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Review Essay

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‘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)

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Abstract

Approximately 11.7 million people are detained globally, with an observed rise in the female prison population in recent years. A range of human rights treaties, and non-binding minimum standards of care (2016 Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2010 Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)) protect the rights of prisoners. States however have discretion in defining humane treatment and adequate medical care in detention settings.

In this *Review Essay*, we focus on the right to health of detained women based on an environment conducive to adequate health, and access to gender-responsive, non-discriminatory healthcare in detention equivalent to that in the community. We scrutinized all United Nations Committee on the Elimination of Discrimination against Women and Committee against Torture Concluding Observations published since 2010, and provide a global illustration of violations of women’s health rights in detention settings to date. We document the inadequate accommodation and standards of detention of women, and inadequate access to healthcare services while detained, particularly relating to HIV and reproductive health, and mental health and drug dependence treatment in some countries. Human rights violations identified in the Concluding Observations reflect 39 countries and are presented as: the United Nations Committee description of their concern pertaining to a country’s treatment of women in detention; and collectively in terms of the particular Bangkok Rule (5, 6, 9, 10, 12, 14–16, 34, 35, 48 and 51).

Our investigation raises general questions around the continued lack of resourcing of female detention settings and gender-responsive healthcare programming, the lack of data and advocacy on behalf of detained women, and the lack of routine scrutiny of the unique health rights assurances of women within independent monitoring and inspection in detention settings all over the world.

Keywords. Bangkok Rules; women in prison; right to health; human rights; sustainable development agenda

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Background

On any given day, approximately 11.7 million people are detained globally in prisons or other closed settings (Penal Reform International 2020). The global female prison population continues to rise, with more than 740,000 women and girls in detention in 2020, and with observed increases since 2010 in Asia (an increase of 50 per cent), Central and South America (an increase of 19 per cent), and Africa (an increase of 24 per cent) (Penal Reform International 2020). Women represent the minority in the global prison population and are generally detained for less severe and non-violent crimes (crimes of poverty). They are disproportionately affected by lower socioeconomic status, exposure to inter-personal violence (child abuse, intimate partner), custodial violence (prison staff, fellow prisoners) and mental illness; and often belong to identified vulnerable groups (sexual minorities, victims of sexual abuse, trafficking and drug related crime; and those with psychiatric illness, learning disabilities or drug dependence) (Karlsson and Zielinski 2020; Van Hout and Crowley 2021; Van Hout, Fleißner and Stöver 2021). Women's unique health needs in many regions of the world are often neglected by the male dominated and ill-resourced detention system. United Nations Human Rights Committee and Special Rapporteur reporting, and contemporary academic reviews indicate that women (including transgender women) continue to experience discrimination, poor standards of care and a lack of access to gender-appropriate healthcare when in prisons and immigration detention, including the denial of food, detention in compulsory drug treatment centres, use of physical and pharmacological restraints and denial of opioid substitution treatment (Alirezeai and Roudsari 2020; Lungu Byrne et al. 2020; Pillay, Chimbga and Van Hout 2021; Van Hout 2021; Van Hout and Crowley 2021; Van Hout and Mhlanga-Gunda 2018; Van Hout and Wessels 2021; Van Hout, Hillis and Kewley 2020; Van Hout, Lungu Byrne and Germain 2020).

Human rights and the right to health in detention

First, we outline the range of human rights protections regarding health as a fundamental human right. Positive obligations regarding right to health under the international treaties include the World Health Organization Constitution (WHO) Article 2 which requires State signature and ratification, with WHO having a legislative capacity to develop international health regulations (UN GA 1946). The Universal Declaration of Human Rights provides for the right to health in Article 25 and while it is not a directly legally binding treaty, it is widely accepted that the Declaration's provisions, in particular the prohibition of torture and racial discrimination, are now rules of customary international law; and through State practice are viewed as legally binding (UN GA 1948). The 1966 International Covenant on Economic, Social and Cultural Rights expands on the Declaration by outlining the steps required for full realization of these rights (UN GA 1966a). The International Covenant on Economic, Social and Cultural Rights is most important in terms of recognizing and safeguarding the right to health (Article 12(1)). State parties are obliged to recognize the right of all to the enjoyment of the highest attainable standard of physical and mental health (including specific issues related to environmental hygiene). The Committee on Economic, Social and Cultural Rights explicitly states: 'States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees … [to] curative and palliative health services'. Although the International Covenant on Economic, Social and Cultural Rights recognizes the 'progressive realization' of such rights and acknowledges resource constraints faced by State parties, General Comment No.14 requires that States take 'deliberate, concrete and targeted steps' to realize the right to health and to identify indicators and benchmarks to track its progress.

