

# **WOMEN, INCARCERATION AND DRUG POLICY IN INDONESIA: PROMOTING HUMANE AND EFFECTIVE RESPONSES**

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## **Introduction**

In 2009, the United Nations Office of Drug and Crime (UNODC) produced a report assessing 100 years of drug control since the 1909 Shanghai Opium Commission where governments convened for the first time to discuss an international approach to drug-related problems.<sup>2</sup> The report identified and recognised the negative ‘unintended consequences’ of drug control policies: the creation of a criminal black market; the shift of policy focus from public health to law enforcement; the balloon effect, with drug law enforcement in one geographical area resulting in diversion of illicit drug production to other areas; policing pressure on one type of drug leading to the use of alternative drugs; and, the marginalisation of and stigmatisation against people who use drugs.<sup>3</sup>

Almost a decade after this UNODC report, the negative consequences of drug control continue to be suffered by a growing number of women incarcerated for drug-related offences worldwide, particularly in South East Asia. This policy guide aims to provide civil society organisations and stakeholders in Indonesia with information and policy recommendations on the situation of women incarcerated for drug-related offences.

## **Methodology**

In 2018, the International Drug Policy Consortium, in partnership with Ozone Foundation in Thailand, LBHM in Indonesia and NoBox Transitions in the Philippines, embarked on a project called ‘Women, incarceration and drug policies in South East Asia: Promoting humane and effective responses’.

The project aims to encourage reforms towards reducing the levels of incarceration of women for drug offences. The project also seeks to increase civil society engagement; gather support for proportionate sentencing and a reduction of death penalty sentences especially for low-level, non-violent drug offences; increase understanding of the number and profile of women incarcerated for drug offences and its wider socio-economic consequences; and to promote alternatives to incarceration.

To these ends, the project partners in three countries in South East Asia conducted research studies on women incarcerated for drug-related offences. They also organised workshops and meetings for civil society organisations involved in women’s rights, drug policy reform and prison reform. National stakeholder’s consultations were

held for relevant public institutions, organisations and communities to come together and discuss the research outputs while sharing their best practices, experiences and challenges as well as elaborate recommendations for national policy reforms. This policy guide is a consolidation of the outcomes of these project activities in Indonesia.

## Global Trends On Women Incarcerated For Drug Offences

In its 2018 Global Prison Trends report, Penal Reform International found that over 714,000 women as of November 2017, according to the Fourth Edition of the World Female Imprisonment List. These include pre-trial detainees or remand prisoners and those that have been convicted or sentenced.<sup>4</sup> While women only represent 7% of the world’s prisoners, they constitute the fastest growing prison population with particularly high rates of imprisonment for drug offences. According to the World Female Imprisonment List, between 2000 and 2017, the global female prison population increased by 53.3% compared to 19.6% for male prisoners. The female prison population levels in Brazil, Indonesia, the Philippines and Turkey have risen particularly sharply between 2015 and 2017. Indonesia is one of twelve countries with the highest rates of incarceration for women worldwide (see Table 1).

In 2013, the UN Commission on Crime Prevention and Criminal Justice estimated that globally one in five prisoners were incarcerated for drug offences.<sup>5</sup> However, the proportion of women incarcerated for drug offences is significantly higher than that of men, with the highest percentages to be found in Latin America and South East Asia.<sup>6</sup> In countries like Brazil,<sup>7</sup> Costa Rica,<sup>8</sup> Peru<sup>9</sup> and Venezuela,<sup>10</sup> more than 60% of women in prison are incarcerated for a drug offence. In the Philippines and Thailand, this proportion reaches 53% and 82% respectively.<sup>11</sup>

The many concerns faced by women incarcerated include drug dependence and mental health problems, often linked to histories of abuse and trauma, vulnerability to sexual abuse by correctional personnel and other prisoners, reproductive healthcare needs, being primary caretakers of young children but being separated from them, and lesser face-to-face contact with their families because of the often remote location of women’s prisons. It is also more difficult for women with a history of incarceration to find employment, housing and financial support when they return to their communities,<sup>12</sup> in particular when formerly incarcerated for drug offences, due to the high level of stigma attached to involvement in the illicit drug trade.

**Table 1: Highest incarceration rates of women worldwide**

	Country	Number of women and girls incarcerated as of September, 2017
1	United States	about 211,870
2	China	107,131 (plus an unknown number in pre-trial and other forms of detention)
3	Russian Federation	48,478
4	Brazil	44,700
5	Thailand	41,119
6	India	17,834
7	Philippines	12,658
8	Vietnam	11,644
9	Indonesia	11,465
10	Mexico	10,832
11	Myanmar	9,807
12	Turkey	9,708

Despite the rising numbers of women incarcerated for drug offences worldwide – and especially in South East Asia – because women and girls only represent less than 10% of the prison population on average, their characteristics

and gender-specific needs have largely been unrecognised and ignored by decision makers in the implementation of drug laws and within the criminal justice system.

