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Women in Detention and the UN Bangkok Rules: Non-Custodial Measures for Women in Conflict with the Law

在押妇女与联合国《曼谷规则》：
针对触犯法律女性的非拘禁措施

The Dui Hua Foundation has translated, with permission, Modules 1, 2, and 9 of Penal Reform International's e-course Women in Detention: Putting the UN Bangkok Rules into Practice. These sections of the e-course deal primarily with non-custodial measures for women in conflict with the law. Dui Hua seeks to enhance technical knowledge about these measures among officials, scholars, criminal justice practitioners, and concerned citizens in China.

对话基金会承蒙国际刑罚改革协会的许可，翻译了其网上课程「在押妇女：实践联合国曼谷规则」的第一、第二和第九单元，这几部分主要探讨针对触犯法律的女性的非拘禁措施。「对话」寻求提升中国官员、学者、刑事司法人员和对此问题关注的公民在这领域的专门知识。

Illustrations by John Bishop ©Penal Reform International

For more information, please visit PRI's website for the full e-course at <http://penalreform-elearning.org/index.php>.

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This booklet contains the following modules¹:

1. Introduction, Human Rights Framework and Non-discrimination
2. Unnecessary Imprisonment: Non-custodial Measures
3. Pregnant Women and Mothers With Children

一、引言、人权框架及不歧视待遇

二、不必要之拘禁：非拘禁措施

三、孕妇与带有子女的母亲

¹ This booklet's Module 3 is a translation of Module 9 of the PRI e-course. All facts contained in this translation were known to be accurate in 2013 when the PRI course was developed. Some policies may have changed.

Module 1
Introduction, Human Rights Framework and Non-discrimination

单元一
引言、人权框架及不歧视待遇



Introduction

The adoption in 2010 of the United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, known as the Bangkok Rules, represents an important step forward in recognising the specific needs of women in the criminal justice system and providing a comprehensive set of standards that should be applied in the treatment of such women. Until then, there were only a handful of relevant provisions in existing international standards.

Before learning about the specific Rules and what is required to put them into practice, it is important to understand the typical background of women offenders and their needs. It is also helpful to know how the Bangkok Rules fit in with other standards that exist.

Learning Objectives: Introduction, human rights framework and non-discrimination

In this module you are going to cover the following questions:

- What are the characteristics of female offenders?
- What are the needs of female offenders?
- In which ways does the criminal justice system discriminate against women?
- What is the international framework on prisoners' rights?
- How do the Bangkok Rules supplement existing standards?
- To whom are the Bangkok Rules addressed?



引言

联合国于 2010 年采纳《女性囚犯待遇及女性罪犯非拘禁措施规则》（简称《曼谷规则》），承认妇女在刑事司法系统中之特定需要，为其待遇确立周详标准，意义重大。在此之前，国际标准中的有关条文，寥寥可数。

在研习条文细节及其实施所须之前，了解女犯人的典型背景与需要尤为重要。认识《曼谷规则》如何配合其他固有标准，亦有裨益。

研习目标：引言、人权框架及不歧视待遇

此单元将涵盖以下问题：

- 女犯人具有何种特质？
- 女犯人有何需要？
- 刑法体制如何歧视妇女？
- 囚犯权利有何国际框架？
- 《曼谷规则》如何补充固有的标准？
- 《曼谷规则》面对的有关方面？



Julie Bilotta's Case

Julie Bilotta's story illustrates one of the more obvious characteristics of women prisoners, related to pregnancy and child-birth. It also shows how, even in so-called "developed" country prison systems, the needs of female prisoners are overlooked.

In September 2012, Julie Bilotta was 8 months pregnant and in pre-trial detention on drug and fraud-related charges at a prison in Canada's capital of Ottawa. She started to experience labour pains, but prison staff told her she was in phantom labour and gave her indigestion medicine.

After continuing to complain, Julie was told to "shut up" and was moved to a segregated cell. A guard told her, "You should have thought about that before you got pregnant."

Pre-trial detention



Prisoners in pre-trial detention are detainees who have been arrested in a criminal case, but have not yet been charged or sentenced and hence are awaiting a criminal proceeding. They are therefore to be presumed innocent until found guilty (presumption of innocence). They are also often referred to as prisoners on remand, untried or un-convicted prisoners.

茱莉·庇罗他的案例

茱莉·庇罗他的经历，正好说明女囚犯一个较为明显的特征：怀孕及分娩期间相关的特殊需要。由其经历可见，即使所谓「发达」国家的监狱制度，对女囚犯的需要，亦有所忽略。请开启茱莉案例的档案，了解她的经历。

2012年9月，茱莉·庇罗他怀胎八月，因涉嫌毒品及讹骗相关的控罪，审前被收押于加拿大首都渥太华一监狱之内。当她感到产前阵痛开始时，监狱人员却推说其为假性作动，只给予治疗消化不良的药物。

茱莉多次投诉，却被下令「封口」，并转押至独立囚室。一名狱警更对她说：「怀孕前你早该想到会有此一天。」

审前羈押



审前羈押者，是指已遭逮捕，仍未被起诉或判刑，等候刑事审判之在押人士。因此，在被判有罪前，他们享有无罪的推定（无罪推定）。他们通常又称还押犯、候审或未决囚犯。

Segregation cells are about the size of a closet, constructed of concrete with a steel bunk, a mattress, a steel toilet and sink, and a small window. There is a meal slot in the steel door that can only be opened from the outside and inmates must yell through it if they want a guard to come.

Only when the baby's feet emerged did nurses recognise Julie was in labour and jail staff called an ambulance. The baby was born in the cell some nine hours later, with respiratory problems, while Julie needed a blood transfusion.

Julie was only allowed to hold her baby in the ambulance on the way to the hospital after his birth. For the next three weeks, until she was allowed to move to a halfway house, Julie was only able to see him through "closed visits" - meaning for a limit of 20 minutes and behind a sheet of Plexiglas.²

This case is not a one-off incident, even in Canada. In the 1990s a string of suicides and incidents of self-harm led to the establishment of a federal task force on the conditions of women in Canadian prisons. Another incident caused national outrage in 1996, when strip searches of eight female prisoners were conducted by an all-male riot squad.

As Dawn Moore, an author on Ms Bilotta's case put it: "Because the vast majority of lawbreakers are male, the prison as a primary tool of punishment has always had an, 'add women and stir' strategy, assuming that men and women are interchangeable when it comes to incarceration."

Pregnancy-related characteristics are often the obvious thing associated with women prisoners. However, there are many other characteristics of women in prison that need to be understood.

Women Prisoners

Women and girls are in the minority of prisoners around the world, constituting an estimated 2 to 9 per cent of national prison populations.³

Because of the relatively small percentage of women prisoners around the world, women's characteristics and needs have tended to remain unacknowledged or little understood, and their needs are largely unmet.

In recent years, the number of women in prison has increased significantly in some countries, and at a greater rate than men.

² To read more about Julie's case, see the following news article:

http://www.thestar.com/news/canada/2012/10/12/ottawa_prison_investigating_allegations_that_guard_ignored_woman_who_gave_birth_in_jail_cell.html.

³ To consult the ICPS Prison Brief to see what percentage of the prison population are women in your country, please see <http://www.prisonstudies.org/world-prison-brief>.

独立囚室如衣橱般大小，混凝土建造，内置一张不锈钢床、一张床褥、一座不锈钢马桶和盥洗盘，整个囚室只开一扇小窗。铁门上有送膳用的小门，只能从门外打开。囚犯如须召唤狱警，必须大声叫喊。

直到婴儿的双脚冒了出来，护士才意识到茱莉正在临盆，然后监狱人员才呼叫救护车。大约九个小时之后，婴儿在狱中诞生，患有呼吸疾病，而茱莉则须接受输血。

茱莉只获准在救护车往医院途中手抱刚出生的儿子。接下来三周，直至获安排搬往中途宿舍之前，茱莉只能与儿子“隔离会面”——每次限时二十分钟，只能隔着塑胶玻璃窗与儿子相见。⁴

即使在加拿大，此案例亦非个别事件。90年代，一连串的自杀及自残事件发生，促使当局成立联邦专责小组，监察狱中女性的处境。另外，1996年，八名女囚犯被令脱衣搜查，并由全男班防暴队来进行，引发举国震怒。

诚如茱莉案例笔者当·摩亚所评：

「因大多数罪犯都是男性，监狱作为主要的处罚设施，一直奉行『男性为主，女性融入』的模式，将男女囚犯的监禁等同看待。」

女囚犯在怀孕期间的特定需要相对明显，但还有很多其他女囚犯面对的特殊情况也不容忽视。

女囚犯

各国在囚妇女及女童所占监狱人口的比例从百分二至九不等，但均属少数。⁵ 由于世界各地的女囚犯仅属少数，她们的特征和需要往往不获正视或理解，她们的需要大多数不获配合。

近年来，某些国家的女性囚犯人数显著增加，增长幅度更大于男性。

⁴欲知茱莉经历详情，请看此英文的文章：

http://www.thestar.com/news/canada/2012/10/12/ottawa_prison_investigating_allegations_that_guard_ignored_woman_who_gave_birth_in_jail_cell.html.

⁵为了参阅国际监狱研究中心编制的《监狱情况摘要》查看贵国女性囚犯占监狱人数的百分比，请看此英文的网站：<http://www.prisonstudies.org/world-prison-brief>。

What are the characteristics of female offenders?

The majority of **offending** and **imprisoned** women come from socially disadvantaged communities and groups. Offences committed by women are closely linked to poverty and are often a means of survival to support their family and children.

- Offender: A person charged with and convicted of a crime.
- Imprisoned: A person who has been detained on criminal charges, regardless of whether they have been found guilty or not

Type of offences

In contrast to male prison populations, only a small minority of women are convicted of violent offences. Women mainly commit petty crimes, theft, fraud and drug related offences. Studies have demonstrated that prior emotional, physical, and/or sexual abuse often contributes to women's criminal behaviour^{iv}

Economically disadvantaged

Like men, women prisoners typically come from economically and socially disadvantaged segments of society.



Discrimination against women in society results in unequal power relations and lack of access to economic resources. Because of this, they are particularly vulnerable to being detained because of their inability to pay fines for petty offences and/or to pay bail. They typically depend on the willingness of male family members to spend resources for legal representation, fines or bail.

女性罪犯有何特征？

犯罪及在囚妇女，大多来自于社会上弱势社区和群体。女性犯罪与贫穷密不可分，经常是因为养家糊口之累所导致。

- 罪犯：被检控及定罪者
- 在囚人士：不管是否已被定罪，因刑事控罪而被拘押者。
-

罪行之种类

有别于男囚犯，女囚犯中因犯暴力罪行而遭判刑者，仅属少数，而大多数为轻微罪行、偷窃、讹骗及与毒品有关之罪行。研究显示，女性犯罪，与其曾受精神、肉体、及/或性虐待的经历有关。

贫困

跟男囚犯一样，女囚犯通常来自社会和经济的弱势社群。



社会对女性的歧视带来不平等的权力关系，使她们难以取得经济资源。因此，她们特别容易因未能就轻微罪行缴交罚款及/或保释金而遭拘留。她们通常只能仰赖其男性亲属的援助，为其提供法律辩护、缴付罚款或保释金。

Discrimination against women

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Other typical characteristics

A high percentage of women offenders are drug users, will have experienced sexual abuse or been involved in sex work. The typical female offender is young, unemployed, has a low level of education and has dependent children. Typically, they lack information on the rights that should be upheld in criminal justice and penitentiary settings.

What are the needs of female offenders?

Women and men have different needs that must be met when they are imprisoned or subject to non-custodial measures. At the most basic level, women and men are physiologically different and have specific healthcare and hygiene needs. These extend beyond pre and post-natal care. Women also may have been victims of sexual abuse before entering prison, and when in prison are particularly vulnerable to self-harm, mental and physical abuse.

Family...and stigma



对女性的歧视

任何基于性别而区分、排斥或限制，其目的或效果是在政治、经济、社会、文化、公民或任何其他领域，损害或取消女性，不论已婚与否，在男女平等的基础上，赞同、享受或行使人权及基本自由之行为。

其他典型特征

很多女犯人都是药物使用者、性虐待受害人或性工作者。典型女犯人都是年轻，无业，学历低，育有儿女。她们通常对自己在刑事司法或监狱系统中应有的权利都一无所知。

女犯人有何需要

无论遭受囚禁或非拘禁措施的惩处，男女各有不同的需要都必须获得满足。在最基本的层面上，两性生理构造有别，各有独特的保健卫生需要，不限于生产前后的护理。妇女可能入狱之前受过性虐待，于狱中份外容易自残并受到精神和肉体虐待。

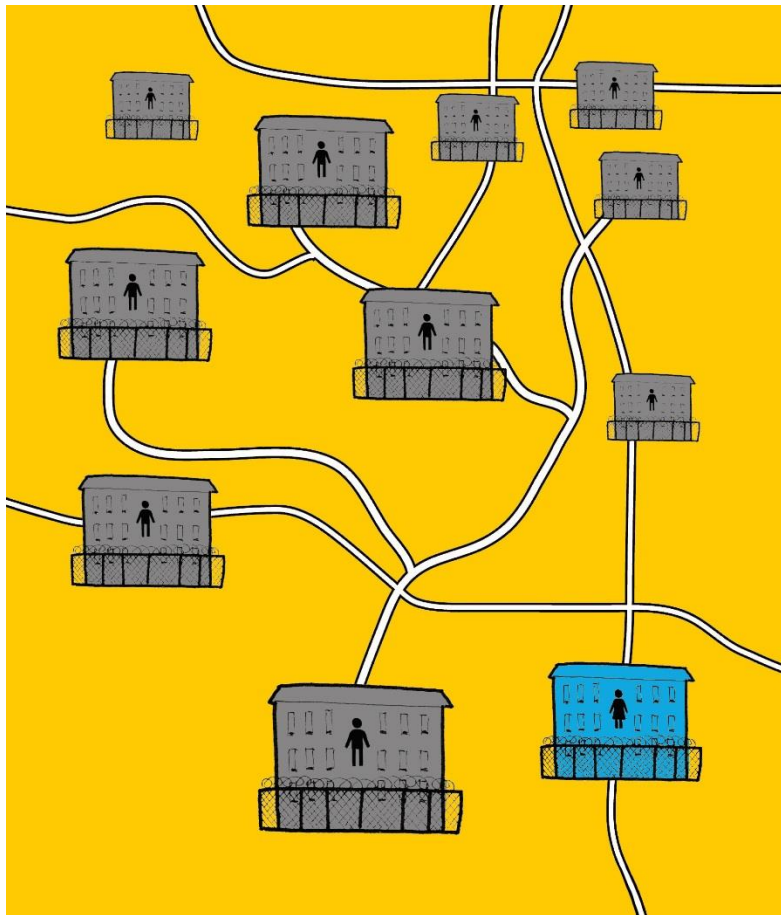
家庭……与污名



Traditional gender roles often result in a particular stigma against women in prison. While female spouses regularly support their husbands in prison and upon release, women in detention tend to be shunned by their spouses and often even by the whole family.

At the same time, women are often the sole or primary caretakers of young children, increasing the impact of even short periods of detention on children and the wider family. In some cases, women are imprisoned during pregnancy or soon after giving birth and may have their children with them in a penitentiary facility.

Prisons - designed for men

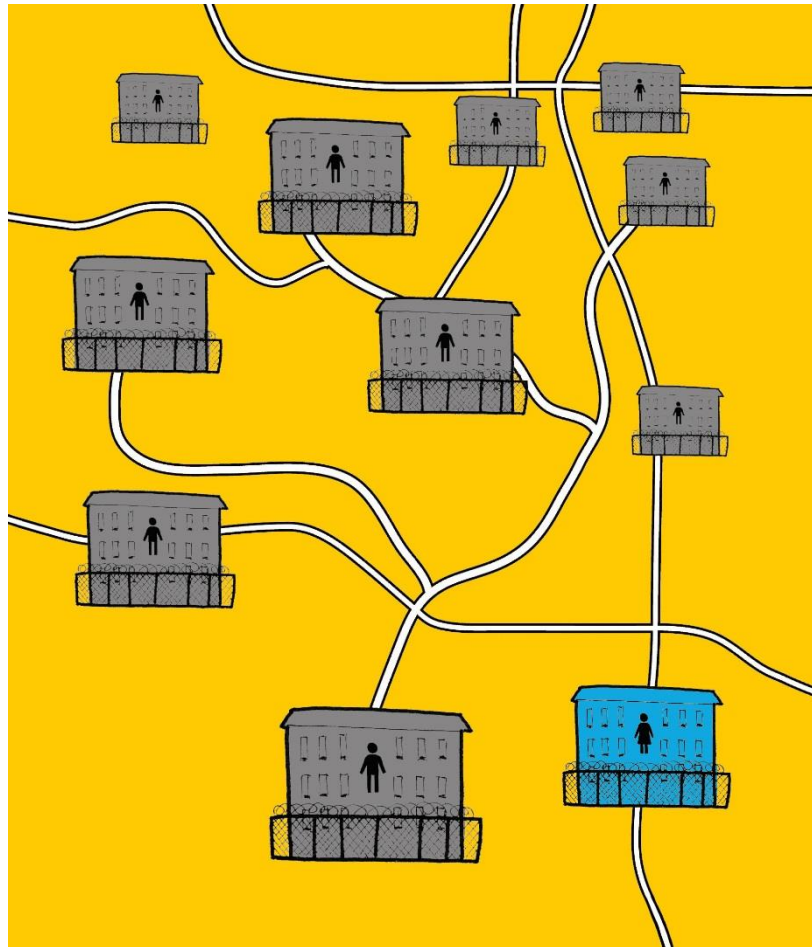


Prison systems and prison regimes are usually designed for the majority male population. This includes everything from the architecture of prisons, security procedures, staffing of prisons, facilities for healthcare to family contact, work and training. As a result, many prisons tend not to meet the needs of women on multiple levels. Additionally, because there are generally far fewer prison facilities for women, women offenders are often imprisoned far from home, limiting their contact with their families and resulting in women often being held at a higher security level than necessary.

