

Implementation of the Bangkok Rules to Women Offenders in the Community

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Outline of presentation

- Characteristics and nature of female offenders in the criminal justice system
- Backgrounds of the Bangkok Rules
- Efforts to implement the Rules to women offenders
- Public awareness raising in Thailand

Different risks and needs

- Less severe offences
- Multiple and complex problems, e.g. abuse, drug addiction, and motherhood



Backgrounds of the Bangkok Rules

United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs)

- adopted since 1955
- not sufficient attention towards treatment of women



Backgrounds of the Bangkok Rules

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders

2006

Kamlangjai (Inspire) project

2008

Enhancing Lives of Female Inmates (ELFI) project

2010

Approval of the Bangkok Rules by UN Assembly

2011-present

Implementation

Thailand Efforts to Implement the Bangkok Rules to Women Offenders



Amendment of Law relating to alternative measures for women offenders

Criminal Procedure Code of Thailand

Article 89/2 - apply alternatives to imprisonment for prisoners (confinement outside prison, intermittent imprisonment, home detention)

Article 246 - suspend the imprisonment for specific groups of offenders (mentally ill or seriously ill offenders, pregnant women, women with young children)

Article 247 – reduce the capital punishment for pregnant women prisoners to life imprisonment and allow them to raise their children in prisons

Thailand Efforts to Implement the Bangkok Rules to Women Offenders

Development of effective alternative measures for women offenders

Measures	Male	%	Female	%
Non-custodial	366,771	69.57	84,306	76.80
Fine	127,808	24.24	56,656	51.61
Forfeiture of property	325	0.06	48	0.04
Suspended sentence or punishment				
- with probation	140,194	26.59	11,957	10.89
- without probation	98,444	18.67	15,645	14.25
Custodial (Imprisonment, detention, capital punishment)	160,391	30.43	25,462	23.20
Total	527,162	100.00	109,768	100.00

Thailand Efforts to Implement the Bangkok Rules to Women Offenders

Development of effective alternative measures for women offenders



- Develop the gender-sensitive pre-sentence investigation tool
- Propose the court to order the pre-sentence investigation in every women case

Thailand Efforts to Implement the Bangkok Rules to Women Offenders

Gender-responsive programmes for women offenders



- Gender-specific vocational training program
- Educational program for drug addicted women offenders (birth control, prenatal health-care)

Public Awareness Raising

Public awareness raising

- Projects under HRH Princess Bajrakitiyabha's Initiatives
 - Kamlangjai Project
 - Say No to Violence against Women Campaign



Research on women prisoners

- Women offending
- Women drug related offenders



Thank you



Implementation of the Bangkok Rules to Women Offenders in the Community

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Since the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as the Bangkok Rules was adopted by the UN General Assembly in 2010, many countries and international organizations are putting these rules into practice. In Thailand, criminal justice agencies and organizations working with women also place a strong emphasis on the implementation.

The Thailand Institute of Justice (TIJ), a public organisation established by the Royal Thai government in 2011, is one of the justice agencies supporting this endeavor along with promoting knowledge sharing amongst worldwide forum. As one of our tasks on the part of content dissemination and knowledge sharing, TIJ is utmost honoured to be welcomed in this flora and to share Thailand experiences on implementation of the Bangkok Rules focusing on women offenders in non-custodial setting. Accordingly, the topics discussed and examined in this article will include characteristics and nature of women offenders in the criminal justice system, backgrounds of the Bangkok Rules, efforts to implement the Rules to women offenders, and public awareness raising in Thailand.

