of prisoners, less overcrowding and prisoner education)
- Investigation and prosecution
- Victim services
- Staff training
- Collaboration with non-prison agencies⁴⁹

This demonstrates how determined campaigning over many years can bring gender-based abuse into the open after much denial, and how changes in the law can lead to practical measures to mitigate its frequency.

Box 5 12-Step protocol for responding to and investigating allegations of sexual assault in prisons

The State of Oregon in the US has instituted a protocol on sexual assault to protect inmates from further victimisation and to ensure that prison staff engage in effective evidence collection, investigation techniques and documentation.

1. When there is a reported incident by an inmate, the staff member
 - a. Notifies the officer in charge (OIC)
 - b. Ensures that the victim is safe and kept separated from the aggressor
 - c. Ensures that the victim does not shower, eat or drink until completion of evidence collection
 - d. Secures the incident area and treats it as a crime scene until the investigation is completed
2. The OIC isolates the victim through transfer to the health services and asks the victim to disclose when and where the assault occurred and who committed it, in addition to other relevant questions.
3. The OIC notifies the health services of the sexual assault and the health services provide the necessary and appropriate treatment without compromising evidence.
4. The OIC notifies the (in-prison) Sexual Assault Response Team about the status of the victim.
5. If the report is made within 72 hours of the assault, the OIC places the suspected inmate aggressor in a dry segregation cell; if authorized, the OIC interviews the alleged aggressor; and secures clothing both from the latter and the victim.
6. The OIC notifies the investigations unit in order to coordinate the investigation response by the Oregon State Police.
7. The OIC notifies the Oregon State Police of the sexual assault.
8. The OIC notifies and briefs the assistant superintendent of security, the institutions administrator and the communications manager.
9. The OIC works with the institution's health services' staff to arrange for transport to the local hospital for treatment, examination, documentation, collection of forensic evidence, testing for sexually transmitted infection and referrals for counselling.
10. The OIC prepares a trip authorization and assigns staff to escort.
11. For cases handled by the Oregon State Police, the OIC maintains the crime scene and chain of custody for evidence until it is released to the Oregon State Police and prepares an unusual incident report.
12. If the sexual assault is reported more than 72 hours after the alleged incident, the OIC, in consultation with the sexual assault liaison and Department of Corrections investigators, review and apply appropriate steps and work with the institution's health service staff to determine whether to have on-site medical evaluation versus transport to the local hospital.⁵⁰

men took away their blankets and after spending a night in the cold they agreed to allow the men to have sex with them again. We try to tell these boys that they will die of AIDS, but what can these boys do?'

A prisoner in Malawi ⁵⁵

Health care provided in many prison systems is grossly inadequate. Linking prison health more closely to public health and establishing the supremacy of public health principles is a very important aspect of reform. Doing so is likely to have the following benefits in ensuring that penal reform takes account of the different needs of male and female prisoners:

- Women prisoners should have access to a woman doctor on request.
- Medical staff not employed by the prison authorities will find it easier to make independent judgements and to always put the needs of the patient before the requirements of prison management.
- Inappropriate security measures (e.g. shackling women to beds during hospital visits, gynaecological examinations or labour) should never be employed; condoms should be made available as well as harm-reduction measures for drug-users.

- Measures should be taken that are consistent with good public health norms, such as enhanced diets with adequate protein content for pregnant and breast-feeding mothers, ante and post-natal care of a standard likely to be found in the outside community, and ensuring that medical staff dealing with women are appropriately trained.
- Ensure the transfer of acute mentally ill cases from prison to a health setting, and support the provision of counselling services for victims of past violence and abuse as well as for perpetrators of abuse.
- Ensure that GBV can be reported to medical personnel without fear of reprisals.

