

Women in pre-trial detention in Africa

A review of
the literature

Marilize Ackermann
2014

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The aim of CSPRI is to improve the human rights of prisoners through research-based lobbying and advocacy and collaborative efforts with civil society structures. The key areas that CSPRI examines are developing and strengthening the capacity of civil society and civilian institutions related to corrections; promoting improved prison governance; promoting the greater use of non-custodial sentencing as a mechanism for reducing overcrowding in prisons; and reducing the rate of recidivism through improved reintegration programmes. CSPRI supports these objectives by undertaking independent critical research; raising awareness of decision makers and the public; disseminating information and capacity building.



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Acronyms and abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
ARV	Antiretroviral
Bangkok Rules	United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	United Nations Convention on the Rights of the Child
CSPRI	Civil Society Prison Reform Initiative
DCS	Department of Correctional Services (South Africa)
DRC	Democratic Republic of Congo
PPJA	Promoting Pre-trial Justice in Africa
TB	Tuberculosis
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCAT	United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UNIOSIL	United Nations Integrated Office in Sierra Leone
UNODC	United Nations Office on Drugs and Crime
UNSMR	United Nations Standard Minimum Rules for the Treatment of Prisoners
WHO	World Health Organization



Foreword

There are approximately one million prisoners in Africa, many of them detained under deplorable, sometimes life-threatening, conditions. A significant proportion of them are unsentenced prisoners, or pre-trial detainees. In some African states, pre-trial detainees account for as much as 80% of the total prison population; an indication of severe dysfunction in the criminal justice system. These prisoners may spend weeks, months and sometimes even years in detention before their cases are adjudicated. For them, the process has become the punishment. The poorest of the poor bear the brunt of unnecessary and prolonged pre-trial detention particularly severely, because they lack the means to post bail, to post surety and to engage legal services.

Since 2011 the Civil Society Prison Reform Initiative (CSPRI) has, through its Promoting Pre-trial Justice in Africa (PPJA) project, engaged in research and advocacy to promote evidence-based policy reform in Africa. A number of case flow audits have been completed and on-going research is focusing on the socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia. It remains our view that effective policy reform and sustainable solutions must be based on reliable research that views the problem in all its multi-dimensional complexity. The purpose of a criminal justice system is to enhance public safety through investigations, prosecutions and convictions. At the same time, a criminal justice system must respect the rights to liberty and to equality enshrined in the African Charter on Human and Peoples' Rights. The deprivation of liberty, especially through pre-trial detention, should be regarded as a measure of last resort. A criminal justice system should also respect the right to equality and special care must be taken to protect the rights of minority, marginalised and vulnerable groups.

Research undertaken by PPJA showed that women are a particularly vulnerable group in pre-trial detention situations. This report seeks to draw attention to their situation through a review of the literature. A key finding of this report is that there has been very little research on female imprisonment in Africa. Existing literature shows that, while women in pre-trial detention face a host of challenges, the impact of their detention is probably felt more severely on the outside because they are removed from children, households and social networks that depend on them.

LM Muntingh
CSPRI Project Coordinator



Executive summary

It is estimated that women account for between two and six percent of the total prison population in Africa. Women in pre-trial detention in Africa experience compounded discrimination on the grounds of gender, social standing, and poverty. The small number of women in prison compared to men means that detention structures are less equipped to deal with female detainees' needs. Historically, sub-Saharan African society is patriarchal, and women have had fewer opportunities than men to access education and amass wealth or property. In some countries women were not allowed to own property and still struggle to gain the right to inherit and to participate in economic activity. The literature indicates that women are more exposed to poverty than men and that they face great difficulty to access mechanisms of justice as a result of disempowerment through poverty. Female detainees, especially those originating from rural areas, are often poorly educated, unaware of their rights in detention, unable to access and afford legal representation, post bail or pay fines. Prolonged pre-trial detention only serves to exacerbate poverty among women with severe downstream social and economic effects on their children and families.

A popular discourse argues that women are less likely to commit violent and serious crimes than men. To some extent, the literature about women in pre-trial detention confirms this perception. However, reports from recent years indicate that a significant number of female detainees in South Africa are held for murder, and that the majority of these women had been subjected to prior victimisation or abuse. In Malawi and Zambia, many female detainees were held for murder or violent crime against a partner, but in countries such as Kenya, Botswana and Zimbabwe women were more frequently arrested for non-violent crime. Internationally, there is a strong correlation between female criminality and substance abuse. Available literature confirms similar patterns in South Africa, but this link has not been made in more socially conservative African countries, where substance abuse is less common. In less-developed countries, the picture with regard to the numbers of women detention and the reasons for their detention is different. For example, women in Sierra Leone and the Democratic Republic of Congo (DRC) may be detained in place of their husbands. In Malawi and Zambia authorities continue to enforce outdated criminal codes, jailing persons for nuisance-related crimes such as loitering, touting or being a 'rogue'. In conservative religious countries like South Sudan, women are commonly detained for crimes such as adultery.

A highly concerning aspect of female detention is the impact on the children of detainees. The literature indicates that the majority of female detainees in Africa are mothers and many are the primary or sole caretakers of their children. Typically, mothers are allowed to keep babies or young children in prison with them up to a certain age. It was found that budgetary provision was made for children imprisoned with mothers only in South Africa and Kenya in recently constructed, specialised baby units, but that there are few babies in prison. The number of children who are left alone outside prison when their mothers are detained is much greater and the social impacts on them are profound. Where social welfare structures exist, children are likely to be placed in the care of a family member, foster parent or orphanage. Families often break up upon imprisonment of the mother, especially if the mother committed a violent crime against the father.

Once imprisoned, female detainees encounter a number of critical problems which disproportionately affect women and which may threaten their rights to human dignity and security of person. These include concerns around reproductive health needs, mental disorders and increased vulnerability to abuse in prison. Harassment and attempts to exploit female detainees by law enforcement officers are reported in many countries.

The objective of this review is to explore existing literature in respect of the reasons for female remand detention in Africa and the challenges women experience in prison. The biggest challenge to compiling this review was the lack of centralised and comprehensive statistics. The subject is under-researched and statistics referred to represent snapshot data obtained either from the database of the International Centre for Prison Studies or from various ad hoc reports. Literature pertaining to South Africa was available, but authoritative studies from less developed countries do not exist, or were last undertaken as long ago as the 1980s. The failure of states to allocate resources to female detainees and the absence of consistent and clear policies and legislation around the issues they commonly encounter suggest a lack of awareness or a lack of political will to improve the situation.



Introduction

An estimated one million persons are in prison in Africa, the majority of whom are awaiting trial. The conditions of detention are generally extremely poor and overcrowding is a major concern. Although pre-trial detainees have by definition not yet been found guilty of the crimes they stand accused of, they are seldom kept apart from sentenced prisoners in Africa, presumably the result of limited resources.

African society is generally patriarchal and many countries in sub-Saharan Africa, in their various phases of development, fail to observe women's rights to equality. Gender-based discrimination is widespread throughout the region.¹ Historically, women's rights to amass wealth, inherit property and to further themselves academically or economically are limited.² The effects are that many African women, especially those originating from rural areas, tend to be poor, have little or no education, and are therefore particularly vulnerable to abuse and exploitation. This kind of deprivation tends to characterise most prisoners in Africa, both male and female. The vulnerability of female detainees is compounded by the inability to access mechanisms of justice, which leads to further disempowerment of an already marginalised group. Even though the United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR) were adopted in 1955, women in prison continue to be a group whose specific vulnerabilities and unique needs remain poorly met. The adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) in 2010 drew attention to the plight of women in prison and, for the first time, issues such as women's reproductive health, mental health, histories of abuse, children imprisoned with mothers and duties of care with respect to female detainees were recognised in the international legal framework. This study explores the situation of women in pre-trial detention in Africa through assessing the reasons why they are being detained and the particular challenges they face. Their particular situation has been recognised by the UN Special Rapporteur on Extreme Poverty and Human Rights as follows:

"In this respect, women are particularly vulnerable to penalization measures. Due to structural discrimination, women have less representation in structures of power and therefore are disproportionately disadvantaged in their dealings with State authorities and less able to claim their rights. Often penalization measures have a much more onerous impact on women than men, given that women are overrepresented among the poor, have less access to education, employment and economic resources, and assume the principal burden of care and domestic work."³

This report reviews the existing literature relating to women in pre-trial detention in Africa.

1.1 Objective of the review

This report provides a review of the literature on pre-trial detention of women in Africa and the challenges they experience once imprisoned. The review examines the situation in a number of African countries against the backdrop of the international legal framework pertaining to detainees and prisoners, in particular the Bangkok Rules. The main aim of the report is to draw attention to the vulnerability of women in pre-trial detention in Africa and the short, medium and longer term consequences of this. Secondly, the report ascertains the extent to which the subject has been researched to identify gaps and opportunities for further research in the field. The underlying assumption of this research project is that policy reform should be based on evidence. A central purpose of the report is to demonstrate that the imprisonment of women has significant socio-economic impacts, in particular, impacts outside the prison walls.

1 The Population Council Inc. 2008. *Sexual and Gender Based Violence in Africa: Literature Review*, p.12, http://www.popcouncil.org/uploads/pdfs/AfricaSGBV_LitReview.pdf [accessed 7 May 2014].

2 Redpath, J, Morrel, R, Jewkes, R & Peacock, D. 2008. *Masculinities and public policy in South Africa: Changing masculinities and working towards gender equality*. Johannesburg/ Cape Town: Sonke Gender Justice Network, p. 32-33, <http://www.promundo.org.br/en/wp-content/uploads/2013/01/South-Africa.Masculinities-and-Public-Policies.pdf> [accessed 16 May 2014]; UN Women. 2011. *Progress of the World's Women*, p. 41. <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf> [accessed 7 May 2014].

3 United Nations General Assembly. 2011. *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, A/66/265, paragraph 11, 4 August 2011, <http://www.ohchr.org/Documents/Issues/Poverty/A.66.265.pdf> [accessed 26 May 2014].

1.2 Methodology and limitations

This study provides an overview of the literature on the subject of women in pre-trial detention in Africa through the method of desktop research. No empirical data was collected. In terms of substance, this literature review is limited by the lack of authoritative and current data. Most reports reviewed do not distinguish between remand detainees (unsentenced) and convicted (sentenced) prisoners. Many countries do not publish comprehensive admission and release statistics for law enforcement authorities. Particular attention is paid to the situation in countries where the CSPRI and the Promoting Pre-Trial Justice in Africa project have conducted field research namely Ghana, Guinea (Conakry), Kenya, Malawi, Mozambique, Sierra Leone, South Africa and Zambia.

This review deals with three aspects of women held in pre-trial detention:

- It explores the reasons why women are held in pre-trial detention in order to identify trends in criminal behaviour, or deficiencies in law enforcement and judicial mechanisms. It is hoped that these research findings will help prevent unnecessary and unnecessarily prolonged detention.
- The review investigates issues such as health care, mental health care and drug dependency because these are key issues facing women in detention which authorities should address as a matter of urgency.
- On a social and economic level, the detention of women has a serious impact on children incarcerated with their mothers and those children who are left behind without the care of their mothers. While this report focuses on women, much of what is described here applies to male prisoners as well.



The rights of women in detention: An overview of the international legal framework

The issues faced by women in detention gained formal recognition in international human rights law with the adoption by the UN General Assembly of the Bangkok Rules in 2010.⁴ Since the adoption of the UNSMR in 1955, the development of appropriate guidelines for female detainees had been long overdue. With the singular exception of a reference to pregnant detainees, the UNSMR gave no recognition to female prisoners. Due to an absence of authoritative norms and standards, coupled with poor oversight and monitoring of prisons, the plight of female detainees in Africa has remained hidden. The Bangkok Rules represents a progressive step towards advancing the basic human rights and rights of access to justice for women deprived of their liberty. It does this by recognising their unique needs in 'soft law'.

2.1 The history of the Bangkok Rules

Adopted in 1955 by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, the UNSMR is the key legal text addressing the rights of detainees. It serves as the basic guideline to inform states of their obligations with regard to the deprivation of liberty of persons.⁵ In subsequent years, three main instruments related to prisons were adopted by the United Nations, namely the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment in 1988,⁶ the Basic Principles of the Treatment of Prisoners in 1990,⁷ and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), also in 1990. At the time of adoption, the UNSMR did not take into account the particular needs and vulnerabilities of women in detention, nor do the additional instruments address such issues adequately. The United Nations Congress on the Prevention of Crime and the Treatment of Offenders effectively served as the main forum at which the recognition of the needs of women in detention was addressed and promoted. The issue was debated at each of the five-yearly Congresses, from the Sixth Congress held in 1980 to the Eleventh Congress in 2005.⁸ At the Tenth Congress, member states adopted the Vienna Declaration on Crime and Justice: Meeting the Challenges of the 21st Century,⁹ thereby making a commitment to take into account and address, not only within the United Nations crime prevention and criminal justice programme, but also at domestic level, any disparate impact of programmes and policies on women, and to develop recommendations relevant to the unique needs of female detainees.¹⁰

In 2003 and 2008, the United Nations General Assembly called for states to acknowledge the problems faced by women in detention and to consider the impact of imprisoning women with child care duties, as well as babies or small children incarcerated with mothers.¹¹ At the 18th session of the Commission on Crime Prevention and Criminal Justice in 2009, a resolution submitted by the Government of Thailand was adopted, acknowledging as a premise to the Bangkok Rules that prison facilities are built primarily for males. It had therefore become necessary to address and accommodate female detainees' specific needs.¹²

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- 4 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].
 - 5 United Nations Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, <http://www.refworld.org/docid/3ae6b36e8.html> [accessed 22 February 2014].
 - 6 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, Principle 52, <http://www.un.org/documents/ga/res/43/a43r173.htm> [accessed 22 February 2014].
 - 7 Basic Principles of the Treatment of Prisoners, 45/111, 14 December 1990, <http://www.un.org/documents/ga/res/45/a45r111.htm> [accessed 22 February 2014].
 - 8 Barzano, P. 2013. *The Bangkok Rules: An International Response to the Needs of Women Offenders*. United Nations Asia and Far East Institute, Resource Material Series No. 90, p.85. http://www.unafei.or.jp/english/pdf/RS_No90/No90_11VE_Barzano.pdf [accessed 22 February 2014]. At the Sixth Congress, a resolution on the specific needs of female prisoners was adopted, recommending that States recognise and find solutions for the problems encountered by women in prison. Particularly, that women be treated equally during arrest, trial, sentencing and detention and that special regard be given to pregnant women and women with child care responsibilities.
 - 9 The Vienna Declaration on Crime and Justice: Meeting the Challenges of the 21st Century, A/RES/55/59, 17 January 2001, http://www.unodc.org/pdf/crime/a_res_55/res5559e.pdf [accessed 22 February 2014].
 - 10 United Nations Economic and Social Council, Official Record, Supplement No. 10, Commission on Crime Prevention and Criminal Justice: Report on the Nineteenth Session (4 December 2009 and 17-21 May 2010), E/CN.15/2010/30, p. 27& 28, http://www.unodc.org/documents/commissions/CCPCJ_session19/Draft_report/E2010_30eV1054137.pdf [accessed 22 February 2014].
 - 11 United Nations General Assembly Resolutions 58/183 of 22 December 2003 and 63/241 of 24 December 2008.
 - 12 Penal Reform International & Quaker United Nations Office. 2011. Briefing on the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), p. 2, http://www.penalreform.org/wp-content/uploads/2013/05/PRI-QUNO_English_1-1.pdf [accessed 22 February 2014].

In 2009, a group of experts, representing 25 countries, met in Bangkok to develop supplementary rules specific to the treatment of women in detention. The process was largely driven by the Government of Thailand, hence the name of the text. At the 12th United Nations Congress on Crime Prevention and Criminal Justice held in 2010 in Salvador, Brazil, the inter-governmental expert group reported on the outcome of the Bangkok meeting and presented the draft version of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).¹³ This was followed by the adoption of a draft resolution by the Economic and Social Council on 22 July 2010 and finally, on 21 December 2010, the General Assembly adopted the Bangkok Rules without a vote.¹⁴

2.2 The objectives of the Bangkok Rules

The Bangkok Rules set out comprehensive guidelines and standards for the treatment of female prisoners and identifies pre-trial detention as a period during which the risk of abuse and ill-treatment of women is particularly high. It recognises women as a vulnerable group within the criminal justice system and aims to address problems which affect women, such as health care, mental health care, the treatment of women with substance abuse problems, and the links between incarceration and prior victimisation.

A range of factors supported the development of a dedicated set of rules to address the needs of female prisoners such as the development of women's rights to equality and protection from abuse, as well as an increased awareness around the child's rights to parental care and protection of the family unit. On a practical level, a major motivation behind putting in place a dedicated set of rules is the significant increase of female detainees worldwide.¹⁵

While there has been little research on female criminality in many African countries, broader international studies show that crimes committed by women are often economically motivated or related to substance abuse.¹⁶ It further shows that violent crime is commonly committed as a response to prolonged domestic abuse or victimisation directly preceding the crime.¹⁷ The Bangkok Rules echo this position by recognising that women generally pose a low risk to others, supporting the argument in favour of the use of non-custodial measures during the pre-trial phase. In the African context, crimes related to substance abuse may be less common than in other parts of the world, but instead, social conditions such as poverty and conservative cultural practices have a marked impact on the detention of women.

2.3 Instruments of international 'soft law'

In addition to the Bangkok Rules, there are a number of instruments of international soft law which govern the detention of persons. As mentioned above, the UNSMR is the most established non-treaty text within the international legislative framework pertaining to detention. It sets standards for acceptable practice and management of detention facilities and is widely used as a guideline for monitoring purposes.¹⁸ As far as its specific application to women is concerned, the UNSMR addresses only the separation of women and men, the medical care of pregnant detainees and it provides for children to be imprisoned with their mothers.¹⁹

13 Penal Reform International & Quaker United Nations Office. 2011. Briefing on the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), p. 6, http://www.penalreform.org/wp-content/uploads/2013/05/PRI-QUNO_English_1-1.pdf [accessed 22 February 2014]

14 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014]

15 Penal Reform International & Quaker United Nations Office. 2011. Briefing on the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), p. 2, http://www.penalreform.org/wp-content/uploads/2013/05/PRI-QUNO_English_1-1.pdf [accessed 22 February 2014].

16 Barzano, P. 2013. *The Bangkok Rules: An International Response to the Needs of Women Offenders*, United Nations Asia and Far East Institute, Resource Material Series No. 90, p.82-3. http://www.unafei.or.jp/english/pdf/RS_No90/No90_11VE_Barzano.pdf [accessed 22 February 2014].

17 United Nations Special Rapporteur on Violence Against Women. 2013. *Pathways to, Conditions and Consequences of incarceration for women*, A/68/340, 21 August 2013, paragraphs 6 and 7, www.ohchr.org/Documents/Issues/Women/A-68-340.pdf [accessed 22 February 2014]. See further Barzano, P. 2013. *The Bangkok Rules: An International Response to the Needs of Women Offenders*. United Nations Asia and Far East Institute, Resource Material Series No. 90, p. 82-83. http://www.unafei.or.jp/english/pdf/RS_No90/No90_11VE_Barzano.pdf [accessed 22 February 2014].

18 Ashdown, J. & Jones, M. 2010. Women in Detention. *International Review of the Red Cross*, 92(877):128, <http://www.icrc.org/eng/assets/files/other/irc-877-ashdown-james.pdf> [accessed 22 February 2014]; Barzano, P. (2013) *The Bangkok Rules: An International Response to the Needs of Women Offenders*. United Nations Asia and Far East Institute, Resource Material Series No. 90, p. 85. http://www.unafei.or.jp/english/pdf/RS_No90/No90_11VE_Barzano.pdf [accessed 22 February 2014].

