

# **RAOUL WALLENBERG INSTITUTE**

OF HUMAN RIGHTS AND HUMANITARIAN LAW

## **Applying the Bangkok Rules: Women and Children with Special Needs**

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# **Bangkok Rules and Women Offenders**

**For Confronting:**

**Discrimination? Gender Issues?  
Special Needs?**

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## **Bangkok Rules Organisation I**

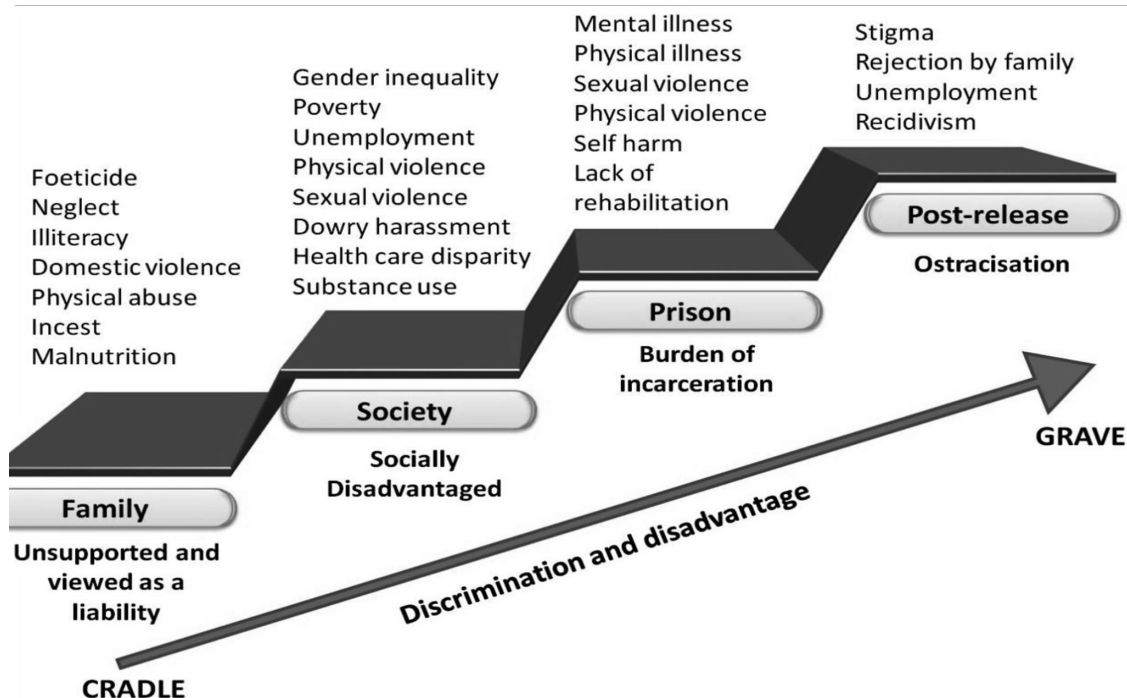
**✓ General management of institutions, applicable to all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners, as well as women subject to “security measures” or corrective measures ordered by a judge.**

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# Bangkok Rules and Women Offenders

✓ **BR 1** says that **Standard 6** of the SMR regarding discrimination requires that *"account shall be taken of the distinctive needs of women prisoners"* and that *"providing for such needs shall not be regarded as discriminatory"*

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# Rationale

✓ **Due to their vulnerability in prisons, social reintegration of most women offenders with special needs is much better served in the community than in prisons**

*(where their requirements can rarely be met and where their situation is likely to deteriorate)*

✓ **Just the imprisonment of WSN comprises an unduly harsh punishment.**

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# BK Rules' Generic Character

**Special needs of prisoner groups can vary significantly among different countries:**

**Factors to consider:**

**Culture– Traditions– Religion  
Economic , social and political contexts**

**Availability of resources  
Level of development of the criminal justice system**

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## **What are Women/Children with Special Needs?**

