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Disability Rights Arrives

April 18, 2017

by Robert Dinerstein*

I am extremely pleased to note the decision by the *Human Rights Brief* Co-Editors-in-Chief to add Disability Rights to the existing areas of concentration for the publication. This addition reflects the growing importance of disability rights as human rights, an importance that is reflected in the ten-year anniversary of the adoption of the [UN Convention on the Rights of Persons with Disabilities \(CRPD\)](#) but both precedes and extends beyond that enactment. This is thus a propitious time to begin a sustained focus on disability rights within a human rights context.

Although broad declarations and treaties such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights certainly can be read to include the rights of people with disabilities, the absence of specific mention of disability rights in these documents has had the effect of rendering them a virtual nullity for people with disabilities. Starting in 1971, various non-binding declarations, such as the [Declaration on the Rights of Mentally Retarded Persons \(1971\)](#), the [Declaration on the Rights of Disabled Persons \(1975\)](#), and the [United Nations Decade of Disabled Persons \(1982-1993\)](#) expressed rhetorical support for the rights of people with disabilities, even as they reflected an increasingly outmoded medical model of disability. [The World Programme of Action Concerning Disabled Persons \(1982\)](#), the [Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care \(MI Principles\) \(1991\)](#) and the [UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities \(1993\)](#) added more content to substantive disability rights but nevertheless were limited in scope because they were neither treaty obligations nor regarded as customary law.^[1] Prior to the adoption of the CRPD, the only international treaty that explicitly mentioned disabilities was the [Convention on the Rights of the Child \(CRC\) \(1989\)](#), Article 23 (1) of which provided that states “recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the

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community.” In addition to being limited to the rights of *children* with disabilities, however, the remainder of Article 23 of the CRC spoke more to access to special care or addressing special needs than to a rights-based view of disability.

The invisibility of disability in a broader UN context is evidenced in the complete absence of disability from the [UN’s Millennium Development Goals \(MDGs\)](#), which were in effect from 2000-2015. Fortunately, the successor to the MDGs, the Sustainable Development Goals (SDGs), which will cover the period from 2015-2030, addresses this elision by considering disability issues in five of the 17 SDGs.[\[ii\]](#)

Beyond the legal landscape, traditional human rights organizations, such as Human Rights Watch and Amnesty International, paid little attention to the rights of people with disabilities. One of the only organizations to advocate for people with disabilities (and specifically mental disabilities) was Mental Disability Rights International (MDRI), now called Disability Rights International, which Eric Rosenthal founded in 1993, and which was housed here at American University Washington College of Law in the first several years of its existence. Eric and other DRI staff have written a number of the articles on disability rights that have appeared in the Human Rights Brief.[\[iii\]](#)

Against this backdrop, the process of drafting and deliberating on the document that was to become the CRPD in 2006 reflected a true paradigm shift in thinking about disability rights. That shift, epitomized by the slogan “Nothing about us without us,” was effectuated through a treaty that emphasized the autonomy, dignity, right to non-discrimination and equality of people with disabilities, and that evinced a social model of disability, which emphasizes the need to view disability through the interaction of the person with a physical or mental impairment and his or her physical and attitudinal environment. People with disabilities and disabled people’s organizations were actively involved in the Working Group that advised the Ad Hoc Committee charged with drafting the Convention. The result was a treaty that recognized the universal legal capacity of people with disabilities and their rights in a broad array of areas such as community living, health, employment, education, voting, access to justice, accessibility, and many more.

As of this writing, 172 countries or regional organizations have ratified the CRPD, with 160 of those countries having signed the Convention. Regrettably, the United States has not yet ratified the CRPD, though President Obama did sign the treaty in 2009.[\[iv\]](#) But notwithstanding the formal absence of the United States from the treaty and its bodies, the CRPD is shaping legal opinion in the United States, especially in the area of support for legal capacity (Article 12 (3) of the CRPD) and the concomitant concept of supported decision making.[\[v\]](#)

