



Drug offences, access to justice and the penalisation of vulnerability

Submission  
to the UN Committee on the Elimination of Discrimination against Women

General Discussion on "Access to Justice"  
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## Introduction

Harm Reduction International welcomes the Committee's decision to focus on women's access to justice, and would like to take this opportunity to raise important issues relating to women in contact with the criminal justice system, the disproportionate amount imprisoned for non-violent drug offences.

Access to justice must mean more than accessing the existing justice system when that system is abusive, discriminatory, or fundamentally broken.

Women come into contact with criminal justice system are usually those that are most disadvantaged. Often women with offending backgrounds are from marginalised communities and their contact with the criminal justice system must be understood in a context of social deprivation, lack of education and economic marginalisation<sup>i</sup>. This is especially the case in relation to drug offences, and in relation to women who use drugs – both disproportionately represented in prisons across the world.

Governments all over the world have attempted to use criminal laws and prisons as a response to social and economic problems. This is acutely felt in the context of drug dependence and related offending, and its impacts are felt most by those in need of social assistance, not punishment.

This submission provides data on the disproportionate incarceration of women for non-violent drug offences, and a discussion of the need for an in-depth look at criminal laws and policies relating to drugs in the Committee's day of discussion on access to justice, and in its future work.

### **The disproportionate incarceration of women for non-violent drug offences**

More than 625,000 women and girls are held in penal institutions around the world<sup>ii</sup>, representing between 2% and 9% of the global prison population.<sup>iii</sup> In some countries that number is far higher. In Thailand, for example, women made up 14.7% of all prisoners in 2012, most of them serving sentences for drug offences.<sup>iv</sup> In Europe and Central Asia there are more than 120,000 women in prisons on any given day.<sup>v</sup> Harm Reduction International's 2012 research, the first of its kind, showed that one in four are in prison for non-violent drug offences, approximately 30,000 women across Europe and Central Asia. 20,000 women are imprisoned for non-violent drug offences in Russia alone, more than twice all EU countries combined<sup>vi</sup>.

UN Women recently noted that 'most offences for which women are imprisoned are "crimes of poverty" and are nonviolent, property or drug-related'.<sup>vii</sup>

Even though the number of female prisoners is relatively small, the proportion of women serving prison sentences for drug related crimes is comparatively high<sup>viii</sup>. HRI's research focused on non-violent drug offences (possession, transport, sales) and studied data from fifty-one European and Central Asian countries gathered through government agencies - including national prison services, ministries of justice and drug agencies - as well as academic researchers and civil society organisations.

As noted, in Russia some 20,000 women are in prison for drug offences, a third of the total number of female prisoners. While no country matched the scale of female incarceration in Russia, many others had higher proportions of women in prison for non-violent drug offences: Latvia (68.7%) Portugal (47.6%), Estonia (46%), Spain (45.4%), Greece (43.7%), Italy (42.9%) and Sweden (41%).<sup>ix</sup>

In total, 28% of all women in prison in Europe and Central Asia were convicted of non-violent drug offences. These are predominantly women from disadvantaged backgrounds, socially and economically marginalised, lacking in education, and often having histories of mental health problems and abuse. Their incarceration for minor drug offences serves neither their needs nor those of society.

Research from the United States of America shows that nationally, there are more than eight times as many women incarcerated in state and federal prisons and local jails as there were in 1980, increasing from 12,300 in 1980 to 182,271 by 2002.<sup>x</sup> Drug offences have played an enormous role in this trend. In Russia, between 2005 and 2010, the female prison population doubled, while the number of women convicted for drug offences tripled.<sup>xi</sup>

Similar trends are found in other parts of the world. In Australia between 1984 and 2003, the rate of imprisonment among women rose by 209%, compared to 75% for men.<sup>xii</sup> In Latin America, research has found that 'the international war on drugs has sent thousands of Latina women to prison'.<sup>xiii</sup> In Ecuador, between 2002 and 2009, 60-80% of all female prisoners were sentenced for drug offences. Similarly, in Argentina, the numbers of women in prisons for drug offences constituted 87%, Peru – 67%, Colombia - 44%, Costa Rica - 64%.<sup>xiv</sup> In Thailand, there were 30,020 women in prisons in 2012, 17,170 were for drug offences, amounting 56% of the female prison population.<sup>xv</sup> While the number is not clear, many women are on death row for drug offences. Most are couriers, from poor or disadvantaged backgrounds.

Apart from the drug crimes for which women are more likely to go to prisons, available data also shows that women who use drugs are more likely to be imprisoned than their male counterparts: in European countries the prevalence of drug dependence among male prisoners varies from 10% to 48% while among female prisoners it is 30% to 60%.<sup>xvi</sup> Research shows that many women convicted of drug offences have histories of sexual and physical abuse, coexisting psychiatric disorders, low self-esteem, low literacy and/or are living with HIV or hepatitis C.<sup>xvii</sup> They are unskilled and (often single) mothers, with a lack of familial support. They may also be financially dependent on a male partner involved in the drug trade.<sup>xviii</sup>

In addition, women living in poverty are particularly vulnerable to being detained because they cannot pay fines for petty offences or to post bail.<sup>xix</sup>

### **Penalising women's vulnerability**

Studies show governments' over-reliance on criminal laws to address social and economic problems in many countries.