19 United Nations Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, Rules 8(a), 23 & 53, <http://www.refworld.org/docid/3ae6b36e8.html> [accessed 22 February 2014]

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that special measures or arrangements which are made for women, especially pregnant women or nursing mothers, are deemed not to constitute discrimination, but instead, are aimed at attaining gender equality in prisons.²⁰ Containing a similar non-discrimination clause, the Basic Principles for the Treatment of Prisoners presents an articulation of the underlying principles to the UNSMR and reaffirms the function of the criminal justice system as that of safeguarding the basic values and norms of society.²¹

The Tokyo Rules recognise the need to develop a non-institutionalised approach to the treatment of offenders and call on states to make use of non-custodial measures at the earliest possible stage.²² Although the Tokyo Rules are gender-neutral, they are highly beneficial for women in detention and should be applied in cases of petty crime and in cases where the offender poses a minimum risk to society. The Tokyo Rules are incorporated into the Bangkok Rules insofar as courts are required to consider the background, family ties, history and prior victimisation of women in decisions that may separate them from their families and communities.²³

Although the abovementioned instruments are not legally binding, they constitute authoritative and practical tools which assist states to apply the content of binding treaty standards and customary international law.²⁴

2.4 International and regional treaties

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) promotes women's rights to equality in a general sense, with a focus on the exercise of civil rights. South Sudan, Sudan and Somalia are the only African states not to have signed or ratified CEDAW.²⁵ The United Nations Declaration on the Elimination of Violence compliments CEDAW by recognising the urgent need for the universal application of the rights and principles of equality, liberty, security, integrity and dignity to women.²⁶

The United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the accompanying Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment are authoritative umbrella texts that protect all persons against torture and ill treatment whilst deprived of their liberty. Its provisions are gender-neutral and must be applied to all incidents which fit the description of torture or other forms of ill-treatment listed in UNCAT.²⁷

The guiding principles enshrined in the United Nations Convention on the Rights of the Child (CRC) are relevant to women in detention insofar that States Parties should consider the child's best interest, as well as his or her right to family unity, before separating him or her from the parent.²⁸ This is relevant in the context of mothers separated from their children through imprisonment.

20 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, Principle 52, <http://www.un.org/documents/ga/res/43/a43r173.htm> [accessed 22 February 2014]

21 Basic Principles for the Treatment of Prisoners, 45/111, 14 December 1990, <http://www.un.org/documents/ga/res/45/a45r111.htm> [accessed 22 February 2014]

22 United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), A/RES/45/110, 2 April 1991, Rules 6.1 and 6.2. <http://www.refworld.org/docid/3b00f22117.html> [accessed 22 February 2014].

23 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rules 57 & 58, incorporating Rule 2.3 of the Tokyo Rules, <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].

24 Special Rapporteur on Violence Against Women, *Pathways to, Conditions and Consequences of Incarceration for Women*, A/68/340, 21 August 2013, paragraph 83, www.ohchr.org/Documents/Issues/Women/A-68-340.pdf [accessed 22 February 2014]; Ashdown, J & Jones, M. 2010. Women in Detention. *International Review of the Red Cross*, 92(877), p. 128. <http://www.icrc.org/eng/assets/files/other/irrc-877-ashdown-james.pdf> [accessed 22 February 2014].

25 United Nations Convention on the Elimination of Discrimination Against Women, 34/180, 18 December 1979, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> [accessed 20 February 2014]; List of signatories available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en [accessed 22 February 2014].

26 United Nations Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December 1993, <http://www.refworld.org/docid/3b00f25d2c.html> [accessed 22 February 2014].

27 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/39/46, 10 December 1984, <http://www.refworld.org/docid/3ae6b3a94.html> [accessed 14 May 2014].

28 United Nations Convention on the Rights of the Child, 44/25, 20 November 1989, Articles 5, 8, 9(1) and 16. <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf> [accessed 22 February 2014].

At the continental level, the African Charter on Human and Peoples' Rights is silent on the subject of prisons.²⁹ However, article 30 of the African Charter on the Rights and Welfare of the Child (ACRWC) is of particular importance as it obliges State Parties to apply protective measures to children of imprisoned mothers. If the offender is pregnant or the mother of young children, non-custodial sentences should always be considered first. No State Party should impose the death penalty on pregnant women or mothers of young children. The ACRWC further confirms the importance of eventual reintegration of the mother with the family and society.³⁰ The Committee of Experts on the Rights and Welfare of the Child recently adopted its first General Comment and focused specifically on Article 30 of the African Charter, and therefore on the situation of children incarcerated with their mothers.³¹ A total of 41 African states have signed and ratified this treaty including South Africa, Malawi, Kenya, Ghana and Guinea (Conakry). Nine African states have signed the treaty, but are yet to ratify it, including Zambia and Liberia. Only four states have neither signed nor ratified the treaty, namely the DRC, Sudan, South Sudan and Sao Tome and Principe.³²

The Protocol to the African Charter on Human and Peoples' Rights promotes the equal treatment of women in Africa in all spheres of life. In particular, it mentions the right of women to equal protection and benefit of the law, including equal access to legal aid.³³ The Protocol has been signed and ratified by 28 states, including South Africa, Malawi, Ghana and Zambia, while 18 African states have ratified but not signed the treaty, including Kenya and Guinea (Conakry). Eight countries have neither signed nor ratified the treaty, including Botswana and Sudan.³⁴ In overview it can be said that the majority of African states support equal treatment of women as reflected in their being party to these instruments. Practice reflects, however, a different situation.

2.5 The recognition of women in international instruments

The founding texts such as the UNSMR, the Body of Principles, the Basic Principles and the Tokyo Rules, are considered insufficient to address the distinct needs of female detainees.³⁵ The abovementioned international treaties all promote their own objectives, none of which are focussed on women in detention. Furthermore, treaties do not function as practical guides to the implementation of the obligations they contain. For this reason, the Bangkok Rules are extremely valuable and present a detailed and user-friendly directive. Since the Bangkok Rules were adopted recently, it follows that much still needs to be done to comply with the Rules. Moreover, nothing in the literature could be found indicating a clear and firm expression from any African states to actively work towards compliance with the Bangkok Rules.

29 Muntingh, L. 2013. Guidelines and Principles on Imprisonment and the Prevention of Torture Under the African Charter on Human and People's Rights: How Relevant are they for South Africa? *Law, Democracy and Development*, 17:363–6.

30 African Commission on Human and People's Rights, African Charter on the Rights and Welfare of the Child, 1979, Article 30. <http://www.achpr.org/instruments/child/> [accessed 22 February 2014].

31 African Committee of Experts on the Rights and Welfare of the Child. 2013. *General Comment on Article 30 of the Convention on the Rights and Welfare of the Child, ACERWC/GC/01*, adopted by the Committee at its 22nd Ordinary Session, 4–8 November 2013, http://www.africanchildinfo.net/index.php?option=com_sobi2&sobi2Task=sobi2Details&sobi2Id=1336&Itemid=142&lang=en [accessed 28 June 2014].

32 African Commission on Human and Peoples' Rights. Ratification Table: African Charter on the Rights and Welfare of the Child. <http://www.achpr.org/instruments/child/ratification/> [accessed 22 February 2014].

33 African Commission on Human and Peoples' Rights. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 1995, Article 8. http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf [accessed 22 February 2014].

34 African Commission on Human and Peoples' Rights, Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. <http://www.achpr.org/instruments/women-protocol/ratification/> [accessed 22 February 2014].

35 Barzano, P. 2013. The Bangkok Rules: An International Response to the Needs of Women Offenders. United Nations Asia and Far East Institute, Resource Material Series No. 90, p.85. http://www.unafei.or.jp/english/pdf/RS_No90/No90_11VE_Barzano.pdf [accessed 22 February 2014].



Reasons for women in detention

At the outset it must be recognized that men and women end up in prison for broadly different reasons. The international literature repeatedly describes the typical profile of the female detainee as one of a woman who is likely to have a history of physical and/or sexual abuse, who is a mother, usually the primary caregiver of young children, and whose involvement with crime is often due to poverty or substance abuse.³⁶ Discourse on female criminality primarily revolves around the victimization of women, or places the prevalence of female detainees on the targeted prosecution of gender-related crimes such as abortion or prostitution. International studies suggest that ten to fifteen percent of female detainees are convicted of violent crimes and that women typically engage in less aggressive and more economic orientated crime.³⁷ An increasing global trend is that women are imprisoned for drug offences more than for any other crime and that women in financial struggles are increasingly being enticed into becoming couriers to smuggle drugs across borders.³⁸

Unfortunately, little is known about the profile of African female detainees and the reasons for their pre-trial detention. Crimes committed by women, especially murder, have received some attention in literature, mostly in South Africa.³⁹ Two notable studies have been conducted in South Africa documenting female detainees' experiences in prison and histories of prior victimisation. The first was conducted at Worcester Prison and Pollsmoor Prison in the Western Cape and the second was conducted at three prisons in Gauteng.⁴⁰ Stories penned by prisoners are published from time to time, such as the accounts of 33 female prisoners from Zimbabwe.⁴¹ In South Africa, data is analysed from time to time for purposes such as policymaking,⁴² but empirical studies are extremely scarce, especially for less developed African countries.

In order to understand the scope of the issue, it is necessary to look at the number of women who are in pre-trial detention. Table 1 below contains snapshot data recorded by the International Centre of Prison Studies, in its World Prison Brief, of the total number of detainees in a particular country in a particular year and, where available, the month and year.⁴³ The numbers and percentages include convicted prisoners and remand detainees. The data is listed in descending order from the country with the highest proportion of female detainees to the lowest.

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- 36 Covington, S. 2007. The Relational Theory of Women's Psychological Development: Implications for the Criminal Justice System. In Zaplin, R. *Female Offenders: Critical Perspectives and Effective Interventions, 2nd Edition*. http://bcotn.org/subcommittees/csct/womans_journey_home.pdf [accessed 5 April 2014]; Artz, L, Hoffman-Wanderer, Y & Moul, K. 2012a. *Women, Crime and Incarceration: Exploring Pathways of Women in Conflict with the Law*. Gender, Health & Justice Research Unit, University of Cape Town, p.18. <http://www.pspod.org.za/MediaLib/Downloads/Home/ResearchEvidence/Women%20Crime%20and%20Incarceration.pdf> [accessed 8 April 2014].
- 37 Becker, S & McCorkel, J. 2011. The Gender of Criminal Opportunity: The Impact of Male Co-Offenders on Women's Crime. *Feminist Criminology*, 6:79--110, p. 79.
- 38 Ollus, N & Nevala, S (eds). 2000. *Women in the Criminal Justice System: International Examples and National Responses*. Proceedings of the workshop held at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 10-17 April 2000, Vienna, Austria, p.4 & 60-2. http://www.heuni.fi/material/attachments/heuni/reports/6KjPF9f7n/Women_in_CJS.pdf. [accessed 14 May 2014].
- 39 Pretorius, HG & Botha, S. 2006. The Cycle of Violence and Abuse in Women who Kill an Intimate Partner: A Biographic Profile. *South African Journal of Psychology*, 3(2):242-52; Kramer, S. Undated. Discourse and Power in the Self-perceptions of Incarcerated South African Female Sexual Offenders. University of South Africa Institute for Social and Health Sciences. http://www.mrc.ac.za/crime/atsa_kramer.pdf http://wiredspace.wits.ac.za/bitstream/handle/10539/8378/Research%20Report_Sherianne%20Kramer_%20Female%20Sexual%20Offenders.pdf?sequence=2%20 [accessed 14 May 2014]; Maritz, S. 2003. Women who Kill: A Psycho-legal Literature Review, Mini-dissertation in partial fulfilment of the requirements for the degree Master in Psychology, University of Johannesburg. <https://ujdiqispace.uj.ac.za/bitstream/handle/10210/1525/Finaleskripsie.pdf?sequence=1> [accessed 14 May 2014].
- 40 Artz, L, Hoffman-Wanderer, Y & Moul, K. 2012b. *Hard Time(s): Women's Pathways to Crime and Incarceration*. Cape Town: Gender, Health & Justice Research Unit, University of Cape Town, p. 209. http://www.gjru.uct.ac.za/pdf/hard_times.pdf [accessed 2 April 2014]; Haffeeje, S, Vetten, L & Greyling, M. 2006. *Violence and Abuse in the Lives of Women and Girls Incarcerated at Three Gauteng Women's Prisons*. Johannesburg: Centre for the Study of Violence and Reconciliation Gender Programme, Research Brief, No. 3. <http://www.csvr.org.za/docs/correctional/violenceandabuse.pdf> [accessed 8 May 2014]; Haffeeje, S, Vetten, L & Greyling, M. 2006. *Minority Report: The Imprisonment of Women and Girls in Gauteng*. Johannesburg: Centre for the Study of Violence and Reconciliation Gender Programme, Research Brief, No. 4. <http://www.csvr.org.za/docs/correctional/minorityreport.pdf> [accessed 8 May 2014].
- 41 Musengezi, C & Staunton, I (eds). 2003. *ATragedy of Lives: Women in Prison in Zimbabwe*. Harare: Weaver Press.
- 42 See as examples: Parliamentary Monitoring Group. 2007. Report on the meeting of the Portfolio Committee on Correctional Services of 24 August 2007. <http://www.pmg.org.za/minutes/20070823-correctional-services-amendment-bill-briefing>, [accessed 14 May 2014]; University of Cape Town, Gender, Health and Justice Research Unit. 2011. Policy brief: - Women in Prison - Health and Mental Health. http://www.gjru.uct.ac.za/pdf/Submission_on_DCS_and_JICS_Annual_Reports.pdf [accessed 14 May 2014].
- 43 See <http://www.prisonstudies.org/map/africa> to access statistical information on a chosen country.

Table 1

Country	Total Prison Population	Total Pre-Trial detainees	Total female detainees
Central African Republic	845 (Nov 2011)	70.2% (Nov 2011)	8.2% (Nov 2011)
Rwanda	55 618 (Dec 2012)	7.1% (Dec 2012)	6.4% (Sep 2012)
Mauritius	2 663 (2013)	39.5% (2013)	6.3% (2013)
Equatorial Guinea	1 000 (Est 2013)	Unknown	5.9% (Est 2013)
Djibouti	550 (2013)	50% (Est 2013)	5.5% (Est 2013)
Kenya	52 000 (Oct 2012)	36% (Oct 2012)	5.3% (Oct 2012)
South Sudan	7 500 (Dec 2013)	45% (Jun 2011)	5.3% (Dec 2013)
Benin	7 247 (Oct 2012)	74.9% (2010)	5% (Oct 2012)
Guinea (Conakry)	2 606 (2013)	65% (2013)	4.8% (Dec 2008)
Burundi	7 793 (Dec 2013)	51.8% (Dec 2013)	4.8% (Dec 2013)
Seychelles	628 (Oct 2012)	24.3% (Aug 2012)	4.5% (Oct 2012)
Madagascar	18 719 (2013)	53% (2013)	4.5% (2013)
Guinea Bissau (Two prisons)	92 (2013)	Unknown	4.3% (2013)
Uganda	37 936 (Nov 2013)	52% (Jun 2012)	4.2% (Nov 2013)
Sao Tome & Principe	194 (Sep 2013)	12.9% (Sep 2013)	4.1% (Sep 2013)
Cape Verde	1 434 (2013)	29.6% (2012)	4% (Jul 2013)
Tanzania	35 301 (Nov 2013)	50.1% (Oct 2013)	3.7% (Sep 2009)
Egypt	62 000 (2013)	9.9% (2006)	3.7% (2006)
Lesotho	2 401 (2013)	19.7% (2013)	3.5% (2013)
Zimbabwe	18 980 (Feb 2014)	27.6% (Feb 2010)	3.5% (Feb 2013)
Senegal	8 428 (Dec 2012)	41.4% (Dec 2012)	3.4% (Dec 2012)
Botswana	4 124 (Oct 2013)	24.6% (Sep 2013)	3.3% (Dec 2013)
Liberia	1 930 (2012)	78% (2012)	3.2% (2011)
Togo	4 287 (2013)	61.8% (2013)	3.2% (2013)
Sierra Leone	3 280 (Sep 2013)	58.3% (Sep 2013)	3% (Sep 2013)
DRC	22 000 (2010)	82% (2010)	3% (2010)
Mali	4 963 (2013)	50.2% (2013)	3% (2013)
Niger	7 116 (2013)	54% (2013)	3% (2012)
Congo (Brazzaville)	1 500 (2013)	75% (2012)	2.9% (2012)
Côte d'Ivoire	8 900 (Dec 2013)	44% (Dec 2013)	2.9% (Dec 2013)
Mozambique	15 735 (Dec 2012)	35.1% (Dec 2012)	2.9% (2009)
Ethiopia	93 044 (2011)	14% (2010)	2.8% (2011)
Chad	4 831 (Dec 2011)	63.4% (Dec 2011)	2.8% (May 2011)

Country	Total Prison Population	Total Pre-Trial detainees	Total female detainees
Namibia	4 314 (2012)	7.9% (2007)	2.7% (2012)
Tunisia	25 000 (Nov 2013)	52% (2013)	2.7% (Nov 2013)
Angola	21 634 (June 2013)	47.7% (Nov 2011)	2.7% (Dec 2011)
Swaziland	3 616 (Mar 2014)	18.1% (Mar 2012)	2.6% (Mar 2012)
South Africa	156 370 (Aug 2013)	28.1% (Aug 2013)	2.3% (Mar 2013)
Cameroon	25 337 (Dec 2012)	62% (Jul 20005)	2% (Dec 2012)
Mauritania	1 664 (2013)	48.5% (2013)	2% (2013)
Nigeria	56 620 (Dec 2013)	68.7% (Jun 2013)	2% (Jun 2013)
Sudan	19 101 (2013)	20.4% (2013)	2% (Mar 2003)
Gambia	1 000 (Dec 2013)	30% (Dec 2013)	2% (Dec 2012)
Comoros	206 (Oct 2013)	91.7% (Oct 2013)	1.9% (Oct 2013)
Ghana	14 416 (Jan 2014)	21.4% (Oct 2013)	1.6% (Jan 2014)
Burkina Faso	5 823 (Dec 2013)	41.5% (Dec 2013)	1.5% (Dec 2013)
Libya	5 090 (Sep 2013)	87.2% (Sep 2013)	1.2% (Sep 2013)
Zambia	17 021 (Sep 2013)	23.2% (Sep 2013)	1% (Sep 2013)
Algeria	60 000 (May 2013)	10% (Aug 2012)	1% (May 2013)
Malawi	12 236 (Dec 2012)	15.9% (Dec 2012)	0.8% (Dec 2012)
Gabon	3 500 (2013)	33% (2013)	Unknown
Somalia	3 450 (Est 2012)	Unknown	Unknown
Eritrea	Unknown	Unknown	Unknown

Apart from the Central African Republic, the proportion of female detainees is similar to global averages (2%-6%). No statistics are available for Somalia and Eritrea and some others, such as the Gambia, Djibouti and Equatorial Guinea are estimated figures.

