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**Use and application of United Nations standards and
norms in crime prevention and criminal justice****Draft United Nations rules for the treatment of women
prisoners and non-custodial measures for women
offenders******PRELIMINARY OBSERVATIONS**

The United Nations Standard Minimum Rules for the Treatment of Prisoners (hereinafter SMR) apply to all prisoners without discrimination, therefore the specific needs and realities of all prisoners, including of women, should be taken into account in their application. The SMR, adopted more than 50 years ago, did not, however, draw sufficient attention to women's particular needs. With the increase of the women prisoner population worldwide, the necessity to bring more clarity to considerations which should apply to the treatment of women prisoners has acquired importance and urgency.

Recognising the necessity to provide global standards with regard to the distinct considerations which should apply to women prisoners and offenders, and taking into account a number of relevant resolutions adopted by the United Nations, referred to below – which call on Member States to respond appropriately to the needs of women offenders and prisoners – the present Rules have been developed to complement and supplement, as appropriate, the *SMR and the Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)* in connection with the treatment of women prisoners and alternatives to imprisonment for women offenders.

The present Rules do not in any way replace the *SMR* or the *Tokyo Rules* and, therefore, all relevant provisions contained in these instruments continue to apply to

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all prisoners and offenders without discrimination. While some of the present Rules bring further clarity to existing provisions in the *SMR* and in the *Tokyo Rules* in their application to women prisoners and offenders, others cover new features.

These Rules are inspired by principles contained in various Conventions and Declarations of the United Nations and are therefore consistent with the provisions of existing international law. They are addressed to prison authorities and criminal justice agencies involved in the administration of non-custodial sanctions and community based measures.

The specific requirements to address the situation of female offenders have been emphasized by the United Nations in various contexts. For example, in 1980 the *Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders* adopted a resolution on the specific needs of women prisoners,¹ which, inter alia, recommended that: “(1) in the implementation of the resolutions adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders directly or indirectly related to the treatment of offenders, recognition should be given to the specific problems of women prisoners and the need to provide the means for their solution;... (2) in countries where it is not yet done, programmes and services used as alternatives to imprisonment should be made available to women offenders on an equal basis with male offenders;... and (3) the United Nations, the governmental and non-governmental organizations with consultative status with it, and all other international organizations, should make continuing efforts to ensure that the woman offender is treated fairly and equally during arrest, trial, sentence and imprisonment, particular attention being paid to the special problems which women offenders encounter, such as pregnancy and child care.”

Also the Seventh, Eighth and Ninth United Nations Congresses on the Prevention of Crime and the Treatment of Offenders made specific recommendations concerning women prisoners.²

With the *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*, adopted by the *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders* and endorsed by General Assembly Resolution 55/59 of 4 December 2000,³ Member States of the United Nations declared that they committed themselves to take into account and address, within the United Nations Crime Prevention and Criminal Justice Programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men (op. para. 11); and

¹ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980, A/CONF.87/14/Rev.1, Resolution 9.

² See A/CONF.121/22/Rev.1, Resolution 6 on Fair treatment of women by the criminal justice system; A/CONF.144/28/Rev.1, Draft Resolution 5 on Basic principles for the treatment of prisoners; Resolution 17 on Pretrial detention; Resolution 19 on Management of criminal justice and development of sentencing policies and Resolution 21 on International and interregional cooperation in prison management and community-based sanctions and other matters; and A/CONF.169/16/Rev.1, Resolution 1 on Recommendations on the four substantive topics of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders; Resolution 5 on Practical implementation of the Standard Minimum Rules for the Treatment of Prisoners and Resolution 8 on Elimination of violence against women.

³ General Assembly Resolution 55/59, Annex, *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*.

to develop action-oriented policy recommendations based on the special needs of women as prisoners and offenders (op. para. 12). The Plans of Action for the implementation of the Vienna Declaration contain an entire chapter (i.e., Chapter XIII) devoted to specific measures recommended to follow up on the commitments undertaken in the above-mentioned paragraphs 11 and 12, including “reviewing, evaluating and, if necessary, modifying their legislation, policies, procedures and practices relating to criminal matters, in a manner consisting with their legal systems, in order to ensure that women are treated fairly by the criminal justice system”.⁴

The General Assembly, in its resolution on Human Rights in the Administration of Justice adopted on 22 December 2003, called for increased attention to be devoted to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they can be addressed.⁵

In its resolution 61/143 on the Intensification of Efforts to Eliminate all Forms of Violence against Women, adopted on 19 December 2006, the General Assembly stressed that violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including arbitrary deprivation of liberty, whether occurring in public or in private life and, among other things, urged States to review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles, including the principle of non-discrimination; to take positive measures to address structural causes of violence against women and to strengthen prevention efforts that address discriminatory practices and social norms, including with regard to women who need special attention, such as women in institutions or in detention, and to provide training and capacity-building on gender equality and women’s rights for law enforcement personnel and the judiciary.

This resolution also recognizes the fact that violence against women has specific implications for women’s contact with the criminal justice system, as well as their right to be free of victimization while imprisoned. Physical and psychological safety is critical to ensuring human rights and improving outcomes for women offenders, of which the current rules take account.

Finally, in the Bangkok Declaration, unanimously adopted by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice on 25 April 2005 and endorsed a few months later by the General Assembly, Member States declared that they are “committed to the development and maintenance of fair and efficient criminal justice institutions, including the humane treatment of all those in pretrial and correctional facilities, in accordance with applicable international standards” (op. para. 8), recommending also that “the Commission on Crime Prevention and Criminal Justice give consideration to reviewing the adequacy of

⁴ General Assembly Resolution 56/261, Annex.

⁵ General Assembly Resolution 58/183 on Human rights in the administration of justice, op. para. 15.

standards and norms in relation to prison management and prisoners” (op. para. 29).⁶

As with the SMR, in view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the following Rules can be equally applied in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the global aspirations considered by the United Nations as amenable to the common goal of improving outcomes for women prisoners, their children and their communities.

Some of these Rules address issues applicable to men and women prisoners, including those relating to parental responsibilities, some medical services, searching procedures, and the like, although the Rules are mainly concerned with the needs of women and their children. However, as the focus includes the children of imprisoned mothers, there is a need to recognize the central role of both parents in the lives of children. Accordingly, some of the Rules contained in this document would apply equally to male prisoners and offenders who are fathers.

PART I

INTRODUCTION

These Rules do not in any way replace the SMR and the Tokyo Rules. Therefore all provisions that are contained in these instruments continue to apply to all prisoners and offenders without discrimination.

Part I of the Rules, covering the general management of institutions, is applicable to all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners, as well as women subject to “security measures” or corrective measures ordered by a judge.

Part II contains Rules applicable only to the special categories dealt with in each section. Nevertheless, the Rules under section A, applicable to prisoners under sentence, shall be equally applicable to the category of prisoners dealt with in section B, provided they do not conflict with the Rules governing that category of women and are for their benefit.

Both sections A and B provide additional Rules for the treatment of young female prisoners. It is important to note, however, that separate strategies and policies in accordance with international standards, in particular the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*, the *United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)*, the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* and the *Guidelines for Action on Children in the Criminal Justice System*, need to be designed for the treatment and rehabilitation of this category, while institutionalization shall be avoided to the maximum possible extent.

Part III contains Rules covering the application of non-custodial sanctions and measures for women and young female offenders, including on arrest, at pretrial, sentencing and post-sentencing stages of the criminal justice process.

⁶ General Assembly Resolution 60/177, Annex.

Part IV contains Rules on research, planning, evaluation, public awareness-raising and sharing of information, and is applicable to all categories of female offenders covered in these Rules.

RULES OF GENERAL APPLICATION

Basic Principle

[SMR Rule 6]

Rule 1

In order for the principle of non-discrimination, embodied in Rule 6 of the SMR to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in no way shall be regarded as discriminatory.

Admission

Rule 2

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives and, in case of foreign nationals, consular representatives, receive information about access to legal counsel, prison rules and regulations, the prison regime and where to seek help when in need.

2. Prior to admission, women with caring responsibilities for children shall, whenever possible, be permitted a short suspension of detention to make arrangements for the children.

Register

[SMR Rule 7]

Rule 3

1. The number and personal details of the children of women being admitted to prison shall be recorded at the time of admission. The records shall include at least their names, ages and, if not accompanying the mother, their location and custody or guardianship status.

2. All information relating to the children's identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children.

Allocation

Rule 4

Women prisoners shall be allocated, to the extent possible, to prisons close to their homes or places of social rehabilitation, taking account of their caring responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.

