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Minority women in the criminal justice system: violence and discrimination

Report from side-event at 8th Regular session of the UN Forum on Minorities

On 25 November 2015, Penal Reform International (PRI) and the Quaker United Nations Office (QUNO) co-organised a side-event titled 'Minority women in the criminal justice system: violence and discrimination' at the 8th Regular session of the UN Forum on Minority Issues in Geneva. The event was sponsored by the Permanent Representation of Canada and the UN Office on Drugs and Crime.

This report was produced by PRI and QUNO to provide an account of the side event, including minutes of the individual presentations and of the questions and answers following the panel presentations.

Background

In some countries, women from racial and ethnic minority groups represent over 50 percent of the prison population. The disproportionate incarceration rates of women from certain ethnic and minority groups is highlighted by the Special Rapporteur on violence against women.¹ For example, in the United Kingdom ethnic minority women made up 28 per cent of the women's prison population, representing over three times that of the general population.² In Brazil, nearly two-thirds of women prisoners are of African descent.³

Because the criminal justice system is designed for the male majority population, women in conflict with the law face discrimination and inequality both at the pre-trial, trial and sentencing stage as well as in detention, having a negative impact on their human rights and ability to rehabilitate and rebuild their lives. For women from minority groups, the inequalities and discrimination are exacerbated due to their typically multiple needs from their socioeconomic marginalisation in most societies and the consequences of discrimination.

The 2010 UN 'Bangkok Rules'⁴ on women offenders and prisoners encourage governments and prison administrations to address the needs of women who are members of minority groups (or Indigenous communities) – specifically the different religious and cultural backgrounds and the multiple forms of discrimination in their access to programmes and services. (See Bangkok Rules 54 and 55).

¹ Roy Walmsley; International centre for Prison Studies; see World Female Imprisonment List, Third Edition (September 2015) and World Prison Population List, Tenth Edition (November 2013).

² UN Special Rapporteur on violence against women, Mission to the United Kingdom of Great Britain and Northern Ireland, UN Doc: A/HRC/29/27/Add.2

³ See <http://www.laht.com/article.asp?ArticleId=2399480&CategoryId=14090>, 6 November 2015

⁴ UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, 2010, see <http://www.penalreform.org/priorities/women-in-the-criminal-justice-system/international-standards/>

Deliberations at side-event

Moderator

Laurel Townhead, Quaker UN Office (QUNO)

Ms Townhead welcomed participants and noted that violence and histories of abuse are disturbingly common among minorities in criminal justice systems.

Welcoming remarks

Elizabeth Williams, Canada

Ms Williams thanked the co-organisers before noting that the event is falling on the International Day for the Elimination of Violence against Women, which is an important day for Canada. She welcomed the fact this event will be looking at the multiple layers of discrimination faced by women in detention. Canada supports the Minorities Forum as an opportunity for discussing and addressing challenges faced by minorities, including for example the homogeneity in police forces and the limited involvement by minorities in criminal justice bodies.

Olivia Rope, Penal Reform International

Ms Rope began by explaining that women are a minority in national prison systems – constituting between 2-9% of national prison systems on average, totalling over 700,000 globally although the rates of their imprisonment are increasing, and at a much faster rate than of men. Within the female prison population we see disproportionately high rates of minority women (eg. in an Eastern European country 12.5% of the women in prison belong to the Roma minority, although Roma only make up 0.3% of the national population). It was explained that the pathway to offending and experience in prison is very different for women, fraught with violence and discrimination.

Most women in prison are accused or convicted of non-violent, minor crimes – often for drug or property offences. Their offences are typically a product of discrimination at the hands of families, communities and wider societies. The majority are mothers, frequently sole carers and they usually have low education and have lived in poverty. Research shows that poverty is one of the primary reasons that leads to offending.

It was explained that in many countries where harsh drug laws are employed minorities – and specifically women – the impact is harsh. For instance in the US, African Americans make up 13% of the population, but account for over a third (33 per cent) of drug arrests, and 37% of people sent to state prison on drug charges. The disparate sentencing of crack versus powder cocaine led to this misrepresentation of minority women in prison. Similar disparities have been observed elsewhere.

Ms Rope noted that women who find themselves in prison are often placed in a regime that is designed for men (often by men), and so the needs of minority women are even less recognised or provided for. A paramount need – to be safe from violence – is frequently not met. The 2010 Bangkok Rules, it was noted, provide various safeguards to prevent and address violence. But for these safeguards to be truly effective, the realities for minority women in prison need to be recognised and addressed. For example it's been reported that some minorities are less likely to complain or access services, and are as a result more likely to endure violence for longer periods. Other barriers include a reluctance to involve the prison authorities for fear of racism or their complaint being dismissed; a lack of information on services available in appropriate languages or formats; and a lack of cultural awareness

among the prison administration (e.g. with investigatory methods which may involve physical procedures, etc).