## Box 1. International guidelines and recommendations for women incarcerated for drug offences

The **2016 United Nations General Assembly Special Session on the World Drug Problem** (UNGASS) concluded with an Outcome Document that addresses human rights abuses in the name of drug control,<sup>13</sup> including gender-specific issues faced by women incarcerated for drug-related offences, and calls on member states to:

- Mainstream a gender perspective into and ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes, develop and disseminate gender-sensitive and age-appropriate measures that take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem and, as States parties, implement the Convention on the Elimination of All Forms of Discrimination against Women (para 4. g)
- Encourage the taking into account of the specific needs and possible multiple vulnerabilities of women drug offenders when imprisoned, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (para 4. n)

In 2016, the UN Commission on Narcotic Drugs adopted **Resolution 59/5 ‘Mainstreaming a gender perspective in drug-related policies and programmes’**. The resolution called on member states to consider the specific needs of women and girls in implementing drug policies in line with the international drug control conventions, and:

*‘to take into consideration the specific needs and circumstances of women subject to arrest, detention, prosecution, trial or the implementation of a sentence for drug-related offences when developing gender-specific measures as an integral part of their policies on crime prevention and criminal justice, including appropriate measures to bring to justice perpetrators of abuse of women in custody or in prison settings for drug-related offences’ (emphasis added).<sup>14</sup>*

The same resolution also instructs UN member states to draw from the provisions of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),<sup>15</sup> the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>16</sup> and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).<sup>17</sup> These UN Standard Minimum Rules include key guiding principles regarding women deprived of liberty:

### The Nelson Mandela Rules:

- Rule 28. In women’s prisons, 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 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 of the keys of all that part of the prison.

(2) No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman 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 Bangkok Rules:**

- Rule 60. Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.
- Rule 61. When sentencing women offenders, 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 typical backgrounds.
- Rule 62 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 Tokyo Rules:**

- 1.5. Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

These international guidelines and recommendations require more efforts by UN member states to be adequately implemented at national level.

## **Drug Policy In Indonesia**

Law No. 9,<sup>18</sup> adopted in 1976, and subsequently amended in 2009 as Law No. 35,<sup>19</sup> lays out the key rules and punishments associated with involvement in the illicit drug market in Indonesia. Since the adoption of the legislation in the 1970s, Indonesia's drug policy has been focused on a tough prohibition and enforcement strategy.

Law No. 35 categorises drugs into three schedules. Drugs under Schedule I are prohibited for medical use. If there is no option left, drugs under Schedule II can be used for medical purposes. Meanwhile, drugs Schedule III are used for medical purposes. Meanwhile, drugs under schedules II and III can be used for both medical and research purposes

under the supervision of the Ministry of Health. Law No. 35 also provides criminal penalties of imprisonment, fines, and, in some cases, death for different acts such as the illicit use, possession, sale, distribution, export, import, delivery, planting, and manufacture of these substances. Indonesia is notorious for the imposition of the death penalty on drug offenders, notably in the case of 14 prisoners who were executed by firing squad in 2015.<sup>20</sup>

The 2009 Law No. 35 requires the parents of minor people who use drugs, the families of adult people who use drugs and people who use drugs themselves to report their drug use to the authorities. Failure to do so is punishable by imprisonment and payment of fines. In addition, any person who ‘purposely’ does not report any of the violations of the drug legislation may also be criminally charged and punished with imprisonment and the payment of fines.

The law nonetheless includes provisions to divert people who use drugs from the criminal justice system and towards rehabilitation - in cases involving drug use, judges are indeed given the discretion to order drug treatment instead of imprisonment.<sup>21</sup>

Concerns have been raised by rights advocates regarding possibly worrisome proposed amendments to Indonesia’s criminal code in 2018. The criminal code referred to as ‘KUHP’ is basically the 1918 penal code issued by the Dutch government during its colonisation of Indonesia, which was retained after Indonesia’s independence in 1945. The draft bill of the revamped criminal code, which as of February 2019 was still in the final stages of deliberation in the Indonesian Parliament, contains 22 articles on illicit drug use, possession, couriering, and smuggling. These acts under the proposed new criminal code will still be punishable by imprisonment, and in severe cases, death by a firing squad. Furthermore, the draft criminal code reproduces the punitive provisions already included in the 2009 drug law but excludes its health provisions. The draft criminal code also contains a blanket prohibition which does not distinguish between people who use drugs with

people engaged in trafficking.<sup>22</sup> Incorporating drug-related activities in the proposed new criminal code would constitute a shift from the existing health-oriented approach to drug use under the 2009 drug law, to a purely criminal approach.

As a result of the systematic enforcement of the country’s punitive drug law, the Ministry of Law and Human Rights has reported that Indonesia’s prisons are over capacity. As of February 2018, 67.4% of all prisoners in Indonesia (112,441 men and women, out of a total prison population of 166,590) were incarcerated for drug-related offences.<sup>23</sup>

## **LBHM’S STUDY ON WOMEN INCARCERATED FOR DRUG OFFENCES IN INDONESIA**

During the last quarter of 2017, as part of the IDPC regional project on women incarcerated for drug offences in South East Asia, LBHM’s Research Team conducted a study on the situation in Indonesia. The study combined quantitative and qualitative data gathering methods. The research team travelled to gather data from 307 women incarcerated for drug offences in four prisons in Indonesia – involving 55 women in Humbang Hasundutan (South Sumatra), seven women in Gorontalo (South Sulawesi), 24 women in Rantau Prapat (South Sumatra) and 221 women in Semarang Women Prison (West Java)– across three provinces and islands.

