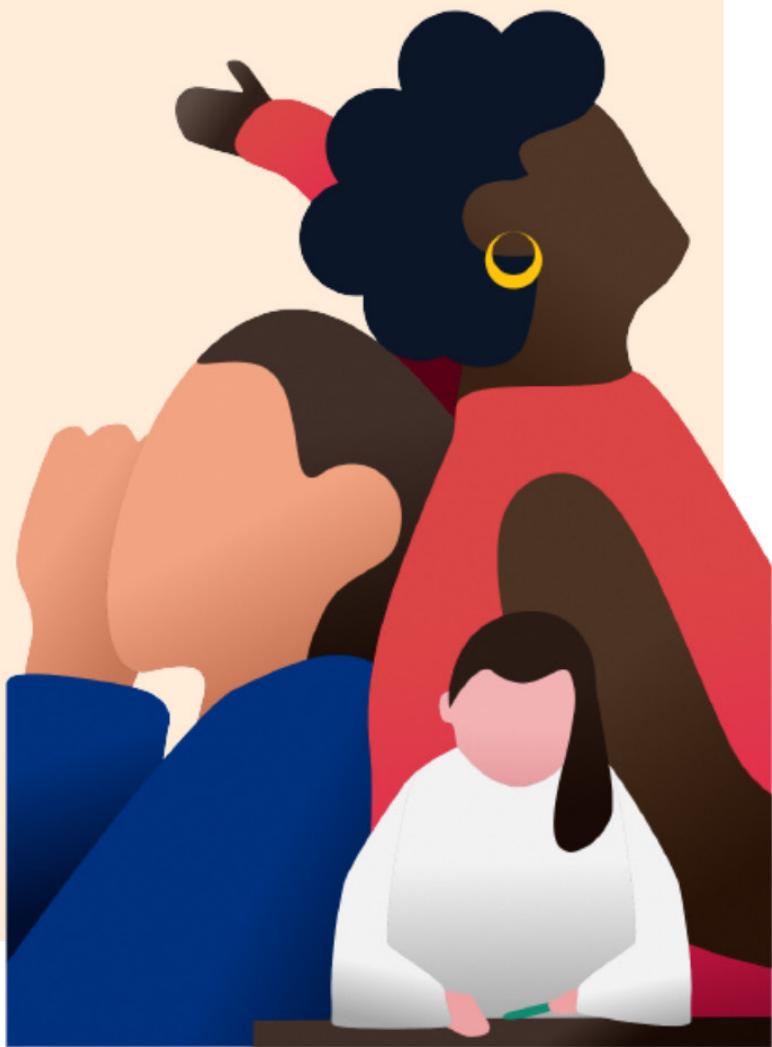


Women in detention: Body searches

Improving protection in situations
of vulnerability



association for
the prevention
of torture



The Association for the Prevention of Torture (APT) is an international nongovernmental organisation based in Geneva, working globally to prevent torture and other ill-treatment.

Founded in 1977, the APT aims at reducing the risks of torture and ill-treatment by advocating and promoting practical measures such as monitoring of places of detention, implementation of safeguards and protection of detained persons in situations of vulnerability. The APT has played a key role in establishing international standards and mechanisms to prevent torture, among them the Optional Protocol to the UN Convention against Torture (OPCAT) and National Preventive Mechanisms. To implement its vision of societies without torture, the APT works at the national, regional and international levels to support different partners, ranging from authorities, national human rights institutions to civil society organisations.

www.apt.ch

Materials contained in this publication may be freely quoted or reprinted, provided credit is given to the source: "Women in detention: Body searches - Improving protection in situations of vulnerability, January 2022, Association for the Prevention of Torture. Retrieved from: www.apt.ch".

(c) Association for the Prevention of Torture, January 2022.

Written by: Luce Ahouangnimon, Senior Adviser, Detention and Mobilisation

Cover illustration: Images adapted from artworks by Marek Tartal under a Creative Commons-Attribution-NonCommercial-ShareAlike 4.0 International (CC-BY-NC-SA)

Women in detention: Body searches

Improving protection in situations of vulnerability

January 2022



association for
the prevention
of torture

Women in detention: Body searches

“Most people see body searches as an obstacle to visit their loved ones. They are [...] a form of violence that we have normalised.”

