**DIGNITY’s contribution to the questionnaire on deprivation of liberty of women and girls**

NB: The answers provided are focused on the section about the justice system and rely substantially on existing publications, by DIGNITY staff, partner organisations and others. References to women should be understood to also include girls.

**I. Justice system**

**1. What are the main causes for women coming into conflict with the law? Which are the groups of women who are most vulnerable and why?** **Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses.**

***Generally***

Surveying the **causes** for women coming into conflict with the law, Rytter and Huber state as follows:[[1]](#footnote-1)

Criminal justice institutions are basically designed to uphold the norms of a given society. Consequently, discriminatory social norms and constructions of gender in society influence the development of justice systems, which, in turn, perpetuate such norms and constructions. From a wider justice sector perspective, entrenched gender norms, and the multiple layers of discrimination that women face in all spheres of life, make women particularly vulnerable on their journey through the criminal justice system and during their stay in prison. Such obstacles may be legal, institutional, social economic or practical.

**Characteristics** **of women offenders** have been explored on the basis of poverty, education, family status/children, violence against women, drug and alcohol dependence and first-time or recidivist offenders. Surveying the profilesof women who come into conflict with the law, Rytter and Huber state as follows[[2]](#footnote-2):

The offences women are charged with or convicted of are not detached from their backgrounds. They reflect, to a large extent, the social and economic backgrounds they come from, and the economic and social discrimination women and girls face in society. The “feminisation of poverty” has a bearing on women in the criminal justice system. […]

A low educational profile is another key characteristic of women offenders, reminiscent of the discrimination girls face in accessing education in many countries across the world. Research has revealed the impact of young motherhood on education and subsequent pathways to offending. A striking number of women entering prison have been victims of violence prior to arrest, and a strong link has been established between violence against women and women’s incarceration. [fn21: UN Special Rapporteur on Violence Against Women, its Causes and Consequences, *Pathways to, conditions and consequences of incarceration for women,* A/68/340, 21 August 2013, p. 4] Given the high level of psychological distress over the lifetimes of these women, it may not be surprising that higher rates of mental health issues have been found amongst women prisoners compared to men, and that alcohol and substance dependency were also overrepresented.

The overwhelming majority of women prisoners are mothers, and many leave more than one child behind.

In a seminal report entitled ‘Pathways to, conditions and consequences of incarceration for women’, the Special Rapporteur on Violence Against Women explored the causes of incarceration as including:[[3]](#footnote-3)

* experiences of involving the presence of violence,
* coercion to commit crimes,
* obtaining abortions,
* moral crimes such as adultery or extramarital sex,
* running away from the home without permission,
* for the purposes of protection or rehabilitation
* anti-drug policies
* political activities related to women’s or LGBTI rights

Surveying the **types of offences** for which women are typically charged with, Rytter and Huber state as follows:

Wherever research has been conducted, the majority of women were found to be charged with or convicted of non-violent economic offences. [fn15: The overall figure for economic offences globally is 18%, surveys of women prisoners identified rates between 22% and almost 50%. *See* UNODC, *World crime trends and emerging issues and responses in the field of crime prevention and criminal justice,* 12 February 2014, E/CN.15/2014/5, para. 16.] Moreover, the rate of detention for drug-related offences amongst women is much higher than for their male counterparts, up to 70% compared to 21% in the overall sentenced prison population. [fn16: *Ibid,* para. 29.] Research indicates that in the ‘enthusiasm’ for waging the ‘war on drugs’ women are easier targets for law enforcement, even though they do not play significant roles in the drug trade. [fn17: Huber, *Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules* in Women and Children as Victims and Offenders: Background, Prevention, Reintegration (Kury et al eds, Springer Publishing House vol 2), Jun 2016, p. 51.] Other types of crimes that disproportionately affect women are ‘moral crimes’, such as adultery and prostitution, in particular where prostitution is only penalized for ‘providers’ but not for ‘clients’.

