

Ceremonies of Degradation¹: Strip-Searching in Women's Prisons

Women in Prison Advocacy
Network (WIPAN)

This article contains extracts and derives from an upcoming Women in Prison Advocacy Network (WIPAN) policy paper of the same title.

Special thanks to Mollie Boland Anderson and Aude Wormser – without their invaluable research and input, this article would not have been possible.

I. INTRODUCTION

Strip-searching has long been a mainstay of everyday prison procedure. Predicated on notions of safety and contraband detection, it is considered a necessary aspect of prison policy. However, despite its widespread use, there is little empirical evidence to show that it is an efficient means of discovering illicit implements and substances. Even more concerning is the way in which it abrogates the personal rights and freedoms of women in prison. For the many women in prison who have been victims of physical and/or sexual abuse, strip-searching represents a form of revictimisation – one which they are subjected to on a regular basis. This article contends that the highly degrading and invasive nature of strip-searching, coupled with its harmful psychological effects, makes it a wholly inappropriate and outdated method of ensuring prison safety. By rethinking the ways in which prison security goals are pursued, it is hoped that a more gendered and rights-based approach towards the treatment of women in prison can be achieved.

II. STRIP-SEARCHING IN WOMEN'S PRISONS

In NSW, a strip-search is defined as:

A search of a person or of articles in the possession of a person that may include (a) requiring the person to remove all of his or her clothes, and (b) an examination of the person's body (but not of the person's body cavities) and of the clothes.²

As the definition reveals, strip-searching is an inherently invasive process that compromises the personal privacies of individuals subjected to it. In the case of women in prison, the process can be especially humiliating. A substantial number of women in prison come from disadvantaged social and personal backgrounds, where experiences of abuse are not uncommon. According to statistics, 45 per cent of women in prison have reported being abused and/or controlled by their partners or spouses within the year prior to their incarceration.³

Similarly, 49 per cent of all female offenders were victims of at least one form of abuse as a child.⁴ By subjecting women in prison to regular strip-searches, authorities are replicating the dynamics of coercion and abuse. Women in prison already live in a hyper-regulated reality, where their every move is under strict control by correctional officers.⁵ For these women, strip-searches represent a further form of oppression, wherein feelings of powerlessness and loss of esteem are invoked.

Furthermore, strip-searches have the potential to reinforce concepts of learned helplessness among women who have been abused.⁶ The process can be particularly traumatising when performed by, or in the presence of, male correctional officers, especially for women who may come from certain Indigenous or other cultural backgrounds, where relationships with men are restricted.⁷ This can have adverse impacts on the emotional and psychological states of women in prison, and can serve to increase the risk of self-harm and substance abuse.⁸ To this extent, strip-searching may exacerbate existing health and safety concerns instead of mitigate them.

Despite the harmful and degrading impacts of strip-searching, its use has often been justified on the basis of prison security – in particular, the need to stamp out prison drug culture.⁹ There is little doubt that substance abuse poses a serious problem in prisons. A significant number of women in prison have histories of drug abuse, with 61 per cent of women in prison having reported using illicit drugs within the year prior to their imprisonment.¹⁰ The overrepresentation of illegal drug use among female prison entrants highlights the need for prisons to deal with the health and safety risks that it presents.

Although strip-searching is aimed at containing these risks, there is little evidence to show that it is effective in reducing the distribution and accessibility of illicit drugs in prison.¹¹ According to a study conducted by Sisters Inside Inc, of 41 728 strip-searches performed on women in prison in Queensland from 1999 to 2002, only two uncovered drugs.¹² Similar studies have produced comparable results.¹³ When these results are contrasted with the significant damage that strip-searches do to the women subjected to them, their use in women's correctional facilities becomes difficult to justify.

III. WHERE ARE WE NOW?

The potential for strip-searches to be processes that routinely the degradation of women in prison begs the question – what are we doing to ensure that the rights and freedoms of these women are being protected?

A. The International Rights Framework

In 2010, the United Nations General Assembly adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules').¹⁴ The rules marked the first successful attempt by the United Nations at addressing the gender specific issues faced by women in contact with the criminal justice system.