Aside from civil and political rights, the 'second generation' economic and social human rights as provided for in the International Covenant on Economic, Social and Cultural Rights apply to prisoners; where the right to a healthy environment and right to healthcare

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are clearly linked to other 'first generation' rights, such as non-discrimination, privacy and confidentiality. While the International Covenant on Civil and Political Rights does not expressly provide for a right to health, it specifically provides the right to humane treatment of prisoners (Articles 2, 6, 7, 10 and 26) (UN GA 1966b). Article 26 provides for non-discriminatory protection of the law and equality before the law of a State and is supported by Article 2 which outlines the right to an effective remedy for violations.

Article 5 (e) (iv) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination obliges State parties to ensure that no person is denied basic healthcare on the basis of their nationality, colour or creed (UN ICERED 1965). The unique gendered aspects and rights, including right to gender appropriate and gender-responsive healthcare of women is further recognized in the 1979 Convention on the Elimination of all Forms of Discrimination against Women in Article 12 which requires that: 'State parties shall take all appropriate measures to eliminate discrimination against women in the field of health care' (UN CEDAW 1979). This Convention provides that discrimination against women encompasses ill-treatment that affects women disproportionately, including detention conditions that do not respond adequately to the specific needs of women. With regard to children in detention settings, the Convention on the Rights of the Child Article 24 guarantees the right to health and medical care to young detained persons centred on the principle of the 'best interests of the child' (UN CRC 1989).

Lastly, the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (UN GA 1984) creates further binding obligations on States not to ill-treat those deprived of their liberty, and recognizes 'an inadequate level of healthcare can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment"' (Council of Europe 2015). Article 16 applies to State's official obligation to prevent acts of cruel, inhuman or degrading treatment or punishment. Going beyond the 'right to an effective remedy', Articles 12 to 14 clearly stipulate the right to prompt and impartial investigations of allegations of torture, including financial compensation and rehabilitation of the victim.

Health rights and minimum standards of care of women in detention

There are a range of non-binding United Nations norms and minimum standards for the treatment of prisoners and medical declarations particular to the rights of prisoners regarding their health and medical ethics in detention settings (Lines 2008). The United Nations Principles of Medical Ethics, WHO and World Medical Association declarations all mandate the rights of prisoners to humane treatment and appropriate medical care (UN GA 1982; World Health Organization 2003; World Medical Association 2011). The United Nations Principles of Medical Ethics relevant to prisons (Principles 1, 6) contain a non-derogation clause during State declaration of emergency (UN GA 1982). The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) draw attention to the State duty to ensure adequate accommodation paying attention to the environmental determinants of health (cubic content of air, minimum floor space, lighting, heating and ventilations) and to provide prisoners with access to free, non-discriminatory and equivalent healthcare, the right to receive qualified, consented and confidential medical care, and that doctors or public health bodies should make regular inspections on the adequacy of food, hygiene, cleanliness and physical conditions of the prison (Mandela Rules 13, 24, 25, 27, 30, 31, 32, 35) (UN GA 2016). While, the Mandela Rules do not specifically refer to women (with exception of Rule 7 referring to self-perceived gender identity), they are supported by the soft law principles and non-discrimination provisions contained in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which are 70 rules outlining the treatment of women in detention, including pre-trial and sentenced, adopted by the United Nations

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General Assembly on 22 December 2010 (UN GA 2010). Particular health rights provisions for women in detention settings are provided for the 2010 Bangkok Rules (5, 6, 9, 10, 12, 14–16, 34, 35, 48 and 51; see Table 1).

In short, there are various protections and rights assurance mechanisms respecting the right to health of women deprived of their liberty; not limited to prohibition of torture and discrimination but also including those relevant to the conditions of detention and right of access to healthcare. States however have discretion in defining humane treatment and adequate healthcare in detention settings (Lines 2008). In this Review Essay, we focus on illustrating human rights violations particular to the health of incarcerated women based on the right to an environment conducive to adequate health (which does not produce ill-health, disease or disabilities), and right to access of gender-responsive, non-discriminatory healthcare in prison equivalent to that in the community (UN GA 2010; Leiter 2015). We scrutinized all United Nations Committee on the Elimination of Discrimination against Women (CEDAW) and Committee against Torture (CAT) Concluding Observations[1] published since 2010, and we provide a global illustration of United Nations Committee documentation of violations of women's health rights while in detention. We present and collate this information relating to the geographies where violations are recorded, the United Nations Committee description of their concern pertaining to a country's treatment of women in prison, and collectively in terms of the particular Bangkok Rule breached.