In terms of **drug offences**, Ashdown and James observe that women are often “tricked into being drug couriers for small sums of money and sometimes do not understand the risks involved and the implications of the act.”[[4]](#footnote-4)

***Denmark***

In terms of the broader question of women coming into conflict with the law in Denmark, a study conducted by the Danish Ministry of Justice’s research department has been studying the number of judgements in criminal cases from 1983-2012 and comparing the statistics for men and women. [[5]](#footnote-5) The findings show that women receive three times the number of convictions in criminal cases compared to 30 years ago which is an increase of 200 %. This is primarily due to the introduction of stricter legislation and a rise in the number of female drivers.

The main reason for the increase is due to violations of the Danish Road Traffic Act. Additionally, the increase relates to an increase in offences relating to other special laws such as drug law offences and gun law offences. When looking at criminal offences (of the Danish Penal Code), the development is not as significant as there has only been an increase of 14 % for women over the 30-year period. The majority of criminal offences relate to property crimes, especially shoplifting, which constitute more than half of the offences committed by women.[[6]](#footnote-6) Please note that the fact that women are sentenced in criminal cases may not always mean that they are imprisoned. Especially in traffic crimes, the sentence may be ‘community service’ or perhaps a fine.

In 2012 the average number of women in prisons and remand in Denmark was 159, constituting approximately 4 % of the total prison population[[7]](#footnote-7). In 2013 the average number rose to 171 and in 2014 to 161 women.[[8]](#footnote-8) It is well-established, within Danish prisons as well as globally, that the fact that women constitute a minority in prisons renders them readily vulnerable to not having their rights fully realised, generally as well as arising specific needs as women. There also occurs a double stigmatisation for women caught up in the criminal justice system by virtue of on the one hand contravening the law and on the other hand social and cultural mores prevailing in many societies, namely the expectation that women do not commit crimes and let down their families and children[[9]](#footnote-9). For women serving with their children, the imprisonment is often more intrusive and has long term and negative consequences. Two to five children live with their incarcerated parent, typically the mother, every year in Danish prisons.[[10]](#footnote-10)

In Danish prions, the most vulnerable women, and which constitute the largest group, are those that are socioeconomically disadvantaged. These are often marginalised women who have had a challenging life including drug use, prostitution, tough upbringings and so forth. There also tends to occur a polarisation between socioeconomically disadvantaged prisoners and those who were relatively more resourceful in their lives outside prison.[[11]](#footnote-11) It is also found to be the group of disadvantaged women who have the hardest time coping with the mixed-sex prisons.

In Denmark, men and women serve together which is unique compared to many other countries and in contradiction of international standards in the area. When the United Nations Committee Against Torture examined Denmark in 2015, it recalled the necessity to be especially aware of protecting women in mixed-sex prisons and recommended Denmark to conduct a study focussing on the conditions and opportunities for female inmates.[[12]](#footnote-12) The idea of having men and women serve in the same prison is among other things linked to the Danish ‘normalisation principle’ which refers to organising prisons aligned with the conditions outside prison as much as possible[[13]](#footnote-13). However, this model is not without its problems.

As women constitute a minority in Danish prisons, there are for the time being women serving in four of the Danish prisons. Many of the women prefer to serve in mixed-sex prisons, however, many also experience to be exposed to repression, sexual abuse and harassment. A study made by the Danish Prison and Probation Service in 2015 finds that 18 % of the surveyed women had been exposed to sexual harassment by fellow inmates and 9 % had experienced sexual assault.[[14]](#footnote-14) Another study conducted focussing on women’s conditions in Danish prisons found that some women feel pressured to establish relationships with men as a way of being protected thus indicating that the conditions in the prisons are dependent on male protection.[[15]](#footnote-15)