One of the issues dealt with by the Bangkok Rules is that of body searches, and in particular, the threat they pose to the personal privacies of women in prison. Under rule 19, personal searches (including strip-searches) are to be performed only by trained women staff in accordance with established procedures.¹⁵ The rule also emphasises the importance of protecting the dignity and self-respect of the women subject to such searches.¹⁶ Consistent with this, rule 20 encourages the development of alternative screening mechanisms (e.g. body scans) to replace strip-searches.¹⁷ In doing so, the Bangkok Rules implicitly recognises the psychological and emotional harm that strip-searches can have on women in prison, and attempts to discover viable alternatives to strip-searching.

Although the Bangkok Rules is the first international instrument wholly dedicated to tackling the specific challenges faced by women in contact with the criminal justice system, its principles are built on existing rights frameworks. In seeking to deal with the unique lived experiences of women interfacing with the criminal justice system, the Bangkok Rules is consistent with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁸ It also fills a gap left behind by the Standard Minimum Rules for the Treatment of Prisoners,¹⁹ by explicitly extending the scope of human rights protections available to individuals in prison to women. In many ways, strip-searching policies contravene principles regarding gender discrimination. By applying a one-size-fits-all policy of strip-searching on all individuals in prison without taking into account the significantly detrimental impacts it has on the psychological states of women in prison, authorities have failed to adequately safeguard the needs of these women.

Another international instrument that has been significant in the area is the International Covenant on Civil and Political Rights (ICCPR).²⁰ Article 7 of the ICCPR protects individuals against 'cruel, inhuman or degrading treatment or punishment'.²¹ In a similar vein, article 17 states that individuals should not be subjected to arbitrary or unlawful interference with their privacy and enshrines the right to legal protection against such interferences.²² As some authors have noted, the ways of strip-searching abrogates the privacy rights of women in

‘Women in prison already live in a hyper-regulated reality, where their every move is under strict control by correctional officers. For these women, strip-searches represent a further form of oppression, wherein feelings of powerlessness and loss of esteem are invoked.’

prison by subjecting them to considerable trauma, contravenes these principles.²³

B. The Regulatory and Procedural Framework

The failure of Australia to satisfactorily comply with the international framework of standards regarding the treatment of women in prison is concerning given the harmful, long-term effects that strip-searching has on these women.

In NSW, the power to search men and women in prison is contained in both statute and regulation. Section 79(r) of the *Crimes (Administration of Sentences) Act 1999* (NSW) allows for regulations to be made in relation to the use of body searches. Pursuant to this, reg 46 *Crimes (Administration of Sentences) Regulations 2014* (NSW) sets out the rules governing the search of individuals in prison and their cells. These regulations are complemented by the Corrective Services NSW Operations Procedures Manual (‘the procedures manual’).²⁴ For the purposes of this article, the 2012 version of the procedures manual will be relied on, as it is the most recent version of the strip-search procedures accessible by the authors.²⁵

The regulatory and procedural framework contains some safeguards that attempt to limit the potential for strip-searches to be used in an abusive and punitive way:

1. Strip-searches may only be performed in two circumstances: when the general manager directs that it be done, or when a correctional officer considers it appropriate.²⁶
2. Strip-searches must be conducted by a member of the same sex, unless there is an emergency or where exceptional circumstances apply.²⁷
3. Strip-searches must be conducted ‘with due regard to dignity and self-respect and in as seemly a way as is consistent with the conduct of an effective search’.²⁸
4. Strip-searches must be performed by a minimum of two correctional officers (with one giving the relevant directions and the other observing the search), and must be supervised by a senior officer.²⁹
5. Search areas are to afford individuals with sufficient privacy and space, and correctional officers are to provide clear instructions on how the search will be conducted.³⁰
6. Prior to a search, the individual must be given the opportunity to surrender any weapons/contraband they may have on their persons.³¹
7. Correctional officers are to wear surgical-type gloves and are prohibited from touching the inmate.³²

Ceremonies of Degradation: Strip-
Searching in Women's Prisons
Women in Prison Advocacy Network



Illustration by Angelina Yurlova

Gender-specific safeguards are also available to women in prison:

1. Where a woman is participating in the Mothers and Childrens Program and is residing with her child/children, staff must ensure the search is conducted away from any children.³³
2. Strip-searches of women are performed in two stages, with only one-half of the body (either the top or bottom half) exposed at any one time.³⁴

While these safeguards attempt to strike a balance between the invasiveness of strip-searching and its use as a security policy, not all of the safeguards are sufficiently adequate.

