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## Female incarceration in Brazil: analysis of the application of Bangkok Rules based on decisions of the Federal Supreme Court

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

### Encarcelamiento femenino en Brasil análisis de la aplicación de las Reglas de Bangkok a partir de las decisiones del Supremo Tribunal Federal

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#### Abstract

The article analyzed the application of the Bangkok Rules, a set of guidelines for the treatment of incarcerated women, based on rulings by the Supreme Federal Court (STF). The aim was to understand the adoption of specific, non-binding norms on female incarceration from a gender perspective within the internal scope (Brazil), especially by the highest body of the Judiciary, as well as to identify existing needs and obstacles. To this end, the deductive method and exploratory research were used, analyzing the issue based on bibliographic and jurisprudential research techniques. Initially, the article demonstrated the position of women in patriarchal society and the stigmas attributed to the female gender, moving on to the discussion of human rights within the rules. Lastly, it analyzes the eleven STF rulings. In conclusion, it was noted that even after ten years of their adoption, the Bangkok Rules remain largely unimplemented. Based on the content of the Supreme Federal Court's decisions, the judiciary views women only in terms of motherhood, and even then, it overlooks all the activities involved, as well as the specificities of each case. It was found that female incarceration and the rules are reduced to motherhood, without guaranteeing rights to others through penitentiary institutional reforms.

**Keywords:** female incarceration; 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 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.

#### Resumen

El artículo analizó la aplicación de las Reglas de Bangkok, un conjunto de directrices para el tratamiento de mujeres encarceladas, a partir de sentencias del Supremo Tribunal Federal (STF). El objetivo fue comprender la adopción de normas específicas – y no relacionadas – sobre encarcelamiento femenino, con perspectiva de género en el ámbito interno (Brasil), sobre todo, por el órgano de cúpula de Poder Judicial, como también identificar necesidades y entraves existentes. Para tanto, se utilizó el método deductivo y la investigación exploratoria, y se analizó el problema con base en la técnica de investigación bibliográfica y jurisprudencial. En un primero momento, fue demostrada la posición de la mujer en la sociedad patriarcal y los estigmas atribuidos al género femenino, pasando por la exposición de los derechos humanos en las reglas y, por último, fueron analizadas las once decisiones del STF. A título de conclusión, se percibió que, aunque pasados diez años de su adopción, las Reglas de Bangkok siguen, en gran parte, no implementadas. Por el contenido de las decisiones del Supremo Tribunal Federal, el judiciario solamente ve las mujeres cuanto al ejercicio de la maternidad y, aún así, desconsidera todas las actividades involucradas, como también las particularidades de cada caso. Fue verificado, en este sentido que el encarcelamiento femenino y las reglas son reducidas a la maternidad, sin la garantía de derechos a las demás por medio de reformas institucionales penitenciarias.

**Palabras clave:** encarcelamiento femenino, Reglas de Bangkok, Supremo Tribunal Federal.

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## 1 Introduction

The mass incarceration of women is a contemporary problem in many parts of the world. Thus, the exponential increase in the female prison population in Brazil in recent years, demonstrated by data from the National Secretariat of Penal Policies (2024), raises questions about the applicability of certain rights.

Women who commit crimes, unlike men, have not always been considered by the State, stimulating the perspective found today: it is thought that they are more likely to suffer violence, abuse and neglect, with additional challenges in social reintegration after serving their sentence. If in many moments they were totally invisible, today there are rights that play a limiting role at the time of punishment.

The United Nations (UN), as a relevant international body, approved, in 2010, the Bangkok Rules, a set of guidelines for the treatment of women prisoners. The rules recognize gender specificities and propose measures to reduce deprivation of liberty and improve the conditions of female incarceration.

Despite the advances already achieved in the area, there are still problems to be faced. An important gap is the lack of studies on the application of the Bangkok Rules in concrete cases, in order to verify the effectiveness of the human rights of women prisoners. Therefore, the research will start from the following question: "how have the Bangkok Rules been applied by the Federal Supreme Court (STF) to guarantee the rights of women prisoners in Brazil?".

The objective is to examine the adoption of specific – and non-binding – norms on female incarceration, with a gender perspective in the domestic sphere (Brazil), especially by the highest body of the Judiciary (STF), which is responsible for guarding the Constitution, as well as to identify existing needs and obstacles. To this end, the deductive method and exploratory research are used, seeking to analyze the problem, based on the technique of bibliographic and jurisprudential research.

At first, the position of women in patriarchal society and the stigmas attributed to the female gender, accentuated by various institutions, such as law, are analyzed. It is understood, then, as important the repercussion of feminist perspectives in criminology, thinking about the idea of creating norms without conservative matrices.

