



*Training Modules for  
Correctional Staff on*

**the Management  
of Women Prisoners  
in the ASEAN Region**

**TRAINING MODULES FOR CORRECTIONAL STAFF ON THE MANAGEMENT OF  
WOMEN PRISONERS IN THE ASEAN REGION**



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## **INTRODUCTION**

These training modules have been developed by the Thailand Institute of Justice (TIJ) to provide practical guidance on the implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) in member states of the Association of Southeast Asian Nations (ASEAN). The modules cover only those rules which relate to the treatment of women prisoners. TIJ is planning separate capacity building activities which will focus on non-custodial measures and sanctions for a different target group.

Before the adoption of the Bangkok Rules on 21 December 2010, there were no specific international standards focusing on the distinct, gender-specific needs of women offenders and prisoners and the principles that should underpin their management and social reintegration. The Standard Minimum Rules for the Treatment of Prisoners (SMR) applied to all prisoners, including men and women, but had very limited provisions that related specifically to women prisoners. Such provisions focused on pregnancy, childbirth, pre- and post-natal care, but did not provide guidance on other important considerations relating to women prisoners' rehabilitation needs. The Bangkok Rules were developed to supplement, rather than replace the SMR and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). This means that the guidance provided in the Bangkok Rules must be taken into consideration together with the provisions of the SMR and the Tokyo Rules to ensure the full implementation of international standards in the treatment of women offenders and prisoners. Accordingly most of the Bangkok Rules make specific reference to the rule number in the SMR or the Tokyo Rules which they supplement. Some rules cover new areas, which have not been included in the SMR or the Tokyo Rules, such as the treatment of children living with their mothers in prison.

The SMR were revised in 2015 and the revised rules were approved by the Commission on Crime Prevention and Criminal Justice on 22 May 2015.<sup>1</sup> The new rules are referred to as the 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)'. At the time of writing the Mandela Rules were awaiting approval by the Economic and Social Council and adoption by the General Assembly, which were expected to take place by the end of 2015.

The Mandela Rules take into consideration the provisions of the Bangkok Rules and include more focus on the needs of women prisoners in comparison to the previous SMR. Some key provisions of the Bangkok Rules are repeated in the Mandela Rules due to their importance. The Mandela Rules have also specifically spelt out a number of prisoner rights not referred to in the SMR prior to revision. These rights apply to both men and women prisoners. Nevertheless, the Bangkok Rules continue to supplement and complement the Mandela Rules, with their more focused and detailed guidance on the management and treatment of women prisoners. The two sets of standards need to be taken together for a comprehensive understanding of the rights of women prisoners and the principles that apply to the management of women's prisons.

The target audience of the training modules are prison practitioners, including all levels of staff from the most junior to the most senior levels. The modules are also relevant to specialist staff, such as healthcare staff, social workers, psychologists and educators, though specialist staff would need to receive separate training focusing on their responsibilities in more detail. Some of the modules target also policymakers, as a number of provisions of the Bangkok Rules and the guidance provided in these modules require the support and investment of policymakers for successful implementation. This is particularly true of Module 12 which covers the needs of prison staff.

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<sup>1</sup> Commission on Crime Prevention and Criminal Justice, twenty-fourth session, Vienna, 18-May 2015, draft resolution, E/CN.15/2015/L.6/Rev.1



Prior to the development of these modules a needs assessment was conducted by the Thailand Institute of Justice on the implementation of the Bangkok Rules in some countries of the ASEAN region with a view to identifying challenges and determining staff training needs. The needs assessment was limited in its scope as it did not include visits to women's prisons in most ASEAN countries<sup>2</sup>, but relied predominantly on existing reports and published information.

Valuable information was received in the context of two meetings organised by the United Nations Office on Drugs and Crime (UNODC) and TIJ in Bangkok in February and March 2013. The first of these was entitled "East Asia-Pacific Regional Meeting on the Implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)" and was held in Bangkok on 19-21 February 2013. The second meeting was entitled "ASEAN Expert Meeting on the Development of Training Modules based on the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)" and was held in Bangkok on 19-21 March 2013. Prior to the first meeting questionnaires had been submitted to the participants of each country to gather statistics and basic information on the situation of women offenders and prisoners. The responses received to these questionnaires, including from seven of the ASEAN region countries (excluding Indonesia, Lao and Singapore) provided a valuable official source of information for the assessment report.

The first meeting adopted a set of conclusions and recommendations, which included the identification of training needs on the Bangkok Rules as a key requirement and recommended, in particular, to make efforts to change staff attitudes to enable the successful implementation of the Bangkok Rules.

The current training modules have been developed specifically for prison staff in the ASEAN region in response to the recommendations of the regional meetings and taking into account the particular problems identified in the region. They are complemented by Training Modules for the Training of Trainers on the Management of Women Prisoners in the ASEAN Region, which are for the use of trainers. The modules are also supplemented by a list of reference documents and training materials focusing on the management and treatment of women prisoners, which may be used to deepen and expand on the information provided in these training modules. (See Annex 1)

Throughout the training modules account has been taken of the challenges faced in the ASEAN region, such as acute overcrowding and the shortage of resources in many prison systems. Where feasible, suggestions have been made to enable the implementation of the rules in these difficult circumstances. Having fully understood and internalised the spirit and objectives of the Bangkok Rules, prison staff themselves can think of other creative measures to ensure that women prisoners are treated, as far as possible, in accordance with the Bangkok Rules even in overcrowded prisons and despite limited human and material resources. It is also intended that, having fully understood the philosophy which underpin the rules, prison staff can prioritise the measures they can implement, taking into account the resources and capacities of their prison systems.

Trainers will facilitate discussion on all topics throughout the training course, to prompt participants to consider how the rules may be applied in their countries, despite the problems faced, and to enable an exchange of experiences and good practices so that the learning is further deepened and expanded.

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<sup>2</sup> A comprehensive assessment of women's prisons in Thailand was conducted in 2013 by the Thailand Institute of Justice and the findings published in October 2014 (Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand). The Thailand Institute of Justice conducted an assessment and survey in the Philippines in May and June 2015. The findings of the assessment in Thailand and the preliminary observations of the TIJ researchers as regards the management of prisons and jails where women are held in the Philippines were used to inform the ASEAN staff training needs assessment.

Good practice examples from the region have been provided in these modules as far as possible. But as publicly available information on prison systems in the ASEAN region is limited, the number of countries which are referred to is also limited. The training course itself will provide a forum for the identification of other good practices in different countries of the region.

Extensive reference has been made to the Bangkok Rules throughout the modules. Reference to the Mandela Rules has been made on a more limited basis, where particularly relevant. Both set of rules will be provided as handouts during trainings.

It is hoped that these modules, together with the Training Modules for Training of Trainers on the Management of Women Prisoners in ASEAN Region, will provide a good basis for the development of capacity building activities for staff working in women's prisons in the ASEAN region.



## MODULE 1

### GENDER SENSITIVE PRISON MANAGEMENT

#### Learning objectives

- To review the principles of a gender sensitive prison management approach;
- To consider the types of discrimination women prisons experience;
- To identify measures that can be taken to eliminate discrimination against women in prison management policies and practices.

#### 1. What is a gender sensitive prison management approach?

A gender sensitive prison management approach refers to management policies and practices which ensure that the discrimination faced by women prisoners is minimised or eliminated as far as possible; that the gender-specific needs of women are recognised and met; and that the prisons in which women are housed provide a rehabilitative environment in terms of facilities, rules and regulations, as well as the relationship between staff and prisoners.

All the rules contained in the Bangkok Rules, Parts I and II, are essential elements of a prison management policy which takes into account the gender specific needs of women prisoners. Understanding the rationale for the rules and ensuring that prison policies and practices are developed with reference to them will enable the establishment of a gender sensitive prison management approach which assists with the social reintegration of women prisoners in a positive prison environment, while also ensuring safety and order in prisons.

The components of a gender sensitive prison management approach have been identified as follows:<sup>3</sup>

- Taking affirmative action to counter-balance discrimination encountered by women prisoners, due to their small numbers;
- Adopting a gender-sensitive management style;
- Recognizing the different needs of female prisoners, including those from different cultural backgrounds, and providing programmes and services that address these needs.

The first of the points above refers to the discrimination encountered by women prisoners. Later on in this module we will discuss what kinds of discrimination women prisoners encounter and measures that can be taken to eliminate such discrimination.

First we will look at what is meant by a **gender-sensitive prison management style**.

The following have been identified as some of the requisite ingredients for a gender-sensitive management style in women's prisons:<sup>4</sup>

- The recognition of the different needs of women;

<sup>3</sup> UNODC Handbook on Women and Imprisonment, 2<sup>nd</sup> edition with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), 2014, Atabay, T., p. 27

<sup>4</sup> Ibid., p. 26

- A capacity and willingness by prison staff to communicate openly with prisoners and a less authoritarian manner;
- Skills such as active listening, patience in explaining rules and expectations;
- Awareness of emotional dynamics, and the capacity to respond firmly, fairly and consistently.

Women prisoners have different needs due to their gender, their typical backgrounds and because imprisonment affects women differently than men. Their gender specific needs relate to their sexual and reproductive health, special hygiene requirements, their special needs as mothers, psycho-social support needs and, frequently, treatment for substance dependence due their typical backgrounds. Such needs should be recognised by prison authorities.

The perception of justice and fairness is key to maintaining discipline in all prisons, including women's prisons. As prisoners who feel that they are treated fairly and not punished frequently and arbitrarily, are more likely to accept the authority of prison staff.

Women do not respond well to harsh discipline and unnecessarily strict, inflexible rules. A prison managed in an authoritarian manner, relying on rigid rules and punishment to maintain order, is an environment that will have a very negative impact on women's mental wellbeing. Such an environment will create tension and conflicts in prison, both between staff and prisoners and between prisoners. Instead, an approach that is flexible, where staff communicate with prisoners in a positive and constructive manner, where discipline is maintained not by frequent punishments but by keeping prisoners meaningfully occupied, where prisoners are enabled to develop personally and where conflict is resolved by discussion and mediation, has a much more positive contribution to women prisoners' social reintegration, while also reducing tension and conflicts in prison.

The prison's size, design and architecture, as well as proximity to women's homes, also have a significant impact on women's mental wellbeing and rehabilitation. Women prisoners' prospects of social reintegration are improved in smaller facilities, close to the community, where they can have regular contact with their family, children and friends. The damaging impact of imprisonment on women may also be reduced by housing them in facilities which are not oppressive and excessively institutional, offering sufficient outside space, including gardens, for exercise and sports, and where the security level is as low as possible to ensure prisoners' safe and secure custody.

All of these and others will be discussed in the relevant modules of this course. The success of the implementation of a gender sensitive management style depends to a large extent on prison managers' and staff's willingness to recognise the different needs of women and to develop their policies and practices in a way which responds to these needs to the maximum extent possible.

## **2. What is the typical background of women prisoners?**

Research indicates that women prisoners worldwide come from backgrounds that are, in general terms, very similar. This also includes women prisoners in ASEAN countries.

- Many women offenders have experienced sexual or physical abuse prior to imprisonment;
- A large proportion of women have mental healthcare needs which will have arisen due to domestic violence or sexual abuse;
- There is a high level of substance or alcohol dependency among women prisoners, often as a coping mechanism in response to victimisation.

### **The typical background of women prisoners: examples from the ASEAN region**

Research conducted among women prisoners in **Malaysia** showed that most of the women had left home when they were young, some of them had been abused as children and about half of the women had grown up in homes where the parents were divorced.<sup>5</sup>

The research in **Malaysia** also revealed that the main problem among women prisoners was drug use and the main offence committed by women was related to the use or sale of drugs and drug use was the primary health problem of women in prison.<sup>6</sup>

In **Thailand** about one-fifth of women prisoners who took part in a survey conducted by TIJ said they had harmed themselves or attempted suicide at some time in their lives; one-fifth indicated they had been subjected to physical abuse once or twice in their lives, while 17 per cent reported such abuse to have taken place multiple times. In 70 per cent of cases such abuse was perpetrated by a spouse or partner.<sup>7</sup>

In **Thailand**, just over one fifth of women who participated in the survey, indicated that drug dependence was related to their current offence and close to half said that drug use was involved in their current offence.<sup>8</sup>

A study conducted among women prisoners in **Singapore** showed that a high percentage (42 per cent) had experienced emotional distress and a slightly higher proportion (45 per cent) reported a history of physical, emotional or verbal abuse.<sup>9</sup> Thirty six per cent had turned to substance abuse to help them cope with stress. The study concluded that there was likely to be a relationship between emotional distress, victimisation and substance dependence.<sup>10</sup>

It is very important that prison management policies and rules in women's prisons take into account the typical background of women prisoners and develop regimes that respond to the needs which arise as a result of past victimisation, mental illness and substance dependence, among others. The recognition of women's backgrounds and needs should be reflected in staff attitudes, safety and security, healthcare, contact with the outside world, prisoner activities and programmes, among other aspects of prison life as a whole, in order for the objective of prisoner rehabilitation to be met.

### **3. The impact of imprisonment on women and their children**

Women are likely to experience imprisonment differently than men and often the mental distress caused by imprisonment may be particularly intense in the case of women due to the following factors:

- Separation from families and communities gives rise to extreme distress to women which may lead to mental health problems or exacerbate existing mental health needs.

<sup>5</sup> Samuel, R., Omar, R. Female prisoners in Malaysia: An examination of socio-demographic characteristics, International Congress on Interdisciplinary Business and Social Science 2012, in *Procedia, Social and Behavioral Sciences*, 65 (2012), pp. 507-509

<sup>6</sup> Samuel, R., Omar, R., pp. 507 and 509

<sup>7</sup> Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, pp. 136, 136

<sup>8</sup> Ibid., p. 136

<sup>9</sup> Mien, Goh Chin, 'Treatment of Female Offenders in Singapore', 153<sup>rd</sup> International Senior Seminar, 9 January to 8 February 2013, Participants' Papers, UNAFEI, p. 165

<sup>10</sup> Ibid., p. 165

- Many women have caring responsibilities and imprisonment will generate high levels of anguish in them, due to worries about separation from their children, their children's fate, and separation from and worry about other people who they cared for (e.g. an older or disabled member of the family).
- All women, but especially those who have been physically or sexually abused in the past, feel vulnerable and experience fear at abuse in prison settings, especially if the staff are male.
- Women who have committed crimes will often be stigmatised by their families and communities and their spouses will often abandon them, leaving them with little or no outside support both during their imprisonment and on release.
- A large majority of women who are imprisoned are mothers and their children will experience trauma and acute emotional and developmental problems as a result of separation from their mothers.
- If there is no father to look after the child or if he abandons the mother, the children will be at risk of being brought up in under-resourced state institutions, sometimes resulting in their own eventual criminalisation.

A gender sensitive prison management approach includes the recognition of the impact of imprisonment on women's emotional and mental health, as well as the impact of the mother's imprisonment on her children, and aims to provide activities, services and opportunities that reduce the harmful impact of isolation from the community on the women's mental wellbeing, as well as their children's development.

A gender sensitive management approach also includes the elimination of discrimination against women prisoners.

#### **4. The types of discrimination women prisoners experience**

Women prisoners are usually discriminated against because most prisons and prison regimes have been developed for the majority male prisoner population. Women's specific needs are rarely taken into account in the building of prisons or the development of prison regimes and programmes, as women make up a small minority of the prisoner population.

In addition women are very often housed far away from their homes because there are usually very few women's prisons in most countries. This means that women's links with their families are disrupted, even though women have a particularly strong need to keep in contact with their families, especially if they have children.

In other cases women will be housed in annexes of men's prisons, which may mean that they are held closer to their homes, but this usually also means that they have less access to services and activities than their male counterparts as the focus of management in such prisons will be the majority male population.

Women also suffer discrimination because their special needs are not met.

These include, for example, women's special hygiene needs and their healthcare needs, which go well beyond pre- and post- natal care, but also include preventive healthcare for breast and cervical cancer, and mental healthcare, among others, which will be discussed in Modules 3 and 4.

Women also have special needs because of the violence many have experienced during their lives prior to imprisonment. Widespread domestic violence against women and their sexual abuse prior to imprisonment have been documented in countries worldwide. If the environment in which women are imprisoned does not provide for their safety (e.g. not being separated from male prisoners and being supervised by male staff) and where prison policies and practices violate women's dignity (e.g. invasive body searches and strip searching) all women, and in particular women with a background of victimisation, will be traumatised or re-traumatised.

Women with a history of domestic violence or other forms of abuse and victimisation have special mental healthcare needs, and are in need of professional, comprehensive counselling and support provided by specialists, which is rarely available in prisons. They also need to be accommodated in an environment that is safe and which is managed in a gender sensitive way, in order for them to overcome, rather than relive, past experiences.

Prison authorities need to introduce policies and practices that allow for special considerations in the treatment of women prisoners, as provided by the Bangkok Rule 1.

#### **Bangkok Rule 1**

In order for the principle of non-discrimination, embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.

Providing for special needs is sometimes wrongly regarded as a form of positive discrimination. In fact, it cannot be adequately emphasised that when such needs are not provided for, the outcome for that individual is a position of disadvantage, often severe, in comparison to other prisoners. Thus, taking measures to respond to special needs is not in itself discriminatory, but on the contrary, essential to eliminate or reduce to a minimum the discrimination encountered by prisoners due to their gender or other characteristics.

This understanding is underlined in Principle 5 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states:

“Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory.....”

#### **5. What measures can be taken to eliminate discrimination against women prisoners?**

During the training course we will be discussing in detail the measures that can be taken to eliminate discrimination against women, but here are some examples of what can be done.

- The allocation of women prisoners within the prison system can take into account their need to maintain family links, especially when children are involved;
- Registration procedures should include considerations relating to women's children, whether they be with them in prison or outside, in order to ensure contact between the women and the children living outside prison and to take into account the needs of children living in prison;



- The medical screening of women on admission should take into account women's specific mental healthcare needs and risk of self-harm and suicide;
- The assessment of women needs to take into account women's typical background and needs and ensure that their individual sentence plans are developed on that basis;
- Women's special hygiene needs must be provided for;
- Women should have access to activities and programmes on an equal basis with men and the programmes offered to them should be appropriate to their needs, while also not being limited to those activities and programmes which are deemed to be suitable for the female gender;
- Special visiting rights and conditions should be accorded to mothers with children outside prison;
- If women are allocated far away from their homes their rights to communication by telephone may be increased and longer visiting hours may be allowed to compensate for lesser visits.

There are many other measures that can be taken to ensure that prisons where women are held are managed in a gender-sensitive way and where discrimination against women prisoners is eliminated or reduced to a minimum.

While some of these measures need additional resources (e.g. hygiene materials), many others do not (e.g. flexibility in visiting rights). Most need only a willingness to recognise women's special needs and a creativity and flexibility in approach to respond to them in the best way possible. When this is accompanied by a capacity and willingness to communicate openly with prisoners, a less authoritarian manner and skills such as active listening, patience in explaining rules and expectations, as outlined earlier in this module, the impact of many negative aspects of prison which can arise due to poor material conditions or overcrowding, can be minimised to a significant degree. Consequently the social reintegration of women prisoners, which is the ultimate aim of any prison system which is responsible for the supervision and care of women offenders, will have a much higher prospect of success.

Experience in women's prisons has shown that such an approach also ensures better order and security in women's prisons, as women react positively to staff empathy and openness.

**Good Practice: gender sensitive prison management is possible in overcrowded conditions and despite staff shortages**

**Correctional Institution for Women, Mandaluyong, Philippines**

The superintendent of the Correctional Institution for Women, in Mandaluyong, the Philippines issued a memorandum on "reintegration of rehabilitation programmes and prison rules and

regulations for a gender-sensitive prison management" in July 2010, before the adoption of *the Bangkok Rules*, based on the *UNODC Handbook for prison managers and policymakers on women and imprisonment* and the *Standard Minimum Rules for the Treatment of Prisoners*, which included guidelines on gender-sensitive prisoner management, including searching, restraints and disciplinary punishments, for women prisoners, which corresponded to the requirements of the

Bangkok Rules.<sup>11</sup> The memorandum was updated in May 2013, following the adoption of the Bangkok Rules, with additional guidelines based on the provisions of the Bangkok Rules.

The gender sensitive management approach adopted in this prison was praised in an assessment conducted in 2014. In this facility the prison management has developed a varied and comprehensive programme for women prisoners. Many of these involve close collaboration with NGOs, health, art therapy or education professionals. Visiting rights and conditions, searching procedures and the maintenance of order and discipline also reflect the gender sensitive prison management approach.

*Sources: Memorandum issued by the Superintendent of the Correctional Institution for Women, Mandaluyong, Philippines, "Reintegration of rehabilitation programmes and prison rules and regulations for a gender-sensitive prison management", dated 17 July 2010 and "Revised memorandum on reintegration of rehabilitation programmes and prison rules and regulations for a gender-sensitive prison management", dated 9 May 2013; DIGNITY (Danish Institute Against Torture), Baker, J., Rytter, T., Conditions for Women in Detention, Needs, vulnerabilities and good practices, 2014*

#### **Ratchaburi Central and Remand Prison, Thailand**

Prisoner interviews confirmed that Ratchaburi Central and Remand Prison was exceptional with its gender sensitive management style which promoted constructive relationships between staff and prisoners and a more relaxed prison regime. Discipline and order was maintained thanks to the empathetic and positive attitude of staff, despite overcrowding and staff shortages.

*Source: Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, 2014, p. 91*

#### **Good Practice: A homely, low security prison environment in Albania's women's prison**

"Although the old military barracks are a challenging landscape for Albania's Ali Demi women's prison, it has been transformed into an attractive, low security prison with a village-like atmosphere. Gardens are carefully tended, and surfaces painted brightly. Women have been permitted to make their dormitories and communal spaces homely, with self-made furnishings and pictures. The compound features a library with a study table and computers; a dining room and a counselling room, all tastefully decorated. Women sleep four to each dormitory, which open onto the main garden compound. The doors are never locked. On weekends, women pay social visits to each other's rooms, and drink tea together."

*Source: DIGNITY, Baker, J., Rytter, T., Conditions for Women in Detention, Needs, vulnerabilities and good practices, 2014 p. 44*

<sup>11</sup> Memorandum dated 17 July 2010, provided to UNODC and outlined in UNODC/TIJ, East Asia-Pacific Regional Meeting on the Implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Bangkok, 19-21 February 2013, UNODC/JSDO/BKEGM/2013/1, 14 March 2013, para. 71

## MODULE 2

### ALLOCATION, ADMISSION AND CLASSIFICATION

#### Learning Objectives

- To consider the importance of women prisoners' allocation close to their homes in the success of their social reintegration;
- To review the admission procedures for women prisoners, taking into account women's particular vulnerability at this time;
- To review the registration of women prisoners, including those who are admitted to prison with their children and those who have children outside prison;
- To understand the importance of undertaking a comprehensive, gender-sensitive assessment and classification of women prisoners on their admission to prison to ensure that they are placed in the right security level and that a suitable sentence plan is developed to match each woman's needs.

#### 1. Allocation

The Bangkok Rules recognise women's especially strong need to keep in contact with their families, particularly where children are involved, and the extremely harmful impact of isolation from families and communities on women prisoners. Taking into account these factors the Bangkok Rules supplement the Mandela Rules with a number of provisions which aim to increase women prisoners' contact with their families and the community.

Rule 4 of the Bangkok Rules covers the allocation of women prisoners:

#### Bangkok Rule 4

Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.

This rule was introduced because of the reality in prison systems worldwide that women prisoners are very often placed in prisons far away from their homes, due to the small number of women prisoners and the correspondingly small number of women's prisons. This means that many women prisoners receive much fewer visits than their male counterparts, due to the difficulties and costs involved in the long travel that families must undertake to visit their loved ones.

In other cases women are housed in annexes of male prisons, which may be closer to home, but which are managed on the basis of the risk profiles and needs of the majority male prison population. Women often face significant discrimination in such prisons, with less access to many activities and services, in comparison to men, as well as inferior physical facilities.

Thus, the allocation of women represents one of the areas which results in the indirect discrimination of women prisoners. This disadvantage faced by women arises also in countries of the ASEAN region.

### **Women imprisoned far away from their homes in the ASEAN region**

In **Thailand** women have to spend a considerable proportion of their sentences far away from their homes because their allocation has to take into account the length of their sentences. This results in a very unfavourable situation where women with very long sentences often find themselves located far away from their homes, although these women almost certainly need more contact, given the many years that they face behind bars.<sup>12</sup>

In the **Philippines** women are often housed far away from their homes since there are only two correctional facilities for women sentenced to a prison term longer than three years in this country. This puts severe limitations on the number of times families can visit the women.<sup>13</sup>

The Bangkok Rules provides for special efforts to be made to allocate women to prisons close to their places of residence or their place of social rehabilitation, in consultation with the women concerned. There is a need to maintain a balance between the women's need to access certain programmes and services, which may not be available in the prison closer to home, and their need to maintain family links. The consultation with the women themselves is required, firstly to enable them to contribute to the decision-making, as far as practicable, taking into account their individual rehabilitation needs. Secondly, if they have been victims of violence, perpetrated by their spouses or another member of their family, they may wish to be allocated far away from their place of residence, to protect their safety and mental wellbeing.

Due to the limited number of women's prisons, prison authorities may not have the option of fully implementing this provision. However, there may be some measures that prison authorities can take.

For example:

- Where the allocation of prisoners is dependent on rules that can be changed (e.g. the length of sentence which determines the prison to which a prisoner must be allocated), consideration may be given to revising the rules, taking into account the very low security risk presented by a large majority of women offenders (See Module 6 on security and order).
- When a woman prisoner is housed far away from her home and requests a transfer to a prison closer to home, prison authorities could consider the request favourably taking into account the woman's risk and needs assessment, as well as the benefits of maintaining links with her family.

The responsibility of putting this rule into practice should, however, not rely solely on prison authorities. Relevant ministries might need to consider establishing a larger number of smaller facilities to accommodate women prisoners, with a geographic distribution that would allow for all women to be housed close to their places of residence.<sup>14</sup>

Housing women in smaller facilities within the community and with close links with families, friends and community organisations, has been recommended following a comprehensive research conducted among women prisoners in the UK. See box.

<sup>12</sup> Thailand Institute of Justice, Atabay, T, Owen, B., p. 16

<sup>13</sup> DIGNITY, Baker, J., Rytter, T., p. 103

<sup>14</sup> UNODC Handbook on Women and Imprisonment, p. 30

**Smaller facilities for women prisoners: recommendations of a review conducted in England and Wales**

“I have concluded that those women for whom prison is necessary would clearly benefit from being in smaller units closer to home or more easily accessible for visitors, such as in city centres. There are “urban prisons” in the USA and Canada that provide models. The open section of Cornton Vale, which makes use of old staff houses to provide a homely environment for women nearing the end of their sentences, provides another. The women I met in these houses were running them as a family unit, doing their own budgeting, shopping and cooking. I believe that the UK can learn from these examples of smaller units serving a relatively local community. There is no reason why they cannot be multi-functional, with varying levels of security to perform as bail hostels, local, training and resettlement prisons with links to other local support centres...”

*Source: The Corston Report, A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System, Home Office, England and Wales, May 2007, p. 35*

Prison authorities can also introduce measures to compensate for the disadvantages women face when they are allocated far away from their homes, such as allowing for longer visiting hours or for more frequent and longer telephone calls, among others, which we will be discussing in Module 7 on contact with the outside world.

