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**Ana I. Cerezo**

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# Women in Prison in Spain: The Implementation of Bangkok Rules to the Spanish Prison Legislation

Ana I. Cerezo<sup>1,2</sup>

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**Abstract** This paper aims to take a close look at the reality of female crime in Spain. On the one hand, we will focus on describing the current situation of women incarcerated in Spanish prisons, an especially vulnerable group given their peculiarities and needs. Through secondary sources, we describe the situation of discrimination against women in these prisons. On the other hand, the paper establishes whether the current Spanish prison legislation echoes all or some of the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures of Freedom for Women Offenders* (Bangkok Rules, 2010). To this end, a detailed analysis of both standards, national and international, is essential. As a general conclusion, although Spain has high standard prison regulations and modern facilities, female prisoners in Spanish prison are subject to discrimination. It is from such a perspective that this article proposes that the necessary changes and appropriate penitentiary policies to meet the specific needs of female prisoners are established.

**Keywords** Women · Crime · Prison · Bangkok rules · Discrimination

## Introduction

The increase of the female prison population in virtually all countries around the world, and the lack of specific treatment and prevention measures relating to women offenders were key arguments used by the United Nations in 2010 when a total of 70 rules for the treatment of women inmates and women offenders subject to non-custodial measures were approved (hereinafter “the Bangkok Rules”). These rules, structured in four sections, recognize that female prisoners have significantly different needs from male prisoners since historically, prisons and prison regimes have almost invariably been designed for the majority male prison

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✉ Ana I. Cerezo  
aicerezo@uma.es

<sup>1</sup> Andalusian Institute of Criminology, University of Malaga, Malaga, Spain

<sup>2</sup> Department of Criminal Law, Faculty of Law, University of Malaga, Málaga 29071, Spain

population—from the architecture of prisons, to security procedures, to healthcare, family contact, work and training. These rules give guidance to meet the specific needs of women in case of imprisonment and to reduce the population of women in prisons.

The purpose of this article is to evaluate the implementation of Spanish prison legislation to the Bangkok rules in order to identify potential weaknesses in Spanish prison legislation. To reach this point, it is necessary to explain briefly a regulatory framework of women in prison, to report information on the situation of incarcerated women in Spain and to analyse whether the guidelines proposed by the UN in 2010 are being implemented.

## The Bangkok Rules

### Background in United Nations

The Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations on 30th August 1955, at the First Congress on the Prevention of Crime and Treatment of Offenders, held in Geneva, is considered the first international prison standard. References to women prisoners in this first text merely mention the need for women's institutions (Article 23.1.) to have special facilities for the treatment of pregnant inmates, those who have recently given birth and are nursing, as well as a nursery (Article 23.2.) for inmate mothers who keep their children in prison.

It was not until the Sixth Congress on the Prevention of Crime and Treatment of Offenders, held in Caracas in 1980, when a special mention of the specific needs and possible discriminatory situation of women in prison compared to men was made, given their minority numbers in prisons. It mentions that women have more limited access to programmes and prison services, and that they have been placed in prisons far away from their families.

The Seventh Congress, held in Milan, deals with the equal treatment that the woman should have in the criminal justice system, from her arrest until her imprisonment. All these phases require the provision of a particular attention to the special problems of women, such a pregnancy or the care of minor children.

### Its Necessary Approval and the Principle of Non-Discrimination

The references to the problems of female prisoners in the instruments above mentioned, suggests the lack of knowledge and interest in a field requires specific regulation. The need and urgency to bring more clarity to the considerations that should be applied to the treatment of women prisoners is gradually gaining importance. It is clear that neither Standard Minimum Rules for the Treatment of Prisoners and the subsequently approved Minimum Rules for non-custodial measures (the Tokyo Rules) were sufficient emphasis on the special needs of women prisoners.

Added to this is the fact that, in view of the great variety of legal, social, economic and geographical conditions in the world, not all the rules can be applied in the same way in all places, urgent need to “*stimulate a constant endeavor to overcome practical difficulties in their application, in the knowledge that they represent, as a whole, global aspirations amenable to the common goal of improving outcomes for women prisoners, their children and their communities*”. It is not a coincidence that the first of the Bangkok rules alludes to the attention to the distinctive needs of women inmates in the application of the rules to accomplish substantial gender equality shall not be regarded as discriminatory.

The most detailed analysis of the content of these 70 rules will be in a later section of this article.

## European Regulations

Although the processes of social cohesion and integration that are happening in the European Union are provoking a minimal impact on the European regulations related to the prison population and prison conditions, it is necessary to highlight three legal instruments. The first one is the Recommendation of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules (Recommendation (87) 3), of 12th February, 1987.

A second document in this area is the Recommendation of the Committee of Ministers of the Council of Europe to member states on the New European Prison Rules (Recommendation (2006)2), dated on 11th January 2006. This document states in Article 34: “*detainees should be allowed to give birth outside prison, but if a child is born in prison, the authorities should provide the necessary assistance and infrastructure.*”

Another regulation is the *European Parliament Resolution on the special situation of women in prison and the impact of the imprisonment of parents on social and family life* (2007/2116 (INI)) adopted on 15th February 2008. This document urges Member States to incorporate gender dimension into prison policies and to formulate penitentiary policies aimed to improving the integration of women in prison, because of the situation of social exclusion and poverty that characterize a large number of them. Also, it requires Member States to give more attention to gender-related aspects, in particular through appropriate training for medical prison staff and re-education of women in fundamental values:

- a) By integrating the gender dimension in data collection in all areas to make visible the problems and needs of women prisoners;
- b) By creating in each state a study commission for effective control of the conditions of internment, able to detect and remedy any aspects of discrimination affecting women in the prison system;
- c) Highlighting in debates at all levels (local, regional and national) the needs of women prisoners and former prisoners in order to promote positive measures related to housing, training, social integration and so on.

## The Unequal Treatment Prison from Men and Women in Spanish Prisons

Below are several arguments that come to ascertain the situation of inequality faced by women in relation to men in Spanish prisons.

