

# **Women, Incarceration and Drug Policies in South East Asia:**

**Promoting Humane and  
Effective Responses**

**A Policy Guide for the Philippines**

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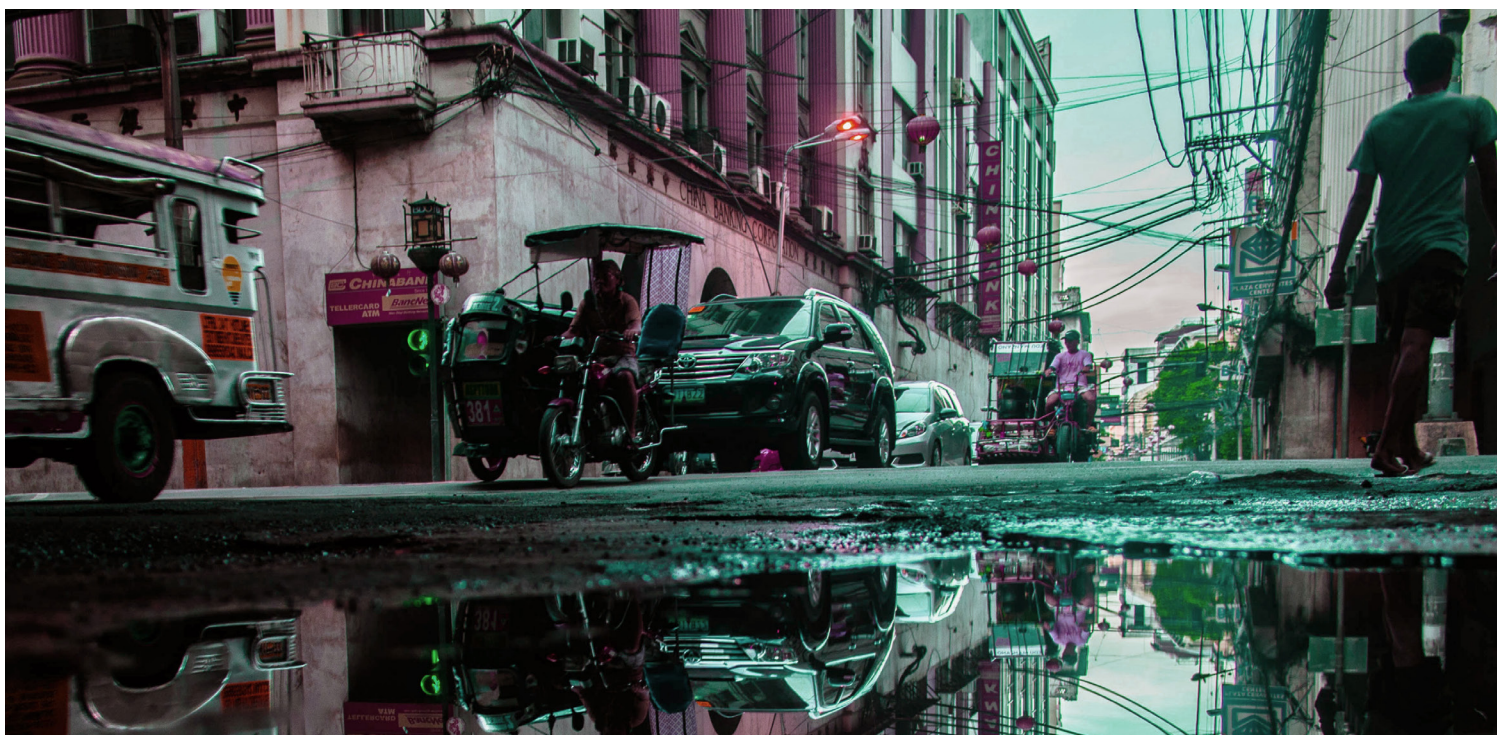
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## Introduction

In 2009, the United Nations Office of Drug and Crime (UNODC) produced a report assessing one hundred years of drug control since the 1909 Shanghai Opium Commission. The report identified and recognized the negative ‘unintended consequences’ of drug control policies: the creation of a criminal black market; the shift of policy focus from public health to law enforcement; enforcement in one geographical area resulted to diversion of illicit drug production to other areas; pressure on one type of drug led to the promotion of the use of other alternative drugs; and, the marginalization of and stigmatization against persons who use drugs.<sup>1</sup>

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

policy recommendations on the situation of women incarcerated for drug-related offences.

### Methodology

In 2018, the International Drug Policy Consortium, in partnership with Ozone Foundation in Thailand, LBH Masyarakat in Indonesia and NoBox Transitions, Inc. in the Philippines, embarked on a project called ‘Women, Incarceration and Drug Policies in South East Asia: Promoting Humane and Effective Responses’.

The project aims to encourage reforms towards reducing the levels of incarceration of women for drug offenses. The project also seeks to increase civil society engagement; gather support for proportionate sentencing and reduction of death penalty sentences especially for low-level, non-violent offenses; increase understanding of the extent and profile of women

<sup>1</sup> United Nations Office on Drug and Crime, *A Century of International Drug Control*, United Nations Vienna, 2009.

incarcerated for drug offenses and its wider socio-economic consequences; and to promote alternatives to incarceration.

To these ends, the project partners in three countries in South East Asia conducted research studies on women incarcerated for drug related offenses. They also provided workshops and meetings for civil society organisations involved in women's rights, drug policy

reform and prison reform. National stakeholder's consultations were held for relevant public institutions, organisations and communities to come together and discuss the research outputs while sharing their best practices, experiences and challenges as well as provide recommendations for national policy reforms. This policy guide is a consolidation of the outcomes of these project activities in the Philippines.

