

## INTERNATIONAL STANDARDS AFFECTING THE ENFORCEMENT OF SENTENCES FOR WOMEN SENTENCED TO IMPRISONMENT

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### **Abstract**

*Since the vast majority of prisoners are male, prison systems and prison regimes have historically been designed for men, ranging from prison architecture to security procedures, medical devices, family contact, work, and training. As a result, only a small number of prisons meet the specific needs of women prisoners. These prisons often do not provide rehabilitation services, mental health services, drug treatment and counselling for victims of physical and sexual violence, the lack of which is often the root cause of women committing crimes. Empirical evidence shows that women are more vulnerable to mental and physical abuse during arrest, interrogation, and in prison. Many of the problems that women face after being released from prison are similar to those of men, but women are more likely to be particularly discriminated against. In many countries, because there are very few prisons for women, it is difficult to maintain family ties while incarcerated, in violation of international standards. For many years, international standards and national laws that contain provisions on the rights of persons deprived of their liberty and on the corresponding obligations of States have mainly been developed for men. They also focus on the conditions rather than the causes and consequences of incarceration. The article examines the fundamental provisions of international standards for the treatment of convicted women and their application in the process of execution of deprivation of liberty. The final result of the analysis of international documents and implementation practices was the identification of a certain range of problems: the physiological, social, moral, psychological and criminological characteristics of female prisoners are not taken into account, which indicates a departure from the gender differences of the legal status. The study of the provisions of international and domestic penal enforcement legislation, as well as the practice of carrying out the maternal function of a woman sentenced to imprisonment, preparing her for release and problems after release indicate the presence of different approaches in the policies of specific States.*

**Keywords:** *international standards for the treatment of convicts, deprivation of liberty, convicted women, penitentiary institutions, criminological characteristics of female prisoners, mental health services, drug treatment, gender differences, international documents, practice in the implementation of rights, moral and psychological characteristics of female prisoners, and preparation of female prisoners for release.*

The punishment in the form of imprisonment is a complex aspect in the system of criminal penalties in different countries, since it includes many parameters that have a negative impact on the physical and moral state, as well as on the social sphere of convicts, including women [31]. The studies of a number of scientists emphasize that in the penal enforcement legislation of most States, the legal status of women is regulated superficially. For example, in the process of serving a prison sentence, their psychophysiological, social, moral, psychological and criminological characteristics are not taken into account, which negatively affects the implementation of the penal policy.

Of course, the penitentiary system of any state has its own characteristics, but there are certain international standards that regulate the execution of sentences in the form of deprivation of liberty. These standards include: the Universal Declaration of Human Rights, the International

Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the UN Standard Minimum Rules for the Treatment of Prisoners of 1957, the Set of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles for the Treatment of Prisoners, The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules").

The opinion of A. D. Gorodinets deserves attention, who points out that the meaning of international legal acts on women's rights is aimed at protecting women who have young children, as well as those who do not have them, since any woman is a potential mother. Thus, any women are subject to special protection already because of their physiological, emotional and psychological characteristics that distinguish them from men. Respect for women's rights in all aspects, that is, from the point of view of equality with men and in the aspect of their special protection, is very important in any sphere of public life [1].

Domestic penal enforcement legislation provides for the specifics of material and household support for convicted pregnant women, convicted nursing mothers and convicted women with children, including: cohabitation with children, receiving additional parcels and transfers; the right to special assistance during childbirth and in the postpartum period. Women with children are a special category of persons sentenced to imprisonment, whose legal status should take into account the fact that they are responsible not only for themselves, but also for their young children [2].

The number of convicted women in Azerbaijan has increased dramatically. According to the Azerbaijani human rights center, at the end of 2019, there was a density in the women's colony. Previously, the number of convicted women did not exceed the limit of 350 people. The current number is 480, many of whom have short terms. Women of the Republic are jailed mainly for fraud, trafficking in women, and drug trafficking.

Some problematic aspects are still relevant today in the practice of execution of sentences related to isolation. For example, carrying out the maternal function of a woman sentenced to imprisonment, preparing for release, applying disciplinary penalties to this category of women, etc.

