

# UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules): A Gendered Critique

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## Abstract

In 2010, the United Nations adopted the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the “Bangkok Rules”). This was a landmark step in adapting the 1955 Standard Minimum Rules for the Treatment of Prisoners to women offenders and prisoners, and was an important precursor for the revision of the 1955 rules themselves. As ‘soft law’, they are human rights principles that recognize that female prisoners have different needs from male prisoners. They take into account, among others, the presence of high levels of victimization among women prisoners and their greater propensity for self-harm and suicide; the special status of some women prisoners as mothers of children; the particular health and hygiene concerns of women; the stigma and discrimination facing women prisoners; the need for gender-responsive programs and activities for women in prison; and the particular needs of indigenous women prisoners and those from diverse religious and cultural backgrounds. They call for gender-responsive and gender-sensitive policies and programs in prison in a wide variety of areas: intake, classification, mental and physical healthcare, mothering in prison, searches, and the development of pre- and post-release programs that take into account the stigmatization and discrimination that women face upon release from prison, among others. We will explore the history and background of these rules, offer a critique, and discuss their implications for feminist criminological interventions related to women in prison around the world.

**Keywords:** women offenders; feminist criminology; Bangkok Rules; prisons; women prisoners

**Resumen.** *Reglas de las Naciones Unidas para el tratamiento de las reclusas y medidas no privativas de la libertad para las mujeres delincuentes (reglas de Bangkok). Derechos humanos y criminología feminista*

En 2010, las Naciones Unidas adoptaron las Reglas de las Naciones Unidas para el tratamiento de las reclusas y medidas no privativas de la libertad para las mujeres delincuentes (las «reglas de Bangkok»). Esto fue un paso importante en la adaptación de las Reglas mínimas de las Naciones Unidas para el tratamiento de los reclusos de 1955 a las mujeres delincuentes y reclusas y fue un precursor importante para la revisión de las propias reglas de 1955. Como instrumentos jurídicos no vinculantes, son principios de derechos humanos que reconocen que las mujeres reclusas tienen diferentes necesidades con respecto a los reclusos varones. Entre otras cosas, tienen en cuenta la presencia de altos niveles de victimización entre las reclusas y su mayor propensión a autolastimarse y suicidarse; la condición especial de algunas mujeres reclusas como madres; las necesidades particulares de salud e higiene de las mujeres; el estigma y la discriminación que sufren las mujeres reclusas; la necesidad de programas y actividades sensibles al género para las mujeres encarceladas; y las necesidades particulares de las mujeres reclusas indígenas y de diversos orígenes religiosos y culturales. Piden políticas y programas sensibles al género en los centros penitenciarios en una amplia gama de ámbitos: ingreso, clasificación, cuidados de salud física y mental, maternidad en las prisiones, registros y elaboración de programas previos y posteriores a la puesta en libertad que tengan en cuenta la estigmatización y la discriminación que esperan a las mujeres al salir de la cárcel, entre otras. Examinaremos la historia y antecedentes de estas reglas, ofreceremos una crítica y discutiremos sus implicaciones para las intervenciones criminológicas feministas relacionadas con las mujeres reclusas en todo el mundo.

**Palabras clave:** mujeres delincuentes; criminología feminista; reglas de Bangkok; prisiones; mujeres reclusas

### Summary

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### The invisibility of women in prison

Until 2010, women prisoners were largely absent from the standard and norm setting of the international criminal justice community, exemplified by the work of the UN Commission on Crime Prevention and Criminal Justice. The main document specifying international standards for incarcerated persons were the 1955 Standard Minimum Rules for the Treatment of Prisoners. They were meant to apply to all prisoners, but only mention women specifically in four places: Rule 8(a), separating women from men prisoners; Rule 23,

specifying special facilities for pregnant women prisoners and children born to them; Rule 46 concerning staffing of prisons, to include men and women; and Rule 53 which specifies that women should be guarded only by women.<sup>1</sup> In that historical period, there was relatively little interest in women in prison among scholars or practitioners, and despite the espousal of non-discrimination by sex of the Universal Declaration of Human Rights, the United Nations system had yet to expand on non-discrimination by sex as it would in 1979 in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Since then, however, there has been substantial growth worldwide in research and rights pertaining to women in general, and related to women, offending, and incarceration in particular. This research reveals some generalities and regularities about women's imprisonment, but also some specificity, and has informed the drafting of the 2010 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules"). These rules can thus be considered needs-based human rights, in that they are based on women prisoners' needs as documented by research and practice, which they enshrine into rights that states, as the ones responsible for penitentiary institutions, must uphold.

