

## SEXUAL AND REPRODUCTIVE RIGHTS IN WOMENS PRISONS IN COLOMBIA DURING THE COVID-19 PANDEMIC

Overcrowding determines the conditions in which people imprisoned in Colombia live; these conditions are also marked by the lack of reliable access to water, the delivery of spoiled food, insufficient and poorly maintained bathrooms, inadequate provision of health services—including the lack of medical and psychological personnel—and the inability to access medicines.

This overall situation impacts women in prison differentially, systematically violating their rights as set out in the Bangkok Rules.<sup>1</sup> Furthermore, these conditions have led to the rapid and massive spread of COVID-19 infection inside prisons, posing a serious risk to the health, well-being, and lives of those incarcerated.

The Colombian penitentiary and prison system has failed to guarantee women in prison the right to healthcare. With the arrival of COVID-19, the national government drafted and implemented policies of confinement that have restricted visitation, goods, and services. The measures designed by the Ministry of Justice and Law and the National Penitentiary and Prison Institute (INPEC) to prevent infection and to combat the pandemic did not achieve their objectives. Instead, they deepened rights violations.

Even with the prevention and care measures the national government has adopted for prisons and detention facilities, we found the following problems: (1) the absence of adequate sanitary conditions, (2) restricted access to toiletry and personal hygiene products, (3) inadequate food, (4) the temporary suspension of visits and entry by outside partners, (5) restrictions on medical care, and (6) the inefficiency of measures to apply alternatives to incarceration for those populations with the highest risk for complications from COVID-19 infection.

In 2020 the Humanas Corporation and Mujeres Libres presented our report titled "The Situation of Women in Prison in the High- and Medium-Security Women's Prison of Bogotá, Colombia."<sup>2</sup> We collected information for the report through telephone conversations with imprisoned women between April and June of that year. Building on that experience, we now present the differential impact of these official measures on women, and specifically on their sexual and reproductive rights.

---

<sup>1</sup> Organización de Naciones Unidas, Reglas para el tratamiento de reclusas y medidas no privativas de la libertad para mujeres delincuentes – Reglas Bangkok, 2010.

<sup>2</sup> Humanas, Mujeres Libres Situación de las mujeres que sufren la prisión: Establecimiento de Alta y Mediana Seguridad para mujeres Bogotá, 2020. Disponible en: <https://www.humanas.org.co/wp-content/uploads/2021/02/Informe-ca%CC%81rcel-de-mujeres-en-Bogota%CC%81-2020.pdf>

Among all the measures taken by the government, the following stand out:

---

#### LACK OF ADEQUATE SANITARY CONDITIONS

INPEC has officially implemented prevention measures, such as frequent hand washing, for which a guaranteed supply of water, soap, and clean towels easily accessible to the population is necessary. The same is true for the use of personal protective equipment.<sup>3</sup> However, in the penitentiary facility we investigated, we found the following conditions:

Women did not have access to a dependable supply of water, and when there was water, the water was of poor quality, gray in color, dirty, and with flakes of rust. Due to the prison system's historical overcrowding—which persists despite rulings from international organizations<sup>4</sup> and national courts<sup>5</sup>—there are not enough bathrooms for the number of women locked up in the prison, and of those bathrooms that do exist, many are not serviceable due to lack of maintenance. The water pressure does not allow water to reach the upper floors, forcing women to collect water in buckets and bottles to use the toilets and showers on those floors.

Under these conditions, the women prisoners could not comply with the measures established by the Government or follow the recommendations of the World Health Organization to avoid COVID-19 infection. As such, the national government has violated these women's rights to full health,<sup>6</sup> as well as the terms of Bangkok Rule 5, which establishes that women must have the necessary spaces and items to meet women's needs, including free sanitary towels and a permanent supply of water.