**2. Admission**

A number of international instruments describe the rights of the prisoner and the obligations of prison staff at the point of first admission to prison in order to safeguard against torture, ill-treatment and disappearance, and to ensure that prisoners are provided with all the information and facilities that will enable them to inform their lawyers and families about their whereabouts and seek legal advice, as necessary. Information provided to prisoners on admission should also enable them to fully understand their rights and obligations and the prison regime, so that they are able to adapt to prison life as quickly as possible with the full knowledge of their entitlements and responsibilities.

The Mandela Rules sets out the prison authorities’ responsibilities during the admission of a prisoner as follows:

**The Mandela Rules**

**Rule 54**

Upon admission, every prisoner shall be promptly provided with written information about:

- (a) The prison law and applicable prison regulations;
- (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
- (c) His or her obligations, including applicable disciplinary sanctions; and
- (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.

**Rule 55**

1. The information referred to in rule 54 shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided.
2. If a prisoner is illiterate, the information shall be conveyed to him or her orally. Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs.
3. The prison administration shall prominently display summaries of the information in common areas of the prison.

The Bangkok Rules reiterate the obligations of the prison authorities and require that additional measures are taken when women are first admitted to prison, as set out in Rule 2:

**Bangkok 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.

The Bangkok Rules recognise women prisoners' particular vulnerability when they are first admitted to prison, which may be due to the severe distress of separation from their children, families and communities, as well as worry about their children, possible past victimization and fears for their safety, lack of experience of contact with state authorities which can lead to additional anguish, coupled with low educational and economic status, among others.

The following are the key measures that may be taken to ensure that the requirements of the Bangkok Rules are fulfilled during the admission of women prisoners:

- While all prison staff responsible for the admission process should be specifically trained to fulfil their responsibilities in a professional and sensitive way, they should receive additional training to deal appropriately with newly admitted women and, where applicable, their children, taking into account women's special needs at this time.
- Staff should provide women with facilities to contact their families, provide information on how to access legal counsel, including legal aid, as necessary. They should also offer them facilities to do so. The ability to access legal counsel is particularly important in the case of pre-trial detainees, but also others who may wish to contact lawyers to lodge appeals or for any other reason which may be directly or indirectly related to their imprisonment.
- The information should be provided in writing to all prisoners, as well as being explained to them orally, taking into account the fact that many women may be illiterate or have a low level of education. Explaining the rules and regulations will enable them to ask questions at this time to prevent any future misunderstanding.
- Where foreign nationals are admitted they should be provided with such information in a language that they understand. They should also be accorded access to their consular

representatives, if they so wish. (See Module 10 for a more detailed discussion of the treatment of foreign national prisoners).

In some countries in the ASEAN region women are isolated for long periods together with other newly admitted prisoners under restricted access to activities, contact with the outside world and other prisoners. This is said to be done to prepare them for gradual entry into prison life and to identify their needs. However, this period of isolation was found to increase anxiety and depression among women. The practice contradicts the provisions of the Bangkok Rules, which provide for a totally different approach towards newly admitted women prisoners, focusing on assistance and support and contact with families and lawyers.

A large majority of women admitted to prison are mothers. Where the law provides for children to stay with their mothers in prison, some children will arrive in prison with their mothers. Many other children will remain outside, experiencing an abrupt separation from their mothers, facing uncertainty, anguish and fear.

The Bangkok Rules recognise the needs and vulnerabilities of all of these children and require that women be allowed to arrange for the care of their children before being admitted to prison, taking into account the best interests of the children. This may be done with a temporary suspension of the woman's sentence to allow her time to make appropriate arrangements, which would be a matter for sentencing authorities.

#### **Bangkok Rule 2.2**

Prior to or on admission, women with caretaking 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.

Where a suspension of sentence is not possible according to the law, prison authorities may assist by granting such women a short period of prison leave so that they can ensure that their children are provided with adequate alternative care during their imprisonment. Such a measure will make an immense difference to the wellbeing of both the mother and the child or children, most certainly preventing the deterioration of the mother's mental health and enabling the child to understand, as far as possible, what has taken place, reduce the trauma of separation and help the child start adapting to his or her new circumstances.

### **3. Registration**

The Mandela Rules require that prison authorities keep an up-to-date register containing information about prisoners' identity, the reasons for their detention, the time of their arrest and the time of their admission to prison, release and transfer, any visible injuries and complaints about ill-treatment, an inventory of their personal property, the names of their family members, including their children, with location and guardianship status and emergency contact details of the prisoners' next of kin.<sup>15</sup>

Dependent children may be admitted together with their mothers to prison in most countries around the world, including in ASEAN countries. Children may stay in prison for some years before they must be removed. It is essential that such children are registered at the time of their admission to prison, together with their mothers, to ensure that all those who are accommodated in prisons are accounted

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<sup>15</sup> The Mandela Rules, Rule 7

for. The information recorded should include, as a minimum, the names of the children and their age. Registering children admitted to prison is a key safeguard against disappearances, as well as being important to ensure that the needs of such children, including their nutrition and healthcare, are taken into account in prison policies and programmes.

Many women admitted to prison will have left children behind and it is extremely important that the women are able to keep in contact with their children regularly. It is equally important that authorities have information about the whereabouts and the situation of such children so that the state can provide for them as necessary. This is why the Bangkok Rules and the newly approved Mandela Rules include a requirement that prison authorities make a note of the names, ages, location and guardianship status of women prisoners admitted to prison.

### **Bangkok Rules**

#### **Rules 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.

#### **Rule 3.2**

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.

While the primary aim of gathering information about the children of imprisoned mothers is to make sure that such children are taken care of and that mothers can maintain links with their children, a secondary objective is to increase knowledge about the parental status of imprisoned women to contribute to future policy formulation, including, for example, sentencing policies or government policies which are relevant to the care of children of imprisoned mothers.

The Bangkok Rules make clear that all information relating to such children's identity be kept confidential and never be shared by third parties' without the consent of the mother and only when such action is in the best interests of the children concerned.

## **4. Assessment and classification**

A proper assessment and classification on admission is extremely important to ensure that prison authorities can decide on the right security level for each prisoner and gather the information necessary to develop individualised sentence plans with a balanced programme of activities, which respond to the needs, including gender specific needs, of women prisoners. Assessment and classification lies at the heart of good prison management, enabling prisoners to spend their time in prison occupied in a constructive manner and to receive counselling, treatment and participate in specific programmes, as relevant, to address issues such as victimisation, substance dependence, healthcare needs, and development of parenting skills, among others. In the absence of a comprehensive, gender-sensitive assessment and classification system the aim of eventual social reintegration would be hard to achieve.



The need for a gender-sensitive assessment and classification system to enable prison authorities to work towards each woman's social reintegration based on her individual needs, is highlighted by the Bangkok Rules, Rules 40 and 41.

### **Bangkok Rules**

#### **Rule 40**

Prison administrators shall develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and implementation towards those prisoners' early rehabilitation, treatment and reintegration into society.

#### **Rule 41**

The gender-sensitive risk assessment and classification of prisoners shall:

- (a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women prisoners;
- (b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process;
- (c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;
- (d) Ensure that those with mental health care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.

These rules underline the need to take into account women's backgrounds and needs in order to develop appropriate sentence plans and rehabilitative programmes to match individual needs.

The rules also make very clear that the large majority of women prisoners are not a high security risk and do not need to be held in high security facilities. Even where their sentences may be long, for example for drug related offences, in countries where such offences receive long sentences, the women do not necessarily pose a high security risk. Nor do many women who have committed violent offences represent a security risk to others, as many will have committed such offences against their partners or somebody that they know due to long-term abuse. It is therefore extremely important that assessment and classification look at each individual and assess the risks they pose and their needs on an individual basis, and not on the basis of the crimes that they have committed or the length of their sentences.

Regrettably in many countries women are housed in higher security levels than necessary, sometimes because there are not sufficient prisons for women with lower security levels. In some countries their mental healthcare needs may be assessed as risks, which will mean that they are placed in high

security facilities, rather than being housed in the lowest security level possible, as required by the Bangkok Rules.

**Women held in high security facilities due to the lack of lower security prisons**

There is only one facility for female offenders in **Singapore**, which is a maximum security prison. This means that many female prisoners are being housed in a much higher security level than warranted by their security classification.

*Source: Goh Chin Mien, 'Treatment of Female Offenders in Singapore', 153<sup>rd</sup> International Senior Seminar, 9 January to 8 February 2013, Participants' Papers, UNAFEI*

Being held in high security facilities and conditions can have an extremely harmful impact on women prisoners' mental wellbeing, undermining, from the very beginning of their sentence the success of their prospects of social reintegration while at the same time violating their rights to be held in the least restrictive conditions necessary for their safe and secure custody.

It is therefore highly important that staff, including specialist staff, are trained to undertake comprehensive assessments of women prisoners when they are first admitted to prison and to review such assessments at regular intervals. Assessment tools, perhaps adapted by those already available internationally, should be developed to assist staff in this process and ensure consistency. Assessment tools should not only be gender-sensitive but also sensitive to the different cultural characteristics and needs of women prisoners arising from their nationality, ethnicity, race or indigenous status. In the Philippines, for example, considerable attention was being devoted to the development of gender and culture-sensitive assessment tools relevant to that country, at the time of writing, in cooperation with universities.

In many countries, including in a number of countries in the ASEAN region, overcrowding and the shortage of specialist staff and resources may present significant challenges to conducting a comprehensive gender sensitive assessment and classification system, as required by the Bangkok Rules. In such countries measures can be taken to introduce such a system on a gradual basis, making best use of available resources. Possible measures have been suggested in the box.

**What can be done where staff resources are insufficient to conduct a gender sensitive assessment and classification process?**

- Depending on the number of daily admissions, all women admitted to prisons may be assessed in a central prison or another central facility dedicated to assessment and classification, where they may be assessed by well-trained security staff and specialist staff such as psychologists, social workers, educators and medical specialists and then transferred to the prison where they will be serving their sentences;
- Suitable regular staff may be trained by specialist staff, such as psychologists and social workers, to conduct, at least, a simple social and psychological assessment to accompany the risk assessment to be conducted by trained security staff and tools may be developed by specialist staff to guide them in this process in each prison;
- Assessments may be undertaken over a longer period of time – e.g. within 2-3 months of admission- prioritising those with short sentences.

- Any assessments conducted during the earlier stages of the criminal justice process, such as social inquiry reports, can be made available to prison staff to assist them with their task.

A rigorous specialist staff recruitment policy should be introduced at the same time to attract social workers and psychologists to work in prisons and funds allocated for this purpose by government authorities.

## MODULE 3

### HYGIENE AND HEALTHCARE: GENERAL

#### Learning objectives

- To discuss the requirement for a whole prison approach to healthcare in prisons, with a shared responsibility to protect and promote women prisoners' mental and physical health;
- To review the essential principles and components of the health screening of women prisoners on admission;
- To review the components of gender specific healthcare services in prisons ;
- To consider the need for medical confidentiality and how this can be achieved in prisons;
- To review the special hygiene requirements of women and what prison authorities must do to provide for these needs.

In many countries women face discrimination and barriers in accessing adequate health-care services in the community, due to their gender. Therefore female prisoners often have greater primary health-care needs in comparison to men.<sup>16</sup> The health status of prisoners is generally much poorer than that of the general population, and women's health needs can be seriously neglected in a male-dominated prison system.

Many women have chronic and complex health conditions resulting from lives of poverty, drug use, family violence, sexual assault, adolescent pregnancy, malnutrition and poor health care.<sup>17</sup> Drug-dependent women offenders have a higher prevalence than male offenders of tuberculosis, hepatitis, toxæmia, anaemia, hypertension, diabetes and obesity.<sup>18</sup> Mental illness is overrepresented among women in prison.<sup>19</sup> Existing mental healthcare needs can deteriorate in the prison environment, in particular due to the disruption of links with families and overcrowding. The harmful effects on mental health are intensified when women do not feel safe, if they are supervised by male staff and feel at risk of abuse.

States are responsible for the health care of all prisoners, including women prisoners. All prisoners need to have access to the same health care standards and services that are available in the community.<sup>20</sup> Such services should be provided free-of-charge to all prisoners without discrimination.<sup>21</sup>

Ensuring that women prisoners enjoy the same health standards in prisons as in the community requires that:

<sup>16</sup> Møller, L., Stöver, H., Jürgens, R., Gatherer, A. and Nikogasian, H., eds., Health in Prisons, A WHO Guide to the essentials in prison health, WHO Europe (2007), p. 27.

<sup>17</sup> WHO Europe, UNODC, Women's health in prison: correcting gender inequity in prison health, 2009, p. 20

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Mandela Rules, Rule 24.1

<sup>21</sup> Ibid.

- The conditions in prisons are conducive to protect and promote the physical and mental health of women prisoners;
- Women's healthcare needs are determined on their admission to prison on an individual basis by qualified healthcare professionals and a healthcare plan developed for each woman;
- Gender specific healthcare services, equivalent to those in the community, are provided to women;
- Provision is made for women's special healthcare needs, including mental healthcare needs, substance dependence, sexually transmitted infections (STIs) and HIV related healthcare needs.

Prison healthcare services should develop effective policies relating to the gender specific healthcare provision for women prisoners in close cooperation with ministries of health and community healthcare services in order to ensure equivalence of care between community and prison healthcare and continuum of care following women's release from prisons.

It is good practice for healthcare services in prisons to be the responsibility of the Ministry of Health and for healthcare to be provided by Ministry of Health staff.

**Good practice: Close cooperation between the Ministry of Health and Ministry of Justice for healthcare in prisons in Thailand**

In Thailand the Ministry of Health has overall responsibility for healthcare services in prisons. In practice the responsibility is shared with the Ministry of Justice, which has established its own medical centres in prisons, staffed by nurses who are employed by the Ministry of Justice and, in some prisons, by doctors. In most prisons doctors from the Ministry of Health visit prisons on a regular basis and where required prisoners are taken to community hospitals for treatment,

*Source: Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, p. 53*

## 1. A whole prison approach to healthcare

Prisons are often unhealthy environments where a variety of diseases are common. One of the key, underlying reasons for the spread of disease in prisons is overcrowding which limits the amount of space available to each prisoner, their access to fresh air, to adequate nutrition, water and exercise. All of these factors undermine the immunity and health of all prisoners, including their mental health. This can put immense pressure on the healthcare services, which usually have very limited staff, technical resources and medication.

Prisoners' right to health, which is recognised by a number of international instruments, includes their "entitlement to the underlying determinants of health, including adequate sanitation, safe water and adequate food and shelter."<sup>22</sup> Prison healthcare policies should therefore ensure that prison conditions and services are designed to protect the physical and mental health of all prisoners, and not be limited to the treatment of disease. All such policies should include considerations which apply to women prisoners' gender-specific healthcare and hygiene requirements, which should be reflected in prison management and healthcare policies. By adopting a whole prison approach to healthcare

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<sup>22</sup> United Nations Commission on Human Rights (2005), Report of the United Nations Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, United Nations document E/CN.4/2005/51, para. 45.

prison authorities can prevent health problems from arising and worsening, thereby making savings on healthcare costs in the long term.

The fundamental place of a healthy prison environment in the protection and promotion of prisoners' health is reflected in the Mandela Rules, Rule 35, which provides for the physician or competent public health body to regularly inspect and advise the prison director on the quality and quantity of food, hygiene, sanitation, temperature, lighting, ventilation, the suitability and cleanliness of prisoners' clothing and bedding and access to exercise and sports. The prison director is obliged to take into consideration this advice and put in place measures to address the shortcomings identified by the physician or public health body. Where the prison director does not have the authority or means to implement the recommendations of such reports, they must submit their own report and the recommendations of the physician or public health body to a higher authority.<sup>23</sup>

In many prison systems in the ASEAN region severe levels of overcrowding in most prisons present a significant challenge to the provision of a healthy prison environment. Overcrowding is probably the most important barrier to the implementation of many provisions of the Bangkok Rules. While prison authorities have no power over the number of women sent to prison, there are measures that they can take to limit the harmful impact of overcrowding on women's physical and mental health. For a start, they can take some measures to relieve the pressure on space. See UNODC and ICRC's recommendations in the box.

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<sup>23</sup> Mandela Rule 35.2

**Some UNODC and ICRC recommendations to relieve pressure on space and mitigate the impact of overcrowding in prisons**

- The time prisoners spend out of their cells should be increased. Ideally this would include the maximum possible time spent in the open air.
- Consideration may be given to reclassifying under-utilized areas of the prison to maximize the use of existing prison space, to provide for more sleeping accommodation, while ensuring that the separation of prisoners complies with the Standard Minimum Rules for the Treatment of Prisoners. This latter is especially important in prisons where vulnerable groups are at risk of abuse.
- All buildings capable of housing prisoners may be examined and brought to a state of repair sufficient for habitation. Experience shows that with the simplest of modifications unused space or space used for other purposes can be brought into use as living accommodation. In doing so, there should be a thorough consideration of the advantages and disadvantages of reassigning existing premises. For example, converting workshops into dormitories will increase capacity at the expense of reducing opportunities for activities. Where premises are converted into living accommodation, this should be done in compliance with rules relating to hygiene, security, ventilation, lighting and access to sanitary facilities.
- Prisoners may be distributed more rationally within the prison. For example, low risk prisoners may be accommodated in less secure areas, prisoners who are permitted to spend the longest periods out of cells may be accommodated in the most crowded sections of the prison, as a short-term measure, while other measures are taken to reduce such overcrowding.
- The arrangements for storing personal belongings may be improved and bunk beds can be introduced to increase space available in cells and dormitories. Where bunk beds are introduced care should be taken that all prisoners have access to adequate ventilation and the overall space available in the cell remains within recommended specifications. See *International Committee of the Red Cross (ICRC), 'Water, Sanitation, Hygiene and Habitat in Prisons' Supplementary Guidance' 2012*, chapter 3.
- Maximum possible use of early release programmes and home leave, as well as the transfer of eligible prisoners to lower security prisons, such as open prisons, may be considered in order to relieve pressure on space. When such measures are implemented, every effort needs to be made not to transfer prisoners further away from their homes, in order not to disrupt family links.
- A privilege system may be introduced, whereby lower-risk prisoners could earn additional rights to home leave and work furloughs.
- Towards the end of their sentences, prisoners may be released to half-way houses, which could be managed by social services or NGOs. This would help relieve pressure on prison space as well as assist with the gradual preparation of prisoners for re-entry.

Source: *UNODC Handbook on strategies to reduce overcrowding in prisons, 2013, Atabay, T., pp. 143, 144; 167, 168*

**Good practice: Relieving pressure on space in Ratchaburi Central and Remand Prison, Thailand**

The management in this prison allows prisoners with short sentences to sleep in the corridors outside the dormitories to relieve pressure on space in the dormitories. The doors of the dormitories are kept open at night so that the women sleeping in the corridors can access the toilets, adjacent to the dormitories, at all times. This also increases the ventilation in the dormitories.

Source: *Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand*, p. 40

**2. Health screening on admission**

**Bangkok Rules**

**Rule 6**

The health screening of women prisoners shall include comprehensive screening to determine primary health-care needs, and also shall determine:

- (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling;
- (b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm;
- (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues;
- (d) The existence of drug dependency;
- (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.

The first step in meeting the healthcare needs of prisoners is to ensure that they undergo a medical examination on entry, on an individual basis, conducted by qualified healthcare professionals, including psychologists.

The medical examination on entry is essential to ensure that:

- (a) prisoners start receiving appropriate treatment for any health conditions without delay;
- (b) any signs of ill-treatment in previous detention/custody are identified and appropriate action taken;
- (c) those who are suspected of having contagious diseases are isolated and appropriate treatment provided; and
- (d) prisoners' level of fitness to work, exercise and participate in activities is determined.<sup>24</sup>

<sup>24</sup> Mandela Rules, Rule 30



The Bangkok Rules have introduced specific provisions for the health screening of women prisoners, which take into account their typical background and needs. They require that the medical screening on entry determine specifically whether women have any sexually transmitted or blood-borne diseases and that women be offered voluntary HIV testing, with pre- and post- test counselling. They provide for a thorough mental health assessment, including the assessment of self-harm or suicide risk, the determination of women's reproductive healthcare needs and the existence of drug dependency. All such examinations should be undertaken by specialist healthcare staff as soon as possible following a woman's admission to prison.

It may not always be possible to arrange for a full health screening on admission, due to the high number of admissions and shortage of staff, but an initial examination should be conducted by a nurse as soon as possible following admission. Those who require urgent assistance can be prioritised for examination by a doctor the following day.<sup>25</sup>

The screening conducted on admission (i.e. the first day or the following day) should determine, at least, urgent medical needs, primary healthcare needs and diagnose any signs of ill-treatment or torture (See Section 3 below).

Where specialist staff are not immediately available to undertake the more comprehensive healthcare screening required by the Bangkok Rules, this may be undertaken within the first week of admission. A mental healthcare assessment may best be conducted after the woman has settled in to the prison and overcome the anguish and distress experienced during the first days of admission.

Medical information gathered on entry should be recorded in the prisoners' medical file, and the information kept confidential. No staff within a prison, with the exception of the health care staff, should have access to a prisoner's medical records or medical information.

Individual healthcare plans should be developed for each woman based on the findings of the initial screening and the screening should be repeated at regular intervals to check progress and identify any new healthcare needs.

### **3. Screening for ill-treatment and torture, including sexual violence**

It is essential that the medical examination on admission includes screening for ill-treatment and torture, including sexual violence. If a woman complains of having been ill-treated she should be prioritised for medical examination, and such examination should be undertaken by an independent healthcare specialist, due to the need for absolute medical impartiality on the part of the physician, and trust on the part of the prisoner. Where possible the examination should be undertaken by an expert in documenting sexual abuse, and ideally there should be a team of experienced psychiatrists, psychologists, gynaecologists and nurses, who are trained in the treatment of survivors of sexual torture.<sup>26</sup>

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<sup>25</sup> Coyle, A., *A Human Rights Approach to Prison Management*, International Centre for Prison Studies, 2009, p. 45; CPT Standards (2006), para. 33.

<sup>26</sup> United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol), 9 August 1999, p. 40

**Rule 7**

1. If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.
2. Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.
3. Specific measures shall be developed to avoid any form of retaliation against those making such reports or taking legal action.

Even where a woman has not complained of ill-treatment if her medical examination indicates possible ill-treatment, she should be prioritised for a full examination by an experienced independent healthcare professional or a team of professionals.

Where women are found to have been victims of ill-treatment or torture, including sexual violence, they should be provided with immediate access to legal counsel and should be given full information as to their legal right to make an official complaint to an independent judicial authority. No woman should be coerced into taking any decision as to whether or not to lodge an official complaint about her treatment before she has spoken to her lawyer, which should be provided free-of-charge, if the woman herself cannot afford to pay for a lawyer.

Ill-treatment and torture and particularly sexual abuse in custody is a very sensitive subject and not easily accepted or discussed among prison staff. However, the reality is that ill-treatment and torture, including sexual violence, in detention, especially in police custody, is a high risk in many countries worldwide, including in a number of countries in the ASEAN region. The eradication of such practices begins with the recognition of their existence.

Therefore it is highly important that prison authorities develop guidelines for prison staff and prison healthcare staff on measures to be taken when a woman complains of ill-treatment and torture on admission or when the initial medical examination reveals signs of ill-treatment and torture. Prison staff and healthcare staff should be given training on facilitating women who have been victims of violence to come forward and talk about their experience. They should also receive training on responding to women who complain of ill-treatment and torture in a professional and sensitive way.<sup>27</sup>

Women who have been subjected to ill-treatment and torture, including sexual abuse, should be provided with access to appropriate counselling by qualified psychologists, whether or not they have decided to take legal action.

It is essential that measures are put in place and included in staff training to protect women who lodge complaints from retaliation or intimidation by staff.

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<sup>27</sup> Penal Reform International/ Thailand Institute of Justice, Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), 2013, Atabay, T., p. 43

#### **4. Gender Specific Healthcare**

As mentioned earlier, many women who enter prison will have existing primary healthcare needs, often left untreated in the community. This is because most women offenders come from socially and economically deprived backgrounds and will not have had regular access to medical care. In addition, in many countries women face discrimination and barriers in accessing healthcare services in the community. Women's existing primary healthcare needs are likely to intensify in prisons where proper hygiene, access to adequate nutrition and water, as well as fresh air and exercise are not provided and where women have to live in cramped overcrowded conditions.

Women also have additional healthcare needs due to their gender and typical backgrounds. Such needs include reproductive and sexual healthcare needs, including preventive healthcare, substance dependence treatment and mental healthcare needs.

Prisons which house women prisoners need to provide healthcare services which cover both the primary healthcare needs and gender specific needs of women prisoners.

##### **Bangkok Rules**

###### **Rule 10**

1. Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners.
2. If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.

###### **Rule 11**

1. Only medical staff shall be present during medical examinations unless the doctor is of the view that exceptional circumstances exist or the doctor requests a member of the prison staff to be present for security reasons or the woman prisoner specifically requests the presence of a member of staff as indicated in rule 10, paragraph 2 above.
2. If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.

An essential element of gender specific healthcare services is to enable women to be treated by female healthcare professionals. This should be the norm in all prisons where women are held.

Where female doctors or nurses are not available in prisons on a constant basis all women who are to undergo a medical examination should be asked if they would prefer to be examined and treated by a female doctor and if they so wish, a female doctor should be made available to them, either in a community hospital or at the earliest opportunity in prison.

Where women do not express a preference to be treated by a female healthcare professional and the examination is undertaken by a male doctor, a female member of the healthcare team should be present at the medical examination. Having a female chaperone in the room should also be the

routine practice when a woman has to be treated by a male doctor due to the urgency of the case and unavailability of a female physician.

Such a practice is reassuring to the patient and protects her from abuse, as well as protecting the physician from any unfounded allegations of abuse.

Regrettably, the shortage of women healthcare staff in women's prisons poses a significant challenge in a number of ASEAN countries. One way of overcoming this would be to strengthen cooperation with community healthcare services, whose female medical staff may be available to treat women prisoners at certain days of the week or certain hours each day. This may, for example, be arranged with a Memorandum of Understanding between the two sectors, where prison and community healthcare services are within different ministries.

Non-medical staff should not be present during medical examinations, as this would be a violation of the patient's right to medical confidentiality. If, in exceptional circumstances, the doctor or nurse examining the prisoner requests a staff member to be present, that staff member should be a woman and she should be out of hearing of the discussion between the patient and the doctor. The patient's privacy and dignity should be protected at all times.

### **Bangkok Rules**

#### **Rule 17**

Women prisoners shall receive education and information about preventive health-care measures, including from HIV, sexually transmitted diseases and other, blood-borne diseases, as well as gender-specific health conditions.

#### **Rule 18**

Preventive health-care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community.

A key component of gender specific healthcare in prison is the provision of preventive healthcare services to all women prisoners. These include pap smears and screening for breast and cervical cancer. Such screening should be undertaken at regular intervals, at least similar to that in the outside community.

Female prisoners who often have a low level of education and who come from socially deprived backgrounds may be unaware of many aspects of preventive healthcare. Prison provides an opportunity to offer such women information and education on preventive healthcare, including prevention from STIs, HIV, blood-borne diseases and other gender-specific health conditions.

Prison authorities may organise education on women's healthcare in cooperation with health services and NGOs in the community to increase women's knowledge and awareness.

