

RAOUL WALLENBERG INSTITUTE

OF HUMAN RIGHTS AND HUMANITARIAN LAW

**United Nations Rules for the Treatment of
Women Prisoners
and
Non-custodial Measures for Women Offenders
(Bangkok Rules)**

and

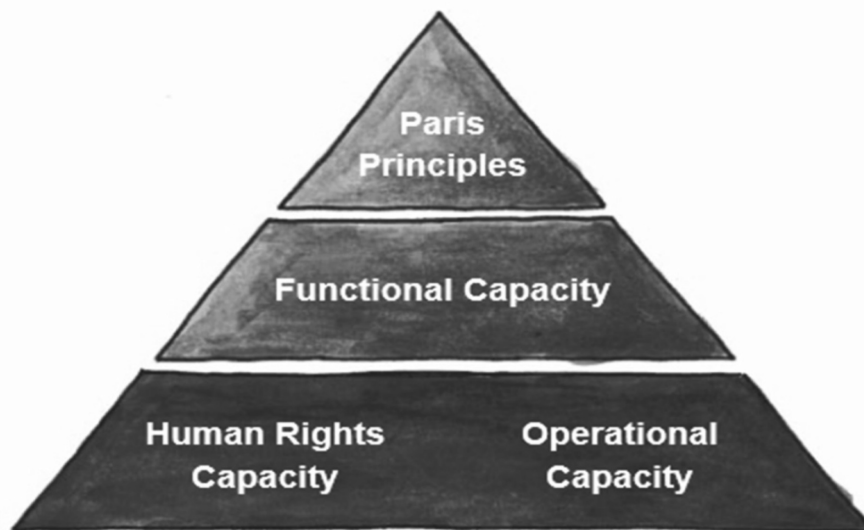
**National Human Rights Institutions
Asia Region/RWI**

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- ✓ **The Raoul Wallenberg Institute contributes to enhance and sustain the capacity of Asian National Human Rights Institutions to promote and protect human rights in the region.**
- ✓ **It carries out tailored capacity developing interventions at the regional, sub-regional and national levels**
- ✓ **It delivers two regional blended learning courses on human rights (general knowledge) and on equality and human rights of women for both NHRIs and academia**
- ✓ **It holds two regional meetings per year:**
 - ✓ **Advancements and Challenges (NHRI)**
 - ✓ **Academic Achievements and Research (Academics)**

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Technical Support



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Influence Sphere / Impact

Asia

**Cambodia, China, India, Indonesia, Laos, the Maldives, Mongolia,
Myanmar, the Philippines, Thailand and Vietnam
Asia Pacific Forum for National Human Rights Institutions (APF)
Southeast Asian Human Rights Studies Network**

Africa

**Secretariat of the Network of African Human Rights Institutions (NANHRI)
Kenya, SudAfrica, Mozambique**

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National Human Rights Institutions

NHRI are 'cornerstones' of national human rights protection systems, providing key opportunities through which human rights can be promoted, protected, mainstreamed and nationally owned from within disregarding their format as long as they comply with the Paris Principles

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NHRIs: Fundamental Concepts

- ✓ “NHRIs are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are part of the State apparatus and are funded by the State.”
- ✓ NHRIs are unique and do not resemble other parts of government: they are not under the direct authority of the executive, legislature or judiciary although they are, as a rule, accountable to the legislature either directly or indirectly.
- ✓ NHRs are not NGOs; they have a statutory legal basis and particular legal responsibilities as part of the State apparatus.
- ✓ If NHRIs have mandates to investigate complaints, they must be neutral fact finders and cannot become advocates for one side or another.
- ✓ NHRI must be independent both from the NGO sector and from the Government

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NHRI functions

- ✓ Engagement with three powers of the State
- ✓ Human rights promotion – public awareness raising, training of public officials and civil servants, mass media, civil society engagement
- ✓ Human rights policy – research, providing policy advice, reviewing laws for human rights consistency, national enquiries
- ✓ Complaints investigation, resolution and monitoring, court proceedings
- ✓ Monitoring, control and follow up of human rights and the general situation of offenders and prisons facilities.

