

# INCARCERATED WOMEN'S RIGHT TO HEALTH: BRIDGING THE GAP BETWEEN POLICY AND REALITY

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## ABSTRACT

This article aims to investigate the impact of incarceration on women with regard to their right to health in the criminal justice system in the Middle East and North Africa (MENA). Despite the universal recognition of the right to health within detention facilities, it has received limited scholarly attention. There is a pressing need for research on this topic due to the identified gap in the literature concerning incarcerated women, with the available data being fragmented and insufficient in addressing the women offender's right to health in detention settings in the region.

The findings of this article indicate that the use of detention facilities as a punitive measure has a significant detrimental impact on women, resulting in additional challenges within these environments. This results in gender-based disparities and differential inequalities of treatment that are systematically imposed upon women within the prison and criminal justice systems. Despite this evidence, incarcerated women are marginalised in discussions related to criminal justice system treatment. A significant absence of concrete steps towards reforming the criminal justice system remains.

**Keywords:** right to health, women's health, Bangkok Rules, incarceration, gender-based disparities, women in prison

## INTRODUCTION

The United Nations Nelson Mandela Rules state: 'prisoners should enjoy the same standards of health care that are available in the community'.<sup>1</sup> The health and well-being of incarcerated individuals stand out as being one of the most

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<sup>1</sup> United Nations General Assembly (UNGA) 'The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)' UNGA Resolution (Res) 70/175 (2015) UN Doc A/RES/70/175.

vulnerable to the denial of rights.<sup>2</sup> Incarcerated individuals experience challenges in accessing healthcare, making the provision of comprehensive medical services within correctional facilities an ongoing global concern.<sup>3</sup> Worldwide, more than 10.7 million individuals are held in penal institutions.<sup>4</sup> Prison health is a crucial public health concern exacerbated by rising levels of incarceration, subsequent overcrowding, and aggravated by prisoner demographics and an increased incidence of health issues.<sup>5</sup>

Considering how correctional institutions shape the health outcomes of incarcerated individuals, the existing healthcare services provided to incarcerated women fall short of adequately addressing their unique needs and often fail to meet established human rights standards and international guidelines. Approximately 741,000 women find themselves incarcerated either as pre-trial detainees or sentenced prisoners, with their representation fluctuating from 2% to 9%.<sup>6</sup> An intriguing trend emerges when examining the evolution of these statistics over the past two decades.<sup>7</sup> While the number of incarcerated men has witnessed an approximate 20% increment from the year 2000 to 2017, the prison population of women has experienced a more alarming surge, surpassing the 50% mark during the same period.<sup>8</sup> This pronounced disparity in growth rates underscores a deeper issue that reflects the disparity in offending between genders and the differential treatment they receive within the criminal justice system.<sup>9</sup>

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<sup>2</sup> Eilish Scallan, Kari Lancaster and Fiona Kouyoumdjian, 'The "Problem" of Health: An Analysis of Health care Provision in Canada's Federal Prisons' (2021) 25 *Health* 3.

<sup>3</sup> Kirnvir K Dhaliwal and others, 'Diabetes in the Context of Incarceration: A Scoping Review' (2023) 55 *eClinicalMedicine* 1.

<sup>4</sup> Helen Fair and Roy Walmsley, 'World Female Imprisonment List: Women and Girls in Penal Institutions, Including Pre-Trial Detainees/Remand Prisoners' (5<sup>th</sup> edn, World Prison Brief 2022) 14.

<sup>5</sup> Katherine E McLeod, and others, 'Global Prison Healthcare Governance and Health Equity: A Critical Lack of Evidence' (2020) 110 *American Journal of Public Health* 303.

<sup>6</sup> Marie Claire Van Hout, Simon Fleibner and Heino Stöver, "'Women's Right to Health in Detention": United Nations Committee Observations Since the Adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)' (2022) 15 *Journal of Human Rights Practice* 138.

<sup>7</sup> Brenda J van den Bergh and others, 'Imprisonment and Women's Health: Concerns About Gender Sensitivity, Human Rights and Public Health' (2011) 89 *Bull World Health Organ* 689.