The [Committee on the Rights of Persons with Disabilities](#), which meets twice per year in Geneva, Switzerland, and is about to hold its Seventeenth Session this spring, has been active and aggressive in interpreting the treaty rights of people with disabilities and issuing Concluding Observations for the 48 states or regional organizations that have gone through the complete evaluation process.[\[vi\]](#) The Committee’s conclusions, along with the jurisprudence that is developing through individual cases brought under the CRPD’s Optional Protocol, are a rich source for elaborating on the content and meaning of the CRPD. An important part of the Committee’s review process is the opportunity for non-governmental organizations (NGOs) and Disabled People’s Organizations (DPOs) to submit “shadow reports” that provide a critical civil

society perspective on the country reports the States file. In conjunction with the requirement in Article 4 of the CRPD that States adopt laws consistent with the CRPD, and modify or abolish ones that are inconsistent with it, many countries are engaging in an extended and intensive analysis of the rights of people with disabilities within their borders.

Important as the CRPD is for the development of disability rights, it is not the only game in town. On September 30, 2016, [the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities](#) entered into force. The treaty facilitates access to published material by people with vision and print disabilities by easing copyright limitations on the dissemination of material. Disability is also the subject of the comprehensive 2011 World Report on Disability, published by the World Health Organization and The World Bank, which provides important information about, and recommendations regarding, the status of people with disabilities and the kinds of supports they need to thrive in society.

With these and other developments in mind, it is easy to see the potential for practical scholarship in the area of disability rights to go along with the practical human rights scholarship for which the *Human Rights Brief* is justly known. As noted above, over its 23-year history, the *Human Rights Brief* has published a number of articles on disability rights.^[vii] Going forward, I see ample opportunities for articles on such topics as regional disability rights protection; ongoing analysis of the work of the Committee on the Rights of Persons with Disabilities and its cases under the Optional Protocol; national enforcement, and monitoring, of CRPD rights; intersectional rights of people with disabilities (including the rights of women, immigrants, racial and ethnic minorities, and children with disabilities); and assessment of the meaning, and implementation, of specific articles of the CRPD, including Articles 9 (accessibility), 12 (legal capacity), 13 (access to justice) 14 (liberty and security of person), 19 (community living), and 29 (participation in political and public life), to mention just several key provisions. And in addition to monitoring the development of implementation of the Marrakesh Treaty, exploration of the access of people with disabilities to the internet and other forms of virtual communication will be critical in ensuring that people with disabilities are not left behind in the technological and communications revolution, as they have too often by revolutions in the past.

I hope you will join me in congratulating the *Human Rights Brief* in undertaking this initiative and that you will consider contributing to the ongoing effort to vindicate at long last the human rights of people with disabilities.

ENDNOTES

[i] See National Council on Disability, *Understanding the Role of an International Convention on the Human Rights of People with Disabilities* (June 12, 2002), at 21-22 & n.57 (citations omitted).

[ii] See UN Division for Social Policy and Development: Disability, Sustainable Development Goals (SDGs) and Disability, <https://www.un.org/development/desa/disabilities/about-us/sustainable-development-goals-sdgs-and-disability.html> (indicating disability is addressed in Goals 4, 8, 10, 11, and 17).

[iii] See Eric Rosenthal & Laurie Ahern, *When Treatment is Torture: Protecting People with Disabilities Detained in Institutions*, 19 (2)HR Brief 13 (Winter 2012); Tara J. Melish, *The UN Disability Convention: Historic Process, Strong Prospects, and Why the US Should Ratify*, 14(2) HR Brief 37 (Winter 2007); Alison A. Hillman, *Protecting Mental Disability Rights: A Success Story in the Inter-American Human Rights System*, 12(3) HR Brief 25 (Spring 2005); Debra Benko & Brittany Benowitz, *The Application of Universal Human Rights Law to People with Mental Disabilities*, 9(1) HR Brief 9 (Fall 2001); Max Lapertosa & Eric Rosenthal, *MDRI: Pioneering Strategies for International Enforcement of Mental Disability Rights*, 3 HR Brief 6 (Fall 1995); Eric Rosenthal, *MDRI Fosters*

Dialogue on Human Rights in Psychiatric Institutions at Montevideo Conference, 2(1) HR Brief 5 (Fall 1994); and Fatimah A. Mateen, *NGO Advocates for Rights of People with Mental Disabilities*, 1(1) HR Brief 3 (Spring 1994).