3.1 Female criminality in various African countries

Studies on female criminality within particular African states are rare and those that do exist date as far back as the 1980s. Most studies originate from South Africa, the country with the highest prison population and imprisonment rate in Africa. However, imprisoned female offenders in South Africa have a unique profile in Africa which is not necessarily applicable to the rest of the continent. South Africa's previous Minister of Correctional Services, Sbu Ndebele, expressed concern in the media about the increased employment of women as drug mules, and stated that many are imprisoned for murdering their partners after suffering domestic abuse.⁴⁴ During the 2012/13 reporting period (the most recent statistics available at the time of writing), South Africa's Department of Correctional Services (DCS) recorded 2 392 sentenced female detainees and 988 women in pre-trial detention against 102 486 sentenced male detainees and 44 742 men in pre-trial detention.⁴⁵ It has been found that abused women who kill their partners are highly unlikely to

44 Kubheka, A. 2014. Female Prison Population on the Rise. *IOL News*, 26 March 2014. <http://www.iol.co.za/news/crime-courts/female-prison-population-on-the-rise-1.1666778> [accessed 2 May 2014]

45 Department of Correctional Services (South Africa). 2013. *Annual report 2012/2013*, p.33. <http://www.dcs.gov.za/docs/landing/DCS%20Annual%20Report%202012-2013.pdf> [accessed 3 April 2014].

be generally violent or dangerous.⁴⁶ Yet, South African female detainees appear to be inclined to violent crime. Statistics from DCS dated 2011 indicate that 45% of female detainees, both sentenced and remand detainees, were imprisoned for economic offences, while 38% were imprisoned for aggressive crimes.⁴⁷ In 2008, almost half of the South African female prison population were incarcerated for violent crimes such as murder, attempted murder or robbery.⁴⁸ A survey of 55 female prisoners in two prisons in the Western Cape revealed murder to be the most prevalent crime, followed by forgery and theft. Of the convicted offenders, 42% had some secondary education and, although the sample is quite small, this is different to the typical profile of the female detainee in Africa. Of the respondents, 72% admitted to abusing alcohol and 30% admitted the use of drugs.⁴⁹ Amongst a total of 4 152 sentenced female prisoners surveyed in 2004, murder was the most common crime (914). This was followed by theft (879) and assault (438).⁵⁰

In Malawi, poverty is considered the main motivating factor for crime. A survey from 2003 amongst male and female prisoners recorded crop theft and theft of livestock as the two most common crimes in Malawi, while corruption ranked third.⁵¹ No more recent or gender-disaggregated crime statistics could be found. However, a detailed analysis of female offenders dated 2004 provides some insight into the reasons why women were detained in Malawi at the time. Of a total of 40 female detainees surveyed, 19 were detained for theft, three for manslaughter, two for assault, five for damage of property, three for unlawful wounding and three were held on miscellaneous charges, including charges for the possession of 'chamba' (cannabis) and prostitution. Of the 19 thefts, three of the offenders were employed by the State at the time that the crime was committed, which means the theft amounted to corruption. In the sample, all the women incarcerated for theft are said to have been influenced by their male partners and most cases of violent crime were sparked by an argument with a spouse. The women detained on accounts of manslaughter all cited reasons closely related to witchcraft (avenging a deceased family member) and in each case, the victim was a family member of the offender. In all offenders' profiles, domestic relations play a central role. The three accounts of miscellaneous violent crimes pertain to abortion or infanticide. In each case, the offender cited rejection by the father of the child as the motivating factor. None of the offenders were intoxicated during the commission of their crime. All detainees were mothers.⁵²

A second survey of 69 female detainees was conducted around the same time in three Malawian prisons, namely Zomba Central Prison, Maulla Prison and Chichiri Maximum Security Prison. At 34 cases out of 69, murder was the most common crime (49%), with theft ranking second (8 cases) and witchcraft-related reasons were the most commonly cited motivation for the murders, followed by murder of their own children.⁵³

No crime statistics or gender-disaggregated detention statistics could be found for Ghana. It is, however, considered a major transit country for drug trafficking from South America to Europe and the rest of Africa.⁵⁴ Of the total number of male and female remand detainees who participated in a 2011 survey, 18% were held on drug charges.⁵⁵ One author suggests that female delinquents are commonly directed toward thievery and prostitution,⁵⁶ but no reports could be found to confirm a link between female detainees and drug-related crimes. A highly contentious issue in Ghana is

46 Bhana, K & Hochfeld, T. 2001. *Now we Have Nothing: Exploring the Impact of Maternal Imprisonment on Children whose Mothers Killed an Abusive Partner*, p. 5. Centre for the Study of Violence and Reconciliation. www.csvr.org.za/docs/gender/nowhavenothing.pdf [accessed 5 May 2014].

47 Statistics supplied by the Judicial Inspectorate for Correctional Services, as at end February 2011.

48 Artz, L, Hoffman-Wanderer, Y & Mout, K. 2012b. *Hard Time(s): Women's Pathways to Crime and Incarceration*. Gender, Health & Justice Research Unit, University of Cape Town, p. 129. http://www.ghiru.uct.ac.za/pdf/hard_times.pdf [accessed 2 April 2014]

49 Artz, L, Hoffman-Wanderer, Y & Mout, K. 2012a. *Women, Crime and Incarceration: Exploring Pathways of Women in Conflict with the Law*. Gender, Health & Justice Research Unit, University of Cape Town. <http://www.pspod.org.za/MediaLib/Downloads/Home/ResearchEvidence/Women%20Crime%20and%20Incarceration.pdf> [accessed 8 April 2014].

50 Sloth-Nielsen, J.(2005) *Women and Prisons in South Africa*, CSPRI Newsletter, No. 9, p. 2, <http://cspri.org.za/publications/newsletter/9%20-%20February%202005.pdf> [accessed 2 May 2014]

51 Pelser, E, Burton, P & Gondwe, L. 2004. *Crimes of Need: Results of the Malawi National Crime Victimization Survey*, ISS/NSO Pretoria. <http://www.issafrica.org/pubs/Books/CrimesOfNeed/10Points.pdf> [accessed 22 March 2014].

52 Burton, P, Pelser, E & Gondwe, L. 2005. *Understanding Offending Prisoners and Rehabilitation in Malawi*. Crime & Justice Statistical Division National Statistical Office, p. 47-9. <http://www.issafrica.org/uploads/Book2005UnderstandPrisoner.PDF> [accessed 22 March 2014].

53 Twea, S. 2004. *Women as Offenders: - The Social and Legal Circumstances of Women who Commit Crimes: A Case Study of Selected Prisons in Malawi*. Thesis submitted in partial fulfilment for the Masters Degree in Women's Law, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe, p.20 & 21. <http://uzweb.uz.ac.zw/law/women/dissertations/Women%20criminals%20Malawi.pdf> [accessed 2 March 2014].

54 Aning, K, Kwarkye, SB & Pokoo, S. 2013. *Getting Smart and Scaling Up: The Impact of Organized Crime on Governance in Developing Countries A Case Study of Ghana*. http://cic.nyu.edu/sites/default/files/kavanagh_crime_developing_countries_ghana_study.pdf [accessed 19 March 2014].

55 Open Society Foundations. 2013b. *The Socioeconomic Impact of Pre-trial Detention in Ghana*, p. 33. <http://www.opensocietyfoundations.org/sites/default/files/ptd-snapshot-ghana-05232013.pdf> [accessed 1 April 2014].

56 Weinberg, S. 1973. Female Delinquency in Ghana West Africa: A Comparative Analysis. *International Review of Modern Sociology*, 3(1), p. 65.

the banishment by the community of women presumed to be involved with witchcraft to 'witch camps' reportedly located in the northern, rural parts of Ghana. In 2012, six of these camps housed around 800 women and 500 children. Reportedly, the camps have been existence for almost one hundred years and were set up run by local chiefs.⁵⁷ Women accused of witchcraft are banished from villages by local populations and forced to find refuge in these camps, rather than being criminally prosecuted for practising witchcraft. Although not officially run by the State, it is argued that the camps are *de facto* prisons, where the accused are effectively forced to remain without trial or the possibility of reintegration.⁵⁸ As unofficial places of detention, these women are left in an extremely vulnerable position with no legal recourse. The Government of Ghana has recently expressed the intention to close the camps.⁵⁹

Findings of a survey conducted in 1988 in Zambia present interesting trends from the profile of 81 female detainees (40 pre-trial and 41 convicted detainees) held in six female prisons, namely Mufulira, Kitwe, Ndola, Kabwe, Lusaka and Livingstone. A total of 65% of detainees were held for violent crimes such as murder, manslaughter and assault. Most violent crimes were related to domestic quarrels.⁶⁰ Theft was the second most common offence.⁶¹ More than 50% of the detainees were illiterate.⁶²

Annual crime reports for Kenya are available online from the Kenya Police for the period 1995 to 2010, but statistics do not distinguish between the genders of offenders.⁶³ A survey of 200 female detainees in Nairobi's Langata prison dated 1999 indicated that offenders had mostly committed petty crimes such as loitering with the intent to engage in prostitution, the brewing of spirits, hawking without licences, petty thefts of property and possession of 'bhang' (cannabis). The brewing of traditional liquor called Changaa was legalised in 2010, removing many petty offenders from the risk of being prosecuted through the criminal justice system. Most offences related to the manner by which women earned their livelihood and it was found that the crimes committed had strong links to poverty.⁶⁴ Similar patterns emerge from a 1998 survey of six prisons in Botswana where most women were convicted for violating trade and liquor regulations, followed by drug-related and property offences.⁶⁵ It was found that women in prison are predominantly poor, young and uneducated. It confirmed high levels of prior victimisation, substance abuse (cannabis and methaqualone [mandrax] tablets) and detainees tended to suffer from mental disorders. Recent crime statistics from Botswana are available online, but are not disaggregated by gender.⁶⁶ According to prison census statistics for Zimbabwe for 2011/12, the majority of women were held on charges of common assault, theft or fraud.⁶⁷

57 Whitaker, K. 2012. Ghana Witch Camps: Widows' Lives in Exile, *BBC News Magazine*, 1 September 2012. <http://www.bbc.com/news/magazine-19437130> [accessed 28 April 2014].

58 ActionAid. 2012. *Condemned Without Trial: Women and Witchcraft in Ghana*, p. 5. <http://www.actionaid.org.uk/news-and-views/prisoners-of-prejudice-women-accused-of-witchcraft-condemned-to-ghanas-witch-camps> [accessed 5 March 2014].

59 Igwe, L. 2014. *The politics of abolishing witch camps in Ghana*. James Randi Educational Foundation. <http://www.randi.org/site/index.php/swift-blog/2301-the-politics-of-abolishing-witch-camps-in-ghana.html> [accessed 28 May 2014].

60 Sakala, JB. 1988. *Women and Crime in Zambia*. A dissertation for the degree of Masters of Law, University of Zambia, p. 120. <http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/922/Sakala2JB0001.PDF?sequence=2> and <http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/922/SakalaJB0001.PDF?sequence=1> [accessed 26 March 2014].

61 Sakala, JB. 1988. *Women and Crime in Zambia*. A dissertation for the degree of Masters of Law, University of Zambia, p. 112-8. <http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/922/Sakala2JB0001.PDF?sequence=2> and <http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/922/SakalaJB0001.PDF?sequence=1> [accessed 26 March 2014].

62 Sakala, JB. 1988. *Women and Crime in Zambia*. A dissertation for the degree of Masters of Law, University of Zambia, p. 121. <http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/922/Sakala2JB0001.PDF?sequence=2> and <http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/922/SakalaJB0001.PDF?sequence=1> [accessed 26 March 2014].

63 Kenya Police. 2010. *Annual Crime Report for the Year 2010*. <http://www.kenyapolice.go.ke/crime%20statistics.asp> [accessed 23 March 2014].

64 Oketch, MA. 1999. *Factors Affecting Female Criminality in Kenya: A Case Study of Langata Maximum Women's prison*. <http://researchkenya.or.ke/node/5126> [accessed 24 March 2014].

65 Modi-Moroka, T. 2003. Vulnerability Across a Life Course: An Empirical Study: Women and Criminality in Botswana Prisons. *Journal of Social Development in Africa*, 18(1) p.145, 148 &151. <http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/social%20development/vol18no1/jsda018001008.pdf> [accessed 8 April 2014].

66 For weekly crime reports between 2010 and 2013, see the official website of the Botswana Police Service: <http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Botswana-Police-Service-/Divisions/Crime-Reports/POLICE-WEEKLY-CRIME-REPORT-FROM-13062011-TO-19062011/> [accessed 8 April 2014].

67 Zimbabwe National Statistics Agency website, Zimbabwe Prison Census, 1st Quarter 2012, November 2013, http://www.zimstat.co.zw/dmdocuments/Prison/Q1_2012.pdf; Zimbabwe National Statistics Agency website, Zimbabwe Prison Census, 2nd Quarter 2012, January 2014, http://www.zimstat.co.zw/dmdocuments/Prison/Q2_2012.pdf; Zimbabwe National Statistics Agency website, Zimbabwe Prison Census, 3rd Quarter 2012, January 2014, http://www.zimstat.co.zw/dmdocuments/Prison/Q3_2012.pdf; Zimbabwe National Statistics Agency website, Zimbabwe Prison Census, 4th Quarter 2012, March 2014, http://www.zimstat.co.zw/dmdocuments/Prison/Q4_2012.pdf, [accessed 2 May 2014].

Proxy detention is practised in countries such as the DRC, South Sudan and Sierra Leone, meaning that women may be imprisoned for the crimes of their husbands or sons.⁶⁸ It is not clear how common this practice is. In South Sudan in November 2012, most female detainees had been accused or convicted of adultery.⁶⁹

3.2 Outdated offences

In former British colonies the poor and homeless risk to be held for outdated offences under penal codes inherited from colonial powers.⁷⁰ Rooted in England's Vagrancy Act of 1824, the Malawi Penal Code criminalises various 'nuisance' behaviours such as nuisance caused by rogues and vagabonds.⁷¹ A rogue or vagabond is defined as a 'suspected or reputed thief who has no visible means of assistance and cannot give a good account of himself'. The Penal Code further criminalises disorderly or indecent behaviour by prostitutes, beggars and touts.⁷² This legislation effectively allows for the arrest of any person who bothers the public for being homeless or someone whom law enforcement presumes to be a thief. In dealing with a charge for vagrancy in the case of *Stella Mwanza*, the court noted that such charges 'could be used to target non-criminal indigent persons, meaning that imprisonment could be based upon mere poverty, homelessness or unemployment.'⁷³ In 2006, the Government of Malawi declared illegal the act of minibus-taxi touting on the grounds that it violated various municipal by-laws.⁷⁴ While prostitution is illegal in Malawi, it appears to be tolerated to a large degree. Various activities related to prostitution such as brothel-keeping and procurement are criminalised and the police continue to target persons for these offences.⁷⁵

Similarly, the Zambian Penal Code, based on England's Vagrancy Act of 1824 gives licence to the police to arrest rogues and vagabonds – effectively someone who is homeless or poor or is assumed to be a thief, irrespective of whether the person has caused actual harm.⁷⁶ It is evident that such laws are open to abuse and exploitation by the police, but moreover, it targets the poor in one of the poorest countries in the world.

In 2009 in Sierra Leone, the crime of fraudulent conversion made up ten percent of charges enforced by the police.⁷⁷ The offence 'relates to the use of property for purposes other than that for which it was given and/or intended.'⁷⁸ Aspects of fraudulent conversion border on debt default and there is a slight distinction between criminal and civil elements of the offence. While the specific intent to defraud is not always evident, charges are often pressed when the debtor is simply unable to repay monetary debts.⁷⁹ Informal trading is a common economic activity for women in Sierra Leone and in their capacity as traders women are often engaged in informal borrowing or borrowing from micro-finance institutions. The majority of such traders have limited literacy and numeracy skills, and disputes related to payments and debts are

68 Human Rights Watch. 2012. 'Prison is not for me' *Arbitrary Detention in South Sudan*, p.58, http://www.hrw.org/sites/default/files/reports/southsudan0612ForUpload_1.pdf [accessed 4 May 2014]; Thompson, A & Mahtani, S. 2012. *Women, Debt and Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone*, p. 17, <http://www.advocaidsl.com/wp-content/uploads/2011/03/AdvocAid-Women-Debt-and-Detention-Final-Report.pdf> [accessed 1 April 2014]; Promoting Pre-trial Justice in Africa, Newsletter No. 7, 22 January 2014, <http://ppja.org/about-ppja/newsletter-7-women-in-per-trial-detention-in-drc-conditions-at-mpimba-prison-legal-assistance-for-detainees-in-angola-uniforms-for-remand-detainees-in-south-africa/view> [accessed 4 May 2014].

69 Human Rights Watch. 2012. 'Prison is not for me' *Arbitrary Detention in South Sudan*, p.62, http://www.hrw.org/sites/default/files/reports/southsudan0612ForUpload_1.pdf [accessed 4 May 2014].

70 Promoting Pre-trial Justice in Africa. Undated. Campaign to repeal outdated offences launched. <http://ppja.org/news/campaign-to-repeal-outdated-offences-launched> [accessed 2 May 2014].

71 Southern Africa Litigation Centre and Centre for Human Rights Education, Advice and Assistance. 2013. *No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi*, p. 29, <http://ppja.org/countries/malawi/no-justice-for-the-poor/view> [accessed 29 March 2014].

72 Penal Code, Sections 180 – 184 (Malawi).

73 *Stella Mwanza and 12 Others v Republic* [2008] MWHC 228;7.

74 Tambulasi, R & Kayuni, H. 2008. Can the State Perpetuate the Marginalisation of the Poor? The Socio-Economic Effects of the State's Ban on Minibus 'Callboys' in Malawi. *Development Southern Africa*, 25(2):220. <http://www.eldis.org/go/home&id=51789&type=Document> [accessed 23 March 2014].

75 Southern Africa Litigation Centre and Centre for Human Rights Education, Advice and Assistance. 2013. *No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi*, p. 98, <http://ppja.org/countries/malawi/no-justice-for-the-poor/view> [accessed 29 March 2014].

76 Laws of Zambia, Chapter 87 Section 178(g); Promoting Pre-trial Justice in Africa. Undated. *Outdated offence used to arrest Zambian activist*, <http://ppja.org/countries/zambia/outdated-offence-used-to-arrest-zambian-activist> [accessed 2 May 2014].

77 Thompson, A & Mahtani, S. 2012. *Women, Debt and Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone*, p. 17, <http://www.advocaidsl.com/wp-content/uploads/2011/03/AdvocAid-Women-Debt-and-Detention-Final-Report.pdf> [accessed 1 April 2014].

78 Fraudulent conversion is criminalised in terms of section 20(1)(iv)(b) of the Larceny Act of 1916; See further Thompson, A & Mahtani, S. 2012. *Women, Debt & Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone*, p. 18, <http://www.advocaidsl.com/wp-content/uploads/2011/03/AdvocAid-Women-Debt-and-Detention-Final-Report.pdf> [accessed 1 April 2014].

79 Thompson, A & Mahtani, S. 2012. *Women, Debt and Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone*, p. 18, <http://www.advocaidsl.com/wp-content/uploads/2011/03/AdvocAid-Women-Debt-and-Detention-Final-Report.pdf> [accessed 1 April 2014].

commonplace. Another concerning trend is that women may be detained in their spouses' stead or as his accomplice, despite a lack of evidence.⁸⁰ Unpaid monetary debt is viewed as an offence in countries such as Guinea (Conakry) and South Sudan which has a serious effect on women who typically have restricted access to means and are at risk of default.⁸¹ A survey of male and female detainees in Guinea found that seven percent of respondents were held on civil debt charges.⁸²

While the abovementioned laws are applied to all genders, women in African countries are disproportionately affected by poverty and often engage in activities which may put them at risk of prosecution under outdated criminal codes such as loitering, prostitution, debt default or mere homelessness. From the above it is concluded that outdated laws give police free reign to arrest people for nothing more than being poor, homeless or a 'nuisance'.⁸³ The failure to prosecute nuisance-related crimes judicially points to a lack of real intention to pursue such matters and implies that powers of law enforcement are easily abused.⁸⁴ The Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa calls on states to decriminalise offences such as loitering, prostitution, failure to pay debts and disobedience to parents, but law reform has not yet taken place.⁸⁵

3.3 Perceived Gender-related Offences

3.3.1 Abortion

As recent as 2012, abortion was totally prohibited in 14 African countries including Angola, the DRC, Lesotho, Mauritius and Somalia.⁸⁶ A number of African states, such as Nigeria, Mozambique, Uganda, Kenya and Zimbabwe prohibit abortion, unless for reasons of health and safety of the woman.⁸⁷

The Kenyan criminal code criminalises abortion and the performance of abortions. A doctor may be sentenced to 14 years in prison for performing an abortion, while the woman involved may be sentenced to seven years.⁸⁸ Anecdotal reports suggest that women are rarely sentenced to prison for causing abortion and it appears that magistrates resort to simple admonishments or sentence convicted offenders to probation which points to an inconsistent application of the law.⁸⁹ The Kenyan Police recorded a total of 32 cases of procurement of abortion in 2009 and 30 cases in 2010. During 2009, 66 cases of concealment of abortion were recorded and 69 cases in 2010.⁹⁰ Therefore, the total number of arrests for abortion-related crimes is minimal.

This position is similar to that in Zimbabwe, where a total of ten convictions were recorded during the prison census of 2012, showing that abortion-related crimes accounted for a small number of female detainees.⁹¹

80 Thompson, A & Mahtani, S. 2012. *Women, Debt and Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone*, p. 16, <http://www.advocaidsl.com/wp-content/uploads/2011/03/AdvocAid-Women-Debt-and-Detention-Final-Report.pdf> [accessed 23 March 2014].

81 Human Rights Watch. 2012. 'Prison is not for me' *Arbitrary Detention in South Sudan*, p75 http://www.hrw.org/sites/default/files/reports/southsudan0612ForUpload_1.pdf [accessed 4 May 2014].

82 Open Society Foundations. 2013a. *The Socioeconomic Impact of Pre-trial Detention in Guinea Conakry*, p.28. <http://www.opensocietyfoundations.org/publications/socioeconomic-impact-pretrial-detention-guinea-conakry> [accessed 8 May 2014].

83 United Nations General Assembly. 2012. *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, A/67/278/ 9 August 2012, paragraph 48. <http://www.ohchr.org/Documents/Issues/Poverty/A-67-278.pdf> [accessed 3 May 2014].