Characteristics and Nature of Female Offenders in Criminal Justice System: Acknowledging the Gender Differences

It has been well recognised, arguably, that female offenders have different profile of risks and needs unlike their male counterparts, that is to say, they

relatively tend to be convicted for less severe offences. Nevertheless, even though the general profile of women prisoners is a less violent one, usually convicted for drugs related crime or property offences, they are, more often than not, forced to undergo the identical/alike punitive treatment experience as men. In other words, throughout the world, correctional facilities, institutions, and treatment programmes, which are designed for male offenders, are devised and drafted by male architectures. Hence, the overall environment of either correctional or rehabilitating system, including the rules of conduct, the staffs, security levels, and the programming itself, is drawn upon to match the needs of the convicted male, of which are the majority population. As such, it can be said that being a minority in such stereotyped/conventional settings does not convey female offenders the same benefits and opportunities purported for and available to their masculine counterparts.¹

Apart from the nature and the attributes with regard to the severity of the offences committed, women also differ from men vis-à-vis the accounts and grounds for committing their crimes. Mostly often, women tend to carry more multiple and complex problems relating to their offending comparing to men.² In addition, women in criminal justice system are generally those attached with intricate histories of abuse, victimisation, trauma and addiction.³

Many findings have shown that the greatest needs for women offenders with complex problems are multifaceted treatment programmes including additional education on vocational training as well as parenting skills, which arguably can only be done/accomplished through the use of specifically designed and targeted programme for women.⁴

The Road towards the Inauguration of Bangkok Rules in 2010

The Kamlangjai Project

The Kamlangjai Project, literally translated in Thai as ‘inspiration’, was launched on the 31st October 2006 under the strong royal patronage and leadership of HRH Princess Bajrakitiyabha. The project aims to provide moral support, basic healthcare, and opportunities for women prisoners, both while serving

sentences and after release. It also recognises, as quoted by HRH Princess, *‘the double jeopardy’* of serving time and being discriminated that would inevitably render women prisoners emotionally vulnerable. Aggravated by the pain of separation from the children, this increases the chance of their mental illnesses, which could potentially lead to an act of self-harm. Within this Project, it stresses the philosophy of giving women offenders a second chance with a view to returning them back to society as good citizens. With such care and attention, as putting forward by HRH Princess, *‘these women can be inspired with a positive thinking whilst strengthening their inner sense and soul to live a meaningful life’*.

A special feature of the Kamlangjai Project is the emphasis on assisting pregnant and nursing inmates as well as the children who live with mothers in prison. Having this issue in mind, the project develops a series of maternity training courses including improving the facilities for childcare and breast-feeding mothers along with the improving of women’s healthcare in prisons. Other medical helps are also offered by leading private optical clinics, volunteered to provide optical services for women prisoners at the Bangkok’s correctional facilities.

The initial success of the Kamlangjai Project has accumulated eminent support from various sectors of the Thai society, including NGOs, various charity organisations, the private sector, and the media. Accordingly, the event help turns the Thai public to become more aware of the plight of women prisoners. This growing awareness therefore helps enhancing the society’s acceptance towards women prisoners, which could then, conceivably, reduce the difficult and traumatic stigmatisation. Moreover, the project seeks to promote opportunities for women prisoners upon release so as to minimise their chance of re-offending. Activities and programmes in this area include vocational training such as foot massage, cooking and baking skills, hairdressing, to name a few.

Consequently, thanks to the paramount attention, nationwide as well as international success, the project has received more and more growing number of supports and sponsorships from various partners and stakeholder, both private and public, including charitable organisations and numerous international NGOs. In 2008, Thailand presented the Kamlangjai Project at the 17th session of the Commission on

Crime Prevention and Criminal Justice (CCPCJ) in Vienna; the level of support from various countries was encouraging. Also, at the 10th Annual General Meeting of ICPA in Prague, Thailand already alluded to the possibility of leading the efforts to develop the SMRs specifically for women prisoners.