### Some Characteristics of Spanish Women Prison Population

As shown in Table 1, during the first decade of this century the percentage of women in prison exceeded 8%, this being the highest percentage in the European Union (Cid 2008; Space 2009). The evolution of the female prison population has remained largely unchanged since then. However, if the timescale to look back to previous years is extended, an upward trend can

**Table 1** Women in prison in Spain (1980-2015)

	1980	1990	1995	2000	2005	2010	2011	2012	2013	2014	2015
Total number of women in prison	487	2604	4217	3653	5592	5723	5288	5225	5180	4977	4722
Total number of men in prison	14293	30454	40739	41451	61508	67853	65184	63372	62912	60040	56892
% of women of all prisoners	3.4	8.55	10.3	8.81	8.33	8.43	7.5	7.62	8.23	7.65	8.29
% of women prisoners of total female population	0.0025	0.0131	0.021	0.0178	0.025	0.0244	0.0225	0.0220	0.0217	0.0209	0.0199

Source: Conviction Statistics, National Institute of Statistics (INE)

be observed, due to the number of female to male inmates having increased enormously between 1980 and 1995. This is a period in which the number of women in prison was multiplied by eight (with one woman for every 29 men, increasing to one woman for every nine men). From 2011, a gradual decrease in the prison population in general and in women, in particular, is observed. This decrease is due *inter alia* to the lower penalties for drug trafficking offences (Organic Law 5/2010, of 22nd June, on the reform of the Criminal Code), which has led to the release of a good number of inmates.

Unlike men, who are mainly imprisoned for committing property related crimes, women are sentenced to prison in 37.9% of cases for the commission of drug related crimes, followed by property related crimes (35.3 %), and way ahead of these, homicides and assaults. In Table 2, the criminal typologies of men and women are shown, serving to highlight the most significant differences between drug related crimes and, conversely, those in which women are more often than not the victims, namely sexual crimes and gender-based violence (Table 3).

In relation to the evolution of these crimes, Figs. 1, 2, 3 and 4 shows how drug related crimes committed by women experience a gradual increase up until 2009, at which point they are declining. Rates in property related crimes are increasing during the last years.

In men, however, tendencies in relation to these two types of crimes decrease, as is shown in the figure below.

It is also interesting to note that according to data from 2012, 28.6% of women were sentenced to imprisonment compared to 25% of men. The deprivation of other rights represent 55% of all penalties imposed on men and 48.2% of those applied to women. Fines represent 20% of all penalties imposed on men and 13.2% of those applied to women.

It should be noted that these statistics are computed on the basis of a single penalty per crime, i.e. selecting the main penalty or that which is considered to be the most serious or important, ignoring the fact that the same individual may have been sentenced to more than one penalty, that is to say, a main penalty plus an accessory penalty (Díez 2006).

In the last five years, there has been a steady increase in the use of imprisonment in both convicted men and women, as can be seen in the figure below.

According to several studies, the average length of a prison sentence imposed on women for drug trafficking offences would be around 4 years (Almeda and Bodelón 2007; Cruells and Igareda 2005; García-España and Díez-Ripollés 2012).

**Table 2** Crime convictions of the prison population according to sex (% of the total number of men and women in prison)

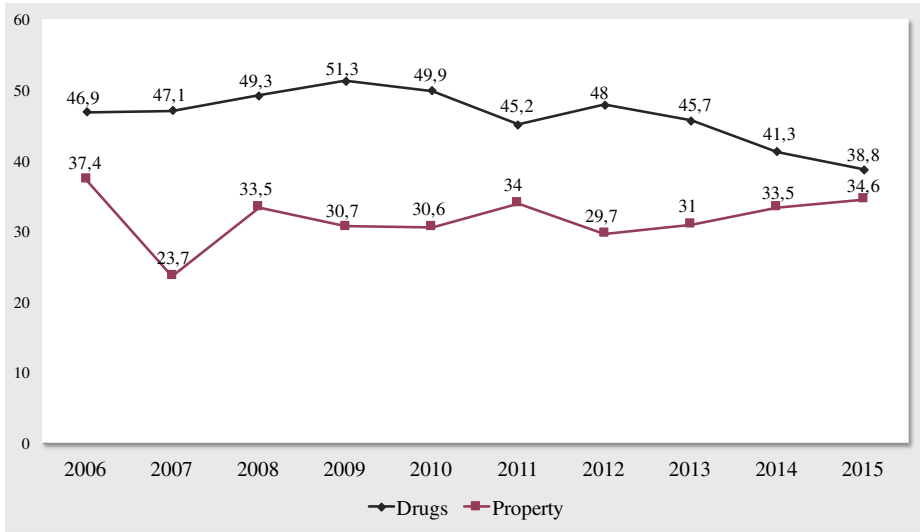
Crimes	Men		Women	
	N	%	N	%
Homicides	3.601	(7.4%)	290	(7.2%)
Assault	2.400	(4.9%)	176	(4.3%)
Kidnapping	668	(1.4%)	48	(1.2%)
Sexual crimes	3.115	(6.4%)	56	(1.4%)
Gender-based violence	3.920	(8.1%)	6	(0.1%)
Crimes against family relations	210	(0.4%)	13	(0.3%)
Property related crimes	18.789	(38.8%)	1.403	(35.3%)
Drugs related crimes	10.132	(20.9%)	1.505	(37.9%)
Driving offences	1.341	(2.8%)	39	(1%)
Counterfeiting	763	(1.6%)	77	(1.9%)
Tax crimes and crimes against public administration	261	(0.6%)	29	(0.7%)
Crimes against the judiciary	730	(1.5%)	109	(2.7%)
Crimes against public order	1.848	(3.8%)	130	(3.3%)
Other crimes	549	(1.2%)	80	(1.9%)
Misdemeanors	70	(0.2%)	13	(0.3%)
Total	48.397	(100%)	3.974	(100%)