### Women in prison: Problems and needs

Women are generally subject to incarceration in prisons designed by and for men, where they experience not only gender discrimination but other forms of oppression, such as that based on race, ethnicity, class, and indigenous status. Women are a small proportion of prisoners in virtually every country of the world. As such, they are subject to the discrimination of economies of scale.

1. 8(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

23 (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate. (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers; 46 Salaries shall be adequate to attract and retain suitable men and women;

53 (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution. (2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer. (3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women (United Nations, 1955).

Their small numbers mean that they are generally housed with security levels that are out of sync with their lower seriousness of offending. They are isolated from their social networks more than men because fewer prisons have slots for women in the same geographical area as men's prisons. These logistics make it inevitable that women will be placed further from their home communities, on average, than men. Lower numbers also mean that women are provided with less diversity in programs and training schemes compared to men.

Apart from these disadvantages as a minority in total institutions, around the globe women offenders and prisoners suffer greater social stigma than men in prison due to their violating criminal law as well as gender norms, and thus prisons have a tendency to infantilize, domesticate (Almeda, 2005), and pathologize women, further oppressing them. This is evidence of the attempt to refeminize the 'fallen woman' by reinforcing the gender norms for women outside of prison. Carlen and Worrall (2004) essentially suggest that the purpose of incarcerating women is to create a carceral gender regime. Sudbury (2004, 2005) takes their suggestion to the international arena, arguing that globalization, neoliberal policies, racism, the global war on drugs, the feminization of poverty, and the prison-industrial complex have all contributed to the increased criminalization of women and a global carceral gender regime.

The most consistently produced resource on the trends in women's imprisonment around the world is the World Female Imprisonment List compiled by Roy Walmsley for the International Centre for Prison Studies in England. This list, now in its third edition, covers 219 prison systems in independent countries and dependent territories. Female prisoners make up between 2% and 9% of the total prison population in around 80% of prisons systems in the world (Walmsley, 2015). The countries with the highest proportions of women prisoners are Hong Kong-China (19.4%), Macau-China (17.7%), Myanmar (16.3%), Bolivia and Qatar (both 14.7%), Thailand (14.5%), Vietnam (14.4%), and Kuwait (13.8%). The highest female prison population rates are in Thailand (66.4 per 100,000 of the national population), the United States (64.6), Seychelles (48.9), El Salvador (45.9), Turkmenistan (38.2), the Russian Federation (36.9), Macau-China (33.6), Rwanda (32.0), Belarus (29.9), and American Samoa (29.6). The median proportion of women to the total prison population is 4.4%. The female prison population has risen in all continents of the globe and grown much faster than male prison population levels (Walmsley, 2015).

The characteristics of women in prison, the conditions in prisons for them, and their particular needs are a topic of research that is popular among feminist criminologists but one whose findings vary in availability and currency by region of the globe; nevertheless, some findings are consistent. Often, the standard of measurement is how women in prison are different from men. These differences are sometimes framed in terms of whether they are risks or 'criminogenic' needs as determined by criminologists, criminal justice practitioners, or social workers; clinical needs as diagnosed by physical and mental health clinicians; human rights violations (when needs are unmet), as determined

by inspectors or human rights activists; or needs expressed by the women in prison themselves as expressed to activists or researchers. Often, an 'objective' need masks the structural oppression that is behind that need. For example, some mental health symptoms of women in prison are related to the oppressive circumstances that led them to offend, to be victims (particularly of gender-based violence) as well as offenders, or to the repressive nature of prison itself. Certainly the *image* that women prisoners' immediate needs projects can be misconstrued to one that reflects vulnerable, passive, powerless subjects. Many of these needs are enshrined in the Bangkok Rules and merit careful analysis and critique. Indeed, much of the international institutional rhetoric about 'empowerment' of women who are survivors of violence is absent from the rhetoric about women in prison (Barberet, 2014).