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Independent Monitoring

- ✓ **Basic and essential activity for ensuring human rights compliance in prison systems.**
- ✓ **It highlights abuses, protects imprisoned offenders**
- ✓ **Shields prison staff from baseless criticisms**
- ✓ **Strengthens and supports staff for complying with Human Rights**
- ✓ **Keeps prison conditions in the national agenda/discussion**

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Different Models of NHRIs

- ✓ **45%** of NHRIs are human rights commissions with an explicit human rights mandate.
- ✓ **11%** of NHRIs are ombudsperson offices with a general maladministration mandate, and no specific human rights mandate.
- ✓ **26%** of NHRIs are hybrid institutions, combining human rights and maladministration (anti-corruption) mandates.
- ✓ Other less common models include human rights advisory commissions and research institutes.

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The Accreditation Process: ICC

- ✓ In 1993, NHRIs established the International Coordinating Committee of NHRIs (ICC) to coordinate the activities of the NHRI world/wide network.
- ✓ In 1998, rules of procedure were developed and its membership was enlarged to 16 members, four from each of the geographical regions. At that same meeting, the ICC resolved to create a process for accrediting institutions.

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Levels of Accreditation

Type of Accreditation

	A
	B
	C
	No application for accreditation
	No Data Available

Legend

- A Compliant with the Paris Principles
- B Observer Status - Not fully compliant with Paris Principles or insufficient information provided to make a determination
- C Non-compliant with the Paris Principles

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Berlin Declaration

May 2011

- ✓ **All States should establish and maintain effective and independent, national preventive mechanisms in accordance with international standards, including one or more independent, national preventive mechanism according to standards of the OPCAT, and support its activities by sufficient funding and by allowing unannounced visits to all places of detention with access to all detainees**

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AMMAN DECLARATION

**Eleventh International Conference
of the International Coordinating
Committee of National Institutions
for the Promotion and Protection of
Human Rights**

**Amman, Jordan
5-7 November 2012**

NHRIs in the Asia-Pacific region

- ✓ **Equipped with varying levels of quasi-judicial powers**
- ✓ **Enabled to investigate allegations of torture and other human rights abuses**
- ✓ **To hold inquiries and public hearings**
- ✓ **To carry out visits to places of detention.**

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Human Rights Commission Maldives

Powers of the Commission

- ✓ The Commission's members may without prior notice, inspect any premises where persons are detained under a judicial decision or a court order.

- ✓ The Commission, during their inspections shall inquire whether infringements of human rights of the detainees have occurred, and review the well-being of the detainees and make recommendations to the relevant government authorities should they deem the amenities offered to them or the facilities of detention need improvement.

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South Korea: National Human Rights Commission

November 2001

The Commission has as a mandate (amongst others) to enter any place of detention in order to investigate cases brought to its attention. Where it considers that a case is urgent it has the right to demand action to provide immediate relief pending its formal decision.

In its first year of operation the Commission dealt with 1,113 complaints about the correctional services. The major grounds of complaint raised by those in detention included abuse of punishment, cruel treatment, improper medical treatment, restriction on sending letters or writing, and the use of abusive language by prison guards.

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The Afghan Independent Human Rights Commission (AIHRC)

- ✓ Investigated the causal factors behind torture in law enforcement institutions in Afghanistan.
- ✓ 398 victims of torture in prisons and other detention centres
- ✓ Close to 100 law enforcement officials were interviewed
- ✓ Questionnaires were sent out to families of the victims, experts, and relevant authorities
- ✓ The interviews and questionnaires covered 28 provinces in Afghanistan, and involved all the main ethnic groups in the country

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Afghan Inquiry Results

- ✓ 98.5% of the sample group alleged that they had been tortured.
- ✓ Over 65% of the group stated that the perpetrators were the police (as opposed to other law enforcement authorities).
- ✓ 84.2% claimed that they had been tortured for refusing to provide confessions

By pin-pointing the causal factors involved in torture, the AIHRC has taken an important step towards improving its capacity to plan its strategic activities, activities involving relationships with the prisons facilities and Ministry of Justice, training and involvement of the community.

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Kenya

The programme includes further cooperation with the Kenya Prisons Service to create sustainable capacity within KPS to meet relevant international human rights standards, in particular the UN Standard Minimum Rules for the Treatment of Prisoners, and the Bangkok Rules through targeted activities with the KPS Human Rights Office and Prisons Staff Training college.