Ensuring the implementation of the maternal function of a woman is one of the main tasks of the legislator and law enforcement officer. When released from correctional institutions, women arrive in a stressful situation, since the issue of child maintenance and upbringing is acute. After all, during the period of isolation, a woman does not actually burden herself with the idea of how to support her child, since this was done by the staff and staff of the institution. Foreign experience shows that for a woman after her release comes a period of social restrictions — problems with finding a job and household appliances. Such a psycho-traumatic situation leads the woman back to places of deprivation of liberty. In addition, the study of the practice of executing a sentence in the form of deprivation of liberty shows that even during the period of serving a sentence, the violation of the established order of serving a sentence occurs for the reasons that women who are in prison are most characterized by such negative states as anxiety, depression, fear, loneliness. A number of authors, G. P. Baidakov, S. A. Kapunkin, A. I. Mokretsov, A. N. Pastushenya rightly believe that the correction of a criminal can be successful in the conditions of his isolation from society only if it is organized as a purposeful process of correcting the psychology of the person deprived of liberty, taking into account psychological and pedagogical laws and recommendations. The above implies the requirement for the legal support of the process of correction of convicts—the maximum psychological and pedagogical validity and optimal content and organization of corrective action [3], which creates the prerequisites for their correction.

Marlene Alejos, in the study "Infants and Young Children Living in Prison," points out that young children living in prisons with their incarcerated parents are not, "formally speaking," incarcerated for an offense or crime [28]. In fact, many young children living in prisons, especially infants, have no other choice. In the absence of better solutions for organizing child care, parents prefer that they stay with them in prison. Adults in charge of care choose to keep children in prison if allowed by prison authorities (or in some cases social workers or judicial authorities), who decide whether they can be allowed to stay or not. No matter how or by whom the decision is made, if a child is allowed to be with his incarcerated parents, the prison becomes his home. In some countries, housing for mothers with young children is organized specifically, but in many others, children simply live in the same cell (and sleep in the same bed, if there is one) as their mothers, and sometimes together with other adults [22]. If the prison has limited resources and conditions are harsh, children also suffer from these restrictions, and the general prison rules often apply to them, too. But in some countries, children living in prison are "invisible" to the criminal justice system and forgotten by social services. In many countries, these children are not even registered (in the institution's journals or elsewhere) and are recognized as living in institutions only on an "informal" basis [4].

In many countries, children born to incarcerated women live there with their mothers, and infants can enter places of detention with their mothers. There are wide differences between countries and within countries in what conditions are provided for this. In some countries, there are "mother and child blocks", where special conditions are provided for the support of the mother and the development of the child [30]. In other countries, children live in places of detention, but their presence there is not officially recognized or controlled by the state, and no special conditions are created for them. In places of detention, there are often no or insufficient conditions to ensure the safety, health and development of the child. However, studies have shown that young children who are forcibly separated from their mothers are harmed in their development and emotional sphere in the long term [21]. When mothers and children are separated, mothers may never see their children again or lose track of them. Sometimes this is due to the costs associated with organizing visits by children to the penitentiary institution. In other cases, this is due to the fact that the mother refuses relatives who raise children, or that the mother is deprived of parental rights to the child. These mental and developmental problems are usually they remain with children for life. And when children are allowed to live in places of detention, and when they are separated from their mothers – in both cases, difficult problems and dilemmas arise. In all decisions that are made with respect to a child whose mother is incarcerated, the best interests of the child are the main consideration. Children's preferences should always be taken into account, and prison policies should encourage and facilitate the participation of children, according to their age, in decision-making.

In 2007, the Constitutional Court of South Africa ruled in the case of *M. v. State* that the constitutional provision that "in every matter concerning a child, the best interests of that child are paramount" applies to the sentencing of the child's primary caregiver. In addition, the Court issued guidelines aimed "at promoting the uniform application of principles, consistency in measures of influence and individualization of the outcome."

