



Comité para
la Prevención
de la Tortura

Women in Prison: Chile

Analysis from the National Preventive Mechanism

| September 2024



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture



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Chile



UNCAT Ratification 30 September 1988	OPCAT Ratification 12 December 2008
National Preventive Mechanism (NPM) <u>Comité para la prevención de la Tortura [Committee for the Prevention of Torture]</u>	
NPM legal framework Law No. 21.154 (25 April 2019)	NPM operationalisation 2020
NPM structure Law 21.154 designates the NHRI as the National Mechanism for the Prevention of Torture, but mandates that it will act exclusively through the Committee for the Prevention of Torture. The CPT is a functionally autonomous entity, administratively attached to the NHRI.	NPM composition 7 expert members Staff (August 2024): 20 members (11 women) - Prevention Committee: 4 members - experts (2 women) - Executive Secretariat: 6 members (3 women) - Analysts: 10 (6 women)

Prison population	Women in prison – Characteristics	Prisons for women
Total prison population 50,912	Foreign women 901 ¹	Number of women's prisons 46
Women in prison (total) 3,888 7.63%	Pregnant women 42 ²	Women-only prisons 15
Sentenced women 1,964	Women with children in prison 98	Mixed prisons with separate units for women 31
Women in pre-trial detention 1,924	Older women (over 60 years) 134	
<i>Source: Chilean Gendarmerie, Statistics of the prison population under the responsibility of the Chilean Gendarmerie, June 2023.</i>	LGBTIQ+ women 226	<i>Source: NPM Bolivia, July 2024</i>
	Women with disabilities	

¹ The vast majority of foreign women are in pre-trial detention (56%).
² According to data submitted by Chilean Gendarmerie to the CPT as of June 2023.

49³

Indigenous women

487

Source: Chilean Gendarmerie, Statistics of the prison population under the responsibility of the Chilean Gendarmerie, June 2023.

II. Recommendations

Healthcare

- + It is recommended that the Ministry of Health, in the medium term, work on the design and subsequent implementation of a comprehensive health model⁴ that guarantees access to healthcare without discrimination for persons deprived of liberty in the custody of the Chilean Gendarmerie.

Contact with the outside world

- + It is recommended that the National Directorate of the Chilean Gendarmerie, following the stipulations of Ext. Res. No. 490, which instructs on the authorisation and procedure for virtual visits and Circular No. 118, in the medium term, guarantee free telephone calls or video calls for persons in prison with their significant others and lawyers, ensuring private, regular and quality communication. The possibility of making calls or video calls abroad within the system is encouraged in order to guarantee this right to non-nationals.

Prison life: routine and activities

- + In relation to the use of time, it is recommended that the Ministry of Justice, in the medium term, increase the offer and access to training, recreational and sporting activities, in order to contribute to improving the quality of life of women in prison, especially for those who are in pre-trial detention and who do not have access to this offer because it is a temporary prison stay, although the time is prolonged and there are no actions aimed at preventing the deterioration of mental health and contributing to their reintegration process after serving their sentence in prison.

Pregnant, postpartum and breastfeeding women

- + In the absence of a national legal regulation governing prison life, the *Ministry of Justice and*

³ The registration of persons with disabilities in the Chilean Gendarmerie is an incipient project. As of June 2023, 49 women with disabilities were registered, however, as of the same date, there are still 301 women in prison for whom there is no information.

⁴ In prisons, the healthcare available to inmates depends on the existence and quality of health units located inside the prisons, on access to the public healthcare network (free access), and/or on personal or institutional resources when, due to lack of timely public provision, private healthcare is used. To date, no health unit inside prisons has health authorisation. The Prison Hospital (one at national level) and the health units in public prisons are financed by the Chilean Gendarmerie's own resources, which are very limited in this area. This has an impact on the lack of health professionals (especially doctors and midwives), and therefore on the performance of morbidity and mortality controls, and on the availability of equipment, supplies and medicines for acute and chronic pathologies.