<sup>8</sup> Fair and Walmsley (n4).

<sup>9</sup> Sapir Fellus, 'Prison as a Space to Heal: Women Federal Prisoners in Canada and the Role of the Healthcare Professional' (2018) *University of Ottawa Journal of Medicine*

The evidence of inadequate prison healthcare for women includes violations of women's human rights and failure to accept that imprisoned women have more and different healthcare needs compared to male prisoners, which frequently revolve around reproductive and gynaecological health concerns, mental health challenges, substance dependencies, and past experiences of abuse and violence.<sup>10</sup> Furthermore, these women often bear the responsibility of being mothers and serving as the primary caregivers for their children, necessitating additional healthcare support.<sup>11</sup> There is a pressing need to reassess existing services, as research findings, expert perspectives, and global experiences indicate.<sup>12</sup> To address the urgency of this topic, a brief review of the literature was undertaken as the methodology. The choice of a brief review was prompted by the need to consolidate recent research and policy developments in this field. An extensive systematic search was conducted across electronic databases for legal and policy materials on the subject.

## CHALLENGES IN APPLYING THE BANGKOK RULES

Understanding the intersectional vulnerabilities existing within detention settings is of paramount importance. The United Nations (UN) has recognised these challenges and has called for measures to mitigate the increased risk to public health within prisons. These measures include the early release of vulnerable incarcerated individuals, especially due to issues of overcrowding and the need for communal living arrangements for basic necessities such as having to eat, shower, and use toilet.<sup>13</sup> These initiatives align with normative UN standards for detention, exemplified by the United Nations Standard Minimum Rules for the Treatment of Prisoners, often referred to as the 'Nelson Mandela Rules'.<sup>14</sup>

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<<https://pdfs.semanticscholar.org/73e6/b750c5f6ddfedbd93dd0cc54a705e61b9c86.pdf>> accessed 5 April 2023.

<sup>10</sup> Van Hout, Fleibner and Stöver (n 6).

<sup>11</sup> Lei Cheng and Elisa Nesossi, 'Women Detention and Incarceration in China: The 2010 Bangkok Rules, Domestic Humanitarian Values, and Legal-Political Priorities' (2018) 6 *The Chinese Journal of Comparative Law* 50.

<sup>12</sup> Lisa Montel and others, 'How Should Implementation of the Human Right to Health be Assessed? A Scoping Review of the Public Health Literature from 2000 to 2021' (2022) 21 *International Journal for Equity in Health* 1.

<sup>13</sup> Janice Kathleen Moodley, Bianca Rochelle Parry and Marie Claire Van Hout, 'Incarceration, Menstruation and COVID-19: a Viewpoint of the Exacerbated Inequalities and Health Disparities in South African Correctional Facilities' (2022) 19 *International Journal of Prisoner Health* 400.

<sup>14</sup> UNGA Res 70/175 (n1).

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However, a critical issue arises when addressing the treatment of incarcerated women on a global scale. The growing number of incarcerated women has drawn considerable attention from human rights advocates, underscoring the urgent need for implementing the Rules for the Treatment of Women Prisoners and Non-Custodial Measures, more commonly known as the 'Bangkok Rules'.<sup>15</sup> These international guidelines were developed in response to concerns about the treatment of incarcerated women within the criminal justice system.<sup>16</sup> The Bangkok Rules underscore the imperative need for gender-responsive policies and programs to ensure humane and equitable treatment for incarcerated women.<sup>17</sup>

Nevertheless, achieving universal application remains challenging, as implementing these standards requires the commitment of member states to adapt them to their specific legal, social, economic, and geographical conditions.<sup>18</sup> Also, as varying cultural contexts and resources exist across different countries, not all rules can be applied in the same way in all places.<sup>19</sup> A recent review examined the challenges faced by incarcerated women in South African correctional facilities concerning menstruation and the impact of COVID-19. This review not only revealed a scarcity of documented experiences among incarcerated women but shed light on human rights violations. Additionally, it highlighted substandard healthcare provisions, including the insufficient allocation of sanitary products within the prison system. In essence, the problem of health disparities within the global incarceration system is multifaceted and deeply concerning, affecting the general well-being of inmates and highlighting a pressing need for reform and increased awareness of these critical issues.