In 2011 the Danish Prison and Probation Service established a Committee concerning the conditions for female inmates. One of the recommendations from the Committee has been to gather all women in one prison and three regional custody facilities in order to increase protection and strengthen rehabilitation. Relatedly it saw that a women’s prison would enable a targeted approach focused on the women’s particular needs e.g. by educating prison staff to handle the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities.[[16]](#footnote-16) This has been subject to political debate for a considerable time. In 2017, the current Government in agreement with the Prison and Probation Service decided to establish a female prison opening in 2020. Some of the main characteristics of the debate in Denmark are the following[[17]](#footnote-17):

*Pro a female prison*

* Women will avoid pressure, sexual harassment and abuse from male prisoners
* Increased protection of the most vulnerable women
* Possible to offer a programme of activities, work and education which target women’s specific needs and interests
* It does not harm the ‘normalisation principle’ because women constitute a small minority in the prisons, so it is already differentiated from society outside prison
* Easier to facilitate children staying with their mothers
* Prison staff can be educated to meet the needs of the vulnerable women and help ensure better rehabilitation

*Against a female prison*

* It contradicts the ‘normalisation principle’ and principles around equality between men and women
* Studies show that a majority of the women prisoner prefer to stay in mixed gender prisons due to the violence, harassment and power dynamics that take place among women which especially harms the most vulnerable women
* It risks taking away focus from developing non-custodial measures for women
* It harms the principle of contact with the outside world as in most cases women will serve further away from home because there will only be one women prison in all of Denmark
* There will be less resources and opportunities regarding activities, work and education because it will be a small prison
* Might be difficult to meet the need of the more resourceful group of women

A critical element driving the discussion around establishing a women prison has been that of stereotyped ideas of women. This includes a perspective on women prisoners as hysterical, controlling, scheming, gossiping and someone who wants to produce conflicts. It has for instance been an argument for having men and women serve together in order to avoid enhancing these characteristics. However, by perceiving women to be as such, one disregards the positive dynamics that can be created among women especially if it is facilitated by competent prison staff.[[18]](#footnote-18)

***Jordan***

As already alluded to, notions related to “**crimes of honour**” also engender an abusive and arbitrary regime of detention and persecution where victims themselves are accused or taken into taken into what is dubbed “protective custody”, to protect them against violence or threats thereof, regularly without their due consent. Protective custody of women is a persisting challenge in Jordan. Numbers are unclear and vary.[[19]](#footnote-19) The primary reason given for the use of protective custody is for women who are alleged to have to have “behaved in a way which threatens their family’s honour or because they left, or were absent from, their home”.[[20]](#footnote-20) This is observed to result from a misapplication of the *Crime Prevention Law* under Jordanian law which confers broad discretion on governors to impose administrative detention.[[21]](#footnote-21) Expanding on this, DIGNITY’s research on condition for women in detention found that women in protective custody in Jordan included:[[22]](#footnote-22)

those who had been detained because (or partly because) they were fighting for custody of their children; had been raped and become pregnant; had become pregnant outside of marriage; had tried to leave their families after being forcedly married and divorced from different men for profit; and women who had suffered and survived shootings, stabbings and burnings, from father, brothers or uncles. Some women also spoke of inmates who had finished serving sentences for harming or killing a family member, and had then immediately been returned to prison against their will as protection from reprisals by the family of community.

**2. Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected.**

N/A

**3. What are the main challenges for women’s access to justice, including, for example, the availability and quality of legal representation, the ability to pay for bail, and the existence of gender stereotyping and bias in judicial proceedings?**

***Generally***

It is incontrovertible to link the right of access to justice for women to the realization of CEDAW, as it is an indispensable element of the “rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and other law implementation mechanisms”.[[23]](#footnote-23) According to Committee on the Elimination of Discrimination against Women, the right encompasses the following elements:[[24]](#footnote-24) i. justiciability (unhindered access and ability to realise rights); ii. availability (of courts and other decision-making bodies); iii. accessibility (secure, affordable and physically accessible; adapted to the needs of women); iv. good-quality (competent, efficient, independent and impartial, in adherence to international standards); v. accountability (to ensure that these principles are complied with); and, vi. provision of remedies (in terms of protection and redress for any harm suffered).