4.7 Meet the needs of pregnant women and mothers of young children

One of the most difficult problems faced by prison systems when dealing with women is to ensure the appropriate treatment of pregnant women and mothers of young children. Poor prison conditions, lack of proper care and facilities, and the high level of stress that accompanies incarceration may place at risk both the

Box 6 Mental health and care of women in prison in the Andhra Pradesh region

The Indian organisation Penal Reform and Justice Association (PRAJA) organised week-long Health Camps at two jails in Hyderabad and Rajahmundry, as part of a programme to promote the mental health and care of women in prison.

During the Health Camp sessions:

- Eyes were tested for disease and weakness. 69 pairs of spectacles were distributed to those with weak eyes. One person had a cataract condition.
- Eye drops, vitamins and other medicines were issued.
- A blood-testing unit identified prisoners' blood groups and distributed cards to each prisoner.
- All women underwent a general screening, then a gynaecology camp was organised. Four gynaecologists and paramedical staff conducted tests. Some women had pre-menopausal symptoms, a few had acute menstrual problems, many had urinary problems, and others had conditions related to being generally run-down.
- Dental examination showed that the women's oral hygiene was in a bad state. They received general medical advice on the importance of oral health.
- Ear and throat infections were treated and preventive measures proposed.⁵⁶

PRAJA's Health Camp project demonstrates how, even in a very poor country, it is unacceptable for prisoners not to be given minimum standards of health care. Methods can be found to enable basic rights to be delivered with limited resource input.

health of a pregnant woman and that of her unborn child. Pregnant women should only be held in prison in the most extreme circumstances, such as when there is a concrete threat of violent crime. As the Special Rapporteur on Prisons and Conditions of Detention in Africa has said:

*'Prison is not a safe place for pregnant women, babies and young children and it is not advisable to separate babies and young children from their mothers. However, it is possible to find solutions so that these women are not imprisoned: use of bail for remand prisoners, non-custodial sentences or conditional/early release, parole, probation, [or] suspended sentences for convicted [female] prisoners.'*⁵⁷

If a woman is pregnant in prison, special provisions must be made for ante and post-natal care and treatment. It is well established in international human rights standards that babies should not be born in prison. If they are, their births must be registered, but the birth certificate should not state that the birth took place in prison.⁵⁸ Measures of physical restraint, such as shackles or straightjackets,

should never be used on a pregnant woman or woman giving birth, unless there is a compelling reason to do so.

Arrangements for the care of babies born to imprisoned mothers and the care of young children of imprisoned women vary across the world, from taking children away from the mother at birth, to enabling the child to stay with their mother until six or more years old.⁵⁹ Either solution presents a dilemma. As stated above, a prison is not an ideal place in which to bring up a baby, but separating a baby from its mother is damaging to its development even when there is a suitable alternative home for the baby.

The best solution is for pregnant women and those with young children not to be sent to prison. In all decisions made concerning a child of a woman in prison, consistent with the *Convention on the Rights of the Child*, the best interests of the child must be a primary consideration.⁶⁰ Such decisions must be made with regard to the responsibility of the state to ensure the child special protection and assistance.

Box 7 Special provisions in the Russian Penal Code for pregnancy, mothers and children

As described above, the Russian Penal Code provides for suspended sentences for a pregnant woman or a woman with a young child convicted of a minor crime. In other cases, the Code accepts that pregnant women be imprisoned and that babies born in prison stay with their mothers under the following conditions:

- A woman in pre-trial detention who has children under three may bring them with her, and they are entitled to improved living conditions, specialised medical service, increased rations and clothing, a longer time out of their cells and are not to be put into punishment cells.
- In penal institutions, nurseries may be set up where children of female inmates can be provided care until they reach the age of three.
- Pregnant women and women with children have the right to extra food donations via mail or provided during visits, and to a specialised medical service.
- Pregnant female inmates or those with children in the nurseries receive at least 50% of their wages, pensions, or other incomes in their personal accounts.
- Female inmates with infants at the penitentiary's nursery, and female inmates relieved from work because of their pregnancy or having recently given birth, may not be placed in punishment cells or prison-type cells.⁶¹