First, there is something to be said about the test of appropriateness as a threshold for whether a strip-search should be conducted. Although the test seeks to limit the discretion of correctional officers, it sets a low bar for body searches. In fact, it is arguably a lower standard than the 'reasonable suspicion' test imposed on police officers wanting to conduct body searches without a warrant.³⁵ Moreover, the test of appropriateness is one that is highly subjective and open to abuse. What is or is not 'appropriate' is likely to differ between correctional officers.

Second, the fact that the rule against strip-searches by members of the opposite sex is relaxed in emergencies and exceptional circumstances is problematic to the extent that the words 'emergency' and 'exceptional' are not defined. This leaves the scope of the safeguard uncertain.

Third, while standards that make reference to the dignity and self-respect of women arguably minimise the trauma of ordinary body searches (i.e. frisk and pat-down searches), they are difficult to reconcile with strip-searches. As the accounts of many women in prison reveal, strip-searching is a humiliating process in and of itself, regardless of whether the search is done in accordance with procedures. Requiring correctional officers to protect the dignity of these women when conducting what is an inherently degrading exercise is not only paradoxical but also impossible. Furthermore, instruments that frame the standard in this way erroneously imply that there is an appropriate and correct method of conducting strip-searches, and fail to recognise the deep emotional and psychological impacts they have on women in prison.

The difficulties presented by some of these safeguards are exacerbated by the fact that certain aspects of strip-searching policy continue to compound existing power discrepancies between correctional officers and women in prison. Regulation 131(4)(a) of the *Crimes (Administration of Sentences) Regulation 2014* (NSW) for example, allows correctional officers to have recourse to force to search in specified circumstances.³⁶ It is not open to individuals in prison to refuse to participate in body searches, as resistance and non-compliance is a correctional centre offence.³⁷ To this extent, the power

imbalance between correctional centre authorities and women in prison is reinforced, as women in prison are unable to assert their privacy rights. Even more humiliating is the fact that women who are on their period may be asked to remove their tampons or sanitary pads as part of the search.³⁸ This can be especially demeaning, particularly when performed in the presence, and under the behest, of correctional officers. When such practices are viewed within the context of the personal histories of women in prison and the basic standards of treatment that they are entitled to, the degrading nature of strip-searching as a policy becomes evident.

IV. CONCLUSION

Ultimately, the impacts of strip-searching must be examined against the backdrop of the unique lived experiences of women in prison. Although they are subject to certain restrictions as punishment for their offences, women in prison remain individuals with inherent rights. For these women, the loss of liberty represents the totality of their punishment – anything that goes beyond that is unwarranted. In the case of strip-searching, the harmful emotional and psychological impacts that it has on women in prison constitutes a form of extra-curial punishment that cannot be justified, particularly when the inefficacious nature of strip-searches is recognised. It is time that we ended the abuse and discrimination against women in prison, and brought our criminal justice policies in line with recognised standards of fairness and humanity.

REFERENCES

1. See generally Harold Garfinkel, 'Conditions of Successful Degradation Ceremonies' (1956) 61(5) *American Journal of Sociology* 420.
2. *Crimes (Administration of Sentences) Regulation 2014* (NSW) reg 46(5).
3. Devon Indig et al, '2009 NSW Inmate Health Survey: Key Findings Report' (Report, Justice Health, 2010) 70.
4. Lubica Forsythe and Kerryn Adams, 'Mental Health, Abuse, Drug Use and Crime: Does Gender Matter?' (Trends and Issues in Crime and Criminal Justice, No 384, Australian Institute of Criminology, 2009) 5.
5. Amanda George, 'Strip-searches: Sexual Assault by the State' (Paper presented at Without Consent: Confronting Adult Sexual Violence, Melbourne, 27–9 October 1992) 212. <http://www.aic.gov.au/media_library/publications/proceedings/20/george.pdf>.
6. Cathy Pereira, 'Strip Searching as Sexual Assault' (2001) 27 *Hecate* 187, 189.
7. See, eg, Melissa Lucashenko and Debbie Kilroy, 'A Black Woman and a Prison Cell: Working with Murri Women in Queensland Prisons' (Research Paper, Sisters Inside Inc, 2005) 17.
8. Jude McCulloch and Amanda George, 'Naked