传统性别角色，每每令在囚妇女蒙上莫大污名。丈夫在囚、出狱，妻子通常会予以照料支持，但在囚妇女往往遭丈夫甚至所有亲属唾弃。

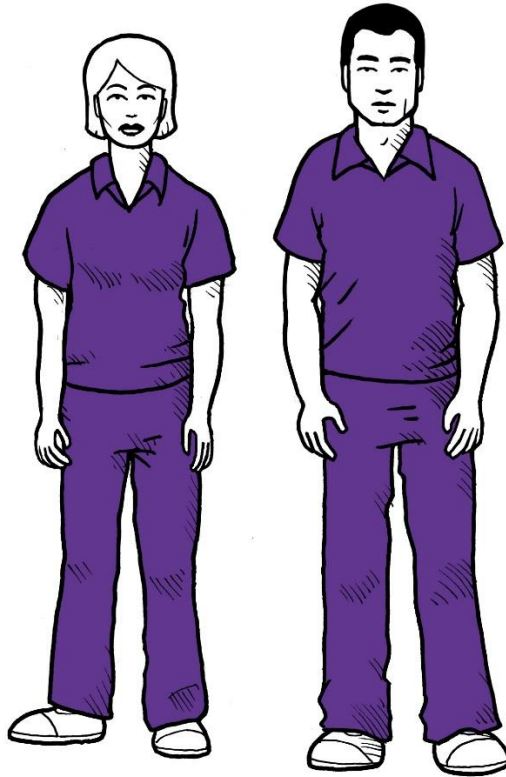
与此同时，妇女通常都是年幼子女唯一或主要的照料者，即使只是短暂的囚禁，对其子女、亲属影响也大。在某些情况下，妇女在怀孕期间或分娩后即遭监禁，或会与子女同住于监狱。

监狱—男囚导向设计



监狱体制的设计通常以男囚为导向，包括监狱建筑、人员配置、保安程序、医疗设备、家属联络、工作及培训。因此，很多监狱往往在不同层面上未能切合女性需要。再者，女性监狱较少，女犯人往往被囚至远离家园的监狱，有碍家庭联络，也可能变相让她们受到过于严密的保安监管。

What other characteristics of female offenders can you think of?



In case you missed any, here are some of the characteristics and backgrounds that apply to many women offenders. Remember that this is not the case with every woman in the criminal justice system.

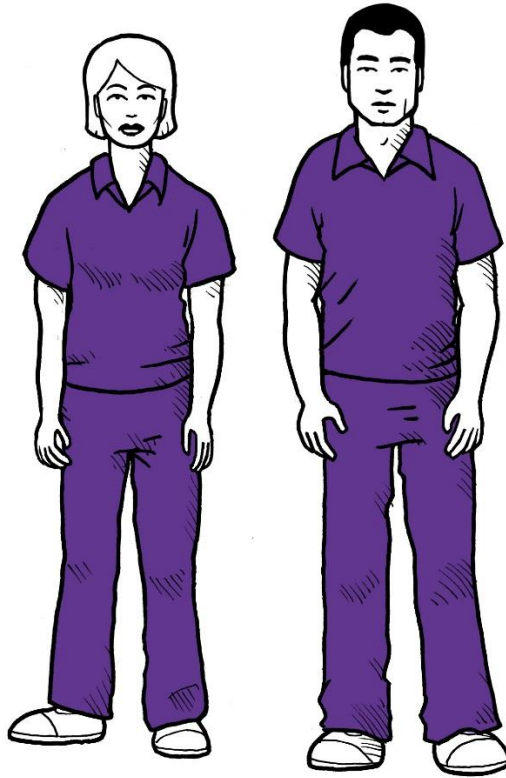
- Many come from socially and economically disadvantaged communities and groups
- The majority of the offences committed are related to poverty
- There is a disproportionate number of women offenders who have suffered emotional, physical and/or sexual abuse
- Convictions are mainly for petty crimes, rather than violent offences

Now that we have gone through the typical profile of women offenders, we will have a look at how the system often discriminates against women.

In what ways does the criminal justice system discriminate against women?

A considerable proportion of women offenders are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation they experience often at the hands of their husbands or partners, their family and the community.

你能想出其他哪些女犯人的特征？



为免遗漏，以下列出很多女性可能具有的特征及背景，以供参考。但请注意，以下并不代表每一触犯刑事司法的女性都有相同的处境。

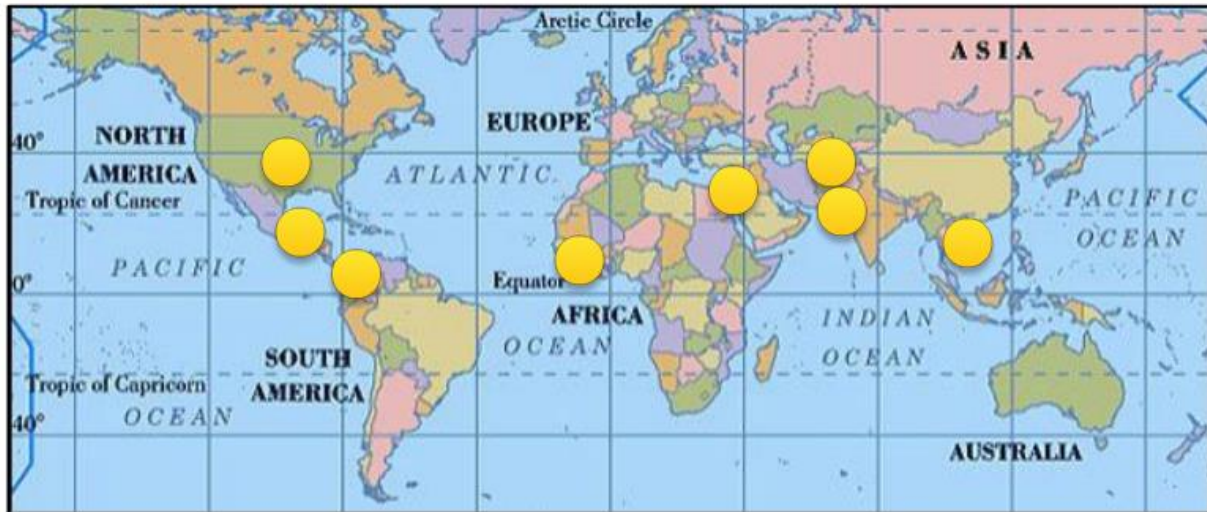
- 很多女犯人来自社会和经济的弱势社群。
- 大多数犯罪均与贫穷有关
- 不成比例数目的女犯人曾遭受精神、肉体及 / 或性虐待
- 大多触犯轻微罪行，而非暴力罪行

我们刚看过典型女犯人的简介，现在再看制度如何歧视女性。

刑事司法系统如何歧视女性？

相当比例女犯人之所以入狱，直接或间接是受到丈夫或伴侣、家庭及社区不同层面的歧视和剥削所致。

A look around the world at discriminatory practices



USA

As of 2000, more than 70 per cent of women inmates in the US were incarcerated for non-violent drug, property or public order offences. In fact, a study found that while one in three women are serving time for drug-offences, the comparable figure for men is one in five, showing harsher sentences for these crimes are handed down to women.

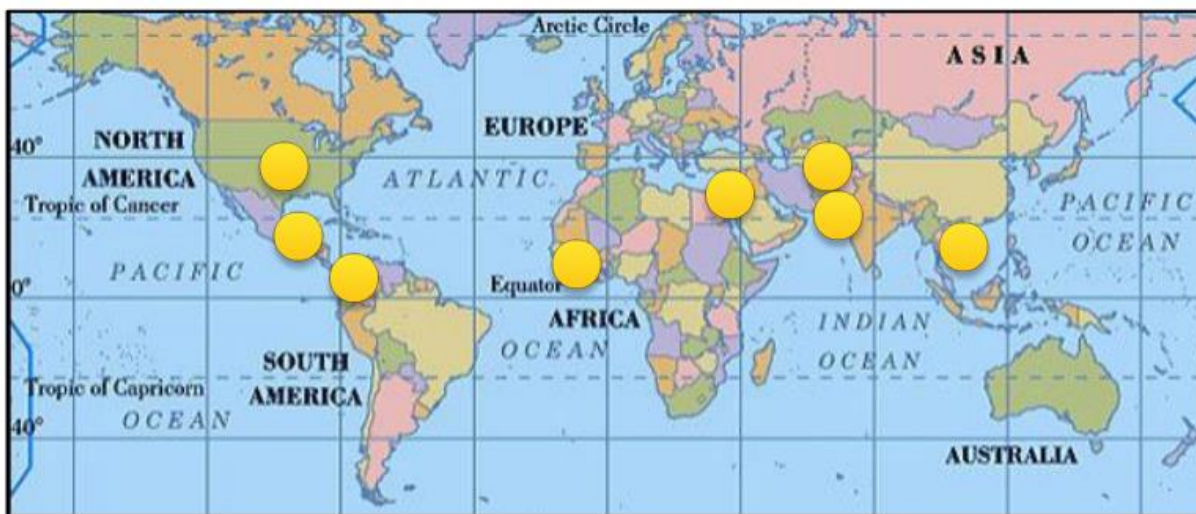
Afghanistan

In Afghanistan, victims of rape are treated as persons having committed the crime of adultery ('zina') until proven innocent. To prove rape is extremely difficult, so often rape victims are penalised and imprisoned for adultery, and as a result are shamed and stigmatised by their families and communities. This is not a problem in Afghanistan alone. Furthermore women are unable to approach jirgas or shuras (a council of men elders that try and resolve crimes) without the assistance of a male relative, limiting their access to justice.

Cambodia

A survey by the Ministry of Women's Affairs in 2005 showed why 89 per cent of women in Cambodia never access justice systems. Those who do report violence within their homes (22.5 per cent of married women experience domestic violence) may be confronted with beliefs that violence is a private issue and a prerogative of men. Over 60 per cent of local officials and police tend to believe that a husband can threaten his wife with a weapon when she questions him. Nearly a third of men maintain that different forms of violence are appropriate at times in their marriages.

世界各地歧视性作法一览



美国

截至 2000 年，超过七成女囚都是因非暴力，与药物、财产或公众秩序有关的判罪而遭监禁。有研究指出，三位女囚当中，就有一人因药物相关罪行而服刑；而五位男囚当中，就只有一人如此。由此可见，法庭对女性此类罪行的量刑较为严苛。

阿富汗

在阿富汗，强奸案的受害人被证明是无辜前作通奸犯对待。由于举证强奸行为极度困难，失败之余，受害人往往被判通奸而遭罚款、监禁，并受家属和社区的羞辱。此问题并不只发生于阿富汗。另外，如无男性亲属协助，妇女不能接洽「积伽」或「素拉」（男性长老议会，负责审判罪案），局限了她们寻求司法公正的渠道。

柬埔寨

2005 年妇女事务部进行一项研究反映为何百分之八十九的柬埔寨女性家暴受害者都从未诉诸法律（百分之二十二点五的已婚女性曾受家暴）。举报的受害者可能遭受多方的冲击，有认为暴力乃家内事和男人的特权。当地官员和警员中，有过六成倾向认为当妻子质疑丈夫时，丈夫可持武器威吓；约三分之一的男性坚信，在婚姻关系中，偶施以不同程度的暴力亦不为过。

Jordan

In some countries, such as in Jordan, women are detained for their ‘protection’, sometimes for over a decade because they are at risk of becoming victims of honour crimes (see Glossary for definition). Maysun was detained in a correction centre in Amman for at least 10 years after she was raped by her brother and nephew. Unaware that she had become pregnant as a result, and being unmarried, the doctor who subsequently examined her called the police. Her nephew was convicted to seven years’ imprisonment, and she received three and a half years sentence for unlawful sex. Even after serving her time, the Governor, on the basis of the 1954 Crime Prevention Law, insisted that she remain in the facility for her own protection, until she obtains a sponsor, or gets married. She considered suicide because she was not permitted to leave and saw this as the only way to recover “her freedom”.

Pakistan

In Pakistan there are many women put in detention for long periods, even for minor offences and often for longer than the period of punishment prescribed for the alleged offence, as they have been abandoned by their families and are unable to pay bail themselves. This is particularly true in cases involving adultery or narcotics, where even after being proven innocent and acquitted; they carry the stigma of being in jail. Women abandoned by their families are also more vulnerable to physical and sexual abuse by prison staff, as there are no relatives to pursue their case or to meet the unlawful demands of jail staff.

Nicaragua

In Nicaragua all cases of abortion have been criminalised. The penal code imposes prison terms on women and girls who seek or obtain an abortion, regardless of the circumstances. With abortion penalised, the risk of unsafe procedures is high, resulting in complications or long-lasting need for treatment.

Colombia

In Colombia, women can be imprisoned for up to four and a half years for having abortions even in cases of rape or when their lives are at risk. Colombia’s law prohibits abortion in all circumstances with narrow exceptions allowing judges to waive penal sentences.

Sierra Leone

In Sierra Leone women can be arrested and imprisoned for cases of ‘fraudulent conversion’. Based on British colonial law, such criminal cases are too often simple matters of unpaid debt. Not only does this run contrary to international law, such a charge can result in a woman being detained for several months to several years because of owing amounts as small as \$100.

约旦

在某些国家，例如约旦，某些妇女有遭受名誉杀害（定义请见《词汇》）的危险，当局为求「保护」，会把她们拘禁起来，有时甚至长达十年之久。美晨被兄弟和甥侄强奸后，遭禁锢在亚曼的惩教中心超过十年。为她诊治的医生并不知道她是因奸成孕，亦见她未婚，于是报警。她的甥侄被判入狱七年，她则被判非法性交而须服刑三年半。刑满后，省长根据 1954 年防止罪案法，命令她留在狱中，以策安全，直至觅得监护人或结婚为止。因不获释，她想过轻生，视此为唯一重获「自由」的途径。

巴基斯坦

因被家人遗弃，而自己也无能力缴付保释金，很多巴基斯坦妇女即使只犯下轻微罪行，亦遭长期拘留，拘留时间往往长过控罪的刑期。与通奸或药物有关的案件中，此情况尤为常见，即便获判无罪释放，她们亦背负牢狱的污名。遭家人遗弃的妇女容易受到监狱人员的肢体和性虐待，皆因无亲属为她们寻求辩护或满足监狱人员的不法要求。

尼加拉瓜

在尼加拉瓜，堕胎属刑事罪行。根据该国刑法，妇女和女童寻求或进行堕胎，不问因由，均会被判监禁。因堕胎并不合法，不安全堕胎风险很高，导致日后并发症或长期治疗的需要。

哥伦比亚

哥伦比亚妇女堕胎，就算是因奸成孕，或怀孕危及孕妇的生命，均可被判长达四年半的监禁。哥伦比亚法例禁止所有堕胎，只有在极少数例外情况下，法官可免除犯人的刑罚。

塞拉利昂

在塞拉利昂，妇女触犯“欺诈侵占”行为，可被拘捕及监禁。根据英国殖民时期的法律，此类刑事控罪涉及的往往只是欠款未还的情况。这项法律不单与国际法背道而驰，女犯人也可能只因少至一百元的欠款，而遭拘禁数月至数年不等。

What is the international framework on prisoners' rights?



There are a number of standards that make up the international framework on the treatment of prisoners.

These include the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) and the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules). Additionally, other international human rights standards, such as the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of Discrimination Against Women, have principles that should be applied to the treatment of prisoners.

The principle of non-discrimination

All human rights treaties share the core concept of non-discrimination, including discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This concept applies to all human beings, including prisoners and has been reflected in the Standard Minimum Rules and Tokyo Rules.

International legal standards

The UN Bangkok Rules are not replacing, but supplementing the Standard Minimum Rules and the Tokyo Rules, filling the gaps related to specific needs of female offenders. Learn more about the key standards that the Bangkok Rules complement by reading the documents below for a brief summary.

囚犯权利有何国际框架？



囚犯权利国际框架包含多项标准。

当中包括《在囚人士待遇最低标准规定》（最低标准规定）及《联合国非拘禁措施最低标准规定》（东京规定）。此外，其他国际人权标准，如《公民权利和政治权利国际公约》、《国际儿童权利公约》及《消除对妇女一切形式歧视公约》，均载有规定在囚人士待遇的原则。

不歧视原则

所有人权条约均建基于不歧视的理念，即反对基于种族、肤色、性别、语言、宗教、政治或其他见解、国籍或社会出身、财产、出生或其他地位等各种歧视。

此原则适用于全人类，包括在囚人士，亦同时体现于《最低标准规定》及《东京规定》。

国际法律标准

《联合国曼谷规矩》补足而非取代《最低标准规定》及《东京规定》，填补有关妇女特有需要的缺漏。请阅读以下文件，阅读概要，了解《曼谷规定》所补足的重要标准。

The “Nelson Mandela Rules”

The Standard Minimum Rules for the Treatment of Prisoners⁶ were first adopted by the United Nations in 1957, and in 2015 a revised set of Rules, the “Nelson Mandela Rules” were adopted. They provide guidelines for international and domestic law regarding people held in prisons and in other forms of custody. The Rules are not legally binding, but a recognised set of minimum standards for the treatment of prisoners around the world. In many countries the Mandela Rules are the only international standards which are used as a reference point for the treatment of prisoners or have been used as a blue-print for the drafting of national prison rules.

- women and men should be detained in separate facilities: Rule 8 (a)
- women’s institutions should provide specific accommodation for pre-natal and post-natal care and treatment: Rule 23 (1)
- nursing infants are allowed to remain in the institution with their mothers and the institution should provide a nursery staffed by qualified personnel: Rule 23 (2)
- women prisoners should be supervised and attended to by female prison officers: Rule 53 (3)
- women’s institutions should be under the authority of a responsible woman officer: Rule 53 (1)
- no male member of the staff should enter a women’s institution unless accompanied by a woman officer: Rule 53 (2)

Tokyo Rules

The United Nations passed the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) in 1990.⁷ The Tokyo Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for people subject to alternatives to imprisonment. The Tokyo Rules are intended to promote greater community involvement in the management of community justice as well as to promote a sense of responsibility towards society among offenders. The Tokyo Rules do not contain any provisions specific to female offenders.

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights⁸, which is a legally binding treaty for those States which have ratified it, says that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”, Article 10). As can be seen in this map, the treaty has been ratified by a large number of states.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

⁶ Please see <http://www.penalreform.org/resource/standard-minimum-rules-treatment-prisoners-smr/>.

⁷ Please see https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_Non-custodial_Measures_Tokyo_Rules.pdf.

⁸ Please see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

《The Nelson Mandela 规定》

《在囚人士待遇最低标准规定》于 1957 年获联合国采纳。此规定针对在囚人士为国际和国内法律提供指引。⁹虽然此规定并无法律约束力，但却是全球各地普遍认可的一套最低标准。在很多国家，此规定是唯一的国际标准，用于囚犯待遇的参考或起草当地监狱规则的蓝本。

- 女性和男性应关押在分开的监舍里：规则 8（a）
- 女性监狱应设有特别设施，以供产前及产后护理：规则 23（1）
- 哺乳期的婴儿可与母亲同住于监狱中，监狱应设有育婴室，并聘有合格人员：规则 23（2）
- 女囚犯应由女性监狱人员监督及看守：规则 53（3）
- 女性监狱应由女性负责官员管理：规则 53（1）
- 未有女职员陪同，男职员不得进入女性监狱：53（2）

《东京规则》

1990 年联合国通过《联合国非拘禁措施最低标准规定》（东京规定）。¹⁰《东京规定》订立一套基本原则，以推广非拘禁措施及接受非拘禁措施人士的最低保障。《东京规定》旨在鼓励更多社区人士参与管理社区司法及培养犯人对社会的责任心。《东京规定》并无专为女犯人撰写的条文。

《公民权利和政治权利国际公约》

《公民权利和政治权利国际公约》¹¹具有法律效力，约束所有缔约的国家。当中列明：「自由被剥夺之人，应受合于人道及尊重其天赋人格尊严之处遇。」（第十条）。从以下地图可见，很多国家已正式批准此公约。

第十条

- 一. 所有被剥夺自由的人应给予人道及尊重其固有的人格尊严的待遇。

⁹ 请看 <http://www.penalreform.org/resource/standard-minimum-rules-treatment-prisoners-smr/>。

¹⁰ 请看 https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_Non-custodial_Measures_Tokyo_Rules.pdf。

¹¹ 请看 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>。

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

In addition to these standards, there are a number of other relevant international standards:

- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- UN Basic Principles for the Treatment of Prisoners
- UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
- UN Rules for the Protection of Juveniles Deprived of their Liberty
- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

What are the Bangkok Rules?

The adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders in 2010 represents an important step forward in recognising the gender-specific needs of women in the criminal justice system. The Bangkok Rules provide standards that should be applied in the treatment of women offenders. The Bangkok Rules are also the first international instrument to specifically address the situation of the children of prisoners.

The Bangkok Rules' Legal Status

The Bangkok Rules are a so-called “soft law” instrument, meaning they are not legally binding like conventions; however, they express a commitment by states. Over time soft law often emerges as good practice, and can thereby be as influential as treaty rules.

By voting for, and hence supporting the Rules, all UN member states acknowledged the existence of gender-specific characteristics of women in the criminal justice system and agreed to respect and meet the particular needs arising from these characteristics.

二. (甲) 除特殊情况外, 被控告的人应与被判罪的人隔离开, 并应给予适合於未判罪者身分的分别待遇;

(乙) 被控告的少年应与成年人分隔开, 并应尽快予以判决。

三. 监狱制度应包括以争取囚犯改造和社会复员为基本目的的待遇。少年罪犯应与成年人隔离开, 并应给予适合其年龄及法律地位的待遇。

除了以上标准, 尚有其他相关国际准则:

- 《保护所有遭受任何形或拘留或监禁人士原则》
- 《联合国囚犯待遇基本原则》
- 《联合国刑事法律援助原则及指引》
- 《联合国保护受剥夺自由之少年规则》
- 《联合国少年司法最低标准规则》(北京规则)

何谓《曼谷规则》?

联合国于 2010 年采纳《女性囚犯待遇及女性罪犯非拘禁措施规则》, 承认妇女在刑法体制中之特有需要, 意义重大。《曼谷规则》为其待遇确立周详标准。此规则亦是首部特别针对囚犯子女处境的国际规章。

《曼谷规则》之法律地位

《曼谷规则》被视为「软法律」, 虽然不如公约般具有法律约束力; 但此文书代表了各国的承诺。行之日久, 软法律往往成为普遍认可的良好惯例, 因此其影响之至, 堪比条约规则。

联合国成员国投票支持此规则, 即表明承认妇女在刑法体制中有其独特的性别特征, 并同意尊重及满足由此等特征而衍生的特别需要。

Who do the Rules apply to?

The Bangkok Rules contain 70 rules and cover not only women prisoners but also female offenders subject to non-custodial measures (such as reporting to the police at regular intervals or electronic tagging), **‘corrective measures’** ordered by a judge’ (such as drug treatment or mental healthcare), women subject to **‘protective’ custody** (protective custody of victims of violence) and **non-custodial sanctions** (including specifically gender-specific alternatives to imprisonment).



- **Non-custodial measures:** Sanctions aimed to address the specific needs of offenders, for example by ordering a drug or substance dependence programme.
- **Protective custody:** Protective custody means that a person is put in prison to protect them from harm, in this context usually from gender-based violence, for example from honour crimes. As in this case, the person is not even alleged to have committed any offence, this type of imprisonment is by definition only a last resort where the woman affected requests such protection.
- **Non-custodial sanctions:** Non-custodial sanctions mean that a sanction other than imprisonment is handed down following a criminal offence. These can include fines, restitution to the victim, a suspended or deferred sentence, probation and judicial supervision. Another form of alternative sanction is community service, which involves an offender working without pay for a certain number of hours benefiting the community.

规则保障何人？

《曼谷规则》载有七十条规则，除了适用于女囚犯，也涵盖接受非拘禁措施（如定期向警方报到或接受电子追踪）、接受法官颁令的惩教措施（如戒毒治疗或精神病护理）的女犯人、被保护性拘禁（暴力受害人之保护性拘禁）或接受非拘禁惩处（包括按性别而判处的非拘禁惩处）的妇女。



- **非拘禁措施：**针对犯人特有需要的处分，例如戒除毒品或药物依赖的疗程。
- **保护性拘留：**保护性拘留是指对当事人进行关押，以免其受到伤害，此伤害通常来自基于性别的暴力，例如名誉杀害。如同本案例里，当事人根本没有被指控任何犯罪，此类拘留应只是在当事人寻求保护下，作为最后手段的做法。
- **非拘禁惩处：**非拘禁惩处，即囚禁以外的处罚。此类惩罚包括罚款、给予受害人补偿、缓期执行、缓期量刑、缓期考验及司法监督。另一种替代性的惩处为社会服务，规定犯人无偿为社群服务一定的时数。

To summarise, the Bangkok Rules apply to:

- prisoners under arrest and awaiting trial
- prisoners under sentence
- female offenders subject to non-custodial measures
- female offenders subject to ‘corrective measures’
- women subject to ‘protective custody’

What issues do the Bangkok Rules include?

For prisoners under sentence, the Bangkok Rules cover the following issues:

- Admissions
- Personal hygiene
- Healthcare services
- Safety and security
- Parental responsibilities
- Discipline and punishment
- Contact with the outside world
- Classification and individualization
- Prison regime
- Personnel and training

Do any Rules apply to male prisoners?

Some of the Bangkok Rules address issues equally relevant for male and female prisoners. The preamble to the Bangkok Rules states that some of these rules would apply equally to male prisoners and offenders, including “those relating to parental responsibilities, some medical services, searching procedures and the like”.

To whom are the Bangkok Rules addressed?

The Bangkok Rules are addressed to prison authorities and various other actors in the criminal justice system. This includes relevant government ministries, policymakers, legislators, prison authorities and staff, prison healthcare services, probation and parole services, and prison monitoring bodies.

总而言之，《曼谷规则》保障：

- 已被拘捕及等候审判之在囚人士
- 服刑囚犯
- 接受非拘禁措施之女犯人
- 接受「矫正措施」之女犯人
- 受保护性拘留之妇女

《曼谷规则》涵盖哪些要项？

关于服刑囚犯，《曼谷规则》涵盖以下要项：

- 收监程序
- 个人卫生
- 医疗服务
- 安全与保安
- 父母责任
- 纪律与惩罚
- 与外界联络
- 分类与个别考虑
- 监狱制度
- 监狱人员和培训

有无任何规则适用于男囚犯？

有数条《曼谷规则》亦针对男女囚犯同样切身的问题。《曼谷规则》的序言指出，有几项规则同样适用于男性囚犯及罪犯，包括「有关父母亲责任、某些医疗服务、搜查程序等问题」。

《曼谷规则》面对的有关方面？

《曼谷规则》的对象是监狱当局及其他刑事司法系统里的负责人员，包括有关政府部门、决策者、立法机构、监狱当局及人员、监狱医疗服务、缓刑考验及假释部门、监狱监测机构。

Treatment of women offenders and prisoners

In this booklet, you will learn more about specific provisions contained in the Bangkok Rules from the perspectives of different actors who have an impact on women's rights in prisons. You will apply what you have learned to specific case studies.

Module 1 Self-Assessment

You can now answer 3 questions to assess your understanding.

1. The Bangkok Rules are only applicable to women prisoners convicted of a criminal offence. True or false?

Let's review the correct answer:

False. The Bangkok Rules are applicable to all categories of women prisoners. This includes untried women prisoners.

2. Women offenders have different needs because the crimes committed, the reasons for their criminal behaviour, and their typical backgrounds are different from male offenders. True or false?

Let's review the correct response.

True. Research shows that women prisoners often come from socially disadvantaged communities and groups. Offences committed by women are closely linked to poverty and are often a means of survival to support their family and children. In contrast to male prison populations, only a small minority of women are convicted of violent offences. Women mainly commit petty crimes, theft, fraud and drug related offences. Studies have demonstrated that prior emotional, physical, and/or sexual abuse often contributes to women's criminal behaviour. The United Nations Resolution adopting the Bangkok Rules states that women prisoners belong to one of the vulnerable groups that have specific needs and requirements.

3. Match the situation of the following women with the correct term.

Pre-trial Detention

Protective Detention

Corrective Measure

Non-custodial sanction

- Alex is arrested for alleged traffic offences and denied bail.
- Adriana asks the authorities to house her in prison for fear of becoming victim of an honour crime.
- Liz commits theft to support her drug dependency. She is ordered to attend a community drug dependence programme.
- Anika is convicted of theft. She is ordered to serve 50 hours of community work.

女性犯人及囚犯待遇

在这本书里，您将会从不同负责人员的角度了解更多关于《曼谷规则》的详细条文，他们的角色均会影响到妇女在狱中的权利。您会将所学应用于特定的案例。

单元一测验

请回答三条问题，以考核您的理解。

一、《曼谷规则》仅适用于被判有罪的女囚犯。正确还是错误？

请查看正确答案：

错误。《曼谷规则》适用于所有类别的女囚人，包括未经审判的在囚妇女。《曼谷规则》适用于所有类别的女囚，包括未经审判的在囚妇女。

二、因为罪行种类、基本背景、犯罪因由异于男犯人，女犯人有其特有的需要。正确还是错误？

请查看正确答案：

正确。研究显示，在囚妇女，通常来自社会上弱势的社群。女性犯罪，每因贫穷，为生计及养家所迫。有别于男罪犯，女罪犯中因犯暴力罪行而遭判刑者，仅属少数。女犯人数多数犯下轻微罪行、偷窃、讹骗及与毒品有关之罪行。研究显示，女性犯罪，与其曾受精神、肢体、性虐待的经历有关。联合国采纳《曼谷规则》，声明女囚犯属于弱势社群，有其独特需要。

三、请为以下妇女的处境配对相应的词语。

审前羁押
保护性拘留
惩教措施
非拘禁惩处

- 阿历斯因交通罪行而被捕，不准保释。
- 阿德莉安娜要求当局批准她住进监狱，恐防自己遭到名誉杀害。
- 莉斯偷窃，以维持毒瘾。法庭颁令她参与社区戒毒疗程。
- 阿妮卡被裁定犯下偷窃罪，判处五十小时社会服务。

Let's review the correct response.

- ✓ Alex is arrested for allegations of traffic offences and denied bail = **Pre-trial Detention**
- ✓ Adriana asks the authorities to house her in prison for fear of becoming victim of an honour crime. = **Protective Detention**
- ✓ Liz commits theft to support her drug dependency. She is ordered to attend a community drug dependence programme. = **Corrective Measure**
- ✓ Anika is convicted of theft. She is ordered to serve 50 hours of community work. = **Non-custodial Measure**

请查看正确答案：

- ✓ 阿历斯因交通罪行而被捕，不准保释。> **审前羁押**
- ✓ 阿德莉安娜要求当局批准她住进监狱，恐防自己遭名誉杀害。> **保护性拘留**
- ✓ 莉斯偷窃，以维持毒瘾。法庭颁令她参与社区戒毒疗程。> **矫正措施**
- ✓ 亚妮卡被裁定犯下偷窃罪，判处五十小时社会服务。> **非拘禁惩处**

Module 2

Non-Custodial Measures

单元二

非拘禁措施



Illustrations by John Bishop ©Penal Reform International

Introduction

In Module 1, you were introduced to the Bangkok Rules, and the international framework on prisoners' rights. We looked at the typical characteristics of female offenders and their corresponding specific needs. In this module we are going to learn about non-custodial measures and sanctions for female offenders.



Learning Objectives: Non-custodial measures

We will address the following questions:

- What should gender-specific alternatives to imprisonment for women offenders look like, and why are they important?
- How can characteristics of female offenders, including care-taking responsibilities, be taken into account from the sentencing stage onwards?
- What safeguards must be in place for 'protective detention' of women?
- What standards exist and what measures can be taken to avoid imprisonment of victims of trafficking?

序言

单元一介绍了《曼谷规则》及针对在囚人士权利的国际框架。单元一亦讲解了典型女囚犯特征及相应的特有需要。在本单元，我们将会研习针对女犯人的非拘禁措施及惩处。



研习目标：非拘禁措施

此单元将讲解以下问题：

- 因应性别而设的非拘禁措施应是何等样式？ 其为何重要？
- 当局应如何自量刑阶段考虑女犯人的特征（包括其负担照看的责任）？
- 应为受「保护性拘留」的妇女设立何种保障？
- 有何现有标准及措施可防止囚禁人口贩运之受害者？

Imprisoning women – the cost

More than 625,000 women and girls are held in penal institutions around the world. As we learned in Module 1, the majority are imprisoned for petty, non-violent offences and do not pose a threat to society.

To refresh our memories, women offenders often...

- come from **poor** communities
- come from **marginalised** or **minority communities**
- have a history of **domestic** or **sexual abuse**
- have **mental health issues** and **alcohol and drug dependency**
- are the **primary or sole carer** for children and other dependent family members

Victims of violence

In New York's prisons, 80 percent of women imprisoned for a violent crime in 2009 had never been convicted of a prior crime. A large proportion were victims of domestic violence. Many women do not reoffend. For example, of the 38 women convicted of murder in New York and released between 1985 and 2003, not a single one returned to prison.

Women who have committed violent crimes are often victims of violence themselves.

Mrs E's Case

Case Study

Offences are often a result of not having the money to pay fines or to afford bail.

Mrs E's case is an example of when the inability to pay a fine results in imprisonment.

Open Mrs E's case file to learn about her story.

Mrs E, a female in her 30s, was held at one of Ghana's women's prisons with her baby. She told her story:

"A man came... and beat me at the farm where I was working. I used a cutlass to stop him, and I cut him [on his arm]. They fined me 350 cedi [around US\$200] but I have no money and no one to pay. I do not know who the baby's father is and my mother died. Only my father is left."

Because she did not have US\$200 to pay the fine, Mrs E is serving three years' imprisonment. Current policy says that when her baby daughter is weaned or reaches one year of age, she will be placed in foster care until Mrs E is released.

监禁妇女—代价

世界各地有多于 625,000 名妇女及女童遭囚禁于刑罚机构。如单元一所述，当中大部分女囚犯是因犯下轻微或非暴力罪行而遭监禁，对社会不构成威胁。

再次一提，女犯人通常

- 来自贫穷社区
- 来自边缘或弱势社群
- 曾受过家暴或性虐待
- 有精神健康、酗酒及药物依赖的问题
- 为子女或扶养家属主要或唯一的照料者

暴力受害人

2009 年，纽约各监狱因暴力犯罪而遭监禁的妇女中，八成无犯罪前科，当中大部分都是家暴受害人，其重犯率也低。如纽约在 1985 至 2003 年期间，因谋杀罪服刑期满获释的 38 名妇女中，并无一人重返监狱。

犯下暴力罪行的妇女，通常本身都是暴力受害人。

E 太太之案例

案例研习

犯人通常因未有足够金钱缴交罚款或保释金而涉罪。

因未能缴交罚款而遭监禁，E 太太的经历，就是一例。

请打开 E 太太的案例档案了解她的经历。

E 太太，三十多岁，与她的婴孩一同遭囚禁于加那的女子监狱。她讲述她的故事：

「一名男子前来 . . . 并在我工作的农场殴打我。我用一把短弯刀阻止他，并割伤了他（手臂位置）。随后遭当局罚款 350 塞地（大约 200 美元），但我并没有钱，也没有人为我缴付。我不知谁是宝宝的爸爸，而我的母亲已经过世，只剩下我爸爸。」

因没有 200 美金支付罚款，E 太太现正服三年的刑期。现行政策规定，一旦其女儿断奶或年满一岁，将会移送寄养，直至 E 太太获释。

Prison is an ineffective and often damaging solution for women offenders. Prisons are designed for men and very often do not meet the needs of women effectively. This jeopardises their ability to lead safe, law-abiding lives post-release.

The cost on children and family

Millions of children worldwide have a parent in prison. Tens of thousands of children live with their parent in prison. Even in cases of short prison terms, part or all of a childhood spent inside a prison can have a damaging impact on a child's physical and emotional well-being. This may increase the likelihood of the child's institutionalisation or imprisonment in the future.

In many countries, it is not uncommon for a woman to lose custody of her children even while in **pre-trial detention**, and presumed innocent of the alleged offence.

Pre-trial detention

Prisoners in pre-trial detention are detainees who have been arrested in a criminal case, but have not yet been charged or sentenced and hence are awaiting a criminal proceeding. They are therefore to be presumed innocent until found guilty (presumption of innocence). They are also often referred to as prisoners on remand, untried or unconvicted prisoners. This does not include the initial deprivation of liberty by the police or law enforcement officer.



The economic cost on imprisoned women

Sending a woman to prison often results in economic problems upon her release. These can include barriers to accessing employment, educational opportunities and health insurance coverage, and finding affordable housing.

对女犯人而言，囚禁的处罚不但成效不彰，更常对其造成伤害。监狱为男性而设，往往不能有效符合妇女的需要，此种惩处方式更会妨碍她们在刑满后过安全、守法的生活。

为孩童及家庭带来的代价

全世界有数以百万计的孩童，其父母身陷狱中，也有数以万计的孩童与家长同住监狱。即使只是短期监禁，在狱中度过部分或整段童年的日子，可为儿童身心健康带来不良影响，亦可能增加其未来入狱或进精神病院的机会。

在很多国家，被告在审前羁押阶段本应享有无罪的推定，但女犯人在这时期就丧失子女抚养权也是不乏之事。

审前羁押

审前羁押者，是指已被逮捕，但未经起诉或判刑，正等候刑事程序处理之在押人士。因此，他们应享有无罪的推定，直至被判有罪（无罪推定）。他们通常又称还押犯、候审或未决囚犯。此并不包括警察和执法人员施行的初步拘留。



为在囚妇女带来之经济代价

监禁服刑往往为在囚妇女带来出狱后的生计问题，如在就业、进修、医疗保险和寻找负担得起的住房方面，均困难重重。

These costs can be avoided by keeping women out of prison where imprisonment is not necessary or justified.

Prison as a last resort

There is growing international acceptance that imprisonment should be a last resort. The UN Special Rapporteur on Extreme Poverty and Human Rights argued that “States must only have recourse to detention and incarceration when it is necessary to meet a pressing societal need, and in a manner proportionate to that need.”

