

*Women, Incarceration and Drug Policy:*  
Regional Dialogue in Southeast Asia  
20 - 22 August 2019, Fang District, Chiangmai, Thailand

**Summary Report**

**INTRODUCTION**

The Regional Dialogue organised by the International Drug Policy Consortium (IDPC) and the Inspire Project (administered by the Ministry of Justice, Thailand) was held in Chiangmai, Thailand, from 20 to 22 August 2019. The event gathered 35 participants from national drug agencies, correctional facilities, government ministries, national human rights bodies, UN agencies, NGOs and two formerly incarcerated women, mainly from Indonesia, the Philippines and Thailand, as well as invitees from Malaysia, the United Kingdom and the United States. The event was conducted in the format of a roundtable discussion in accordance with ‘Chatham House Rule’, whereby all statements recorded are not attributed to specific individuals.

**OPENING SESSION**

The Dialogue opened with welcome remarks from a representative of the Department of Corrections, Ministry of Justice, from the host country Thailand, and the co-organisers the International Drug Policy Consortium and the Inspire Project. The high rates of incarceration in Thailand, particularly in relation to women, the causal relation with drug laws and policies, and the possible reforms that could reduce those rates, including the decriminalisation of drug use and possession for personal use, were highlighted. The need for further collaboration between civil society and government officials on the issue was also raised.



*Participants at the opening session of the regional dialogue*

## GLOBAL TRENDS AND RESPONSES

### Global trends: A focus on Latin America

This session discussed the global trends and developments relating to women incarcerated for drug offences, involving a comparison between regions, and the work of the United Nations Office on Drugs and Crime (UNODC) around the world relating to the incarceration of women. The experiences of women incarcerated for drug offences around the world, gathered under a project in Latin America led by the Washington Office on Latin America (WOLA), IDPC and the Colombian NGO Dejusticia, were shared, including:

- Sara, 50 years of age, fled her family at age 13 to escape sexual abuse at the hands of her uncle. With no education or opportunities, she became drug dependent and worked in the sex trade, and was eventually arrested for selling small quantities of crack to support her own consumption. Out of desperation, she attempted to bribe the police officer arresting her for selling drugs with the equivalent of US\$3.75. She received a sentence of 5 years and 4 months for selling crack and 1 year and 8 months for attempting to bribe a police officer with US\$3.75.
- Nayeli, an indigenous 28 years old woman from Cochabamba, Bolivia, was convicted of transporting 3 kg of cocaine paste and received a prison sentence of 8 years.

The presentation showed how women typically commit less or non-violent crimes, and are often incarcerated for theft or low-level drug offences. When women commit violent offenses such as homicide, it is often linked to abuse. Among women in prison, there are high rates of first-time offenders and after release, lower rates of recidivism. Data snapshots were presented to show the global trends in the incarceration of females, as copied below.<sup>1</sup>

Country	Number of female prisoners	Continents	Female prison population total (latest available to 30.9.2017)	Women/girls as percentage of total prison population	Female prison population rate (per 100,000 of general population)
United States	211,870				
China	107,131				
Russian Federation	48,478	AFRICA	35,606	3.40%	3.2
Brazil	44,700	AMERICAS	308,293	8.40%	31.4
Thailand	41,119	ASIA	263,571	6.70%	6.2
India	17,834	EUROPE	102,397	6.10%	12.1
Philippines	12,658	OCEANIA	4,550	7.40%	11.3
Vietnam	11,644	WORLD	714,417	6.90%	9.9
Indonesia	11,465				
Mexico	10,832				
Myanmar	9,807				
Turkey	9,708				

In many countries in Latin America, the majority of women in prison are held for drug offences, e.g. over 60% of women in prisons in Costa Rica, Brazil, Venezuela and Peru. The reason for these trends is the harsh penalties instituted under drug laws and the disproportionate nature of sentencing of drug offences, as well as the disproportionate impact of these policies and practices on women. In Southeast Asia, it can be worse, for example in Thailand, the world's second largest incarcerator of females (the USA being first), where over 80% of women are in prison for drug offences, 78% of whom being first-time offenders.

<sup>1</sup> Source: World Female Imprisonment List (Institute for Criminal Policy Research), 2017

## Female prison population levels – change since about the year 2000 to 2017

Continents	Estimated female prison population total at about 2000	Latest available female prison population total (to 30.9.2017)	Change in female prison population total since about 2000	Change in general population mid-2000 to mid-2016 (UN)
AFRICA	25,000	35,606	42.4%	49.40%
AMERICAS	196,300	308,293	57.1%	19.10%
ASIA	143,800	263,571	83.3%	19.40%
EUROPE	98,900	102,397	3.5%	3.70%
OCEANIA	1,900	4,550	139.5%	28.40%
WORLD	465,900	714,417	53.3%	21.30%

According to one survey, 96% of the women arrested for drug offences in Latin America are first-time offenders and usually operate at the lowest levels of organised crime. They are generally involved in small-scale drug dealing, transporting drugs within a country or across borders, smuggling drugs into prison, and cultivating plants for processing into controlled substances. With a few exceptions, the women involved in the drug trade are expendable and easily replaced. Many women who end up transporting drugs are co-opted by networks that use similar methods to those employed in human trafficking crimes. That is what happened to Liliana, a Venezuelan woman with two children who agreed to transport drugs under the threat that her family would be harmed if she refused. She is incarcerated in Argentina.

Women in prison share common characteristics. They often live in situations of poverty and marginalisation, have low levels of education, face greater economic vulnerability than men, are unemployed or underemployed, are primary caregivers for dependent children or the elderly, are victims of domestic violence before and during incarceration, and may suffer from mental health issues and/or problematic drug use. According to a survey of 8 Latin American countries, most women in prison are mothers and among them, over half are single mothers.

There are several commitments made by member states at global and regional level to reduce the incarceration of women under certain circumstances such as in relation to health and the specific vulnerabilities faced by women as well as to improve the conditions of incarceration, such as ensuring adequate access to health services. Some of these commitments relate to drug control in the 2016 UNGASS Outcome Document,<sup>2</sup> and to HIV with the 2016 Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030.<sup>3</sup> There are also resolutions at the UN Commission on Narcotic Drugs (CND resolution 58/5 ‘Supporting the collaboration of public health and justice authorities in pursuing alternative measures to conviction and punishment for appropriate drug related offences of a minor nature’<sup>4</sup>) and the Commission on Crime Prevention and Criminal Justice (CCPCJ) (CCPCJ resolution 26/2 ‘Ensuring access to measures for the prevention of mother-to-child transmission of HIV in prisons’<sup>5</sup>; CCPCJ resolution 2017/19 ‘Promoting and encouraging the implementation of alternatives to

<sup>2</sup> Available here: <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

<sup>3</sup> Available here: [https://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf)

<sup>4</sup> Available here:

[https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_58/2015\\_Resolutions/Resolution\\_58\\_5.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_58/2015_Resolutions/Resolution_58_5.pdf)

<sup>5</sup> Available here: [https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_26/CCCPJ\\_Res\\_Dec/CCPCJ-RES-26-2.pdf](https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_26/CCCPJ_Res_Dec/CCPCJ-RES-26-2.pdf)

imprisonment as part of comprehensive crime prevention and criminal justice policies<sup>6</sup>, and CCPCJ resolution 26/3 ‘Mainstreaming a gender perspective into crime prevention and criminal justice policies and programmes and into efforts to prevent and combat transnational organized crime’<sup>7</sup>).

### **The role of the UNODC in Southeast Asia**

The production and supply of drugs, especially synthetic drugs such as methamphetamine, have been increasing rapidly in Southeast Asia over the past three years, alongside rates of consumption which appear to be on the rise as well. While men are more likely to start using drugs, women who start using drugs move towards drug use disorders at a faster rate.

High rates of incarceration are a burden on criminal justice systems. In Southeast Asia, the UNODC Goodwill Ambassador for Rule of Law in Southeast Asia, HRH Princess Bajrakitiyabha Mahidol has sought to address the nexus of drug control and criminal justice to improve access to justice and promote the rule of law in Southeast Asia, with a priority focus on women in prison. UNAIDS and the UNODC have been carrying out work to improve the health of people in prisons.