Three of the four prisons were facilities for both men and women while one (Semarang) was exclusive for women. Table 2 shows the prison population in each of the four prisons as well as the number of women prisoners incarcerated for drug offences.

**Table 2. Number of informants and overview of prison situation**

Name of prison/Detention Center	Humbang Hasundutan	Rantau Prapat	Gorontalo	Semarang Women Prison
Number of research women respondents	55	24	7	221
Total prison population (including pre-trial detainees)	390	1,514	601	387
Number & percentage of people incarcerated for drug offences	266 (68%)	998 (66%)	81 (13%)	260 (67%)
Total number of female prisoners	74	25	41	340
Number & percentage of women incarcerated for drug offences	55 (74%)	25 (100%)	7 (17%)	260 (76%)
Capacity of the prison	150	375	330	174
Overcrowding issues	160%	304%	82%	122%

**Figure 1. Overview of research respondents' age**

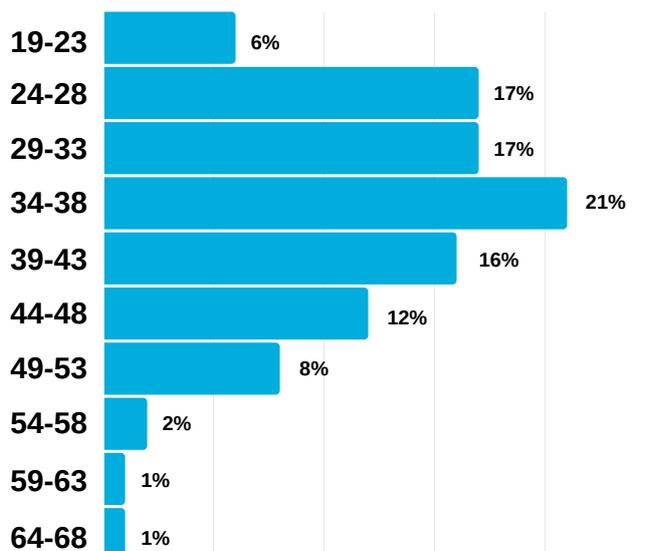


Figure 1 shows the age of the research respondents. The age of women prisoners who participated in the study ranged from 19 years old to 68 years old with most in their mid- to late-thirties.

Figure 2. Marital status, children, employment status, daily needs of research respondents

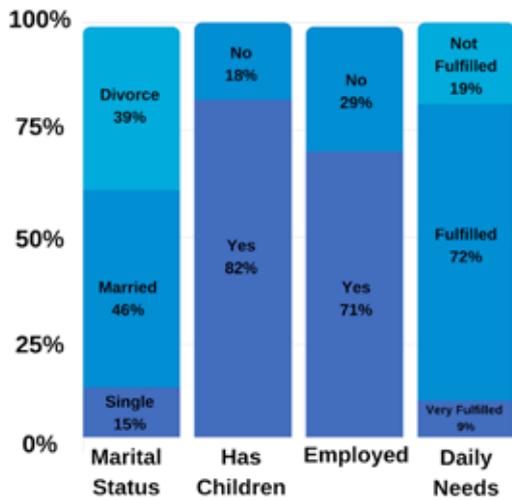


Figure 2 shows the marital status and whether the research respondents have children, jobs and were fulfilled in their daily needs.

Figure 3. Type of drug involved in criminal case (n = 317)

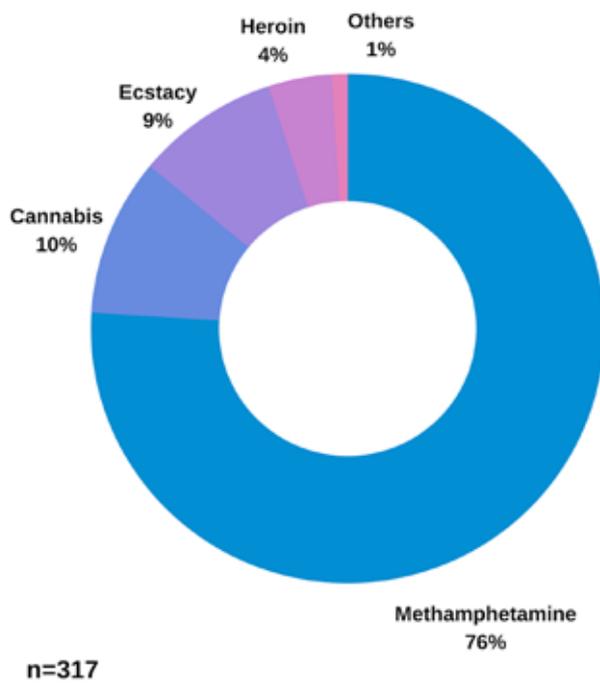


Figure 3 shows the type of drug involved in the case and used as evidence against the research respondents. The most common substance involved by far is methamphetamine (known locally as “shabu”) in 76% of the cases, followed by cannabis (10%), ecstasy (9%), heroin (4%), and others (1%).