Subsequently, based on gender specificities and the performance of women in activities considered masculine – including criminal practice – the human rights contained in the Bangkok Rules are examined. Finally, the manifestations of adaptation to the obligations – of soft law – arising from the above-mentioned rules of international scope are analyzed, based on the 11 decisions of the Federal Supreme Court that the cite, in order to allow the identification of the interpretations given.

## 2 Women as criminals and ruptures with social roles

Gender, according to Marcela Lagarde (1996, p. 26-27), is a symbolic construction, which contemplates categories, hypotheses and knowledge regarding phenomena related to sex. This is also present in societies, in subjects, in relationships and in politics.

Thus, the term "sex" is used in the sense of biological reproductive differences, as well as other physical and physiological characteristics of human beings. As a parameter for creating categories, there is a distinction between men and women, that is, between males and females of the human species. On the other hand, the term "gender" refers to the characteristics socially attributed to the sexes, such as feminine or masculine attributes (Jaramillo, 2009, p. 105).

In view of this, gender inequalities would be ratified by patriarchy, based on biological differences. It is worth mentioning that the word patriarchy derives from the combination of the Greek words pater (father) and arkhé (origin and command), which would indicate the "authority of the father"; however, over time, this term has acquired a new meaning (Campos, 2020, p. 112).

Soraia Mendes (2017, p. 88) understands that patriarchy represents a form of manifestation and institutionalization of male domination, with its maintenance and reproduction through historical manifestations, as well as various institutions that operate as pillars linked to each other and that convey the idea of mechanisms of discrimination against women.

Pierre Bourdieu (2012, p. 104) carried out an analysis of the institutions that help and are responsible for perpetuating the order of genders, with three main instances: family, Church and school. In the same sense, Facio and Fries (2005, p. 260) understand that, due to the universalization of historically rooted female subordination, institutions such as the family, the State, education, religions, medicine and law ensure the reproduction and maintenance of the condition of inferiority.

Law, as it comes from the State, begins from the male point of view. Laws respond according to male interests, treating men's needs as universal and not just those of a portion of the population. If studies understand that men's needs are equal to human needs, women's needs are treated as specific, so that the law has an androcentric character, that is, it is not objective and not neutral (Facio; Fries, 2005, p. 264-265).

The feminist movement, in turn, contributed to certain changes. Social historians understood that "women" were a homogeneous category, that is, biologically feminine people, who had different roles and contexts, but with the same essence. The discussions were about women's "passivity" in relation to patriarchal oppression, a poor perspective that annulled the trajectory of active participation in paradigmatic changes (Soheit, 1997, p. 96-100).

It was only in the 1970s that the feminine theme began to gain greater attention in criminology, both in relation to the position of inequality in the criminal sphere and to women as perpetrators of crimes (Baratta, 1999, p. 19). According to Lemgruber (1999, p. 4), at this time, there was a great change in studies on female criminality, mainly due to the "role theory", which denies previous justifications based on biological and psychic factors, elaborating an idea focused on the different social reactions to crime between males and females.

Thus, through feminist criminology, the penal system receives a macro-sociological interpretation, with the categories of gender and patriarchy, inquiring into the way women are treated. In fact, it is understood that no other knowledge has been as much a prisoner of androcentrism as criminology, as it has largely centered its universe on the masculine – both by the object of knowledge (crime and criminals), by the subjects who produce knowledge (criminologists), and by knowledge itself – so the secular absence of women in this field must be questioned (Andrade, 2017, p. 127 - 129).

Angotti (2018, p. 17), when studying the emergence of women's prisons in Brazil, found that, since the Colonial Period, women have been incarcerated in places with a prevalence of male prisoners, with rare exceptions to appropriate establishments. In this sense, narratives of abandonment, sexual abuse, problems with guards were common

It can be seen that, since the advent of women's imprisonment, neglect was extremely present, as well as the idealization of women's inferiority and the need for corrections. At the present time, we live in a neoliberal society, marked by gender inequalities since its foundation, with structural and structuring oppressions, which arose in colonialist exploitation and which still persist in social processes and relations, characteristics of violence and repression of the period (Borges, 2018, p. 37).

Consequently, women are the weaker party when they are defendants or convicted, so that fundamental and human rights represent a limit to criminal law (Mendes, 2017, p. 185). However, they still remain invisible to the eyes of the State, requiring an autonomous reference, without conservative matrices.