See Module 4 for a more detailed discussion of HIV prevention, treatment and care.

Many women who are admitted to prison are pregnant or are nursing mothers and will be admitted with their infants. Such women need access to the same level of pre- and post-natal care, and medical care during childbirth, as available in the community. This topic will be examined in detail, together with the other needs of pregnant women, breastfeeding mothers and mothers with children in prison, in Module 9.

## **5. Medical confidentiality**

### **Bangkok Rules**

#### **Rule 8**

The right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times.

Medical confidentiality is a key principle of medical ethics which applies to all patients including prisoners. The Bangkok Rules reiterate this principle and underline specifically women's right not to share information about their reproductive health history and not to undergo screening in relation to their reproductive health history. This means that women should have the right to refuse vaginal screening.

As we discussed earlier the principle of medical confidentiality requires that medical examinations should only be undertaken by medical staff and in the presence of other healthcare staff, where necessary. Non-medical staff should never be present during such examinations, except for exceptional circumstances, when the examining doctor requests a member of staff to be present (e.g. when a prisoner may be violent and unpredictable). Such circumstances would very rarely arise in the case of women prisoners.

Prison healthcare staff need to ensure that the health information about prisoners are kept in separate files, which should be locked up and accessible only to authorised healthcare staff. If healthcare information is computerised, then only authorised healthcare staff should have the password. The principle of medical confidentiality should be respected by each and every member of the healthcare team.

Healthcare staff may only share this information with third parties following the consent of the prisoner. The sharing of information may be necessary to assist with the treatment of the prisoner or even her release for compassionate reasons, depending on the case. In situations when withholding information about a prisoner's health status may harm her or others and it is not possible to receive the prisoner's consent, the doctor may decide to share limited information, sufficient to protect the prisoner and others, with prison managers or judicial authorities.

In some countries, including in the ASEAN region, the shortage of specialist staff has led to the involvement of trustee prisoners in various aspects of prison management, which is a practice that carries many risks and has no place in good prison management policies and practices. In the context of medical confidentiality it is important to note that involving trustee prisoners in any aspect of prisoner healthcare violates the principle of medical confidentiality and puts vulnerable prisoners at risk, as trustee prisoners can use medical information as a means of power over other prisoners.

## **6. Hygiene**

Meeting prisoners' hygiene requirements is crucial not only to protect their health but also to preserve their dignity.

The Mandela Rules require that adequate bathing and shower installations be provided to prisoners so that they can have a bath or shower as frequently as necessary for general hygiene.<sup>28</sup> The sanitary

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<sup>28</sup> The Mandela Rules, Rule 16

installations must be adequate to enable prisoners to comply with the needs of nature when necessary in a clean and decent manner.<sup>29</sup> The Mandela Rules also provide for prisoners to have access to water and toilet articles for health and cleanliness, facilities to take care of their hair and, in the case of men, the possibility to shave regularly.<sup>30</sup>

### **Bangkok Rules**

#### **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.

The Bangkok Rule 5 supplements these rules, requiring that women's accommodation 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 for the personal care of children and women.

This would mean access to running water at all times. Where possible hot water should be available on a constant basis, and where this is not possible, at least women with children, those who are menstruating, pregnant and breastfeeding, as well as those who are going through the menopause, should have regular access to hot water. Women should have unlimited access to toilets, which should afford privacy. Sanitary facilities should be kept clean at all times.

Women should receive sanitary pads, free-of-charge, from the prison authorities in adequate supplies. They should be distributed to women in a way that avoids women having to experience the embarrassment of asking for them themselves. Women should also be provided with all other toilet articles, such as soap, toothpaste and shampoo, in order from them to maintain their cleanliness, health and dignity.

In a number of ASEAN countries research has found that women's access to hygiene articles is insufficient, which means that they have to rely on their families to provide them with their needs. Women who are poor, whose families live far away and therefore cannot visit them frequently and foreign national prisoners are at a particular disadvantage in this respect. Sometimes foreign women prisoners will be discriminated against, as prison authorities may prioritise their own nationals for receiving a share of the limited number of sanitary pads, which means that these women are doubly disadvantaged.

The provision of hygiene articles, including sanitary pads, is the responsibility of the state. Where such items are insufficient to meet the needs of women prisoners, prison authorities should alert central prison administration and/or the relevant ministry as to the shortfall.

Prison authorities can also establish and strengthen cooperation with community groups, including NGOs working on women or prisoner related issues, to try to supplement the hygiene materials provided by prison authorities.

It is important to take particular care to ensure that women who are poor, who receive few visits from their families and foreign nationals are provided with additional hygiene articles, as necessary, to counter-balance the discrimination experienced by these prisoners and prevent their possible

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<sup>29</sup> The Mandela Rules, Rule 15

<sup>30</sup> The Mandela Rules, Rule 18

exploitation by other prisoners (e.g. requiring the prisoners to perform services for them in return for hygiene articles).

In some prison systems in the ASEAN region, particularly where prisons are overcrowded, the strict prison timetable does not allow for women to take care of their personal hygiene requirements adequately, as women have to queue for long periods to gain access to the shower facilities, within a limited time period. Apart from preventing the women from fulfilling their hygiene requirements this leads to stress among prisoners.

Where women's ability to wash themselves and take care of their other personal hygiene requirements are prevented due to a strict prison timetable, a review of the timetable may be considered and changes made so that bathing times are extended or more flexibility allowed so that prisoners can fulfil their hygiene requirements sufficiently to maintain their health and dignity.

## MODULE 4

### SPECIAL HEALTHCARE NEEDS

#### Learning objectives

- To discuss strategies to meet women prisoners' special mental healthcare needs, including the needs of those who are at risk of self-harm and suicide;
- To review the benefits of substance dependence treatment for women prisoners and the key principles of gender sensitive strategies to treat substance dependence;
- To consider the importance of developing strategies and services for HIV prevention, treatment, care and support in women's prisons.

As discussed in the previous module, women who are admitted to prison are more likely to have mental healthcare needs than men, and such needs can intensify in the prison setting. As the commentary to the Bangkok Rules notes, research in some countries indicates that women may be at higher risk of harming themselves or attempting suicide in comparison to men in prison, due to the higher level of mental illness and substance addiction among women prisoners and the harmful impact of isolation from the community on the mental well-being of women.<sup>31</sup>

Women are twice as likely as men to contract HIV through sex and the pre-existence of STIs increases their risk of contracting HIV.<sup>32</sup> As a significant proportion of women prisoners have a background of drug use, sexual abuse, sex work and unsafe sexual practices, a large proportion of women prisoners who are admitted to prison are infected with STIs, including HIV, and hepatitis when they enter prison.<sup>33</sup> For example, In the Pathum Thani Correctional Institution for Female Drug Addicts in Thailand the proportion of prisoners with HIV was 4.9 per cent in January 2013, the highest proportion among six women's prisons visited in Thailand as part of an assessment carried out by TIJ. Medical staff interviewed said that this might be due to new admissions, which included a considerable proportion of women who are likely to have been involved in sex work, as well as in the increase in the number of women being tested.<sup>34</sup>

#### 1. Mental healthcare

Fundamental to the protection and promotion of women's mental health in prison is the creation of a positive, healthy prison environment with a gender sensitive prison management approach. Prisoners should be assisted to develop their sense of personal worth and respect and be offered a varied and comprehensive programme of activities to keep them positively occupied and help them prepare for life after release. Creating a healthy, positive prison environment relies predominantly on the style of management, staff attitudes and the prison regime, rather than additional resources. Thus, it can be achieved in any country and prison system, provided that prisoners' basic material needs are provided for.

<sup>31</sup>Commentary to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (the Bangkok Rules), Rule 16

<sup>32</sup> Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 3

<sup>33</sup> Ibid. p.3

<sup>34</sup> Thailand Institute of Justice, Atabay, T., Owen, B., p. 66



The positive, rehabilitative climate in prison can be further enhanced by offering all prisoners a variety of programmes, in cooperation with organisations of civil society, that help protect and promote mental health, such as meditation, yoga, theatre and dance.

In parallel, women identified as having mental healthcare needs on admission to prison should be offered gender-sensitive and interdisciplinary mental health care and psycho-social support programmes, based on individual needs. The mental health screening should be conducted by specialists and issues to be covered should include women's past victimisation (e.g. experience of domestic violence and sexual abuse), history of trauma, of mental ill health, including post-traumatic stress disorder, history of self-harm or suicide attempts, substance dependence, as well as any caring responsibilities which were disrupted by the prison sentence, among others.

### **Bangkok Rules**

#### **Rule 12**

Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in non-custodial settings.

#### **Rule 13**

Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.

Treatment should be provided by a qualified healthcare team, including a psychologist and, where necessary, a psychiatrist. All too often the only treatment offered for mental ill health in prisons is medication based, which is not the appropriate response in many cases. Instead, treatment should include an investigation of the reasons which provoke mental illness and an integrated approach of counselling, psychosocial support and, if necessary, medication be offered, as required by the Bangkok Rules.

Where prisoners are in need of treatment for mental illness, healthcare professionals should always discuss with them their treatment options and devise a treatment plan with their full consent. The patients should be involved in decision making. In order for the patients to make an informed decision about treatment plans, comprehensive information should be provided to them about their condition.

Patients should be given all relevant information about any medication that is being suggested for their treatment, including any side-effects or long-term consequences. All treatment should be individualised and respond to the patient's unique needs.

### **Prisoners' views on what constitutes a good mental health service**

Prisoners in focus groups conducted in 2006 identified the following positive characteristics of a mental health service:

- an ability to form trusting relationships with health professionals;
- continuity of care;
- not being misinformed or deceived with false information;
- clear and detailed information regarding side-effects of medications;
- education about the nature of their illness;
- involvement in planning their own care and pathways of care;
- rapid transfer to hospital if treatment cannot take place in the prison when acutely unwell;
- treatment or therapy appropriate to a prisoner's condition.

*Source: WHO Europe, Prisons and Health, Eds. Enggist, S., Møller, L., Galea, G. and Udesen, C., 2014, p. 90*

Since protecting and promoting mental health in prisons is a whole prison responsibility, staff awareness of what supports mental health and the ability to recognize mental health problems are crucial.<sup>35</sup> Some prison staff may require more extensive training than others, but all prison staff and managers require some training on mental health in prisons<sup>36</sup> and in particular on women's mental health.

Women are particularly susceptible to mental distress and depression at certain times, for example on admission to prison, due to separation or loss, upon receiving bad news from home, following the delivery of a child, following the experience of any act of victimization or violence, during menopause, after separation from a child previously in the prison with the mother and prior to release. A gender sensitive prison management approach should include raising the awareness of staff and their training to recognize symptoms of mental distress. Staff should be in a position to respond to needs in an understanding and sensitive manner, and where necessary refer the women to specialised support.

In all prison systems cooperation should be established with psycho-social support services in the community, as part of a general policy of cooperation between prison and public health services. Thus, women in need of specialist support may be referred to community services where necessary. In those systems which experience specialist staff shortages, cooperation with organisations of civil society can be highly beneficial, reducing the burden on the prison's health services. In addition, prisoners are likely to have more trust in an independent provider of mental health support and the contact with civil society, in itself, will have a normalising effect on prison life. The contribution of organisations of civil society can be immensely beneficial in this context.

<sup>35</sup> WHO Europe, Prisons and Health, 2014, p. 90

<sup>36</sup> Ibid.

**Good practice: Promotion of mental health in a women’s prison in Albania**

“Albania’s Ali Demi (#325) prison stood out among the facilities visited by DIGNITY as a place that promotes the mental welfare, healing and rehabilitation of women, and it was regarded as such by prison and outside health professionals, as well as inmates. At the time of the visit the environment was open, personal and governed with a sense of care, with a structured series of tasks and activities to keep inmates busy during the week. Staff focused strongly on welfare tasks, connecting women with families or sources of support, opening healthy spaces for time with children and conjugal visits with husbands. Staff made special effort to give women care and personal attention, and various inmates spoke of this with appreciation. “The psycho-social staff are present in everyday life, and they treat us like friends,” said one detainee. Another noted: “Everyone needs good treatment but women can be more fragile, and more expressive, and they need more attention. We feel inferior anyway, so if staff treated us badly, we’d feel worse and worse. Maybe we’d have more fights and quarrels.” This approach was evidenced with few disciplinary issues, visibly comfortable relationships between staff and inmates, and low reported rates of depression and self-harm. “

*“In 325 there’s more space for making it like home, despite women being deprived of their liberty. It is more multi-disciplinary with its care — there is a social worker, medical doctor, psychologist, and even the prison director is from the social sciences. It makes a difference.” — NGO Health Professional”*

*Source: DIGNITY, Baker, J. and Rytter, T., Conditions for Women in Detention, Needs, vulnerabilities and good practices, 2014 p. 87*

**2. Suicide and self-harm prevention**

According to international research suicide rates in prison are significantly higher than those in the general population.<sup>37</sup> Suicides have increased in some countries in recent years, particularly as a result of overcrowding.<sup>38</sup> Research in some countries indicates that women may be at higher risk of self-harm and attempted suicide in comparison to men, because of the higher level of mental illness and substance dependence among women prisoners.

**Bangkok Rules**

**Rule 16**

Developing and implementing strategies, in consultation with mental health-care and social welfare services, to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialized support to those at risk shall be part of a comprehensive policy of mental health care in women’s prisons.

The prevention of suicide and self-harm should therefore constitute a key component of mental health policies in women’s prisons. The assessment of mental health on admission should include the identification of those prisoners who may be at risk of suicide and self-harm. A therapeutic response

<sup>37</sup> Penal Reform International, Penal Reform Briefing No. 2, Health in prisons: realising the right to health, 2007, p. 3

<sup>38</sup> Penal Reform International, Thailand Institute of Justice, Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 2013, Atabay, T., p. 55

should be developed by qualified healthcare staff, addressing the underlying causes of self-harm and suicide attempts. In addition staff need to be trained to detect risk of self-harm and suicide, provide support and refer such cases to specialists.<sup>39</sup>

As the commentary to the Bangkok Rule 16 notes, all too often initiatives to prevent suicide consist only of technical solutions, such as the removal of items that may be used for suicide, or the introduction of additional restrictions to reduce possibilities of suicide, which do not address the cause of mental distress, which lead to acts of suicide or self-harm. Such precautions may in many cases exacerbate the situation.

In some prison systems prisoners who harm themselves or attempt suicide are punished, which is unacceptable, as such an approach is likely to further damage the mental health of the prisoner involved, without offering any benefits in terms of their treatment or management. Self-harm and suicide attempts should always receive a therapeutic response and prisoners involved should immediately be referred to healthcare staff.

A key component of strategies to reduce incidents of self-harm and suicide in prisons, is to establish a positive prison environment, which promotes mental health. In parallel to the identification and supervision of prisoners who are at particular risk of suicide and self-harm and the individual treatment provided to them, prison managers and staff need to take a proactive approach to improve prison morale, in order to promote mental health and reduce the risk of self-harm and suicide.

### **3. Substance dependence treatment**

A high proportion of women in prison worldwide and in particular in countries of the ASEAN region have been convicted of drug related offences. Most often the offence is related to the sale of drugs, though many women who engage in the sale and distribution of drugs are substance dependent themselves. Comorbidity - that is, the presence of both mental healthcare needs and drug dependence is common among women prisoners.<sup>40</sup>

#### **Bangkok Rules**

##### **Rule 15**

Prison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.

Offering voluntary substance dependence treatment programmes in prisons in ASEAN countries is therefore extremely important to contribute to the social reintegration of a large proportion of women prisoners. Such programmes should recognise gender differences in drug dependence and adopt treatment approaches that respond to the specific needs of women. They should, in particular, address the underlying causes of drug use, such as history of victimisation. Studies have found that comprehensive programmes which include components such as women-only groups, women-focused topics, mental health programming and child care produce better outcomes than the traditional

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<sup>39</sup> WHO, International Association for Suicide Prevention, Preventing Suicide in Jails and Prisons, 2007, p. 10

<sup>40</sup> WHO Europe, Correcting gender inequity in prison health, 2009, p. 20

mixed-gender programmes.<sup>41</sup> Cognitive and behavioural treatment has been proven to be effective in the treatment of women with substance dependence.<sup>42</sup>

The same standards of ethical treatment should apply to the treatment of drug dependence as other health care conditions. Similar to any other medical procedure, drug dependence treatment, whether psychosocial or pharmacological, should be based on the principle of informed consent. This means that the patient should have the right to refuse treatment, having been informed of all the risks and benefits of treatment options and the consequences of refusing treatment.<sup>43</sup> While prisoners may be encouraged to accept treatment with the offer of certain privileges (e.g. more family visits), refusing treatment should never result in sanctions or affect the conditions and length of the prison sentence.<sup>44</sup>

Only in exceptional crisis situations of high risk to self or others, compulsory treatment may be mandated for specific conditions and short periods of time as specified by the law.<sup>45</sup> There are very strict ethical principles which must be adhered to in such cases, such as the requirement for decisions to be made by at least two independent healthcare specialists, judicial review, right to appeal, a strict time limit and evidence-based treatment review.<sup>46</sup> Long term compulsory treatment, on the other hand, breaches international human rights law and the principles of medical ethics, is expensive and provides no benefit to the patient or the community.<sup>47</sup>

Substance dependence treatment programmes in prisons should be developed in cooperation with community healthcare services and relevant NGOs. Treatment should be centred around demand reduction and psycho-social support, including treatment for the negative psychological consequences of drug dependence and withdrawal.

**Good practice: Drug dependence and mental health treatment in the prisons of two ASEAN countries**

**Rehabilitation and leadership programme for women prisoners in the Philippines**

The Therapeutic Community Modality Program (TCMP) has been piloted in a number of women's facilities in the Philippines. The model, adapted from a US-designed rehabilitation tool for substance abusers, uses structured activity, social group work, leadership roles, trainings and privileges to manage and 'rehabilitate' detainees, and is overseen by the inmate welfare development officer.

The programme aims to teach responsibility, good behaviour and communication skills within a framework of activities, referred to as a more 'community-like' environment. This starts with a morning meeting, and carries through — via duties and activities — until early evening. Both prison and NGO staff have credited the system with an overall improvement in health and morale among women, and with combating depression.

*Source: DIGNITY, Baker, J and Rytter, T., Conditions for Women in Detention, Needs, vulnerabilities and good practices, 2014, p. 84*

<sup>41</sup> UNODC, Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned, 2004, p. 91.

<sup>42</sup> Ibid.

<sup>43</sup> UNODC From Coercion to Cohesion, Treating drug dependence through health care, not punishment, Discussion Paper, 2010, pp. 6-7

<sup>44</sup> Ibid.

<sup>45</sup> UNODC and WHO (2009) Principles of drug dependence treatment, Discussion Paper, p. 10; UNODC From Coercion to Cohesion, p. 7-8

<sup>46</sup> Ibid. p. 8

<sup>47</sup> Ibid., p. 8

### **Programmes to address drug dependence and mental health in women's prisons in Thailand**

Among the prisons visited in 2013, two had set up therapeutic communities (TC) for drug dependent prisoners. It was reported that in total there were 23 prisons with therapeutic communities which had received the accreditation from the Ministry of Health.

In Chiang Mai Correctional Institution for Women, for example, the TC programme had been established in 2009 and improved in 2010 in collaboration with the Ministry of Health. In 2013 a new "addiction rehabilitation programme" with a four month duration was introduced to supplement the existing programmes, targeting 300 women in total. In January 2013 there were six months or 1.5 year programmes. Sixty-two prisoners were participating in the TC programme, reportedly on a voluntary basis. One hundred more prisoners were expected to join within the following month. The daily programme included cleaning, administrative work, morning activities, including a session which resembled an alcoholics' anonymous group for drug dependent people, short-term vocational training courses, arts, dancing and yoga classes, with teachers from community institutions. The supervisor of the therapeutic community said that the programme addressed women's particular needs – for example, they had family therapy, where families came to visit. They had group therapy and individual prisoners could also request counselling if they wish. Prisoners participating in this programme are entitled to open visits every three months in comparison to the yearly open visit entitlement of other prisoners.

In addition to the dedicated TC programmes in some prisons, a community group therapy project was also running in a number of prisons visited in 2013 (Bangkok, Chonburi and Chiang Mai). The programme targets drug dependent prisoners with mental health problems, aiming to improve mental health.

*Source: Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the implementation of the Bangkok Rules in Thailand, 2014, pp. 97-99*

#### **4. HIV prevention, treatment, care and support**

##### **Bangkok Rules**

##### **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.

As mentioned earlier, women prisoners comprise a high risk group for sexually transmitted infections, including HIV, already at the time that they are admitted to prison. In prison their vulnerability may be intensified, due to poor nutrition, violence and stigma, and often very limited treatment and care. In many prisons antiretroviral therapy is not available, including to HIV-positive pregnant women, to prevent mother-to-child transmission.

It is essential that HIV management programmes developed in prisons take into account women's unique needs, including risk of mother-to-child transmission, as well as women prisoners' typical backgrounds, which require different psycho-social and healthcare responses compared to those required by men.

International experience has shown that gender-specific interventions are more successful than those that are gender-neutral.<sup>48</sup> Women prisoners benefit from programmes that address HIV prevention in terms of interactions and relationships with other people, as well as those that address the cultural and socioeconomic conditions in which the women live.<sup>49</sup> Many women will have been subjected to sexual abuse and need psychological interventions that address the trauma of victimisation together with strategies to empower women to help them negotiate safer sex practices effectively.<sup>50</sup>

WHO recommends that an infant feeding practice for HIV-positive mothers be promoted and supported by maternal, new-born and child health services. See box for some key WHO recommendations.

Please refer to the WHO guidelines for the evidence base and discussion points relating to these and other recommendations, as well as general key principles which should underlie the treatment of HIV-positive mothers or infants.

### **Selected recommendations on HIV and infant feeding**

#### **Recommendation 1. Ensuring mothers receive the care they need**

Mothers known to be HIV-infected should be provided with lifelong antiretroviral therapy (ART) or antiretroviral drug (ARV) prophylaxis interventions to reduce HIV transmission through breastfeeding according to WHO recommendations.

#### **Recommendation 2. Which breastfeeding practices and for how long**

*In settings where national or sub-national authorities have decided that maternal, newborn and child health services will principally promote and support breastfeeding and ARV interventions*

Mothers known to be HIV-infected (and whose infants are HIV uninfected or of unknown HIV status) should exclusively breastfeed their infants for the first 6 months of life, introducing appropriate complementary foods thereafter, and continue breastfeeding for the first 12 months of life. Breastfeeding should then only stop once a nutritionally adequate and safe diet without breast milk can be provided.

#### **Recommendation 3. When mothers decide to stop breastfeeding**

*In settings where national or sub-national authorities have decided that maternal, newborn and child health services will principally promote and support breastfeeding and ARV interventions*

Mothers known to be HIV-infected who decide to stop breastfeeding at any time should stop gradually within one month. Mothers or infants who have been receiving ARV prophylaxis should continue prophylaxis for one week after breastfeeding is fully stopped. Stopping breastfeeding abruptly is not advisable.

*[See recommendations 4, 5 and 6 on alternatives to breastfeeding]*

<sup>48</sup> WHO Europe, Prisons and Health, Eds. Enggist, S., Møller, L., Galea, G. and Udesen, C., 2014, p. 161

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

### **Recommendation 7. When the infant is HIV-infected**

If infants and young children are known to be HIV-infected, mothers are strongly encouraged to exclusively breastfeed for the first six months of life and continue breastfeeding as per the recommendations for the general population, that is, up to two years or beyond.

*Source: WHO, UNAIDS, UNFPA UNICEF Guidelines on HIV and infant feeding 2010, Principles and recommendations for infant feeding in the context of HIV and summary of evidence.*

Policies and strategies introduced to respond to HIV and AIDS in prisons should be developed within a national framework that encompasses both public and prison health, taking into account the need for continuum of care between the two sectors and also when prisoners are transferred from one prison to another.

The components of gender sensitive HIV prevention, treatment, care and support services would ideally include:<sup>51</sup>

- Providing information on modes of HIV transmission and ways to reduce those risks, as well as on testing, and treatment;
- Providing voluntary confidential HIV testing and counselling services;
- Providing appropriate diet and nutritional supplements;
- Providing antiretroviral treatments,
- Preventing and treating tuberculosis, other opportunistic infections and other blood-borne diseases such as hepatitis B and C;
- Diagnosing and treating sexually transmitted infections;
- Providing drug dependence treatment, including substitution therapy for opioid dependence;
- Providing access to reproductive health and family planning services;
- Care for children, including those born to HIV-infected mothers;
- Care during pregnancy and delivery in appropriate settings and antiretroviral therapies to HIV positive pregnant women to prevent mother-to-child transmission;
- Providing access to essential prevention commodities such as male and female condoms, sterile injecting equipment, and safe tattooing equipment;
- Providing post-exposure prophylaxis (PEP) to women who have been exposed to a risk;
- Palliative care and compassionate release for patients with AIDS and who are terminally ill.

There are no medical grounds to separate prisoners with HIV from other prisoners due to their HIV status.<sup>52</sup>

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<sup>51</sup> Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC and UNODC, ILO, UNDP, Policy Brief, HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions, July 2012, p. 1

<sup>52</sup> UNODC, WHO, UNAIDS, A toolkit for policymakers, programme managers, prison officers and health care providers in prison settings, 2008, pp. 93-94



**Good Practice: HIV Prevention, Treatment and Care in Women's Prisons in Thailand**

In all women's prisons visited in Thailand in January 2013 considerable attention was being paid to the prevention and treatment of HIV and AIDS, to a large extent thanks to funding received from the Global Fund. Activities included voluntary testing and counselling, training of nurses by the Department of Corrections, training and awareness raising among prisoners, selection and training of leader prisoners to motivate other prisoners to undertake testing and to raise their awareness and antiretroviral therapy (ART) treatment in the case of selected prisoners, based on medical assessments. Prisoners who were HIV positive generally lived among the general prison population, unless they had complications and were receiving ART.

*Source: Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, 2014, pp. 63-66*

In addition to the close collaboration with community health services which is essential for the implementation of HIV management programmes in prisons, developing cooperation with NGOs working on HIV / AIDS issues can be extremely beneficial to expand and diversify services provided. For example, information materials on HIV may be published in cooperation with NGOs for distribution among women prisoners, posters may be designed and displayed around the prison; education programmes may be conducted for women prisoners. NGOs with qualified healthcare staff can also contribute to the voluntary testing, pre- and post-test counselling and other healthcare services, where these are not provided by community health services and where resources are limited.

Successful programmes have involved women prisoners themselves in the implementation of HIV prevention, treatment and care programmes. Women may be encouraged and trained, for example, to conduct peer-based educational sessions and to help develop information materials on HIV and AIDS.

## MODULE 5

### THE SAFETY OF WOMEN PRISONERS

#### Learning Objectives:

- To consider the types of abuse women in prison may suffer;
- To review policies to prevent the abuse of women prisoners;
- To review the role of independent complaints mechanisms in safeguarding the safety and human rights of women prisoners.

One of the most important component of strategies that aim to promote the social reintegration of women prisoners is to ensure that they are safe and feel safe at all times. If women's safety is not protected and they are fearful of being subjected to violence, all other efforts to enable their rehabilitation are likely to fail. As has been repeated throughout these modules, a significant proportion of women who are admitted to prison will have experienced abuse and violence at some time during their lives and will be in particular need to feel safe. Their mental health problems will almost certainly get worse in prisons where safety is not guaranteed and where women feel threatened by other prisoners or staff.