---

<sup>3</sup> INPEC- Directiva 004 del 11 de marzo de 2020 “Directrices para la prevención e implementación de medidas de control ante casos probables y confirmados de Covid-19”

<sup>4</sup> Comisión Interamericana de Derechos Humanos, 2011. Informe sobre los derechos humanos de las personas privadas de la libertad en las Américas. Disponible en: <https://www.oas.org/es/cidh/ppl/docs/pdf/ppl2011esp.pdf>

<sup>5</sup> Corte Constitucional, 2013. Sentencia T-388. Por medio de la cual se declara el Estado de Cosas Inconstitucional en el sistema penitenciario y carcelario. Disponible en: <https://www.corteconstitucional.gov.co/relatoria/2013/t-388-13.htm#:~:text=Reconoci%C3%B3%20que%20la%20situaci%C3%B3n%20de,inconstitucional%20del%20sistema%20carcelario%20nacional.>

<sup>6</sup> “El derecho a la salud es un derecho inclusivo que no sólo abarca la atención de salud oportuna y apropiada sino también los principales factores determinantes básicos de la salud, como el acceso al agua limpia y potable y a condiciones sanitarias adecuadas, condiciones sanas en el trabajo y el medio ambiente y acceso a la educación e información sobre cuestiones relacionadas con la salud, incluida la salud sexual y reproductiva”. Relator Especial de las Naciones Unidas para el Derecho a la Salud, profesor Paul Hunt. E/CN.4/2003/58, párr. 23

---

## RESTRICTIONS TO ACCESS TO HYGIENE PRODUCTS

Although INPEC's rules do not specifically prohibit the entry of toiletries and hygiene items, the agency abruptly prohibited their entry, without considering that women in prison had been receiving these intimate hygiene items from the outside. Sanitary napkins and other personal hygiene products are not provided by the state, but by the families of the prisoners, who either deliver them during visits or provide the funds for their purchase inside the prisons. As such, when women prisoners no longer had access to these basic necessities, they spoke out against the situation.

In response to their complaints, INPEC distributed toiletry kits to women in prison. These kits contained items necessary for personal care and hygiene,<sup>7</sup> but the amounts were not enough to last three months (since, according to INPEC directives, the toiletry kit is to be delivered only four times a year).<sup>8</sup> Nor were commissaries supplied with a sufficient quantity of necessary items, such as sanitary towels.

After three months, INPEC began to allow the entry of these items, but only via a transport company that has a contract with the institution. This meant that the families also had to pay the costs of shipping and packaging. In addition, the arrangement encouraged the resale of sanitary napkins by some women or the charging of money by the guards to provide them.

---

## INADEQUATE FOOD

Our study revealed severe issues with the quality of the food during the first three months of pandemic confinement measures in Colombian prisons. Food delivered to the women was raw or semi-raw, with a bad taste, strange odor, and several times in a state of decay. Poor quality food does not promote women's health, especially for those who are pregnant, as indicated in the Bangkok Rules, which require that women receive guidance for their health and an adequate diet for their condition (number 48).

Women who require a specific diet because of health conditions or illnesses suffered similar impacts.

---

<sup>7</sup> The toiletry kit contained: two small rolls of toilet paper, two packages of sanitary napkins, a tube of toothpaste, a toothbrush, soap for bathing, a shaving razor, and a small deodorant.

<sup>8</sup> INPEC. Memorando 0251 del 2004.

---

## TEMPORARY SUSPENSION OF VISITS BY FAMILY AND OUTSIDE PARTNERS

The prohibition of family visits by INPEC has also affected the right to conjugal visits.<sup>9</sup> For more than a year, women have not had access to intimate visits, neither with partners who are not imprisoned nor between persons who are in prison. To date, the national government has not proposed measures to guarantee access to this right. Instead, the government continues to violate prisoners' fundamental rights to privacy and to sexual freedom, and to those sexual and reproductive rights that have been restricted by the pandemic control measures.

In normal times, authorities admitted gynaecologists only once a month to attend women in prison and pap smears were conducted by brigades every two or three months, which was not frequently enough for all women to have access to these procedures. But by "suspending the entry of all external personnel, without exception," as INPEC stated in an internal memo,<sup>10</sup> INPEC barred the entry of these medical professionals, since they are not part of the prison's regular or daily staff. Over time this uninterrupted absence has had a direct impact on women's sexual and reproductive health. We note with concern that women's health conditions have worsened, and they have been unable to learn how serious the deterioration is, because of the absence of gynaecological health services and because they have been unable to consult with professionals who know their risk factors and specific needs. This goes against the standards laid out in the Bangkok Rules about the right to receive general medical care and specialized care (number 5), and to receive all preventive services, such as pap smears and other tests necessary to detect cancer (number 18).