Rytter and Huber state as follows:[[25]](#footnote-25)

The status of women and society’s gender-related dynamics reach deep into the criminal justice system and permeate prisons. While both men and women may face obstacles in accessing justice, women often experience additional barriers, which are directly related to their sex and their gender roles. Lack of financial resources in addition to high rates of illiteracy, inequality and exclusion are among the key factors the challenge women’s access to justice and influence/determine their pathways to offending. These factors also impact their journey through the justice system and, ultimately, their life in prison. […]

Women in the criminal justice system also tend to be disadvantaged in accessing legal representation. Typically, they depend on the willingness of male heads of households to agree to spending the family budget on their legal representation. Where legal aid is available, eligibility criteria can discriminate against women if the criteria are based on family/household income, to which women offenders often do not have access. […]

Criminal justice institutions often have an under-representation of female justice administrators, and in some jurisdictions, patriarchal norms prompt police, prosecutors and judges to adopt gender-biased approaches. Police may dismiss claims of gender-based violence as unsubstantiated without initiating any preliminary investigation; prosecutors may allow stereotypes to influence investigations and trials, undermining the claims of female victims; and judges may adopt rigid standards about what is appropriate behavior for women, penalizing those who do not conform and issuing lenient sentences to male perpetrators. It is against this background that many women end up in prison, where past patterns of injustice and discrimination persist alongside new forms of suffering.

According to Huber, a lack of gender-sensitive training of judges, prosecutors and lawyers may result in a failure to properly appreciate mitigating factors specific to women:[[26]](#footnote-26)

Research also suggests that lawyers and judges lack awareness of gender-specific circumstances and their relevance in sentencing. As a consequence, mitigating factors relating to offences committed by women in conflict with the law are neither pleaded by legal representatives nor considered by judges. Such circumstances include a history of (sexual) violence suffered by partners/spouses prior to violence against these perpetrators or coercion to commit or abet an offence. It is likely that in many jurisdictions the interpretation of self-defence and of mitigating factors does not adequately allow for the consideration of prior long-term and systematic abuse by male family members or partners, in particular where the violent response to (sexual) abuse by the female victim is not immediate.

In terms of **pre-trial detention**, the Special Rapporteur on Violence Against Women observes that “many countries hold women in pretrial detention for extremely long periods, and the number of female pretrial detainees is often equivalent to or larger than the number of convicted female prisoners”.[[27]](#footnote-27)

Further to this point, Ashdown and James point out that where “women are unable to pay for a lawyer, or where legal processes are extremely slow, they may spend longer in pre-trial detention than the penalty for the crime itself.”[[28]](#footnote-28)

**4. What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade? To what extent are non-custodial measures used, in accordance with the Bangkok Rules?**

Despite the abovementioned increase in convictions of women in Denmark, women still constitute a relatively small minority of the Danish prison population, amounting to approx. 4-6%.[[29]](#footnote-29) One explanation is that offences committed by women e.g. shoplifting carry less severe punishment. The women who get imprisoned are most often those who have committed crimes related to drugs or other types of serious crimes, robbery and murder and other forms of violent offences[[30]](#footnote-30). Generally, women tend to commit crimes as individuals where men are more likely to partake in organised crimes which result in more serious crimes and relatedly severe punishment.[[31]](#footnote-31)

Statistics show that young women aged 15-17 are those with the highest increase in being represented in crime rates while previously it was the women aged 18-20 years. Also, the gap between young men and women is reducing. On one account, this is not only because women behave more like men but also that men behave more like women.[[32]](#footnote-32) The increase of criminality among women and girls are also interlinked with women’s liberation e.g. because women are more outside the home, take care of themselves and play a much more active role in night life. Relatedly women now drink more alcohol than before, which has proven to be interlinked with crimes related to violence, which are observed to be increasing among young women and girls. [[33]](#footnote-33)

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