## Global Trends on Women Incarcerated for Drug Offenses

In its 2015 Global Prison Trends report, Penal Reform International found that while women comprised 6.5 percent of the world's prisoners – over 660,000 women as of 2013 – they constitute the fastest growing prison population with particularly high rates of imprisonment for drug offences. The proportion of women incarcerated for drug offences is significantly higher than that of men, with the highest levels of incarceration of women to be found in South East Asia.<sup>2</sup>

This number has significantly increased between 2015 and 2017. The Fourth Edition of the World Female Imprisonment List states that more than

714,000 women and girls are held in penal institutions throughout the world as of September 2017. These include pre-trial detainees or remand prisoners and those that have been convicted or sentenced.<sup>3</sup>

While women make up only about 2 to 9 percent of countries' total prison population, subject to some exceptions, the number of women in prison is increasing at a faster rate than the number of men incarcerated. According to the World Female Imprisonment List, between 2000 and 2017, the global female prison population increased by 53.3% compared to 19.6% for male prisoners.

**Table 1: Highest Incarceration Rates of Women Worldwide**

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

<sup>2</sup> Penal Reform International (2015), *Global Prison Trends 2015*, <http://www.penalreform.org/resource/global-prison-trends-2015/>

<sup>3</sup> Walmsley, Roy, *World Female Imprisonment List 4th Edition (2017)*, Institute for Criminal Policy Research, Birkbeck University of London.

The female prison population levels in Brazil, Indonesia, the Philippines and Turkey have risen particularly sharply between 2015 and 2017. The Philippines is one of twelve countries with the highest rates of incarceration for women worldwide (see *Table 1*).

Some concerns faced by women in incarceration include mental health problems with histories of abuse and trauma, vulnerability to sexual abuse by correctional personnel and other prisoners, reproductive health care needs, being primary caretakers of young children and having to leave them,

and lesser face to face contact with their families because of the location of women's prisons. It is more also difficult for women with a history of incarceration to find work, housing and financial support when they return to their communities.<sup>4</sup>

However, despite the rising numbers worldwide and in South East Asia, since women and girls represent less than ten percent of the prison population on average, their characteristics and gender-specific needs have largely been unrecognized and ignored.

## Women Incarcerated for Drug-Related Offenses in the Philippines

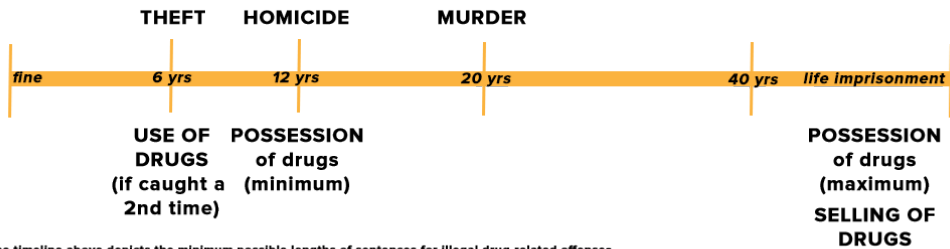
### Drug Policy and the Philippine Legal System

The law in force in the Philippines for drug-related offences is Republic Act 9165: The Comprehensive Dangerous Drugs Act of 2002.<sup>5</sup> It provides penalties of fine, imprisonment and in some cases, death, for the following prohibited acts:

- *Importation of dangerous drugs and/or controlled precursors and essential chemicals;*
- *Sale, trading, administration, dispensation, delivery, distribution and transportation of dangerous drugs and/or controlled precursors and essential chemicals;*
- *Maintenance of a den, dive or resort where any dangerous drug is used or sold in any form;*
- *Being employees of a den, dive or resort where any dangerous drug is used or sold in any form;*
- *Manufacture of dangerous drugs and/or controlled precursors and essential chemicals;*
- *Illegal chemical diversion of controlled precursors and essential chemicals;*
- *Manufacture or delivery of equipment, instrument, apparatus and other paraphernalia for dangerous drugs and/or controlled precursors and essential chemicals;*
- *Possession of dangerous drugs, with the maximum penalty to be imposed if possession of dangerous drugs is found to be during a party, social gathering or meeting or in the proximate company of at least two persons;*
- *Possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs, with the maximum penalty to be imposed if possession of equipment or paraphernalia is found to be during a party, social gathering or meeting or in the proximate company of at least two persons;*
- *Use of dangerous drugs.*

<sup>4</sup>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](https://www.prisonpolicy.org/reports/women_overtime.html)  
<sup>5</sup><https://pdea.gov.ph/images/Laws/RA9165.pdf>

### PROPORTIONALITY OF SENTENCING



The timeline above depicts the minimum possible lengths of sentences for illegal drug-related offenses compared to other crimes in the Philippines. For the use of “dangerous drugs,” a person caught the first time can be diverted to treatment and rehabilitation for a minimum of 6 months. For possession of drugs, the length of imprisonment increases depending on the amount in possession.

The Comprehensive Dangerous Drugs Act of 2002 also includes provisions on mandatory and random drug testing as well as compulsory treatment and rehabilitation for persons who use drugs. This law has been in force since 2002 and has already accounted for most of the pre-trial or remand detainees and prisoners in Philippine jails and prisons.<sup>6</sup> The Philippines has some of the highest numbers of pre-trial or remand prisoners in the world at 75.1 percent of the entire prison population as of March 31, 2018, according to the World Prison Brief.<sup>7</sup> Remand or pre-trial prisoners are usually detained in jails managed by the Bureau of Jail Management and Penology (BJMP)

and then transferred to prisons run by the Bureau of Corrections once convicted and sentenced.

In July 2016, the Philippine National Police released Command Memorandum Circular No. 16 series of 2016, on the Anti-Illegal Drugs Campaign Plan called Project “Double Barrel”.<sup>8</sup> It provided guidelines on the government’s drug clearing strategy in the villages (*barangays*). These guidelines have resulted in thousands of arrests and over a million people surrendering themselves to police or *barangay officials*.<sup>9</sup>

<sup>6</sup>NoBox Transitions Foundation, “Women, Incarceration and Drug Policy in the Philippines,” 2018.