Under international law the rape of a woman in custody by an agent of the state may constitute torture for which the state is directly responsible.

Other forms of sexual abuse, some of which may be quite common in some systems, include, but are not limited to the following:

#### Abuse by staff:

- Verbal abuse, often with sexual connotations
- Improper touching during searches
- Deliberate and frequent use of intimate body searches
- Spying on prisoners living areas and showers
- Sex for access to goods and privileges

#### Abuse by other prisoners:

- The exploitation of vulnerable prisoners by those who are in privileged positions, which may include sex or other services in exchange for goods
- Sexual harassment and abuse by male prisoners, if the two categories are not adequately separated
- Abuse of younger prisoners by older women

It is paramount that prison authorities develop policies and put into practice measures that provide for the maximum protection of women prisoners, in line with provisions of the Mandela Rules and the Bangkok Rules.

## **Mandela Rules**

### **Basic Principles**

#### **Rule 1**

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

#### **1. Separation of categories and supplementary measures**

The Mandela Rules state very clearly that men and women should be, so far as possible, detained in separate institutions. Where this is not possible the institution which houses both men and women should have entirely separate premises allocated to women.<sup>53</sup>

The physical separation of men and women is fundamental to the protection of women prisoners from male prisoners and needs to be strictly enforced.

Limited contact between men and women may be allowed, for example during certain activities and programmes, but only subject to the consent of the women prisoners and only on condition that the activities and programmes are closely supervised by staff to prevent any misconduct by prisoners. Such arrangements may enable women to participate in a larger variety of programmes and bring some normality to prison life, provided that the conditions referred to are applied.

In addition to protecting women from male prisoners, prison authorities need to ensure that women are protected from other women prisoners as well. This requires a separation of girls from adult women<sup>54</sup> to protect girls from sexual or other forms of abuse that may be perpetrated by older women, as well as the separation of women according to security risk.

Staff should also be alert to the possibility of the abuse of vulnerable prisoners (for example, those who are poor, who do not have families visiting them, foreign nationals who do not speak the local language, ethnic or racial minorities etc.) by prisoners who are more powerful or who are in privileged positions.

While the effective supervision of prisoners is one of the key components of strategies to prevent abuse, other measures must also be taken to reduce and eliminate prisoner on prisoner abuse. These include:

- Not to have a system of trustee prisoners, with special privileges and disciplinary or quasi-disciplinary powers. Trustee prisoners are likely to take advantage of their position and exploit vulnerable prisoners. Selected prisoners can be given limited responsibilities in assisting with certain aspects of the administration of the prison, such as working in the prison shop, helping run sports activities, rehabilitation and education programmes, being trained as mentors to assist with suicide prevention, among others. But they should never be given any role that may have any relation to discipline and order (such as reporting on rule breaking by other

<sup>53</sup> The Mandela Rules, Rule 11 (a)

<sup>54</sup> The Mandela Rules, Rule 11 (d)

prisoners) or any responsibility that may be exploited, at the expense of vulnerable prisoners.<sup>55</sup>

- To ensure that prisoners who are poor and others who do not receive visits from their families, and who therefore do not receive any additional money, food or hygiene materials from outside, are provided with their needs fully by prison authorities or by cooperation with NGOs. This can reduce the risk of their exploitation by other prisoners.
- To ensure that an effective and confidential complaints mechanism is in place (See Section 3 below).
- To ensure that staff are easily accessible to prisoners who wish to discuss any problems or make complaints. They should respond with sensitivity and understanding and try to resolve conflicts or other problems before they escalate and cause further harm.

## 2. Supervision of women and prohibition of sexual harassment and abuse

A key measure that must be taken to protect women prisoners from sexual abuse is to ensure that they are supervised exclusively by women staff, as provided by the Mandela Rules,<sup>56</sup> which reiterates the position of the SMR prior to revision. The Bangkok Rules, by not supplementing these provisions, maintain the same position.

This means that all women's prisons should be managed by women staff, including by a female director. In prisons where both male and female prisoners are housed, the separate section where women are held should have a female director and all staff should be female.

### **Good practice: Only women staff supervise women prisoners in some ASEAN countries**

- In **Brunei Darussalam** and **Singapore** all staff in prisons where women are held are female.
- In **Thailand's** 'correctional institutions for women' all staff are female (though not in other prison facilities where women are held).

If a male member of staff needs to enter the section of a prison where women are held, he should only do so if he is accompanied by a woman staff member at all times.

These provisions do not preclude specialist male staff, such as doctors and teachers entering women's prisons to carry out their professional duties.<sup>57</sup> However, adequate safeguards should be in place in all cases to prevent any abuse (e.g. as discussed earlier, when male doctors examine women prisoners, a female healthcare staff should be present).

In countries where male staff are employed in women's prisons due to female staff shortages, it is extremely important that men are employed only on the outside perimeter and in administrative offices. They should never have any responsibility that requires them to be inside the prison on a regular basis. If they need to enter the prison premises they should always be accompanied by women

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<sup>55</sup> Mandela Rule 40

<sup>56</sup> Mandela Rules, Rule 81

<sup>57</sup> Mandela Rules, Rule 81.3

staff. While such a practice does not fully comply with the Mandela Rules or the Bangkok Rules it can be regarded as a compromise measure that needs to be phased out while an active policy of female staff recruitment is implemented. (See Module 12)

### **Male staff abuse and exploitation of women prisoners**

The following is an extract from a report published by DIGNITY summarising its findings in five countries' women's prisons, including one country in the ASEAN region.

“DIGNITY was also informed of sexual relationships taking place covertly between female inmates and male staff in at least two countries [including one in the ASEAN region] and of sexual favours taking place. Inmates and NGO workers commented that women with limited livelihood opportunities — especially those with no outside support — were more likely to engage in these relationships, suggesting a form of ‘survival sex’. ‘It’s a secret subject,’ said one inmate [in the ASEAN region]. ‘The walls have ears.’

In one facility DIGNITY was informed that male security staff pay inmates to do their laundry and prepare food and coffee, which may be a gateway to such abuses. In another facility, women spoke of the status gained by those with staff ‘boyfriends’, allowing them better sleeping spaces and food.

*Source: DIGNITY (Danish Institute Against Torture), Baker, J., Rytter, T., Conditions for Women in Detention, Needs, Vulnerabilities and Good Practices, 2014*

While the supervision of women prisoners by female staff minimises risks for abuse, especially sexual abuse, female staff may also abuse and ill-treat women prisoners. This risk should never be disregarded.

### **Bangkok Rules**

#### **Rule 31**

Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.

#### **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.

There should be clear policies and rules in place in relation to the use of force, violence and sexual misconduct by staff. All forms of ill-treatment, violence, sexual relationships with prisoners or sexual harassment should be strictly prohibited and criminalised.

All persons working in prisons, including women's prisons, should be trained on the absolute prohibition of ill-treatment and sexual misconduct, whether it be verbal, psychological or physical.

Supplementary measures, such as anger management courses for prison staff, as well as staff access to consultations with psychologists, among others, should be considered to reduce staff tension and anger that may trigger abuse and ill-treatment. (See Chapter 12)

### **3. Independent complaints mechanisms**

Providing prisoners with accessible, confidential and effective complaints' mechanisms is a key principle of good prison management, ensuring a legitimate outlet for prisoners' dissatisfaction and helping to reduce tension, fear and arbitrariness in prisons.

The Mandela Rules provide clear and detailed guidelines on prisoner complaints mechanisms. They require that: every prisoner have an opportunity to make requests or complaints to the prison director or other senior staff member; prisoners be able to talk to monitoring bodies, such as prison inspectors, in full privacy and confidentiality; and that they are able to submit complaints to the central prison authorities, higher judicial authorities or other competent bodies without censorship. These rights are extended to the legal adviser of the prisoner as well as his or her family members or any other person who has knowledge of the case.<sup>58</sup>

The Mandela Rules further require that every request or complaint be promptly dealt with and replied to without undue delay and that safeguards be in place to protect prisoners from retaliation, intimidation or any other negative consequences of having submitted a request or complaint. The rules also require that allegations of torture or other cruel, inhuman or degrading treatment or punishment be dealt with immediately and result in a prompt and impartial investigation by an independent national authority.<sup>59</sup>

The Bangkok Rules, emphasise and add provisions that apply specifically or more commonly to women prisoners.

#### **The Bangkok Rules**

##### **Rule 25**

1. Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation.
2. Women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid.

....

A gender sensitive prison management approach would ensure that women are able to apply to a senior member of staff, without fear of intimidation or hostility, to discuss any problems she may have, to make requests and submit complaints, including about treatment by staff or other prisoners. All such complaints and request should be taken seriously and appropriate measures be taken to

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<sup>58</sup> Mandela Rules, Rule 56

<sup>59</sup> Mandela Rules, Rule 57

investigate the allegations being made. The women who complain should be protected from retaliation or intimidation by other prisoners or staff.

Experience worldwide indicates that women, especially those who have a background of abuse and who are otherwise vulnerable (socially, economically or due to low educational levels and low self-esteem, mental disability or due to foreign nationality) may not have the confidence to complain, especially if the procedures are unclear and difficult to access and where there is a lack of confidence in the confidentiality of such complaints' procedures. But in fact these are the women who are at particular risk of abuse. Thus it is highly important that staff are accessible and are seen to be accessible to women prisoners.

**Good practice: Accessible procedures for women prisoners to seek information, make requests or complaints in the Correctional Institution for Women, Mandaluyong, the Philippines**

In the Philippines' Correctional Institute for Women, a one stop 'inmate action centre' (Ka-agapay Centre) has been set up for prisoners who wish to speak personally and privately to a staff representative. Women can visit here to request audiences with the warden, lodge complaints, and ask for information or support on issues ranging from health to family. Their request will then be referred to relevant staff. The office is in the communal recreation area, and staffed by prison personnel from 8:30 to 4pm on week days.

Source: DIGNITY, (*Danish Institute Against Torture*), Baker, J., Rytter, T., *Conditions for Women in Detention, Needs, Vulnerabilities and Good Practices*, 2014, p. 97

In addition it is equally important that all women prisoners are fully informed about complaints procedures to higher and independent authorities, such as ombudsmen and national human rights institutions, and that they are never discouraged from submitting complaints to such bodies. The number of prisoner complaints received by independent authorities is not necessarily a sign of bad prison management, but on the contrary, may be a sign of good practice, as it demonstrates that prisoners are not afraid of submitting complaints and that they expect action to be taken as a result of their complaints.

**Good practice: The Human Rights Commission of Malaysia (SUHAKAM) and prison monitoring**

The Human Rights Commission of Malaysia (SUHAKAM) has the authority to conduct monitoring in places of detention in Malaysia, to interview prisoners in private and receive complaints from prisoners. SUHAKAM advises governmental bodies, based on its findings, with recommendations to improve the implementation of human rights principles in places of detention and on measures that must be taken in response to specific complaints by prisoners.

It is very important that complaints do receive a response in all cases within a reasonable time period and, where relevant, an independent investigation of the allegations be undertaken.

If a woman prisoner complains of sexual abuse by police in previous custody or prison staff, this should be taken very seriously, as sexual abuse may amount to ill-treatment and torture, depending on the case. Such complaints will require an independent investigation, which means an investigation by a judicial or other competent authority, independent of the prison administration.

All such women should be informed of their rights to lodge an official complaint and should be assisted to access legal counsel without delay.

Women prisoners who report abuse should be provided with immediate protection, as necessary. If the complaint is against a prison staff member, that person should be assigned to other duties, which take him or her away from any contact with the woman concerned, so that he or she is not in a position to prejudice the investigations and so that the woman is protected from retaliation. If the allegation of abuse is serious enough, the person may be given a leave of absence while the allegations are investigated. Transferring the woman to another prison is only advised if this will not result in the woman being housed further away from her home than in the original prison. Segregating the woman is not recommended, as this may be perceived as punishment, unless the woman concerned requests segregation.

Women who submit complaints of abuse by a staff member may also be at risk of retaliation by other staff members. It is essential that policies and measures are in place to prevent such retaliation by any member of staff, including by employing strict disciplinary measures and by making it clear to all staff that such retaliation or intimidation will not be tolerated.

Women who allege to have been subjected to abuse should be offered counselling by qualified healthcare professionals, ideally independent of the prison service. Women who have become pregnant as a result of rape should be provided with immediate access to qualified healthcare professionals, as well as counselling.

All women prisoners who have been subjected to ill-treatment or torture, including sexual abuse, should be assisted to access legal counsel and legal aid immediately in order to help them decide whether or not to lodge an official complaint and to assist them with the complaints procedure, if they so wish.



## MODULE 6

### SECURITY AND ORDER IN WOMEN'S PRISONS

#### Learning Objectives

- To consider the appropriate security levels in prisons where women are held;
- To review the use of security measures, such as searching procedures and instruments of restraint, in the case of women prisoners;
- To discuss policies and rules relating to the maintenance of discipline and order within a gender sensitive prison management framework.

#### 1. Security levels in women's prisons

The large majority of women in prison worldwide do not pose a high security risk. This is true also of ASEAN countries, where the majority of women have been convicted of non-violent offences, in particular drug related and property offences. In a few countries in the ASEAN region women imprisoned due to illegal immigration constitute a significant proportion of the prison population. In at least one country women convicted of prostitution make up one fourth of the female prison population. International research has determined that even when women do commit violent offences most often these are committed against a partner or spouse, often in response to long-term abuse. Such women do not pose a risk to others, merely on the basis of their offence.

|                          | Homicide | Theft/<br>Robbery<br>/property<br>crimes | Drug<br>related         | Human<br>trafficking | Prostitution | Illegal<br>immigration | Fraud,<br>forgery<br>etc |
|--------------------------|----------|--|-------------------------|----------------------|--------------|------------------------|--------------------------|
| <b>Brunei Darussalam</b> | 0        | 13%                                      | 2%                      |                      |              | 28%                    | 5%                       |
| <b>Cambodia</b>          | 10.4%*   | 15%                                      | 59.6%                   | 12%                  |              |                        | 9%                       |
| <b>Malaysia</b>          |          |  | Highest<br>proportion** |                      |              | High<br>proportion**   |                          |
| <b>Myanmar***</b>        | 1.5%     | 7.1%                                     | 18%                     |                      | 25%          |                        |                          |
| <b>Philippines****</b>   | 6%       | 13%                                      | 52.7%                   |                      |              |                        | 22%                      |
| <b>Singapore</b>         | 1.7%     | 8.1%                                     | 78.7%                   |                      |              | 0.3%                   | 9.3%                     |
| <b>Thailand</b>          | 1.41%    | 13.41%                                   | 81.77%                  |                      |              |                        |                          |

\*With an additional 4.3 % convicted of attempted homicide

\*\* Figures not provided

\*\*\*Figures provided by Myanmar included 47.5% "other" offences, with type not clarified.

\*\*\*\*Figures provided relate only to women sentenced to over three years' imprisonment held in correctional institutions for women under the Bureau of Corrections

There are many other offences included in the figures provided by the authorities in each country. As the proportions of these offences are quite small, they have not been included in the table above. These include: rape, battery and injury/ causing bodily harm, kidnapping, gambling, forestation, bearing arms, crimes against public safety, gambling, arson, crimes against chastity, crimes against national security, as well as a number of articles in criminal codes where the offence type is not clear.

**Table 1: The offence profiles of women prisoners in some ASEAN countries (2012/2013)<sup>60</sup>**

Women in most prison systems worldwide are classified in the same way as men, with little or no attention being paid to women's different backgrounds, needs and circumstances, such as a history of domestic violence and sexual abuse, as well as parental responsibilities. This means that many women may be placed a higher security level than appropriate, while suitable prisoner programmes matching individual needs will not be offered.

In some countries, women (and all prisoners) will be allocated to prisons on the basis of the length of their sentences. So those with long sentences will automatically be housed in a high security prison, although the length of a prisoner's sentence on its own never constitutes a justifiable ground to hold a prisoner in higher security conditions. For example, women who commit drug related offences often receive very long prison terms in some ASEAN countries, although in the large majority of cases the women concerned are only small players, and very rarely high level drug traffickers. What they need is not high security levels but counselling and therapy for those who are drug dependent themselves and education and skills training for all, so that they can start a new, positive and lawful life following release.

In addition, due to the limited accommodation available for women prisoners in a number of countries they are housed in security levels not justified by their risk assessment undertaken on admission. Thus, for example, all women may be housed in a high security prison due to the lack of any other women's prisons in the country.

As we have seen in Module 2, the Bangkok Rules emphasise the need to develop gender sensitive assessment and classification methods for women prisoners<sup>61</sup>, so that each woman is housed in the most appropriate security level with the minimum level of restrictions necessary for her safe and secure custody. They draw attention to the particularly harmful impact of high security measures and isolation on women prisoners and require states to allocate women to lower security levels matching the lower level of risk they pose to others.<sup>62</sup> This is a key component of women prisoners' successful rehabilitation, since being held in high security conditions and being subjected to high security measures such as restrictions on visits and correspondence with families and friends, can have a particularly detrimental impact on women's mental wellbeing and their prospects of social reintegration, while also violating their right to be held in the least restrictive environment necessary for their safe and secure custody.

Bangkok Rule 41 also requires that prison authorities ensure that those with mental health care needs are housed in the lowest possible security level, rather than being placed in a higher security level solely due to their mental health problems. This requirement is based on the understanding that a restrictive prison environment in a higher security prison is particularly damaging to mental health and even more so if the woman concerned already has mental healthcare needs. Placing such women in a higher security levels would be counterproductive, violating the rehabilitative aims of imprisonment.

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<sup>60</sup> Sources: Questionnaire responses to UNODC/TIJ, East Asia-Pacific Regional Meeting on the Implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Bangkok, 19-21 February 2013 and Goh Chin Mien, 'Treatment of Female Offenders in Singapore', 153<sup>rd</sup> International Senior Seminar, 9 January to 8 February 2013, Participants' Papers, UNAFEI (The names of offences vary from country to country. The figures provided have been compiled under standard headings for ease of comparison.)

<sup>61</sup> Bangkok Rule 41

<sup>62</sup> Bangkok Rule 41 (a)

## **2. Discipline and order**

The way in which discipline and order is maintained in women's prisons is one of the key indications by which the existence and impact of a gender sensitive prison management approach can best be assessed.

Discipline and order can be maintained with an authoritarian management style, by instilling fear and intimidation in prisoners with frequent punishments for rule breaking or it can be maintained with an empathetic attitude, understanding and mediation, rather than punishment, whenever possible, and flexibility in approach. The latter will not only be successful in maintaining order and discipline more successfully in women's prisons, but it will also engender a positive atmosphere that protects and promotes mental wellbeing and reduces tension among both staff and prisoners. In fact, it is now generally acknowledged that safety and security in all prisons, including male and female, can best be maintained by creating a positive climate which encourages the cooperation of prisoners. External security (preventing escapes) and internal safety (preventing disorder) can be ensured by building positive relationships between prisoners and staff and channeling prisoners' energy into meaningful activities. This is the essence of dynamic security, which should be employed both in men's and women's prisons.

The concept of dynamic security includes:

- Developing positive relationships with prisoners
- Diverting prisoners' energy into constructive work and activity
- Providing a decent and balanced regime with individualised programmes for prisoners

There will always be some disruptive prisoners in all prisons and punishment may be necessary from time to time, but penalising rule breaking should always go hand in hand with rehabilitative interventions that aim to change the attitudes of prisoners, helping with their personal development and thereby reducing disruptive behaviour.

Restrictions placed on prisoners should never be more than those that are absolutely necessary for the maintenance or discipline and order, as stated by the Mandela Rules.

### **The Mandela Rules**

#### **Rule 36**

Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life.

In most countries of the ASEAN region prisons are overcrowded. When this is coupled with staff shortages, staff may feel that they have no other alternative but to maintain order with restrictive regimes and authoritarian management styles, with a tendency to punish prisoners frequently for small infractions. While this is understandable and may lead to a disciplined prison, such an attitude will create a negative, tense prison atmosphere and will not help with prisoners' rehabilitation. On the contrary it will lead to the deterioration of mental health, tension and stress. In a women's prison with well-trained staff who apply the principles of gender-sensitive prison management in all aspects of prison life, including discipline and order, there is a much higher likelihood of achieving success in maintaining order, while also contributing to the social reintegration of women prisoners.

In Module 1 we discussed the components of a gender-sensitive management style and it is worth remembering once again the points made in that module in the context of discipline and order.

The comments in the box are those of two woman prisoners in two different prisons in Thailand indicating two different approaches to maintaining discipline and order.

**Good Practice: Discipline and order achieved with understanding and sensitivity in Ratchaburi Central and Remand Prison in Thailand, despite overcrowding and staff shortages**

“Just think about it – there are so few wardens here, and so many prisoners. There are altogether four staff for 800 prisoners. At night there are only three. It’s only thanks to their good intentions and kindness that they can keep everything under control. Every day the director comes to visit. He comes every day and plays with the children. The staff are good people. I don’t know how the other prisons are, but I think this must be the best prison. I wonder sometimes myself how the guards can manage all the prisoners and be in control. I consider myself to be lucky. When I first came here I was a trouble-maker. But they treated me well and I changed. When I got a disciplinary punishment, it was to run around the yard ten times or to jump up and down. There is no beating here, no hitting.”

*Source: Private prisoner interview, Ratchaburi Central and Remand Prison, Thailand, January 2013, referred to in Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, 2014, pp. 91-92*

**Strict rules, a perception of injustice and unapproachable staff aggravate stress in another prison in Thailand**

“A problem that I have encountered is that it’s hard to access prison staff. Some of them are easy to talk to but some are too arrogant. We can’t explain ourselves when we do something wrong. We just want some justice but they think that we are too aggressive. ....I’m frustrated and sometimes I want to fight but I come to my senses and think that I want to be back with my family. Sometimes when we are stressed, we want some relief. When the rules are too strict, these just make us get angrier. For example, the rule about the hair. I am 30 years old now but I have to cut my hair short like an elementary student. We are in the prison not a juvenile detention home. Rules are too strict and some are too personal. It’s bad enough to be in here.”

*Source: Private prisoner interview, a woman’s correctional institution in Thailand, January 2013. Unpublished.*

### **3. Prisoner searches**

All prisoners, including women prisoners, may need to be searched on a regular basis to ensure that they are not carrying illegal items, such as drugs or mobile phones. The procedures that are followed in relation to searches, the manner in which searches are carried out and their frequency are important indicators as to whether a prison is being managed in a just and humane manner, with respect to human dignity and gender specific sensitivities.

Many women in prison have a background of abuse, including sexual abuse, and a search that is carried out in a manner that is humiliating or which prompts the women to re-experience past trauma will have an extremely harmful impact on their mental wellbeing.

In a number of countries in the ASEAN region strip searches and body cavity searches are carried out on a routine basis, when a woman is first admitted to prison, each time she leaves the prison and returns from court or a hospital. This practice does not comply with a gender sensitive prison management style and violates both the Bangkok Rules and the Mandela Rules.

In some ASEAN countries the way in which these searches are carried out is also a matter of significant concern. For example, in some cases untrained staff or even trustee prisoners are reported to carry out invasive body searches, which puts the prisoner's health at serious risk, while violating principles of good prison management, by giving trustee prisoners security related responsibilities.<sup>63</sup>

### **The Mandela Rules**

#### **Rule 50**

The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

#### **Rule 51**

Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.

#### **Bangkok Rule 19**

Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.

The Mandela Rules are very clear that prisoner searches need to be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

Good prison management principles require that a clear set of procedures are established with regard to searches, which prescribe: when searches may be carried out; the types of searches that may be carried out; who may authorise them; and the manner in which searches may be conducted.

Prison administrations need to keep records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and the result of the searches.<sup>64</sup>

All searches, including pat down and frisk searches, should be carried out by staff of the same gender in a way that respects the prisoner's dignity.

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<sup>63</sup> Mandela Rule 40.1

<sup>64</sup> Mandel Rule 51

### **Mandela Rule 52**

1. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.

2. Body cavity searches shall be conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety.

### **Bangkok Rule 20**

Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

Strip searches and body cavity searches should never be conducted on a routine basis. There needs to be very good justification to conduct such searches which should be kept to the absolute minimum necessary for the safe and secure custody of prisoners. The circumstance in which such searches may be carried out should be defined by law. Both the Mandela Rules and the Bangkok Rules require that alternative methods are developed to replace strip and body cavity searches.

When such intrusive searches need to be conducted they should be authorised by the chief executive officer in writing and the reason for the search should be put on record.<sup>65</sup>

Strip and cavity searches should always be conducted in private, by a person of the same gender, and every effort should be made to protect the dignity and privacy of the prisoner being searched. In the case of strip searches the search may be conducted by a trained staff member of the same gender. Body cavity searches should be conducted by a healthcare professional, to protect the prisoner from physical harm.<sup>66</sup> However, since the act of searching is not a medical matter, but rather a security measure, the healthcare professional carrying out the search should not be the same medical officer who will subsequently be responsible for the prisoner's healthcare.<sup>67</sup> This requirement takes into account the trusting relationship which must exist between a patient and a healthcare professional, whose duty should be limited to the patient's medical care. In addition, a search infringes upon the principle of confidentiality which a healthcare professional should respect in their relationship with patients.

When an independent healthcare professional is not available to undertake such a search, the next acceptable option is for the search to be conducted by a member of staff of the same sex as the prisoner, appropriately trained by a medical professional.<sup>68</sup>

Body cavity searches should always be carried out by healthcare staff if the woman herself so requests.

It is also very important that staff demonstrates sensitivity and respect when searching visitors, and in particular children visiting their mothers.

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<sup>65</sup> Commentary to the Bangkok Rules, Rule 19

<sup>66</sup> Mandela Rule 52.2

<sup>67</sup> Mandela Rule 52.2

<sup>68</sup> Mandela Rule 52.2

### **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.

The Bangkok Rule 21 provides important guidance as regards the searching of children living with their mothers in prison and children visiting their mothers, urging competence, professionalism and sensitivity on the part of the staff conducting the search and requiring that principles of respect and dignity be applied during such searches.

Being searched, if not conducted in an appropriate manner, can be a traumatic experience both for the child and for the mother of that child. The child or children may be discouraged from further visits.

As with the searches of women prisoners, it is important that written guidance is developed by prison authorities as to the searching of children in prison and visiting children, which describe the circumstances and manner in which such searches may be carried out and by whom, taking into account the best interests of the children.

If in exceptional circumstances strip searches need to be carried out, there should be a clear legal basis for the search, which should be authorised by a senior officer. The search should be conducted in a way that respects the human rights and dignity of the child, by a staff member of the same gender as the child, and the child's mother or guardian should be present at all times during the search.

Children should never be subjected to body cavity searches.<sup>69</sup>

### **Good practice: Strip searches and invasive body searches exceptions in the Correctional Institution for Women, Mandaluyong, Philippines**

In line with an official memorandum issued by the Superintendent of the Correctional Institution for Women in July 2010, strip searches and invasive body searches are performed only in exceptional circumstances. When they are carried out, such searches are conducted by a medical officer, nurse or a female member of staff in private. According to the memorandum issued by the Superintendent no prisoner may be humiliated or required to strip completely during the search.

