

Women, Incarceration, and Drug Policy

TRAINING MODULE



International Drug Policy Consortium

INTRODUCTION

➤ **Aim of Module** - To increase awareness and understanding of the situation of women in relation to drugs, particularly women in incarceration for drug offenses; and to promote gender sensitive drug policy reform towards reducing the levels of incarceration of women for drug offenses.

Learning objectives:

Participants will gain an understanding of:

- The situation of women in relation to drugs and incarceration for drug offenses;
- The existing policies and conventions affecting women who use drugs and women in incarceration for drug offenses; and
- The need to engage gender sensitive drug policy reform to protect and promote the rights of women in relation to drugs and incarceration.

While drug use and the effects of the global war on drugs have a dominantly male image, the impact of drug policies on women cannot be ignored. The growing number of women in prisons all over the world are linked to punitive drug laws. However due to a bigger male population, the needs of women in incarceration for drug offenses are largely unrecognised.

This module aims to build awareness on the situation of women in relation to drugs, and specifically, women in incarceration due to drug offenses. It seeks to promote gender-sensitive drug policy reform towards reducing the numbers of women in incarceration due to drug related offenses.

This module is built on the hope that the rights of women in incarceration for drug offenses are recognized as part of the greater movement to protect and promote women's rights as human rights.

SESSION 1 📄 Presentation: Background on Women Who Use Drugs (30 min.)

SESSION 2 📖 Activity: Word Race: Women's Rights Are Human Rights (60 min.)

SESSION 3 📖 Activity: Paint-A-Picture: Violations of Women's Rights in Relation to Drugs and Incarceration (60 min.)

SESSION 4 📄 Presentation: Situation of Women in Incarceration for Drug Offenses (30 min.)

SESSION 5 📄 Presentation: Women in the Criminal Justice System (60 min.)

SESSION 6 📄 Presentation: International Policies Affecting Women's Rights in Relation to Drugs and Incarceration (60 min.)

SESSION 7 📄 Presentation: Women Post-Incarceration: Situation and Policy Concerns (30 min.)

SESSION 8 📖 Activity: Good Stories and Alternatives to Incarceration (45 min.)

SESSION 1

▣ *Background on Women and Drugs*

🕒 30 minutes

Aim – To provide an overview of the impact of drug policy on women and information on the situation of women who use drugs, women in the drug trafficking chain and women involved in cultivation.

Learning Objectives

1. To understand vulnerability, discrimination, and other disadvantages faced by women who use drugs;
2. To identify men and women proportion in drug consumption, distribution, and production in connection to criminal justice system;
3. To understand the lack of attention to women who use drugs due to male dominated data

Duties

1. Introduce the aim of the session (slide).
2. Before starting the presentation, ask the participants about their experiences, if any, with women who use drugs.
3. Present the information below and corresponding slides (slides).

👁 Facilitators' note

Depending on time available, the facilitator has a choice of either combining the presentations of Sessions .1, .2 and .3 in one presentation, or to keep them in separate sessions.

The facilitator also can use the presentation with video call conference during covid-19 pandemic

🕒 Information to cover in this presentation:

While prevalence of drug use disorder is dominated by men, women show more vulnerable to several harmful conditions¹. Studies show women tend to have a co-morbid psychiatric disorder, face particular risks in terms of sexual and reproductive health besides sexual violence experience, and as a result of having partner who use illicit drugs, women can suffer from its consequences such as becoming family's caregiver since the partner is being jailed.²

Drug using women who are mothers have an additional vulnerability, their children's welfare can be affected by their drug use. The likelihood of losing child custody is related to low socioeconomic status and involvement in the criminal justice system among women who use illicit drugs.³

Female drug use as well as their involvement in other illicit drug activity such as cultivation may be increasing. According to a UN Women Policy Brief in 2014, the more advanced the country, the higher the proportion of females among drug users. Between 2005 and 2010, in Europe and the Americas, women's lifetime use of sedatives and tranquilizers far exceeded men's⁴.

¹ *Guidelines on Drug Prevention and Treatment for Girls and Women*. Vienna: UNODC, 2016

² *World Drug Report 2020*. Vienna: UNODC, 2020.

³ Martha Canfield, et al, *Maternal substance use and child protection: a rapid evidence assessment of factors associated with loss of child care*, Child Abuse and Neglect, vol. 70 (2017), pp. 11–27.

⁴ *A Gender Perspective on the Impact of Drug Use, the Drug Trade and Drug Control Regimes*, UN Women Policy Brief, July 2014. https://www.unodc.org/documents/ungass2016/Contributions/UN/Gender_and_Drugs_-_UN_Women_Policy_Brief.pdf

In the USA, women are one of the fastest-growing segments of the prison population. Between 1978 and 2014, the number of women in state and federal prisons grew by nearly 800 percent.⁵ This country accounts for five percent of the world's female population but it represents almost 30 percent of the world's incarcerated women.⁶ Globally, the 25 jurisdictions that have the highest rates of women incarcerated are all U.S. states ([show the chart](#)).

Women's participation in the drug trade is also on the rise, especially among poor, uneducated and abused women, but they are relegated to low-ranking, low-paying but high risk positions such as acting as drug mules or small scale street-level traffickers. This not only exposes them to harsh legal consequences but also makes them vulnerable to different forms of gender-based violence⁷.

In Indonesia, based on a research conducted in 2018, out of the 307 respondents, 78 – that is, over 25 percent of the women – said that they had experienced torture, mostly at the hands of the police, but also by criminal justice and prison officials. 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 of the government).

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). At least six women were imprisoned for not reporting their drug use. Two respondents did not understand what charges were brought upon them and what their sentence was⁸.

Women are also involved in cultivation. There are an estimated 4 million men, women and children cultivating drug crops all over the world and there is evidence to suggest that women have an unrecognised and proportionate share in these activities⁹.

In the same above-mentioned 2014 policy brief, UN Women observed that, “women's involvement in drug use and the drug trade reflects the decreased economic opportunities and lower political status that women face in everyday life.”

This observation is echoed by the conclusions stated in the policy paper produced by the International Network of People Who Use Drugs (INPUD), as part of its Drug User Peace Initiative, called *A War on Women Who Use Drugs*,

“Women who use drugs are all but invisible in terms of data collection and in terms of service provision and harm reduction. Women who use drugs experience exclusion from services and healthcare and are all too often not catered for appropriately by services that are available.

⁵ Bureau of Justice Statistics, “Female prisoners under State or Federal jurisdiction,” Corrections Statistical Analysis Tool, www.bjs.gov

⁶ Aleks Kajstura and Russ Immarigeon, “States of Women's Incarceration: The Global Context,” (Prison Policy Initiative, 2015). <http://www.prisonpolicy.org/global/women/>.

⁷ *A Gender Perspective on the Impact of Drug Use, the Drug Trade and Drug Control Regimes*, UN Women Policy Brief, July 2014.

⁸ Mary Catherine A. Alvarez. “Women, Incarceration and Drug Policy in Indonesia: Promoting Humane and Effective Response. IDPC & LBHM, 2019

⁹ Camille Stengel and Jennifer Fleetwood. *Developing Drug Policy: Gender Matters*. Global Drug Policy Observatory, Swansea University, 2014.

Women who use drugs experience considerable barriers to accessing healthcare and service provision, thus resulting in barriers to the prevention of blood-borne and sexually transmitted infections. Women who use drugs are more likely to experience violence, both perpetrated by the state, and in their homes and family contexts. Women who use drugs experience gross violations of their human rights, including arbitrary incarceration, interference with their bodily integrity and interference with their families...

It is clear that prohibition and criminalisation serve to drive and exacerbate many of the harms associated with drug use. It is also clear that due to gender- and sex-based stigma and discrimination, harms associated with drug use are substantially greater for women.”¹⁰

Higher stigma on female drug use may have also led to a deficit in women’s access to treatment. In Afghanistan, despite high rates of opium and heroin use among women, only four percent of women have access to treatment facilities. A 2010 European study also showed that the male to female ratio of treatment was 4:1. ¹¹

Women’s rights or gender equality rarely feature in discussions about the world drug problem. Men are, after all, a large majority of those using or trafficking drugs. Women’s roles, both as participants and victims, are underestimated and understudied. However, it is clear that the world drug problem is undermining gender equality, and that a gender perspective is needed in all efforts to prevent and respond to this issue.

¹⁰ *Drug User Peace Initiative – A War on Women Who Use Drugs*. INPUD, 2014.

¹¹ *Ibid.*

SESSION 2

Word Race - Women's Rights are Human Rights

 **60 minutes**

Aim – To introduce participants to concepts of gender, gender sensitivity, and women's rights as human rights.

Facilitators' note

The Facilitator may decide how much time will be given for the teams to write the words depending on the number of participants. The time limit may range from 3 to 5 minutes or less if there are fewer participants.

Learning Objectives

1. To understand gender as “socially constructed”. Unlike biological sex, gender is a product of society. If society determines what is masculine or feminine, then society can change what is considered masculine, feminine, or anything in between;
2. To understand human rights based on its international legal framework;
3. To understand the Convention on the Elimination of All Forms of Discrimination against Women.

Duties

1. Divide the participants into two groups. Let them form two lines in front of a white board, blank flip charts or any suitable vertical writing surface. Provide the persons in the front of the lines with markers.
2. Instruct the participants to take turns writing one word each that they associate or think of when they see the words written at the top of the white board or flip chart. The participants should write as many words as they can within the time limit for their teams without repeating the words already written. Repeated words on the list will not be counted for the team.
3. Just before the timer starts, write the words “MALE” and “FEMALE” on the whiteboards or flip charts with one team having to list words under “Male” and another team to list words under “Female”.
4. When the time is up, the facilitator then counts all the words by validating the answers of each team, and removes any words from the list that are repeated. The team with the highest number of words on the list after validation wins.