<sup>7</sup><http://www.prisonstudies.org/country/philippines>

<sup>8</sup><https://didm.pnp.gov.ph/Command%20Memorandum%20Circulars/CMC%202016-16%20PNP%20ANTI-ILLEGAL%20DRUGS%20CAMPAIGN%20PLAN%20E2%80%93%20PROJECT%20DOUBLE%20BARREL.pdf>

<sup>9</sup><https://www.rappler.com/newsbreak/iq/145814-numbers-statistics-philippines-war-drugs>





## **The NoBox Study on Women Incarcerated for Drug Offenses**<sup>10</sup>

NoBox Philippines conducted research combining both quantitative and qualitative data-gathering to understand the experiences and profiles of women incarcerated for drug-related offenses in the Philippines. The research respondents were twenty (20) women in pre-trial detention held in a BJMP jail and fifteen (15) who were already sentenced and imprisoned at the Women's Correctional Institute of the Bureau of Corrections.<sup>11</sup>

As of September 2017, BJMP-managed jails house 106,217 people incarcerated for drug-related offenses out of a total of 151,953 total incarcerated – this

means 2 out of every 3 people in BJMP Jails are incarcerated for drug-related offenses. More than half of them are charged with possession and the national jail congestion rate is at over 600%. Meanwhile in the Bureau of Corrections, more than half of the women in prison are incarcerated for “crimes related to opium and other prohibited drugs.” Note that the number of pre-trial detainees for drug-related offences had a huge increase in 2016 as seen in tables 2 and 3 below.

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<sup>10,11</sup> NoBox Transitions Foundation, Inc., “Women, Incarceration and Drug Policy In the Philippines,” 2018.



**2 out of every 3 persons waiting for their sentence are charged with a drug offense**

**Table 2: Number of people held in Bureau of Jail Management and Penology jails**

	Overall Population		Drug-Related Charges	
	Males	Females	Males	Females
2012	63,263	6,429	23,893	4,524
2013	65,321	6,725	29,457	5,634
2014	76,584	8,003	40,306	7,203
2015			52,661	9,099
2016	126,946		89,194	15,518

Note: Drug-related charges refers to the number of charges of violations of RA 9165, NOT the number of people charged with violations of RA 9165.

**Table 3: Number of people held in Bureau of Corrections prisons**

	Overall Population		Drug-Related Charges	
	Males	Females	Males	Females
2012	35,235	2,016	6,192	1,228
2013	36,381	2,194		
2014	38,347	2,329	5,595	1,336
2015	38,987	2,445	5,562	1,393
2016	38,805	2,621	5,450	1,489
2017	38,990	2,854	5,888	1,712

Note: Drug-related charges refers to the number of charges of violations of RA 9165, NOT the number of people charged with violations of RA 9165.

## While women make up a smaller percentage of the prison population compared to men



Data from the Bureau of Corrections (2017)

The women who participated in the research came from different geographic, religious, educational and economic backgrounds. While there were a few who finished college, most of them stopped after high school. Many of them belong to the informal economy – working as tricycle drivers, street vendors, sex workers or in the service sector as security guards, janitors and call center agents. There were also some who worked overseas or in local government.

Only three of all the women interviewed for the study did not have children. Most of the women interviewed were either married or have common law partners of the same or different sex. Before they were imprisoned, many of them lived with their extended families and their parents or in laws helped with child care.

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*"Parang bangungot yung nangyari sa akin kasi ang mga anak ko nagkahiwa-hiwalay (What happened was like a nightmare because my children were separated from each other)," laments **Silima, 45.***

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Some of the women who were interviewed reported direct involvement in drug markets, while others reported no involvement at all. On the one hand, those who admitted use or selling of drugs showed a variety of contexts and purposes. Some described their drug use as functional – how using shabu (methamphetamine, one of the most widely used drugs in the Philippines) allowed them to stay awake at night and work or to concentrate better in school.

Some of them admitted to selling shabu as a matter of economic necessity – to pay for a child’s medication or hospitalization. A theme that stood out was the involvement of family members, either as motivation or as influences. On the other hand, some of the women said they were not involved with drugs at all and were imprisoned based on planted evidence or were unjustly and illegally arrested.

## Women’s Experiences with the Criminal Justice System

The study also highlights the experiences of women during arrest and detention. The women shared stories of practices of extortion and corruption when they were arrested and detained. These practices are described as:

- 1) **“palit ulo”** which means being arrested “in exchange for the head” of someone else in order for the arresting authorities to meet a certain “quota”;
- 2) **“tanim droga”** or evidence planting; and
- 3) **“areglo”** or extortion.

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*“Pag alam naman na walang pera, wala namang pakialam. Unlike pag malaki ang nahuli (If they know that you don’t have money, they don’t care. Unlike if you’re a big fish),” Aileen, 37, narrating how the police never tried to extort from her because they knew she couldn’t afford it.*

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They also reported being pressured to sign documents that they did not fully understand and in the absence of any legal counsel, as well as having their trial dates very frequently rescheduled to the point that the period of their pre-trial detention may already exceed the imposable sentences of the crimes they are charged with.

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*“Hindi na safe ang mga tao ngayon, tataniman ka ng droga” (People are not safe today, they will plant drugs on you), Madel, 48, says, narrating that she spent 9 months in jail despite never selling drugs.*

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## Services and Facilities in Detention

The facilities and services available to women in jails and prisons vary. In the Philippines, women are detained in facilities exclusive for women only. Some of the detention facilities for female pre-trial detainees are in entirely separate locations from the male jails while some share a common jail complex or compound with the male detention facilities. Once convicted and sentenced, women are imprisoned in exclusive correctional facilities for women which are built in different locations from the men’s prisons.