Personal Hygiene

[SMR 15-16]

Rule 5

Dormitories and rooms used for accommodation of female prisoners shall have facilities and materials required to meet women's specific hygiene needs, including, at least, a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking, those who are pregnant, breast feeding or menstruating.

Health-care services

[SMR 22-26]

Medical screening on entry

[SMR 24]

Rule 6

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

- (i) sexually transmitted diseases (STD), and depending on risk factors, women prisoners may also be offered voluntary testing for HIV, with pre- and post-test counselling;
- (ii) risk of suicide and self-harm;
- (iii) the reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues; and
- (iv) sexual abuse and other forms of violence that may have been suffered by women prisoners prior to admission.

Rule 7

1. If the medical practitioner diagnoses the existence of sexual abuse or other forms of violence during prior detention, he or she shall inform the woman prisoner of her right to seek recourse from judicial authorities. The woman should be fully informed of the procedures and steps involved. If the woman agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women access legal counsel.
2. Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.
3. Specific measures shall be developed to avoid any form of retaliation against those making these reports or taking legal action.

Rule 8

Women prisoners' right to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times.

Rule 9

If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.

Gender Specific Health care*Rule 10*

1. Gender specific health-care services, at least equivalent to those available in the community, shall be provided to women prisoners.
2. If a woman prisoner requests that she be examined or treated by a female physician or nurse, a female physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention.

Rule 11

1. Only medical staff shall be present during medical examinations unless the doctor views that exceptional circumstances exist or the doctor specifically requests a member of the prison staff to be present for security reasons.
2. If it is necessary for non-medical prison staff to be present during medical examinations, such examinations shall be carried out in a manner that safeguards privacy, dignity, and confidentiality.

Mental Health and Care*Rule 12*

Individualized, gender sensitive, trauma-informed and comprehensive mental health-care and rehabilitation programmes shall be available for women prisoners with mental health care needs.

Rule 13

Prison staff shall be made aware of times when women may feel particular distress, for example, on admission to prison, upon receiving negative information from home, or during menopause, and prior to release, so as to be sensitive to their situation and provide support.

HIV prevention, treatment, care and support*Rule 14*

In developing responses to HIV/AIDS in penal institutions, programmes and services shall be responsive to the specific needs of women, including prevention of mother to child transmission. In this context, prison authorities shall encourage and

support the development of peer-based education initiatives on HIV prevention, treatment and care.

Substance abuse treatment programmes

Rule 15

Prison health services shall provide specialized treatment programmes for female substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.

Suicide and self-harm prevention

Rule 16

Developing strategies to prevent suicide and self-harm among women prisoners and providing appropriate, gender specific and specialized support to those at risk shall be part of a comprehensive policy of mental health care in women's prisons.

Preventive Health-care Services

Rule 17

Female prisoners shall receive education and information about preventive health-care measures, including from HIV and STDs, as well as gender specific health conditions.

Rule 18

Preventive health-care measures of particular relevance to women, such as *Papanicolaou* smears and screening for breast and gynaecological cancer, shall be offered to women prisoners.

Safety and Security

[SMR Rules 27-36]

Searches

Rule 19

Effective measures shall be taken to ensure that women prisoners' dignity and respect is protected during personal searches, which shall only be carried out by female staff, who have been properly trained in appropriate searching procedures.

Rule 20

Alternative screening methods, such as scans shall be developed to replace invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

Rule 21

Prison staff shall demonstrate sensitivity, and preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.

Discipline and punishment

[SMR Rules 27-32]

Rule 22

Solitary confinement or disciplinary segregation shall not be applied to pregnant women, breastfeeding mothers and women with infants in prison.

Rule 23

Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children, with due regard to the best interests of the child.

Instruments of restraint

[SMR Rules 33-34]

Rule 24

Instruments of restraint shall never be used on women who are in labour, during birth and immediately after birth.

Information to and complaints by prisoners

[SMR Rules 35-36]

Rule 25

1. Women prisoners who report abuse shall be provided immediate protection and support, and their claims investigated by competent and independent authorities, with full respect to the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation by the alleged perpetrator of the abuse.
2. Women prisoners who become pregnant as a result of sexual abuse shall receive appropriate medical advice and counselling and shall be provided with the requisite health-care support and treatment as well as legal aid.

Contact with the outside world

[SMR Rules 37-39]

Rule 26

Women prisoners' contact with their families, including their children, and their children's guardians shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions which are at long distances from their homes.

Rule 27

Where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men.

Rule 28

Visits involving children shall take place in an environment that is not hostile in terms of the physical surroundings and staff attitudes, and shall allow open contact between mother and child.

Institutional Personnel and training

[SMR Rules 46-55]

Rule 29

Capacity building for female staff employed in women's prisons shall enable them to address the special social reintegration requirements of female prisoners and manage safe and rehabilitative facilities. Capacity building measures shall include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of female prisoners.

Rule 30

There shall be a clear and sustained commitment at managerial level in prison administrations to prevent and address discrimination against female staff.

Rule 31

Clear policies and regulations on the conduct of prison staff, which aim to provide maximum protection for women prisoners from any gender based violence and abuse, shall be developed and implemented.

Rule 32

All prison staff shall have access to training programmes, including training on gender sensitivity and prohibition of discrimination and sexual harassment.

Rule 33

1. All staff assigned to work with women in prison shall receive training relating to the gender specific needs of female prisoners.
2. Basic training shall be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to basic medicine and first aid.
3. Basic training on the health care of children living with their mothers shall also be provided to such prison staff, in order for them to be in a position to apply first aid in emergencies.

Rule 34

Capacity building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights with a particular focus on their link to HIV, stigma and discrimination shall also be part of the curriculum.

Rule 35

Prison staff shall be trained to detect risk of self-harm and suicide among women prisoners and offer assistance, by providing support and referring such cases to specialists.

Young Female Prisoners*Rule 36*

Prison authorities shall put in place measures to meet the protection needs of young female prisoners.

Rule 37

Young female prisoners shall have equal access to education and vocational training available to young male prisoners.

Rule 38

Young female prisoners shall have access to age and gender specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.

Rule 39

Pregnant young female prisoners shall receive the equivalent support and medical care as provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

PART II**RULES APPLICABLE TO SPECIAL CATEGORIES****A. PRISONERS UNDER SENTENCE****Classification and individualization**

[SMR Rules 67-69]

Rule 40

Prison administrators shall introduce classification methods that address the gender specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and implementation towards their early rehabilitation, treatment and reintegration into the society.

Rule 41

The gender sensitive risk assessment and classification of prisoners shall:

- (i) take into account the generally low risk posed by women prisoners to others, as well as the particularly harmful effects high security measures and increased levels of isolation can have on them;

(ii) enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disabilities and substance abuse, as well as parental and other caring responsibilities to be taken into account in the allocation and sentence planning process;

(iii) ensure that women's sentence plans include rehabilitative programmes and services, which match their gender specific needs; and

(iv) ensure that those with mental health-care needs are housed in the least restrictive accommodation and receive appropriate treatment, rather than being placed in higher security levels purely due to their mental health problems.

Prison regime

[SMR 65-66 and 70-81]

Rule 42

1. Women prisoners shall have access to a balanced programme of activities, which take account of gender appropriate needs.
2. The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities shall be provided in prisons in order to enable women prisoners to participate in prison activities.
3. Particular efforts shall be made to provide appropriate services for women prisoners who have psycho-social support needs, as a result of having been subjected to physical, mental or sexual abuse.
4. Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.

Social Relations and aftercare

[SMR 79-81]

Rule 43

Prison authorities shall encourage and, where possible, also facilitate visits to female prisoners as an important pre-requisite to ensure their mental wellbeing and social reintegration.

Rule 44

In view of women prisoners' disproportionate experience of domestic violence, they shall always be consulted, as to whom, including which family members, are allowed to visit them.

Rule 45

Prison authorities shall utilize options such as open prisons, half-way houses and community based programmes to the maximum possible extent for female prisoners, to ease their transition from prison to liberty and to re-establish their contact with their families at the earliest possible stage.

Rule 46

Prison authorities shall cooperate with probation and/or social welfare services and NGOs to design comprehensive pre- and post-release reintegration programmes which take into account the gender specific needs of women.

Rule 47

Continued support following release shall be provided to women ex-prisoners who need psychological, medical, legal and practical help to ensure their successful social reintegration.