Human Rights is urged, in the short term, to ensure that the rights of women prisoners and nursing mothers are incorporated into the proposed amendment to the Prison Regulations.⁵

- + Meanwhile, the *National Directorate of the Chilean Gendarmerie* is recommended to comply with international standards that require special conditions to be provided to pregnant and nursing mothers during detention, especially for the treatment of pregnancy, childbirth and puerperium in all penal units of the country.

Foreign or indigenous women

- + Considering the continuous reports of verbal and psychological mistreatment of women, particularly of the most vulnerable groups, such as foreign nationals or members of indigenous peoples, it is recommended that the National Directorate of the Chilean Gendarmerie should advance in the training of direct personnel and apply a zero tolerance policy with regard to such behaviour.

Alternatives to detention

- + It is recommended that the Senate Commission on Human Rights, Nationality and Citizenship, in the short term, speed up the discussion and approval of the bill under discussion (bulletin No. 11.073-07), known as the "Sayen Law", which modifies the Code of Criminal Procedure, making pre-trial detention inadmissible for pregnant women and women with children under three years of age.

III. Detention Issues

Body searches

The CPT has been made aware of women being stripped naked during searches of the premises, with the women being forced to remove their underwear and perform squats. The most commonly identified reason for these procedures is that an assault has been committed against a female officer or that a search for prohibited items has been carried out. Raids and body searches are carried out by prison staff of the same sex as the prisoner, not by health staff. A daily record of searches is usually kept, but it does not detail body searches but the procedure in general.

Persons in prison express concern and great discomfort at the situation experienced by their visitors. They are subjected to body searches, to undignified treatment, accompanied by a high economic cost, time, but also because there are regular changes in the list of items and quantities allowed that are often not communicated officially and in advance to the prison population, which directly affects family ties and, therefore, the levels of discomfort and tension in the population, along with perceptions of abuse and arbitrariness on the part of prison officials and/or authorities.

Solitary confinement, isolation

In Chile there are a number of reasons why a person may be subjected to solitary confinement: (1) disciplinary sanction, (2) maximum security measure, (3) personal protection or security, (4) form of prison population management, (5) isolation pending classification or transfer, and (6) isolation for

⁵ In Chile, the Regulations of Penitentiary Facilities (REP), set out in Supreme Decree No. 518, is the main internal regulation governing the functioning of prison activity. In addition to the REP, there are a series of administrative resolutions which regulate specific aspects of the prison system and activity, of a lower normative rank which are not subject to the control of legality exercised by the Comptroller General of the Republic by means of the process of reason. The national penitentiary system lacks a body of regulations of legal rank that establishes minimum standards of respect for the dignity and rights of persons in prison. This means that the principles and guarantees of criminal law only apply up to the moment of the judicial imposition of the sentence, making it difficult to have effective jurisdictional mechanisms for protection in the event of violation of rights.

health reasons. This includes women.

The Regulations of Penitentiary Facilities (REP) only regulate isolation as a sanction, stipulating the safeguards that must be taken into account when a person is placed in isolation, namely: notification of the grounds for isolation, fairness, timing and proportionality of the disciplinary measures, certification of the conditions under which isolation is carried out and daily visits by the prison authority, medical certification of the state of health of the person to be placed in isolation and judicial supervision of the isolation, among others. Isolation in maximum security facilities is not regulated in this regulation, but in circulars or resolutions for each prison. This means that maximum security facilities vary from one unit to another in terms of yard hours, activities offered and visiting and entrustment regimes. The rule stipulates for periodic review of the stay of persons under this regime.

In Chile, there is no regulation for persons who, de facto, are in isolation for reasons associated with personal security, awaiting classification or transfer, or for health reasons. The guidelines established in the SRP to respect the fundamental rights of persons held in isolation as a sanction should be extended to any person held in isolation. However, a number of worrying situations of prolonged and unregulated isolation have been noted: people who have been in collective isolation for more than 6 months for personal security, without visits or video calls; people in isolation for tuberculosis for more than 2 months without being able to contact their families because they have no cash to call on the public telephone; women isolated in pairs in the same 3x2 cell, for weeks and 24 hours a day, without a break or any contact with the outside; people with a mental health diagnosis shackled hand and foot to the bed in the health unit of the penitentiary.

