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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Technical cooperation and capacity-building to promote and protect the rights of persons deprived of their liberty: implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non- custodial Measures for Women Offenders

Report of the Office of the United Nations High Commissioner for Human Rights**

Summary

The present report is submitted pursuant to Human Rights Council resolution 42/32. In the report the Office of the United Nations High Commissioner for Human Rights (OHCHR) sets out examples of technical assistance and advisory services it has provided, alone or with other United Nations entities, to promote and protect the rights of persons deprived of liberty in implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). In the report, OHCHR draws on information received from national and regional experiences of technical cooperation, drawing on information received from States, United Nations entities and other relevant stakeholders.

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I. Introduction and methodology

1. The present report is submitted pursuant to Human Rights Council resolution 42/32, in which the Council requested OHCHR to prepare a report to be submitted to the Human Rights Council at its forty-fourth session. The report serves as a basis for a panel discussion under agenda item 10 on the activities and plans of OHCHR, other relevant United Nations agencies and, where applicable, regional organizations, to support the efforts of States to promote and protect the human rights of prisoners.
2. The year 2020 marks the tenth anniversary of the adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the thirtieth anniversary of the adoption of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the sixty-fifth anniversary of the adoption of the Standard Minimum Rules for the Treatment of Prisoners (revised as the Nelson Mandela Rules in 2015). In its resolution 42/32, the Human Rights Council recognized the importance of human rights in crime prevention and the administration of justice. In the resolution, the Council recognized the importance of technical assistance, capacity-building and the voluntary exchange of good practices and the challenges faced in the implementation of the Mandela Rules and the Bangkok Rules. In the resolution, the Council requested OHCHR to highlight practical examples of the promotion and protection of the human rights of prisoners, including women prisoners and offenders.
3. To prepare the present report, OHCHR gathered information from its headquarters and field presences, including regional and country offices, human rights components of United Nations peace missions and human rights advisers to United Nations country teams. Those contributions, together with information provided by United Nations entities, including the United Nations Office on Drugs and Crime (UNODC) and United Nations human rights bodies and mechanisms, as well as civil society, constitute the basis for the present report. OHCHR is grateful for the contributions received from Honduras, Italy, Lebanon, Paraguay, Qatar, Saudi Arabia, Sweden, Thailand, Turkey, Uganda, the United Kingdom of Great Britain and Northern Ireland, UNODC and Penal Reform International in the preparation of the present report.¹
4. Recognizing that the most important element in the protection of all persons deprived of their liberty is to ensure the implementation of human rights norms and standards at the national level, OHCHR provides an overview of practices that are representative of technical cooperation and advisory services. It further highlights examples of how technical cooperation and capacity-building programmes are supporting States in the implementation of the Mandela and Bangkok Rules. The present report covers the period from 2015 to 2019. During its finalization, concerns regarding the spread of coronavirus disease (COVID-19) in prisons were raised by the United Nations and many other stakeholders.²
5. The report is arranged according to the key areas covered in the Bangkok and Mandela Rules. Interrelated rules are grouped in order to illustrate relevant technical cooperation activities related to: (a) respect for the inherent dignity of persons deprived of liberty; (b) non-custodial measures; (c) health care; (d) protection of vulnerable groups; and (e) training, awareness-raising and research. For reasons of space constraints, the present report is not exhaustive, but rather focuses on a number of concrete examples to facilitate an exchange of views and experiences during the panel discussion.

Framework for technical cooperation: the protection of all persons deprived of their liberty

6. Technical cooperation is an integral part of OHCHR programmes and is central to implementing the High Commissioner's global mandate under General Assembly resolution 48/141 to promote and protect the enjoyment and full realization, by all people, of all human rights, everywhere. OHCHR undertakes technical cooperation at the request and with the agreement of States. Technical cooperation programmes are designed on the basis of dialogue with relevant stakeholders and based on a comprehensive assessment of the human rights situation in a given country. Depending on the human rights situation, technical cooperation

¹ Contributions will be available on the OHCHR website.

² See www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx.

aims to translate international human rights law and principles into practical methods, approaches, procedures and tools, to be applied by international, regional and national actors in their human rights work.

7. The Board of Trustees, which oversees the Voluntary Fund for Technical Cooperation in the Field of Human Rights, advises the Office on policy and strategic orientation with regard to technical cooperation. In that context, the Board of Trustees has elaborated seven components of effective technical cooperation. They are: (a) the importance of anchoring technical cooperation to the universality and indivisibility of all human rights; (b) the importance of strengthening national frameworks and institutions in the field of human rights through technical cooperation and advisory services; (c) technical cooperation should be offered to support the implementation of and follow-up on recommendations by human rights mechanisms including the universal periodic review; (d) effective human rights technical cooperation should reflect and inform national development objectives to achieve the 2030 Sustainable Development Goals; (e) the importance of partnerships with all entities on the ground; (f) the need for technical cooperation programmes to ensure the broadest possible participation; and (g) technical cooperation should be mainstreamed throughout the work of all United Nations programmes and operations in each country and region.

8. Technical cooperation programmes include advisory services, training courses, workshops and seminars, fellowships, grants, the provision of information and assessments of domestic human rights needs. Through their technical cooperation and advisory services, the United Nations and regional organizations also support the efforts of States to achieve the 2030 Sustainable Development Agenda, ensure that policy processes and outcomes empower rights holders to assert and claim their rights and assist duty bearers in ensuring that those rights are enjoyed by all. In implementing its technical cooperation work, OHCHR collaborates with all relevant stakeholders at the national and regional levels, including civil society, national institutions and representatives of Governments, parliaments, law enforcement bodies and the judiciary. The Office also works closely with all relevant United Nations agencies and country teams and regional organizations to ensure a coordinated United Nations system-wide human rights approach to technical cooperation.