84 Southern Africa Litigation Centre and Centre for Human Rights Education, Advice and Assistance. 2013. *No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi*, p. 5, <http://ppja.org/countries/malawi/no-justice-for-the-poor/view> [accessed 29 March 2014].

85 African Commission on Human and Peoples' Rights, Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa, point 1 of the Plan of Action, <http://www.achpr.org/instruments/ouagadougou-planofaction/> [accessed 2 May 2014].

86 Guttmacher Institute. 2012. *Facts on Abortion in Africa*. http://www.guttmacher.org/pubs/IB_AWW-Africa.pdf [accessed 5 May 2014].

87 Guttmacher Institute. 2012. *Facts on Abortion in Africa*. http://www.guttmacher.org/pubs/IB_AWW-Africa.pdf [accessed 5 May 2014].

88 Laws of Kenya, *The Penal Code*, Chapter 63, Articles 158 – 160, <http://www.issafrika.org/cdct/mainpages/pdf/Terrorism/Legislation/Kenya/Kenya%20Penal%20Code%201-100%20of%20119%20A%20.pdf> [accessed 10 April 2014].

89 Centre for Reproductive Rights. 2010. *In Harm's Way: The Impact of Kenya's Restrictive Abortion Law*, p.69, http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/InHarmsWay_2010.pdf [accessed 11 April 2014].

90 Kenya Police. 2010. *Annual Crime Report for the Year 2010*, p.19, <http://www.kenyapolice.go.ke/crime%20statistics.asp> [accessed 23 March 2014].

91 Zimbabwe National Statistics Agency website, Zimbabwe Prison Census, 1st Quarter 2012, November 2013, http://www.zimstat.co.zw/dmdocuments/Prison/Q1_2012.pdf; Zimbabwe National Statistics Agency website, Zimbabwe Prison Census, 2nd Quarter 2012, January 2014, http://www.zimstat.co.zw/dmdocuments/Prison/Q2_2012.pdf; Zimbabwe National Statistics Agency website, Zimbabwe Prison Census, 3rd Quarter 2012, January 2014, http://www.zimstat.co.zw/dmdocuments/Prison/Q3_2012.pdf; Zimbabwe National Statistics Agency website, Zimbabwe Prison Census, 4th Quarter 2012, March 2014, http://www.zimstat.co.zw/dmdocuments/Prison/Q4_2012.pdf, [accessed 2 May 2014].

In Malawi, abortion is criminalised under legislation inherited from the British Offences against the Person Act of 1861, in terms of which an attempt to procure an abortion is punishable by seven to 14 years imprisonment.⁹²

3.3.2 Prostitution

Prostitution is criminalised in the majority of African countries and it is widely documented that female sex workers are frequently harassed, abused or subjected to extortion by law enforcement authorities.⁹³

In Zambia, prostitution itself is not criminalised, but it is prosecuted as a crime of nuisance.⁹⁴ Sections 146 and 147 of the Penal Code prohibit living on the earnings of prostitution or aiding and soliciting for prostitution. Convictions attract serious penalties.⁹⁵ The prohibition of prostitution renders female sex workers vulnerable to harassment or violence at the hands of the police, which in turn leads to unwillingness to report such crimes and ultimately to impunity for the perpetrators.⁹⁶

Sex work is criminalised in Kenya⁹⁷ and reports indicate that women are arrested at times on charges of prostitution for being dressed 'immorally' without having engaged in prostitution. A report by the Federation of Women Lawyers of Kenya indicates that sex workers are often arrested on fabricated charges so that law enforcement authorities can extort sex from them in exchange for their release. There are also reports of sexual assault of sex workers during custody.⁹⁸

Similar reports of harassment and targeted arrests of sex workers have been noted in Botswana, South Africa, Namibia and Malawi.⁹⁹ Bribes are extorted for their release without any charges having been laid.¹⁰⁰ Sex work is illegal in South Africa and in an effort to curb arbitrary arrests, a 2009 order of the Western Cape High Court prohibits police from arresting sex workers unless they intend to follow through with prosecution.¹⁰¹

While most studies show a pattern of harassment and abuse and the hands of law enforcement agents, conclusive data on the numbers of women arrested for prostitution could not be found.

3.3.3 Witchcraft

The practice of witchcraft is widely criminalised throughout Africa including in countries such as Cameroon, the Central African Republic, Kenya, Uganda, Tanzania, and Zimbabwe. In some countries it is considered an offence to accuse a person of practising witchcraft. The laws of former British colonies frequently include a variation of the Suppression of Witchcraft Act as part of their legislative frameworks.¹⁰²

92 Jackson, E et al. 2011. Strategic assessment of unsafe abortion in Malawi. *Reproductive Health Matters*, 19(37) p.134. <http://www.eldis.org/vfile/upload/1/document/1110/Strategic-assessment-of-unsafe-abortion-in-Malawi.pdf> [accessed 10 April 2014].

93 Arnott, J & Crago, A. 2009. *Rights not Rescue, A Report on Female, Male, Trans sex workers' human rights in Botswana, Namibia, and South Africa*, p.10. http://www.opensocietyfoundations.org/sites/default/files/rightsnotrescue_20090706.pdf [accessed 5 April 2014].

94 Zambian Penal Code Act, Chapter XVII, Section 178, text available at <http://www.parliament.gov.zm/downloads/VOLUME%207.pdf> [accessed 9 April 2014].

95 Meerkotter, A. 2012. *Crackdown on Sex Workers in Zambia: The Wrong Response?* <http://www.southernafricallitigationcentre.org/1/wp-content/uploads/2012/11/Article-on-sex-work-in-Zambia1.pdf> [accessed 5 April 2014].

96 Bourke-Martignoni, J. 2002. *Violence Against Women in Zambia.. Report Prepared for the Committee on the Elimination of Discrimination Against Women*. Geneva: World Organisation Against Torture, p.30. <http://www.omct.org/files/2002/01/2193/zambiaeng2002.pdf>. [accessed 5 May 2014].

97 Laws of Kenya, *Penal Code*, Chapter 63, Section 154 <http://www.kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/P/ Penal%20Code%20Cap.%2063%20-%20No.%2010%20of%201930/docs/ PenalCode81of1948.pdf> [accessed 5 May 2014].

98 Federation of Women Lawyers. 2008. *Documenting Human Rights Violation of Sex Workers in Kenya*. http://www.opensocietyfoundations.org/sites/default/files/fida_20081201.pdf [accessed 5 April 2014].

99 Southern Africa Litigation Centre and Centre for Human Rights Education, Advice and Assistance. 2013. *No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi*, p. 59 and 98. <http://ppia.org/countries/malawi/no-justice-for-the-poor/view> [accessed 29 March 2014].

100 Arnott, J & Crago, A. 2009. *Rights not Rescue: A Report on Female, Male, Trans Sex Workers' Human Rights in Botswana, Namibia, and South Africa*, 2009, p.24 – 37. http://www.opensocietyfoundations.org/sites/default/files/rightsnotrescue_20090706.pdf [accessed 5 April 2014]; *South African Press Agency, IOL News*. 2012. Most sex workers abused by police: study, 22 August 2012. <http://www.iol.co.za/news/south-africa/most-sex-workers-abused-by-police-study-1.1367966> [accessed 5 May 2014].

101 *The Sex worker Education and Advocacy Taskforce v Minister of Safety and Security and Others* (3378/07) [2009] ZAWCHC 64; 2009 (6) SA 513 (WCC) (20 April 2009), <http://www.saflii.org/za/cases/ZAWCHC/2009/64.html> [accessed 5 May 2014].

102 Cimpric, A. 2010. *Children Accused of Witchcraft: An Anthropological Study of Contemporary Practices in Africa*. http://www.unicef.org/wcaro/english/wcaro_children-accused-of-witchcraft-in-Africa.pdf [accessed 3 April 2014]; Mgabako, C & Glenn, K. 2011. Witchcraft Accusations and Human Rights: Case studies from Malawi. *The George Washington International Law Review*, 43, p. 8.

Malawi inherited the 1911 Witchcraft Act from England,¹⁰³ which does not legally recognise witchcraft, but makes it an offence to accuse someone of practising witchcraft, or for an individual to claim that they practice it. In 2011, 45 persons were allegedly held on charges of witchcraft in Malawian prisons.¹⁰⁴ Over the years, elderly women in Africa were more frequently suspected and accused of witchcraft than males.¹⁰⁵ It appears that the women suspected of practising witchcraft, instead of those alleging it, are the ones to be detained. This means that the legislation is incorrectly implemented and that there are actually no legal grounds for their detention. The Witchcraft Act has been under review by the Malawi Law Commission since 2009.¹⁰⁶ It has been reported that it is difficult to ascertain the degree to which women are imprisoned for witchcraft-related offences, since the person may be arrested for offences such as breaching the peace.¹⁰⁷

Until 2006, Zimbabwe's legal framework included the Witchcraft Suppression Act which did not recognise witchcraft and made it illegal to call anyone a witch.¹⁰⁸ On 1 July 2006 the Act was repealed and substituted by Part VI of the Criminal Code. The amendment recognises and criminalises witchcraft, imposing a fine or maximum prison sentence of up to five years for engaging in the practice. Groundlessly accusing someone of being a witch or accusation through the purported use of non-natural means is defined as an offence and carries a penalty of a fine or imprisonment not exceeding one year. However, the mere suspicion and accusation of someone for practising witchcraft is not an offence.¹⁰⁹ In 2012, the number of women in Zimbabwean prisons convicted of witchcraft related offences stood at seven, compared with a total of 11 men.¹¹⁰ Surveys conducted between 2005 and 2009 in the Central African Republic confirmed that a large number of cases brought before the family courts are with craft-related, and that 70% of prisoners in Bangui Central Prison were there after having been accused of witchcraft.¹¹¹

3.4 The relationship between female criminality, physical abuse and substance abuse

European and North American literature confirm the link between female criminality and prior physical or sexual abuse. When exploring the reasons for female detention, it is necessary to consider the indirect impact of past experiences of abuse or substance abuse on the number of women in pre-trial detention.

In broad terms, child and adult experiences of abuse have been identified to be possibly the single most important factor distinguishing female and male offenders.¹¹² Judging from reports indicating high levels of gender-based violence in African states such as Zambia, Kenya and Tanzania,¹¹³ there is a strong possibility that a significant proportion of women in African prisons have at some point been exposed to abuse. A survey of 569 women in three prisons in Gauteng, South Africa, found that 38% of participants had experienced domestic violence in their families whilst growing up, 21% were sexually assaulted before the age of 15, and 15% were raped before the age of 15. Some form of

103 Laws of Malawi, Witchcraft Act, Cap. 7:02.

104 *IRIN Malawi*. 2011. Suspected Witches Jailed, 6 April 2011, <http://www.irinnews.org/report/92396/malawi-suspected-witches-jailed> [accessed 2 May 2014].

105 Mgabako, C & Glenn, K. 2011. Witchcraft Accusations and Human Rights: Case Studies from Malawi. *The George Washington International Law Review*, 43:1-22; The Nation Online, *Malawi frees all witches from jail*, 20 January 2013, <http://mwnation.com/malawi-frees-all-witches-from-jail/> [accessed 2 May 2014].

106 Malawi Law Commission. 2009. *Notice of Work Programme 2009*. <http://www.sdn.org.mw/lawcom/docs/WorkProg2009.pdf> [accessed 2 May 2014].

107 *IRIN Malawi*. 2011. Suspected Witches Jailed, 6 April 2011. <http://www.irinnews.org/report/92396/malawi-suspected-witches-jailed> [accessed 2 May 2014].

108 Nkatanzo, L. 2009. Zimbabwe Outlaws Practice of Witchcraft. *New Zimbabwe.com*, 11 December 2009. <http://www.newzimbabwe.com/pages/witchcraft2.14064.html> [accessed 2 May 2014].

109 Criminal Code of Zimbabwe Act No. 23 of 2004, Sections 98 – 99, <http://www1.umn.edu/humanrts/research/Criminal%20Law%20Code%20Veritas.pdf> [accessed 2 May 2014].

110 Zimbabwe National Statistics Agency website, *Zimbabwe Prison Census, 1st Quarter 2012*, November 2013, http://www.zimstat.co.zw/dmdocuments/Prison/Q1_2012.pdf; Zimbabwe National Statistics Agency website, *Zimbabwe Prison Census, 2nd Quarter 2012*, January 2014, http://www.zimstat.co.zw/dmdocuments/Prison/Q2_2012.pdf; Zimbabwe National Statistics Agency website, *Zimbabwe Prison Census, 3rd Quarter 2012*, January 2014, http://www.zimstat.co.zw/dmdocuments/Prison/Q3_2012.pdf; Zimbabwe National Statistics Agency website, *Zimbabwe Prison Census, 4th Quarter 2012*, March 2014, http://www.zimstat.co.zw/dmdocuments/Prison/Q4_2012.pdf [accessed 2 May 2014]

111 Cimpric, A. 2010. *Children Accused of Witchcraft: An Anthropological Study of Contemporary Practices in Africa*, p. 43–4. http://www.unicef.org/wcaro/english/wcaro_children-accused-of-witchcraft-in-Africa.pdf [accessed 3 April 2014].

112 Armour, C. 2012. Mental Health in Prison: A Trauma Perspective on Importation and Deprivation, Female Prisoners' Mental Health: A Special Trauma Case? *International Journal of Criminology and Sociological Theory*, 5(2): 886–94.

113 Kishor, S. & Johnson, K. 2004. *Profiling Domestic Violence – A Multi-Country Study*, Calverton, Maryland, ORC Macro; The Population Council Inc. 2008. *Sexual and gender based violence in Africa: Literature review*, p.12, http://www.popcouncil.org/uploads/pdfs/AfricaSGBV_LitReview.pdf [accessed 7 May 2014]; World Health Organization. 2005. *WHO Multi-country Study on Women's Health and Domestic Violence against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Responses*. http://www.who.int/gender/violence/who_multicountry_study/en/ [accessed 5 May 2014].

abuse, including emotional abuse during their last relationship was experienced by 78% of participants. Amongst these women, murder was the most common crime, having been committed by 38% of the participants.¹¹⁴ Confirming findings in the international literature,¹¹⁵ a study conducted by the University of Cape Town (UCT) on the relationship between female criminality and substance abuse shows that women who are addicted to, or frequently used alcohol were more likely to have committed violent crimes.¹¹⁶ It was further found that drug addiction is often the result of abuse, pointing to a cycle of abuse, substance abuse and crime.¹¹⁷ Recent media statements indicate that drug traffickers increasingly target young, single mothers who find themselves in financial difficulty to work as drug mules. In 2013, an estimated 337 South African women were held in foreign prisons for this reason and the repatriation of 16 children had been arranged by South Africa's Department for Social Development.¹¹⁸

The University of Malawi conducted an assessment of drug abuse and HIV/AIDS in Malawi in 2004. Of 1 218 drug abusers surveyed, 96% were men. Cannabis was the most common drug used.¹¹⁹ There is no up-to-date information available on the abuse of substances by females in Malawi, nor of the impact of substance abuse on criminality.

3.5 Poverty and access to justice

Women in Africa continue to be victims of widespread gender discrimination and remain an economically disadvantaged population group. A survey of 25 Sub-Saharan African countries shows that women are more likely than men to live in poverty in 22 of those countries.¹²⁰ Women affected by poverty are likely to be uneducated, ignorant of their rights, and fearful or distrusting of authorities and judicial mechanisms.¹²¹ Access to justice is beset by challenges such as high travel costs, high legal fees or lack of access to legal representation, corruption, poor capacity for interaction with state officials and long waiting periods.¹²² The literature confirms that women are particularly vulnerable to remaining in pre-trial detention because they cannot afford fines for minor offences, bail, or legal representation.¹²³

Legal processes are often inaccessible to the poor and it can be argued that the imposition of bail as a precondition for release discriminates against the poor.¹²⁴ In many countries, an offender must provide some form of security in exchange for his or her release. Security may take various forms including monetary bail,¹²⁵ surety/bail-bond or non-monetary conditions of bail. In some instances, authorities may require the provision of surety which functions as a guarantee that detainees or their proxies will post bail if called upon to do so. When dealing with less serious offences, bail conditions may comprise non-monetary terms, such as requiring the accused to appear in court on a specified day or prohibiting the accused from engaging in particular conduct. In some cases, detainees who are released on the

114 Haffeeje, S, Vetten, L & Greyling, M. 2006. *Violence and Abuse in the Lives of Women and Girls Incarcerated at Three Gauteng Women's Prisons*. Johannesburg: Centre for the Study of Violence and Reconciliation Gender Programme, Research Brief, No. 3. <http://www.csvr.org.za/docs/correctional/violenceandabuse.pdf> [accessed 8 May 2014].

115 Grella, CE, Stein, JA & Greenwell, L. 2005. Associations Among Childhood Trauma, Adolescent Problem Behaviors, and Adverse Adult Outcomes in Substance-Abusing Women Offenders. *Psychology of Addictive Behaviors*, 19(1):43–53.

116 Artz, L, Hoffman-Wanderer, Y & Moutl, K. 2012b. *Hard Time(s): Women's Pathways to Crime and Incarceration*. Gender, Health & Justice Research Unit, University of Cape Town, p. 209. http://www.gjru.uct.ac.za/pdf/hard_times.pdf [accessed 2 April 2014].

117 Artz, L, Hoffman-Wanderer, Y & Moutl, K. 2012b. *Hard Time(s): Women's Pathways to Crime and Incarceration*. Gender, Health & Justice Research Unit, University of Cape Town, p. 204. http://www.gjru.uct.ac.za/pdf/hard_times.pdf [accessed 2 April 2014].

118 Williams, P. 2013. Drug Mules Pay Price of Abuse. *Pretoria News*, 6 August 2013. <http://www.iol.co.za/pretoria-news/opinion/drug-mules-pay-price-of-abuse-1.1558576> [accessed 7 May 2014]; *South African Press Agency, Times Live*, 16 Children Repatriated to South Africa from Foreign Jails, 28 July 2013. <http://www.timeslive.co.za/local/2013/07/28/16-children-repatriated-to-south-africa-from-foreign-jails> [accessed 7 May 2014]; Nair, Y. 2013. SA Drug Mules: Young, Single Moms. *IOL News*, 22 May 2013. <http://www.iol.co.za/news/crime-courts/sa-drug-mules-young-single-moms-1.1520040> [accessed 7 May 2014].

119 Bisika, T, Thomas SE & Chamangwana, I. 2004. *Drug Abuse and HIV/AIDS in Malawi: Results from a Rapid Situation Assessment*. Zomba: Centre for Social Research, University of Malawi, http://books.google.co.za/books/about/Drug_abuse_and_HIV_AIDS_in_Malawi.html?id=QKLFAAAIAAJ&redir_esc=y [accessed 5 April 2014].

120 UN Women 2011, *Progress of the World's Women*, p. 104. <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf> [accessed 7 May 2014].

121 UNODC. 2008. *Handbook for Prison Managers and Policy Makers on Women and Imprisonment*. Criminal Justice Handbook Series, p. 86. <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> [accessed 27 February 2014].

122 United Nations General Assembly Report of the Special Rapporteur on Extreme Poverty and Human Rights, A/67/278/9, August 2012, paragraphs 21, 27 and 57. <http://www.ohchr.org/Documents/Issues/Poverty/A-67-278.pdf> [accessed 3 May 2014].

123 Townhead, L. 2007. *Pre-Trial Detention of Women and its Impact on their Children*. Women in Prison and Children of Imprisoned Mothers Series. Quaker United Nations Office, p.17–8. <http://www.quano.org/resource/2007/2/pre-trial-detention-women-and-its-impact-their-children> [accessed 2 April 2014]; UNODC. 2008. *Handbook for Prison Managers and Policy Makers on Women and Imprisonment*. Criminal Justice Handbook Series, p. 3. <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> [accessed 27 February 2014].

124 UNODC. 2007. *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, p.21. http://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf [accessed 29 March 2014].