**Figure 4. Period of Imprisonment in months (n = 303)**

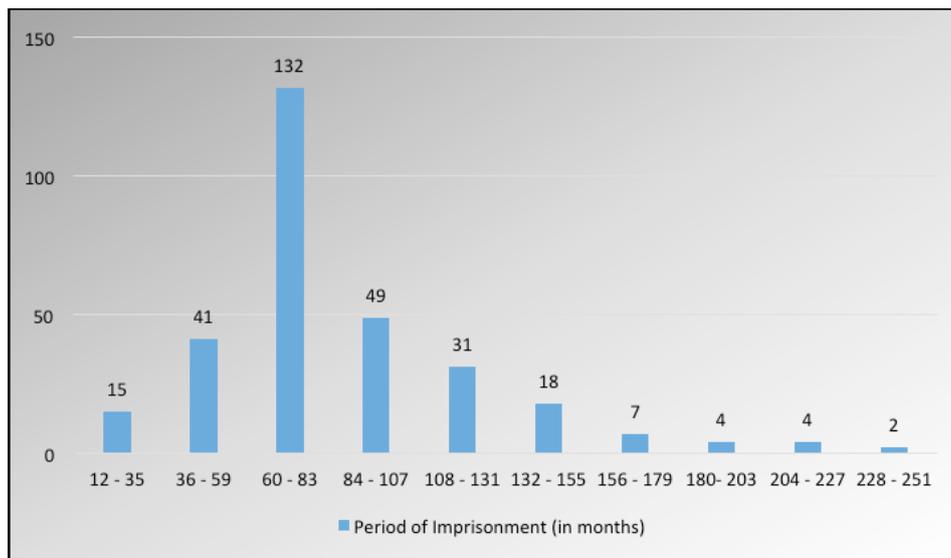
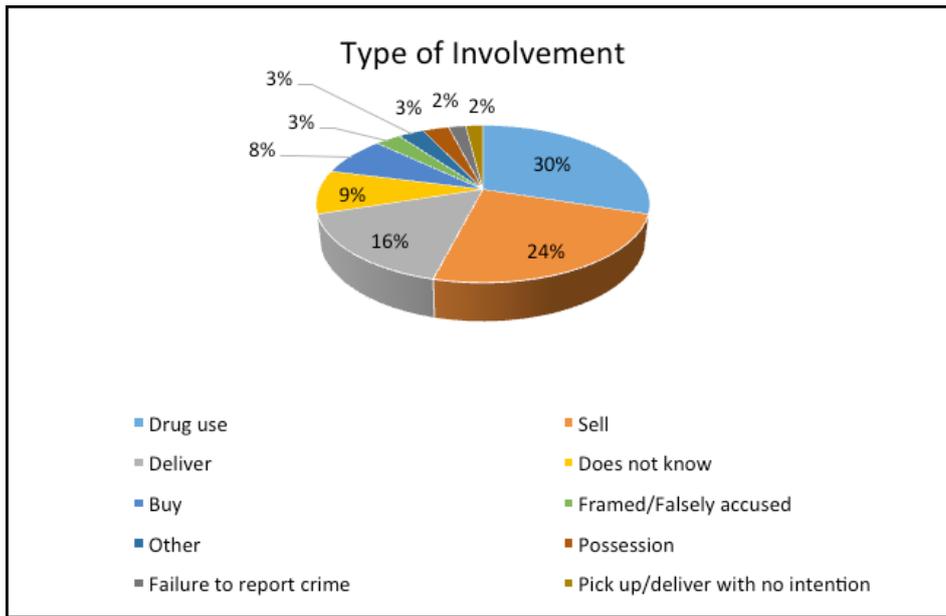


Figure 4 shows the period of imprisonment of the research respondents by number of months. The average period of the women's sentences is 83.70 months (that is, 6 years 11 months), with the shortest period of imprisonment being 12 months. Two respondents received life sentences. One respondent received sentences to complete terms of both drug rehabilitation and imprisonment. The period of imprisonment varies, and it was not possible to identify any pattern. For instance, one case led to a prison sentence higher than 100 months (that is, 8 years 4 months) but involving less than 0.4 grams of drugs.

The research respondents were mostly charged for drug use (30% of the respondents), selling

drugs (24% of the respondents) and delivering drugs (16% of the respondents) (see Figure 5.). At least six women were imprisoned for not reporting their drug use. Disturbingly, two respondents did not understand what charges were brought upon them and what their sentence was. Those who used drugs were sentenced to imprisonment, rather than rehabilitation, despite the provision included in Law No. 35 offering such an option. Over half of the women (53%) reported that men were involved in their case, and 27% of the respondents said that their intimate partners influenced their involvement in the drug offence. Several respondents said they were not involved in any illicit drug activities, but were still convicted by the judge.