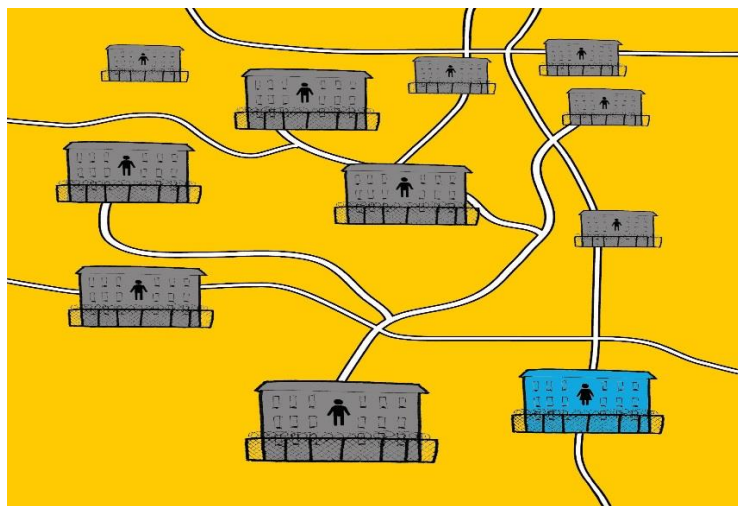
Tokyo Rules

The Tokyo Rules set out a fundamental principle to increase the use of non-custodial sanctions and measures instead of imprisonment. They outline types of alternatives that may be used by authorities.

Non-custodial measures are alternatives to imprisonment for cases of pre-trial detention, while non-custodial sanctions mean that a sentence other than imprisonment is handed down following conviction of a criminal offence. These can include fines, restitution to the victim, a suspended or deferred sentence of imprisonment, probation and judicial supervision. Another form of alternative sanction is community service, which involves an offender working without pay for a certain number of hours benefiting the community.

Alternatives

Why are alternatives to imprisonment often not used to respond to women’s offending? The same criteria are usually applied to men and women at the sentencing stage. The typical background of women offenders, their caring responsibilities and the usually lower security risk they pose to others are rarely taken into account. This means that many women are imprisoned even though their social reintegration needs would be much better served by a non-custodial measure or sanction.



如非必要或合理，不判妇女入狱，就可避免此等代价。

监禁仅作为最后手段使用

监禁应仅作为最后手段使用，这是国际间愈来愈受认同的一种做法。联合国赤贫及人权特别报告员主张：「各国必须基于社会迫切需要时才实施拘留及囚禁，其做法亦必须与需要相称。」

《东京规定》

《东京规定》订定基本原则，以增加使用非拘禁惩处及措施替代监禁。此等原则概述当局可使用的替代措施。

非拘禁措施是用于审前羁押，替代拘禁的作法。而非拘禁惩处，即囚禁以外的刑罚。此类刑罚包括罚款、给予受害人补偿、缓期执行、缓期量刑、缓期考验及司法监督。另一种替代性的惩处为社会服务，规定犯人无偿为社群服务一定的时数。

替代措施

为何监禁的替代措施，常不用于女犯人？在量刑时，并无考虑到男女之别而适用同一套标准。女犯人的典型背景、其照顾责任、其通常较低的威胁性，法庭甚少予以考虑。因此，即使非拘禁措施较符合其再融入社会的需要，很多妇女仍遭到监禁。



There is a shortage of alternatives to prison that are suited to and meet women offenders' needs. This hinders the use of alternative non-custodial measures and sanctions by authorities and courts. For example, in some countries mothers are more likely to be imprisoned because the alternatives may be regarded as unsuitable because there are no childcare facilities.

In England it was found that sentencers appeared reluctant to fine women and instead would issue more severe community penalties. Because of this, in the event of a subsequent conviction, such women could be given even more severe sentences because a step had been skipped on the sentencing ladder.

Bangkok Rules 57, 58 and 59 encourage the development and implementation of alternatives to imprisonment, and provide guidance on measures that can be taken to reduce imprisonment of women. This is in line with the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, 1990) which the Bangkok Rules supplement.

Rule 57

The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.

Rule 58

Taking into account the provisions of rule 2.3 of the Tokyo Rules, women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties. Alternative ways of managing women who commit offences, such as diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible.

Rule 59

Generally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organizations or other community services, shall be used to protect women who need such protection. Temporary measures involving custody to protect a woman shall only be applied when necessary and expressly requested by the woman concerned and shall in all cases be supervised by judicial or other competent authorities. Such protective measures shall not be continued against the will of the woman concerned.

符合女犯人需要的监狱替代设施，并不足够，有碍当局及法庭采用非拘禁措施和惩处。例如，在某些国家，因替代设施并无托儿设施，当局或法庭视之为不适合母亲，母亲因而较易遭监禁。

英格兰的裁判人员，似乎并不愿意对妇女处以罚款，而处以较重的社区刑罚，在量刑的阶梯上跳升了一级，因此，如有再犯，该名妇女可被判予更重的刑罚。

《曼谷规则》第 57、58 及 59 条是为推广监禁的替代措施，就减少监禁妇女提供指引。此皆与《联合国非拘禁措施最低标准规定》（东京规定，1990）相符，而《曼谷规则》亦旨在补足此规定。

规则 57

《东京规则》各项规定应成为制定和实施对女性罪犯的适当应对措施的指导方针。应在会员国法律制度范围内拟定有性别区分的转化措施和审前及量刑替代安排等可选办法，其中应考虑到许多女性罪犯的受害史以及她们担负的照看责任。

规则 58

考虑到《东京规则》规则 2.3 的规定，不应在不适当考虑女性罪犯的背景和家庭联系的情况下，将她们与家人和社区分开。只要适当和可能，应尽量实施替代方式管理犯有罪行的妇女，例如转化措施和审前及量刑替代安排等。

规则 59

一般而言，应使用非拘禁手段的保护方式，例如，安置在由独立团体、非政府组织或者其他社区服务机构管理的避难所中，以此保护需要这种保护的妇女。只有在必要时并且在所涉妇女明确请求的情况下，才可采用涉及拘禁的临时措施保护妇女，并且在任何情况下都应由司法或其他主管部门予以监督。不得违背所涉妇女的意愿而继续实施这种保护措施。

Diversiónary measures



When a woman is arrested for an alleged crime, if they do not pose a risk to society the police should have the option to issue a diversion. They should have the option to issue gender-sensitive non-custodial orders, such as participation in rehabilitative activities.

Diversiónary measures can provide a suitable response to women offending, without severely disrupting the lives and care of their family and children and their employment.

Gender-sensitive **diversionary measures** can be more effective in women's social reintegration in some cultures. For example restorative justice processes give victims the chance to tell offenders the impact of their crime, to get answers to their questions and to receive an apology, and give offenders the chance to understand the impact of their actions and to do something to repair the harm. Restorative justice may take place as an alternative to prosecution for less serious crimes, when an offender has pleaded guilty in court but before sentence, after sentence, in prison or in the community.

Alternatives to pre-trial detention can avoid the high social and economic cost of pre-trial detention. Remember that any such alternative must be gender-specific. For example, is it practically possible for a woman to report to the police each day if she has a young child and no means of transport?

A prison **sentence** should be the last resort. Non-custodial sanctions enable the common problems leading to a woman's offence to be addressed, and take account of any history of victimisation and caretaking responsibilities.

转送教改机构的措施



当一名妇女被控以一项罪名，如她并不对社会构成威胁，警方应可选择采取转送教改机构的措施。警方应可选择颁令因应性别而定的非拘禁措施，如参与康复活动。

转送教改机构措施可适切处理妇女犯罪，而不严重妨碍妇女生活、照顾家庭和孩子、以及工作。

因应性别而转送教改机构的措施，于某些文化而言，可能更有效帮助妇女再融入社会。例如，通过恢复性司法程序，受害人可向犯人讲述其罪行的影响、解答其疑问、获得道歉，同时犯人亦可了解其行为的影响及弥补伤害。在判刑前、判刑后，狱中或社区中，如罪行不严重，而犯人认罪，恢复性司法可替代检控。

以其他措施替代审前羁押，可避免审前羁押带来高昂的社会和经济代价。请紧记，任何此类替代措施，必须因应性别的需要。例如，规定一名要照料幼小子女，而且并无交通工具的妇女每天到警察局报到，是否切实可行？

监禁刑罚应仅为最后的手段。非拘禁惩处有助解决引致妇女犯罪的常见问题及将妇女的被害经历和照看责任纳入考虑当中。

Drug courts are one example of an alternative system for women with drug dependencies. They use the leverage of the criminal justice system and its potential sanctions to provide a judicially supervised programme of substance dependency treatment and other services. While drug courts aim to address an individual's immediate offence, their longer-term goals are to promote an individual's recovery and reintegration into the community, thereby helping to end recidivism.

To understand more fully why diversionary measures are important, let's look at the issues of pre-trial detention.

Pre-trial detention

Many women are in prison during criminal investigations. They have not been tried, and some may not have been charged. They may well be innocent. This type of detention is not a sanction, but rather a measure to safeguard a criminal procedure.

People awaiting trial should not necessarily be kept in detention. There needs to be reasonable suspicion that the person has committed the offence. Imprisonment must be **necessary and proportionate** to prevent them from absconding, committing another offence or interfering with the course of justice during pending procedures. Prison on remand is not legitimate when this objective can be achieved through other, less intrusive measures. Such measures may include:

- bail
- seizure of travel documents
- requirement to appear before the court as and when required
- not to interfere with witnesses
- periodic reporting to police or other authorities, electronic monitoring, or curfews

These types of less intrusive measures are important given the consequences of pre-trial detention of women.

Consequences of pre-trial detention of women

Bangkok Rule 57 recognises the cost of the excessive use of pre-trial detention that women are often exposed to and promotes the use of alternatives. The excessive pre-trial detention of women is due to factors such as not being able to afford bail or legal representation to challenge the detention, factors which affect women more so than men.

Rule 57

The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.

毒品法庭是其中一种替代体制，针对染上毒瘾的妇女。此体制借助刑事司法系统的效力及其可能的刑罚，提供戒毒疗程及其他服务，并由司法监督。毒品法庭一方面是要处理当事人面前的罪行，但长远目标是为帮助其能改过自新，并重新融入社会，从而遏止再犯。

为了更全面了解转送教改机构措施的重要之处，现进而讲解有关审前羁押的议题。

审前羁押

很多妇女在刑事调查期间遭到拘押。她们未经审判，更有些未被起诉。她们可能是完全无辜的。此类收押并非刑罚，而是用以确保刑事程序顺利进行的措施。

对于候审的被告，并不都有羁押的必要，实施时也必须基于合理怀疑其确有犯行。囚禁也必须是相称和必要的，用于防止等待司法程序期间潜逃、触犯其他罪行或妨碍司法公正等行为。如有其他较不强制性的措施可达成以上目标，还押囚禁并不合理。该类措施包括：

- 保释
- 扣存旅行证件
- 如经传唤被告得随时到庭
- 禁止干扰证人
- 定时向警方或有关当局报到、电子追踪监察或宵禁

顾及审前羁押对妇女可能带来的后果，此类较不强制性的措施尤为重要。

审前羁押对妇女带来之后果

《曼谷规则》规则 57 认为过度使用审前羁押往往为妇女带来过高的代价，并提倡推广替代措施。过度收押妇女，可归因于以下因素：不能付担保释金或抗议收押所需的法律费用，这些因素一般影响妇女多于男性。

规则 57

《东京规则》各项规定应成为制定和实施对女性罪犯的适当应对措施的指导方针。应在会员国法律制度范围内拟定有性别区分的转化措施和审前及量刑替代安排等可选办法，其中应考虑到许多女性罪犯的受害史以及她们担负的照看责任。

Even when detained for short periods of time, women experience physical, emotional, and social consequences of pre-trial detention which can be acute and endure long after detention ends. Women often lose their jobs and homes. They are separated from their children and worry about their welfare. Their relationships with their spouses and partners may also be harmed.



Any decision about alternative pre-trial detention measures should be gender-specific. For example, should bail imply regular reporting to authorities, transport to the respective police station or court must be affordable and feasible, and must not jeopardise caretaking responsibilities.

What about alternatives for convicted women?

Non-custodial sanctions

When sentencing a convicted woman offender, consideration should be given to the woman's background and reasons that have led her to commit the offence. The sentence should provide assistance to help the woman overcome the reasons that led to the criminal behaviour.

即使只是短期拘禁，妇女所承受的肉体、精神及社会后果，亦可能极为严重，出狱后历久不退。妇女往往失去工作和家园。她们会与子女骨肉分离，忧心孩子安好。她们与配偶或伴侣的关系亦可能因此受损。



任何有关替代审前羁押措施的决定，都应该因应性别的需求。例如，如保释期间要求向当局定时报到，往返警察局或法庭的交通费用必须低廉和方便，并且不妨碍其照看责任。

对于被宣判有罪的妇女，又有哪些替代措施？

非拘禁惩处

量刑时，法庭应考虑妇女的背景和犯罪因由。刑罚应有助妇女克服驱使她们犯罪的原因。



Non-custodial sanctions are an alternative sanction to imprisonment and aim to:

- address the underlying causes of offending behaviour
- take into account the relationship between the offender, the victim and the wider community by considering the rehabilitative needs of the offender, the protection of society and the interests of the victim

Non-custodial sanctions have been shown to be much more effective than imprisonment in reducing female re-offending and in promoting lasting rehabilitation. For example, since a large proportion of women prisoners have mental healthcare needs, are drug- and/or alcohol-dependent, or suffer from the trauma of domestic violence or sexual abuse, sending them to a suitable gender-appropriate treatment programme addresses their needs much more effectively than the harsh environment of prisons.

Let's look at two examples of non-custodial sanctions in more detail.



非拘禁惩处替代监禁，旨在：

- 对应犯罪因由
- 考虑犯人的康复需要、保障社会和受害人利益，从而顾及犯人、受害人及整体社区的关系

有显示非拘禁惩处比监禁更有效减少妇女再犯并促进持久的康复。例如，鉴于大部分女囚犯都有精神健康护理需要、染有毒瘾和 / 或酒瘾、或有经历家暴或性虐待的心理创伤，为她们进行符合性别的疗程，比监狱严峻的环境，更有效对应她们的需要。

请细看以下两个非拘禁惩处的例子。

Circle Sentencing



In Canada circle sentencing is used as an alternative to imprisonment. Participants include the judge, defence counsel, prosecutor, police officer, the victim and the offender, and their respective families, and community residents. Participants sit facing one another in a circle and discuss the case. Discussions are designed to reach a consensus about the best way to resolve the conflict and resolve the case. A fundamental principle of circle sentencing is that the sentence is itself less important than the process used to arrive at an outcome or a sentence.

Fines



Fines are among some of the most frequently employed alternatives to imprisonment. They must be calculated so that they do not disproportionately disadvantage the poor. Sweden and Finland use a system of 'day fines' to overcome any discrimination against the poor. Each fine is fixed in relation to the seriousness of the crime. For example, if a crime is valued at 20 'days', each day might be valued at \$1 for a poor person and \$20 for a richer person.

圆桌量刑



在加拿大，圆桌量刑是判处监禁的一种替代办法。法官、辩护律师、检察官、警察、受害人、犯人、双方家属、及社区居民均会参与其中。参与人士围圈而坐，面对面，讨论案情。讨论旨在寻求共识，达成化解对立、解决案件的最佳方法。此做法的基本原则就是：刑罚本身并不如寻求共识或协定刑罚的过程重要。

罚款



罚款经常用以替代监禁。罚额必须小心计算，而不至对穷人造成不成比例的付担。瑞典及芬兰设有「日薪罚款」，以消除对穷人的歧视。每一项罚金因应罪行情节轻重而定。例如，如罪行的罚金以二十日计算，穷人每日的罚金可能是一美元，而较富有的人可能是二十美元。

Other non-custodial measures and sanctions

Other non-custodial measures and sanctions include caution, curfew orders and electronic monitoring.

Alternatives to imprisonment – suited to women

Because of the specific needs of women offenders, developing and implementing alternatives to imprisonment requires a gender-specific ‘lens’. Bangkok Rule 60 provides guidance on the types of services that may constitute alternatives to detention for women offenders.

Rule 60: Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women’s contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.

Gender differences in substance dependence

It is 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 need gynaecological care, skills for negotiating safer sex, and opportunities to discuss issues such as violence and pregnancy.

Care-taking responsibilities

In issuing non-custodial sanctions, the possible care-taking responsibilities of a woman must be kept in mind, to ensure that it is possible for mothers to participate in community-based programmes.

Women-only services

As mentioned in Bangkok Rule 60, 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 transport

Issues of access should be addressed to ensure the effective functioning of non-custodial programmes. This includes ensuring transport to women living in rural areas and providing free-of-charge services.

非拘禁措施及惩处

其他非拘禁措施及惩处包括警诫、宵禁令及电子监察，以表列出。

监禁之替代措施——适合妇女

女犯人有特别需要，因此，在设计及执行替代措施时，负责人员须本着男女有别的视野来作出考量。

《曼谷规则》规则 60 为适合女犯人的非拘禁措施提供了指引。

规则 60：应提供适当资源为女性罪犯设计合适的替代安排，以便将非拘禁措施与干预措施相结合，解决导致妇女触及刑事司法制度的最常见问题。这些安排可包括对家庭暴力和性虐待受害人的治疗课程和咨询服务；为精神残疾者提供的适当治疗；改善就业前景的教育和培训方案。这种方案应考虑到提供照看儿童服务和专为妇女提供服务的必要性。

药物依赖之性别差异

鉴于药物依赖及其症状存有性别差异，治疗方法因而有所不同。进行社区计划时，妇女或需妇科护理、学懂如何要求更安全的性行为、以及获得与别人讨论如暴力和怀孕等问题的机会。

照看责任

考虑非拘禁惩处时，必须顾及妇女的照看责任，以确保为人母亲的女犯人可以参与社区计划。

专为妇女提供之服务

如规则 60 所提，应有专为妇女提供之服务，如为暴力受害人提供安全之所，远离男性暴力，或帮助妇女克服药物使用所带来的污名与耻辱等机会。

安排交通

当局应妥善安排交通往返，以确保非拘禁计划顺利进行。此包括为住在乡郊的妇女安排交通及提供免费接送服务。

Case Study

Centre 218 in Scotland shows how a gender-sensitive approach to providing a community-based programme contributes to addressing the root causes of women offending. The centre provides a safe environment for women offenders and adopts a person-centred approach where each woman has an individually-tailored programme based on her needs.

Now that we have a better understanding of why alternatives to imprisonment are important and how these alternatives can be gender-sensitive, we will look at how to apply this at the sentencing stage.

Factors in sentencing women offenders

Bangkok Rule 64 states that non-custodial sentences are to be preferred where possible for pregnant women and women with dependent children, while Rule 61 requires that at the sentencing stage mitigating factors should be considered.

Rule 64

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

Rule 61

When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds.

What are these factors?