*Source: Memorandum of the Superintendent of the Correctional Institution for Women Mandaluyong, Philippines, dated 17 July 2010 and TIJ survey and assessment on the implementation of the Bangkok Rules carried out in the Philippines in May-June 2015.*

## **4. Instruments of restraint**

According to international standards instruments of restraint may never be used as punishment.<sup>70</sup> Instruments of restraint may only be used when authorised by law, as a precaution against escape, during a transfer, on condition that the restraints are removed when the prisoner appears before a judicial or administrative authority or by order of the prison director when other methods of control

<sup>69</sup> Mandela Rule 60

<sup>70</sup> Mandela Rules, Rule 43.2

fail, to prevent the prisoner from injuring himself or others or from damaging property.<sup>71</sup> The method of restraint must be the least intrusive necessary to control a prisoner's movement and should be removed as soon as possible after the risks posed are no longer present.<sup>72</sup>

Both the Mandela Rules and the Bangkok Rules prohibit the use of restraints on women during labour, during childbirth and immediately after childbirth.

**Bangkok Rule 24**

Instruments of restraint shall never be used on women during labour, during birth and immediately after birth.

**Mandela Rule 48**

.....

2. Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.

In some countries body restraints, such as shackles, are used on pregnant women during transfers to hospitals, gynaecological examinations and childbirth. This practice is unjustified from the point of view of security as it is highly improbable that a woman would try to or even be able to escape under most of these circumstances. Escape can be easily prevented with the proper supervision of the woman concerned. Therefore there can be no security justification for the use of restraints in these circumstances.

As the commentary to Bangkok Rule 24 notes, shackling during labour may cause complications during delivery such as haemorrhage or decreased foetal heart rate. If a caesarean section is needed, a delay of even five minutes may result in permanent brain damage to the baby.<sup>73</sup> Unrestrained movement is critical during labour, delivery, and the post-delivery recovery period. Shackles hamper a woman's ability to move to alleviate the pain of her contractions, which increases stress on the woman's body and may decrease the flow of oxygen to her fetus.<sup>74</sup>

It is therefore of utmost importance that prison authorities establish clear procedures with regard to the use of restraints, in line with the Mandela Rules 43, 47, 48 and 49, and the Bangkok Rule 24. The procedures should clearly prohibit all kinds of restraints on women as specified in Bangkok Rule 24.

Prison staff should receive training in the use of control techniques that would eliminate the need to use restraints in the case of women prisoners or, in exceptional circumstances, to reduce their intrusiveness.<sup>75</sup>

**Good practice: Restraints not used on pregnant women in Thailand**

Restraints never used on pregnant women during transfer to hospitals, medical examinations or childbirth in Thailand.

*Source: Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, 2014, p. 20*

<sup>71</sup> Mandela Rules, Rule 47.2

<sup>72</sup> Mandela Rules, Rule 48.1

<sup>73</sup> Commentary to the Bangkok Rules, Rule 24

<sup>74</sup> Ibid.

<sup>75</sup> Mandela Rule 49



## **5. Punishments**

There are certain types of punishments that are prohibited by international standards and should never be used in the case of any prisoner. These are listed in the Mandela Rules, and include the following<sup>76</sup>:

- Indefinite solitary confinement
- Prolonged solitary confinement
- Placement of a prisoner in a dark or constantly lit cell
- Corporal punishment or the reduction of a prisoner's diet or drinking water
- Collective punishment

In addition, instruments of restraint should never be applied as a sanction for disciplinary offences.

Disciplinary sanctions and measures should not include the prohibition of family contact, which may only be restricted for a limited time period, where there is a clear security justification.<sup>77</sup>

The Mandela Rules define solitary confinement as the confinement of a prisoner for 22 hours or more a day without meaningful human contact.<sup>78</sup>

Prolonged solitary confinement is defined as solitary confinement for a time period in excess of 15 consecutive days.<sup>79</sup>

The Mandela Rules provide that solitary confinement may only be used in exceptional circumstances and for the shortest possible period of time, that it should be subject to independent review and be imposed only following the authorisation of a competent authority.<sup>80</sup>

The Mandela Rules prohibit solitary confinement in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such a measure, and in cases involving certain categories of women, similar to the Bangkok Rules.

### **The Bangkok Rules**

#### **Rule 22**

Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.

The Bangkok Rules prohibit the imposition of solitary confinement on pregnant women, women with infants and breastfeeding mothers in prison, recognising the particularly harmful impact of such a restrictive measure on these categories of women, as well as their children.

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<sup>76</sup> Mandela Rule 43

<sup>77</sup> Mandela Rule 43.3

<sup>78</sup> The Mandela Rule 44

<sup>79</sup> Ibid.

<sup>80</sup> The Mandela Rule 45

**Good practice: No solitary confinement for women prisoners**

In three prisons visited in **Thailand** in January 2013 solitary confinement was not used at all on any category of woman prisoner, which constitutes best practice and is not only in line with the Bangkok Rules and the Mandela Rules but also with pronouncements and recommendations of the UN in general.

*Source: Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, 2014, p. 71*

The suspension of visits is used quite frequently as a disciplinary sanction in a number of countries of the ASEAN region, which according to prisoner interviews, has a very negative impact on their mental health.

Both the Mandela Rules and the Bangkok Rules require that the prohibition of family contact not be used as a disciplinary sanction. This requirement is based on the recognition that family contact is one of the most important rights of prisoners, which contributes significantly to their social reintegration. The prohibition of such contact does not have any beneficial impact on a prisoner who has breached discipline, but is likely, on the contrary, to make such prisoners more resentful and aggressive.

**The Bangkok Rules**

**Rule 23**

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

Prisoners' right to contact with their families and the benefits of such contact will be discussed in more detail in Module 7.

## MODULE 7

### CONTACT WITH THE OUTSIDE WORLD

#### Learning objectives

- To explore what is meant by contact with the outside world;
- To understand the particular importance to women prisoners of contact with family members;
- To explore how women often receive unequal treatment when it comes to prison visits;
- To consider the importance of all women prisoners' contact with legal counsel and prison authorities' responsibility to assist them access legal assistance, including legal aid;
- To reflect on the importance of contact with representatives /organisations of civil society to normalise prison life and reduce the isolation experienced by women prisoners;
- To understand the importance of access to newspapers, television and radio in ensuring that women prisoners are not isolated from the outside community and are able to keep up-to-date with current affairs.

All prisoners have a right to a reasonable level of contact with the outside world. Such contact is a right, not a privilege.<sup>81</sup> Contact with the outside world can be maintained by the following means:

- Letters
- Telephones
- Visit from families and friends
- Visit from lawyers
- Community organisations that visit prisons or conduct activities and programmes in prisons
- Newspapers, television and radio

Women have a very strong emotional need for contact with their families, especially where children are involved. However, they are often discriminated against in their ability to maintain links with their families since they are frequently allocated far away from their homes due to the restricted number of women's prisons in most countries. We have discussed the key importance of women's allocation close to their homes in Module 2. In addition to this disadvantage women face, once imprisoned women are frequently abandoned by their partners or husbands, sometimes due to the stigma of the women's imprisonment. Thus women may face additional challenges in having access to their children who, if very small, may not have the means to travel the long distances involved in visiting their mothers.

Particularly in low-income countries and in restrictive prison environments, where activities and programmes provided in prisons may be lacking, contact with family, friends and/or organisations of civil society may be the main means of reducing the risk of alienation, anxiety and hopelessness caused by isolation from society. By allowing as much contact as possible with families and others prison authorities will reduce the risk of mental ill-health amongst women prisoners and improve the prison atmosphere.

In research conducted by TIJ in women's prisons in Thailand, for example, the lack of sufficient contact with families and friends was one of the key issues that was raised by a large number of women prisoners, who felt stressed and anguished due to their inability to get more frequent visits from their families. The women's placement far away from their homes was exacerbated by restrictions placed

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<sup>81</sup> The Mandela Rules 58-63

on the length and number of letters that they could send and receive and the lack of access to telephones in a number of prisons.

The following table sets out the findings of a survey conducted among women prisoners in Thailand in 2013 which shows the difficulties families face in keeping in contact with their wives, sisters, mothers and daughters in prison.

| Reason                           | For children | For family |
|----------------------------------|--------------|------------|
| Too far to travel                | 26%          | 25%        |
| Too expensive for them to travel | 23%          | 24%        |
| Too busy to visit                | 11%          | 15%        |
| No telephone in the facility     | 10%          | 10%        |

**Table 2: Why women’s families and children could not keep in contact with the women prisoners on a regular basis in Thailand<sup>82</sup>**

Information available regarding a few other countries of the ASEAN region also strongly indicates a need to increase women’s contact with the outside world in most prisons, by improving policies and practices relating to the allocation of women prisoners, and by introducing measures to increase women’s contact with the outside world, taking into account the key importance such contact has on women’s mental wellbeing, especially if they have children outside prison.

Increasing women’s contact with the outside world does not require significant additional resources, but can have an immense impact on women prisoners’ prospects for social reintegration and reduce stress and tension in prison.

Women prisoners may also be disadvantaged in contact with legal representatives or in accessing legal aid, due to their low economic and educational level, unawareness of their rights and lack of self-confidence.

The Bangkok Rules recognise the discrimination experienced by women in their contact with the outside world and require that prison authorities take measures to counterbalance the disadvantages faced by women in this respect.

**The Bangkok Rules**

**Rule 26**

Women prisoners’ contact with their families, including their children, 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.

This rule supplements international standards which provide for prisoners’ communication with the outside world<sup>83</sup> and which limit the circumstances in which restrictions may be placed on such

<sup>82</sup> Source: Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the implementation of the Bangkok Rules in Thailand, 2014, p. 130

<sup>83</sup> Mandela Rule 58

communication, as outlined in Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:

“A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”

### **1. Letters**

Letters constitute an extremely important means by which women prisoners can maintain links with their families and friends. Where visits are restricted due to women’s imprisonment far away from their homes, letters become all the more important for both the women and their families.

In some prison systems, including in the ASEAN region, all incoming and outgoing letters are monitored, which takes up a significant amount of staff time. Given that staff shortages exist in many countries, this task is all the more detrimental to the proper management of women’s prisons, putting additional pressure on staff resources. To compensate, some prison administrations restrict the length of letters women and their correspondents can write, which undermines meaningful contact between the women prisoners and their families and friends.

Internationally there have been quite restrictive regulations in this area in the past, but today more liberal opportunities for prisoners to receive and send letters are considered to constitute good practice. When all letters are read and censored by prison staff, delays in the flow of letters occur and valuable time and resources are wasted. It is now generally accepted that it is highly unlikely that a prisoner will discuss escape plans or conduct criminal activities via written correspondence and that only in extreme cases would such censorship represent a “reasonable condition and restrictions” as mentioned in Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, quoted above.

#### **Comments by a woman prisoner in Thailand on letters**

“All prisoners here want mental support from relatives or their loved ones. For me, there are two things. Every day I wait for the sound of the announcement bell when my relatives come to visit and when letters arrive. If either of them is missing, I feel discouraged. For me, everything in the prison is alright. Except one thing, the letters are much delayed. Sometimes, it takes 1-2 months. I want this important problem to be solved. Since some prisoners who have no visiting relatives depend on the incoming letters.”

*Source: Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, 2014, p. 82*

Based on their risk assessments, the incoming and outgoing letters of only a small number of prisoners may need to be read, with the exception of those which involve correspondence with legal representatives, higher judicial authorities (e.g. complaints), human rights bodies or parliamentarians. Such prisoners need to be informed that their private correspondence is subject to monitoring.

There is no need or justification for limiting the length of letters, which would be an unnecessary measure when the monitoring is limited to a few cases where there is justification for it.

Prison authorities may also need to assist prisoners by providing them with paper and writing materials, particularly those women who are poor and who cannot afford to buy these items themselves.

## **2. Telephones**

Telephone calls can be an important means for prisoners to maintain contact with their families and the possibility to make and receive telephone calls should be made widely available to all women prisoners.

Telephone communication may be facilitated by having regular telephone booths in prisons, which may be operated with cards to avoid the usage of cash within the prison.

The possibility to talk over the phone is, of course, of particular importance for those women who are illiterate. Also, if prisoners' families and friends live far away from the place of imprisonment, visits are more difficult and telephone calls can serve as a substitute.

The cost of phoning from prison should never be higher than in the community and where possible, the cost should be subsidized especially in the case of women who do not receive visits, women who are poor and who have children outside prison.

Only in the case of prisoners who have been assessed as high risk is there a reason to routinely monitor telephone conversations. Prisoners must be informed that monitoring will be undertaken.

In other cases, telephone calls may be recorded and retained for a specific period of time.

Telephone contact is particularly important for foreign national prisoners whose families do not reside in the country of imprisonment. Such prisoners should be allowed to make and receive telephone calls as frequently as possible to compensate for the lack of contact with families via visits. Telephone calls should not be prohibited only on the basis of there not being any staff member in the prison who speaks the language spoken by the prisoner, if the individual risk assessment of the prisoner did not indicate a need to monitor her telephone conversations. As with other prisoners who have not been assessed as posing a risk, the telephone calls of foreign national women may be recorded and retained for a period of time instead.

## **3. Visits**

Visits are particularly important for all prisoners, and especially women prisoners, as they provide the most direct means of contact and communication with family members, including children, as well as friends. They enable women to maintain, as far as possible, a normal relationship with their spouses, partners and children, and are one of the key factors that can assist in women's social reintegration.

In some countries, including in ASEAN countries, only closed visits are allowed to all prisoners, including women prisoners, even where there is no security justification of this restriction. It is good practice to allow for open visits to all prisoners, under adequate supervision. Open visits should be the norm especially where children are concerned.

## The Bangkok Rules

### 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.

### Rule 43

Prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration.

Physically separating visitors should be resorted to only in exceptional situations based on well-founded and reasoned decisions, following an individual assessment of the potential risk posed by a particular prisoner.

Closed visits impact on the right to private and family life and as such:

- cases must be considered on an individual basis;
- any decision to impose closed visits must be proportionate to the risk they are meant to be reducing; and
- any measures imposed must be reviewed on a regular basis.

Prison authorities should allow and encourage long visits with families, especially where children are involved, in order to help maintain a positive relationship between the prisoners and their families and to respond to the emotional needs of both the women and the children.

The conditions in which visits take place are also important in ensuring that the experience is a positive one, encouraging families to continue visiting on a frequent basis. Especially where children are involved the environment should not be hostile in terms of surroundings and staff attitudes. Children may be tired and restless, especially if they have had to travel long distances. Staff should demonstrate understanding. There should be play areas for children so that parents may have time on their own. The visiting room should have chairs and tables, and toilet facilities for visitors. If the visits are taking place in the open, then shelter should be provided in case of inclement weather conditions.

### Good practice: Visits to women prisoners in the Philippines

In general frequent, long and open visits are allowed to women prisoners in the Philippines, which is a very positive practice. In addition there are family days when the families of prisoners can visit them for a more extended period. Even in the case of maximum security prisoners, visitors can enter the prison courtyard and in most cases are allowed to mingle, eat and drink together with the women prisoners for as long as six hours. The Correctional Institutions for Women in Mandaluyong and in Davao, Mindanao, have particularly comfortable visiting conditions, allowing women and their visitors close contact and privacy. Morale in the prisons with more relaxed visiting regulations are noticeably higher.

*Source: DIGNITY, Baker, J and Rytter, T., Conditions for Women in Detention, Needs, vulnerabilities and good practices, 2014, pp. 106-107*

Ensuring that women prisoners meet with their family members in a friendly, comfortable and positive environment will have a significant impact on the number of visits they receive and the quality of the visits, which will have an extremely beneficial impact on women's mental wellbeing.

Family visits should never be restricted or prohibited in response to a disciplinary offence, as discussed in Module 6. Any restrictions made to prisoners' contact with the outside world must be linked to a valid security risk. Contact with families, in particular, may only be restricted for a limited time period and as strictly required for the maintenance of security and order<sup>84</sup>, as we have seen in Module 6.

In some countries there is a practice of visitors having to pay for visits. This is totally unacceptable, violating both the Mandela Rules and the Bangkok Rules, in that the right of the prisoner to receive visits is restricted on the basis of their families' financial means, putting immense financial pressure on families and making it impossible for some families to visit at all.

In a number of prison systems male prisoners are allowed conjugal visits with their spouses or partners, whereas this right is not granted to women prisoners. This is another practice where women prisoners are discriminated against. Both the Mandela Rules<sup>85</sup> and the Bangkok Rules make clear that, whenever male prisoners are allowed conjugal visits, women should also enjoy this right on an equal basis with men. Facilities should be provided for such visits to take place in conditions that are clean and pleasant and respectful of dignity.

#### **The Bangkok Rules**

##### **Rule 27**

Where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men.

Condoms should be provided free-of-charge to protect women and their partners against sexually transmitted infections, including HIV, and women should be educated and encouraged to use them. Women should also be offered other means of birth control, on a voluntary basis, to avoid unwanted pregnancies.

Due to their typical backgrounds, which can involve a history of domestic violence and sexual abuse, women prisoners should always be consulted as to who may visit them. This is particularly important in the case of conjugal visits.

#### **The Bangkok Rules**

##### **Rule 44**

In view of women prisoners' disproportionate experience of domestic violence, they shall be properly consulted as to who, including which family members, is allowed to visit them.

There are a number of steps that prison authorities can take to facilitate and increase women prisoners' contact with their families, as required by the Bangkok Rules. Most of these measures do not require any additional resources although the benefits are likely to be immense.

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<sup>84</sup> The Mandela Rule 43.3

<sup>85</sup> The Mandela Rule 58.2



- Allow extended visits when families cannot visit frequently due to the distances and costs involved;
- Where possible provide free-of-charge overnight accommodation for families who have travelled a long way;
- Allow additional telephone calls to women who are unable to receive visits from their families;
- Do not monitor all letters and do not restrict the number or length of letters women prisoners can send and receive. Only monitor the letters of those prisoners who have been assessed as high risk. In this way prisoners' letters will not be delayed, the communication will be meaningful and prison staff time will be freed;
- Ensure that the conditions in which visits take place allow for contact between families and prisoners, especially where children are involved. This will ensure that the visits provide a positive experience to both the women and their families and encourage families to visit more often;
- When families face challenges in visiting women prisoners, electronic visitations may be facilitated via skype, as long as these do not replace actual visits for those who are able to visit.
- Writing materials may be provided free-of-charge to those prisoners who cannot afford to buy them.

**Good Practice: Electronic visitation opportunities in the Philippines and Singapore**

- Some prisons in the **Philippines** have electronic visitation options via skype: the Bureau of Jail Management and Penology (BJMP) in partnership with the Office of the Solicitor General in the Philippines set up computers in male and female jails of some regions in the Philippines and designated them purposely for electronic visitation. The electronic visitation programme is included as one of the Inmate Welfare Development Programmes of the Bureau. This allows prisoners in these regions to have voice or video calls with their loved ones via skype and is made available six and a half hours per day, six days a week.
- In **Singapore** the prison system has established a tele-visiting system, using nine teleconference centres located throughout the country, including one specifically for children under the age of 16.

*Sources: DIGNITY, (Danish Institute Against Torture), Baker, J., Rytter, T., Conditions for Women in Detention, Needs, vulnerabilities and good practices, 2014, p. 110; Department of the Interior and Local Government, Bureau of Jail Management and Penology National Headquarters, Memorandum, "BJMP Protocol on the "e-Dalaw" Program, 28 November 2011; US Department of State Philippines 2013 Human Rights Report, p. 8 and US Department of State, Singapore 2013 Human Rights Report, p.2*

#### 4. Contact with lawyers

The Mandela Rules provide for all prisoners to have access to legal advisers or a legal aid provider via visits and communication without delay and censorship and in full confidentiality.<sup>86</sup> Consultations with lawyers may be within sight, but must be out of hearing of staff.<sup>87</sup> If the prisoner does not speak the local language, the prison administration must facilitate access to the services of an independent interpreter.<sup>88</sup> All prisoners must have access to legal aid.<sup>89</sup>

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, provide for anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty to be entitled to legal aid at all stages of the criminal justice process.<sup>90</sup> Effective legal aid must be provided promptly and should not be limited to the pre-trial period.<sup>91</sup> States also need to ensure that imprisoned persons and children deprived of their liberty have access to legal aid after the trial and sentencing process.<sup>92</sup> For this purpose prison authorities should provide full information about their rights under the law, including their right to confidential legal aid, and legal aid providers should be encouraged to provide legal advice and assistance to prisoners.<sup>93</sup>

#### Definition of Legal Aid and Legal Aid Providers

##### United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

##### Introduction, paragraphs 8 and 9:

For the purposes of the Principles and Guidelines, the term “**legal aid**” includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.

For the purposes of the Principles and Guidelines, the individual who provides legal aid is herein referred to as the “**legal aid provider**”, and the organizations that provide legal aid are referred to as the “legal aid service providers”. The first providers of legal aid are lawyers, but the Principles and Guidelines also suggest that States involve a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia. Provision of legal aid to foreign nationals should conform to the requirements of the Vienna Convention on Consular Relations and other applicable bilateral treaties.

<sup>86</sup> The Mandela Rule 61.1

<sup>87</sup> Ibid.

<sup>88</sup> The Mandela Rule 61.2

<sup>89</sup> The Mandela Rule 61.3

<sup>90</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 3, para. 20.

<sup>91</sup> Ibid., Principle 7, para. 27

<sup>92</sup> Ibid., Guideline 6, para. 46.

<sup>93</sup> Ibid., para 47

The Bangkok Rules recognise that women prisoners may face particular challenges in enjoying their right of access to legal counsel immediately on detention and throughout their pre-trial detention and imprisonment. This can be due to women prisoners' generally low level of education, economic and social status, lack of experience of any contact with state authorities, unawareness of their rights, fear and lack of confidence. Therefore, as we have seen in Module 2, the Bangkok Rules require that prison authorities facilitate newly admitted women's access to legal counsel.<sup>94</sup> This rule covers pre-trial detainees as well as sentenced prisoners.

The need for pre-trial detainees to have immediate and full access to legal counsel and, where necessary, legal aid, is very clear.<sup>95</sup> This is due to their legal status and their need to be assisted with their defence. But sentenced prisoners may also need access to legal counsel for many reasons, including to: appeal against their conviction and sentence; to appeal against issues relating to their imprisonment, such as their allocation; to defend themselves against an allegation of a serious disciplinary offence<sup>96</sup>; in cases where they allege to have been ill-treated or sexually abused; for parole applications and representation at parole hearings, among others<sup>97</sup>, as well as in relation to issues not directly connected to their imprisonment, such as cases relating to divorce, property rights and the care and custody of children outside prison.

- Prison authorities have the responsibility to explain to all newly admitted women, whether they are pre-trial or sentenced prisoners, their right of access to legal counsel and legal aid, and facilitate such access if the women themselves are not able to do so;
- Written information provided on admission may include, for example, contact details of bar associations and legal aid providers and these may also be displayed on the walls of the prison in prominent places. In countries where NGOs or paralegal services provide assistance to prisoners, the contact details of such organisations should also be made available to the women and they should be assisted in contacting these organisations;
- Foreign national women should be informed of their right to legal counsel and legal aid in a language that they understand and be assisted to access legal counsel. Only informing their consular representatives is not sufficient for this purpose as consular representatives do not always assist their citizens in such matters;
- In cases where the prisoner does not speak the local language, prison authorities should facilitate their access to the services of an independent, competent interpreter;<sup>98</sup>
- Lawyers and all legal aid providers should be allowed and encouraged to visit their clients in prison without restriction and their consultations with their clients should be confidential – that is out of hearing of staff;
- The searches of lawyers and legal aid providers on admission to prison should comply with principles of dignity and respect. They may only be subjected to pat down and frisk searches and scans. The search must never include the searching of any of documents.

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<sup>94</sup> The Bangkok Rule 2

<sup>95</sup> For a detailed discussion, see UNODC, *Early access to legal aid in criminal justice processes: a handbook for policymakers and practitioners*, Cape, E., 2014

<sup>96</sup> The Mandela Rule 41.3

<sup>97</sup> UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 6, para. 47 (d)

<sup>98</sup> Mandela Rule 61.2

**Good Practice: Training of prisoners to become paralegal officer in the Philippines**

The Bureau of Jail Management and Penology (BJMP) in the Philippines, supported by the Humanitarian Legal Assistance Foundation (HLAF), conduct training to volunteer prisoners in selected male and female jails to be Paralegal Coordinators. The programme provides them with knowledge on modes of release, basic criminal procedures and rights of the accused. This also empowers the Paralegal Coordinators to advise fellow prisoners on their rights and assist them with case processing and criminal justice procedures.

By 2014, HLAF was able to institutionalise the Paralegal Coordinators in BJMP by including the project in the BJMP Paralegal Manual which the BJMP designed in partnership with HLAF, AusAID and the New Zealand Embassy.

*For further information, see: HLAF website at <http://www.hlaf.org.ph/>*

**5. Contact with organisations of civil society**

The emphasis on security in many prison systems in the ASEAN region limits prisoners contact with the outside world, due to fears of illegal items entering prisons, which, in turn limits the possibilities of cooperation between prison administrations and organisations of civil society. As a result the immense benefits which the contributions of civil society can bring, not only in terms of contributing to programme delivery, but also improving prisoners' mental health by enabling them to feel part of the community, are not sufficiently utilised.

Prison authorities may increase women prisoners' contact with the outside world by applying more lenient policies in allowing organisations of civil society to access prisons to assist with the delivery of activities and programmes, by taking relevant and proportionate security measures such as the vetting of civil society organisations in advance and supervision - though not interference - during activities.

Such cooperation with civil society is extremely beneficial to normalise the prison atmosphere, with a very positive impact on the mental health of women, as well as relieving the burden on prison authorities in providing a varied and balanced regime to women prisoners. For example, civil society organisations specialising in mental health and drug dependence may run programmes for women in need of treatment; arts and music groups may provide classes in these fields; organisations specialising STIs and HIV/ AIDS may provide educational programmes, other organisations may provide yoga and tai chi classes, among others.

Involving organisations of civil society access to prisons will also increase public awareness about challenges encountered in prisons by staff in fulfilling their duties effectively and encourage public support to efforts to improve the quality and variety of services provided to prisoners.

**6. Access to newspapers, television and radio**

The Mandela Rules provide for prisoners' access to newspapers, periodicals and other publications, radios and lectures, or any similar means to access news from outside, as authorised by the prison administration.<sup>99</sup>

Ensuring that prisoners have the means to keep themselves informed of current affairs is important to reduce their sense of alienation and isolation from society. Reading newspapers and periodicals,

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<sup>99</sup> Mandela Rule 63

watching television or listening to the radio are also very simple ways in which prisoners can be keep themselves constructively occupied and up-to-date with current affairs, while broadening their horizons.

Prison administrations should ensure that the main newspapers published in the country, as well as other magazines and periodicals of general interest are available in multiple copies in prison libraries and that television sets and radios are placed in communal areas for prisoners' use in their free time.

Effort should be made to subscribe to newspapers and periodicals in languages that represent the main foreign languages spoken by foreign national women held in particular prisons.

These are measures that do not need significant resources to implement, but will enrich prisoners' lives considerably, while contributing to their education and entertainment, which are important to protect their mental wellbeing and create a positive prison atmosphere.

Cooperation with organisations of civil society, who can help with donating publications to the prison, as well as organising talks and lectures by academicians, journalists and others on matters of general interest, may also be a way in which prison authorities can strengthen women prisoners' sense of being a continued part of the community, rather than their exclusion from it, as provided by the Mandela Rule 88.1.