Sometimes, contacts between mothers in places of detention and their children living outside of penitentiary institutions are severely or unjustifiably restricted [29]. In some countries, the mother is punished by temporarily stopping communication between her and her child (for example, by banning visits). For many prisoners, children are the meaning of life, and the violation of communication with the child is often the worst punishment for the mother, which has a significant impact on her physical and mental health. At the same time, a child who has done nothing wrong is also punished. Serving a sentence far from home is a particularly difficult ordeal for women with children. Studies have shown that if relationships with children are maintained, female prisoners are less likely to reoffend after release. The children of the

prisoners did not commit any crimes, so they should not suffer like criminals. For those children who live in places of detention, the quality of life should be at least as good as the quality of life they would have outside the prison. Their living conditions should always include good food, decent playgrounds and, if necessary, the opportunity to attend kindergarten. In all cases, the best interests of the children should be the primary consideration. Children living in places of deprivation of liberty should be allowed to leave at any time if it is considered that this is in the best interests of the child.

Additional information from organizations working directly with children living in prisons in various parts of the world was also studied to learn about prison practices in general and the problems faced by children living in prisons [20]. For example, in Canada, "when possible, the wishes of the child are evaluated" when considering applications from the mother with a request to keep the child with her. Children can also ask the head of the institution to terminate the program, but it is not clear from the policy how they can make the request and whether they have direct access to the head of the institution [19]. It is also not clear from the policy how children's opinions are collected, and whether they are given sufficient weight in accordance with the age and maturity of the child — in particular, with regard to children living permanently in an institution, which is possible for children up to the age of four.

The French policy does not contain any specific provisions that allow the child to participate in the decision regarding his or her stay in prison (this may also be related to the child's age).

In Australia, for example, convicts can request permission from the prison superintendent to keep a child with them in prison. Children are allowed to stay in prison with their mother, usually until the age of 12 months, and pre-school children can stay overnight and, in exceptional circumstances, older children too. The mother or primary caregiver may also apply for permission to stay overnight or have additional visiting days for their child.

In the UK, the possibility of visiting relatives of convicted prisoners has been intensified. The instructions regulate, and the state funds, the visits of children to their mothers in prison, and mothers can have three months' leave to stay with their families. Thus, the practice of keeping convicted women with children confirms that all states have their own approaches to the concept of "convicted mother-child", so the opinion that the interests of the child are put first among specialists is different [1, p. 22].

Since the physiological, moral and psychological characteristics of women serving sentences in places of deprivation of liberty are quite acute in the penal enforcement policy pursued by various states and the legal status of women and men is equalized, it is necessary to focus on the issues of protecting the health of women in places of deprivation of liberty. For example, in 2011, the World Health Organization developed a "Guide to action and checklists for assessing current policies and practices", which reflected the issues of women's health in places of detention. The guidelines also addressed issues such as women's detention and sentencing, as well as the conditions in which women serve their sentences and which may have an impact on their health, including mental health.

All staff working with women in detention facilities should be trained to recognize and respond appropriately to gender issues, and should be made aware of the special health needs of female prisoners. The security and privacy of female prisoners should not be compromised by the use of male employees in certain positions or to perform certain functions (for example, pat-down searches). Concern for the safety and security of women's intimate lives also extends to the organization of transportation between penitentiary institutions and between penitentiary institutions and hospitals. In the criminal justice system as a whole, court officials, lawyers and judges should be familiar with the health care provided in places of detention and with the specific health needs of women and be able to take them into account when sentencing and

defending women in court. Women prisoners need unfettered access to a full range of health and dental services [27].

It should be noted that the Kiev Declaration (2009) does not challenge the provisions, but it is noted that in some countries, prison medical staff already have clinical protocols and standards of nursing care that need to be consulted periodically, and the proposed checklist should help in this. In particular, the provision of health services in places of deprivation of liberty should take into account the special needs of women in health care due to their gender identity; these services should be provided on a case-by-case basis and in an organized manner that respects the principles of integrity and humanity; comprehensive and detailed examinations of women upon admission to the penitentiary institution, after which such examinations should be carried out regularly throughout the entire period of detention; specialized health care that is provided without delay and taking into account the individual needs of women, for example, psychiatric care, including assistance in overcoming the consequences of violence and post-traumatic stress disorder; assistance in the treatment of chronic health disorders, HIV infection and AIDS, as well as other serious diseases. It is noted that it is important to carry out activities in preparation for release from prison, which must be properly planned and implemented in order to ensure the continuity of care and treatment and access to health care and other services after release. The services and approaches listed above can bring the desired results only if national governments, policy makers in this area, and prison administrations understand, accept, and fulfill their role in this process [5].

