

Penal Reform and Gender: Update on the Bangkok Rules

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This brief aims to provide an update to the Gender and Security Sector Reform Toolkit's Tool on Penal Reform and Gender, following the adoption by the United Nations (UN) General Assembly of the *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, also known as the Bangkok Rules. It is recommended that readers take time to read the full text of the Bangkok Rules.

1 Introduction

On 21 December 2010, the UN General Assembly approved, without a vote, the *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules). These rules are the first comprehensive, international initiative to highlight and offer guidance in addressing the needs and requirements of women and girls in the criminal justice system. It is important to note that the text acknowledges that some of the Bangkok Rules, particularly those which cover parental or care giving responsibilities, could also apply to men.

The Bangkok Rules explicitly supplement the *Standard Minimum Rules for the Treatment of Prisoners* (the SMRs, 1955). The SMRs already contained some rules which seek to address the specific needs of women and girls in detention. For example, the SMRs require prisons to:

- detain women and men in separate institutions;
- keep young prisoners separated from adults;
- have specific accommodation to provide pre-natal and post-natal treatment and a nursery; and
- use women officers to supervise and attend women prisoners.¹

The SMRs do not, however, emphasise the *range* of needs specific to female adult and juvenile prisoners, nor do they consider related needs at other stages in the criminal justice process.

The Bangkok Rules are applicable not only to penal institutions, but to “all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners”.² They are applicable also to women subject to non-custodial “security measures” (such as reporting to the police at regular intervals or electronic tagging) or “corrective measures ordered by a judge” (such as drug

¹ United Nations, First United Nations Congress on the Prevention of Crime and Treatment of Offenders, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, 1955.

² United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, Resolution 65/229 of 21 December 2010, annex, article 14.



treatment or mental health-care). The Bangkok Rules also address the application of non-custodial measures for female offenders.

The number of women prisoners and the proportion of women in prison populations have increased over the past 25 years. As of January 2012, more than 625,000 women and girls were held in penal institutions throughout the world, either as pre-trial detainees or as convicted and sentenced offenders. However, women and girls still constitute a small minority of any country's prison population: in about 80% of prison systems, between 2 and 9% of the total prison population.³

Women and men have different needs that must be met when they are imprisoned or subject to non-custodial measures. Most obviously, women and men are physiologically different, and have specific health-care and hygiene needs, beyond pre- and post-natal care. Women are also very often the primary caretakers of children and other dependent family members. They may have been victims of sexual abuse before admission to prison, and when in prison are particularly vulnerable to self-harm, mental and physical abuse.⁴ Prison systems and prison regimes are usually designed for the majority male population – from the architecture of prisons to security procedures, facilities for health-care, family contact, work and training. As a result, many prisons tend not to meet the needs of women. As there are far fewer prison facilities for women, women offenders are often imprisoned far from home, limiting their contact with their families, and are often held at a higher security level than necessary.

Non-custodial measures refer to measures that may be imposed on women or men who are being formally processed through the criminal justice system, at both pre-trial and sentencing stages, which do not involve deprivation of liberty. They include diversion programmes, community service orders, house arrest or limitation of freedom of movement, and administrative and monetary sanctions. Where these are applied, even community-based measures may unintentionally disadvantage women by failing to take into account their childcare responsibilities.

Clear international rules may provide guidance for penal institutions in meeting the needs described.

2 Content of the Bangkok Rules

The Bangkok Rules address the following issues relating to treatment of women prisoners and non-custodial measures for women offenders:

Issue	Content – main points
<p>Non-discrimination</p> <p><i>Rule 1 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> Providing for the distinctive needs of women prisoners in order to accomplish substantial gender equality shall not be regarded as discriminatory.
<p>Admission, registration and allocation of women prisoners</p> <p><i>Rules 2-4 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> Women with dependent children should be allowed to make arrangements for them before entering custody. Women should be provided with facilities to contact their relatives, access to legal advice and information about prison rules and regulations. Information on the children of a woman entering prison should be collected when she is admitted. Women should be allocated to prisons close to their homes.
<p>Personal hygiene</p> <p><i>Rule 5 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> Women's specific hygiene needs should be met by providing the facilities and materials required during menstruation, and access to a regular supply of water.

³ Roy Walmsley, *World Female Imprisonment List (second edition)*, International Centre for Prison Studies, 2012.

⁴ United Nations Office on Drugs and Crime, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, Criminal Justice Handbook Series, 2008, p. 7 and 10.