Pregnant women, breastfeeding mothers and mothers with children in prison

[SMR 23]

Rule 48

1. Pregnant or nursing women prisoners shall receive advice on their diet under a programme to be drawn up and monitored by a qualified health practitioner. Appropriate food must be provided for babies, children and breast-feeding mothers, free of charge.
2. The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.

Rule 49

When it is in their best interest, babies and dependent children shall be allowed to stay in prison with their mothers. They shall not be treated as prisoners.

Rule 50

Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with them.

Rule 51

1. Children living with their mothers in prison shall be provided with ongoing primary health care services and their development monitored by specialists, in collaboration with community health services.
2. The environment provided for the child's upbringing shall be as close as possible to that of a child outside prison.

Rule 52

1. Decisions as to when a child is separated from his or her mother shall be based on individual assessments and the best interests of the child within the scope of relevant domestic laws.
2. The removal of the child from prison shall be undertaken with sensitivity and only when alternative care arrangements for the child have been identified.

3. After children are separated from their mothers and placed with family or relatives or other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children.

Foreign Nationals

[SMR 38]

Rule 53

Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign national women prisoners to their home countries, especially if they have children in the home country, shall be considered as early as possible during their imprisonment, following the informed consent of the woman, and provided the transfer does not entail any human rights risks for her.

Ethnic and Racial Minorities and Indigenous Peoples

Rule 54

Prison authorities shall recognize that women prisoners from different cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender and culture relevant programmes and services. Accordingly, prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups.

Rule 55

Post-release services shall be reviewed to ensure that they are appropriate and accessible to indigenous women prisoners and to women prisoners from ethnic and racial minority groups, in consultation with the relevant groups.

B. PRISONERS UNDER ARREST OR AWAITING TRIAL

[SMR 84-93]

Rule 56

The particular risk of abuse women face in pretrial detention shall be recognized by prison authorities, who shall adopt appropriate measures in policies and practice to guarantee such women's safety at this time.

PART III

NON-CUSTODIAL MEASURES

Rule 57

Women offenders shall not be separated from their families and communities unless strictly necessary. Alternative ways of managing women who commit non-violent offences, such as diversion measures, pretrial and sentencing alternatives shall be implemented, wherever appropriate and possible.

Rule 58

The provisions of the Tokyo Rules shall guide the development of appropriate responses to women offenders. Gender specific options for diversionary measures, pretrial and sentencing alternatives shall be developed, taking account of the history of victimization of many women and their care-taking responsibilities.

Rule 59

Sanctions involving custody to protect a woman shall only be applied if absolutely necessary and expressly requested by the woman concerned and shall in all cases be supervised by judicial authorities. As a general rule, other means of protection, for example, in shelters managed by independent bodies, NGOs or other community services, shall be used.

Rule 60

Investment shall be made in devising suitable alternatives for female offenders, in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system, such as therapeutic courses and counselling for victims of domestic violence and sexual abuse, suitable treatment for those with mental disabilities, among others. Such programmes shall take account of the need to provide care for children and women-only services.

Rule 61

Taking into account the disproportionate number of women who are imprisoned for minor drug related offences, often as a result of manipulation, coercion and poverty, the sentencing courts shall have the power to consider, when sentencing, mitigating circumstances and the character or the criminal histories of women convicted of drug offences.

Rule 62

The provision of gender sensitive, trauma-informed, women only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as diversion and alternative sentencing purposes.

Post-sentencing dispositions*Rule 63*

Decisions regarding early conditional release (parole), shall favourably take into account women prisoners' caring responsibilities, as well as their specific social reintegration needs.

Pregnant Women and Women with small children*Rule 64*

Custodial sentences for pregnant women and women with dependent children shall be avoided to the maximum possible extent, and only be considered when the

offence is serious or violent, the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

Female children in conflict with the law

Rule 65

Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. Female children's gender-based vulnerability shall be taken into account in decision-making.

Foreign Nationals

Rule 66

Maximum effort shall be made to ratify the *United Nations Convention against Transnational Organized Crime and the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, to fully implement their provisions so as to provide maximum protection to victims of trafficking, in order to avoid secondary victimization of many foreign national women.

PART IV

RESEARCH, PLANNING, EVALUATION AND PUBLIC AWARENESS-RAISING

Research, Planning and Evaluation

Rule 67

Efforts shall be made to organize and promote comprehensive research on the offences committed by women, reasons that trigger women's confrontation with the criminal justice system, the impact of imprisonment on women, characteristics of women offenders, as well as programmes designed to reduce women's re-offending, as a basis for effective planning, programme development and policy formulation to respond to the social reintegration needs of women offenders.

Rule 68

Efforts shall also be made to organize and promote research on the number of children affected by their mothers' confrontation with the criminal justice system and imprisonment in particular, and the impact of this on the children, in order to contribute to policy formulation and programme development, taking into account the best interests of the children.

Rule 69

Efforts shall be made to review and evaluate periodically the trends, problems and factors associated with offending behaviour in women and the effectiveness in responding to the social reintegration needs of women offenders, as well as their children, in order to reduce the negative impact of their mothers' confrontation with the criminal justice system on them.

Raising public awareness and sharing information

Rule 70

1. The media and the public shall be informed about the reasons that lead to women's confrontation with the criminal justice system and the most effective ways in responding to such confrontation, in order to enable women's social reintegration, taking into account the best interests of their children.
2. Publication and dissemination of research and good practice examples, shall form comprehensive elements of policies that aim to improve the outcomes and fairness to women and their children of criminal justice responses to women offenders.
3. The media, the public and those with a professional responsibility in matters concerning women prisoners and offenders shall be provided regularly with factual information about the matters covered in these Rules and in their implementation.

COMMENTARY TO THE DRAFT UNITED NATIONS RULES FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS

PART I

RULES OF GENERAL APPLICATION

Rule 1

The principle of non-discrimination enshrined in Rule 6 of the SMR and the principle of individualization provided in Rule 63 (1) clearly imply that providing for the special needs of individuals is an essential element of putting into practice the principle of non-discrimination. Thus, taking affirmative action to eliminate discriminatory practice in the case of women prisoners requires taking account of special considerations, when applying SMR and these rules to female prisoners. This understanding is reflected in Principle 5 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which makes clear that special measures to address the particular needs of women prisoners and other special categories are not to be deemed discriminatory.

Rule 2 (1)

Women, especially those who are illiterate, poor, those who have been violently victimized and who are the primary carers of their children and families, feel particularly vulnerable on first admission to prison. They are often unaware of their legal rights, are extremely distressed about what is happening to them and what impact that will have on their children. According to some studies women are at heightened risk of self-harm and suicide during the initial period following admission to prison. According to the UK NGO, Howard League for Penal Reform, for example, in the UK 50% of those who take their own lives in prison do so during the first month. They point out that first night centres which have been put in place in a number of prisons in the UK have helped ease transition from the outside to prison life. The Howard League for Penal Reform's research shows that a dedicated wing, or unit, where all new prisoners spend their first 48 hours at the prison can prevent suicides. Such facilities are particularly important in the case of female

prisoners, who are especially vulnerable to mental distress, and particularly during their first days of imprisonment.⁷ The importance of a special reception area and procedures, which assists newly arrived prisoners to contact their families and to receive comprehensive information about the prison regime and where to seek help when in need, has been highlighted also by other literature, including WHO.⁸

Rule 2 (2)

Most women who face detention or imprisonment are primary carers of children. The sudden and often unexpected removal of the carer requires alternative care arrangements to be made in order to protect and provide for the children, taking into account their best interests in line with the provisions of the Convention on the Rights of the Child. The mother would also need to have access at this time to information and legal advice on alternative care arrangements and their long term implications.

Rule 3

This information will be valuable in assisting with contact between the mother and child living outside prison if required, as well as in gathering data about the parental status of women in prison, with a view to increasing knowledge about imprisoned mothers and improving the suitability and effectiveness of criminal justice responses to female offenders, while taking account of the best interests of their children.

Rule 4

All prisoners should be allocated, as far as possible, close to their homes or places of social reintegration, in order to facilitate communication with their families, as well as agencies and services used to enhance their social rehabilitation, in order to put into practice of Rules 79 and 80 of SMR, which provide that special attention should be paid to the maintenance and improvement of relations between the prisoners and their families. These Rules state that from the beginning of a prisoner's sentence, consideration should be given to his or her future after release. Prisoners should be encouraged and assisted to maintain or establish relations with agencies outside prison which may promote the best interests of his or her family and his own social rehabilitation. However, women are most often disadvantaged in their allocation, due to the small number of women's prisons in most countries and therefore experience immense challenges in maintaining contact with their families. In accordance with this rule, prison authorities should introduce the means to ensure that women are allocated closer to home or places where they can be in communication with agencies which can assist with their social rehabilitation. Given women's history with violence and exploitation, it should not be assumed that women's former residence is a preferred or safe place for her to be released to (e.g. due to past abuse or expected future stigmatization) and her allocation close to

⁷ The Howard League for Penal Reform, 'Care, concern and carpets': How women's prisons can use first night in custody centres to reduce distress, 2006.

