

ADDRESSING GENDER INEQUALITIES

IN THE CRIMINAL JUSTICE SYSTEM



INSTITUTE FOR CRIMINAL JUSTICE REFORM



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CRIMINAL JUSTICE
REFORM

Addressing Gender Inequalities in the Criminal Justice System

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Foreword

This research is the result of a law internship program hosted by the Institute for Criminal Justice Reform ('ICJR') and facilitated by the Australian Consortium for 'In-Country' Indonesian Studies ('ACICIS'). This partnership aims to increase students' awareness of legal issues that are being discussed in the host country, Indonesia, through a comparative approach with the best practices in Australia.

As one of the fastest growing prison demographics globally, female offenders face significant inequalities as they navigate a criminal justice system ostensibly designed for men. Owing to failures in taking the unique backgrounds and needs of female offenders into account, the problem of gender inequality in criminal proceedings has become a prominent human rights issue deserving of closer analysis.

This report aims to present an overview of the gendered responsibilities and obligations of states, under a normative framework of international standards, in order to explore how best to address gender inequality in the criminal justice system. This report also intends to address why incorporating a gender-sensitive approach to all aspects of the criminal justice system is a human rights issue of critical importance. It is hoped that this report will provide a useful resource on the complex intersections between gender, socio-economic standing, and bias within criminal justice systems, and how they relate to the protection of human rights.

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Chapter One

Addressing Gender Inequalities in the Criminal Justice System

1.1 Introduction: Understanding the Female Offender

As one of the fastest growing prison demographics globally,¹ the plight of female offenders has increasingly demanded the attention of human rights activists and governments alike. Placed into situations ostensibly designed and built for men, women often face significant inequities in the criminal justice system. Owing to failures in taking the unique backgrounds and needs of female offenders into account, the problem of gender inequality in criminal proceedings has become a prominent human rights issue deserving of closer analysis.

Research routinely shows that female prisoners are far more likely than male prisoners to come from a background of gender-based violence and abuse.² As such, understanding how the complex intersections of gender, poverty, violence, and economic factors, shape a woman's experience of the criminal justice system, is central to the protection of human rights.

The recent case of Indonesian national Merri Utami illustrates the dire consequences of failing to approach criminal proceedings in a gender-sensitive manner. Following her escape from an abusive husband in Indonesia, Utami fled to Taiwan and then Nepal, before falling victim to a drug-mule scheme.³ Identifying Utami as a woman vulnerable to exploitation, a man she had become involved with asked her to bring a bag back to Indonesia on his behalf. Unbeknownst to Utami, the bag contained 1.1kg of heroin, and she was swiftly convicted of drug trafficking in 2003, and sentenced to death under Indonesia's hard-line drug laws.⁴ At the time of writing in 2021, Utami remains on death row.

The tale of Merri Utami reinforces the need to approach the justice system with a gender-sensitive lens. In vowing to show no mercy to drug smugglers entering the country, the Indonesian court system failed

¹ International Drug Policy Consortium and Perkumpulan Lembaga Bantuan Hukum Masyarakat, *Policy Guide: Women, Incarceration and Drug Policy in Indonesia: Promoting Humane and Effective Responses* (March 2019) <http://fileserver.idpc.net/library/Indonesia_Policy_Guide_Women.pdf>.

² Penal Reform International, *Briefing Paper: Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules* (2015) <https://cdn.penalreform.org/wp-content/uploads/2015/04/Added-value-of-the-Bangkok-Rules-briefing-paper_final.pdf>.

³ Beh Lih Yi, 'Indonesian Drug Convict Facing Death Row Highlights Risks to Migrant Workers: Campaigners,' *Reuters* (Online, 28 July 2016) <<https://www.reuters.com/article/us-indonesia-executions-women-idUSKCN108032>>.

⁴ Ibid.

to recognise Utami as a vulnerable woman with a history of domestic abuse. Had the court system recognised the overarching themes of exploitation and gender power dynamics within her case, it is more likely that Utami would have been spared her current fate.

Notably, within the discourse of legal gender equality, there is often a misguided assumption that the principle of equality before the law prevents implementing any substantive gendered approach to criminal proceedings and incarceration. However, the means of achieving true gender equality within the criminal justice system rest in recognising the unique challenges faced by women in a system designed for men.

A clear understanding of the trends of female involvement in the criminal justice system must underpin any effort to establish gender-sensitive approaches to criminal proceedings. As discussed above, there is overwhelming evidence to suggest that female inmates are far more likely than males to come from backgrounds of domestic violence and sexual abuse.⁵ The flow-on effect from trauma in both childhood and adulthood can often manifest in the differences between female and male drug use, noting that the majority of female offenders are incarcerated for non-violent, often drug-related, crimes. Research highlights that women with substance-abuse issues have higher rates of post-traumatic stress disorder than men, and women are more prone to internalising their trauma and seeking out substances as a form of self-medication.⁶

Owing to deeply-entrenched societal gender norms, women often face significant barriers in accessing education and viable economic opportunities.⁷ Gendered disparities in economic prospects have been shown to increase the vulnerability of women to exploitation, particularly in terms of falling victim to drug mule operations, as highlighted earlier in the case of Merri Utami. Similarly, whereas male offenders are more likely to be motivated by crimes of revenge or malice, female offenders tend to be driven by economic factors and a desire to alleviate poverty. This is particularly pertinent as research suggests that women are twice as likely as men to live in poverty, noting also the institutionalised barriers that women often face to financial equality within the workforce.⁸

⁵ UN Office on Drugs and Crime, *World Drug Report 2018: Women and Drugs* (June 2018) <https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf>.

⁶ Ibid.

⁷ United Nations Development Programme, *International Guidelines on Human Rights and Drug Policy* (6 November 2020) <<https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/international-guidelines-on-human-rights-and-drug-policy.html>>.

⁸ Penal Reform International, *Briefing Paper: Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules* (2015) <https://cdn.penalreform.org/wp-content/uploads/2015/04/Added-value-of-the-Bangkok-Rules-briefing-paper_final.pdf>.

