

Briefing on the UN rules for the treatment of women prisoners and non-custodial measures for women offenders ('Bangkok rules')

Contents

Introduction

Why the Bangkok Rules are needed

Content of the Rules

Implementing the Rules

Resources

Background to adoption of the 'Bangkok Rules'

Introduction

On 21 December 2010 the UN General Assembly (GA) took an important step towards meeting the needs and characteristics of women in the criminal justice system. By adopting Resolution A/RES/65/229, without a vote, the GA approved the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (known as the 'Bangkok Rules', in recognition of the leading role which the Thai Government, under the direction of Her Royal Highness, Princess Bajrakitiyabha, played in their promotion and adoption). The Rules supplement but do not replace the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Standard Minimum Rules for Non-custodial Measures (the 'Tokyo Rules').

Girls (girl children under the age of 18) should, in line with the Convention on the Rights of the Child, benefit from additional provisions and protections appropriate to their age, but this briefing and the Rules themselves recognise that until this is achieved, any higher protections afforded under the Rules should apply also to girls.

For a more extensive background to the adoption of the Rules, please see below.

The text of GA Resolution 65/229 is not yet available at the time of writing, but for the full text of the Rules as adopted by the Third Committee of the GA in October 2010, in all six UN languages, please see: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/C.3/65/L.5>

The UN Office on Drugs and Crime (UNODC) Commentary does not form part of the Bangkok Rules but represents a gathering of international best practices that countries may wish to take into consideration as background information and guidance when implementing the provisions of the

Rules. At the time of writing this is not yet available on the UNODC external website, but a draft version may be accessed on the PRI website in English http://www.penalreform.org/files/Commentaries_Draft_UN_rules_for_the_treatment_of_women_prisoners.doc

PRI and QUNO participated in the development of the rules, and warmly welcome the result. By issuing this briefing, we hope to encourage their dissemination and implementation.

The Quaker United Nations Office (QUNO) represents Friends World Committee for Consultation (Quakers), an international non-governmental organisation with General Consultative Status at the UN, and works to promote the peace and justice concerns of Friends (Quakers) from around the world.

Contact: Rachel Brett, rbrett@quono.ch

Penal Reform International (PRI) is a membership based international non-governmental organization with Special Consultative Status at the UN, and works to promote criminal justice and penal reform worldwide.

Contact: Mary Murphy, mmurphy@penalreform.org



2

Why the Bangkok Rules are needed

Women (and girls) are in the minority of prisoners around the world, constituting an estimated 2 to 9% of national prison populations. For this reason, and other reasons relating to women's status and position nationally and internationally, women's characteristics and needs as subjects of the criminal justice system have tended to remain unacknowledged or little understood, and their needs are largely unmet. The UN Standard Minimum Rules for the Treatment of Prisoners, adopted more than 50 years ago, themselves reflect this shortcoming.

Meanwhile, the number of women imprisoned has increased significantly in some countries, and at a greater rate than for men. (The number of women in prison at the time of writing stands at an estimated half a million worldwide. Many detentions, particularly short-term ones, may of course go unrecorded.) This increase has largely been ascribed to States' adoption of harsher reactions to the non-violent crimes for which women are usually apprehended (property and drug-related offences, characterised in many administrations as petty or less serious ones.) The majority of such women usually come from socially disadvantaged communities and groups.

A number of problems accompany and characterise the situation of women in the criminal justice system, and particularly in relation to detention. Foreign national women will experience particular difficulties within the criminal justice system, and prison in particular, as will women from other disadvantaged groups. Some problems will also apply to men to a similar or lesser degree. The problems which gave rise to the Bangkok Rules include the following:

- **Fewer women's prisons, and locations far from home, family and friends**

The small number of women prisoners usually means fewer prisons for women and girls and greater distances from their homes and families. When this is compounded by inadequacies in transport, communication and visiting provisions, and inequity in poor families' and female family members' access to resources, maintaining contact with family members (including dependant children) and the outside world can be difficult or even impossible. This leads to isolation, which can have serious social and

psychological effects. Failure to allocate resources to building dedicated women's prisons can also give rise to a situation in which women are housed in annexes of male prisons, often inadequately separated from the male population and in danger of psychological and physical abuse. In such circumstances, where men suffer inadequate visiting arrangements through the impact of overcrowding, this will also affect co-housed women, but often with different consequences.