The first factor of risk of torture or ill-treatment which the CPT detects with regard to the use of isolation has to do with the fact that, with the exception of isolation as a sanction, there is no clarity as to what is the prevailing norm in the regulation of the reason, duration, conditions and guarantees or safeguards in the rest of its uses. One of the main problems with the regulations governing the execution of custodial sentences is that the REP is a Decree of the Executive which is therefore administrative, not legal, and is supplemented by various administrative resolutions issued directly by the Chilean Gendarmerie. As they do not have legal status, the regulations not only leave room for arbitrariness and discretion on the part of the local administration of the execution of the sentence, but also prevent internal supervision and external control of the reasons, duration and conditions under which this measure is imposed.

The practice of isolation used in Chile affects a large part of the fundamental rights of persons in prison, mainly associated with the precarious access to information and justice, the lack of communication with the outside world, the precarious access to hygiene products or personal hygiene and clothing, and the severe and sometimes irreversible affectation of physical and mental integrity.

The Chilean Gendarmerie records show that, as of September 2023, there are 476 persons held in isolation for personal security, either by court order (99), for exhausted segmentation (356), for high public awareness (19) or for other reasons (2). The recorded length of stay ranges from 8 days to 2,343 days, i.e. more than 6 years, with an average of 105 days (3.5 months). 92% of the persons in this situation are men. About half of the people in isolation due to exhausted segmentation are in pre-trial detention (47.2%) (GENCHI, 2023b).

National regulations prohibit the isolation of *"pregnant women and up to six months after the end of pregnancy, nursing mothers and those who have children with them"* (Prison Regulations, art. 86, para. 3). The CPT has, however, become aware of the use of isolation of mothers with their infants. Although this is not considered to be common, three cases were identified where the patient was isolated for up to 47 days. The infants and children remained in isolation with their mothers, having the opportunity to attend the crèche and participate in their regular outings, but were then returned to isolation.

Use of means of coercion

In Chile, there have been violations related to the use of shackles, handcuffs or restraints on the beds of pregnant women during childbirth or immediately after the birth of the child. One Mapuche woman, Lorenza Cayuhán, gave birth shackled and in the presence of male guards. Cases were also reported in which women with recent reproductive losses were transferred to the penitentiary unit without waiting for sufficient time for their recovery and using short restraint measures (handcuffs). There were also cases where women who had miscarried were transferred to the prison unit without waiting for sufficient time for recovery and using short restraint measures (handcuffs).

Mental healthcare

In its visits, the CPT has observed that there is significant demand and concern about mental health conditions. Many report receiving medication, particularly antidepressants and anxiolytics, and having had consultations with a psychiatrist or psychologist, but not receiving regular mental healthcare or treatment. Health staff report that the main conditions are related to personality disorders, which are referred to the Technical Area or the mental health programme for diagnosis and treatment.

The mental health of the female prison population should be carefully monitored, especially in the context of increasing suicide rates inside prisons.⁶ According to the Technical Area of the prisons visited, it is indicated that the main difficulties of women prisoners are associated with mental health, which are usually related to drug use and personality disorders.

It was reported that, in order to receive treatment for illnesses diagnosed prior to imprisonment, women are required to present documentation of their medical condition. This measure, while reasonable and understandable, is difficult for many women to comply with as it means mobilising family members or other persons. Even more so for those who come from other regions or countries. As a consequence to the shortage of personnel and health services referred to above, the waiting time for external care is long and has consequences for the timely delivery of diagnosis and treatment.

In general terms, the low number of health professionals inside the units, the very low supply of treatment for mental health conditions, the bureaucratic obstacles that exist for the accreditation of any health condition and, especially, the lack of diagnosis and timely attention to diseases or ailments are worrying. This, considering that death due to illness is the leading cause of death in the country's prisons.

IV. Women in Special Situations of Vulnerability

Pregnant, breastfeeding women and mothers

During its visits, the CPT has identified a number of risk factors for abuse associated with pregnant women. In relation to prenatal care, there are barriers to accessing ultrasound scans, which are generally related to lack of vehicles and staff for transfers, and lack of coordination with public health units. This situation exemplifies the difficulties associated with the lack of integration of prison health into the national health system.