Tokyo, Mandela and Bangkok Rules

9. Globally, more than 10 million people are deprived of their liberty, with some three million people held in pretrial detention.³ In many States, the number of people held in pretrial detention is equivalent to or higher than that of convicted prisoners. Data further suggests that occupancy exceeds official prison capacity in at least 114 countries and that prisons in 92 of those countries, hold between 100 and 200 per cent of their capacity.⁴ Such statistics do not capture the global scale of persons detained in other settings.

10. It is estimated that some 714,000 women and girls are in prison, comprising 7 per cent of the global prison population. Since 2000, the number of women and girls in prison worldwide has increased by 53 per cent, while the male population has increased by 20 per cent.⁵ Despite the increase in numbers, women and girls are a minority in prison systems worldwide. Once deprived of their liberty, they encounter systems, practices, policies and facilities designed for the majority male prison population.⁶ In the global study on children deprived of their liberty, the Independent Expert leading the study estimated that there were at least 410,000 children detained in remand centres and prisons every year, with an estimated 1 million children held every year in police custody (see A/74/136).

11. The right to liberty and security and the obligation to treat persons deprived of their liberty with dignity and humanity is widely recognized in international and regional instruments as one of the most fundamental human rights. The international legal framework for the protection of all persons deprived of their liberty is comprehensive, emphasizing that

³ See Institute for Criminal Policy Research, "World prison population list", 12th ed. (2018).

⁴ Ibid., "More than three million people are held in pre-trial detention and other forms of remand imprisonment worldwide", World Prison Brief, 2 April 2020.

⁵ Ibid., "Over 700,000 women and girls in prison around the world, new report by Institute for Criminal Policy Research shows", World Prison Brief, 22 September 2015.

⁶ See Penal Reform International, submission to the general discussion on access to justice held by the Committee on the Elimination of Discrimination against Women during its fifty-fourth session (11 February–1 March 2013), p. 2.

persons deprived of their liberty must be treated with humanity and respect for the inherent dignity of the human person (see A/68/261). A core defining element of deprivation of liberty is the inability of those who are detained to protect themselves, as their daily life is largely dependent on the decisions taken by the personnel in detention facilities. When it resorts to deprivation of liberty, a State therefore undertakes a duty of care and special responsibility towards those held in detention (A/HRC/30/19, para. 8, and A/HRC/42/20, para. 35).

12. The Tokyo Rules, Mandela Rules and Bangkok Rules provide valuable guidance on a wide variety of issues to States as they elaborate the content of the provisions to protect persons deprived of their liberty that are enshrined in human rights treaties.

13. The Tokyo Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for people subject to alternatives to imprisonment. In order to address a gap in international standards on addressing the needs of women in the criminal justice system, the Bangkok Rules were adopted in 2010. The 70 Bangkok Rules supplement the Mandela Rules and the Tokyo Rules, acknowledging that the causes and consequences of deprivation of liberty for women are gendered and that women and girls in prison have gender-specific characteristics and needs (A/HRC/41/33, para. 13). The Bangkok Rules provide guidance to policymakers, legislators, sentencing authorities and prison staff on a wide variety of issues, including gender-sensitive alternatives to pretrial detention and sentencing post-conviction.⁷

14. The Standard Minimum Rules for the Treatment of Prisoners were adopted by the United Nations in 1955. In 2015 a revised version was adopted, updating the text in eight key areas and is known as the Mandela Rules. They provide a minimum set of standards for the treatment of prisoners and represent a key framework for monitoring and inspection bodies. The 122 Rules cover all aspects of prison management and outline the agreed minimum standards for the treatment of prisoners, whether pretrial or convicted. The Mandela Rules have been used as a blueprint for the drafting of national prison rules globally.⁸

II. Technical cooperation to promote and protect the rights of persons deprived of their liberty: implementation of the Mandela and Bangkok Rules

15. Working closely with States, civil society and persons deprived of liberty, OHCHR aims to safeguard the human rights and dignity of persons deprived of their liberty. Guided by international human rights standards, OHCHR, in particular through its field presences, conducts visits to places of deprivation of liberty, monitoring the conditions of and the legal basis for detention. It provides advice on the legal and policy reforms needed to ensure compliance with international norms and standards relating to deprivation of liberty and provides training for judges, prosecutors, lawyers and corrections staff on relevant international norms and standards. For instance, in 2018 OHCHR conducted over 2,000 visits to places of detention. Through monitoring and subsequent technical assistance programmes, OHCHR supports States in their efforts to improve prison conditions and the protection of persons deprived of their liberty.

16. Issues relating to the protection of persons deprived of their liberty are also raised and dealt with by numerous international mechanisms on a regular basis. Human rights mechanisms such as the treaty bodies, the special procedures and the universal periodic review, frequently refer to the Mandela and Bangkok Rules. Treaty bodies request States to indicate, in initial and periodic reports, the extent to which they are applying standards included in the Mandela and Bangkok Rules and regularly refer to them in their concluding observations and individual communications. The specialized expertise of each mechanism contributes to increasing the level of protection for persons deprived of their liberty.⁹

⁷ See, for example, Penal Reform International and the Thailand Institute of Justice, *Guidance Document and Index of Implementation on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, (2013).

⁸ Ibid.

⁹ See, for example, A/68/261, para. 64, A/HRC/30/19, A/HRC/42/20 and A/HRC/41/33.

17. Other United Nations entities also work on the protection of persons deprived of their liberty. They include, but are not limited to, UNODC, the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees, the United Nations Development Programme (UNDP), the United Nations Office for Project Services (UNOPS), the World Health Organizations (WHO), the United Nations Entity for Gender Equality and the Empowerment of Women and the Department of Peacekeeping Operations. In addition, the International Committee of the Red Cross (ICRC) plays an important role in the protection of persons deprived of their liberty, including in the context of international and non-international armed conflict. Numerous civil society organizations also provide assistance for the protection of person deprived of their liberty. Examples from some of the above entities are included in the present report.

