



Promoting penal
reform worldwide

67th Session of the CEDAW

HALF-DAY GENERAL DISCUSSION ON ACCESS TO JUSTICE

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Written Submission

Penal Reform International (PRI) highly welcomes the initiative of the UN Committee on the Elimination of Discrimination against Women (CEDAW) to elaborate a general recommendation on access to justice with a broad approach encompassing women as defendants, an area which is often overlooked.

PRI would like to outline the main issues arising in this particular context in order to facilitate the consultation of CEDAW.

A considerable proportion of women offenders are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and the community.

In many countries where criminal sanctions are used to curb sexual or religious “immorality”, offences such as adultery, sexual misconduct, violations of dress codes, prostitution, or witchcraft penalise women exclusively or disproportionately.

In other countries detention is used as a form of “protection” for victims of rape, to protect the victim as well as to ensure that she will testify against her rapist in court.

As discrimination against women in society results in unequal power relations and access to economic resources, women in conflict with the law depend on the willingness of male family members to spend resources on due process of law for them. This is reflected in particular vulnerability to being deprived of their liberty, for reasons including an inability to pay for legal representation, fines for petty offences or to meet financial and other bail or sentencing obligations.

Moreover, in most societies alternatives to prison fail to take into account the specific requirements of women offenders, in particular their caretaking responsibilities, their previous history of domestic violence and the fact that there are gender differences in substance dependence requiring different substance dependence treatment programmes.

Women (and girls) comprise the minority of prisoners around the world, constituting an estimated two to nine per cent of national prison populations; however, their numbers are increasing significantly and at a greater rate than for men. Due to their small number amongst the prison population, the specific needs and characteristics of women and girls as subjects of the criminal justice system have tended to remain unacknowledged and unaddressed. Prison systems and prison regimes are almost invariably designed for the majority male prison population – from the architecture of prisons, to security procedures, to facilities for healthcare, family contact, work and training. As a consequence, few prisons meet the specific needs of women prisoners, and often do not prepare them for release with gender-appropriate rehabilitation.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) were adopted by the UN General Assembly in March 2011 to rectify the lack of standards; however the international community still lacks awareness and commitment to implementation.

In many regards, women have a heightened vulnerability to mental and physical abuse during arrest, questioning and in prison. For many women, custody means ill-treatment, threats of rape, touching, “virginity testing”, being stripped naked, invasive body searches, insults and humiliations of a sexual nature or even rape. Further, there are cases of dependency of prisoners upon prison staff which lead to increased vulnerability to sexual exploitation, as it drives them to ‘willingly’ trade sex for favours.

Even after release from prison, women are likely to suffer particular discrimination due to social stereotypes. While spouses regularly support their husbands in prison and upon release as a matter of course, contrarily women tend to be shunned by their husband. Often they are rejected by their families and in some countries lose their parental rights. If they have left a violent relationship, establishing a new life will entail economic, social and legal difficulties, in addition to the challenges of transition to life outside prison.

Lastly, the impact of being imprisoned can be severe if the prisoner is the sole carer of the children - a role still overwhelmingly held by mothers. Even a short period in prison may have damaging, long-term consequences for the children concerned and should be avoided, unless unavoidable for the purposes of justice.

PRJ appreciates the opportunity to provide input to the General Discussion and the forthcoming General Recommendation and stands ready to assist with further information.

15 January 2013

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