In general, the pregnant women have little information about their pregnancy processes and also about the protocols regarding childbirth and postpartum in prison. The lack of information not only makes it difficult to adequately monitor the perinatal health of pregnant women and their unborn children, but also increases the levels of stress and anxiety of mothers-to-be, which are accentuated by

⁶ Study reveals prison suicide statistics for the first time in the country. In the case of women this risk increases up to 10 times. More info:

<https://www.latercera.com/que-pasa/noticia/estudio-revela-por-primera-vez-cual-es-la-posibilidad-de-suicidarse-en-una-carcel-en-el-pais/ZLGL2DYH5JCMFB24K5V3RMLXPI/>

the limited support networks available to them while they are in prison.

As to the delivery of the baby, the women interviewed stated that they were transferred in a special vehicle, ambulances or vans to hospitals. In most cases, the baby's father or other significant accompanying person is not part of the process, which is generally carried out in the presence of a police officer. Unfortunately, the CPT has followed up on two cases in which women defendants have given birth inside prison, in one of which an *Amicus Curiae*⁷ was filed and in the other case, following an ad hoc visit, urgent findings and recommendations were issued to the authorities.⁸

These findings warn about the occurrence of obstetric violence and discrimination against pregnant women in prison, a situation that not only involves the Chilean Gendarmerie, but also the health staff who assist women who are admitted to hospitals from prisons at the time of childbirth.

Women prisoners and staff report that there is little capacity to provide psychological and mental health intervention for mothers to adequately accompany the postpartum period in prison. The intervention professionals interviewed highlighted this as something pending and very necessary in the context of imprisonment.

In addition, the CPT's monitoring of cases of infants born to sentenced women who had not been registered in the civil register while in the custody of the Chilean Gendarmerie has revealed a violation of the children's right to identity, given the failure to comply with the legal deadline (max. 30 days) for their registration, which also affects the children's access to other rights.

The CPT noted during its visits that, in the event of release, sentenced women generally have greater facilities than convicted women to leave the prison with their children and accompany them on their health checks. In the case of convicted women, these permits are more cumbersome and the rule is that they do not accompany them in cases of medical trips abroad, since in their cases it is the courts that must authorise departure. In this regard, the CPT is particularly concerned regulating and equalising access for children of convicted and sentenced mothers, and that access to healthcare for children without discrimination should take precedence over the procedural status of the mother.

A good practice observed relates to the coordination between the Ministry of Health and the C.P.F. Mayor Marisol Estay de San Miguel to register pregnant women at the clinic, allowing them access to benefits from public programmes.

At a structural level, it can be argued that access to healthcare for the entire prison population is not provided in the same way from one prison to another prisons, and there is also inequalities in access to healthcare between convicted and sentenced women who live with their children in prison. In many cases, it depends on the particular arrangements of the facilities with the local health network. The prison health authorities are aware of this situation and are concerned about it and are working together with the Public Policy Division of the Ministry of Health and Chilean Gendarmerie to improve access to healthcare for pregnant and breastfeeding women.

Foreign or indigenous women

The CPT has highlighted important findings on the situation of foreign women in Chilean prisons, the vast majority of whom have been charged. In the northern part of the country, a large number of them are charged with or convicted of offences under Law 20,000 on drugs, and many belong to indigenous peoples. The programme offer is extremely limited and lacks a gender perspective and an intercultural approach. There has been little or no contact with relatives and support networks to receive parcels, clothes, warm clothes or personal hygiene items, and they have to carry out activities such as washing the

⁷ [*Amicus Curiae* filed in the Court of Appeals of San Miguel. January 2023.](#)

⁸ [*Report of the reactive visit of the Maternal and Infant Section of the CCP Iquique, regarding a delivery and birth in a place of deprivation of liberty.*](#)

clothes of Chilean inmates to generate means, which puts them in situations of vulnerability. Foreign women in this area generally do not have coins to use public telephones – which cost approximately 0.4 USD per minute – and are not always enabled for calls abroad. The importance of consular assistance for contact with family members and information on their legal proceedings is noted. It has been observed that migrant women and women belonging to indigenous peoples suffer verbal abuse with insults from officials and other women in prison.