Despite the great advances, there is a long way to go to overcome the law as masculine or, at least, neutral. Reflecting on the need to reformulate the normative scope of female incarceration, from the perspective of the gender situation, the United Nations took sides, with the creation of the Bangkok Rules (National Council of Justice, 2016a), which will be addressed in the next topic.

### **3 The Bangkok Rules as a specific mechanism for the protection of international law of human rights**

From the conjuncture of the materialization of women in typically male activities, such as criminal practice, norms that protect their fundamental rights when deprived of liberty have become necessary. From this, the adaptation of criminal laws proved to be a unique challenge of global importance.

In the context of international human rights law, given that the prison system was designed primarily for men, experts from the United Nations (UN) met with the purpose of identifying the major problems related to the female prison population, in view of the peculiarities of gender not addressed on other occasions. Thus, on December 21, 2010, the so-called Bangkok Rules emerged, which are 70 United Nations provisions for the treatment of women prisoners and non-custodial measures for women offenders, serving as a guide for States Parties adopt concrete measures (National Council of Justice, 2016a).

The adoption of the rules represented an important step in recognizing women's gender-specific needs and standards of treatment in criminal justice systems. Prior to them, international norms did not adequately translate the specificities, both in the conditions of detention and in the alternatives to the use of deprivation of liberty, so that such rules are the first instrument of international protection with such approaches (Penal Reform International, 2013, p. 03)

According to Diana Muñoz-Miguez (2020), the rules incorporate a gender focus in legal systems to promote dignified prison treatment, based on the recognition of the need for differential treatment, that is, positive discrimination for women. Therefore, the content of international frameworks such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1981 and the Convention of Belém do Pará of 1994 is reaffirmed, in order to promote concrete actions in favor of the prison population affected by the difficulties of the system.

The rules emerge as a way for States to assume a commitment to assist women prisoners, contemplating their specific needs and promoting the application of human rights. Also, for the first time, issues related to the special care of children who live with their mothers in prisons were addressed. Therefore, they represent a historic milestone for the recognition of gender equality (Asociación Interamericana de Defensorías Públicas, 2015, p. 18).

These rules were not meant to replace the previous rules for treating prisoners. On the contrary, they serve as a filling in of the gaps left by the Minimum Rules for the Treatment of Prisoners, a document published in Geneva (United Nations, 1955), which aimed to prevent crime and the treatment of offenders, but did not deal with issues such as dignity, access to health, the right to defense, etc., which were brought in with the Mandela Rules. in 2015 (National Council of Justice, 2016b).

The rules recognize that not all states have the same social and economic conditions, so the rules do not need to be applied in the same way. However, it encourages a constant effort to overcome difficulties in implementation, in view of the common purpose of all, which is to improve the situation of incarcerated women, their children and their communities. They serve as an incentive for the adoption of legislation that establishes alternatives to imprisonment, prioritizing the financing of such systems. In addition, they are an invitation for Member States to consider the specific needs and realities of women when developing laws, procedures and policies, inspired by the Bangkok Rules (National Council of Justice, 2016a).

From this, the idea is to ensure the application in practice, implying the incorporation of domestic legislation and public policies around the world. Many of the rules do not even require the use of additional resources for enforcement, but a change in attitudes, awareness, and practices. Among the necessary investments, one of the main ones is the training of criminal justice actors and sensitization on gender specificities (Penal Reform International, 2013, p. 03).

Although the meeting between the member states took place in 2010, it was only in 2016 that the resolution was published by the National Council of Justice (CNJ) in Brazil. The document represents, in international law, a source of soft law or *droit dur* – a norm devoid of binding force: its non-compliance does not entail sanctions on States. According to Mazzuoli (2015, p. 185), it cannot be said that this new source has no relevance in international law, as its importance is linked to international practice. Often, these rules aim at future behavior of States, so that they consist of guidelines to be followed.

It is emphasized that the rules are inspired by principles contained in various United Nations conventions and declarations (in accordance with international provisions), and are addressed to prison authorities (which includes policymakers, legislators, the Public Prosecutor's Office, the judiciary, and officials in charge of overseeing probation) and criminal justice agencies involved in the administration of non-custodial sentences and measures in an open environment. It is understood that some women who commit crimes do not demonstrate a risk to society, so that their incarceration may create obstacles to their social reintegration (Conselho Nacional de Justiça, 2016a, p. 16).

According to the United Nations Office Against Drugs and Crime (2014), there are two major axes of protection for women in situations of confinement: the first deals with the attribution of behavioral roles that guarantee equal opportunities in obtaining social reintegration, through programs that have continuity, adaptability and flexibility in the management of rehabilitation processes; a second, in a complementary character, brings supervision through women, especially by people trained to guarantee safety and protection against any abuse or offense to dignity.