**Figure 5. Involvement of women in drug offences**



## Experiences With The Criminal Justice System

### Access to legal assistance

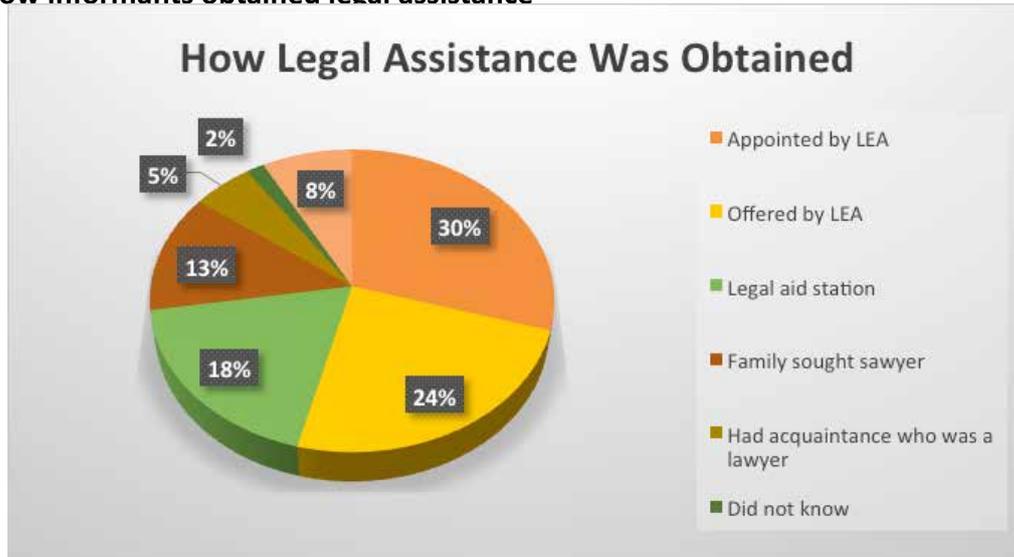
Most of the research respondents did not have a lawyer during the investigation and prosecution stages of their cases. Over half of them had legal assistance only during the trial stage of their

cases but 42% of the women who participated in the study said they were not assisted by a lawyer in all stages of the proceedings against them (see Figure 5). The research findings also show that law enforcement agents (LEA) plays an important role in providing legal assistance during trials (see Figure 7). However, all research respondents were disappointed with the quality of legal assistance they received.

**Figure 6. Access to legal representation at different stages of court proceedings**



Figure 7. How informants obtained legal assistance



## Box 2. International guidelines and recommendations on access to legal aid

The right to have legal representation and to have access to free legal assistance is guaranteed in the International Covenant on Civil and Political Rights<sup>24</sup> and was further reinforced in the **Revised Standard Minimum Rules for the Treatment of Prisoners or the Mandela Rules**,<sup>25</sup> which provides:

‘If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.’ (Rule 119 No. 2, Revised Standard Minimum Rules for the Treatment of Prisoners).

The **UNGASS 2016 Outcome Document** also includes provisions on the right to a fair trial and access to legal assistance, exhorting member-states to:

‘4.o Promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment and to eliminate impunity, in accordance with relevant and applicable international law and taking into account United Nations standards and norms on crime prevention and criminal justice, and *ensure timely access to legal aid and the right to a fair trial*’ (emphasis added).

In an ‘**Information note for criminal justice practitioners on non-custodial measures for women**’, the UNODC called on judges, prosecutors and the police to ensure that those who appear before them who cannot afford a lawyer and/or are vulnerable are provided with access to legal aid.<sup>26</sup> This is one way with which criminal justice practitioners can contribute to ensuring that the specific

needs of women in the criminal justice system are met.

Guideline No. 9 of the **United Nations Principles and Guidelines on Legal Aid** outlines the specific steps that states need to take to ensure access to legal aid for women:

‘Guideline 9. Implementation of the right of women to access legal aid: States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:

(a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice;

(b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;