## MODULE 8

### PRISONER REHABILITATION: ACTIVITIES AND PROGRAMMES

#### Learning Objectives:

- Consider the role of individualisation in the rehabilitation of women prisoners;
- Review the benefits of different types of programmes and activities that should be offered to women prisoners, including education, work and vocational training;
- Discuss the role of sports and recreation in protecting the mental and physical health of women prisoners;
- Understand the importance of gender-specific, psycho-social programmes in the rehabilitation of women prisoners, taking into account their typical backgrounds and mental healthcare needs.

The concept of prisoner rehabilitation comprises many elements, including the conditions of detention, humane treatment, access to healthcare and contact with families, among other aspects of prisoners' life in prison, discussed in other modules. In this module we will be looking at the role of prisoner activities and programmes, based on individual needs, in the rehabilitation and social reintegration of women prisoners.

#### 1. Individualisation and cooperation with community organisations

The concept of individualisation is central to prisoner rehabilitation. It means that each prisoner should be offered activities and programmes based on individual needs, which are determined by the assessment undertaken on admission to prison and repeated at regular intervals. In the case of women prisoners, the assessment should be gender-sensitive, as we have discussed in Module 2, so that their typical backgrounds as women offenders and their gender-specific needs can be taken into account in the development of appropriate programmes of activities.

The key principle of individualisation in the rehabilitation of prisoners is underlined in the Mandela Rules 89 and 94.

#### The Mandela Rules

##### Rule 89

1. The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. It is therefore desirable that such groups should be distributed in separate prisons suitable for the treatment of each group.

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##### Rule 94

As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions.

In overcrowded prisons individualisation of programmes for all prisoners is likely to present challenges, especially if specialist staff are lacking to undertake the comprehensive assessments required by the Bangkok Rules.

In such circumstances a step-by-step approach may be adopted in the assessment of prisoners, as suggested in Module 2.

In addition the following steps may be taken:

- Certain activities may be prioritised targeting specific groups: For example education for those who are illiterate or who have very low levels of education or drug treatment programmes with motivation among prisoners and voluntary participation; programmes that promote mental health with voluntary participation, but accessible to all prisoners; reproductive and sexual health education for all prisoners; special programmes on pregnancy and parenting skills for pregnant prisoners and breastfeeding mothers.
- Cooperation with services in the community and organisations of civil society may be strengthened so that they may conduct assessments among prisoners and deliver programmes to address individual needs.
- The prison administration may conduct surveys among prisoners to gather information as to what programmes the women themselves would like to be offered and prioritise programmes on that basis.

In parallel it is important that the prison administration works towards comprehensive individualised assessments on admission and the development of individual sentence plans for each prisoner, with the introduction of assessment tools, recruitment of staff, including specialist staff, and staff training.

Another principle which is emphasised by the Mandela Rules is that the separation of prisoners from society should not lead to the disruption of their links with the community. On the contrary, their treatment should encourage and emphasise prisoners' continued part in the community.

### **The Mandela Rules**

#### **Rule 88**

1. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners.
2. There should be in connection with every prison social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

The involvement of organisations of civil society in the development and delivery of prisoner activities and programmes is a key component of policies and strategies that aim to ensure that prisoners are not isolated from the outside community, as discussed in Module 7. Their contribution to women prisoners' rehabilitation can be immense with their design and delivery of a variety of activities and programmes targeting specific needs.

## **2. A balanced and flexible programme of activities in women's prisons**

All prisoners, including women prisoners, must be provided with a balanced and comprehensive programme of activities. This means, for example, that requiring prisoners to work all day and every day of the week, without providing them with opportunities and time for education, sports and recreation or participation in psycho-social support programmes, among others, is not acceptable. It is also not acceptable to only provide vocational training or education and then leave the prisoners idle the rest of the time.

The activities and programmes provided must resemble as far as possible life outside prison, with a variety that takes into account the special rehabilitation needs of each individual woman. They should be balanced to provide meaningful occupation, with sufficient emphasis on each aspect of women prisoners' need for personal development.

This understanding is reflected in the first paragraph of Bangkok Rule 42.

### **The Bangkok Rules**

#### **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.

Sometimes women prisoners may be too depressed by their imprisonment or overcome by feelings of hopelessness and anguish, which may reduce their motivation to participate in activities and programmes. Remaining idle and isolated from group activities will further damage these prisoners' mental health. Such women should be motivated to participate in vocational training and education programmes, where necessary with motivation training provided by social workers, psychologists and/or community organisations. Prisoners can also be encouraged to participate in education and other rehabilitation programmes with a system of privileges or good conduct allowances.

Another point emphasised by the Bangkok Rule 42 is that activities and programmes in women's prisons must provide some flexibility so that pregnant women, breastfeeding mothers and women with children in prison may also participate. This rule takes into account the fact that in many prison



systems, including in the ASEAN region, these categories of women are not able to participate in many activities in prison, either because there are not appropriate programmes for them, or because their breastfeeding times do not allow them to participate or because they must remain with their children as there is nobody else to take care of their children, while they participate in activities.

The following are some measures that may be taken:

- Breastfeeding mothers should not be precluded from programmes just because their breastfeeding times do not allow them to do so. Either separate sessions should be offered to such women or they may be able to participate and breastfeed at the same time during the activity, depending on the nature of the programme.
- Childcare facilities should be provided for mothers with children in prison, staffed by nurses and/or carers so that these women are also not excluded from taking part in programmes.
- Where there are shortages of nurses or carers, other women prisoners may act as carers while the mothers participate in activities and this responsibility may be rotated among suitable prisoners, selected and trained for the task. Such training may serve the women well as a future occupation as carers in the community.

**Good Practice: A comprehensive programmes of activities in cooperation with organisations of civil society in the Correctional Institute for Women, Mandaluyong, Philippines**

The Correctional Institute for Women offers a varied and comprehensive programme of activities to women prisoners. The prison authorities here have established links with NGOs, health, art therapy and education professionals which have enabled them to increase and diversify the activities and programmes provided to the women. Most women in the facility which holds over 2000 women are engaged in activities ranging from baking, massage, pedicure skills, computer training and day courses on areas such as social graces and sign language.

This institution also offers women prisoners formal education classes for a few hours each day, ranging from basic to high school education. The education is provided by the Ministry of Education.

*Source: DIGNITY, Baker, J., Rytter, T., Conditions for Women in Detention, Needs, vulnerabilities and good practices, 2014, p. Baker, pp. 120, 121 and Superintendent, Correctional Institution for Women, the Philippines, Expert Group Meeting on the Training Modules for Correctional Staff and Training of Trainers on the Management of Women Prisoners in the ASEAN Region, Bangkok, Thailand, 8-9 October 2015.*

### **3. Education, work, vocational training, sports and recreation**

The Mandela Rules' provisions on work and vocational training are outlined in Rules 96 to 103 and their provisions relating to education and recreation are covered in Rules 104 to 105. These rules are valid for all prisoners, including women prisoners.

### **3.1 Work and vocational training**

The main principles of prison work are that:

- work should not be of an afflictive nature and it should be meaningful;
- working conditions should resemble those outside prison with adequate health and safety precautions in place;
- prisoners should be adequately remunerated;
- prisoners should work normal working hours and should not be required to work on weekends;
- the main purpose of the work should be to provide prisoners with vocational training and increase their skills so that they may find employment more easily following release.

International experience and research has shown that women prisoners often come from marginalised and disadvantaged backgrounds and in most countries will have faced discrimination in their access to work. Even where women have been employed prior to imprisonment, their earnings are often very low, as they tend to work in unskilled jobs due to lack of education or vocational skills.

Therefore women prisoners are in great need of vocational training and developing their work experience so that they can lead crime-free lives following release.

#### **Women prisoners' need for vocational training in Thailand**

In Thailand the 30 per cent of women prisoners who took part in the survey conducted by TIJ in 2013 indicated that they needed vocational training, among others to improve their prospects of social reintegration.

Thirty per cent said that they needed employment following release to enable their social reintegration.

While a large proportion of women (close to 90 per cent) did work prior to imprisonment, more than half of the women said that they did not earn enough to live on.

These findings suggested a need to increase the vocational training provided to women to improve their prospects of employment in skilled jobs and thereby improve their socio-economic status.

*Source Thailand Institute of Justice, Atabay, T, Owen, Women Prisoners and the Implementation of the Bangkok Rules in Thailand, pp. 132 and 138*

However, women are very often discriminated against in their access to work in prisons, especially if they are held in annexes of male prisons. The work that is offered is frequently only the types of work that are deemed to be suitable for women and the choice is limited. These may include, for example, sewing, cleaning and handicrafts, but not other more complex skills that would help them get better paid jobs following release.

In some countries, including in the ASEAN region, the working hours may be too long, with no flexibility, which violate the principle of providing a balanced and flexible programme of activities. The remuneration may be so low that women who are poor and whose families do not visit them, are

unable to supplement their diet and hygiene needs with purchases from the prison shops, and are unable to save any money to put aside for their release or to send to their families.

**Good practice: The establishment of a social security scheme for women prisoners in some facilities in the Philippines**

A social security scheme has been established in Quezon City jail for women and the Correctional Institute for Women, in the Philippines, which enable willing prisoners to enlist into the social security system via a national micro savings programme. The programme provides social protection for women and enables them to save some of their earnings for the future.

*Source: DIGNITY, Baker, J., Rytter, T., Conditions for Women in Detention, Needs, Vulnerabilities and Good Practices, 2014, p. 118*

**Good practice: Women prisoners in Argentina's federal prisons receive the minimum wage for work in prison**

Women who work while incarcerated in the federal prison system of Argentina earn wages at the rate of 14.5 pesos per hour, an amount which matches Argentinian minimum wage. A portion of these wages are set aside for each woman to be used upon her release, with the remaining portion available for her personal use. The grant of minimum wage allows women to support their families even while incarcerated. It also allows them to buy extra supplies for themselves while imprisoned. Argentina's use of its national minimum wage as a threshold for prison labour exceeds the wages granted to labouring prisoners in many countries.

*Source: Cornell Law School's Avon Global Center for Women and Justice and International Human Rights Clinic, Defensoria General de la Nacion Argentina, the University of Chicago Law School International Human Rights Clinic, Women in Prison in Argentina: Causes, Conditions and Consequences, May 2013, p. 25*

Offering women prisoners a wide selection of work and vocational training that corresponds to market needs, so that they can learn new skills in prison to help them earn a living following release is one of the key requirements for the women's social reintegration.

Possible areas of vocational training for women prisoners may include, among others:

- administrative skills
- computer skills
- bookkeeping
- cooking and catering
- painting and decorating
- gardening
- women's health
- childcare
- dressmaking
- income management
- electro-technology
- horticulture

Where staff resources and space is limited, a number of measures may be taken to increase prisoner participation in vocational training and work programmes.

These may include:

- Where separate workshops are not available for women housed in the annexes of male prisons, prison administrations may introduce a system of rotation, enabling women prisoners to use the workshops at separate times to men. Female members of staff should supervise any activities undertaken by women prisoners in the male section of the prison to ensure their safety;
- Prison authorities may establish and strengthen cooperation with community organisations, including NGOs, to improve vocational training provided to women prisoners. This will help alleviate women's sense of isolation from the community and may enable them to establish links with organisations which can help them when they are released from prison.
- Prisoners may be trained by NGOs or other community services to run skills training programmes. Such an approach will not only provide women prisoners with new skills but improve the confidence of those who are trained as trainers and develop peer group support among women prisoners.

**Good Practice: Training of trainers for prisoners in Ratchaburi Central and Remand Prison, Thailand**

In the Ratchaburi Central and Remand Prison, women prisoners have an opportunity to take part in yoga training every day, with training being provided by prisoners, who have been trained as trainers. In January 2013 the TIJ research team had an opportunity to conduct an individual interview with a prisoner who had become a yoga trainer in prison. She said: "I became a yoga trainer in prison and am only engaged in yoga now as an activity. Before this I was making flowers and I also finished training for working in a beauty salon. When the INSPIRE project started, I was selected to be trained by an Indian trainer and that's how I became a trainer. I also go to other prisons to train prisoners. I went to Koh Samui in May last year. Yoga makes me feel better. When I am released I am thinking of continuing with yoga training, maybe in my neighbourhood." She was waiting for her certificate from the INSPIRE project. She added that certificates helped reduce sentences.

*Source: Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, 2014, p. 94*

In addition, the Bangkok Rules provide that special programmes and activities be provided for pregnant women and breastfeeding mothers. These may include special healthcare programmes to address the needs of these categories of women and their children, yoga and tai chi classes to provide such women with appropriate exercise, education on parenting skills, among others. (See Module 9)

### **3.2 Education**

The Mandela Rules require that:

- education is offered to all prisoners who may benefit from further education;
- the education of illiterate prisoners and of young prisoners be compulsory and receive special attention;

- as far as possible, education in prison be integrated with the educational system in the community so that prisoners can continue with their education following release.

According to available data the majority of women in prison in the ASEAN countries have a low level of education, similar to the profile of women prisoners in other countries worldwide.

See box for some statistics.

#### Education levels among women prisoners in some ASEAN countries

- A survey conducted by TIJ in **Thailand** found that 9 per cent of women did not have any education, 34 per cent had completed primary school and 32 per cent had completed secondary school, the rest having a higher education or a vocational training certificate.<sup>100</sup>
- According to a pilot study conducted in **Singapore** among 102 women prisoners, almost five per cent had no education at all, 30 per cent had finished primary school and 54.4 per cent - secondary school.<sup>101</sup>
- In **Malaysia**, according to figures provided in 2013, 49 per cent of women prisoners were illiterate and 36 per cent had primary school education.<sup>102</sup>
- In the **Philippines**, the situation is slightly different according to figures provided in 2013, which indicated that 25 per cent of women were illiterate or had primary school education, 39.6 per cent had high school education and 33.5 per cent had college level education.<sup>103</sup>

Education is essential to develop prisoners' self-confidence and employability and has been proven to be one of the most important aspects of offender rehabilitation. For example, one study found that high school graduation on its own (as a crime prevention measure) could reduce recidivism rates by 21 per cent, while providing general education in prison could reduce recidivism rates by 8.3 per cent.<sup>104</sup> Another study, which meta-analysed the outcomes of prison based programmes in Australia, Canada, Europe, New Zealand and the United States, found that education could lead to a 15 per cent reduction in reoffending.<sup>105</sup> Other studies have also found that education programmes can reduce recidivism levels significantly.<sup>106</sup>

<sup>100</sup> Thailand Institute of Justice, Atabay, T, Owen, p 131

<sup>101</sup> Mien, Goh Chin, 'Treatment of Female Offenders in Singapore', 153<sup>rd</sup> International Senior Seminar, 9 January to 8 February 2013, Participants' Papers, UNAFEI, p. 165

<sup>102</sup> UNODC/TIJ, East Asia-Pacific Regional Meeting on the Implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Bangkok, 19-21 February 2013, UNODC/JSDO/BKEGM/2013/1, 14 March 2013, para. 76

<sup>103</sup> Questionnaire response to the UNODC/TIJ, East Asia-Pacific Regional Meeting on the Implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Bangkok, 19-21 February 2013,

<sup>104</sup> Drake, E. K., Aos, S. and Miller, M. G., Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State Washington Institute for Public Policy, Table 1, referred to in UNODC Handbook on Strategies to Reduce Overcrowding in Prisons, Atabay, T., 2013, pp. 153, 154

<sup>105</sup> Matrix Knowledge Group, The Economic Case for and Against Prison (2007), referred to in UNODC Handbook on Strategies to Reduce Overcrowding in Prisons, Atabay, T., 2013, p. 154

<sup>106</sup> Research Brief, Occasional Paper Series - No. 2 - September 1997, Open Society Institute, Criminal Justice Initiative, Education as Crime Prevention, Providing education to prisoners, referred to in UNODC Handbook on Strategies to Reduce Overcrowding in Prisons, Atabay, T., 2013, p. 154

Education is essential in the case of prisoners who are illiterate, as well as young persons, who are faced with a break in their usual schooling with imprisonment.

It is important that education provided in prison follows the national curriculum, leading to an officially recognised certificate, in order not to discriminate against the prisoners' right to the same level of education provided to others and not to disadvantage them if they continue their education following release.

Prisoners may be encouraged in various ways to participate in education programmes, such as reducing their sentences in line with the number of hours they spend attending education courses or as a reward for certificates received. See examples in the box.

#### **Good practices**

##### **Encouraging women to further their education in the federal prison system of Argentina**

The federal prison system offers primary (elementary), secondary (high school) and university level courses. Women can receive a reduction in their sentences if they successfully pass all or part of their educational courses. This practice encourages women to further their education and earn various degrees. The incentive also applies to vocational courses that teach practical skills.

*Source: Cornell Law School's Avon Global Center for Women and Justice and International Human Rights Clinic, Defensoria General de la Nacion Argentina, the University of Chicago Law School International Human Rights Clinic, Women in Prison in Argentina: Causes, Conditions and Consequences, May 2013, p. 25*

##### **Encouraging education in the Philippines**

The revised Penal Code of the Philippines encourages prisoners to participate in education, teaching or mentoring programmes with the deduction of 15 days off their prison term for each month of study, teaching or mentoring. This supplements the reduction of sentences they can receive for good conduct.

*Source: The Philippines Republic Act No. 10592, an act amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code, Article 97.*

Establishing prison libraries stocked with a wide selection of books, ranging from instructional books and reference materials to novels, as well as periodicals and newspapers is also an important component of enabling prisoners to educate themselves in the broadest sense.<sup>107</sup> Prisoners should be encouraged to use libraries and borrow books, as reading provides a very constructive way in which to spend their free time, while improving the prison atmosphere.

Prison administrations may engage with libraries in the community to receive their assistance to develop prison libraries, provide books and offer ongoing administrative assistance. The opportunity may be used to have community librarians train selected prisoners as librarians, who may then be given responsibility to help administer prison libraries.

Cooperation with organisations of civil society can also be immensely beneficial as such organisations may channel book donations to prisons.

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<sup>107</sup> Mandela Rule 64

### **3.3 Sports and recreation**

The Mandela Rules require that recreational and cultural activities are provided to all prisoners to protect and promote their mental and physical health.

Physical activities and the possibility of engaging in recreational activities help promote mental and physical health, as well as encouraging team work. Such activities should not be seen as luxuries, but necessities to ensure that prisoners' energy is used in a positive manner, assisting with their social reintegration.

Women are often discriminated against in their access to sports activities, in particular, if they are housed in annexes of male prisons. While male prisoners may have access to a gym or opportunities to play football or practice other sports, women may have limited opportunities for physical activity, which may consist, for example, of a one-hour aerobics class per week for a limited number of women. Lack of physical activity can have an extremely detrimental impact on women, many of whom already experience high levels of distress and depression.

Prison authorities should make every effort to enable women's access to sports and recreation on an equal basis with men.

Measures that can be taken include:

- Cooperation with community groups and sports services may be established, so that they may provide classes, training and sports equipment, thereby reducing the pressure on prison authorities;
- Gyms may be established for women prisoners. If resources do not allow for the establishment of separate gym facilities for women who are housed in annexes of male prisons, the gyms of the male prisons (where they exist) may be used on a rotation basis.
- Existing gardens and yards may be used to the maximum possible extent to enable prisoners to practice sports. For example a volleyball net may be set up in a large enough yard and women may be trained to play volleyball. Similarly yards may be equipped for basketball or football, with minimal additional resources.
- Yoga, dance and tai chi classes may be introduced in cooperation with community groups. Such classes may be conducted in gardens, large dormitories or yards and do not need significant additional resources.

### **3.4 Gender specific, psycho-social programmes**

As we have discussed in previous modules women offenders have particular psycho-social support and mental healthcare needs, which arise from a variety of factors, including widespread experiences of domestic violence and sexual abuse, their history of drug dependence, which is often an outcome of their typical backgrounds, and mental healthcare needs. In many countries, including the ASEAN region specifically, a significant proportion of prisoners have a background in sex work. Some of these women are likely to have been victims of human trafficking<sup>108</sup>. In Myanmar, for example, a significant

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<sup>108</sup> While beyond the scope of these training modules, which do not include a discussion of criminal justice and sentencing policies, it should be noted that victims of human trafficking should not be treated as criminals and not be imprisoned. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime requires that States protect victims of human trafficking (see especially Arts. 6, 7 and 9 1 (b)). Criminalisation limits the

proportion of women are convicted of prostitution (25 per cent in 2012). However even in countries where prostitution is not criminalised some women in prison are likely to have a background in sex work in the region. A proportion of such women are likely to have been sexually abused, including all those who are victims of human trafficking. Such women are in need of psycho-social support by specialists experienced in treating trauma and victimisation.

Women's mental healthcare needs are intensified in prisons, due to separation from families, children and the community. Recognising these realities, the Bangkok Rules include a provision that require gender-specific psycho-social support programmes to be offered to women in prisons.

Such programmes are best delivered by specialist organisations of the community. They may include both group work and individual consultations dealing with substance dependence; history of abuse and domestic violence; and mental healthcare needs related to past trauma or separation from families and children. Special programmes for victims of human trafficking may be introduced. Programmes that focus on building confidence, life-skills and healthy relationships are also extremely useful in this context, as women who have a history of abuse usually lack confidence and are particularly vulnerable to further exploitation and abuse.

Peer support has been found to have a very positive influence on the success of such programmes, in particular in the case of women who have experienced domestic violence.<sup>109</sup> Therefore women who have completed certain programmes should be encouraged to work alongside specialists in the delivery of such programmes for women prisoners. Prisoners should also be encouraged to set up their own peer support groups, supervised by specialist staff, as necessary.

Offering women prisoners gender-specific, psycho-social support programmes will assist them immensely in their social reintegration, while also improving relationships in prison, both between staff and prisoners and between prisoners.

As discussed in Module 4, programmes that address substance dependence are also particularly pertinent to the social reintegration of women prisoners in the ASEAN region, taking into account the high level of convictions for drug related offences. Such programmes need to be run by specialists and include a multi-disciplinary approach and participation should always be voluntary.

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trafficking victims' access to justice and protection and decreases the likelihood that they will report their victimisation to the authorities. Given the victims' existing fears for their personal safety and of reprisals by the traffickers, the added fear of prosecution and punishment can only further prevent victims from seeking protection, assistance and justice. (See The United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking, text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1) paras. 7 and 8; Guideline 2, paras. 5 and 6.

<sup>109</sup> UNODC Handbook on Women and Imprisonment, Atabay, T., p. 54



## MODULE 9

### PREGNANT WOMEN, MOTHERS AND DEPENDENT CHILDREN IN PRISON

#### LEARNING OBJECTIVES

- To explore the needs of pregnant women, breastfeeding mothers and mothers with children in prison and what prison authorities should do to respond to their needs;
- To review the key points relating to the treatment of children living with their mothers in prison;
- To consider the key principles that should underlie the separation of children from their mothers in prison, based on the best interests of the children concerned.

A very large majority of women in prison are mothers. Many have a number of children outside prison, others are admitted to prison with their small children or are pregnant when they are admitted and give birth while in prison. All of these categories of women and their children have distinct and special needs. Prison authorities need to make every effort to provide for these needs, in order to protect and promote the health and wellbeing of both the mothers and the children.

|  | Age limit for children staying with mothers          | No. of children with mothers |
|--|--|------------------------------|
| Brunei Darussalam                            | 2 years or more based on best interests of the child | 0                            |
| Cambodia                                     | 3 years  | 81                           |
| Malaysia                                     | 4 years  | 17                           |
| Myanmar                                      | 6 years  | 369                          |
| Philippines*                                 | 1 year   | 0                            |
| Singapore                                    | 3 years  |                              |
| Thailand                                     | Legally 3 years, in practice usually 1 year          |                              |
| Vietnam                                      | 3 years  | 66                           |
| *Only in correctional institutions for women |  |                              |

**Table 3: Children in prison in some ASEAN countries (2013)<sup>110</sup>**

#### 1. Pregnant women, breastfeeding mothers and mothers with children in prison

The Mandela Rule 28 provides that:

“In women’s prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.”

<sup>110</sup> Source: Questionnaire responses to UNODC/TIJ, East Asia-Pacific Regional Meeting on the Implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Bangkok, 19-21 February 2013 and Goh Chin Mien, ‘Treatment of Female Offenders in Singapore’, 153<sup>rd</sup> International Senior Seminar, 9 January to 8 February 2013, Participants’ Papers, UNAFEI

The Bangkok Rules add further requirements, which expand the care of pregnant women and breastfeeding mothers to reflect a more holistic approach.

### **The Bangkok Rules**

#### **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.

Pregnant women and breastfeeding mothers need to stay in special accommodation where all their pre-natal and post-natal care needs may be met. Where special accommodation is not possible, they should at least have considerably more space than other prisoners and they should have ongoing access to hot and cold water and sanitary facilities in order to be able to fulfil their special hygiene needs.

Such women and their children have special nutritional needs which should be met by prison authorities. They should receive a balanced diet with adequate protein, vegetables and fresh fruits and children who are not being breastfed should receive nutritious food appropriate to their age. These should be provided free-of-charge.

Special programmes developed to educate such women on their and their children's healthcare and nutritional needs, as well as on parenting skills can be extremely beneficial to raise the women's awareness about these subjects. Given the large majority of women prisoners' socially and economically deprived backgrounds and low education levels, this may be the first opportunity for them to learn about such issues. The programmes are ideally run by community healthcare services.

Prison healthcare staff or healthcare staff in the community, qualified in pre-and post-natal care, should monitor pregnant women and breastfeeding mothers' health and ensure that all their needs are met.

Taking into account the best interests of the children, mothers should not be discouraged from breastfeeding their children. Sufficient time and appropriate facilities, for example in a nursery, should be available for them to be able to breastfeed their children in privacy and in a comfortable environment.

Often these categories of women are excluded from prison activities and programmes, which means that they are idle for long periods and do not get sufficient exercise. This is not acceptable. Pregnant women and breastfeeding mothers should have access to all programmes offered in the prison and flexibility should be applied to ensure that breastfeeding mothers or mothers with small children in prison are able to participate in programmes, as discussed in Module 8.

**Good practice: Enabling mothers to participate in prison activities in Thailand**

In some prisons in Thailand, such as Central Women's Correctional Institution in Bangkok, carers take care of new-born babies in nurseries, while their mothers participate in activities.

As mentioned in Module 4, HIV/AIDS prevention and treatment programmes should take into account the special needs of women, including measures to prevent mother to child transmission of HIV. (See WHO, UNAIDS, UNFPA, UNICEF Guidelines on HIV and infant feeding 2010 for detailed guidance)

In developing policies and programmes that aim to provide for the special needs of pregnant women and breastfeeding mothers, prison authorities should also take into account the needs of women who had recently given birth before they were admitted to prison. They should receive the same quality of post-natal care provided to women who give birth while in prison.

Women should be transported to community healthcare facilities for childbirth, and, as discussed in Module 6, restraints should never be used during transport, delivery or shortly after delivery. Where it is not possible to transfer a woman to a community hospital, the medical care and facilities provided in prison should be equivalent to those in the community and the fact that the child was born in prison should not be mentioned on its birth certificate. Women should be informed in advance where they will be giving birth and if there are choices to be made they should be made aware of them.