A survey was conducted on prisons in Thailand and found that there are opportunities to intensify the integration of TB-HIV services in prison. 118 out of 121 surveyed prisons (i.e. 98%) reported routine TB screening for people living with HIV whereas 99% of surveyed prisons provided HIV counselling and testing services for all confirmed TB patients. 85% of all surveyed prisons reported access to Xpert MTB/RIF examination. However, expansion of certain service delivery modalities such as making HIV testing and treatment services available at the prisons and making use of availability of GeneXpert to perform HIV viral load testing would further improve the TB-HIV diagnosis, care and treatment services in prison. Concerns about sexual violence faced by people in prison were also raised. The same survey carried out by UNAIDS reported that 69.4% of prisons had appropriate measures to report sexual violence and 72.7% of prisons had appropriate measures to address sexual violence. In addition, 74.4% of prisons held transgender individuals in separate cells.

The UNODC provides technical assistance and capacity building for countries to help ensure that prisoners have full access to the comprehensive HIV service package. For example in Vietnam, since 2013, the UNODC has been supporting the implementation of methadone maintenance therapy (MMT) services where one pilot programme has been carried out in one prison to date. The UN has a number of resources relevant to the issue of women in prison: ‘UNODC Handbook on Women and Imprisonment’ (2014),<sup>8</sup> ‘Prisons and Health’ (WHO, 2014),<sup>9</sup> ‘Women’s health in prison – Action guidance and checklists to review current policies and practices’ (WHO, UNODC, 2011),<sup>10</sup> and ‘HIV prevention, treatment and care in prisons and other closed settings: A comprehensive package of interventions’ (UNODC, 2013).<sup>11</sup>

### **WOMEN, INCARCERATION AND DRUG POLICY IN ASIA**

The objective of this session was to present the situation and key issues relating to the incarceration of women for drug offences in Southeast Asia, particularly in Thailand, Indonesia, and the Philippines.

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<sup>6</sup> Available here: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=E/RES/2017/19](https://www.un.org/en/ga/search/view_doc.asp?symbol=E/RES/2017/19)

<sup>7</sup> Available here: [https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_26/CCPCJ\\_Res\\_Dec/CCPCJ-RES-26-3.pdf](https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_26/CCPCJ_Res_Dec/CCPCJ-RES-26-3.pdf)

<sup>8</sup> Available here: [https://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf)

<sup>9</sup> Available here: [http://www.euro.who.int/\\_data/assets/pdf\\_file/0005/249188/Prisons-and-Health.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf?ua=1)

<sup>10</sup> Available here: [https://www.unodc.org/documents/hiv-aids/WHO\\_UNODC\\_2011\\_Checklist\\_Womens\\_health\\_in\\_prison.pdf](https://www.unodc.org/documents/hiv-aids/WHO_UNODC_2011_Checklist_Womens_health_in_prison.pdf)

<sup>11</sup> Available here: [https://www.who.int/hiv/pub/prisons/prisons\\_package.pdf?ua=1](https://www.who.int/hiv/pub/prisons/prisons_package.pdf?ua=1)

## **Situation in Thailand**

According to the 2019 report of the Department of Corrections of Thailand, the proportion of cases of drug related offenses is 79%: 284,000 prisoners of which 39,644 are female offenders. Interestingly, the recidivism rate in Thailand decreased in a year of release but the number is increasing after two to three years, thus it is suggested that formerly incarcerated people keep returning to the criminal justice system.

The presenter pointed out that there is an increase in the number of inmates in Thai prisons. This trend is caused by poverty, marginalisation, low levels of education, and lack of legal knowledge. It was highlighted that most of those convicted are incarcerated for drug offences (representing about 80 to 85% of the prison population). In the case of the women, those most commonly convicted are mothers who are care providers for their children. Confession to police usually take place first, with interrogation often coming in later, which leads to an increase in the number of convictions. Moreover, poverty and lack of opportunities usually becomes a pulling factor to earn more income through engaging in the drug trade. Some started with drug use, and then engaged in selling. Women are also recruited by gangs from different nationalities, such as Japanese and African.

Challenges faced by women during imprisonment was highlighted in the discussion. These women have a hard time adapting inside the prison, as they leave their children and the burden of caretaking to their parents. Challenges to adaptation include emotional, physical, and spiritual hardships. It was observed that the prisons are not modelled for women's needs, spaces for each prisoner is lacking, and insufficient ventilation causes upper respiratory problems.

The discussion then moved on to the conditions of women after release from prison. They face high stigmatisation and discrimination as the public do not trust them anymore and their criminal records make matters worse. Transferring services and programmes from the prison to the community was also raised as a challenge for these women. The lack of financial resources is the main concern for formerly incarcerated women in continuing the training they received inside prison or finding a new job, such as massage parlors and doing craft work. Suggestions on what can be offered included: setting up a business with low costs and side jobs could be offered, women should have more choices for income earning opportunities, a hotline could be made available for women to call in when needed to avoid reverting back to engagement in drugs.

## **Situation in Indonesia**

Among the 606 women prisoners that were the subject of the research conducted in the study presented, 80% of the female prison population were drug offenders while 26 of them were from foreign countries (e.g. Senegal, Vietnam, Taiwan, China, Kenya, Nepal, and Malaysia). An increase in drug-related convictions and drug use were seen as some of the reasons for the incarceration of women.

Some key issues on life inside the prisons for incarcerated women in Indonesia were raised: overcrowding brought about by imprisonment-oriented law enforcement efforts; the numbers of people who use drugs has grown sharply since 2014 even though Indonesia is not considered the largest drug market in Asia; there are varying perceptions of people convicted of drug offences as they are viewed as either victims or people who use drugs, drug dealers, and drug traffickers; and the women face multiple vulnerabilities inside the prison. With regards to the programmes and services inside the prison, collaboration among several government agencies from the sectors of education, religion, health, police and prosecutors helped in maintaining the programmes and services. Concerns were raised over the fact that there is no specific law focusing on the specific classification of women or to their specific needs inside prisons (Act. No. 12 of 1995). Nonetheless, the presenter concluded that the correctional facilities are used to ensure that people become productive members of society.

## **Situation in the Philippines**

Details about the lack of human and financial resources were discussed – it was presented that the ideal workforce to run the prisons should comprise 46,854 personnel but there are only 13,121 personnel currently working in Philippines prisons. The population of persons deprived of liberty as of 14 August 2019 was 133,789, 73.85% of which being drug-related cases. In the year 2012, there were only 3,787 drug-related cases, and an increase took place when the war on drugs started in 2016. Most women are caught for selling and possession of drugs. In 2017, there was a 612% congestion rate amongst the jails across the Philippines, which fell to 392.17% congestion rate in 2019. The congestion rate was addressed and lowered through the implementation of plea bargaining and the implementation of the ‘Good Conduct Time Allowance Law’ (RA 10592). The mortality rate was reported as being minimal because of the provision of health services inside female prisons.

The key issues faced by jail facilities were heightened during the implementation of the war on drugs in the Philippines. Congested facilities are the primary concern, while reoffending rates increased because of the low penalty charges imposed or after being released through plea bargaining. Further explanation on overcrowding and congestion was provided: an influx of cases in courts resulted in the slow prosecution of cases resulting in overcrowding and longer jail time; the circumstance of illegal drugs being used as an income earning business by families, relatives, and children; the consideration of drug dependency as a requirement for plea bargaining takes a lot of time due to the high number of applicants (consideration of drug dependency is used to assess whether the person deprived of liberty will be sent to community-based rehabilitation or not); and the insufficient human resources in jail, especially paralegal officers, and of accredited physicians within the Department of Health (DOH) is resulting in the slower process of prosecution and high congestion in jails. Under the Republic Act No. 9165, physicians often face restrictions to their work because of requirements imposed by the law, leading to less physicians being accredited to conduct drug dependency assessments. As for jail officers, they cannot act, help, or divulge information on persons deprived of liberty given the limiting Data Privacy Act of 2012 that they have to follow. Moreover, Barangay Anti-Drug Abuse Councils require more training in dealing with a formerly incarcerated person, as reintegration programmes are still lacking at the community level. It was also added that bail is a matter of judicial discretion in the Philippines, and because many people within the criminal justice system are poor, they cannot afford bail. Submission of proof of indigence is requested when a person deprived of liberty seeks financial assistance, but it takes time to process the request and people often are not aware that such mechanisms are available.

## **Trends and developments in Southeast Asia**

A regional analysis on the key trends and developments in Southeast Asia was presented. Increased rates of incarceration were reported in Asia, which rate is significantly above the global average of 2 to 9% of women incarcerated. The Philippines had the highest congestion rate even before the war on drugs started. For the other regions, in Cambodia 80% of women are held for drug offences, in Indonesia this is 60%, in the Philippines it reaches 60% for women and 15% for men, in Singapore it is 75%, and in Thailand 80% of women are held in prison for drug offences.

