

### 3 Women in Prisons and the Bangkok Rules – A Practical Guide for Social Workers

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#### *Introduction*

Human rights are a fundamental element of social work. Further, the global definition of social work names human rights as principles, a motivation, a justification, and a major focus that need to coexist alongside collective responsibility. Human rights can only be realised on a day-to-day basis if people take responsibility for each other and the environment (IF-SW, 2014). '[...] it [is] imperative that those involved in the field of social work education and practice have a clear and unreserved commitment to the promotion and protection of human rights [...]' (UN, 1994a, 3). Meyer and Siewert describe social work practice in various terms. They explain that social work mediates, practices, helps, advises, sanctions, evaluates, and accompanies. The field of social work practice is manifold (Meyer & Siewert, 2021, 9ff.).

This chapter shows how social work – as a human rights profession – can beneficially put human rights agreements into practice. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) serve as a human rights instrument. This chapter demonstrates how the Bangkok Rules can be accessed step by step and become useful and applicable for everyday practice. For this purpose, we first give an overview of social work as a human rights profession, followed by an introduction to and history of the Bangkok Rules. Based on this theoretical background, Chapter 3 will put the Bangkok Rules into practice by using a simple and structured table. With this chapter, we want to encourage each social worker to claim human rights conventions as a useful tool for their daily practice.

#### *1. Social Work as a Human Rights Profession*

Silvia Staub-Bernasconi examines the historical development of social work as a human rights profession from 1902 until the present day (Staub-

Bernasconi, 2017). The International Federation of Social Work (IFSW) stated in 1988 that social work is a human rights profession (Prasad, 2017) and published a manual on social work and human rights, together with the United Nations (UN), in 1994 (UN, 1994b). The global definition of social work also names human rights as a fundamental element of social work (IFSW, 2014).

The Universal Declaration of Human Rights was adopted in 1948 due to the impact of the Second World War. Human rights are explicitly independent of national legislation, as Nazi Germany illustrated what could, seemingly legally, be done to people. An orientation on international human rights agreements also enables social work to criticise existing laws more convincingly. Especially the penal system, has an urgent need for change and action (Prasad, 2021, 562). Prasad also writes: ‘Social work often finds it easy to denounce and address human rights violations by the state. However, there is a peculiar silence when it comes to reflecting on its failures to participate in violations of (human) rights’ (Prasad, 2021, 563).

The first step in shaping practice accordingly - as a human rights profession - is knowledge of human rights (Prasad, 2021). However, knowledge of human rights alone will not be enough to improve the practice of social work in terms of human rights (Reichert, 2011, 194). It thus seems challenging at first to fully understand all the concepts and definitions of human rights (Reichert, 2011, 196). A successive appropriation of human rights, starting with the declaration particularly relevant to one’s field of work, appears to be a practicable possibility. A social work practice orientated towards human rights enables one to recognise human rights violations, develop individual and structural solutions, and reflect on one’s own practice (Prasad, 2021, 564).

## 2. *The Bangkok Rules*

*‘The adoption of the United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (the Bangkok Rules) in December 2010 represented an important step forward in recognizing the gender-specific needs of women in criminal justice systems’* (PRI, 2021, 3).

Detention is a restriction, if not a violation, of basic human rights. In recent years, several international conventions set out important principles and human rights guarantees for prisoners. Since the mid-1950s, the United Nations has been developing standards and norms to encourage the promotion and development of criminal justice systems based on reinforcing fundamental human rights standards. The so-called ‘soft laws’

represent the collective vision of the criminal justice system, create governmental frameworks, describe best practices, and support the development of sub-regional and regional strategies (UNODC, 2007, 10).

Since the adoption of the Standard Minimum Rules for the Treatment of Prisoners (SMRs) in 1955 (UN, 1955), a considerable amount of research has been conducted on, for example, the causes of crime or the impact of imprisonment. But only since the early 2000s has the research started to focus on the gender differences between women's and men's backgrounds and their social reintegration needs (PRI, 2021). In December 2015, the UN General Assembly adopted the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) (UN General Assembly, 2015). The Nelson Mandela Rules are an updated version of the SMRs and set out the minimum standards for good prison management (PRI, 2016). To promote the basic principles of non-custodial measures, the UN adopted the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) in 1990 (UN General Assembly, 1990) (see Chapter 2).

However, neither the Nelson Mandela Rules nor the Tokyo Rules take the unique needs of women who come into contact with the criminal justice system into sufficient account (UN General Assembly, 2011a, 5). In 2009, the Thai government submitted a resolution to the Commission on Crime Prevention and Criminal Justice expressing the particular vulnerability of incarcerated women in a system that is constructed principally for men. Based on that, the UN General Assembly adopted a set of rules in 2010 that represent a critical step towards recognising the needs of women in the criminal justice systems: the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) (The Dui Hua Foundation, 2022; UN General Assembly, 2011b).