Source: Conviction Statistics, National Institute of Statistics (INE), Data for April, 2016

**Table 3** Types of penalties according to sex (% of the total number of convicted men and women)

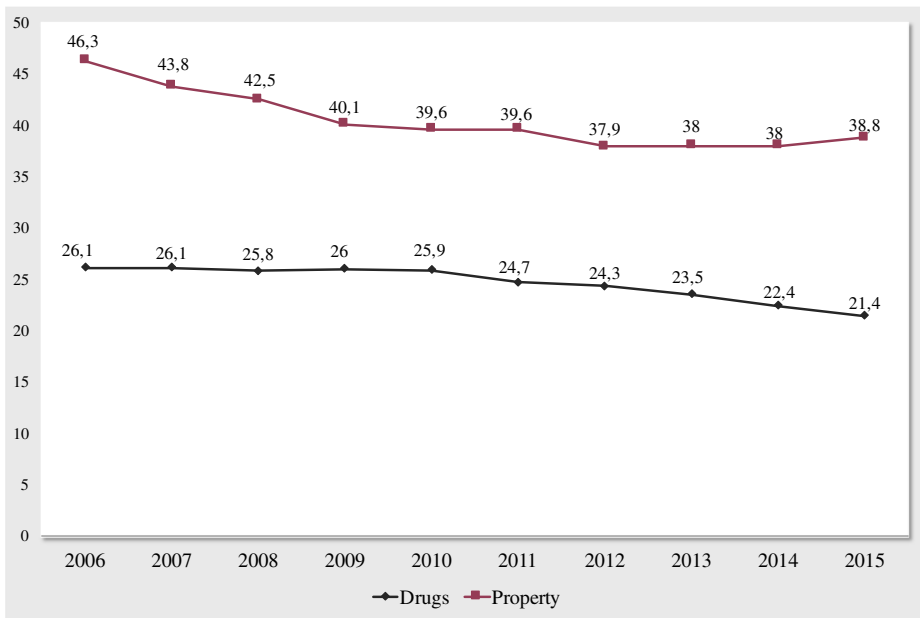
Type of sentences	Men	Women
1. Deprivation of liberty penalties	25	28.6
1.1 Imprisonment	24.9	28.5
1.2 Default imprisonment	0.1	0.1
1.3 Home detention	0	0
2. Penalties depriving other rights	55	48.2
2.1 Disqualification from public office	0.1	0.1
2.2 Professional disqualification	18.4	21
2.3 Driving licence dispossession	13.5	11.1
2.4 Firearms possession prohibition	5.3	3.3
2.5 Restraining order: residing in certain places	0.1	0
2.6 Restraining order: physical proximity to the victim	5.7	3.7
2.7 Restraining order: communication with the victim	2	1.2
2.8 Community service	9.8	8.5
2.9 Foreigners' Deportation	0.4	0.4
3. Fines	20	13.2
Total	100	100

Source: Conviction Statistics, National Institute of Statistics (INE), Data for 2013



Source: Author's own work, developed from National Institute of Statistics (INE)

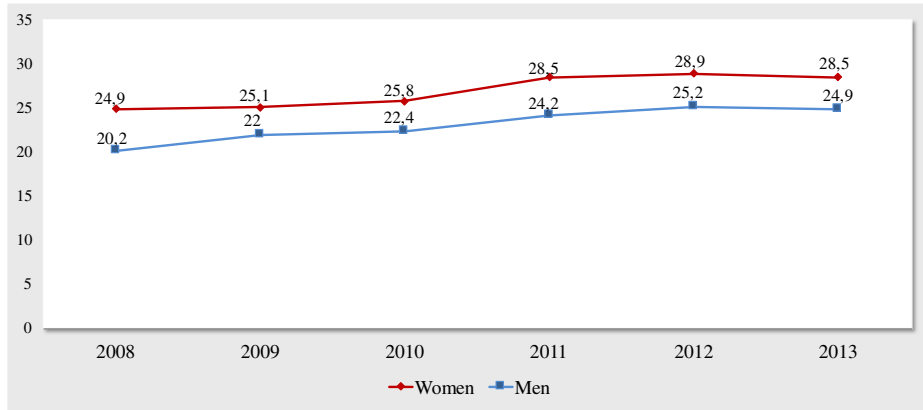
**Fig. 1** Evolution of sentenced crimes against property and public health (drugs) in female prisoners (% of the total number of female prisoners) (2006-2015). Source: Author's own work, developed from National Institute of Statistics (INE)



Source: Author's own work, developed from National Institute of Statistics (INE)

**Fig. 2** Evolution of sentenced crimes against property and public health (drugs) in male prisoners (% of the total number of male prisoners) (2006-2015). Source: Author's own work, developed from National Institute of Statistics (INE)



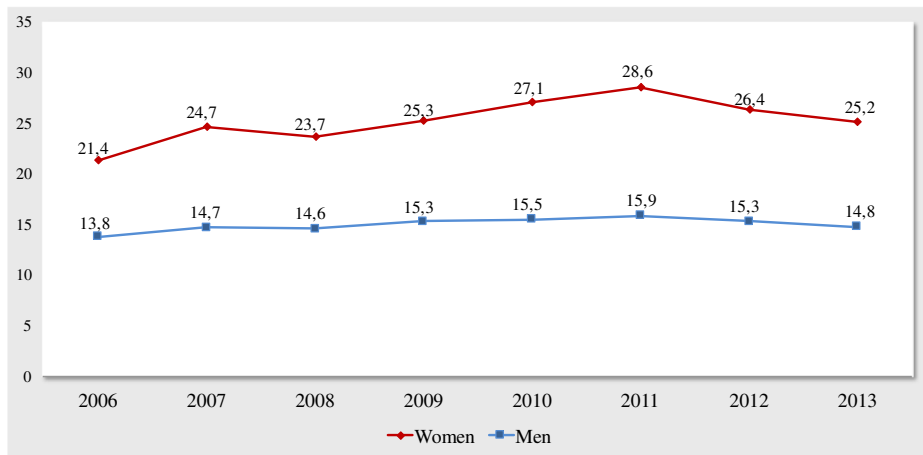


Source: Author's own work, developed from National Institute of Statistics (INE)

**Fig. 3** Evolution of the use of imprisonment for sentenced men and women (2008-2013). Source: Author's own work, developed from National Institute of Statistics (INE)

In relation to the criminal procedural status of women imprisoned in April, 2016, 13.6% are in pre-trial detention compared to 12.4% of men, as shown in Table 4.