Check your understanding

What mitigating factors are given in Bangkok Rule 61? (Select all that apply)

- Lack of criminal history
- Severity and nature of the criminal conduct
- Caretaking responsibilities
- Background of women offenders - do they experience domestic violence? Do they live in poverty or with a drug addiction?
- Marital status

个案研习

位于苏格兰的 218 中心，示范因应性别而调整的社区计划如何有助对应妇女犯罪的根本因由。该中心为女犯人提供安全环境，并本着以人为本的宗旨，因应其需要，为每名妇女量身订造一套计划。

在了解到监狱替代措施的重要之处，以及此类措施如何符合性别需要之后，下一步将探讨如何在量刑阶段应用这些措施。

对女性罪犯量刑的因素

《曼谷规则》规则 64 订明，当局应尽可能优先采用非拘禁的判决处理孕妇和须要抚养子女的女性，而规则 61 则规定当局须在量刑时考虑减刑的因素。

规则 64

在可能和适当情况下，对怀孕妇女和有受抚养子女的妇女应首先选择非拘判决，只有在罪行严重或暴力犯罪或该妇女构成持续危险的情况下，并在考虑到儿童最高利益之后，才考虑拘禁判决，同时还应确保做好照看这类儿童的适当安排。

规则 61

在对女性罪犯量刑时，考虑到她们的照看责任和典型背景，法院应有权力考虑减轻罪行的因素，例如无犯罪史、犯罪行为相对不严重及犯罪性质。

减刑有何因素？

理解测验

《曼谷规则》规则 61 载有哪些减刑因素？（请选择所有适用者）

- 无犯罪史
- 情节轻重及罪行性质
- 照看责任
- 女犯人之背景——其是否受过家暴？其是否生活贫困或染有毒瘾？
- 婚姻状况

Correct Answer: The marital status of a woman should not be considered by the courts when sentencing women offenders. Rule 61 however does list mitigating factors such as lack of criminal history, severity and nature of the crime, caretaking responsibilities and background of women offenders.

When may imprisonment be appropriate for women offenders?

Imprisonment should only be considered where

- The offence is serious or violent
- The woman represents a continuing danger to society
- The best interests of the child/children are met
- There is appropriate provision of care for the children or other dependents of the offender, such as elderly or relatives with disabilities

You should now be ready to apply gender-sensitive sentencing to two case-studies.

Case Study: Mrs M

Mrs M is 35 years old and a single mother of three boys, aged 8, 12 and 16. She has been convicted of 40 counts of credit card fraud, committed while she was under a suspended sentence for similar offences. The family lives in an area affected by gang violence and drugs.

Mrs M has already spent four months in prison, one month while awaiting trial before having been granted bail and three months serving her sentence before being released on bail. The delay in finalising the matter provided her with the opportunity to demonstrate her capacity to develop business activities and increase her income.

Which of the following issues are central to a gender-sensitive sentencing of Mrs M?
(Select all that apply)

- Mrs M comes from an impoverished background
- The potential impact on Mrs M's children from a prison sentence for their mother
- Whether there would be any other caretaker for the children if Mrs M were to be imprisoned
- The relative non-severity (non-violence) of the criminal conduct

正确的答案：法庭量刑时，不应考虑女犯人的婚姻状况。 规则 61 载有以下减刑因素：无犯罪史、情节轻重及罪行性质、照看责任和女犯人之背景。

监禁在甚么情况下适合女犯人？

只应在以下情况考虑监禁：

- 严重或暴力罪行
- 该妇女对社会构成持续危险
- 符合子女的最佳利益
- 子女或其他依赖该犯人照顾的人，如长者或亲属，得到合适的照顾。

您现应准备好将顾及性别量刑应用于两个个案。

个案研习：M 太太

M 太太，35 岁，一名单亲母亲，育有三名男孩，分别为八岁、十二岁和十六岁。她缓刑期间犯下四十项信用咭诈骗罪，她之所以被判缓刑也是因为涉及同类罪行。该家庭的住处时有帮派殴斗及滥药问题。

M 太太身陷牢狱，经已有四个月，当中有一个月是审前拘押、等候保释，其余三个月为服刑直至获得保释。 因判决延迟，M 太太趁此期间展现出做生意和增加收入的能力。

以下哪些问题，在因应性别的量刑中是关键的因素？ （请选择所有正确答案）

- M 太太出身贫穷
- 监禁对 M 太太孩子的可能影响
- 若 M 太太遭监禁，会否有人代为照顾孩子？
- 罪行（非暴力）情节较轻

Outcome

This case went before South Africa's Constitutional Court in 2007. Mrs M appealed to the court after being sentenced in the lower district court. The magistrate in the lower district court asked Mrs M whether her children would have somewhere to live if she was sent to prison. Satisfied that the children would not end up on the street, he sentenced Mrs M to a prison term of four years.



The Constitutional Court held that the enquiry of the magistrate into the welfare of her children was inadequate since the magistrate had failed to do such things as seek a social worker report. The ruling noted that various crucial issues had been overlooked, including:

- the quality of alternative care available
- the potential impact moving the three children would have on schooling and other activities
- how the children would be financially supported in Mrs M's absence.

A social worker report was requested for the appeal. This revealed that Mrs M's imprisonment would result in the children's separation. They would also lose their home, neighbourhood and school routine.

Considering the impact on Mrs M's children, the Court overturned the imprisonment sentence in order to protect the **human rights of Mrs M's children.**

结果

2007 年，此案由南非宪法法院审理。M 太太在较低级的区域法院判刑后，即上诉至此法院。区域法院的裁判官问 M 太太若她服监禁刑，孩子是否有容身之所。裁判官认为孩子不会沦落街头后，判处 M 太太四年监禁。



宪法法院裁定，裁判官对孩子福祉的调查有所不足，并无进行所需步骤，如索取社工报告等。判决中列出几项重要考虑，而裁判官对此有所忽略，包括：

- 托儿的质素
- 对学习及其他活动可能的影响
- M 太太不在时，谁来负责赡养孩子

上诉期间，社工报告呈上法庭。根据该报告，如 M 太太入狱，孩子将会被迫分离。他们亦会失去家园、熟悉的居住环境和上学作息。

鉴于对 M 太太孩子的影响，法院推翻监禁之判刑，以保障 M 太太孩子的人权。

The court gave Mrs M a suspended sentence holding that she would not be sent to prison as long as she did not commit another offence that involved dishonesty. The sentence also included conditions that Mrs M would:

- Repay the persons she defrauded
- Go to counselling
- Undertake community work for ten hours per week for three years

Judge Albie Sachs explains the decision

"We could have said the children's rights must be considered but sent Mrs M to jail anyway, perhaps for a lesser term. But that would not have changed anything."

"The minute my colleague spoke to me about the importance of the three teenage children of Mrs M, I started to see them not as three small citizens who had the right to grow up into big citizens but as three threatened, worrying, precarious, conflicted young boys who had a claim on the court, a claim on our society as individuals, as children, and a claim not to be treated solely as extensions of the rights of the mother, but in their own terms."

The verdict set a legal precedent. In addition to ensuring the children had alternative care arrangements, the court looked at the full impact of imprisonment of their mother.

Rule 64 of the Bangkok Rules reflects these principles which are grounded in the UN Convention on the Rights of the Child. The Convention requires any decision where children are involved to be based on the best interest of the children.

"Every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them." (Paragraph 18 of the verdict)

Rule 64

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

Remember!

Some of the Bangkok Rules address issues equally relevant for male and female offenders and prisoners, including "those relating to parental responsibilities, some medical services, searching procedures and the like".

法院判处 M 太太缓刑，不用入狱，除非她再犯下不诚实的罪行。判刑附有以下条件，M 太太要：

- 归还诈骗所得的款项
- 接受辅导
- 做三年社区服务，每周十小时

艾比·撒克斯法官解释该判决：「我等本可以只言明必须考虑孩子的权利，但依旧判处 M 太太监禁，或可能缩短刑期。但该做法并不会改善情况。」

「当同事向解释 M 太太的三名少年儿子是何等重要，我就开始视他们为三名受惊、忧心忡忡、脆弱和迷惘的年幼男孩，而非只是三名年幼的市民。他们身为社会的一分子和儿童，在法院和社会中，都有其权利，其权利乃自身本有，并非只是其母亲权利的延伸。」

此判决确立了一个法律先例。除确保孩子有人照看之外，法庭亦须顾及母亲入狱对子女的全部影响。

《曼谷规则》规则 64 包含此等原则，而此等原则来自《联合国儿童权利公约》。此公约规定任何牵涉儿童的决定必须以儿童的最佳利益为依归。

「每位儿童均有其尊严。若从宪法法理视儿童为个体，有其独立人格，而非只是微型成人，等待羽翼长成，就不能视儿童为其父母的伸延，以为儿童与父母密不可分共浮沉。」（判词第十八段）

规则 64

在可能和适当情况下，对怀孕妇女和有受扶养子女的妇女应首先选择非拘禁判决，只有在罪行严重或暴力犯罪或该妇女构成持续危险的情况下，并在考虑到儿童最高利益之后，才考虑拘禁判决，同时还应确保做好照看这类儿童的适当安排。

请谨记！

《曼谷规则》有几项规则同样适用于男女罪犯或囚犯，包括「有关父母亲责任、某些医疗服务、搜查程序等问题」。

See Bangkok Rules Preamble, Paragraph 12.

In cases where the court decides that a prison term is unavoidable, it has to take some responsibility for what happens to the children as a result, and take reasonable steps to minimise any damage.

Preamble, Paragraph 12: “Some of these Rules address issues applicable to men and women prisoners, including those relating to parental responsibilities, some medical services, searching procedures, and the like, although the Rules are mainly concerned with the needs of women and their children. However, as the focus includes the children of imprisoned mothers, there is a need to recognize the central role of both parents in the lives of children. Accordingly, some of the Rules contained in this document would apply equally to male prisoners and offenders who are fathers.”

Let's look at the case file of Ms K who is from the United States.

Ms K's case

At 15 years old, Ms K married Eddy and was pregnant with their first child one year later. After a few happy years together, Eddy began to violently attack Ms K. Once, she had to stay in hospital for two months.

One day when Eddy was drunk he attacked and strangled her. When she started to black out: “I just reached out and found something. I didn't know what it was, but it was a little steak knife. I was trying to get him off me, I stabbed him.”

Ms K had no criminal record or history of violence. Her son was seven years old at the time and was traumatised by the death of his father and arrest of his mother.

Ms K pled guilty and was sentenced to five years of **probation**, conditioned on her participation in a programme designed for women who were convicted and victims of domestic violence. She credits this programme with helping her understand her past and move forward.

Ms K explains:

“It gave me the ability I needed to find myself, to be more empowered and have my own voice. My self-worth had been based on Eddy, a man who screamed hurtful words at me and beat me. [The programme] allowed me to rebuild my life because they gave me unwavering support that empowered me to develop myself.”

Probation

The release of an offender from detention under conditions such as supervision.

Women are not only imprisoned for an offence, or an alleged offence.

见《曼谷规则》序言第十二段。

某些案件中，若法庭裁定监禁无可避免，必须为孩子因母亲入狱所承受的处境承担部分责任，以及采取合理行动将伤害减至最低。

序言第十二段

本规则主要涉及妇女及其子女的需要，但有一些涉及男女囚犯都适用的问题，例如有关父母亲责任、某些医疗服务、搜查程序等问题。不过，由于关注的重点包括在狱中服刑的母亲的子女，因此需要认识到父母双方在子女的生活中扮演的重要角色。有鉴于此，本规则中有些规则将同样适用于身为人父的男性囚犯和罪犯。

现请阅读美国人 K 女士的案例。

K 女士之案例

K 太太十五岁时嫁与艾迪，一年后怀上他们第一个孩子。几年幸福日子过去，艾迪开始对 K 女士施暴。有一次，K 女士更要留院两个月。

某日，艾迪醉酒，袭击 K 女士并勒住她的颈项。当她正要陷入昏迷之际：「我把手伸出去，抓到个东西。开始我不知道那是甚么，原来是一把牛排刀。我想挣开他，捅了他一刀。」

K 女士并无刑事案底或暴力前科。她儿子当时七岁，因父亲死亡、母亲被捕而心理受创。

K 女士认罪，被判处五年缓刑考验，并附有一条件：必须参与为曾受家暴之女罪犯而设的计划。她认为这个计划帮助她了解自己的过去并迈向将来。。

K 女士解释道：

「我因此而重拾自己，获得更多力量，也有自己的主见。我以前的自我价值来自艾迪，那个向我尖叫恶言并殴打我的男人。[该计划]给予我坚定的支持，使我能够发展自己，从而帮助我重整人生。」

缓刑考验

犯罪人从拘禁中获释，但必须接受如监管等条件。

妇女并不仅因犯罪或指控犯罪而被拘禁。

So-called “protective detention”



In some countries, prisons are used as places of ‘protection’ for victims of violence. It is an extreme and vivid example of the thin line between victimisation and imprisonment.

Usually there are shelters or safe houses run by NGOs or social welfare systems for victims of violence. However, the demand for safe houses is regrettably often higher than what is available. This often results in women being placed in sections of detention facilities or prisons as a measure of protection.

Bangkok Rule 59 provides specific conditions for situations when women are held in custody to protect them from violence, including:

- Protective detention must be temporary and only used when necessary
- Women must express a desire in writing to receive such measures of protection
- Women are to be free to leave whenever they wish, having received all information including the risks they may face
- Detention facilities should be independently monitored
- Staff should be trained to respond to particular needs including trauma
- Accommodation must be strictly separate from prisoners
- Psycho-social assistance and legal aid should be offered

所谓「保护性拘禁」



某些国家以监狱作为暴力受害人的庇护之所。 此为极端而生动的例子，说明伤害与监禁仅一线之差。

通常非政府机构或社会福利系统中有提供为暴力受害人而设的庇护所或安全宿舍。 但可惜安全宿舍求过于供，一些妇女因而遭安置在拘禁设施某些分区或监狱，以作保护。

《曼谷规则》规则 59 规定，为保护妇女免受暴力时采取拘禁时，须具备以下的特定条件，包括：

- 保护性拘禁必须为临时措施并在必要时才实施
- 妇女必须以书写方式表明其意愿
- 妇女在知悉所有信息（包括其将面对的风险）下，随时可按其意愿离
- 拘禁设施应受独立监察
- 监狱人员应受训以应付如创伤等特别需要
- 住宿须与监犯严格分开
- 应提供心理社交辅导与法律援助

Rule 59

Generally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organizations or other community services, shall be used to protect women who need such protection. Temporary measures involving custody to protect a woman shall only be applied when necessary and expressly requested by the woman concerned and shall in all cases be supervised by judicial or other competent authorities. Such protective measures shall not be continued against the will of the woman concerned.

Maysun Shobaki's case of 'protective detention' in Jordan illustrates the issues with this type of detention.

Ms Shobaki was raped by her brother and nephew and became pregnant as a result. The doctor who examined her called the police because she was unmarried. Ms Shobaki was detained in a correction centre in Amman for at least 10 years.

Her nephew was sentenced to seven years' imprisonment, and she received three and a half years' sentence for unlawful sex. Even after serving her time, the Governor insisted that she remain in the facility for her own protection, until she obtain a sponsor, or get married. She considered suicide because she was not permitted to leave and saw this as the only way to "recover her freedom".

- Custody as a means of protection must only be a temporary measure
- Such protective measures shall not be continued against the will of the woman concerned
- Custody to protect a woman shall only be applied when necessary and expressly requested by the woman concerned in writing

We will now look at imprisoned victims of trafficking, a vulnerable group of women who increasingly find themselves in prison.

规则 59

一般而言，应使用非拘禁手段的保护方式，例如，安置在由独立团体、非政府组织或者其他社区服务机构管理的避难所中，以此保护需要这种保护的妇女。只有在必要时并且在所涉妇女明确请求的情况下，才可采用涉及拘禁的临时措施保护妇女，并且在任何情况下都应由司法或其他主管部门予以监督。不得违背所涉妇女的意愿而继续实施这种保护措施。

美晨·素巴其 在约旦的「保护性拘禁」案例，带出此种拘禁的问题。

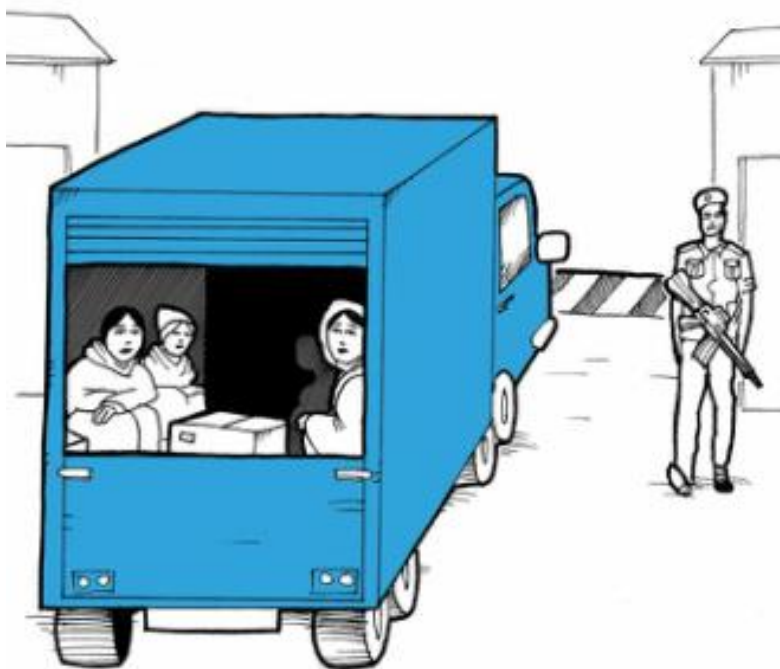
素巴其女士遭兄弟和甥侄强奸，并因此而怀孕。为她诊治的医生并不知道她是因奸怀孕，亦见她未婚，于是报警。素巴其女士遭禁錮在亚曼的惩教中心，已十年有多。

她的甥侄被判入狱七年，她则被判非法性交而须服刑三年半。刑满后，省长根据1954年防止罪案法，命令她留在狱中，以策安全，直至觅得监护人或结婚为止。因不获释，她想过轻生，视此为唯一重获「自由」的途径。

- 拘禁以作保护必须仅用作临时措施
- 如当事妇女不欲接受，此类保护措施不应继续执行。
- 保护妇女的拘禁措施应只在必要时实施，并应由当事妇女以书写方式明确要求。

现将讲述被拘禁之人口贩运受害人。此乃一群脆弱的妇女，当中愈来愈多人遭到监禁。

Locking up victims of trafficking?



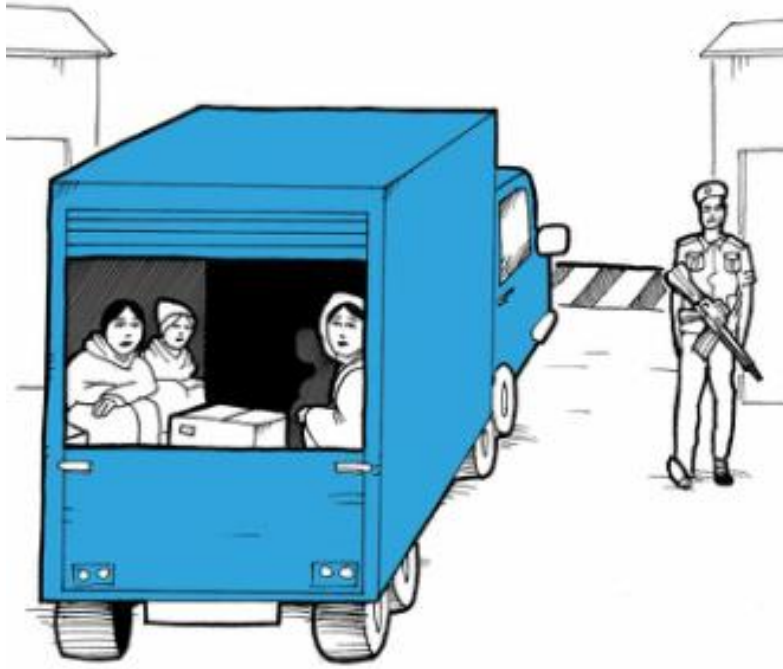
Trafficked persons are subjected to multiple human rights abuses (such as violence or forced prostitution) and are often victims of crime whether or not the persons responsible for the trafficking are identified, arrested, charged, prosecuted or convicted. Sometimes victims of trafficking are detained or charged for breaching immigration rules or for their involvement in illegal activities because they have been trafficked.