The word list could look like this:

MALE		FEMALE	
Strong	Pants	Beautiful	Make-up
Brave	Sports	Sensitive	Lipstick
Handsome	Hardworking	Pretty	Pregnancy
Blue	Aggressive	Pink	Childbirth
Breadwinner		Dresses	

5. After the number of words are counted, the facilitator then changes the heading of the list of words from Male to Female and vice-versa. The facilitator will then ask the participants if each word listed under the word “Male” will still be associated with the word “Female” and vice-versa. Note: Except for pregnancy and childbirth.

MALE FEMALE		FEMALE MALE	
Strong	Pants	Beautiful	Make-up
Brave	Sports	Sensitive	Lipstick
Handsome	Hardworking	Pretty	Pregnancy
Blue	Aggressive	Pink	Childbirth
Breadwinner		Dresses	

6. Present the aim of the activity and as a wrap-up, present the information below and accompanying slides (slides).
7. Explain what human rights are. According to UN, human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Everyone is entitled to these rights, without discrimination.

There is an international human rights law lays down the obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. The foundations of this body of law are the Charter of the United Nations and the Universal Declaration of Human Rights (UDHR), adopted by the General Assembly in 1945 and 1948, respectively.

The UDHR, together with the International Covenant on Civil and Political Rights and its two Optional Protocols (on the complaints procedure and on the death penalty) and the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, form the so-called International Bill of Human Rights.

The International Covenant on Economic, Social and Cultural Rights seeks to promote and protect include the right to work in just and favourable conditions; the right to social protection, to an adequate standard of living and to the highest attainable standards of physical and mental well-being; and the right to education and the enjoyment of benefits of cultural freedom and scientific progress.

The International Covenant on Civil and Political Rights deals with such rights as freedom of movement; equality before the law; the right to a fair trial and presumption of innocence; freedom of thought, conscience and religion; freedom of opinion and expression; peaceful assembly; freedom of association; participation in public affairs and elections; and protection of minority rights. It prohibits arbitrary deprivation of life; torture, cruel or degrading treatment or punishment; slavery and forced labour; arbitrary arrest or detention; arbitrary interference with privacy; war propaganda; discrimination; and advocacy of racial or religious hatred¹².

8. In the context of women's rights, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by UN General Assembly on 18 December 1979. The spirit of the Convention is rooted in the goals of the UN: to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women¹³.

¹² [Human Rights](#). United Nations' official website

¹³ [Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979](#). Office of the High Commissioner of UN Human Rights

① Information to cover in this presentation:

Gender is defined by the World Health Organization as “the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. It varies from society to society and can be changed. While most people are born either male or female, they are taught appropriate norms and behaviours – including how they should interact with others of the same or opposite sex within households, communities and work places. When individuals or groups do not ‘fit’ established gender norms they often face stigma, discriminatory practices or social exclusion”¹⁴.

The Office of the High Commissioner for Human Rights of the United Nations likewise describes gender as “socially constructed identities, attributes and roles for women and men.” The OHCHR further recognizes that society’s social and cultural definitions for the biological differences between women and men have resulted in the distribution of power and rights favouring men and placing women at a disadvantage. They are affected by political, economic, cultural, social, religious, ideological and environmental factors. The OHCHR cites the role of women in taking care of the household and children and the role of men to provide for the family and work outside the home as examples of socially learned differences¹⁵.

Society’s social and cultural meaning for the biological differences between women and men have resulted to hierarchical relationships between women and men or discrimination against women, some examples are:

- Economic and social discrimination such as laws and policies that prohibit women from equal access to land, property, and housing;
- Gender-based violence which affects at least 30% of women globally, including domestic violence and sexual abuse;
- Denying women access to sexual and reproductive health rights;
- Viewing women human rights defenders as a threat to religion and culture.

Some groups of women also face compounded forms of discrimination due to factors like socio-economic status, age, ethnicity, in addition to their gender¹⁶.

Examples of these groups of women who experience compounded forms of discrimination are women who use drugs and women in incarceration, including those incarcerated for drug offenses.

Protecting and promoting women’s human rights require that gender stereotypes be dismantled which starts with understanding existing social structures and relations. Gender roles and constructions can be changed over time by culture, society and community.

¹⁴ *Glossary of Terms and Tools. Gender, Equity and Human Rights.* World Health Organization. <http://www.who.int/gender-equity-rights/knowledge/glossary/en/>

¹⁵ *Women’s Rights Are Human Rights.* Office of the High Commissioner for Human Rights, United Nations, 2014. <http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>

¹⁶ Office of the High Commissioner for Human Rights. *Women’s Human Rights and Gender Equality.* <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/WRGSIndex.aspx>

SESSION 3

Violations of Women's Rights in Relation to Drugs and Incarceration

 **60 minutes**

Aim – To let the participants dramatize examples of violations of women's rights and policy concerns in relation to drugs and incarceration for drug offenses, identifying them with the international legal framework of female prisoner's rights.

Learning Objectives

1. To have a picture of specific example of violations of women's rights in relation to drugs and incarceration for drug offenses;
2. To identify those violations with the breach of the international legal framework of women's special needs in prison.

Duties

1. Introduce the aim of the session (slide).
2. Divide the participants into groups of 5 or more people.
3. Each group will be instructed to form a picture of specific examples of violations of women's rights in relation to drugs and incarceration for drug offenses by dramatizing and using themselves as props then freezing for a few minutes like a living painting.
4. The "pictures" formed by the groups may be judged by facilitators and a winner or winners could be selected based on the best depiction of the violation.
5. The activity may serve as an introduction to the next session or other sessions.
6. Some examples of rights violations or policy concerns that participants may be asked to dramatize are: lack of access to legal assistance, solitary confinement, separation from children or family, physical violence, etc.

Facilitators' note

The facilitator may decide what examples of rights violations or policy concerns should be acted out by the groups based on earlier discussions.

The facilitator may also decide on the time provided for the groups to form their picture based on the number of participants and other factors. The time allotted for forming a picture may be 2-3 minutes or more.

7. Identify those violations with the breach of the international legal framework of women's special needs in prison^{17,18,19,20,21,22,23} that regulate²⁴:

Reception, Registration, and Placement. In principle, no one should be imprisoned without a valid commitment order. If carrying a child, it is necessary to note the total number and personal data of the child including the name, age. If does not live with her child in prison, it is also necessary to note the location of the child's residence and their guardianship status. All information relating to the children must be kept confidential.

Separation of prisons must take into account their sex, age, criminal record, legal reasons why they are imprisoned, and their health. Imprisonment for men and women must be completely separated wherever possible.

Upon the arrival, the inmates must carry out a thorough medical examination including STDs, blood-borne disease, post-traumatic stress, reproductive health history including current or recent pregnancy, and examination of sexual harassment and other forms of violence that may be suffered before imprisonment. HIV-AIDS is also being examined in special circumstances.

Health Services. The right of everyone to have the highest standards attainable for physical and mental health is guaranteed. The international legal framework also regulate the elimination of discrimination against women to obtain health services, especially gender-specific health services such as pregnancy and postnatal health services.

The mental health of female prisoners also needs attention. The prisons must provide mental health care and rehabilitation facilities including for drug use disorder. The health service must also facilitate female drug users with special needs, namely pregnant women and women who have children, also taking into account diverse cultural backgrounds.

Pregnant, Breastfeeding, and Carrying Children. The prison must pay attention to the special needs of women who menstruate, become pregnant, breastfeed, and carry children, especially sanitary supplies and water supplies. It must also provide

¹⁷ *The Standard Minimum Rules for the Treatment of Prisoners.* Adopted the First United Nations Congress on The Prevention of Crime and The Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

¹⁸ *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules).* Adopted by the General Assembly on 21 December 2010, on the report of The Third Committee (A/65/457)

¹⁹ *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.* Adopted by General Assembly Resolution 43/173 of 9 December 1988

²⁰ *Universal Declaration of Human Rights.* Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

²¹ *International Covenant on Civil and Political Rights.* Adopted and opened for signature, ratification, and accession by General Assembly Resolution 2200A (XXI) of 16 December 1999, entry into force 23 March 1976

²² *Convention on the Elimination of All Forms of Discrimination against Women.* Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979. Entry into force 3 September 1981, in accordance with article 27(1)

²³ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.* Adopted by the General Assembly of The United Nations on 10 December 1984

²⁴ As described by Desy Rahmawati Aziz in *Legal Framework of Woman Behind Bar*

a special place of care needed during pregnancy, post-delivery, and a place for baby care that is managed by a competent person, where the baby can be placed and cared for when not with his mother.

Inmates who are breastfeeding are allowed to live with their babies in prison.

Children who live with their mothers in prison must not be treated like prisoners. They must be given the maximum possible opportunity to spend time together. The child will also be provided with routine health services and their development must be monitored by specialists who work with the community.

Violence, Torture, and Sexual Harassment. It is guaranteed that no one may be tortured or treated or punished in a cruel, inhuman or degrading manner. These rights are no exception owned by inmates.

If in the health examination on female prisoners found violence or sexual harassment, either before or while in prison, then she must be told her right to find a way out through legal channels. If she agrees to take legal action, the prison officer will help refer the case to law enforcement officials for an investigation and also help her to get legal assistance (lawyers). If she will not take one, she must be assured to get counselling guidance from an adequate psychologist.

Specifically for cases of sexual harassment, prisoners who report must be given immediate protection, support and counselling. In addition, their claims must be immediately investigated by competent and independent parties and maintain the principle of confidentiality. Female prisoners who have been sexually abused and become pregnant as a result, must receive medical care and counselling and be given legal support and assistance.

Accommodation and Sanitation. All accommodations provided for prisoners must meet all health requirements with due regard to climatic conditions, lighting, air temperature, air heating and ventilation. Sanitation installations for defecation must be adequate, proper, and clean. Likewise, bathing installations must also be adequate and appropriate so that they can shower according to temperature and climate, as often as possible adjusting the season and geographical area. But at least once a week they are required to take a shower.