Drug offences are not committed in a social or economic vacuum. Women who are involved in drug offences are often from most vulnerable families and with low social or education background. Also, mental illness and drug use are often both a cause and a consequence of imprisonment and the rates of self-harm and suicide are noticeably higher among female than among male prisoners.<sup>xx</sup>

Women who are in contact with criminal justice systems experience high level of stigma and discrimination. This is exacerbated in relation to women who have a background of physical or sexual abuse or of alcohol and drug dependency. Many have not had adequate health or social care prior to their incarceration.<sup>xxi</sup>

Often ignored is the social cost of imprisoning women to family and community. Family breakdown and long-term problems among children taken into care are clear costs of excessively punitive approaches to crimes of poverty.<sup>xxii</sup>

Given a range of social pressures, women – and particularly women who use drugs - are reluctant to access the formal justice chain and even more, try to avoid contacts with the state functions. For example, a study from Thailand showed that sex workers will almost never report the abuses they face or seek legal protection or justice due to fear of being fined or prosecuted under the relevant laws prohibiting sex work.<sup>xxiii</sup> Institutional hurdles compound these pressures and pose additional barriers to women's access to justice.<sup>xxiv</sup>

However, where laws are missing, excessively punitive or discriminatory and the infrastructure of justice is broken, access to justice must mean more than simply helping women to access existing justice systems.<sup>xxv</sup>

This is particularly evident on the case of women who use drugs, who represent a significant proportion of women in contact with the criminal justice system and who face widespread stigma, discrimination and abuse.

A recent paper from the Eurasian Harm Reduction Network shows that 'women who use drugs are systematically subjected to violence from law enforcement agencies responsible for drug law implementation'<sup>xxvi</sup>. The study further describes that police often use drug laws to extort information and to fabricate evidence in order to fill arrest quotas. As a result, women are arbitrarily detained, beaten, and bullied.<sup>xxvii</sup>

## Conclusions

International law makes it clear that governments are responsible for ensuring women's access to justice and eliminating discrimination in all justice systems.<sup>xxviii</sup> Access to justice, moreover, means more than simply access to the existing system, if that system is abusive, discriminatory or fundamentally broken.

The impact of punitive approaches to minor drug offences is one that has been raised by the Committee on the Elimination of Discrimination Against Women in the past. In relation to the United Kingdom, the Committee expressed concerns at the number of women 'imprisoned for drug-related offences or because of the criminalization of minor infringements, which in some instances seem indicative of women's poverty.'<sup>xxix</sup> The Committee recommended, 'that the Government intensify its efforts to understand the causes for the apparent increase in women's criminality and to seek alternative sentencing and custodial strategies for minor infringements.'<sup>xxx</sup>

The UN Special Rapporteur on Violence Against Women has also raised the same concern. Following a mission to the United States in 1995, the Special Rapporteur observed that 'the United States is criminalizing a large segment of its population; this segment is overwhelmingly composed of poor persons of colour and is increasingly female. This criminalization leads to overcrowding in prisons.' The Special Rapporteur highlighted that 'many of the drug-related offences for which women are incarcerated in the United States may be more appropriately handled by a community-based system of welfare and social support' and recommended United States that 'there should be a policy review of the impact of drug laws on women, especially 'mules'' – she noted.<sup>xxxi</sup>

In the recent follow up report to the visit to the United States in 2011, the current Special Rapporteur on Violence Against Women stressed that the government ‘needs to ensure that sentencing policies reflect an understanding of women’s levels of culpability and control with drug offenses.’<sup>xxxii</sup> She also recommended that, it needs to ‘review laws that hold women responsible for their association with people involved in drug activities, and which punish them for activities of drug operations they may have little or no knowledge.’<sup>xxxiii</sup>

Imprisoning women for non-violent drug offences is arbitrary and disproportionate. It routinely ruins lives, breaks families apart and puts children at serious risk. Furthermore numbers as high as presented in this submission draw attention to the tremendous failure in public policy, namely drug policies, public health and criminal justice policies. Governments should be urged to shift their focus away from arrests, prosecutions, prison and, if at all possible, the criminal justice system and into sentencing reforms and facilitate wider access to justice for marginalised women.

Harm Reduction International encourages the Committee to examine issues related to women in contact with the criminal justice system in the context of access to justice, social deprivation and marginalisation.

We urge the Committee to consider drug offences as a priority within this discussion, given the sheer scale of arrests, prosecutions and imprisonment for such offences.

Moving forward, we would urge the Committee to analyse national drug laws and policies as they impact on women’s rights under the Convention, in periodic reporting of States parties. Indeed, a future general day of discussion on these broad and complex issues would be an important step forward in improving attention to women’s rights in drug control.