The percentage of the foreign female inmate population (around 28% of total female inmates) does not correspond to the percentage of the foreign female population in the general female population in Spain, which is considerably lower (10.6%) (Ministry of Health and Social Services and Equality 2013). In the past decade, there was an upward trend in foreign female prisoners, similar to the rise that occurred in men, which peaked in 2010. However, in 2011, it was possible to observe a significant decrease for the first time, with an accentuated decrease in 2015, as shown in Table 5. This decrease coincides with the observed decrease in the prison population in general.



Source: Author's own work, developed from National Institute of Statistics (INE)

**Fig. 4** Evolution of inmates classified under open-prison regime in Spain according to sex (% of the total number of imprisoned men and women) (2006-2013). Source: Author's own work, developed from National Institute of Statistics (INE)

**Table 4** Prison population and their criminal procedural status according to their sex

	Men	Women	Total
Pre-trial detainees	7.071	638	7.709
Convicted	48.689	3.987	52.676
Preventive detainees	555	30	585
Pre-trial detainees and convicted	633	23	656
<i>Total</i>	56.948	4.678	61.626

Source: Conviction Statistics, National Institute of Statistics (INE), Data for April 2016

Particularly striking is the origin of these women compared with men who are foreign prisoners. Given the increasing presence of foreign women in Spanish prisons, studies examining the peculiarities of this group have proliferated (García and dir 2012; Ribas et al. 2006; Vega et al. 2005). Currently, about 72% of women imprisoned in Spain come from Latin American countries (Brazil 33%, Bolivia 23%, Dominican Republic 16%, Colombia 13%, mainly). Unlike men, who include many prisoners from Morocco followed by Colombians and Romanians; the Maghrebi women are in a minority (at 8%), as are Asians at just 2%. The rest of the female inmates come from other European countries (12%), mainly from Eastern Europe, and sub-Saharan Africa (6%).

There seems to be some specialization in the type of crime by geographic area of origin. A large percentage of these women (more than 80%), mainly from Latin American countries, have been convicted of offenses against public health by acting as “mules” that is, persons detained in Spanish airports carrying small amounts of drugs which they are attempting to smuggle into Spain. They are usually the last links to international drug trafficking networks. The Ibero-American women convicted of drug trafficking continue to be the main economic source sustaining their families from within prison (sending all income earned in the prison workshop industries back to their countries of origin). The overrepresentation that has existed in Spanish prisons in recent years of this type of criminal profile among Latin American women has a lot to do with the increased penalties for drug trafficking offenses that came into force with the Criminal Code of 1995. The reform of the Penal Code of 2010, as discussed above, has led to a decrease in the penalties imposed on these women and an increase in deportations. Moreover, as most of these women are not consumers, unlike their Spanish counterparts, specific drug-addiction exemptions or mitigating circumstances are not taken into consideration and they therefore serve longer sentences. The Spanish women who commit drug trafficking crimes are mostly drug addicts, who include themselves in small distribution

**Table 5** Foreign female prisoners in Spanish prisons (2006-2015)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Total number of <b>female</b> foreigners in prison	1820	2171	2293	2306	2295	1921	1807	1672	1527	1357
Total number of <b>male</b> foreigners in prison	18823	22977	23908	24856	24020	22581	21086	20168	18170	16513
% women of all foreigners prisoners	8.81	8.63	8.75	8.48	8.72	7.84	7.89	7.65	7.75	7.59

Source: Conviction Statistics, National Institute of Statistics (INE)

networks in order to cater for their own personal consumption. They often combine their criminal activity with property crimes and, sometimes, with prostitution at the lowest level in the streets and on the roadside. This group also stands out significantly among those women who are on remand, a necessity often brought about by the lack of family roots, the possibility of them trying to escape or the need to ensure their presence at trial.

In relation to offenses committed against persons, there is a high percentage of women from the Maghreb (18%) and Asia (21%). Crimes against property are mostly committed by women from the European Union, mainly Romanians (50%).

There is also a high percentage of Romani (or 'Gypsy') women among the female prison population (25%) (Barañí 2001). The Romani population represents just 1.4% of the Spanish population. Amongst studies that analyse the needs and discrimination suffered by this group, these are women who, from an early age, are burdened with family responsibilities, without having had actually fully considered motherhood or marriage as an option. Their functions are not limited to the domestic sphere either, as they often end up being responsible for bringing in the household income as well.

As such, Romani women who are incarcerated are mostly adult women, not drug addicts, nor sporadic consumers even, for whom the drug trade has become the means of their family's economic survival. A large number of Roma women also commit crimes against property, normally referred to as theft through neglect, hence the police jargon "neglecters". These are women who are on the street, seemingly going about their business but who take advantage of any neglect on the part of their victims to steal various items of property.

The gradual increase in recent years of the criminal activities of women raises the question as to the possible causes. While in the past, the differences between male and female crime seemed to be explained on the basis of biological and psychological factors or distinct social roles, currently, social exclusion seems to be the key to elucidate the more than notable increase in women's involvement in crime.

Indeed, certain aspects concerning the most common profile of women prisoners supports the theory that the social exclusion in which these women live, is the main factor for triggering criminal activity (Yagüe 2006).