- **Problems in the care of dependant children residing outside the prison**

Research shows that many women prisoners are the sole or primary carer of young children, and have other family responsibilities. The effects of even a short period of custody can be particularly devastating for a woman (and dependant child) if she is the sole or main carer of her children. In many countries there is a high risk of women, including women with dependant children, losing their accommodation and employment upon detention. A mother whose children have been placed in the care of the state or another person often cannot reclaim custody unless she can prove that she has accommodation and the means to support her family. This can cause lasting or even permanent family dislocation.

- **Problems in the care of dependant children residing in prison**

Out of sheer necessity, or in an attempt to alleviate the traumatic and long term effect of separation on the mothers and their children, most administrations make some provision for children, and particularly babies, to remain in the place where their mother is detained. Even the best funded prisons can usually not provide an appropriate physical and psychological environment for children. In the least well funded there are a range of risks to children's well-being. In neither case is there usually the chance for women to be with their children beyond a stipulated number of months or years. Non-custodial sanctions and measures may not exist for women and may be poorly adapted to their circumstances and responsibilities as carers.

- **Heightened vulnerability of women to mental and physical abuse**

In some countries problems in the recruitment, training and oversight of law enforcement officials lead to women in their care suffering abuse. Such abuse can range from verbal humiliation to rape. Rape, and ‘transactional’ sex as a means of survival, leave more than psychological scars; they also increase the risk of unwanted pregnancy, HIV and other blood borne diseases. The impact of even routine strip-searches on women is disproportionately greater than on men, as in many countries women detainees as a group present a higher incidence of previous sexual assault than both the general community and their male counterparts. Women with cultural or religious backgrounds that emphasise modesty will find strip-searching particularly degrading and traumatic. Menstruation and pregnancy also affect women’s experience of searches. Such problems are reinforced when women are held in the same premises as men, particularly where there are no or insufficient female staff. In such cases the mere fact of searching makes them vulnerable to sexual assault by guards and even male prisoners.

- **Heightened vulnerability of women to self-harm and suicide**

Women, especially those who are the primary carers of their children and families, who are illiterate, poor, and/or have been violently victimised, feel particularly vulnerable on first admission to prison. They may be less aware of their legal rights, and extremely distressed not only about what is happening to them but at the impact that their detention will have upon their dependants. Women may therefore be at particular risk of self-harm and suicide during the immediate period following admission to prison.

- **Particular challenges in catering for physical characteristics and healthcare needs**

Female prisoners usually find themselves in a system run primarily by men for men. Frequently, as a result, their specific healthcare and hygiene needs are not adequately taken into account (and by extension, nor are those of the children who accompany them). While poor hygiene affects both men and women detainees, women are especially vulnerable to the risks presented by such conditions during menstruation and during and after pregnancy. In many countries poor access to ante- and post-natal care in the community is likely

to be reflected in even worse access in detention, with lack of resources of all kinds. There may also be a lack of awareness among managers that reproductive health needs vary according to a woman’s age and situation. Additionally, research shows that in some countries more women than men prisoners are drug users and infected with HIV and AIDS. Where experience of violence, including sexual violence, is particularly prevalent among women prisoners, the numerous short- and long-term psychological, sexual and reproductive health consequences for women may be poorly recognised.

- **Economic and social disadvantage, reduced access to justice**

Women’s offending and imprisonment are often closely related to their economic and social disadvantage. In some societies women have less access to education than men and have fewer legal rights. Typical female offenders in many countries will be young, unemployed, have low levels of education and have dependent children. This may be reflected in particular vulnerability to being deprived of their liberty, for reasons including lack of information on rights and options, an inability to pay fines for petty offences or to meet financial and other bail or sentencing obligations. It is not uncommon for women to be detained in the interests of ‘protection’ rather than for alleged perpetrators or potential perpetrators of crimes against them to be apprehended.