✓ **In addition, the programme undertakes strategic interventions to strengthen human rights perspectives in the implementation of other justice sector reforms in Kenya.**

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Myanmar National Human Rights Commission

✓ **Order No. 51/2013 of 30 December 2013 by the president of Myanmar, issuing a general amnesty for all persons imprisoned or facing trial or investigation for certain categories of political offences.**

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The Bangkok Rules' Special Characteristics

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The International Covenant on Civil and Political Rights



**“All persons deprived of their liberty
shall be treated with humanity and
with respect for the inherent dignity
of the human person.”**

ART. 10

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- ✓ Adopted by the General Assembly (A/C.3/65/L.5) at its 65th session on 2010
- ✓ Supplement for the Standard Minimum Rules for the Treatment of Prisoners (SMR) and the Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)
- ✓ Provide special guidance on how to act when officers of the law, legislators, judges, prosecutors and public defenders face the human rights guarantee for women and children offenders while complying with their best interest, special circumstances, distinct vulnerabilities, and specific needs.
- ✓ Encourage gender approach to every legal decision concerning women and children (girls) in conflict with the law, including national foreigners
- ✓ Promote States' adoption of alternative measures and non-custodial procedures implementing a human rights gender-based approach to justice
- ✓ Identify and address the gender-specific aspects and challenges for women and children that are on trial, declared offenders or/and in prisons

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- ✓ Recognise that prison facilities worldwide were designed primarily for male prisoners
- ✓ Admit that, in general, female offenders do not pose a risk to society
- ✓ Understand that it is more difficult for women and girls to rehabilitate and reinsert in the eyes of the society
- ✓ Represent the global ethical aspiration towards the common goal of improving outcomes for women prisoners and their children as well as for girls in conflict with the law
- ✓ Request to analyse and publish specific data on women, both, in prison and offenders
- ✓ Promote the incorporation of the whole community in the process of rehabilitation involving the participation of civil society.

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Bangkok Rules and the International Human Rights Law

Ten Core UN Conventions on Human Rights

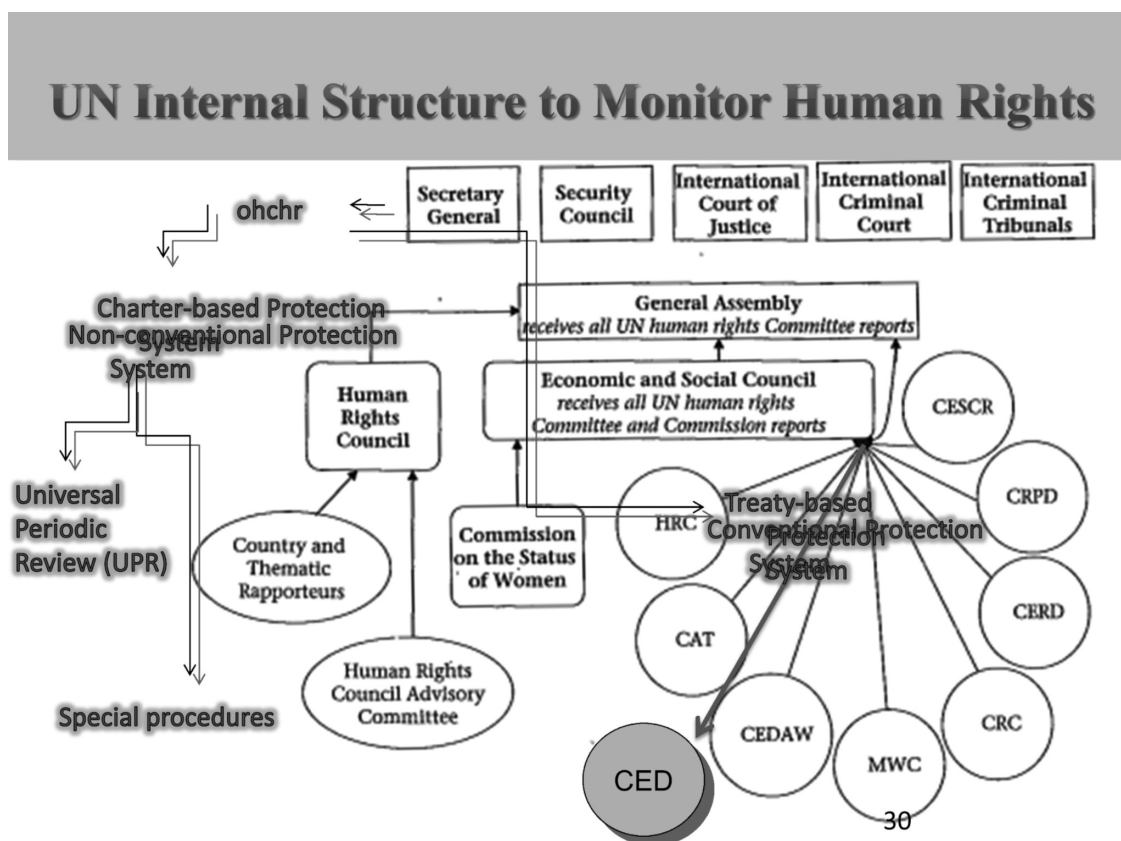
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Ten Core UN Conventions on Human Rights