There is a wealth of evidence indicating the continued health inequity of incarcerated women, with their specific health needs routinely neglected. This is particularly evident when it comes to their sexual and reproductive health. The insufficient availability within correctional facilities of essential menstrual hygiene

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<sup>15</sup> UNGA Res 65/229 'United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)' (2010) UN Doc A/C.3/65/L.5.

<sup>16</sup> Alana Van Gundy, 'Bangkok Rules' (2019) *The Encyclopedia of Women and Crime* 1.

<sup>17</sup> Andrea Huber, 'Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules' in Helmut Kury, Slavomir Redo and Evelyn Shea (eds), *Women and Children as Victims and Offenders: Background, Prevention, Reintegration* (Springer 2016).

<sup>18</sup> Rosemary Barberet and Crystal Jackson, 'UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (The Bangkok Rules): A Gendered Critique' (2017) 102 *Revista De Sociologia* 215.

<sup>19</sup> UN Office on Drugs and Crime, '*Handbook on Women and Imprisonment*' (2<sup>nd</sup> edn, 2014).

products such as sanitary pads is often termed ‘menstrual product scarcity’, effectively affirming it as a systemic prison reality.<sup>20</sup> As for maternity measures, an investigation assessing the adoption of the Bangkok Rules in 55 countries found that all countries reported at least one violation in the conditions of detention, the violations including the absence of provision for ante and post-natal care and lack of specialist support for mothers detained with infants and small children.<sup>21</sup> This underscores the difficulties in implementing a unified set of rules, given the cultural variations, varying deployment of resources, and lack of any unified government policy approach over borders.<sup>22</sup>

## **CHALLENGES AND DISPARITIES IN FEMALE DETAINEE RIGHTS TO HEALTH IN THE MENA REGION**

Well-being and the right to health of women detainees in the MENA region are influenced by a complex interplay of cultural, social, and political factors. Cultural stigmas related to women’s health issues are significant barriers to accessing essential healthcare services and addressing women prisoners’ needs.<sup>23</sup> These stigmas often result in detrimental health outcomes and hinder the pursuit of gender-specific medical care. Furthermore, the commitment to international human rights standards within countries varies considerably.<sup>24</sup> Resource constraints, political obstacles, and long-standing traditions continue to shape unequal access to education, healthcare, and other social services. These disparities are often exacerbated when considering factors such as race, class, sexuality, religion, and disability. The outcome is a persistent violation of the rights of women detainees, endemic within a system characterised by inadequate

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<sup>20</sup> International Drug Policy Consortium, Corporación Humanas Colombia and Penal Reform International, ‘Period Poverty in Prisons During the COVID-19 pandemic: Submission to the UN Special Rapporteur on Health’ (IDPC, 2021) <<https://idpc.net/publications/2021/06/period-poverty-in-prisons-during-the-covid-19-pandemic-submission-to-the-un-special-rapporteur-on-health>> accessed 14 April 2023.

<sup>21</sup> Penal Reform International, ‘Global Prison Trends, (2022) 27.

<sup>22</sup> Marie Claire Van Hout, Simon Fleibner and Heino Stöver, ‘# Me Too: Global Progress in Tackling Continued Custodial Violence Against Women: The 10-Year Anniversary of the Bangkok Rules’ (2021) 24 *Trauma, Violence, & Abuse* 515.

<sup>23</sup> Soumyadeep Bhaumik, ‘Human Rights in Eastern Civilisations: Some Reflections of A Former UN Special Rapporteur’ (Book Review 2023) 29 *Australian Journal of Human Rights* 181.

<sup>24</sup> Yvonne M Dutton, ‘Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms’ (2012) 34 *UPa JInt’l L* 1.

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access to healthcare, acute scarcity of sanitary products, and the absence of gender-appropriate medical services.