LGBTIQ+ women

The CPT's monitoring has highlighted several important findings on the situation of some transgender women in prison. It is noted that in general a heteronormative view prevails and that sexual violence continues to be perpetrated. Men's prisons have most of the sexual diversity modules, which segment this group in a differentiated way. Self-identification as LGBT+ when entering these modules is not always fulfilled in all cases, with people being integrated for security reasons. Deficiencies are identified in the provision of reintegration activities and in access to health services, especially hormone therapy for transgender people. Of concern is the lack of confidential reporting channels and situations of mistreatment, including sexual abuse, given the high exposure of this group to these risk situations. Although progress has been made in treatment and safety, stigma and exposure to physical and sexual violence persist.

V. Alternatives to Detention

The CPT is encouraged by the recent and progressive development of national jurisprudence aimed at decreeing house arrest for pregnant women or women who are mothers or have children under their responsibility, as can be seen in decisions handed down in different judicial instances, the Supreme Court, some Courts of Appeal (Concepción, Chillán and Puerto Montt) and some guarantee courts (Concepción, Los Ángeles, Chillán and Puerto Montt).

In Judgement rol 50967-22 of August 2022, the Supreme Court highlights the need to take into account specific international norms regarding women in prison with children, in order to develop optional measures and alternative measures to pre-trial detention and sentencing. In other judicial instances, the Court of Appeals of Concepción and Chillán issued rulings in July and August 2022⁹ which, following the defence's request for amparo, substituted pre-trial detention for total deprivation of liberty at home, as established in article 155 a) of the Code of Criminal Procedure.

In June 2023, the Ministry of Justice and Human Rights published the "*Plan de Trabajo Condiciones Carcelarias de Mujeres Privadas de Libertad*" [*Work Plan for Prison Conditions for Women Deprived of Liberty*], which details measures to advance the improvement of prison conditions for women with a focus on habitability and social reintegration. Following a participatory consultation, the CPT submitted methodological and content comments on the plan, some of which were incorporated into the final version. The document recognises the increase in the number of women in pre-trial detention and the need to implement a gender-specific approach in the prison system, defining a series of measures and lines of work in the short, medium and long term. Despite the progress made, the CPT has observed that some short-term and medium-term measures have not made any progress.

VI. Other Relevant NPM Information on Women in Prison

⁹ Court of Appeals of Concepción. Judgments Rol 698-2022; 666-2022; 743-2022; 837-2022; 872-2022; Court of Appeals of Chillán. Judgment Rol 221-2022.

- [Report of the visit to the C.P.F. of San Miguel: Condiciones de reclusión y atención de salud de mujeres gestantes en la Sección Materno Infantil \[Conditions of detention and health care of pregnant women in the Maternal and Infant Section\]. February 2024.](#)
- [Visit Report to Alto Hospicio CP. March 2023.](#)
- [Visit Report to the Penitentiary Hospital of C.D.P. Santiago Sur. February 2023.](#)
- [Informe Misión de Observación Migrante: Interculturalidad, Custodia y Cuidado de Personas Migrantes en el norte de Chile Cap. VII, Sección Materno Infantil \(SMI\) C.C.P. Iquique y Capítulo IX, SMI C.P.F. Antofagasta \[Migrant Observation Mission Report: Interculturality, Custody and Care of Migrants in Northern Chile Chapter VII, Mother and Child Section \(SMI\) C.C.P. Iquique and Chapter IX, SMI C.P.F. Antofagasta\]. November, 2023](#)
- [Report on the visit to the Centro Penitenciario Femenino Mayor Marisol Estay de San Miguel. December 2022.](#)
- [“La invisibilidad de las mujeres en el sistema penitenciario” \[The invisibility of women in the prison system\]. Thematic chapter Annual Report 2022. November 2022.](#)
- [Report on the Visit to the Mother and Child Section of the Centro Penitenciario Femenino San Joaquín . April 2022.](#)

This report is part of the Global NPM report on Women in Prison.

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