The breakdown of relationships and families has been shown to disproportionately affect women.⁹ Observing that societal influences most commonly dictate that women have the vast majority of childrearing duties, economic pressures from the breakdown of relationships and the financial burden of single-motherhood can further force women down a criminal path. Similarly, societal barriers to accessing education, including child marriage, and gendered household tasks preventing girls attending school, can all contribute to gendered economic disparities influencing female involvement in the criminal justice system.

1.2 Methodology

It is within this context that this exploratory report will seek to examine and address gender inequalities within criminal proceedings. For the purpose of collaboration between the Institute for Criminal Justice Reform ('ICJR') and the Australian Consortium for 'In-Country' Indonesian Studies ('ACICIS'), this research report will present the relevant international standards and best practices as they relate to gendered issues within the criminal justice system. Drawing upon primary source research methods in presenting both hard and soft sources of international law and legal standards, as well as secondary source research methods, including UN reports, academic journals, and policy briefs, this report will centre around an exploration of the role of gender at a normative level in legal proceedings. Seeking to address issues of gender discrimination in the criminal justice context, this report will then collate best practice research to inform the conclusions and policy considerations contained within the final chapter.

This report will open with an exploration of the relevant international standards, treaties, and guidelines pertaining to women in the criminal justice system, particularly during the trial, sentencing, and post-sentencing phases of criminal proceedings. As the central framework for incorporating a gender-sensitive approach to criminal proceedings and imprisonment, the 2010 United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the '*Bangkok Rules*'), will inform some of the discussion. However, other treaties and guidelines of fundamental importance will also be presented, including The United Nations Convention on the Elimination of All Forms of Discrimination against Women ('*CEDAW*'), the Universal Declaration of Human Rights ('*UDHR*'), and the International Covenant on Civil and Political Rights ('*ICCPR*'). This chapter will then explore the Australian approach to drug laws and harm minimisation models, noting that the majority of female offenders are incarcerated for drug-based offences.

⁹ Penal Reform International, *Briefing Paper: Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules* (2015) <https://cdn.penalreform.org/wp-content/uploads/2015/04/Added-value-of-the-Bangkok-Rules-briefing-paper_final.pdf>.

Secondly, this report will present the relevant gendered aspects of criminal proceedings which ought to be taken into account at all stages of trial, and imprisonment. Recognising the impacts of gender-based violence and abuse on female offenders, as well as exploring the factors that typically contribute to a woman's involvement in the criminal justice system, this report will seek to reinforce the central idea that incorporating gender sensitivities is integral to the protection of human rights more generally.

Finally, the concluding chapter of this report will provide several policy considerations, aimed at the government level. These considerations will centre around practical measures that can be incorporated into the criminal justice system, to reflect the unique characteristics and needs of female offenders.

1.3 Problem Statement

This report aims to present an overview of the gendered responsibilities and obligations on states, under a normative framework of international standards, in order to explore how best to address gender inequality in the criminal justice system. This report also intends to address why incorporating a gender-sensitive approach to all aspects of the criminal justice system is a human rights issue of critical importance. It is hoped that this report will provide a useful resource on the complex intersections between gender, socio-economic standing, and bias within criminal justice systems, and how they relate to the protection of human rights.

Chapter Two

Relevant International Standards on Gender and the Criminal Justice System

2.1 Overview

In recent decades, the international community has sought to develop a robust framework of international laws, treaties, and guidelines aimed at addressing gender inequalities within the criminal justice system. Drawing upon both hard and soft sources of law, including legally binding treaties and authoritative, albeit non-binding, UN General Assembly resolutions and guidelines, this chapter will present a non-exhaustive exploration of relevant normative international standards.

States' effective compliance with international standards, as they pertain to gendered issues in criminal proceedings, is of critical importance to both the promotion of human rights and the rules-based global order. Notably, the implementation of such standards into domestic legislation is a significant step in protecting women from the unique vulnerabilities and challenges posed by the legal system, and can assist in the goal of reaching economic and social parity between the sexes.

In an increasingly globalised society, a state's close adherence to international standards can further support regional prosperity and stability, by promoting a rules-based global order.¹⁰ Through committing to respect human rights treaties and upholding principles of good governance, both Indonesia and Australia are afforded the opportunity to become responsible leaders in the Indo-Pacific region. The challenge, however, rests in bridging the gap between international best-practice standards, and daily implementation on the ground.

¹⁰ Australian Department of Foreign Affairs and Trade, *2017 Foreign Policy White Paper*, White Paper Report (2017).

2.2 International Standards at the Trial Phase

Substantive gender equality at the trial phase requires an impartial judiciary to be free from bias, myths and negative gender stereotypes. As Claire L'Heureux-Dubé, former justice of the Canadian Supreme Court once wrote:

‘Myths and stereotypes are a form of bias because they impair the individual judge’s ability to assess the facts in the particular case in an open-minded fashion. In fact, judging based on myths and stereotypes is entirely incompatible with keeping an open mind, because myths and stereotypes are based on irrational predisposition and generalisation, rather than fact. They close one’s mind to both truth and reality.’¹¹

As such, the relevant international standards for gender-sensitivity at the trial stage of criminal proceedings relate to the necessity of an independent and impartial judiciary. It is also imperative that judges, lawyers, and prosecuting officials adopt a gender-sensitive, rather than gender-blind, approach to criminal trials. Whereas gender-blind approaches ignore or fail to address the gendered dimensions of a case, gender-sensitivity takes gendered dimensions into account, reflecting the duty of impartiality’s requirement of open-mindedness to all mitigating factors.