125 Monetary bail is a cash deposit which is paid either to the police or to the court, to guarantee the person's compliance with the conditions set for release.

condition to report regularly to the authorities may be arrested because they lack the means to cover the costs of travelling to the place where they are required to report.¹²⁶

According to a 2004 survey in South Africa, a third of female remand detainees who were granted bail could not afford it, compared to 7% of male prisoners.¹²⁷ Marking a slight improvement, a subsequent 2007 report by the Judicial Inspectorate of Prisons shows that approximately a quarter of female detainees on remand were unable to afford bail.¹²⁸ In 2013, DCS estimated the total percentage of remand detainees (male and female) who remain in detention despite bail having been fixed, at between 15% and 20%.¹²⁹ It is evident that female detainees' inferior socio-economic position therefore results in avoidable imprisonment.¹³⁰

A census conducted in three Kenyan prisons during 2003 found that 86% of all remand prisoners who qualified for bail remained in prison because they could not meet the conditions set.¹³¹ A similar pattern can be observed in Ghana where the inability of women to access legal aid and the courts contribute directly towards large numbers of women in pre-trial detention. In Ghanaian culture, women and children are often afraid to speak in public, rendering them unable to present their cases to authorities.¹³² Many women remain subject to traditional male dominance and submit to social norms that deny them their statutory entitlements to inheritance and property.¹³³ Such cultural practices have the most serious impact on uneducated and economically disadvantaged women. Research confirms that many detainees are not advised of their right to representation upon arrest, nor is state funded legal aid forthcoming. Of the detainees surveyed in 2013, 17% remained in detention because they were unable to afford bail.¹³⁴

In Sierra Leone, gender inequality and female poverty are pervasive problems, impacting directly on women in pre-trial detention. Disparities between the genders are said to be severe and has been referred to as an example of the 'feminisation of poverty'.¹³⁵ Sierra Leone's bail regime has been described as 'rigorous', 'inconsistent and excessive'.¹³⁶ Typical conditions for release of a person on bail include the requirement to produce two sureties, who are resident in the same city as the court, and who must produce title deeds as evidence of property ownership.¹³⁷ Historically, women were not able to own property and poor female detainees are unlikely to have close male acquaintances who are land owners. It also raises questions around the accessibility of title deeds and clarity of laws of land ownership in Sierra Leone.¹³⁸ Where monetary deposits are required for bail, the average amount set is 25 times the average weekly earnings of detainees.¹³⁹ This is disproportionately high and unaffordable for most detainees. Many women are in conflict with the law due as a

126 This is reportedly the case for a number of detainees in Zambia. See Open Society Initiative for Southern Africa (2011) *Pre-trial Detention in Zambia: Understanding Case Flow Management and Conditions of Incarceration*, p. 10 http://www.osisa.org/sites/default/files/sup_files/open_learning_-_pre-trial_detention_in_zambia.pdf [accessed 1 April 2014].

127 Judicial Inspectorate of Prisons (South Africa). 2004. *Women in South African Prisons: A Publication Prepared by the Judicial Inspectorate of Prisons in Support of the 16 Days of Activism Campaign Unite Against Women and Child Abuse*. Cape Town.

128 UNODC. 2008. *Handbook for Prison Managers and Policy Makers on Women and Imprisonment*, Criminal Justice Handbook Series, p. 86, <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> [accessed 27 February 2014].

129 Department of Correctional Services (South Africa). *Annual report 2012/2013*, p. 13, <http://www.dcs.gov.za/docs/landing/DCS%20Annual%20Report%202012-2013.pdf> [accessed 29 March 2014].

130 Sloth-Nielsen, J. 2005. Women and Prisons in South Africa. *CSPRI Newsletter*, No. 9, p. 2, <http://cspri.org.za/publications/newsletter/9%20-%20February%202005.pdf> [accessed 2 May 2014].

131 UNODC. 2011. *Access to Legal Aid in Criminal Justice Systems in Africa*, p. 37. https://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf [accessed 29 March 2014].

132 Appiah, K. 2013. *Report on Access to Justice: Scoping Study of the Justice (Formal and Informal) Sector in Ghana*, p. 16. <http://www.starghana.org/userfiles/files/publications/Access%20to%20Justice%20-%20Scoping%20Study%20of%20the%20Justice%20Sector%20in%20Ghana.pdf> [accessed 29 March 2014].

133 United Kingdom Home Office. 2014. *Operational Guidance Note Ghana*, p.5. <http://www.refworld.org/pdfid/528370ed4.pdf> [accessed 6 April 2014].

134 Open Society Foundations. 2013b. *Socioeconomic Impact of Pre-trial Detention in Ghana*, p. 10. <http://www.opensocietyfoundations.org/sites/default/files/ptd-snapshot-ghana-05232013.pdf> [accessed 1 April 2014].

135 Sierra Leone Truth and Reconciliation Commission Report. 2005. *Witness to Truth, Chapter 3b Women and the Armed Conflict in Sierra Leone*, http://www.sierraleoneontrc.org/index.php/view-report-text-vol-3b/item/volume-three-b-chapter-three?category_id=9 [accessed 29 March 2014].

136 Thompson, A & Mahtani, S. 2012. Women, Debt and Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone cites the following report: UNIOSIL. 2007. *Behind Walls: An Inventory and Assessment of Prisons in Sierra Leone*. Freetown. A copy of the report could not be found.

137 Open Society Justice Initiative. 2013. *The Socioeconomic Impact of Pre-Trial Detention in Sierra Leone*, p.40. <http://www.opensocietyfoundations.org/publications/socioeconomic-impact-pretrial-detention-sierra-leone> [accessed 1 April 2014].

138 Open Society Justice Initiative. 2013. *The Socioeconomic Impact of Pre-Trial Detention in Sierra Leone*, p.40, footnote 19: 'Land rights in Sierra Leone are not straightforward. Sierra Leonean citizens (but not foreigners) can acquire private land in Freetown and the Western Area only. In the provinces (the rest of the country) land ownership is governed by customary law and only "natives" who belong to a provincial tribe (excluding "non-native" Sierra Leoneans, such as those of Krio and Lebanese descent) may have rights to land. Customary land tenure may include various types of customary tenure such as *de facto* private ownership, secondary tenure, community ownership, begged ownership and leased ownership. It is therefore unclear which kind of land rights are referred to when detainees said they "owned" land. The freehold system in the Western Area is not guaranteed by any system of title registration.'

139 Open Society Justice Initiative. 2011. *The Socioeconomic Impact of Pre-Trial Detention*, p.41. <http://www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention> [accessed 1 April 2014].

result of family disputes, domestic violence or poverty. Severed relations with relatives often leave women unable to meet bail requirements¹⁴⁰ and financial assistance may be wilfully withheld as a form of punishment. A 2010 report estimated that only 5% to 10% of prisoners had access to legal representation primarily due to financial constraints.¹⁴¹ A 2007 report by United Nations Integrated Office in Sierra Leone (UNIOSIL) found that 80% of detainees interviewed could not fulfil their bail conditions, which is a general problem affecting both men and women.¹⁴² Given the marginalised position of women in society, it is likely that a very small percentage of the persons who are able to access justice are women.

The use of monetary bail and surety continue to be common practice in African states. The monitoring of detainees through electronic devices as an alternative to custody is a new concept in Africa. The electronic monitoring of parolees was launched in South Africa in 2012 and at the end of the 2013 reporting period DCS had indicated the intention to extend its use to remand detainees.¹⁴³

3.6 Conclusion

With regard to the reasons why women find themselves in detention, the literature reviewed from South Africa and Zambia show that a considerable number of women are sentenced for murder. Predominantly, unequal domestic relations or a history of prior abuse feature at the centre of violent crime committed by women. Women who murder or assault their partners under such circumstances generally pose a minimal threat to others. Facing charges of such gravity, it can be assumed that they will spend a considerable period of time in pre-trial detention. The position is different in Kenya, Malawi, Botswana and Zimbabwe where reports indicate that the majority of crimes committed by women are of a non-violent nature.

Economic disadvantage is the main factor to impact on pre-trial detention of women in Africa. Poverty is the context for a range of social problems such as substance abuse, drug trafficking, prostitution, domestic violence and the general disempowerment of women. Poor female detainees are likely to be uneducated or poorly educated, and face difficulties in accessing justice. The enforcement of outdated offences such as loitering, idleness, constituting a nuisance and civil debt continue to effect poor and homeless persons in a number of African countries. The absence of social security and the primary duty of child care place female detainees at a particular disadvantage.

Both men and women are affected by the criminalization of abortion and prostitution. Convictions for practice of witchcraft appear to have a small impact on the number of females in detention in the countries reviewed. Although witchcraft has serious impacts on a social level – for example the killing or banishment of suspected witches to camps, the prosecution and imprisonment of women for this reason is less common. Prostitution and abortion is outlawed in a number of countries, yet such practices are either tolerated or are unrecorded. Sex workers frequently report harassment, extortion and arbitrary arrest at the hands of law enforcement authorities, but the offences of this nature seldom reach the courts. Since police admission and release dates are not readily available, it was not possible to ascertain the extent to which female sex workers are detained pre-trial.

140 Thompson, A & Mahtani, S. 2012. *Women, Debt and Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone*. <http://www.advocaidsl.com/wp-content/uploads/2011/03/AdvocAid-Women-Debt-and-Detention-Final-Report.pdf> [accessed 1 April 2014].

141 United States Department of State. 2011. *Human Rights Report 2010: Sierra Leone*. <http://www.state.gov/documents/organization/160143.pdf> [accessed 4 April 2014].

142 Thompson, A & Mahtani, S. 2012. *Women, Debt and Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone* citing the following report: UNIOSIL. 2007. *Behind Walls: An Inventory and Assessment of Prisons in Sierra Leone*. Freetown. (A copy of the report could not be found.)

143 Department of Correctional Services (South Africa). 2013. *Annual report 2012/2013*, p. 13 and 17. <http://www.dcs.gov.za/docs/landing/DCS%20Annual%20Report%202012-2013.pdf> [accessed 29 March 2014].



Health needs of women in detention

The conditions in African prisons and remand detention facilities are often conducive to the rapid spread of infectious diseases such as HIV/AIDS, tuberculosis (TB), cholera and illness linked to inadequate sanitation, hygiene and poor nutrition.¹⁴⁴ Given the high turnover of detainees and the temporary nature of remand detention, qualified medical personnel are not necessarily available to detainees awaiting trial, nor are proper health screenings or assessments done upon admission. In addition to the regular health hazards of detention, women have additional and unique health concerns. This includes needs arising from menstruation, pregnancy, child birth, the development of certain forms of cancer and a heightened vulnerability to sexual abuse.¹⁴⁵ A study from Europe shows that women who enter the prison system are likely to come from a deprived background; to experience problems with substance abuse; infectious diseases; to suffer from depression or another type of mental illness; and are at risk of self-harm or suicide.¹⁴⁶ The United Nations Office on Drugs and Crime (UNODC) draws attention to women detained in relation to crimes such as attempted or completed abortion who are likely to show signs of having suffered severe psychological strain and who may have experienced recent pregnancy, abortion, miscarriage or delivery and as such, present heightened health risks during pre-trial detention.¹⁴⁷ Pre-trial detention is seen as temporary, yet the reality is that many people remain remand detainees for months or even years and should therefore be afforded the same treatment as sentenced prisoners. Even a short period in detention can have severe medium- and long-term health consequences. Some of the main issues are addressed below.

4.1 Access to health care services and screening upon admission

Rules 22 to 26 of the UNSMR set out the basic rights of detainees to access health care services. All detainees must be medically examined as soon as possible following admission to prison and a medical officer should be readily accessible.¹⁴⁸ The Bangkok Rules allow female detainees to request examination by female medical officers¹⁴⁹ and protect the right to medical confidentiality, specifically around reproductive health.¹⁵⁰

The South African Correctional Services Act prescribes a health status examination of sentenced prisoners upon admission, which includes testing for contagious and communicable diseases.¹⁵¹ A 2012 study conducted in two female prisons revealed that female respondents did not receive annual general medical check-ups, routine pap-smears or mammograms. Access to health care was reported to be periodic and usually provided upon request by the detainee.¹⁵² In Zambian prisons, female holding cells are reportedly severely overcrowded, poorly ventilated and no distinction is made between sick and healthy persons, which exacerbate the spread of infectious diseases.¹⁵³ In 2013, a total of 618 women were reportedly held in Mozambican prisons where diseases such as malaria, TB, cholera, and HIV/AIDS

144 Open Society Justice Initiative. 2011. *Pre-trial Detention and Health: Unintended Consequences, Deadly Results*, p. 33. <http://www.opensocietyfoundations.org/reports/pretrial-detention-and-health-unintended-consequences-deadly-results> [accessed 20 March 2014].

145 Todrys, KW & Amon, JJ. 2011. Health and Human Rights of Women Imprisoned in Zambia, *Biomedcentral International Health & Human Rights*, <http://www.biomedcentral.com/1472-698X/11/8> [accessed 21 March 2014].

146 Van den Bergh, BJ, Gatherer, A & Møller, LF. 2009. Women's health in prison: Urgent need for improvement in gender equity and social justice. *Bulletin of the World Health Organisation*, 87(6):406. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2686215/> [accessed 21 March 2014].

147 UNODC. 2008. *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, p. 74. <http://www.refworld.org/docid/4a096b0a2.html> [accessed 21 March 2014].

148 United Nations Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, Rules 24 & 25 (1). <http://www.refworld.org/docid/3ae6b36e8.html> [accessed 21 March 2014].

149 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 10. <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].

150 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 8. <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].

151 Correctional Services Act (Act 111 of 1998) as amended, Section 5(b). <http://www.dcs.gov.za/Publications/Legislation/DCS%20Act%2011%20of%202008.pdf> [accessed 28 February 2014].

152 Artz, L, Hoffman-Wanderer, Y & Moul, K. 2012b. *Hard Time(s): Women's Pathways to Crime and Incarceration*. Gender, Health and Justice Research Unit, University of Cape Town, p. 239. http://www.ghjru.uct.ac.za/pdf/hard_times.pdf [accessed 7 March 2014].

153 Todrys, KW & Amon, JJ. 2011. Health and Human Rights of Women Imprisoned in Zambia. *Biomedcentral International Health & Human Rights*, p.3. <http://www.biomedcentral.com/1472-698X/11/8> [accessed 21 March 2014].

are common. According to a human rights report by the United States Department of State, the status of health care in general is particularly poor in Mozambique. Healthy and sick prisoners are not separated, and the sanitation, ventilation, light and temperature control in prisons is poor. Emergency medical care and access to potable water were inadequate. Seemingly, few prisons had access to health-care facilities and the National Prison Service did not have sufficient means to provide basic medical supplies or transportation to hospitals or clinics outside prison premises.¹⁵⁴ Amnesty International confirmed this position through reporting inadequate screening upon admission and poor medical recordkeeping. Medical posts are said to contain limited amounts of medication, and basic treatment consists of dispensing painkillers and bandaging.¹⁵⁵

Unfortunately, international guidelines pertaining to health services largely benefit sentenced prisoners, not remand detainees, nor does available literature focus on the implementation of health rights during pre-trial detention.

4.2 Focus on HIV/Aids and tuberculosis

African prisons, especially Sub-Saharan prisons, are notoriously known for the high prevalence of TB and HIV/Aids amongst detainees.¹⁵⁶ Epidemiological studies of prison populations have consistently shown that the rate of HIV infection in prisons exceed that of the general population. This pattern is reflected in Sierra Leone where, at 9.7 %, prisoners represent the population grouping with the highest rate of HIV infection, while the general population infection rate is 1.5%.¹⁵⁷ Generally, female detainees have higher HIV infection rates than male prisoners.¹⁵⁸ This is also true of women in free society. The prevalence for HIV infection is affected by social ills such as poverty¹⁵⁹ and abuse. A study from South Africa found that physical or sexual abuse increased women's likelihood of HIV infection by 66%.¹⁶⁰ A 2006 survey amongst sentenced prisoners (male and female) in South Africa found that 19.8% were HIV-positive, a figure which was slightly above the national infection rate of 16.25%.¹⁶¹ A report by UNODC suggests that HIV is not necessarily contracted in prison, since many prisoners have been infected with sexually transmitted diseases prior to admission to prison.¹⁶²

The availability of anti-retroviral (ARV) treatment appears to be sporadic within African detention facilities. The Bangkok Rules require screening for the presence of sexually transmitted diseases or blood-borne diseases upon admission to prison and female detainees may also be offered testing for HIV, with pre- and post-test counselling.¹⁶³ Following a 2006 order of the Durban High Court, South Africa prioritises the distribution of free ARV treatment to prisoners and remand detainees.¹⁶⁴ An examination of patient follow-up records from 103 public sector ARV treatment clinics in Malawi at the end of 2006 showed that a total of 103 prisoners, constituting 0.13% of the entire patient database were receiving ARV treatment.¹⁶⁵ A subsequent report suggests that there are no medical facilities within

154 United States Department of State. 2013. *Country Reports on Human Rights Practices 2013: Mozambique*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220141> [accessed 21 March 2013].

155 Amnesty International. 2012. *Lacking up my Rights: Arbitrary Arrest, Detention and Treatment of Detainees in Mozambique*, p. 47. <http://www.amnesty.org/en/library/asset/AFR41/001/2012/en/3cd26887-08d7-4e42-b98a-5e59020f3a72/afr410012012en.pdf> [accessed 8 March 2014].

156 Reid, SE et al. 2012. Tuberculosis and HIV Control in Sub-Saharan African Prisons: Thinking Outside the Prison Cell. *The Journal of Infectious Diseases*, <http://jid.oxfordjournals.org/content/early/2012/02/20/infdis.jis029.full?keytype=ref&ijkey=l6G3fORjWtf7Z8z> [accessed 21 March 2014]; See generally UNODC. 2007. *HIV and Prisons in Subsaharan Africa: Opportunities for Action*. http://www.unodc.org/documents/hiv-aids/Africa%20HIV_Prison_Paper_Oct-23-07-en.pdf [accessed 21 March 2014].

157 National Aids Secretariat. 2012. *Country Progress Report Sierra Leone, March 2012*. [http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_SL_Narrative_Report\[1\].pdf](http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_SL_Narrative_Report[1].pdf) [accessed 6 April 2014].

158 Fazel S & Baillargeon J. 2011. The Health of Prisoners. *The Lancet*, 377: 956–65. <http://download.thelancet.com/pdfs/journals/lancet/PiiS0140673610610537.pdf?id=aaaF3NsBHUVjP8yAxxLtu> [accessed 21 March 2014].

159 UN Women. 2011. *Progress of the world's women*, p. 114. <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf> [accessed 7 May 2014].

160 Dunkle, K, Jewkes, R, Brown, H, Gray, G, McIntyre, J & Harlow, S. 2004. Gender-Based Violence, Relationship Power, and Risk of HIV Infection in Women Attending Antenatal Clinics in South Africa. *The Lancet*, 363(9419):1415–21.

161 Lim'Uvune Consulting. 2006. *Unlinked, Anonymous HIV and Syphilis Surveillance Study Among Staff Employed by, and Offenders in the Custody of, the Department of Correctional Services in South Africa, Department of Correctional Services HIV Prevalence Survey*.

162 UNODC. 2006. *HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response*. Vienna: UNODC/WHO/UNAIDS, p.24, https://www.unodc.org/pdf/HIV-AIDS_prisons_July06.pdf [accessed 7 May 2014].

163 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 6(a), <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].

164 *N and Others v Government of Republic of South Africa and Others* 2006 (6) SA 543 (D). http://www.tac.org.za/Documents/Court_Cases/Westville_Prisoners/WCCJudgment.pdf [accessed 21 March 2014].