⁸ Møller, L., Stöver, H., Jürgens, R., Gatherer, A and Nikogosian, H. eds., Health in Prisons, A WHO guide to the essentials in prison health, The World Health Organisation Europe (2007), p. 142.

services that will assist with social reintegration should therefore take account of this factor.

Rule 5

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, are of particular importance. These should be available to women under conditions in which they do not need to be embarrassed asking for them (for example either dispensed by other women or, better yet, accessible whenever needed). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers that the failure to provide such basic necessities can amount to degrading treatment.⁹

Rule 6

Rule 24 of the SMR provides that the medical officer should see and examine every prisoner as soon as possible after his or her admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures. The Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment (Principle 24) also provides that a proper medical examination should be offered to a detained or imprisoned person as promptly as possible after his or her admission to the place of detention or imprisonment, and thereafter medical care and treatment should be provided whenever necessary.

It is vital that all prisoners undergo a medical examination and health screen on entry, on an individual basis, to ensure that the prisoner starts receiving proper treatment for any health conditions immediately. Female prisoners, typically from economically and socially disadvantaged backgrounds, and many women in low-income countries suffer from a variety of health conditions which may be untreated in the community. In many countries women face additional discrimination and barriers in accessing adequate health-care services in the community, due to their gender. Therefore female prisoners often have greater primary health-care needs in comparison to men. For these reasons, a comprehensive screening of women on entry to prison is vital to ensure appropriate treatment.

Rule 6 (1)

Violence against women, especially sexual violence, has numerous short- and long-term sexual and reproductive health consequences for women. As such, women prisoners represent a high-risk group for sexual and reproductive health diseases. It is vital to diagnose any reproductive or sexual health diseases as early as possible and provide appropriate treatment. As regards testing for HIV, it is essential that informed consent is sought and secured non-coercively before HIV/AIDS testing or

⁹ CPT Standards, 2006 Edition, Extract from the 10th General Report, CPT/Inf (2000) 13, para. 31.

medical interventions are provided to prisoners and that the process of securing consent specifically allows prisoners to refuse such testing and treatments.¹⁰

Rule 6 (2)

The assessment should take into account the mental health history of the prisoner, drug and/or alcohol addiction and prior self-harm and suicide attempts, in determining risks. In a number of countries research indicates that women have much higher levels of mental health-care needs than men on entry to prison, are more likely to be addicted to drugs and higher rates of self-harm attempts. In at least one country, research indicates higher levels of suicide among women prisoners in comparison to men. Research in some countries indicates that prisoners who commit suicide suffered from some form of mental disability or substance dependence (or both) on entry to prison. Studies of prisoner suicides have also indicated that long-term sentences, single-cell use, mental disabilities, substance abuse and a history of suicidal tendencies are associated with an increased suicide risk.¹¹ Research has also identified a higher prevalence of self-harm history among prisoners who commit suicide, compared to the general population, as well as higher levels of suicide “ideation” among self-harmers in prison.¹² Thus, prisoners who harm themselves may be considered at higher risk of attempting suicide than others.

Rule 6 (3)

It is important that the reproductive health history of women is recorded in their medical files to assist with determining any future treatment. Current reproductive health complications should receive the appropriate medical responses without delay. For example, women who have recently undergone abortions, experienced miscarriages or complications during delivery may need urgent medical attention. Those who have recently given birth require post-natal care and, often, counselling related to this circumstance.

Rule 6 (4)

The health screening on admission is essential to identify any signs of ill-treatment or torture in previous detention/custody and take appropriate action. Torture and abuse of prisoners in custody, immediately after arrest, is more common than during the period of imprisonment. During this time, women are at particular risk of sexual abuse, including rape, which may be used as a tool to coerce and control them and to force them to make confessions.

¹⁰ UNODC, WHO, UNAIDS, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response, Lines, R. and Stöver, H., 2006, p. 19. See also Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison, Rule 3 and CPT 3rd General Report, CPT/INF (93) 12, para. 55.

¹¹ Matsching T., Frühwald S and Frottier P., Suicide behind bars, an international review, Klinische Abteilung für Sozialpsychiatrie und Evaluationsforschung, Universitätsklinik für Psychiatrie, AKH Wien, Österreich. Psychiatr Prax. 2006 Jan;33 (1):6-13.

¹² McArthur, M., Camilleri, P. and Webb, H., Strategies for Managing Suicide and Self-harm in Prisons, Australian Institute of Criminology, 1999, p. 1.

Rule 7

Any woman who has been diagnosed as having been abused in previous custody should be fully informed of her right to complain and adequate assistance shall be provided to her to enable her to proceed with her complaint if she so wishes. The principle of confidentiality should be respected during this process and the woman concerned should receive the psychological support required by her situation, whether or not she chooses to complain.

Rule 8

International standards guarantee the right to medical confidentiality for all individuals, including prisoners. Women may have particular safety and security concerns in relation to their reproductive health history, and therefore should never be coerced into giving information, which they feel may put them at risk.

Rule 9

Many women worldwide who are admitted to prison are accompanied by small children, who may remain with them in prison, sometimes for long periods. It is vital to respect such children's right to the highest attainable standards of health, enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights and Article 24 of the Convention of the Rights of the Child, undertaking also a thorough health screening on their entry to prison and provide the requisite health care during the whole period of their stay in prison facilities.

Rule 10

All women are entitled to treatment and care equivalent to that of community standards for their gender specific health-care needs. Due to the typical background of women in prison, risk factors and their health care needs as women, women's prisons require a gender-specific framework for health care which emphasizes reproductive and sexual health, mental health care, treatment for substance abuse and counselling victims of physical and sexual abuse.

Due to cultural reasons, and/or because of past negative experiences with men, including being subjected to sexual abuse or violence, women may not wish to be examined by a male medical specialist and may even feel re-traumatized by such an examination. This Rule takes into account this possibility, providing women with the right to request examination and treatment by a female medical specialist. Women should not have to provide a reason for such a request.

Rule 11

The principle of confidentiality which applies to all medical examinations requires that patients should be examined individually, on their own, without the presence of any other person, unless specifically requested by the patient. In prisons, doctors may in exceptional circumstances request the presence of prison staff, if they feel at risk. However, in all cases security staff should be out of hearing of the patient and medical specialist. The presence of male staff in the examination and treatment of female prisoner may cause extreme distress and violates the right to privacy and should be avoided in all cases.

Rule 12

High levels of domestic violence against women and their sexual abuse prior to imprisonment has been documented in countries worldwide. Women who are admitted to prison are more likely than men to suffer from mental disabilities, often as a result of domestic violence, physical and sexual abuse. This Rule underlines the need to ensure that mental health care provided in women's prisons should be gender sensitive and interdisciplinary. Women's distinctive mental health-care and psychological support needs should be recognized, including for example, of those who demonstrate acute distress and depression due to isolation, separation from children, families and communities. Rule 12 expressly underlines that treatment should be individualized and aim to address the reasons that provoke distress, depression, as well as psychiatric problems, based on a integrated and holistic approach of counselling, psychosocial support and medication, if necessary. This Rule takes account of the reality that in many prison systems women prisoners' unique mental health-care needs are not adequately understood or treated, symptoms are addressed rather than the underlying reasons that lead to mental health problems. Too often women are prescribed medication to overcome their distress or depression, rather than being provided with psycho-social support, based on individual assessments.

Rule 13

Women are particularly susceptible to mental distress and depression at certain times, for example on entry to prison, as they are usually the primary carers of children, and often also have other caring responsibilities. Many women experience acute psychological and physical difficulties during menopause. Thus the rule encourages staff awareness and training to recognize symptoms of mental distress and to respond to needs in an appropriate manner.

Rules 14

Women have a particular physical vulnerability to HIV. Studies have shown that women are at least twice as likely as men to contract HIV through sex. The pre-existence of sexually transmitted diseases (STD) can greatly increase the risk of contracting HIV.¹³ Due to the typical background of female prisoners, which can include injecting drug use, sexual abuse, violence, sex work and unsafe sexual practices, a significant number of women are infected with STD, including HIV and hepatitis, at the time they enter prison. Thus, the proportion of women in prison with an STD is relatively very high.¹⁴ As such, HIV prevention, treatment and care in women's prisons, covered by these rules, are vital to protect women from HIV/AIDS and prevent the spread of the disease.