Assessing standards of care pertinent to health rights assurances of women in detention

The initial sample of all Concluding Observations consisted of 178 CAT and 251 CEDAW Concluding observations (n=329) published by the Office of the High Commissioner for Human Rights from 2010 to August 2021. Detailed searches were conducted in each report using the standard UN terminology in Concluding observations which are the terms 'prison'; 'detention' in the case of CEDAW, and 'prison'; 'detention'; 'women' and 'female' in the CAT. Inclusion criteria centred on the CEDAW and CAT Concluding observations on a country published since 2010 and their reference to a violation of one or more of the relevant Bangkok Rules encompassing environmental standards of detention (hygiene, sanitation, ventilation, accommodation space) and access to gender appropriate healthcare for women, as illustrated in Table 1. Of note is that many of these United Nations Committee Concluding observations while referring to general concerns around detention conditions did not explicitly refer to women or female prisons. In this Review Essay we only included reports which explicitly refer to women in detention or female prisons.

We found violations of a broad range of relevant Bangkok Rules in the 45 included reports (14 CAT and 31 CEDAW). Thirty-nine countries are represented. The range of years was as follows: 2010 (n=3); 2011 (n=3); 2012 (n=3); 2013 (n=2); 2014 (n=1); 2015 (n=1); 2016 (n=5); 2017 (n=13); 2018 (n=8); and 2019 (n=6). Descriptions of the United Nations Committee reports are presented in Table 2 and mapped against relevant Bangkok Rules in Table 3.

The reports illustrate the continued breaches of the Bangkok Rules as reported in the CAT and CEDAW levels in a large number of countries regarding the right to health of women in detention settings. Descriptions provided by the United Nations Committee reports generally relate to the right to adequate accommodation (clean water, food, hygiene

1 United Nations Committee Concluding Observations are public and official reports of the United Nations which the Treaty Bodies (in this instance CEDAW and CAT) produce at the end of every session for every State under review. These reports refer to the positive aspects of a State's implementation of a treaty and areas where the treaty body recommends that further action needs to be taken by the State.

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Table 1. Bangkok Rules pertinent to right to health and right to access of healthcare in detention settings

Rule 5: The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.
Rule 6: The health screening of women prisoners shall include comprehensive screening to determine primary healthcare needs, and also shall determine: (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling; (b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and Self-Harm; (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues; (d) The existence of drug dependency; (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.
Rule 7: (2) Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.
Rule 8: The right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times.
Rule 9: If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable healthcare, at least equivalent to that in the community, shall be provided.
Rule 10: (1) Gender-specific healthcare services at least equivalent to those available in the community shall be provided to women prisoners. (2) If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.
Rule 11: (1) Only medical staff shall be present during medical examinations unless the doctor is of the view that exceptional circumstances exist or the doctor requests a member of the prison staff to be present for security reasons or the woman prisoner specifically requests the presence of a member of staff as indicated in rule 10, paragraph 2, above. (2) If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.
Rule 12: Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health care needs in prison or in non-custodial settings.
Rule 13: Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.
Rule 14: In developing responses to HIV/AIDS in penal institutions, programmes and services shall be responsive to the specific needs of women, including prevention of mother-to-child transmission. In this context, prison authorities shall encourage and support the development of initiatives on HIV prevention, treatment and care, such as peer-based education.
Rule 15: Prison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.
Rule 16: Developing and implementing strategies, in consultation with mental health care and social welfare services, to prevent suicide and Self-Harm among women prisoners and providing appropriate, gender-specific and specialized support to those at risk shall be part of a comprehensive policy of mental health care in women's prisons.
Rule 17: Women prisoners shall receive education and information about preventive healthcare measures, including on HIV, sexually transmitted diseases and other blood-borne diseases, as well as gender-specific health conditions.
Rule 18: Preventive healthcare measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community

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Table 1. Continued

Rule 25: (1) Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation (2) Women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid.
Rule 33: (1) All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners. (2) Basic training shall be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to first aid and basic medicine. (3) Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the healthcare of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.
Rule 34: Capacity-building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, shall also be part of the curriculum.
Rule 35: Prison staff shall be trained to detect mental health care needs and risk of Self-Harm and suicide among women prisoners and to offer assistance by providing support and referring such cases to specialists
Rule 38: Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's healthcare and have regular access to gynaecologists, similar to adult female prisoners.
Rule 39: Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.
Rule 41: The gender-sensitive risk assessment and classification of prisoners shall: (a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women prisoners; (b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process; (c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs; (d) Ensure that those with mental health-care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.
Rule 48: (1) Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.
Rule 51: (1) Children living with their mothers in prison shall be provided with ongoing healthcare services and their development shall be monitored by specialists, in collaboration with community health services.

needs) (Rule 5); the right to gender-specific healthcare services at least equivalent to those available in the community (Rule 10); the comprehensive health screening of women and relevant responses to providing medical care for human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and reproductive health; individualized, gender-responsive, trauma-informed and comprehensive mental healthcare and rehabilitation programmes; and drug dependence treatment (including for pregnant women who use drugs) (Rules 6, 12, 15, 16).