[iv] The CRPD was open for ratification in early 2007, during the Bush Administration. Although the U.S. delegation was actively involved in the treaty-drafting process, the Bush Administration refused to sign the CRPD. Two government officials defended that position in Tracy R. Justesen & Troy R. Justesen, *An Analysis of the Development and Adoption of the United Nations Convention Recognizing the Rights of Individuals with Disabilities: Why the United States Refused to Sign this Convention*, 14(2) HR Brief 36 (Winter 2007). For a contrary view, see Melish, *supra* note 2.

[v] I addressed supported decision making and Article 12 of the CRPD in Robert D. Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making*, 19(2) HR Brief 8 (Winter 2012).

[vi] See

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5

[vii] In addition to the articles cited previously, the HR Brief has published Oliver Lewis, *Stanev v. Bulgaria: On the Pathway to Freedom*, 19 (2) HR Brief 2 (Winter 2012); Jennifer W. Reiss, *The Convention on the Rights of Persons with Disabilities in Post-Lisbon European Union*, 19(2) HR Brief 18 (Winter 2012); and, on a domestic issue, Edwin R. Hazen & Robert D. Dinerstein, *The Rights of Bar Examination Applicants with Disabilities in the United States*, 6 (2) HR Brief 5 (1998-99).

Implementation of Alternative Measures for Women in Venezuelan Prisons Based on the Bangkok Rules

June 20, 2017

by Maria Corina Muskus Toro*

INTRODUCTION

“Once women are outside of prison they do not want to talk. They want to forget it. No woman deserves to live what is lived inside of prison.”^[i]

Prisons are tailored particularly for men, as women make up only two to nine percent of the prison population in eighty percent of the world’s prison systems.^[ii] As a result, the particular needs of incarcerated women are ignored and remain invisible.^[iii] Hence, there is an urgent need to reevaluate women’s prison conditions without male prisons as a reference point because women’s needs inside of detention facilities are not being fulfilled by the states.^[iv]

In addition, it is important to understand the median background and profile of female detainees and their paths prior to incarceration. Understanding their backgrounds will makes us realize the importance of the implementation of gender-sensitive policies, like the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).^[v] The Bangkok Rules were adopted by the United Nations General Assembly in 2010 with the intent to provide guidelines for states and address the needs of women in the criminal justice system by prioritizing the application of non-custodial measures.^[vi] The Bangkok Rules contain gender specificities for women in detention facilities and states should implement them in all situations referring to women in prison.^[vii]

First, this article will discuss the gender differences of women in prisons worldwide and the risk of torture and ill-treatment against women in detention. Second, this article will focus on the particular conditions of women with regards to the only women detention facility in Venezuela, the National Institute for Female Corrections (INOF). There are other women detained in annexes of male prisons, but this article will focus on the particular conditions of the INOF.^[viii] Third, this article will expose the human rights violations in the INOF. Fourth, this article will explain the importance of the Bangkok Rules and propose the implementation of the following alternative measures: stop the excessive use of pretrial detention, decriminalize drug crimes, and implement non-custodial measures such as community service and probation.

ACKNOWLEDGING GENDER DIFFERENCES OF WOMEN IN PRISON WORLDWIDE

Being a woman intersects with conditions such as poverty, sexual orientation, race, and age.^[ix] In order to understand the importance of the implementation of gender sensitive policies in

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Venezuelan prison settings, it is pivotal to examine the very unique and specific profiles of incarcerated women. Regretfully, research and documentation of the general backgrounds of women inside detention facilities in Venezuela^[x] and Latin-America is limited.^[xi] Nevertheless, the general profile of the average woman on a worldwide scale that goes to prison is a good example to use.