Personal Hygiene, Clothing, and Bedding. Prisoners must be kept clean, so water and equipment needed for health and hygiene should be provided. In addition, the special needs for those who are menstruating, pregnant, breastfeeding, and carrying children, especially sanitary supplies and water supplies should be provided.

The provided clothes must be polite and not demean or embarrass them. All clothing must be clean and stored in proper condition. Similarly, underwear must be changed frequently and washed to maintain their health. In exceptional circumstances when a prisoner is going out of prison for an official purpose, she is permitted to wear her own clothes or other inconspicuous clothes.

The prisoners are given their own beds and adequate sleeping equipment. These bedding must be clean when given, then they must always be kept clean, neat, and must be replaced often enough. In addition, they must always maintain personal

hygiene and the residential environment and follow the activities carried out in order to clean the residential environment.

Discipline and Punishment. Behaviour that is a violation of discipline must be in written form as outlined in the written rules. The regulation must contain the type and duration of the sentence and the authority who impose the sentence. Prisoners should not be punished if there are no rules with legal provisions that govern them and they should not be sentenced twice for the same offense.

Penalties must not be in the form of physical punishment, placing in a dark cell, and all penalties that are cruel and inhuman or degrading other human dignity. Penalties in the form of stuffy confinement or in the form of restrictions on rights must be with a written statement from a medical officer stating that the offender is worthy of serving the sentence. They must also be visited and monitored regularly by medical staff whether the sentence will be continued or dismissed on the basis of physical or mental health. In addition, the punishment may not be in the form of bridles such as handcuffs, chains or iron ballast.

Religious Worship. The right to freely determine the religion that is followed and the right to worship according to her religion is a human right that is included in the civil and political rights guaranteed by the state. The state must guarantee the freedom of each of its citizens to embrace religion and practice worship according to their beliefs. Prisons must provide comprehensive programs and services to address these needs, including minorities, in consultation with them and related groups.

Storage of Prisoner's Property. All money, valuables, clothing, and other personal possessions of prisoners which according to prison rules may not be kept by themselves since entering the prison must be kept safely by the authorized prison official. The inventory records must be signed by the relevant prisoners and must always be kept in good condition. The medical officer decides whether the drugs carried by the prisoner can be used or not.

Relations with the Outside World. Prisoners are permitted under supervision to communicate with family or friends who have a good reputation on a regular basis, either by correspondence, telephone, or through visits.

Female prisoners should be placed in prisons close to their homes or social rehabilitation centre, taking into account the availability of programs and services that are right for them. The relationship of female prisoners with their families, including children and their children's guardians must be facilitated with adequate facilities.

The prisoners must always be regularly updated with information about important things happening in the outside world, whether through newspapers, magazines or special institutional publications, or through lectures or similar means controlled by prison officials including encouraging the use of libraries.

Transfer of Prisoners. Prisoners who are being transferred to or from a prison should be seen as little as possible by the general public. The transfer must be maintained and the officer must take action to protect them from any form of

humiliation, curiosity and publicity, but may not cause the prisoner to suffer physical suffering.

8. Wrap the session up by asking participants' thoughts regarding the paint-a-picture activity in connection with the knowledge of the international legal framework that protect women's rights in prison. Is there any insight that incarceration of women for drug offense have increased the number of female prisoner which in the developing countries it is accumulating the violations of constitutional, international, and national legal framework of woman behind the bar?

SESSION 4

📄 *The situation of women in incarceration*

🕒 30 minutes

Aim – To provide updated and relevant data on the situation of women in incarceration and women incarcerated for drug offenses.

Learning Objectives

1. To have a picture on statistical data of women who involve in drug use, trade, and production;
2. To identify correlation between such involvement with the number of woman in incarceration;
3. To overview underlying factors of recent situation on women in illicit drug economy.

Duties

1. Introduce the aim of the session (slide).
2. Before starting the presentation, ask the participants if they have any experience related to women in incarceration and/or specifically women in incarceration for drug offenses or refer to the symbols presented in Session .1.
3. Present the information below and corresponding slides (slides).
4. Participants can be invited to be able to empathise with women who end up in prison / detention by utilising the interactive online "Choose your own adventure" at <https://www.caligtangan.com>

🗣️ Information to cover in this presentation:

Women make up a small proportion of the global prison population – between 2 to 9 percent of a country's prison population, subject to some exceptions, but the number of women in prison are increasing along with the rise of the prison population. Some studies have shown that the number of female prisoners are increasing at a faster rate than male prisoners.

Country and Period Covered	Male Prison Population Increase (Percentage)	Female Prison Population Increase (Percentage)
USA (1977-2004)	388%	757%
Australia (1984-2003)	75%	209%
Argentina (1990 -2012)	111%	193%

Similar trends have been noted in Mexico, Bolivia, Colombia, Kenya, New Zealand, Cyprus, Estonia, Finland and Greece between 1994 and 2004²⁵.

²⁵ United Nations Office of Drug and Crime. *Handbook on Women and Imprisonment, 2nd Edition*, 2014.

Despite the rising numbers worldwide, because women and girls represent less than ten percent of the prison population, their characteristics and gender-specific needs have largely been unrecognized and ignored.

Therefore, in 2014, UN Women published a policy brief that was intended to inform the work of the UN System Task Force on Transnational Organized Crime and Drug Trafficking as Threats to Security and Stability in its preparation for the 2016 Special Session of the UN General Assembly.

As a member of the task force, UN Women shares its main message that transnational organised crime, including drug trafficking, fuels violence, corruption, and income inequality, inhibits legitimate social and economic activity, poses a serious threat to public health and international peace and security, and undermines gender equality and women's empowerment.

Some of the major issues faced by women in incarceration include the following:

- Mental health problems, histories of abuse and trauma, serious psychological distress
- Vulnerability to sexual abuse by correctional personnel and other prisoners;
- Different physical health needs such as reproductive health care and menopause;
- Most women in prison are mothers of minor children and are more likely to be primary caretakers;
- Because there are fewer women's prisons, most of them are located far from home, making visits more costly and difficult, thus women in prison have less face-to-face contact with their families;
- It is more difficult for women with a history of incarceration to find work, housing and financial support when they return to their communities²⁶.

It is important to note that because many women in incarceration come from poor and marginalised communities, a large number of women who are detained do not have the economic means to hire a lawyer and are often unaware of their legal rights. This puts them in a more vulnerable position where they may be signing statements without full knowledge of the legal implications and also creates delays in the criminal justice process²⁷.

Most women in prison are charged with minor and non-violent offenses. In the United States, two-thirds of women in federal prisons are there for non-violent drug offenses. Between 2006 and 2011, the female prison population of Latin America almost doubled, with the majority for drug-related offenses²⁸.

The incarceration of women for drug offenses increased largely due to policy changes in law enforcement, like the "war on drugs" which brought more resources and attention to stricter drug enforcement²⁹.

²⁶ Wendy Sawyer. *The Gender Divide: Tracking Women's State Prison Growth*. Prison Policy Initiative, January 9, 2018, https://www.prisonpolicy.org/reports/women_overtime.html

²⁷ United Nations Office of Drug and Crime. *Handbook on Women and Imprisonment, 2nd Edition*, 2014

²⁸ *A Gender Perspective on the Impact of Drug Use, the Drug Trade and Drug Control Regimes*. UN Women Policy Brief, July 2014. https://www.unodc.org/documents/ungass2016/Contributions/UN/Gender_and_Drugs_-_UN_Women_Policy_Brief.pdf

²⁹ Wendy Sawyer. *The Gender Divide: Tracking Women's State Prison Growth*. Prison Policy Initiative, January 9, 2018, https://www.prisonpolicy.org/reports/women_overtime.html

Prosecution of women for drug offenses also usually do not consider the reasons why they became involved in drugs, which may be due to pressure from a partner, histories of domestic violence and other forms of abuse, lack of livelihood opportunities and lack of access to treatment programs³⁰.

In addition to the increasing number of female prisoners, the proportion of women who are in prison for drug offenses is higher than that of men, 35 percent compared to 19 percent globally, although number of female prisoners (714,000) are far below that of men (9,6 million).³¹ Several things reveal the difference in proportion.

In Brazil for example, a post-doctoral researcher at the Centre for the Study of Violence of the University of São Paulo, Mariana Chies explained that when we look at the data on women incarcerated for drug offenses, we can't forget that this involvement of women is tied to a broader process of feminisation of poverty.

She answered the question about the worrying perspectives of the prison population in the face of the pandemic and also about the recent release of the 2019 National Penitentiary Information Survey, released by the National Penitentiary Department in April. The report shows that women's incarceration has risen again in the country, and that more than half of the women who are incarcerated today have convictions or charges related to drug trafficking³².

Consumption. For drug consumption, poverty is one reason. A study in the United Kingdom of Great Britain and Northern Ireland, the use of heroin, crack and cocaine among homeless women was higher than that among homeless men³³.

Increased stigma is also associated with homeless women who use drugs, which causes them to stay more entrenched within drug-using networks and spend less time with nondrug using networks that could be potential sources of help for treatment and care³⁴.

Higher stigma to women who use drugs also affects access to treatment and care for drug use disorders. Women encounter significant systemic, structural, social, cultural and personal barriers in accessing treatment for drug use disorders. Furthermore, the higher stigma to women who use drugs makes them being a more hidden population than men who use drugs.

Cultural norms may therefore make it difficult for women to acknowledge their drug problem and to leave their homes and families to undergo treatment. Since many women with drug use disorders also live with a partner or other family member using drugs, relationship issues and the role of drug use within the relationship remain central issues in women seeking support for drug treatment.

Inequality of access between women and men to treatment and care for drug use disorders clearly further exposes women to incarceration.

³⁰ Kasia Malinowska-Sempruch & Olga Rychkova. *The Impact of Drug Policy on Women*. Open Society Foundations.

³¹ *World Drug Report 2018*. Vienna: UNODC

³² "Women are more vulnerable to drug trafficking convictions because Justice incriminates more petty crime, says violence researcher". *Humanitas* 360, 7th of May 2020

³³ Homeless Link. *Women and homelessness*. Research Briefing (London, September 2015). Available from www.homeless.org.uk.