*Andrea Casamento, SPT member and Executive Director,
Association of Families of Detainees (ACIFAD)*

While sometimes necessary for security reasons and to prevent the entry of illegal goods into places of deprivation of liberty, body searches can be extremely traumatic for women detainees. This is especially the case for those women who have experienced sexual violence or other kinds of trauma. In some cases, body searches may be used by prison staff as a means to punish or humiliate women detainees or as a form of reprisal against them and their relatives. Arbitrary or compulsory body searches can also deter family members and friends from visiting their loved ones in detention. This can have a negative impact on the well-being of prisoners and their reintegration process on release. Accordingly, the use of body searches needs to be clearly regulated and associated with safeguards and intrusive searches resorted only if absolutely necessary.

In line with the 2010 [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders](#) (the “Bangkok Rules”) and with the 2015 [United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (the “Nelson Mandela Rules”), the APT calls for better protection of women detainees through clear and consistent implementation of international standards regulating the use of body searches.

Part I: What standards apply?

In 2010, the UN adopted the [Bangkok Rules](#), a set of standards for the treatment of women prisoners. For the first time, an international document included specific provisions related to body searches of women:

Rule 19: Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.

Rule 20: Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

Rule 21: Prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.

It is important to note that the foremost priority when conducting searches is to respect the dignity of the person being searched. The Bangkok Rules also highlight the importance of ensuring those conducting searches are adequately trained and the need to follow established procedures.

Other applicable standards

The standards on body searches were further developed in the Nelson Mandela Rules (Rules 51 to 54). Rule 51 emphasises that searches must not “be used to harass, intimidate or unnecessarily intrude upon a prisoner’s privacy”.

The [Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#) establish that body searches should be governed by the principles of necessity, reasonableness and proportionality. They should also be carried out “under appropriate sanitary conditions by qualified personnel of the same sex, and shall be compatible with human dignity and respect for fundamental rights”. Invasive vaginal and anal searches are prohibited. The use of alternative means to conduct body searches, including by scanning equipment, is encouraged.

In relation to LGBTQI+ persons, the [Yogyakarta Principles](#) require that States “shall adopt and implement policies to combat violence, discrimination and other harms on grounds of sexual orientation, gender identity, gender expression, or sex characteristics faced by persons who are deprived of their liberty, including with respect to such issues as placement, body or other searches”.

Part II: The issues at stake

In places of deprivation of liberty, body searches may constitute a necessary security measure to prevent the entry or movement of dangerous or prohibited items. Such searches can be divided into three categories:

- **Frisking** (or pat-down), where the detainee remains dressed
- **Visual inspections** (or strip searches), where the detainee must undress and is subjected to a visual inspection (in some circumstances they may be asked by the prison staff to perform squats), without physical contact
- **Invasive body searches** (or intimate body cavity searches), where the detainee is subjected to a physical examination of their body cavities (the anus and vagina).

Modalities of searches on women detainees

Being searched can be extremely humiliating – and even traumatising – for women if the search is undertaken by men police or prison officers. It can be even more humiliating and degrading if penitentiary staff use this opportunity to grope or touch women inappropriately, humiliate them or sexually assault them.

Even if only women staff are involved, all types of body searches can cause significant humiliation for those being searched. This is especially the case if searches are conducted arbitrarily or on a routine basis, and if the dignity and privacy of the women being searched are not respected.

Such cases were recorded in the [2018-2019 Biannual Report](#) of the National Mechanism for the Prevention and Combat of Torture in Brazil (Mecanismo Nacional de Prevenção e Combate à Tortura). The NPM observed that collective strip searches were conducted on women detainees in front of other prisoners to humiliate them.

Searches, therefore, should not be conducted as a blanket policy for all women. Rather, they should be conducted on an individual basis, based on the principles of necessity and proportionality.

Moments of accrued risk

Body searches are commonly undertaken upon arrival to a detention facility: after transfer from another prison; when returning to prison after a Release of Temporary Licence (ROTL); following a visit; during internal moves inside the facility; or during a cell-search.¹ These are moments when women detainees are particularly at risk of gender-based violence through inappropriate or arbitrary body searches. Abuse is more likely to take place if searches are conducted in an isolated area, when women find themselves out of sight and left on their own with an officer.

¹ Prison Reform Trust, [Searching of the Person](#), November 2020.