Women in custody, who are mostly mothers, are generally uneducated, have a low-income, have a background of trauma or violence, have substance abuse problems, and have mental health issues.^[xii] Likewise, Penal Reform International, an organization that focuses on the criminal justice system, has identified that women deprived from liberty on a worldwide scale are women that have been physically and physiologically abused, women with drug-dependency issues who are poor, and women who have health problems.^[xiii] Similarly, the Special Rapporteur on Violence Against Women of the United Nations argued in a thematic report that there is a strong link between violence against women and women's incarceration.^[xiv] The prevalence of drug issues is also a major problem; the Special Rapporteur on Violence Against Women has stressed that the high rates of women imprisonment are because of drug related crimes.^[xv] Furthermore, women inside of prison have a higher tendency to suffer from mental illness than their male counterparts.^[xvi] Poor comprehensive mental health programs inside of prisons have terrible consequences for women.^[xvii] For example, some incarcerated women have substance abuse problems or psychiatric disorders due to the emotional pain and stress caused by being separated their children and families.^[xviii]

Studies have also found that around eighty percent of incarcerated women are mothers who are usually the household's primary caregivers.^[xix] Different from men, some of these women take their children with them to prison.^[xx] This happens in Venezuela, as this article will later demonstrate.^[xxi] Children suffer as a consequence of the incarceration of their parents and also when they accompany their mothers in detention facilities. A research study conducted by the University of California found that imprisonment leads to a cycle of violence, and children of former incarcerated parents are at greater risk of future incarceration themselves.^[xxii] Children are deeply affected by the incarceration of their mothers and studies have shown that they can suffer from poor school performance and aggressive behavior, which contributes to the criminality cycle.^[xxiii]

RISK OF TORTURE AND ILL-TREATMENT AGAINST WOMEN IN DETENTION FACILITIES

Women in detention facilities are at a high risk of suffering from torture and ill treatment.^[xxiv] The Inter-American Court of Human Rights has recognized that acts of sexual violence, such as rape and invasive body searches, are acts of torture while in detention.^[xxv] Additionally, the European Committee for the prevention of torture has considered that not providing personal hygiene products to women such as sanitary pads and tampons can amount to degrading treatment.^[xxvi] There are other situations that highlight the experiences of women that live inside of prison that put women at a high risk of suffering from torture and ill-treatment. ^[xxvii] For example, lack of health care services that cover specific needs of women such as sexual and reproductive rights and access to hormone therapy for transgender women. Also, the situation of pregnant, breastfeeding mothers, and women that live in prison with their children, and the separation of women from their family as they might be detained kilometers away

from their family.[\[xxviii\]](#) Or, the lack of same sex custody staff. States have to be aware of the risks that imprisonment entails for women and the factors that contribute to torture and ill-treatment.

IMPRISONED WOMEN IN VENEZUELA

Women inside of detention facilities in Venezuela represent five point nine percent of the detainee population, while the world median is four point four percent.[\[xxix\]](#) This article focuses on the particular conditions of women in the only women detention facility in Venezuela, the National Institute for Female Corrections (INOF). The conditions inside of the INOF include: excessive use of pretrial detention; overcrowding; lack of access to food; lack of access to safe drinking water; lack of access to basic supplies, such as shampoo, soap, sanitary pads, or toilet paper assigned for only one woman, toilet; unsanitary facilities; lack of medical attention; and sexual violence.[\[xxx\]](#) These conditions also affect the children that accompany their mothers.[\[xxxi\]](#) There are around eighteen to twenty children inside of the INOF that live in the same conditions as their mothers.[\[xxxii\]](#)

Excessive Use of Pretrial Detention

The excessive use of pretrial detention is one of the major aspects of the global problems of incarceration.[\[xxxiii\]](#) In Venezuela, fifty seven percent of the total prison population in Venezuela is in pretrial detention, which means that they are incarcerated before trial.[\[xxxiv\]](#) In the INOF, on the figures reported in 2016, 475 women were in pretrial detention and only 123 have been convicted.[\[xxxv\]](#) This means that more than seventy percent of the female population inside of the INOF is in pretrial detention, and due to the overcrowding, there is no separation of sentenced female detainees and women in pretrial detention.[\[xxxvi\]](#) The over-use of pretrial detention leads to overcrowding.