³⁴ Joan S. Tucker and others. *Homeless women's personal networks: implications for understanding risk behaviour*. Human Organization, vol. 68, No. 2 (Summer 2009), pp. 129–140.

In the supply side, few studies have addressed women's contact with the criminal justice system, its consequences and the impact of the participation of women in drug supply on the lives of the women involved. Globally, the majority of drug traffickers are men, but the issue of gender has not been taken into consideration in much of the research on drug trafficking.

Cultivation and Production. While research on issues related to women who use drugs has improved in recent years, little consideration has yet been given to understanding the participation of women in the supply side (related to illicit drug crop cultivation, drug production and drug trafficking) of the drug problem. Below the information from the limited studies and reports that have covered the role of women in drug cultivation, production and trafficking in order to provide an insight into the specific aspects of women's involvement in drug supply and into the effects that this involvement has on women.

The illicit cultivation of drugs often takes place in areas where rule of law is weak and where there is conflict or violence perpetrated by armed groups. The implication is that people in such areas have limited or no access to basic services including education, sanitation and health care. In Afghanistan, for example, there is evidence that opium poppy is cultivated in areas with a very strong culture of gender inequality: opium poppy cultivation is more likely to occur in villages where girls have no access to schools.

Women living in such areas suffer the worst consequences of poverty, are paid low wages or not paid at all, and lack other opportunities for economic self-reliance and access to education and health-care services. For instance, in Afghanistan women living in areas where opium poppy is cultivated and where there is a structural absence of economic opportunities have reported that the income generated from opium poppy cultivation enables them to pay for household necessities such as food, furniture and clothes³⁵.

Women and children provide unpaid labour in the cultivation of opium poppy, as cultivating and harvesting opium poppy is a very labour-intensive operation. Women participate in labour-intensive processes such as weeding and clearing fields, lancing and breaking opium poppy capsules to remove and clean seeds, and preparing opium gum ready for sale. Women also produce by-products of opium, such as oil and soap.

In Latin America, by contrast, women play a more active decision-making role during the different phases of coca bush cultivation and cocaine production. They are mainly involved in the initial stages, namely the cultivation and harvesting of coca leaf, but not much information is available on the participation of women in the later phases of cocaine production, which are more specialized, require qualified people, including chemists, and typically involve only men³⁶.

In certain parts of Colombia, households involved in coca cultivation have suffered consequences linked to the presence of illegal armed groups, which have resulted in increased levels of violence and barriers to social and economic mobility, especially for women³⁷.

³⁵ *Ibid*

³⁶ Roberto Laserna. *Coca cultivation, drug trafficking and regional development in Cochabamba, Bolivia*. PhD dissertation, University of California at Berkeley, 1995, p. 170–175.

³⁷ María Clara Torres Bustamante. *Coca, Política y Estado: El caso de Putumayo* (Bógota, Universidad Nacional de Colombia, 2012).

Through studies in Africa, particularly in countries in southern of the continent, it has been observed that many older women and housewives in rural areas engage in the cultivation of cannabis as a means of sustaining their households. It has been argued that the presence of these women in cannabis cultivation is a result of the fact that their partners and other male members of their families are often absent because they go to urban areas in search of work, or because they have died, often from an AIDS-related illness³⁸.

In the case of the manufacture of amphetamines, research has shown that women can play the role of both “cooks” and “shoppers” (the latter purchase or obtain supplies for manufacture). For example, in the State of Missouri in the United States, a survey showed that in 40 per cent of cases of methamphetamine laboratory seizures, women actively involved in the manufacture, sale or use of methamphetamine were arrested³⁹.

Poverty and the role and unequal access between men and women is clearly a problem in the role of women in illicit crop cultivation and drug production. Limited studies in Afghanistan on poppy cultivation, Latin America for coca processing, cannabis cultivation in Africa, and the role of women in the amphetamine production process show this interconnection.

Trafficking. Role of women in drug trafficking is also certainly related to the greater proportion of women and men incarcerated for drug offences which reaches 35 percent compared to 19 percent worldwide according to the World Drug Report 2018.

While there are no comprehensive global data on trends relating to women arrested for drug-related offences, there is a widespread perception that the number of women arrested for participating in the illicit drug trade is on the rise worldwide, in particular among women who lack education or economic opportunity or who have been victims of abuse⁴⁰.

A number of studies have focused on the role that women play in drug trafficking, whether as drug “mules” or in low-level drug dealing. However, these are not necessarily the only roles they play; women may have diverse roles in a drug trafficking network, from a leading role in a drug network or trafficking group to a significant or intermediary role, or a lesser or low level role along the drug supply chain.

Men may still dominate the top positions in drug trafficking organizations, but some women lead drug trafficking groups and are perceived by their male co-workers or law enforcement agents as “professional” drug traffickers or high-level members of the illicit organisation. They make key decisions related to both global and regional trafficking in drugs.

It is quite different from the poverty background that underlies women in the production and cultivation of illicit drug, it has been argued that women tend to obtain a high level of recognition in drug trafficking organisations through family associations or the death, incarceration or incapacitation of an intimate partner, as a result of which they have gone on to become leaders⁴¹.

³⁸ Annette Hübschle. *Of bogus hunters, queenpins and mules: the varied roles of women in transnational organized crime in Southern Africa*. Trends in Organized Crime, vol. 17 (2014) pp. 31–51.

³⁹ Robert Jenkot. *Cooks are like gods’: hierarchies in methamphetamine-producing groups*. Deviant Behavior, vol. 29, No. 8 (2008), pp. 667–689.

⁴⁰ Inter-American Commission of Women and Organization of American States. *Women and drugs in the Americas: a policy working paper*. (Washington, D.C., 2014).

⁴¹ Giacomello. *Women, drug offenses and penitentiary systems in Latin America*.

In Latin America, there are many cases of powerful female leaders who have been key symbols of the narco-culture in the region over several decades. Some significant examples are the “drug queens”, who run drug trafficking organizations, such as Enedina Arellano Felix, who is believed to have led the Tijuana cartel since 2008⁴².

Griselda Blanco, known as “La Madrina”, is another example of a woman running a drug trafficking network. Blanco is believed to have been the first to traffic cocaine from Colombia to the United States and is believed to have been involved in trafficking thousands of kilograms of cocaine into the United States between 1975 and the 2000s⁴³.

At the secondary level in the drug supply chain, the development of an intermediary role by women is relatively common but still not the norm. At this level, women may not play a leading role in a cartel or organised crime group, but their contribution is still significant within the group.

During the “‘crack’ crisis” in the United States, women were noted as being successful “crack” cocaine dealers. Many of those “crack” cocaine dealers came from stable family backgrounds and maintained that status. In one example, a dealer offered her apartment to her clients, helped them manage the effects of the drug and helped oversee their finances so that they did not spend all their money on it. She controlled unruly customers, avoided unwanted sexual attention and ensured that she did not attract the attention of the police⁴⁴.

Women can become involved in drug trafficking for a number of reasons. As in the case of men, it may be their own personal decision, although driven by economic factors in circumstances where other employment and income options may be limited.

Drug dealers may also see advantages in recruiting women for their own business benefit; for example, they may take advantage of institutionalized sexism, whereby women avoid being suspected of drug trafficking and other criminal activities by playing on traditional images of femininity.^{45,46} Moreover, women may request or accept lower pay than men; some researchers have noted that women feel compelled to accept lower rates of payment than men to carry out drug trafficking activities⁴⁷.

In recent years, West Africa has become one of the main connecting points of the cocaine trade between Latin America and Europe, as well as of methamphetamine trafficking to East and South East Asia and South Africa. Some organized crime groups and syndicates from the sub region, principally West African drug syndicate networks, have developed strategies to recruit women living with HIV or other diseases as drug “mules”. This is because law enforcement authorities are reluctant to bring them into the criminal justice system and prefer

⁴² United States, Department of the Treasury, Office of Foreign Assets Control, *What you need to know about U.S. sanctions against drug traffickers: an overview of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. ‘1901-1908, 8 U.S.C. ‘1182) and Executive Order 12978 of October 21, 1995.* (Washington, D. C.).

⁴³ United States of America v. Griselda Blanco, 861 F.2d 773 (United States Court of Appeals for the Second Circuit, 1988).

⁴⁴ Johnson, Dunlap and Tourigny. *Crack distribution and abuse in New York.*

⁴⁵ Maher and Hudson. *Women in the drug economy.*

⁴⁶ Howard Campbell. *Female drug smugglers on the U.S.-Mexico border: gender, crime, and empowerment.* Anthropological Quarterly, vol. 81 No. 1 (winter 2008), pp. 233–267.

⁴⁷ Kensy and others. *Drug policy and women*

to deport them rather than provide them with health care or because they fear becoming infected themselves⁴⁸.

Other African cartels have been known to recruit women, in particular women in vulnerable situations, including Caucasians, women with children, older people and the disabled, as low profile couriers, as they may face a lower risk of being caught by the authorities⁴⁹.

In South Asia, a large number of women and children are employed by drug traffickers in Bangladesh to carry heroin and bottles of Phensedyl, a codeine based cough syrup, across the border from India⁵⁰.

Again, poverty makes women involved in drug trafficking networks. This further strengthens the data on the larger proportion of women than men who are imprisoned for drug offenses. It can be argued that women primarily become involved in drug trafficking because they are driven by poverty and financial need⁵¹. In addition, many are responsible for caring for their dependants (children, grandchildren, elderly or disabled family members). Some are single mothers and they become involved in the drug business as a way of contributing to the family income or as an alternative means of sustaining the household⁵².

Overall, there tends to be a multiplicity of factors acting together, in which gender, socioeconomic vulnerability, violence, intimate relations and economic reasons shape the complex relationship between women and the drug economy, in which a stratified and masculine system prevails⁵³.

