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## REPORTS OF THE SEMINAR

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### **GROUP 1**

### **IMPLEMENTING THE “BANGKOK RULES” — FOCUSING ON PROTECTING HUMAN RIGHTS BY IMPROVING THE LIVING ENVIROMENT OF FEMALE OFFENDERS**

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## **I. INTRODUCTION**

Group 1 started the discussions on 25 January 2013. The Group by consensus elected Ms. Olivia Onyango as its Chairperson, Mr. Padam Prasad Pandey as Co-Chairperson, Ms. Joycelyn Roach-Spencer as its Rapporteur and Mr. Leandro Zaccaro Garcia as Co-Rapporteur.

The Group accepted one of the member’s suggestions of having two sub-groups as a strategy to effectively and efficiently complete the task. The subgroups were divided in regard to the area of professionalism, that is the Judicial Group and the Correctional Group. After three sub-group sessions, the whole group gathered again to allow the sub-groups to present their findings and to finalize the group workshop report together.

The Group also agreed to conduct its discussions about the main theme, “Implementing the Bangkok Rules — Focusing on Protecting Human Rights by Improving the Living Environment of Female Offenders”, following the agenda: 1) Gender Sensitivity: Protecting the Human Rights of Female Offenders; 2) Issues on Dependent Children of Women Offenders; 3) Medical, Health and Hygiene Services Unique to Women; 4) Issues Relating to Vulnerable Female Offenders: Juveniles, Foreign Nationals and other Minority Groups; 5) Personnel; 6) Social Relations; 7) Research and Study.

## **II. SUMMARY OF THE DISCUSSIONS**

### **A. Gender Sensitivity: Protecting the Human Rights of Female Offenders**

Most of the participants agreed that gender sensitivity has not been a priority in the treatment of female offenders in their respective countries. As it relates to accommodation, except for Japan and Kenya, all females are housed in institutions originally built for men, which have been retrofitted to accommodate females, and in some cases there are no separate institutions for female offenders who are housed in shared facilities with men, though in separate cells.

In the pre-sentencing phase, with the exception of Nepal, where only female police officers can arrest female offenders, other participants did agree that there is no gender sensitivity to police arrest, and, as a rule, the male police officers are allowed to arrest females.

The participant from Mexico stated there is a General Committee with representatives of the judicial, executive and legislative branches which visits the prisons and the jails to ensure that the matters relating to female safety, dignity and fundamental rights are protected. Other participants agreed that there are similar committees in their own countries for this purpose. From the Japanese perspective, however, judges visit not to ensure the human rights condition but only to improve their

understanding about the criminal justice system, including corrections.

Also, several participants stated that the judges do not actually take into consideration gender issues when sentencing females, and in that respect, some judges employed a “hard line” approach even though operating within their authority. For example, the participant from Brazil stated that even though there is a Penal Code, which provides a minimum and maximum sentence for each crime, some judges always impose the maximum sentence without much thought. The participant from Nepal stated that there is no provision under the law for alternative sentencing to imprisonment, and the court has the power to consider mitigation factors only in cases of intentional homicide and not other cases. In Japan, participants agreed that prosecutors are authorized to drop cases even with enough evidence to secure a conviction, taking into consideration the specific needs of the female offender.

At the end of discussions most participants agreed that some judges will always take a “hard line” approach and apply the maximum penalty, while others will use their discretion and consider sentencing options by using their own consciences, but while following the Penal Code within the law. According to the participant from Thailand, the court uses both sentencing guidelines, or *Yee-tok*, and the Penal Code to decide the penalty to be imposed. Although such guidelines are not legally binding and do not officially limit the discretion of the judge, in practice they are widely used to ensure the uniformity of sentencing policy.

The participant from Kenya said that in her country, the law forbids the judges from applying the death sentence (hanging) to pregnant female offenders.

In institutional care, most of the participants stated that safety and security measures have improved over the last decade, and abuses of female offenders have been minimized. Whereas in the past it was the norm to verbally and sometimes physically abuse offenders, now in some countries it is possible to see evidence of positive changes based on initiatives of ongoing training following the international human rights standards and the application of sanctions on guilty correctional officers who abuse their powers.