Every country in the world is affected by human trafficking, whether as a country of origin, transit or destination for victims.

Sexual exploitation in numbers

Sexual exploitation is by far the most commonly identified form of human trafficking, accounting for 79 percent of trafficking. This is followed by forced labour (18 percent). A disproportionate number of women are involved in human trafficking as victims and as culprits. Sometimes former victims become perpetrators of human trafficking, as a means of escaping their own victimisation. In China, it is estimated that about 70 percent of women in prison are “secondary offenders” who have aided men in crimes like trafficking in women and children or organising prostitution.

是否应该拘禁人口贩运的受害人？



不管贩运份子是否得到确认、逮捕、检控或被定罪，被贩运者的人权常遭侵犯（如遭施暴或被迫卖淫），也往往是罪案的受害人。有时候，人口贩运受害人因本身被贩运而触犯法律或违反入境条例而被拘禁或起诉。

不论作为受害人的来源国、中转站或目的地，各国均蒙受人口贩运的影响。

性剥削之数据

性剥削是最常见的一种人口贩运的形式，占总数的百百分之七十九，紧随其后的是强迫劳工（百分之十八）。人口贩运中，身为受害人或犯罪者的妇女人数异常高。有时后，受害人之所以变成犯罪者是因为要避免本身继续受害。在中国，大约七成的女犯是“从犯”，她们曾协助男性拐卖妇女和儿童或组织卖淫。

Legal framework on human trafficking

"The lack of specific and/or adequate legislation on trafficking in persons at the national level is one of the major obstacles in the fight against trafficking. It is not sufficient to criminalize some underlying offences of human trafficking, but human trafficking in its entirety needs to be criminalized." (Excerpt from the Toolkit to Combat Trafficking in Persons, Global Programme against Trafficking in Human Beings, United Nations, 2006)

To remedy the lack of specific and adequate legislation on trafficking in persons, the United Nations adopted the UN Convention against Transnational Organized Crime, and its Protocol.

Bangkok Rule 66 indicates that States should make maximum effort to ratify the Convention and its supplementary Protocol, and incorporate their provisions into domestic law.¹

Rule 66: Maximum effort shall be made to ratify the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime to fully implement their provisions so as to provide maximum protection to victims of trafficking in order to avoid secondary victimization of many foreign-national women.

What standards exist on victims of trafficking?

Whilst the UN Convention against Transnational Organized Crime, and its protocol do not oblige states to stop the prosecution of trafficked people, multiple other international and regional guidelines, action plans, declarations and resolutions urge states to do so.²

Key instruments include:

- Convention of Council of Europe on Action against Trafficking in Human Beings
- United Nations Human Rights Principles and Guidelines on Human Rights and Human Trafficking

¹ Has your country ratified the Convention and its Protocol? To find out, please see this website:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en.

² To read more in the UNODC's toolkit to combat trafficking in persons, please see this website: http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf.

打击人口贩运之法律框架

「国家层面缺乏专为打击人口贩运而立的法律或充分的有关法例，为打击人口贩运的一大障碍。 仅将几项与人口贩运有关罪行列入刑法规管，并不足够，应将人口贩运完整列入刑法规管。」（节录自《打击人口贩运手册》，对抗人口贩运之全球计划，联合国， 2006 年）

为弥补针对人口贩运方面立法不足，联合国采纳《联合国打击跨国有组织犯罪公约》及其《协议》。

《曼谷规则》规则 66 订明列国应尽最大努力批准此《公约》及其补充《协议》，并为当中条款纳入本国立法。³

规则 66

应尽最大努力批准《联合国打击跨国有组织犯罪公约》及其《关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》， 27 以期充分实施其中的规定，从而为人口贩运活动受害人提供最大限度的保护，以避免许多外国妇女二次受害。

有何现行标准保障人口贩运受害人？

虽然《联合国打击跨国有组织犯罪公约》及其《协议》并不强制各国停止检控被贩运者，但有不同的国际或区域性的文书指引、行动方案、宣言和方案均呼吁各国采取这样的做法。⁴

重要文书如下：

- 《欧洲委员会打击人口贩运行动公约》
- 《联合国人权原则及有关人权及人口贩运指引》

³贵国已否正式批准此《公约》及其《协议》？为了多了解，请见此英文的网站：
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en。

⁴为了详阅有关联合国毒品及犯罪问题办公室出版之《打击人口贩运手册》，请见此英文的网站：
http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf。

What international standards say

- A trafficking victim should be given at least 30 days to recover and escape the influence of traffickers before he or she must make a decision on whether to cooperate with the police
- Trafficked persons should not be detained, charged or prosecuted for illegal entry into a country or for violating other immigration laws
- Trafficked persons should be effectively protected from retaliation by traffickers, before and after testifying, including by issuing resident permits and providing protection measures, e.g. protecting their identity
- Victims should not be prosecuted for trafficking-related offences, such as holding false passports, or prostitution
- Regardless of whether prostitution is legal or not, sex work should not be a prosecutable offence, even if the person agreed to work in the sex industry

Summary: Non-custodial measures

You have nearly finished Module 2. We learnt about the cost of imprisoning women, and of pre-trial detention, and about alternatives to imprisonment. In looking at alternatives, we considered what it means to make these gender-specific as well as what factors should be considered in sentencing women offenders. We looked at a case of where women are imprisoned under ‘protective detention’ and what measures should be taken to ensure their rights are respected. Finally we looked at the laws on victims of trafficking.

Module 2 Assessment

You can now answer 3 questions to assess your understanding.

1. Women offenders should never be sent to prison and should always be given a non-custodial sentence. True or false?

据国际标准所定

- 人口贩运受害人在决定与警方合作与否之前，应获起码三十天的时间以康复并摆脱人口贩运者的影响
- 被贩运者不应因非法进入国境或违反其他入境法例而被拘留、起诉或检控
- 被贩运者在作证前后，应受有效保护以免遭受贩运份子的报复，包括签发居留证件和提供如隐藏其身份等保护措施
- 受害人不应对因与贩运有关的罪行如假造护照或卖淫而遭检控
- 不论卖淫合法与否，即使当事人同意从事性行业，性工作亦不应纳入控罪之列。

总结： 非拘禁措施

单元二研习快到尾声，当中提及监禁妇女和审前羁押的代价及替代监禁的措施。研习替代监禁的措施时，我们探讨了何谓因应性别而设的措施，以及对妇女量刑时应考虑的因素。我们参考了一起案例，此案例反映受保护性拘禁的妇女的处境，亦探讨应以何措施保障她们的权益。最后介绍了保障人口贩运受害人的法例。

单元二、 测验

请回答三条问题，以评估您的理解。

一、女犯人绝不应遭禁监，仅应对其作非拘禁惩处。正确还是错误？

False. Women are not exempt from sentences involving imprisonment. However, Bangkok Rule 57 acknowledges that the majority of women offenders are victims themselves, have children and do not pose a serious threat to society. Because of this, non-custodial sentences may be more appropriate. This is in line with the UN 'Tokyo Rules' (1990) which set out a fundamental principle to move towards an increased use of non-custodial sanctions and measures as an alternative to imprisonment. Moreover, Bangkok Rules 61 and 64 outline considerations that should be taken into account at the sentencing stage.

1. If a woman offender has committed a violent crime, she should go to prison regardless of her care-taking responsibilities and potential impact on the woman's children. True or false?

False. If a woman offender committed a violent or otherwise serious crime, a custodial sanction can be considered. However, Bangkok Rule 64 states that even in this case, the best interest of the child or children have to be taken into consideration in the determination of the sentence.

2. In cases where there are no safe alternatives to protect women from violence, the State has an obligation to place such women in custody in a prison or other formal detention centre, provided the accommodation is separate from prisoners. True or false?

False. Bangkok Rule 59 prescribes strict and narrow criteria for when protective detention can be used. The obligation of the state is to protect a woman in danger using measures that don't involve detention. If at all, such "protective detention" is a last, temporary resort. It must only be used when necessary and when expressly requested in writing by the woman in need of protection. The woman concerned must be free to leave whenever she wishes, having received all relevant information, including the risks she may face.

错误。 并不是身为妇女就可免于被判处监禁的刑罚；但《曼谷规则》规则 57 承认，大部分女性罪犯本身为受害者，须要抚养儿女，而且并不对社会造成威胁。因此，非拘禁惩处可能更为合适。此与联合国《东京规定》（1990）相符，《东京规定》订定基本原则，旨在增加使用非拘禁拘禁刑罚和措施替代监禁。另外，《曼谷规则》规则 61 及 64 也概述量刑时应考虑的因素。

二、如女犯人犯下暴力罪行，理应入狱，而不论其是否有照看责任，或母亲入狱是否对其子女造成影响。正确还是错误？

错误。 如女犯人犯下暴力或严重罪行，法庭可考虑拘禁刑罚。但《曼谷规则》规则 64 明确指出，即使如此，子女的最佳利益也必须在量刑时予以考虑。

三、当别无其他安全措施保护妇女免受暴力时，国家有责任将其安置于监狱或其他正规的拘留中心，但其住宿要与囚犯区隔分开。正确还是错误？

错误。 《曼谷规则》规则 59 订立严格而明确的标准，规定何时可用保护性拘禁。国家有责任以非拘禁的措施保护身处危难的妇女，而「保护性拘禁」乃万不得已、临时的办法。保护妇女的拘禁措施只应在必要时实施，并应由接受保护妇女以书写方式明确要求。在知悉所有相关信息（包括其将面对的风险）下，该妇女亦可随时可按其意愿离开。

Module 3

Pregnant Women, Breastfeeding Mothers, and Mothers with Children in Prison

单元三

狱中孕妇、哺乳母亲与带同孩子的母亲



Module 3: Pregnant women, breastfeeding mothers and mothers with children in prison

This module covers the standards which relate to particular support for women in prison who are pregnant, breastfeeding mothers and mothers with children. It also looks at what the Bangkok Rules say on the sensitive and complex issue of deciding whether children should stay with their mothers in prison, and if so what type of treatment children should receive.



单元三：狱中孕妇、哺乳母亲与带同孩子的母亲

此单元涵盖有关支持狱中孕妇、哺乳母亲与带孩子母亲之准则。同时，本单元亦探讨《曼谷规则》如何看待易惹非议而复杂的问题：儿童应否与服刑母亲同住监狱；如是者，儿童应享有何种待遇。



Learning objectives: Pregnant women, breastfeeding mothers and mothers with children in prison

In this module you will address the following questions:

- How should prison healthcare services provide pre-natal and post-natal treatment and care of women prisoners?
- What should be taken into consideration when deciding whether or not a child should stay in prison with his or her parent?
- When children are staying in prison with their parent, what measures should prison administrations implement to comply with international standards?

Since the adoption of the Standard Minimum Rules in 1957, the number of women in prison has grown worldwide. This includes pregnant women, breastfeeding mothers and women with children staying with them in prisons. Building on the Standard Minimum Rules, the Bangkok Rules introduce further guidance on healthcare and other needs of these women as well as the needs of their children.

Pregnant women

Healthcare services in prison are often under-resourced and understaffed. As a consequence, healthcare provisions often fall below the standard of healthcare women receive in the community, and imprisoned pregnant women rarely receive adequate **ante- and post-natal care**. Sometimes healthcare is limited to trying to cope with serious health concerns such as HIV or tuberculosis (TB).

研习目标：

狱中孕妇、哺乳母亲与带同孩子的母亲

此单元将探讨以下问题：

- 狱中保健服务应如何向女囚犯提供分娩前后的治疗及护理？
- 决定儿童应与服刑母亲一起留在狱中时，应有何考虑？
- 当儿童与服刑家长一起留在狱中，监狱当局应实施何种符合国际标准之措施？

自从 1957 年《最低标准规定》获采纳以来，世界各地在囚妇女数目有所上升，当中包括怀孕妇女、哺乳母亲及带同子女服刑之妇女。《曼谷规则》以《最低标准规定》为基础，订立更多有关妇孺医疗保健及其他所需之指引。

狱中怀孕妇女、哺乳母亲与带同孩子的母亲

怀孕妇女

狱中的医疗服务往往缺乏资源及人手，导致其素质常常较妇女于社区享用的医疗服务为低，而在囚怀孕妇女更少接受充足的产前及产后护理。有时医疗甚至只限于应付如艾滋病或肺结核等严重的健康问题。

Ante- and post-natal care



For example, Amnesty International reported that one pregnant prisoner in Ghana had to pay her own taxi fare or walk 30 minutes to the hospital accompanied by an officer when the prison did not have a vehicle to take her to the hospital for her monthly check-ups.¹

Rule 28 of the Mandela Rules and **Bangkok Rule 48** provide guidance on the support needed by women in this context.

Mandela Rule 28

In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

¹ To see a story that illustrates some of the issues that arise from not receiving adequate pre-natal care, please watch this video: <https://www.youtube.com/watch?v=kdeZ7qHWJSA>.

产前及产后护理



例如，据国际特赦组织报导，曾有位迦纳怀孕囚犯，由于监狱并无提供接载车辆，需在狱警陪同下自费乘搭出租车或步行30分钟到医院接受每月一次的产前检查。²

《Mandela 规定》 规则 28 及《曼谷规则》规则 48 就有关上述妇女所需的支持提供指引。

《Mandela 规定》 规则28

女性监狱中应设有特别住宿，以提供必需的产前及产后护理。 如若可行，婴孩应获安排于囚禁设施以外的医院出生。若婴孩于狱中出生，出生证明对此不可有所提及。

²请见有关美国狱中怀孕期间被监狱拒绝给予护理的录像（英文）：
<https://www.youtube.com/watch?v=kdeZ7qHWJSA>。

Rule 48

1. Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.
2. Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.
3. The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.

Check Your Understanding

Rule 23 of the Standard Minimum Rules and Bangkok Rule 48 provide guidance on the support needed by women in this context. Read the two Rules and find what is missing from the checklist for prison authorities. Consider what part of Bangkok Rule 48 has not been included in this checklist:

Checklist

- Are pregnant women accommodated in cells or dormitories with adequate hygiene and sanitary facilities, regular access to hot water, ventilation, fresh air and heating?
- Are pregnant women and women who have recently given birth examined regularly by a qualified healthcare practitioner? Does this include a programme of health and a diet customized for each woman?
- Are the nutritional and other healthcare requirements of these women provided for by the prison authorities?
- Is written information provided about the key issues related to pregnancy, giving birth and healthcare following the delivery of the baby? Does this include what they can do to improve their and their children's health and how to prepare for delivery?
- Is such information provided in multiple languages, including those languages most frequently spoken among women prisoners in a particular prison, and is it explained orally illiterate women?

规则四十八

- 一、 怀孕或哺乳女囚犯应参与由合资格保健从业员制定及监察的计划，接受健康及饮食指导。孕妇、婴孩、小孩及哺乳母亲应可享用充足及适时提供的食物、住在有益健康的环境及获安排定期做运动，以上应费用全免。
- 二、 除因特殊健康理由，不可劝阻女囚犯喂哺母乳。
- 三、 治疗计划要顾及刚分娩的女囚犯之医疗及营养需要，即使她们的婴孩并无留在狱中。

理解小测

《最低标准规定》规则 23 及《曼谷规则》规则 48 就此类妇女所需支持提供指引。请阅照此二条规则，并指出供监狱参阅的列表上有何缺漏。请思考《曼谷规则》规则 48 中有何内容并未列入此列表。

要项列表

- 是否有安排怀孕妇女住进备有充足卫生设施、供暖系统、通风系统、新鲜空气及常有热水供应的囚室或宿舍？
- 怀孕妇女及刚分娩妇女是否有接受合资格保健人员定期检查？当中是否有包括为各名妇女订制的保健计划及餐膳？
- 监狱当局是否有照顾此等妇女的营养及其他保健需要？
- 是否有就有关怀孕、分娩及分娩后护理的重要事项提供书面信息？当中是否有包括如何改善母婴健康及如何准备分娩的建议？
- 此信息是否备有多种语言版本，包括狱中女犯人最常用之语言？是否有向不识字的妇女口头解释此信息？

What part of the Rule has not been included in this checklist?

- Nutritional requirements of pregnant prisoners
- Information about pregnancy, giving birth and healthcare for pregnant prisoners
- Guidance on breastfeeding mothers

Correct answer: The Checklist lacks a point on sub paragraph (2) of Rule 23 which requires that women who want to breastfeed their children be allowed to do so. A flexible prison regime is important so that mothers can choose whether to breastfeed or not, except if there is a medical reason not to do so.

Important!

Bangkok Rule 48(3) draws attention to women who have given birth shortly before their admission to prison, but whose children remain outside. Women prisoners who have recently given birth but are not living with their babies in prison also need to be provided with post-natal treatment and support. When a baby is not in prison with her or his mother the healthcare needs of the mother can easily go unnoticed.

Children of imprisoned parents



规则有何内容并未列入此列表？

- 怀孕女囚犯之营养需要
- 有关怀孕、分娩及保健信息以供怀孕女囚犯参考
- 喂哺母乳指引

正确答案： 规则 23（2）中有一要项并未列入列表，该要项规定当局应容许妇女如其所欲以母乳喂哺子女。在这方面，监狱制度具备灵活性尤为重要，除非有医疗理由，母亲应可选择是否以母乳喂哺子女。

重要！

对于入狱前刚分娩的妇女而其初生婴孩则居于监狱以外者，《曼谷规则》规则48（3）有所规定。刚生产的女囚犯，尽管没有与婴孩同住，同样需要产后护理及支持。当婴孩并未与母亲同住在狱中，这些母亲的医疗需要往往容易被忽视。

入狱父母之子女



As discussed earlier in the course, there are millions of children around the world affected by the imprisonment of one or both parents.

The statistics

Here is a snapshot from around the globe showing how many imprisoned women are mothers and the number of children in prison them.

Georgia

In Georgia, 82 per cent of 290 women interviewed in prison have children.

Armenia

In Armenia 71 per cent of 142 women interviewed have children.

South Africa

In South Africa in 2007, 168 babies were in prisons with their mothers.

Afghanistan

Of 56 women interviewed in a prison in Kabul, 78.5 per cent were mothers and 43 children were living with their mothers in prison.

Brazil

In Brazil's largest women's prison 87 per cent of prisoners are mothers.

United States

In the US over 66,000 women in prison are mothers of children.

Russia

In Russia 80 per cent of convicted women are mothers.