The majority of CEDAW and CAT reports were from the years 2017 and 2018 and highlighted a lack of basic needs provisions (food, drinking water, bedding, sanitary products), neglect of hygiene needs, insufficient privacy of sanitary facilities and unsafe, deplorable

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Table 2. UN CAT and CEDAW Committee Concluding Observations per latest country report

Country	CEDAW and CAT Committee statement	Date	Symbol
Afghanistan	The UN CAT (2017c) Committee refers to inadequate sanitation and access to water, food of a sufficient amount and quality and medical services. In that connection, the Committee is particularly concerned by the situation of women in prisons.	2017	CAT/C/AFG/CO/2
Albania	The UN CEDAW (2016e) Committee identifies women in detention, secluded women and asylum-seeking women, in particular as regards their access to education, health services, employment, housing and participation in public and political life.	2016	CEDAW/C/ALB/CO/4
Argentina	The UN CEDAW (2016b) Committee refers to the limited access to education, job skills training, work opportunities and health services for women in detention.	2016	CEDAW/C/ARG/CO/7
Argentina	The UN CAT (2017e) Committee appreciates the information on programs designed to improve access to healthcare for incarcerated women, particularly pregnant women; nevertheless, in view of the deficiencies noted by various oversight bodies, it remains concerned about the inadequacy of those programs at the federal and provincial levels.	2017	CAT/C/ARG/CO/5-6
Australia	The UN CEDAW (2018a) Committee refers to high rates of mental health disorders among women in detention and their insufficient access to mental and physical healthcare.	2018	CEDAW/C/AUS/CO/8
Belarus	The UN CEDAW (2011b) Committee refers is particularly concerned about the situation of Irina Khalip, Natalia Radzina, both journalists of independent media outlets, and Anastasia Palazhanko, deputy chairperson of the youth organization 'Young Front', who are detained at the KGB pretrial detention centre in Minsk on charges of organizing riots (art. 293 of the Criminal Code), reportedly without confidential access to a lawyer and adequate medical treatment.	2011	CEDAW/C/BLR/CO/7
Belarus	The UN CEDAW (2016c) Committee indicates that prison and detention conditions for women continue to be poor, including insufficient health and sanitary conditions.	2016	CEDAW/C/BLR/CO/8
Belarus	The UN CAT (2018d) Committee regrets the absence of information from the State party as regards the conditions of women held in labor treatment facilities, which are of particular concern as they allegedly lack access to medical services, including gynecologists.	2018	CAT/C/BLR/CO/5
Botswana	The UN CEDAW (2019c) Committee is concerned about the lack of equal access to free antiretroviral treatment for members of disadvantaged groups, including indigenous women, women prisoners.	2019	CEDAW/C/BWA/CO/4
Brazil	The UN CEDAW (2012d) Committee is concerned about the lack of adequate health facilities and services for female inmates, in particular pregnant women.	2012	CEDAW/C/BRA/CO/7
Burkina Faso	The UN CEDAW (2017b) Committee is concerned about the poor conditions of detention in which women are held, including overcrowding and a lack of access to food, drinking water and adequate sanitation.	2017	CEDAW/C/BFA/CO/7
Cambodia	The UN CEDAW (2019b) Committee is concerned about the detention of women and children in overcrowded prisons that fail to meet international standards, including access to essential healthcare services, especially for pregnant women.	2019	CEDAW/C/KHM/CO/6

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Table 2. Continued

Country	CEDAW and CAT Committee statement	Date	Symbol
Canada	The UN CAT (2018b) Committee remains concerned at reports indicating that there is excessive use of means of restraint and that correctional institutions lack the appropriate capacity, resources and infrastructure to manage serious mental health conditions, a problem that is particularly acute in women's institutions.	2018	CAT/C/CAN/CO/7
Chile	The UN CEDAW (2012a) Committee is concerned regarding the difficult situation faced by women in prison, particularly with regard to their access to adequate health facilities and services.	2012	CEDAW/C/CHL/CO/5-6
Chile	The UN CEDAW (2018c) Committee is concerned that women in detention have limited access to adequate healthcare as a result of a general shortage of professional staff and the absence of healthcare staff overnight and at weekends in detention centres. The Committee is further concerned about the risks faced by pregnant women in detention, owing to the lack of access to obstetric and gynecological care.	2018	CEDAW/C/CHL/CO/7
Chile	The UN CAT (2018c) Committee remains concerned about reports that the prison authorities do not take adequate account of the specific needs of women deprived of their liberty in terms of personal health and hygiene.	2018	CAT/C/CHL/CO/6
Cyprus	The UN CAT (2019) Committee remains concerned about the situation in the central prison of Nicosia, in particular overcrowding and poor material conditions, lighting and sanitation, as well as about overcrowding in the women's sections and the lack of privacy and health concerns that have been reported.	2019	CAT/C/CYP/CO/5
El Salvador	The UN CEDAW (2017h) Committee refers to the problems in gaining appropriate access to accommodation, health and sanitary facilities.	2017	CEDAW/C/SLV/CO/8-9
Ethiopia	The UN CAT (2010a) Committee remains seriously concerned about consistent reports of overcrowding, poor hygienic and sanitary conditions, lack of sleeping space, food and water, the absence of adequate healthcare, including for pregnant women and HIV/AIDS and tuberculosis patients, the absence of specialized facilities for prisoners and detainees with disabilities, co-detention of juveniles with adults, inadequate protection of juvenile prisoners and children detained with their mothers from violence in prisons and places of detention in the State party.	2010	CAT/C/ETH/CO/1
France	The UN CEDAW (2016d) Committee is concerned regarding the lack of access by female inmates to healthcare.	2016	CEDAW/C/FRA/CO/7-8
Greece	The UN CEDAW (2013) Committee is concerned regarding the lack of access by female inmates to adequate health facilities and service.	2013	CEDAW/C/GRC/CO/7
Honduras	The UN CEDAW (2016a) Committee is concerned about the insufficient health and sanitary conditions of women in detention, including pregnant women and women detained with their children.	2016	CEDAW/C/HND/CO/7-8
Iraq	The UN CEDAW (2014) Committee is concerned regarding the precarious conditions and overcrowding of some detention facilities and the lack of adequate healthcare facilities and services for women detainees.	2014	CEDAW/C/IRQ/CO/4-6