(c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where

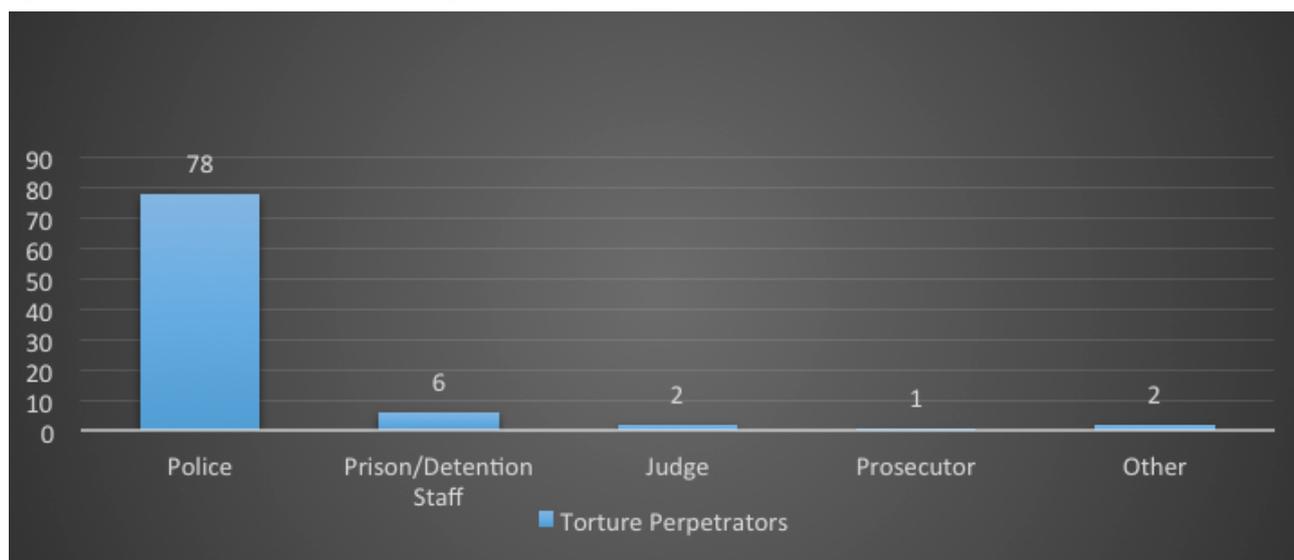
requested or required’.<sup>27</sup>

### **Experiences of torture and ill-treatment**

Out of the 307 respondents, 78 – that is, over 25% of the women – said that they had experienced torture, mostly at the hands of the police, but also by criminal justice and prison officials (see Figure of the government).

8). 57 respondents experienced physical torture, 35 said that they had suffered psychological torture and 3 reported being tortured sexually (ie. where the perpetrator was acting on the authority of the government). Seven women also said they experienced sexual violence (ie. where the perpetrator was not acting on the authority

**Figure 8. Perpetrators of torture against research respondents**



### Box 3. International guidelines and principles on the prevention of torture and other cruel treatment or punishment

Both the Bangkok Rules and the Mandela Rules anchor the minimum standards for the treatment of prisoners on human dignity. Rule 1 of the Mandela Rules calls for the treatment of all prisoners with respect due to their inherent value and dignity as human beings.

The UNGASS Outcome Document also exhorts UN member states to:

‘4.0 Promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that *ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment* and to eliminate impunity, in accordance with relevant and applicable international law and taking into account United Nations standards and norms on crime prevention and criminal justice, and ensure timely access to legal aid and the right to a fair trial’ (emphasis added).

#### **Conditions in prison**

Three of the four prisons visited in the research study were mixed facilities with both men and women prisoners. This made it difficult for the women to access the common areas.

Many of the women are placed in prisons that are far away from their families. The reason why prisons are located in such inaccessible areas is unknown. The distance makes it difficult for their families to visit them. Sixty-six respondents reported never having been visited by their families. One respondent applied to be transferred to a prison closer to her family, but the process was difficult and lengthy.

Access to health services remains a major challenge. Reproductive healthcare services are available in Semarang Women’s Prison, but not in the other prisons. However, HIV testing is mandatory for all people upon entry into a pre-trial detention or prison facility (but not necessarily for those transferred to another facility), and the women therefore cannot refuse it. About 30% of the research respondents reported that mental health services were available, but only 9% said

they have accessed it. However, sanitary pads for menstruation are not free and the women have to buy them in the prisons at a cost 2-3 times higher than outside. The women also need to buy their own soap, shampoo, detergent and other basic needs.

The quality of the food provided is reportedly very poor, pushing women to often have to buy food from the prison canteen, which is also expensive. They also have to pay for telephone calls. The research respondents reported that the cost of their basic needs while in prison could go up to 3 million Rupiah (equivalent to USD 211). Women prisoners try to meet these costs by requesting money from their families, working as personal assistants to rich prisoners and making crafts like bags and batik cloth (traditional Indonesian textile).

There are no healthcare services whether physical or psychosocial and no rehabilitation treatment services for women who use drugs while they are incarcerated. This is despite the fact that 69% of the respondents reported having used drugs, mostly amphetamines. Four informants said that they were drug dependent and had to endure painful withdrawal symptoms without being

## Box 4. International guidelines and recommendations for women's access to drug-related health services

The Bangkok Rules specifies approaches to women who use or are dependent on drugs and held in prisons or detention facilities in rule 6 (4):

'Research in a number of countries has found that a large proportion of women entering prison have a drug dependency. Drug offences are one of the most common category of crimes committed by women and drugs are often key to women's offending behaviour. Some research also indicates that women prisoners are more likely to be addicted to harder drugs than male prisoners. It is therefore important to diagnose any treatment needs for drug dependency on entry to prison, in order to provide the requisite healthcare services, as early as possible during detention and imprisonment, taking into account that drug dependency is a recognised underlying factor that can lead to conflict with the law and therefore to re-offending following release, if left untreated.'<sup>28</sup>

