

Incarceration of women in Brazil: analysis of the application of the Bangkok Rules based on decisions of the Federal Supreme Court¹

Encarceramento feminino no Brasil: análise da aplicação das Regras de Bangkok a partir das decisões do Supremo Tribunal Federal

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Abstract:

This article analyzes the application of the Bangkok Rules — a set of guidelines for the treatment of incarcerated women — based on rulings by the Federal Supreme Court (*Supremo Tribunal Federal*, STF) of Brazil. The objective is to understand the adoption of specific, non-binding norms regarding the incarceration of women from a gender-sensitive perspective in the national context, particularly by the highest body of the Judiciary. It also aims to identify existing needs and challenges. The study adopts a deductive method and exploratory research, using bibliographic and case law analysis. It begins by examining the role of women in a patriarchal society and the stigmas attached to the female gender. It then presents the human rights outlined in the Rules, followed by an analysis of 11 STF decisions. The findings indicate that, even after 10 years of their adoption, the Bangkok Rules remain largely unimplemented. Based on the content of the STF's rulings, it appears that the Judiciary views women primarily through the lens of motherhood, while disregarding the full scope of maternal responsibilities and the specific circumstances of each case. Thus, the incarceration of women and the application of the Rules are often reduced to motherhood, without broader institutional prison reforms that ensure rights for all incarcerated women.

Keywords: incarceration of women; Bangkok Rules; Federal Supreme Court.

Resumo:

O artigo analisou a aplicação das Regras de Bangkok, um conjunto de diretrizes para o tratamento de mulheres presas, a partir de acórdãos do Supremo Tribunal Federal (STF). O objetivo foi compreender a adoção de normas específicas – e não vinculantes – sobre encarceramento feminino, com perspectiva de gênero no âmbito interno (Brasil), sobretudo, pelo órgão de cúpula do Poder Judiciário, bem como identificar necessidades e entraves existentes. Para tanto, utilizaram-se o método dedutivo e a pesquisa exploratória, bem como analisou o problema com base na técnica de pesquisa bibliográfica e jurisprudencial. Em um primeiro momento, demonstraram-se a posição da mulher na sociedade patriarcal e os estigmas atribuídos ao gênero feminino, passando pela exposição dos direitos humanos nas regras e, por último, analisaram-se as 11 decisões do STF. A título de conclusão, percebeu-se que, mesmo após 10 anos da sua adoção, as Regras de Bangkok permanecem, em grande parte, não implementadas. Pelo teor das decisões do Supremo Tribunal Federal, o judiciário somente vê as mulheres quanto ao exercício da

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maternagem e, mesmo assim, desconsidera todas as atividades envolvidas, bem como as particularidades de cada caso. Verificou-se, nesse sentido, que o encarceramento feminino e as regras são reduzidas à maternidade, sem a garantia de direitos às demais por meio de reformas institucionais penitenciárias.

Palavras-chave: *encarceramento feminino; Regras de Bangkok; Supremo Tribunal Federal.*

1 Introduction

The mass incarceration of women is a contemporary issue in several parts of the world. The exponential increase in the female prison population in Brazil in recent years (Secretaria Nacional de Políticas Penais, 2024) raises important questions about the applicability of some rights.

Unlike men, women who commit crimes have not always been recognized by the State, fostering the current perspective: they are seen as more likely to suffer violence, abuse, and neglect, and face additional challenges in social reintegration after serving their sentences. While they were often rendered completely invisible in the past, today there are rights that act as limits on how punishment is imposed.

The United Nations (UN), as a key international body, adopted the Bangkok Rules in 2010 — a set of guidelines for the treatment of incarcerated women. These rules acknowledge gender-specific needs and propose measures to reduce the use of imprisonment and improve conditions of female incarceration.

Despite progress made in this area, several issues remain unresolved. One significant gap is the lack of studies analyzing the application of the Bangkok Rules in concrete cases, to assess the effectiveness of the human rights of incarcerated women. Therefore, this research is guided by the following question: “How have the Bangkok Rules been applied by the Federal Supreme Court (*Supremo Tribunal Federal*, STF) to guarantee the rights of incarcerated women in Brazil?”

The aim is to examine the adoption of specific — yet nonbinding — norms regarding the incarceration of women, from a gender-sensitive perspective within the Brazilian context, particularly by the highest body of the Judiciary (STF), which is responsible for safeguarding the Constitution. The study also seeks to identify existing needs and obstacles. To do so, it employs a deductive method and exploratory research, analyzing the issue based on bibliographic and case law research techniques.

Initially, the analysis focuses on the role of women in a patriarchal society and the stigmas attached to the female gender — stigmas reinforced by various institutions, including

the law. The influence of feminist perspectives on criminology is thus considered significant, especially in promoting the development of norms free from conservative frameworks.