Rule 1 represents the fundamental principle on which the Bangkok Rules are based. It focuses on the recognition that female prisoners are discriminated against, given that prisons were developed for the male population. Attending to the special needs of groups does not constitute discrimination, on the contrary, it ensures that they are not discriminated against in the enjoyment of all their rights on an equal basis with others, in the same sense contained in the minimum rules for the treatment of prisoners (Penal Reform International, 2013, p. 25).

Gender discrimination intensifies in prison, projecting itself in multiple aspects related to treatment. Thus, the norm seeks to prevent existing patterns of inequality in society, requiring the interpretation and application of institutional regulations, policies, procedures, programs, and practices, from the perspective and sensitivity of gender (Asociación Interamericana de Defensorías Públicas, 2015, p. 33-36).

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (Brazil, 1984) provides the legal basis for this rule in its article 4 – it is understood, therefore, that the specific gender needs of women are inherent to their status, so that prison practices must ensure that they are met on a constant basis, in order to maintain de facto equality. There should be policies that include compensation measures for some practical disadvantages experienced by women, which are discontinued when the objectives are achieved. In fact, the special protection of maternity, by the Convention itself, is not considered discriminatory, and the physical and mental well-being of pregnant and breastfeeding women with young children in prison must be promoted in the prison environment (Penal Reform International, 2013, p. 25).

In practice, this first rule implies the responsibility of States and judicial authorities to develop gender-responsive management policies – starting with admission to prison, staying during and with support at the time of release – in order to ensure that the specific needs of women are taken into account, as well as those of different groups of prisoners. based on their ethnicity, nationality, sexual orientation, age, etc. (Penal Reform International, 2013, p. 26).

World experience shows that women prisoners are especially vulnerable, and should be treated with a certain sensitivity during the period in which they are entering the prison system. Also, when they are mothers, separation from the family can generate negative impacts. It is worth noting that, in many places, incarceration carries particular stigmas in the case of women, increasing feelings of anguish. It is not by chance that there are references to the high frequency of suicide cases in women's prisons, when compared to men and women in freedom, in addition to the high rates of serious mental illnesses. The suffering of children is also emphasized on the immediate consequences of separation from their mothers, as they are most often the main caregivers, requiring the protection of their best interests, under the terms of the Convention on the Rights of the Child (Penal Reform International, 2013, p. 28; Brazil, 1990; World Health Organization et. al., 2007).

As for the norms related to the health and well-being conditions of women, in the Minimum Rules for the Treatment of Prisoners (United Nations, 1955), they were limited to pregnancy, pre- and postnatal care, and the creation of daycare centers for children who remain with their mothers. In light of this, the Bangkok Rules (National Council of Justice, 2016a), between 5 and 18, fill a gap regarding comprehensive coverage of the care of prisoners and their children.

The ability of those deprived of liberty to maintain their hygiene determines the idea of the meaning of human dignity, being an important requirement to promote health and prevent diseases. Thus, the Minimum Rules for the Treatment of Prisoners already provided access to water, soap, toothbrushes and toothpaste, and towels, but without any mention of women's hygiene requirements (Penal Reform International, 2013, p. 33).

Different needs must be met, according to a comment by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2000), which condemns the non-provision of basic items, such as sanitary napkins, which ends up being equivalent to degrading treatment. Many states do not guarantee sufficient hygiene products, so women are led to resort to inadequate solutions during their period, conflicting with human dignity. Rule 5, in this regard, requires sufficient supply of water, sanitation facilities, and the supply of sanitary pads, so that women are not embarrassed or humiliated (Asociación Interamericana de Defensorías Públicas, 2015, p. 67-68). In addition, health care for women deprived of liberty must follow the principle of equivalence, that is, it must occur in the same way as in the community (Asociación Interamericana de Defensorías Públicas, 2015, p. 80).

The security and surveillance rules reinforce other recommendations, however, they address the specific needs of women deprived of liberty and their vulnerabilities, through special procedures (Asociación Interamericana de Defensorías Públicas, 2015, p. 89). In the case of the Bangkok Rules, the provisions are based on the idea that security can be maintained and improved while respecting the human rights of women prisoners, as well as gender specificities. In addition, it provides special care for pregnant women, breastfeeding women and mothers with young children in the establishment (Penal Reform International, 2013, p. 61). Contact with the outside world, present in rules 26 to 28, already has some regulations in the Minimum Rules for the Treatment of Prisoners. In the case of the Bangkok Rules, there is a strong recognition of the maintenance of women's contact with their families, especially when they have children involved, considering the harmful impact of isolation. Therefore, the reality experienced is highlighted, as most prisoners are kept away from their homes. They also include the requirement of access to legal advice and assistance from prison authorities to enable meetings and communications with family members (Penal Reform International, 2013, p. 71).