Respect for dignity and privacy

Because of their intrusive nature, body searches are a severe infringement of a person's privacy. Concerted and consistent action must be taken to uphold the dignity of women when body searches are conducted. In this regard, women prisoners must be searched in private and out of sight of men staff and detainees and according to established procedures (Bangkok Rules, Rule 19). Accordingly, they should only be conducted when absolutely necessary and according to strict protocols that respect the person's dignity. In fact, the Inter-American Commission on Human Rights, in its [Principles and Best Practices on the Rights of Liberty of Persons Deprived of Liberty](#), has recommended that "intrusive vaginal or anal searches are prohibited by law" (Principles XXI).

Who can perform body searches?

International standards are very clear on the matter: body searches can only be conducted by staff of the same gender as the person being searched. This means that women must only be searched by women prison staff. In addition, Rule 19 of the Bangkok Rules specify that women staff shall be appropriately trained to conduct body searches. Intrusive searches should be conducted by medically trained staff of the same gender that are not part of the regular health-care service of the prison or by prison staff "appropriately trained by a medical professional in standards of hygiene, health and safety" (Rule 52, Mandela Rules).

Use of alternative methods

Prison authorities are encouraged to use appropriate alternatives, such as electronic equipment (X-rays), metal detectors or cells equipped with dry toilets when there is a suspicion of drugs having been ingested. Alternative methods of personal searching should be available to replace strip searches and body cavity searches; for example, X-ray machines, metal detecting portals, hand held metal detectors or BOSS (Body Orifice Security Scanner) chairs. Security technology devices should accommodate all gender identities.

In cases where detention facilities cannot afford such equipment and where there is a suspicion that contraband is hidden in body cavities, an ultrasound exam can be performed. Another solution includes having the detainee wait alone under surveillance for the substance or object to dislodge. However, suspicion of contraband in body cavities should never be used to keep women in solitary confinement for longer than absolutely necessary.²

Consequences of refusing to undergo searches

In places of deprivation of liberty, the concept of consent is problematic. Detainees are held in a closed and coercive environment against their will and under the authority of correctional staff. In this context, it could be argued that whenever they 'consent' to undergo body searches, they are in fact coerced to agree.

² International Committee of the Red Cross, [Body searches in place of detention](#), 2006.

Women in detention: Body searches

Detainees are expected to submit to a search or otherwise face disciplinary measures, such as spending time in isolation or being deprived of certain privileges.³ These forms of retaliation have an aggravated impact on women, who may find themselves deprived of family visits or their support networks and which constitute an essential pillar to their mental health during their time in detention.

Searches conducted on relatives and other visitors

In many countries, people who visit detainees are also subjected to body searches for safety reasons. In practice, these security measures disproportionately affect women: mothers, wives, daughters, girlfriends or sisters of detainees. There is a very high risk that body searches that humiliate visitors will deter visits. The risk is enhanced when these searches are applied systematically, regardless of the women's age or health conditions (for example, with older women, young girls, pregnant women).

Searches of children visiting a parent in prison are sensitive and prison staff must be particularly attentive and respectful while conducting such searches. In this regard, prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners (Rule 21, Bangkok Rules).

There are no established procedures or standards for the search of professional visitors, such as legal representatives, social workers and doctors. However, modalities should be agreed with the relevant professional bodies upon visits to ensure a balance between security and the right of confidential professional access.⁴

Searches conducted on detention monitors

States are obliged under the [Optional Protocol to the Convention against Torture](#) (OPCAT) to provide members and staff of National Preventive Mechanisms (NPMs) the privileges and immunities necessary for the independent exercise of their functions.⁵ While it is accepted that essential basic security measures are to be respected for the benefit of all concerned, it is equally important that those working for independent monitoring bodies - in particular, NPMs - are not in any way restricted in their work. They should not feel that they might be subjected to any form of pressure, including being searched. The [United Nations Subcommittee on Prevention of Torture](#) (SPT) is very clear on this matter and stresses that "States should ensure that both the members of the NPM and its staff enjoy such privileges and immunities as are necessary for the independent exercise of their functions".⁶ This recommendation naturally extends to women monitors and confers protection against illegal or abusive searches of NPM staff.

³ Ibid.

⁴ Coyle A, *A Human Rights Approach to Prison Management*, p. 65.

⁵ Article 35, Optional Protocol to the Convention against Torture.

⁶ United Nations Subcommittee on Prevention of Torture, [Guidelines on National Preventive Mechanisms](#), CAT/OP/12/5, para. 26.

For other monitors, such as representatives of civil society organisations, this situation may unfortunately vary as they may not benefit from the same safeguards provided under the OPCAT.