A. Respect for the inherent dignity of persons deprived of their liberty: conditions of detention

18. The power to detain comes with a corresponding responsibility to provide for basic needs, including food, adequate shelter and medical care, and to protect detainees from serious threats of harm. The basic principles of the Mandela Rules are that prisoners must be treated with respect for their inherent dignity and value as human beings and should be treated according to their needs, without discrimination. The Mandela Rules provide guidelines on the minimum requirements for accommodation and living conditions in places of deprivation of liberty. These include rules related to cell conditions, hygiene, accommodation and food and water in detention.¹⁰ Supporting those rules are rules 83–85 in which the importance of internal and independent inspections is recognized. In the Bangkok Rules, it is further recognized that the conditions of detention, including policies, services and infrastructure are often not adapted to women's needs.

19. In the Tokyo, Mandela and Bangkok Rules the impact of overcrowding on conditions of detention is recognized and is often linked to excessive use of pretrial detention, a key area of focus for OHCHR monitoring. Following the publication in 2014 of an OHCHR report entitled "Prisons in Tunisia: international standards versus reality",¹¹ a working group to implement the recommendations set out in the report was established in the Ministry of Justice and the General Directorate of Prisons and Rehabilitation. In the report OHCHR identified a number of critical issues, based on its monitoring, including overcrowding, with levels in some prisons reaching 150 per cent of capacity. In partnership with Penal Reform International, OHCHR supported the General Directorate of prisons in organizing a workshop to develop a national strategy for reducing overcrowding in prisons. In April 2015, the Ministry of Justice adopted a national strategy to reduce overcrowding in prisons and committed to reforming the Criminal Code as part of the effort to reduce overcrowding in prisons. In 2017, the Government abolished the mandatory minimum sentence of one year for drug-related crimes. OHCHR continues to monitor places of detention and in 2019, published a second thematic report based on the Mandela and Bangkok rules, entitled, "Separating categories of detainees and their treatment in Tunisian prisons".¹²

20. In 2016, OHCHR undertook monitoring related to the situation of women in prisons in Burundi. In its subsequent report, OHCHR recommended that the State authorities undertake measures to improve the conditions of detention in line with the Mandela and Bangkok Rules. As a result, the Minister of Justice established a commission to conduct a census of the prison population in both male and female prisons, in order to address overcrowding, prolonged pretrial detention, and expedite judicial procedures. In addition, mobile courts were established to relieve overcrowding in prisons. Conditional release measures were also implemented for some women, including those who were living with their children in prison, breastfeeding mothers and elderly women. OHCHR supported a legal aid fund that enabled 65 per cent of the female prison population to gain access to legal assistance.

21. In Nigeria, the OHCHR Human Rights Adviser supported the National Committee against Torture in undertaking visits to places of detention. The visits of the Committee to

¹⁰ Mandela Rules Nos. 1–5, 12, 14–16, 18–22, 35, 42, 43 and 113.

¹¹ Available in Arabic only.

¹² Available in Arabic only.

prisons in Port Harcourt, Lagos and central Nigeria helped to increase public awareness regarding the conditions of detention and the high rate of pretrial detainees, constituting some 89 per cent of the population in Nigerian prisons. OHCHR facilitated the provision of pro bono legal assistance to 140 pretrial detainees following the release of the Committee's report.

22. In 2016 and 2017, OHCHR Guatemala carried out a joint study with the national human rights institution on the issue of pretrial detention. The report is based on joint monitoring and consultations with members of the judiciary, criminal public defence actors, the Office of the Attorney General and the prison system. The study concluded with a series of recommendations, including addressing internal practices that facilitated excessive recourse to pretrial detention. In 2018, OHCHR Guatemala provided technical advice to State institutions, civil society and the Congress regarding reforms related to pretrial detention regulations in the Criminal Procedure Code.

23. Through its prison reform support programme in Cambodia, OHCHR addresses the importance of adequate accommodation as elaborated in the Mandela Rules. It has supported the General Department of Prisons to improve sanitation, hygiene and access to potable water. In 2019, the General Department of Prisons produced a final draft minimum standard on prison construction based on previous recommendations jointly provided by OHCHR and UNOPS and consolidated by ICRC. The guidelines reflect international human rights norms and standards and provide for the separation of different categories of detainees, including provision for person with disabilities and children imprisoned with their mothers.

24. Following engagement by the United Nations Human Rights Monitoring Mission in Ukraine to reduce unlawful pretrial detention in conflict-related criminal cases, the Constitutional Court of Ukraine declared article 176.5 of the Criminal Procedure Code unconstitutional in June 2019. Adopted in 2014, article 176.5 provided for automatic application and extension of pretrial detention in conflict-related criminal cases. This provision led to the excessive use of pretrial detention, and together with protracted trials had an impact on conditions of detention and the dignity of persons detained. OHCHR advocated for the law to be amended, including by submission of *amicus curiae* to the Constitutional Court.

25. Monitoring the situation of irregular migrants in detention, including unaccompanied and separated minors, is a critical focus of the work of OHCHR Mexico. In relation to the safeguards in detention included in the Mandela Rules, the Office presented recommendations to the Federal Congress on legislation to establish a national registry of detention and comprehensive registration of all detainees on admission to detention, in line with Nelson Mandela Rules Nos. 6–10, which led to the adoption of a national law on the registry of detention. The Office also delivered technical advice on the use of pretrial detention, which contributed to the adoption of a constitutional reform enabling a review of the use of pretrial detention by 2024.