**Good Practice: The healthcare of pregnant women and breastfeeding mothers in prisons in Thailand**

In Thailand significant attention and resources are allocated to the treatment and care of pregnant women, breastfeeding mothers and children living with their mothers in prisons. Pregnant women are registered with a community hospital and receive regular pre-natal medical checks in the hospitals and the babies are delivered in these hospitals. Children have their vaccination and receive regular check-ups in community hospitals. Pregnant women and nursing mothers receive additional food and children staying with their mothers in prison are also provided with special food. All mothers interviewed in 2013 were satisfied with the medical care they received, including during the delivery of their baby.

*Source: Thailand Institute of Justice, Atabay, T, Owen, B. Women Prisoners and the Implementation of the Bangkok Rules in Thailand, pp. 106-110*

## **2. Children staying with their mothers in prison**

Whether a child can stay with his or her mother in prison and for how long is prescribed by law in most countries worldwide. Some countries do not allow children to stay with their mothers in prison at all. In other jurisdictions there are great variations in the age limit up to which children may remain in prison. However, having legislation prescribe what should be done with each child is not the best way of ensuring that the best interests of that child is served, as required by the Convention on the Rights of the Child.<sup>111</sup> This is recognised by the Bangkok Rules and the Mandela Rules<sup>112</sup>, which require that decisions to allow children to stay in prison with their mothers should always be based on the best interests of the children.

<sup>111</sup> Convention on the Rights of the Child, Article 3.1

<sup>112</sup> Mandela Rule 29.1

**The Bangkok Rules**

**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.

These rules recognise that applying a rigid policy in all cases, where circumstances vary immensely, is all too often not an appropriate course of action.

The Bangkok Rules also add that decisions to remove children from prison should be based on individual assessments. A child should never be removed from prison until suitable alternative care arrangements have been identified.

**The Bangkok Rules**

**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.

.....

In making such decisions consideration needs to be given to the following, as a minimum:

- the health and developmental needs of the child (e.g. the health and emotional benefits of breastfeeding by the mother, in contrast to other options outside),
- conditions in prison and whether or not the child's nutritional and healthcare needs can be met;
- the nature and quality of alternative care arrangements outside prison (e.g. will the child live with relatives or in an institution?)

In addition, prison authorities should also consider the mental health benefits to the mother of breastfeeding and bonding with her child even if for a limited period of time.

Such decisions should be the responsibility of specialist staff, such as social workers and healthcare specialists.

Prison staff may have little authority to apply these principles if the national legislation has strict rules prescribing whether or not a child can remain with his or her mother in prison and for how long. Thus, policy makers and legislators need to review the legislation in their countries to bring them in line with the Mandela Rules and the Bangkok Rules.

In the meantime, prison authorities should demonstrate flexibility, as far as possible, and take decisions on an individual basis, depending on the circumstances of the child and family, and on the

availability of alternative care options in the community. The extent to which such flexibility may be applied will vary from one jurisdiction to the other.

It is of utmost importance that when a child is to be removed from prison, this is undertaken with sensitivity. The trauma of separation both for the mother and the child is likely to be immense at this time and prison staff must demonstrate understanding and empathy.

In order to reduce the harmful impact of separation on the child and the mother, including to protect the child from developmental problems, prisoners should be given maximum possible opportunities to meet with their children after separation. Mothers whose children have been removed from prison may be accorded special visiting rights, so that they can see their children as frequently as possible. During the first period of separation, overnight visits by the child may be considered, to help the mother and the child to gradually adjust to separation.

Mothers with children outside prison should always have special visiting rights, whether or not the children were with them in prison to start with, as discussed in Module 7. Such visits should always allow for contact between the mother and her children. The only exceptions that may be applied would involve situation where the mother had harmed the child.

### **3. The treatment of children living with their mothers in prison**

Until the adoption of the Bangkok Rules the treatment of children living with their mothers in prison had not received much attention and was not an issue addressed by international standards. The Bangkok Rules, recognising the reality that a very high number of children spend years with their mothers in prison in countries worldwide, introduced provisions that cover the treatment of these children.

#### **The Bangkok Rules**

##### **Rule 49**

.....Children in prison with their mothers shall never be treated as prisoners.

##### **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.

The Mandela Rules, which revised the former SMR, also introduced provisions on the treatment of children living with their parents in prison.

## The Mandela Rules

### Rule 29

1. A decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned. Where children are allowed to remain in prison with a parent, provision shall be made for:
  - (a) Internal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent;
  - (b) Child-specific health-care services, including health screenings upon admission and ongoing monitoring of their development by specialists.
2. Children in prison with a parent shall never be treated as prisoners.

Both the Bangkok Rule 49 and the Mandela Rule 29.2 emphasise that children living with their parents in prison should never be treated as prisoners.

The rules require that children's developmental and healthcare needs are provided for by child-specific healthcare services, starting from screening on admission and continuing with the children's regular health monitoring. Such services need to be provided by specialists of community healthcare services or at least in close collaboration with community healthcare services.

In order to reduce to a minimum the negative impact of being brought up in a prison, the environment provided for children's upbringing should be as close as possible to conditions outside prison. This would mean that there should be child-friendly nurseries staffed by specialist staff or carers who can take care of the children when they are not with their mothers. The children should have adequate play and exercise facilities. Mothers should be able to spend the maximum possible amount of time with their children and be allowed to breastfeed them in a comfortable environment, as discussed in Module 8.

Measures should be in place to protect children from all forms of physical or psychological abuse in prisons.

### Good Practice: The treatment of pregnant women, breast-feeding mothers and children in prison

In the Correctional Institution for Women in Mandaluyong, the **Philippines**, adequate pre- and post-natal care is provided to pregnant women and women who have given birth. Mothers are accommodated in a specially equipped mother's ward which is attended by clinic staff. The emotional care and support provided to women who have given birth while in prison is highlighted in the research conducted by DIGNITY. The separation of children from their mothers was found to be undertaken with some sensitivity. The efforts of the social worker in assisting women find appropriate carers for the children were praised by a prisoner interviewed by DIGNITY, though the removal of children from their mothers is not based on individual assessments.

*Source: DIGNITY, Baker, J., Rytter, T., Conditions for women in detention, needs, vulnerabilities and good practices, 2014, pp. 81,82*

### Good practice: Crèches and nursery schools for prisoners' and prison officials' children

Prisons in Karnataka state, **India**, have set up crèches and nursery schools attended by children imprisoned with their parents, children of prison officials and children living close to the prison. These joint facilities prevent duplication of provision (one crèche for prisoners' children, another for everyone else) or the creation of crèches with very small numbers of users. The scheme helps to mitigate the problem of children living in prison becoming socially isolated by allowing them to mix with children from the surrounding area. However, crèche supervisors, who include imprisoned mothers, will need to ensure that children from one group (e.g. prisoners' children) are not stigmatized by those from another.

*Source: UNODC Handbook on Women and Imprisonment 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), 2014, p. 86*

## MODULE 10

### SPECIAL CATEGORIES

#### LEARNING OBJECTIVES:

- To understand the special status and needs of women pre-detainees and measures that should be taken to ensure that they are safe and that they are treated in line with their unconvicted status;
- To consider the special vulnerability of girls in prison and their special gender and age specific needs, and review measures that can be taken to respond to such needs;
- To discuss the additional challenges faced by foreign women prisoners and what prison authorities can do to ensure that policies and practices minimise the harmful impact of the language barriers and isolation they experience;
- To consider the gender and culture specific needs of women who are members of minority groups or indigenous peoples and ways in which to ensure that they enjoy the same rights as other women prisoners.

While all women in prison have gender specific needs that are often not met in prison systems worldwide and while they are all vulnerable due to their gender, some groups of women prisoners are particularly vulnerable and have additional needs due to their legal status, age, nationality or minority status.

The Bangkok Rules require that prison authorities develop specific policies to ensure that all women in prison enjoy the same rights. This means that special measures need to be put in place to counterbalance the disadvantages faced by some groups of women, and to ensure that those who are particularly vulnerable are protected, while their additional needs are met.

#### 1. Pre-trial detainees

Women pre-trial detainees make up a significant proportion of prison populations worldwide, including in the ASEAN region. In 2013 the proportion of women in pre-trial detention ranged between 10 per cent and 70 per cent in ASEAN countries for which data is available. Some of these women spend months or even years in prison while they await their trials, during the trial process or await the outcome of their appeals. Their special status and needs are not usually taken into account in prison management policies and strategies. In fact, pre-trial detainees often live in worse conditions and have more restricted rights in comparison to sentenced prisoners, despite the fact that they have not yet been convicted of any crime.

The Mandela Rules contain a series of rules (Rules 111 to 120) which cover the treatment of all pre-trial detainees, including men and women.

The main principle that underpins the treatment of all pre-trial detainees is that they should be presumed innocent and be treated as such. This means that they have additional rights and privileges.



The second most important principle is that they should have access to professional legal assistance from the first day of their detention so that at least one of the fundamental requirements for a fair trial is met.<sup>113</sup>

### **The Mandela Rules**

#### **Rule 119**

1. Every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her.
2. If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.

#### **Rule 120**

1. The entitlements and modalities governing the access of an untried prisoner to his or her legal adviser or legal aid provider for the purpose of his or her defence shall be governed by the same principles as outlined in rule 61.
2. An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider.

The right to have access to legal counsel is set out in the Mandela Rules 61, 119 and 120, as well as the Bangkok Rule 2, which we have reviewed in Modules 2 and 7. The Mandela Rule 119 requires that every untried prisoners be informed about the reasons for his or her detention and that if the untried prisoner does not have his or her lawyer, a legal adviser be assigned to him or her in all cases where the interests of justice so require, and that such legal assistance be free-of-charge if the prisoner cannot afford to pay for a lawyer.

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provide detailed guidance on pre-trial detainees' right to prompt access to legal aid, requiring, among other things, that State authorities "provide every person, on admission to a place of detention, with information on his or her rights in law, the rules of the place of detention and the initial stages of the pretrial process." They require that such information is "provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity".<sup>114</sup> Bar or legal associations and other legal aid providers should be encouraged to offer support to individuals detained, arrested, suspected or accused of, or charged with a criminal offence, and legal aid providers' access to pre-trial detainees should be facilitated.<sup>115</sup>

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<sup>113</sup> International Covenant on Civil and Political Rights (ICCPR), Article 14.3 (b)

<sup>114</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 4, 44 (e)

<sup>115</sup> Ibid., Guideline 4, 44 (f) and (g)

The Bangkok Rule 2 provides that in all cases prison authorities should offer assistance and facilitate newly admitted women prisoners' access to legal counsel. Such assistance should not be limited to the admission period, but be available at any time when a woman requests help. Women, who are often illiterate, lacking confidence and often less aware of their rights in comparison to men, are in particular need of such assistance.

Pre-trial detainees' meetings and correspondence with their legal advisers should take place without delay and must be confidential. If the prisoner does not speak the local language, an interpreter should be provided.

Training should be provided to social workers or other appropriate staff members on the conditions for eligibility for legal aid, and they should assist women in accessing legal aid wherever a woman cannot afford a lawyer herself.<sup>116</sup> Such assistance should also be offered in cases which are particularly urgent or complex or the potential penalty particularly severe notwithstanding the financial means of the woman concerned.<sup>117</sup>

Pre-trial detainees should be housed separately from sentenced prisoners. If they so desire, they can have their food procured from outside and they can wear their own clothes. They should be offered work, but never be obliged to work. They may procure books, newspapers and writing materials from outside and they can be treated by their own doctor and dentist, at their own cost, if they so wish. If pre-trial detainees do not wish to wear their own clothing, procure food or medical services from outside, these should be provided by the prison administration. The clothing pre-trial detainees wear should distinguish them from sentenced prisoners. (Mandela Rules, 111-118)

Given the reality that many pre-trial detainees spend prolonged periods in prison, good prison management principles require that they are not excluded from prisoner activities and programmes, such as education, vocational training and gender-specific programmes.

The Bangkok Rules recognise that women are particularly vulnerable during pre-trial detention, when sexual abuse and other forms of ill-treatment and torture may be used to as a means of coercion to extract confessions. Therefore Rule 56 requires that prison authorities are particularly vigilant in ensuring the policies and practices to protect women, outlined in Module 5, are vigorously applied in the case of women pre-trial detainees.

### **Bangkok Rules**

#### **Rule 56**

The particular risk of abuse that women face in pretrial detention shall be recognized by relevant authorities, which shall adopt appropriate measures in policies and practice to guarantee such women's safety at this time.

Ensuring that pre-trial detention is managed by the Ministry of Justice, together with all prisons in any jurisdiction, provides an additional and important safeguard in this respect, separating the powers that are responsible for investigating criminal offences (e.g. Ministry of Interior) from those who are responsible for keeping prisoners in safe custody (e.g. Ministry of Justice).

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<sup>116</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 3, 20.

<sup>117</sup> Ibid., Principle 3, 21

## 2. Girls

Girls in conflict with the law, referring to female offenders under the age of 18, are children, according to international law and should not be held together with adult prisoners. All children, including girls, should be subject to a separate justice process within a juvenile justice system and their institutionalisation should be avoided to the maximum possible extent. If they must be detained they should be held in juvenile justice institutions which respond to the social reintegration needs of children, designed for the treatment and rehabilitation of this category of prisoners.

However, the reality is that children, especially girls, are held together with adult prisoners in many countries worldwide due to the shortage or lack of appropriate separate institutions that better respond to the needs of children.

Due to their very small numbers in most prison systems, the disadvantages girls face are even more acute than those of adult women or boys. While their numbers are low, the harmful impact of imprisonment on girls' development can be immense if appropriate measures are not taken to address their special needs.

All children in detention are at risk of abuse and have special protection needs due to their age and vulnerability, as recognised by international law. Girls have additional protection needs due to their gender, which are covered by the Bangkok Rules, as well as a number of other international instruments.

### **Convention on the Rights of the Child**

#### **Article 3**

3. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and to this end, shall take all appropriate legislative and administrative measures.

#### **Article 36**

States Parties shall protect the child against all forms of exploitation prejudicial to any aspects of the child's welfare.

#### **Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. ....

.....

- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

....

**United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)<sup>118</sup>**

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

**United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)<sup>119</sup>**

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

**Bangkok Rules**

**Rule 36**

Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.

**United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice<sup>120</sup>**

41. Taking into account the distinctive needs of girls and their vulnerability to gender-based violence, Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments:

- (a) To eliminate the risk of all forms of harassment, violence and discrimination against girls;
- (b) To ensure that the special needs and vulnerabilities of girls are taken into account in decision-making processes;
- (c) To ensure that the dignity of girls is respected and protected during personal searches, which shall only be carried out by female staff who have been properly trained in appropriate searching methods and in accordance with established procedures;
- (d) To implement alternative screening methods, such as scans, to replace strip searches and invasive body searches in order to avoid the harmful psychological and possible physical impact of such searches;
- (e) To adopt and implement clear policies and regulations on the conduct of staff aimed at providing maximum protection for girls deprived of their liberty from any physical or verbal violence, abuse or sexual harassment.

<sup>118</sup> Adopted by General Assembly resolution 40/33 of 29 November 1985

<sup>119</sup> Adopted by General Assembly resolution 45/113, 4 December 1990

<sup>120</sup> Adopted by the General Assembly resolution 69/194 on 18 December 2014

Special measures should be put in place to ensure that girl prisoners' safety is protected at all times. They should be separated from boys and adult women prisoners, as they may be abused by either of these categories of prisoners.

In practice many prison systems in the ASEAN region do not have the space and facilities to totally separate girls from adult women and such separation may amount to isolation when the number of girls is very small. In such circumstances prison authorities should ensure, at the very least, that adult women are separated according to security risk and those who pose any risk to the safety of girls are strictly separated from them.

The rule that requires female prisoners to be supervised by female staff should be vigorously applied in the case of girls, as girls are extremely vulnerable to abuse by male staff. Where a policy of mixed gender staffing has been applied in prisons where girls are held serious abuses have been reported.

Staff responsible for the supervision and care of children, including girls, should be very carefully selected on the basis of professional capacity, integrity, ability and personal suitability.<sup>121</sup> Individuals who have been convicted of a criminal offence against a child should not be eligible to work in prisons where children are held.<sup>122</sup> Staff should receive special training on the supervision and care of children, including specifically girls.

#### **Convention on the Rights of the Child**

##### **Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

..

#### **United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules")**

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

#### **The Bangkok Rules**

##### **Rule 37**

Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.

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<sup>121</sup> United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, para. 40 (a)

<sup>122</sup> Ibid., para. 40 (b)

**Rule 38**

Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.

Central to prison management policies and strategies relating to the treatment of all children in detention should be their rehabilitation and social reintegration. If children are held in prison, the environment in which they are accommodated should promote their mental and physical wellbeing and offer opportunities for them to continue their education, participate in vocational training programmes and access healthcare services appropriate to their age. Children should have maximum possible contact with their families and the outside world.

Girls should have the same level of access to education and vocational training as boys and girls in the community. Their education should meet the requirements of their age, follow the national curriculum and lead to nationally recognised certificates.

Girls should have access to gender specific programmes such as those that address history of victimisation, counselling for sexual violence and abuse, education on reproductive and sexual healthcare. Many girls in prison have a history of abuse and are in need of professional assistance from specialists in child psychology. For all girls prisons may provide a good opportunity to raise their awareness and knowledge about reproductive and sexual health issues, as many are likely to have little knowledge in this field, including on how to protect themselves against STIs, including HIV.

Girls should have regular access to gynaecologists, similar to adult female prisoners.

**Bangkok Rule 39**

Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

Some girls in prison may be pregnant and need access to the same level of pre- and post-natal care as adult female prisoners, and their children also have the right to the same level of care as the children of adult women. In addition, the health of girls who are pregnant should be monitored even more closely than adult women, due to their age and greater risk of health complications.

*See United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) and United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, for further guidance on the treatment of children, including girls and boys, in detention.*

**4. Foreign nationals**

Foreign national women make up a large proportion of the women prisoner population in many countries worldwide, including in some countries in the ASEAN region. In at least two countries in the region where individuals may be imprisoned for breaching immigration laws, the proportions are particularly high.

Foreign national women face additional challenges in prison due to: language barriers; isolation from families, friends and social networks; their consequent lack of access to finances and additional food or hygiene materials; lack of knowledge about the laws in the country of imprisonment; particular difficulties in accessing legal counsel due to lack of families and relations who may help them; and challenges in accessing healthcare due to lack of national insurance coverage.

The challenges faced by foreign national prisoners in East Asia-Pacific region were highlighted during a regional meeting held in Bangkok in February 2013. One particular difficulty faced by foreign national prisoners was identified as isolation, in particular in those cases where they did not have an embassy in the country of imprisonment. For example, this may mean that the families of foreign national prisoners face immense challenges in sending them money.<sup>123</sup> In addition, foreign national prisoners may be unable to take part in vocational training, education and other rehabilitation programmes due to language barriers. In some countries they may be barred from prison work due to the lack of a work permit.

According to international law prison authorities should inform foreign nationals of their right to communicate with their consular representatives immediately on admission and if the prisoner so wishes inform their consular representatives without delay.<sup>124</sup> Consular officers have the right to visit the foreign national prisoner in prison, to converse and correspond with him or her and to arrange for legal representation, provided that the prisoner so wishes.<sup>125</sup>

Bangkok Rule 2 requires that prison authorities provide foreign national women access to consular representatives on admission, as well as information about prison rules and the regime in a language that they understand.

The Mandela Rules require that foreign nationals are allowed facilities to communicate with their diplomatic and consular representatives.<sup>126</sup> Prisoners who are nationals of states without diplomatic or consular representation in the country and refugees or stateless persons must be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or any national or international authority whose task it is to protect such persons.<sup>127</sup>

As regards access to legal counsel, if the prisoner does not speak the local language, the prison administration must facilitate access to the services of an independent competent interpreter.<sup>128</sup>

During disciplinary hearings, if a prisoner does not understand or speak the language used, they must be assisted by a competent interpreter free of charge.<sup>129</sup>

Foreign national women should be able to practice their religion in prison.<sup>130</sup> If there are a sufficient number of women with the same religion who wish to have access to a qualified representative of their religion, this wish should be granted and, as far as possible, such access should be facilitated on

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<sup>123</sup>UNODC/TIJ, East Asia-Pacific Regional Meeting on the Implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Bangkok, 19-21 February 2013, UNODC/JSDO/BKEGM/2013/1, 14 March 2013, para. 77

<sup>124</sup> Vienna Convention on Consular Relations (1963), Article 36

<sup>125</sup> Ibid.

<sup>126</sup> Mandela Rule 62.1

<sup>127</sup> Mandela Rule 62.2

<sup>128</sup> Mandela Rule 61.2

<sup>129</sup> Mandela Rule 41.3

<sup>130</sup> Mandela Rule 66

a full-time basis.<sup>131</sup> Enabling women to practice their religion means that prison authorities need to provide appropriate facilities for this purpose and allow time and flexibility in the prison regime for them to fulfil the precepts of their religion. They should also provide for any special dietary and hygiene requirements.

Bangkok Rule 26 provides that “where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes”. While this provision does not specifically refer to foreign prisoners, it is clearly applicable to them as well. We have seen in Module 7 how disadvantages faced by women with regards to their contact with the outside world may be counterbalanced by being flexible and applying special measures.

Foreign national prisoners should be informed of the possibility of seeking transfer to serve their sentence in their country of nationality, subject to bi-lateral agreements and the consent of the States involved.<sup>132</sup>

Bangkok Rule 53 encourages the voluntary transfer of women prisoners to their home countries, especially if they have children in their home countries and provides that where a child living with a non-resident foreign national is to be removed from prison consideration should be given to relocating the child to its home country, taking into account the child’s best interests.

**Bangkok 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.

Thus, where bilateral transfer agreements are in place, prison staff need to explain to prisoners the implications of a transfer to their home countries and assist with the process, based on the voluntary participation of the prisoners themselves. Where a child has been living with its mother in prison and is to be removed from prison, prison authorities should consider relocating the child to his or her home country, following discussions with the mother and liaison with consular officials, if the mother wishes the child to be transferred to his or her home country (e.g. where the family of the mother can look after the child).

Prison staff can do a lot to help reduce the isolation experienced by foreign national prisoners by compensating for the various disadvantages they face, with reference to Rule 26 of the Bangkok Rules, as well as introducing specific measures to implement other provisions of the Bangkok Rules and the Mandela Rules referred to above.

The following are a list of some measures that may be taken to mitigate the disadvantages faced by foreign national women:

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<sup>131</sup> Mandela Rule 65

<sup>132</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 6, para. 47 (d)



- Ensuring that all information regarding prisoners' rights and obligations and the prison regime is made available to foreign national women in a language that they can understand;
- Assisting foreign national prisoners' access to legal assistance;
- Informing foreign national prisoners of the possibility of seeking transfer to serve their sentence in their own country, subject to bi-lateral agreements and the consent of the States involved.
- Encouraging the voluntary transfer of women prisoners to their home countries, especially if they have children in their home countries.
- Ensuring that, when a child living with a non-resident foreign national is to be removed from prison, consideration is given to relocating the child to its home country, taking into account the child's best interests.
- Introducing flexibility to the rules relating to contact with the outside world (e.g. rights to more telephone calls and letters) and establishing long-distance means of communication, such as skype and video links;
- Putting in place practical measures to assist families to send money to women prisoners from abroad;
- Making efforts to enable foreign women prisoners' access to the same healthcare services as other women in prison. This may include agreements with hospitals and cooperation with other healthcare services in the community, among others;
- Making efforts to ensure that prison libraries contain books and periodicals in foreign languages most commonly spoken in the prison;
- Offering language courses to enable foreign prisoners to learn the local language.
- Taking measures to facilitate the participation of foreign national prisoners in activities and programmes, for example, with the assistance of prisoners of the same nationality who speak the local language and in cooperation with NGOs who work with foreign national prisoners.

## **5. Minorities and indigenous peoples**

The number and proportion of women from ethnic and minority groups is growing in prisons in many prison systems worldwide. International experience shows that women from indigenous and minority groups may be particularly vulnerable in prisons. Their minority status will often be accompanied by lower socio-economic circumstances and low confidence and self-esteem. In addition, indigenous women are often imprisoned particularly far away from their homes and communities, and consequently receive few visits from their families. Some women who belong to this category may not speak the main language of the country of imprisonment, which means that they face further isolation in prison, similar to foreign national women. Many will have different religious beliefs to the majority prison population. Such women will often need special programmes that address both their gender specific needs as well as their cultural, spiritual and religious requirements. In addition, similar to foreign national women, they will need assistance with interpretation and access to all information relating to their imprisonment in a language that they can understand.

The Bangkok Rules include specific rules that require prison authorities to recognise the distinctive needs of women who are members of minority groups or indigenous peoples and the multiple forms of discrimination they may face in prison, and to enable their access to gender and culture-relevant programmes and services, in consultation with the prisoners themselves and the relevant groups in the community. Such considerations should also apply to pre- and post-release support services.

### **The Bangkok Rules**

#### **Rule 54**

Prison authorities shall recognize that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programmes and services. Accordingly, prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups.

#### **Rule 55**

Pre- and post-release services shall be reviewed to ensure that they are appropriate and accessible to indigenous women prisoners and to women prisoners from ethnic and racial groups, in consultation with the relevant groups.

Depending on available resources, the prison authorities may take a number of measures to counter-balance the disadvantages faced by these groups of women and to assist with their social reintegration. For example:

- In countries where certain ethnic and racial minority groups and indigenous peoples form a significant proportion of the prison population, prison authorities may make efforts to employ staff who are members of these groups, to foster trust and understanding between staff and prisoners from such groups;
- Many minority and indigenous women will have low education and minimal job skills. They should be encouraged to participate in education and vocational skills training programmes;
- Prison authorities should consult with the women concerned and, where available, with community groups that work with women, to develop activities and programmes that meet the special gender and culture specific needs of these groups. The collaboration with community groups in the development and delivery of programmes will be of special benefit for the women in prison, easing their sense of isolation and distress;
- Where indigenous and minority women prisoners are located far away from their homes and do not receive frequent visits from their families due to the costs involved, prison authorities may introduce flexibility to visiting rules by allowing the families to stay for a longer period when they do visit and they may also increase the telephone calls allowed to such groups of women to compensate;
- As with foreign national prisoners, the religious needs of such women should be met, with facilities and time provided to them to enable them to practice their religion in prison. Where they have special dietary or hygiene requirements these should also be provided for.

## 6. Other groups

There are other groups of women prisoners who face additional discrimination and challenges in the prison environment and who may be vulnerable to abuse by both staff and prisoners, on the basis of their age, disability and sexual orientation.

Older prisoners and prisoners with disabilities need special facilities and assistance in terms of their accommodation, access to sanitary facilities, education and rehabilitation programmes. They also have special healthcare needs corresponding to their age and nature of their disability. Prisoners with disabilities, especially, are at risk of abuse by staff and other prisoners and have special protection requirements.

Lesbian and transgender prisoners can face immense discrimination in prisons, which can be more intense and harmful than what they will have experienced in the outside world. Lesbian women may be isolated from other prisoners not on the basis of an objective risk assessment, but with the mistaken belief that they pose a risk to others merely on the basis of their sexual orientation. They may be held in inferior conditions, be subjected to unfair disciplinary sanctions and face other forms of discrimination by the prison administration. Male to female transgender prisoners are extremely vulnerable, as they may be accommodated with men, on the basis of their birth gender, paving the way to sexual abuse and rape. If they complain to prison staff or higher authorities they may receive little attention or it may be alleged that the act was consensual. They may be subjected to frequent strip searches without justification.