In their review of the U.S. research on gender-responsive risks and needs for women prisoners, Wright et al. (2012) noted that women are normally incarcerated for less violent offenses than men such as minor property offenses, and their criminal roles compared with men's are more secondary. Their security risk is likely therefore to be low. Women prisoners are likely to be economically and socially marginalized and to report victimization and physical and mental ill health. These are considered criminogenic needs; they are related to prison misbehavior and to recidivism. More than men, women prisoners are sole caregivers of children and often have little or no available support for them, during or after prison. To respond to women's needs, prisons should be more treatment oriented than punitive, offer appropriate programming, utilize gender-sensitive risk/needs assessments and classification policies, put in place less confrontational styles, and employ personnel who want to work with women and have strong interpersonal skills (Wright et al., 2012). In addition, they should provide ample opportunity for visits with family and children, along with reentry programs. It is important to acknowledge the larger structural issues of gender inequality and institutional racism (Hannah-Moffat, 2010), as well as the need for the empowerment of women in prison and upon return to the community (Barberet, 2014).

Much of the debate about women's imprisonment reflects the social construction of motherhood and thus what to do with women who are mothers to dependent children. The age limits for children to stay with mothers in prison range around the world from not allowed to no upper limit in Eritrea. The vast majority of countries do allow women to have their children with them and the range of age allowed is 1-6 years (Robertson, 2011). Most of the debates about motherhood and incarceration are framed around the rights of the child and less about the rights of the mother. Women prisoners are reduced to their biological and social reproductive functions. The coercive gendered nature of women's parenting in prison, or from prison, has been largely ignored. The pain of being separated from one's children exists alongside the pain of being with them in prison systems that only minimally take responsibility for them.

Spain can be seen as a model in its efforts to accommodate motherhood in prison through mother and baby units, child care centers in prison (which

follow national regulations for public daycare facilities), arrangements for outside child care and weekend furloughs with foster families, and parenting cells, where parents who are both incarcerated can live together in a cell with their young child. Spain's prison system also fully permits conjugal visits. This relaxation of punitivity is fully in consonance with Spain's constitution and penitentiary laws, which recognize rehabilitation as the main objective of incarceration. Yagüe Olmos' (2007) extensive historical look at mothers in prison in Spain, from the seventeenth century to Franco's dictatorship and to the present, documents the increasing visibility of motherhood in prison. She recommends decarceration (alternatives to incarceration) as the best solution. Spain's policies can be seen as balancing the objectives of creating autonomous, independent mothers and healthy children and fortifying family relationships—again, very much in consonance with Spanish values and institutional priorities outside prison walls. However, in less developed parts of the world, some of the debates about motherhood in prison are moot. For most of the mothers in prison, their children would be homeless if not with them in prison and thus their presence in prison is a given. However, their care in prison (schooling, healthcare) is not guaranteed (Barberet, 2014).

### **UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders**

The intergovernmental organization that has been most active in promulgating global standards for imprisonment is the United Nations, which is supported by the advocacy efforts of civil society such as Penal Reform International, the Quakers, the American Civil Liberties Union, and Amnesty International, among others. The UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders build on a number of human rights instruments, notably the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners, the 1988 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, but also more well-known legal instruments such as the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Elimination of Racial Discrimination; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Bangkok Rules, like the Standard Minimum Rules for the Treatment of Prisoners (the latter recently updated in 2015 and called the Mandela Rules), are what are termed 'soft law'. They permit voluntary monitoring but non-adherence carries no penalties besides being 'named and shamed' in the United Nations system or by activists and the media. Nevertheless, without these guidelines, activists and the world community would have no globally

agreed yardstick by governments with which to monitor and improve the world's prisons. Such guidelines are a main reference point for the design and evaluation of prison conditions worldwide (United Nations Office for Project Services, 2016), and are frequently cited and used in rule-of-law development assistance for transitional states and those requesting technical assistance from the United Nations or development agencies. They were preceded by some background work at the UN Office on Drugs and Crime in Vienna: a handbook for prison managers and policymakers on women and imprisonment (UNODC, 2008) and a cross-cutting gender instrument in its Criminal Justice Assessment Toolkit (UNODC, 2010). The creation of the Bangkok Rules was spearheaded through the Thai delegation to the UN Commission on Crime Prevention and Criminal Justice by Princess Bajrakitiyabha Mahidol of Thailand, herself a leader on women's issues in Thailand, a prosecutor, and jurist with advanced degrees in law from Cornell University in the United States. Thailand hosted an expert group meeting to draft the rules, calling upon researchers and activists in the area of women and prison from around the globe.