26. During 2018, OHCHR Yemen conducted 121 visits to prisons and detention facilities, including joint visits in eight southern governorates in cooperation with the Ministry of the Interior and the Attorney General. Following coordination with the respective authorities and humanitarian agencies, the wards for juveniles and for women in the Al Hudaydah central prison were provided with a solar power system and water filters. In 2018, OHCHR conducted training for 71 officials from the Ministry of the Interior, the Office of the Attorney General and the Human Rights Ministry, on issues such as health care in prison, protection of vulnerable groups, prison administration and non-custodial measures. Following the training, the participants drafted an internal set of recommendations aimed at improving the rights of prisoners, highlighting key areas of the Mandela Rules.

27. In Uganda, OHCHR has undertaken extensive monitoring, with 202 visits to places of detention between 2015 and 2018. The Office works with the Uganda Human Rights Commission, the Justice, Law and Order Sector of the Government and the Ugandan Prison Service to improve conditions based on findings from detention monitoring. In the remote Karamoja region, joint monitoring and advocacy conducted by the Office, the Commission and other stakeholders, led to the renovation and construction of a new wing in Amita prison in Abim district and the construction of a new facility in Kaabong. Furthermore, in 2019 joint monitoring with the Joint United Nations Programme on HIV/AIDS, the Ugandan Human Rights Commission and WHO on access to health care in prisons resulted in the secondment of a ministry health worker to cover each of the prisons in the Karamoja region.

B. Alternatives to detention and non-custodial measures

28. The Tokyo Rules set out the fundamental principle that imprisonment should be a last resort and alternatives are outlined, including non-custodial measures and sanctions. Rules 57–66 of the Bangkok Rules on non-custodial measures represent a supplement to the Tokyo Rules, interpreted from a gender perspective, including the requirement to take into account a women’s background, circumstances and caretaking responsibilities. They provide guidance on gender-sensitive alternatives for both pretrial detention and sentencing post-conviction.¹³

29. The absence of alternatives to detention is a significant contributor to overincarceration and overcrowding. In order to render alternatives to detention effective, there must be a variety of measures available at the pretrial and conviction stages and the system must be adequately resourced (A/HRC/30/19, para. 55). However, gender-specific alternatives to prison are lacking in many States. Rule 60 of the Bangkok Rules places the responsibility on States for allocating adequate financial and human resources to the development of non-custodial measures and sanctions.

30. In Kenya, Penal Reform International explored a gender-sensitive approach to non-custodial sentences, as required under the Bangkok Rules. Working with the Kenya Probation and Aftercare Service, the aim of the project was to study and develop gender-sensitive community and probation orders in Kenya. This resulted in amendments to pre-sentence reports on women to better reflect their daily realities and backgrounds, and helped to improve non-custodial sanctions for women. Probation officers also received training on how to use these adapted tools and implement a gender-sensitive approach in their work.

31. In Madagascar, the OHCHR Human Rights Adviser provided support to the Government to develop a draft law on alternative criminal sanctions, guided by the Mandela and Tokyo Rules. With the support of an international expert, a review of existing legislation and alternative non-custodial measures and sanctions was undertaken, to ensure that the judicial authorities had sufficient alternative options to pretrial detention and imprisonment. OHCHR also provided technical and financial support for the implementation of the 2019 penal law policy, which aims to reduce recourse to pretrial detention and explore alternatives to detention.

32. The National Health Service in England has rolled out liaison and diversion services to support the Government’s efforts to intervene early for vulnerable offenders.¹⁴ Liaison and diversion services place clinical staff at police stations and courts to provide assessments and referrals to treatment and support. They provide information to decision makers in the justice system in real time when it comes to charging and sentencing vulnerable people, so that decisions and sentences can be tailored to meet their needs. This may include options for diversion away from the criminal justice system and charges or diversions away from a custodial sentence to a community sentence with a treatment requirement. Police forces also have the flexibility to deal with low-level offending without recourse to the courts, through the use of out of court disposals. The strategy of the National Police Chiefs’ Council on the use of out-of-court disposals for adults promotes a two-tier approach offering a choice between a community resolution and a conditional caution.¹⁵ Out of court disposals with rehabilitative conditions offer an opportunity for early intervention with vulnerable groups, such as offenders with substance misuse or mental health issues, and are aimed at addressing the underlying drivers of offending behaviour. Alongside the deferred prosecution scheme in the United Kingdom, some police forces have developed appropriate diversion schemes, attaching conditions which direct female offenders to women’s centres.

33. In Nigeria, in response to recommendations received under the universal periodic review, the President signed into law the Correctional Service Act (2019). The Act aims to reform the Nigerian penitentiary system, emphasizing rehabilitation and establishing mechanisms for non-custodial sentences. A presidential advisory committee was also

¹³ See Penal Reform International, “UN Bangkok Rules on women offenders and prisoners: a short guide” (2013), pp. 6 and 8.

¹⁴ See contribution from the United Kingdom.

¹⁵ National Police Chiefs’ Council, “Charging and out of court disposals: a national strategy 2017–2021” (2017).

established in order to focus efforts on decongesting the country's prisons, which have a 136 per cent occupancy rate.¹⁶ The Human Rights Adviser engaged with the Presidential Committee on Correctional Service Reform and Decongestion and supported a national workshop on the effective implementation of the Correctional Services Act, including the development of sentencing guidelines for non-custodial measures provided under part II of the Act.

34. In Belarus, the OHCHR Human Rights Adviser supported the United Nations Resident Coordinator and the country team in highlighting issues and recommendations in relation to the country's drug policy, deprivation of liberty and the use of alternatives to detention in briefings to the parliament. In 2019, OHCHR organized a study visit to Lisbon for Belarussian authorities. This facilitated knowledge-sharing on progressive Portuguese practices in drug policy and related legislation, including alternatives to detention, appropriate medical services and rehabilitation. OHCHR continues to support the discussion on implementation of a progressive drug policy and alternatives to detention in Belarus.

