



Promoting penal
reform worldwide

Women in Prison

An International Symposium on the Bangkok Rules

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Added value of the UN Bangkok Rules and Tools to implement them

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1. Introduction

In September 2012, Julie was 8 months pregnant and in pre-trial detention on drug and fraud-related charges, at a prison in country X. She started to experience labour pains, but prison staff ignored her. Nursing 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."

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.

This case is not a historic incident from ancient times, but happened in 2012 in an industrialised, Western democracy. Also, it was not the only incident in this country that ultimately caused some outrage in public: at about the same time there was also a string of suicides and incidents of self-harm, and an incident of strip searches of eight female prisoners conducted by an all-male riot squad.

I have selected this case - on purpose - because pregnancy related characteristics are often the one and only thing associated with women offenders. Unfortunately arrangements in detention - and the thinking of those responsible in the criminal justice system - often stops with pre and post-natal care.

This limited understanding was mirrored in international standards, up until the adoption of the UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, the so-called Bangkok Rules.

These Rules, adopted by the GA in December 2010, finally filled the gap addressing the specific needs of women in the criminal justice system.

Discrimination of female offenders

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

In some countries criminal sanctions are used to curb sexual or religious “immorality”, and offences such as adultery, sexual misconduct, violations of dress codes, prostitution, or witchcraft penalise women exclusively or disproportionately.

In other countries detention is used as a form of “protection” for victims of rape, to protect the victim as well as to ensure that she will testify against her rapist in court.

As discrimination against women in society results in unequal power relations and access to economic resources, women in conflict with the law depend on the willingness of male family members to spend resources on due process of law for them. This is reflected in particular vulnerability to being deprived of their liberty, for reasons including an inability to pay for legal representation, fines for petty offences or to meet financial and other bail or sentencing obligations.

Women (and girls) comprise the minority of prisoners around the world - an estimated two to nine per cent of national prison populations; however, their numbers are increasing significantly and at a greater rate than for men. Due to their small number amongst the prison population, the specific needs and characteristics of women and girls as subjects of the criminal justice system have tended to remain unacknowledged and unaddressed. Prison systems and prison regimes are almost invariably designed for the majority male prison population – from the architecture of prisons, to security procedures, to facilities for healthcare, family contact, work and training. As a consequence, few prisons meet the specific needs of women prisoners, and often do not prepare them for release with gender-appropriate rehabilitation.

In many regards, women have a heightened vulnerability to mental and physical abuse during arrest, questioning and in prison. For many women, custody means ill-treatment, threats of rape, touching, “virginity testing”, being stripped naked, invasive body searches, insults and humiliations of a sexual nature or even rape. Further, there are cases of dependency of prisoners upon prison staff which lead to increased vulnerability to sexual exploitation, as it drives them to ‘willingly’ trade sex for favours.

Even after release from prison, women are likely to suffer particular discrimination due to social stereotypes. While spouses regularly support their husbands in prison and upon release as a matter of course, contrarily women tend to be shunned by their husband. Often they are rejected by their families and in some countries lose their parental rights. If they have left a violent relationship, establishing a new life will entail economic, social and legal difficulties, in addition to the challenges of transition to life outside prison.

Lastly, the impact of being imprisoned can be severe if the prisoner is the sole carer of the children - a role still overwhelmingly held by mothers. Even a short period in prison may have damaging, long-term consequences for the children concerned and should be avoided, unless unavoidable for the purposes of justice.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) were adopted by the UN General Assembly in December 2010 to rectify the lack of standards; however the international community still lacks awareness and commitment to implementation.

2. Problems and gaps

Lack of awareness, attitude

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

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

It is a deeply saddening that the UN Bangkok Rules, a text which – after decades of the issue being overlooked altogether – has filled the gap of standards addressing the pillars of a gender-sensitive criminal justice system is still hardly mentioned and very little known, and a lot of work still needs to be done to bring these standards to the attention of policy-makers.