The disproportionate nature of drug laws in Asian countries was discussed by the participants, with no mitigating factors for low-level offenders being considered during sentencing and, as a result, most people in prison are held for non-violent offences. Factors exacerbating the overincarceration of women for drug offences include the inability to afford bail, together with the inability to afford legal representation. For example in Thailand, there is a justice fund that poor people may apply for to request assistance to fund their legal services but most people do not know about it and as a result do not apply for it.

Furthermore, in many countries, the possession of drugs is assumed to be for supply, even if it was for the person’s own consumption. Penalties for drug offences are highly punitive, with long terms of imprisonment

for non-violent offences such as simple possession. In the Philippines for instance, the minimum penalty for those caught with possession of drugs is 12 years of imprisonment. It was observed that many organisations are working to try to raise awareness of the problem, calling for a shift away from approaching drugs as a criminal justice issue and towards considering drug use as a health issue. The 'Support. Don't Punish' campaign led IDPC was introduced to the participants, which calls for the decriminalisation of drug use and possession for personal use. Alternatives to incarceration are also promoted by the campaign, by raising awareness of the fact that the drug issue is a health concern and not a criminal justice issue.<sup>12</sup> It was shared that Thailand has started considering legal reforms to enable the legal regulation of cannabis for medical purposes, and decriminalisation has also been discussed. Participants raised how Southeast Asia countries experience and face the same challenges with drugs as other countries outside the region, and that it truly is a global issue.

## **Discussion**

Several key points were discussed following the more formal presentations on country and regional trends:

- The participants discussed whether the programmes and services offered to women inside the prisons and/or jails gave them opportunities to build their own business post-release. It was suggested that creating programmes that exposed the women to learning about starting and running their own business might help them better adapt outside prison instead of doing crafts work while incarcerated.
- It was suggested that eliminating stigma imposed upon former prisoners can be done through launching education and information programmes targeting specific groups such as judges, lawyers, doctors and famous universities.
- A proposal was made that a new sentencing guideline and/or programme be drafted to create opportunities for people who use drugs, and improve the quality of life of prisoners.
- Given the assumption that possession of drugs is only for selling, it was suggested that advocating for proportionality sentencing across countries where this is the case was necessary.
- A question was raised about the fact that foreign women travel to Indonesia loaded with drugs (either swallowed or in their suitcase), and are then incarcerated in Indonesia, posing concerns over security in the country. To this, participants discussed the reality that women who are in situations of vulnerability are commonly used as drug couriers. The discussion also focused on the need for law enforcement officers to collaborate whenever a woman or a person who carries drugs are clueless about what is happening to them. The question was asked about whether law enforcement efforts should focus on identifying and arresting the syndicates behind the drug trade, or continue to arrest people at the lowest levels of the trafficking chain. Collaboration and understanding amongst law enforcement agencies should be prioritised in these cases.

## **INTERNATIONAL STANDARDS ON THE INCARCERATION OF WOMEN**

### **International standards and guidelines relevant to women incarcerated for drug offences**

A snapshot of the key international standards on the incarceration of women which are relevant to drug policy was presented. These standards come in various forms: UN guidelines on the treatment of prisoners or on alternatives to coercive sanctions, UN political declarations or resolutions on drug policy, International human rights guidance and the Sustainable Development Goals (SDGs).

The key UN guidelines on the treatment of prisoners and alternatives to coercive sanctions, are the UN Rules for the Treatment of Women prisoners and Non-Custodial Measures for Women Offenders (referred to as the Bangkok Rules)<sup>13</sup> which are a set of 70 rules that specifically address the problems and needs of women in

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<sup>12</sup> See: [www.supportdontpunish.org](http://www.supportdontpunish.org)

<sup>13</sup> Available here: [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)

prison. Although all 70 rules are important, a number of rules discuss the need to take into account the specific needs and vulnerabilities of women:

- Rule 61 mentions the need for courts to consider mitigating factors.
- Rule 41 refers to the need for prison authorities to conduct a gender-sensitive risk assessment of women prisoners to understand any history of violence, mental health, drug use, etc.. This is to provide necessary services in prison.
- Rule 60 focuses on the need to provide non-custodial alternatives alongside interventions that address the key problems and situations of vulnerabilities that led women to come into contact with the criminal justice system.
- Rule 62 promotes the provision of gender sensitive drug dependence treatment services in prison.

Various rules focus on pregnant women, or women with children, such as the consideration of mitigating factors by courts in sentencing (including caretaking responsibility), the need to incarcerate women close to their home to retain family ties, the promotion of non-custodial sentences for pregnant women or women with dependent children, and before or on admission to prison, allowing women with caretaking responsibilities to make arrangements for their children.

A second set of important international guidelines is the The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015).<sup>14</sup> These rules offer a framework to monitor and assess the treatment of all prisoners. Here again, although most rules are relevant, some specifically mention women:

- Women's prisons should provide special accommodation for pre and post-natal care, and that birth giving take place in hospitals, outside of prisons
- Women in labour, childbirth and immediately after childbirth should not be restrained.
- Rule 58.2 considers women's right to conjugal visits, which should be allowed on the same basis as for men.
- Rule 81 focuses on preventing violence against women by restricting male prison staff for the supervision of women in prison.

A third set of international standards is the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, 1990).<sup>15</sup> Of particular note, rule 1.5 promotes non-custodial measures to reduce the use of imprisonment, taking into account the observance of human rights, social justice and rehabilitation needs.

Among the UN commitments made by member states, there are specific operational recommendations from the UNGASS Outcome Document which incorporate a few of the key Rules already mentioned: addressing the needs and vulnerabilities of women in prisons; providing non-discriminatory access to healthcare and social services to women, including in prisons; the need to identify and address the factors and conditions making women vulnerable to exploitation and engagement in drug trafficking; and the need to involve women in the design, implementation, monitoring and evaluation of drug policies.

Various resolutions have also been adopted at the UN Commission on Narcotic Drugs (CND) on women. The most comprehensive one is Resolution 59/5, which recommends taking into consideration the needs and circumstances of women in all aspects of their criminal justice journey; bring to justice perpetrators of abuse of women in custody or in prison settings; and to provide evidence-based treatment and care services for women in prisons. This resolution links back to all three sets of international standards (the Bangkok Rules, Mandela Rules and Tokyo Rules). In 2018, the CND also adopted resolution 61/4 on the prevention of mother to child transmission of HIV, hepatitis B and C and syphilis among women who use drugs.<sup>16</sup> In this resolution, there is one recommendation well worth highlighting, which calls for respect for confidentiality and informed

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<sup>14</sup> Available here: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)

<sup>15</sup> Available here: <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

<sup>16</sup> Available here: [https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_61/CND\\_res2018/CND\\_Resolution\\_61\\_4.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_61/CND_res2018/CND_Resolution_61_4.pdf)



consent for HIV-related treatment for women in prison. One year later in 2019, the CND adopted resolution 62/6, which refers back to the Bangkok Rules, but also calls for training and support for health professionals, including health staff in prisons on HIV.<sup>17</sup>

In terms of the key human rights guidance relevant to women, drug policy and incarceration, of particular note is the International Guidelines on Human Rights and Drug Policy – launched in 2019, by UNAIDS, the World Health Organisation, the UN Development Programme and the International Centre on Human Rights and Drug Policy.<sup>18</sup> The Guidelines include a full section on women, and on people deprived of liberty. For women who use drugs, the Guidelines call on governments to take steps to end the detention and punishment of women as a result of drug use during pregnancy; and also call for states to use the flexibilities in the UN drug control treaties to decriminalise drug use activities. For women accused of drug offences, the Guidelines promote gender-specific diversion measures that seek to address the underlying factors of involvement in the illicit drug market; non-custodial sentences should be prioritised for pregnant women; courts should be able to consider mitigating factors; and they also include a specific recommendation on foreign nationals, and their possible transfer to their own country, following a request and/or informed consent for the woman prisoner. The Guidelines also look into women involved in illicit drug cultivation. There, they focus on ensuring that women have equal rights to participate and benefit from alternative livelihood programmes, and in decision making on an equal basis with men.

Another source of human rights guidance is the latest report of the Office of the High Commissioner for Human Rights on Women Deprived of Liberty. The report recommends that governments reform drug-related policies, laws and practices in line with international human rights standards, and calls for the implementation of the International Guidelines on Human Rights and Drug Policies into policies relevant to women.