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Table 2. Continued

Country	CEDAW and CAT Committee statement	Date	Symbol
Israel	The UN CEDAW (2011a) Committee is concerned at reports that approximately 25 per cent of Palestinian female prisoners suffer from treatable diseases, but that many have little or no access to medical attention, and it notes with concern the lack of adequate services provided to pregnant Palestinian prisoners.	2011	CEDAW/C/ ISR/CO/5
Israel	The UN CEDAW (2017d) Committee reiterates its concern about the increased number of Palestinian women and girls who are subjected to prolonged administrative detention and forcible transfers from the Occupied Palestinian Territory to places of detention in Israel and about reports of their limited access to justice and healthcare services.	2017	CEDAW/C/ ISR/CO/6
Italy	The UN CEDAW (2017e) Committee is concerned regarding the lack of access by female inmates to basic health and social services.	2017	CEDAW/C/ ITA/CO/7
Kazakhstan	The UN CEDAW (2019a) Committee is concerned regarding the limited access to healthcare for and the discrimination and violence faced by women living with HIV/AIDS, women with disabilities and women using drugs, including in prisons.	2019	CEDAW/C/ KAZ/CO/5
Lebanon	The UN CAT (2017d) Committee is concerned regarding the inadequate health care services in the prisons, particularly in the case of female prisoners.	2017	CAT/C/LBN/ CO/1
Mexico	The UN CEDAW (2018b) Committee is concerned about the conditions in many detention centres, especially those situated in remote areas, that limit access for women to health services, including obstetric and gynecological care.	2018	CEDAW/C/ MEX/CO/9
Montenegro	The UN CEDAW (2017g) Committee is concerned regarding the limited access for female prisoners to literacy and educational programs, drug dependence treatment and reinsertion programs.	2017	CEDAW/C/ MNE/CO/2
Niger	The UN CEDAW (2017f) Committee is concerned about the poor conditions of detention for women, including overcrowding and lack of access to food, drinking water and adequate sanitary conditions.	2017	CEDAW/C/ NER/CO/3-4
Northern Ireland	The UN CEDAW (2012c) Committee is concerned about women's limited access to mental health care in prisons.	2012	CEDAW/C/ GBR/CO/7
Norway	The UN CEDAW (2017a) Committee is concerned that health services in prison are at times not tailored to the specific needs of women, including with respect to mental health care and substance abuse rehabilitation services.	2017	CEDAW/C/ NOR/CO/9
Panama	The UN CEDAW (2010a) Committee is concerned at the difficult situation faced by women in prison, particularly with regard to their access to adequate health facilities and services.	2010	CEDAW/C/ PAN/CO/7
Panama	The UN CAT (2017b) Committee is concerned at reports that the prison administration does not sufficiently consider the special needs of persons with disabilities and women prisoners in areas such as medical care, accessibility, the maintenance of family ties, and services and facilities for pregnant women and women with children.	2017	CAT/C/PAN/ CO/4
Paraguay	The UN CEDAW (2017c) Committee is concerned regarding the limited access of female inmates to healthcare services and to items of personal hygiene.	2017	CEDAW/C/ PRY/CO/7