165 Makombe, SD et al. 2007. A National Survey of Prisoners on Antiretroviral Therapy in Malawi: Access to Treatment and Outcomes on Therapy. *Journal of Infection in Developing Countries*, 1(3):303–7, <http://www.jidc.org/index.php/journal/article/download/19734609/216> [accessed 21 March 2014].

prisons and detainees are reliant on the public health care system for all medical services.¹⁶⁶ The lack of treatment of HIV-positive patients is particularly concerning, given the high prevalence of HIV amongst the general public (10.8% in 2012)¹⁶⁷ and, even more, amongst prisoners in Malawi. A 2005 study recorded the prevalence of HIV infection amongst female prisoners at 50%.¹⁶⁸

Due to conditions such as overcrowding, poor ventilation, lack of light and failure to detect TB early, the prevalence of TB is particularly high in Sub-Saharan prisons.¹⁶⁹ Mozambican prison policy allows for the separation of healthy and sick prisoners, which is reportedly the only apparent measure to protect persons from the spread of disease. In Maputo, the Central and Civil Prisons reserve sections for people affected by TB.¹⁷⁰ The Zambian Prison Service has national policies in place which provide for the treatment of HIV/AIDS in prison but the lack of medical supplies prevents effective treatment.¹⁷¹ During HIV and TB screening and treatment efforts in Zambia in 2011, researchers found that female detainees were less likely to have been screened than males.¹⁷² Specifically with regards to TB testing, certain categories of inmates within prisons are reportedly less likely to have been tested than others. This includes the usual minority groups such women, juveniles, detainees on remand, and immigrants.¹⁷³ In Malawian prisons, some of the most common diseases are TB, scabies, diarrhoea, other sexually transmitted infections, respiratory illnesses, malnutrition, malaria and bilharzia. Overcrowding is the main factor contributing to the spread of TB.¹⁷⁴ In 2011 it was reported that TB and HIV prevention measures were restricted to five prisons and TB patients were treated in district hospitals.¹⁷⁵

4.3 Pregnancy and childbirth

Pregnancy and childbirth is an aspect of female detention receiving increased attention in the literature and legislation. The UNSMR dictates that pregnant women are entitled to adequate ante- and post natal care, to give birth in hygienic conditions and to be assisted by qualified medical staff.¹⁷⁶ The absence of such basic provisions could lead to complications during birth, post-natal infections and/or infant or maternal death. The Bangkok Rules prohibit the use of instruments of restraint during childbirth and immediately after birth,¹⁷⁷ yet some countries continue to make use of these during childbirth and gynaecological examinations.¹⁷⁸ The European Committee for the Prevention of Torture condemns such practices as acts which may constitute inhumane treatment as per the UNCAT.¹⁷⁹

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- 166 Open Society Initiative for Southern Africa. 2011. *Pre-trial Detention in Malawi: Understanding Case Flow Management and Conditions of Incarceration*, p. 73. http://www.osisa.org/sites/default/files/sup_files/open_learning_-_pre-trial_detention_in_malawi.pdf [accessed 1 April 2014].
- 167 Information retrieved from the website of UNAIDS: <http://www.unaids.org/en/regionscountries/countries/malawi/> [accessed 21 March 2014].
- 168 Reid, SE et al. 2012. Tuberculosis and HIV Control in Sub-Saharan African Prisons: Thinking Outside the Prison Cell. *The Journal of Infectious Diseases*, 205 Suppl 2:S265–73. <http://jid.oxfordjournals.org/content/early/2012/02/20/infdis.iis029.full?keytype=ref&iijkey=16G3fORjWtf7Z8z> [accessed 21 March 2014]; Chimphambano, C, Komolafe, OO & Muula, AS. 2007. HIV Prevalence Among Prison Inmates in a Central Prison in Southern Malawi 2005. *Tropical Doctor*, 37:226–8. <http://tdo.sagepub.com/content/37/4/226.full.pdf+html> [accessed 22 March 2014].
- 169 Reyes, H. 2007. Pitfalls of TB Management in Prisons, Revisited. *International Journal of Prisoner Health*; 3(1): 43–67. http://www.icrc.org/eng/assets/files/other/reyes_ijph_march2007.pdf [accessed 21 March 2014].
- 170 Lorizzo, T. 2012. Prison Reforms in Mozambique Fail to Touch the Ground: Assessing the Experience of Pre-trial Detainees in Maputo. *SA Crime Quarterly* No 42, p.6. http://www.issafrica.org/uploads/4Prisons_Mozambique.pdf [accessed 25 March 2014].
- 171 Institute for Security Studies. 2009. *The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa, Chapter 7: The Zambian Prison Service*, Monograph No. 159. <http://www.issafrica.org/topics/crime-and-criminal-justice/01-apr-2009-monograph-no-159-the-criminal-justice-system-in-zambia-enhancing-the-delivery-of-security-in-africa-african-human-security-initiative/chapter-7-zambia-prison-service> [accessed 6 April 2014].
- 172 Todrys, KW, Amon, JJ, Malembeka, G & Clayton, M. 2011. Imprisoned and Imperilled: Access to HIV and TB Prevention and Treatment, and Denial of Human Rights, in Zambian prisons. *Journal of the International AIDS Society*, 14(8). <http://www.ncbi.nlm.nih.gov/pubmed/21314929> [accessed 22 March 2014].
- 173 Human Rights Watch. 2010. *Unjust and Unhealthy: HIV, TB and abuse in Zambian prisons*, p. 50. <http://www.hrw.org/reports/2010/04/27/unjust-and-unhealthy-0> [accessed 20 March 2014].
- 174 Open Society Initiative for Southern Africa (2011) *Pre-trial Detention in Malawi: Understanding Case Flow Management and Conditions of Incarceration*, p. 46. http://www.osisa.org/sites/default/files/sup_files/open_learning_-_pre-trial_detention_in_malawi.pdf [accessed 1 April 2014].
- 175 Open Society Initiative for Southern Africa. 2011. *Pre-trial detention in Malawi: Understanding case flow management and conditions of incarceration*, p. 74. http://www.osisa.org/sites/default/files/sup_files/open_learning_-_pre-trial_detention_in_malawi.pdf [accessed 1 April 2014].
- 176 Rule 23 of the UNSMR states that women's institutions should especially accommodate for pregnant detainees by providing pre-natal and post-natal care. Article 24(b) of the African Protocol for Women ensures the right of pregnant or nursing women in detention to an environment which is suitable for their condition as well as the right to be treated with dignity.
- 177 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 24. <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].
- 178 UNODC. 2008. Handbook for Prison Managers and Policymakers on Women and Imprisonment, p.20. <http://www.refworld.org/docid/4a096b0a2.html> [accessed 21 March 2014]; Sichel, D. 2008. Giving Birth in Shackles: A Constitutional and Human Rights Violation. *Journal of Gender, Social Policy & the Law*, 16(2):223–55. <http://www.wcl.american.edu/journal/genderlaw/16/2sichel.pdf> [accessed 21 March 2014].
- 179 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *10th General Report on the CPT's activities covering the period 1 January to 31 December 1999*, [CPT/Inf (2000) 13], paragraph 27, <http://www.cpt.coe.int/en/annual/rep-10.htm> [accessed 23 March 2014].

The South African Correctional Services Act provides for the discretionary use of mechanical restraints.¹⁸⁰ It is not clear whether restraints are used systematically during childbirth, but an anecdotal report by one woman suggests that this may be the case.¹⁸¹ A 2011 amendment to the Correctional Services Act requires a medical examination of any remand detainee who claims to be pregnant¹⁸² and recently introduced regulations under the Act oblige prisons to meet the dietary requirements of pregnant female detainees on remand as per the Department of Health's Maternal Health Guidelines.¹⁸³

One study suggests that women's access to ante- and postnatal care in Zambian detention facilities is virtually non-existent and no provision is made for HIV prophylaxis to prevent mother-to-child transmission.¹⁸⁴ Despite having particular nutritional needs, pregnant or breastfeeding women receive the same food as other inmates and meals reportedly consist of approximately 400 to 450 grams of maize meal per day, in addition to small quantities of beans, or a small type of fish called Kapenta, local to Zambia.¹⁸⁵ The nutritional value of this diet is extremely poor and women are dependent on family members to supplement the meals.¹⁸⁶ Poor diets have long term negative effects on the health of women and children, who may stay imprisoned with their mothers up to the age of four years.¹⁸⁷ The Zambian Prison Service allocates no formula or food portions to children and it is the responsibility of the family to supply clothing and other necessities for the child.¹⁸⁸ It is unclear whether restraints are used during childbirth and given the small number of medical staff at prison clinics, it is inferred that women are taken to an outside facility to give birth. Similarly, women in Zimbabwean prisons give birth in public health facilities and return to prison within days of giving birth. There is no budgetary allocation for post-natal care or early childhood development.¹⁸⁹

A report from Sierra Leone confirms a policy that women who enter prison when pregnant must give birth inside one of the cells of the female section, and will only be transferred to a hospital in case of complications. It appears that not all births are attended to by qualified medical staff and that women mostly give birth without any medical supervision. Pregnant women and infants follow the same diet as other prisoners, consisting of three small meals of rice and sauce per day,¹⁹⁰ which falls short of meeting nutritional needs.

4.4 Sanitary supplies

The Bangkok Rules direct authorities to supply sanitary towels free of charge to all detainees and to ensure a regular supply of water, for the purposes of personal hygiene.¹⁹¹ However, items such as soap, toothpaste, extra sets of clean clothes and sanitary towels are not supplied by the Zambia Prisons Service¹⁹² and female detainees are

180 Correctional Services Act (Act 111 of 1998) as amended, Section 31. <http://www.dcs.gov.za/Publications/Legislation/DCS%20Act%20111%20of%202008.pdf> [accessed 28 February 2014].

181 University of Witwatersrand Justice Project interviewed a detainee who confirmed to having been shackled to the bed whilst giving birth in prison. See Manaleng, P. 2014. Women in Prison Ignored and Neglected. *Sunday Star*, 8 March 2014. http://www.iol.co.za/news/south-africa/women-in-prison-ignored-and-neglected-1.1658349#Ux2bKj9_vTo [accessed 22 March 2014].

182 Correctional Matters Amendment Act (Act 5 of 2011), Section 49A.

183 Regulations to the Correctional Services Act, Government Gazette No. 35277, 25 April 2012, Section 26D.

184 Todrys, KW & Amon, JJ. 2011. Health and Human Rights of Women Imprisoned in Zambia. *Biomedcentral International Health & Human Rights*, p.3, <http://www.biomedcentral.com/1472-698X/11/8> [accessed 21 March 2014]; Lack of access of detainees to HIV and TB treatment is confirmed in Open Society Initiative for Southern Africa. 2011. *Pre-trial Detention in Zambia: Understanding Case Flow Management and Conditions of Incarceration*, p. 23 and 53. http://www.osisa.org/sites/default/files/sup_files/open_learning_-_pre-trial_detention_in_zambia.pdf [accessed 1 April 2014].

185 Open Society Initiative for Southern Africa. 2011. *Pre-trial Detention in Zambia: Understanding Case Flow Management and Conditions of Incarceration*, p. 56. http://www.osisa.org/sites/default/files/sup_files/open_learning_-_pre-trial_detention_in_zambia.pdf [accessed 1 April 2014].

186 Todrys, KW & Amon, JJ. 2011. Health and Human Rights of Women Imprisoned in Zambia. *Biomedcentral International Health & Human Rights*, p.4, <http://www.biomedcentral.com/1472-698X/11/8> [accessed 21 March 2014].

187 The Laws of Zambia 1996, Prison (Amendment) Act, Cap 97, Article 56. Text available at <http://www.zamlii.org/zm/legislation/consolidated-act/97> [accessed 10 April 2014].

188 Todrys, KW & Amon, JJ. 2011. Health and Human Rights of Women Imprisoned in Zambia. *Biomedcentral International Health & Human Rights*, p.4. <http://www.biomedcentral.com/1472-698X/11/8> [accessed 21 March 2014].

189 Law Society of Zimbabwe. 2013. *Pre-trial Detention in Zimbabwe: Analysis of the Criminal Justice System and Conditions of Pre-trial Detention*, p. 39–40, 46. <http://www.osisa.org/open-learning/law/zimbabwe/pre-trial-detention-zimbabwe> [accessed 6 April 2014].

190 Thompson, A & Mahtani, S. 2008. *Children Living in Prison: Insights from Sierra Leone*, p. 9. <http://www.advocaidsl.com/wp-content/uploads/2011/03/Children-Living-in-Prison-Insights-from-Sierra-Leone-2008.pdf> [accessed 22 March 2014].

191 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 5. <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].

192 Todrys, KW & Amon, JJ. 2011. Health and human rights of women imprisoned in Zambia. *Biomedcentral International Health & Human Rights*, p.3 & 15. <http://www.biomedcentral.com/1472-698X/11/8> [accessed 21 March 2014].

dependent on NGOs or outsiders to supply such necessities.¹⁹³ Women are not able to wash themselves frequently and there is a lack of clean bedding, extra clothes and mattresses.¹⁹⁴ A report from Malawi indicates that women are given cloth cut from old uniforms to manage menstruation. However, the distribution of materials is inconsistent and there is not always soap to wash the cloths with. Some donations for cotton wool were received, but there are no incinerators to dispose of waste.¹⁹⁵

In response to the need for sanitary products in South African prisons, DCS has invested in the installation of units for the production of sanitary towels at three prisons.¹⁹⁶ The objective is to meet the demand by female detainees, as well as to provide training opportunities for offenders. Some of the towels are distributed to underprivileged women in rural areas.¹⁹⁷ 'Pads for Prisoners' was an initiative launched in 2008 by International Centre for Criminal Law Reform and Criminal Justice Police, to distribute reusable pads to female detainees in South Sudanese prisons. While equipment and material were initially provided by a donor, it appears that the necessary material ran out when donor funding dried up in mid-2010.¹⁹⁸

4.5 Cancer screening and treatment

As a preventive measure, the Bangkok Rules require testing and screening of female detainees for breast and gynaecological cancer.¹⁹⁹ Detainees' rights to access specific medical care depend upon the availability of the particular service to the general female public within a given country. This position is reflected in Rule 10 of the Bangkok Rules which states that gender-specific health care services in prisons must at least be equivalent to those available in the community.

Cervical cancer is said to kill more women in Africa than any other cancer.²⁰⁰ In South Africa, an estimated 1 in 33 women have a lifetime risk of developing breast cancer and an estimated 1 in 39 women are at risk of developing cervical cancer.²⁰¹ National guidelines issued by the Department of Health provide for cervical cancer screening for all women, once every ten years.²⁰² Cancer screening services are freely available at all public hospitals and through non-profit organisations such as the Cancer Association of South Africa (CANSA), it follows therefore that this service should be equally available to female prison populations. It is unclear whether cancer screening is available to women in pre-trial detention facilities but it is presumed it is available only to sentenced prisoners. A report by Center for Infectious Disease Research in Zambia (CIDRZ) indicated that women in prison do not receive gynaecological, cervical, or breast cancer screening at all.²⁰³ CIDRZ reports that cervical cancer screening points are available in each province of Zambia and therefore the service should be equally available to women in Zambian prisons.²⁰⁴

193 Open Society Initiative for Southern Africa. 2011. *Pre-trial Detention in Zambia: Understanding Caseflow Management and Conditions of Incarceration*, p. 89. http://www.osisa.org/sites/default/files/sup_files/open_learning_-_pre-trial_detention_in_zambia.pdf [accessed 1 April 2014].

194 Human Rights Watch. 2010. *Unjust and Unhealthy: HIV, TB and abuse in Zambian prisons*, p. 47–8. <http://www.hrw.org/reports/2010/04/27/unjust-and-unhealthy-0> [accessed 20 March 2014].

195 Twea, S. 2004. *Women as Offenders: The Social and Legal Circumstances of Women who Commit Crimes: A case study of selected prisons in Malawi*, Thesis submitted in partial fulfilment for the Master's Degree in Women's Law, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe, <http://uzweb.uz.ac.zw/law/women/dissertations/Women%20criminals%20Malawi.pdf> [accessed 2 March 2014].

196 Department of Correctional Services (South Africa). 2013. *Annual report 2012/2013*, p. 23–4. <http://www.dcs.gov.za/docs/landing/DCS%20Annual%20Report%202012-2013.pdf> [accessed 29 March 2014].

197 Department of Correctional Services (South Africa). 2012. *Offenders Benefit from Sanitary Towel Project*, September 2012. <http://www.dcs.gov.za/docs/landing/Offenders%20benefit%20from%20Sanitary%20Towel%20Project.pdf> [accessed 29 March 2014]; Pedersen, L & Muntingh, L. 2010. *Assisting the Process of Prison Reform in Southern Sudan: Building Leadership Capacity Within the Prisons Service and Addressing the Circumstances of Prisoners with Specific Needs (Phases I and II)*. Vienna: United Nations Office on Drugs and Crime. p. 25.

198 Pedersen, L & Muntingh, L. 2010. *Assisting the Process of Prison Reform in Southern Sudan: Building Leadership Capacity Within the Prisons Service and Addressing the Circumstances of Prisoners with Specific Needs (Phases I and II)*. Vienna: United Nations Office on Drugs and Crime.

199 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 18, <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].

200 Information retrieved from the website of Centre for Infectious Disease Research in Zambia: <http://www.cidrz.org/cervical-cancer/> [accessed 21 March 2014].

201 Information retrieved from the Cancer Association of South Africa website: <http://www.cansa.org.za/> [accessed 20 March 2014].

202 National Department of Health. 2004. *Implementing Cervical Screening in South Africa*, p. 20–2. http://www.westerncape.gov.za/text/2006/1/chp_manual_vol_1.pdf [accessed 24 March 2014].

203 Human Rights Watch. 2010. *Unjust and Unhealthy: HIV, TB and Abuse in Zambian prisons*, p. 7. <http://www.hrw.org/reports/2010/04/27/unjust-and-unhealthy-0> [accessed 20 March 2014].

204 Information retrieved from the website of Center for Infectious Disease Research in Zambia, <http://www.cidrz.org/cervical-cancer/> [accessed 21 March 2014].

4.6 Management of substance abuse and addiction

The Bangkok Rules provide for screening of female detainees to determine drug dependency and require the facilitation of specialised treatment for women with substance abuse problems.²⁰⁵ This is considered a significant development, since it is now acknowledged on an international level that female detainees may have gender specific needs in relation to substance abuse and treatment.²⁰⁶ Unfortunately, little information is available on the prevalence of drug dependency and mental illness among female detainees in Africa. Research from Europe shows that women are most commonly imprisoned for drug-related crimes, being either offences to obtain drugs, offences committed under the influence of drugs, or offences related to the illegal supply of drugs.²⁰⁷

4.7 Female detainees' vulnerability to physical abuse in pre-trial detention

The main perpetrators of sexual exploitation of female detainees include law enforcement- and prison officials, and fellow inmates. Women and girls are often coerced into exchanging sex for food or drugs.²⁰⁸ Sadly this continues to be the situation in numerous pre-trial detention facilities in Africa. In Zambian prisons for example, female detainees claim that prison officials frequently ask for sex in exchange for food, drugs or their release, and that sexual abuse and police brutality against women are common.²⁰⁹ The perpetration of sexual abuse against women necessitates medical and psychological health care services. Sexual abuse in prison may lead to the spread of disease, unwanted pregnancy and a vicious circle of ongoing vulnerability to abuse.²¹⁰

4.8 Mental health

International studies suggest that women in detention are more likely to suffer some form of mental illness than their male counterparts.²¹¹ Due to the high correlation between female criminality and physical or sexual abuse, female detainees often show signs of depression, anxiety and/or trauma caused by years of abuse or childhood victimisation.²¹² Generally, women are more likely to harm themselves or commit suicide than men.²¹³ More specifically, female pre-trial detainees attempt suicide much more often than women in free society and male detainees.²¹⁴ Disaggregated statistics for Africa could not be found, but a survey of 206 prisoners of which 17% were women conducted at the Lusaka Central Prison in Zambia revealed that just over 63% of participants suffered from a mental disorder.²¹⁵ Mental illness is exacerbated by imprisonment, general public intolerance of disturbing behaviour and a lack of access to mental health treatment.²¹⁶

205 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rules 6 and 15, <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].

206 UNODC. 2008. *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, p. 13–4, <http://www.refworld.org/docid/4a096b0a2.html> [accessed 21 March 2014].

207 World Health Organization. 2009. *Women's Health in Prison: Correcting Gender Inequity in Prison Health*, paragraph 39. http://www.unodc.org/documents/commissions/CND-Session51/Declaration_Kujiv_Women_60s_health_in_Prison.pdf [accessed 10 April 2014].

208 UNODC. 2007. *HIV and Prisons in Sub-Saharan Africa: Opportunities for Action*, paragraph 11. http://www.unodc.org/documents/hiv-aids/Africa%20HIV_Prison_Paper_Oct-23-07-en.pdf [accessed 10 April 2014].

209 Todrys, KW & Amon, JJ. 2011. Health and Human Rights of Women Imprisoned in Zambia. *Biomedcentral International Health and Human Rights*, 11:8. <http://www.biomedcentral.com/content/pdf/1472-698x-11-8.pdf> [accessed 21 March 2014].

210 Ebeiro, CD. 2011. The Problems of Administration of Justice on Female Offenders in Nigeria. *African Journal of Criminology & Justice Studies*, 4(2): p. 33. <http://www.umes.edu/assets/0/22/6576/0c64d6f5-5465-4aff-8ec9-ef30915ebbe8.pdf> [accessed 28 March 2014].

211 Watson, R, Stimpson, A & Hostick, T. 2004. Prison Health Care: A Review of the Literature. *International Journal of Nursing Studies*, 41(2):119–28.