The issues faced by women in the criminal justice system are also integrated in the SDGs, including Goal 5 on gender equality – especially on issues related to discrimination, violence, decision making processes, access to sexual and reproductive health, access to land and property, and women’s empowerment. These are all key components for addressing the underlying causes of women’s involvement in illicit drug activities. Finally, SDG 16 on access to justice is also relevant here, in particular Target 16.3 on ensuring equal access to justice for all and Target 16.B on non-discriminatory laws and policies.

### **Case study: Implementing the Bangkok Rules in Thailand**

According to the Developing Primary Health Care for Women Inmates’ Well-being project, there are 310,000 men and 37,000 women incarcerated in Thailand (13% of prison inmates are women). There are female prisoners in 99 prisons, and only eight female-only prisons. Most of the women inmates in Thailand are Thai (92.7%) or from Lao PDR (5.6%), the average age is 37.3 years old, and two thirds had primary school education or less. They worked in a factory or agriculture. Most are married, with 3/6% in same sex marriage. 85% committed offenses under the Narcotics Act 1979. Some women inmates were sentenced more than 10 years in prison. Many female inmates’ dormitories are not hygienic, especially lack of toilets and ventilation issues causing respiratory infection and muscle pain. There are limitations in terms of prison staff and access to healthcare services in the correctional institution.

The Implementation of the Bangkok Rules and Treatment of Offenders Programme (IBR) aims to promote effective and gender-sensitive criminal justice, as well as a rights-based treatment of offenders that are in line with international standards and norms, including the Bangkok Rules and the Nelson Mandela Rules. The programme includes trainings for wardens on the Bangkok Rules, and also promotes the use of non-custodial

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<sup>17</sup> Available here: [https://www.unodc.org/documents/commissions/CND/Drug\\_Resolutions/2010-2019/2019/CND\\_Resolution\\_62\\_6.pdf](https://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2010-2019/2019/CND_Resolution_62_6.pdf)

<sup>18</sup> Available here: <https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/international-guidelines-on-human-rights-and-drug-policy.html>

measures and supports the reintegration of offenders in order to reduce prison overcrowding and ensure an inclusive society. The three main activities of the IBR include research, capacity-building and policy advocacy. The objective is to create model prisons, which are closely monitored by the Ministry of Health. A network of partnerships is established to conduct activities in prisons. For mixed prisons, there are different zones that separate men and women, with women officers overseeing female prisoners.

The Chiang Mai Woman Correctional Institution among the 22 model prisons which are aligned with the Bangkok Rules, under the leadership of Princess Bajrakitiyabha Narendira Debyavati. In accordance with the Bangkok Rules, Chiang Mai prison was improved to respond to the needs of the female inmates. When a woman comes into prison, she registers and undergoes checks and an interview. Sexual and reproductive healthcare and programmes are available for inmates who are pregnant or with children (with a mother and child room for breastfeeding and child activities), foreigners (with information materials in their language), minorities (to accommodate their beliefs and customs whenever possible), and the elderly. The prison is clean with drinking water available, there is a standardised sleeping area and a health centre. There are training and professional development programmes. Police and courts also provide legal training to inmates about their legal rights. There are also drugs programmes available. The prison includes a library named Happy Center. There are recreational activities according to each person's need, for example, the facility includes a room specially designed for inmates to learn about themselves, share ideas within the group, and they can talk with a social worker or psychologist.

## **RESEARCH OUTCOMES ON WOMEN, INCARCERATION AND DRUG POLICY IN SOUTHEAST ASIA**

In this session, NGO representatives that conducted research on women in prison for drug offences in Thailand, Indonesia and the Philippines presented the key findings of their research<sup>19</sup> and then moderated small group discussions to reflect on the research findings, with a view to exchange perspectives from other countries. Participants were divided into small groups and discussed each of the three countries for 20 minutes, before reporting back to all participants.

### **Research outcomes from LBH Masyarakat (LBHM) in Indonesia**

In the research carried out by LBHM on women incarcerated for drug offences, LBHM classified the prisons into regional offices, and randomly chose four prisons, two in Sumatra, one in Semarang and one in Gorontalo. The research was conducted in a limited time period and with limited resources. The participants in the research were 307, with 10 of the women undergoing qualitative interviews who were held in Semarang prison, which is the nearest prison to Jakarta.

LBHM shared the outcomes of the research with their paralegal team (i.e. people from the community empowered in legal studies), they designed infographics to spread the information in a way that is easily understood by local authorities. The research was brought to the UN Commission on Narcotic Drugs, where it was presented at a side event, with cross links and parallels made with findings from Latin America.

Indonesian officials reacted to the research, which they found interesting. The research was conducted in Samara and officials welcomed the research team. However, the government still retains a highly very negative view about drugs and drug offenders. Since the President declared a war on drugs in 2015 and there have been many executions and extrajudicial killings, the situation is getting more complicated, with 79 victims of extrajudicial killings in 2018 alone. This is something that resonates a lot with the Philippines, which is suffering from the same issues at a much larger scale. Below are key points raised during the group discussions.

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<sup>19</sup> The research findings are outlined in the policy guides available here: <https://idpc.net/policy-advocacy/partnerships/women-incarceration-and-drug-policy-in-south-east-asia>

**Foreigners:** There is a view that foreigners come to Indonesia to spread drugs, and as a result they can be treated more harshly. Some foreigners go to prison because of fabricated cases. One of the interviewees was from China, and she was angry towards the President for declaring his war on drugs. She had to undergo two trials, the second one for using drugs in prison with other inmates, but she was the only one who got trialled, because she was Chinese. She had no interpreter during the trial. The Commission on Violence against Women interviewed 22 women, 73% were Indonesian, the rest were foreigners (Africa, Philippines, etc.) and they did not know that they were victimised by the syndicates, their close friends or their partners. The media plays a role in spreading warnings and in victimising women drug traffickers. Some of the foreign women do not know about the punishment they face and do not understand the judgement being passed by the courts. In Indonesia, migrants do not go to migration centres, they go to prisons. This is different from the situation in Thailand and the Philippines where there is a separate facility for foreigners having committed drug offences.

**Torture:** A very high proportion of women are victims of torture at the hands of the police in Indonesia. Torture by the police is very common for both men and women (including sexual violence). Many women reported using their HIV status to protect themselves from sexual violence.

**Family visits:** When men are incarcerated, they fulfil their sexual needs with conjugal visitation in a separate room. But for women this is taboo. If the official knows of a case of sex work, they will report them. This is a strong gender bias. On visitation, women are often abandoned, with few visits, compared to men. In some cases, women and their male spouses are in the same jail, and so cannot be in contact. In other cases, women do not want their family to visit them because of shame/stigma. This is different in the Philippines, where women have a lot of family visits (most of them have three or more children). The family remains very present.

**Pregnant women:** In Thailand, there are nutritionists helping pregnant women, and they receive medical support twice a month for both mothers and infants, providing development information according to age. There is a separate building for mothers and young children.

**Children and babies:** The children left behind can be victims of abuse themselves (case of a woman incarcerated who left her kids with her uncle and they were raped by him). In the Philippines, babies can only stay in the prison facility for up to three months if the facility is equipped. They can stay longer if the woman is breastfeeding. In Indonesia, babies can stay until they are two years old. In Thailand, women give birth in the hospital and then can stay into prison for up to two years with their mothers.

**Follow up system for people who use drugs:** In Indonesia, there are only two 'solutions' for people who use drugs: either prison or a rehab centre. Because of this, law enforcement officials can make money, with people who use drugs having to pay the official to access rehab and not prison. In the rehab centres, there is also a problem with corruption: if you have money you can go for two months, if not, you could go for a year. Participants discussed the fact that rehabilitation should be seen as a right to health, it has to be voluntary, not mandatory. It will not be effective to force women into rehab. Rehab facilities should consider the characteristics of the use of different drugs (methamphetamine vs. heroin for instance). For methamphetamine, for instance, mental health support should be emphasized. The path to abstinence is part of a journey. Having family and friends support system that is non-stigmatising is also important. In Thailand, when people who use drugs leave prison, they can sign a follow up form but it's not compulsory. Follow up consists of submitting information about the formerly incarcerated person to the local administration. But this is problematic when the person moves out of their hometown. This is to assess the needs in their lifestyle and support them if needed. The system is in place, but many people just disappear. There is a rehab programme with a follow up system of one year, with follow up seven times a year. However, people who use drugs often go back to using drugs.

**Prison overcrowding:** In Thailand, this is a major issue, and various programmes aim to reduce the incarceration of women. In Indonesia, there are more than 500 prisons, and there is still a 200% overcrowding

issue. The solution from the government is to build more prisons. There is a misperception in the government about what could truly be done about reducing overincarceration (e.g. promoting decriminalisation for drug use). The government wants to protect youth from drugs but they criminalise young people who use drugs. In Thailand, there are many projects in prisons but there are too many people incarcerated for those to be effective.