Where children do live in prison with their mother, **special provisions must be in place to ensure that the child's rights are promoted and protected** whilst they are in prison, and throughout any separation period from their mother that may follow:

- Child welfare, rather than prison authorities, should have primary responsibility for making decisions regarding children in prison.
- Arrangements need to be made that minimise the restrictive nature of imprisonment for children, promote bonding between mother and child, and give children access to as many normal experiences as possible.
- Mechanisms must be in place to protect children in prisons from all forms of physical or mental violence, including sexual abuse, neglect or negligent treatment.
- The situation in the countries of Central Asia and Eastern Europe, where children are kept in a nursery, looked after by professional carers and visited periodically for a number of hours by their mothers, is less desirable than the arrangements in other countries where children and mothers live together in special units.

In some countries, mothers have their children removed and put into the care of the state when they go to prison. On release, they need to re-establish a stable home to regain care of their children. One British study found that: 'Half the mothers nearing release were not expecting to return to their previous accommodation, almost 4 out of 10 had lost their homes and there was an increase in the number expecting to be homeless.'⁶² Release of such prisoners requires specific planning and support, with emphasis on secure housing and support for family reunification. Civil society groups can make a contribution by assisting with social reintegration – e.g. by providing halfway houses and refuges for women.

4.8 Ensure appropriate and skilled prison staff

Training

In many countries, the training of prison staff is grossly inadequate for the tasks they are required to perform. Even in countries where it exists, staff training rarely addresses the specific problems and needs of women

Box 8

Equal opportunities in employment in England and Wales

The Prison Service in England and Wales has a range of policies and structures designed to ensure equal opportunities in employment. For example:

- The Prison Service's Equal Opportunities Policy says that prison officers who have undergone gender reassignment and been accepted by the Prison Service in their acquired gender may carry out the normal physical searching duties of an officer of that sex.⁶⁴
- GALIPS is the Prison Service Staff Support Network. It supports all staff and managers, regardless of their sexual orientation, and advises on LGBT issues. Membership of GALIPS is free and is open to all staff with an interest in LGBT issues, those seeking help and advice and anyone wishing to support the network, whether or not they identify as LGBT.
- In 2007, an agreement was signed between the Prison Service of England and Wales and the Equal Opportunities Commission on an Action Plan to deal effectively with sexual harassment in the Prison Service. The agreement is the outcome of a process that began in 2005 when the Equal Opportunities Commission decided it would carry out an investigation into the 'frequency and persistence of sexual harassment against women and men' working for the Prison Service.

The agreement commits the Prison Service to work:

- To determine the incidence of sexual harassment of staff within the Prison Service.
- To create a culture in which sexual harassment is unacceptable and in which the standards of behaviour required are readily understood by all staff.
- To ensure that sexual harassment is tackled and dealt with effectively and consistently, throughout the Prison Service.
- To ensure that managers fully understand their duty to prevent sexual harassment and put this into practice on a day-to-day basis.
- To make it easy for employees to complain of harassment and to support complainants during and after their complaints procedures.
- To ensure that complainants have confidence in the complaints procedures and that complaints will be dealt with promptly, transparently and appropriately.
- To take steps to implement systems which will ensure recording and monitoring of all informal and formal complaints of sexual harassment.
- To deal with the perpetrators of harassment appropriately.

Specific actions that the Prison Service will undertake include:

- A review and analysis of formal complaints of sexual harassment over a 12-month period to identify the characteristics of harassment complaints, the consistency of approach in dealing with complaints and the lessons learned.
- A review and written analysis of 10 randomly chosen complete complaint files for each of the two years.
- A survey of male and female staff and focus groups of staff to ascertain: the incidence of sexual harassment; the nature and extent of sexual harassment experienced or observed; whether staff feel free to complain and, if not, why not and whether they feel confident in the complaints procedure and, if not why not; and the most effective measures that can be taken to prevent such harassment.⁶⁵

and other vulnerable groups, or the differences in men's and women's prisons. Training and regular staff development is essential if prison staff are to be able to carry out their tasks in a manner that responds to gender differences. Training must make staff more sensitive to the vulnerability of men and women prisoners to abuse, as well as to policies and procedures for preventing and responding to abuse.