Alternatives to detention: pregnant women and women with dependent children

35. Rule 64 of the Bangkok Rules provides for non-custodial sentences for pregnant women and women with dependent children and highlights the necessity of taking the best interests of the child into account. The Bangkok Rules request States to restrict as far as possible the imprisonment of pregnant women or mothers with small children, recognizing that prisons are not suitable places to care for pregnant women, breastfeeding mothers, babies and small children. Rule 61 requires that at the sentencing stage, mitigating factors should be considered, including caretaking.

36. In Italy, women represent just under 5 per cent of the prison population. Penitentiary Law No. 62 (2011) protects the relationship between children and mothers who are detainees. Article 1 establishes the prohibition of pretrial detention in prisons for pregnant women and mothers with children up to the age of 6, unless there are exceptional precautionary requirements. The law provides for the placement of mothers with children in specialized "institutes of attenuated custody" for mother or sole father detainees. The institutes are relatively low-security establishments modelled on a residential household. They provide nurses, paramedics, obstetricians, gynaecologists and paediatricians aimed at providing a family-community environment to lower the traumatic impacts of detention on children. Law No. 62 also provides that prison sentences of no more than four years for pregnant women and mothers of children under the age of 10 should be served under specific house arrest arrangements, even if they constitute a residual part of a more severe penalty.¹⁷

C. Access to health care

37. When a State deprives someone of their liberty, it takes on the duty of care to provide preventive, curative and palliative health services (A/65/255, para. 59). Providing adequate health care in prison is a critical challenge for all prison systems. Mandela Rules Nos. 24–35 provide specific guidance on how health-care services in prisons should be organized and the specific duties and responsibilities of health-care staff. In particular, detainees should have the same standards of health care that are available in the community, taking into account the additional risks related to incarceration (see A/HRC/38/36 and A/HRC/42/20, para. 34).

38. Bangkok Rules Nos. 5–18 supplement the Mandela Rules by providing guidance on how to fulfil the specific hygiene and health-care needs of women and address the provision of health care for children who are living with their mothers in prison. The Bangkok Rules further recognize that health care in prisons is often male-oriented and overlooks the specific health-care needs of women, including hygiene and sexual, reproductive and preventative health care.

39. In Honduras in 2019, the Secretary of Health developed a framework agreement for inter-institutional cooperation on comprehensive health care for indigenous and Afro-Honduran peoples. The aim of that agreement between the Secretariat of Health, the Ministry

¹⁶ Penal Reform International and Thailand Institute of Justice, "Global prison trends 2019", p. 10.

¹⁷ See contribution from Italy.

of Development and Social Inclusion, the Directorate of Indigenous and Afro-Honduran Peoples and the Secretariat for Human Rights is to improve the delivery of adequate health care in prisons for indigenous persons. That includes measures to ensure prompt diagnosis and treatment of chronic diseases, including tuberculosis.¹⁸

40. In Senegal, the OHCHR Regional Office for West Africa, in partnership with the Observatory of Places of Deprivation of Liberty and the Association of Senegalese Women Jurists, monitored 10 women's prisons in 2018, interviewing approximately 90 per cent of detainees. The monitoring covered issues related to gender-specific hygiene and health care needs, reproductive health services, women detained with their children, rehabilitation and judicial proceedings. Following engagement with the prison authorities, cardiologists, ophthalmologists, gynaecologists and psychologists were mobilized to provide medical consultations and treatment; the Ministry of Justice committed to document and review all cases of prolonged pretrial detention, including a review of women detained with their children in line with Bangkok Rules Nos. 49–52; and the Director of Criminal Affairs and Pardons committed to implementing measures to review sentencing and raise awareness among judges of applying alternatives to detention.

41. In 2019, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, developed a checklist on health care issues related to the monitoring of places of detention for national preventative mechanisms (CAT/OP/7). Recognising the quality of health care in prisons as a crucial indicator in assessing the risk of cruel, inhuman and degrading treatment and torture, the self-assessment checklist aims to ensure that national preventive mechanisms cover health-care issues comprehensively in order to fulfil their preventive mandate. The checklist consists of six categories of health-care issues, based on the Mandela Rules and the Istanbul Protocol.

Addressing mental health care in prison

42. Addressing mental health care in prison remains a critical challenge. Prisons are not therapeutic environments and in many jurisdictions, mental health services are insufficient or absent. Rules 2 and 5 of the Mandela Rules require prisons to make all reasonable accommodation and adjustments for prisoners with physical, mental or other disabilities, in order to ensure access to services and programmes on an equitable basis.

43. Women offenders often have high rates of prior physical and mental illness and trauma, substance dependency and, once detained, self-harm, and relatively high rates of suicide (A/HRC/41/33, paras. 13 and 16). Rules 12 and 13 of the Bangkok Rules emphasize that mental health issues can become more acute in detention. To address rehabilitative needs, interventions that address gender-specific, individualized psychosocial and psychiatric care are needed.¹⁹ Under the Bangkok Rules, whenever possible non-custodial measures are recommended and sanctions in the case of women who already have a mental disability are preferred (rule 60).

44. In June 2018, the Government of the United Kingdom published a strategy for female offenders.²⁰ The strategy is part of a whole-system approach to female offenders, which recognizes that female prisoners report poorer mental health than male prisoners (49 per cent of women compared to 18 per cent of men), with higher levels of suicide attempts, psychosis, anxiety and depression. The strategy includes taking a gender-responsive, trauma-informed approach to helping women address factors that bring them into the justice system. In addition, a community sentence treatment requirement protocol has been developed to improve access to mental health and substance misuse services in order to address the underlying reasons for offending. Among offenders serving community orders, overall nearly one third have mental health conditions (29 per cent) with a 46 per cent prevalence among women.²¹ The protocol recognizes that when a person's individual vulnerabilities become the reason for offending, that needs to be effectively addressed. Where appropriate, community

¹⁸ See contribution from Honduras (unofficial translation).