- **Increased stigmatization**

Women offenders in most societies contravene prevailing role models for their sex. In some countries legislation may even permit women’s detention for challenging role models based on religion, custom and particular perceptions of a woman’s place in society. This can lead to more extreme forms of ostracization by family and the community during detention and upon leaving prison than is experienced by men. In some countries women lose their parental rights even where this does not meet the best interests of their children, and without any examination of what criminal justice options might serve the children’s best interests.

4

Content of the Rules

The 70 Rules address the following issues relevant to women's experience of the criminal justice system:

- Prisoners under arrest and awaiting trial: access to non-custodial measures, post-sentencing dispositions
- Prisoners under sentence: classification and individualisation, the prison regime, social relations and aftercare, including:
 - Admission: registration and allocation
 - Personal Hygiene
 - Healthcare services: medical screening on entry, gender specific care, mental health and healthcare, HIV and AIDS prevention, treatment, care and support, substance abuse treatment programmes, suicide and self-harm, preventive healthcare services, responses to allegations of rape and other violence and torture
 - Safety and security, searches
 - Discipline and punishment: instruments of restraint, information to and complaints by prisoners, inspections
 - Contact with the outside world
 - Institutional personnel and their training
- The specific needs of pregnant women, breastfeeding mothers, women with dependant children, juvenile female offenders, foreign nationals, minorities and indigenous people
- The need for research, planning and evaluation, public awareness raising, information sharing and training

Implementing the Rules

Who needs to act and what actions are required?

Implementation of the Rules' provisions requires action at international/regional and national levels.

Actors at the national level include:

- Ministries of justice, home affairs/interior, health, education, housing, employment, social affairs, women and children
- Ombudsman offices and other national human rights Institutions, including National Preventive Mechanisms under the UN Optional Protocol to the Convention against Torture (OPCAT)
- Police, legal aid, probation and prison services and their professional bodies
- Courts, judges, prosecutors/state attorneys, the legal profession
- Local government, social services, employment, housing and children's services
- Physical and mental health institutions and providers, general and specialist
- Independent quality control and monitoring bodies
- Specialist civil society organisations (for example those working on women, children, healthcare and health promotion, prison and criminal justice reform, torture prevention)

Actions required:

- Establish an appropriate process that includes dissemination of the Rules, and consultation with national and international stakeholders to build a consensus on the way forward
- Seek assistance from international or regional bodies, and bilaterally, in identifying existing good practice and possible sources of support
- Identify gaps in current policy, legislation, regulations, structures, relationships and practices on the treatment of women and girls in the criminal justice system, and possible reasons behind these gaps

- Draft national (and/or regional) reform proposals with stakeholders
- Ensure compatibility of new proposals with existing national legislation, taking the opportunity to address any gaps in complying with international standards, and to ratify new conventions or report under existing obligations
- Prepare an analysis of implementation costs and other resource needs with stakeholders, and make resource proposals
- Make plans for further dissemination, including through comprehensive, inter-agency training and follow-up training, and inclusion of the Rules in academic and professional curricula
- Make plans for ongoing research and monitoring of the situation of women in the criminal justice system, and evaluation of the Rules' implementation, including any resulting impact, positive or negative.

Actors at international and regional levels include:

United Nations, other international and regional criminal justice, health and human rights secretariats, treaty bodies and special procedures, particularly those with a specific brief on the rights of women and children

Actions required:

- Access, become familiar with, translate and disseminate the Rules and the Commentary to the Rules internally
- Train staff in the Rules' provisions
- Draw the Rules and their Commentary to the attention of relevant governments and bodies
- Identify appropriate institutional opportunities to support States in implementing the Rules' provisions
- Incorporate the identified opportunities for action in institutional planning and budgeting
- Refer to the Rules in country visits, and in particular when monitoring prisons and other places of detention
- Monitor implementation and offer ongoing support

Resources

Handbook for Prison Managers and Policymakers on Women and Imprisonment (UNODC, 2008)