See Tool on Gender Training for Security Sector Personnel

Recruitment

Recruitment policies should take into account the fact that prison work is much more than being a security guard. Prison staff require various skills to provide human services, and prison work has to be carried out within an ethical framework that complies with international human rights standards. The recruitment process must eliminate unsuitable candidates whose profiles suggest they are likely to resort to violence or to abuse their power over others. Job descriptions, recruitment procedures and criteria for advancement must reflect the human service requirements of a prison officer's role.

Prison standards require that women prisoners be attended and supervised only by female officers. Women are placed at particular risk of sexual and physical abuse when male staff are employed in inappropriate capacities in women's prisons. It is thus essential that prison staff recruitment programmes foresee the hiring of a sufficient number of women. This may require special measures such as targeted outreach campaigns in the media, schools and communities; family-friendly employment policies; and special provision to ensure the retention and advancement of female staff.

See Tool on Police Reform and Gender for comparable strategies to recruit female police officers

Equal treatment of women and lesbian, gay, bisexual and transgender staff

Whilst women have worked in women's prisons for many years, the employment of women in men's prisons is a more recent development. In countries where women work in men's prisons, they have faced discrimination and harassment from their male colleagues, as have LGBT staff.⁶³

4.9 Engage civil society organisations

An important way of ensuring that gender issues are properly addressed in prisons is through increasing the involvement of civil society organisations, which can have extensive experience and expertise in gender issues.

Civil society organisations can become involved in:

- **Providing services to prisoners**, such as support to women needing counselling or other help to recover from abuse and addictions, counselling for those with HIV/AIDS, programmes for perpetrators of violence, training for women so that they can find employment on release, friendship and support to children with no families, as well as bringing aid such as medicines to women, children and other vulnerable prisoners.
- **Human rights work** to draw attention to gender issues in penal systems, by participating in providing alternative reports to bodies such as the UN Committee on the Rights of the Child, the UN Committee Against Torture and to the relevant regional mechanisms, and using the law where there are flagrant breaches.
- **Capacity-building** of penal system staff as well as human rights, anti-discrimination and penal reform groups, to inform and assist them to incorporate a gender perspective into their work.
- **Raising awareness** of the public, parliamentarians and oversight bodies of the need for policy changes and specific measures to address discrimination and poor treatment in prisons.
- **Auditing** the penal system for gender awareness and advising on appropriate policy responses.

See Tool on Civil Society Oversight of the Security Sector and Gender

4.10 Build public support for penal reform

Public support for penal reform is not easily obtained. Reforms that aim to reduce the number of prisoners or improve prison conditions can be hard to introduce. All those involved in penal reform – prison administrators, politicians, media and civil society groups – need to work continuously to keep the public involved in a debate about imprisonment and its use. Regular information, reports and statistics need to be produced and publicised.

Box 9

Women's civil society in Yemen

In Yemen, the Women's National Committee promotes dialogue with decision makers to ensure justice for women. Until recently, women prisoners who had completed their sentence were forbidden to leave prison unless a male guardian collected them. The Women's National Committee put pressure on the Ministry of Interior and got this unfair rule changed. The Yemeni Women's Union, supported by Oxfam in five districts, has 36 volunteer lawyers who provide free legal support to poor women in prisons, courts and police stations. As a result of their legal assistance, 450 female prisoners were released in 2004 and 2005.⁶⁶

Support for improving the treatment of women and other vulnerable groups in prison may be more easily obtained than support for reform more generally. The government should produce information about women and children in prison that is easily accessible and not buried at the back of long reports. By involving civil society groups concerned with women and children and ensuring that prisons cooperate with such groups by giving them such access, various activities can be generated that can build public support.