The majority of women in prison have experienced some form of social exclusion prior to imprisonment:

They mostly come from very large family groups or families with a troubled background, which involved loosening of family ties, abuse and maltreatment during their childhood and their youth. These women have survived a difficult childhood, on the margins of society, without opportunities or even affection; 25% said they were held for periods of their adolescence in some kind of closed, boarding or reformatory institution, usually for having committed petty theft or for drug use. Female prisoners come mostly from working-class neighbourhoods or the outskirts of cities, or from urban environments prone to slums and overcrowding, with either poor or a complete absence of a social services network. Parenting in this context explains the easy access to certain illegal practices, such as drug trafficking (Igareda 2007). Various theories have accredited that affirm that early exposure to delinquent models leads to an asocial assumption of values for which the acquisition of income bypasses the concepts of sacrifice or personal effort. Subsistence left to chance or the social services. The *benefit* is seen as immediate. In other words, the pursuit of an easy way out is very much present in the minds of these women.

Seventy per cent of imprisoned women have another family member in prison: in 10 % of the cases, this was a parent and in 3%, one of their own children. There is, therefore, a

multigenerational influence on the processes of exclusion that from fathers/mothers to sons/daughters are passed. The parents of many of these women have problems with drug addiction, alcoholism, low income, low educational level, unemployment or labour activities in the underground economy, etc. (Almeda 2002, 2003).

Women prisoners suffer from a high rate of illiteracy, more so than men, partly because they left school at an early age or were failures at school: About 50% declare themselves to be illiterate or without primary education on being admitted to prison, and 36% admit to having no school qualifications. Only 11% have completed some form of tertiary education (Cervelló 2006).

It also highlights the very low professional qualifications or lack of employment experience of women prisoners; 22% are unemployed, with 11.5% admitting that they have never held down a paid job. Women who have been employed, have done precarious jobs that have been poorly remunerated, such as cleaning, working as a market stall seller or seasonal work in the countryside. Given their lack of training and work experience, they are less competent professionally and are predisposed to unemployment or the worst paid occupations (del Pueblo Andaluz and Andalusian Ombudsman Report 2006).

Between 50% and 70% of women prisoners admitted to having used drugs while in prison (Gañán and Gordon 2001). Female prisoners with substance abuse problems are addicted to heroin combined with other drugs such as cocaine, medicines, etc. There is an increase in female inmates with an addiction to cocaine alone (Villagrà et al. 2011). Health problems resulting from drug use, especially the prevalence of HIV at 22% (compared to 17% of male prisoners) and Hepatitis C, which stands at 28% (compared to 32% in men) should be highlighted. Drug addiction also presents with a high depressive symptoms, a high risk of autolysis, irritability and physical and psychological suffering. These symptomatology are often correlated with their past history of family violence and sexual abuse (post-traumatic stress).

About 70% of women in prison have children, with a mean of 2.7 children per woman, as opposed to 1.3 children in Spanish society in general; 38.7% have families with three or more children (Ballesteros et al. 2013). Early motherhood and the numerous offspring of these women, together with their many failed personal relationships, lead these women into becoming the sole provider for their family. About 35% of these women are separated, single or widowed, compared with 20% who are married and 36% who have a common-law husband. Prior to imprisonment, only 28% of cases are made up of a nuclear family. About 33% of these women have husbands or partners in prison (Ballesteros et al. 2013). Many of them are single parents on whom children, parents and/or dependents and disabled individuals are economically dependent; a life of crime or prostitution present themselves as valid alternatives in order to acquire money to support their families.

In 20% of the cases, these dependent children are left in the care of the inmate's husband or partner, in 38% of the cases of extended family members (generally the maternal grandparents), and in 9.5% of the cases, in foster homes, minors protection centres or pre-adoption/adoption programmes (Yagüe 2007a). Apart from the immense worry of having children whom they are not able to care for themselves (their main concerns being that their children may develop diseases, fall into drug addiction, or become part of a criminal gang), they develop a feeling of constant guilt that leads them to internalize the idea of being a "bad mother" (Paino et al. 2004).

## Spanish Prison Legislation

It should be noted that the Spanish constitution makes no specific mention of women in prison. However, our prison regulations, made up of the General Prisons Organic Law

(hereinafter LOGP) 1979, and the Prison Rules that define this law in depth (hereinafter RP), approved by Royal Decree 190/1996 of 9th February, provide various provisions regarding women prisoners that shall be analysed later on.

### *Girl Offenders*

Spanish legislation states that girls between the ages of 14 and 18 must serve their period of internment in special institutions for minors. The current law on the criminal responsibility of minors, Organic Law 5/2000, provides for minors to be prosecuted by juvenile judges and that the measures imposed on them are distinct from penalties imposed on adults. If interned, juveniles are to be kept in facilities other than those of adults (Fernández et al. 2009). In these custodial centres, girls live separately from boys (Rule 36), and have the same access to education and professional training as boys (Rule 37), to programmes and services relevant to their age and gender (Rule 38), and to gynecological services, receiving special attention if they are pregnant (Rules 38 and 39). Nevertheless, given the lack of transparency in this area, due to the difficulties associated with gaining access to information on minors, discriminatory situations in these centres cannot be ruled out (Fernández 2008; García et al. 2008; Yagüe 2005).

### *Female Immigrants Held in Detention Centres for Foreigners (DCFs)*

It should be noted that in addition to the seclusion of adult women in prison and female minors in detention centres, there are foreign women who are placed in Detention Centres for Foreigners (DCFs, or 'CIEs' in Spanish). These are State-run establishments, under the auspices of the Ministry of the Interior, managed by the General Directorate of the Police and supervised by members of the National Police Corps, where foreigners with an irregular situation, pending deportation, are kept in custody for a maximum of sixty days.

According to a recent study conducted by Martínez Escamilla, the irregular situation of these women, together with the social stigmatization and non-recognition of prostitution as a job, increases their vulnerability. Another dramatic finding of this research is the presence in DCFs of women victims of human trafficking, specifically trafficking for sexual exploitation, which in the majority of cases goes unnoticed by DCF staff without anyone actually realising the extreme situations in which these women find themselves (Martínez, M. (dir.) 2013).