The Bangkok Rules complement and fill the gaps between the Nelson Mandela Rules and the Tokyo Rules. The Bangkok Rules address the ineffectiveness and harmful effects of prisons and suggest gender-sensitive detention alternatives. For example, the section on non-custodial measures (Bangkok Rules 57–66) supplement the Tokyo Rules and interpret them from a gender-specific perspective, by taking into account the rehabilitation needs of the person in view of women's backgrounds, such as their caring responsibilities (PRI, 2021, 8). The Bangkok Rules supplement the Nelson Mandela Rules with more detailed guidance on the particular support required by pregnant women in prison, breastfeeding mothers, and mothers with children (PRI, 2021, 114). The 70 Bangkok Rules can

be divided into the following 11 topics (Atabay and Penal Reform International, 2013):

Table 1: *Bangkok Rules Topics (PRI, 2021)*

Topic No.	Topic	Rules
1	Non-discrimination of women in prison	Rule 1
2	Admission, registration and allocation	Rules 2–4
3	Hygiene and healthcare	Rules 5–18
4	Safety and security	Rules 19–25
5	Contact with the outside world	Rules 26–28
6	Prison staff	Rules 29–35
7	Special categories	Rules 36–39 & 53–56
8	Rehabilitation	Rules 40–47
9	Pregnant women, breastfeeding mothers, and mothers with children in prison	Rules 48–52
10	Non-custodial measures	Rules 57–66
11	Research, planning, evaluation, and public awareness raising	Rules 67–70

Overall, the implementation of the Bangkok Rules around the world remains piecemeal (Van Hout et al., 2022, 2021). In December 2020 – 10 years after their adoption – representatives of the UN and more than 80 global organisations appealed to the international community to review their laws, policies, and practices regarding the full implementation of the Bangkok Rules. Particular attention should be paid to the low proportion of women involved in violent crimes, the background of the crime, and gender-sensitive alternatives to imprisonment (PRI, 2020).

The Bangkok Rules serve as a suitable instrument for improvement and reflection, and measures can be taken to redesign the practice in accordance with the Rules. Even if the Bangkok Rules are only recommendations and not legally binding, the impact they have on legislative processes should not be underestimated. The so-called ‘soft laws’ can serve as rules of conduct for international legal development; they can also result

in improvements that would not otherwise have been made (Cornel, 2020, 194; Prais, 2020).

For example, the influence of the “Principles for the Treatment of Women Sentenced to Imprisonment” can be seen in a guide to women’s correctional practice in Sweden (Haverkamp, 2011, 37). Prais has extensively analysed the implementation of the Nelson Mandela rules in Canada (Prais, 2020). In a verdict, the Federal Constitutional Court in Germany pointed out that ‘it may be an indication that fundamental rights requirements have not been adequately taken into account or that the interests of detainees have not been weighted in accordance with fundamental rights requirements if international law requirements or international standards relating to human rights, such as those contained in the relevant guidelines and recommendations adopted within the framework of the United Nations or by bodies of the Council of Europe, are not observed or are undercut’<sup>1</sup> (2 BvR 1673/04 Para. 63). Thus, the court ruled that falling short of human rights covenants indicates that insufficient attention is being paid to the needs of prisoners.

### 3. *Putting the Bangkok Rules into Practice*

Like other human rights regulations, the Bangkok Rules initially appear abstract and almost inaccessible in terms of daily implementation and application in practice. Due to the dense content and the many different regulations, it is challenging to get started. In the following section, we would like to show how a simple introduction can be achieved, and promote the use of the Bangkok Rules. It is not about implementing all the rules perfectly, which is, structurally, rarely even possible. It is much more about improving one’s own practice bit by bit, in line with the human rights regulations. This piecemeal improvement happens when social work is seen as a human rights profession. It should be emphasised again that a flawless implementation cannot be (immediately) achieved, but a step-by-step approach is possible.

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1 [Translation by the authors], original verdict: BVerfG, Urteil des Zweiten Senats vom 31. Mai 2006 - 2 BvR 1673/04 -, Rn. 63

### 3.1. *Pick your Topic*

As a first step, we suggest choosing one of the eleven topics that is relevant for your own practice and which you would like to see reflected in your own practice. This can be based on a concrete programme but also on a specific topic of interest. In the first instance, it is advisable to choose a smaller rather than a broader setting.

### 3.2. *Pick your Rule*

The rules that apply to the specific topics can already be clearly narrowed down using Table 1 above. From the relevant rules, one or two can be selected that are as suitable as possible for the selected topic. At this point, the need to be exhaustive can be set aside. Further rules can be used later on. Even simply reading these thematic rules can offer suggestions and broaden the perspective of one's own practice.