⁴⁸ Hai Thanh Luong. *Transnational drugs trafficking from West Africa to Southeast Asia: a case study of Vietnam*. Journal of Law and Criminal Justice, vol. 3, No. 2 (December 2015), pp. 37-54.

⁴⁹ Liana Sun Wyler and Nicolas Cook. *Illegal Drug Trade in Africa: Trends and U.S. Policy* (Washington, D.C., Congressional Research Service, 2009).

⁵⁰ Pushpita Das. *Drug trafficking in India: a case for border security*. Institute for Defence Studies and Analyses, IDSA Occasional Paper No. 24 (May 2012).

⁵¹ Rebecca Schleifer and Luciana Pol. *International guidelines on human rights and drug control: a tool for securing women's rights in drug control policy*. Health and Human Rights Journal, vol. 19, No. 1 (June 2017), pp. 253–261.

⁵² *Women, Drug Policies, and Incarceration*.

⁵³ Fleetwood. *Drug mules in the international cocaine trade*.

SESSION 5

📄 *Women in the Criminal Justice System*

🕒 60 minutes

Aim – To present the policy concerns faced by women incarcerated for drug-related offences at various stages of engagement with the criminal justice system.

Learning Objectives

1. To understand general stages within criminal justice system;
2. To identify inhibiting factors to implement international standards which protect women's rights in incarceration;
3. To categorise national legal framework and local policies which support universal fulfilment of incarcerated female prisoners' rights.

👁️ Facilitators' note

The facilitators might consider giving an overview of the criminal justice institutions and processes that are being practiced in the country where they are from or may ask the participants to share experiences with the criminal justice system.

Duties

1. Introduce the aim of the session (slide);
2. Present the information below with corresponding slides (slides) and give handouts.

📌 Information to cover in this presentation:

Many women who find themselves in contact with the criminal justice system are from poor and vulnerable sectors or in societies where women are not given access to education due to social norms, thus majority of women in incarceration could not afford to hire a lawyer but may also be illiterate and not aware of their rights⁵⁴. These rights need to be protected at all stages of engagement with the criminal justice system – from arrest and pre-trial detention to sentencing.

Arrest. An arrest is defined as using legal authority to deprive a person of his or her freedom of movement⁵⁵. Usually, an arrest occurs when a person has been taken into police custody. Torture and abuse of women in custody immediately after arrest is more common than during the period of imprisonment. At this stage, women are vulnerable to different forms of abuse, including sexual abuse, which may be used as a way to coerce them or force them to confess. Thus, women's access to legal counsel at this stage is of utmost importance⁵⁶.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules provide for a detainee's right to legal counsel immediately after arrest and throughout the criminal justice process. The Beijing Declaration

⁵⁴ United Nations Office of Drug and Crime (UNODC). *Handbook for Prison Managers and Policy Makers on Women in Imprisonment*. United Nations, New York, 2008.

⁵⁵ <https://www.law.cornell.edu/wex/arrest>

⁵⁶ UNODC. *Handbook for Prison Managers and Policy Makers on Women in Imprisonment*. United Nations, New York, 2008.

and Platform for Action also called on governments to provide access to free or low cost legal services for women living in poverty⁵⁷.

During an arrest, the arrested person is read her or his rights, known as Miranda rights. Miranda rights include the right to remain silent (not answer any questions asked by law enforcement) and to be represented by an attorney.

Remand or Pre-Trial Detention. As of June, 2014, there were almost three million people held in pre-trial detention and other forms of remand imprisonment throughout the world. The number of pre-trial/remand prisoners includes 480,000 in the United States, 255,000 in India, 195,000 in Brazil, 116,000 in Russia, 107,000 in Mexico, 70,000 in the Philippines, 66,000 in Thailand, 55,000 in Iran, 50,000 in both Indonesia and Pakistan, 48,000 in Turkey, 47,000 in Bangladesh, 44,000 in South Africa, 40,000 in Colombia, 37,000 in both Nigeria and Peru, 35,000 in Venezuela, 32,000 in Morocco and 31,000 in Argentina⁵⁸.

Women form a growing number of pre-trial detainees in many countries. Some have to wait for years for their trials to be concluded, sometimes exceeding the sentences of the crimes for which they are charged. The impact of being held in pre-trial detention could be worse for women. Women are likely to lose custody of their children and lose their jobs. Even a short period of detention could have long-standing consequences for women and their children. Thus, the UN Standard Minimum Rules for Non-Custodial Measures provides that women suspects who do not pose a risk to society should not be detained pre-trial unless under exceptional circumstances⁵⁹.

Sentencing, Imprisonment and the Death Penalty. Tougher sentencing policies has led to increasing prison populations worldwide and a disproportionate increase in the imprisonment of women. Offenders imprisoned for drug-related offences make up a large percentage of the prison populations, including women. Many countries need to undertake a review of policies and laws relating to drug-related offences in order to reduce the number of persons who use drugs sent to prison as well as reduce prison overcrowding. Sentencing laws and practices for non-violent drug offences need to emphasize non-custodial measures to affect the sentences of a large proportion of women who are in prison for drug-related offences whose imprisonment may be unjust and unnecessary⁶⁰.

Amnesty International reported that from January to December 2017, 53 countries imposed a total of 2,591 death sentences and at least 21, 919 people were known to be under sentence of death globally at the end of 2017. The death penalty was imposed or implemented for drug related offences in 15 countries. In Iran, 40 percent of executions in 2017 were for drug offences while in Singapore, all 8 executions carried out were for drug offences. In Indonesia, 70% of death penalties imposed in 2017 were for drug offences. There are women on death row for drug related offences all over the world.

⁵⁷ Ibid.

⁵⁸ Walmsley, Roy, World Pre Trial/Remand Imprisonment List, second edition, International Centre for Prison Studies, 2014. http://www.prisonstudies.org/sites/default/files/resources/downloads/world_pre-trial_imprisonment_list_2nd_edition_1.pdf

⁵⁹ UNODC, Handbook for Prison Managers and Policy Makers on Women in Imprisonment, United Nations, New York, 2008.

⁶⁰ Ibid.

Although the concept and practice of proportional sentencing in relation to drug offences have been recognized by the international community^{61,62}, in some countries, mandatory minimum sentences still apply, irrespective of the specific role played in or the profit gained from a drug-related offence⁶³.

The array of roles in international drug trafficking is not always reflected in drug laws, or in sentencing. It has also been argued that, since low-level drug trafficking may be easier to control, local law enforcement agencies may focus on that part of the drug supply chain in order to achieve more immediate and visible results⁶⁴.

In some countries, for instance in Latin America, drug-related offences account for the first or second cause of incarceration among women, yet only between the second and the fourth cause among men. With mandatory pre-trial detention established in some Latin American countries for drug offences⁶⁵, the situation may be more precarious, especially for women^{66,67}.

According to the latest information, women comprise nearly 7 percent of the global prison population, with more than 714,000 women and girls held in penal institutions throughout the world in 2017, either as pre-trial detainees or following conviction and sentencing. The estimated number of women in prisons globally doubled from 2000 to 2017, a disproportionately higher increase than among the male prison population. Globally, between 2010 and 2014, an estimated 35 percent of women in prison had been convicted for drug-related offences, while the figure for men was 19 percent⁶⁸.

Some research has suggested that the increase in women's imprisonment rates mainly affects ethnic minorities and vulnerable populations⁶⁹. In the case of the United States, for example, over half of the women in federal prisons were incarcerated for drug-related offences, and a disproportionate number of them are Latina and African-American^{70,71}.

The same situation occurs in the United Kingdom, where most women imprisoned for drug-related charges are from a minority ethnic background and, along with foreign-born women, are overrepresented in the prison system for these offences^{72,73}.

⁶¹ Commission on Narcotics Drugs Resolution 59/7 Promotion of proportionate sentencing for drug-related offences of an appropriate nature in implementing drug control policies.

⁶² Outcome document of the thirtieth special session of the General Assembly, entitled "Our joint commitment to effectively addressing and countering the world drug problem" (General Assembly resolution S-30/1, annex), para. 4 (j and k).

⁶³ Covington and Bloom. *Gendered Justice*.

⁶⁴ Sital Kalantry. *Women in prison in Argentina: causes, conditions, and consequences*. Public Law Working Paper, No. 439 (Chicago, University of Chicago Press, 2014).

⁶⁵ Organization of American States, Secretariat for Multidimensional Security and Inter-American Drug Abuse Control Commission. *Technical Report on Alternatives to Incarceration for Drug-Related Offenses* (Washington, D.C., Inter-American Drug Abuse Control Commission, 2015).

⁶⁶ Cindy S. Woods. *Addressing prison overcrowding in Latin America: a comparative analysis of the necessary precursors to reform*. *ILSA Journal of International and Comparative Law*, vol. 22 (2016)

⁶⁷ Giacomello. *Women, drug offenses and penitentiary systems in Latin America*.

⁶⁸ According to reports from 50 Member States (UNODC, Special data collections on persons held in prisons (2010–2014)).

⁶⁹ Rosalyn Harper, Gemma C. Harper and Janet E. Stockdale. "The role and sentencing of women in drug trafficking crime" issued in *Legal and Criminological Psychology*, vol. 7, No. 1 (February 2002)

⁷⁰ Stengel and Fleetwood. *Developing drug policy: gender matters*.

⁷¹ Kensy and others. *Drug policy and women: addressing the negative consequences of harmful drug control*.

⁷² Prison Reform Trust. *Counted Out: Black, Asian and Minority Ethnic Women in the Criminal Justice System* (London, 2017).

⁷³ Janice Joseph. "Drug offenses, gender, ethnicity, and nationality: women in prison in England and Wales" issued in *The Prison Journal*, vol. 86, No. 1 (2006)

The vulnerability that drives people into low-level drug trafficking often limits their capacity to face prosecution effectively. This can be particularly problematic for women. As documented in Latin America, when women are arrested for drug-related offences, they risk being abandoned by their relatives, reducing their opportunities to secure a sufficient legal defence, especially in countries with no legal-aid system⁷⁴.