Part III: Intersectionality and vulnerabilities

Gender intersects with other characteristics and identities, including sexual orientation, race and ethnicity, religion, disability, gender identity and expression, and age. The combination of several of these factors can exacerbate the vulnerability that women face in the criminal justice system. They may heighten their risk of being subjected to torture and other ill-treatment, including through unjustified or invasive body searches.

Risks faced by LGBTQI+ women

LGBTQI+ women - and especially trans women - face greater risk of sexual violence by prison staff, especially if they are under the supervision of men officers. Women detainees viewed as 'masculine' because of their appearance can be subjected to harassment, physical abuse and 'forced feminisation' by prison staff. They can suffer specific and targeted abuse, including so-called 'corrective rapes' performed through unjustified invasive body searches.

The Local Preventive Mechanism (LPM) from the Buenos Aires province of Argentina reported such degrading practices in its [2020 Annual Report](#). During a visit to a prison, the LPM reported that women and transgender persons were subjected to humiliating searches and forced to undress completely in front of others, including in the presence of men prison staff. Other incidents included women detainees being violently searched each time they entered or left the cell block, women detainees being thrown to the floor, and metal detectors used to touch their private parts.⁷

Body searches involve particular risks of abuse for intersex and trans persons. In practice, trans women are often searched by men officers, despite identifying themselves as women. Similarly, trans men are often searched by women officers, despite identifying as men. And this is where there is a gap in existing international standards, which provide that body searches shall be conducted by staff of the same sex as the person being searched. The standards do not necessarily address the specific situation of trans persons; in particular, if their gender identity is not recognised by the authorities; if they are in a process of transitioning; or if they are gender-fluid (i.e. they do not identify with a specific gender identity). Accordingly, the UN Special Rapporteur on Torture has recommended that States "guarantee all transgender detainees the choice of being searched by male or female officers".⁸

⁷ Mecanismo Local de Prevención de la Tortura, [Informe Anual 2020](#).

⁸ Human Rights Council, 31st session, [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), A/HRC/31/57, January 2016.

Women in detention: Body searches

In addition, as reported by the Rio de Janeiro (Brazil) State Mechanism to Prevent and Combat Torture, because of their sexual identity, trans persons in some institutions are subjected to humiliating body searches, involving nudity, including collectively and in front of other persons deprived of liberty.

Risks faced by ethnic minorities and indigenous women detainees

In some countries, women from indigenous communities are over-represented in the criminal justice system and may be targeted by law enforcement and prison staff on the basis of entrenched social stereotypes. Indigenous women and women belonging to ethnic minorities are subjected to higher levels of institutional violence and are often more likely to be victims of sexual harassment or rape in places of deprivation of liberty. Once they are placed in detention, minorities and indigenous peoples are more likely to be victims of segregation and are more often assigned to maximum security areas, even when the nature of their offence does not justify it.

In this context of targeted and systemic discrimination, data shows that [indigenous women detainees](#) are strip searched at higher rates than non-indigenous women.⁹ Prior to being convicted for criminal offences, indigenous women offenders have often experienced violence and victimisation, including physical and sexual assault, emotional abuse and psychological abuse. This situation is illustrated by an incident that took place in January 2021 that triggered a wave of indignation in Australia. An [incarcerated Aboriginal woman](#), held on remand in a prison in the Australian Capital Territory, was forcibly strip searched by four guards dressed in riot gear. The woman was a sexual assault survivor and had a serious heart condition, which was known to the prison staff. An investigation was carried out into this ‘critical incident’ by an independent oversight body, which found the woman’s human rights had been breached. This case, among others, has sparked grave concern among health care professionals who work with Aboriginal women detainees. There is a risk that body searches can add to the vulnerability that Aboriginal women deprived of liberty face. Correctional authorities are encouraged to address these risks by implementing alternative measures, including the use of scanning technology. This case, among others, has sparked grave concern among health care professionals who work with Aboriginal women detainees. There is a risk that body searches can add to the vulnerability that Aboriginal women deprived of liberty face. Correctional authorities are encouraged to address these risks by implementing alternative measures, including the use of scanning technology.

⁹ Larkin D., University of New South Wales Law School, [Excessive strip-searching shows discrimination against Aboriginal women](#), July 2021.