Ms Rope offered some examples of serious discrimination for women - observed by PRI – regarding the quality and types of rehabilitation programmes offered in women’s prisons, which often follow society stereotypes of the type of work women should be doing, regardless of their demand in the market or wishes of the women. Firstly, in a high-income country it was reported that minority women had less choice in the work they did in prison and were usually employed in medial workshops compared to jobs with vocational qualifications attached. Secondly, with drug-rehabilitation programmes which do not take account of the distinct. One study in a European country found a lack of take-up of drug programmes by ethnic minority prisoners. This was not surprising as on analysis the study found that while the choice of drug by women prisoners differed and drug programmes focused on the main drug choice thereby not appropriate for minority women.

The last point made by Ms Rope relating to discrimination was the intersectionality of race, gender, poverty, and incarceration. Minority women had reported in one study that they received less help in their resettlement. It was noted that even after release from prison, women are likely to suffer particular discrimination and stigma 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 partner. The stigmatisation faced by women offenders is exacerbated for minority women. In conclusion, the Bangkok Rules require pre- and post-release services to be reviewed in light of these unique and complex needs of minority women.

Moderator:

Ms Townhead shared her experience that many women in prison were offending deliberately to receive a prison sentence as they needed a place of safety. It is thereby critical to address the violence experienced outside of prison in the lives of these women.

Anna Giudice Saget, UN Office on Drugs and Crime

Ms Giudice Saget gave an introduction as to the mandate of UNODC, and also the relevant international standards in addition to the Bangkok Rules on violence against women, including Model Strategies and the resolution on gender-related killings of women and girls; noting that unfortunately the term ‘crime of passion’ is still used to describe where a husband kills his wife (or children). UNODC also have a training curriculum for police on violence against women, among other tools, often developed in cooperation with other organisations (such as PRI, QUNO and OHCHR).

Ms Giudice Saget offered some thoughts on the challenges with addressing violence against women such as the lack of data globally. Data is currently country-based or based on one specific group or minority. It is therefore difficult to state conclusively that minority women are in a more challenging position than minority men. There are also challenges to overcome in addressing violence in the differing cultures, societies, etc, and the need to avoid stigmatisation of minority groups by stating they have higher levels of violence in their communities.

It was explained then when we are discussing violence experienced by women in the criminal justice system, or generally, that post-traumatic stress disorder (PTSD) influences the reaction, for instance, when being questioned by police. Miss Giudice Saget went on to explain that violence takes many forms, it is not just physical, and the impact is sometimes bigger than a physical one, but can be psychological and economical.

Regarding minority women, the statistics show that they are 10 times more likely to die from violence. Various examples were given including from the UK where minority groups have disproportionate levels of domestic homicide and Asian women are more than 3 times more likely to commit suicide. It was reiterated that there is more research needed as to why these statistics are higher.

Ms Giudice Saget went onto explain how the criminal justice system is often not just culturally-neutral, but gender-neutral. It is important to recall that violence influences women's pathways to prison, as noted by the Special Rapporteur on violence against women. Laws still discriminate, or lead to discrimination of minority women, and there are differing punishments and defences for men and women (for example with adultery). Rape victims are often further victimised, and mandatory sentencing for instance disproportionately impacts women and minorities, in particular in relation to drug laws.

In conclusion, Ms Giudice Saget noted that there are major obstacles for minority women in accessing protection against violence, from the police for example. She explained that this can entail a lack of confidence in institutions, financial costs, lack of knowledge and physical distance. Eligibility for legal aid also can be discriminatory, when it is assessed against family income (women cannot access this income always, especially if victims of violence). There is an excessive use of force and racial profiling by the police in many countries; and stereotypes continue to exist where women cannot access justice against perpetrators of justice because it may be 'accepted' by the male majority police force who will not proceed with the case.

Hannah Wu, Office of the High Commissioner for Human Rights

Ms Wu explained that the three Special Procedures under the Human Rights Council holding a mandate to address violence against women systematically look at the situation for women in custody. It was reiterated that for women offenders there is a continuum of violence in their lives, before, during and after imprisonment. The Special Rapporteur on violence against women issued a report on this specific area in 2013, dedicating an annual report to the General Assembly to the conditions and consequences of the imprisonment of women.

Ms Wu went onto explain that regardless of the country, whether developed or improvised, women face similar problems and human rights violations leading to their imprisonment, as well as deplorable conditions in prisons and negative consequences. Ms Wu noted that it is necessary to link together many of the UN bodies' work, for instance the UN Subcommittee for the Prevention of Torture which visits detention centres in countries (noting that reports are often confidential, but increasingly are made public). Ms Wu also noted that the recent General Recommendation issued by the Committee on the Elimination of Discrimination against Women (CEDAW) is a useful resource for guidance on addressing violence/discrimination faced by women in criminal justice systems.

In regards to pathways to imprisonment, Ms Wu went through a list of characteristics and specifics for women, including the presence of violence, coercion by partners or others, offences only applied to women such as abortion and moral crimes (adultery or being raped), or crimes such as running away. Women are also imprisoned sometimes for protection and increasingly due to anti-drug policies.