#### ***Recommendations:***

- In the Philippines, Malaysia, Indonesia, Thailand and Myanmar, there is a group connected and working on research. This could be used to conduct research with more commonalities in terms of research methodology and findings. A standard partnership could be created with the corrections institution, the Commission on Women and the Commission on Human Rights in each country so that implementation can be similar in terms of the framework and partnerships.
- A series of photo essays could be done in Indonesia to share the stories of incarcerated women and raise awareness and stimulate dialogue for reform. This is hard to do because cameras and phones are prohibited in prisons, and it is very hard to get permission. A writing workshop is being conducted in prisons now so that women can write their stories.
- UN Women has a programme looking at access to justice for women, and LBHM could link with them on this. The UNODC could help to facilitate this. Doing better research, and using the research to sensitise policy makers on the need to address key challenges faced by women (violence against women, access to legal aid, etc.) were both highlighted.

#### **Research outcomes from Ozone Foundation in Thailand**

The work of Ozone aims to increase opportunities for work for formerly incarcerated women (e.g. as a massage therapist), change perceptions of formerly incarcerated women, help women after they come out of prison (e.g. legal assistance, support for employment and housing), as well as to enable them to create a network of women having had the same experience, such as a peer network of formerly incarcerated women. The group discussed the points below.

***Employment opportunities:*** To help women find employment, there is a need to analyse their skills first and then assess the market to check whether there is an actual need for those skills, with the possibility of offering those as employment opportunities. For example, Fang prison is in a district where there are no companies, so opportunities for working for large companies do not exist. Some women can start their own business, e.g. sell food or raise pigs. Some can join long-distance learning opportunities. The Department of Corrections in Thailand has a programme that offers seed money for women released from prison to start their own business. It is also the government policy to provide training and education opportunities inside prison, but the training offered is not diverse enough and does not meet the individual needs of all people in prison.

***Drug use in prisons:*** In most countries, the government refuses to accept that there is drug use in their prisons, making it difficult to ensure the provision of services addressing drug use and dependence. In Thailand, Fang District has the only prison that allows methadone access for women in prison, which Ozone helps to administer.

***Empowerment of formerly incarcerated women:*** Ozone has proposed forming a network of formerly incarcerated women, so that they can discuss lessons learned and submit recommendations to the government. Ozone wants to focus on the meaningful engagement of this group in policy processes. First they need to talk about the problems they encounter, to be able to overcome self-stigma and accept themselves, then as they grow they can have representatives that push their views and recommendations to the policy level. A suggestion was raised for a network of formerly incarcerated women to help source funding to help women who are inside prison. However Ozone is not at that stage yet, and is still trying to work on the empowerment of formerly incarcerated women.

**Health services after release from prison:** The research study on Thailand shows that health workers do not understand the needs of women who have come out of prison. Ozone plans to form a core group amongst the network of formerly incarcerated women to advocate on this, but it is difficult because formerly incarcerated women struggle to communicate effectively with government health workers about their needs. Ozone is trying to be a mediator for them with the government.

**Quality of life of formerly incarcerated women:** Many of the formerly incarcerated women that Ozone works with have been kicked out of their families, and might not have a place to live. Ozone is just starting to engage with them, together with the Inspire Project, at the pre-release and post-release stage, to find ways to support them.

### **Research outcomes from NoBox in the Philippines**

NoBox conducted a study involving 35 women incarcerated for drug offences. Given the sample size, the results of the study carried out by NoBox may not be representative. NoBox chose this sample size because they wanted to go more in depth in their research and hear the detailed stories of women in prison, rather than do a mass survey. NoBox hopes to be able to do more on women in prison. This was a pilot project for NoBox and the aim was to obtain baseline data. Once they define the research methodology and get more partners on board, they can expand the work. For example, the Human Rights Commission in the country has information on women and drugs that it can share, and can be involved in this work going forward. NoBox is yet to present the research in the Philippines. It is a challenging task because one issue faced is that women feel so much stigma that they may even want to go live somewhere else upon release. The following points were raised during the group discussion:

**Overall situation in prisons:** In the Philippines, there are only two prisons for people who have been sentenced to a term of three years and higher; one in the north and one in the south. There are seven prisons altogether; the other five are for men. This creates a problem of distance, where women can end up far away from their imprisoned spouse or family, and it makes matters more difficult when they go back to their communities. All the prisons are overcrowded and under-staffed, eg. there is only one psychologist for all prisons in the Philippines. There is very minimal use of conjugal visits for incarcerated women – however, there are very lax rules for visitations, which are allowed six days a week.

**Vulnerability of women to human trafficking and other transnational crime:** Women who use drugs can be exploited as sex slaves, which sees men charged with sex crimes and the women charged with drug possession. Women can also more likely be used as drug couriers because they are seen as people who can be trusted with money, in contrast to men.

**Gangs running prisons:** The culture of prisons in the country is different depending on the location, which will impact upon the type of programmes and policies in place. In the Philippines, roles are often given to people held in prisons, e.g. paralegals (the International Committee of the Red Cross gives paralegal training), and peer groups are used to help run the prisons. This facilitates the formation of gangs in prisons, and in these cases jail officers will coordinate with the leaders who will, in turn, coordinate with their members. Officers try to gain trust with prison-run programmes.

**Livelihoods inside prisons:** Women in prison still try to earn money for their families. They will do the 'dirty work' of richer prisoners, such as cleaning, as well as sell handicrafts, artwork and paintings through channels to markets outside prisons. In some prisons in the Philippines, women incarcerated earn points which can lead to sentence reductions, for example, the more they join activities, the more points they will get.

**Children who are born in prison:** In the Philippines, the National Guideline is that women should not give birth in detention but go to the nearest public hospital; but that is not always the case in practice.

**Reducing prison overcrowding:** The Philippines is trying to reduce overcrowding by increasing the number of prisons and offering plea bargaining for people convicted to serve a community service instead of a prison sentence.

**Stigma, social reintegration and employment:** There is a need to remove the stigma associated with women who have served a term in prison, to help ensure their ability to reintegrate into society after their release. In Thailand, a number of services including mental health and vocational training is provided before going home; but when they are out of prison they face stigma and are not accepted. It is difficult for them to find employment and they lack income. Some prisons try to bring employers inside the prison to teach people how to make products and then employ them to work in the factory upon release. But some companies still do not trust them because of their drug conviction, potential employers are afraid they will make trouble for them. An innovation being introduced is to give companies tax rebates to encourage more companies to participate in such programs. One other problem is that women in prison trained in traditional massage are not able to work as a massage therapist for a year after they are released from prison – however, there was advocacy done with the relevant government agency to eliminate this regulation and it was successful. The mindset of women when they are released is also a challenge to reintegration – they often do not want to go back to their community. The mindset of business owners also needs to change. The media coverage about recidivism of people released from prison is also important for their impact on public opinion.

**Dissemination of research:** It was suggested that the research across the three countries be standardised so that regional research results are produced, eg. by standardising frameworks and questionnaires in order to build regional profile of women in prison. UN agencies such as UN Women and UNODC can be involved.

## **STUDY VISIT TO WOMEN'S PRISON IN FANG DISTRICT, CHIANGMAI**

The prison in Fang District has been deemed a model prison for women by the Thai Ministry of Justice. As a result the Inspire Project initiated some projects in the prison to further improve conditions for women, including setting up a care and play room for mothers with babies inside the prison. Despite this, the prison is at overcapacity, with 1,311 prisoners for a prison built for 900 people. The number of staff members (48 in total) was also seen as a challenge. Prison staff reported that prisoners remain in pre-trial detention for a maximum period of five months to a year.

Women make up a minority of the Fang prison population (185 women out of 1,311 prisoners), and like other prisons in Thailand, 70 to 80% are held on drug offences (mainly selling small amounts of drugs and user-dealers). Because Fang is close to the border with Myanmar, where many people are stateless, a number of people held in the prison are stateless. This causes challenges, such as being able to access healthcare services which may be limited to Thai citizens only. However the prison officers in Fang say that when they accompany people who are stateless then they are able to access those services. A doctor comes once a month to the prison, and there are specific provisions for elderly women.

The site visit was a chance to see some of the programmes being implemented, including educational classes, the 'To be number 1' drug rehab programme, and various vocational training programmes which included the production of brooms and baskets by men and embroidered clothes by women, from which inmates could make some money from the sale although they are sold at very cheap prices and the revenues are split between the prisoner and the prison which reinvests the funds towards vocational training programmes.