Subsequently, based on gender-specific characteristics and the participation of women in activities traditionally viewed as masculine — including criminal acts — the study examines the human rights protections established in the Bangkok Rules.

Finally, the study analyzes how the STF has adapted to the obligations arising from the aforementioned international soft law rules, based on 11 STF decisions in which the Bangkok Rules are cited. This analysis aims to identify the interpretations given to those rules.

2 Women as offenders and the disruption of social roles

Gender, according to Marcela Lagarde (1996, p. 26-27), is a symbolic construct that encompasses categories, hypotheses, and knowledge related to sex-based phenomena. It is present in societies, in individuals, in relationships, and in politics.

The term *sex* refers to reproductive biological differences, as well as other physical and physiological characteristics of human beings. As a basis for constructing categories, it distinguishes between men and women — i.e., between male and female members of the human species. On the other hand, the term *gender* refers to characteristics that are socially assigned to the sexes, such as feminine or masculine attributes (Jaramillo, 2009, p. 105).

Gender inequalities are reinforced by patriarchy, which is grounded in biological differences. Notably, the word *patriarchy* derives from the Greek words *pater* (father) and *arkhé* (origin and command), originally meaning “authority of the father.” Over time, however, the term has acquired new meanings (Campos, 2020, p. 112).

Soraia Mendes (2017, p. 88) argues that patriarchy represents a form of manifestation and institutionalization of male dominance, maintained and reproduced through historical expressions as well as various institutions that serve as interconnected pillars conveying the mechanisms of discrimination against women.

Pierre Bourdieu (2012, p. 104) conducted an analysis of the institutions that assist in and are responsible for perpetuating the gender order, identifying three main structures: the family, the Church, and the school. Similarly, Facio and Fries (2005, p. 260) argue that, due to the universalization of historically rooted female subordination, institutions such as the family, the state, education, religion, medicine, and the law uphold the reproduction and maintenance of women’s inferior status.

Law, as a construct of the state, originates from a male-centered perspective. Legislation responds to male interests, treating men's needs as universal rather than as those of just a portion of the population. While academic studies often regard men's needs as equivalent to human needs, women's needs are treated as specific. As a result, the law assumes an androcentric character — i.e., it is neither objective nor neutral (Facio; Fries, 2005, p. 264-265).

The feminist movement, in turn, contributed to certain changes. Social historians had previously regarded “women” as a homogeneous category — biologically female individuals who, despite differing roles and contexts, shared the same essence. Discussions often portrayed women as passive in the face of patriarchal oppression — a narrow perspective that erased their active role in paradigm shifts (Soheit, 1997, p. 96-100).

It was only in the 1970s that women's issues began to receive greater attention in criminology, both regarding their position of inequality within the criminal justice system and as offenders themselves (Baratta, 1999, p. 19). According to Lemgruber (1999, p. 4), this period marked a major shift in the study of female criminality, particularly through the “role theory,” which rejected earlier justifications based on biological and psychological factors. Instead, it focused on the different social reactions to crime depending on whether the offender was male or female.

Through feminist criminology, the penal system is interpreted from a macrosociological perspective, incorporating the categories of gender and patriarchy and questioning how women are treated. In fact, no other field has been as captive to androcentrism as criminology, which has largely centered its framework on the male perspective — whether in its object of study (crime and criminals), its producers of knowledge (criminologists), or the knowledge itself. Therefore, the historical absence of women in this field must be critically examined (Andrade, 2017, p. 127-129).

Angotti (2018, p. 17), in her study of the emergence of women's prisons in Brazil, found that since the Colonial Period, women were often incarcerated in facilities dominated by male prisoners, with very few exceptions of institutions specifically designed for them. In this context, narratives of abandonment, sexual abuse, and problems with prison guards were common.

Since the onset of incarceration of women, neglect has been a constant feature, along with the idealization of female inferiority and the perceived need for correction. Today, we live in a neoliberal society marked by gender inequalities since its foundation — shaped by

structural and structuring forms of oppression that emerged from colonial exploitation and continue to persist in social processes and relationships, characterized by violence and repression from that period (Borges, 2018, p. 37).

As a result, women are the more vulnerable party when they are defendants or convicted, making fundamental and human rights essential limits on criminal law (Mendes, 2017, p. 185). However, women remain largely invisible to the State, requiring an autonomous framework free from conservative models.

Despite significant progress, there is still a long path ahead toward overcoming a legal system that remains masculine — or at best, neutral. In light of the need to reform the normative framework surrounding incarceration of women from a gender-based perspective, the United Nations took action by adopting the Bangkok Rules (Conselho Nacional De Justiça, 2016a), which will be addressed in the following section.