212 United Nations Special Rapporteur on Violence Against Women. 2013. *Pathways to, Conditions and Consequences of Incarceration for Women*, A/68/340, 21 August 2013, paragraphs 6 and 7. www.ohchr.org/Documents/Issues/Women/A-68-340.pdf [accessed 22 February 2014].

213 United Nations Special Rapporteur on Violence Against Women. 2013. *Pathways to, Conditions and Consequences of Incarceration for Women*, A/68/340, 21 August 2013, paragraph 48. www.ohchr.org/Documents/Issues/Women/A-68-340.pdf [accessed 22 February 2014].

214 World Health Organization. 2007b. *Preventing Suicide in Jails and Prisons*, p.13. www.who.int/mental.../prevention/suicide/resource_jails_prisons.pdf [accessed 8 May 2014].

215 Nseluke, MT & Siziya, S. 2013. Prevalence and Socio-Demographic Correlates for Mental Illness Among Inmates at Lusaka Central Prison, Zambia. *Medical Journal of Zambia*, <http://www.mjz.co.zm/content/prevalence-and-socio-demographic-correlates-mental-illness-among-inmates-lusaka-central> [accessed 6 April 2014].

216 World Health Organization. 2007a. *Mental Health in Prisons*, p.1. http://www.who.int/mental_health/policy/legislation/policy/en/ [accessed 10 April 2014].

In Sierra Leone, prisons do not have the necessary staff, medication or facilities to deal with mental disorders among males or females.²¹⁷ The situation is even more dire in South Sudan where there are no mental health facilities at all, so patients are detained in prisons.²¹⁸ Without necessarily being charged with a criminal offence, 90 men and women with mental disorders were being held as 'lunatics' at Rumbek Central Prison in Lakes State in 2012.²¹⁹ When psychiatric hospitals have limited space, suspects referred for psychiatric observation to determine their capacity to stand trial may spend lengthy periods in detention before being admitted for psychiatric observation.²²⁰ Detention and the lack of mental health care services in prisons may cause further harm to their mental and physical well-being.

As a basic right, the UNSMR requires that a medical officer with knowledge of psychiatry must be available at detention facilities and that psychiatric services for the diagnosis and treatment of states of mental abnormality must be provided.²²¹ In acknowledgement of their specific vulnerability, Rule 6 of the Bangkok Rules recommends that all women be screened upon admission to determine whether they may have specific health care needs, such as post-traumatic stress disorder and risk of suicide and self-harm.²²² This notion is further developed by Rules 12 and 16, which deal with the need for individualised, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation.

Legislation in South Africa requires an assessment of a sentenced offender's mental health upon admission to prison.²²³ In terms recently amended legislation, DCS must, within its available resources, provide adequate health care, social and psychological services for mentally ill remand detainees.²²⁴ In practice, capacity is limited and sometimes prison staff members fill the void by providing mental support to women.²²⁵ The Judicial Inspectorate of Correctional Services in South Africa reported a total of 20 suicides in 2011/12 and 29 in 2012/13,²²⁶ but no distinction is made between men and women. A survey of 569 female detainees in three prisons in Gauteng province found that 16% of participants had attempted suicide and 23% reported having suicidal thoughts. Self-harm was reported by 11% of participants and 13% were using anti-depressant medication.²²⁷ There is little doubt that there is a substantial need for mental health care services and specifically to prevent suicide and self-harm. In respect of children in South African prisons, a recent survey found that access to mental health care services for children awaiting trial is rendered upon request, but there are concerns whether children suffering mental health problems would be able to make such a request.²²⁸

It is extremely important that mental disorders are diagnosed and treated in order to stop the cycle of reoffending and to support eventual reintegration of offenders into society.²²⁹ It should be borne in mind that imprisonment itself can be a traumatic experience and present a significant hurdle in the process of re-entry and reintegration.

217 Republic of Sierra Leone Ministry of Health and Sanitation. 2012. *Mental Health Policy*, p. 23. http://www.whosierraleone.org/1_docs/mohspartnersdocs/mental_health_policy.pdf [accessed 6 April 2014].

218 Pedersen, L & Muntingh, L. 2010. *Assisting the Process of Prison Reform in Southern Sudan: Building Leadership Capacity Within the Prisons Service and Addressing the Circumstances of Prisoners with Specific Needs (Phases I and II)*. Vienna: United Nations Office on Drugs and Crime, p. 25.

219 Human Rights Watch. 2012. 'Prison is not for me' Arbitrary Detention in South Sudan, p.20. http://www.hrw.org/sites/default/files/reports/southsudan0612ForUpload_1.pdf [accessed 4 May 2014].

220 Muntingh, L. 2011. *An analytical study of South African prison reform after 1994*. Unpublished PhD Thesis, University of the Western Cape, p. 356–8.

221 United Nations Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, Rule 22(1). <http://www.refworld.org/docid/3ae6b36e8.html> [accessed 22 February 2014].

222 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 6(b). <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf> [accessed 22 February 2014].

223 University of Cape Town, Gender, Health and Justice Research Unit. 2012. *Women in prison: Health and Mental Health*, p. 2. Policy Brief. www.ghju.uct.ac.za/pdf/Policy_Brief_Health.pdf [accessed 6 April 2014].

224 Correctional Matters Amendment Act (Act 5 of 2011) Section 49D.

225 University of Cape Town, Gender, Health and Justice Research Unit. 2012. *Women in Prison: Health and Mental Health*, p. 4. Policy Brief. www.ghju.uct.ac.za/pdf/Policy_Brief_Health.pdf [accessed 6 April 2014].

226 Judicial Inspectorate of Correctional Services (South Africa). 2013. *Annual Report 2012/2013*, p. 56. <http://judicialinsp.dcs.gov.za/Annualreports/ANNUAL%20REPORT%202012%20-%202013.pdf> [accessed 21 March 2014].

227 Haffejee, S, Vetten, L & Greyling, M. (2006). *Violence and Abuse in the Lives of Women and Girls Incarcerated at Three Gauteng Women's Prisons*. Johannesburg: Centre for the Study of Violence and Reconciliation Gender Programme, Research Brief, No. 3. <http://www.csvr.org.za/docs/correctional/violenceandabuse.pdf> [accessed 8 May 2014].

228 Muntingh, L & Ballard, C. 2012. *Report on Children in Prison in South Africa*. <http://cspr.org.za/publications/research-reports/report-on-children-in-prison-in-south-africa> [accessed 26 May 2014].

229 World Health Organization. 2007a. *Mental Health in Prisons*, p.1 & 2. http://www.who.int/mental_health/policy/legislation/policy/en/ [accessed 10 April 2014].

4.9 Conclusion: Prison health is a public issue

Most reports reviewed here support the argument that prison health is a public health issue.²³⁰ Since nearly all prisoners are eventually released, it is important to address serious health concerns such as mental disorders and communicable diseases in order to support reintegration. However, the literature suggests that women in African prisons are often disadvantaged with regards to access to appropriate health care, both in remand detention and as sentenced prisoners. Institutionalised gender discrimination is reflected in the unequal allocation of resources and poor accountability for inadequate service provision. Poor physical and mental health care services will also have an impact on released women's dependants and their immediate families.

²³⁰ UNODC, World Health Organization & UNAIDS. 2006. *Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response*. https://www.unodc.org/pdf/HIV-AIDS_prisons_July06.pdf [accessed 7 May 2014].



Mothers in detention

Across the world, the majority of female detainees are not only mothers, but the sole or primary caregivers of children.²³¹ The high number of children per family and the early childbearing age of the average African woman also holds true for women in detention on the continent. In 2006, 83% of female detainees in South Africa were mothers, 42% of whom had three or more children²³² and 45% were the family breadwinner prior to their imprisonment.²³³ A survey of 67 female detainees in 2008 found that 33% of their children were under the age of six years and 34% between the ages six and 12.²³⁴ The Special Rapporteur on Prisons and Conditions of Detention in Africa noted the dilemma which mothers face, namely that prisons are not a safe place for pregnant women, babies and young children, nor is it advisable to separate babies and young children from their mothers.²³⁵ The issue of the imprisonment of babies or young children with their mothers has received attention both in the literature and from states which have designed policies to deal with this issue. The first General Comment issued by the African Committee of Experts on the Rights and Welfare of the Child in 2013 mentions the obligations of states to ensure that social welfare services protect the rights of children whose mothers are in prison.²³⁶ Presumably, most countries would lack the infrastructure and resources to fully comply with this directive. The impact of parental imprisonment on children who stay behind is largely unexplored.

The African Charter on the Rights and Welfare of the Child requires states to ensure that sentencing procedures systematically assess the convicted offender's duties as a sole or primary caregiver prior to sentencing, and to ensure the use of non-custodial measures in appropriate cases.²³⁷ The South African Constitutional Court case *S v M* is widely viewed as a precedent to sentencing courts to prioritise consideration of the best interests of children²³⁸ who stand to be affected by custodial punishment of their parents. Although in *S v M* the Court dealt with sentencing, it also implies that the best interests of the child principle must have bearing on a court's decision whether to detain the sole caregiver of a child, or whether less restrictive means should be applied.

The order is also in line with Article 9(1) of the CRC which requires States Parties to ensure that children shall not be separated from their parents against their will and that the best interests of the child are taken into account when such separation is necessary.

231 Townhead, L. 2007. *Pre-Trial Detention of Women and its Impact on their Children*, p. 5. Quaker United Nations Office. http://www.quno.org/sites/default/files/resources/ENGLISH_Pre-trial%20detention%20of%20women%20and%20its%20impacts%20on%20children.pdf [accessed 5 April 2014].

232 Sloth-Nielsen, J. 2005. Women and Prisons in South Africa. *CSPRI Newsletter*, No. 9, p. 2. <http://cspri.org.za/publications/newsletter/9%20-%20February%202005.pdf> [accessed 2 May 2014].

233 Haffejee, S, Vetten, L & Greyling, M. 2006. *Violence and Abuse in the Lives of Women and Girls Incarcerated at Three Gauteng Women's Prisons*. Johannesburg: Centre for the Study of Violence and Reconciliation Gender Programme, Research Brief, No. 3, p.3. <http://www.csvr.org.za/docs/correctional/violenceandabuse.pdf> [accessed 8 May 2014]; Sloth-Nielsen, J. 2005. Women and Prisons in South Africa. *CSPRI Newsletter*, No. 9, February, p. 3. <http://cspri.org.za/publications/newsletter/9%20-%20February%202005.pdf> [accessed 2 May 2014].

234 Luyt, WFM. 2008. Imprisoned Mothers in South African Prisons with Children Outside of the Institution, *European Journal of Crime, Criminal Law and Criminal Justice*, 16:299–323, see in particular p. 315.

235 Chirwa, V. 2001. *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa: Prisons in Malawi*, p. 36. http://www.achpr.org/files/sessions/30th/mission-reports/malawi/achpr30_misrep_specmec_priso_malawi_2001_eng.pdf [accessed 2 March 2014].

236 African Committee of Experts on the Rights and Welfare of the Child 2013. *General Comment on Article 30 of the Convention on the Rights and Welfare of the Child*, ACERWC/GC/01, paragraph 60, http://www.africanchildinfo.net/index.php?option=com_sobi2&sobi2Task=sobi2Details&sobi2Id=1336&Itemid=142&lang=en [accessed 28 June 2014].

237 African Charter on the Rights and Welfare of the Child, Section 30(1) and (2). Text available at <http://acerwc.org/wp-content/uploads/2011/04/ACRWC-EN.pdf> [accessed 27 February 2014].

238 Section 28(2) of the Bill of Rights in the Constitution states: 'A child's best interests are of paramount importance in every matter concerning the child.' This is the foundation for the Constitutional Court judgment in *S v M CCT 53/06* [2007] ZACC 18; 2008 (3) SA 232 (CC) (26 September 2007).

Case summary: *S v M (CCT 53/06) [2007]*

M was a mother of three children, all under the age of 12 years. The High Court convicted her for the second time, and sentenced her to four years' imprisonment for fraud. She successfully appealed to the Constitutional Court in respect of the sentence. The Court found that sentencing authorities should take into account all varied interests, especially those of children placed at risk. The Court found that it is necessary for sentencing authorities to determine the best interest of children who stand to be affected by the imprisonment of their primary caregiver. M received a reduced sentence of community service and correctional supervision, and guidelines were set out for sentencing authorities where the accused is the sole caregiver and where children may be affected. Furthermore, courts should ascertain whether it is necessary to take proactive steps to ensure that the children will be adequately cared for while a caregiver is incarcerated.²³⁹

It is important to note that the use of non-custodial sentences does not set mothers above the law. Offenders should still be held accountable for their crimes and it is necessary to find a balance between the imposition of punishment on the mother and the extent to which the innocent child stands to be affected. By determining the best interest of each child in his or her particular circumstances, it may be possible for sentencing authorities to find a solution which both protect the child from undue hardship and ensure the mother still pays her debt to society.

5.1 Children imprisoned with their mothers

Domestic legislation or practice usually allows for babies to be born in prison and for children to remain with their mothers until a certain age. Prisons and pre-trial detention facilities are not considered to be conducive environments for the healthy social, mental and emotional development of children. It has been reported that sights such as traffic, birds, trees, animals and men frighten children who have spent a considerable time in female prisons.²⁴⁰ Children incarcerated with mothers in African prisons may be exposed to poor conditions of detention such as overcrowding, poor hygiene, a lack of adequate food and clean water and sufficient supplies of materials such as nappies and soap. In 2012, Kenya's Legal Resources Foundations reported that prisons did not have facilities such as beds or special food for children. Children did not have access to educational lessons or medical care, and children born to women in custody had difficulty obtaining birth certificates.²⁴¹ It may be that males and females are not separated.²⁴² In such cases, children may be exposed to ill treatment and there is a high risk of children falling victim to sexual violence or other forms of abuse and exploitation, as the Committee against Torture (CAT) noted with regard to Kenyan prisons.²⁴³

Yet, the forcible separation of mothers and infants is highly undesirable. One author argues that it's preferable for babies to remain with their mothers unless there are compelling reasons for separating them, as there is an inextricable link between anxiety and stress in the mother and the physical and emotional well-being of the baby.²⁴⁴ Factors which support the incarceration of children with mothers include optimal duration of breastfeeding, strengthening of mother-child bonds during the early development phase and the inability of the mother to find a suitable alternative care arrangement. For example, in Malawi, where poverty affects a large number of women in detention, the family might not be able to provide for the child if the mother is absent, or might reject the woman and child from the community.

239 The guidelines for determining whether custodial sentencing is appropriate are set out in the South African Constitutional Court Case, *S v M (CCT 53/06) [2007]* ZACC 18; 2008 (3) SA 232 (CC) (26 September 2007), paragraph 36. <http://www.saflii.org.za/za/cases/ZACC/2007/18.html> [accessed 2 March 2014].

240 Robertson, O. 2008. *Children Imprisoned by Circumstance*, p.7. Quaker United Nations Office. http://www.quono.org/sites/default/files/resources/ENGLISH_Children%20Imprisoned%20by%20Circumstance.pdf [accessed 2 March 2014].

241 United States Department of State. 2013. *Country Reports on Human Rights Practices 2012:- Kenya*. 19 April 2013. <http://www.refworld.org/docid/517e6e1d9.html> [accessed 1 March 2014].

242 Quaker United Nations Office. 2004. *Submission to the Committee on the Rights of the Child Day of Discussion on Implementing Child Rights in Early Childhood, Children Imprisoned with Mothers*. [http://www.bernardvanleer.org/files/crc/3.C%20Friends_World_Committee_for_Consultation\(Quakers\).pdf](http://www.bernardvanleer.org/files/crc/3.C%20Friends_World_Committee_for_Consultation(Quakers).pdf) [accessed 27 February 2014].

243 Committee Against Torture. 2013. *Committee Against Torture Examines Report of Kenya*, CAT13/011E, 16 May 2013, p. 1 and 3. [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/0F8C319DCCE8F96DC1257B6D005A9DEB?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/0F8C319DCCE8F96DC1257B6D005A9DEB?OpenDocument) [accessed 2 March 2014].

244 Townhead, L. 2006. *Women in Prison & Children of Imprisoned Mothers: Recent Developments in the United Nations Human Rights System*. http://www.wunrn.com/news/2006/08_21_06/082706_women_in.pdf [accessed 1 April 2014].

An example is given of the patriarchal nature of marriage in rural Malawi, where a woman lives in her husband's village and her arrest will cause the village support system to be withdrawn. In such cases it would be almost impossible for a female detainee to leave a child at home.²⁴⁵

The African Committee of Experts on the Rights of the Child recommends that, if the child is kept in prison, procedural safeguards be put in place such as regular assessments of the living environment of the child.²⁴⁶ Further factors to consider include the individual characteristics of the child such as gender, level of maturity, quality of relationship with mother and the extent to which care solutions are available to the family.²⁴⁷ Children should be identified and registered at the detention facility so that resources are allocated to them and to ensure that they do not become lost within the penal system.²⁴⁸ Births of babies born during incarceration must be registered and the birth certificate should not mention the fact that they were born in prison.²⁴⁹ The Special Rapporteur on Prisons and Conditions of Detention recommends that States ensure that children incarcerated with mothers be accommodated in 'crèche type facilities' and that children be allowed to go outside prison walls from time to time to accustom them to everyday sights.²⁵⁰ In Kenya, children can remain with their mothers until the age of four years. Kenyan law requires that a detained mother may not leave a child behind if no custodian has been identified.²⁵¹ In January 2013, a day care facility for children under the age of four was opened at Kenya's only maximum-security female institution, Langata Women's Prison in Nairobi. The centre is the first of its kind in Kenya and aims to provide a normal life to children incarcerated with their mothers. At the time, 45 children benefited from the centre.²⁵²

The South African Correctional Services Act permits children to be incarcerated in prison with their mothers until the age of two years or until such a time as they can be appropriately placed in alternative care by the Department of Social Development.²⁵³ The Department of Correctional Services is responsible for providing food, clothing, health care and facilities for the sound development of the child. As far as practicable, the DCS must ensure that a mother and child unit is available to accommodate female inmates with children.²⁵⁴ Prior to the amendment of the Act in 2011, children could stay in prison for up to five years, living in the cell with their mothers, which may be a single or communal cell.²⁵⁵ As at 31 December 2013, 87 babies were held with their mothers in DCS female correctional facilities. Out of a total of 22 female correctional centres within the DCS structure, 16 now have special mother and baby units.²⁵⁶ DCS reported that it provided health care services for mothers with children including training on parenting skills, immunisation of babies, eradication of mother to child transmission of HIV and a nutritional programme for mothers and babies which included

245 Twea, S. 2004. *Women as offenders – the social and legal circumstances of women who commit crimes: A case study of selected prisons in Malawi*. Thesis submitted in partial fulfilment for the Master's Degree in Women's Law, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe. <http://uzweb.uz.ac.zw/law/women/dissertations/Women%20criminals%20Malawi.pdf> [accessed 2 March 2014] p. 26.

246 African Committee of Experts on the Rights and Welfare of the Child. 2013. *General Comment on Article 30 of the Convention on the Rights and Welfare of the Child*, ACERWC/GC/01 (2013), adopted by the Committee at its 22nd Ordinary Session, 4 – 8 November 2013, paragraph 55. http://www.africanchildinfo.net/index.php?option=com_sobi2&sobi2Task=sobi2Details&sobi2Id=1336&Itemid=142&lang=en [accessed 28 June 2014]

247 African Committee of Experts on the Rights and Welfare of the Child. 2013. *General Comment on Article 30 of the Convention on the Rights and Welfare of the Child*, ACERWC/GC/01, adopted by the Committee at its 22nd Ordinary Session, 4 – 8 November 2013, paragraph 24(c). http://www.africanchildinfo.net/index.php?option=com_sobi2&sobi2Task=sobi2Details&sobi2Id=1336&Itemid=142&lang=en [accessed 28 June 2014]

248 Robertson, O. 2008. *Children Imprisoned by Circumstance*, p.38. Quaker United Nations Office. http://www.quono.org/sites/default/files/resources/ENGLISH_Children%20Imprisoned%20by%20Circumstance.pdf [accessed 2 March 2014].

249 Alejos, M. 2005. *Babies and Small Children Residing in Prisons*, p. 20. Quaker United Nations Office. <http://www.quono.org/resource/2005/3/babies-and-small-children-residing-prisons> [accessed 2 March 2014].