5 Integrating gender into penal reform in specific contexts

5.1 Post-conflict countries

Background

States emerging from a period of conflict or internal turmoil present particular penal reform challenges. Against a background of many pressing priorities, such as rebuilding the infrastructure and re-establishing basic institutions, rebuilding a penal system is sometimes seen as a low priority. From the outset, it is important that the relevant state administrative body accepts the need for detention facilities to be provided and run, and allocates sufficient resources for these purposes.

Challenges and opportunities for integrating gender

Rebuilding a penal system is very complex. Major considerations are:

- The existing local situation regarding prisons needs to be understood. Prisons may have very bad associations for the population of the country: detention without trial, rape, torture and execution. Rebuilding may be an opportunity to start with a clean slate and establish a system that will be less abusive, more gender responsive and more trusted by the people.
- The original prison system may have been dysfunctional or completely out of accord with the rule of law and gender equality. It may have been run by the police or the military, contrary to good human rights practice. If so, a different model of imprisonment needs to be created, but there is a danger that models from outside the country and inappropriate to its circumstances will be imported. A prison system must be re-established in a manner sensitive to the cultural and social environment, whilst also making efforts to introduce ideas such as better treatment for women and the employment of women staff.
- If a pre-conflict public prison service still exists and can be re-established quickly, the post-conflict environment may provide an opportunity to vet staff that have been involved in abuses and retrain other staff in a human rights approach that is gender sensitive.

- Before the conflict, there will have been a prison law in force but it may have been inadequate, out of date and disregarded because of its obsolescence. Yet, any place of detention set up in a post-conflict international intervention must be administered according to law, since the remit of the intervention is to assist in re-establishing a law-bound state. In the transitional period in 1999, the International Force for East Timor established a rudimentary prison law based on international standards which ensured no discrimination, regular visits by independent outsiders, norms for searching detainees, accommodation, hygiene, food, facilities for making purchases, exercise, the practice of religion and access to medical treatment.⁶⁸ Starting prison reconstruction with a system that respects human rights and ensures no discrimination provides a good basis for the eventual construction of a gender-responsive penal system.

Tips

- In post-conflict situations, understanding the different needs and roles of men and women is particularly important, especially if sexual violence was used in the conflict. Foreign forces and international bodies coming into a post-conflict situation to rebuild a prison system will need considerable training in cultural awareness and gender sensitivity.
- Handover from the police and the military to a civilian prison service as soon as possible.
- When rebuilding a system that existed before the conflict, consider working with more junior members of staff who will have had less responsibility for past abuses and are more likely to be receptive to a human rights based, gender-responsive approach.
- Where prison staff from other states are brought in to manage prisons in the transitional phase, it is important to ensure that the men and women selected have experience in dealing with female and young prisoners. Recruiters should look for cultural sensitivity and good communication and interpersonal skills, exemplary personal history and gender sensitivity.
- Where visits to other countries are part of penal staff training, it is important that it includes exposure to good practice in gender matters and meetings not only with officials but also with civil society groups concerned with gender issues.
- Ensure that accurate information about the prisons, the regime and the treatment is in the public domain, so that rumours related to alleged ill-treatment and sexual and other abuse can be quashed. Family visits are important, not only for the families involved, but so that families can dispel any rumours concerning alleged ill-treatment.

5.2 Transitional countries in Eastern Europe and Central Asia

The countries of Central Asia and Eastern Europe (called transitional countries after 1989 as they were deemed to be in transition to a new form of government) are

Box 10 Women in prison in Afghanistan ⁶⁷

Tordai and Shafiq – along with another 12 female inmates and their 15 children – share a detention facility with 236 male prisoners in a mud-built compound, which was originally Mazar city's traffic police department. The building has only two small yards and just nine cells for both male and female convicts.

The lack of space means those awaiting trial languish with the convicted in the same cells. According to the prison director, Colonel Abdulrub: 'In addition to a lack of proper medicine and health care here, the issue of very old and overcrowded rooms is another trouble for prisoners living in this compound,' adding that up to 30 prisoners were living in a room originally built for 10 inmates.

