



Promoting penal  
reform worldwide

University of Chicago Law School

**'WOMEN'S IMPRISONMENT:  
CAUSES, CONDITIONS AND CONSEQUENCES'**

**EXPERT MEETING  
14 May 2013, Chicago**

## **Challenges at the international level & added value of the UN Bangkok Rules – Speaking Notes**

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### **1. Problems/ gaps – international perspective**

#### **1.1. Lack of awareness, attitude**

When we talk about 'women's access to justice', most people – state representatives, organisations and institutions alike – discussions unfortunately pass with little mention of women offenders and women prisoners, if at all.

This aspect appears to be far less 'attractive' as subject for discussion, and unfortunately, gender stereotypes mean that women are not supposed to commit criminal offences. But whether we like it or not, women are not only victims, but can also be suspects, defendants and convicted prisoners.

Advocating for a gender-sensitive approach to women offenders, I have come across 2 initial responses.

The first reaction is: "Why would women offenders be treated differently from men? This would constitute discrimination!"

Once stakeholders have accepted the argument that accounting for the specific needs of a particular group does not constitute discrimination, but ignoring them would, the second barrier is the lack of awareness about what the needs of women offenders actually are.

Thirdly, state representatives respond by sighing about the allegedly huge costs related to the implementation of the Bangkok Rules.

Yet, many of the Rules do not require additional resources for their implementation, but a change in awareness, attitude and practices.

But I would also like to challenge the financial argument in a more systemic look into penal policies.

## 1.2. Overuse of imprisonment affecting vulnerable groups disproportionately

There is an over-reliance on imprisonment in general, yet affecting women offenders disproportionately.

For male and women offenders, penalisation and imprisonment has become the first response, rather than the last resort, even though non-custodial measures and sanctions prove to be more effective in order to prevent reoffending, in particular for minor and non-violent offenses.

With the urge to be 'tough on crime', the size of the prison population throughout the world is growing. It is estimated that more than 10.1 million people, including sentenced and pre-trial prisoners, were held in penal institutions worldwide in May 2011, and in the past two years the prison population grew in 71 per cent of countries.

Out of 194 jurisdictions for which data had been collected, 118 had a rate of prison occupancy above 100 per cent. The global problem of overcrowding is one of the major factors for prison conditions incompatible with human rights, but also unnecessary detention places an enormous financial burden on governments.

It is not surprising that in criminal justice systems under financial distress, the allocation of resources for vulnerable groups – including female offenders and women prisoners – is not a priority.

Non-custodial alternatives for imprisonment, besides a number of other positive effects, would free resources needed elsewhere in criminal justice systems, not least in ensuring the needs of vulnerable groups in detention such as women prisoners are met.

## 1.3. Lack of gender-sensitive alternatives

Yet, even where non-custodial alternatives to imprisonment are in place, they tend not to be gender-sensitive.

Usually, the same criteria are applied to both men and women in decisions relating to pre-trial detention as well as at sentencing stage, usually not taking into account women's specific background such as their caretaking responsibilities and their previous history of domestic violence.

Secondly, there is a shortage of alternatives suited for women offenders' needs, hindering their application. For example, where bail implies regular reporting to authorities, transport to the respective police station or court must be affordable and feasible for women, and not jeopardise their caretaking responsibilities.

As women are mainly convicted of petty crimes closely linked to poverty, gender-sensitive alternatives carry a huge potential to avoid incarceration in the first place. After all, the prevention of unnecessary imprisonment is the best medicine against abuse in detention.

It is therefore that I would like to highlight Bangkok Rule 60, which provides guidance on the types of services that should be elements of a strategy of alternatives for women offenders.

- It is now recognised that there are **gender differences in substance dependence** and related complications that require different treatment approaches. In the delivery of community-based programmes, women may also need gynaecological care, and opportunities to discuss issues such as violence and pregnancy.

- In issuing non-custodial sanctions, the possible **care-taking responsibilities** of a woman must be kept in mind.
- **Women-only services** provide opportunities, for instance for victims of violence to be in a place of safety from male violence, and may also help women overcome the stigma and shame they experience in cases of substance use.
- **Ensuring access** to women living in rural areas, and providing free-of-charge services require adequate resources to ensure the effective functioning of non-custodial programmes.

#### 1.4. Lack of gender-sensitive monitoring

A forth obstacle to effectively address concerns related to women detainees I would like to highlight is the lack of gender-sensitive monitoring.

External and independent oversight mechanisms, where in place, can play a key role in identifying risk factors for abuse and systemic shortcomings that contribute to it.

Yet, where monitoring bodies are in place, they often over-rely on documenting individual cases and interviews with individuals, rather than identifying systemic risk factors, which can be established without putting individual complainants at risk.

Secondly, many monitoring bodies fall short of meeting the requirement of a gender-balanced multi-professional team – as required by Rule 25 (3) of the Bangkok Rules and other sets of standards such as OPCAT.

But also, very often monitoring bodies are themselves not aware of the gender-specific needs of women prisoners, and the Bangkok Rules as a framework for assessing whether women's prisons are fit for purpose.

## 2. Added value of the UN Bangkok Rules

In the second part of my presentation, I would like to highlight a few areas related to violence against women in custodial settings, where I think the UN Bangkok Rules provide particular added value.