3 The Bangkok Rules as a Specific Mechanism for the Protection of International Human Rights Law

As women began to participate in activities traditionally considered masculine, such as criminal conduct, it became necessary to establish rules that safeguard their fundamental rights when deprived of liberty. Adapting criminal legislation posed a unique, globally significant challenge.

Within the scope of international human rights law — and considering that prison systems were originally designed primarily for men — experts from the UN convened to identify the most pressing issues affecting the female prison population, in light of gender-specific needs that had previously been overlooked. This effort led to the adoption, on December 21, 2010, of the so-called Bangkok Rules: 70 provisions issued by the UN concerning the treatment of incarcerated women and non-custodial measures for female offenders. Such rules serve as a guide for State Parties to implement concrete measures (Conselho Nacional De Justiça, 2016a).

The adoption of the Rules marked an important step toward recognizing women's gender-specific needs and appropriate standards of treatment within criminal justice systems. Prior to their implementation, international norms did not adequately address these specificities — either in detention conditions or in alternatives to incarceration. The Bangkok

Rules thus represent the first international protection instrument to incorporate such approaches (Penal Reform International, 2013, p. 3).

According to Diana Muñoz-Miguez (2020), the Rules incorporate a gender perspective into legal systems to promote dignified prison treatment, based on the recognition of the need for differentiated treatment—in other words, affirmative measures for women. As such, they reaffirm the content of international frameworks such as the 1981 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 1994 Belém do Pará Convention, with the goal of promoting concrete actions in support of incarcerated women affected by systemic deficiencies.

The Rules emerge as a means for States to commit to addressing the needs of incarcerated women, recognizing their specific requirements and ensuring the application of human rights. For the first time, they also addressed the particular care needs of children who live with their mothers in prison. Therefore, the Rules represent a historical milestone in the recognition of gender equity (Asociación Interamericana de Defensorías Públicas, 2015, p. 18).

These Rules were not designed to replace previous prisoner treatment standards. On the contrary, they aim to fill the gaps left by the Standard Minimum Rules for the Treatment of Prisoners (SMRs), a document published in Geneva (Organização Das Nações Unidas, 1955), which focused on crime prevention and the treatment of offenders but failed to address issues such as dignity, access to healthcare, and the right to legal defense — matters that were later incorporated into the Mandela Rules in 2015 (Conselho Nacional de Justiça, 2016b).

The Rules recognize that not all States share the same social and economic conditions; thus, they do not require uniform application. However, they encourage a continued effort to overcome challenges in implementation, given the shared goal of improving the conditions of incarcerated women, their children, and their communities. The Rules serve as an incentive for the adoption of legislation that establishes alternatives to imprisonment, with an emphasis on funding such systems. Furthermore, they invite Member States to consider the specific needs and realities of women when developing laws, procedures, and policies inspired by the Bangkok Rules (Conselho Nacional De Justiça, 2016a).

The aim is to ensure the practical application of the Rules by incorporating them into national legislation and public policies around the world. Many of the provisions do not even require additional resources to implement, but rather a shift in attitudes, awareness, and practices. Among the necessary investments, one of the most important is the training of

criminal justice actors and raising awareness about gender-specific issues (Penal Reform International, 2013, p. 3).

Although the meeting of UN Member States took place in 2010, it was only in 2016 that the resolution was published in Brazil by the National Council of Justice (*Conselho Nacional de Justiça*, CNJ). In international law, the document constitutes a source of *soft law* or *droit dur* — a norm lacking binding force: its non-compliance does not result in sanctions for States. According to Mazzuoli (2015, p. 185), it cannot be said that this new source lacks relevance in international law, as its importance is linked to international practice. Often, these rules are aimed at guiding the future behavior of States and serve as standards to be followed.

Importantly, the Rules are inspired by principles contained in various UN conventions and declarations (in accordance with international provisions). They are directed toward prison authorities — including policymakers, legislators, public prosecutors, the judiciary, and officials responsible for overseeing parole — as well as criminal justice agencies involved in the administration of non-custodial sentences and community-based measures. It is understood that many women who commit crimes do not pose a threat to society, and their incarceration may actually hinder their social reintegration (Conselho Nacional De Justiça, 2016a, p. 16).

According to the United Nations Office on Drugs and Crime (2014), there are two main axes of protection for women in confinement. The first involves the assignment of behavioral roles that ensure equal opportunities for social reintegration through programs that offer continuity, adaptability, and flexibility in managing rehabilitation processes. The second, as a complementary measure, concerns supervision performed by women — particularly individuals trained to ensure safety and protection from any abuse or violation of dignity.