¹⁹ A/HRC/38/36, paras. 29, 30, 72 and 98.

²⁰ Ministry of Justice, "Female offender strategy" (2018).

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²¹ Ministry of Justice, "Vulnerable offenders steered towards treatment", 10 August 2018.

sentence treatment requirements can also support diversion away from the criminal justice system by providing effective community sentence options.²²

45. In Turkey, the General Directorate of Prisons and Detention Houses has developed a structured psychological evaluation and intervention programme, which aims to ensure that psychological health services are available to prisoners. On admission to prison, a research and evaluation form is completed with prisoners. That includes an individual assessment by psychologists and social workers and the development of an individualized treatment and therapy plan. In addition, an assessment, profile, tools and rehabilitation programme has been developed, addressing the grounds and motivations for criminal behaviour and the development of individualized rehabilitation programmes.²³

D. Protection of specific groups deprived of their liberty.

46. Specific groups, including juveniles, persons with disabilities, migrants, indigenous persons and lesbian, gay, bisexual, transgender and intersex persons, among others, face particular challenges and have distinct needs when deprived of their liberty. While space does not allow for all vulnerable groups to be addressed in the present report, some relevant technical cooperation examples are highlighted below.

Deprivation of liberty of lesbian, gay, bisexual, transgender, intersex and other gender-diverse persons

47. Rule 2 of the Mandela Rules, while not explicitly referring to lesbian, gay, bisexual, transgender and intersex detainees, contains a rule emphasizing the principle of non-discrimination and its practical implications. This requires that each prisoner's needs are provided for, in particular the most vulnerable categories, so that no prisoner experiences any discrimination in their treatment.

48. For lesbian, gay, bisexual, transgender, intersex and other gender-diverse persons, criminal justice systems and prisons tend to overlook their specific needs. Moreover, in jurisdictions where same-sex relations and expressions of diverse gender identities are criminalized, such persons face heightened vulnerability and risks while detained. In 2018, the Association for the Prevention of Torture produced a guide for monitoring bodies that provides an overview of how authorities should identify patterns of abuse against lesbian, gay, bisexual, transgender and intersex persons deprived of their liberty.²⁴ The guide also sets out measures to prevent ill-treatment and torture and highlights global promising practice. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity contributed to the development of the manual.

49. The United Kingdom Prison and Probation Service recently published a revised policy framework on the care and management of individuals who are transgender, taking into account learning from the implementation of the previous policy introduced in 2016.²⁵ Safeguards have been strengthened by improving the risk assessment process, requiring every prison to have a dedicated staff member responsible for transgender individuals and introducing new training for staff. The Prison and Probation Service has also developed a transgender e-learning course, which is available to all staff. In January 2020, operational guidance for the care of transgender individuals was published to support staff in the implementation of the new framework. A person who is transgender is supported to present in the gender with which they identify, regardless of whether they are in a male or female prison.²⁶

50. To better understand the challenges faced by the approximately 4,000 transgender people in prisons in Thailand, UNDP, together with the Department of Rights and Liberties

²² See contribution from the United Kingdom.

²³ See contribution from Turkey.

²⁴ Association for the Prevention of Torture, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: a Monitoring Guide* (2018).

²⁵ Available from www.gov.uk/government/publications/the-care-and-management-of-individuals-who-are-transgender.

²⁶ See contribution from the United Kingdom.

Protection of the Ministry of Justice, conducted an internal review of the management of transgender inmates in selected prisons. Among other findings, they found that correctional officers often lacked knowledge of transgender issues, resulting in increased stigma and stereotyping of transgender inmates. A joint workshop for correction officials, held in 2018 by UNDP, the Inspire Project and the Department of Corrections of the Ministry of Justice, addressed core issues related to sexual orientation, gender identity and expression and the challenges faced by transgender prisoners. Following the workshop, UNDP supported the Department of Corrections to develop a set of guidelines to improve the management of transgender prisoners in Thailand.²⁷

51. In Paraguay, the strategic plan of the Ministry of Justice for the period 2017–2021 includes a focus on specific categories of detained persons in situations of vulnerability. As part of the reform of the penitentiary system, the General Directorate for Human Rights of the Ministry has initiated a process to review and develop new internal protocols. These include protocols for the care of the elderly, foreign nationals, persons with disabilities, indigenous persons and transgender persons deprived of their liberty. In addition, a “penitentiary decongestion plan”, involving judicial hearings through videoconferencing and rehabilitation and social reintegration programmes through the Directorate of Social Welfare and Reintegration, supports these measures.²⁸

Deprivation of liberty of persons with disabilities

52. Mandela Rules Nos. 2 and 5 provide that prisons must make adjustments to accommodate prisoners with physical, mental or other disabilities, in order to ensure access to services and programmes on an equitable basis.

53. In 2017 the Committee on the Rights of Persons with Disabilities, produced guidelines on the right to liberty and security of persons with disabilities, providing States with additional guidance. In the guidelines, the Committee reaffirmed the absolute prohibition of detention on the basis of impairment, emphasizing that all persons with disabilities deprived of their liberty are entitled to procedural and substantive guarantees on an equal basis with others, including conditions of accessibility and reasonable accommodation (A/72/55, annex).

54. Following advocacy from OHCHR Cambodia, the Policy Academy included a module on the Convention on the Rights of Persons with Disabilities in the four-month initial training it provides to newly recruited prison staff, benefiting 289 new prison staff across all 28 prisons.