*Participants at the women's prison in Fang District, Chiangmai*

The prison has a room where women can spend time with their children, in line with the Bangkok Rules. The children can stay in prison with their mothers if there is no family relation that can take care of them, until they are three years old. Family visits are limited to Monday, Wednesday and Friday for those convicted, and Tuesday and Thursday for people not yet convicted. Visits are conducted in the visiting room with a phone, there is no physical contact. However, several times a year, families and children can come to the women-only zone for 3h to spend time with their incarcerated family member. For those whose family is far away, they have the possibility to apply for video conference visits.

Some of the Fang prison staff were sympathetic about the people held in the prison, for example, saying that many of them are there for minor offences and ended up there because they were ignorant as well as broader systemic flaws in society and because of economic hardship. As a result, educational classes are compulsory for people who are illiterate, to ensure that when they leave prison they will have attained a higher level of education. The prison officers talked about the people in prison as being entrusted to their care, and so they work hard to ensure that all those held in prison were healthy and well. They did not seem to have had to care for a transgender person before, as the question elicited surprise and the response that the person will be placed in a cell according to their biological gender.

Ozone has a relationship with the Fang prison as they had arranged for the provision of methadone for some people in prison before.

After release from prison, there is a follow up visit to support formerly incarcerated women – although this is often difficult for those living in mountainous area. Furthermore, grants are provided to outstanding prisoners to help them start a business, with follow up support for a month after release. Stigma after release from prison was highlighted as a key issue by prison staff, with families rejecting their formerly incarcerated relative.

Lunch for the participants was prepared by the people in prison (the meeting organisers paid a fee for the meal).

## **LESSONS FROM VISITING THE WOMEN'S PRISON IN FANG DISTRICT**

The objective of this session was to gather thoughts and perspectives about the study visit to the Fang District Prison. The participants divided into small groups, where each group discussed three suggested topics:

- a) Vulnerabilities before incarceration (including the sentencing process and the underlying factors motivating commission of drug offences)
- b) Conditions of imprisonment (including access to health services and visits from family members)
- c) Post-release challenges (including access to opportunities for employment and housing).

Each group then reported to the rest of the participants. Below is a summary of key issues mentioned by the three groups.



*Participants at the women's prison in Fang District, Chiangmai*

### **Vulnerabilities before incarceration**

Socio-economic factors, in particular poverty, were highlighted as the key cause of engagement in crime and incarceration. Another element highlighted was the fact that being a user-dealer in Thailand is an aggravating factor attracting more severe sentences, which is different from other regions of the world where they can receive an alternative to incarceration or more lenient punishment. The participants agreed that multidisciplinary interviews might be beneficial to better understand the reasons and factors that lead to one's imprisonment. Talking with the prisoners can further elaborate on this but the participants were only able to talk to prison officers. However the common profile of inmates does accord with the pre-existing understanding that participants had about people in prison.

### **Conditions of imprisonment**

On the conditions of imprisonment of the women, the group observed that the facilities were clean, almost sterile, and well organised. High security seems to be prioritised through the multi-level wirings at the gate. It was also observed that the provincial court and police stations are near the prison facility, and this is ideal for processing their cases quickly, compared to other countries. With the stated challenge of overcrowding, the group observed that the facility is quite spacious and not as bad in comparison to other prison facilities they had seen before.

The group discussed the programmes and services being offered by the prison facility and commented on the screening, assessment, and classification of drug use and dependence which did not seem to follow clear criteria. Some commented that the approach to interviewing could influence the extent to which the inmate



will be willing to share about his or her drug use. Some concerns were also raised about issues of illiteracy and being part of an ethnic minority when being screened. Furthermore, given the low rates of literacy and education, some participants questioned the extent to which women incarcerated understood the legal process they had gone through, and the paperwork that they would have had to complete and submit; they would have been vulnerable to coercion during the process.

It was noted by most of the participants that the food was unexpectedly tasty at the lunch prepared by the prisoners. They commented that the cooking training programme and sewing equipment (including cutters and needles) for the women helps empower them and improved trust towards them. There were concerns about the effectiveness of some programmes such as the 'To be number one' drug rehab programme. However, participants were impressed that many harm reduction services promoted in the UN comprehensive package are available in Thai prisons, except for needle and syringe programmes (since prisons are supposed to be drug-free), and methadone maintenance therapy is only a pilot project in Thailand, with only two patients benefiting from it. There is also a specific area for people to have sex within the prison and condoms are distributed.

Moreover, it was noticed by the group that the complaints box mechanism inside the prison through which inmates can raise concerns might not be effective since it is set up in a public area and inmates might be afraid that others see them submitting a complaint – although it was further explained that other boxes are available in more hidden locations. Some also showed some surprise about the fact that no complaint was ever made on accounts of violence in prison.

It was observed that the prison officers are in strict uniform and follow strict protocols for daily tasks. It was further observed that it was striking for some that the prison warden is well aware of the problems going on inside and outside the prison. How the prison officers approach the inmates and co-officers shows that they really care for the detainees, especially how they talk to them. However, there is still a lingering feeling of stigma towards women incarcerated for drug offences. It was observed that practices such as putting red tags on the arms of a detainee who was involved with a large amount of drugs was alarming and further stigmatised the detainee in the prison. The tags were presumably used for monitoring and security purposes.

The limited number of visitations permitted was considered by some as quite harsh and potentially resulting in negative consequences for mental health and for family relationships, especially compared to other countries in the region. In the Philippines, physical contact is allowed and families can go to the prisoner's dormitory, for instance.

Finally, participants discussed the level of collaboration between prisons and NGOs focusing on the rights of LGBTQI+ communities, sex workers, family foundations, the Global Fund, Ozone, etc. The participants were explained that these collaborations are adapted to the context and needs of the prisoners in specific prisons.

### **Post-release challenges**

Participants raised concerns about the level of stigma and rejection formerly incarcerated women face by their community, and this is making it very hard for them to find a job. It was considered as important to better involve community leaders and NGOs to facilitate their social reinsertion after release. Participants also noted the significant efforts by prison staff invested into following up with people after their release from prison. This is not the case in the Philippines although there is some consideration of this now. However, some pointed out that this aftercare and follow up after release may be problematic if it impinges on their freedom. Participants were interested in learning more about the experiences of people held in the prisons and to hear a different side to how they are treated, as well as their experience of the arrest and sentencing process.

## **FACTORS INVOLVED IN THE INCARCERATION OF WOMEN FOR DRUG OFFENCES**

In this session, participants took a closer look at some of the driving factors behind the increasing rates of incarceration of women for drug offences in Latin America and Thailand.

### **Case study: Latin America**

The driving factors behind women's incarceration were highlighted: the single most important factor is poverty, being single mothers, unequal power relations between women and men, drug dependency and trafficking of women. Sometimes women are coerced or duped into involvement in the drug trade. And sometimes it is a family business or women live in communities where marijuana, coca or poppies are grown, and the whole community is involved. The participants viewed a video featuring Gaby's story who is from Guerrero, Mexico, a small town that survives from cannabis – from growing to harvesting to packaging to transporting it.<sup>20</sup>

Research studies in Latin America have looked at the levels of involvement in the drug trade and incarceration and the vast majority of those in prison are low-level, first-time offenders. In Colombia, less than 2% were medium or high-level traffickers. The situation is similar in Mexico for both men and women – these are two countries notorious for the proliferation of drug trafficking groups. Yet those accused of committing low-level offenses face disproportionately high sentences, both in terms of sentencing policies and in relation to other serious crimes. Often drug laws fail to distinguish between the gravity of the crime committed, the substance involved, one's level of leadership in drug trafficking organisations, and whether the crime was violent or not. All are subject to the same mandatory minimum sentences. In Latin America, there are small-scale dealers who have sentences of up to 20 years. And in Southeast Asia sentences are even higher. Sentences for drug offences are also disproportionate in relation to other crimes, with people being incarcerated for drug offences for longer periods of time than those in prison for murder or rape.

In Ecuador, until recently murder had a 16-year maximum sentence while the maximum sentence for drug trafficking was 25 years. In Bolivia, drug crimes can be sanctioned for more years than rape.

Another way in which drug laws land women behind bars is the way in which 'possession' of drugs is codified into law, allowing people who use drugs to be charged as small-scale dealers. Many women are also convicted of 'conspiracy' – they are the girlfriends, spouses or mothers of men involved in the drug trade and they are convicted simply because they were living in a house where drugs were stored, or were present when drug transactions took place. In the USA, these women often end up with more jail time than their partners, as they have no information to plea bargain with. Finally, drug laws do not allow prosecutors and judges to take into account mitigating circumstances, such as situations of vulnerability such as poverty or being responsible for small children or elderly parents.