Based on the NoBox study, the following services and facilities were observed and shared by the research respondents:

Service or Facility	Jail (BJMP)	Prison (Bureau of Corrections)
<b>Dormitories</b>	<p>The jail has three dormitories with about 1,500 inmates:</p> <ol style="list-style-type: none"> <li>1) where the elderly are assigned</li> <li>2) perceived by detainees as where those with same sex relationships are usually placed</li> <li>3) perceived by detainees as where those with mental illnesses are placed</li> </ol>	<p>18-hectare complex with numerous dormitories: Dorms 1 to 12, Dormitories A to D, the Reception and Diagnostic Center (RDC), and the Therapeutic Community (TC) dorm.</p> <p>Other facilities include a gym, study area, laundry area, and a “mothers’ ward”.</p> <p>As in the jail, the dorms have specific assignments. Detained foreign nationals, are placed in Dorm 8 while women who are pregnant or have just recently given birth are assigned to the mother’s ward.</p> <p>Women who give birth inside the prison are</p>

Service or Facility	Jail (BJMP)	Prison (Bureau of Corrections)
		<p>allowed to keep their child until the child is 6 months old or up to 1 year if they have no family outside prison, after which the child will be entrusted to a family member outside the detention facility or, if none are available, a social worker.</p> <p>Newcomers are first brought to the RDC where they typically spend a year, after which, if their case is drug-related, they are moved to the Therapeutic Community (TC) dorm</p>
<b>Daily Schedule</b>	<p>06:00 – Wake up                      07:00 – Roll call                      08:00 – Morning session with behavioral shaping tools                      09:00 – Free time                      10:30 – Head count</p> <p><i>Lunch</i></p> <p>12:30 – Head count                      13:00 – Afternoon session for tasks and activities                      Allowed to watch TV                      17:30 – Head count</p> <p><i>Dinner</i></p> <p><i>Film Showing</i></p> <p>22:00 – Final head count                      22:30 – Lights out</p>	<p>04:00 to 05:00 – Wake up for prayers                      05:30 – Roll call</p> <p>Dorm keeper decides schedule in between 4 other head counts: 08:30, 11:00, 16:00 and 18:00.</p>
<b>Task and Activities<sup>12</sup></b>	<p>The women are assigned to different departments which will determine the activities and tasks they will do (eg. housekeeping, kitchen, grounds)</p> <p>Alternative Learning System – for elementary or high school classes</p> <p>TESDA – vocational courses</p>	<p>Numerous programs and activities are available ranging from recreational to religious, the ALS and livelihood activities are also available.</p> <p>The women may also be assigned some tasks.</p> <p>The women also elect their own officers.</p>
<b>Food</b>	<p>Most of them were satisfied with the food, saying there was even meat                      Some opt to buy from the canteen                      Some have food brought by their families</p>	<p>Despite the large prison population, the women did not register any complaints about the food.</p>
<b>Hygiene and Laundry</b>	<p>Allowed only 1 bucket of water for bathing per day and 1 bucket of water for laundry</p>	<p>Water is available to store in their water buckets from 0500 to 0930 and 1600 to 1900.</p> <p>The water containers are valuable and some have secured them with padlocks and lids due to incidents of water theft.</p>
<b>Sleep</b>	<p>Space is very limited, most sleep on the floor with a pillow and blanket, some have mattresses and sleeping mats (banig), others sleep on cardboard.</p>	<p>Every resident of the TC dorm is assigned a mattress and space to place it.</p>
<b>Medical and Legal Services</b>	<p>Nurses and doctors visit twice a month for consultations and public health lectures</p> <p>Free vaccines and HIV testing available</p>	<p>There is a medical officer (physician) and 3 nurses. But the women have complained that the medicines are not enough.</p>

<sup>12</sup> There are numerous activities and programs available to the women in prison, ranging from recreational to the religious, from those provided by the government to those provided by civil society organizations and academic institutions. Some of the activities and programs reported include: being part of a 100-member choir, the "ALIVE Program" (Arabic Language and Islam Values Education) for Muslims, which is taught for 2 hours daily; the Alternative Learning System (ALS) program is also available for the inmates to complete their elementary or high school education. Livelihood activities include card-making, dressmaking, and crafting accessories made from beads. Learning activities include a "life healing choices" program, which included motivational messages and peer sessions. The women can choose which activities they want to engage in, subject to availability (some, like 'electronics', are not regularly offered) and the approval of the prison personnel. (NoBox Philippines, Women in Incarceration and Drug Policy in the Philippines, 2018)

Service or Facility	Jail (BJMP)	Prison (Bureau of Corrections)
	Medication available for mentally ill inmates  Paralegal services available from inmates trained by an NGO	According to one of the women, she has witnessed 15 deaths in her seven years in the prison. The causes of death include tuberculosis, diabetes, heart disease, stroke and cancer.
<b>Visitation</b>	Friday to Saturday – 13:30 to 16:00 but only for adult relatives  Children allowed only on Family Days which are the first Friday of the month  Second Fridays are Friends Day where friends are allowed to visit  Visitation can be restricted by jail management for breach of security regulations.	Thursday to Sunday – 09:00 to 16:00 for family members  Saturday and Sunday for friends

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*“Narealize ko na pag malayo sa pamilya dito, kailangan magpakabait kasi importante ang dalaw (I realized that if you’re far from your family, you need to be obedient because visits are important),” says **Mabel, 47**, explaining how far her family already to visit her where she’s imprisoned and need to be obedient and disciplined so as not to compromise this ‘privilege.’*

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## Aspirations and Hopes

The women also shared their hopes and aspirations starting with more physical space to move and do their daily activities. They also look forward to the time with their families. They look forward to rejoining them when they are released. They also hope to find regular employment or a source of income such as a small business after they have served their time. They vowed to not return to their involvement with drugs once they are released and reunited with their families.