250 African Commission on Human and Peoples' Rights Special Rapporteur on Prisons and Conditions of Detention in Africa, Report presented by Hon. Commissioner Med SK Kagawa at the 52nd Ordinary Session of the African Commission on Human and Peoples' Rights, 9–22 October 2012, Cote d'Ivoire, p. 15. <http://www.achpr.org/sessions/52nd/inter-session-activity-reports/prisons-and-conditions-of-detention/> [accessed 28 February 2014].

251 Committee Against Torture. 2013. *Committee Against Torture Examines Report of Kenya*. CAT13/011E, 16 May 2013, p. 5. [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/0F8C319DCCE8F96DC1257B6D005A9DEB?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/0F8C319DCCE8F96DC1257B6D005A9DEB?OpenDocument) [accessed 2 March 2014].

252 Craig, J. 2013. *Day Care Center Opens for Kenya's Female Prisoners*. Voice of America, 24 January 2013. <http://www.voanews.com/content/day-care-center-opens-for-kenyas-female-prisoners/1589985.html> [accessed 2 May 2014].

253 Correctional Services Act (Act 111 of 1998) as amended, Section 20.

254 Sections 20(2) and (3) of the Correctional Services Act (Act 111 of 1998) as amended <http://www.dcs.gov.za/Publications/Legislation/DCS%20Act%2011%20of%202008.pdf> [accessed 28 February 2014].

255 Correctional Services Act (Act 111 of 1998); Sloth-Nielson, J. 2005. Children in African Prisons. *CSPRI Newsletter*, No. 9. <http://cspri.org.za/publications/newsletter/9%20-%20Februaru%202005.pdf> [accessed 2 May 2014]; Muntingh, L. 2009. *Alternative Sentencing in Africa: Human Rights in African Prisons*. Cape Town: Human Sciences Research Council Press, p. 13.

256 Parliamentary Monitoring Group. 2014. *Women with Children in Correctional Centres: Gauteng Department of Correctional Services briefing*, 19 February 2014. <http://www.pmg.org.za/report/20140219-women-children-in-correctional-centres-gauteng-department-correctional-services-briefing> [accessed 3 May 2014].

breastfeeding and weaning.²⁵⁷ The Independent Police Investigative Directorate (IPID) provide some guidelines for the admission of children with mothers in police custody, which entails the registration of the child as a 'suckling' (in the case of breastfed children) or otherwise. The words "CHILD OF SAPS Case nr" must be entered in the register. It also contains orders for the child to be fed according to the Standing Orders.²⁵⁸

The number of children incarcerated with mothers in Ghana is said to be small. A child is allowed in prison only during the period that the mother is breastfeeding.²⁵⁹ The Ghanaian Criminal Procedure Code allows for non-custodial or suspended sentences for pregnant women and for children to be transferred to a place of safety.²⁶⁰ According to Amnesty International, Nsawam Central Women's Prison is the only prison with a child-friendly space. Pregnant women and women with babies under a year old are kept in a separate cell with cribs. The room has screens on the windows, but bed nets and other baby supplies are not provided by the prison service. For prisoners whose families live far from the prison, this is especially difficult because they have to rely on donations of baby clothes, medicine, nappies, soap, baby food and other supplies. Babies are also not covered under the prison health care scheme, and any non-emergency treatment or medicine that the child needs has to be provided by the mother. The prison reportedly provides antenatal care for all pregnant detainees and allows women to deliver in a hospital. Diets are not adapted for pregnant women and women receive the same diet as men. There appears to be no budgetary allocation to ensure nutritional requirements specifically for pregnant or breastfeeding women and babies, since the latter are not registered as detainees.²⁶¹ A poor diet during pregnancy and whilst breast feeding will have medium to long term adverse consequences for a child.

5.2 Separation of imprisoned mothers from their children

A study was conducted in 2008 in South Africa to gauge the impact of the imprisonment of mothers on their children who are left behind.²⁶² This topic is not addressed anywhere in Africa despite the well-known, severe and wide-ranging socio-economic and health impacts. Studies show that the imprisonment of parents cause children to experience a range of psychosocial problems including depression, hyperactivity, aggressive behaviour, social withdrawal, sleep and eating disorders, poor performance in school and juvenile delinquency.²⁶³ Children between the ages of two and six are reportedly most affected by separation from their mothers.²⁶⁴ The absence of the primary caregiver may lower the standard of care of the child, may lead to a change in the child's home and schooling environment and puts the child at risk of abuse, emotional and developmental strain.²⁶⁵ There is a strong likelihood that the family unit will break up if the mother is imprisoned and the child is placed in the care of state social services instead of remaining in the care of the father.²⁶⁶ In 2004 in South Africa, the Judicial Inspectorate of Prisons found that 74% of female detainees' children were placed with family or friends and 17% were placed in alternative care.²⁶⁷

257 Parliamentary Monitoring Group. 2014. *Women with Children in Correctional Centres: Gauteng Department of Correctional Services briefing*, 19 February 2014. <http://www.pmg.org.za/report/20140219-women-children-in-correctional-centres-gauteng-department-correctional-services-briefing> [accessed 28 February 2014].

258 The Independent Complaints Directorate (South Africa) – Proactive Research Unit. 2009. *Custody Management of Persons in Police Custody*, p. 7–8. [http://www.ipid.gov.za/documents/report_released/research_reports/Custody%20Management%20Report\(small%20file\).pdf](http://www.ipid.gov.za/documents/report_released/research_reports/Custody%20Management%20Report(small%20file).pdf) [accessed 3 April 2014].

259 Bastik, M & Townhead, L. 2008. *Women in Prison: A Commentary on the UN Standard Minimum Rules for the Treatment of Prisoners*, p. 58. http://www.peacewomen.org/assets/file/Resources/NGO/HR_Prisoners_QUNO_2008.pdf [accessed 27 February 2014]. The Ghana Prison Regulations provide at paragraph 9 that 'The child of a female prisoner may be received into a prison with its mother until it has, in the opinion of the Medical Officer, been weaned.'

260 Acts of Ghana, Criminal Procedure Code, Act 30 of 1960, Sections 312 & 313A, text available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88529/101254/F25539202/GHA88529.pdf> [accessed 2 March 2014].

261 Amnesty International. 2012. *Prisoners are Bottom of the Pile: The Human Rights of Inmates in Ghana*, AFR 28/002/2012, p. 25 & 26. www.amnesty.org/fr/library/info/AFR28/002/2012/en [accessed 28 February 2014].

262 Luyt, WFM. 2008. Imprisoned Mothers in South African Prisons with Children Outside of the Institution. *European Journal of Crime, Criminal Law and Criminal Justice* 16:299–323.

263 UNODC. 2008. *Handbook for Prison Managers and Policy Makers on Women and Imprisonment*. Criminal Justice Handbook Series, p. 19. <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> [accessed 27 February 2014] citing Murray J & Farrington D. (2005). Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency Through the Life-Course. *Journal of Child Psychology and Psychiatry*, p. 1.

264 South African Human Rights Commission. 2006. *Briefing to Correctional Services Portfolio Committee: The Impact of Imprisonment on Women and Children: Are We Acting in Children's Best Interests?* 25 August 2006, <http://www.pmg.org.za/docs/2006/060825sahrc.htm> [accessed 28 February 2014].

265 UNODC. 2008. *Handbook for Prison Managers and Policy Makers on Women and Imprisonment*, Criminal Justice Handbook Series, p. 20–1. <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> [accessed 27 February 2014].

266 Quaker United Nations Office. 2005. *Submission by Friends World Committee for Consultation (Quakers) Committee on the Rights of the Child Day of Discussion 2005: Children Deprived of Parental Care: Working Group 1: States' Role in Preventing and Regulating Separation: Parental Imprisonment Deprives a Child of Parental Care*, p. 2. http://www.crin.org/docs/resources/treaties/crc.40/GDD_2005_Quakers_1.pdf [accessed 28 February 2014].

267 A slightly higher figure of 22% is reported by Haffeejee, S, Vettes, L & Greyling, M. 2006. *Violence and Abuse in the Lives of Women and Girls Incarcerated at Three Gauteng Women's Prisons*, Johannesburg: Centre for the Study of Violence and Reconciliation Gender Programme, Research Brief, No. 3, p.3. <http://www.csvr.org.za/docs/correctional/violenceandabuse.pdf> [accessed 8 May 2014].

When a mother is arrested and awaiting trial in Sierra Leone, there are two options for the care of her children to be exercised under the direction of the Ministry of Social Welfare, Gender and Children. The child may either be placed in the care of family members, who might be located in any part of the country, or placed in the care of the state-run orphanage, most likely situated in Freetown.²⁶⁸ The period immediately following a mother's arrest is of particular concern as delays within the criminal justice system means the parent may spend a considerable amount of time in pre-trial detention without any consideration for the mother's duty of care and insuring continued care of affected children by a competent court.²⁶⁹

Given the correlation between female criminality and abuse, children are likely to have experienced domestic violence or witnessed abuse.²⁷⁰ A study from South Africa found that where mothers are imprisoned for the murder of their spouses, the paternal family often shows hatred towards the children and is reluctant or unwilling to care for them. Effectively, the child of the mother imprisoned for killing the father loses both parents.²⁷¹ According to a European study, the imprisonment of a household member has been found to increase the risk of children in that household for later-in-life imprisonment by a factor of five.²⁷² This is an extremely concerning trend and shows the detrimental social impact of maternal imprisonment on the family of the detainee.

The Special Rapporteur on Prisons and Conditions of Detention in Africa noted that most African correctional systems do not take into account the importance of the mother-child relationship when they design policy for women in prison.²⁷³ Prisons often do not allow physical contact between mothers and children during visits. Visiting can be a stressful and confusing experience for the child.²⁷⁴ A 2008 survey of 67 sentenced female detainees in South Africa reported that 95% of respondents had lost contact with their children after imprisonment.²⁷⁵ It is recommended that the State not only allows, but facilitates direct contact with the detained parent on a regular basis, particularly during the early childhood phase. The reality in Africa is that most states do not have the resources or infrastructure to facilitate family visits. It is up to the families to arrange and maintain contact between children and their imprisoned mothers.

5.3 Socio-economic effects of the detention of women

The socio-economic effects of the imprisonment of women have an impact on multiple levels – the individual, the family and the community. A number of notable studies on the socio-economic impact of pre-trial detention were commissioned by the Open Society Foundation in Ghana, Sierra Leone, Malawi, Guinea (Conakry) and Zambia. A common theme emerges throughout these studies, namely that pre-trial detention has a profound, harmful and disproportionate impact on the poor. In Guinea it was found that the excessive use of pre-trial detention reduces the income of detainees who mainly earn daily or weekly wages. It forces families into poverty, and damages the education and income potential of imprisoned parents' children.²⁷⁶ The loss of income is compounded by additional expenses incurred by the family to visit the detainee, to provide food, clothes and other necessities, especially if the mother is incarcerated with a child. In Nigeria and Guinea it was noted that detainees had to pay bribes to access 'luxuries' such as phone calls, receiving

268 Thompson, A & Mahtani, S. 2008. *Children Living in Prison: Insights from Sierra Leone*, p. 7. <http://www.advocaidsl.com/wp-content/uploads/2011/03/Children-Living-in-Prison-Insights-from-Sierra-Leone-2008.pdf> [accessed 22 March 2014].

269 Robertson, O. 2007. *The Impact of Parental Imprisonment on Children*, p. 16. Quaker United Nations Office. http://www.penalreform.org/wp-content/uploads/2013/05/Impact_English.pdf [accessed 28 February 2014].

270 Bhana, K & Hochfeld, T. 2001. *Now we Have Nothing: Exploring the Impact of Maternal Imprisonment on Children whose Mothers Killed an Abusive Partner*, p. 5. Johannesburg: Centre for the Study of Violence and Reconciliation. www.csvr.org.za/docs/gender/nowhavenothing.pdf [accessed 5 May 2014].

271 Bhana, K & Hochfeld, T. 2001. *Now we Have Nothing: Exploring the Impact of Maternal Imprisonment on Children whose Mothers Killed an Abusive Partner*, p. 18. Johannesburg: Centre for the Study of Violence and Reconciliation. www.csvr.org.za/docs/gender/nowhavenothing.pdf [accessed 5 May 2014].

272 Social Exclusion Unit (UK). 2002. *Reducing Re-offending by Ex-prisoners: Report by the Social Exclusion Unit*. London: Office of the Deputy Prime Minister (UK) <http://www.nobars.org.au/downloads/Reducing-Reoffending-Report.pdf> [accessed 14 May 2014].

273 African Commission on Human and Peoples' Rights Special Rapporteur on Prisons and Conditions of Detention in Africa, Report presented by Hon. Commissioner Med SK Kaggwa at the 52nd Ordinary Session of the African Commission on Human and Peoples' Rights, 9–22 October 2012, Cote d'Ivoire, p. 11. <http://www.achpr.org/sessions/52nd/inter-session-activity-reports/prisons-and-conditions-of-detention/> [accessed 28 February 2014].

274 Robertson, O. 2007. *The Impact of Parental Imprisonment on Children*, p. 25–6. http://www.penalreform.org/wp-content/uploads/2013/05/Impact_English.pdf [accessed 28 February 2014].

275 Luyt, WFM. 2008. Imprisoned Mothers in South African Prisons with Children Outside of the Institution. *European Journal of Crime, Criminal Law and Criminal Justice*, 16:299–323. See p. 319 in particular.

276 Open Society Foundations. 2013a. *The Socioeconomic Impact of Pre-trial Detention in Guinea Conakry*, p.41. <http://www.opensocietyfoundations.org/publications/socioeconomic-impact-pretrial-detention-guinea-conakry> [accessed 8 May 2014].

visitors, food, water or medication.²⁷⁷ The financial strain may deter the family from visiting which leads to isolation of the detainee from her community and family.²⁷⁸ A report from Ghana indicates the extent to which families may fall into debt as a result of costs incurred for costs related to visits and the provision of necessities such as clothes and medication to the detained family member. Some are obliged to borrow money, becoming indebted, thereby risking imprisonment themselves. Others may have to take children out of school, sell household items or cut back on food.²⁷⁹ Thus, the excessive use of pre-trial detention perpetuates poverty.

The individual's loss of family ties impacts acutely on female detainees, given the central role they play in the lives of family and children. In Sierra Leone, it was observed that women are often transferred between prisons without the family's knowledge, which further burdens and discourages families from attempting to maintain family relations.²⁸⁰ Amongst prisoners interviewed during a study conducted in Ghana, the most commonly identified social impact on families and detainees was the stigmatisation associated with prison which leads to communities rejecting the person.²⁸¹ During a study conducted at South African prisons, prisoners identified the need to re-establish family relations and sense of belonging within the community as some of the key needs upon release.²⁸² Parental imprisonment increases the risk of children's involvement in criminal activity, especially the use of drugs.²⁸³ In countries where access to legal representation is deficient or inaccessible to the poor, such as Ghana and Sierra Leone, remand detainees are at the mercy of detaining authorities, fostering corruption or bribery and increasing the risk of torture.²⁸⁴

The unnecessary use of pre-trial detention wastes resources and increases the cost of public health care. Prolonged pre-trial detention exposes the accused to criminality and conditions which are often more hazardous than for convicted prisoners. This is sure to have lasting effects on individuals.²⁸⁵

5.4 Conclusion: Mothers in detention

The prolonged or unnecessary use of pre-trial detention has multiple harmful effects on the social and economic position of female detainees, their families, especially on their children, and on communities. The exact number of children affected by the detention of a mother in Africa is unknown, especially the number of children who remain outside. Some African countries have policies or legislation regulating the detention of babies or young children with mothers, up until a certain age. However, children who are separated from mothers in detention are a highly vulnerable group and one which has received little attention. Women in pre-trial detention in Africa are typically poor, from a marginalised sector or background, living on the margins of society and their reduced social status means that their children are already vulnerable to destitution, neglect or abuse. Practices around the placement of children in alternative care appear to be inconsistent and not conducive to sustain continued relations between imprisoned mothers and their children. The recently adopted Bangkok Rules should draw attention to the situation of imprisoned women and over time result in improvements in provision for the needs of mothers and babies.

277 Open Society Institute. 2010. *The Socio-economic Impact of Pre-trial Detention*, p. 24. <http://www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention> [accessed 5 April 2014]; United Nations Human Rights Council. 2007. Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Nigeria, 4 to 10 March 2007, A/HRC/7/3/Add.4, 2007, paragraph 51. http://www.apt.ch/content/files/Nigeria_SRT%20Report%20Nov%202007.pdf [accessed 5 April 2014].

278 UNODC. 2008. *Handbook for Prison Managers and Policy Makers on Women and Imprisonment*. Criminal Justice Handbook Series, p. 16. <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> [accessed 27 February 2014].

279 Open Society Foundations. 2013b. *Improving Pre-trial Justice in Ghana: Socioeconomic Impact of Pre-trial Detention in Ghana*, p. 25–7. <http://www.opensocietyfoundations.org/.../ptd-snapshot-ghana-05232013.pdf> [accessed 2 March 2014].

280 Robertson, O. 2008. *Children Imprisoned by Circumstance*, p.37. Quaker United Nations Office. http://www.quno.org/sites/default/files/resources/ENGLISH_Children%20Imprisoned%20by%20Circumstance.pdf [accessed 2 March 2014]

281 Open Society Foundations. 2013b. *Improving Pre-trial Justice in Ghana: Socioeconomic Impact of Pre-trial Detention in Ghana*, p. 23–5. <http://www.opensocietyfoundations.org/.../ptd-snapshot-ghana-05232013.pdf> [accessed 2 March 2014].

282 Muntingh, L. 2008. *A Societal Responsibility: The Role of Civil Society Organisations in Prisoner Support, Rehabilitation and Reintegration*, p.15–6. <http://cspri.org.za/publications/research-reports/A%20Societal%20Responsibility.pdf> [accessed 2 April 2014].

283 South African Human Rights Commission. 2006. *Briefing to Correctional Services Portfolio Committee: The Impact of Imprisonment on Women and Children: Are We Acting in Children's Best Interests?* 25 August 2006. <http://www.pmg.org.za/docs/2006/060825sahrc.htm> [accessed 28 February 2014].

284 Open Society Foundations. 2013b. *Improving Pre-trial Justice in Ghana: Socioeconomic Impact of Pre-trial Detention in Ghana*, p. 39. <http://www.opensocietyfoundations.org/.../ptd-snapshot-ghana-05232013.pdf> [accessed 2 March 2014]; Open Society Justice Initiative. 2013. *The Socioeconomic Impact of Pre-Trial Detention in Sierra Leone*, p.40. <http://www.opensocietyfoundations.org/publications/socioeconomic-impact-pretrial-detention-sierra-leone> [accessed 1 April 2014].

285 Open Society Institute. 2010. *The Socio-economic Impact of Pre-trial Detention*, p. 13–4. <http://www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention> [accessed 5 April 2014].



Overall conclusion

Lack of research and information: Examining female detainees' position in Africa is extremely difficult without a clear perspective of the number of women affected by pre-trial detention and the crimes they are accused of. Most countries do not publish crime or prisons statistics within the public domain. There is a lack of authoritative and up-to-date literature around important themes such as the prevalence of substance abuse and drug trafficking by women in Africa, and the correlation between criminality and factors such as cultural practices and physical abuse.

Compounded discrimination: Female detainees in Africa are effectively exposed to compounded discrimination related to gender and poverty. In its various manifestations, poverty is the dominant factor contributing to the avoidable and disproportionate number of women in remand detention. Essentially, women affected by poverty are disempowered on various levels and unable to access justice.

Children and mothers: While babies born in prison are accommodated for to some extent in either domestic legislation or practice, the social and economic impacts of the imprisonment of mothers are especially severe on children who are left behind, or who are eventually separated from the mother. This area is under-researched.

Lack of political will: The paucity of information points to a lack of political focus and allocation of resources to address the issue, which until now, is attributed to the fact that fewer women enter the prison system than men. In order to prevent the detrimental effects of pre-trial detention, it is important to develop an understanding of the reasons for female imprisonment.

In order for reform to be brought about, it is recommended that further research be done on an individual country level, so as to identify the gaps in law and policy, and to understand the reasons for the development of, or lack of, practices around major needs such as making provision for female health and female responsibilities of care. Legal reform must be supported by transparency in governments with regard to the accessibility of information and sincere efforts to engage in oversight of prisons and conditions of detention. Prisons should not be seen as a social black hole to which offenders are removed, since the same people will eventually re-emerge into society, where their experiences in prison will be shared and absorbed.



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