These rules reflect much of the previously discussed research evidence on women in prison. They take into account the presence of high levels of victimization among women prisoners and their greater risk for self-harm and suicide; the lower security risk of most women prisoners, yet higher classification levels; the special status of some women prisoners as mothers of children; the separation of women from their communities of origin and the impediments to prison visits; some health and hygiene concerns of women; the stigma and discrimination facing women prisoners; the use of prisons as shelters for women's safety, as well as their use for 'immoral crimes'; the difficult pregnancies of juvenile female prisoners, some of whom may have been married very young; the need for gender-responsive programs and activities for women in prison, yet on a par with the opportunities given to men prisoners; and the particular needs of indigenous women prisoners and those from diverse religious and cultural backgrounds (Barberet, 2014). They call for free sanitary pads; the development of alternatives to strip/invasive searching; the development of alternatives to incarceration for women; and research, evaluation, and data gathering on issues related to women in prison. The UN Bangkok Rules total 70 and supplement and complement the Standard Minimum Rules for the Treatment of Prisoners. The justification for these rules is that providing for women's needs, as different from those of men, will comply with the principle of nondiscrimination in the Standard Minimum Rules—thus increasing gender equality.

The Bangkok Rules are new, undergoing implementation, and have received very little critique. Most of the experts and advocates consulted in their drafting were ultimately satisfied with the results. The Commission on Crime Prevention and Criminal Justice in Vienna, the main commission that ultimately drafted and approved the rules, is a male-dominated body that rarely debates women's issues, with few experts on women and criminal justice. Thus,



in context, the mere fact that these rules came into existence is notable. They were surely instrumental in opening the door to a revision of the 1955 Standard Minimum Rules for the Treatment of Prisoners, which occurred in 2015. They are forward looking in terms of their implications for the decarceration of women. For criminologists, they urge data gathering, research, and evaluation on women in prison and women's programs.

Certainly, these rules do not suggest a radical gendered intervention for women in prison, and their general tone is conservative compared to much of the work done in the UN system on women, notably by UN Women. In a number of places, the standard for equality of programs or services for women in prison is very low: either with women on the outside of prison (health care) or with male prisoners (conjugal visits, education, and vocational training for juvenile female prisoners). They also do not ward against domesticity in prison programming. They focus a great deal on the biological functions of women and on mothering in prison, but they prioritize the interests of children without recognizing the coercive mothering that prisons often exert on women. They remain narrow in scope and do little to counter the causes of incarceration (including both the causes of women's offending but also punitive sentencing policies). They reify the vulnerability of women offenders and do not, for example, respond to the situation of women who are political offenders/prisoners; the rules use words like "vulnerable", "support" or "needs" more than "rights" or "empowerment". As such, as needs-based human rights, they are a product of the historical and political context of our times, and merit reflection and critique for continued improvement. It is to a full critique that we now turn.

### **Analyzing the social construction of gender and sexuality in the Bangkok Rules**

Feminist criminologists have helped shape policies and practices that address women's existence in prison institutions and the criminal justice system, and women's particular reasons for being imprisoned and particular needs when they are. Yet feminist criminologists can also problematize and critique gender-based policies and practices from queer and critical feminist perspectives.

The Bangkok Rules represent an unusual but important tension in mainstream human rights for women: protection versus protectionism. Are we protecting women or do we assume women need protection based on sexist stereotypes? Are we asking women what types of protections they want and need, or are state officials, academics, and NGOs assuming that their plans for protection are sound and moral?

On one hand, the Bangkok Rules are couched in the assumption that imprisonment can be harmful emotionally, mentally, and physically; that it is largely ineffectual, and that it negatively impacts the health and wellbeing of families and their communities. Further, the "masculinization" of imprisonment in many globally-situated North World countries has led to real



consequences for women prisoners: little contact with family (by choice or by design), shackling during childbirth (a norm for other medical procedures), a literal re-design of women's prisons to be like men's prisons with barbed wire, regulated schedules, and little focus on rehabilitation. These are real issues that women experience in prison. The Bangkok Rules suggest ways to mitigate or end gender-based issues in imprisonment; they offer protection. Protection from the impact of imprisonment is an important and principled goal of the Rules.