E. Training, awareness-raising and research

55. Rules 75 and 76 of the Mandela Rules include provisions on education and training, including in-service training that should reflect evidence-based best practice and the employment of specialist staff.²⁹ Rules 29–35 of the Bangkok Rules supplement the Mandela Rules, addressing the training staff should receive on the gender-specific needs and human rights of women prisoners. The Bangkok Rules also require that staff employed in women’s prisons receive training on specific health-care issues, including the developmental and health-care needs of children. Bangkok Rule No. 70 (4) addresses the need to sensitize and train criminal justice officials on the Bangkok Rules to ensure that criminal justice responses to women take account of their gender-specific needs and the best interests of their children.³⁰

56. In Tajikistan, UNODC, together with Penal Reform International, launched a platform for practitioners and experts to discuss penal practices and policies. UNODC also provided support to the development of a training curriculum for prison officers that was endorsed by the Ministry of Justice. The curriculum includes lessons learned on gender-responsive non-custodial measures and post-release rehabilitation and reintegration services for women prisoners. Furthermore, in 2019 UNODC launched a practice-oriented e-learning course on

²⁷ See UNDP Thailand, “The lives of transgender people in Thai prisons”, 16 May 2019.

²⁸ See contribution from Paraguay (unofficial translation).

²⁹ Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, and Penal Reform International, *Guidance Document on the Nelson Mandela Rules*, (2018).

³⁰ Penal Reform International and the Thailand Institute of Justice, *Guidance Document on the Bangkok Rules* (2013) pp. 109–112.

the Mandela Rules. The course, which is aimed at front-line prison practitioners and free of charge, includes interactive management scenarios filmed in selected prison facilities in Algeria, Argentina and Switzerland.

57. In Thailand, recognizing that specialized training for staff is instrumental in addressing the specific needs of prisoners, the Thailand Institute for Justice has developed a training course on the management of women prisoners for senior correctional staff in the Association of Southeast Asian Nations region. The purpose of the two-week annual course is to promote awareness of international standards and norms related to the treatment of women prisoners, thus equipping correctional practitioners with the necessary knowledge and skills in the management of women in prisons.³¹

58. In Uganda, approximately 95 per cent of the staff of the Ugandan Prisons Service have undergone human rights training. Both the Mandela and Bangkok Rules are incorporated into the curriculum of the Uganda Prison Academy and Training School. The Prisons Service, in partnership with the Ministry of Health and the United States Centre for Disease Control, conducted training for staff in 2018 on responding to and managing sexual and gender-based violence. In 2017, the Ugandan prison standing orders were revised to include provisions of the Mandela Rules and human rights committees for staff and prisoners were established in all prisons. The Prisons Service has worked with UNODC, Penal Reform International and the Uganda Human Rights Commission on specific training related to the Mandela and Bangkok Rules.³²

59. In Saudi Arabia, UNODC supported the Ministry of Labour and Social Affairs in training 50 officers on prison management in line with the Mandela Rules. Additionally, officers from the Ministry of the Interior General Directorate of Prisons participated in a training programme and a study visit to the Italian Department of Penitentiary Administration, which facilitated an exchange of experiences on prison management and human rights.

60. The OHCHR technical cooperation project in Saudi Arabia has also carried out capacity-building on the human rights of prisoners in coordination with the Human Rights Commission. That included workshops in 2017 and 2018 with law enforcement officials, a training-of-trainers component and a human rights training course for prison officials. The training addressed human rights in the administration of prisons and juvenile centres, including non-custodial measures, health care and rehabilitation needs, as outlined in the Mandela and Bangkok Rules.

61. The Swedish Prison and Probation Service supports the Group of Friends of Corrections in Peace Operations, addressing critical corrections issues in United Nations peace operations, including the development and delivery of training addressing the practical application of the Mandela and Bangkok Rules. Since 2005, the Service has organized pre-deployment training for corrections officers to United Nations peacekeeping operations. In 2017, a training-of-trainers component was developed and in 2019, an “all women” pre-deployment course was developed to increase the numbers and capacity among women peacekeepers. The Service is also involved in the development of a corrections leadership training that was piloted in Sierra Leone in 2019 and the development of a week-long Mandela Rules training course for corrections personnel, in conjunction with the OSCE Office for Democratic Institutions and Human Rights.

62. In 2017, Penal Reform International and its partners trained detention monitors from 20 countries on applying the Mandela Rules in a detention monitoring summer school in the United Kingdom. The majority of participants were members and staff of national preventive mechanisms. A similar training course was delivered in 2015 to members of national preventive mechanisms from 13 countries on preventing torture and ill-treatment through gender-sensitive monitoring and application of the Bangkok Rules. Those courses supported previous work with the Association for the Prevention of Torture to develop a detention monitoring tool, providing practical guidance to help monitoring bodies, including national preventive mechanisms, to conduct effective visits to places of detention.

63. In Turkey, through the establishment of a distance learning system in 31 centres across the country, 25 per cent of Turkish prison staff have received in-service training, including

³¹ See contribution from Thailand.

³² See contribution from Uganda.

on standards related to the protection of persons deprived of their liberty. This supports the training delivered to some 65,000 staff in five training centres throughout the country. Since 2016, Turkey has also participated in the European Penitentiary Training Academies Network.³³

64. From 2015 to 2019, 764 prison staff underwent a four-month initial training course with financial and technical support from OHCHR Cambodia. The training covered relevant human rights standards on the protection of persons deprived of their liberty, including the Mandela and Bangkok Rules. OHCHR also supported 20 core trainers to assess the impact of the training course and receive feedback from former trainees and local prison management, in order to feed into the ongoing review of training modules for prison staff. OHCHR also supported and accompanied one-day visits to prisons for trainees and new recruits to contextualize the training on site in prisons.

65. The United Kingdom women's policy framework contains gender-specific rules and guidance for prison and probation staff on how to manage and support women in custody and the community. Accompanying the framework is a guidance document on working with women in custody and the community. The document contains practical advice on how staff can deliver gender-responsive and trauma-informed practice in prison and community settings, including advice on persons with specific needs, such as perinatal women. A new training package entitled "Positive outcomes for women: enabling rehabilitation (POWER)" has been devised to develop the skills and knowledge of staff working with women in custodial and community settings. The package consists of 12 modules covering topics such as court and pre-sentence reports, maintaining family ties, foreign nationals and sex workers, enabling staff to respond to women in a gender-responsive and trauma-informed way.