The Universal Declaration of Human Rights (‘UDHR’) and The International Covenant on Civil and Political Rights (‘ICCPR’)

As foundational human rights instruments, the UDHR and the ICCPR set out key international norms as they relate to judicial impartiality and independence. Specifically, Articles 7 and 10 of the non-binding UDHR set out rights pertaining to equality before the law, equal protection under the law free from discrimination, and entitlement to full equality in a fair and public hearing by an independent and impartial tribunal. Article 14 of the ICCPR, as a legally-binding treaty, enshrines these rights into international law and reinforces the centrality of a fair and impartial trial free from bias and discrimination. As such, these instruments underpin the importance of recognising gender bias as a form of partiality, and the necessity to eliminate it in order to achieve substantive gender equality at the trial phase.

¹¹ Claire L'Heureux-Dubé, ‘Beyond the Myths: Equality, Impartiality, and Justice’ [2001] (10) *Journal of Social Distress and the Homeless* 87.

The Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW')

Signed and ratified by both Indonesia and Australia, the legally-binding CEDAW treaty mandates that states work towards the complete elimination of gender discrimination, including gender-based violence. Passed into Indonesian domestic law in 1984 under Law No. 7/1984,¹² and into Australian domestic law, also in 1984, under *The Sex Discrimination Act 1984 (Cth)*,¹³ CEDAW obliges states to formally guarantee substantive gender equality, by taking all reasonable measures to eliminate gender discrimination, and necessitates that progress reports are actively submitted to the CEDAW Committee.

CEDAW's wide scope is relevant to the context of gender inequality within the criminal justice system, as the treaty guarantees equal rights for women in all aspects of life, including throughout the trial, sentencing, and post-trial phases of a criminal case. As ratifying states to the Convention, both Indonesia and Australia have a legal obligation to ensure that offenders in the criminal justice system are treated in a gender-sensitive manner free from discrimination and prejudice. Article 1 of CEDAW officially defines discrimination against women as '*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*'

Notably, in *Inga Abramova v. Belarus*, Communication No. 23/2009, the CEDAW Committee incorporated the Bangkok Rules into its interpretation of Article 1 CEDAW, and emphasised that acts of torture and the ill-treatment of female prisoners in detention constitute a violation of CEDAW.¹⁴

The UN Basic Principles on the Independence of the Judiciary

Adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, and endorsed by the UN General Assembly in resolutions 40/32 and 40/146, the UN Basic Principles on the Independence of the Judiciary calls on states to take these principles into account within the constraints of their own national legislation and practices. Included within the Basic Principles is the duty of all

¹² Lies Macoes, 'After 36 Years, Who Still Remembers CEDAW?,' *The Jakarta Post* (Online, 25 July 2020) <<https://www.thejakartapost.com/academia/2020/07/25/after-36-years-who-still-remembers-cedaw.html>>.

¹³ Australian Human Rights Commission, 'The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Sex Discrimination – International Activities', *Sex Discrimination – International Activities* (Web page) <<https://humanrights.gov.au/our-work/sex-discrimination/convention-elimination-all-forms-discrimination-against-women-cedaw-sex>>.

¹⁴ London School of Economics Centre for Women, Peace and Security, 'Abramova v Belarus (2011): CEDAW', *Tackling Violence Against Women* (Web page) <<https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/abramova-v-belarus-2011/>>.

governments to respect and observe the independence of the judiciary and the duty to ensure that adequate resources are provided in order for the judiciary to properly perform its functions.

The Montreal Declaration: Universal Declaration on the Independence of Justice

As part of the First World Conference on the Independence of Justice, the Montreal Declaration was adopted to ensure the free exercise of fundamental human rights through respect of the rule of law. This declaration sets out the functions and objectives of national judiciaries, including ‘to administer the law impartially between citizen and citizen, and between citizen and state; to promote, within the proper limit of the judicial function, the observance and the attainment of human rights; [and] to ensure that all peoples are able to live securely under the rule of law’. Furthermore, the declaration requires that judges keep informed on developments on international conventions and instruments of human rights, such as the Bangkok Rules elaborated on later in this chapter, and seek to implement these rules as far as possible within the limitations and frameworks of national constitutions and laws.

2.3 International Standards at the Sentencing Phase

The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (‘The Bangkok Rules’)

Unanimously adopted in 2010 via UN General Assembly Resolution 65/229, the Bangkok Rules provide the most comprehensive framework explicitly dealing with the unique needs of women within the criminal justice system.¹⁵ Whilst developed to expand upon, rather than override, the existing UN Standard Minimum Rules for the Treatment of Prisoners (the ‘Mandela Rules’), the Bangkok Rules represent a major advancement in official recognition that criminal justice systems are designed with male offenders in mind.¹⁶

Central to the Bangkok Rules’ gender-sensitive approach is the promotion of non-custodial sentences for female offenders where appropriate.¹⁷ For instance, Bangkok Rule 57 necessitates that viable

¹⁵ Penal Reform International, *Briefing Paper: Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules* (2015) <https://cdn.penalreform.org/wp-content/uploads/2015/04/Added-value-of-the-Bangkok-Rules-briefing-paper_final.pdf>.

¹⁶ Omar Phoenix Khan, ‘Introducing a Gender-Sensitive Approach to Pre-Trial Assessment and Probation: Evaluation of an Innovation in Kenya’ [2018] (65) *Probation Journal* 184.

¹⁷ Penal Reform International, *Briefing Paper: Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules* (2015) <https://cdn.penalreform.org/wp-content/uploads/2015/04/Added-value-of-the-Bangkok-Rules-briefing-paper_final.pdf>.

alternatives to custodial sentences be prioritised for women, drawing upon research which notes the serious impact of maternal separation on a child, and the fact that a significant number of female offenders are mothers with dependent children.¹⁸ Moreover, Bangkok Rule 61 stipulates that ‘courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and backgrounds’.

Another theme of the Bangkok Rules is the recognition that the majority of female offenders are incarcerated for drug-related crimes.¹⁹ Owing to relevant factors such as economic disadvantage, lack of access to education, and personal histories of abuse and trauma, women in prisons tend to face drug-dependency issues at a much higher rate than their male counterparts.²⁰ In order to address these issues, Bangkok Rule 62 further provides for the ‘provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women’s access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.’