But the Bangkok Rules also play into stereotypes of women as feminine and unfit for imprisonment, that femininity is special and fragile. The Rules are steeped in normative, cisgender definitions of "woman" and heteronormative assumptions about sexual identity and family. Women are situated as mothers (or potential mothers) first and foremost, whose reproductive capabilities must be protected (human incubators, not agentic individuals). Femininity—in its softness, maternal instinct, and weakness—is stereotyped as incapable of crime or violence without a backstory of suffering that led women to crime, a cause-and-effect story that explains away malice, malicious intent, or depravity with "but she's a woman." In so doing, the Bangkok Rules are relying on an ideology of protectionism that may do little to relieve the oppression and exploitation of imprisonment for women. Protectionism is based on what those with power and authority assume about what women need, and what those in power want to see happen in their communities and nation-states.

A queer, critical feminist analysis of the seventy Bangkok Rules illuminates the following three themes: a) real gendered needs and heteronormative gender role expectations, b) fragile femininity and women's specialness as victims of crime and circumstance, and c) absence of gender diversity and intersectionality. These themes showcase the ways that the Bangkok Rules do little to challenge the dominance of "carceral feminism" whereby feminist organizations and actors rely on the state for protection through criminalization (Bernstein, 2010, 2012; Bernstein and Jakobsen, 2010).

### **Gender needs and gender roles**

First, there are real gender needs around menstruation, pregnancy, and breast-feeding in prison. The Bangkok Rules argue for basic access to menstrual products and to medical care. Additionally, the Bangkok Rules recognize that worldwide, women are more likely to be the primary parent and primary caretaker of children. Going further, they recognize that keeping women with children has positive results for both parties. The family unit is situated as deserving of rights, on its own, in addition to the rights of the woman-as-mother and the child(ren).

Yet the Bangkok Rules largely discuss women in very specific family-related terms. Additionally, the Rules position women's health as reproductive health, and only for young women (pre-pregnant, pregnant, or with young children). There is no mention, for example, of health care during menopause or the

medical needs around gendered cancers such as breast cancer or uterine cancer. In a sense, the Rules are supporting an old, sexist troupe of women's duties to have children and be responsible for maintaining a family with children. Imprisoned women are, quite literally, kept as units of reproduction for the state. In this way, gender role expectations are shored up within the Rules.

This can be interpreted as a shrewd integration of sexist stereotypes of cisgender, straight women in favor of the state: if women are units of reproduction, the state ensures women's access to medical care and to their children. Whether mothering is a reality or not for all women imprisoned, these articulations of femininity mean that the Rules argue for specific medical care needs, mental health support, screening practices (by women only), additional time with and access to their children, and so on. There is no escaping the gendered social world; playing on those stereotypes to secure dignity and health is a savvy political move. But whether or not the Rules are shrewd or unintentionally sexist is unknown, and likely a mix of both.

### **Fragile femininity, victimhood, and women's specialness**

Second, women are considered unfit for the punitive criminal justice system. First, as presented in the Bangkok Rules, women are not "real" criminals but rather victims of circumstance and violence. Few women serve time in prison for violent crimes. Additionally, the Bangkok Rules are critical of how women may be imprisoned for their own safety, a form of protective custody. Moreover, imprisoned women have histories of sexual, physical, and emotional violence that may have directly played into their crimes. For example, a woman may have been coerced to commit crimes as a result of domestic violence (e.g., a family member or husband forcing a woman to carry or sell drugs) or commits violence against the men in her family or community that have long been violent with her or with the women and girls in her family. Experiences of gender violence are situated as evidence of women's specialness, making them unfit for incarceration.

The Bangkok Rules use the notion of women's "specialness," the fragility of femininity, as both the reason for being in prison (women are not criminals, but victims) and as the reason for special accommodations while in prison (access to mental health care, access to family, etc.). This form of protectionist thinking underscores how the Bangkok Rules articulate the recommended policies and practices for women prisoners. Again, this could be a shrewd use of sexist stereotyping or it could be the result of such stereotyping.

To wit, men too are victims of sexual, physical, and emotional violence. Men, particularly young men, may experience physical and sexual violence that can contribute to criminal offenses later on. Yet there are no separate rules of compassion for them. Rarely do the Rules encourage that to be taken into consideration for imprisoned men. It does not fit with the social construction of masculinity as strong and unyielding. Men, like women, experience imprisonment due to multiple, intersecting layers of oppression and discrimination. (In

the U.S., this is well documented in *The New Jim Crow* by Michelle Alexander, who argues that prisons are the latest form of racialized social control.)