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**Jaya, 38**, decided to be a drug ‘runner’ (i.e. courier) when her daughter had an illness which required “3 injections per day, which cost Php 10,500.00.” She received Php 500.00 for each successful delivery of shabu, and this allowed her to pay for her daughter’s medical expenses throughout the five months of her illness.

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## Policy Challenges and Concerns

The research results on the situation of women in incarceration for drug-related offenses in the Philippines point to several policy concerns and challenges:

### A. Access to Justice

Many incarcerated women come from poor and marginalized communities, thus a large number of them do not have the economic means to hire a lawyer and are often unaware of their legal rights. This places them in a more vulnerable situation where they may be signing statements without full knowledge of the legal implications while adding further delays in the criminal justice process.<sup>13</sup>

The extremely high number of people being charged for drug-related offenses has resulted in clogged court dockets, over-burdened Public Attorneys (public

defenders) and a generally very slow criminal justice system characterized by unnecessary delays which contribute to the very high numbers of pre-trial detainees still awaiting the resolution of their cases. Congestion in the courts also results in overcrowding in the jails.

The research respondents perceive the courts and public attorneys to be inefficient and unable to deliver justice. They also narrate stories of corrupt and abusive practices when they were arrested. Many of them believe that those who are able to secure the services of private lawyers have a better chance of attaining justice.

### B. Overcrowding and Congestion

All stakeholders, including prison officials and detainees, are concerned with the alarming rates of

<sup>13</sup> United Nations Office of Drug and Crime, *Handbook on Women and Imprisonment*, 2<sup>nd</sup> Edition, 2014, page 8.

prison and jail overcrowding and congestion. This problem impacts all aspects of their everyday lives including the health of the women in detention, their access to justice and delivery of services. Overcrowding and congestion also affect the capacity of the jail and prison officials to perform their duties as there is always a lack of personnel and many of them are tasked with multiple assignments or roles.

### **C. Access to Services**

There is no standardized needs assessment process in the jails and prisons. Consequently, the services and facilities are not standardized as well. Some services available in one jail or prison may not be available in another. Fortunately, the gaps in services and facilities are filled in by the involvement of civil society organizations who provide health care, livelihood training, education, to name a few. Nurses and doctors visit the jails twice a month while there is a medical officer and nurses in the prison. They provide medical consultations and public health lectures. There are free vaccines and HIV testing but the prisoners report that the medicines are insufficient.

### **D. Family and Visitation**

The correction facilities for women after they are sentenced for drug offences are located in Metro Manila and in Mindanao, which may be very far from their homes and families. The distance and the cost of travel often limit visitation which can be very painful for the women in detention. Some of the research respondents have expressed fear of being abandoned by their families or their husbands. The cancellation of visitation privileges after a breach in the prison's security protocol was met with sadness and frustration.

### **E. Treatment of Pregnant Women**

The stories from the research show that the jails do not have a standard practice for the treatment of pregnant detainees. Some jail personnel are kinder than others. One interviewee recounts being handcuffed while giving birth until her mother pleaded with the security

detail. She was also not allowed to recuperate in the hospital and had to rely on fellow detainees to take care of her, while her baby had to be immediately given to her mother. Some shared that there were jail personnel who were kind enough to allow the newborn to stay in the administrative offices and even helped take care of the infant while the detainee mother participated in jail activities. Women who give birth while imprisoned are allowed to keep their infants for 6 months although in some cases, women who do not have families can keep their newborn child for one year, after which the child will be entrusted to a social worker.

### **F. Stigma and Discrimination**

Women incarcerated for drug-related offenses experience different layers of stigma and discrimination. This may start with the families and the communities they come from who view them as "immoral" for being involved with drugs. They may also experience discrimination from service-providing organizations while they are detained and this hampers their access to some services. Their being female may also affect how the justice system perceives them and their involvement with drugs. The reaction from the justice system may be either leniency as acts of mercy towards them as women or harsher treatment for going against what is expected of them as good Filipinas. This view of women incarcerated for drug offenses as immoral and indecent also affects how they will be reintegrated back into society after imprisonment.





## Policy Recommendations

In 2016, the UN Commission on Narcotic Drugs adopted a resolution, Mainstreaming a Gender Perspective in Drug-Related Policies and Programmes. The resolution called for member-states to **consider the specific needs of women and girls in implementing drug policies** in line with the international drug control conventions, and “to take into consideration **the specific needs and circumstances of women subject to arrest, detention, prosecution, trial or the implementation of a sentence for drug-related offences when developing gender-specific measures as an integral part of their policies on crime prevention and criminal justice**, including appropriate measures to bring to justice perpetrators of abuse of women in custody or in prison settings for drug-related offences.”<sup>14</sup>

The same resolution also instructs member-states to draw from the provisions of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders

(the Bangkok Rules)<sup>15</sup>, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>16</sup> and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)<sup>17</sup>.

The 2016 United Nations Special General Assembly (UNGASS) on drugs also produced an Outcome Document that sought to address human rights abuses in the name of drug control including gender-specific issues faced by women incarcerated for drug-related offences, enjoining member-states to:

*“4.g Mainstream a gender perspective into and ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes, develop and disseminate gender-sensitive and age-appropriate measures that take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem and, as States parties, implement the*

<sup>14</sup> 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](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_59/Resolution_59_5.pdf)

<sup>15</sup> [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)

<sup>16</sup> <https://www.un.org/ruleoflaw/blog/document/united-nations-standard-minimum-rules-for-non-custodial-measures-the-tokyo-rules/>

<sup>17</sup> [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)

*Convention on the Elimination of All Forms of Discrimination against Women;*

**4.n** *Encourage the taking into account of the specific needs and possible multiple vulnerabilities of women drug offenders when imprisoned, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);”<sup>18</sup>*

The UNGASS Outcome Document also includes provisions relevant to each of the policy concerns raised as a result of the study on women incarcerated for drug-related offences in the Philippines. These relevant provisions will be mentioned in the discussions of the key policy recommendations.