With the Bangkok Rules, new provisions on institutional staffing are added. The focus is on eliminating the discrimination that prison employees experience, in addition to special training for the rights of women prisoners,

especially the prohibition of gender violence. Staff employed in facilities are required to be raised to health issues, including basic care for children (Penal Reform International, 2013, p. 105).

Employees must be trained, through training, to be able to fulfill the objective of social reintegration of the prisoner, as well as they must be committed and serious, so that discrimination is not made based on gender. Administrators, on the other hand, must develop methods that ensure the good treatment of prisoners through specific projects, in addition to offering activities that are in accordance with the female gender, in order to facilitate rehabilitation (National Council of Justice, 2016a).

Some rules address special categories of prisoners, such as adolescent girls in conflict with the law (rules 36-39), women in pretrial detention or awaiting trial (rule 56), foreigners (rule 53), minorities, and indigenous people (rules 54-55), which are not the main scope of this research (National Council of Justice, 2016a).

In the same sense as the Minimum Rules for the Treatment of Prisoners (United Nations, 1955), the Bangkok Rules (National Council of Justice, 2016a) have commandments related to rehabilitation, according to the "convicted prisoners" part, with a gender perspective and specific requirements for the social reintegration of women (Penal Reform International, 2013, p. 77).

It is also important to emphasize the pre- and post-liberation policies, generally developed for men, disregarding women deprived of liberty. Consequently, the rules fill a loophole by bringing that relevant agencies and correctional authorities must design activities after release, as women are susceptible to discrimination, family rejection and, in some cases, when they leave m of violent relationships, they experience the need to establish a new life, causing economic, social, and legal difficulties, as well as housing, health and work (Penal Reform International, 2013, p. 83).

Rules 48 to 52 deal with pregnant prisoners, breastfeeding women and mothers with children in prisons, complementing the Minimum Rules for the Treatment of Prisoners (United Nations, 1955), due to the detailed guidelines on the types of support and services to be provided to such categories, considering the health, nutrition, emotional and development of children (National Council of Justice, 2016a).

The Bangkok Rules provide a regulation with perspective on the type and nature of support measures and services to be provided to pregnant women, mothers and breastfeeding women, as well as their minor children, taking into account the requirements of developmental (physical and mental) health. They also offer standards for the decision-making processes for allowing children to remain with their mothers in deprivation of liberty and separation arrangements. To this end, the premise It is essential, whenever possible, to opt for non-custodial measures (Asociación Interamericana de Public Defenders, 2015, p. 133-134).

Next, there is a section dedicated to non-custodial measures, as a complement to the United Nations Standard Minimum Rules for Non-Custodial Measures – Tokyo Rules (National Council of Justice, 2016a). Although they are directly based on the principles and provisions of such rules, they present a new look, based on interpretation from a gender perspective, complementing them, in view of the conjuncture of exponential increase of women in conflict with the criminal justice system (Penal Reform International, 2013, p. 05).

The understanding of the comments on these rules is emphasized, in the sense that a considerable portion of women offenders do not correspond to risks to society, so that their imprisonment hinders social reintegration, representing the direct or indirect result of discrimination experienced at the hands of husbands, partners, families and communities. Therefore, the penal system must consider their background and motives for committing the crime, as well as care, assistance and help to overcome the facts that led to the crime (United Nations Office on Drugs and Crime, 2011).

Finally, rule 70 aims at public awareness, information sharing, and training. It is evident that the public, in general, is not well informed about the harmful impacts of imprisonment, in addition to other issues, a situation that is even worse in the particular case of women, who have significant damage in incarceration, with consequences in the lives of their children. Thus, society's understanding and cooperation are paramount for the effective implementation of measures of the Bangkok Rules, as well as for reducing the stigmas faced (Penal Reform Internationale, 2013, p. 111; United Nations Office on Drugs and Crime, 2011).

However, many women find themselves in a situation of helplessness: prison has been analyzed, to a large extent, from the male perspective, so that there is still state neglect in relation to prisoners. According to Minister Ricardo Lewandowski (National Council of Justice, 2016a, p. 12), even though the Brazilian government has been actively involved in the consolidation and elaboration of the Bangkok Rules, contributing to their approval at the United Nations General Assembly, there have been no consistent public policies, demonstrating the lack of implementation and internalization.