The importance of discussions, conferences and reports relating to women in custody can therefore not be overestimated, in order to overcome the stigma and account for the fact that even in their role as defendants women are often also victims, as gender discrimination does not stop in front of a court house or at the prison gates.

Advocating for a gender-sensitive approach to women offending, the first reaction usually is that women prisoners cannot be treated differently, arguing that this would constitute discrimination.

Yet, as I have just outlined the profile and background of women in prison, and the reasons for which they are imprisoned, differ significantly from those of men. Accounting for the specific needs of a particular group with particular characteristics and needs does not constitute discrimination. Ignoring them would.

As a member of the British House of Lords has put it:

“Treating as equal those who are unequal not only leads to further inequality, it also leads to injustice.” (Baroness Helena Kennedy)

Overuse of imprisonment affecting vulnerable groups disproportionately

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

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

With the urge to be ‘tough on crime’, the size of the prison population throughout the world is growing. It is estimated that more than 10.2 million people, including sentenced and pre-trial prisoners, were held in penal institutions worldwide in May 2011, and in the past two years the prison population grew in 71 per cent of countries.

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

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

priority.

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

Lack of gender-sensitive alternatives

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

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

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

As women are mainly convicted of petty crimes closely linked to poverty, gender-sensitive alternatives carry a huge potential to avoid incarceration in the first place.

After all, the prevention of unnecessary imprisonment is the best medicine against abuse in detention.

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

- It is now recognised that there are **gender differences in substance dependence** and related complications that require different treatment approaches. In the delivery of community-based programmes, women may also need gynaecological care, and opportunities to discuss issues such as violence and pregnancy.
- In issuing non-custodial sanctions, the possible **care-taking responsibilities** of a woman must be kept in mind.
- **Women-only services** provide opportunities, for instance for victims of violence to be in a place of safety from male violence, and may also help women overcome the stigma and shame they experience in cases of substance use.
- **Ensuring access** to women living in rural areas, and providing free-of-charge services require adequate resources to ensure the effective functioning of non-custodial programmes.

3. Added value of the UN Bangkok Rules

Up until the adoption of the Bangkok Rules, the key international source relating to the treatment of prisoners, the UN Standard Minimum Rules for the Treatment of Prisoners (SMR), adopted by the United Nations in 1957, provided little guidance on the treatment of women offenders.

Other than basic provisions on pre- and post-natal care and provisions and on nursing of infants, there were only two rules aiming at the protection of women in custody from violence: one requires the supervision by female staff exclusively, the other demands strict separation of female from male detainees.

These rules are crucial for the protection of female prisoners from (sexual) violence of (male) prison staff and from male fellow prisoners, but the scarcity of provisions relating to women at all reveals the blatant gaps in standards addressing women detainee's needs.

In the second part of my presentation I would therefore like to highlight a few provisions, in order to illustrate the added value UN Bangkok Rules.

Identification of victims of torture and ill-treatment

As we all know, women prisoners are even more vulnerable to abuse than male detainees because of their typically lower social and economic status, because they are often less aware of their rights, and because their gender makes them particularly vulnerable to sexual abuse or threats of sexual abuse.

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

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

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

Requirements of hygiene - preventing degrading treatment

A second key aspect relating to the dignity as well as the health of women prisoners are adequate provisions of hygiene.

As for example the European Committee for the Prevention of Torture (CPT) has held, the failure to provide basic necessities such as sanitary pads can amount to degrading treatment in violation of international law.

Bangkok Rule 5 requires facilities and materials 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.

Gender-specific healthcare

A third key area in which the Bangkok Rules provide detailed guidance is gender-specific healthcare, and this includes not just pre- and post-natal care.

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

The provisions range from medical examinations to be conducted by women physicians and nurses as a matter of principle, and in a way that accounts for women's vulnerability when exposing their bodies, to guidance on the presence of non-medical staff during examinations, provisions on the confidentiality of medical information and the principle of consent (Rule 8).