The United Nations Standard Minimum Rules for Non-Custodial Measures (‘The Tokyo Rules’)

Further strengthening the framework of guidelines surrounding women in prisons and mitigating the effects of gender inequality, the Tokyo Rules serve as the primary international standard on alternatives to imprisonment and promoting non-custodial measures.²¹ As with the Bangkok Rules and the Mandela Rules, the Tokyo Rules were formed by a non-binding, albeit highly influential, UN General Resolution, passed in 1990 under resolution 45/110.

Similar to Bangkok Rule 57, the Tokyo Rules sets out some central principles including ensuring that pre-trial detention is used as a method of last resort, necessitating that mitigating factors be considered when applying non-custodial sanctions to a prisoner during the sentencing phase, and safeguarding against poorly trained staff employed to supervise non-custodial alternatives.

¹⁸ International Drug Policy Consortium and Perkumpulan Lembaga Bantuan Hukum Masyarakat, *Policy Guide: Women, Incarceration and Drug Policy in Indonesia: Promoting Humane and Effective Responses* (March 2019) <http://files.idpc.net/library/Indonesia_Policy_Guide_Women.pdf>.

¹⁹ UN Office on Drugs and Crime, *World Drug Report 2018: Women and Drugs* (June 2018) <https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf>.

²⁰ Ibid.

²¹ Penal Reform International, ‘International Standards’, *Alternatives to Imprisonment* (Web page) <<https://www.penalreform.org/issues/alternatives-to-imprisonment/international-standards/>>.

The United Nations Convention on the Rights of the Child

As one of the most widely ratified treaties within international human rights law, the Convention on the Rights of the Child provides a comprehensive structure for the protection of children's rights. For the purposes of addressing gender inequality within the criminal justice system, and specifically at the sentencing phase, Article 3 of the Convention is particularly relevant. This article necessitates that the best interests of the child are always taken into account, which is especially pertinent in contexts where a mother may be sentenced to a custodial sentence resulting in separation from her child. As such, other instruments and guidelines pertaining to addressing gender inequality at the sentencing phase should be read in light of Article 3 of the Convention on the Rights of the Child. This is to ensure that the interests of a child whose mother is being sentenced are protected, and to encourage non-custodial sentences for women, and particularly mothers, for the sake of their children.

The Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World

Emerging from the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, the Salvador Declaration of 2010 presents a non-binding, albeit influential, statement on the necessity of reinforcing and promoting alternatives to imprisonment at the sentencing stage. Whilst not strictly gender-specific, this declaration does suggest viable alternatives to custodial sentencing, including community service programs, restorative justice, electronic monitoring systems, as well as supporting rehabilitation and reintegration programs.

Regional Guidelines and Instruments

While it appears more difficult to isolate international instruments which incorporate a gender-sensitive approach to the sentencing phase, some regional instruments and strategies appear to provide more guidance. In the European context, the EU Parliament resolution of October 2017 on 'prison systems and conditions' (2015/2062(INI)) noted that imprisonment is a 'particularly inappropriate situation' for vulnerable individuals such as women.²² The resolution further stated that women prisoners have 'specific needs and must have access to adequate medical services and medical examinations', and

²² European Union: European Parliament, *European Parliament resolution on prison systems and conditions*, 5 October 2017, (2015/2062 (INI)), available at: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0385_EN.html?redirect.

considers it ‘appropriate to reflect on alternative [non-custodial] models that take into account the wellbeing of children’.²³

In the African context, Article 30 of the African Charter on the Rights and Welfare of the Child relates to children of imprisoned mothers. This article notes that expectant mothers in the criminal justice system ought to be given special treatment, including prioritising non-custodial sentences, ensuring that the child is not imprisoned with the mother, establishing alternative means and methods of confinement, and ensuring that expectant mothers are protected from the death penalty.

At the domestic level, legislative articles can provide good practice examples worthy of consideration by other states. For example, under Article 72 of the Criminal Code of the Republic of Kazakhstan, a woman’s sentence can be postponed if she has a child aged 14 years or younger, unless she has been sentenced to five or more years in prison, or has been sentenced for a grave or especially grave crime. Under Article 82 of the Criminal Code of the Russian Federation, a pregnant woman or a mother can also postpone her sentence, as long as it is less than five years and not of a grave nature, until her child reaches the age of 14.

2.4 International Standards at the Post-Sentencing Phase

The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (‘The Bangkok Rules’)

The full scope of gendered issues addressed in the Bangkok Rules is broad and varied. Other topics of crucial importance covered in the Rules include prison guidelines on, *inter alia*, access to feminine hygiene products and resources, the provision of gender-specific healthcare including reproductive, sexual, and mental health needs, HIV prevention and treatment, and specific accommodations for pregnant women, breastfeeding mothers, and women with dependent children.

As discussed in Section 2.3 on International Standards at the Sentencing Phase, the Bangkok Rules provide a comprehensive and detailed set of guidelines for the treatment of women in prisons. At the post-sentencing phase, the Bangkok Rules are particularly important in ensuring that adequate standards

²³ European Union: European Parliament, *European Parliament resolution on prison systems and conditions*, 5 October 2017, (2015,2062 (INI)), available at: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0385_EN.html?redirect.

of gender-sensitive treatment are maintained for female inmates. For instance, Bangkok Rule 5 on personal hygiene stipulates that hygiene facilities within female prisons are equipped to meet women's specific needs, including that sanitary products are provided free of charge.

Moreover, Rule 6(a) sets out rules on female-specific medical screenings for women entering prisons, including healthcare screenings for sexually transmitted infections, reproductive health such as breast and cervical cancer screenings, and mental health screenings to include histories of sexual abuse, violence, and post-traumatic stress disorders. By way of further example, Rule 20 establishes the need to develop less-invasive alternatives to traditional strip searches, noting that female offenders are more vulnerable than their male counterparts, and are more likely to have traumatic memories associated with forced strip searches than men.

