

THE PREVENTION OF DISCRIMINATION AND VIOLENCE AGAINST CONVICTED WOMEN

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Abstract

The article describes the discrimination and violence faced by imprisoned women, especially torture and cruel treatment. The main topic here is the situation in the criminal justice system that concerns women convicted, as well as women sentenced to imprisonment. It deals with the risks faced by women in the private sphere or society, and also emphasizes the important link between prison culture and society. Violence against women is often contained in social and cultural values and practice. Other groups of convicted women at risk of cruel treatment and torture include women with limited health, foreign citizens, ethnic and racial minorities, and women belonging to Indigenous Peoples. The criminal justice system and the legislature cannot completely avoid the impact of these values and therefore their attitude towards women has not always been as serious as their attitude towards other forms of violence. Thus, the possibility of cruel treatment and torture available to women in places of deprivation of Liberty is a problem that can not be solved only by work aimed at correcting the situation in these institutions. The root causes of the special vulnerability of women in penitentiary institutions are often found outside the walls of prisons, although in places of deprivation of Liberty this vulnerability is even greater. Women are not only vulnerable to torture and cruel treatment, they also have special needs in places of deprivation of Liberty, which, as a rule, are often neglected (for example, women's special medical problems) or are greatly aggravated by the fact of being in prison (for example, some female prisoners are rejected by relatives as a result of stigma associated with convicted women). In this context, the needs of female prisoners should also be taken into account. As a rule, the main responsibility for the care and upbringing of children is assumed by women, as a result of separation from the mother and co-existence with the mother in prison, the child can be greatly harmed. In this regard, for pregnant women and mothers with underage children, the need for maximum consideration of the interests of the child is increasingly perceived, with an emphasis on penalties not related to deprivation of Liberty.

Keywords: *discrimination against women, violence, Penitentiary institutions, female prisoners, criminal justice system, torture and cruel treatment.*

I. Introduction

The protection of fundamental rights and the improvement of prison conditions in places of deprivation of liberty are among the main goals of many organizations around the world. The ongoing struggle to reduce the use of imprisonment, humanize detention, and prevent discrimination and inequality in its application is as old as the history of prisons themselves. It should be noted that public opinion does not generally show much sympathy toward offenders. Members of society are often more willing to demonstrate harshness toward crime, especially when they are either unwilling or unsure how to be strict about social inequalities. When the general state of society, as well as commonly accepted norms and values, somehow lose their obligatory character, the majority of the population begins to question their relevance and fairness. In other words, the rights of female prisoners were not a significant issue in the past century. Nevertheless, there has always existed a general culture and a set of tools available to human rights defenders

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seeking to provide assistance: the culture of human rights itself, the system of international human rights law, the body of international norms developed to promote human rights globally, and the corresponding regional and domestic frameworks.

The change in the percentage ratio between male and female prisoners reveals the shortcomings of almost all penitentiary systems in terms of meeting the specific needs of female inmates. International standards established by international organizations are intended to apply equally to all persons in detention. However, in practice, cases of discrimination against women are frequently observed, and these standards are not always effectively implemented. Therefore, it is necessary to develop recommendations aimed at changing management practices in correctional institutions, improving the living conditions of female prisoners, and taking into account their specific characteristics. Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines the concept of “discrimination against women” as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field” [2, p. 491].

II. The prevention of discrimination and violence faced by imprisoned women

The most extreme form of discrimination faced by women is gender-based violence, which refers to “violence that is directed against a woman because she is a woman, or that affects women disproportionately. This includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty.” Gender-based violence, depending on its conditions and nature, constitutes torture as a form of cruel treatment and exploitation.

Rape is one of the most serious forms of gender-based violence. Women may be subjected to violence in places of detention for the purpose of extracting confessions, humiliating them, depriving them of their dignity, or simply because the perpetrator decides to exploit their complete helplessness. Rape may also occur when female prisoners are forced to provide sexual services in exchange for food, privileges, or even access to basic human rights [12, pp. 189–194].

Furthermore, sexual violence against women may also be committed by male inmates, sometimes with the involvement of prison staff. When violence is committed directly by officials, or with their instigation or consent, it is recognized as a form of torture. The International Criminal Tribunal for the former Yugoslavia has also recognized in its judgments that rape and other forms of sexual violence may, in certain circumstances, constitute torture [3, p. 225].

Women who have been subjected to violence not only struggle with the trauma caused by the abuse and its physical consequences — such as possible pregnancy or health issues — but also must overcome feelings of shame and social stigma commonly associated with rape, particularly in societies where discrimination against women is widespread due to cultural or religious norms.

Many women who are raped in prison do not report it, partly for the reasons mentioned above, as well as due to inadequate responses by authorities or fear of retaliation. Violence against women in prisons includes many forms beyond rape. Such

acts include threats of rape, unwanted touching, sexual insults and humiliation, the use of physical restraints during childbirth, virginity testing, and others.