United Kingdom

In the UK 66 per cent of women prisoners are mothers, with 55 per cent having at least one child under 16 years of age.

如前面所述，全世界有数以百万计的儿童因父母一方或双亲入狱而受影响。

统计数据

以下是数据概要，列出世界各地入狱母亲的人数及与母亲一起留在狱中的儿童的人数。

格鲁吉亚

在格鲁吉亚，受访 290名妇女当中有82%带同子女服刑。

亚美尼亚

在亚美尼亚，受访 142名妇女当中有71%带同子女服刑。

南非

于2007年，南非有168名婴孩与母亲一起住在监狱。

阿富汗

位于喀布尔的一所监狱，受访 56名妇女当中有78.5%是母亲，也有43名儿童与母亲同住监狱。

巴西

在巴西最大女子监狱当里，有 87% 囚犯是母亲。

美国

在美国，超过 66,000 女囚犯是母亲。

俄罗斯

在俄罗斯， 80% 服刑妇女是母亲。

英国

在英国， 66% 女囚犯是母亲，当中 55% 至少育有 1 名 16 岁以下子女。

Lebanon

In Lebanon 49 per cent of female inmates have children under 16.

Rwanda

In Rwanda 45 per cent of female prisoners have children under 16 years old.

Remember!

Bangkok Rule 64 states that where possible non-custodial sentences are preferable for pregnant women and women with dependent children.

Rule 64

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

Promising practice: New York



黎巴嫩

在黎巴嫩，49% 女囚犯育有 16 岁以下子女。

卢旺达

在卢旺达，45% 女囚犯育有 16 岁以下子女。

请切记！

《曼谷规则》规则六十四订明，在许可情况下，怀孕妇女及需抚养子女之妇女，应尽量判予非拘禁判决。

规则64

在可能和适当情况下，对怀孕妇女和有受抚养子女的妇女应首先选择非拘禁判决，只有在罪行严重或暴力犯罪或该妇女构成持续危险的情况下，并在考虑到儿童最高利益之后，才考虑拘禁判决，同时还应确保做好照看这类儿童的适当安排。

可望成功的做法：纽约



A successful programme for convicted female offenders in New York, United States, allows homeless mothers to serve their sentences in community residences instead of sending them to prison. In 2008 Drew House was opened to house homeless convicted mothers and help them retain custody of their children. An alternative to imprisonment, the women must observe a curfew and sign in and out. They must also make weekly visits to treatment centres and monthly visits to their supervising case officer.

Should children live in prison with their mothers?



When a woman with a young child receives a prison sentence, a difficult question arises: should the child be separated from his/her mother or accompany her into prison? Since women are often the main or sole caretaker of children in most regions, this is a complex challenge faced in many countries.³

³ To watch an English-language video clip about a women's prison in Kabul, Afghanistan, and the impact custody has on the children that are housed in prison with their mothers, please watch this video: <https://www.youtube.com/watch?v=4nBCDuf6WLE>.

美国纽约推行了一个成功计划，容许无家可归的母亲于社区内的居所服刑而无须囚禁监狱。2008年，杜耀堂（Drew House）开幕，旨在收留无家可归女犯人，并协助她们保有子女之抚养权。此计划替代入狱服刑，服刑妇女必须遵守宵禁令，进出必须签名记录。同时，服刑妇女每周必须到访治疗中心及每月与监管人员见面。

子女应否与服刑母亲住在狱中？



当母亲被判入狱，尚有年幼儿女，当中衍生一道难题：分隔母子／女，还是容许子女跟随母亲入狱？由于母亲往往是儿童主要或唯一的照料者，此正是许多国家面对的复杂难题。⁴

⁴这段英文片段讲述一所位于阿富汗喀布尔的女子监狱的情况及服刑母亲与子女同住监狱对子女之影响：<https://www.youtube.com/watch?v=4nBCDuf6WLE>。

Remember!

Paragraph 12 of the preliminary observations of the Bangkok Rules states that some rules apply equally to male prisoners and offenders who are fathers. This includes those Rules related to parental responsibilities.

Bangkok Rule Preliminary Paragraph 12: Some of these rules address issues applicable to both men and women prisoners, including those relating to parental responsibilities, some medical services, searching procedures and the like, although the rules are mainly concerned with the needs of women and their children. However, as the focus includes the children of imprisoned mothers, there is a need to recognize the central role of both parents in the lives of children. Accordingly, some of these rules would apply equally to male prisoners and offenders who are fathers.

What is the “best interests of the child” principle?



In the UN Convention on the Rights of the Child the term “best interests” broadly describes the well-being of a child. A child's well-being is determined by a variety of individual circumstances. Its interpretation and application must conform with international law.

请切记！

《曼谷规则》初步意见第12段说明有些规则同样应用于身为父亲之囚犯及罪犯。 此包括那些有关父母责任之规则。

《曼谷规则》 初步意见第12段：本规则主要涉及妇女及其子女的需要，但有一些涉及男女囚犯都适用的问题，例如有关父母亲责任、某些医疗服务、搜查程序等问题。 不过，由于关注的重点包括在狱中服刑的母亲之子女，因此需要认识到父母双方在子女的生活中扮演的重要角色。 有鉴于此，本规则中有些规则将同样适用于身为人父的男性囚犯和罪犯。

何谓「儿童之最佳利益」原则？



于联合国儿童权利公约中，「最佳利益」一词泛指儿童的福祉。 一个儿童的福祉取决于各种个别状况。诠释或应用有关原则必须符合国际法。

Best interests

In most prison systems, there is legislation stipulating the maximum age children can stay with their mothers, which usually ranges from six months to six years. Usually these laws are applied rigidly with little consideration of the individual circumstances and needs of each child. Often officials pay little attention to the implications of a policy that separates children from their mothers at a young age. Such a policy fails to assess the relevant factors in individual cases.

The best interests of the child should be the primary consideration in any decision on whether to allow children to stay with their mothers in prison. This is provided for in **Bangkok Rules 49** and **52**, and **Article 3** of the Convention on the Rights of the Child.



Convention on the Rights of the Child

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

最佳利益

在大部份监狱系统里，有法例限制儿童与母亲同住狱中之年龄，年龄普遍定于六个月至六岁不等。监狱严格执行此法，鲜有顾及儿童之个人状况及需要。官员往往不甚注意分开年幼子女与母亲的政策所带来的后果。这种政策未能评估每个个案之相关因素。

决定是否准许子女跟随母亲入住监狱之时，儿童之最佳利益应是首要考虑因素。儿童的最佳利益已于《曼谷规则》规则48及规则52与《儿童权利公约》第三条订明。



《 儿童权利公约 》

第三条

- 一、 关于儿童的一切行动，不论是由公私社会福利机构、法院、行政当局或立法机构执行，均应以儿童的最大利益为一种首要考虑。

Rule 52

1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.
2. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.
3. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

Rule 49



Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.

规则52

- 一. 应在相关国内法范围内，根据个案评估，并以儿童的最高利益为本，决定何时将子女与母亲分开。
- 二. 应审慎采取让子女离开监狱的措施，并且只能在已为儿童确定其他照看安排的情况下实施，对于外国囚犯，还应与领事官员协商。
- 三. 子女与母亲分开并安排由家人或亲属照看或通过其他替代方式照看之后，应在符合儿童最高利益和无损公共安全的情况下，为女性囚犯与子女会面提供尽可能多的机会和便利。

规则 49



是否允许子女与狱中母亲待在一起的决定应以儿童的最高利益为本。与狱中母亲待在一起的儿童绝不应被作为囚犯对待。

Child welfare agencies should have primary responsibility for assessing what the best interests of the child are, in coordination with healthcare specialists and others involved with the child in prison. The decision-making process should be inclusive of the mother and child.



Children's participation is required by **Article 12** of the Convention on the Rights of the Child and was reiterated by the Committee on the Rights of the Child.

Convention on the Rights of the Child

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

儿童福利机构应肩负核定儿童的最佳利益的主要责任，并与医护专家及其他于狱中与有关人士合作。决议过程需有母亲及孩子参与其中。



儿童权利公约**第十二条**规定儿童必需参与其中，而联合国儿童权利委员会亦有重申儿童参与之权利。

儿童权利公约

第十二条

一、缔约国应确保有主见能力的儿童有权对影响到其本人的一切事项自由发表自己的意见，对儿童的意见应按照其年龄和成熟程度给以适当的看待。

二、 为此目的，儿童特别应有机会在影响到儿童的任何司法和行政诉讼中，以符合国家法律的诉讼规则的方式，直接或通过代表或适当机构陈述意见。

Case study: Ukraine

Policy:

In Ukraine, children born in prison can stay with their mothers up to the age of three, or in exceptional cases, four. When they reach the age limit, children are put into orphanages. This can make it difficult for mothers to stay in contact with and to monitor their children's welfare.

Bangkok Rule 49

Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.

Bangkok Rule 52 (1)

1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.

Ukraine's policy is not in compliance with **Bangkok Rules 49 and 52(1)**.

The Bangkok Rules require maximum flexibility in making a decision. The decision should always be justified by individual assessments and based on the principle of the best interests of the child. Housing children in prison until the end of their mother's sentence or increasing the age limit for how long children can be housed in prison are not appropriate measures as they do not allow for individual assessments. Therefore the correct measures that could be implemented are:

- Remove the imposed age limit and replace with assessments of each case
- Base any decision on the best interests of the child
- Implement a process where both mother and child can express their views

个案研究： 乌克兰

政策：

在乌克兰，儿童若出生于监狱就可与母亲一起留在狱中直至三岁，或于特别情况下留至四岁。当儿童到达年龄限制时，就会被安置于孤儿院内，令母亲难以与子女保持联络及照看他们的情况。

《曼谷规则》 规则 49

是否允许子女与狱中母亲待在一起的决定应以儿童的最高利益为本。 与狱中母亲待在一起的儿童绝不应被作为囚犯对待。

《曼谷规则》 规则 52（1）

一、应与社区保健服务机构合作，为与狱中母亲一起生活的儿童提供持续的保健服务，并由专家监测儿童的成长情况。

乌克兰政策并不符合 《曼谷规则》 规则 49 及规则 52（1）。

《曼谷规则》 要求以最具弹性的方式作出每个决定，并应以个别评核结果为根据，并以儿童之最佳利益原则为依归。 将儿童留于监狱直至母亲服刑完毕或上调儿童可居留于监狱的年龄，都非合适措施，皆因当中并无进行个别评估。 正确推行措施如下：

- 取消实施年龄限制，并代之以个别评估
- 依据儿童的最佳利益作出决定
- 推行一项可供母亲及子女表达意见的程序

Check your understanding

Ben is nearly three years old and has lived in a rural prison with his mother since birth. He and his mother have had no contact with his father, whose whereabouts are unknown. Below are considerations that should form part of the assessment in deciding whether Ben should be moved into alternative care based on the **best interests of the child** principle.

- Conditions in prison
- Quality of care expected to receive outside prison
- Remaining length of sentence of the mother
- Views of the child, mother and other family members

Best interests of the child

The principle ‘best interests of the child’ is enshrined in the Convention of the Rights of the Child. It requires that all interactions with a child, and any decision-making that impacts on a child must take into account what is in the best interests.

Separation process

The time following a decision to remove a child from his or her parent in prison and place him or her in suitable alternative care can be a traumatic time for those involved. Therefore any separation should be done in a sensitive manner. - See **Rule 52(2)**:

Rule 52 (2)

The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.

理解小测

班恩就满三岁，自出生起就与母亲住在乡郊的一所监狱。他及母亲都未曾联络过行踪不明的父亲。在基于儿童的最佳利益下，以下几点应列入评估因素，以决定班恩应否移送接受替代照料。

- 狱中情况
- 监狱以外可获照料的素质
- 母亲之余下刑期
- 孩子、母亲及其他家庭成员之意见

儿童之最佳利益

「儿童之最佳利益」原则载于儿童权利公约，规定在与儿童沟通及作任何对儿童产生深远影响的决定时，必须考虑儿童之最佳利益。

分离程序

决定将子女与服刑父母分开，并给予子女合适替代照看的措施，对所有当事人而言，都可能是一次痛苦的经历。因此，分离程序必须小心谨慎地进行。参看规则52（2）。

规则 52（2）

应审慎采取让子女离开监狱的措施，并且只能在已为儿童确定其他照看安排的情况下实施，对于外国囚犯，还应与领事官员协商。

Prison authorities and welfare agencies should provide information to the mother and child about the alternative care arrangements. This should include information on how the mother and child will be able to keep in contact with each other following the separation. After being separated, the mother should have access to facilities to meet with her child and have the maximum time possible with him or her.



Rule 52 (3)

After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

See the UN Guidelines for the Alternative Care of Children (adopted in 2009) for more guidance on these issues.

Now that we have looked at what to consider when deciding whether a child should stay in prison, we will address the conditions for children who are housed in prison.

监狱当局及福利机构应向母亲及子女提供有关替代照料的各种安排，包括母亲与子女于分开后的联络方法。分开后，母亲应可使用设施与子女见面，当局亦应尽可能给予见面时间。



规则 52（3）

子女与母亲分开并安排由家人或亲属照看或通过其他替代方式照看之后，应在符合儿童最高利益和无损公共安全的情况下，为女性囚犯与子女会面提供尽可能多的机会和便利。

欲知更多相关指引，请参阅联合国关于儿童的替代照料准则（于 2009 年采纳）

前面探讨决定一名儿童应否留在狱中的考虑因素，以下将说明狱中儿童之境况。

The treatment of children in prison with their mothers

Thousands of children around the globe spend some of their most formative years in prison with their parent. This has an immense impact on their futures. The reality of prison overcrowding in many parts of the world means that children end up living in poor conditions, with little or no access to health services or education facilities.

Treatment of children

Bangkok Rule 49 aims to address this issue by requiring that children in prison with their mothers shall never be treated as prisoners.

However, perhaps partly because they are not prisoners, prison policies, programmes, staff training and budgets rarely take into account the needs of these children adequately.

Rule 49

Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.

The following shows three examples of prisons that have not provided for the healthcare and well-being of children staying in prison.

Benin

In Benin's Cotonou Prison it was reported that children up to the age of four were allowed to live with their detainee mothers. However, the prison's budget did not include children, either in the provision of sleeping space or of food. As a result, women prisoners had to split their already meagre rations to feed both themselves and their children.

Papua New Guinea

It was reported by the UN Special Rapporteur on Violence against Women that in one prison in Papua New Guinea there was only a one-bed cell which sometimes had to house as many as seven women and nine children. The prison did not provide food or other necessities for babies and children.

与母亲留在狱中之儿童所受到之待遇

世界各地成千上万的儿童与父母同在狱中渡过成长的关键时期；然而，这个阶段对他们将来的影响却甚为深远。世界各地的监狱多是过于拥挤，狱中儿童也因此生活在恶劣的环境里，只能获取很少，甚至完全无法享用医疗服务或教育设施。

儿童之待遇

《曼谷规则》 规则49 旨在解决此问题，规定与母亲同住狱中的儿童，绝不可被视作囚犯一样看待。

但多少也是因为他们不是囚犯，当局在制定监狱政策、计划、员工培训及财政预算时，鲜有顾及这些儿童的需要。

规则49

是否容许儿童与母亲一起留在监狱的决定应以儿童的最佳利益为依归。这些儿童绝不能被看待为囚犯。

以下举出三个没有为留在狱中之儿童提供健康护理及福祉之监狱作为例子。

庇宁

在庇宁之哥都努监狱，报告显示儿童可与服刑母亲一起留在狱中直至四岁。但监狱财政预算并无顾及儿童睡眠空间或食物的需要。在配给已经相当困乏的情况下，女囚犯只能将仅有的食物分成小份给自己及子女糊口。

巴布亚新几内亚

据联合国暴力侵害妇女问题特别报告员报告，巴布亚新几内亚一所监狱内，只有一间备有一张睡床的囚室，该囚室有时要用作安置多达七名妇女及九名儿童。监狱并没有提供食物或其他婴孩及儿童之必需用品。

Ghana

Amnesty International found that in Ghana food was not allocated for babies in prison because they were not regarded as inmates. Women with babies depended on help from prison guards, visitors, churches and NGOs. However, not all prisoners received visitors and thus only received additional food when fellow inmates shared with them.

Earlier in the course we looked at the prison's obligations towards children in terms of searches, admission into prison, registration, medical screening, etc. The Bangkok Rules also provide guidance on adequate prison conditions for children housed with their mothers.

Prison conditions



Photo © Heidi Cerneka

To reduce the impact of living in prison, the Bangkok Rules require that efforts be made to the extent possible to eliminate the differences between life inside and outside prison for children. This includes efforts in the areas of healthcare, education and other activities.

The Rules also state that mothers with children in prison should be provided with the maximum possible opportunities to spend time with their children (**Rule 50**).

Rule 50

Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.

加那

国际特赦组织发现加那并未为狱中的婴孩提供食物，因为当局不将他们视为囚犯。带同婴孩之妇女只可依赖狱警、访客、教会及非政府福利机构提供援助。但并非所有囚犯都有访客探访，她们如要获得额外食物，只能指望同室囚犯的施赠。^{xvii}

此单元之前，我们曾探讨监狱在搜查、进狱、登记、健康检查等方面对儿童应尽之责任。《曼谷规则》还为与母亲同住监狱的儿童提供充足的监狱环境指引。

监狱状况



照片© Heidi Cerneka

为了减少监狱生活对儿童的影响，《曼谷规则》规定当局必须尽力施行政策和措施为儿童消除狱外与狱中生活的差别，当中包括有关健康护理、教育及其他活动的政策和措施。

《曼谷规则》亦规定应尽可能为子女与其同在狱中的母亲提供与子女相处的机会。（规则50）

规则50

应尽可能为子女与其同在狱中的女性囚犯提供与子女相处的机会。

Rule 51(2)

The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

Promising Practice: India



Photo © Sylvia Frissard

PRI and its partner organisation, Penal Reform and Justice Association (PRAJA), successfully implemented a project in the State Jail for Women in Andhra Pradesh, India. The project enabled children in prison with their mothers who were eligible for nursery school to attend the local community school. This minimised the psychological damage caused by prison surroundings.

Below, read about other promising practices in implementing **Bangkok Rules 50 and 51(2)**.

Mexico

At the Prevention and Rehabilitation Centre for Women in Jalisco, Mexico, an early-childhood education facility for children aged six months to three years provided education at the same standard as that in the community.

规则51（2）

狱中培育儿童之环境应尽可能接近监狱以外之儿童所处之环境。

可望成功的做法：印度



照片© Sylvia Frissard

国际刑法改革（PRI）和刑事法律改革及司法协会（PRAJA）在印度安得拉邦立女子监狱成功推行了一项计划，使与母亲同住监狱，合资格进幼儿院的适龄儿童到当地社区学校上学。此安排将监狱环境对儿童造成心理伤害减至最低。

请细阅以下其他推行《曼谷规则》规则 50 及 51（2）的范例。

墨西哥

墨西哥哈利斯哥的女子预防和康复中心提供学前教育，水平相当于社区的学前教育，供年龄由六个月到三岁之小童就学。

Brazil

In a prison in the Brazilian state of Minas Gerais, the nursery centre was renovated and decorated in a way that reduced the negative impact of typical institutional starkness.