The complexity of the human rights landscape in the MENA region is a critical factor, with notable variations from one country to another. Taking Libya as an example, although there are designated detention facilities for women, concerns arise as one of these facilities, Al Jawiya, is not fully segregated from the men's detention facility due to an increased number of detained women. Addressing this concern necessitates the provision of a suitable facility for female detainees.<sup>25</sup> Similarly, the Moroccan Observatory of Prisons, a dedicated non-governmental organisation committed to safeguarding prisoner rights, has documented issues related to overcrowding and non-compliance with both domestic and international standards. According to their assessment, the prison population has grown. To improve detention conditions, the Moroccan government has initiated development and restoration projects in multiple prisons.<sup>26</sup> These projects focus on elevating the standards of food, hygiene, and infrastructure to meet international benchmarks. The prisons in which these efforts are concentrated include Bourkaiz, Safi, Kenitra, Tiznit, Missouri, Salé, Khémisset, Khouribga, and Ain Sebaa.<sup>27</sup>

On the other hand, Saudi Arabia's Vision 2030 is driving substantial improvements in women's rights, such as increased workforce representation, the right for women to attend the Hajj and Umrah pilgrimages without a male guardian, and positive changes in women's rights through a new Personal Status Law.<sup>28</sup> Saudi Arabia is also actively pursuing legal reforms to enhance its judicial system, emphasising accountability, transparency, and consistency. While these reforms signal a positive step forward, they remain under review and must be extended to consideration of incarcerated women's complex health needs in detention settings.

In the Human Rights and Democracy Report for 2022,<sup>29</sup> published by the UK Foreign, Commonwealth, and Development Office (FCDO), there is a noticeable shift in human rights priorities. The Kingdom of Bahrain, for instance, has been

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<sup>25</sup> Fiona Mangan and Rebecca Murray, *Prisons and Detention in Libya* (United States Institute of Peace 2016) 12.

<sup>26</sup> Bureau of Democracy, Human Rights, and Labor, '2022 Country Reports on Human Rights Practices: Morocco' (US Department of State 2023).

<sup>27</sup> Bureau of Democracy (n26) 6.

<sup>28</sup> Lubna Javed Rizvi and Zahid Hussain, 'Empowering Woman Through Legal Reforms- Evidence from Saudi Arabian Context' (2022) 64 *International Journal of Law and Management* 137.

<sup>29</sup> Foreign, Commonwealth & Development Office, *Human Rights and Democracy: The 2022 Foreign, Commonwealth and Development Report* (UK Government 2023).

removed from the list of countries considered a human rights priority. This shift indicates international recognition of the progress made by the Kingdom of Bahrain in respecting and promoting human rights, which has been directly supported by the UK.<sup>30</sup>

## CONCLUSION

Incarcerated women's right to health within detention facilities is a critical, yet often overlooked, human rights issue. Gender disparities in global incarceration rates, combined with the challenges in implementing the Bangkok Rules, underscore the urgent need for healthcare reform for incarcerated women. It is imperative that their unique healthcare needs are comprehensively met and that systemic failures are not only highlighted but addressed in a sensitive and humane manner, with a clear acknowledgment of the human rights basis of their rightful claims. To protect the right to health for all, nations and international bodies must address these disparities, implement gender-responsive policies, and create an equitable system of care.

Regional disparities must be acknowledged, and an understanding of the legal framework surrounding incarcerated women's health must be developed. The study on which this article is based focuses on MENA, and intends to contribute to increasing understanding of the status of women's incarceration in the region. Limitations to current understandings include regional data gaps, which support the need for further exploration and investigation of cultural and regional variations. This is essential for targeted interventions that uphold the right to health for all incarcerated individuals and promote a more humane criminal justice system.

The research underpinning the brief exploration of the issues here is directed toward sparking further examination of the health conditions in women's prisons to generate policy reforms to improve incarcerated women's well-being worldwide. Incarcerated women, as a particularly vulnerable subset within an already vulnerable group, require special attention and compassionate healthcare to safeguard their right to health. This requires a particular focus in terms of mental, reproductive, and gynaecological health within detention settings. This affects not only their detention experience but also their post-detention rehabilitation and reintegration into society.

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<sup>30</sup> Foreign, Commonwealth & Dev Office (n29).



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