- ✓ W & Ch that are in a particularly vulnerable position in prisons and who therefore need additional care and protection.
- ✓ The prison environment --psychological distress and isolated conditions -will exacerbate their existing problems.
- ✓ In addition, risk of abuse from other prisoners and prison staff due to prejudicial attitudes and discriminatory perceptions entrenched in society itself, which are more pronounced in the closed environment of prisons. They could suffer from humiliation, physical and psychological abuse and violence due to their ethnicity, nationality, gender and sexual orientation (special needs)

*Most of these prisoners are vulnerable due to more than one reason*

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## **Special Needs/ Special Measures <sup>(1)</sup>**

- ✓ Women have a number of unique risk factors, protective factors, and intervention' needs that differ from their male counterparts.
- ✓ Greater proportions of women entering the system are parents of dependent children, and they are more likely than men to be the primary caretakers and sources of financial support for their children prior to and following incarceration.
- ✓ Incarcerated women are more at risk for self-harm than for violence toward others.
- ✓ Compared to men in custody, women are disproportionately victimised sexually by other inmates and staff while incarcerated.

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## **Special Needs/ Special Measures (2)**

- ✓ **Women's pathways to crime often differ from men's, they include influences such as trauma, mental health, substance abuse difficulties and poverty.**
- ✓ **Histories of sexual victimization and other maltreatment are much more common among women entering the criminal justice system than for male offenders or women in the general public.**
- ✓ **Medical and mental health needs tend to be greater for women**
- ✓ **Pregnant/ with children particular needs**

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## **Bangkok Rules Organisation**

### **Admission and Allocation**

**Standards SMR**

**7**

**BR Standards**

**2-3-4**

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# **Bangkok Rules: Special Needs**

- ✓ **WP Mental health conditions/ care needs**
- ✓ **WP Disabilities**
- ✓ **Pregnant or with Children**
- ✓ **WP Drug Abuse Treatment**
- ✓ **Foreign national WP**
- ✓ **Lesbian, gay, bisexual, and transgender (LGBT)**
- ✓ **Elderly women offenders**
- ✓ **WP with terminal illness/ HIV**
- ✓ **Ethnic and racial minorities and indigenous women**
- ✓ **WP under sentence of death.**

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# **The “W” Appraisal\***

**Who, Why, What, When, How.....?**  
**Available to all inmates confined in a prison or jail**  
**Settings include both assessment and treatment services**

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# Mental Disability

- ✓ The is an umbrella to include psychiatric and intellectual disabilities. Psychiatric disabilities may be major, e.g. schizophrenia and bipolar disorder; or minor mental health problems, often referred to as psychosocial problems, e.g. mild anxiety disorders.
- ✓ Intellectual disabilities “a condition of arrested or incomplete development of the mind characterized by impairment of skills and overall intelligence in areas such as cognition, language, and motor or social abilities”.

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# Risk Increase

- ✓ Female prisoners with mental health needs are prone to suffer abuse, self-harm and deteriorating mental well-being in prisons. Women without any mental health problems prior to imprisonment will develop a range of mental disabilities while in prisons
- ✓ Lack of safety, no decision-making, poor conditions, lack of specialist care, dormitories overcrowded, no privacy and staff not trained to deal with their gender-specific psychosocial support requirements

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## **Essential Differences**

- ✓ **Basic mental health services distinguished from rehabilitation services in that the former focus on symptom reduction and coping within the prison**
- ✓ **Goal of basic mental health services is not to rehabilitate or prepare offenders for release but to identify offenders with psychological or psychiatric problems and initiate treatment services for them**
- ✓ **Reducing criminal behavior and attitudes and reducing recidivism**

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## **Bangkok Rules Organisation**

**SMR Standards**

**22-23-24- 25-26**

**BR Standards**

**5 – 6- 7- 8- 9-10 -11-17 -18**

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## First Incarceration Phase Orientation