Rule 1 represents the fundamental principle on which the Bangkok Rules are based. It centers on the recognition that incarcerated women face discrimination, since prison systems were developed for the male population. Addressing the specific needs of certain groups does not constitute discrimination; on the contrary, it ensures that they are not excluded from enjoying all of their rights on equal terms with others. This principle is also reflected in the UN SMRs (Penal Reform International, 2013, p. 25).

Gender discrimination is intensified within the prison system, manifesting in multiple aspects of treatment. Accordingly, the Rules aim to prevent prevailing patterns of inequality found in society, requiring that institutional regulations, policies, procedures, programs, and

practices be interpreted and applied through a gender-sensitive lens (Asociación Interamericana de Defensorías Públicas, 2015, p. 33-36).

The UN Convention on the Elimination of All Forms of Discrimination against Women (Brazil, 1984) provides the legal basis for this rule in Article 4. It establishes that women's gender-specific needs are inherent to their status and must therefore be consistently addressed by prison practices in order to ensure substantive equality. Policies must include compensatory measures to offset practical disadvantages experienced by women, which should be discontinued once their objectives have been met. Notably, the Convention affirms that special protection for motherhood is not discriminatory. Within the prison context, this means that the physical and mental well-being of pregnant women, nursing mothers, and women incarcerated with young children must be actively promoted (Penal Reform International, 2013, p. 25).

In practice, Rule 1 imposes a responsibility on States and judicial authorities to develop gender-responsive management policies — beginning at admission into prison, continuing throughout incarceration, and extending to post-release support. These policies must ensure that the specific needs of women are considered, including those of different groups of female inmates, based on factors such as ethnicity, nationality, sexual orientation, age, and more (Penal Reform International, 2013, p. 26).

Global experience shows that incarcerated women are particularly vulnerable and should be treated with sensitivity, especially during the initial stages of imprisonment. When they are mothers, separation from their families can have deeply negative impacts. Notably, in many places, incarceration imposes unique stigmas on women, intensifying feelings of distress. Not coincidentally, there are references to the higher frequency of suicide among incarcerated women compared to both men in prison and women outside the prison system, as well as elevated rates of severe mental illness. Furthermore, the suffering of children due to the immediate consequences of separation from their mothers is emphasized, since, in most cases, mothers are the primary caregivers. This requires the protection of the child's best interests, in accordance with the Convention on the Rights of the Child (Penal Reform International, 2013, p. 28; Brazil, 1990; World Health Organization *et al.*, 2007).

Regarding health and well-being standards for women, the SMRs (Organização Das Nações Unidas, 1955) were limited to provisions on pregnancy, pre- and postnatal care, and the establishment of nurseries for children who remain with their mothers. In response, the

Bangkok Rules (Conselho Nacional De Justiça, 2016a), specifically Rules 5 to 18, address this gap by offering comprehensive coverage for the care of female inmates and their children.

The ability of persons deprived of liberty to maintain personal hygiene is closely linked to the concept of human dignity and is essential for promoting health and preventing disease. Although the SMRs already provided for access to water, soap, toothbrushes, toothpaste, and towels, they made no mention of the specific hygiene needs of women (Penal Reform International, 2013, p. 33).

Distinct needs must be met, as emphasized by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2000), which condemns the failure to provide basic items — such as sanitary pads — considering such omission to amount to degrading treatment.

Many States do not ensure sufficient hygiene products, forcing women to resort to inadequate solutions during menstruation, which conflicts with human dignity. Rule 5 mandates the sufficient provision of water, sanitary facilities, and menstrual hygiene products, ensuring that women are not subjected to embarrassment or humiliation (Asociación Interamericana de Defensorías Públicas, 2015, p. 67-68). In addition, health care for women deprived of liberty must be provided according to the principle of equivalence — i.e., under the same conditions as in the community (Asociación Interamericana de Defensorías Públicas, 2015, p. 80).

The rules on security and supervision reinforce existing recommendations but focus on the specific needs and vulnerabilities of incarcerated women through specialized procedures (Asociación Interamericana de Defensorías Públicas, 2015, p. 89). In the case of the Bangkok Rules, the provisions are based on the understanding that security can be maintained and even improved while respecting the human rights of incarcerated women and acknowledging gender-specific needs. They also require special care for pregnant and breastfeeding women as well as for mothers of young children held in the facility (Penal Reform International, 2013, p. 61).

Rules 26 to 28 address contact with the outside world, a subject already regulated under the SMRs. In the Bangkok Rules, however, there is a strong emphasis on maintaining contact between women and their families — especially when children are involved — recognizing the harmful effects of isolation. The reality must be acknowledged: most incarcerated women are held far from their homes. The Rules also require access to legal counseling and assistance

from prison authorities to facilitate family visits and communication (Penal Reform International, 2013, p. 71).