Other practices and behaviors may also constitute cruel treatment, depending on their nature and frequency. Women in prisons face various forms of discrimination not only on the basis of sex but also because they represent a small minority in penitentiary systems worldwide – in most countries, women make up only 2–9% of the prison population [10, pp. 30–33].

Most researchers who highlight discrimination against women on ethnic and religious grounds also emphasize another crucial aspect – those women are treated differently depending on the nature of the crimes they commit or the sanctions imposed upon them. They link the resolution of this issue to the positive and negative obligations of states. In fact, the general framework of international legal instruments related to the protection of women in prison is designed to take into account women's specific characteristics – particularly from a maternal/biological perspective – while analyzing other sociological aspects of women's imprisonment through a universal lens. Therefore, it can be argued that women in prisons, despite the inevitable restrictions of a closed environment, must still be able to benefit from human rights protection. This framework, similar to many other international instruments for the protection of prisoners and their rights, should be guided by specific anti-discrimination provisions aimed at reducing potential gender inequality. A wide range of international human rights protection mechanisms regulating the legal status of convicted persons – accepted in most countries and adhered to by states that are parties to these conventions – have been developed and apply to persons deprived of liberty.

Among them are 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. However, it should be noted that none of these instruments are specifically devoted to the legal status of prisoners, or female prisoners in particular. Although there is no single convention focused exclusively on prisoners' rights, there exist numerous international and regional documents designed to protect those rights. These instruments can be roughly divided into two categories: binding ("hard law") standards and non-binding ("soft law") standards.

International treaties specifically aimed at protecting women's rights address the dimension of non-discrimination within the broader human rights framework. For instance, the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not explicitly refer to women in prison, yet it provides a fundamental basis for the adoption of positive measures ensuring women's full development. The Convention is one of the most important binding (hard law) instruments at the international level. Certain provisions of CEDAW – both general and specific – serve as legal tools in the protection of prisoners' rights. According to the Convention: Persons deprived of liberty must be "treated with humanity and with respect for the inherent dignity of the human person" (obligation to respect). The primary purpose of the prison system should be the "reformation and social rehabilitation" of prisoners (obligation to fulfill). As for the UN's soft law standards concerning the rights of prisoners, these include the UN Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, the Code of Conduct for

Law Enforcement Officials, the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the UN Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules), among others.

With the growing number of female prisoners worldwide, the need for greater clarity regarding the special considerations that must be applied in their treatment and the ways to address their issues within prisons has become increasingly important and relevant.

Recognizing the need to establish global standards for the treatment of female offenders and prisoners – and taking into account several relevant resolutions adopted by various UN bodies calling on Member States to adequately address their needs – the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) were adopted on 21 December 2010. The Bangkok Rules do not replace the Standard Minimum Rules for the Treatment of Prisoners but rather complement them. Even when combined with the principle of non-discrimination, the Bangkok Rules reject the illusion of universality in prison human rights: while the Standard Minimum Rules apply to all prisoners without discrimination, the particular needs and realities of female prisoners must be duly considered. The earlier rules, adopted more than 50 years ago, did not adequately address women's specific needs. Thus, with the global increase in the number of female prisoners, clarifying the special considerations applicable to their treatment has gained significant urgency and relevance. Before the adoption of the Bangkok Rules, the UN had already emphasized the growing need to address the situation of female offenders in various contexts. For example, in 1980, the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders adopted a Resolution recognizing the special needs of women prisoners and the necessity of providing means to address them, noting that programs and services serving as alternatives to imprisonment – where such systems had not yet been implemented – should be made available to female offenders on an equal basis with men.

Furthermore, the UN General Assembly Resolution on Human Rights in the Administration of Justice (22 December 2003) called for increased attention to the problems faced by women in prison, including those accompanied by their children. Another resolution, adopted on 19 December 2006 – Resolution 61/143 on Intensification of Efforts to Eliminate All Forms of Violence against Women – emphasized that “violence against women” constitutes any gender-based act that results in or is likely to result in physical, sexual, or psychological harm or suffering to women. States were urged to review and, where necessary, amend or repeal all laws, regulations, policies, practices, and customs that contribute to discrimination. At the same time, most international legal norms declaring human rights and freedoms also include provisions concerning female prisoners. For instance, Article 10 of the International Covenant on Civil and Political Rights (ICCPR) stipulates that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.