In the case of Japan, participants stated that the government is sensitive to the needs of female offenders, and in that regard appropriate facilities have been built to house female offenders and rehabilitation programmes are offered. All participants agreed that searches are usually conducted appropriately whereby only female officers are allowed to search female offenders and care is usually taken to protect and respect the dignity of the female especially as related to “strip” searches. Though rehabilitation programmes are offered, not enough attention is given to inmates’ areas of interest, but rather to the availability of programmes, and certification in skilled areas is limited or lacking.

### **B. Issues on Dependent Children of Women Offenders**

The Group discussed the matter of dependent children. Some participants stated that in the pre-sentencing phase, the judges are sensitive in this regard and will consider non-custodial sentencing and other sentencing options, depending on the type of crime and the conditions of the female offender. The participant from Kenya stated that the provisions in the Kenyan laws are sensitive to juvenile offenders by having juvenile courts and family division courts.

About institutional care of mothers and children, most participants stated that provisions are made in the best interest of the child to live in prison with their mothers, but in such cases the duration of the stay in these institutions varies from between 3 months to 6 years, depending on the laws within each country.

Most of participants agreed that basic health and nutritional care are provided for the children and mothers. For women who are pregnant upon admission, they are usually sent to pre-natal clinics, monitored throughout their pregnancies and deliver their babies at public hospitals.

### **C. Medical, Health and Hygiene Services Unique to Women**

Most of the participants agreed that basic medical services and standard hygiene materials are provided by institutions. Participants however differed on the matter of treatment of gender-specific

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health issues. Some stated that specific medical exams, such as pregnancy tests, pap smears, screening and mammography, are not offered to female offenders, and are only done in extreme cases, like in the detection of a disease, while others stated that efforts are made to have this done.

In most of the countries, the Government tries to provide comprehensive health care for female offenders. However, there are shortages of doctors who work in correctional institutions because their pay is much lower in comparison with private medical practitioners.

All participants agreed that the Kenyan approach in training doctors and nurses as correctional officers is a good one. However much needs to be done in the assessment of mental health of female offenders, since much attention is not paid to the background checks for history of sexual, physical abuse, and eating disorders, which in some cases, according to the lecture of Dr. Tazuko Aoshima, is linked to female drug and sex crimes.

#### **D. Issues Relating to Vulnerable Female Offenders**

##### **1. Juveniles**

Most of the participants agreed that juveniles who are in conflict with the law are taken to juveniles courts and are committed to juvenile institutions, though in some countries space is limited and juveniles have to be housed in adult institutions, whereby education and vocational training are sometimes not available. The participant from Jamaica stated that education of juveniles in correctional institutes is mandatory, according to the Child Care and Protection Act, and is adhered to. In the case of Kenya, the participant stated that there are no juvenile facilities for girls, and efforts are made to send juveniles to probation hostels, as failure to keep them in community care will result in their being sent to an adult institution.

The Japanese participants stated that the Juvenile Training School provides appropriate counseling and educational/vocational training for juvenile female offenders.

Also according to the participant from Mexico, there are specialized bodies in the Attorney General's Office, the Court of Justice, and the Public Defender's Office responsible to attend to the juvenile offenders.

Most participants agreed that correctional policies need to be more focused on mental health issues of juveniles and need to adopt more precise assessment tools for suicide and self-harm tendencies. The participant from Jamaica said this issue is currently receiving priority attention in her country following the recent suicide of a female juvenile and subsequent suicidal attempts by other female juveniles of the state.

##### **2. Foreign Nationals and other Minority Groups**

The group agreed that there is no stated or obvious discrimination as it relates to foreign nationals or other minority groups in each country; however in some cases language barriers prevent basic communication from taking place, and it becomes necessary for Correctional Officers to receive some basic foreign language training to alleviate this problem.

#### **E. Personnel**

Most participants agreed that the training system is the same for both male and female Correctional Officers and also agreed that, based on the recommendation of visiting expert lecturer Ms. Piera Barzano from the UNODC, female staff should be specifically trained to be sensitive to the particular needs of female offenders in an effort to better assist them. The participant from Brazil stated that, in some cases, it is not possible to train people to be sensitive; that sensitivity is an inborn trait or acquired based on family and community upbringing, not only in professional training. After discussion, the group concurred that the best practice is to recruit women who have the interest and skills to work with women; skills for example in social work and psychology as opposed to persons with financial backgrounds.