Much attention is paid to the preparation of women sentenced to imprisonment for release (social, psychological, medical aspects). Cooperation between correctional administrations, on the one hand, and civil, social and medical services, on the other, often leaves much to be desired. The successful implementation of comprehensive measures to prepare for the release of women sentenced to imprisonment, to return to a normal law-abiding life in society and to provide them with assistance depends not only on the provisions of the penal enforcement legislation, but also on the efforts made by the administration of executive institutions [6].

Practice shows that due to the criminal past, former convicted women are discriminated against in employment and in terms of education. Despite the fact that women, when returning to life in society, in many cases face the same problems as men who have been released, these problems can be more, and they can be much more serious. Due to the existing stereotypes of women in society, women are more likely to be discriminated against after their release. They may be turned away by their family, and in some countries they may be deprived of their parental rights.

According to the international documents, the principle of non-discrimination requires States to eliminate specific the difficulties faced by women prisoners, and take into account their gender-specific needs. The principle of non-discrimination also requires States to consider and address the disproportionate impact of criminal justice policies on women and children [18]. To do so, they must review harsh punishments, including the death penalty, that disproportionately affect female offenders. For example, the so-called "crimes of adultery" have led in some countries to the fact that the death penalty is applied to women more often. In addition, in many countries, minimum sentence standards for drug-related crimes, regardless of the degree of involvement in the crime, have led to gender inequality among prisoners.

Before women are released from prison, they should be able to complete programs that facilitate their transition to a life of freedom. These programs vary according to cultural background, but may include life skills, parenting, and health care courses [16]. The mere acquisition of basic household skills, such as cooking and washing clothes, will mean a great deal to some female prisoners and will help them in their life of freedom. In the reporting documents provided by the United Nations Office on Drugs and Crime, it is stated that resources and attention given to women's needs in preparing them for release and life after release are quite

insufficient, and cooperation between prison administrations and civilian social welfare and health services is often lacking. Women serving short sentences of imprisonment are particularly often denied access to pre-release programs [10].

Once released from prison, according to the Standard Minimum Rules for the Treatment of Prisoners, all former prisoners must have access to adequate food, clothing, housing, medical care and other necessary social services.

The administration of penitentiary institutions should arrange for female prisoners, especially women with children, to have housing for the first time after their release. Women may face the fact that they will not be able to take their children to their homes until they get housing, but they will also not be able to get housing until they take their children to their homes. In the reporting documents provided by Quaker Council for European Affairs, it is said, that this problem makes it extremely difficult for these women to return to normal life in society and may be a contributing factor to re-offending [13, 17].

The administration of penitentiary institutions should cooperate with responsible institutions in civil society. Foreign prisoners are often released in another country than the country where they served their sentences, so it is important to maintain contacts with foreign institutions.

The high prevalence of untreatable trauma is characterized by a large proportion of female prisoners, predisposing this category to mental health disorders and self-inflicted harm. Research indicates that mental health problems among female prisoners are often both a cause and a consequence of their incarceration. A short stay in prison, even in pre-trial detention while awaiting trial, can cause damage to a woman's mental health and family life, but does little or nothing to deter her from reoffending. This damage is much more pronounced when women are incarcerated away from home and do not receive adequate health care during and after their incarceration. Women's mental health may deteriorate in places of detention that are overcrowded, where there is no differentiation of prisoners based on a comprehensive assessment, and where there are either no programs for working with prisoners or they are not sufficient to meet the special needs of women.

The harmful effects on mental health are compounded when women do not feel safe and if they are supervised by male staff who make them feel at risk of further violence [26].

Consideration should be given to the prevention of harm to mental health when entering places of detention and to measures to strengthen the mental health of women. The promotion of mental health and well-being should be central to all prison health care policies, and a psychiatric check-up on admission should be an integral part of the routine procedure [9]. Other studies have shown that among women in pre-trial detention awaiting trial, the prevalence of mental disorders is higher than among convicted women. This indirectly indicates that the prevalence of mental illness does not increase in proportion to the length of time spent in prison. It also suggests that women with a mental health disorder may be arrested and detained as a result of their mental disorder, especially for relatively minor crimes for which they should have been hospitalized rather than incarcerated.