### **Case study: Thailand**

According to the latest available data on people who use drugs in Thailand in July 2019, most people who use drugs are between 20 and 24 years old, most of them are laborers and contractors. More than 90% are male. The number one drug involved is amphetamines, followed by methamphetamine ('ice') and cannabis. Drugs are often used to work longer hours and be more sociable. Statistics on drug treatment and rehabilitation for 2014 to 2019 found that over 90% of the patients in treatment are male.

Regarding statistics on drug arrests during 2014 to 2019, there has been no increase in the number of women arrested for drug-related offences. They are usually charged in drug offences involving packaging, manufacturing and selling, with around 10% charged for simple possession. However, there is a lack of information on women offenders. The causes of women being involved in drug-related activities does not differ

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<sup>20</sup> Video available here: <https://womenanddrugs.wola.org/videos/>

from Latin America, they relate to violence (including domestic violence), poverty, physical conditions, being victim of human trafficking.

The Office of the Narcotics Control Board (ONCB) is responsible for monitoring and assisting inmates by allocating budgets and resources and through policy advocacy in these three areas. Firstly, in the process of classifying women drug offenders as women who use drugs and deciding rehabilitation and treatment plans (this step involves a health assessment taking into account the psychological characteristics of the patients). Secondly, the ONCB reviews treatment and rehabilitation procedures and prepares the prisoners before their release (this step focuses on improving physical and mental health, vocational training, family and social relations). And thirdly, the ONCB monitors the formerly incarcerated person through coordinating a network that would support the person in finding a job, education and housing.

## **MEASURES TO REDUCE THE RATE OF INCARCERATION OF WOMEN FOR DRUG OFFENCES**

The objective of this session was to present different measures adopted by some countries to reduce the rate of incarceration of women for drug offences. It aims to look at the underlying factors of incarceration.

### **Case study: Innovative approaches in sentencing of ‘drug couriers’ in Europe and the Americas**

The trend of increasing incarceration of women for drug-related offences is not only seen in Asia but all over the world, such as in Europe and the Americas. The presentation started with a description of various innovative approaches being utilised by different countries. These innovative approaches were published to provide key examples of policies and programmes with a gender perspective, to empower women and respond to the key vulnerabilities they face.<sup>21</sup>

Costa Rica is one of the only countries that reviewed their drug law with a gender perspective, reducing penalties for women smuggling drugs in male prison, with alternatives to incarceration if in situation of vulnerability. The reform reduced prison sentences of 8 to 20 years of imprisonment to 3 to 8 years of imprisonment. After the reform was pushed, among the 750 total of women incarcerated, 150 women were immediately released. Of those, only 1% reoffended.

The Portuguese decriminalisation model is a good practice example being shared over the world. In addition to the decriminalisation of drug use and possession for personal use, the country allocated significant funding towards harm reduction and treatment programmes. In case of arrest, the person is referred to a ‘dissuasion commission’, an administrative body composed of a physician, social worker and lawyer, which collects information about the person’s drug use, as well as other health and social issues. The model provides broad-ranging responses. 18 years following the reform, data show that there was no increase in overall drug use prevalence. Moreover, there have been marked reductions in new cases of HIV, hepatitis B, hepatitis C, and low rates of overdoses. Improved access to voluntary treatment was observed also. There was a major reduction in prison overcrowding, and police resources were redirected towards violent offenders. As a result of the reform, the relations between the police and community improved.

The United Kingdom reviewed its sentencing guideline for drug offences in 2012. Before that, sanctions were solely imposed on the basis of the quantities of drugs seized. This resulted in a large number of foreign nationals being incarcerated as drug couriers. Since 2012, the guidelines have advised the judges to take into account the role of the person in the drug trafficking chain during sentencing (lesser role, significant role, leading role), as well as mitigating factors (children, sole caretaker, situation of socio-economic vulnerability). When implementing the guideline, the courts realised that 50% of female drug offenders were involved in

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<sup>21</sup> For more information, visit: <https://idpc.net/publications/2017/06/gender-and-drug-policy-exploring-global-innovative-approaches-to-drug-policy-and-incarceration>

'lesser' roles, as drug courers. As a result, a higher number of women was incarcerated for less than 10 years in prison.

Bolivia issued six pardons between 2012 and 2018, to respond to extreme prison overcrowding. The pardons focused on minor offences, pregnant women, taking into account the interest of the child, social reintegration of the prisoners, and on first-time offenders. The number of women incarcerated was reduced by 84% between 2012 and 2017. By September 2018, 1,555 women had benefited from these measures.. Yet, more problems with prison overcrowding will arise unless longer-term reforms are adopted – pardons are only a short-term solution.

Another measure shared is the Justice Home, a trauma-informed and gender-responsive alternative to incarceration programme for women in the USA. It was developed in New York state and was initiated in 2014 to reduce women's involvement with criminal activity. Participating women remain at home while being provided with support from a case worker for issues related to drug dependence and other social and health issues. So far the project has benefited 35 women each year so it is low-scale. Importantly, the costs of the programme are significantly lower than retaining a woman in prison – and it provides a key opportunity for the women involved to address the key factors that led them to engage in criminal activities, while retaining family ties.

The session was concluded by encouraging the participants to be critical and and look at these innovative approaches, not as perfect models, but as a start for elaborating new approaches that could address prison overcrowding in the region.

#### **Case study: Reforms to reduce numbers of people incarcerated for drug offences in the Philippines**

The presenter discussed current measures being used in the Philippines to try and address prison overcrowding. The Good Conduct Time Allowances Act (Republic Act of the Philippines No. 10592) is a prison reduction scheme being followed by jails and prisons in the country. Under the Act, good conduct through participation in different programmes while incarcerated results in a reduction of one's sentence. Thanks to this programme, an increasing number of people were released: from the time it was implemented, 11,000 inmates were released in 2015, 16,000 in 2016, 11,000 in 2018 and 12,000 in 2019.

Furthermore, in 2018, a reform of the Republic Act 9165, Sec. 23 was adopted, allowing for plea bargaining for drug-related cases. Under this new procedure, a person sentenced for 12 to 20 years in prison for drug possession can see their sentence reduced to 4 years and 6 months' imprisonment or community-based rehabilitation. This provision reduced prison overcrowding and also gives a chance for people to rehabilitate. However, more and more people also come into prison because of the war on drugs launched by the president and the programme is struggling to keep up with the influx of prisoners.

A Senate bill was also presented to improve jail conditions for women.

In addition, the '*Pa-ReLEASE-Me*' programme, aimed to strengthen the linkages between the Bureau of Jail Management and Penology, the Department of Social Welfare and Development, Local Government Units and other government entities to provide for a sustained pre-reintegration referral system. The RENEW (Reformation, Education, Nurture and Empowerment of Women) Programme was also presented. The programme provides basic services for women incarcerated (food, hygiene, clothes), education and literacy, skills enhancement (massage, spa services, dress making, bead work), livelihoods products, a behavioural management through group work (i.e. therapeutic communities), religious and interfaith programmes, cultural and sports activities, celebration of Mother and Father Day, paralegal support, etc.

The presenter provided the example of one Philippine jail. Despite the lack of human resources, the jail proposes interfaith programmes to respect the right to religion of the inmates. Cultural and sports program are made available (e.g., musical drama contest, pageants, Mother's Day and Father's Day celebration) and encouragement on the local government units are being done. Unlike Thailand, children are not allowed to be kept inside the prison or jail. Family and conjugal visits are allowed on the afternoons from Tuesday to Sunday. There is a separate facility for those wishing to have sexual relations during conjugal visits. In the case of women, prenatal and cervical cancer check-ups are available and given priority by the law. Regarding post-release or aftercare programmes, the person is often referred to their local government units and/or in Barangay Anti-Drug Abuse Council.

The 'Resilience Against Drugs in the Community' programme targets people incarcerated for drug-related charges. This is for people who refuse the plea bargaining programme and who, therefore, are required to undergo counselling and rehabilitation inside prisons. Intensified Greyhound Operations are also conducted every three months to every jail facility, wherein random drug testing are being done on the personnel and inmates. The prison awards Drug-Free Facility Awards, and nine female jails have currently been certified as being drug-free.

The Human Rights Commission conducts regular visits to the prisons and jails of the Philippines to assess human rights compliance.