In order to demonstrate the application, in concrete cases, the next section will present decisions of the current understanding of the Federal Supreme Court, as the highest instance of the country.

#### 4 Application and effectiveness of the Bangkok Rules in Brazil based on Supreme Court decisions Federal Court

According to Heidi Ann Cerneka (2012), unlike a UN Convention, in the case of the Bangkok Rules, the idea is to establish principles and rules of good penitentiary organization and practices related to the treatment of prisoners, so that Brazil, as a member of the UN, has the "duty" to respect them. Pat Carlen (2012, p. 148), when reflecting on the way they are interpreted, understands that it definitely depends on the political and economic conditions of the different countries.

According to Global Prison Trends (Penal Reform International, 2020, p. 06), many countries still do not take gender-specific issues into account in their laws under the Bangkok Rules. In some cases, such as Brazil, even when they exist, they are not always used by the courts, demonstrating that the reforms have not brought significant results so far.

In the same vein, in a report by the International Drug Policy Consortium (2021, p. 04), countries are indicated that, although they have committed to reducing women's incarceration back in 2010, have not kept their promises, such as Brazil, where there has been a significant increase in the female prison population.

The Brazilian female prison population, according to data from the National Secretariat of Penal Policies (2024), corresponds to 26,876 women. According to Espinoza (2016, p. 94), the exponential increase in female incarceration in recent decades demonstrates the urgency of the need to devote more attention to policies aimed at the situation.

Overcrowding causes environments that do not cover the basic needs of health, comfort, privacy, sanitation, nutrition, and security (United Nations, 2013, p. 16). However, it cannot be taken as the only cause for these undignified experiences, given that the system is totally unprepared to meet the demands (Varela, 2017, p. 144).

In this context, the presence of 230 pregnant women and 103 breastfeeding women in prison establishments in 2023 stands out. The specific conditions for these women are partially met, with 61 cells or dormitories for pregnant women, as well as 51 nurseries and 8 daycare centers in the prisons, which offer some structure for the care of children. With regard to children, 99 children were in prison by the end of the year, distributed in different age groups: 91 aged 0 to 6 months, 7 aged between 6 months and 1 year, and 1 aged between 1 year and 2 years (National Secretariat of Penal Policies, 2024).

Of the country's penal establishments, 74.85% were originally built for the male public; 18.18% for the mixed; and only 6.97%, exclusively, for women. Thus, there is a lack of concern in providing adequate infrastructure for women. In most women's and mixed prisons there are no specific places for social visits and conjugal visits (National Penitentiary Department, 2019, p. 16-19).

Mixed prisons make it possible for inmates and security guards to rape them, force them into prostitution, and other massive violations. Therefore, the United Nations believes that there is a strong relationship between violence against women and the incarceration of women, whether before, during or after prison. Therefore, the gender approach allows us to recognize that stereotypes can cause negative effects on women (United Nations, 2013, p. 3-13).

In order to demonstrate the application, in concrete cases, the section presents decisions of the current understanding of the Federal Supreme Court, as the main superior instance of Brazil. Up to the date of closing of this work, there were the following decisions (judgment) with the expression: "Bangkok Rules".

Table 1 – Decisions of the Federal Supreme Court with the expression "Bangkok Rules"

Supreme Court - "Bangkok Rules"			
PROCESS	DATE	KIND	THEME
HC 131760	02/02/2016	Habeas Corpus	House arrest of a patient in an advanced stage of pregnancy
HC 118533	23/06/2016	Habeas Corpus	Narcotics trafficking and application of Law No. 8,072/90
HC 134104	02/08/2016	Habeas Corpus	House arrest of pregnant patient

RE 580252	16/02/2017	Extraordinary Appeal	Civil liability of the State for personal injuries to deprived of liberty
Hard carry 142279	20/06/2017	Habeas Corpus	House arrest of a patient with minor children
Hard carry 142593	20/06/2017	Habeas Corpus	House arrest of patient with minor daughter
Hard carry 136408	05/12/2017	Habeas Corpus	House arrest of a patient with a child under 12 years of age
Hard carry 143641	20/02/2018	Habeas Corpus	Replacement of preventive detention with home detention for all imprisoned women, pregnant women, postpartum women or mothers of children and disabled
Ext 1403	10/04/2018	Extradition	Extradition of mother with Brazilian children
Hard carry 149803 Agr	11/09/2018	Procedural Appeal in Habeas Corpus	House arrest of patient with children under 12 Years
Hard carry 191939	07/12/2020	Habeas Corpus	Pregnant patient who committed an illegal act during imprisonment Home

Source: prepared based on the decisions of the Federal Supreme Court.