The Bangkok Rules introduce new provisions regarding institutional staff. The focus is on eliminating the discrimination experienced by female prison staff and on ensuring specialized training concerning the rights of incarcerated women, especially the prohibition of gender-based violence. Staff working in prison facilities are required to receive training and awareness on health-related issues, including basic childcare (Penal Reform International, 2013, p. 105).

Prison staff must be trained to fulfill the goal of reintegrating women into society. They must also act with commitment and integrity to avoid gender-based discrimination. Prison administrators, in turn, should develop methods that ensure the proper treatment of incarcerated women through specific programs and offer gender-sensitive activities to facilitate rehabilitation (Conselho Nacional de Justiça, 2016a).

Some rules refer to special categories of female prisoners, such as adolescent girls in conflict with the law (Rules 36-39), women held in pretrial detention (Rule 56), foreign nationals (Rule 53), and minority and Indigenous women (Rules 54-55), which are not the primary focus of this study (Conselho Nacional de Justiça, 2016a).

In line with the SMRs (Organização Das Nações Unidas, 1955), the Bangkok Rules (Conselho Nacional de Justiça, 2016a) also contain provisions on rehabilitation, specifically under the section on “sentenced prisoners,” incorporating a gender perspective and setting out specific requirements for the social reintegration of women (Penal Reform International, 2013, p. 77).

Importance should also be placed on pre- and post-release policies, which are usually designed for men and often overlook women deprived of liberty. The Rules fill this gap by requiring that relevant agencies and prison authorities design post-release programs, recognizing that women are vulnerable to discrimination, family rejection, and, in some cases, the need to rebuild their lives after escaping violent relationships. This transition often results in economic, social, legal, housing, health, and employment challenges (Penal Reform International, 2013, p. 83).

Rules 48 to 52 address the needs of pregnant women, nursing mothers, and women incarcerated with their children, supplementing the SMRs (Organização Das Nações Unidas, 1955) by providing detailed guidance on the types of support and services that should be

offered to these groups. These provisions consider physical and mental health, nutrition, emotional well-being, and child development (Conselho Nacional De Justiça, 2016a).

The Bangkok Rules offer a gender-sensitive regulatory framework concerning the type and nature of support measures and services to be provided to pregnant women, mothers, and nursing women, as well as their young children, with attention to their health (both physical and mental) and developmental needs. Additionally, the Rules establish standards for decision-making processes regarding whether children may remain with their mothers in places of detention, as well as the procedures for their separation. The fundamental premise is that non-custodial measures should be prioritized whenever possible (Asociación Interamericana de Defensorías Públicas, 2015, p. 133-134).

Following this, a section is dedicated to non-custodial measures as a complement to the UN Standard Minimum Rules for Non-custodial Measures — also known as the Tokyo Rules (Conselho Nacional de Justiça, 2016a). While these provisions are based directly on the principles and content of the Tokyo Rules, the Bangkok Rules offer a renewed interpretation with a gender perspective, enhancing them in light of the exponential increase in the number of women coming into conflict with the criminal justice system (Penal Reform International, 2013, p. 5).

Commentary on the Rules emphasizes that a significant portion of female offenders does not pose a threat to society, and that imprisonment often hinders their reintegration. In many cases, their offenses are directly or indirectly linked to experiences of discrimination or abuse by husbands, partners, family members, or communities. Thus, the criminal justice system must consider women's personal histories and the circumstances that led to the offense as well as provide care, support, and assistance to overcome the underlying causes (United Nations Office on Drugs and Crime, 2011).

Lastly, Rule 70 emphasizes public awareness, information-sharing, and training. It highlights the fact that the general public is not well informed about the harmful impacts of incarceration, especially in the case of women, whose imprisonment often causes significant harm, including negative effects on their children's lives. Therefore, public understanding and societal cooperation are essential for the effective implementation of the Bangkok Rules and for reducing the stigma women face (Penal Reform International, 2013, p. 111; United Nations Office on Drugs and Crime, 2011).

Nonetheless, many women remain in situations of neglect: the prison system has been predominantly analyzed from a male-centered perspective, and institutional disregard for

female inmates persists. According to Justice Ricardo Lewandowski (Conselho Nacional de Justiça, 2016a, p. 12), although the Brazilian government actively participated in the drafting and consolidation of the Bangkok Rules — contributing to their adoption by the UN General Assembly — there have been no consistent public policies, which evidences a lack of implementation and internalization.

To demonstrate the practical application of the Rules, the next section will present decisions from the current case law of the STF, the highest judicial authority in Brazil.