The UNGASS 2016 Outcome Document also requests member states to:

a. take a health-centred approach to drugs:

"Recognize drug dependence as a complex, multifactorial health disorder characterized by a chronic and relapsing nature with social causes and consequences that can be prevented and treated through, inter alia, effective scientific evidence-based drug treatment, care and rehabilitation programmes, including community-based programmes, and strengthen capacity for aftercare for and the rehabilitation, recovery and social reintegration of individuals with substance use disorders, including, as appropriate, through assistance for effective reintegration into the labour market and other support services." (para 1(i))

b. ensure voluntary access to treatment:

"Encourage the voluntary participation of individuals with drug use disorders in treatment programmes, with informed consent, where consistent with national legislation, and develop and implement outreach programmes and campaigns, involving drug users in longterm recovery, where appropriate, to prevent social marginalization and promote non-stigmatizing attitudes, as well as to encourage drug users to seek treatment and care, and take measures to facilitate access to treatment and expand capacity". (para 1(j))

"Promote effective supervision of drug treatment and rehabilitation facilities by competent domestic authorities to ensure adequate quality of drug treatment and rehabilitation services and to prevent any possible acts of cruel, inhuman or degrading treatment or punishment, in accordance with domestic legislation and applicable international law". (para 4(c))

c. implement measures to minimise the health and social harms associated with drug use:

"Invite relevant national authorities to consider, in accordance with their national legislation and the three international drug control conventions, including in national prevention, treatment, care, recovery, rehabilitation and social reintegration measures and programmes, in the context of comprehensive and balanced drug demand reduction efforts, effective measures aimed at minimizing the adverse public health and social consequences of drug abuse, including appropriate medication-assisted therapy programmes, injecting equipment programmes, as well as antiretroviral therapy and other relevant interventions that prevent the transmission of HIV, viral hepatitis and other blood-borne diseases associated with drug use, as well as consider ensuring access to such interventions, including in treatment and outreach services, prisons and other custodial settings, and promoting in that regard the use, as appropriate, of the technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users, issued by the World Health Organization, the United Nations Office on Drugs and Crime and the Joint United Nations Programme on HIV/AIDS". (para 1(o))

d. ensure access to treatment in prisons and detention:

“Ensure non-discriminatory access to health, care and social services in prevention, primary care and treatment programmes, including those offered to persons in prison or pretrial detention, which are to be on a level equal to those available in the community, and ensure that women, including detained women, have access to adequate health services and counselling, including those particularly needed during pregnancy”. (para 4(b))

“Enhance access to treatment of drug use disorders for those incarcerated and promote effective oversight and encourage, as appropriate, self-assessments of confinement facilities, taking into consideration the United Nations standards and norms on crime prevention and criminal justice, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),<sup>17</sup> implement, where appropriate, measures aimed at addressing and eliminating prison overcrowding and violence, and provide capacity-building to relevant national authorities”. (para 4(m))

offered any healthcare intervention.

### **Impact of imprisonment on family ties**

Some of the research informants lied to their families about their imprisonment. Some of them

prohibited their families from visiting them, while some saw their families cut off communication with them once they arrived in prison. This is highly problematic as most of them (82%) have children.

## **Box 5. Addressing stigma and discrimination against women accused of drug offences**

In its 2018 World Drug Report, the UNODC noted that, ‘While there is little evidence to determine whether there is discrimination against women (in comparison with men) at the sentencing level, some studies suggest that judges and other criminal justice officials do not consider gender inequalities. This is based, in part, on the misconception that the principle of equality before the law does not allow accounting for the distinctive needs of women in order to accomplish substantial gender equality’.<sup>29</sup>

The stigma and discrimination faced by women incarcerated for drug-related offences also extends to their own families and communities and many of them risk rejection and being ostracised even after their period of incarceration is over, making it much more difficult for women to be reintegrated back in society after imprisonment. This has led the UNODC to conclude that: ‘What is clear is that women’s contact with the criminal justice system has more negative consequences on them than it does on men, exacerbating both their economic vulnerability and their social exclusion’.<sup>30</sup>

## **Policy Concerns And Recommendations**

The research results, as well as the consultation conducted with national stakeholders in Jakarta in July 2018, point out some important policy concerns for the protection of the rights of women incarcerated for drug offences in Indonesia. The recommendations below are derived from these discussions.

### **A. Access to legal assistance**

The research findings and the national stakeholders’ consultation identified the need for legal assistance for women that is gender sensitive, competent and delivered with integrity. The lack of understanding about the law among prisoners was also pointed out. To address the lack of understanding of the law among prisoners,

and to improve the quality of legal representation, the Ministry of Justice and Human Rights, legal aid and government institutions and civil society organisations need to engage in the following activities:

1. Legal counselling in communities and prisons to improve knowledge about the laws
2. Involve women's organisations in awareness-raising activities
3. Involve academic institutions to offer legal knowledge to communities
4. Conduct special trainings for advocates who handle drugs case, and in doing so, ensure that terminology and training materials are gender sensitive.