‘ELFI’: An Initiative arising from Eminent Success of the Kumlangjai Project

With an outstanding success of the already existing Kumlangjai Project, HRH Princess Bajrakitiyabha has initiated another project, namely, Enhancing Lives of Female Inmates, or known as ‘ELFI’. This project is set out to act as a complement and a catalyst to the Kamlangjai Project, which is already largely renowned on the international front. The main task of ELFI is to augment the wisdom of what to become the Bangkok Rules later on in 2010 by developing a set of rules specific to the treatment of women prisoners.⁵

It should also be stressed that the key role of ELFI is not to produce such effect in which female prisoners will be granted with more privileges or better treatment than their male counterparts. Indeed, the project aims to narrow the gap of negligence so that the specific needs of women prisoners can be appropriately and reasonably satisfied. This includes areas concerning issues such as reporting abuse and filing complaints in prison settings, in which it must be conducted in conjunction with the fundamental principle of confidentiality. Also, the project highlights the need to sufficiently manage and fulfil medical and nutritional needs of the pregnant and nursing women prisoners including the appropriate dietary for the babies, children, as well as breast-feeding mothers. More importantly, ELFI emphasises the issue of determining when the children are to be separated or to stay in prison with their convicted mothers, which must be done while having the children best interest at heart. And last but not least and as equally important to the points mentioned, the project, with reference to the Tokyo Rules on non-custodial measures for women offenders, stresses and strongly acknowledges the importance of alternative measures for those who commit non or less violent crimes, especially crimes relating to minor drug-related and petty offences.

Backgrounds of the Bangkok Rules

Ultimately, the international organisation that has been most dynamic and engaged in the promotion and the enhancement of imprisonment standards is, without a doubt, the United Nations. Together with the supports and advocacy from several organisations and institutions, the United Nations has been producing a number of instruments aiming to improve and advance the worldwide imprisonment standard, which includes the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs) as well as other prison-specific guidelines.

The SMRs were adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders which followed by the approval of the United Nations' Economic and Social Council in the July 1957 Resolution. Henceforth, there has been a gradual increase in the interest and participation from other international as well as government organisations and more and more international guidelines with respect to the imprisonment treatment standards have been issued and approved. In 1988, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the 1990 Basic Principles for the Treatment of Prisoners were released and internationally circulated.

Both the 1988 and the 1990 documents were adopted by the United Nations General Assembly. Together with the SMRs, these instruments establish the basis of worldwide recognition that all prisoners must be treated with respect for their human integrity and dignity. The 1988 and 1990 Principles along with the existing application and implementation of the SMRs have greatly shed significant light upon the notion that the purpose of imprisonment is in fact rehabilitation, not punishment or retribution.

Subsequently, further provisions have been added to address the issue of children detention, which were dealt with in the 1985 Standard Minimum Rules for the Administration of Juvenile Justice and the 1990 Rules for the Protection of Juveniles Deprived of their Liberty. Nonetheless, there has been a growing concern on the issue of insufficient attention towards any special measures or treatments applied to women and girl prisoners. Accordingly, the United Nations Office on Drugs and

Crime (UNODC) has laid down special needs of female prisoners, the management of women's correctional facilities including the measures to reduce the women prison population in the Handbook for Prison Managers and Policymakers on Women and Imprisonment and relating criminal justice system assessment toolkit.

More importantly, in consideration of the above, other than provisions and measurements outlined in the SMRs and related documents towards the improvement of better and higher standard of treatment of prisoners, the General Assembly has also adopted the United Nations Standard Minimum Rules for Non-custodial Measures, also known as the Tokyo Rules, at its 45/110 resolution on 14th December 1990. The Tokyo Rules are designed to provide a set of basic principles to promote the use of non-custodial measures, as well as the minimum safeguards for persons subject to alternatives to imprisonment.⁶ The Rules aim at alleviating problems arising from overcrowding in prisons and at streamlining the administration of criminal justice by promoting less use of confinement, through enhancing the use of alternative measures that can be exercised in society. Therefore, in this sense, the Tokyo Rules function as a complement to the SMRs.⁷

Overview of the Bangkok Rules

With the above mentioned difficulties concerning the persistent drawbacks of the existing SMRs and other relevant provisions, this has led to a key turning point event for the newly established standard treatment for both women prisoners and women offenders. That is to say, as witnessed earlier that HRH Princess Bajrakitiyabha has taken a leading role with regard to the concerned matter. This, along with a highly successful establishment of both the Kumlungjai and the ELFI projects, couples with HRH Princess wilful determination and her lead support in the advancement for the livelihood of the female prisoners and female offenders worldwide, during the United Nations Commission on Crime Prevention and Criminal Justice 19th session in early 2010, the Commission finally consent to the adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, widely known as the Bangkok Rules, in which the highly appraised proposal was putting forward by HRH Princess Bajrakitiyabha herself.