4 Application and Effectiveness of the Bangkok Rules in Brazil Based on Decisions of the Federal Supreme Court

According to Heidi Ann Cerneka (2012), unlike a UN Convention, the Bangkok Rules aim to establish principles and standards for sound prison management and the treatment of women prisoners. As a member of the UN, Brazil has a “duty” to uphold these rules. Pat Carlen (2012, p. 148), in reflecting on how the Rules are interpreted, notes that their implementation ultimately depends on the political and economic conditions of each country.

According to Global Prison Trends (Penal Reform International, 2020, p. 6), many countries still fail to incorporate gender-specific considerations into their legal frameworks, as required by the Bangkok Rules. In some cases, such as Brazil, even when such provisions exist, they are not consistently applied by the courts, revealing that reforms have yet to produce significant results.

Similarly, a report by the International Drug Policy Consortium (2021, p. 4) highlights countries that, despite committing in 2010 to reducing the incarceration of women, have failed to honor their promises. Brazil is among them, having seen a significant increase in its female prison population.

The female prison population in Brazil stands at 26,876 women (Secretaria Nacional de Políticas Penais, 2024). As noted by Espinoza (2016, p. 94), the exponential rise in incarceration of women over recent decades underscores the urgent need for more attention to public policies addressing this situation.

Overcrowding results in environments that fail to meet basic needs for health, comfort, privacy, sanitation, nutrition, and safety (Organização Das Nações Unidas, 2013, p. 16). However, overcrowding cannot be viewed as the sole cause of such degrading conditions, as

the prison system is entirely unprepared to meet the demands placed upon it (Varella, 2017, p. 144).

Notably, as of 2023, there were 230 pregnant women and 103 nursing mothers in Brazilian prison facilities. Specific conditions for these women are only partially met: 61 cells or dormitories are designated for pregnant women, and 51 nurseries and 8 daycare centers offer limited infrastructure for the care of their children. Regarding children, 99 were living in prison facilities at the end of the year, distributed across different age groups: 91 were between 0 and 6 months old, seven were between more than 6 months and 1 year old, and one child was between more than 1 year and 2 years old (Secretaria Nacional de Políticas Penais, 2024).

Of the prison facilities in Brazil, 74.85% were originally built for male inmates, 18.18% for mixed-gender populations, and only 6.97% exclusively for women. This reflects a clear lack of concern for providing adequate infrastructure for female prisoners. In many women's and mixed-gender prisons, there are no designated areas for social or conjugal visits (Departamento Nacional Penitenciário, 2019, p. 16-19).

Mixed-gender prisons expose women to the risk of being raped by inmates or security guards, being forced into prostitution, and suffering other forms of mass violations. Consequently, the United Nations recognizes a strong connection between violence against women and their incarceration — before, during, and after imprisonment. The gender-sensitive approach makes it possible to acknowledge that stereotypes can have harmful effects on women (Organização das Nações Unidas, 2013, p. 3-13).

To demonstrate the practical application of the Bangkok Rules, this section presents decisions reflecting the current understanding of STF, as the highest judicial authority in Brazil. As of the closing date of this study, the following rulings (judgments) included references to the expression “Bangkok Rules.”

Chart 1. Decisions of STF Containing the Expression “Bangkok Rules”

| STF – “Bangkok Rules” | | | |
|-----------------------|------------|---------------|---|
| CASE | DATE | TYPE | SUBJECT |
| HC 131760 | 02/02/2016 | Habeas Corpus | House arrest for a petitioner in an advanced stage of pregnancy |
| HC 118533 | 23/06/2016 | Habeas Corpus | Drug trafficking and application of Law No. 8.072/90 |

| | | | |
|---------------|------------|---------------------------------------|---|
| HC 134104 | 02/08/2016 | Habeas Corpus | House arrest for a pregnant petitioner |
| RE 580252 | 16/02/2017 | Extraordinary Appeal | State liability for personal injury to persons deprived of liberty |
| HC 142279 | 20/06/2017 | Habeas Corpus | House arrest for a petitioner with minor children |
| HC 142593 | 20/06/2017 | Habeas Corpus | House arrest for a petitioner with a minor daughter |
| HC 136408 | 05/12/2017 | Habeas Corpus | House arrest for a petitioner with a child under 12 years old |
| HC 143641 | 20/02/2018 | Habeas Corpus | Substitution of pretrial detention with house arrest for all female detainees — pregnant, postpartum, or mothers of children and people with disabilities |
| Ext 1403 | 10/04/2018 | Extradition | Extradition of a mother with Brazilian children |
| HC 149803 Agr | 11/09/2018 | Interlocutory Appeal in Habeas Corpus | House arrest for a petitioner with children under 12 years old |
| HC 191939 | 07/12/2020 | Habeas Corpus | Pregnant petitioner who committed an offense while under house arrest |

Source: Prepared by the authors based on decisions of the Federal Supreme Court.