<p>Health-care</p> <p><i>Rules 6-18 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ A health screening should determine primary needs and specific medical conditions such as sexually transmitted diseases, mental health-care needs, reproductive health history, drug dependency and previous sexual abuse and violence. However, the right to medical confidentiality and not to undergo screening in relation to reproductive health history shall be respected. ▪ Gender-specific health-care services equivalent to those available in the community should be available, including mental health-care, substance abuse treatment programmes and preventative health-care measures. ▪ If a female prisoner requests to be examined or treated by a women physician or nurse, then a woman physician or nurse should be made available, except for situations requiring urgent medical intervention. If a male practitioner carries the medical examination contrary to the wishes of the prisoner, a female staff member should be present during the examination.
<p>Searches</p> <p><i>Rules 19-21 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ Personal searches shall be carried out only by female staff. ▪ Alternatives to strip searches and invasive body searches, such as scans, shall be developed.
<p>Contact with the outside world</p> <p><i>Rules 26-28 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ Contact with children and families should be encouraged and facilitated. ▪ Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes. ▪ When conjugal visits are allowed, male and female prisoners should be allowed to exercise this right on an equal basis. ▪ Visits involving children should take place in an environment that allows open contact between mother and child, with opportunities for extended contact encouraged.
<p>Disciplinary measures</p> <p><i>Rules 22-24 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ A pregnant or a breastfeeding woman or a woman with an infant should not be punished with confinement. ▪ Disciplinary sanctions should not include prohibition of family contact. ▪ Restraint instruments should not be used on a woman in labour, during or immediately after birth.
<p>Pregnant women, breastfeeding mothers and mothers with dependent children</p> <p><i>Rules 48 and 64 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ Pregnant and breastfeeding women shall receive advice from a qualified health practitioner, adequate food, a healthy environment and regular exercise opportunities. ▪ Women shall not be discouraged from breastfeeding unless there are specific health reasons. ▪ Non-custodial measures for pregnant women or women with dependent children shall be preferred when possible and appropriate.
<p>Juvenile female prisoners</p> <p><i>Rules 36-39 and Rule 65 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ The protection needs of girls should be met. ▪ Access to education and vocational training should be equal to those available to male juvenile prisoners. ▪ Age/gender-specific programmes and services, including women's health-care, should be accessible. ▪ Pregnant juveniles should receive the same care and support as adult pregnant prisoners. ▪ Institutionalisation of children in conflict with the law shall be avoided to the maximum extent possible.

<p>Foreign nationals</p> <p><i>Rule 53 and Rule 66 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ When possible, non-resident foreign-national women prisoners should have the option to be transferred to their home country, especially if they have dependent children there. ▪ Where a child living with a non-resident foreign-national woman prisoner is to be removed from prison, consideration should be given to relocating the child in its home country.
<p>Minorities and indigenous people</p> <p><i>Rules 54-55 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ Programmes and services shall be provided to meet the distinctive needs of women from different religious and cultural backgrounds.
<p>Prisoners under arrest or awaiting trial</p> <p><i>Rule 56 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ Appropriate measures shall be adopted to guarantee women's safety in pre-trial detention.
<p>Non-custodial measures</p> <p><i>Rules 57-62 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ Gender-specific options for diversionary measures and pre-trial and sentencing alternatives shall be developed, taking account of the history of victimisation of many women offenders and their caretaking responsibilities. ▪ Women offenders shall not be separated from their families and communities without consideration given to their backgrounds and family ties. Alternative ways of managing women offenders should be implemented whenever appropriate and possible. ▪ Non-custodial means (such as services or shelters provided by non-governmental organisations) shall be used to protect women who need such protection. ▪ Appropriate resources shall be made available in order to combine non-custodial measures with programmes (for example counselling, therapy, education, etc.) addressing the most common problems leading to women's contact with the criminal justice system. ▪ 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.
<p>Parole</p> <p><i>Rule 63 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ Decisions regarding parole shall take into account women prisoners' caregiving responsibilities as well as their specific social reintegration needs.
<p>Complaints and inspection</p> <p><i>Rule 25 of the Bangkok Rules</i></p>	<ul style="list-style-type: none"> ▪ Women prisoners who report abuse shall be provided immediate protection, support and counselling, and the case should be confidentially investigated by independent and competent authorities. ▪ Women prisoners who have been subjected to sexual abuse, and those who have become pregnant as a result, shall receive appropriate medical attention and counselling. ▪ Inspectorates, visiting or monitoring boards shall include women members in order to monitor the conditions of detention and treatment of women prisoners.