The United Nations Standard Minimum Rules for the Treatment of Prisoners ('The Mandela Rules')

In conjunction with the Bangkok Rules, the Mandela Rules provide an influential basis to inform internationally-recognised minimum standards of prisoner treatment. Updated and revised in UN General Assembly Resolution 70/175 in 2015, the non-binding Mandela Rules support the promotion of humane conditions in prisons, and the protection of prisoners' human rights.²⁴ Whilst not specifically gender-focused, the Mandela Rules do contain some relevant provisions pertaining to female offenders.

Applicable gender-related Mandela Rules include:

Rule 28: *'In women's prisoners, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.'*

Rule 48(2): *'Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.'*

Rule 58(2): *'Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in*

²⁴ International Drug Policy Consortium and Perkumpulan Lembaga Bantuan Hukum Masyarakat, *Policy Guide: Women, Incarceration and Drug Policy in Indonesia: Promoting Humane and Effective Responses* (March 2019) <http://filesserver.idpc.net/library/Indonesia_Policy_Guide_Women.pdf>.

place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.’

Rule 81 (1): *‘In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody keys of all part of that prison.’* (2): *‘No male staff member shall enter the part of the prison set aside for women unless accompanied by a women staff member.’* (3): *‘Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women’.*

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (‘UNCAT’)

Having signed and ratified UNCAT, Indonesia and Australia are both legally required to prevent acts of torture and cruel treatment, including within prison settings. As a peremptory norm of *jus cogens*, from which no derogation is permitted under international law, the definition of torture has been afforded a broad interpretation. Importantly, gender-based violence and discrimination is considered a form of torture or cruel treatment.²⁵ Therefore, ratifying states to UNCAT, including Indonesia and Australia, have a legal obligation to ensure that gender-based violence and discrimination are eliminated from criminal justice environments.

2.5 Other Relevant Standards

As touched on in 2.1, this chapter presents a non-exhaustive list of sources of international standards as they pertain to women in the criminal justice system. While there are many other influential treaties and guidelines that will not be covered in this report, it is worth briefly mentioning some additional standards relevant to addressing gender inequalities in the prison context.

The UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice is a document of the UN General Assembly. These set of guidelines seek to implement measures including reinforcing that the responsibility for prosecuting gender-based violence rests with prosecutors and not the victim, and

²⁵ UN Human Rights Office of the High Commissioner News and Events, *Gender-based Crimes Through the Lens of Torture: International Women’s Day – Tuesday 8 March 2016* (3 March 2016) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17152&>>.

promoting working closely with a victim of gender-based violence to collect evidence collaboratively, rather than treating them with suspicion. Moreover, these strategies urge states to periodically review domestic legislation through the lens of mitigating gender-based violence and discrimination within the criminal justice system.²⁶

Furthermore, the UN Office on Drugs and Crime (UNODC) provides a handbook entitled ‘Women and Imprisonment’, which seeks to empower prison managers and policymakers to approach female offenders in a gender-sensitive approach per the Bangkok Rules.²⁷

2.6 The Australian Context

In recent years, Indonesia and Australia have adopted radically divergent approaches to the issue of drug control laws and substance-abuse issues. Whereas Indonesia has infamously declared its ‘War on Drugs’, Australia has sought to pursue a model of harm minimisation for low level offenders. Understanding how different jurisdictions approach the issue of drugs is relevant to the wider issue of addressing gender inequalities in the criminal justice system, as research consistently demonstrates that the majority of women offenders are incarcerated for drug-related crimes.²⁸ It is important to note that this subchapter is not to suggest that Australia’s model is faultless, but rather to present an alternative model of drug control to an Indonesian audience.

A major feature of the Australian Government’s ‘National Drug Strategy 2017-2026’ is an emphasis on harm minimisation amongst drug users, and shifting the focus on substance-abuse issues from a criminal issue to a health issue.²⁹ For women in particular, drug use often stems from a history of abuse and trauma, as well as lack of access to educational and economic opportunities.³⁰ As such, governments with hard line policies towards narcotics and mandatory custodial sentencing fail to consider the

²⁶ UN Office of the Special Representative of the Secretary-General on Violence Against Children, *Safeguarding the Rights of Girls in the Criminal Justice System: Preventing Violence, Stigmatization and Deprivation of Liberty* (2015) <https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/safeguarding_the_rights_of_girls_in_the_criminal_justice_system_1.pdf>.

²⁷ UN Office on Drugs and Crime, *Handbook for Prison Managers and Policymakers on Women and Imprisonment* (2008) <<https://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf>>.

²⁸ International Drug Policy Consortium and Perkumpulan Lembaga Bantuan Hukum Masyarakat, *Policy Guide: Women, Incarceration and Drug Policy in Indonesia: Promoting Humane and Effective Responses* (March 2019) <http://files.idpc.net/library/Indonesia_Policy_Guide_Women.pdf>.

²⁹ Australian Department of Health, *National Drug Strategy 2017-2026* (2017) <https://www.health.gov.au/sites/default/files/national-drug-strategy-2017-2026_1.pdf>.

³⁰ UN Office on Drugs and Crime, *World Drug Report 2018: Women and Drugs* (June 2018) <https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf>.

gendered factors that may lead a woman to drug use, and uncompromising laws only serve to further entrench women into a cycle of imprisonment and poverty.

A key example of Australia's harm minimisation strategy is the pilot program of 'Safe Injecting Rooms' operating in the Australian state of Victoria. From 2009-2018, the City of Yarra, which is a council area in Melbourne, recorded the highest frequency of heroin-related deaths in Melbourne, peaking in 2015 at 35 deaths from heroin used or purchased in the City of Yarra.³¹ Responding

to these issues, the Victorian Government passed legislation in 2018 under Part IIA of the *Victorian Drugs, Poisons and Controlled Substances Act 1981* to allow for the implementation of 'Safe Injecting Rooms' in the City of Yarra. These facilities provide a hygienic place for drug users to inject their drugs, under medical supervision, and allow for the delivery of healthcare services including mental health support, drug abuse treatment, wound care, and emergency overdose care. Whilst initially hugely controversial within Victorian society, the 'Safe Injecting Rooms' have proved life-saving, with 1,232 overdoses safely managed and treated by healthcare staff within the centre in a 12 month period from June 30 2018 to June 30 2019.³² Through providing quality health services to drug users, rather than imprisoning them, the Victorian Government is seeking to address the mental and physical health issues that often underpin drug-dependency issues.