## **B. Overcrowded prisons and alternative to incarceration**

Overcrowded prisons were seen as a result of a lack

of alternatives to detention and imprisonment, as well as women re-offending after release from prison due to the high level of stigma and discrimination in their communities and the resulting lack of employment opportunities post-incarceration

1. Provide diversion mechanisms outside the criminal justice system for women accused of minor drug offences, especially drug use and possession for the purpose of personal use in response to which harm reduction services should be offered instead
2. Revise government regulations on parole
3. Provide comprehensive social reintegration programmes for women released from prison
4. Ensure better access to evidence-based rehabilitation services that address physical, psychological and social needs.

## **Box 6. International guidelines and principles on alternatives to incarceration**

Section III of the Bangkok Rules focusses on the need to ensure non-custodial measures for women, in particular:

- The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities. (Rule 57)
- When sentencing women offenders, 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 typical backgrounds. (Rule 61)
- 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. (Rule 62)

The UNGASS Outcome Document includes a paragraph dedicated to alternatives to incarceration and punishment, para 4(j):

“Encourage the development, adoption and implementation, with due regard to national, constitutional, legal and administrative systems, of alternative or additional measures with regard to conviction or punishment in cases of an appropriate nature, in accordance with the three international drug control conventions and taking into account, as appropriate, relevant United Nations standards and rules, such as the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)”

The UNODC 'Information note on non-custodial measures for women' also emphasizes the need for pre-trial alternatives to be implemented for women offenders whenever appropriate and possible. The Note calls on prosecutors and judges to ensure that bail amounts are fair, and the economic situation of women is given due consideration. Alternatives to monetary bail should also be given some thought.<sup>31</sup> The Note also outlines opportunities for non-custodial measures in the trial and sentencing stages, stating further that non-custodial alternatives to punishment are especially appropriate for minor drug-related offences. Sentencing alternatives should be applied whenever possible in such a way as not to separate women offenders from their families and communities. Courts are enjoined to take note of the women's specific characteristics, including mitigating factors like the absence of a previous criminal record and the non-severity of the supposed criminal conduct in light of women's caretaking responsibilities and background.<sup>32</sup>

### **C. Torture and other cruel treatment including extortion and illegal fees**

In order to address concerns related to cases of torture and extortion:

1. Provide frontline complaint mechanisms and witness protection mechanisms from the National Police Commission and the Department of Corrections
2. Hire more female police officers particularly in narcotics departments by the National Police
3. Provide special examination rooms for women to accommodate gender-specific needs and provide CCTV cameras to avoid abuse
4. Ensure separate detention facilities for women and children.

### **D. Access to health services and treatment for incarcerated women who use drugs**

Ensuring better access to health and drug-specific services to women incarcerated requires the following:

1. Provision of harm reduction and drug dependence treatment services for women who use drugs, including opioids and methamphetamine
2. Training for police and prison staff about health interventions needed for people who use drugs
3. Advocacy for the signing of a memorandum of understanding between the Ministry of Law and Human Rights and the prisons to ensure protection of rights of incarcerated women.

### **E. Addressing stigma and discrimination**

Women incarcerated for drug-related offences frequently experience different layers of stigma and discrimination. Different institutions in the criminal justice system can help mitigate the stigma and discrimination experienced by women incarcerated for drug-related offences:

1. Interventions by judges, prosecutors, and lawyers before women are sent to trial or to prison by facilitating access to legal aid, diverting women offenders from prosecution, helping prevent excessive pre-trial detention and ensuring that gender-specific needs are taken into consideration during trial and sentencing.
2. Adoption by prison officials of gender sensitive practices to address the specific needs of women prisoners.
3. Removal, by legislators and policy makers, of mandatory sentencing and provide the judiciary with discretion to take into account the circumstances of the offense, and the vulnerability and caring responsibilities of women offenders.
4. Introduction by legislators and policy makers of reforms to remove criminal penalties and decriminalise certain drug-related acts, in particular drug use and the possession of drugs for personal use.<sup>33</sup>

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## Notes

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## About IDPC

The International Drug Policy Consortium is a global network of non-government organisations that specialise in issues related to illegal drug production and use. The Consortium aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level and supports evidence-based policies that are effective in reducing drug-related harm. It produces briefing papers, disseminates the reports of its member organisations, and offers expert advice to policy makers and officials around the world.

## About LBHM

LBHM (in English: Community Legal Aid Institute) is a human rights-based organisation providing free legal aid services, community legal empowerment, research and policy advocacy for poor and marginalised groups. This Jakarta-based organisation works mainly in five focus issues; death penalty, drug policy, HIV and AIDS, mental health, and LGBTI rights. Specifically on drug policy, LBHM advocates for a more humane drug policy. More about LBHM can be found in their website at [www.lbhmasarakat.org](http://www.lbhmasarakat.org).

## About this Policy Guide

This report aims to provide a guide for the Government of Indonesia in developing a gender-sensitive drug policies in Indonesia. It contains findings from the 'Women incarcerated for drug offences' research which was conducted by LBHM in 2017 - 2018. It provides references to international standards on gender-sensitive policies, as well as key policy recommendations.

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