<http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> (English)

http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment_russian.pdf (Russian)

Women's Health in Prison: Correcting gender inequity in prison health (WHO, 2009)

http://www.euro.who.int/_data/assets/pdf_file/0004/76513/E92347.pdf (English)

http://www.euro.who.int/_data/assets/pdf_file/0007/76516/E92583.pdf (French)

http://www.euro.who.int/_data/assets/pdf_file/0006/76515/E92347R.pdf (Russian)

Quaker United Nations Office (QUNO) www.quno.org
Penal Reform International (PRI) www.penalreform.org

6

Background to adoption of the 'Bangkok Rules'

The Standard Minimum Rules for the Treatment of Prisoners were adopted by the First United Nations (UN) Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the UN Economic and Social Council in 1957. They remain the key point of reference in evaluating prison conditions.

Since 1955, the needs and nature of prison populations, and the criminal justice systems of which they form a part, have altered. Further international guidelines concerning imprisonment have been developed. Two of the most important regarding imprisonment are the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the 1990 Basic Principles for the Treatment of Prisoners. The Standard Minimum Rules for Non-custodial Measures ('Tokyo Rules') of 1990 sought to expand use of community based responses to crime and ensure that prison was used as a last resort. Further provisions were made to respond to the needs and characteristics of children (the 1989 Convention on the Rights of the Child, the 1985 Standard Minimum Rules for the Administration of Juvenile Justice, 'Beijing Rules', the 1990 Rules for the Protection of Juveniles Deprived of their Liberty and Guidelines for the Prevention of Juvenile Delinquency, 'Riyadh Guidelines').

These rules and principles contain only a handful of provisions specifically directed to the needs and characteristics of women and girls in the criminal justice system. In 1980 the 6th UN Congress on the Prevention of Crime and Treatment of Offenders explicitly recognised that women often do not receive the same attention and consideration as male offenders because of their small numbers. This was acknowledged to have resulted in limited access for women to the necessary programmes and services, and placement in detention facilities far from their families and home communities. It was accepted that women usually have the major responsibility for the care of children.

In 2000 States committed themselves in the Vienna Declaration on Crime and Justice to take into account and address any disparate impact of programmes and policies on women and men, and to develop action-oriented policy recommendations based on the special needs of women as prisoners and offenders.

At its 18th session in 2009 the Commission on Crime Prevention and Criminal Justice (the Commission) adopted Resolution 18/1 entitled "Supplementary Rules Specific to the Treatment of Women in Detention and in Custodial and Non-Custodial Settings", submitted by the Thai Government. This recognised that many existing prison facilities worldwide were designed primarily for male prisoners and that the number of women prisoners had increased significantly. It also expressed awareness of women prisoners as a vulnerable group with specific needs and requirements. With this Resolution, the Commission requested the Executive Director of the United Nations Office on Drugs and Crime to convene in 2009 an open-ended intergovernmental expert group meeting to develop, consistent with the Tokyo Rules, supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings.

An informal round-table meeting was organised in February 2009 by the Government of Thailand that brought together experts from all regions of the world, including among the non-governmental experts representatives of PRI and QUNO. A subsequent inter-governmental expert group was convened in Thailand in November 2009, where experts from 25 Member States, again including PRI and QUNO representatives, produced draft Rules, drawing on, amending and supplementing the results of the February meeting, which had included a separate commentary setting out an empirical basis.

At the 12th United Nations Congress on Crime Prevention and Criminal Justice held in Salvador, Brazil, in April 2010 the inter-governmental expert group reported on the outcome of the meeting in Bangkok. The UN Crime Commission endorsed the draft Rules at its 19th session in May 2010, and a draft resolution (document A/C.3/65/L.5) was adopted by the Economic and Social Council on 22 July 2010. On 14 October 2010 the Third Committee (Social, Humanitarian and Cultural) approved a text recommending to the General Assembly the adoption of a resolution setting out the Bangkok Rules, and on 21 December 2010 the Rules were adopted without a vote (A/RES/65/229).