Secondly, Ms Wu explained that conditions in imprisonment for women often involve violence, a violation of their privacy, inadequate healthcare and hygiene, overcrowding and a lack of feminine-specific care. There are specific issues for women with children or pregnant women. She noted that the CEDAW Committee ruled on an individual case in 2009 which found that the failure to address specific rights and needs of women constitutes discrimination.

Ms Wu then explained that the third aspect – consequences of incarceration – entails often lack of effective rehabilitation and reintegration programmes for women and the failure to protect the family unit. There is more self-mutilation, depression and suicide among women prisoners, and stigmatisation, distance and rejection by families is common, a problem that is specifically challenging post-release.

Ms Wu finally recalled the findings of the Special Rapporteur on country visits, including to the US and UK. For instance, in the UK high rates of incarceration of disadvantaged women, particularly from racial minorities was reported. A combination of poverty, age, employment status, residence, social position, - and not race or culture per se – may explain higher rates of abuse among African American, native American and immigrant communities, and the reluctance to reach out to police is even more entrenched among minority and immigrant communities, as they may view police and the courts as oppressive, rather than protective institutions. In the UK black and minority ethnic women constituted 28% of imprisoned women, representing over three times that of general population). In New Zealand a disproportionate high level of Maori (Indigenous) women were reported at every stage of the criminal justice system.

In conclusion, Ms Wu, reiterated the necessity to build synergies between UN bodies and actors in this field to work together towards change. She noted that ‘Connect the dots’ meeting hosted by Canada as an example where different tools can be shared. There needs to be a focus on the needs of women and gaps in the support systems.

Interventions from participants

- A delegate from the **Mission of Thailand** thanked the organisers and noted that Thailand has worked with PRI and UNODC on implementation tools for the Bangkok Rules, and also welcomed the comments from OHCHR as regards exchanging information on various levels and further cooperation. **Olivia Rope (PRI)** noted that the “Toolbox on the Bangkok Rules” is available for free on PRI’s website, and also emphasised that while only 2 or 3 rules specifically address the needs of minority women, all of the Rules apply to minority women and pose positive obligations on governments on treatment, conditions, monitoring, etc.
- **Defense for Children International** commented that there is a lack of data, and agreed with ‘connecting the dots’ / improved synergies, asking if the panel had thoughts on how this could be done at different levels?
Anna Giudice Saget (UNODC) responded that indeed women/minorities in the criminal justice system should receive more attention internationally. At the societal level the issue of violence against women is one of the largest issues that should be addressed within the new development agenda. Issue that always needs to be pushed in the agenda of other issues. One point for future forum’s /events would be to give women who are directly affected the opportunity to speak, to empower them. There is strong knowledge on women in prison but it would also be important to address violence against women at initial stage. Do we focus on most vulnerable people (those who are already in prison) or do we focus on prevention of violence against women in general?
Olivia Rope (PRI) added that women as offenders and prisoners is not a mainstream issue. PRI raises the issue globally, and see that people are comfortable with speaking about women as victims but not too comfortable to talk about women as offenders (in conflict with law). Now more recognition of needs of women in detention, helped for example by the reports of the UN e.g. SR VAW’s. There is also an increase in the number of women in prison, and more discussion on the impact of the ‘war on drugs’ on women (e.g. with the UNGASS next year). It is important to push the agenda on this issue.

Hannah Wu (OHCHR) noted that there are major challenges to cooperate in meaningful way. Important to increase level of consciousness. Driving factor that it is not only a thing of our organizations. Varied levels of attention on international level to violence against women. Sometimes a few sentences, sometimes nothing and therefore it is important to have meetings like this to bring different actors into contact.

- **Elizabeth Williams (Canada)** asked the panel to elaborate specifically on the discriminatory effect mandatory sentences has on women. **Anna Giudice Saget (UNODC)** explained that this is clearly seen with drug-crimes. There are statistics showing for instance in the UK that 19% of female prisoners are foreigners and 80% of them are convicted for drug offences. Women are often used as drug mules and receive harsh punishments, including the death penalty in some countries. **Laurel Townhead (QUNO)** added that mandatory sentences don't allow judges to look at specific circumstances of the case. Therefore, it isn't possible to take into account levels of coercion, violence, knowledge of drug trafficking. Important to take into account position that women have within the drug trafficking. **Olivia Rope (PRI)** noted that often as women are lower down in the 'drug chain' they have no opportunities to enter plea bargaining deals, and even if bail is possible women often no access to money or help.
- **Laurel Townhead (QUNO):** The report by the Special Rapporteur on violence against women from 2013 is a good resource but there is more that could be explored by this mandate, including the extent to which laws allow prior victimization into account in sentencing.
- **Anna Giudice Saget (UNODC):** Criminal justice systems are male dominated and gender is an issue that needs to be addressed. This includes having not just specialised police or female judges, but having clarity for the whole system. Ms Giudice Saget also noted that there should be representatives of minority groups included in such discussions. How can minority women be empowered to deal with violence issues? It would be helpful to have community representatives/ minority women involved to provide insight into this type of question.

Conclusion

The moderator thanked panellists and the engaged audience, and noted that the recommendations in the Forum could be strengthened on the issues faced by women who are offenders, suspects or prisoners.

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