The Spanish Ombudsman, in the 2011 Annual Report of the National Mechanism of Prevention of Torture, provides Table 6 showing the number of inmates in DCFs nationwide, disaggregated by sex (del Pueblo and Spanish Ombudsman Annual Report 2011).

As can be seen, in 2011, a total of 11,456 foreigners were placed in DCFs, of which 7.6% were women. Many of these women are detained in 'stop and search' checks carried out by the police in order to detect illegal immigrants, in which the ethnic profile of the individual is often used as the selection criterion.

### *Maternity Facilities*

Spanish penitentiary law also provides mothers with the right to keep their children with them in prison until they are 3 years old (Art. 38 LOGP. Art. 17 RP), creating the need to establish appropriate structures in order to cater for this.

**Table 6** Foreign detainees in DCFs in 2011 according to sex

ICF	Men	Women	Total
Algeciras	2.919	157	3.076
Barcelona	1.627	33	1.660
Fuerteventura	118	1	119
Las Palmas	347	24	371
Madrid	2.342	343	2.685
Málaga	308	117	425
Murcia	1.296	40	1.336
Santa Cruz de Tenerife	113	12	125
Valencia	1.510	149	1.659

Source: 2011 Annual Report of the National Mechanism for the Prevention of Torture, from data obtained from the website of the Ministry of the Interior

There are different penitentiary structures where children under three years of age live with their mothers:

- Maternal Units. These are separate zones away from the rest of the other prison modules, available in a few prisons.
- Dependent Mothers Units. These are units outside of prisons and work through the collaboration of public and/or private entities. Penitentiary regulations provide for the incorporation of female prisoners under open prison regime into these units.
- External Units for Mothers. These are ad hoc prisons built specifically for mothers to bond with their children. This new type of facility began to take shape in 2004 with the express intent of meeting the specific needs of caring for children. To this end, special emphasis has been placed on ensuring there are appropriate conditions for the physical and psychological development of these children. Noted for their educational content and the high level of demand placed on mothers, they are of a voluntary nature and are subject to compliance with a previously established therapeutic contract. In this contract, the commitment to participate in educational and therapeutic programmes is detailed, including the obligation to not consume drugs, the acceptance of blood tests as and when required, good behaviour and a healthy lifestyle. At present, only three of these units exist in Spain in Sevilla, Madrid and Palma de Mallorca.
- The residential family module located in IV Madrid Aranjuez prison centre, caters for cases where both partners are imprisoned and have children under three years old. The couple lives with their children in prison.

In Spain, around 200 women live in prison with their children under 3 years of age (of whom there are also around 200). In Spain, numerous studies have addressed the coexistence of mothers with children in prison. The majority of these have been in favour of this, albeit there are studies critical of the system (Jiménez and Palacios 1998; Naredo 1999).

Spain easily meets with the Bangkok Rules in trying to secure the needs of pregnant inmates, infants and children in prison (rules 48-52). In Art. 29.1.e), the LOGP makes provision for the exemption from the obligation to work for women during pre-and post-

partum: 16 continuous weeks which can be increased up to 18 weeks for multiple births; these are periods which may be distributed before or after delivery, provided they include the first six weeks after birth. Similarly, inmates are exempt from being placed in isolation while pregnant, after giving birth and during the period in which they are caring for their children while in prison (Art. 43.3 LOGP), in compliance with Rule 22.

### **Deficiencies in the Spanish Penitentiary Legislation Under the Bangkok Rules**

The ignorance, by the Spanish institutions, about the gender differential impact on prisons has caused a significant lack of policies, actions and specifically targeting women inmates strategies. Some of the most important deficiencies found in the Spanish regulations are detailed in this section.

#### *A few Prisons Only for Women*

In Spain, there are only three prisons exclusively for women. These are Alcalá de Guadaíra in Seville, Brieva in Avila and Wad Ras in Barcelona. These are centres with specific infrastructure, resources, programmes and staff for female inmates. The conditions of prison terms served in these institutions are different from standard prisons with modules for men and usually a single module for women.

Looking back over time, female prisoners have traditionally received unequal treatment in comparison to men. For years, legal standards have cossetted flagrant discrimination, such as imprisonment for conduct deemed immoral or for having broken with the social role assigned to women. In addition, they have had to endure their concentration in a few prisons, with the corresponding geographical distance from their home that this implied, as well as more restrictive prison regulations (Giménez 1997).

It is true that in the last quarter of a century there have been significant changes. The LOGP of 1979 established the regimental separation between men and women in remand detention establishments (Art. 8.3), in prisons (Art 9.1) or during admission (Art. 16.a). Prisons were constructed along modern lines, on a gender-neutral basis, i.e. the women's modules were, in theory, identical to those of men. Over time, however, the continuity of formal discrimination has been verified. The programmed activities continue to be designed for a male profile in these prisons, as still, there is only one specific module for women in place, with the remaining 12 to 14 modules reserved for men. This is embodied in the inability of women to be able to gain access to certain areas and services, such as therapeutic zones or carpentry and aluminium workshops, for example.

Rules 4 and 5 must be complied with. Rule 4 states that female inmates must be sent to prisons close to their homes. While this happens in Spain, this is not due, as rule 57 mentioned, to their responsibilities to care for other people, as is stipulated in the regulation, but rather is applied as a general policy rule to all prison inmates, male or female. However, in the case of women, not all prisons have modules for women, so there are fewer prisons to which it can address an inmate woman. This affects the lower number of visits and communications for the inmate women compared to men.

According to Rule 5, the female inmates' accommodation in Spanish institutions has all the facilities and materials necessary to meet with their gender-specific needs, either during pregnancy, lactation or menstruation.

### *The Lack of Female Classification in Prison*

In the prison modules reserved for females, all types of offenders live side by side, those who on pre-trial detention with those who are convicted and serving a sentence, young adult offenders with adult offenders, first-timers with recidivists, etc. This fact may lead to a breach of Rule 56 of the Bangkok Rules, which highlights the particular risk of abuse that women on pre-trial detention may suffer.