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Table 2. Continued

Country	CEDAW and CAT Committee statement	Date	Symbol
Peru	The UN CAT (2018a) Committee is concerned by reports that the prison authorities do not give sufficient consideration to the special needs of women deprived of their liberty, especially in the case of pregnant women and women with children under the age of 3. Other information received by the Committee points to the poor quality of the food provided to prisoners, water supply and sanitation problems, insufficient ventilation, significant shortages in medical and healthcare services, a lack of specialized personnel and corruption on the part of prison officials (p. 6). The Committee takes note with concern of the number of people who died while in custody between 2012 and 2014 (a total of 639 persons, including 30 women, according to data provided by the State party) and of the causes of death, which in many cases were violent assaults or infectious diseases, especially tuberculosis and acquired immunodeficiency syndrome (AIDS).	2018	CAT/C/PER/CO/7
Qatar	The UN CAT (2018e) Committee is concerned about the reports of poor conditions of detention, including inadequate sanitation, insufficient ventilation and shortage of bedding and food. In that connection, the Committee is particularly concerned by the situation of women held in this detention facility.	2018	CAT/C/QAT/CO/3
Republic of Korea	The UN CAT (2017f) Committee is concerned at the poor material conditions, including overcrowding, extremely small investigation detention rooms and insufficient privacy of sanitary facilities, in particular for women.	2017	CAT/C/KOR/CO/3-5
Republic of Moldova	The UN CAT (2017a) Committee is concerned regarding that health care and hygiene needs of women in the penitentiary system are not adequately addressed.	2017	CAT/C/MDA/CO/3
Senegal	The UN CEDAW (2015) Committee is concerned about overcrowding in detention centres and prisons for women and women detainee's lack of access to adequate healthcare.	2015	CEDAW/C/SEN/CO/3-7
Togo	The UN CEDAW (2012b) Committee is concerned regarding the situation of women in detention, including the deplorable health conditions in detention facilities.	2012	CEDAW/C/TGO/CO/6-7
UK	The UN CEDAW (2019d) Committee is concerned about the inadequacy of mental health care services in prisons and the disproportionate rates of self-harm and suicide among women.	2019	CEDAW/C/GBR/CO/8
Uzbekistan	The UN CEDAW (2010b) Committee is concerned about the conditions of detention for female detainees, including the lack of hygiene and proper nutrition.	2010	CEDAW/C/UZB/CO/4
Yemen	The UN CAT (2010b) Committee is concerned regarding the lack of specific healthcare for women prisoners, including for pregnant women and for their children.	2010	CAT/C/YEM/CO/2/Rev.1

and congested conditions for women in detention settings. Fifteen countries (Afghanistan, Belarus, Burkina Faso, Chile, Cyprus, El Salvador, Ethiopia, Honduras, Niger, Paraguay, Peru, Qatar, Republic of Korea, Republic of Moldova and Uzbekistan) were observed to breach Rule 5 pertaining to adequate accommodation (congestion, safe and sleeping space, bedding, lighting, ventilation) and environmental standards of care (access to clean water, food, sanitation and personal hygiene) in detention settings.

Further, where there was a lack of detail in some CAT and CEDAW reports, for example when referring to 'no adequate healthcare services', we assigned these to a violation

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Table 3. Identified violations of the Bangkok Rules explicit to health and access to healthcare

Bangkok Rule	Violated by
Rule 5: The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.	Afghanistan; Belarus; Burkina Faso; Chile; Cyprus; El Salvador; Ethiopia; Honduras; Niger; Paraguay; Peru; Qatar; Republic of Korea; Republic of Moldova; Togo; Uzbekistan
Rule 6: The health screening of women prisoners shall include comprehensive screening to determine primary healthcare needs, and also shall determine: (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling; (b) Mental healthcare needs, including post-traumatic stress disorder and risk of suicide and self-harm; (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues; (d) The existence of drug dependency; (e) Sexual abuse and other forms of violence that may have been suffered prior to admission	Afghanistan; Albania; Argentina; Australia; Belarus; Brazil; Cambodia; Canada; Chile; El Salvador; Ethiopia; France; Greece; Iraq; Israel; Italy; Kazakhstan; Lebanon; Mexico; Northern Ireland; Norway; Panama; Paraguay; Peru; Republic of Moldova; Senegal; Togo; UK; Yemen
Rule 9: If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable healthcare, at least equivalent to that in the community, shall be provided	Cambodia; Honduras; Panama Yemen
Rule 10: (1) Gender-specific healthcare services at least equivalent to those available in the community shall be provided to women prisoners. (2) If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.	Belarus; Chile; Mexico; Norway; Peru; Republic of Moldova; Yemen
Rule 12: Individualized, gender-sensitive, trauma-informed and comprehensive mental healthcare and rehabilitation programmes shall be made available for women prisoners with mental healthcare needs in prison or in non-custodial settings	Australia; Canada; Northern Ireland; Norway; UK
Rule 14: In developing responses to HIV/AIDS in penal institutions, programmes and services shall be responsive to the specific needs of women, including prevention of mother-to-child transmission. In this context, prison authorities shall encourage and support the development of initiatives on HIV prevention, treatment and care, such as peer-based education.	Botswana; Ethiopia; Kazakhstan Peru
Rule 15: Prison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.	Kazakhstan; Montenegro; Norway