- ✓ Assessment newly incarcerated offenders  
(carried out during the orientation phase of women's incarceration)
- ✓ Recognise emotional, intellectual, and behavioral problems/ deficits
- ✓ Identify “specialised treatment needs or special circumstances/needs”
- ✓ Single out offenders at risk for psychological or behavioral problems

BR 6

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## Urgent Crisis Intervention

- ✓ Stabilise the offender
- ✓ Provision and urgent use of psychotropic medications
- ✓ Removal of offender from general prison population
- ✓ (his or her/ others) safety
- ✓ Intensive counseling
- ✓ Long-term psychopharmacological treatment
- ✓ Assistance in establishing a social support network
  - ✓ Labour-therapy and physical care

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## **WO with Physical Disabilities**

- ✓ **“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”  
CRPD**
- ✓ **Imprisonment should be used as a last resort in all cases**
- ✓ **United Nations Convention on the Rights of Persons with Disabilities**
- ✓ **Universal Design**
- ✓ **Accessibility**
- ✓ **Freedom of movement**
- ✓ **Universal Language**
- ✓ **Special Education**

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## **Bangkok Rules Organisation**

### **Foreign Nationals**

**Standards SMR**

**38, 41**

**BR Standards**

**53**

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## WO Foreign National Prisoners

- ✓ Do not carry the passport of the country in which they are imprisoned. This term therefore covers prisoners who have lived for extended periods in the country of imprisonment, but who have not been naturalized, as well as those who have recently arrived.
- ✓ Increasingly punitive measures applied to foreign national offenders, discrimination, xenophobia, racism, limited awareness of legal rights, lack of access to legal counsel, lack of social networks and economic marginalization.
- ✓ Punitive immigration laws lead to the imprisonment of trafficked women, migrant workers, and all whose status is illegal, including persons trying to escape abusive situations

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## Elderly Women Offenders

- ✓ Elderly! (or older) *Conception* is arbitrary and varies between countries and studies.
- ✓ USA and Australia, above the age of 50 are considered as elderly.
- ✓ United Kingdom those above 60 or 65 within this category.
- ✓ Canada defines older as those between 50 to 64 years of age
- ✓ Generically, elderly women offenders are those who are 65 years or older.

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## **Elderly Women Offenders**

- ✓ **The female inmate population is getting old: radicalization**
- ✓ **Females live longer than men, not uncommon to see some who are elderly (over 65), aged (over 75), or very old (over 85)**
- ✓ **Few States parties have compassionate release programs for female inmates; more of those exist for men than women**
- ✓ **Women offenders count 10 years more of their biological age**

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## **HIV and Terminally Ill Women Offenders**

- ✓ **Entitled to a standard of health care equivalent to that available outside**
- ✓ **Fulfil special medical needs related to their disease**
- ✓ **Prevention of mother-to-child transmission**
- ✓ **Transferred to specialized institutions or to civil hospitals**
- ✓ **Psychological and spiritual support needs related to the prospect of death**
- ✓ **Be with family – compassionate release**
- ✓ **Access to justice**
- ✓ **Dignity**
- ✓ **====Costs**

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# **Bangkok Rules Organisation**

## **Pregnant Women, Mothers and Dependent Children in Prison**

**Standards BR 48-52**

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# **Bangkok Rules Organisation**

## **Gay and Lesbian Inmates**

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## **Sexual Activity in Prisons (1)**

- ✓ **The sexuality of an inmate brings unique challenges to managing a prison. LGBT inmates comprise a particularly vulnerable group in prison.**
- ✓ **Sexual deprivation in prison led to homosexuality in offenders as they are denied opportunities for “normal” heterosexual activities.**
- ✓ **More likely to engage in consensual same-sex sexual activity and are at a much higher risk of being sexually victimized.**
- ✓ **Sex in prison leads to more violence in prison, including more sexual violence**

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## **Sexual Activity in Prisons (2)**