The Human Rights Committee, which monitors compliance with the ICCPR, has emphasized that states bear special obligations toward individuals whose status as detainees makes them particularly vulnerable. It has stated that persons deprived of liberty should not be subjected to any deprivation or restriction other than those resulting from their lawful detention, and that respect for their dignity must be ensured under the same conditions as for free individuals. Articles 3, 7, 10, 23, and 24 of the ICCPR also regulate the rights and specific needs of persons deprived of liberty, particularly women prisoners, pregnant women in custody, and imprisoned mothers. Pregnant women in

detention must always be treated with respect, especially during childbirth and in caring for newborns. States Parties are obliged to provide appropriate facilities, medical care, and health services for such mothers and their children.

Finally, the Inter-American Commission on Human Rights has stressed that deprivation of liberty entails strict control, loss of privacy, limitation of living space, and, above all, a drastic reduction in the means of self-protection. According to the Commission, the act of deprivation of liberty “imposes concrete and material obligations to preserve the human dignity of the prisoner”.

The Criminal Code of the Republic of Azerbaijan recognizes and prescribes punishment for the following acts directly aimed against the rights of women: sexual violence (Article 108); rape (Article 149); acts of a sexual nature involving violence (Article 150); coercion to engage in acts of a sexual nature (Article 151); sexual intercourse or other acts of a sexual nature with a person under the age of sixteen (Article 152); and forcing a woman into marriage (Article 176-1).

Thus, during policy formulation and program development, the specific needs of women are often overlooked, and their security concerns are not given sufficient attention. Although more focus is given to the needs of women in women’s prisons, at the central administrative level, the lack of attention to women’s specific needs in the formulation of strategies, policies, and programs, as well as in the allocation of corresponding budgets, is reflected in the living conditions within such institutions.

In addition, since there are fewer women’s prisons compared to men’s prisons, women are often held far from their families. As a result, one of their fundamental needs – maintaining family contact – is jeopardized. Discrimination manifested in the lack of access to special programs and services for women, as well as in restrictions on family contact, while not necessarily amounting to cruel treatment, may in some cases evolve into forms of cruel or degrading treatment [4, pp. 382–410].

According to Article 11 of the Criminal Procedure Code of the Republic of Azerbaijan, criminal proceedings in Azerbaijan are conducted on the basis of equality of all persons before the law and the courts. The bodies conducting criminal proceedings shall not grant privileges to any participant in the process based on citizenship, social status, sex, race, nationality, political or religious affiliation, language, origin, property status, official position, beliefs, place of residence or stay, or other grounds not justified by law.

For a deeper study of the issue, it is necessary to examine more precisely the terms “gender” and “gender mainstreaming.” According to the World Health Organization’s definition, the term “gender” refers to the socially constructed roles, relationships, personality traits, attitudes, behaviors, and values that a society attributes to men and women. Unlike the term “sex,” which refers to biological differences between men and women, gender roles vary greatly across different cultures [11, p. 113]. From a sociological perspective, the term “gender role” refers to the artificially constructed distinctions between men and women.

In 1997, the UN Economic and Social Council (ECOSOC) introduced the term “gender mainstreaming” (a strategy to achieve gender equality) when it identified the need for “the integration of a gender equality perspective into all policies and programmes of the United Nations system.” The Council defined gender mainstreaming as follows:

“Gender mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies, or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and

experiences an integral dimension in the design, implementation, monitoring, and evaluation of policies and programmes so that women and men benefit equally, and inequality is not perpetuated” [8, pp. 115–120].

When applied to policies and programmes in places of deprivation of liberty, the concept of gender mainstreaming occupies a central role. The closed environment of prisons, where certain societal attitudes and orientations are reinforced, intensifies women’s feelings of helplessness and lack of rights.

At the same time, paradoxically, the specific needs of women in penitentiary institutions are taken into account even less than in society as a whole. This is because prisons—especially correctional facilities—are predominantly male-oriented institutions that neither recognize nor understand gender-specific needs, excluding, for example, those related to childbirth and pregnancy. Promoting gender mainstreaming in places of detention is a long-term process aimed at achieving sustainable change not only within such institutions but also in the broader societal attitudes, policies, and practices. Nevertheless, concrete changes in laws, regulations, procedures, and policies can have a noticeable and direct impact on protecting women from torture and cruel treatment [7, p. 144–157].

Provisions of the Criminal Procedure Code of the Republic of Azerbaijan also take into account the need to protect the rights and interests of individuals on the basis of gender during investigative actions. For example:

- Personal examinations involving the removal of clothing must be conducted with the participation of persons of the same sex (Article 238.4).
- If it becomes necessary to undress a person of the opposite sex, the investigator, defense counsel, or other male participants cannot take part in that investigative action. In such cases, the examination is carried out by a physician or forensic specialist upon the investigator’s instruction (Article 238.5).
- A personal search and seizure must be conducted in the presence of at least two witnesses of the same sex as the person being searched, as well as a relevant specialist (Article 246.3).