According to the latest World Female Imprisonment List, since 2000, the number of women in prison has doubled in Latin America; Brazil, El Salvador and Guatemala have seen a particular increase⁷⁵. Many women are incarcerated for non-violent micro-trafficking offences⁷⁶.

Available data for Europe indicate that the proportion of female prisoners serving sentences for drug-related offences varies considerably, from 5 percent in Bulgaria to 40 percent in Spain. In Europe, there is less disparity between the proportion of men and women imprisoned for drug-related offences than in other regions⁷⁷.

Although more men than women serve prison sentences for drug-related offences in the United States, drug-related crimes account for about 25 percent of all crimes committed by women, while they comprise only 14 percent of all such crimes committed by men. In addition, in 2016, 47 percent of men and 56 percent of women were imprisoned in the United States federal prison system for drug-related offences⁷⁸.

In Asia, data show that, in 2014, the highest percentage of women in prison for drug-related offences was in Thailand (77 percent of women in prison, compared with 61 percent of men). However, in Asia, the overall proportion of men and women in prison sentenced for drug-related offences is comparable⁷⁹.

Overall, more men than women are involved in activities related to the drug supply chain. Some of the vulnerabilities, such as poverty, lack of education and economic opportunities, that may render a person vulnerable to being exploited by organised crime groups for low-level drug trafficking are experienced by both men and women.

In many circumstances, however, women may be more vulnerable than men, given that they may have stronger feelings of responsibility for their family, can be exploited easily by organised crime groups as a result of institutionalised sexism, are less visible to law enforcement agencies and may accept lower wages than men for their services. The evidence available also shows some crossover between trafficking in persons, trafficking in women for sexual exploitation, drug use and drug trafficking. These vulnerabilities may be a product of social structures in which women are seen as passive and non-empowered individuals.

⁷⁴ Alberto Binder, Ed Cape and Zaza Namoradze. *Effective Criminal Defence in Latin America* (Bogotá, Dejusticia, 2015).

⁷⁵ Walmsley. *World female imprisonment list*.

⁷⁶ *Women and drugs in the Americas*.

⁷⁷ UNODC, Special data collections on persons held in prisons (2010-2014).

⁷⁸ E. Ann Carson, "Prisoners in 2016", (Washington, D.C., Bureau of Justice Statistics, 2018).

⁷⁹ UNODC, Special data collections on persons held in prisons (2010-2014).

SESSION 6

▣ *International Policies Affecting Women's Rights in Relation to Drugs and Incarceration for Drug Offenses*

🕒 60 minutes

Aim – To present existing international policies and conventions including the global drug control regime as well as policy developments which may affect the rights of women who use drugs and women in incarceration for drug offenses.

Learning Objectives

1. To review minimum standards, principles, rules, declaration, and international agreements on women's special needs in prison;
2. To understand the international legal framework to protect the rights of women who use drugs and women in incarceration for drug offenses;
3. To identify community role to serve as a basis for policy reforms.

👁 Facilitators' note

The facilitator may refer to IDPC's module on the International Drug Control System to discuss existing international drug policy.

See also: [Drug Control and Human Rights Violations](#) adapted from the [IDPC Drug Policy Guide, 3rd Edition](#)

Duties

1. Introduce the aim of the session (slide).
2. Present the information below with corresponding slides (slides) and give handouts.
3. Re-affirm participants to the rights of women during imprisonment from Session 3.
4. Explain that all convention, even though have ratified by the member countries, it is not certain that the state can immediately implement it because of the country's sovereignty and lack of control from the society regarding the implementation of international legal framework on human rights.

📌 Information to cover in this presentation:

Punitive and harsh national drug policies are based on the global drug control conventions. The international drug control system shifted the focus on drug use from a public health concern to a law enforcement issue and has contributed to the stigmatisation and marginalisation of people who use drugs, including women. Women who use drugs and women who are incarcerated for drug offenses are highly vulnerable to abuse and rights violations.

A number of minimum standards, principles, rules, declaration, and international agreements were alluded when discussing women's special needs in prison at Session 3. These various documents become an international legal framework for the fulfilment of human rights, especially women during imprisonment.

The Office of the High Commissioner on Human Rights have called attention to these human rights violations in the context of drug control:

“Violations to the right to life, the right to health, the prohibition of torture and other forms of ill-treatment, the prohibition of arbitrary detention, the right to equality and non-

discrimination, the rights of indigenous peoples, and the rights of children are all sources of serious concern”⁸⁰.

The Commission on Narcotic Drugs through a 2016 Resolution on Mainstreaming a Gender Perspective on Drug Related Policies and Programmes called for member-states to take into account the specific needs of women and girls in implementing drug policies and programmes in line with the international drug control conventions, including “the need for access to health services developed specifically for their needs, and the needs of women who are the sole or primary caretakers of minors and others..⁸¹”.

The same CND Resolution encourages member states to collect and share disaggregated quantitative and qualitative data and mainstream a gender perspective to address the knowledge gap on women and drug use, 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, and to draw, as appropriate, on the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)⁸²”.

These Conventions mentioned in the CND Resolution contain provisions to protect the rights of persons deprived of liberty and may be utilized to protect the rights of women in incarceration for drug offenses:

UN Minimum Standards for the Treatment of Prisoners (The Nelson Mandela Rules)

The Standard Minimum Rules for the Treatment of Prisoners were first adopted in 1957, and in 2015 were revised and adopted as the Nelson Mandela Rules. The Mandela Rules are divided into two parts: Part I covers the general management of prisons, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to “security measures” or corrective measures ordered by the judge while Part II covers special categories of prisoners.

The Mandela Rules amended the 1957 UN Minimum Standards with provisions to strengthen these substantive areas: respect for prisoners’ inherent dignity, medical and health services, disciplinary measures and sanctions, investigations of deaths and torture in custody, protection of vulnerable groups, accesses to legal representation, complaints and independent inspection and training of staff.

The UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)

The Tokyo Rules were adopted by the UN General Assembly in 1990 and provides for the principles to be followed by member-states for the promotion of non-custodial measures and

⁸⁰ Office of the High Commissioner for Human Rights, spoken at the Side Event on World Drug Problem on Human Rights, 16 June 2014. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14712>

⁸¹ Commission on Narcotic Drugs, Resolution 59/5: Mainstreaming A Gender Perspective on Drug Related Policies and Programmes, 2016. https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_59/Resolution_59_5.pdf

⁸² Ibid.

minimum safeguards for people who are subjected to alternatives to imprisonment. It is divided into 23 sections and 8 parts covering the different stages of the criminal justice process.

The UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)

The Bangkok Rules were adopted by the UN General Assembly in 2010 to address the gap on the needs of women in the criminal justice system. It is important for protecting the rights of women offenders and prisoners and monumental for including the rights of children who are imprisoned together with their parents.

The Bangkok Rules are divided into 70 sections aiming to provide guidance to policy makers, sentencing authorities and prison managers on preventing the unnecessary incarceration of women and to meet the specific needs of women who are in prison, as well as children in prison with their parents.

It has provisions on gender sensitive alternatives for pre-trial detention and post-conviction sentencing, health care, rehabilitation programs, training of prison staff and visitation rights and measures for the protection of women prisoners against abuse and violence.

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

The CEDAW was adopted by the UN General Assembly in 1979 and is described as the international bill of rights for women. It contains a preamble and 30 articles which defines what constitutes discrimination against women and provides agenda for action for member-states to end discrimination.

Discrimination against women is defined in article 1 of the Convention as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

CEDAW has an Optional Protocol which entered into force on December 22, 2000, allowing the CEDAW Committee to receive and consider complaints by individuals or groups against member-states for violations of the Convention.

In a 2011 decision on a communication filed by a woman against the state of Belarus using the Optional Protocol (*Abramova vs. Belarus*), the CEDAW Committee held that detention facilities which do not address the specific needs of women constitutes discrimination. The Committee stated that discrimination against women within the meaning of article 1 encompasses gender-based violence, i.e., “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” The Committee also reiterated that “gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms”, including the “right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment”, constitutes discrimination within the meaning of article 1 of the Convention⁸³.

⁸³ Committee on the Elimination of Discrimination Against Women, 49th Session, 11-29 July 2011, Communication No. 23/2009. http://www2.ohchr.org/english/law/docs/CEDAW-C-49-D-23-2009_en.pdf

The Committee then ordered Belarus, and essentially reminding all other member-states, to take measures to ensure the protection of the dignity and privacy, as well as the physical and psychological safety of women detainees in all detention facilities, including adequate accommodation and materials required to meet women's specific hygiene needs; among others. (See hand out for more details)

In April of 2016, the United Nations General Assembly held a Special Session on the issue of drugs (UNGASS 2016), which produced an outcome document that includes this statement calling on member-states to:

“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 pre-trial 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;”⁸⁴.

All of these international conventions and policy pronouncements from international drug control agencies and United Nations bodies may be maximized together with other human rights conventions to protect the rights of women who use drugs and women in incarceration for drug offenses and may serve as a basis for policy reforms towards these ends.

According to those minimum standards, principles, rules, declaration, international agreements, and protocols mentioned above, prison must ensure the fulfilment of specific women's need. Among them are:

1. Rights during reception, registration, and placement of new inmates.
 - 1.1. Women's specific needs for this procedure are record of the prisoner's children both who live with the mother in the prison for breastfeed and if live outside prison, the record of children's address together with their guardianship status. These records must be kept confidential.
 - 1.2. Separation of prison must be based on sex, criminal record, their health, and legal imprisonment reasons. Prison for men and women must be completely separated.
 - 1.3. Medical examination especially of sexual and reproductive health as well as on sexual harassment and other forms of violence that may be experienced before imprisonment must be conducted upon arrival to the prison.
2. Health services rights are guaranteed both for physical and mental condition.
 - 2.1. Gender specific health services such as pregnancy and postnatal or menstrual.
 - 2.2. Mental health care and rehabilitation including for drug use disorder must be provided.
3. Rights for prisoner who are pregnant, breastfeeding, and carrying children.
 - 3.1. Prison must provide a special place of care needed during pregnancy, post-delivery, and for baby care that is managed by competent personnel.
 - 3.2. Inmates who are breastfeeding are allowed to live with their babies in the prison.
 - 3.3. Children who live with their mother in prison must not be treated like prisoners, provided with routine health services as well as their activities that support their development must be monitored by professional who work with the community.