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Table 3. Continued

Bangkok Rule	Violated by
Rule 16: Developing and implementing strategies, in consultation with mental healthcare and social welfare services, to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialized support to those at risk shall be part of a comprehensive policy of mental healthcare in women's prisons.	Australia; Canada; Northern Ireland; Norway; UK
Rule 34: Capacity-building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, shall also be part of the curriculum.	Botswana; Ethiopia; Kazakhstan
Rule 35: Prison staff shall be trained to detect mental healthcare needs and risk of self-harm and suicide among women prisoners and to offer assistance by providing support and referring such cases to specialists	UK
Rule 48: (1) Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.	Argentina; Brazil; Cambodia; Chile; Honduras; Israel; Panama; Yemen
Rule 51: (1) Children living with their mothers in prison shall be provided with ongoing healthcare services and their development shall be monitored by specialists, in collaboration with community health services.	Cambodia; Honduras; Panama Yemen

of Rule 6 which summarizes general standards of medical care for women in detention settings. This reflects the particularly high allocation of information to represent violations of Rule 6. Twenty-eight countries (Afghanistan, Albania, Argentina, Australia, Belarus, Brazil, Cambodia, Canada, Chile, El Salvador, Ethiopia, France, Greece, Iraq, Israel, Italy, Kazakhstan, Lebanon, Mexico, Northern Ireland, Norway, Panama, Paraguay, Peru, Republic of Moldova, Senegal, United Kingdom and Yemen) were documented as having inadequate or no access to gender appropriate healthcare for women in detention.

Concerns around limited access to mental health care (contra Rules 12 and 16), despite the high rates of mental health disorders of women in detention settings, are recorded for Australia, Northern Ireland and Norway (UN CEDAW 2012c; 2017a; 2018a). In Canada, the 2018 CAT report remained concerned at reports indicating that there was excessive use of means of restraint (physical, pharmacological) and that correctional institutions lack the appropriate capacity, resources and infrastructure to manage serious mental health conditions, observed to be particularly acute in women's detention settings. The 2019 CEDAW report on the United Kingdom indicated concern about the inadequacy of mental health care services in prisons and the disproportionate rates of self-harm and suicide among women. These are general aspects also relevant to the Bangkok Rules particular to the rights of detained women to access specialized psychological support and counselling (Rule 7), the specialized support of victims of sexual abuse (Rule 25), and the requirement of prison staff to have sensitivities towards and the skills to detect mental distress and make appropriate referrals (Rules 13 and 35). We assigned violations to specific regulations, such as lack of access to, or provision of, substance or drug dependence treatment in detention settings, if they were explicitly mentioned. Three CEDAW reports explicitly refer to the lack

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of access to specialized drug dependence treatment for detained women who use drugs, including those pregnant or with children (Kazakhstan, Montenegro and Norway) as provided for in Rule 15 and 62 (UN CEDAW 2017a; 2017g; 2019a). Several mention the lack of care of, and facilities for, detained women who are disabled in Ethiopia and Panama (UN CEDAW 2010a; 2017b).

There is a recurrent and pervasive theme of lack of provision and access to ante and post-natal care in detention settings, and specialist support of mothers detained with infants and small children in eight countries, namely Brazil, Cambodia, Yemen, Chile, Israel (discrimination regarding Palestinian female prisoners), Mexico, Peru, Honduras and Belarus (contra Rules 48 and 51) (UN CEDAW 2019b; 2018b; 2018c; 2016a; 2012d; 2011a; UN CAT 2018d; 2010b; 2018a). Four CEDAW and CAT reports explicitly refer to the inadequate care of children detained with their mothers (Cambodia, Honduras, Panama, Yemen) and violations of Rule 9 regarding their right to paediatric care while deprived of their liberty. Seven (CEDAW and CAT) explicitly refer to the lack of gender-specific healthcare services (at least equivalent to those available in the community) provided to women prisoners (contra Rule 10) (Belarus, Chile, Mexico, Norway, Peru, Republic of Moldova, Yemen). While we did not explicitly focus on the rights of the detained child, breaches in the rights of children with their mothers are observed in terms of right to access paediatric care (contra Rules 9 and 51) and prevention of mother to child transmission of HIV in detention (contra Rule 14). Several CEDAW and CAT reports document the lack of health education and basic health provisions for pregnant or breastfeeding women in detention (contra Rule 48). There are several CEDAW and CAT reports which explicitly refer to lack of access to HIV care (contra Rule 14), including for pregnant women in Ethiopia and Kazakhstan and in Botswana, where the 2019 CEDAW Committee is concerned about the lack of equal access to free antiretroviral treatment (ART) for women prisoners. Deaths due to HIV/AIDS were reported in Peru (UN CEDAW 2019a; 2019c; UN CAT 2018d; 2010a).