### 2.1. Identification of victims of torture and ill-treatment

We also know, that the risk of ill-treatment is particularly ripe during arrest, interrogation and transit between the police station and prison because there are usually few, if any, safeguards against abuse.

The medical screening on entry to a prison is one of the essential steps in preventing and combating ill-treatment and torture by law enforcement authorities. It is also vital in providing for the psychological and physical needs likely to arise from such abuse.

It is in this context that Bangkok Rule 7 details the prisons authorities' responsibilities if the medical examination reveals that a woman prisoner has been subjected to abuse during previous custody.

Rule 7 allows to draw something like a **Checklist in cases of ill-treatment or torture**:

- 1) Any woman who has been diagnosed as having been abused in previous custody should be fully and clearly informed of her right to make a complaint.

- 2) Adequate assistance shall be provided to her to enable her to proceed with her complaint if she so wishes.
- 3) Yet, as in some circumstances and cultures women may not wish to take legal action against the perpetrators of abuse, and their wishes must be respected.
- 4) The principle of confidentiality should be respected during this process, and the woman should be properly protected if she is at risk of retaliation.
- 5) The woman concerned should receive the psychological support she needs whether or not she chooses to complain.
- 6) Appropriate tests should be undertaken and treatment prescribed for any health complications resulting from the incident, all the while respecting the principle of informed consent and medical confidentiality.

## 2.2. Gender-specific healthcare

A third key area in which the Bangkok Rules provide detailed guidance is gender-specific healthcare, the lack of which can also amount to torture or ill-treatment.

The Bangkok Rules are very detailed on how healthcare programmes must be designed in a gender-specific way and preserve women's dignity and privacy, and they are even more important since other sets of standards are lacking guidance altogether.

The provisions range from medical examinations to be conducted by women physicians and nurses as a matter of principle, and in a way that accounts for women's vulnerability when exposing their bodies, to guidance on the presence of non-medical staff during examinations, and to provisions on the confidentiality of medical information and the principle of consent, safeguards lacking entirely in other detention standards such as the UN Standard Minimum Rules for the Treatment of Prisoners, but emphasised in Rule 8 of the Bangkok Rules.

## 2.3. Mental healthcare provisions and prevention of suicide and self-harm

Very detailed guidance is furthermore provided on mental healthcare provisions, and the prevention of suicide and self-harm, which is of particular importance in light of research indicating that women in prison attempt suicide and self-harm at a much higher rate than male prisoners.

The Bangkok Rules take into account that safeguards to this end are already required at the **admission stage**, and that too often suicide and self-harm are addressed through medication or result in punishment of the prisoner.

Seeking to provide an alternative to the 'classic' responses to the risk of suicide and self-harm, Bangkok Rule 12 requires a holistic, gender-sensitive and individual approach, involving issues such as access to education, vocational training and recreation, family contact and a balanced diet, taking account of any trauma that a woman may have suffered and looking at the root causes of the mental healthcare issues.

Rules 13 and 16 recognise that prison staff are an essential part of a gender-specific response to women under distress, require training and capacity building initiatives, and call for the development of a prevention strategy in consultation with mental healthcare and social welfare services.

## 2.4. Searches

There have been reports of self-harming following inappropriate treatment during searches, which demonstrates how sensitive this issue is in general, but particularly for women.

The Bangkok Rules reiterate that women prisoners should **only be searched by the same gender**, important due to the increasing use of mixed staff in some jurisdictions which leads to searches, including of female visitors, being carried out by male staff.

But Bangkok Rules 19 and 20 go beyond this minimum requirement and call for searches to adhere to the right to dignity, being carried out by staff properly trained and in accordance with well established procedures; and alternative screening methods to be developed, such as scans, to replace strip searches and invasive body searches.

### **3. PRI Toolbox**

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#### **Briefing on the discrimination of women in the criminal justice system**

The briefing maps concerns relating to the discrimination of women as alleged offenders in the justice system, indicates references by human rights bodies, and gives examples of concerning practices as well as good practice in the following areas.

#### **Guide on gender-sensitive monitoring**

A guide to help bodies monitoring places of detention incorporate a gender perspective into their work and address violence against women and girls in detention. Jointly published with the Association for the Prevention of Torture.

#### **Guidance Document**

A comprehensive guide, giving the rationale behind each rule, to who they are addressed, suggested measures for implementation at policy and practical level, and examples of good practice to inspire new thinking.

#### **Index of Implementation**

A comprehensive checklist for an assessment of implementation of the Rules, structured for different actors. Can be used in developing policies and strategies.

-> The latter two documents to be jointly published with the Thailand Institute of Justice.

#### **e-course on women and detention, based on the Bangkok Rules**

A self-paced online course combining analysis of the Rules, interactive assessments and application of the Rules to real life situations, with a certificate issued at completion.

#### **Briefing on girls and detention**

This Briefing will examine the nature of the challenges faced by girls in detention, the international and regional standards in place to address them and makes recommendations for States and civil society for strengthening the rights of girls who are held in detention.

#### **PRI e-bulletin**

A quarterly round-up of information on women in the criminal justice system, the Bangkok Rules and activities by PRI and others on the Rules. Sign up by emailing [info@penalreform.org](mailto:info@penalreform.org)

Many of these tools are available in English, Russian and Arabic. Other languages may follow.

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