Rule 15

A large number of female prisoners worldwide are in need of treatment for substance addiction, though only a minority has access to treatment programmes, and especially to programmes designed for women offenders. When drug addiction

¹³ Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 3
www.unodc.org/unodc/en/drug_demand_hiv_aids.html.

¹⁴ Ibid., p. 3.

is untreated in prison, the likelihood of re-offending is high, either on drugs charges or due to theft or illegal sex acts, often to finance the addiction.

In most countries, women experience social, cultural and personal barriers to treatment entry in the community. These include the significant stigma and shame associated with substance use and related problems among women, such as fear of losing custody of children, lack of partner and other family support to undertake treatment and lack of confidence about treatment. There is significant evidence that substance abuse is tied to both past histories of violence and trauma as well as mental health conditions.¹⁵ In addition, it is increasingly recognized that women have distinctive needs in relation to substance abuse treatment, though few programmes offer specialized services for them. There is now increased knowledge and awareness that gender differences in substance use and related problems require different treatment approaches.¹⁶ In addition, Member States of the UN have reached consensus on treatment strategy development that specifically includes references to gender.¹⁷

A gender sensitive approach to women's health care should therefore also take into account the need to provide specialized treatment programmes for female substance abusers.

Rule 16

Research in some countries indicate that women may be at higher risk of harming themselves or attempting suicide in comparison to men in prison, due to the higher level of mental illness and substance addiction¹⁸ among women prisoners and the harmful impact of isolation from the community on the mental wellbeing of women. These rules therefore provide for appropriate measures to safeguard against such acts.

It must be emphasized that a fundamental element of strategies to reduce incidents of self-harm and suicide in prisons, is to create a prison environment, which is not harmful to the mental wellbeing of prisoners. In parallel to the identification, and supervision of "at-risk" prisoners and the individual treatment provided to them, there is a need for prison managers and staff to take a proactive and positive

¹⁵ Bloom B., Owen, B. Owen & S. Covington, *Gender Responsive Strategies: Research Practice & Guiding Principles for Female Offenders*. National Institute of Justice, US Dept. of Justice, USA, 2003.

¹⁶ UNODC Drug Abuse Treatment Toolkit, *Substance abuse treatment and care for women: Case studies and lessons learned*, United Nations, New York, 2004, p. 23.

¹⁷ *Ibid.*, referring to the Twentieth Special Session of the General Assembly, Devoted to Countering the World Drug Problem Together, 8-10 June 1998, paragraph 8 of the Declaration on the Guiding Principles of Drug Demand Reduction.

¹⁸ E.g. according to a study conducted by the Bureau of Justice Statistics in 2002 and 2004, mental health problems in prison were found to be much higher among women than men; in the UK, according to research published in 2006, 80 per cent of women prisoners were found to suffer from diagnosable mental health problems, 66 per cent were drug dependent or used alcohol to dangerous excess, 37 per cent had attempted suicide at some time in their lives; in 2002 it was estimated that 75 per cent of women entering European prisons were problematic drug and alcohol users and research indicates that women prisoners are more likely to be addicted to harder drugs than male prisoners. (See UNODC Handbook on for prison managers and policy makers on women and imprisonment, 2008, p. 9).

approach to improve prison morale, in order to reduce incidents of self-harm and suicide.

Rule 17

Female prisoners, typically from economically and socially disadvantaged backgrounds, and often uneducated and illiterate, will generally have received minimal education or awareness-raising about prevention from STDs and reproductive health conditions. It is therefore important to raise the level of knowledge and awareness among women in prison, in order to prevent the development of such diseases.

Rule 18

Since all persons in prison, including women, enjoy the right enshrined in the International Covenant on Economic, Social and Cultural Rights, Article 12, to the highest attainable standard of mental and physical wellbeing, the preventive health services provided in prisons should be equivalent, at least, to those in the community, which means that women should receive all the preventive services, such as Papanicolaou test and screening for cancer, that are available in the community. Contraception should be available in prison on an equal basis as in the community, taking into account that contraceptive pills are not only used to prevent pregnancy, but also to treat other gender specific conditions, such as painful menstruation. As the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment has noted, “[t]he fact that a woman’s incarceration may – in itself – greatly diminish the likelihood of conception while detained is not a sufficient reason to withhold such medication.”¹⁹

Rule 19

Article 17 of the International Covenant on Civil and Political Rights guarantees all persons’ right to privacy. The Human Rights Committee, in its General Comment 16 on Article 17 stated that “[s]o far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex” (see HRI/GEN/1/Rev.3, part I).

No prisoner – regardless of gender – should be humiliated or be required to strip completely during a search. Special sensitivity should be demonstrated in the case of women, however, because they are likely to feel the humiliation of undergoing intimate searches particularly. The experience may be extremely distressing and traumatising if they have been victims of sexual abuse in the past. Internal searches of women should only be undertaken if there is a genuine justification.

Male members of staff should never be involved in the personal searches of female prisoners, such as pat down and frisk searches. All searches of women should be carried out by female staff.

¹⁹ CPT Standards, 2006 Edition, Extract from the 10th General Report [CPT/Inf (2000) 13], para. 33.

Rule 20

This Rule takes account the World Medical Association (WMA) Statement on Body Searches,²⁰ where WMA urges all governments and public officials with responsibility for public safety to recognize that invasive search procedures are serious assaults on a person's privacy and dignity, and that they also carry some risk of physical and psychological injury. Therefore this rule recommends that to the extent feasible, without compromising public security, alternative methods should be used for routine screening of women prisoners.

Rule 21

The emotional trauma experienced by the child, if searched without sensitivity, can be immense. Mothers can be so distressed at seeing her child being handled without appropriate care that they have even refused to accept visits from their children in order to avoid putting them through the humiliating and potentially damaging experience of such practices.

Rule 22

The international instruments make clear that solitary confinement is not an appropriate punishment other than in the most exceptional circumstances; whenever possible its use should be avoided and steps should be taken to abolish it. These instruments also acknowledge the fact that, potentially, periods of solitary confinement are prejudicial to the mental health of the prisoner. Principle 7 of the Basic Principles for the Treatment of Prisoners calls for "...efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use..." Thus solitary confinement should be used only in exceptional circumstances in the case of all prisoners, and for the shortest possible period of time. Rule 22 takes account of the best interest of the children, in line with the Convention on the Rights of the Child and calls on member States to avoid using solitary confinement on certain categories of women prisoners altogether in order to avoid causing possible health complications to those who are pregnant or penalizing their children in prison by separating them from their mothers.

Rule 23

Total prohibition of family contact, especially of contact with children, has a very harmful impact on the mental wellbeing of women prisoners, as well as the children involved, and should therefore be avoided, unless the child has particular protection needs.

Rule 24

Rules 33 and 34 of the SMR place strict restrictions on the use of body restraints on prisoners. Firstly restraints may never be used as punishment, secondly they may be used in cases where there is genuine justification to believe that the prisoner may attempt escape during transfers and thirdly, following instruction from a medical officer, due to the imminent danger of harm or self-harm by the prisoner concerned. Nevertheless, in some countries body restraints, such as shackles, are used on

²⁰ Adopted in 1993, editorially revised in 2005.

pregnant women during transfers to hospitals, gynaecological examinations and birth. This practice violates international standards. Moreover, shackling during labour may cause complications during delivery such as haemorrhage or decreased foetal heart rate. If a caesarean section is needed, a delay of even five minutes may result in permanent brain damage to the baby. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has stated that “[...] from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found.”

Rule 25

Rule 35 of the SMR provides that each prisoner is given clear written and if necessary also oral information on complaints procedures on admission to prison, while Rule 36 provides for a confidential complaints mechanism and guarantees prisoners’ right to complain both to prison and independent authorities on a confidential basis. The rule does not explicitly refer to complaints of abuse and the protection of prisoners who do allege ill-treatment, but the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Article 13, provides that “[e]ach State Party should ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps should be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.” It is of utmost importance that women who have been subjected to any form of abuse in pretrial detention or prison should be able to complain without fear of retaliation by staff, confidentially, to the central prison administration, judicial authorities and independent inspectors. Women who claim to have been abused should be confident that they will be provided immediate protection and supervision, while their claims are investigated, and later on, if required, in line with the provisions of the Convention against Torture. Rule 25 therefore provides guidance to prison authorities in the application of the Convention against Torture. It takes account of the fact that women are particularly vulnerable to abuse in prison settings, but that they are often afraid of making complaints due to fears of retaliation. It is included to add an additional safeguard for women against violence and ill-treatment in prison settings.