Institutional personnel and training

Rules 29-35 of the Bangkok Rules

- Staff employed in women's prisons should be trained to address the special social reintegration requirements of women prisoners and to manage safe and rehabilitative facilities.
- Female staff shall receive equal access to training as male staff, and capacity-building for women staff shall include access to senior positions with key responsibility for the development of policies and strategies.
- There shall be a clear and sustained commitment by prison management to prevent and address gender-based discrimination against female staff.
- The internal rules and regulations on the conduct of prison staff shall be aimed at providing maximum protection for women prisoners from any gender-based violence, abuse and sexual harassment.
- Women's prison staff should receive training on:
 - gender sensitivity and prohibition of discrimination and sexual harassment
 - gender-specific needs and human rights of women prisoners
 - women's health
 - (where children are present) child development and basic health-care of children
 - HIV/AIDS prevention, treatment, care and support
 - the means to detect mental health-care needs and risk of self-harm and suicide.

Prison regime, classification and individualisation

Rules 40-47 of the Bangkok Rules

- Prison administrators shall develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners.
- Gender-sensitive risk assessment shall take into account the generally lower risk posed by women prisoners to others, and the particular harm of isolation.
- The regime of prisons should be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children, but also to allow women prisoners to access comprehensive activities and support programmes.
- Visits to women prisoners should be encouraged, but the women prisoners should be properly consulted as to who is allowed to visit them, because of possible previous experience of domestic violence.
- Prison authorities should utilise options for women prisoners such as home leave, open prisons, halfway houses to ease the transition from prison to liberty, reduce stigma and re-establish contact with their families as early as possible.
- Prison authorities shall implement pre- and post-release reintegration programmes, and additional support following release should be provided to women prisoners who need psychological, medical, legal and practical help to ensure their successful social reintegration.

Research, planning and evaluation

Rules 67-69 of the Bangkok Rules

- Efforts shall be made to promote comprehensive research on issues related to female offenders and their children.

Raising public awareness and training

Rule 70 of the Bangkok Rules

- The media and the public shall be informed about the reasons that lead to women's involvement in the criminal justice system and the most effective ways to respond to it.
- Research and good practice examples shall be published and disseminated.
- The media, the public and those with professional responsibility in matters concerning women offenders shall be provided with information about the Bangkok Rules and their implementation.
- Training programmes on the Bangkok Rules and the results of research shall be developed and implemented for relevant criminal justice officials.

Children in prison with their mother:

The Bangkok Rules are the first international instrument that specifically addresses the issue of children of female prisoners. They have introduced a set of basic instructions on how to treat children accompanying their mothers in prisons, children visiting their mothers in prison and considerations which must be applied when taking decisions of separating mothers from their children.

Countries have very different laws as to the age up to which children can stay with their mothers in prison, and offer very different living conditions. Rule 49 sets out the fundamental principle that "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." Rule 51.2 goes on to clarify the responsibilities of states in creating conditions that enable decisions to be made in the best interests of children: "the environment provided for such children's upbringing shall be as close as possible of that of a child outside prison." It is important that women prisoners who have their children with them in prison are "provided with the maximum possible opportunities to spend time with their children" (Rule 50).

The Bangkok Rules establish that children must be taken into account at all stages of a mother's contact with the criminal justice system, and decisions as to when a child is to be separated from its mother must be based on individual assessments. Some of those rules should be applied equally to male prisoners and offenders who are fathers.

3 Implementing the Bangkok Rules

The Bangkok Rules complement a number of legally binding instruments. They set out standards and recommendations for the management of institutions and systems which are responsible for the treatment of women and girls. In order to implement the Rules, a number of actions need to be taken by relevant entities at the national and international levels. Civil society can also play a role in supporting the implementation of the Rules.

The following are examples of actions that might be taken to implement the Bangkok Rules.⁵

⁵ These recommendations are based on the *Briefing on the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("Bangkok Rules")* published by Penal Reform International and the Quaker United Nations Office in 2011.