⁸⁴ Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem. <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

4. Protection from violence, torture, and sexual harassment.
 - 4.1. If in the health examination found violence or sexual harassment, either before or while in prison, she must be told her right to find a way out through legal channels. The prison officer will help for the investigation as well as legal assistance and counselling.
 - 4.2. Immediate protection, legal support, and counselling including medical care to the prisoners who report any sexual harassment. Their report must be investigated independently as quick as possible confidentially.
5. Rights for accommodation and sanitation must be fulfilled with due regard to climatic conditions, lighting, air temperature, air heating and ventilation, clean, proper, and adequate to keep the prisoners' health and hygiene.
6. Rights for personal hygiene, clothing, and bedding.
 - 6.1. Sanitary and clean water supplies for those who are menstruating, pregnant, breastfeeding, and carrying children.
 - 6.2. The provided clothes must be clean, polite and not demean or embarrass the prisoners.
7. Rights for discipline and punishment must be fulfilled as regulated in the Standard Minimum Rules for the Treatment of Prisoners, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment.
8. Rights for religious worship must be fulfilled as regulated in the Standard Minimum Rules for the Treatment of Prisoners, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and United Nations Rules for The Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules).
9. Storage of prisoner's property rights must be fulfilled by safely keeping all personal belongings which are not allowed to be kept by the prisoners. They must always be kept in good condition by the authorized prison official. Medical drugs must be given to the prisoners by the decision of prison medical officer.
10. Relations with the outside world must be fulfilled by an under supervision frequent communication with family or friends with good reputation. This right includes providing updated information regarding what happen in the outside through newspaper etc.
 - 10.1. Relationship of female prisoners with their families especially children must be accommodated with adequate facilities either by correspondence, telephone, or visits.
11. Fulfilment of rights on transfer of prisoners is by protect the prisoners from any form of humiliation, curiosity and publicity during the transfer process without causing physical suffering of the prisoners.

Those eleven-category-of-rights that have been defined above constitute the international legal framework. Unfortunately, UN member states have sovereignty to determine their own national legal frameworks.

Not to mention, there are countries that have ratified an international agreement but have not implemented it. Even it is considered normal in the life of the country. Convention on the

Elimination of All Forms of Discrimination against Women (CEDAW) is one of the international agreement which is violated the most.

For instance, many provisions in national legislation in the region are discriminatory. Instead of correcting these provisions to eliminate discrimination and protect women against violence, states in the region which entered reservations based on contradiction with national legislation are effectively refusing their obligation to correct discriminatory provisions in their national legislation.

In the light of this, the CEDAW Committee has revised its reporting guidelines to ensure that information by states parties concerning reservations, the reasons for them, and the efforts to lift them, come to its attention regularly. However, many states parties to CEDAW fail to meet their periodic reporting deadlines, often submitting reports very late⁸⁵.

Other example is the abolition of death sentence. Of the 173 countries that are signatories to the International Covenant on Civil and Political Rights, 105 have legally abolished (*de jure*) the death penalty for all crime, 8 have legally abolished it for ordinary crimes (except for special circumstances such as war crimes), and 28 are abolitionist in practice (*de facto*)⁸⁶. In addition, only 88 state parties have ratified the Second Optional Protocol aiming at the abolition of the death penalty⁸⁷.

In the “war on drugs” context, Philippines has abolished capital punishment since 2006. But after Rodrigo Duterte was elected as the president in 2016 and practices extra-judicial killings to thousands of drug offender suspects, the House of Representatives voted to reinstate the death penalty for drug crimes in March 2017. However, the law is still pending senate and presidential approval.

From the explanation regarding the international legal framework regarding the protection and fulfilment of the rights of women prisoners, a number of things can be used as lessons for participants. First, participants understand what agreements, standards, principles, and rules apply internationally for the issue of the rights of women prisoners. Second, participants can put an international legal framework based on the category of rights, especially for female prisoners.

The next lesson learned is about the sovereignty of a country that cannot immediately implement the international legal framework. But more importantly, the community can monitor and encourage its implementation.

Countries that have ratified international conventions, especially on issues of human rights, gender equality, and even drugs, actually make it easier for their society to push for the implementation of the international legal framework for these issues. Periodically, the international bodies or committees that are given the mandate to monitor the implementation of the ratification of these conventions involve public to make shadow reports, for example in UN high level meetings for decision-making.

⁸⁵ [Reservations to the Convention on the Elimination of All Forms of Discrimination against Women](#), Amnesty International

⁸⁶ Amnesty International. *Abolitionist and Retentionist Countries as of July 2018*.

⁸⁷ World Coalition against the Death Penalty per 30 July 2020

SESSION 7

▣ *Women Post-Incarceration: Situation and Policy Concerns*

🕒 20 minutes

Aim – To understand the situation of women after they are incarcerated and the policy concerns associated with this situation.

Learning Objectives

1. To identify economic, social and cultural disadvantages after released from prison;
2. To prepare and support the female prisoner after discharged.

Duties

1. Introduce the aim of the session (slide);
2. Present the information below with corresponding slides (slide).

🕒 **Information to cover in this presentation:**

Female former prisoners may be at a disadvantage due to economic, social and cultural factors. While many problems faced by women after they are released from prison are similar to that faced by men, the intensity and multiplicity of their post-release needs can be very different because of social stereotypes.

Women may be rejected by their families and in some jurisdictions, imprisonment leads to loss of parental rights. There have also been studies showing that many women lose their housing rights while in prison. The loss of housing for women can make regaining custody of their children more difficult⁸⁸.

Pre-release preparations and post-release support are often designed around the needs of male prisoners and rarely consider the gender-specific needs of women. The obstacles faced by female former prisoners in post-release integration may vary in different countries and cultures⁸⁹.

In 2016, about 81,000 women were released from U.S. state prisons nationwide, and women and girls accounted for at least 1.8 million releases from local jails in 2013 (the last year all jails were surveyed). While many people are released from jail within a day or so and may not need re-entry (reintegration) support, jail releases can't be overlooked, especially for women, who are more likely than men to be incarcerated in jails as opposed to prisons.

As in other stages of the criminal justice system, most post-release policies and programs were created with the much larger male population in mind. But research makes clear that women returning home have “a significantly higher need for services than men,” and that re-entry supports should be responsive to the particular needs of justice-involved women:

⁸⁸ United Nations Office on Drug and Crime (UNODC), Handbook for Prison Managers and Policy Makers on Women in Imprisonment, United Nations, New York, 2008.

⁸⁹ Ibid.

Economic marginalisation and poverty: Formerly incarcerated women (especially women of colour) have much higher rates of unemployment and homelessness, and are less likely to have a high school education, compared to formerly incarcerated men.

An earlier study (Holtfreder et al., 2004), found that poverty is the strongest predictor of recidivism among women, and “providing state-sponsored support to address short-term needs (e.g., housing) reduces the odds of recidivism by 83 percent” for poor women on probation and parole⁹⁰.

Housing: A 2017 Prisoner Re-entry Institute (PRI) report identified homelessness and the lack of stable housing as the biggest problem facing women in the New York City justice system, noting that 80% of women at Rikers said they needed assistance finding housing upon discharge. A 2006 California study found that 75% of formerly incarcerated women surveyed had experienced homelessness at some point, and 41% were currently homeless⁹¹.

Women who can’t secure safe housing may return to abusive partners or family situations for housing and financial reasons – a point echoed in interviews with paroled women⁹².

Trauma and gendered pathways to incarceration: The PRI report emphasizes the importance of gender-responsive and trauma-informed interventions for reducing recidivism among women. According to that report, such interventions should: provide a safe, respectful environment; promote healthy relationships; address substance use, trauma, and mental health issues; provide women with opportunities to improve their socioeconomic conditions; establish “comprehensive and collaborative” community services; and prioritize women’s empowerment.

Family reunification: Most incarcerated women are mothers, and are frequently the primary caretakers of their children. The importance of family reunification cannot be overstated, especially given the trauma experienced by children when separated from a parent⁹³.

While the complexity of women’s re-entry needs can be daunting, there are successful models in operation demonstrating how states, counties, and communities can best serve them. A project in Los Angeles operates eight houses in the city and is working toward expanding its model nationally. The program offers wraparound services including transitional housing, case management, and legal services to support women as they navigate re-entry.

Staff support women from initial re-entry tasks like obtaining ID cards and applying for public assistance all the way through the process of regaining custody of children and find permanent housing. Another program in Houston also provides programming tailored “to the health and psychosocial needs of women recovering from sexual exploitation.”

Frustratingly, despite their success, these programs lack the funding and capacity to serve all of the women who desperately need them. Unless state governments and federal agencies take action to grow the capacity of these service providers, hundreds of thousands of women every year will leave prison or jail without the resources they need to succeed. As

⁹⁰ Kristy Holtfreder, et al. *Poverty, State Capital, and Recidivism Among Women Offenders*. NCJRS, 2004

⁹¹ Kim Carter. *Invisible Bars: Barriers to Women’s Health & Well-Being during and after Incarceration*.

⁹² Brown & Bloom. *Re-Entry and Renegotiating Motherhood*. *Crime & Delinquency* Volume 55 Number 2 April 2009

⁹³ Lauren E. Glaze and Laura M. Maruschak. *Parents in Prison and Their Minor Children*. Bureau of Justice Statistics, 2010

lawmakers increasingly call for policy changes to help women in prison, they must not ignore the massive gap between the need and availability of women's re-entry programs.