Overcrowding

The INOF is a detention facility designed for 250 women.[\[xxxvii\]](#) In March 2016, the Observatorio Venezolano de Prisioneros, (OVP), a watchdog of prison conditions in Venezuela, reported that the facility holds more than 627 women.[\[xxxviii\]](#) Because the INOF is overpopulated, six to seven women must share a 2x3 square meter cell designed for one woman.[\[xxxix\]](#) Some detainees have no other option but to sleep on the concrete floor, which they sometimes cover with newspaper.[\[xl\]](#) Overcrowding and the over-use of pretrial detention in the INOF has led to the lack of separation between prisoners awaiting trial and sentenced prisoners.[\[xli\]](#)

Due to the overcrowding and the lack of adequate space in the INOF, the basketball court of the prison is used as a garbage dump and the trash can remain there for weeks with decomposing food, insects, and rats, thereby making the facility unsanitary.[\[xlii\]](#) Overcrowding not only impacts the space, but it also negatively impacts the quality of nutrition, sanitation, and health services.[\[xliii\]](#) Because of the overcrowding, there is a higher risk of transmitting diseases.[\[xliv\]](#)

Lack of Access to Food, Safe Water, and Basic Supplies

The lack of access to food is a major problem in the INOF. Since January 2016, the OVP stressed that women are receiving only one meal a day that is neither nutritious nor balanced.^[xlv] The meal consists of a piece of bread, some crackers, or rice; the lack of food causes the prisoners to become malnourished.^[xlvi] It is Venezuela's responsibility to provide food to detainees.^[xlvii] Due to the lack of food, family members have the burden of providing food to women in the INOF. To do so, guards engage in corruption and charge money to family members to bring in food.^[xlviii] Adding to the lack of access to food, the INOF does not provide safe drinking water.^[xlix] The detainees are forced to buy bottled water for three times the market value.^[l] Otherwise, they do not drink water and get dehydrated, or if they drink the unclean tap water, they are exposed to serious health consequences, such as gastrointestinal viruses, diarrhea, and other infections.^[li] In addition to the lack of access to safe water and food, the detention facility does not provide women with basic necessities such as shampoo, soap, deodorant, toilet paper, and sanitary pads.^[lii]

One example of the conditions described above is the case of Araminta Gonzalez, who has been detained in the INOF since June 2014.^[liii] Her lawyer disclosed that she had to trade her bible for soap because the INOF did not provide her with hygienic supplies.^[liv] The inhumane treatment and cruel conditions are main factors that led her to attempt suicide four different times.^[lv]

Absence of Medical Attention

Women inside of the INOF do not have access to both twenty-four hour a day medical attention and reproductive healthcare.^[lvi] The Venezuelan authorities must provide medical attention seven days a week, especially inside of a female prison.^[lvii] In the INOF, there is only a physiotherapist who acts as a night guard.^[lviii] The INOF does not have the necessary medical equipment, staff, or even an ambulance in case of a medical emergency.^[lix] The OVP has documented cases of death inside of the INOF because of the lack of necessary medical attention and equipment.^[lx]

Sexual Violence and Sexual harassment Inside of the INOF

“Everyone had sex with the female guards; almost all of the guards are women. Some female detainees were lesbians but others were not. However, if a female prisoner had a relationship with a guard she could have the best food, access to sanitary towels, shampoo, and safe water. The guards are truly taking advantage of the conditions.”^[lxi]

One of the most disturbing situations in the only Venezuelan women prison is the ongoing sexual violence.^[lxii] Sexual violence inside of the INOF occurs between guards and detainees or just the detainees themselves.^[lxiii] There are female detainees called “machitos.”^[lxiv] Machitos force new detainees to have and maintain sexual relationships with them in exchange for protection.^[lxv] Furthermore, family members of women detainees have reported to the OVP that women inside of the INOF have been subjected to sexual violence and sexual harassment from security forces.^[lxvi] For example, Maria Lourdes Afuni, a former judge and INOF detainee, reported being subjected to rape, sexual violence, threats, and harassment during her detention.^[lxvii] Delibeth Briceno, a student detained in 2014, reported being subjected to harassment, indecent touching, verbal violence, and threats.^[lxviii]

HUMAN RIGHTS VIOLATIONS DUE TO THE PRESENT CONDITIONS IN THE INOF

Venezuela has failed its duty to provide adequate detention conditions in its only women's prison. Venezuela has an international obligation to guarantee that all persons in its custody are treated with respect and dignity.^[lxix] The Inter-American Court on Human Rights acknowledged this standard in the case *Miguel Castro-Castro Prison v. Peru*: "State is responsible, in its condition of guarantor of the rights enshrined in the Convention, of the observance of the right to humane treatment of any individual under its custody."^[lxx]