- ✓ **The inmates defined the “true homosexual” Is a woman who was a homosexual before being incarcerated.**
- ✓ **The “jailhouse turnout” was introduced to homosexual behaviour while in prison.**
- ✓ **It is estimated that the majority of homosexual activities in female prisons involved the jailhouse turnout**
- ✓ **Prostitution**
- ✓ **Abuse= Rape= Coercion=**
- ✓ **Traumas=**
- ✓ **Consensual Homosexual Activities**

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## **Bangkok Rules Organisation III- IV**

- ✓ **Section III contains rules covering the application of non-custodial sanctions and measures for women and juvenile female offenders, including on arrest and at the pre-trial, sentencing and post-sentencing stages of the criminal justice process.**
- ✓ **Section IV contains rules on research, planning, evaluation, public awareness-raising and sharing of information, and is applicable to all categories of female offenders covered in these rules.**

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## **Main Contribution of the Bangkok Rules**

- ✓ **Encourage the continuing efforts to ensure that the woman offenders and girls in conflict with the law are treated fairly and equally during arrest, trial, sentence and imprisonment, with particular attention being paid to the special problems which women could encounter**
- ✓ **Provide additional rules for the treatment of juvenile (girls) female prisoners on arrest and at the pretrial, sentencing and post-sentencing stages of the criminal justice process.**
- ✓ **Invite to apply special rules and procedures to research, plan, evaluate, raise public awareness and information sharing about and on all categories of female offenders covered in these rules.**

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## **Non-Custodial Measures and Sanctions Fundamentals**

- ✓ The judicial culture--with few exceptions--is characterised by imprisonment of offenders as a common punishment for crimes without taking into account their gender needs.
- ✓ New scientific criminology theories and international human rights law have established that while imprisonment is necessary in many cases involving violent offenders, it does not constitute a universal solution with regard either to crime prevention or to the social reintegration of offenders.
- ✓ The main purpose of non-custodial measures in general, and the Bangkok Rules in particular, is not only to find effective alternatives to imprisonment for offenders but to enable authorities to adjust penal sanctions to the particular needs of women and girl offenders in a manner proportionate to the offence committed.

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## **What are Non-Custodial Measures and Sanctions with gender approach**

- ✓ “Non-custodial measures” means any decision made by a competent authority to submit a woman or girl suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment; such decision can be made at any stage of the administration of criminal justice
- ✓ Non-custodial measures diminish social costs, given that the administration of criminal justice imposes a very heavy financial burden on States.
- ✓ Not only woman offenders and girls in conflict with the law, but also society as a whole, benefit from the use of non-custodial measures; this positive deed should encourage community involvement in their implementation.

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## **BK Rules and Non-Custodial Measures**

**Non-custodial measures aim at guaranteeing a just application based on respect for the human rights of women offenders and girls in conflict with the law. They are required in order to prevent disproportionate recourse to control measures.**

**Non-custodial measures are of “considerable potential value for women offenders and girls in conflict with the law as well as for the community”**

**Non-custodial measures could be applied legally for a whole range of offences and in particular for those women or girls who are not likely to repeat them, those convicted of minor crimes and those needing medical, psychiatric or social help.**

**In cases as described above imprisonment is not the best appropriate sanction, since it severs community ties and hinders reintegration into society reducing offenders' sense of responsibility and their ability to make their own decisions.**

**Non-custodial measures have the unique characteristic of making it possible to exercise control over an offender's behaviour while allowing it to evolve under natural circumstances**

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## **Non-Custodial Measures Characteristics**

**Their inherent legal *flexibility* implies that they can be used at any stage of the proceedings.**

**Non-custodial measures should be used in accordance with the principle of minimum intervention; all excessive measures must be avoided.**

**When resorting to non-custodial measures, the competent authorities must consider:**

- the nature and gravity of the offence**
- the personality and background of the offender**
- the protection of society (the prevention of crime)**
- the avoidance of unnecessary use of imprisonment**

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**\*(From the Book “National Human Rights Institutions and The Bangkok Rules”  
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