According to *Habeas Corpus* 131760/SP (Brasil, 2016b), the case involved a petitioner in an advanced stage of pregnancy who was facing charges of drug trafficking and requested the substitution of pretrial detention with house arrest. Although the petition was not formally admitted due to the absence of an interlocutory appeal against the lower court's decision, the request was granted *ex officio*. The President of the Court, Justice Celso de Mello, agreed with the rapporteur and emphasized that the legal reasoning was in accordance with the Bangkok Rules and the Code of Criminal Procedure, also referencing previous rulings by the Court.

In *Habeas Corpus* 118.533/MS (Brasil, 2016a), the Court debated the issue of unlawful constraint in applying the strict provisions of Law No. 8.072/90 to cases of “privileged” drug trafficking. While the ruling broadly acknowledged significant progress in the global standardization of prisoner treatment, it is worth highlighting the statement by the rapporteur, Justice Cármen Lúcia. She pointed out that in cases of privileged trafficking — typically involving individuals in situations of economic, psychological, or emotional dependency —

there is often complete subservience. Such scenarios frequently involve women, such as those who are recruited to drive vehicles carrying large quantities of drugs because they do not fit common criminal profiles. The Justice stressed the social importance of the ruling, noting that many of these women — often mothers — end up incarcerated due to the classification of the crime as heinous.

In *Habeas Corpus* 134.104/SP (Brasil, 2016c), Justice Gilmar Mendes highlighted the application of the Bangkok Rules, which favor non-custodial measures in cases involving pregnant women and mothers of dependent children. He noted that the Rules had been referenced in other cases before the Court and emphasized that Article 318, item IV, of the Code of Criminal Procedure should prioritize motherhood and the rights of the child, particularly during breastfeeding.

In *Extraordinary Appeal* No. 580.252 (Brasil, 2017c), the STF recognized the State's civil liability in cases where fundamental rights are violated, resulting in personal harm to detainees in prison facilities. The Court affirmed the State's inherent responsibility for individuals in custody throughout the duration of their incarceration, requiring that they be held under conditions that meet the minimum standards of humanity established by law and other international legal instruments — mentioning, among these, the Bangkok Rules.

In *Habeas Corpus* 142279/CE (Brasil, 2017a) and *Habeas Corpus* 142593 (Brasil, 2017b), the rapporteur, Justice Gilmar Mendes, reiterated the position previously expressed in *Habeas Corpus* 134104/SP and highlighted the importance of adhering to the Bangkok Rules, particularly Rule 64. In both cases, he granted *ex officio* relief to place the petitioners under house arrest, as they were mothers of minor children.

Habeas Corpus 136.408/SP (Brasil, 2018c) also involved a petitioner with a child under 12 years of age, and the Court deemed house arrest appropriate in place of pretrial detention. The Bangkok Rules were cited in the decision. During the vote, Justice Alexandre de Moraes expressed a critical view, arguing that legal provisions and the Bangkok Rules would be ineffective “if crime remains the customary practice at home.”

One of the most significant cases is the 2018 decision by the Second Panel of STF, which granted a collective *habeas corpus* to pregnant women and mothers of children up to 12 years old or of persons with disabilities, who were being held in pretrial detention. The ruling allowed for the substitution of detention with alternative measures as set out in Article 319 of the Code of Criminal Procedure, as reported in Informative No. 891 (Brasil, 2018e).

Additionally, *ex officio* relief was granted to all other incarcerated women who were pregnant, postpartum, or mothers of children or persons with disabilities (Brasil, 2018e).

As an indirect mechanism related to the Bangkok Rules, Law No. 13.769 of 2018 (Brasil, 2018a) emerged in response to the impact of this collective *habeas corpus*. The law established the replacement of pretrial detention with house arrest for pregnant women or mothers responsible for children or persons with disabilities, and also provided for similar conditions in the context of post-conviction sentencing.

Unlike the other decisions discussed here, one case concerned the possibility of extraditing a mother of two Brazilian children, provided there was a formal commitment to deduct time served, including time under house arrest, from the sentence (Brasil, 2018b).

In line with previous rulings, *Habeas Corpus* 149803 Agr/SP (Brazil, 2018f) granted house arrest to a woman convicted of theft, as she was the mother of three children under the age of 12 — including one child just one year old who was still breastfeeding. Justice Gilmar Mendes once again referenced the Bangkok Rules, as well as the precedent set in *Habeas Corpus* 143.641/SP, which establishes substitution as the standard. He stressed that any judicial decision not to grant such substitution must be properly justified. He also emphasized that the imposition of house arrest does not preclude the adoption of other precautionary measures under the Code of Criminal Procedure, as determined by the lower court.