Necessity of a protective legal framework

State institutions have a clear role to ensure the protection of persons deprived of liberty. They are required to be proactive in meeting their obligations under the Bangkok Rules and the Nelson Mandela Rules. The adoption of clear guidelines, regulations and procedures adopted and implemented by penitentiary institutions provide additional protection to persons deprived of liberty subjected to body searches, especially those who need higher protection, such as LGBTQI+ persons.

In **Argentina**, guidelines were adopted in 2016 on searches involving trans persons in the federal penitentiary system. These guidelines stipulate that there should be alternatives to searches involving nudity and, if it cannot be avoided for good reason, prison staff should only supervise clothing and belongings, leaving health personnel to conduct the search.¹⁰

In **Colombia**, the General Regulations of Detention Facilities stipulate that trans persons in detention should be consulted on a case-by-case basis as to their preference on whether a male or female guard should carry out the search. It also includes guidelines on the treatment of trans persons visiting detention facilities.¹¹

In **Costa Rica**, guidelines for the treatment of LGBTQI+ persons in the prison system establish the right of LGBTI persons to choose the gender of the persons responsible for conducting body searches, as well as the obligation that staff carrying out such searches are adequately trained. They also prohibit discriminatory body searches and those aimed at determining the status of the genitals of persons deprived of liberty. The guidelines stipulate that staff who engage in such conduct will be subject to sanctions.¹² Further, institutional guidelines were adopted within the prison system to specifically regulate searches of trans persons deprived of liberty, as well as searches of visitors.¹³

¹⁰ Federal Penitentiary System, *Guía de procedimiento “visu médico” y de “control de registro” de personas trans en el ámbito del servicio central de alcaidías*, 2016.

¹¹ INPEC, *Reglamento General de los Establecimientos de Reclusión del Orden Nacional-ERON a cargo del INPEC*, 2016.

¹² Ministry of Justice and Peace of Costa Rica, *Guidelines for the care of persons with diverse sexual orientation, expression or gender identity, attached to any of the levels of the Costa Rican prison system*, Articles 22-23, 2018

¹³ Ministry of Justice and Peace, Directorate of Penitentiary Police, Circular No. 05-2017, 12 June 2017

Part IV: What can independent oversight bodies do?

To support monitoring bodies fulfil their preventive mandate, Penal Reform International (PRI) and the APT developed a [Fact Sheet](#) to provide analysis and practical guidance on addressing systemic risk factors facing persons deprived of liberty, including body searches. The [Guidance document on the Bangkok Rules](#) by PRI also offers practical advice for oversight bodies, with a section focusing on body searches. This document highlights new standards and practices around the world that seek to create more effective criminal justice systems that respect women's rights.

Reviewing laws & policies

Oversight bodies must review national legislations and policies to ensure they comply with international standards, in particular the [Bangkok Rules](#) on body searches (Rules 19-21) and the Mandela Rules (Rules 50-52). As part of their monitoring activities, they should check whether the standards are applied in practice. They should also check if prison procedures define the circumstances in which searches are allowed and if they stipulate that women should only be searched by women staff. Whenever there is a gap between law or policies and practice, oversight bodies should propose changes and amendments to ensure they are applied in practice.

In **France**, the Contrôleur général des lieux de privation de liberté (CGLPL) recently issued an [opinion](#) on the care and management of transgender persons in places of deprivation of liberty (revising a previous opinion issued in 2010). The CGLP proposed a series of recommendations to amend applicable laws and regulations. The Code of Criminal Procedure establishes that searches must be carried out by an officer “of the same sex” as the person being searched without any further specification. In the gendarmerie, searches are carried out by an officer of the same sex as the one shown on the civil status documents of the person in custody.¹⁴ The CGLPL also recommended the establishment of a dialogue between the officers and the person being searched to give precedence to physiological status over civil status.¹⁵

Monitoring

Oversight bodies are responsible for conducting detention monitoring visits to centres of deprivation of liberty. Within their mandate, they can analyse thoroughly who is being searched, how often and under what circumstances, in order to identify patterns of potential discrimination and abuse. Their role is to monitor the issue closely and address any concerns they identify, using a preventive approach.

¹⁴ Note-express no 060882 GEND/DOE/SDPJ/PJ du 27 juin 2011 relative au régime des mesures et fouilles à l'occasion d'une mesure de garde à vue.

¹⁵ Contrôleur général des lieux de privation de liberté, [Avis du 25 mai 2021 relatif à la prise en charge des personnes transgenres dans les lieux de privation de liberté](#), July 2021.