Whether a woman's mental health improves or worsens during her incarceration depends on several factors, including the structure of prison facilities, possible treatment options, for example, the availability of programs and conditions for coping with the consequences of trauma, and the services provided to women [12,15].

As suggested in the Standard Minimum Rules for the Treatment of Prisoners, a prisoner may require the continued services of a psychiatrist upon release. This is particularly important for female prisoners, given the high prevalence of mental illness among them, as well as the higher likelihood that they will receive treatment for a mental disorder during their time in prison, which is necessary to continue in civil society.

Women are three times more likely than men to report experiencing physical or sexual violence before being incarcerated. Women who have experienced violence and ill-treatment before being incarcerated may have low self-esteem, poor social adjustment skills, and a lack of self-confidence. Victimization also leads to a significant degree of poor health, which is manifested in disorders of mental health and somatic health, including disorders of the reproductive system [25].

Mental injuries are directly and indirectly associated with a criminal life path and a violation of both mental and physical health. This is why it is important to treat persistent injuries with adequate psychotherapy. In the process of medical examination, it is important to identify women who are or were victims of violence [14]. If they have previously been in a relationship that allows for ill-treatment, or are at risk of encountering other forms of violence when returning to civil society, they need to be provided with advice and support even after they are released from prison. Women who have experienced dysfunctional conflict and domestic abuse may need help to develop a healthy parenting style.

Support in performing parental functions provided by women who are incarcerated with their children, or pregnant women in the pre-and postpartum periods, should be directed to prevent the main risk factors (both in the mother and in the child) of underdevelopment of the spiritual connection between mother and child and parental skills in the mother [11, 24]. Full and comprehensive support is also needed for children separated from their mothers.

Post-release assistance is extremely important, so the prison administration should pay special attention to ensuring that women have access to treatment and social assistance services after their release. In this case, support on a voluntary basis can be very useful both within the prison system and outside it (for example, support from people of equal status). A complicating factor is that many female prisoners serve their sentences far from home.

The evidence clearly, consistently and irrefutably shows that the structures currently in place in criminal justice systems designed to deal with women offenders fail to meet their basic needs and are far from meeting the requirements of human rights, generally accepted international recommendations and the principles of social justice. Although for a small number of female offenders, incarceration is a justified and appropriate measure, too many women are sent to correctional institutions for whom this measure is undeserved and inappropriate. In general, it should be noted that the analysis of international legal acts shows that they often contradict each other in many ways, thereby creating difficulties for their further practical implementation. In the scientific community, opinions are expressed on the creation of a single codified act that would incorporate all the necessary basis for the practical application of these provisions, including the execution of sentences in the form of deprivation of liberty in relation to convicted women. So, Professor V. A. Utkin notes that the provisions contained in the international standards of penal enforcement activities summarize, accumulate and bring to the attention of legislators and law enforcement agencies the world experience, performing an important information function. In this regard, the position of the United Nations Standard Minimum Rules for the Treatment of Prisoners adopted in 2015 (the Mandela Rules) is indicative: "The following rules... are intended only to set out, on the basis of generally recognized achievements of modern thought... what is generally considered correct from a principled and practical point of view in the field of the treatment of prisoners and the management of prisons."

Since the international standards of penal enforcement are also based on the norms of international humanitarian law (human rights law), their guaranteeing value in relation to the treatment of convicted persons is obvious due to the fact that they contain a number of legal guarantees of respect for universally recognized human rights [23]. As an example, the author indicates art. 1 of the "Set of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment" adopted by the UN General Assembly in 1988»: "All persons

subjected to any form of detention or imprisonment have the right to be treated with humanity and with respect for the inherent dignity of the human person." Following the above-mentioned Set of Principles, the 2015 Standard Minimum Rules explicitly state that they "reflect the minimum conditions that the UN considers acceptable" [7].

Thus, the existing international standards for women sentenced to imprisonment provide a certain set of guarantees for the realization and protection of their rights and legitimate interests. However, in practice, studying the experience of different states, taking into account their legal, ideological, and cultural characteristics, we see that the above standards are not fully reflected in the work of penitentiary systems, which ultimately does not lead to the correction of a convicted woman and a decrease in the recidivism of crimes [8].

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