Another example of Australia's harm minimisation approach to drug offenders is the creation of drug courts. Since 1999, drug courts in Australia have served as a diversion program for drug offenders to prevent further involvement with the criminal justice system.³³ Understanding that the majority of low level drug offenders in Australia come from backgrounds of disadvantage, often with significant social, emotional, and behavioural issues, drug courts seek to address the underlying causes of drug dependency in offenders, treating substance abuse issues as health concerns rather than criminal concerns. As an alternative to custodial sentences, participation in drug courts is voluntary and requires a guilty plea, and consists of an intensive program of detoxification, drug treatment and education, drug testing, and close medical, psychological, and psychiatric monitoring and examinations over a number

³¹ Victoria State Government, 'Medically Supervised Injecting Room', *Health.Vic* (Web page) <<https://www2.health.vic.gov.au/alcohol-and-drugs/aod-treatment-services/injecting-room>>.

³² North Richmond Community Health, 'Reducing Public Injecting, Improving Amenity and Saving Lives', '*Medically Supervised Injecting Room*' (Web page) <<https://nrch.com.au/services/medically-supervised-injecting-room/>>.

³³ Parliament of the Northern Territory, *Paper on Drug Courts* (2018) <https://parliament.nt.gov.au/__data/assets/pdf_file/0005/664601/Tabled-Paper-38-Alcohol-and-Drug-Foundation,-Paper-on-Drug-courts.PDF>.

of years.³⁴ Reviews on the effectiveness of drug courts reveal that they are far more effective than conventional incarceration methods in lowering the rates of recidivism for at-risk offenders.³⁵

Australia has also sought to address prisoner welfare issues, including gender inequality concerns, through its ratification of The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2017.³⁶ While Indonesia has signed and ratified UNCAT, at the date of writing in 2021 it has not signed or ratified OPCAT. The Optional Protocol centres around the promotion and improvement of human rights within prison and detention settings, and as a ratifying state, Australia is legally bound to create the *OPCAT Network* to facilitate a system of regular inspections of prisons and detention centres to ensure UNCAT compliance. While there are valid criticisms of Australia's implementation of its OPCAT obligations, its ratification of the Optional Protocol is a positive step towards monitoring gendered inequalities in the criminal justice system.

³⁴ Parliament of the Northern Territory, *Paper on Drug Courts* (2018) <https://parliament.nt.gov.au/__data/assets/pdf_file/0005/664601/Tabled-Paper-38-Alcohol-and-Drug-Foundation,-Paper-on-Drug-courts.PDF>.

³⁵ Ibid.

³⁶ Government of Australia through the Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018) <https://www.corrections.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2019/04/7f/88fc42ada/guiding_principles_correctionsaustrevised2018.pdf>.

Chapter Three

Gendered Aspects of the Criminal Justice System

3.1 Gender-Based Violence and the Vulnerabilities of Women and Girls

In order to adequately address gendered inequalities in the criminal justice system, an awareness of the unique vulnerabilities faced by women and girls, including gender-based violence, is of central importance. As this report has previously emphasised, the majority of female offenders have a history of abuse and trauma. The data suggests that globally, almost 70 million girls between the ages of 15 and 19 have been victims of some form of physical, sexual, or emotional violence before the age of 15, while 84 million girls between ages 15 and 19 have reported that they have been subjected to some level of physical, sexual or emotional violence by a male partner.³⁷ Globally, 40-70% of all female murder victims were murdered by an intimate partner.³⁸

As such, women are considered a vulnerable section of the prison population.³⁹ They face disproportionately high levels of mental health issues owing to abuse prior to imprisonment, high levels of drug and alcohol abuse issues, and significantly higher risks of sexual violence and abuse within the prison systems than male offenders.⁴⁰ Additionally, there is a high likelihood that female offenders have caring duties outside the prison environment, including for dependent children or older parents. Societal stigma against female offenders tends to be more severe than with male offenders upon release, leading women to have a higher chance of abandonment by their families once their sentence is completed.⁴¹

Women's vulnerability to exploitation and human trafficking further reflects the higher rates of female drug offenders. Research shows that the majority of victims of human trafficking are women, whereas the majority of drug traffickers are men.⁴² While women involved in drug trafficking typically constitute less than 10% of all offenders, they disproportionately come from regions of little economic opportunity and low education backgrounds, all of which have been compounded by societal barriers preventing

³⁷ UN Office of the Special Representative of the Secretary-General on Violence Against Children, *Safeguarding the Rights of Girls in the Criminal Justice System: Preventing Violence, Stigmatization and Deprivation of Liberty* (2015) <https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/safeguarding_the_rights_of_girls_in_the_criminal_justice_system_1.pdf>.

³⁸ Ibid.

³⁹ UN Office on Drugs and Crime, *Handbook for Prison Managers and Policymakers on Women and Imprisonment* (2008) <<https://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf>>.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Felicity Gerry QC, 'Let's Talk about Slaves...Human Trafficking: Exposing Hidden Victims and Criminal Profit and How Lawyers Can Help End a Global Epidemic' [2015] (3) *Griffith Journal of Law and Human Dignity* 1.

women in particular from accessing these opportunities.⁴³ Moreover, studies on crime trends and patterns reveal that women are far more likely than men to commit crimes motivated by poverty and financial need.⁴⁴ Notably, research from the Australian Institute of Criminology has exposed extensive human trafficking from Indonesia into Australia,⁴⁵ further fuelling the argument for non-punishment of crimes committed by victims of human trafficking under coercion.