The deplorable conditions inside of the INOF, including the lack of healthcare, unsanitary facilities, overcrowding, absence of food and safe water violates the following international treaties signed and ratified by Venezuela:^[lxxi] the International Covenant on Civil and Political Rights,^[lxxii] the Optional Protocol,^[lxxiii] the Inter-American Convention on Human Rights,^[lxxiv] the Convention against Torture,^[lxxv] and the Convention on the Elimination of All Forms of Discrimination Against Women.^[lxxvi] All of these international treaties obligate Venezuela to improve conditions inside of prisons, to provide adequate facilities, to provide adequate healthcare services, to treat persons deprived of liberty with respect, to prohibit torture or ill treatment that occurs inside of prison, and to provide equal treatment to both men and women in detention.^[lxxvii] Considering the basic principles of humanity for persons deprived of liberty, the inhumane and degrading conditions Venezuelan prisons must be improved. Venezuela must move forward and apply alternative measures to imprisonment based on the Bangkok Rules to comply with its international obligations.

THE BANGKOK RULES AND IMPLEMENTATION OF ALTERNATIVE MEASURES

It is important that Venezuela implements the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) approved by the General Assembly of the United Nations in 2010.^[lxxviii] These Rules are similar to the Mandela Standard Minimum Rules for the Treatment of Prisoners,^[lxxix] but are specific to women. The Bangkok Rules contain gender-specific norms, give special attention to women offenders, and address women's particular need and specific background.^[lxxx] They legitimize the need for gender-specific norms in the criminal justice system.^[lxxxi]

International bodies are in favor of states implementing the Bangkok Rules. The Special Rapporteur on Torture of the United Nations invited all states to: "fully and expeditiously implement the Bangkok Rules and establish appropriate gender-specific conditions of detention."^[lxxxii] Additionally, this Special Rapporteur has stated that, "measures to protect and promote the rights and address the specific needs of female . . . prisoners are required and cannot be regarded as discriminatory."^[lxxxiii] The Bangkok Rules provide practical measures to protect the rights of women in detention,^[lxxxiv] and are not separate or different from international standards. Accordingly, Venezuela must implement and apply the Bangkok Rules in cases of women deprived of liberty.

In addition to the current inhumane and degrading prison settings, Venezuela needs to apply alternative measures to imprisonment for two main reasons. First, alternatives to imprisonment avoid the high social and economic cost of detention and have proven more effective than imprisonment in preventing repeated offenses, particularly for minor, non-violent

offences.^[xxxv] Second, children of former incarcerated parents are at a greater risk of future incarceration, which leads to a cycle of violence.^[xxxvi] Venezuela should improve the current prison conditions inside of the INOF. However, due to the current political and economic crisis that has encompassed skyrocketing inflation,^[xxxvii] scarcity of food and medicine shortages,^[xxxviii] high rates of poverty,^[xxxix] and insecurity^[xc] a short term solution is highly unlikely. This current situation highlights the importance of using the Bangkok Rules to expeditiously create and implement alternatives measures to imprisonment for women in Venezuela.

The implementation of alternative measures to imprisonment for women in detention convicted or charged for minor or non-violent crimes is a feasible solution to reduce the high rates of pretrial detention, the terrible prison conditions inside of the INOF, the vulnerability of women in prison experiencing torture and ill-treatment, and the cycle of violence.^[xci] The Bangkok Rules establish diversionary and pretrial alternative measures as a solution for women offenders, and these measures “shall be implemented wherever appropriate and possible.”^[xcii] The following are alternative measures in accordance with the Bangkok Rules that Venezuela must consider to improve its prison conditions.

RECOMMENDATIONS FOR IMPRISONMENT FOR WOMEN CONVICTED OR CHARGED FOR MINOR OR NON-VIOLENT CRIMES IN VENEZUELA

Stop the Excessive Use of Pretrial Detention

The excessive use of pretrial detention is one of the major problems in the criminal justice system in Venezuela.^[xciii] The Inter-American Commission on Human Rights has recognized that “the excessive use of pretrial detention in the region has been a topic of numerous thematic hearings and a recurring matter in individual petitions.”^[xciv] On the specific topic of women in detention, it is important to consider that overcrowding has a negative impact on women, because women remain invisible inside of prison settings and their gender-specific needs are not met in prison.^[xcv] The Special Rapporteur on Torture has stressed that states must review legislation to reduce the level of detention and overcrowding, as this will help to improve the conditions of women inside of prison.^[xcvi] Hence, Venezuela must stop the over-use of pretrial detention for women in detention charged or convicted of minor or non-violent offenses.