To date, very limited attention has been paid to the specific risks of torture and cruel treatment faced by women in detention. Efforts to combat violence against women generally focus on issues encountered by women in private or public life, with much less attention given to gender-based violence against women prisoners.

Although the issue of torture and cruel treatment is of deep concern to the public, its gender dimensions have not received sufficient attention. State reports regarding the implementation of the Convention on the Elimination of All Forms of Discrimination against Women often lack specific and adequate information about women, even though gender is emphasized as a key factor in preventing torture. Monitoring groups can play an important role in closing this gap by encouraging their countries to address deficiencies in this area, assess risk factors in places where women are held, and evaluate the security measures if any provided by official authorities [1, p. 195].

When analyzing the risks faced by women in places of deprivation of liberty and approaching the problem comprehensively, monitoring organizations should not only consider the specific conditions and circumstances within detention facilities but also examine the broader context to identify potential root causes of the problems detected. Problems identified during visits to correctional institutions may stem from external factors, making it necessary to analyze the legal framework, policies, and practices of the criminal justice system as a whole.

To effectively consider gender-specific aspects, members of monitoring groups must possess certain competencies. Ensuring that the members of these groups have adequate professional knowledge is crucial for correctly identifying gender-related risks faced by women, exploring possible solutions, and taking appropriate measures to mitigate such risks. Monitoring activities yield the most effective results when carried out with attention to gender requirements—that is, when women are included among the members of monitoring groups [5, p. 384].

In addition, female doctors and psychologists should be included in monitoring groups. At least some members of the group should have experience working with individuals suffering from post-traumatic stress and other emotional traumas characteristic of women who have experienced violence, particularly sexual violence. It is desirable that all members of monitoring groups receive specialized training on violence against women, including sexual violence and other gender-specific issues [9, pp. 452–457]. They must be able to ask gender-sensitive questions and formulate them appropriately.

Members of monitoring groups should be fully familiar with the provisions of key international normative documents aimed at protecting women from violence and discrimination and at ensuring that the specific needs of women in prisons are met. Monitoring groups should also include representatives of ethnic and racial minorities, indigenous peoples, and foreign nationals, reflecting a significant portion of the female prison population in their respective countries.

These groups of women face particular challenges and multiple risks that are often best understood by members of the same ethnic or racial communities [6, pp. 77–101]. To ensure that interviews with female juvenile prisoners are conducted appropriately, taking into account their specific needs, and to maintain the professional quality of actions and recommendations, monitoring groups should include at least several members with knowledge of child psychology.

Transparency in state administration and the existence of independent oversight are integral components of any system based on the principles of democracy and the rule of law. This is especially true regarding the monitoring of the state's power to deprive individuals of their liberty. Regular, unannounced visits to monitor the treatment and living conditions of persons deprived of liberty represent one of the most effective methods of preventing torture and cruel treatment.

III. Conclusion

The idea of independent monitoring of places of detention by external actors has made significant progress in recent years. It is now widely recognized that one of the strongest safeguards against torture and ill-treatment is ensuring that places of deprivation of liberty remain as transparent as possible and are regularly visited by credible representatives of civil society.

Preventive monitoring helps reduce the number of acts of torture and cruel treatment, which are most often committed in facilities not subject to independent or external oversight. By visiting places where women are held—or may be held—monitoring groups perform this crucial function.

The continuous violation of the rights and legitimate interests of women held in correctional institutions indicates the necessity of constantly developing, improving, and strengthening legal safeguards for their implementation and protection. One of the main

forms of such safeguards is the supervision of institutions and bodies responsible for the execution of sentences.

According to Article 5 of the Internal Disciplinary Rules of Correctional Institutions, the Minister of Justice of the Republic of Azerbaijan and the Head of the Penitentiary Service have the authority to inspect (supervise) the activities of correctional institutions. Alongside such supervision, it is also of particular importance to allow various entities to visit correctional institutions. These matters are regulated by Article 22 of the Criminal-Executive Code. Among the entities, the Ombudsman and the National Preventive Group have been granted broader powers – including the right to enter such institutions without prior notice and at any time. However, we believe that it is essential to further improve monitoring activities in order to ensure the protection of the rights and freedoms of all prisoners, especially female inmates. In this regard, literature notes that monitoring detention conditions requires certain professional skills. Therefore, it is particularly important for the monitoring group to include not only individuals with legal knowledge but also medical professionals. In our opinion, the monitoring groups should also include psychologists and educators, and such monitoring activities should be organized on a regular basis.

Through the inspection of relevant regulations, procedures, and practices, monitoring groups help identify shortcomings and gaps in detention conditions and develop recommendations aimed at addressing these deficiencies. Such efforts contribute to the implementation of institutional reforms and the adoption of best practices to reduce the risk of torture and cruel, inhuman, or degrading treatment.

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