Women in detention: Body searches

While undertaking their monitoring visits, it is vital that they gather sufficient and credible information on the treatment and conditions of detainees. It is also crucial that the information collected is verified through different sources, a process known as ‘triangulation’. Certain detained persons or groups of detainees, such as women and girls, are especially vulnerable and require additional attention and protection. They should identify if alternative search methods, such as scans, are available to replace invasive body searches or strip searches and be able to access all records relating to body searches that have been conducted. Additionally, monitoring bodies should check if prison procedures define the circumstances in which searches are allowed and if they stipulate that women should be searched by staff of the same gender.

In **Brazil**, the National Penitentiary Department has defined specific procedures related to body searches of LGBTI persons deprived of liberty and visitors. It has also established the importance of replacing body searches with alternative methods, such as the use of body scanners.

Documenting

Private interviews with detainees provide much of the information necessary to document the conditions of detention. In order to assess if body searches are conducted according to established standards, the monitoring team should conduct interviews with detainees, families, medical staff, prison staff and penitentiary authorities. They should also ascertain whether appropriate records of searches are kept; in particular, when strip searches and invasive body searches are conducted; the reasons for the search; the identities of those searched and those who conducted the searches; the outcomes of the searches; and who issued authorization for the search. They should also identify if alternative methods of searching are available, such as scanners, to replace invasive body searches or strip searches.

Reporting

Reports are a central component of a monitoring body’s sustained efforts to improve the treatment and conditions in detention. In their report, monitoring bodies should consider how the criminal justice and deprivation of liberty systems affect men and women, including trans women, differently. The report should provide an analysis of their findings, with regards to international human rights standards and other relevant documents, including the Bangkok Rules. Importantly, the report should include practical recommendations to address the issues identified by the monitoring body.

NPMs should produce a report following every monitoring visit they conduct. They can also prepare a thematic report, covering different places of detention over a certain period of time. These reports will have a preventive focus, identifying patterns or issues of concern and proposing practical recommendations that draw on relevant international standards.

Dialogue for change and advocacy

Based on their reports, NPMs should enter into a constructive dialogue with the authorities regarding the implementation of their recommendations. Through dialogue and advocacy, oversight bodies have the power to drive long-term change on legislation, policies and practices.

In 2015, following years of advocacy by the Local Preventive Mechanism (LPM) of Rio de Janeiro, Bill 7010/2015 was approved by the state parliament to abolish manual body searches on visitors to penitentiary institutions in that state. The Bill also stipulated that searches shall only be conducted through the use of electronic security equipment, such as metal detectors and scanners.

Part V: Recommendations for change

While body searches are humiliating and degrading for all detainees, they exacerbate the vulnerability of women deprived of liberty and expose them to additional suffering and stigma. The APT therefore recommends that:

1. Body searches of persons deprived of liberty and visitors should be replaced, as far as possible, with other alternative methods, such as body scanners.
2. Body searches of persons deprived of liberty and visitors should be carried out according to the principles of legality, necessity and proportionality.
3. Invasive body searches of detainees and visitors should be prohibited by law.
4. Body searches of LGBTQI+ persons should be carried out with respect for the dignity and privacy of the individual and by appropriately trained personnel.
5. LGBTQI+ persons in detention and visitors should have the right to choose the gender of the staff who carry out the body searches.
6. When body searches involve nudity, and it cannot be avoided for good reason, searches should be conducted using a two-step process (first from the waist up, and then from the waist down) to avoid the person being completely naked.

Resources

- Penal Reform International, *Guidance Document on the Bangkok Rules: Implementing the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, December 2021.
- Association for the Prevention of Torture, Digital learning module on *Gender-Sensitive Detention Monitoring*, 2021
- Association for the Prevention of Torture, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*, 2018
- Penal Reform International and the Association for the Prevention of Torture, *Women in detention: a guide to gender-sensitive monitoring*, Second edition, 2015.
- Penal Reform International and the Association for the Prevention of Torture, *Body searches Addressing risk factors to prevent torture and ill-treatment*, Second edition, 2015.
- International Committee of the Red Cross, *Body searches in place of detention*, 2006
- APT Detention Focus Database, *Body searches*



Follow the campaign

#FairAndSafe



www.apt.ch/en/campaigns/women-prison



www.facebook.com/apt.geneva



www.twitter.com/apt_geneva



www.linkedin.com/company/association-for-the-prevention-of-torture-apt-



association for
the prevention
of torture