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<sup>i</sup> Kyev declaration, WHO/UNODC recommendations on ‘Women’s health in prison - Correcting gender inequity in prison health’, 2009

<sup>ii</sup> World Female Imprisonment List (second edition) (Women and girls in penal institutions, including pre-trial detainees/remand prisoners), Roy Walmsley, ICPS, 2012

<sup>iii</sup> *Ibid*

<sup>iv</sup> <http://www.correct.go.th/prisms/inform/report/> accessed on 28 January 2013

<sup>v</sup> Iakobishvili, E. (2012). “Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the Need for Legislative and Sentencing Reform.” Harm Reduction International, London

<sup>vi</sup> *Ibid*

<sup>vii</sup> ‘Progress of the World’s Women, 2011—12: In Pursuit of Justice’, UN Women, 2011, pp. 62-64

<sup>viii</sup> Kyev declaration, WHO/UNODC recommendations on ‘Women’s health in prison - Correcting gender inequity in prison health’, 2009

<sup>ix</sup> Iakobishvili, E. (2012). “Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the Need for Legislative and Sentencing Reform.” Harm Reduction International, London

<sup>x</sup> American Civil Liberties Union, the Brennan Centre, and Break the Chains; ‘Caught in the Net: The Impact of Drug Policies on Women and Families’; p.7; [http://www.aclu.org/files/images/asset\\_upload\\_file431\\_23513.pdf](http://www.aclu.org/files/images/asset_upload_file431_23513.pdf) accessed on 17 May 2012

<sup>xi</sup> <http://фин.рф/structure/inspector/iao/statistika/Xar-ka%20lic%20soderqahixsya%20v%20IK/>; accessed on 21 January 2012

<sup>xii</sup> Reynolds M. (2008); ‘The War on Drugs, Prison Building, and Globalization: Catalysts for the Global Incarceration of Women’; Feminist Formations (NWSA Journal); Vol. 20, no. 2; p. 72

<sup>xiii</sup> *Ibid*, p. 148

<sup>xiv</sup> Fleetwood, J. (2010) ‘Drug mules in the international cocaine trade: diversity and relative deprivation’, The Prison Service Journal Vol. 192, pp. 3-8

<sup>xv</sup> Department of Correction, Ministry of Justice, available at: [http://www.correct.go.th/eng/p\\_gender.html](http://www.correct.go.th/eng/p_gender.html); accessed on 17 February 2011

<sup>xvi</sup> Models of good practice in drug treatment in Europe (“Moretreat”), EC Health and consumer protection, directorate general, Directorate C - Public Health and Risk Assessment, October 31st, 2008, p.27

<sup>xvii</sup> Penal Reform International (PRI), ‘Women in prison: incarcerated in a man’s world’, Penal Reform Briefing No. 3, 2008 (1)

<sup>xviii</sup> *Ibid*

<sup>xix</sup> ‘Progress of the World’s Women, 2011—12: In Pursuit of Justice’, UN Women, 2011, pp. 62-64

<sup>xx</sup> Kyev declaration, WHO/UNODC recommendations on ‘Women’s health in prison - Correcting gender inequity in prison health’, 2009

<sup>xxi</sup> Penal Reform International (PRI), ‘Women in prison: incarcerated in a man’s world’, Penal Reform Briefing No. 3, 2008 (1)

<sup>xxii</sup> Kyev declaration, WHO/UNODC recommendations on ‘Women’s health in prison - Correcting gender inequity in prison health’, 2009

<sup>xxiii</sup> Women’s Access to Justice: Identifying the Obstacles & Need for Change, Thailand, International Commission of Jurists and Justice for Peace Foundation, 2012, Geneva

<sup>xxiv</sup> Progress of the World’s Women, 2011—12: In Pursuit of Justice’, UN Women, 2011, p. 52

<sup>xxv</sup> *Ibid*, p. 9

<sup>xxvi</sup> Submission to UN Special Rapporteur on violence against women: call for immediate action to stop violence against women who use drugs; Eurasian Harm Reduction Network, October 2012

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<sup>xxxvii</sup> *Ibid*

<sup>xxxviii</sup> Progress of the World's Women, 2011—12: In Pursuit of Justice', UN Women, 2011, p. 12

<sup>xxxix</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), UN Committee on the Elimination of Discrimination against Women: State Party Report, United Kingdom of Great Britain and Northern Ireland, CEDAW/C/UK/3 and Add.1 and 2; and CEDAW/C/UK/4 and Add.1-, para. 312.

<sup>xxx</sup> *Ibid*, para. 313

<sup>xxxi</sup> UN Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences (4 January 1999); E/CN.4/1999/68/Add.2; para 17

<sup>xxxii</sup> UN GA, Report of the UN Special Rapporteur on violence against Women, its causes and consequences to the United States of America (6 June 2011), A/HRC/17/26/Add.5, section IV

<sup>xxxiii</sup> *Ibid*