- At the national level

Actors	Actions to be Taken
<ul style="list-style-type: none"> Relevant ministries (e.g. justice, health, education, social affairs, women and children) Prison services Social services, including children's services Independent monitoring and oversight bodies Police services Legal profession and legal aid services 	<ul style="list-style-type: none"> Identify gaps in current legislation, regulations and policies on the treatment of women and girls in the criminal justice system, and draft proposals for reform Identify good practices and resources to support the implementation of the Bangkok Rules Allocate sufficient human and financial resources to implement the Bangkok Rules Include the Bangkok Rules in academic and professional curricula Train prison staff on the content of the Bangkok Rules

Examples of implementation:

Republic of Ireland

In February 2011, following the adoption of the Bangkok Rules, the Inspector of Prisons of the Republic of Ireland published a supplement to the Standards for the Inspection of Prisons in Ireland. The supplement is designed "to give guidance to the Irish Prison Service and prison management on the most important aspects of best practice in relation to the detention of women prisoners and the management of women's prisons."⁶ These supplemental standards on dealing with women prisoners have been significantly informed by the Bangkok Rules, and explicitly recognise that a gender-specific approach is required for women in prison. The 33 standards are organised under the following nine headings: basic principle; admission to prison; accommodation; health and welfare; pregnant women and mothers with babies in prison; contact with children and family members; education, training and rehabilitation; safety; and staff. During future inspections of prisons, the conditions and treatment of women prisoners, and the management of the two women's prisons in the Republic of Ireland, will be benchmarked against them.

England and Wales (United Kingdom)

The criteria used for assessing the treatment of prisoners and conditions in prisons in England and Wales were reissued in January 2012, including references to the Bangkok rules.⁷

Sierra Leone

The NGO AdvocAid, based in Sierra Leone, has developed, in collaboration with *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ), a handbook on the Bangkok Rules. It aims to provide a clear, portable and useful guide to assist prison officials, prisoners and civil society in fostering enforcement or awareness-raising on the new rules. It is illustrated with cartoons and contains detailed footnotes for further reference.⁸

- At the international level:

Actors	Actions
<ul style="list-style-type: none"> United Nations agencies Human rights and health bodies, especially those with a specific focus on women and children Bilateral and multilateral donors 	<ul style="list-style-type: none"> Distribute and make the Bangkok Rules available Train staff on the content of the Bangkok Rules Identify relevant actors to support the implementation at the national level Provide support and monitor implementation of the Bangkok Rules Make financial assistance for prison systems contingent on implementation of the Bangkok Rules

⁶ Judge Michael Reilly, *Inspector of Prisons Standards for the Inspection of Prisons in Ireland - Women Prisoners' Supplement*, Office of the Inspector of Prisons, 2011.

⁷ *Expectations: Criteria for assessing the treatment of prisoners and conditions in prisons*, Her Majesty's Inspectorate of Prisons, 2012 <http://www.justice.gov.uk/downloads/about/hmipris/expectations.pdf>

⁸ AdvocAid, GTZ, *United Nations Rules for the Treatment of Female Prisoners*, 2011, <http://www.advocaidsl.com/wp-content/uploads/2011/03/AdvocAid-Bangkok-Rules-training-booklet-Nov-11.pdf>

4 Additional Resources

UN Resolutions

United Nations, First United Nations Congress on the Prevention of Crime and Treatment of Offenders, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, A/CONF/611 of 30 August 1955, annex I, E.S.C. res. 663C, 24 UN ESCOR Supp. (No. 1) at 11, UN Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 UN ESCOR Supp. (No. 1) at 35, UN Doc. E/5988 (1977). <http://www2.ohchr.org/english/law/treatmentprisoners.htm>

United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, Resolution 65/229 of 21 December 2010. http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/UN_Rules_Treatment_Women_Prisoners_Bangkok_Rules.pdf

Briefs, tools and training materials

AdvocAid, *United Nations Rules for the Treatment of Female Offenders*, 2011.

<http://www.advocaidsl.com/wp-content/uploads/2011/03/AdvocAid-Bangkok-Rules-training-booklet-Nov-11.pdf>

International Centre for Prison Studies, "Penal Reform and Gender" in *Gender and Security Sector Reform Toolkit*, Eds. Megan Bastick and Kristin Valasek, Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008. <http://dcaf.ch/DCAF/EZ/Publications/Penal-Reform-and-Gender-Tool-5>

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<http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/E-book.pdf>

United Nations Office on Drugs and Crime, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, Criminal Justice Handbook Series, 2008.

http://www.unodc.org/pdf/criminal_justice/Handbook_on_Women_and_Imprisonment.pdf

United Nations Office on Drugs and Crime and World Health Organization, *Women's Health in Prison: Action Guidance and Checklists to Review Current Policies and Practices*, 2011.

http://www.euro.who.int/__data/assets/pdf_file/0015/151053/e95760.pdf

Tomris Atabay, *Bangkok Rules Guidance Document and Index of Compliance (working documents)*, PRI: May 2012 <http://www.penalreform.org/news/bangkok-rules-guidance-launched>

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Gender and SSR Toolkit

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