3.2 Factors Contributing to Women and Girls' Involvement in the Criminal Justice System

Understanding the factors that contribute to female involvement in the criminal justice system is central to informing relevant and meaningful gender-sensitive policies. Embedded within the UN Office of the Special Representative of the Secretary-General on Violence Against Children's 2015 report entitled 'Safeguarding the Rights of Girls in the Criminal Justice System' are seven key factors that contribute to female vulnerability and involvement with the criminal justice system.⁴⁶

These factors include:

1. An unstable family environment, reflected by the overrepresentation of female offenders coming from homes of substance abuse, trauma, and poverty
2. The impacts of violence and abuse, which can also lead to impaired cognitive function and lowered IQ
3. The effects of poverty, and recognising that female offenders are more likely than men to commit crimes motivated by poverty and financial necessity
4. Failures of education systems in explaining one's rights, as well as discriminatory policies in many school systems preventing education in contexts of child marriage and/or pregnancy
5. Untreated physical and psychological health issues
6. The criminalisation of vulnerability, and convicting victims rather than perpetrators

⁴³ UN Office on Drugs and Crime, *World Drug Report 2018: Women and Drugs* (June 2018) <https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf>.

⁴⁴ Ibid.

⁴⁵ Felicity Gerry QC, 'Let's Talk about Slaves...Human Trafficking: Exposing Hidden Victims and Criminal Profit and How Lawyers Can Help End a Global Epidemic' [2015] (3) *Griffith Journal of Law and Human Dignity* 1.

⁴⁶ UN Office of the Special Representative of the Secretary-General on Violence Against Children, *Safeguarding the Rights of Girls in the Criminal Justice System: Preventing Violence, Stigmatization and Deprivation of Liberty* (2015) <https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/safeguarding_the_rights_of_girls_in_the_criminal_justice_system_1.pdf>.

7. Societal discrimination, particularly amongst minority groups

3.3 Influence and Significance of Gender Roles

Harmful gender stereotypes and outdated notions of women's roles in society often lead to gender discrimination, including within the criminal justice system. For example, the rise of conservative religious ideologies across Indonesia, as well as increasing trends of the 'domestication' of women, have influenced how gender norms and the status of women are perceived and defined.⁴⁷ Harmful stereotypes, such as perceptions of women as solely placid homemakers confined to the domestic sphere, create additional barriers to accessing education and perpetuate economic reliance on men. Similarly, notions that women are inherently inferior to men are some of the root causes of gender-based violence. As reflected in aforementioned criminological literature, gender-based violence and educational and economic disadvantage can lead to women being more vulnerable to exploitation and becoming involved with the criminal justice system.

3.4 Access to Justice and Role of Stigma

Women and girls often face significant barriers to accessing justice. Owing to a wider lack of awareness of their rights, lack of adequate counselling services, societal stigma, gender-insensitive crime reporting mechanisms, and threats or actual violence and rape, women and girls are more likely to have difficulties in the criminal justice system.⁴⁸ According to the World Drug Report 2018, women are far more likely than men to face societal stigma for criminal offences, extending to prejudicial attitudes of family and community upon female offenders' release.⁴⁹ Through being rejected and ostracised, women tend to face greater barriers in societal re-integration. As such, women's interactions with the criminal justice system tend to result in heightened negative consequences, serving only to further exacerbate social exclusion and economic vulnerabilities.⁵⁰

⁴⁷ Lies Macoes, 'After 36 Years, Who Still Remembers CEDAW?', *The Jakarta Post* (Online, 25 July 2020)

<<https://www.thejakartapost.com/academia/2020/07/25/after-36-years-who-still-remembers-cedaw.html>>.

⁴⁸ UN Office of the Special Representative of the Secretary-General on Violence Against Children, *Safeguarding the Rights of Girls in the Criminal Justice System: Preventing Violence, Stigmatization and Deprivation of Liberty* (2015)

<https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/safeguarding_the_rights_of_girls_in_the_criminal_justice_system_1.pdf>.

⁴⁹ International Drug Policy Consortium and Perkumpulan Lembaga Bantuan Hukum Masyarakat, *Policy Guide: Women, Incarceration and Drug Policy in Indonesia: Promoting Humane and Effective Responses* (March 2019) <

http://fileserv.idpc.net/library/Indonesia_Policy_Guide_Women.pdf>.

⁵⁰ Ibid.

As well as facing access to justice issues, female offenders are also more likely to face several barriers in accessing appropriate drug dependency treatments. Research shows that factors including lack of adequate childcare options, and stigmatising societal attitudes towards female drug users, contribute to a woman's challenges in accessing critical health services.⁵¹ Similarly, vulnerable women may fear authorities taking away their children, and they may have limited support systems and limited social capital, rendering it more difficult to access substance abuse treatments and facilities. However, research does suggest that healthcare services can mitigate these barriers by providing gender-specific accommodations, including child-minding assistance, in order to improve retention rates, engagement, and overall positive health outcomes.⁵²

The issue of competent legal representation is another relevant gendered aspect of accessing justice. Owing to unequal access to economic resources, women tend to face more challenges in financing experienced and capable legal representation.⁵³ As such, women in these situations are more vulnerable to the deprivation of their liberty, and are more likely to encounter unfair trials due to incompetent legal representation.⁵⁴ A further issue of improper legal representation is the fact that access to non-custodial sentences is more often granted through competent defence teams, and thus women in these positions face a higher chance of receiving a detrimental custodial sentence. In addition, research reveals that in many jurisdictions, judges and lawyers often fail to properly understand the effects of gender-specific mitigating factors, including sexual abuse histories, or long-term violence and abuse by an intimate partner, thus resulting in these factors frequently being ignored throughout criminal proceedings.⁵⁵

⁵¹ UN Office on Drugs and Crime, *World Drug Report 2018: Women and Drugs* (June 2018) <https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf>.

⁵² Ibid.

⁵³ Penal Reform International, *Briefing Paper: Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules* (2015) <https://cdn.penalreform.org/wp-content/uploads/2015/04/Added-value-of-the-Bangkok-Rules-briefing-paper_final.pdf>.