Finally, in *Habeas Corpus* 191939/PR (Brasil, 2020), which was received as an interlocutory appeal, the Court granted *ex officio* relief to protect the health and physical integrity of both the pregnant petitioner and the unborn child, ensuring access to regular medical care and adequate prison conditions. However, the appeal was denied, as the offense had been committed while the petitioner was already under house arrest, raising concerns about the risk of recidivism. Regarding the Bangkok Rules, Justice Gilmar Mendes acknowledged their existence and, in a dissenting opinion, held that the petitioner should be placed under house arrest with electronic monitoring.

Evidently, most rulings concern *habeas corpus* petitions, particularly cases involving pregnant women or mothers of minor children, and primarily address the issue of house arrest. There are no recent decisions addressing broader regulatory matters related to prison administration (e.g., admission, registration, healthcare, work, and education), nor are there rulings focused on public awareness or institutional reforms.

The STF has concentrated its attention on decarceration measures for women deprived of liberty, whether in pretrial detention or serving a sentence. In this context, the Instituto

Terra, Trabalho e Cidadania (ITTC, 2021) requested information from public bodies that make up the Brazilian prison system regarding this matter. However, several obstacles were encountered, resulting in a lack of transparent and accurate information, which constitutes a violation of the fundamental rights of incarcerated women and of the constitutional principle of access to information.

Although several states failed to provide the required data, the ITTC outlined a national overview — albeit partial — regarding house arrest: the measure is more frequently granted in cases of pretrial detention (70% of cases), whereas for sentence progression, only 56.24% of eligible women had their rights ensured. Thus, even though the legal criteria for granting house arrest are clear and significant — for mothers, children, and/or dependents — major challenges in its application persist (Instituto Terra, Trabalho e Cidadania, 2021).

Another report shows that house arrest rulings merely restrict women to remaining at home. As for other aspects of daily life — such as taking children to school, attending medical appointments, working, or studying — judicial authorization must be obtained. By requiring women to stay at home and care for their children, such measures, as imposed by the Judiciary, reinforce a societal view of women's role: to be mothers (Instituto Terra, Trabalho e Cidadania, 2022, p. 46; 49).

The institution of house arrest undoubtedly has the positive aspect of prioritizing decarceration measures. However, it falls short by restricting access to fundamental rights necessary for the maintenance and reconstruction of women's lives. Therefore, it should be accompanied by additional public policies, including access to employment, social assistance, health care, and education (Instituto Terra, Trabalho e Cidadania, 2022, p. 72).

Thus, it becomes evident that the discourse of the STF is closely tied to the definition of women as mothers. While the importance of addressing family suffering should not be understated, reducing women solely to their role as mothers — without guaranteeing other relevant aspects — is also a way of oversimplifying the issue and, to some extent, diminishing the broader content of the Bangkok Rules themselves.

5 Conclusion

Based on the arguments presented regarding the role of women in a patriarchal society, three main trends can be identified: the unique nature of women's experience within a traditionally male-dominated institution such as prison; the lack of political interest in their

situation despite the growth of the female prison population; and, especially, their dual disqualification — as criminals and as “bad” women who have transgressed the social role of motherhood.

This study aimed to examine how the Bangkok Rules have been applied by the STF to safeguard the rights of incarcerated women in Brazil. These rules acknowledge the gender-specific needs of women within prison systems and address four main areas: (1) general administration of institutions (admission, registration, place of detention, hygiene, healthcare, and security); (2) treatment of special categories (classification and individualization, prison regimes and post-release support, provisions for pregnant women, foreign nationals, Indigenous women, and children); (3) sanctions and noncustodial measures; and (4) investigation, planning, evaluation, and public awareness of the rules.

Accordingly, all STF rulings containing the term “Bangkok Rules” were analyzed, amounting to a total of only 11 decisions. Most were *habeas corpus* cases, referring to house arrest on the grounds of pregnancy or motherhood of children or persons with disabilities. Thus, even when decarceration measures were granted, reports revealed continued difficulties in addressing other aspects of daily life — such as taking children to school, attending medical appointments, working, or studying — which remain unconsidered.

The maternalization of the prison experience proved to be a recurring theme, closely linked to the patriarchal definition of women. The judiciary, in turn, tends to address female incarceration primarily by invoking the figure of the mother suffering for her abandoned children, without acknowledging real opportunities for the exercise of agency.

Moreover, women without children remain invisible, as they are not afforded the same level of consideration in efforts to mitigate punishment or promote institutional reform. Their experiences continue to be marked by a lack of dignity, respect, and opportunities to overcome past transgressions.

Therefore, more than 10 years after their adoption, the Bangkok Rules remain largely unimplemented. Based on the STF’s decisions, the judiciary sees women primarily through the lens of motherhood — while disregarding the full range of related responsibilities and the specificities of each case.

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