While not necessarily indicative of a gap or breach in the Bangkok Rules, we take note that there is no reporting by the CAT and CEDAW with regard to the training and capacity building of prison staff regarding women's health and paediatric care, capacity building programmes on HIV prevention, treatment and care, and mental healthcare needs and risks of self-harm and suicide (Rules 33, 34). Further, there was an absence of detail regarding medical confidentiality (Rule 8), presence of medical staff during medical examinations (Rule 11), gender-responsive risk assessment and classification of prisoners (Rule 41), women's access to specialized psychological support or counselling (Rules 7 and 25), age appropriate and gender-responsive medical care for juveniles (including pregnant juveniles) in detention (Rules 38 and 39), and provision of health education around preventative health measures, particularly those relevant to women (Rules 17 and 18).

Implications for human rights practice

The information garnered in this Review Essay supports previous assessments that the Bangkok Rules continue to be largely implemented in a piecemeal manner, and continue to fail to observe the human rights of women in detention settings, and meet both basic and health needs of women (Barbaret, Jackson and Jay 2017; Penal Reform International 2020; Van Hout and Crowley 2021; Van Hout, Fleißner and Stöver 2021). It underscores the continued neglect of women's specific health needs (safe space, nutrition and hygiene requirements) and healthcare (screening and treatment of infectious diseases, sexual and reproductive health, mental health, substance use disorder) in prisons all over the world, not limited to those in low resource settings. Development status of the state and level of resources available to implement the normative Bangkok Rules in female prisons are confounding factors, even though the International Covenant on Economic, Social and

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Cultural Rights provides for 'progressive realization' and the 'deliberate, concrete and targeted steps' toward realization and monitoring of right to health.

Of grave concern is the lack of trauma informed medical supports and the particular discrimination against pregnant women and women with infants, lack of access to ante and post-natal care, and lack of access to ART posing a serious challenge to prevention of mother to child transmission (PMTCT) of HIV, and ultimately the 95-95-95 UNAIDS targets. Action is required to inform targeted actions for particularly vulnerable women such as those exposed to inter-personal violence and exploitation, foreign nationals and those belonging to ethnic and sexual minority groups. While not referred to in CEDAW and CAT Concluding Observations since 2010, many jurisdictions still do not have specific prison policies regarding the special needs of lesbian, gay, bisexual and transgender (LGBT) prisoners, despite heightened vulnerabilities and proportionately higher incarcerations rates than the general population (Van Hout and Crowley 2021; Van Hout, Hillis and Kewley 2020). Even the Bangkok Rules do not specifically refer to LGBT prisoners.

Our investigation raises general questions around the continued lack of resourcing of female prisons and gender-responsive healthcare programming in female prisons, the lack of data and advocacy on behalf of women in detention, and the lack of routine scrutiny of the unique and special health rights assurances of women within independent inspection of the situation of women in detention settings all over the world. It is intended to further enhance global dialogues on the visibility of women in prisons, supported by a more in-depth reporting on female prison conditions by the United Nations Committees, gender-responsive and trauma informed responses to their unique health needs, and further lobbying for the implementation of non-custodial measures (see the United Nations toolkit on gender responsive non-custodial measures, UN Office on Drugs and Crime 2020). These insights give a well-founded basis for relevant United Nations agencies and international human rights organizations to develop and support targeted actions to counterbalance gender discrimination and stigmatization, promote gender-responsive non-custodial measures and prison management, and uphold the basic and health rights of women in detention by providing technical assistance, while promoting further improvements and penal reforms worldwide. These could include the strengthening of national and prison health policies and action plans, advocacy in promoting rights-based, gender responsive, public health-centred and evidence-based approaches, capacity building of prison and prison health professional staff, legislative reforms and the application of gender-responsive non-custodial measures for minor offences and technical assistance in health screening and healthcare infrastructure in prisons. All concerted efforts are warranted within the Sustainable Development Agenda where in a male dominated and male designed system, gender-responsive healthcare (and social integration) approaches are crucial to commit to the ethos of 'leaving no one behind' (Ismail et al. 2021).

Lastly, with regard to strategic litigation beyond domestic recourse, and relevant to States party to these treaties, where human rights are violated, the 2000 Convention on the Elimination of all Forms of Discrimination against Women Optional Protocol accepts individual complaints and inquiries, and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment provides an option for States to accept the CAT competence to consider individual complaints and complaints from other State parties (under Articles 21 and 22). This is supported by the 2003 Optional Protocol which provides for a system of international and national inspection and capacity building mechanisms to prevent violation of the Convention.

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Conflict of Interest

Authors have no conflict of interest to declare.

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