



Promoting fair and
effective criminal justice



FOUNDATION FOR HUMAN
RIGHTS INITIATIVE (FHRI)

BACKGROUND PAPER

JUDICIARY WORKSHOP ON THE UN RULES FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS (BANGKOK RULES)

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1. Introduction

The Foundation for Human Rights Initiative (FHRI), in partnership with Penal Reform International (PRI) is hosting a one-day workshop for members of the judiciary on the United Nations Rules for the Treatment of Women prisoners and Non-custodial Measures for Women Offenders – known as the Bangkok Rules. The workshop is financially supported by the UK Government (Department for International Development).

2. Background and context

Women and girls comprise the minority of prisoners around the world, constituting an estimated two to nine per cent of national prison populations. Given that they are a minority, women offenders find themselves in criminal justice systems that are designed for the male majority population, and therefore do not fully address their specific circumstances and corresponding needs. By encouraging the development and use of non-custodial alternatives for women, the UN Bangkok Rules sought to address this inequality by recognizing that women offenders are often:

- first-time offenders
- mothers with dependent children
- frequently suffering from mental health issues (which are worsened in prison)
- victims of violence at a disproportionate rate
- in prison for committing low-level, minor and non-violent crimes that are connected to poverty or coercion, or in the case of violent crimes, linked to trauma and violence.

In Uganda the population of women in prison is around six per cent of the national prison population and as of July 2015 stood at 2,065 women. The number of female prisoners has increased over the past three years in line with international trends. Women offenders in

Uganda serving non-custodial measures at the pre-trial stage, or community based sanctions after sentencing, are also in a minority. In 2012 and 2013, 8,856 Community Service Orders were imposed by the courts and out of these 739 were imposed on female offenders, which constituted 8 per cent of all Orders.

FHRI/PRI's research found that the profile of women in prison in Uganda mirrored the typical background evidenced in many countries globally. Of the 194 women in prison that FHRI/PRI surveyed (approximately 10% of the female prison population):

- 92 percent were mothers
- 76 per cent identified themselves as poor or very poor; 32 per cent had never been to school.
- 57 per cent were charged with or convicted of murder, manslaughter or assault, of which 20 per cent was against a husband, partner or other male family member.
- 37 per cent of women said they had experienced domestic violence.
- The majority of the women were first time offenders (only 12 per cent surveyed had been imprisoned before).
- The most common reasons for offending given by the women were: to support their family, protect their children and financial/poverty-related reasons. Other reasons given included domestic violence and coercion.
- Of the convicted women, 37 per cent were serving sentences of more than 10 years and 40 per cent were serving 3-9-year prison sentences.
- As a result of their imprisonment, 43 per cent of women had lost their job, 35 per cent their home and 31 per cent had had their children taken away.

3. The Bangkok Rules: a reference point

The Bangkok Rules were adopted unanimously in 2010 by 193 member states of the UN at the General Assembly, including Uganda. They represent an agreement on the specific needs of women offenders and prisoners, and how to meet these needs through gender-sensitive policies and practices. The main Rules relevant for the judiciary relate to the development and implementation of non-custodial alternatives to imprisonment for women. Please see the relevant Rules in **Annex**.

In the interests of building fair and effective criminal justice systems, that are gender-sensitive, based on rehabilitation and the rule of law, the Bangkok Rules require steps to be taken to reduce the imprisonment of women, taking into account women's history of victimisation and care taking responsibilities, specifically by:

- Using non-custodial measures instead of pre-trial detention wherever possible.
- Taking into account that where the defendant is a parent or primary caretaker then their childcare responsibilities are an indication that they are unlikely to abscond and that pre-trial detention is therefore less likely to be necessary.
- Considering mitigating and gender specific factors when sentencing women offenders (such as experience and role of violence experienced, role in the criminal activity,

reasons for offending and caretaking responsibilities), with a preference to giving community sanctions.

- Developing alternative sentences to imprisonment that build on existing community service programmes and that also address the most common problems leading to women's contact with the criminal justice system including the provision of counselling for victims of domestic and sexual abuse and poverty or financial dependence.

4. Objectives of the workshop

The main objective of the workshop is to discuss challenges and opportunities in implementing the Bangkok Rules in Uganda with members of the judiciary and to formulate a strategy for further work on gender-sensitive policies and practices. Judicial officers are key actors in ensuring that the Bangkok Rules are put into practice, and therefore this workshop intends to provide an opportunity to:

- take stock of the treatment of women defendants and offenders in courts
- understand the relevant Rules set out in the Bangkok Rules, and the corresponding measures
- share existing good practice on gender-sensitive practices in legislation frameworks and courts – both in Uganda and internationally
- identify remaining challenges and barriers in the implementation of the relevant Rules in Uganda, and measures to overcome these.

The workshop will also draw on the data and findings from FHRI and PRI's report, *Who are women prisoners? Survey results from Uganda*, from 2015, and the recommendations in the report (see page 22 of the report) regarding reducing the number of women in detention.

FHRI and PRI expect that the outcome of this conference will inform future initiatives aimed at reducing the imprisonment of women, where appropriate, in line with the provisions of the UN Tokyo Rules and the Bangkok Rules.

ANNEX 1: Relevant Bangkok Rules

III. Non-custodial measures

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.

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.

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.

Rule 62

The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.

[...]

2. 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.

3. Juvenile female offenders

Rule 65

Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making.