Prison authorities in Mazar also complained about a lack of foodstuffs, as well as proper medical and education facilities for children living alongside their mothers in the prison. 'The government is only providing less than US \$1 for each inmate per day, which cannot even buy their dry bread,' a prison official said.

Human rights bodies have expressed concern over poor prison conditions in the destitute central Asian state. There are 34 prisons across the country and many lack separate buildings for female prisoners, who are often kept in prison cells originally built for male inmates.

'Some 90 children are living with their mothers, who have been charged with different crimes, without any kindergartens and other facilities for their development in all the prisons of the country,' the same prison official claimed.

'Prison conditions in Afghanistan remain extremely poor and prisoners generally have to rely on relatives for their food and other expenditures,' the Afghan Independent Human Rights Commission said in its annual report for 2005. 'Prisons and their staff are severely under-resourced and no training is provided to them about caring for prisoners or their duties with regards to the human rights of prisoners,' the report read.

According to the report, the rights body had helped secure the release of 1,386 illegally detained persons and removed 27 children from adult prison cells in 2005.

governed by varied regimes in regards to penal reform. Countries in Eastern Europe and the Caucasus are now in the Council of Europe and are bound by the *European Convention on Human Rights* and the guidance instrument, the *European Prison Rules*. In Russia, there have been substantial reforms in the direction of a more human rights-based system since the breakup of the Soviet Union. In Central Asia, the Russian model of imprisonment has been maintained but changes have been made to bring it more into line with human rights norms and the rule of law.

Challenges and opportunities for integrating gender:

- Legal provision is made for different treatment of women in prison and women with babies in prison, which could provide a platform for reform.
- The Council of Europe framework gives the possibility of basing reform on the non-discrimination elements of human rights requirements.

Tips

- Women's professional organisations, such as women lawyers' and doctors' groups, can be encouraged to take an interest in helping women in prison.
- Member countries of the Council of Europe are subject to visits by the CPT, whose findings are usually published with the government's reply. These reports usually pay particular attention to gender matters. Civil society organisations and parliamentarians can use them as the basis for awareness-raising.

5.3 Developing countries

Prison systems in many developing countries, including sub-Saharan Africa and the countries of the English-speaking Caribbean, are based on the legacy of the former colonial power. In former British colonies, prisons often follow a standard British design and incorporate aspects of prisons in Britain, as they were in the past. Economic pressures and failures in governance mean that prison conditions are usually bad and often life-threatening. Prisons in Francophone Africa follow the French legal system but here too conditions are often very poor. In Bangladesh, India and Pakistan, the former colonial influence is also strong. In these countries, the idea of imprisonment was imposed by colonialism on systems that were often more attuned to restitution than retribution. The formal justice system is only one part of a much wider set of options for dealing with acts that society views with disapproval.

Women and juveniles in prison in these countries suffer a range of problems. Women in some countries can be imprisoned for dowry-related offences, for adultery or being a rape victim. They are likely to be disowned by their families and may lose access to their children. In those countries, where survival depends on food and medicines being brought in by families, they are at a great disadvantage. Juveniles are often not separated from adults and are in great danger of abuse.

In South East Asia, the prison system is usually highly regimented, with strict rules about how blankets should be folded and how prisoners should sit. The ideology underlying these prison systems is that prison should be a place of reform where prisoners are supposed to give up their wrong way of thinking and return to the fold. Many women are imprisoned for low-level drugs offences.