In light of the policy challenges and concerns raised by the results of the study on women incarcerated

for drug-related offenses in the Philippines, as well as during the discussions with national stakeholders, the following are some **recommendations on:**

1. *The right to counsel and access to legal aid*
2. *Alternatives to incarceration*
3. *Compliance with Mandela and Bangkok Rules on prison conditions*
4. *Addressing stigma and discrimination against women incarcerated for drug offenses and*
5. *Specific recommendations and action points from national stakeholders.*

## 1. The Right to Counsel and Access to Legal Aid

### **Right to counsel**

Every person accused of committing a crime has the right to be duly represented by counsel and this right is guaranteed for all, including those who do not have the means to pay for legal services.

The UNGASS Outcome Document exhorts member-states to:

*“4.o Promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment and to eliminate impunity, in accordance with relevant and applicable international law and taking into account United Nations standards and norms on crime prevention and criminal justice, and ensure timely access to legal aid and the right to a fair trial;”*  
<https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

The right to have legal representation and to have access to free legal assistance is guaranteed in the International Covenant on Civil and Political Rights (<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>) and reinforced in the Revised Standard Minimum Rules for the Treatment of Prisoners or the Mandela Rules ([https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)), which provides:

<sup>18</sup> <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

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

These provisions are particularly relevant for women incarcerated for drug-related offenses in the Philippines since, as described above, most of them do not have the financial means to pay for a lawyer to defend them in court.

In the Philippines, the Public Attorney's Office (PAO) is tasked with extending free legal assistance to indigent persons in criminal and other cases. However, as of 2017 there were only 1,668 PAO lawyers for the entire country and each one was handling an average of 504 cases in court.<sup>19</sup>

There is clearly a need for the government to hire more public attorneys and capacitate them to provide gender sensitive, humane and competent legal assistance for women incarcerated for drug offenses.

### **Access to legal aid**

In an Information Note for Criminal Justice Practitioners on Non-Custodial Measures for Women, the UNODC called on judges, prosecutors and the police to ensure that those who appear before them who cannot afford a lawyer and/or are vulnerable are provided with access to legal aid.<sup>20</sup> This is one way for criminal justice practitioners to contribute in ensuring that the specific needs of women in the criminal justice system are met.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems adopted by the General Assembly in 2012 emphasizes the duty of states to provide legal aid in the first principle:

*"Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process. States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution."*

[https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf)

Legal aid services from law school legal aid centres, lawyers' organisations, bar associations and legal NGOs in the Philippines must be maximised. However, just like the public attorneys, legal aid providers also need to be capacitated on providing gender sensitive and humane legal assistance which take into consideration the specific needs and conditions of women and girls who are incarcerated for drug offenses.

<sup>19</sup> Chanco, Boo, "Crowded Jails", *The Philippine Star*, October 1, 2017. <https://www.philstar.com/business/2017/10/01/1744532/crowded-jails>

<sup>20</sup> UNODC Information note for criminal justice practitioners on non-custodial measures for women offenders, 2015

The right of women in incarceration for drug-related offenses to have equal access to legal aid is further highlighted in Principle 10 of the UN Principles and Guidelines on Access to Legal Aid:

*"Principle 10: Special measures should be taken to **ensure meaningful access to legal aid for women, children and groups with special needs**, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, **drug users**, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including **gender sensitive and age-appropriate measures**."*

Guideline No. 9 outlines the specific steps that states need to take to ensure access to legal aid for women:

**"Guideline 9. Implementation of the right of women to access legal aid:**

*States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:*

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

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

*(c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where requested or required."<sup>21</sup>*

## 2. Alternatives to Incarceration

The UNGASS Outcome Document on alternatives to incarceration:

*"4.j Encourage the development, adoption and implementation, with due regard to national, constitutional, legal and administrative systems, of alternative or additional measures with regard to conviction or punishment in cases of an appropriate nature, in accordance with the three international drug control conventions and taking into account, as appropriate, relevant United Nations standards and rules, such as the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules);"*  
<https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

Alternatives to incarceration can also help reduce the overcrowding and congestion of jails and prisons. Overcrowding and congestion of jails and prisons are a consequence of the imposition of criminal penalties for low level drug-related offences and the increased number of drug-related arrests as a result of intensified government "anti-drug" operations.<sup>22</sup>

<sup>21</sup> Guideline 9, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2013.

<sup>22</sup> <https://newint.org/features/web-exclusive/2017/10/11/philippine-prisons-drugs>

In the Philippines, a huge percentage of those incarcerated for drug-related offenses are in pre-trial detention or are still awaiting sentencing. This is despite the provision on the Tokyo Rules that pre-trial detention should be a means of last resort.<sup>23</sup> As a response to this situation, the Philippine Supreme Court issued **Administrative Order A.M. No. 18-03-16-SC**, which provides for the adoption of a plea bargaining framework in drugs cases. Guidelines were issued in April, 2018 which enable those who are charged with small-scale possession of illicit drugs like cannabis or shabu to be given a lower penalty. The guidelines also allow diversion to treatment and rehabilitation when there is an admission of drug use or after testing positive on a drug dependency test.<sup>24</sup> While the plea bargaining guidelines are still punitive, it is expected to help decongest jails and court dockets in the country from drugs cases.<sup>25</sup>

On the other hand, the UNODC Information Note on Non-Custodial Measures for Women emphasize the need for pre-trial alternatives to be implemented for women offenders whenever appropriate and possible. The Note calls on prosecutors and judges to ensure that bail amounts are fair and the economic situation of women are given due consideration. Alternatives to monetary bail should also be given some thought.<sup>26</sup>