The essential provisions set out in Bangkok Rules recognise and acknowledge the fact that women offenders have substantially varying needs and cannot be treated in the similar way with their male counterparts. What is more, it acknowledges, as the underlying manifestation putting forward by HRH Princess. These refer to the specially tailored provisions which encompass issues such as the implementation of gender sensitive prisoner classification, guidelines on the gender specific healthcare services as well as the treatment of children living with their mothers in the facilities. Furthermore, it covers significant apprehensiveness regarding the risk and security assessments, the reviewing process for safety concerns arising amongst female prisoners, the development of alternate measures other than the incarceration and confinement of the offenders, and the advancement of pre and post release initiative programmes which will help with the stigmatisation and discrimination issues upon releasing the offenders back into the society. All of the mentioned additional provisions set out in the Bangkok rules are considered to be of great importance as they were not adequately addressed or attended to in the 1955 SMRs.⁸

Thailand Efforts to Implement the Bangkok Rules to Women Offenders

To implement the Bangkok Rules to women offenders in the community, Thailand has put an effort to develop alternative measures for them. The recent development includes law amendment on diversion and alternative measures, and treatment programmes for women offenders.

1) Amendment of Law relating to alternative measures for women offenders

Prison overcrowding and problem of women prisoners, especially pregnant women and children in prisons, are critical issues in Thailand, which has concerned not only correctional officers but also the criminal justice system as a whole. Several efforts have been made to lessen these problems and one of the most significant efforts is the amendment of the Criminal Procedure Code of Thailand.

According to the Criminal Procedure Code Amendment Act (No.25) 2007, pregnant women and women with young children could be considered for alternatives to imprisonment. Article 89/2 of the Criminal Procedure Code has been amended to give the court authority to order alternatives to imprisonment for those prisoners who have already served one-third of their imprisonment sentence or at least 10 years in cases of long term or life imprisonment. The alternatives could be confinement outside prisons, intermittent imprisonment, and house detention. Prisoners who are eligible for these measures as specified in the Ministerial Rules include those who have caretaking responsibilities. In this case, women prisoners who have dependent children, parent, or husband could get the early release under these alternative measures.

Article 246 of the Criminal Procedure Code was also amended to give the court authority to suspend the imprisonment sentence for specific groups of offenders including pregnant women and women raising their children aged not over 3 years. During the suspension of imprisonment, offenders will be confined outside prisons and the imprisonment sentence will be in effect when their children are over 3 years old. Additionally, Article 247 also reduces the capital punishment for pregnant women prisoners to life imprisonment and allows the women prisoners to raise their children in prisons for 3 years.

To put these laws into practice, electronic monitoring will supplement with these measures. The first pilot project of electronic monitoring will be launched by the Department of Probation, Ministry of Justice in 2013. After evaluation of the pilot project, the Ministry of Justice will continue the application of electronic monitoring to other groups of offenders as specified in the law.

2) Development of effective alternative measures for women offenders

Non-custodial measures implemented in Thailand are fine, forfeiture of property, suspension of sentence or punishment, parole, and compulsory drug rehabilitation under the Narcotic Addict Rehabilitation Act. These measures are implemented at different stages of the criminal justice system. However, when

analyzing only the non-custodial measures ordered by the court, we will find that the ratio of women offenders under these measures is higher than men offenders (see Table below). About 76.80% of total women offenders were sentenced to non-custodial measures while only 69.57% of total men offenders were sentence to those measures.