The second reason women are considered unfit for the punitive criminal justice system comes from critiques of prison practices and the physical building of the prison itself. There has been a masculinization of prison systems around the world. The Bangkok Rules argue that women's specialness mean that they are particularly unsuited for masculinized imprisonment. For example, today in the U.S., men's and women's prisons mirror each other as a form of parity of treatment. This "new politics of imprisonment" moved away from the rehabilitative aspects of women's prisons to get "tough on crime" (McCorkel, 2013). Now, the Bangkok Rules are trying to bring back that focus in many ways.

The Rules blatantly critique the ways that prisons are gendered, problematizing the ways that the masculine-prison is often coded as gender neutral. Prisons are often masculine in design because they are (assumed to be) *for* men, and it is assumed that men are dangerous, deserving of punishment, and not re-habitable. These masculine prisons are disciplinary, designed to reduce threats in some ways, and allow for violence in other ways, all in the name of punishment. Isolation-as-punishment in prison is damaging to men and women. We care little for men's experiences with past violence, and we care little about their role as parents. The Rules are offering some critique of this, and some, though not much, encouragement to think about men's familial connections and parenting capabilities.

Countries and prison systems may find that the Bangkok Rules may be difficult to implement because rehabilitation is coded as feminine: it is soft on crime, it assumes someone is worth saving, it is situated as the opposite of punishment. There may be little support for that in sexist kyriarchies. Yet this stereotyping works in women's favor: if rehabilitation is feminine, then it is appropriate for women.

### Gender diversity and intersectionality

The third and final theme is one of invisibility of gender diversity and of the intersections of gender with sexuality, race, citizenship status, and other aspects of identity.

The Bangkok Rules lack any understanding of the gender diversity of various societies and cultures. There are real gendered needs of not just cisgender women in prison, but also transgender women, transgender men, gender-nonconforming (GNC), and intersex individuals with vaginas. Where are the transgender women in the Bangkok Rules? Transwomen have medical needs too, like access to hormones and access to what is often (mis-)gendered as men's health (e.g., prostate exam). Where are the transmen who menstruate and need exams for ovarian cysts? Transmen and GNC individuals with vaginas also need menstrual products. Where are the Rules that recommend transgender people have access to hormones (if taking them)? Where are the basic

rights of transgender and gender non-conforming people to be housed safely and to wear the prison clothes that fit their gender identity? Some countries, such as New Zealand, Australia, Germany, France, Nepal, India, and Pakistan, officially recognize more than two genders (how they do so varies country to country). But the Rules seemingly do not extend even to those formally recognized populations. These are major concerns that are invisible in the Bangkok Rules. In addition to gender identity, the Rules also do not address the needs of lesbian/non-straight women. Some U.S. prisons have created LGBTQ wings to house prisoners who are trans, gender non-conforming, and gay as a way to reduce the violence they experience compared to when housed with the general prison population. Yet that is a rare approach and instead it is common practice for trans-gender and GNC inmates to be housed in prisons that do not reflect their gender status, such as housing transwomen in men's prisons. It is also common for LGBTQ prisons to be put in isolation for their own protection; a form of protective custody that is punishing rather than protective.

For all the intentional shrewd moves to capitalize on sexist stereotypes, and unintentional reification of heteronormative femininity in its glorious motherhood, the fact that the Bangkok Rules do not incorporate or extend beyond cisgender, assumingly straight, baby-having women is quite telling of some of the consequences of the Rules and the ways that the Rules play into normative gender expectations that negatively impact anyone who does not fit the norms.

Additionally, the Bangkok Rules seem to be responding to a patriarchal construction of imprisoned women, and with some good reasons, as outlined earlier. However, this ignores the ways that intersecting aspects of discrimination and oppression are structurally supported—how kyriarchy, rather than patriarchy, is at play here. How do race, ethnicity, citizenship status, and other aspects of identity intersect with gender and impact experiences of imprisonment? With rising anti-immigrant practices and policies in economically privileged countries, refugees and other immigrants find themselves in prison-like conditions, sometimes in facilities created by prison construction companies. What does it mean for an undocumented immigrant mother to be separated from her children and sent to a detention facility that bounces her between three detention facilities before deporting her, with her family never quite able to get an answer as to which facility she is in? These are concerns that the Bangkok Rules do not address, and in so doing, may enhance class and racial divides by painting imprisonment as a “one size fits all women” experience.