Mental healthcare provisions and prevention of suicide and self-harm

Very detailed guidance is furthermore provided by the Bangkok Rules on mental healthcare

provisions, and the prevention of suicide and self-harm.

This is important since research indicates that women in prison attempt suicide and self-harm at a much higher rate than male prisoners, due to high rates of mental health issues and substance dependency among women prisoners, and due to the effects of isolation. Not surprisingly practices such as solitary confinement exacerbate this risk.

The Bangkok Rules take into account that safeguards to this end are already required at the **admission stage**, and that too often symptoms are addressed through medication or the prisoner is punished for the behaviour stemming from mental health issues. In some countries self-harm and suicide attempts are even penalised as criminal offenses, causing further distress and deterioration in the prisoners' mental well-being.

There is some evidence that relying exclusively on the removal of items with which women can harm themselves such as sharp objects has in some severe cases resulted in the use of ligatures, which can result in suicide by strangulation.

Seeking to provide an alternative to the 'classic' responses to mental health issues and the risk of suicide and self-harm, the Bangkok Rules (12 et seq) require a holistic, gender-sensitive and individual approach, taking account of any trauma that a woman may have suffered and looking at the root causes of the mental healthcare issues.

Searches

There have been reports of self-harming following inappropriate treatment during searches, which demonstrate that this is a particularly sensitive issue for all prisoners, but especially women.

Women prisoners may have previously experienced violence, and being searched can be particularly humiliating and traumatizing experience, even more so if undertaken by the opposite sex.

In some countries women are subjected to strip searches on a routine basis, sometimes in the presence of male staff, and with humiliation through the process.

Despite the Standard Minimum Rules (Rule 53) explicitly stating that women prisoners should be supervised only by women officers, there is an increasing use of mixed staff in some jurisdictions. This leads to searches of women prisoners, and also their female visitors, being carried out by male staff.

The principle that persons should **only be searched by the same gender** is therefore reiterated in the Bangkok Rules.

Rules 19 and 20 also require searches to:

- adhere to the right to dignity
- be carried out by women staff who have been properly trained
- be in accordance with well established procedures;
- and that alternative screening methods are developed, such as scans, to replace strip searches and invasive body searches.

Moreover, Bangkok Rule 21 requires any **searching of children** – either in prison with their mother or visiting prisoners – to be carried out in a way that protects their dignity.

4. PRI Toolbox

Penal Reform International is committed to gender-sensitive criminal justice systems. We raise

awareness about discrimination faced by women in criminal justice systems and promote the implementation of standards taking into account the specific characteristics and needs of female offenders and women prisoners. We also conduct research and we develop practical tools to support the implementation of the UN Bangkok Rules.

The PRI Toolbox on the Bangkok Rules is available free of charge and comprises:

Guidance Document

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

Index of Implementation

A comprehensive checklist for an assessment of implementation of the Rules, structured for different actors. It can be used in developing policies and strategies. (Jointly published with the Thailand Institute of Justice)

e-course Women in Detention: putting the Bangkok Rules into practice

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

(Trailer see: <http://www.penalreform.org/resource/women-detention-putting-bangkok-rules-practice/>)

Guide on gender-sensitive monitoring

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

Short guide

A short illustrated guide to the UN Bangkok Rules covers the profile of women prisoners and why international standards were needed, who the Rules protect, what they say and who should be involved in their implementation.

Briefing on the discrimination of women in the criminal justice system

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

Briefing on girls and detention

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

PRI e-bulletin

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

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

5. Conclusion

PRI would like to thank the Dui Hua Foundation for making this symposium possible and is proud to be the international partner for this important initiative.

A Canadian journalist, Dawn Moore, has captured well the approach to women prisoners to date:

'Because the vast majority of lawbreakers are male, prisons (...) have always had an, "add women and stir" strategy, assuming that men and women are interchangeable when it comes to incarceration.'

We are confident that this symposium will help overcome this approach

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