Offenders under non-custodial and custodial measures in Thailand in 2012

Measures	Male	%	Female	%
Non-custodial	366,771	69.57	84,306	76.80
Fine	,	24.24	,	51.61
Forfeiture of property	325	0.06	4	0.04
Suspended sentence or punishment				
- with probation	140,194	26.59	11,957	10.89
- without probation	98,444	18.67	15,645	14.25
Custodial (Imprisonment, detention, capital punishment)	160,391	30.43	25,462	23.20
Total	,	100.00	,	100.00

Source: Office of Planning and Budget, the Courts of Justice

The figure from the table reflects that the Thai Courts of Justice seems to take into account needs and problems of women offenders when making sentence decision or the offending behaviors of women may not be so serious that the imprisonment is necessary. For any reasons, there are some evidences that the Thai courts are applying the Bangkok Rule when sentencing women offenders.

Recently, in consideration of the Bangkok Rules, the Court of Appeal ordered the suspension of punishment for a women offender who committed an offence against the Gambling Act. The offender was sentenced to 2 month imprisonment by the provincial criminal court and then appealed to the Court of Appeal for the suspension of punishment. The appeal was allowed. The Court of Appeal gave the reasons that the defendant has no criminal record and the nature of the offence is not serious. The Court also stated clearly that in order to conform to the Bangkok Rules, the Court took into account the negative impact of the imprisonment on the defendant and her child who is under 1 year old. Therefore, the defendant was imposed 2,500 baht (83 US dollars) and suspended the punishment of imprisonment for 2 years with 1 year on probation.

However, when analyzing the number of women offenders under suspension of punishment in 2012, we found that ratio of women offender is lower than those of men offender. Only 10.89% and 14.25% of women offenders were under suspension of punishment with and without probation, respectively. This number is quite low. The statistic from the Department of Probation also reports that there are about 10,000 women offenders newly admitted to the Department each year.

To conform to the Bangkok Rules and provide more opportunity for women offenders to be treated in the community, the Department of Probation is developing the pre-sentence investigation tool which will reflect the needs and problem of women. Pre-sentence investigation is usually ordered by the court for criminal cases the court may impose imprisonment sentence not more than 3 years. Probation officers will conduct pre-sentence investigation for both men and women offenders by using the same tool. However, due to complicated nature of offending and different risk and needs of women offenders, the newly developed tool should be more gender sensitive and address women problem and needs, such as history of sexual abuse, caretaking responsibility, and health and mental problem. Moreover, the Department is proposing the court to order the pre-sentence investigation in every women case. It is expected that the pre-sentence investigation report will provide the background information and factors relating to offending behavior which will assist judges to order appropriate sentence for women offenders.

3) Gender-responsive programmes for women offenders

The Department of Probation is the main agency responsible for non-custodial measures which are probation and compulsory drug rehabilitation. In accordance with the Bangkok Rules, the Department provides vocational training and treatment programmes designed for women. These programmes are planned and designed by considering offender's needs and interests as well as the market demand. After planning, the probation officers will work closely with the local organisations to conduct the programme. For example, volunteer probation officers and community justice network members will help probation officers organise the programmes by drawing resources from local organisations, such as training centers, colleges, and private companies. The available vocational training programmes include Japanese

food cooking (sushi), miniature doll making, doll accessory making, Thai massage, hair cut, and scented candle making. Moreover, if necessary, offenders will be funded for starting their business or assisted for job application.

Additionally, special treatment programmes for drug addicted women offenders are being developed by the Department of Probation. Currently, the Department treats approximately 17,000 women drug addicts under the compulsory drug rehabilitation system each year. These offenders are at risk of being pregnant since it is often found that people using drug are more sexually active and less likely to use contraception when they have sex. To prevent pregnancy among this group of offenders, the programme will educate women drug addicts about birth control and adverse effect on babies, such as birth defects, developmental problem, and behavior problem and provide prenatal health-care programme for pregnant women.

Raising Public Awareness through the Kamlangjai (Inspiration) Project

One of the key factors to effective treatment of women offenders is public awareness and support. Apparently, the adoption of the Bangkok Rules by the UN General Assembly reflects the public support for helping women offenders. However, the implementation of the Bangkok Rules alone could not lessen their problem. Problems and needs of women offender as well as negative impact of imprisonment on women and their children should be informed so that the public understand the need for non-custodial treatment and assist women to reintegrate to society.