The return to family life after a period of incarceration is a critical time. Most women on exit from prison express a sense of optimism and hope for a new beginning. Despite their best intentions, however, the reality of post-release life presents many obstacles that often impede the fulfilment of these aspirations. Although prison is a difficult time for women, the subsequent hardships they endure upon release are no less significant. The realignment of correctional policy initiatives with programming initiatives designed specifically to address the needs of women might provide a starting point for the emergence of more positive outcomes for women offenders and their families.

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In a sense, the parenting agenda provided the lure for participation, but once engaged, attention was expanded to include those areas that directly impacted on the parental role. Successful outcomes associated with this program highlight the possibility of addressing the cycle of dysfunction that often characterises the families of women offenders and with that, the opportunity for fostering positive adaptation and competence in the future trajectories of their children.

While these programs should be available to all people in a community, they are critical for women within the correctional system. Ultimately, however, decisions regarding the dissemination of programs are influenced by issues of cost, with future studies being required to demonstrate not only program effectiveness and client satisfaction, but also cost saving. This must be demonstrated to optimise the probability of ongoing funding for program implementation⁹⁴.

⁹⁴ Sally Anne Frye & Sharon Dawe. "Interventions for women prisoners and their children in the post-release period". *Clinical Psychologist*, November 2008

SESSION 8

Good Stories and Alternatives to Incarceration

 **60 minutes**

Aim – To let participants come up with and share ideas through illustrations, drawings and/or lists on what they think should be the best conditions for women who use drugs and women in incarceration for drug offenses, suggest alternatives to incarceration and provide a jump-off point for action planning for future possible advocacy activities.

Learning Objectives

1. To understand that there are alternative approaches to incarceration for costly drug offenses;
2. To identify the role of stakeholders in each country in alternatives to incarceration whose basic principles have been standardized by UN agencies;
3. To understand what categories are eligible for alternatives to incarceration.

Duties

1. Introduce the aim of the session (slide);
2. Divide participants into groups of 4 or more depending on the total number;
3. Allow the groups 20 to 30 minutes to discuss and illustrate their visions of an ideal situation for women who use drugs and women in incarceration for drug offenses and their suggestions for alternatives to incarceration;
4. Give the groups time to present their illustrations to the plenary;
5. Their illustrations and suggestions may be used as an opening to present alternatives to incarceration and to discuss action plans or future activities.

Information to cover in this presentation:

Imprisonment has been recognized as having a disproportionately severe effect on women and this necessitates finding alternatives to imprisonment at all stages of the criminal justice system. Given that most women are detained for non-violent offenses, courts may consider granting conditional release prior to trial. Community service must take into consideration the time women need to take care of their children and other responsibilities. The economic conditions of women must also be considered in imposing fines as alternatives to imprisonment so that they may not end up being immediately imprisoned if they default on payment⁹⁵.

Alternatives to incarceration may be applied at pre-trial, sentencing and early release of sentenced prisoners. The reach of the criminal justice system may also be limited by decriminalization and diversion. Decriminalization is the process of changing the law so that conduct that has been defined as a crime is no longer a criminal act. Diversion refers to strategies by which authorities focus on other ways of dealing with people who could be processed through the criminal justice system⁹⁶.

⁹⁵ United Nations Office on Drug and Crime (UNODC), Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment, United Nations, New York, 2007.

⁹⁶ Ibid.

Some examples of alternatives to imprisonment during the pre-trial stage are releasing an accused person and ordering such a person to do one or more of the following:

- To appear in court on a specified day or as ordered to by the court in the future;
- To remain at a specific address;
- To report on a daily or periodic basis to a court, the police, or other authority⁹⁷.

Alternatives to imprisonment during the sentencing stage are also provided by the Tokyo Rules, some of which include:

- Conditional discharge;
- Restitution to the victim or compensation order;
- Probation and judicial supervision;
- Suspended or deferred sentence; and
- Community service order⁹⁸.

Four major groups for whom imprisonment has especially deleterious effects and who can benefit from alternatives at every level are children, drug users, the mentally ill, and women.

In many countries the use of imprisonment as a form of punishment is relatively recent. It may be alien to local cultural traditions that for millennia have relied on alternative ways of dealing with crime. Further, imprisonment has been shown to be counterproductive in the rehabilitation and reintegration of those charged with minor crimes, as well as for certain vulnerable populations.

There are now more than ten million prisoners worldwide and that number is growing. The reality is that the growing numbers of prisoners are leading to often severe overcrowding in prisons. This is resulting in prison conditions that breach United Nations and other standards that require that all prisoners be treated with the respect due to their inherent dignity and value as human beings.

Penal Reform International estimates nine million people are in prison or detained often in conditions below applicable international human rights standards and which seriously undermine the chances for their productive return to society. Overcrowding often poses public health hazards, undermines the control of violence inside prison, creates a dangerous environment for prison staff and makes it impossible to deliver United Nations-defined minimum standards of detention requiring adequate light, air, decency and privacy.

The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002 calls for action against overcrowding: "Criminal justice agencies should work together more closely to make less use of imprisonment. The prison population can only be reduced by a concerted strategy."

Penal Reform International suggests a ten-point plan to reduce overcrowding: informed public debate, using prison as a last resort throughout all stages of the criminal justice system, increasing prison capacity, diverting minor cases, reducing pre-trial detention, developing alternatives, reducing sentence lengths and ensuring consistent sentencing, developing

⁹⁷ Ibid.

⁹⁸ Ibid.

solutions to keep youth out of prison, treating rather than punishing drug addicts, the mentally disordered and terminally ill offenders and ensuring fairness for all.

The Cost of Imprisonment in Brazil
Average cost of a prisoner: R\$ 800 per month
Average construction cost per prisoner: R\$ 12,000 (medium security facility) R\$ 19,000 (high security facility)
In comparison: Average cost of a public school student (south-east region): R\$ 75 per month.
Average cost of construction of a house for the poor: R\$ 4,000 to R\$ 7,000
Source: Public National Security Plan, National Secretary of Public Security, Ministry of Justice, Brazil, 2002

The Tokyo Rules. The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) were first discussed at the Seventh Congress on Crime Prevention and Criminal Justice and were later adopted by the General Assembly (resolution 45/110 of 14 December 1990).

The Rules present a set of recommendations that take into account the views of legal scholars, experts in the field and practitioners. They emphasize that imprisonment should be considered a last resort and encourage the promotion of non-custodial measures with due regard to an equilibrium between the rights of individual offenders, the rights of the victims and the concern of society. The Rules set forth a wide range of non-custodial measures at various stages of criminal procedures. They also contain rules on implementation of non-custodial measures, staff recruitment and training, involvement of the public and of volunteers, research, planning, policy formulation and evaluation, thus providing a comprehensive set of rules to enhance alternative measures to imprisonment.

The Tokyo Rules are not the only United Nations instruments that are directly applicable to alternatives to imprisonment. Others include: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; and Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

In specialist areas, considerable attention has been given to alternatives to imprisonment for: **Juveniles**, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); **Drug users**, the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations; **The mentally ill**, the United Nations Principles for the Protection of Persons with Mental Illness; and **Women**, the Seventh United Nations Conference on the Prevention of Crime and the Treatment of Offenders.

The instruments that are directly applicable to alternatives to imprisonment cannot be separated from the role of the United Nations, especially in the fulfilment of human rights.

Given that imprisonment is a restriction, if not an infringement, of fundamental human rights of the prisoner, it is not surprising that that major United Nations treaties limit carefully the circumstances under which imprisonment is justified. The International Covenant on Civil and Political Rights (ICCPR) is perhaps the most important of these multilateral treaties. Other multilateral instruments, such as the United Nations Convention on the Rights of the Child, contain stricter limitations applicable to specific categories of potential prisoners.

Although non-binding, they have helped to significantly promote more effective and criminal justice systems and action. Nations use these standards and norms to provide the framework for and to foster in-depth assessments that may lead to needed reforms. They have also helped countries to develop sub-regional and regional strategies. Globally and internationally, they delineate “best practices” and assist countries to adapt them to their specific needs.

Today, the standards and norms cover a wide variety of issues such as juvenile justice, the treatment of offenders, international cooperation, good governance, victims’ protection and violence against women. They emphasize that States should “endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims and the concern of society for public safety and crime prevention”.

Alternatives to imprisonment are often more effective at achieving important public safety objectives, such as greater security for the population, than imprisonment. Properly designed and implemented, they may infringe less on human rights while costing less in the short and/or long term.

Considering Traditional Alternatives: Sentencing Circles

Circle sentencing uses traditional Aboriginal healing practices and a process of reconciliation, restitution and reparation to address the needs of victims and offenders, their families and community. Circle sentencing began in several Yukon communities.

In circle sentencing, participants—judge, defence, prosecution, police, victim/offender and family, and community residents—sit facing one another in a circle. Discussion is aimed at reaching a consensus about the best way to resolve the case, focusing on both the need to protect the community and the rehabilitation and punishment of the offender.

Circle sentencing is focused mainly on those offenders who plead guilty. Although these offenders may still serve time in prison, there are many other sanctions available, such as community service.

Circle sentencing differs markedly from courts. Circle sentencing focuses, for example, on the process of reaching a sentence, rather than the punishment itself, and helps shape the relationships among the parties. It looks to the present and the future, rather than the past offence, and takes a larger, more holistic view of behaviour.

Source: C. T. Griffiths, *Canadian Criminal Justice: A Primer*, third edition, published by Thomson Nelson (2006).

A first strategy is keeping offenders out of the criminal justice system entirely. Not all socially undesirable conduct must be classified as a crime or dealt with via the criminal justice process; decriminalization legally redefines conduct once regarded as a crime so that it is a crime no longer. Next is diversion, in which options for dealing with offenders by send them to treatment or other programmes rather than formally adjudicating them in the criminal justice system.

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Women across the Americas are being incarcerated at an alarming rate <https://womenanddrugs.wola.org/>

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