According to Habeas Corpus 131760/SP (Brasil, 2016b), the patient was in an advanced stage of pregnancy, who was responsible for drug trafficking, and who requested the replacement of preventive detention with home detention, which was accepted ex officio, although not known about the petition due to the absence of interposition of a regimental appeal against the monocratic decision of the STJ. The President, Justice Celso de Mello, accompanying the rapporteur, stressed that the grounds were in accordance with the Bangkok Rules and the Code of Criminal Procedure, also considering other precedents of the Court.

Habeas Corpus 118.533/MS (Brasil, 2016a) brought to the debate the illegal constraint, by stipulating the rigors of Law No. 8.072/90 for privileged drug trafficking, citing only the enormous advance with regard to the systematization of the treatment given to prisoners worldwide. However, it is worth mentioning the speech of the Rapporteur, Minister Cármen Lúcia, who brought that, in cases of privileged trafficking, considered as that which, due to circumstances such as economic, psychic or affective dependence, is in total subservience, cases that often happen to women – for example, when they are drivers to drive cars with drugs, in large quantities, because they do not have a detectable appearance. The Minister understood, in this sense, that the judgment would have great social importance, since women – with children – are imprisoned, as it is a heinous crime.

Justice Gilmar Mendes, in Habeas Corpus 134.104/SP (Brasil, 2016c), emphasizes the adoption of the Bangkok Rules, which guarantee, preferably, non-custodial measures in the case of pregnant women and mothers with dependent children. She pointed out that, at other times, its observance was pointed out in other cases submitted to the Court, in addition to the fact that the Code of Criminal Procedure, in article 318, item IV, should give precedence to maternity and protection of the rights of the child, such as at the time of breastfeeding.

In Extraordinary Appeal No. 580,252 (Brasil, 2017c), the civil liability of the State was recognized when there is a violation of fundamental rights, which cause personal harm to inmates in prisons. There is an inherent responsibility for people in a situation of incarceration while they remain in detention, so that they must be kept in prison conditions with minimum standards of humanity established by law, as well as in other norms of international law, citing only the existence of the Bangkok Rules.

The Rapporteur of HC 142279/CE (Brazil, 2017a) and HC 142593 (Brazil, 2017b), Justice Gilmar Mendes, in the same sense referred to in Habeas Corpus 134104/SP, praised compliance with the Bangkok Rules, especially rule 64. In the specific cases, he granted an ex officio order to determine that the patients be placed under house arrest, as they have minor children.

HC 136.408/SP (Brasil, 2018c), in turn, also brings a case of a patient with a child under 12 years of age, so that house arrest is applicable in the case of preventive detention, with the Bangkok Rules as an observation of the judgment. In the votes, Justice Alexandre de Moraes makes a criticism, in the sense that it would be useless public policies provided for by law and in the Bangkok Rules, "if at home the customary practice is the crime". One

of the most relevant cases is the 2018 decision of the Second Panel of the Federal Supreme Court, which granted a collective habeas corpus to pregnant women and mothers of children up to 12 years old or of people with disabilities, pre-empted detention, without prejudice to the application of the alternative measures provided for in article 319 of the Code of Criminal Procedure, as provided for in Newsletter No. 891 (Brasil, 2018e). In addition, an ex officio order was granted to other women prisoners, pregnant women, postpartum women, or mothers of children and people with disabilities (Brasil, 2018e). As a mechanism indirectly related to the Bangkok Rules, there is Law 13,769 of 2018 (BRASIL, 2018a), resulting from the repercussion of the aforementioned collective habeas corpus. With this legislation, the replacement of preventive detention by house arrest for pregnant women or mothers responsible for children or children was disciplined.

people with disabilities, as well as provided similar conditions for compliance after conviction.

Unlike other decisions brought here, there is a case of the possibility of extradition of a mother with two Brazilian children, provided that there is a commitment to detract from the sentence, considering the period of imprisonment, including house arrest (Brasil, 2018b).

In the same vein as in other cases, the HC 149803 Agr/SP (Brasil, 2018f) granted a house arrest order to the patient convicted of theft, since she was the mother of three children under 12 years old, including one who was only one year old, who was breastfeeding. Justice Gilmar Mendes, again, brought the observation of the Bangkok Rules, in addition to the precedent of HC 143.641/SP, which demonstrates substitution as a rule, and the decision, which fails to replace, must be well grounded by the magistrate. It also pointed out that there is no prejudice to the adoption of other precautionary measures provided for in the Code of Criminal Procedure, according to the Court of First Instance.