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1948	Universal Declaration of Human Rights (UDHR)
1966	International Covenant on Civil and Political Rights (ICCPR)
1966	International Covenant on Economic, Social and Cultural Rights (ICESCR)
1965	International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)
1979	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
1984	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
1989	Convention on the Rights of the Child (CRC)
1990	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW)
2006	Convention on the Rights of Persons with Disabilities (CRPD)
2006	International Convention for the Protection of all Persons from Enforced Disappearance (CPED); (23/12/2010)
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Inga Abramova vs Belarus

CEDAW Decision against Belarus

**Communication No. 23/2009, UN Doc.
CEDAW/C/49/D/20/2008 (27 September 2011)**

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Bangkok Rules and the International Human Rights Law

The Prohibition of Discrimination Key Principles

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The Concept of Discrimination

Any violation of rights caused to a person or group due to the fact that they are perceived as being different for several reasons as:

- ✓ **Gender (sex and sexual orientation)**
- ✓ **Membership of a cultural group**
- ✓ **Physical and mental health (disabilities, chronic illnesses, AIDS/HIV and addictions)**
- ✓ **Age (particularly children and senior citizens)**
- ✓ **Religion, race, political, economic and/or social situation**

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The Prohibition of Discrimination

✓The prohibition of discrimination, is an overarching principle essential to international peace and security.

✓It conditions the enjoyment of all human rights, be they civil, political, economic, social or cultural.

✓All States are obliged under International Law to ensure and to respect the right to equality ”

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Gender Discrimination

✓ Any distinction, exclusion, restriction or preference of any kind which is based on the grounds of gender or other related status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of all rights and freedoms of the person towards these prejudices have been exerted.

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Bangkok Rules and Non Discrimination

- ✓ The principle of non-discrimination requires to take into account distinctive needs of women prisoners to accomplish substantial gender equality.**
- ✓ Non-custodial measures must be applied fairly and objectively to women offenders and girls in conflict with the law without involving discrimination**
- ✓ Judges should allow prior to issuing a final arrest warrant that women with caretaking responsibilities for children could make arrangements for those children.**
- ✓ Judges should order the allocation of women offenders into prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, the individual woman's preference and the availability of programmes and services**
- ✓ Judges should take into account that the decisions to allow children to stay with their mothers in prison are based on the best interests of the children.**
- ✓ Children in prison with their mothers shall never be treated as prisoners. Their removal or separation of the child should be based on national law.**

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The Bangkok Rules and the Affirmative or Positive Action (1)

✓ The Bangkok Rules contain specific measures aimed at preventing or compensating women and girls in conflict with the law that face disadvantages linked to grounds such as ethnicity, gender, and age.

✓ Measures aiming at attaining full equality in practice overriding the basic prohibition of making distinctions between people.

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The Bangkok Rules and the Affirmative or Positive Action (2)

✓ The main objective of an *affirmative action*, or *positive action measure* is achieving de facto equality .

✓ The objective is frequently and expressly recognized as a legitimate justification for making distinctions favouring certain groups of persons in disadvantage.

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