⁵⁴ Ibid.

⁵⁵ Ibid.

Chapter Four

Considerations and Conclusions on Addressing Gender Inequalities in the Criminal Justice System

As this report has sought to reinforce, incorporating a gender-sensitive approach to women in the criminal justice system is central to the promotion of human rights. In this concluding chapter, five key considerations for policymakers and officials will be presented, in order to assist in addressing gender inequalities in the legal context.

4.1 Considerations for Policymakers and Officials

Consideration One: The Benefits of Shifting Drug Policies Towards a Harm Minimisation Model

Women in particular are disproportionately treated more harshly than men for drug-related offences. Recognising that hard-line narcotics legislation is often ineffective in stemming widespread drug use, policymakers could instead consider pivoting towards a harm minimisation model of drug decriminalisation for personal consumption.

Through pivoting towards a harm minimisation model, drug abuse can be treated as a health issue rather than a criminal issue. Research shows that the decriminalisation of drugs for personal consumption can remove barriers for women in accessing evidence-based drug treatment programs, as well as decreasing stigma, and reducing prison populations. Diverting offenders away from incarceration would also considerably cut costs, allowing law enforcement resources to be redirected towards major drug syndicates and organised crime groups.

Consideration Two: Prioritising Non-Custodial Sentences for Women When Appropriate

As outlined in this report, incarcerated women suffer disproportionately more than their male counterparts. The challenges of incarcerated women extend to the worsening of mental health issues often exacerbated by prior trauma, heightened vulnerability to sexual violence by correctional staff, the inability to continue caring duties for dependents, and the severe repercussions of social stigma upon release. As such, placing priority on non-custodial sentences for women, where appropriate, should be considered as an important method to divert women from the prison system, and prevent the aforementioned challenges.

Consideration Three: Ensuring Stricter Adherence to Relevant International Standards

All jurisdictions can benefit from ensuring closer adherence to international standards as they pertain to addressing gender inequality in the criminal justice system. Therefore, policymakers and officials should consider strengthening treaty obligation implementation and reporting mechanisms. Moreover, policymakers and officials should seek out opportunities to sign and ratify more international human rights treaties where possible, in order to further safeguard the protection of women in the criminal justice system, and protect human rights more broadly.

Consideration Four: Implementing Unconscious Bias and Gender Awareness Training for Judges, Lawyers, and Prosecuting Officials

As outlined in Chapter 2.2, undue gender bias in judges can have a significant impact on their abilities to remain impartial during criminal proceedings. For this reason, policymakers and officials should consider the value of implementing specific training modules for judges, lawyers, and prosecuting officials, to enhance awareness of unconscious gender bias. Similarly, ensuring that legal practitioners remain across recent developments on international standards, and have a strong understanding of current gender-specific guidelines, such as *The Bangkok Rules*, is an important step towards addressing gender inequality in the criminal justice system.

Consideration Five: Preventing the Criminalisation of Victims

Policymakers and officials should consider the harms associated with criminalising and punishing victims of coerced crimes. Research shows that the majority of coerced victims are women, and as the case of Merri Utami outlined in Chapter 1.1 highlighted, the vulnerabilities of a victim of coercion only worsen when states refuse to acknowledge victims as exploited individuals. In order to avoid unjust outcomes and safeguard vulnerable women from unfair convictions, policymakers and officials should consider novel approaches to diverting trafficked or coerced women away from the criminal justice system.

4.2 Concluding Remarks

Addressing gender inequality within the criminal justice system is central to protecting the rights of all women. As outlined in this research report, ensuring a gender-sensitive approach at all stages of criminal proceedings is an essential element in preventing unnecessary suffering for women. Such an approach requires a clear understanding of the complex and often interacting factors that can lead to a woman's involvement in the criminal justice system, including histories of trauma and abuse, lack of access to educational and economic opportunities, and deeply-entrenched societal expectations and stereotypes of women. Through a broadened awareness of the factors that may mitigate a woman's responsibility of criminal offending, criminal justice systems can tailor the approach taken for female offenders, enabling a greater realisation of substantive gender equality. States can also support the pursuit of gender equality in the legal sphere through close adherence to their international obligations under international law. Such obligations include necessitating impartial and independent judiciaries, ensuring the unique needs of women are met during both the sentencing and post-sentencing phase of proceedings, and working towards the complete elimination of gender violence and discrimination. It is clear that establishing means and methods of addressing gender inequality in the criminal justice system is crucial in achieving the true meaning of justice, equity, and fairness for all.

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About the ICJR

The Institute for Criminal Justice Reform, abbreviated as ICJR, is an independent research institution that focuses on criminal law reform, criminal justice system reform, and general legal reform in Indonesia. One of the crucial problems facing Indonesia during the current transition period is reforming the law and its criminal justice system toward a more democratic direction. In the past, criminal law and criminal justice were used more as a means of supporting authoritarian power, and for social engineering purposes. Now is the time for the orientation and instrumentation of criminal law to shift from a tool of authoritarian move towards a pillar for the operation of a democratic political system that respects human rights. These are the challenges faced in the context of restructuring criminal law and criminal justice in the current transitional period. To answer those challenges, a planned and systematic effort is needed. A grand design for reform of the criminal justice system and law in general must be initiated. The criminal justice system as it is known has a very strategic place in the framework of building the Rule of Law and respect for human rights. Democracy can only function properly if there is institutionalization of the concept of the Rule of Law. Reform of the criminal justice system, which is oriented towards protecting human rights, is a "*conditio sine quo non*" with the process of institutionalizing democratization in the current transitional period. Steps in transforming the law and criminal justice system to make it more effective are currently underway. But this effort needs wider support. The Institute for Criminal Justice Reform (ICJR) is taking the initiative to support these steps. Providing support in the context of building respect for the Rule of Law and simultaneously building a culture of human rights in the criminal justice system. This is the reason for the ICJR's presence.

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