Rule 26

This Rule emphasizes the importance for women prisoners of the maintenance of family links, whether in pretrial detention or following sentence. It also emphasizes the flexibility that needs to be demonstrated by prison administrations in applying visiting rules to female prisoners, in order to safeguard against the harmful impact of separation from families and children, in view of the fact that many women are imprisoned far away from their homes. This flexibility may, for example, include extending the length of visits, particularly when visitors have travelled long distances to visit. Other considerations should also apply, such as taking account of the hours when children may visit their mothers without having to miss school.

Rule 27

This Rule aims to prevent discrimination suffered by women in some countries where conjugal visits are not allowed to women in prison or are allowed on a much more restricted basis than to male prisoners.

Rule 28

This Rule takes account of mothers' and their children's emotional need for close physical contact and the requirement for a child-friendly environment for children visiting their mothers, to reduce the trauma and distress suffered by the children in these circumstances. The conditions of visits are of utmost importance, so that visits are experienced as a positive experience, rather than discouraging further contact. Making an effort to enable imprisoned women to meet with their families in a friendly and comfortable environment will have a significant impact on the number of visits they receive and the quality of those visits, affecting the social reintegration prospects of female prisoners.

Rules 29-30

Recognising the vulnerability of women to sexual abuse, the SMR prohibit any involvement of male staff in the attendance and supervision of women prisoners. These Rules are based on the premise provided by the SMR that female staff will be employed to attend and supervise women prisoners, thus increasing safety and enhancing the rehabilitative environment. Increasing the capacity, morale and job satisfaction of female staff would enable them to perform their duties effectively, which impacts on the success of women prisoners' social reintegration. Prison authorities shall base their personnel and training policies on Article XV of the Recommendation on the Selection and Training of Personnel for Penal and Correctional Institutions adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders.²¹

Rule 31

Rule 54 of the SMR prohibits the use of force by prison staff, except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. It provides that officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution. Rule 31 adds further provisions relating to the use of force, taking into account women's gender specific needs of protection from varying forms of violence. In some systems it has been reported that sexual services by prisoners may be required before they are accorded their most basic human rights, such as access to food and essential services. This Rule therefore explicitly prohibits sexual misconduct and abuse, which can amount to torture or ill-treatment. Obviously such a prohibition is all the more vital in systems that have a policy of mixed gender staffing.

²¹ See A/CONF.6/1.

Rule 32

This Rule aims to ensure that female prison staff have equal opportunities to advance in their careers as male staff, taking account of provisions of the Convention on the Elimination of all forms of Discrimination against Women, Article 11, and with the aim of improving the gender sensitive supervision and treatment of women prisoners. SMR prohibits the involvement of male staff in the supervision of women's prisons. Nevertheless, even when not directly employed in the supervision of women prisoners, male staff in senior positions are involved in various aspects of the administration of women's prisons. This rule aims to ensure that such staff are trained in the principle of non-discrimination and are made aware of the total prohibition of sexual harassment against female staff and prisoners. Obviously, in systems where mixed gender staffing is used, the implementation of this rule becomes all the more important.

Rule 33

This Rule takes account of the need to train prison staff in the gender specific treatment and supervision needs of women prisoners in order to ensure the effective management of and the promotion of rehabilitation in women's prisons. It also recognizes the reality that prison staff are typically the first responders to prisoners' and/or their children's health problems, including in emergencies, when prisoners or their children may be harmed and need immediate attention and other emergencies. In many systems prison medical specialists will not be readily available to respond in such circumstances. Training of prison staff on basic health care relevant to women and children and how to apply first aid in emergency situations, is therefore important to ensure that women and children receive immediate basic health care and are referred to specialists by prison staff without delay, as required.

Rule 34

This Rule complements other measures, provided in Rule 17, taking into account women's distinctive needs, which include protection from stigma and discrimination due to their HIV status.

Rule 35

This Rule complements Rule 16 to ensure effectiveness of the protection of women prisoners against suicide and self-harm, recognising the central role of prison staff in detecting those at risk and providing timely assistance.

Rules 36-39

Recognizing the special needs of young female prisoners, Rules 36-39 aim to provide guidance to prison authorities in providing for these needs. In this context it should be noted that Rule 26.4 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) states that "...young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment should be ensured...". Accordingly, the Beijing Rules recognize the fact that the

disadvantages faced by women prisoners, in comparison to their male counterparts, are even more acute in the case of young female prisoners, as a result of their very small numbers in most prison systems. Often they are not separated from adult prisoners, due to the lack of special facilities for juvenile female prisoners, and thereby their safety is put at risk. Young female prisoners are likely to have even less access to suitable educational and vocational training facilities than either adult women or juvenile male prisoners, due to their small numbers. Any programmes provided for juveniles are likely to have been developed to address the needs of boys. Young female prisoners are unlikely to have access to gender sensitive health care or counselling for physical or sexual abuse suffered prior to imprisonment. Pregnant girl prisoners comprise one of the most vulnerable groups in prisons, due to the social stigmatization to which they may be subjected, their inexperience of dealing with pregnancy and the lack of adequate facilities for pregnant young female prisoners.

PART II

RULES APPLICABLE TO SPECIAL CATEGORIES

A. PRISONERS UNDER SENTENCE

Rule 40-41

Rule 69 of SMR provides that, "...as soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment should be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions..." Rule 63 of the SMR emphasizes the need for a flexible system of classification, and underlines that the same level of security does not need to apply to all prisoners in one institution. Also in line with the principle that the security measures to which prisoners are subject should be the minimum necessary to achieve their secure custody, it states that "...open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners...."

However, once again, women are often discriminated against in the application of this principle, due to one or a combination of a series of factors. Firstly, since the same classification instruments are used for women and men in the vast majority of prisons worldwide, despite women's different needs and circumstances, information about a history of domestic violence, sexual abuse, and parental responsibility are areas in which screening is lacking for women. As a result classification and screening procedures do not provide essential information about the women, which may increase the probability of their placement in a higher security level than appropriate, while reducing possibilities of providing suitable prisoner programmes matching individual needs. A further problem is that "needs" are often assessed as risk factors during assessments, which can mean that prisoners with mental disabilities may be seen as requiring a higher level of security, rather than the opposite. Such misclassification affects women more so than men due to the higher level of mental health problems among female offenders. High security levels are inappropriate for the housing of prisoners with mental disabilities and will almost invariably further exacerbate existing mental health-care needs. Furthermore, due

to the limited accommodation available for female prisoners, in a number of countries they are housed in security levels not justified by their risk assessment undertaken on admission. Therefore this rule emphasizes the need to develop gender sensitive assessment and classification methods for women prisoners.

Rule 42

The requirement included in the SMR to apply individual treatment according to the needs of prisoners (SMR 69), implies that programmes should be available in prisons designed specifically for women prisoners, taking into account their gender specific needs, aiming to address the underlying factors that led to their offence and to cope with the challenges they face as women in prison. The current Rule spells out this requirement more clearly and offers some guidance on what measures might be taken to enable women to participate in activities on an equal basis to men.

This Rule also takes account of the gender specific needs of women prisoners, including pregnant women and women with children, as well as the typical background of women prisoners, which increases their need for appropriate, individualized psycho-social counselling and support.

Rule 43

The small proportion of female prisoners worldwide and the resource implications of building sufficient women's prisons to ensure that female offenders are imprisoned close to their homes, give rise to a situation in which women may either be housed in annexes of male prisons, close to their places of residence or in women's prisons, which are most often situated at a long distance from home. Being placed in annexes of male prisons may entail safety risks for the women. Most States have a combination of women's prisons and separate wings for women in men's prisons, which means that, in practice, many women are imprisoned a long distance from their homes, which reduces the possibility for family contact. The situation can be particularly problematic in large countries, where huge distances need to be covered to reach women's prisons. The disruption of family links has extremely harmful emotional consequences for women prisoners, especially if they are mothers, with a detrimental impact on their resettlement prospects. Rule 44 therefore requires prison authorities to remedy this disadvantage by finding ways in which to encourage and facilitate visits to female prisoners. It must be emphasized that prison visits should always be free-of-charge in the case of all prisoners.

Rule 44

This Rule aims to protect women from visits from those who may have abused or exploited them in the past and who the prisoners themselves do not wish to have contact with.