Finally, in HC 191939/PR (Brazil, 2020) received as a Regimental Appeal, an ex officio order was granted to safeguard the health, as well as physical integrity, of both the pregnant patient and the unborn child, achieving periodic medical care and adequate cell. However, the appeal was dismissed, as the offense had been committed under house arrest, with a risk of criminal repetition. As for the Bangkok Rules, the Justice Gilmar Mendes evidenced its existence, so that, in a dissenting vote, he determined that it be placed under house arrest with electronic monitoring.

It can be seen that the rulings are, especially, habeas corpus, dealing with mothers with underage children or pregnant women and the determination of house arrest, without recent decisions and without the scope of norms regarding the general administration of institutions (entry, registration, health, work, education), awareness of society, etc.

The focus of the Federal Supreme Court is on the decarceration measures for women deprived of liberty on a provisional or permanent basis. In this sense, the Land, Labor and Citizenship Institute (2021) requested information from public agencies that make up the structure of the prison system of the Brazilian State on the subject. However, there were several obstacles encountered, resulting in the absence of transparent and accurate information, which violates the fundamental rights of the prisoners, as well as the constitutional principle of access to information.

Although several states have not sent the required data, the Institute has drawn an overview, even if partial, of house arrest at the national level: the guarantee occurs, to a greater extent, in cases of preventive detention (70% of the cases), while, for the purposes of sentence progression, only 56.24% of women had their right assured. Thus, even if the legal criteria for granting are clear and important – for mothers and children and/or dependents – there are still great challenges for their application (Instituto Terra, Trabalho e Cidadania, 2021).

In another report, it is shown that the determination of house arrest only delimits that they remain in their residence. As for the other aspects of daily life – such as taking the children to school, medical care, working, studying – authorization must be requested from the court. By being guided by the imperative of staying at home and taking care of children, such measures, applied by the Judiciary, reveal the vision of the role of women in society: being mothers (Instituto Terra, Trabalho e Cidadania, 2022, p. 46; 49).

The institute of house arrest, without a doubt, has the positive point of favoring decarceration measures. However, it sins in the sense that it bars access to fundamental rights for the maintenance and reconstruction of their lives. Therefore, it is indicated that it must be accompanied by other public policies, such as work, social assistance, health, and education (Instituto Terra, Trabalho e Cidadania, 2022, p. 72).

Thus, it can be seen that the discourses by the Supreme Court are closely linked to the definition of women as mothers. Without minimizing the importance of thinking about family suffering, reducing it to motherhood – without

even guaranteeing other relevant aspects – is also reducing the complexity of the issue and even the content of the Bangkok Rules themselves.

## 5 Conclusion

From the arguments presented about women in patriarchal society, three main tendencies were perceived: the particularity of the female experience within a purely male institution such as prison, the little political interest in their situation with the growth of the female prison population and, especially, their double disqualification: as criminals and "bad" women who transgressed the social role of mothers.

The present study sought to understand the way in which the Bangkok Rules are applied by the Federal Supreme Court (STF) to guarantee the rights of women prisoners in Brazil. Regarding the norms, they recognize the specific needs of gender in prison treatment, covering the following points: (1) general administration of institutions (entry, registration, place of detention, hygiene, health, safety); (2) treatment of special categories (classification and individualization, prison regime and post-release assistance, provisions for pregnant women, foreigners, indigenous people, and children); (3) non-custodial sanctions and measures; (4) investigation, planning, evaluation and awareness of society about the rules.

Therefore, all the STF rulings that contained the expression "Bangkok Rules" were analyzed, reaching the small number of 11 decisions. The vast majority were habeas corpus, referring to house arrest due to pregnancy or maternity of children or people with disabilities. Thus, even with the granting of extrication measures, reports demonstrate the difficulties regarding the other elements of daily life: taking the children to school, medical care, working, studying, etc., which are disregarded.

It was found that the maternalization of the prison experience is common, closely linked to the patriarchal definition of women. The judiciary, in turn, only turns its gaze to female incarceration by appealing to the figure of the mother who suffers for her abandoned children, without recognizing opportunities for an effective exercise.

He is also unaware of those without children, since they do not have the same awareness for the purpose of mitigating punishment and penitentiary institutional reforms. Their experiences remain marked by the lack of dignity, respect and the possibility of overcoming transgressions.

Therefore, more than 10 years after their adoption, the Bangkok Rules remain largely unimplemented. According to the content of the decisions of the Federal Supreme Court, the Judiciary only sees women in terms of the exercise of motherhood and, even so, disregards all the activities involved, as well as the particularities of each case.

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