#### **Case study: Reforms to reduce numbers of people incarcerated for drug offences in Thailand**

In Thailand, the focus has been on releasing women from prison. Despite Royal Pardons however, there are still around 400,000 prisoners in the country. Pardons have been issued every year since 2016, and are an effective mechanism to release prisoners. In addition to pardons, there is a remission process for outstanding prisoners, whereby the sentence is reduced on good behaviour. Parole is another mechanism enabling the release of prisoners. Every month, an internal meeting takes place, chaired by the commander of the prison and involving prison staff and the ONCB to screen the prison population. A list is then submitted to the Ministry of Justice which makes a final decision. There is another parole system for special circumstances: handicap, being more than 70 years of age. This includes referrals to a light structure facility, rehabilitation of people who use drugs in therapeutic communities, rehab through a training programme. There are clear criteria to be eligible for parole.

There have been some attempts by civil society organisations to push for the removal of criminal sanctions for people who use drugs and promote alternatives to prison. The participants discussed the need for a gender focus when these measures are adopted to take into account the specific needs and situations of women, such as gender violence, spouse pressure, no protection in the law in case of violence or intimidation, gender discrimination and stigma, etc.

#### **Discussion**

During the discussion, some participants considered Portugal to be an example of best practice. A question was made as to whether Portugal also includes steps to facilitate the social reintegration of formerly incarcerated people – in response, it was pointed out that Portugal's initiative aims to veer people away from incarceration altogether through decriminalisation. It was also noted that the models presented in this session are innovative approaches to gear the discussion, but that there is no silver bullet that could work everywhere, and most of these approaches also require further improvement. For instance, even the Portugal model that has been particularly successful lacks a strong gender focus.

It was observed that conjugal visits in the Philippines is allowed, a positive element that should be advocated for in other countries of the region. However, conjugal visitations in the Philippines follow specific instructions, and not all jails can implement the guidelines if the space and facilities won't allow it. Moreover, in order to

enjoy the privilege of conjugal visits the couple must produce a marriage certificate or barangay cohabitation certificate.

## **MEASURES FOR IMPROVING PRISON CONDITIONS**

### **Case study: Thailand**

This presentation focused on measures to improve the conditions in the Chiangmai prison facility. These are meant to improve the behaviour and attitude of prisoners. The objective is to release good citizens and reduce overcrowding. This is an urgent issue which affects the health and well-being of prisoners. The prison has the capacity to house over 200,000 prisoners but 400,000 people are currently incarcerated there. This includes around 2,300 women, about 90% of whom are in prison for drug offences. Six inmates are on death row and are in the process of appealing, 103 inmates were handed a life sentence. The facility receives inmates with heavy sentences from other facilities as well – if the sentence is over the authority of the facility, the inmate has to be referred to a facility that can house people with this type of sentence.

The prison has links with hospitals, including the psychiatric hospital. The facilities keep being renovated for safety, security and cleanliness. Cleanliness improves the surroundings, which facilitates the work with the inmates. When women arrive in prison, they are led to a screening room. According to the BKK rules, the screening should be in a separate room and conducted by female officers – the prison follows these rules. If women are illiterate, they are shown a video file. The screening is important to get information on each inmate's profile.

The prison is the only one in the country that has beautiful surroundings. The building has many floors because of lack of space, but it was described by the presenter as looking more like a hotel than a prison, despite issues with overcrowding. New buildings were built so that activities that used to be outdoors can now be indoors or under a roof. There is a meditation hall, as well as a prayer room for Muslim and Christian inmates. There are also resting rooms, a room for lawyers and consulates, a room for dental care where the dentist comes once a month. There is also a building for pregnant women, mothers and babies. Public health staff come regularly for examination. The prison also has facilities for education, as well as a computer room. The video conference can be used to connect with the Chiangmai courts. Group activities are conducted in the Happy Centre, designed to help with physical and mental fitness. Trainers and facilitators come from outside the prisons, including music bands and music teachers, trainers for vocational buildings, including a training centre for Thai massage.

There is also an outside traditional Thai massage training centre where some women are given permission to practice their skills with real customers.

Finally, the prison includes a pre-release unit. The Bangkok Rules promote 3 steps: correction, pre-release training (when the remaining sentence is less than two years). This helps create a sense of self-worth. Former people who use drugs are offered to enter therapeutic community programmes. Training takes four months, and these are held twice a year. The programme provides vocational trainings. It aims for excellence, and the prisoners receive certificates. After release, formerly incarcerated prisoners are mostly self-employed, but it is important that they receive certificates on cooking, massage trainings, etc. which they can show their employers. The products made in prisons are also certified. Another important activity is building family relations as families and children are key to accept prisoners back into society. Grants are provided after release to a few prisoners. The correctional institute was awarded for the partnerships created to help improve the conditions for the inmates, under the project 'Accepting your life goals'.

### **Case study: Preventing violence and torture in Indonesian prisons**

The National Commission on Violence Against Women in Indonesia monitored prisons in 2017, and found many similarities with the Philippines and Thailand. Almost all women are incarcerated for drug crimes, many framed or trapped by drug syndicates. Violence against women is prevalent in all stages of the criminal justice system: arrest, trial, investigation, incarceration and even after release. The presumption of innocence is not applied, legal aid is limited, the rights of the suspect are not implemented. The death penalty and life sentences are contrary to the principle of rehabilitation and do not reduce drug trafficking. Life sentences are increasingly imposed to avoid the death penalty. The panellist highlighted that the death penalty does not decrease drug trafficking and does not guarantee the dismantling of transnational criminal syndicates.

Based on these findings, the National Commission issued a number of recommendations both for the UN and governments:

- The UN should further develop international human rights instruments so that the legal system can identify, prevent and process drug crimes that link drug trafficking with migration mobility and human trafficking.
- UN member states should ratify the Optional Protocol of the Convention Against Torture to ensure that mechanisms are in place to eliminate torture.
- UN member states should ratify the ILO Convention 189 for domestic workers at home and abroad, since migrant domestic workers are particularly vulnerable to crimes related to drug trafficking.
- Governments should ensure fair trial principles are implemented in the criminal justice process, including on violence against women, considering links between drug/human trafficking
- Governments should ensure that legal aid is provided at an early stage to avoid the death penalty, inhumane punishments and violence against women. Legal representation should also ensure that the law enforcement including the court considers other factors that intersect with the crime committed, including if the suspect is a human trafficking victim, which may serve as mitigating factor or even absolve her or him from guilt.
- Give pardons or clemency for those incarcerated for long periods of time. There should also be a policy to abolish death penalty and life sentences and replace them with punishments that still enable those found guilty of felonies to have the hope to rehabilitate.
- All law enforcement apparatus should benefit from capacity building programmes to strengthen their understanding and commitment on human rights and women's rights in order to enforce the law justly, non-discriminatively, and by considering the violence against women dimension.
- The Indonesian National Police should evaluate and reform the legal system and procedures for women suspected of drug trafficking by creating a response system that connects the units managing drugs cases with those that handle trafficking in persons.
- The Indonesian National Police should investigate and document femicide in lieu of the vulnerability of women trapped in drug trafficking syndicates and who are subjected to murder threats.

### **MEASURES FOR ENSURING EFFECTIVE POST-RELEASE TRANSITIONS**

#### **Case study: Mobilising formerly incarcerated women in the Americas**

This session focused on presenting the first-ever meeting of formerly incarcerated women in the Americas which took place in Bogota, Colombia, in July 2019. The event entitled 'Bringing down the bars' gathered 41 formerly incarcerated women from 8 countries to share strategies of organising and resistance, and start building a network at global level. Similar networks of formerly incarcerated women are also being created at national level, for instance the 'Mujeres Libres' network in Colombia. The event culminated with the drafting of a declaration written entirely by formerly incarcerated women.<sup>22</sup>

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<sup>22</sup> For more information, read: <https://www.wola.org/analysis/formerly-incarcerated-women-in-the-americas/>

### **Case Study: Post-release interventions in Thailand**

The NGO Ozone implements programmes to help women re-adapt to society post-incarceration. Ozone supports formerly incarcerated women through a network of peers to avoid relapse and going back to prison, including through a Facebook group. The network includes formerly incarcerated women and women who use/used drugs. The network also mobilises to demand policy change in terms of healthcare, legal aid, childcare, overall drug policies, etc. Under Thai law, pregnant women should not be sent to prison, but the provisions are not specific enough, this is an advocacy point that Ozone highlighted as a possible focus for future advocacy.



*Organisers of the Regional Seminar: IDPC and Inspire Project representatives*

**END OF REPORT**