Rules 45-47

These Rules take account of the particular support requirements of women during their social reintegration and re-entry to society, following release. Although many problems women face during re-entry are similar to those of men, the intensity and multiplicity of their post-release needs can be very different. Women are likely to suffer particular discrimination after release from prison, due to social stereotypes.

They might be rejected by their families and in some countries they may lose their parental rights. If they have left a violent relationship, women will have to establish a new life, which is likely to entail economic, social and legal difficulties, in addition to the challenges of transition to life outside prison. Women are likely to have particular support requirements in terms of housing, reunification with their families and employment, and will need assistance. Women are more likely than men to have been treated for a mental health problem in prison and will be in need of continued psychiatric treatment or counselling after release. Former prisoners experience high rates of drug-related accidents, overdose and death. The risk of renewed drug or alcohol abuse is high among all former prisoners, particularly during the early stages following release, when the myriad difficulties associated with re-entry may lead to despair and relapse into former habits. The high rate of substance addiction among female offenders may therefore pose a significant obstacle to successful reintegration. Pre-release preparation and post-release support policies and programmes are typically structured around the needs of men and rarely address the gender specific needs of female offenders, with targeted continuum-of-care in the community after release. These rules aim to emphasize prison authorities' responsibilities in ensuring that women receive the maximum possible support during this time, to ensure their effective resettlement and care and to reduce rates of re-offending.

Rule 48

The SMR provide very little guidance on meeting the special needs of pregnant women, breastfeeding mothers and women with children in prison. There is no guidance provided on the treatment of the children themselves. In view of the number of women in prison who are pregnant or who have dependent children living with them, it has become essential to provide more detailed guidance and rules as regards their treatment, in order to ensure that both the women's and the children's psycho-social and health-care requirements are provided for to the maximum possible extent, in line with the provisions of international instruments. Programmes for birthing companions, where they are available in the community, should also be made accessible to women in prison.

Rules 49-52

Viewpoints as to whether children of imprisoned mothers should stay with them in prison, and for how long, vary among specialists, with no consensus. Countries worldwide have very different laws as to how long children can stay with their mothers in prison. Nevertheless, there is general consensus that, in trying to resolve the difficult question of whether to separate a mother from her child during imprisonment, and at what age, the best interests of the child should be the primary consideration, in line with the Convention on the Rights of the Child, Article 3. Issues to take into account should include the conditions in prison and the quality of care children can expect to receive outside prison, if they do not stay with their mothers. This principle would imply that prison authorities should demonstrate flexibility and take decisions on an individual basis, depending on the circumstances of the child and family, and on the availability of alternative care options in the community. These rules recognize that applying rigid policy in all cases, where circumstances vary immensely, is all too often not an appropriate course of action. They also emphasize the need for continued communication

between the mother and the child following separation to prevent as far as possible the psychological damage caused by separation.

Rules 53

Foreign national prisoners may be either resident or non-resident in the country of imprisonment. Both groups face particular difficulties. This is particularly salient given the disproportionate number of women caught up in international drug trafficking. The SMR provides limited guidance as to the treatment of foreign national prisoners. Rule 38 of the SMR covers foreign nationals' right to contact with their diplomatic or consular representatives, while rules 41-42 of the SMR deal with rights in relation to the practice of religion. In view of the fact that the number of foreign national prisoners is rising dramatically worldwide, including the number of foreign national women in prison, and taking into account the particularly vulnerable status, especially of non-resident foreign national women in prison settings, Rule 53 aims to provide further guidance to prison authorities in their treatment of foreign national women prisoners.

Where possible, and if the prisoner so wishes, a foreign national woman prisoner should be given the opportunity to be transferred to her home country to serve her prison sentence. It should be noted that "transfer" is completely different to "deportation", the former aiming to assist with the social reintegration of offenders and reduce the harmful effects of imprisonment, whereas the latter is experienced as a punitive measure undertaken in addition to the prison sentence and most often against the will of the prisoner concerned.

The transfer of prisoners is possible when both countries have signed the relevant prisoner transfer treaty. In order for a transfer to take place and for it to serve the purposes of social reintegration, the prisoner must express a desire to serve the sentence in his or her home country.²² The requirement that prisoners must consent to the transfer ensures that transfers are not used as a method of expelling prisoners or as a means of disguised extradition.²³

A transfer will obviously alleviate all the additional difficulties foreign nationals face in prison, and assist with their social reintegration. This is particularly important in the case of women who may have family and children in their home countries, and will therefore suffer the sense of isolation associated with imprisonment more intensely than their national counterparts. Transferring prisoners to serve their sentences in their own countries, if they so wish, should be considered as early as possible after a sentence has been passed. Prisoners should be given clear and full information about their right to request a transfer and the legal consequences of a transfer, to enable them to make an informed decision about their situation. Guidance on the issue of transfer of prisoners is provided by the Model Agreement on the Transfer of Foreign Prisoners adopted by the Seventh

²² On 15 February 2007, the EU justice and home affairs ministers agreed to allow transferring convicted EU prisoners to serve their sentences in their home countries, without their consent, contravening this principle.

²³ Explanatory notes on the model agreement on the transfer of foreign prisoners, Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, UN Doc. A/CONF. 121/10, 25 April 1985, note 14.

*United Nations Congress on the Prevention of Crime and the Treatment of Offenders.*²⁴

Rule 54

Programmes that address both the gender specific needs of female members of minority groups or indigenous peoples, as well as their cultural, spiritual and religious requirements, are lacking in the large majority of prison systems. Prison authorities should work together with indigenous and minority community groups who work with women to develop programmes suitable to the needs of female minority or indigenous offenders. The provision of culturally relevant programmes is important both in itself and to ensure that these groups are not indirectly discriminated against in their consideration for early conditional release in some jurisdictions, due to their failure to fulfil a requisite number of prisoner programmes because of the unavailability of appropriate programmes.

Involving community organizations in programme design and delivery is valuable in maintaining links between prisoners and the outside world, easing resource pressures and improving prison atmosphere. In the case of minority groups and indigenous peoples, continuing contacts with the community is likely to be of particular importance, due to their sense of alienation and isolation within the system, and the higher level of distress experienced as a result of breaking ties with the community in some cultures.

Rule 55

This Rule takes account of the fact that the reintegration and post-release support requirements of women from minority groups and indigenous peoples are likely to be different and possibly more intense in comparison to those who are from the majority group. Due to their particular economic and social marginalization and the discrimination they face in most societies, released minority and indigenous offenders are likely to need special help with housing, social welfare, employment and health care. Therefore, it is vital that prison authorities coordinate with social services in the community with respect to preparation for release and post-release support. Prison authorities should try to ensure that any treatment undertaken for health problems, such as substance abuse or mental health, is continued and/or monitored after release. Where probation services exist they will have an important role to play in assisting in all these areas. It is particularly advisable to cooperate with organizations of civil society providing support to minority groups and indigenous peoples to facilitate culture and gender sensitive assistance to be provided to released women prisoners during the difficult period of transition from prison to liberty.

B. PRISONERS UNDER ARREST OR AWAITING TRIAL

Rule 56

Female pretrial detainees have specific safety requirements, due to their especially vulnerable status. Women are at risk of abuse particularly during their pretrial

²⁴ See Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, 2006, V.o5-91037.

detention period, when sexual abuse and other forms of violence can be used as a means of coercion to extract confessions. Therefore it is vital that prison authorities ensure that policies and rules aiming to safeguard prisoners against abuse are applied vigorously during women's pretrial detention period.

PART III

NON-CUSTODIAL MEASURES

Rule 57-58

A considerable proportion of female offenders do not pose a risk to society and their imprisonment does not help, but hinders their social reintegration. Many are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and the community. Accordingly, female offenders should be treated fairly in the criminal justice system, taking into account their backgrounds and reasons that have led to the offence committed, as well as care, assistance and treatment in the community, to help them overcome the underlying factors leading to criminal behaviour. By keeping women out of prison, where imprisonment is not strictly necessary or justified, their children may be saved from the enduring adverse effects of their mothers' imprisonment, including their possible institutionalization and own future incarceration.

Since a large proportion of women have mental health-care needs, are drug and/or alcohol dependent, suffer from the trauma of domestic violence or sexual abuse, diverting them to a suitable gender appropriate treatment programme would address their needs much more effectively than the harsh environment of prisons.²⁵

The impact of being held in pretrial detention, even for short periods, can be more severe for women than men, particularly if the woman is the sole carer of the children. Even a short period in prison may have damaging, long-term consequences for the women and children concerned and should be avoided, unless absolutely necessary for the purposes of justice, in line with Article 9 (3) of the ICCPR as well as with Rule 6 of the Tokyo Rules, and Principle 39 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, which limit the use of pretrial detention.