The Note also outlines opportunities for non-custodial measures in the trial and sentencing stage stating further that non-custodial alternatives to punishment are especially appropriate for minor drug-related offences. Sentencing alternatives should be applied whenever possible in such a way as not to separate women offenders from their families and communities. Courts are enjoined to take note of the women's specific characteristics, including mitigating factors like the absence of a previous criminal record and the non-severity of the supposed criminal conduct in light of women's caretaking responsibilities and background.<sup>27</sup>

### 3. Conditions in Incarceration

Both the Bangkok Rules and the Mandela Rules anchor the minimum standards for the treatment of prisoners on human dignity

Rule 1 of the Mandela Rules calls for the treatment of all prisoners with respect due to their inherent value and dignity as human beings.<sup>28</sup>

The Bangkok Rules ensure that the distinctive needs of women prisoners are taken into account.

The Bangkok Rules contain provisions on access to personal hygiene and medical services including gender specific health care, as well protection for the safety and security of women prisoners. The Bangkok Rules also include provisions on the right of women prisoners to have contact with the outside world, through visitations from their family and children.<sup>29</sup>

<sup>23</sup> <https://www.un.org/ruleoflaw/blog/document/united-nations-standard-minimum-rules-for-non-custodial-measures-the-tokyo-rules/>

<sup>24</sup> <https://newsinfo.inquirer.net/987672/sc-issues-guide-to-plea-bargaining-in-drug-cases>

<sup>25</sup> <https://www.rappler.com/nation/201843-supreme-court-framework-plea-bargain-drug-cases>

<sup>26,27</sup> UNODC Information note for criminal justice practitioners on non-custodial measures for women offenders, 2015 [https://www.unodc.org/documents/justice-and-prison-reform/Information\\_note\\_BKK\\_Rules.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Information_note_BKK_Rules.pdf)

<sup>28</sup> [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)

<sup>29</sup> [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)

The UNGASS Outcome Document on access to health care and social services in prison or pretrial detention:

*"4.b Ensure non-discriminatory access to health, care and social services in prevention, primary care and treatment programmes, including those offered to persons in prison or pretrial detention, which are to be on a level equal to those available in the community, and ensure that women, including detained women, have access to adequate health services and counselling, including those particularly needed during pregnancy;"*  
<https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

However, overcrowded prisons pose a challenge for treating prisoners, especially women, with respect for their inherent dignity and value as human beings. The lack of space and resources in jails and prisons have resulted to little or no access to basic personal hygiene – e.g. lack of potable water – health care and other basic services. This situation places women prisoners at risk of contracting infectious diseases and makes them vulnerable to abuse from both fellow prisoners and jail personnel. Hence the need to maximize alternatives to incarceration at various stages of engagement with the criminal justice system such as diversion and other non-custodial measures.

## 4. Stigma and Discrimination

Article 1 of the UN Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women as *"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."*  
<http://www.un.org/womenwatch/daw/cedaw/>

Women in incarceration for drug-related offenses frequently experience different layers of stigma and discrimination.

In the 2018 UNODC World Drug Report, the UNODC notes that there has been a disproportionate increase in the rates of women being imprisoned in many countries including for low-level drug-related offenses. The 2018 World Drug Report further recognizes that:

*"While there is little evidence to determine whether there is discrimination against women (in comparison with men) at the sentencing level, some studies suggest that judges and other criminal justice officials do not consider gender inequalities. This is based, in part, on the misconception that the principle of equality before the law does not allow accounting for the distinctive needs of women in order to accomplish substantial gender equality."*<sup>30</sup>

Unfortunately, the stigma and discrimination against women incarcerated for drug-related offences also extends to their own families and communities and many of them risk rejection and being ostracized even after their period of incarceration is over, making it much more difficult for women to be reintegrated back in society after imprisonment, thus leading the report to conclude that,

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<sup>30</sup> UNODC 2018 World Drug Report: Women and Drugs Drug use drug supply and their consequences, United Nations, June 2018.

***“What is clear is that women’s contact with the criminal justice system has more negative consequences on them than it does on men, exacerbating both their economic vulnerability and their social exclusion.”<sup>31</sup>***

Different institutions in the criminal justice system can help mitigate the stigma and discrimination experienced by women in incarceration for drug-related offenses.

Judges, prosecutors, and lawyers can make interventions before women are sent to trial or to prison by facilitating access to legal aid, diverting women offenders from prosecution, helping prevent excessive pre-trial detention and ensuring that gender-specific needs are taken into consideration during trial and sentencing.

Prison officials could adopt gender sensitive practices to address the specific needs of women prisoners. Legislators and policy-makers may remove mandatory sentencing and provide the judiciary with discretion to take into account the circumstances of the offense, and the vulnerability and caring responsibilities of women offenders. Legislators and policy makers may also introduce reforms to remove criminal penalties and decriminalize certain acts.<sup>32</sup>

## 5. Recommendations from National Stakeholders

A specific list of recommendations can be found from the results of the National Stakeholders’ Consultation held in Metro Manila last 31 July 2018. The research study results were shared by NoBox Transitions with various stakeholders including representatives from the National Headquarters of the Bureau of Jail Management and Penology, the Correctional Institute for Women, Quezon City Jail Female Dormitory, the Philippine Commission on Women, the Commission on Human Rights and the United Nations Office of Drug and Crime as well as civil society organizations and academic institutions dealing with women’s rights and the rights of persons deprived of liberty.