All of these groups have special needs, including psycho-social support requirements, due to the challenges associated with their status and the discrimination they face in prison.

Prison authorities need to develop policies and strategies to ensure that these groups, and others, are not discriminated against in any way in the implementation of prison rules and regulations and that their special needs are provided for, so that they are able to enjoy the same rights as other prisoners in practice. The Mandela Rule 2 is one of the key principles that underlies the treatment of all prisoners, which should be vigorously applied in all prisons, including women's prisons.

### **Mandela Rule 2**

1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.
2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

For more guidance on prison management policies relating to these and other groups of prisoners with special needs, both male and female, see *UNODC Handbook on Prisoners with Special Needs, 2009*.

## MODULE 11

### PREPARATION FOR RELEASE

#### LEARNING OBJECTIVES

- To consider the key importance of policies and programmes focusing on women prisoners' preparation for release, in their successful social reintegration;
- To understand the fundamental role of maintaining family links in women prisoners successful social reintegration;
- To review the essential place of community services, probation services and NGOs in assisting with women prisoners' transition to life at liberty and the need to coordinate with such services and agencies during women's preparation for release to ensure a continuum of care following release.

One of the most neglected aspects of the social reintegration of all prisoners, including women prisoners, is their preparation for release. All prisoners face immense challenges in adapting to life after prison, especially if they have served long sentences and if their links with their families have been disrupted. They often face barriers to finding work due to their criminal record. Difficulties are further exacerbated if prisoners have not improved their education and/or job skills in prison, and if they have substance dependencies which have not been treated during their period of imprisonment. Women prisoners face additional challenges due to their gender. They are often abandoned by their spouses or families, which means they will have lost crucial family support following release. They encounter particular stigma because of their imprisonment in many communities, which exacerbates difficulties faced in finding employment or accommodation. If they had children outside prison, they will have to re-establish and strengthen their relationship again, which can be extremely difficult and painful. A large number of women have substance dependencies and mental health problems, which, if untreated in prison, will significantly worsen challenges faced on release.

The Mandela Rules call on prison authorities to pay special attention to maintaining and improving prisoners' links with their families.<sup>133</sup> They provide that, from the beginning of their sentence prisoners' links with relevant persons or agencies outside the prison be promoted.<sup>134</sup> They require that agencies responsible for assisting with the post-release support requirements of prisoners have access to prisons and be involved in developing plans for the social reintegration of prisoners, from the beginning of their sentences.<sup>135</sup> Ideally the activities of all such agencies should be centralised and coordinated to ensure the best outcome of efforts.<sup>136</sup>

The Bangkok Rules 43 to 47 cover the social relations and aftercare of women prisoners. These rules emphasise the importance of enabling women prisoners to maintain social relations, in particular with their families, placing responsibility on prison authorities to encourage and, where possible, facilitate visits to women prisoners, having consulted the prisoners as to who is allowed to visit them.

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<sup>133</sup> Mandela Rule 106

<sup>134</sup> Mandela Rule 107

<sup>135</sup> Mandela Rule 108.2

<sup>136</sup> Mandela Rule 108.3

### **The Bangkok Rules**

#### **Rule 43**

Prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration.

#### **Rule 44**

In view of women prisoners' disproportionate experience of domestic violence, they shall be properly consulted as to who, including which family members, is allowed to visit them.

The Bangkok Rules also encourage prison authorities to utilise options such as home leave, open prisons, halfway houses and community based programmes to ease women's transition from prison to liberty.

#### **Bangkok Rule 45**

Prison authorities shall utilize options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.

They also require that prison authorities design and implement comprehensive pre- and post-release reintegration programmes, which take into account the gender-specific needs of women, in cooperation with probation and/or social welfare services and organisations of civil society.

#### **Bangkok Rule 46**

Prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organizations, shall design and implement comprehensive pre- and post-release reintegration programmes which take into account the gender-specific needs of women.

Some of the key measures that can be taken to enable prisoners' preparation for release do not require substantial additional resources.

The first of these is enabling prisoners to establish and maintain family links. Prisoners have a significantly higher prospect of leading positive and crime-free lives following release if they have a family to support and encourage them and give them a reason to put additional effort into rebuilding a new life following release. Thus, topics discussed in Module 7 are extremely relevant in this context.

**Good practice: Home leave and conjugal visits in Guatemala and Albania**

The main prisons for women in Albania and Guatemala allow both conjugal visits, and home leave towards the end of prisoners' sentences. The former allow women to maintain intimacy in their relationships, which contributes greatly to their wellbeing, and family life. The latter helps inmates to acclimatise to the outside world and begin to prepare the life that will await them on release, from their relationships with family, to job opportunities, child care and housing. In Albania women in their final years of sentence accrue up to five days of leave, four times in a year, with good behaviour. Other outside visits can be permitted for special events, emergencies and medical treatment. Yet some discrimination is still encountered in women's access to conjugal visits in Guatemala where this right was found to be different and more restricted, compared to men.

*Source: DIGNITY (Danish Institute Against Torture), Baker, J., Rytter, T., Conditions for Women in Detention, Needs, vulnerabilities and good practices, 2014, p. 108*

The second of these measures relates to the rehabilitation programmes provided to prisoners during their imprisonment and the relevance of these programmes to individual needs. Again international research shows that both education and increasing chances of employability following release (e.g. with vocational training that is relevant to market needs) increase prisoners' prospects of social reintegration very significantly. In addition providing appropriate treatment for substance dependencies, mental healthcare needs and gender specific needs, such as those that relate to victimisation, ensures that women who are released from prison are stronger and more able to face the challenges ahead. Their risk of returning to drug use is also thereby reduced, though it is also important to provide follow up in the community for any substance dependence treatment or mental health support programme that the women may have participated in prison, to ensure continuity of care.

Ensuring that relevant agencies of the community and non-governmental organisations working on prisoner welfare issues access prisons from the beginning of a prisoner's sentence is also an important pre-requisite for prisoners' social reintegration. Such services and organisations of the community may not only help prisoners with their rehabilitation during imprisonment, but also assist them following release. Probation services, where they exist, have a key role to play in the preparation for release and post-release support of all prisoners, including women prisoners. However, where probation services are not available or are under-resourced and unable to fulfil their responsibilities effectively, appropriate non-governmental organisations and other services in the community may help fill the gap.

Allowing women prisoners to go on home leave on a regular basis during the last part of their sentence, so that they can gradually adjust to life outside prison and re-establish or strengthen their relationships with their families is also an important component of preparation for release programmes and policies.

**Good practice: Preparation for release in Singapore**

In Singapore all prisoners participate in programmes to prepare them for release in the final phase of their imprisonment. Programmes during this phase focus on equipping prisoners with knowledge and skills necessary for living in the community such as financial management and job seeking skills. Prisoners are also provided with information and referral services in the community. Selected prisoners may undergo, 'halfway-care' programmes following release. Prisoners on such programmes continue to be supervised and supported. They work outside prisons while residing in their own homes, halfway houses or a work release camp, although it is noted that, compared to male offenders, the options for women offenders are much more limited with respect to halfway houses and work camps.

All former prisoners who are placed on community based programmes following release are assigned a reintegration officer who plays the role of enforcer and case manager. An aftercare service is offered to all released prisoners during the period immediately following release. During this period ex-prisoners are provided with support to reintegrate into the community. The CARE network is reported to coordinate and improve the effectiveness of efforts made by many agencies to improve the reintegration of former prisoners.

*Source: Mien, Goh Chin, 'Treatment of Female Offenders in Singapore', 153<sup>rd</sup> International Senior Seminar, 9 January to 8 February 2013, Participants' Papers, UNAFEI, p. 168*

**Good practice: Preparation for release in Malaysia**

In Malaysia prison authorities cooperate with private businesses in providing prisoners (both men and women) work in prisons, within a joint venture scheme. A condition for collaboration with the private sector is for the businesses to be operating outside prison as well, so that they can offer suitable candidates work on release. Prison authorities assess prisoners' characteristics and suitability for employment during their imprisonment and share this with potential employers.

Prison staff also work as parole officers and during the final stage of prisoners' sentences they collaborate closely with employment agencies which can offer jobs to prisoners. Employment agencies are invited to prison to explain the available job opportunities and application procedures to prisoners.

In addition, half-way houses have been established where prisoners can stay after release until they can find permanent accommodation.

*Source: Prison Department of Malaysia, Expert Group Meeting on the Training Modules for Correctional Staff and Training of Trainers on the Management of Women Prisoners in the ASEAN Region, Bangkok, Thailand, 8-9 October 2015.*

**Promising practice: preparation for release in the Philippines**

An external relations division has been established in the Correctional Institution for Women to assist prisoners with their life after release. The plan is to assess each prisoner prior to their

release for their risk of reoffending, to establish whether they have sufficient outside support, as well as documents and certificates to help them find housing and employment following release. The prison administration has developed cooperation with relevant agencies and organisations in the community to help released women prisoners with finding employment.

*Source: Superintendent, Correctional Institution for Women, Expert Group Meeting on the Training Modules for Correctional Staff and Training of Trainers on the Management of Women Prisoners in the ASEAN Region, Bangkok, Thailand, 8-9 October 2015*

Towards the end of a prisoner's sentence prison authorities should take additional measures to ease women prisoners' transition from prison to life at liberty. The following measures are recommended:

- Women's links with their families should be increased during the last period of imprisonment to assist with re-unification. This may be achieved by granting more and longer visiting rights and allowing prisoners to go on home leave from time to time to gradually adjust to life outside prison. Such measures are particularly important for women who have served long sentences and who are likely to have become institutionalised.
- Where they are available, half-way houses may be utilised so that women are transferred to these facilities some months prior to their release, to help them get used living in the community.
- Women prisoners should be transferred to open prisons, where they exist, or at least to prisons with the lowest security level to ensure a gradual re-entry into the community.
- At the time of their release women should be provided with clear and comprehensive information, in a language they understand, about the support that they can receive in the community, with the contact details of services that may assist them in the community – such as housing, healthcare and social services and legal aid services. Individual women who need further assistance in the community should be referred directly to the relevant services.
- If a woman has been treated for substance dependence or mental illness in prison, prison authorities should coordinate with healthcare services in the community to ensure follow-up and/or monitoring. Where healthcare services are under-resourced and unable to perform such duties, cooperation may be established with relevant civil society organisations who assist women with substance dependencies and mental healthcare needs.
- Prisoners should, in all cases, be provided with copies of their healthcare records, so that they can themselves ensure continuity of care when they seek further medical assistance in the community at a future date.
- Women should be provided, as a minimum, with enough financial assistance to travel to their place of social reintegration. Where it is not possible to help all women with their transport, poor and vulnerable women should be prioritised.
- Prison services should also coordinate with relevant NGOs or safe houses to assist women who have been victims of domestic violence or other forms of abuse in the community. Efforts should be made in coordination to ensure that the best possible solution is found for the future of such women and that they do not have to return to the same house or community where they have experienced violence.
- Victims of human trafficking should receive special assistance.<sup>137</sup> Their safety may be at considerable risk following release. Cooperation should be established with relevant services in the community, NGOs and safe houses to ensure their protection and safe resettlement following release.

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<sup>137</sup> See footnote 108 for comment on the imprisonment of victims of human trafficking.



## MODULE 12

### WORKING WITH WOMEN PRISONERS: PRISON STAFF

#### Learning Objectives

- To highlight the key role staff play in managing prisons in a gender sensitive manner and their contribution to the social reintegration of women prisoners;
- To consider how women prison staff may be discriminated against, how they can achieve equality with male prison staff and why this improves staff morale and performance;
- To review the key role recruitment, selection and training of prison staff plays in the proper management of women's prisons and the social reintegration of women prisoners;
- To understand the importance of staff training on gender specific issues, women's human rights, basic healthcare, child healthcare and development, and the prevention and management of HIV/AIDS in the treatment of women prisoners.

Prison managers and staff play the most important role in ensuring that prisons are managed in a just and humane manner, conducive to prisoners' social reintegration. Well trained, professional staff who can maintain a secure and safe prison, who interact with women prisoners in a positive manner and assists them, as far as possible, in their rehabilitation are key to the implementation of the Bangkok Rules and the successful social reintegration of women prisoners.

In Module 5 we discussed how important it is for women prisoners to be managed by women staff. This is required by the Mandela Rules and the Bangkok Rules and is one of the most important prerequisites for women prisoners' safety and their feeling of safety. Being and feeling safe is fundamental for women prisoners' mental wellbeing, in the absence of which rehabilitation programmes can do little to assist them in their progress towards social reintegration following release. In addition women staff are in a much better position than men to understand the gender specific needs of women prisoners and to be able form positive and non-exploitative relationships with them.

The Mandela Rules provide detailed guidance on the qualities, recruitment and training of institutional personnel, men and women. They stress the importance of the careful selection of staff, seeking specific qualities such as integrity, humanity, professional capacity and personal suitability.<sup>138</sup> They state that prison staff should have civil service status and be employed on a full-time basis, with adequate salaries and benefits, reflecting the exacting nature of their responsibilities.<sup>139</sup> Prison staff must have an adequate level of education, and they must receive initial training prior to entering the prison service and in service training after they enter the prison service, to improve their capacities and professionalism.<sup>140</sup> Training components that are required as a minimum are outlined in Rule 76 of the Mandela Rules.

<sup>138</sup> Mandela Rule 74.1

<sup>139</sup> Mandela Rule 74.3

<sup>140</sup> Mandela Rule 75

The rules require that prison staff include a sufficient number of specialist staff, employed on a full-time basis, which may be supplemented by voluntary work.<sup>141</sup> The prison director should be adequately qualified and devote his or her entire working day to his or her duties as a prison director.<sup>142</sup> Prison staff should not use force against prisoners, except, if absolutely necessary, in self-defence or in cases of attempted escape or active or passive physical resistance. The force used in such exceptional circumstances should never be more than strictly necessary and must be reported immediately to the prison director.<sup>143</sup> Prison staff who have direct contact with prisoners should not be armed.<sup>144</sup>

The Bangkok Rules supplement these rules with special focus on women staff, taking into account the particular challenges and discrimination they face working in the prison system, as well as the particular skills they should have in working with women prisoners.

Women staff may be discriminated against in accessing training or being promoted to senior positions in the male dominated, hierarchical prison environment. They may face harassment, including sexual harassment, by their male counterparts. Many women staff have to balance family demands with their work responsibilities which exacerbates the stress of their working conditions and environment.

In the countries of the ASEAN region the challenges staff face include acute overcrowding in prisons, shortage of staff and especially the shortage of specialist staff. The shortage of staff means that existing staff have to work long hours to compensate. Sometimes specialist staff are required to carry out security related duties, resulting in much less time for them to carry out their main responsibilities. Such stressful working conditions are often coupled with low salaries and inadequate benefits, leading to job dissatisfaction and rapid staff turnover.

In addition, many staff working with women prisoners do not receive specific training on the needs of women prisoners and the principles of gender sensitive management.

The Bangkok Rules recognise these realities and put forward provisions (Rules 29 – 35) that aim to reduce and eliminate the discrimination faced by women prison staff. They provide for the improvement of women staff's capacity to perform their duties professionally and in a manner that improves their job satisfaction as well as the care and treatment of women prisoners.

### **The Bangkok Rules**

#### **Rule 29**

Capacity-building for staff employed in women's prisons shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities. Capacity-building measures for women staff shall also include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners.

#### **Rule 30**

There shall be a clear and sustained commitment at the managerial level in prison administrations to prevent and address gender-based discrimination against women staff.

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<sup>141</sup> Mandela Rule 78

<sup>142</sup> Mandela Rule 79

<sup>143</sup> Mandela Rule 82.1

<sup>144</sup> Mandela Rule 82.3

## **1. Recruitment and selection**

The proper recruitment and selection of staff is the starting point to ensure that the right people are appointed to carry out the demanding and often challenging task of working with women prisoners. Clear recruitment policies and procedures need to be in place, which ensure that the process is impartial and transparent, and aim to attract the most suitable candidates to work with women prisoners.

The principles concerning recruitment and selection should be seen as being broadly applicable not only to recruitment and selection for initial entry at basic level but also to recruitment and selection for other posts within the prison service.

For assistance with decisions on acceptance or rejection, job descriptions should be used in recruitment procedures. Job descriptions should clearly and concretely describe the aims, duties and responsibilities attached to the work to be undertaken. The conditions of employment, including some account of promotion possibilities, should also be clearly set out.

In order to attract suitable applicants, recruitment needs and necessary qualifications should be well-publicised.

In addition to having the required level of education, good character and suitable qualifying experience, applicants should have a flexible and stable personality, be manifestly motivated for the work they are seeking, have the qualities necessary for forming good human relationships and be motivated to learn.

The body responsible for deciding on acceptance or rejection should be composed of persons with a range of relevant experience. It should work with impartiality.

Whatever the instruments used to assess personality characteristics, care should be taken to ensure that the measuring instruments are unbiased and validated.

Recruitment and selection to higher grades should be based on practical professional experience, allied to managerial potential. In the interest of developing an effective service or services, recruitment and selection for the higher grades should take account of the need to provide career opportunities, as well as to develop new approaches and special skills.

It is of great importance that only women staff are employed both for regular staff positions in women's prisons, as well as for managerial positions, with responsibility to develop policies and strategies relating to the treatment of women prisoners, since women are much better placed to develop management policies that reflect a gender-sensitive prison management approach, as required by the Bangkok Rules.

In most countries of the ASEAN region both female and male staff are recruited to work in prisons where women are held, which is not compliant with the Bangkok Rules, although in most countries male staff do not have first-line supervisory roles. In some countries of the region there is a much higher number of male staff than female staff employed in women's prisons. This is not conducive to a gender-sensitive prison management approach and puts women prisoners' safety, or at the very least their feelings of safety, at risk, taking into account that a significant proportion of women prisoners will have experienced various forms of gender-based violence in their lives.

It is of great importance that policies are adopted in these countries to attract women to work in the prison service with responsibility for the management and supervision of women prisoners, to gradually replace male staff, as they retire, leave or are transferred to other duties, working with male prisoners.

Effective and fair recruitment and selection policies and procedures require commitment at the most senior levels of the prison system, supported by appropriate prison policies, specifically those which relate to staff recruitment, training and promotion.

## **2. Capacity building**

An important element of eliminating discrimination against women staff is to ensure that they have equal access to training as male staff. Such training should include all the topics covered in this handbook, administrative and operational aspects of prison management and other specialised training relating to specific responsibilities.

Gender sensitivity and the prohibition of discrimination and sexual harassment are important elements of such training. In prison systems where male staff are employed in women's prisons training on the prohibition of discrimination and sexual harassment is all the more important.

### **Bangkok Rule 32**

Women prison staff shall receive equal access to training as male staff, and all staff involved in the management of women's prisons shall receive training on gender sensitivity and prohibition of discrimination and sexual harassment.

Special attention should be paid to Rule 31 of the Bangkok Rules which prohibits the use of physical and verbal violence against women prisoners.

### **Bangkok Rule 31**

Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.

Initial training programmes should combine the theoretical and practical aspects that have a bearing upon the individual's duties and functions, and the organisation and functioning of the service. In consequence, the duration of the training should be sufficiently long to achieve these outcomes.

### **Bangkok 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.

In line with the whole-prison approach which is reflected in the Bangkok Rules, basic training should be provided for prison staff working in women's prisons on the main issues relating to women's health, first aid and basic medicine.

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.

These requirements of the Bangkok Rules is based on the reality that prison staff are typically the first responders to prisoners' and/or their children's health problems, including in emergencies, when prisoners or their children may be harmed and need immediate attention. In many systems prison medical specialists will not be readily available to respond in such circumstances. Training of prison staff on basic health care relevant to women and children and how to apply first aid in emergency situations is therefore important to ensure that women and children receive immediate basic health care and are referred to specialists by prison staff without delay, as necessary.

The training of staff working in women's prisons should include capacity-building programmes on HIV prevention and care. They should receive information, education and training to enable them to carry out their duties in a healthy and safe manner. They should be fully aware of the means of transmission and prevention of HIV and be in a position to respond to any queries or concerns expressed by prisoners.

### **The Bangkok Rules**

#### **Rule 34**

Capacity-building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, shall also be part of the curriculum.

#### **Rule 35**

Prison staff shall be trained to detect mental health-care needs and risk of self-harm and suicide among women prisoners and to offer assistance by providing support and referring such cases to specialists.

Prison staff should have access to confidential testing for HIV, with pre- and post- test counselling.

Taking into account the high level of mental distress and psycho-social support needs among women prisoners, prison staff working with women prisoners should receive special training to detect those who are in need of support in order to refer such cases to specialists, as necessary. Awareness of particular times of mental distress, as discussed in Module 4, is important too, so that empathy and support can be offered to the women prisoners at such times.

Continued training should seek to enable staff to achieve constant improvement and thereby promote increased professionalism. This training should ordinarily lead to a nationally recognised qualification in a particular subject or subjects. Such training should be conducted in conjunction with specialised bodies external to the prison service. The training of women staff should aim to empower them within the prison service in order for them to take up senior positions.

As a general rule, such training should be arranged in consultation with the persons concerned. The content of continued training should be targeted as far as possible, taking into account any work-related needs expressed by the staff. Procedures which allow the expression of these needs should be devised in consultation with the staff.

In order to secure a high quality of service, continued training should include programmes undertaken in common with different categories of staff, regardless of grade or function, to improve collaboration between these categories within the service(s) concerned. The programmes should, therefore, seek to familiarise staff with work carried out in multi-disciplinary teams.

### **3. Protecting women staff from abuse and sexual harassment**

In the male dominated prison system women staff may not only face discrimination but also sexual harassment and abuse. Recognising this reality, Rule 32 of the Bangkok Rules, quoted earlier, requires that staff receive training on the prohibition of discrimination and sexual harassment. Such training is important for both male and female staff, as women must be made aware of the different types of sexual harassment that they may face and be able to recognise certain behaviour as such. They should also have access to procedures that enable them to make complaints without fear of retaliation and seek redress when they have been subjected to any form of sexual harassment or abuse.

Sexual harassment against women staff may take different forms. It may be of an overt and direct nature or less easy to detect.

For example, a senior male staff member may tell a woman that she will be fired or confront other negative consequences (such as being deprived of salary increases, promotions, certain shifts or work assignments) if she does not perform a sexual favour for them. This is a very clear form of gender-based abuse, whether or not the woman complies.

More frequently sexual harassment is more subtle and may not even be easy to define. Most commonly it involves the creation of an antagonistic environment, expressed in sexual terms. This might include statements of a sexual nature expressed by male colleagues, comments made about a woman's appearance, staring in a suggestive manner or inappropriate touching. In other words, it can be any form of sexually inappropriate behaviour that makes being at work feel uncomfortable. So, although a woman staff member may wish to be promoted to a more senior position the creation of a hostile environment in which she is harassed and not welcomed might keep her away.

By equating a woman's worth with her looks or stereotypical qualities associated with the female gender, treating her as incapable of doing equal work as her male colleagues, men show women that they are not welcome in traditionally male-dominated fields.

Women staff who confront such situations at work will experience extreme distress, frustration and stress. It may discourage them from trying to advance in their work and prompt them to seek other employment.

Prison administrations should make clear their commitment to eliminating discrimination and sexual harassment against women in the prison service. There should be clear policies in place which aim to protect women staff from gender-based harassment, including disciplinary sanctions in case of such actions. Such policies should be very clear to all staff and included in staff trainings.

There should be effective complaints procedures in place for women to bring their situation to the attention of senior staff, without fear of retaliation. Women staff should also have other avenues open to them, such as complaints to other competent authorities and independent inspectors.

### **4. Working conditions and remuneration**

The conditions of work and pay should permit suitable staff to be recruited and retained, and enable staff to carry out their functions correctly and develop their awareness of professional responsibilities.

Management at all levels should strive to prevent working conditions likely to give rise to stress among the staff, by making suitable arrangements for physical safety, reasonable working hours, open communication and a psychologically supportive climate in each work unit.

Measures should be taken by policymakers to attract more female specialist staff, such as healthcare staff and social workers, to work in women's prisons, with benefits being offered to compensate for

the challenging nature of the work and conditions, and flexibility in working hours to provide for women's family responsibilities.

Working hours and shifts should be arranged in a way that is flexible and enables women staff with dependent children to attend to their children's needs. Where possible a crèche should be available in prisons for the small children of women staff who do not have alternative care arrangements for their children during their working hours.

Given the stressful and demanding nature of their duties, staff should have access to psychological counselling, when in need. Where staff have been exposed to traumatic incidents in the course of duty, they should be offered immediate assistance in the form of debriefing sessions followed, if necessary, by personal counselling and any other necessary long-term measures.

Staff welfare policies should be instituted to provide help to staff with personal and private problems likely to affect their work. Full information should be made available to staff about the nature of the help which can be offered.

Staff should be provided with decent facilities. Wherever possible, they should have rest rooms, somewhere to buy and eat food, access to sport halls and the library. It is the government's responsibility to ensure good working conditions. That means appropriate buildings in acceptable repair, good atmosphere and safe conditions must be provided to prison staff.

Staff should have a contract in which their duties are described and the number of working hours is clear.

Their income from the prison service should enable staff to enjoy a reasonable standard of living, without having to take on extra work. There should be no discrimination against women in this respect. Good pay is important for a number of reasons. Well-paid staff will function better, which will in turn reduce tension and resistance, and ultimately prisoners will follow regime rules. A further aspect of good pay is that it prevents staff from being vulnerable to bribes. Corruption in an establishment promotes lawlessness, injustice, fear, uncertainty, insecurity, revolt, and endangers lives. Ultimately, no-one stands to benefit.

## **ANNEX 1**

### **LIST OF COMPLEMENTARY RESOURCE MATERIALS**

The following documents, most of which have been referred to in the text of the training modules, are recommended as complementary reading.

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- DCAF (Geneva Centre for the Democratic Control of Armed Forces), Penal Reform and Gender: Update on the Bangkok Rules, Gender and SSR Kit, author: Pradier, C., Eds: Bastick, M., Grimm, K., 2012
- DIGNITY (Danish Institute Against Torture), Baker, J., Rytter, T., Conditions for Women in Detention, Needs, vulnerabilities and good practices, 2014
- Penal Reform International/ Thailand Institute of Justice, Guidance Document and Index of Implementation on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), Atabay, T, 2013
- Penal Reform International / Association for the Prevention of Torture (APT), Women in detention: a guide to gender-sensitive monitoring, Atabay, T., 2013
- Penal Reform International Briefing: Access to Justice, Discrimination of women in criminal justice systems, January 2012
- Penal Reform International, International Panel on Juvenile Justice, Neglected needs: Girls in the criminal justice system, Sheahan, F., 2014
- Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Pathways to, conditions and consequences of incarceration for women, 21 August 2013, A/68/340
- Thailand Institute of Justice, Atabay, T., Owen, B., Women Prisoners and the Implementation of the Bangkok Rules in Thailand, 2014
- UNODC Handbook on Women and Imprisonment, 2<sup>nd</sup> edition with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), Atabay, T., 2014
- UNODC Training curriculum on Women and Imprisonment Version 1.0, 2015
- UNODC, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2013
- WHO Europe, UNODC, Women's health in prison: correcting gender inequity in prison health, 2009
- WHO, UNAIDS, UNFPA, UNICEF Guidelines on HIV and infant feeding 2010, Principles and recommendations for infant feeding in the context of HIV and summary of evidence





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