Power: Strip Searching in Women's Prisons' in Phil Scraton and Jude McCulloch (eds), *The Violence of Incarceration* (Routledge, 2009) 107, 115.

9. Pereira, above n 6, 190.

10. Ingrid Johnston and Jenna Pickles, 'The Health of Australia's Prisoners 2012' (Report, Cat. No PHE 170, Australian Institute of Health and Welfare, 2013) 74.

11. Pereira, above n 6, 190.

12. Sisters Inside Inc, Submission to ACT Human Rights Commission, *Human Rights Audit and Review of Treatment of Women at the Alexander Maconochie Centre (AMC)*, October 2013, 45.

13. See also Jude McCulloch and Amanda George, 'Naked Power: Strip Searching in Women's Prisons' in Phil Scraton and Jude McCulloch (eds), *The Violence of Incarceration* (Routledge, 2009) 107, 118; Susanne Davies and Sandy Cook, 'Women, Imprisonment and Post-release Mortality' (1998) 14 *Just Policy: A Journal of Australian Social Policy* 15, 19.

14. *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, GA Res 65/229, UN GAOR, 3rd Comm, 65th sess, 71st plen mtg, Agenda Item 105, UN Doc A/RES/65/229 (21 December 2010).

15. *Ibid* annex 12.

16. *Ibid*.

17. *Ibid*.

18. *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981).

19. *Standard Minimum Rules for the Treatment of Prisoners*, ESC Res 663 C, UN ESCOR, Plen, 24th sess, 994th mtg, Supp No 1, UN Doc E/3048 (31 July 1957); *Standard Minimum Rules for the Treatment of Prisoners*, ESC Res 2076, UN ESCOR, Plen, 62nd sess, 2059th mtg, Supp No 1, UN Doc E/5988 (13 May 1977).

20. *International Covenant on Civil and Political Rights*, opened for signature 19th December 1966, 999 UNTS 171 (entered into force 23 March 1976).

21. *Ibid* art 7.

22. *Ibid* art 17.

23. Kat Armstrong, Eileen Baldry and Vicki Chartrand, 'Human Rights Abuses and Discrimination Against Women in the Criminal Justice System' (2007) 12 *Australian Journal of Human Rights* 203, 212; Debbie Kilroy, 'Stop the State Sexually Assaulting Women in Prison: Strip Searching' (Paper presented at Expanding Our Horizons: Understanding the Complexities of Violence Against Women, Sydney, 18–22 February 2002) 19.

24. Corrective Services NSW, 'Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres' (Procedures Manual, Corrective Services NSW, September 2012).

25. In 2014, Corrective Services NSW made updates to its Operations Procedures Manual. However, s 12.4, which relates to the searching of inmates and correctional centres, has not been made publicly available. As a result, the present article relies on the 2012 version of s 12.4 and any recent updates made to the procedures may not be captured in this article.

26. *Crimes (Administration of Sentences) Regulation 2014* (NSW) reg 46(1).

27. Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres* (Procedures Manual, September 2012) s 12.4.6.

28. *Crimes (Administration of Sentences) Regulation 2014* (NSW) reg 46(3).

29. Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres* (Procedures Manual, September 2012) s 12.4.6.

30. *Ibid* s 12.4.6.1.

31. *Ibid*.

32. *Ibid*.

33. *Ibid* s 12.4.6.2.

34. *Ibid*.

35. See *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ss 21, 31.

36. *Crimes (Administration of Sentences) Regulation 2014* (NSW) reg 131(4)(a).

37. *Ibid* reg 46(4).

38. Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres* (Procedures Manual, September 2012) s 12.4.6.2.