These stakeholders acknowledged the research findings and came up with recommended action points to address the identified policy gaps and concerns:

1. *Capacity building on understanding and responding to drug related issues for all stakeholders;*
2. *Developing effective drug treatment and rehabilitation systems in detention centers;*
3. *Develop and standardize nuanced assessment tools for women in detention;*
4. *Develop and standardize evaluation tools for detention centers in the Philippines and ensure the monitoring of policies, programs and activities being rolled out in detention centers, in particular:*
  - a. *Compliance with human rights obligations and use of a human rights approach to jail and prison management*
  - b. *Gender sensitive and gender responsive policies, interventions, facilities, and services*
  - c. *Implement a Model Female Jail or Prison project*
5. *Reduce overcrowding in detention centers by examining the following possible strategies:*
  - a. *Possible release of long term persons deprived of liberty who may have already served their minimum sentences through various modes of release*
  - b. *Diversion mechanisms for drug related offenses*

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<sup>31</sup> Ibid.  
<sup>32</sup> UNODC Information note for criminal justice practitioners on non-custodial measures for women offenders, 2015.

- c. Removal of criminal penalties for drug use and possession for personal use of drugs and paraphernalia*
  - d. Identification of inmates at risk of delay in detention*
- 6. Improving service delivery and programs:**
  - a. Advocating to communities and the private sector to support rehabilitation and reintegration*
  - b. Coordinating existing activities*
- 7. Develop and implement unified mechanism for policies and guidelines to coordinate programs and data systems between the different stakeholders**
- 8. Identify and tap organizations and groups who can initiate changes to outdated policies and propose new policies to improve the criminal justice and penal system**
- 9. Explore further research initiatives on women and drug policy**
- 10. Explore alternatives to incarceration to divert women charged with drug offences and other vulnerable groups from detention**
- 11. Strengthen collaboration among various government agencies, especially the pillars of the criminal justice system, the Department of Health, the Department of Social Welfare and Development, and the Dangerous Drugs Board.**
- 12. Secure funding for intended interventions**
- 13. Address the needs of children left behind by women in incarceration.**

When these recommendations are taken up by relevant government institutions and advocated for by civil society organisations, we are hopeful that the Philippines will take steps to reduce the number of women incarcerated for drug related offenses and towards humane drug policies.

## Good Stories

While there is plenty of work that still needs to be done to protect the rights of women incarcerated for drug offences in the Philippines, there are some notable good practices that have been initiated by civil society and government that deserve to be replicated and institutionalized.

### ***Paralegal formation in the female jails: the lipstick brigade of Mandaue City and Cebu City Jails***<sup>33</sup>

Among the services offered in BJMP jails, the study conducted by NoBox noted the existence of paralegals. Paralegal aides are trained by NGOs like the Humanitarian Legal Assistance Foundation (HLAF) in partnership with the BJMP to help their fellow detainees articulate their access to justice and legal concerns to jail officials. The paralegal aides undergo a series of trainings to provide them with basic legal knowledge and skills. In Mandaue City and Cebu City Female Jails, the paralegal aides are called the “lipstick brigade”. They help bridge the gaps in legal services that many pretrial detainees in Philippine jails do not have access to. If the paralegal aide program is institutionalized in all BJMP jails, they could help provide access to justice for thousands of pretrial detainees including women incarcerated for drug offences.

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<sup>33</sup> <https://newsinfo.inquirer.net/951072/sherry-na-lorenzo-lipstick-brigade-paralegal-aides-mandaue-city-jail-female-dormitory#>



### ***The Task Force Katarungan at Kalayaan (Task Force on Justice and Freedom) in Manila City Jail and Pasig City Jail***

In 2014, the Supreme Court of the Philippines initiated the formation of the Task Force *Katarungan at Kalayaan* (Task Force on Justice and Freedom), to help speed up the resolution of criminal cases of pretrial detainees. This task force is a committee composed of judges, jail officials, prosecutors, public attorneys and other criminal justice institutions tasked to meet regularly to review criminal cases through a set of criteria and take necessary actions to decongest both jails and court dockets. The Task Force was pilot tested for one jail and the Supreme Court reported that it has “significantly contributed to the resolution of cases of inmates at the Manila City Jail.” This success in Manila City Jail led the Supreme Court to call for its replication in other jails.<sup>34</sup>

The task force was replicated in the city of Pasig where the Task Force was convened by the Executive Judge of the Pasig City Regional Trial Court. The task force meeting in Pasig city not only discussed means to decongest the Pasig City Jail but also issues and concerns on the welfare of the detainees.<sup>35</sup>

Having this task force convened regularly in other cities in the Philippines will provide a venue for criminal justice institutions to coordinate and protect the rights of detainees to access to justice and help decongest overcrowded jails.

## **Conclusion**

Civil society organizations and government institutions in the Philippines who are working to help protect the rights of women incarcerated for drug offences could anchor their policy advocacy on the international human rights instruments discussed in this guide, notably the UNGASS 2016 Outcome Document, which is the first UN high level drug policy document to include a chapter on human rights.<sup>36</sup>

The data provided in the study conducted by NoBox Philippines as well as the recommendations of national stakeholders present support for the urgent need to review existing laws and policies which have caused the imprisonment of so many women in the country for non-violent low level drug offences, placing them in situations where they are most vulnerable to abuse and discrimination.

These negative consequences of drug control affecting thousands of women in the Philippines incarcerated for drug offences could only be addressed when the voices and experiences of these women on the need for universal respect for human rights and fundamental freedoms are placed at the center of national drug policies and criminal justice reform.

<sup>34</sup> <http://newsinfo.inquirer.net/810345/sc-forms-body-to-look-into-human-rights-violations>

<sup>35</sup> <http://home.hlaf.org.ph/index.php/frontpage/201-pasig-city-tfkk-meets-for-a-regular-meeting-judge-danilo-s-cruz-as-the-convenor>

<sup>36</sup> <https://idpc.net/publications/2017/03/how-to-capitalise-on-progress-made-in-the-ungass-outcome-document>

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