Furthermore, the suspension of activities by outside partners such as human rights organizations has impeded the monitoring of prison conditions and our ability to document situations of human rights violations.

---

## THE INEFFICIENCY OF MEASURES TO APPLY ALTERNATIVES TO INCARCERATION FOR THOSE POPULATIONS WITH THE HIGHEST RISK FOR COMPLICATIONS FROM COVID-19 INFECTION

---

<sup>9</sup> Conjugal visits are times set aside by right for prisoners to spend intimate time with the person they choose.

<sup>10</sup> Circular 005 del 17 de marzo de 2020 "Medidas para la contención del Covid-19 en los servidores penitenciarios y contratistas".

Through Legislative Decree 546 of 2020,<sup>11</sup> the Ministry of Justice and Law aimed to address the charge that overcrowded prison conditions were causing the coronavirus to spread behind bars, and that the state was incapable of protecting those people most vulnerable to the virus. The decree sought to replace prison terms and preventive detention in prisons and jails with house arrest and temporary house arrest in private residences, among other measures.

However, we found that these measures were taken too late, because by April 14, 2020, the date they took effect, there had already been contagions in several penitentiaries and prisons throughout the country, and 24 people had died inside one facility during prisoner protests demanding safer conditions in response to the pandemic.<sup>12</sup> Moreover, these measures were not effective because they did not reduce overcrowding or fundamentally prevent the risk of infection.

Although the decree purports to provide alternatives to imprisonment for the most vulnerable populations—such as pregnant women, disabled persons, sick persons and persons over 60 years of age (art. 2)—it excludes people from eligibility based on the crime for which they were charged or convicted. More than 100 criminal offenses bar people from alternatives to imprisonment, including offenses related to criminalized drugs and other non-violent crimes. Because of these exclusionary standards, the policy is applicable to very few people; most women in prison are there because of these excluded crimes. Thus, imprisoned pregnant women, elderly women, women with disabilities or serious illnesses were not able to access the benefit of temporary house arrest, because the crime for which they were sentenced was among those that barred them from eligibility for alternatives to prison. Thus, even though these are the women who are most vulnerable to infection, they remained in the prisons.

---

## CONCLUSIONS

The rights violations discussed above impact the sexual and reproductive rights of women in prison through the lack of effective preventive measures and the absence of care in the prison and jail health system. Therefore, to ensure real care, it is urgent that a plan to improve the current health care system be implemented immediately. Although it is a priority to mitigate COVID-19 infection in prisons, it is necessary that INPEC guarantee health care on a permanent basis, ensuring special care for the specific needs of women, as well as the routine and ongoing treatment of diseases and medical attention for issues other than COVID-19.

---

<sup>11</sup> Disponible en:

<https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20546%20DEL%2014%20DE%20ABRIL%20DE%202020.pdf>

<sup>12</sup> 18 de abril de 2021. Disponible en: <https://noticias.caracol.com/informes-especiales/motin-en-la-modelo-las-pruebas-desconocidas-de-una-noche-de-horror>

[Translation: Joe Hiller]



What is more, a sufficient and permanent supply of intimate hygiene items must be guaranteed for women in prison so that they can experience dignified menstrual health and enjoy sexual and reproductive rights.

In the face of problems with the provision of food, the national government must reformulate the way in which it monitors compliance with contracts by the companies that provide this service. Although we decry the companies' repeated failures to comply with their contracts, the companies continue to operate without clear sanctions, much less any that translate into substantial changes in their services, or that ensure the supply of food appropriate for differential health needs, as well as for pregnant and lactating women.

Finally, human rights organizations should be allowed to enter the prisons to verify and monitor the conditions of confinement for incarcerated women. The measures taken by the government to prevent the spread of COVID-19, such as the prohibition of the entry of Human Rights organizations, have made it possible for human rights violations within prisons to remain invisible and to take place with impunity.

4th June 2021