Bangkok Rule 50

Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.

Rule 51(2)

The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

Bangkok Rules 9 and 51(1) give guidance on the provision of healthcare for children living with their mothers in prison.

Rule 9

If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.

Rule 51(1)

Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services.

Check your understanding

Patricia, aged three, accompanies her mother into prison. During the admission process, Patricia is seen by a paediatrician doctor and a child counsellor, who together draw up a plan for her dietary and other healthcare needs. This is done in consultation with Patricia's mother and their doctor outside of prison. The paediatrician schedules an appointment to see Patricia in 12 months time and tells her mother to see the prison nurse if Patricia has any health issues.

巴西

巴西美那斯吉拉斯州的一所监狱，翻新及装饰其幼儿中心，以减少监狱一贯严肃的气氛所带来的不良影响。

《曼谷规则》规则50

应尽可能为子女与其同在狱中的女性囚犯提供与子女相处的机会。

规则51（2）

为这类儿童成长而提供的环境应尽可能接近监狱之外儿童所处的环境。

《曼谷规则》规则9及规则51（1）对与母亲同住狱中之儿童之健康护理提供指引。

规则9

如果女性囚犯有子女陪伴，该子女也应接受健康检查，最好是由儿童健康专家检查，以确定任何医治需要。应为其提供适当的保健服务，至少应等同社区提供的服务水平。

规则51（1）

应与社区保健服务机构合作，为与狱中母亲一起生活的儿童提供持续的保健服务，并由专家监测儿童的成长情况。

理解测验

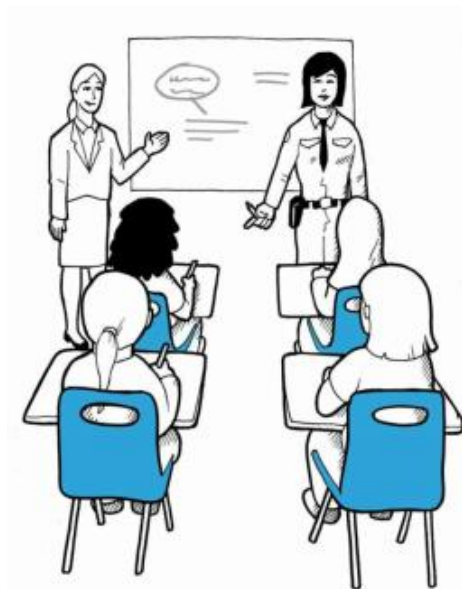
佩翠西亚，三岁，随母亲一起进入狱中居住。在进住程序时，儿科医生及辅导员接见佩翠西亚并共同为她订定计划以管理其日常饮食及其他健康护理需要。上述工作是在监狱以外进行，亦有咨询过佩翠西亚母亲及医生的意见。儿科医生安排一年后再见佩翠西亚，及嘱咐她的母亲，若她有任何健康问题，就要带她见驻狱护士。

Which element of **Bangkok Rules 9 and 51(1)** is not complied with?

- The child shall undergo a health screening, preferably by a child health specialist
- Suitable healthcare, at least equivalent to that in the community, shall be provided to the child
- The development of children living with their mothers shall be regularly monitored by specialists
- The child shall be provided with ongoing healthcare services

Correct Answer: The admission process was compliant with the Rules in that a comprehensive plan was drawn up in consultation with specialists and Patricia's mother. However, it is not sufficient to schedule an appointment for a year later. Every child who is housed in prison should be monitored regularly by qualified healthcare specialists. This would entail regular check-ups, vaccinations, and any other preventative healthcare and treatment provided for children in the community (see Rule 51). Furthermore, the psychological needs of children living in prison should be closely monitored to assess any adverse effects of living in a closed institution.

Bangkok Rule 33(3) requires that prison staff be given basic training on the healthcare of children so that they can respond appropriately in times of need and emergencies. This is in recognition of the reality that in many prison systems specialist healthcare staff are not always or immediately available to respond to these children's needs.

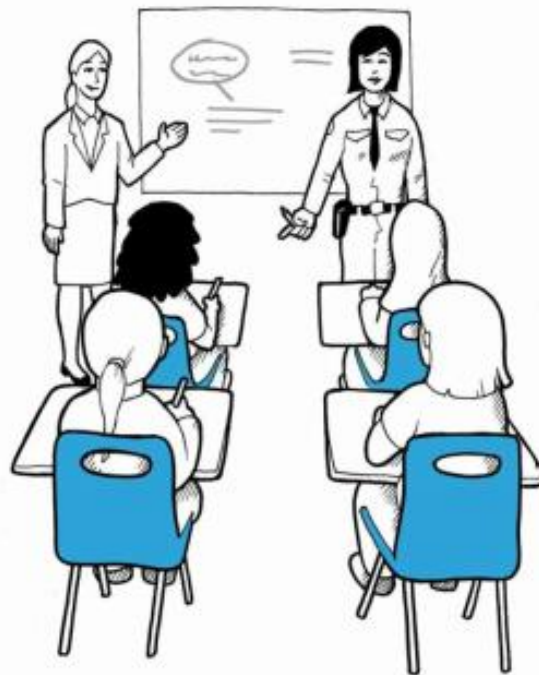


以上有哪些做法并未符合《曼谷规则》规则9及规则51（1）的规定？

- 孩子应接受健康检查，最好由一位儿童健康专家负责
- 为孩子提供合适的健康护理，至少等同社区的服务水平
- 与母亲同住的孩子应定期由专家观察 其成长情况
- 应对小孩提供持续健康护理服务

正确答案：进住程序中有经咨询专家及佩翠西亚母亲之意见而订定一个全面计划，故符合上述两条规则所要求。但预约一年后才见佩翠西亚，却是有所不足。每个住在狱中小孩应定期由合资格健康护理专家观察其成长情况，当中包括社区为儿童提供的定期身体检查、接种疫苗及其他预防性健康护理及治疗（见规则51）。此外，必须密切观察狱中儿童之心理需要，以评估狱中生活是否有带来不良影响。

《曼谷规则》规则33（3）规定监狱职员须接受基本儿童健康护理训练，以便应付不时之需及处理紧急事故。此规定是为了因应监狱中的现实情况，因为许多监狱系统内的健康护理专门人员未必经常在场或可立即照顾儿童之需要。



Rule 33 (3)

Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

Other rules on children of imprisoned parents

As mentioned earlier, the Bangkok Rules are the first set of international standards that provide guidance on the treatment of children living in prison with their parent.

BANGKOK RULES

Children of imprisoned parents

Health screening - Rule 9

Foreign national children - Rule 53

Staff training on children's health - Rule 33

Admission - Rule 12

HIV transmission prevention - Rule 14

Healthcare and hygiene- Rules 5 and 51

Decision to live in prison - Rule 52

Searches - Rule 21

Registration - Rule 3

Visiting - Rules 26 and 28

Childcare facilities - Rule 42

Disciplinary sanctions - Rule 23

Bangkok Rules about children

规则33（3）

在允许子女陪伴狱中母亲的情况下，还应为监狱工作人员提供关于儿童成长知识和儿童保健方面的基本培训，使他们能在需要时和紧急情况下适当应对。

其他有关被囚父母之规则

如前所述，《曼谷规则》为儿童与父母同住监狱时应有的待遇提供指引，订定此领域的首套国际准则。

《曼谷规则》

在囚父母之子女

健康检查 - 规则 9

外籍儿童 - 规则 53

培训职员有关儿童健康知识 - 规则 33

收监 - 规则 12

预防传染艾滋病 - 规则 14

健康护理及卫生 - 规则 5 及 51

居于狱中之决定 - 规则 52

搜查 - 规则 21

登记 - 规则 3

探访 - 规则 26 及 28

托儿设施 - 规则 42

纪律处分 - 规则 23

《曼谷规则》有关儿童之规则

Prevention of HIV transmission

Rule 14

In developing responses to HIV/AIDS in penal institutions, programmes and services shall be responsive to the specific needs of women, including prevention of mother-to-child transmission. In this context, prison authorities shall encourage and support the development of initiatives on HIV prevention, treatment and care, such as peer-based education.

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.

Decision to live in prison

Rule 52

1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.
2. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.
3. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

Visiting

Rule 26

Women prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.

预防传染艾滋病病毒

规则14

在制定惩戒机构应对艾滋病病毒 / 艾滋病的方案和服务时，应注意妇女的具体需要，包括预防母婴传播。在此方面，监狱管理部门应鼓励和支持制定有关艾滋病病毒预防、治疗和护理的同伴教育等举措。

搜查

规则21

监狱工作人员在搜查狱中陪伴母亲的儿童以及探监儿童时，应表现出称职的能力、职业水平和敏感性，并应维护尊重和尊严。

居于狱中之决定

规则52

一、应在相关国内法范围内，根据个案评估，并以儿童的最高利益为本，决定何时将子女与母亲分开。

二、应审慎采取让子女离开监狱的措施，并且只能在已为儿童确定其他照看安排的情况下实施，对于外国囚犯，还应与领事官员协商。

三、子女与母亲分开并安排由家人或亲属照看或通过其他替代方式照看之后，应在符合儿童最高利益和无损公共安全的情况下，为女性囚犯与子女会面提供尽可能多的机会和便利。

探访

规则 26

应通过一切合理方式鼓励和便利女性囚犯与其家人接触，包括与其子女以及子女监护人和法律代表接触。在可能情况下，应采取措施抵消拘押在离家较远监所中的女性面临的不便条件。

Rule 28

Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.

Disciplinary sanctions

Rule 23

Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.

Admission

Rule 2

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.
2. Prior to or on admission, women with care-taking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

Relocation of foreign national children

Rule 53

1. Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign-national women prisoners to their home country, especially if they have children in their home country, shall be considered as early as possible during their imprisonment, following the application or informed consent of the woman concerned.
2. Where a child living with a non-resident foreign-national woman prisoner is to be removed from prison, consideration should be given to relocation of the child to its home country, taking into account the best interests of the child and in consultation with the mother.

规则 28

涉及子女的探视，应在有利于创造良好探视经历的环境中进行，包括工作人员的态度，并应允许母亲和子女之间的公开接触。在可能情况下，应鼓励与子女接触时间较长的探视。

纪律处罚

规则23

对女性囚犯实施的惩戒性制裁不应包括禁止与家人联系，尤其是与子女联系。

收监

规则2

一、应适当关注妇女和儿童的收监程序，因为他们在这个时候尤易受到伤害。应为新入狱的女性囚犯提供便利，让她们与亲属取得联系；寻求法律咨询；了解监狱规则和规章、监狱制度，知道在需要其所通晓语言的帮助时向何处求助；如果系外国人，则还需为其提供寻求领事代表的便利。

二、在收监之前和收监时，应允许负有养育子女责任的妇女为子女做好安排，考虑到儿童的最高利益，包括在可能情况下留出一段合理的暂不拘留时间。

重新安置外籍儿童

规则 53

一、如存在相关的双边或多边协议，在非居民外国女性囚犯提出申请或经其知情同意后，应在其监禁期间尽早考虑移交她们本国，尤其是在她们有子女在本国的情况下。

二、如果让与非居民外国女性囚犯一起生活的儿童离开监狱，应考虑将该儿童迁回其本国，同时应考虑到该儿童的最高利益，并与其母亲协商。

Training and awareness raising of staff on children's health

Rule 33

1. All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners.
2. Basic training shall be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to first aid and basic medicine.
3. Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

Childcare facilities

Rule 42

1. Women prisoners shall have access to a balanced and comprehensive programme of activities which take account of gender-appropriate needs.
2. The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.
3. Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.
4. Particular efforts shall be made to provide appropriate services for women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.

Registration

Rule 3

1. The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status.

培训及增强职员有关儿童健康知识

规则 33

- 一、分管女性囚犯的所有工作人员都应接受与女性囚犯的特殊需要和人权有关的培训。
- 二、除急救和基本医疗知识外，还应为在女子监狱中工作的监狱工作人员提供与妇女健康主要问题有关的基本培训。
- 三、在允许子女陪伴狱中母亲的情况下，还应为监狱工作人员提供关于儿童成长知识和儿童保健方面的基本培训，使他们能在需要时和紧急情况下适当应对。

托儿设施

规则42

- 一、女性囚犯应能参与均衡和全面的活动方案，其中应考虑到与性别相关的适当需要。
- 二、监狱制度应具有足够灵活性，满足怀孕妇女、哺乳母亲以及带有子女的妇女的需要。监狱中应提供托儿设施或安排，使女性囚犯能够参与监狱活动。
- 三、应作出特别努力，为怀孕妇女、哺乳母亲以及在监狱中带有子女的妇女提供适当安排。
- 四、应作出特别努力，为有社会心理辅导需要特别是遭受过身心方面或性方面虐待的女性囚犯提供适当服务。

登记

规则3

- 一、被收监妇女的子女人数以及具体个人信息，应在收监之时加以记录。在不影响母亲权利的情况下，此类记录应至少包含子女的姓名、年龄，若不与母亲在一起，还应包含其住址及其受抚养或受监护状况。

2. All information relating to the children's identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children.

Access to healthcare and hygiene

Rule 5

The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.

Rule 51

1. Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services.
2. The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

Health screening

Rule 9

If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.

二、与这些子女身份相关的所有信息都应保密，此类信息的使用应始终遵守考虑到儿童最高利益这一要求。

健康护理及卫生设施

规则 5

女性囚犯的囚所应具备满足妇女特殊卫生需要所要求的设施和物品，包括免费提供卫生巾和正常供水以供儿童和妇女个人护理之用，尤其是对烹制食品的妇女和怀孕、哺乳或者例假时的妇女。

规则51

一、应与社区保健服务机构合作，为与狱中母亲一起生活的儿童提供持续的保健服务，并由专家监测儿童的成长情况。

二、为这类儿童成长而提供的环境应尽可能接近监狱之外儿童所处的环境。

健康检查

规则9

如果女性囚犯有子女陪伴，该子女也应接受健康检查，最好是由儿童健康专家检查，以确定任何医治需要。应为其提供适当的保健服务，至少应等同社区提供的服务水平。

Summary: Pregnant women, breastfeeding mothers and mothers with children in prison

In this module we have addressed the components of adequate pre and post-natal care and treatment for pregnant prisoners or women who have recently given birth. The question of separating a child from his or her mother as opposed to allowing for the child to accompany his or her mother into prison is a difficult challenge. We explored the principle of the best interests of the child and considerations in assessing this. Finally we addressed the conditions for children who do live in prison with their mothers, and the various provisions in the Bangkok Rules that cover children.

You can now answer 3 questions to assess your understanding.

Assessment

1. Since a child housed in prison with his/her mother is not a prisoner, the cost of any specialised medical care for that child, including with a pediatrician, is the responsibility of the mother or extended family. True or False?

Let's review the correct response:

False. The Bangkok Rules explicitly state that prison authorities should ensure that children living in prison shall be provided with healthcare services, including by specialists, in collaboration with community health services (Rule 51). Also, Rule 51(2) requires that the environment inside prison shall be as close as possible to that of a child's environment outside prison.

2. What considerations should be taken into account when deciding whether a child should be removed from prison? Select all that apply:
 - The child's views
 - The child's level of education
 - Conditions and services available in prison
 - The mother's views
 - The cost of housing a child in prison
 - Availability of appropriate alternative care outside prison

总结：狱中孕妇、哺乳母亲与带同孩子之母亲

本单元讲述为怀孕女囚犯或刚生产妇女提供充足产前及产后护理及治疗之要素。当局究竟应该分开母亲与子女，或是允许母亲带同子女入狱，此为深具挑战的一个难题。本单元亦探讨儿童最佳利益之原则及其评估因素。最后，本单元讲解有关与母亲留在狱中之儿童所需之条件，以及《曼谷规则》有关儿童之各种条文。

请回答三条问题以评核你的理解。

测验

一、由于与母亲居于狱中之小孩并不是囚犯，故所有特别医疗护理费用，包括儿科医生的费用，都需由母亲或亲属支付。正确或错误？

请查看正确答案：

错误。《曼谷规则》明确规定监狱当局应确保狱中儿童得到健康护理服务，包括由专家主理的服务、与社区健康服务合作提供的保健服务（规则51）。此外，规则51（2）规定狱中的生活环境应尽可能接近狱外儿童生活的环境。

二、决定应否将儿童迁离监狱时，应考虑何种因素？请选出所有适用因素：

- 儿童意见
- 儿童教育程度
- 狱中现有条件及服务
- 母亲意见
- 儿童狱中住宿成本
- 监狱外是否有合适的替代照料

Let's review the correct response:

- The child's views
- The mother's views
- Conditions and services available in prison
- Availability of appropriate alternative care outside prison

The primary consideration in deciding whether to separate a child from his/her imprisoned parent is the best interests of the child. Considerations to determine this include the views of the child and mother, the conditions and services available in prison, and the alternative care available outside of prison. The cost of housing a child in prison and the child's level of education do not relate to the best interests of the child and are not relevant in making this decision.

3. In applying the principle from **Bangkok Rule 51(2)** that the environment provided for the upbringing of children inside prison shall be as close as possible to that of children outside prison, what elements should be included in prison policies? Select all that apply.
- Healthcare and monitoring of physical and psychological development
 - Age-appropriate education
 - Rehabilitation programmes that are age-appropriate
 - Maximum opportunity for the child to spend time with his/her parent(s)

Rule 51 (2)

The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

Let's review the correct response:

- Healthcare and monitoring of physical and psychological development
- Age-appropriate education
- Maximum opportunity for the child to spend time with his/her parent(s)

Children who are accompanying their parent into prison are not prisoners and therefore do not require rehabilitation programmes. However, the prison should provide opportunities for children to continue or start their education, for example. This can help ensure that their upbringing is as close as possible to that of children outside prison.

请查看正确答案：

- 儿童意见
- 母亲意见
- 狱中现有条件及服务
- 监狱以外是否有合适的替代照料服务

决定子女与服刑父母应否分开，主要视乎儿童之最佳利益。考虑因素包括儿童与母亲的意见、狱中现有条件及监狱以外是否有合适的替代照料服务。儿童的狱中住宿成本及儿童教育程度无关儿童之最佳利益，故无须考虑。

三、《曼谷规则》规则50(2) 订明儿童在狱中的成长环境应尽可能接近监狱以外的环境，依据此原则制定的监狱政策须包含何种要素？请选择所有适用的要素。

- 健康护理及生理与心理发展之观察
- 适龄教育
- 适龄康复计划
- 提供最多机会予儿童和父母相处

规则51(2)

提供培育儿童的环境应尽可能接近监狱以外之儿童所享有之环境。

请查看正确答案：

- 健康护理及观察生理与心理发展之服务
- 适龄教育
- 提供最多机会予儿童和父母相处

儿童只是跟随父母在狱中居住，并非囚犯，故不需要康复计划。但监狱应给予儿童继续或开始接受教育之机会。此可确保他们的成长尽可能与狱外的儿童相仿。