On 14 February 2002 high-ranking Corrections Department officials escorted an Amnesty International delegation on a visit to Lard Yao Women's Prison, Nonthaburi Province, on the outskirts of Bangkok. Corrections officials acknowledged problems of overcrowding and the dangerously high prisoner to guard ratio. As is the case with most prisons in the Kingdom, severe overcrowding is due to a very high level of arrest and imprisonment of drug users and traffickers.⁶⁹

Challenges and opportunities for integrating gender:

- Discrimination against women is often widespread in these countries and the penal system reflects this, as regards treatment of both female prisoners and female prison staff.
- Addressing past violence and sexual abuse is likely to be hampered by taboos about recognising the existence of such problems, and therefore counselling is unlikely to be available. Similarly, efforts to combat sexual violence in prisons are likely to confront a conspiracy of silence.
- When working in very poor countries to improve the prisons, it is necessary to find low cost solutions that are sustainable and make sense from a local economic point of view.
- In poor countries, the prison system may be able to benefit from the help of organisations – such as the International Committee of the Red Cross or *Medicins Sans Frontières* – in meeting the health and other needs of detainees.

Tips

- It is wise to understand the role that imprisonment plays in the system and the culture as well as the issues that affect women and other groups in the wider society before embarking on gender-responsive penal reform.
- Prison regimes for women in developing countries need to take into account the likelihood of abandonment and destitution on release from prison and make efforts to provide women with an alternative means of earning a living.
- Getting children and juveniles out of adult prisons and into more suitable surroundings can be achieved with the involvement of outside organisations such as UNICEF. Other UN agencies and NGOs might support efforts to improve conditions in women's prisons.

5.4 Developed countries

Just because countries are rich does not necessarily mean that their prison systems are models of good treatment, with no discrimination and conscientious observance of human rights laws. In fact, the CPT, which visits all places of detention in the 47 member states of the Council of Europe, finds much that needs changing in the Western European countries and in the relatively less affluent countries of Eastern Europe.

For example, in a visit to the Czech Republic in 2006, the Committee reported on the case of a Ukrainian prisoner, F, who was being held in a confinement cell for 'destroying prison property'. He was 'a slight man who [was] gaunt and tremulous'. The delegation 'formed the view that F had been repeatedly raped and physically abused while in Valdice Prison. Moreover, during his time in Section E he had been subjected to forced anal and oral intercourse with three different prisoners, and had also been obliged to masturbate them'.⁷⁰

Some developed countries are seeing a trend of high and rapidly increasing use of imprisonment and particularly rapid increases in the use of imprisonment for women. In England and Wales the number of women in prison has more than doubled over the past ten years.⁷¹ In the US, between 2000 and 2006, the female incarcerated population grew by 3.3 per cent a year whilst the male incarcerated population grew by 2 per cent.⁷²

Developed countries are more likely to have equal opportunity employment policies that lead to mixed staffing and, in some countries, women have reached the top of the prison administration or have become directors of large prisons holding only men. There are still, however, problems of harassment against women staff and sexual abuse of prisoners.

Challenges and opportunities for integrating gender:

- A hardening political climate against lawbreakers and the use of imprisonment when treatment would be more appropriate, particularly in connection with the use of illegal drugs, has adversely affected women in the criminal justice system in some developed countries.
- Developed countries tend to influence the penal policies of developing countries through their aid and also set the agenda of the donor agencies, so those policies unfavourable to gender-sensitive penal reform are exported.
- Prison populations are increasing in many developed countries with no commensurate increases in resources, so training in the special needs of women and other vulnerable prisoners and programmes for prisoners such as counselling for victims of past abuse are suffering.
- However, most developed countries have:
 - Active and relatively well-resourced civil society organisations campaigning for prison reform as well as a range of organisations bringing help and support to prisoners and assisting with their social re-integration.
 - Welfare systems that ensure prisoners leaving prison, especially women with children, are not left destitute.
 - Human rights bodies monitor the treatment of those deprived of their liberty and in discrimination.
- Countries in Europe are bound by European Union anti-discrimination laws and requirements covering gender and sexual orientation and by the *European Convention on Human Rights*, which outlaws discrimination, and their representatives in the European Parliament take an interest in human rights and anti-discrimination matters.

