



**Promoting fair and
effective criminal justice**

Organisation for Security and Co-operation in Europe (OSCE):
The Human Dimension Implementation Meeting (HDIM)
Warsaw, 21 September 2014 - 2 October 2015

Working session 5: Tolerance and non-discrimination

Oral Statement of Penal Reform International

Working Session 5: Tolerance and non-discrimination – Violence against women

Dear Chairperson,
Dear delegates,

Penal Reform International (PRI)¹ welcomes the session's discussion on violence against women, and would like to highlight the particular link between violence and women in conflict with the law.

With more and more research carried out on women prisoners we see alarming statistics, with many of the 660,000 women in detention globally reporting experiences of sexual and domestic violence before coming in conflict with the law. In the majority of countries this violence continues while in detention with custody involving ill-treatment, invasive unnecessary body searches, humiliation or even rape.

It is increasingly recognised that there is 'a strong link between violence against women and women's incarceration, whether prior to, during or after incarceration', to quote the United Nations Special Rapporteur on violence against women who dedicated a report to this issue in 2013.

This link is particularly evident in cases where women have killed their abuser following systemic and prolonged domestic violence. Our research has found that a significant proportion of those women who committed violent offences (although very few in absolute terms) were directed against male family members and prompted in response to abuse they faced and/ or to protect their children.

Such fears are not unfounded. Globally, two thirds of the victims of homicide were female in 2012 and almost half of all female victims (47%) were killed by their intimate partners or family members, compared to less than 6% of male homicide victims.

¹ Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide. We promote alternatives to prison which support the reintegration of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

PRI's research has shown that on the whole criminal justice systems ignore the violence experienced by women before they come into conflict with the law and the circumstances that lead to their offending. The 2010 UN Bangkok Rules on women offenders and prisoners provide in Rule 61 that courts shall have the power to consider mitigating factors – in light of the typical backgrounds of women, including their history of violence.

Translating this into policy and practice would mean:

- **Sensitising the judiciary to the realities of domestic violence:** In one case the judge asked the defendant, 'why didn't you just leave your husband?' Victims are too often trapped in the situation – financially, because of children, and out of fear.
- **Applying the concept of 'self-defence' in a gender-sensitive way:** In most jurisdictions this concept is applied in a 'traditional' sense so the attack or threat must be imminent. This usually precludes cases where a woman turns against her abuser, typically not in the moment of violence due to physical inferiority (?) and psychological domination (?).
- **Re-thinking sentencing policies:** Even when prior abuse is applied as a mitigating circumstance at sentencing, long prison sentences often ensue due to harsh sentencing guidelines or legislation on life offences – in response to 'tough on crime' policies.

While not condoning violent offences, it has to be noted that the concepts of mitigating factors and self-defence are interpreted by most criminal justice systems in a manner that is insensitive to the types of threats women face, including in violent relationships.

As a step towards eliminating violence against women, PRI encourages all OSCE member states to review their legislation and judicial and prosecutorial frameworks in light of the UN Bangkok Rules.

I refer you PRI's research and toolbox on the UN Bangkok Rules which include specific tools to assist in an assessment and implementation of a gender-sensitive criminal justice system which can be found on our website.

Thank you for your attention.

End./