The Kamlangjai or Inspiration Project initiated and supported by HRH Princess Bajrakitiyabha is a good practice of raising public awareness. Since 2006, the project has run many activities and campaign aiming to assist women offenders, women prisoners and their children. Moreover, the project acts as a link between public and private organisations and those who need help. Support and assistance from society could reach women and children especially those who are in prisons through this project.

Since HRH Princess Bajrakitiyabha, founder of the Kamlangjai Project, has been UN Women Goodwill Ambassador, the Kamlangjai Project has also launched the “Say No to Violence against Women” Campaign. Various activities, such as bicycle rally, role model competition, and public relations through media, were conducted to raise public awareness on the need to stop violence against women.

Apart from providing continuous assistance to women in and out prisons, the project conducted series of research on women offending, treatment programme, women prisoners, and children in prisons. The research findings are publicized not only in Thai society but also translated to English language and presented in international conferences⁹.

Conclusion and Recommendations

Although the adoption of the Bangkok Rules by the UN General Assembly is the remarkable step toward improvement of women offender treatment, it is more important that the Rules should be effectively implemented. The efforts done by Thai criminal justice as discussed above is at the initial stage. Some measures are at the developing process and there is still more work that needs to be done. However, as the country proposing the Rules, we determine to actively implement it to both women offenders and prisoners.

Thailand Institute of Justice (TIJ) as the organisation promoting the implementation of the Bangkok Rules will play an active role to support and encourage relevant agencies to implement the Rules. Specifically, the implementation of the Rules relating to non-custodial measures which involves several agencies in the criminal justice system should be planned systematically. Actions for developing alternative and non-custodial measures should be comprehensively set and prioritized. More importantly, research on women offending and needs should be done to guide and support any plans or actions that will be developed.

In order to successfully implement the Bangkok Rules, TIJ will give the contribution to promote the development of women treatment programme, diversion measures, and personnel training and conduct research on these subjects.

The contribution of TIJ will also extend to international forum including ASEAN community and other regions. Finally, we invite criminal justice agencies in all countries, relevant international and non-government organisations to devote their attention to women offenders and prisoners and collectively work to assist them.

¹ Barberet, R., *Issues in Women Crimes Around the World*, Women Criminals: An Encyclopedia of People and Issues, ABC-CLIO, 2012, pp 177-186.

² Looking at the UK Home Office publication released in 2010, it discloses that 26 per cent of women reported having been treated or counseled for a mental health or emotional problem in the year before custody, compared with 16 per cent of men. Of the women reporting an alcohol problems entering local prisons, just under half (48 per cent) also reported a drug problem. Over half of the women in prison report having suffered domestic violence. One out of three has experienced sexual abuse. See *'Breaking the Cycle'*, Ministry of Justice Publication, UK, 2010. Available from <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/consultations/breaking-cycle-071210.htm>. (Last visited 15/09/2013)

³ Bloom, B., Owen, B., & Covington, S., *'Gender-responsive strategies: Research, practice, and guiding principles for women offenders'*. Available from <http://nicic.org/pubs/2003/018017.pdf>. (Last visited 10/09/2013)

⁴ Covington, S., & Surrey, J., *'The relational theory of women's psychological development: Implications for substance abuse'*, Gender and alcohol: Individual and social perspectives, Rutgers University Press, 1997, pp 335-351.

⁵ Keynote Address by Her Royal Highness Princess Bajrakitiyabha on the occasion of the opening ceremony of the 11th Annual General Meeting of the International Corrections and Prison Association (ICPA) Topic: *'New Horizons in the Treatment of Women Offenders'*, Bridgetown, Barbados, 26 October 2009.

⁶ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) Resolution 45/110.

⁷ See the 127th International Training Course, Publication of the UNAFEI, 2004. Available from <http://www.unafei.or.jp/english/pages/127Course.htm>. (Last visited 01/10/2013)

⁸ Supra Note (i).

⁹ Research reports can be downloaded from www.kamlangjai.or.th.