Tips

- The media are particularly influential in shaping attitudes to crime and punishment. Good media coverage of the use of prisons for women and the problems involved can be effective in bringing about change.
- European Union and Council of Europe anti-discrimination laws have not been widely used to improve the situation of women in prison, but it has that potential.
- The CPT is a unique European resource covering 47 countries that has paid detailed attention to women in prison and to gender violence. Civil society groups might work to ensure that its reports are well known and its recommendations to governments are implemented.
- Donors supporting penal reform in other countries can work to ensure that gender issues are addressed.

6 Key recommendations

1. **Assessment and information collection:** Analyse the penal system to ensure its impact is not discriminatory and that it deals fairly and equally with all those it affects, including personnel and the families of prisoners. The official data collection of the penal system should provide information broken down by sex, use of pre-trial detention and sentencing level and length, and ensure that data on the incidence of violence is available and shows the level of gender-based violence.
2. **Oversight and monitoring:** Ensure that systems of inspection monitor gender issues, and that the reports of the inspectors are published and receive a government response. Inspectors must be independent of the prison administration and have access at all times to all places of detention. Inspection teams should consist of both men and women, and have access to medical expertise.
3. **Complaints mechanisms:** Put in place in all prisons credible complaints systems, so that incidents of gender-based violence can be reported without the complainant being victimised.
4. **Appropriate security and activities:** Ensure that women prisoners are not subject to a higher degree of security than is warranted by the level of danger they present. Educational and vocational activities in prisons should be appropriate to equip men and women for self-reliance when they leave prison.
5. **Family contact:** Put family contact at the centre of the prison's activities, as a route to humanising the prison regime and holding families together. Family contact should never be withheld or reduced as part of the disciplinary system. Visits that do not permit personal contact should only be imposed when there is clear evidence of a security risk.
6. **Human dignity:** Ensure respect for human dignity is a high priority in the management of prisons and in the procedural rules. Clear and unambiguous rules should state that male staff should never search women prisoners, nor be permitted in the area where women dress and take showers. Prison procedures, in particular as regards strip-searching and internal searches, should be based on actual requirements as regards male and female prisoners.
7. **Gender-based violence:** Put in place mechanisms to protect all prisoners from gender-based violence at the hands of prison staff or other prisoners. Ensure that complaints and oversight mechanisms facilitate reporting of gender-based violence, and ensure that such abuses are punished and the victim supported.
8. **Health care:** Strive for a high quality of prison health care linked to the public health system, addressing the particular health needs of male and female prisoners.
9. **Pregnant women and mothers:** Imprison pregnant women and mothers with young children only when absolutely necessary. Women giving birth in outside hospitals should never be shackled or handcuffed and should receive appropriate care. Where children are held in prison with their mothers, the environment in which the children are kept should as far as possible replicate life in the outside community.
10. **Recruitment and training of prison staff:** Reform the recruitment and training of prison staff, to ensure proper initial and in-service training. Protecting prisoners from sexual violence and addressing the different needs of male and female prisoners should be core elements of prison staff training. Ensure equal opportunities for female and LGBT prison staff.
11. **Civil society:** Open up prisons to the involvement of civil society, including those groups concerned with women and LGBT prisoners. This is an important way of preventing abuse and ensuring that women, children and other vulnerable groups have access to the specialist services they need, in prison and on release.
12. **Support for penal reform:** Build public support for penal reform, working with parliament, civil society and the media.

7 Additional resources

Useful websites

International Centre for Prison Studies - <http://www.prisonstudies.org>
Quaker Council for European Affairs: Women in Prison - <http://www.quaker.org/qcea/prison/index.html>
Stop Prisoner Rape - <http://www.spr.org/>
Penal Reform International - <http://www.penalreform.org/>
Penal Reform and Justice Association - <http://www.prajaindia.org/prajainaction.html>
Women's Prison Association - <http://www.wpaonline.org/>

Practical guides and handbooks

Coyle, A., ***A Human Rights Approach to Prison Management***, London: International Centre for Prison Studies, 2002.
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