66. In 2018, the OSCE Office for Democratic Institutions and Human Rights and Penal Reform International produced a guidance document on the practical implementation of the Mandela Rules. The guide supplements a previous short guide to the Mandela Rules issued by Penal Reform International, in which the 122 Rules were summarized in an accessible format, and a toolbox on the Bangkok Rules, jointly produced with the Thailand Institute of Justice. The toolbox includes a guidance document, free e-course, a workbook for training, specific thematic briefings and a guide for prison staff on the mental health of women in prison.

67. In cooperation with the Thailand Institute of Justice, UNODC has developed a toolkit on gender-responsive non-custodial measures to support countries in their efforts to strengthen the capacity of police, prosecutors and judges in applying gender-responsive non-custodial measures. UNODC also published an e-learning course on alternatives to imprisonment for women offenders in 2016, which supports the UNODC handbook and training curriculum on women and imprisonment.

68. There is still broad scope for the use of non-custodial measures in terrorism cases, including for women who are accused or convicted of terrorism offences, in line with the Tokyo and Bangkok Rules. In support of the United Nations Global Counter-Terrorism Strategy, UNODC and OHCHR organized a subregional training workshop on the gender dimensions of criminal justice responses to terrorism in Cameroon in 2017. Participants from Cameroon, Chad, Niger, Nigeria and the African Union, discussed the role of women both as offenders and as victims, gender perspectives on the criminalization of terrorism-related offences and alternatives to detention. Similarly, the OHCHR East Africa Regional Office and UNODC conducted a joint project on strengthening the capacity of national Governments to integrate gender dimensions into criminal justice responses on terrorism. In 2019, OHCHR supported workshops for prosecutors, judges and law enforcement officials in Chad and Nigeria and convened a dialogue with the African Union Commission on integrating gender measures on security sector reform and preventing violent extremism. A UNODC publication on the gender dimensions of terrorism and a training manual for law enforcement officials in Nigeria was launched in 2019 with the support of OHCHR. A large component of the workshops and the manual focuses on the treatment of female prisoners and the application of the Mandela and Bangkok Rules.

³³ See contribution from Turkey.

Research

69. Bangkok Rules Nos. 67 and 68 encourage research to ensure that criminal justice strategies and policies respond to the complex reasons that lead women to end up in the criminal justice system. The Rules explicitly encourage research on why women offend and the characteristics and impact of imprisonment on them (see A/HRC/31/57).³⁴ Given the long-term impact of prison on mothers and children and the consequences for early childhood development, the Rules highlight the critical need to undertake research on children whose mothers are imprisoned.

70. Penal Reform International has undertaken extensive research on women in the criminal justice system in order to improve evidence-based policy and practice. That includes research in Armenia, Georgia, Jordan, Kazakhstan, Kyrgyzstan, Tunisia and Uganda addressing the characteristics of women offenders in those countries and providing key recommendations for Governments in implementing the Bangkok Rules.

71. In 2016, the law firm Linklaters produced a study for Penal Reform International in which it examined how women who have killed their abusers following prolonged domestic abuse are treated in law and before the courts. Research was conducted in Australia, Brazil, India, Japan, Mexico, Poland, Spain and the United States of America, as well as Hong Kong, China.³⁵ A further study on the sentencing of women for drug-related offences across 18 jurisdictions is forthcoming.

III. Conclusion

72. **The examples in the present report highlight experiences where the provision of technical cooperation and advisory services has supported the efforts of States in implementing the Bangkok and Mandela Rules.**

73. **As highlighted by these examples, a common element in the protection of all persons deprived of their liberty is ensuring the implementation of human rights standards at the national level. While the present report includes positive examples of State actions, significant gaps remain.**

74. **During the finalization of the present report, concerns regarding the spread of COVID-19 in prisons was raised by the High Commissioner for Human Rights, who urged Governments to reduce overcrowding in prisons and other closed facilities in order to prevent the spread of the COVID-19 infection.**

75. **While many Governments aimed to reduce prison populations amid the COVID-19 pandemic, there is a longer-term need to address the global issue of overcrowding and overincarceration. In addition, there is a need for country-specific research on the barriers to the full implementation of alternatives to detention, including gender-specific options, supported by the financial, institutional and human resources needed to implement them (see A/HRC/30/19 and A/HRC/31/57).**

76. **Furthermore, while the Bangkok Rules address a critical gap in gender-sensitive criminal justice systems, the global female prison population continues to rise. Further country-specific research is needed to explain why women are increasingly imprisoned, their pathways to offending, the barriers they face in accessing justice and their rights as suspects, defendants and convicted prisoners.**

77. **While the effective management of prisons requires adequate resources, many of the Bangkok and Mandela Rules do not require additional resources for their implementation. As highlighted by the technical cooperation examples provided in the present report, commitment to the revision of laws and policies and ensuring adequate capacity, staffing and training can have a positive impact on implementation of the Rules and the protection of persons deprived of their liberty.**

³⁴ See also Penal Reform International, “Popular as a victim, forgotten as a defendant”, 18 February 2012.

³⁵ Linklaters LLP and Penal Reform International, *Women Who Kill in Response to Domestic Violence: How Do Criminal Justice Systems Respond?* (2016).

78. The support provided through technical cooperation and advisory services by OHCHR is based on the clear need to address the risks faced by persons deprived of their liberty. In close collaboration with States, other United Nations agencies and a wide range of stakeholders, OHCHR will continue to work towards protecting the rights of persons deprived of their liberty, undertaking technical assistance activities to support the full implementation by States of the Mandela, Tokyo and Bangkok Rules.