#### **F. Social Relations**

The group agreed that one of the ways to maintain social relationships between female offenders

and society is through family visits and other visits from interest groups and other social organizations. All participants stated that this practice is maintained to some extent within their countries; however the practice of restrictive visits is still ongoing in some countries, and this practice needs to be revisited to adopt a “more humane” type of visitation with female offenders and their relatives, especially their children.

According to the participant from Nepal, their Supreme Court in the case of *Setu Social Development and Human Rights Forum and others vs. Prime Minister*, 11 April 2011, regarding conjugal visits, ruled that, under the constitution, women in prison also have the right to reproduce, and, accordingly, ordered the government to provide conjugal visits within prison. Other countries practicing conjugal visits are Mexico and Brazil.

#### **G. Research and Study**

All the participants concluded that research conducted within their respective countries involves mostly the collection of data and statistics, relating to issues such as numbers and types of offences, ages and profiles of offenders. But such research is not in depth enough to cover relevant topics and is not useful for policy making in criminal justice administration. Lack of proper implementation of policies is also an issue in most countries. In the case of Kenya, however, there is the Kenyan Women Judges Association, which undertakes women-focused research and studies supported by the judiciary. The results help to guide their policy and the treatment of female offenders.

### **III. CONCLUSION**

At the end of the discussion, the Group concluded that the facilities currently used to house females were not designed for female offenders and lack the basic amenities to address gender-specific needs. It is clear that not much attention has been paid to the treatment of female offenders. In fact, according to visiting expert lecturer Dr. Patricia Van Voorhis, no significant research could be found on female offenders in order to influence the policy changes, even though statistics point to the significant increase of female offenders over the last decade.

In an effort to improve the living conditions of female offenders in prisons, the issue of overcrowding has to be addressed starting with the pre-sentencing stage, with the application of alternative measures to custodial sentencing, so that prison space can be reserved only for violent female offenders and those serving longer sentences. Additionally, gender specific rehabilitation programmes need to be implemented not only as a means of having females working inside the prison, but with a view towards certification in skills areas that will adequately prepare them to be self-reliant upon their release.

### **IV. RECOMMENDATIONS**

After discussion, the Group agreed on the following recommendations:

**A.** In the field of research, governments should do an extensive and in depth study on incarcerated female offenders, to understand the profiles of these offenders, and to develop more efficient policies to address their specific needs.

**B.** The training of personnel for female correctional units should include gender-specific components and should target female applicants who have the interest, personality and relevant skills to work in a care-based organization. Working conditions of correctional officers must be improved and issues of poor salary and remuneration must be addressed.

**C.** There needs to be greater collaboration among agents of the criminal justice system (Police, Prosecution Office, Courts and Corrections) in an effort to address diversion from imprisonment, thus reducing overcrowding within the female units.

**D.** There is a need for periodical judicial inspection with a view to seeing the conditions of female inmates and, accordingly, submitting a report to the competent authority for addressing the needs of the inmates.

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- E.** There is a need for public campaigns to sensitize public opinion, especially policy makers, that punishment is not only through imprisonment, but also through the application of alternative measures, following the Restorative Justice approach.
- F.** The authorities should construct separate prisons for female offenders which are more appropriate to address female needs and preferably smaller, more community-based institutions, which are more cost-effective and beneficial in keeping female offenders near their homes and families.
- G.** Correctional Services should be empowered to provide medical facilities within each institution to address special medical care for female offenders, especially in the area of gynecology and mental health care.
- H.** The relevant government bureaus, departments or ministries should ensure that senior female staff members are given opportunities to work at the ministry level, whereby they can be influential in policy changes and the decision-making process to improve the female correctional system.
- I.** Juvenile female offenders must be separated from adult female offenders, and age appropriate programmes must be administered following the Japanese example of Juvenile Training Schools.
- J.** Correctional Departments should partner with relevant stakeholders, in both the public and private sectors, in an effort to optimize treatment for female offenders in the areas of mental health care, drug treatment programmes, and prospective employers to ensure the continuity of care of offenders after their release.
- K.** Visiting justices and human rights organizations should regularly visit female institutions to ensure that they are compliant with minimum human rights standards for the treatment of female offenders.
- L.** There is a need for all stakeholders — Correctional Services, Public Prosecutors, Judges as well as other national and international organizations — to be sensitized regarding the “Bangkok Rules”, as a means to collectively improve female-offender treatment.