The lack of female prisoners classification also causes the phenomenon of criminal behaviour learning. There is a criminogenic effect, which is intended to prevent in the male prison population. It produces an adverse effect conditioned by the absence of internal classification. This can result in an exchange of criminal techniques or contacts, including a motivation to continue committing crimes. It is essential to take this effect into account to prevent these situations, especially with young and first-timers female offenders.

The location of women inmates in a unique module in Spanish prisons is leading in addition to another series of major inequalities. One of them is with regard to the “respect modules”, which have proliferated in Spanish prisons considerably in recent years. To live in a respect module, a commitment to meet certain rules stipulated is required (non aggression, non drugs consumption). However, that commitment is worthless among women. There are no pre-selection criteria to enter a module of respect, simply because there is no other module that refer inmates who do not want to join it. To this we must add that if women do not meet the rules, they are isolated in a cell, which already represents a discrimination against male inmates, who if they do not meet the rules, are driven to other modules from the module of respect and are not punished with isolation.

### *The Limited Use of Non-Custodial Measures of Freedom for Women Offenders*

There are several arguments that argue the need to prioritize the implementation of non-custodial measures to women sentenced to imprisonment. The first of them is the low danger and lack of social alarm caused by convicted women, given their criminal profile. Thus, the majority of female offenders do not cause a risk to society and staying in a prison may be detrimental to their social reintegration. Women suffer a double stigma that will curb their integration to society, because in addition to being women, they are convicted.

The second argument is based in the women inmates history of prior victimization. Today, the high frequency of episodes of sexual abuse and domestic and partner abuse in the backgrounds of women in prison is an established fact. These violent episodes are suffered prior to their imprisonment. The most recent comprehensive research, carried out by a women Foundation named SURT group, outlines that the percentage of women prisoners who have suffered some form of violence amounts to a staggering 88.4 %. According to typology, sexual violence affects 68% (of which 41% was systematic; in 59% of cases, the abuse took place within the family environment; and in 25%, these abuses were suffered as minors) (Cruells and Igareda 2005). Physical violence affects 74% of women in prison (of which 80% have been battered or have suffered domestic violence, compared to the rest of society in which this figure is around 12%). Figures regarding the physical and psychological consequences of such violence are also known: 53% reported having attempted suicide at some time, 94% believe themselves to be depressed while living through situations of violence, 76% had poor self-esteem, and 65% believed the aggressions suffered to be their fault.



The incidence of sexual assault or other forms of violence against women inside Spanish prisons is not known, although in a number of cases, sentences have been given to prison officials for committing these acts. Under Spanish legislation, in keeping with Rule 7 of the Bangkok Rules, an inmate who has suffered sexual assault or any other form of violence before or during imprisonment is fully informed of their right to appeal to judicial authorities. Prison authorities help inmates in getting legal assistance and psychological support.

To prevent violence of women in prison, the prison administration in collaboration with the Institute of women, the SURT Foundation and other external associations have developed the “**Sermujer.eS**” program. This programme aims at both the prevention of gender-based violence and the treatment of the inmates who have suffered it and need a greater degree of attention. Empower these women with social competence skills in order to improve both their level of self-esteem as personal and social resources.

The third one refers to the situation of these women as solely responsible for the care of their families, especially for their young children. One of the most important problems facing women when admitted to prison is the abandonment of their children who cannot stay with them in prison; 70% of the female prisoners' children are under the age of 18. With the mother in prison, these children remain in the charge of other relatives or institutions.

Rule 58 refers to the preferential use by judges, based on the family needs of female offenders, of alternative measures to remand detention and prison sentences. These optional mechanisms are rarely used in our country, despite being provided for under Spanish legislation.

### *The Lack of Mental Health Care for Women in Prison*

When providing medical care in prisons one should take into account the significant differences in regard to the nature, complexity and intensity of health problems that specifically affect women. Neither the LOGP, nor the penitentiary regulations developed therein, make provision for female inmates to be medically examined exclusively by female staff, failing, as such, to deal with the provisions made under Rules 10 and 11 of the Bangkok Rules.

Nevertheless, Art. 209.1.2 RP does make provision for the periodic services of a gynaecologist in centres for women. In addition, Art. 38.1 of the LOGP, as well as Art. 213.1 RP, require that women's units have an annexe equipped with the necessary obstetric instruments in cases of inmates needing to give birth.

Spanish prisons also fall short in terms of dealing with mental health issues. In Spain, there are no comprehensive care programmes for mental health and individualized rehabilitation that take into consideration the issue of gender and which are capacitated to deal with the treatment of trauma, as prescribed by Rule 12 of the Bangkok Rules.

### *The Lack of Specific Rehabilitation Programmes for Women Prisoners*

As in other countries, historically in Spain correctional programming for women has been based on profiles of men and their pathways into crime (Covington 2001). There are usually no specific rehabilitation programmes for women, as established by Rules 40 and 41 of the Bangkok Rules. In the standard Spanish prison, convicted female inmates are not subject to classification according to their gender-specific needs. Prison works and professional training are aimed at learning how to sew, how to iron, to cook or to clean. These tasks, besides being overly feminized, need no prior training or provide a professional qualification. Few women

having access to high insertability professional activities, means a very low percentage of women who are working in activities traditionally considered male.

The Bangkok rules refer that in prisons there must be educational programmes directly aimed at increasing the employability of women convicted. In Spain, the few programmes that are focused on their early rehabilitation, treatment and social reintegration, are basically ineffective. This, in part, explains the recidivism rate among women which stands at about 54%; 33% of women in prison have already been in jail three or more times before.