Research has indicated that restorative justice can be effective in the social reintegration of women in some cultures. The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters²⁶ should provide additional guidance to member States in developing appropriate responses to women in the criminal justice system, where appropriate.

In order to fulfil the provisions of these Rules, judicial authorities need to have the necessary information available in order to take appropriate decisions. They may be required, for example, to consider reports compiled by social services on the

²⁵ Bloom B., Owen, B. Owen & S. Covington, Gender Responsive Strategies: Research Practice & Guiding Principles for Female Offenders. National Institute of Justice, US Dept. of Justice, USA, 2003.

²⁶ Endorsed by the UN Economic and Social Council in 2002.

probable impact of the mother's detention on the children and other family members, and the arrangements for the children's care, in the absence of the mother.

Rule 59

In some countries detention may be used as a form of protection for victims of rape, to protect the victim as well as to ensure that she will testify against her rapist in court. This practice is unacceptable, further victimising women and putting them at risk of further abuse. Most importantly, this practice deters women from reporting rape and sexual abuse, thereby allowing perpetrators to escape justice.

In this context, the 2003 report of the Working Group on Arbitrary Detention to the Commission on Human Rights stated: "In its annual report for 2001 (E/CN.4/2002/77 and Add.1 and 2), the Working Group had recommended, with regard to the detention of women who have been the victims of violence or trafficking, that recourse to deprivation of liberty in order to protect victims should be reconsidered and, in any event, must be supervised by a judicial authority, and that such a measure must be used only as a last resort and when the victims themselves desire it."²⁷

A number of other forms of custody, to "protect" women or to protect others' security are used in other countries, which are covered by this rule. Although in exceptional cases such custody may be justified for limited periods due to the lack of more appropriate alternatives, every effort needs to be made for the development of protection means which do not involve imprisonment and where such detention is used, it should always be subject to supervision by an independent judicial authority.

Rule 60

This Rule recognizes the absence of gender specific alternatives to prison in most societies, which hinders the effective implementation of non-custodial sanctions and measures in the case of many female offenders, underlining the need to develop gender sensitive alternatives to prison, tailored to meet the specific requirements of female offenders, in order to reduce re-offending.

Rule 61

In many countries offenders who are imprisoned for drug-related offences make up a large proportion of the prison population, particularly the female prison population. In part this is a result of national and international efforts to combat the trafficking in illicit drugs. However, women are rarely major players in the drugs trade. Their criminal offences are often an outgrowth of their own addiction or due to poverty and other pressures. Women are often used as drug couriers to smuggle drugs across borders for small sums of money. They come from poor countries and sometimes do not understand the risks involved and implications of the acts they agree to perform.

Most offenders charged with drug offences could be dealt with more effectively by alternatives to imprisonment targeted specifically at the drug problem, rather than

²⁷ Report of the Working Group on Arbitrary Detention, Chairperson-Rapporteur, Louis Joinet, Commission on Human Rights, 16 December 2002, UN Doc. E/CN.4/2003/8, para. 65.

imprisonment. The major international instruments, including the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances²⁸ and the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations²⁹ recognize this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives, of which alternatives to imprisonment are a key part.

Rule 61 therefore calls specifically for provisions to allow judges to take account of the circumstances of the offence committed, as well as the caring responsibilities of the women involved, in decision-making.

Rule 62

This Rule takes account of the lack of adequate drug treatment programmes in most communities, which are designed specifically for women and the challenges women face in accessing such treatment, including due to the lack of childcare facilities in the community. A study conducted by UNODC, found that comprehensive programming that acknowledges gender differences, which provides women-only services and gives attention to pre-natal and childcare, parenting skills, relationships, mental health problems and practical needs could improve treatment outcomes. Programmes also needed to address trauma and concurrent disorders, due to high rates of trauma and concurrent mental health problems among women.³⁰ The study also noted that pregnant and parenting women have unique needs that require approaches that are non-judgmental, comprehensive and coordinated.³¹

Rule 63

This Rule is based on the premise that imprisonment is particularly harmful to the social reintegration of women, as well as to their children and other members of their families. Therefore, prison authorities are encouraged to make maximum possible use of post-sentencing dispositions, such as early conditional release, in the case of women, and especially women who have caring responsibilities or who have special support needs (such as treatment/continuum of care in the community), in order to assist with their social reintegration to the maximum possible extent.

Rule 64

Prisons are not designed for pregnant women and women with small children. Every effort needs to be made to keep such women out of prison, while taking into account the gravity of the offence committed and the risk posed by the offender to the public. Recognizing this reality, the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders determined that “the use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of

²⁸ UN Doc. E/CONF.82.15.

²⁹ A/RES/S-20/3 of 8 September 1998.

³⁰ UNODC Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned, United Nations, New York, 2004, p. 90.

³¹ UNODC Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned, United Nations, New York, 2004, p. 92.

imprisonment as a sanction for these categories.”³² The African Charter on the Rights and Welfare of the Child, 1999, Article 30: Children of Imprisoned Mothers, provides that States Parties to the Charter “should undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and should in particular: (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers; (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers. The Council of Europe, Parliamentary Assembly Recommendation 1469 (2000), on Mothers and babies in prison, adopted on 30 June 2000, also recommended the development and use of community-based penalties for mothers of young children and the avoidance of the use of prison custody.

Rule 65

This Rule is based on the principle expressed in Article 37 (b) of the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). All children, and female children in particular, are extremely vulnerable in detention. Imprisonment is likely to have a very harmful impact on children’s psychological and intellectual development, which is why international standards are unanimous in calling for the reduction of the imprisonment of children in conflict with the law to the absolute minimum.

Rules 66

Foreigners are vastly overrepresented in the criminal justice system of many countries, particularly those with a large migrant labour force. The rise in their numbers can partly be attributed to the increasingly punitive measures being adopted against “aliens” in many countries. Trafficked women find themselves behind bars, having been convicted of crimes against public morality, prostitution or breaking immigration rules, although they themselves are the victims of poverty, false promises, coercion and exploitation.

Trafficked persons are sometimes treated as criminals rather than as victims, whether in States of destination, transit or origin. In States of destination, they may be prosecuted and detained because of irregular migration or labour status. Alternatively, immigration authorities may simply deport them to the State of origin if their immigration status is irregular. Trafficked persons returning to their State of origin may also be subjected to prosecution for using false documents, having left the State illegally, or for having worked in the sex industry. Criminalization limits the trafficking victims’ access to justice and protection and decreases the likelihood that they will report their victimization to the authorities. Given the victims’ existing fears for their personal safety and of reprisals by the traffickers, the added fear of

³² Eight UN Congress on the Prevention of Crime and the Treatment of Offenders, Resolution 19 “Management of criminal justice and development of sentencing policies”, Report of the 8th UN Congress on the Prevention of Crime and Treatment of Offenders, 1990, UN Doc. A/CONF.144/28/Rev.1.

*prosecution and punishment can only further prevent victims from seeking protection, assistance and justice.*³³

PART IV

RESEARCH, PLANNING, EVALUATION AND PUBLIC AWARENESS-RAISING

Rules 67-68

These Rules recognize the limited information available on women in the criminal justice system worldwide, which hinders the development of effective policies and implementation of programmes to respond to women offenders' needs fairly and effectively. The utilization of research as a basis for an informed policy formulation in responding to the gender specific circumstances and needs of female offenders is an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and effectiveness of the criminal justice system in both delivering justice and enabling the social reintegration of female offenders, and avoiding as far as possible the negative impact of women's confrontation with the criminal justice system on their children.

Rule 69

The process of planning should particularly emphasize a more effective and equitable system for the delivery of necessary services in prisons and in the community, as relevant to women offenders. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of women offenders and their children and an identification of clear-cut priorities. In that connection, there should also be a coordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

Rule 70

This Rule recognizes the limited nature of reliable data and public awareness on women offenders worldwide, the impact of imprisonment on their children, as well as the important role played by information sharing on research outcomes and good practices in the effectiveness of the delivery of justice to women offenders. It also recognizes the key role played by the media in disseminating information on matters relating to women prisoners and offenders. It also recognizes the importance of making available to the media and to those with a professional responsibility in matters concerning women reliable and up-to-date data, in order to enhance and improve the effective implementation of relevant policies and programmes, while receiving public support for them.

³³ Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings, UNODC, 2006, p. 103.