Decriminalize Drug Crimes

Another recommendation is to decriminalize non-violent drug offenses. For example, countries such as Portugal and the Czech Republic have decriminalized non-violent minor drug offenses, and have experienced cost savings, lower incarceration rates with no significant increase in problematic drug use, and public health benefits.^[xcvii] There is a disproportionate burden of poverty that women bear, which makes women more susceptible to the coercion and corruption of drug use or the drug trade.^[xcviii] Research conducted by the Johns Hopkins-Lancet Commission on Public Health and International Drug Policy has shown that in Mexico and the United States drug law enforcement agencies apply their policies toward racial, ethnic minorities and women in discriminatory ways.^[xcix]

Despite the scarce official data available in Venezuela, some sources have indicated that women inside of detention facilities are mostly charged with drug crimes and are accomplices in the criminal offense of abduction. The decriminalization of drug crimes is a step towards reducing the number of female detainees and would stop the criminalization of vulnerable women with low education and mental health needs.

Probation for Non-Violent Crimes

Probation or parole is a form of conditional release with a set of rules that in case of failure will lead to incarceration.[\[c\]](#) Probation exists in the Venezuelan legal system, but it does not apply to non-violent offenders.[\[ci\]](#) It only applies to women in their last three months of pregnancy or mothers nursing until their sixth month.[\[cii\]](#) Parole must include the cases of women charged or convicted of non-violent crimes. For Venezuela to utilize probation, it must reform its regulations concerning conditional forms of release. Ultimately, the importance of including probation in cases of women charged or convicted of non-violent crimes relies on its implementation. This measure will provide mothers the opportunity to stay in society, live with and take care of their children, and avoid the social stigma of prison. The children will not have to experience the trauma of losing their mothers and mothers will have more opportunities to reenter society.[\[ciii\]](#) These measures will help Venezuela avoid the cycle of violence and prevent children of incarcerated mothers from becoming the next generation of inmates.[\[civ\]](#)

Community Service

“Bangkok Rule 59: Generally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organizations or other community services, shall be used to protect women who need such protection.”[\[cv\]](#)

Venezuela should also consider the implementation of community service, which tends to help women offenders and provide them with social capital opportunities that are usually unavailable in the regular criminal prison.[\[cvi\]](#) The implementation of community services also assists in the reduction of the cycle of violence in children, as women will not spend time away from their families.[\[cvii\]](#) Venezuela should provide women charged or convicted of minor non-violent or drug offenses a range of state services for them to work through that is tailored to each woman. This measure will ultimately help Venezuela, because fewer women will be in custody, which will reduce the economic cost of detention and the demand of healthcare. Venezuela will benefit from the productivity potential of female detainees.

CONCLUSION

Venezuela has failed its duty to have decent and humane detention facilities for women. The current conditions inside the INOF, including the excessive use of pretrial detention, which leads to overcrowding, lack of safe drinking water, lack of access to healthcare and basic supplies, lack of appropriate food, unhygienic conditions, and sexual violence, are inhumane and degrading for women. As explained above, the Bangkok Rules provide gender-specific practical measures and an understanding of the specific needs and backgrounds of women in detention. It is pivotal for the improvement of women's conditions inside of the INOF that Venezuela implements the Bangkok Rules and creates gender-specific policies inside and outside of prison settings. Stopping

the excessive use of pretrial detention, decriminalizing drug crimes, implementing community service, and providing probation for non-violent minor offenses are suitable solutions to the current situation of women in prison. These solutions take into account the particular conditions and particularities of women in detention. Specifically, the implementation of alternative measures for women offenders will help Venezuela avoid the high social and economic cost of detention and will help prevent of the cycle of violence. All of these measures will ultimately prevent torture and ill-treatment, reduce violence against women inside of prison, and create a culture of respect for the rights of women deprived of liberty.

Full-text PDF available [here](#).

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