In prisons that are specifically designed for women, however, prison intervention programmes are available that address the socio-family, educational, occupational and psychological needs of these women. The participation of female inmates in these programmes is about 98% (Yagüe 2007b). Since 2009 the “Program of actions for equality between women and men in the penitentiary field”, prepared by the Deputy Directorate General of treatment and prison management has been underway. This program has marked as main objectives: to overcome the special vulnerability factors that have influenced the immersion of women in criminal activity, eradicate the factors of discrimination based on gender within the prison, the integral attention to the needs of women in prison, as well as promote the eradication of gender-based violence especially psychological and physical harm, addiction, etc., associated with the high prevalence of episodes of abuse and mistreatment in the personal history of many of the female prisoners. Specific measures taken are included in the field of education, drug abuse, paid work and gender-based violence. A Commission technical mixed-Observatory aiming to promote, review and assess the impact of the program has been created.

### *The Lack of Post-Prison Reintegration Programmes*

Nor are there post-prison reintegration programmes that take into account the specific needs of women (Rule 46), nor are they provided with psychological, medical, legal or practical support in conjunction with community services to ensure the success of social reintegration, as provided for in Rule 47. For example, it is stated that on release from jail, only 40% of these women have their own housing, a leased home or council house (Cruells and Igareda 2005).

### *The Lack of Training of Staff*

The Bangkok rules consider a very relevant question—the training of prison staff in order to meet the special needs of women inmates for the purpose of social reintegration—(Rules 29 and 33). Rule 33 states that all staff who must deal with women in prison should receive special training relating to human rights and to the gender-specific needs of women incarcerated. Rule 29 refers to “*Capacity-building for staff employed in women’s prisons shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities*”.

Spanish prison law makes no reference to female prison staff or their training. A recent study by Cuaresma and Nicolás highlights the need for gender equality policies to be introduced and addressed when prison staff receive their training. More specifically, further to scientific research having been carried out, these authors concluded that male prison staff who receive this type of training are more responsive to the specific needs of female prisoners (Cuaresma and Nicolas 2013).

### *Some Extensive Research Aimed at Preventing Female Crime*

Section IV of the Bangkok Rules is, from the authors' point of view, the least observed in Spain. Rule 67 refers to the organization and promotion by the State of exhaustive research into female criminality and, more particularly, regarding everything related to the etiology of this type of crime, the characteristics of these women, the criminal typology, possible secondary criminalization and the conditions or possible consequences of incarceration. Prevention programmes aimed at both reducing female crime as well as recidivism are of utmost importance. In this sense, the development of programmes and policies to meet the needs of social reintegration are essential. In Spain, as has been noted above, specific programmes on social reintegration for women are only conducted in certain prisons, and which are not, as such, prompted or supported by public policy but rather through the goodwill of prison staff.

For its part, Rule 68 refers to the need to organize and promote research on the number of children involved in situations where their mothers are incarcerated and the impact that this fact has on them.

Finally, though the literature referring to female crime or women prisoners has practically not been developed (Barberet 2013), Rule 70 refers to the dissemination of information from the results of such research through the media.

It is deplorable that Spain fails to reach the expected level in any of the above mentioned aspects, as these constitute essential pillars which serve to alleviate the discrimination affecting female prisoners in Spain.

## **Conclusion**

Women in Spanish prisons represent just 8% of the total prison population, although over the past 30 years there has been a considerable increase in the female prison population. As such, Spain occupies the first place in Europe in the rate of incarcerated women. However, over the past 3 years, a slow decline in this figure has been witnessed due to certain prison policies aimed at reducing, not specifically the ratio of female prisoners within the system, but the general prison population overall.

Nevertheless, the low rates of female crime compared to those of men has made this phenomenon all but invisible, with the consequence that research into clarifying the criminological and social profile of these women is scarce. The search for the causes of female crime inexorably leads to the phenomenon of female impoverishment: most women commit crimes for social reasons, and their risk of delinquency is greater in keeping with their level of economic and sociocultural impoverishment.

There are no preventive measures or political actions in place aimed at reducing this criminal profile because its finer points are an unknown entity in terms of the multiple social and economic disadvantages faced by women offenders as opposed to those of men. This inferiority is produced in different areas: in the family (maternity or single parenthood), in terms of health (domestic violence or drug abuse), education (lack of formal schooling and professional training), in economic terms (the high rate of unemployment or precarious situation of women in the labour market) and finally, on a social scale (the role they take on or that of prostitution).

Prisons reproduce and even exacerbate inequalities between men and women. Although the standard policy is that of equal treatment (save the special circumstances marked by motherhood),

in Spanish prisons incarcerated women has always occupied a secondary position due to their inferior numbers and low rate of conflict. This has led to the historical perpetuation of a series of discriminatory factors: precarious spaces, worse living conditions, the remoteness from their home environment, mixed profiling of inmates, etc. Imprisoned women experience the accumulated disadvantages of class, gender and often ethnicity or nationality.

The situation of the criminological and social invisibility of women as prisoners in Spain has been described throughout this paper. The lack of material resources and infrastructure that exacerbate their situation of confinement, and the scarcity of resources channeled towards their integration into the labour market has also been discussed. Without doubt, it is possible to confirm, albeit inexplicably so, that the situation is such that insufficient attention in Spanish prisons is given to the specific needs of this group. In the past 15 years, there have been no substantial changes or modifications in prison policies specifically targeted at women, despite the growth in the female prison population. Moreover, the few correctional measures aimed at integrating women have rarely been designed along lines that take into consideration social and economic inequality as the starting point.

The lack of gender-specific policies in prison administration has been replicated in the failure of the support offered to women when they leave prison. Female ex-prisoners often lack opportunities of gaining access to housing, a job or to adequate treatment for their addiction, all of which culminates in a poor success rate of social reintegration.

The Bangkok Rules draw together a good number of rules and measures that need to be considered, although some critics have claimed that the rules themselves display some gender role stereotyping. Although Spain has high standard prison regulations and modern facilities, female prisoners in Spanish jails are subject to discrimination. It is from such a perspective that this study proposes that the necessary changes and appropriate social and penitentiary policies to meet the specific needs of female prisoners are established.

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