## Discussion

In conclusion, the Bangkok Rules are a mix of protections and protectionist policy and practice recommendations; a strong example of mainstream human rights efforts for women. The Rules proffer many examples of the realities of imprisonment for women and the real needs that need to be addressed. Yet mixed in with that are protectionist recommendations based on stereotypes of femininity. Additionally, the heteronormative, cis-normative nature of the

Rules leaves out and renders invisible those who do not fit binary gender norms and who do not fit with neoliberal ideals of family and “deserving victims” (or rather, “deserving prisoners,” in this case). The three themes show how the Rules rely on and reinforce normative constructions of identity with some attention to “culture” but no attention to race, class, or intersectionality in general.

Focus on reforming imprisonment at the level of the institution (prison) or at the level of the criminal justice system takes away from how the institutions and systems are part of larger social structures meant to maintain neoliberal and neoimperialist regimes and agreements. The Bangkok Rules could have called for prison abolition, which would extend to all regardless of gender. They could have wielded the arguments around fragile femininity and women’s specialness to argue that prisons are unfit spaces of punishment and/or rehabilitation. One reason they have not taken a prison abolitionist stance may be that “carceral feminists” rely on criminalization (of domestic violence, of rape, of prostitution, of sex trafficking) to protect women. Yet many feminists, activists, and academics argue that relying on the state for protection, especially for marginalized groups, whether cisgender women, transgender people, or LGBQ people, is a mistake at best, and dangerous and violent at worst (Conrad, 2014; Mogul et al., 2012).

In addition, criminal justice systems are impacted by changing economic and social imperatives, such that the regulatory arm shifts, for example, from public prisons to private prisons, from prisons to immigrant detention centers or temporary (though often long-term) refugee settlements, and from prisons to a “treatment industrial complex” that offers alternatives to incarceration. Yet these alternatives to incarceration may not be voluntary and may carry the caveat of a threat of jail or imprisonment for those who do not successfully complete that treatment—however “treatment” and “success” are defined (Chen, 2015). Are these alternatives to punitive criminal justice actually forms of preventive social protection? Or is this an example of the use of seemingly gendered protection to create new layers of punishment, exclusion, and oppression? The moves to a treatment industrial complex may be a new form of “tough on crime,” using nonprofits to police behavior and identity, particularly for women whose femininity is stereotyped as amenable to rehabilitation.

For example, neoabolitionist efforts around prostitution globally fit with the spirit of the Bangkok Rules (Ward and Wylie forthcoming). Prostitution is situated as an individualistic experience of violence against women. Neoabolitionists argue for alternatives to criminalization such as counseling and (mainstream) job skills training because women are not criminals, but victims of violence. They strategize and advocate for “end demand” prostitution laws whereby male clients are criminalized, but female sex workers are not. Yet this does nothing to challenge criminalization as a form of oppression, but rather works to shore up the power of the state to control poor communities and women on the margins of society (working in illegal or quasi-legal “shadow economies”) and enact another form of racialized social control.

As the Rules say, we need more research. Research on who is left out and to what end. More research on alternatives to incarceration—what is empowering and what is not. Research to answer larger questions around the implementation of and resistance to the Bangkok Rules. As common with many UN efforts, with no teeth, how are these Rules utilized in general? Or specifically by neoliberal NGOs? By dominating economically privileged countries, like the U.S., who may choose to withhold or grant international aid based on adoption of the Rules, without examining or altering their own practices? Further, since the Rules do not (and arguably cannot) demand reallocation or commitment of resources, how will countries and their criminal justice systems actually bring about changes in practices and attitudes? How can they build awareness? And is this awareness inclusive or oppressive? Where are the calls for more research into LGBTQNC prisoners' experiences of imprisonment?

For those on the margins of normative gender and sexuality, they may experience more violence rather than less as a result of the Bangkok Rules. Critical feminist and queer scholars can question whether the Rules are a positive step in a continuation of human rights-oriented steps. Or is this a reaffirmation of a violent normativity within legal change efforts, of what Dean Spade (2011) calls "administrative violence?" In his book on trans politics and legal change efforts, Spade argues that when marginalized groups rely on legal reforms for protection, the results may be further violence, exacerbating class, gender, and racial divides. In a sense, then, the Bangkok Rules may be doing more to affirm and strengthen institutions of oppression and violence rather than challenge them or end them.

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