### 3.3. *Reflect upon your Practice*

Once the appropriate rules have been selected, the next step is to systematically relate them to the practice of social work. We propose using a table as a working aid for this purpose. First of all, an ad-hoc assessment should be made of the extent to which the requirements of the rule are already being met in practice. Is the rule being implemented *completely*, *partly*, or *not yet*? This first step is intended to encourage reflection on the contents of the rule and how to relate them to one's own practice. After this assessment, the next column can be used to write down what is missing for the requirements of the rule to be met. By writing down specific aspects, the difference between the current situation and the target situation becomes clear. The third step is to note what can be changed or done to meet the missing requirements. At the end of the process, there are practical options for action that can be taken to make the practice more human rights compliant. Again, implementation is a process and can only be realised step by step. Perhaps there are also small changes that can immediately and easily improve the practice.

Table 2: Worksheet for Reflecting on one's own Practice

Bangkok Rule	State of implementation			What is missing?	How to improve the practice?
	Complete	Partly	Not yet		
<i>Chosen rule</i>				<i>What is missing to ensure that the rule is fully complied with?</i>	<i>What can be done to address the shortcomings?</i>
	<i>What is your initial evaluation of your practice according to the rule?</i>				

The initial phase of this process should be associated with as few obstacles as possible. Therefore, we are convinced that simply reflecting on the practice in light of the rules already leads to a better practice. However, there is also reliable material on the Bangkok Rules that explains and comments on the rules and translates them into practice. Penal Reform International addresses a wide range of stakeholders with the Bangkok Rules (politicians, medical professionals, social workers). A concrete question that may be used to reflect on the implementation of Rule 48, for example, would be: ‘Are the nutritional and other health-care requirements of these women met provided by the prison authorities?’ (PRI & Thailand Institute of Justice, 2013, 144). The UN Guidance Document on the Bangkok Rules can be helpful in reflecting on the Bangkok Rules to better understand the scope of the individual rules.<sup>2</sup> In addition, this accompanying document can provide further suggestions for one's own practice and point out issues that may not be obvious from the rule itself. We therefore recommend referring to the accompanying document if a more in-depth study of a rule is possible and desired, or if filling in the table is difficult and no or hardly any ideas come to mind regarding the partially implemented rules. It remains important that the selected rule continues to be related to one's own practice.

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2 Penal Reform International – PRI (2021): *Guidance Document on the Bangkok Rules: Implementing the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*. London: PRI.

Table 3: Example for Reflecting on the Implementation of the Bangkok Rules (on the Topic of Health Care) within one’s own Practice

Bangkok Rule	State of implementation			What is missing?	How to improve the practice?
	Complete	Partly	Not yet		
<p><b>Rule 5</b> 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.</p>		x		Women’s specific hygiene products free of charge.	Provide free, women-specific hygiene products in the sanitary facilities (including soap, toothbrushes, toothpaste, and towels).
<p><b>Rule 8</b> 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.</p>		x		Informing patients about the disclosure of personal information.	Patients should be made aware that their information will be shared within the medical team. Make sure that – with the exception of health-care staff – no other prison authority should have access to the patient’s medical records (PRI, 2021).

Conclusion

The Bangkok Rules are, without doubt, appropriate and suitable guidelines and standards for the practical work of a human rights profession. If social work as a profession is committed to human rights, daily practice should be measured against these standards. The Bangkok Rules represent a framework for practice, provide appropriate guidelines, can be used as an orientation to improve the treatment of women in prison, and address the malpractice and low visibility of women offenders. This chapter intends to make the Bangkok Rules progressively applicable to everyday practice through a clearly structured table. The table therefore provides guidance



and serves as both an analytical tool for practice and as an assessment of the current state. It should be noted that the table represents a tool that can also be applied to other human rights standards, for example the Tokyo Rules or Nelson Mandela Rules (see Chapter 2), or beyond the prison setting (Mapp et al., 2019). There is also an emphasis beyond detention on the importance of human rights to social work (Gatenio Gabel and Mapp, 2020; Gruskin et al., 2010; Mapp et al., 2019). McPherson impressively describes how her understanding of her daily work has been profoundly changed through her personal discovery of human rights, both for herself and for the people she works with. She emphasises this with a quote from a woman she worked with: 'I am still poor, but the problem is injustice, not simply personal failure' (McPherson, 2016).

As a human rights profession, social work not only contributes to the development of human rights (Healy, 2008) but can also contribute significantly to the implementation and enforcement of the Bangkok Rules. The soft laws reflect the circumstances of women who have committed crimes. What's problematic about the soft laws is the lack of binding and obligatory effect, accompanied by a lack of enforceability. However, their effect should not be underestimated (Prais, 2020). With an eye to the future, applying a gender perspective to the global criminal justice systems is long overdue. Finally, the adoption of the Bangkok Rules was a milestone in the field of human rights. But the true significance of these rules will only become clear when they are implemented in practice. We would like to encourage social workers to use human rights for your own practice. In particular, the Bangkok Rules are suitable for reflecting on one's own practice and can contribute to the further development of social work practice.

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