

Chapter 14

Drug Policy and Women Prisoners in Southeast Asia

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Introduction

Currently, the most prevalent types of drugs in Southeast Asia are methamphetamine, ecstasy, and cocaine. The expansion of methamphetamine markets has been significant over the last decade, with the manufacture and use of these synthetic drugs replacing the cultivation of opium and manufacture and use of heroin. The UNODC's World Drug Report (2019a) highlights that methamphetamine markets have grown rapidly in Southeast Asia and at the global level, methamphetamine constitutes over 45% of seizures. Official records from national narcotic control agencies reaffirm the sharp increase of methamphetamine tablets seized in Thailand, Myanmar, Lao PDR, and China, with more than 600 million tablets seized by law enforcement agencies in 2018 compared to around 250 million tablets in 2014. Similarly, nearly 35,000 kilograms of crystalline methamphetamine, another popular form of methamphetamine, were seized in 2018 in the six countries of the Mekong sub-region (UNODC, 2019a).

The traditional predominance of narcotic drug issues in the region led the Association of Southeast Asian Nations (ASEAN) to promote regional response to illicit drug markets, including through the 1976 Declaration of Principles to Combat the Abuse of Narcotic Drugs. In the current period, the meeting of ASEAN Senior Officials on Drug Matters and the ASEAN Ministerial Meeting on Drug Matters are the key regional platforms to address drug issues under the current ASEAN Work Plan on Securing Communities Against Illicit Drugs 2016–2025.

While the ASEAN Community is concerned about this shift in illicit manufacturing, use, and trafficking of narcotic drugs, there is the lack of legally binding regional mechanisms that oblige all member states to resolve drug-related crime

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in a similar direction. Therefore, drug policies still vary depending on jurisdiction and national governments. Some misguided policies and harsh penalties for drugs offences are still in use across the region. National ‘wars’ on drugs and indiscriminate incarceration have resulted in prison overpopulation (Office of the United Nations High Commissioner for Human Rights (OHCHR), 2019b), specifically in relation to an escalation in the numbers of female prisoners in countries that include Indonesia, the Philippines, and Thailand (Walmsley, 2017). The consequences of prison overcrowding include obstacles to the development of rehabilitation and treatment programmes and the violation of fundamental human rights in relation to healthcare, education, and humane treatment.

Drug Policies in Southeast Asia

Integrated socio-economic approaches, namely demand-and-supply reduction, alternative development, public attitude sensitisation, awareness-raising campaigns, and public health services are recommended within criminal justice systems in national responses to drug-related issues (United Nations Office on Drugs and Crime (UNODC), 2015a). Nevertheless, most countries in Southeast Asia still apply strict criminal proceedings and harsh punishment for drug offences, with negative impacts for stakeholders at community, national, and international levels.

Penalisation-based Policies

Penalisation-led policies prioritise the strict use of criminal punishment for drug-related offences. Penalisation directly refers to the principles of deterrence and denunciation to demonstrate that drug-related behaviours are harmful and unacceptable in a particular society. Drug-related offences under penalisation-led approaches are considered state crimes and prioritised as highly dangerous crimes meriting long-term imprisonment, life imprisonment, and in some countries, the death penalty. Brunei Darussalam, Lao PDR, Myanmar, and Singapore have mandatory capital punishment for drug-related offences, while Indonesia, Thailand, Viet Nam, and Malaysia have discretionary capital punishment for some drug offences (OHCHR, 2019b, p. 24). The concept of penalisation is the basis for draconian criminal justice policies and it induces the launch of violent national ‘wars’ on drugs (Human Rights Watch, 2004a, p. 27) as experienced in Thailand in 2003 and in the Philippines in 2016.

While drug wars and punitive criminal justice processes are intended to intensify the individual’s fear of involvement in drug-related activities and to strengthen community efforts to overcome drug problems, harsh measures against drug offenders have not deterred engagement in drug-related activities and they have led to serious concerns about human rights violations. Thailand and the Philippines, for example, have been challenged over counter-narcotics operations that have led to extrajudicial arrests and killings (Amnesty International, 2019; Human Rights Committee, 2005).

Records from the Department of Corrections between 1 November 2008 and 1 November 2019 demonstrates that the number of drug offenders (those who are

pre-trial detainees and convicted prisoners for drug-related offence) tripled from 102,477 to 290,149. Within this population, the number of female drug offenders increased from 15,284 to 39,639. The total number of drug offenders in Thailand constituted 54.91% of the prison population in 2008 and has risen significantly to 79.41% in 2019. This situation has created financial burdens for the state, requiring an annual budget allocation of over Thai Baht 10 billion or around US\$330 million for the administration of prisons in Thailand.

Legalisation-based Policies

On the opposite end of the spectrum to penalisation policies, legalisation approaches remove drug-related offences from criminal law. Ideally, the goal of legalisation is to bring prohibited drugs from the black market to a controllable demand-and-supply mechanism facilitated by the government. In practice, legalisation can range from complete removal of the prohibition on all controlled drugs to various forms of regulation (Greenwald, 2009). Depending on the risks associated with different drugs and psychotropic substances, regulation may include restrictions and specific measures for drug control such as age limitations, and restrictions on quantities purchased.

In Southeast Asia, Thailand was the first country to legalise medical cannabis according to legislation passed by the National Assembly in December 2018. However, only specific people authorised by the Thai government, such as medical doctors, are entitled to plant or possess cannabis and a prescription is needed for medical users. As a psychoactive drug, cannabis is still prohibited for recreational use with a penalty of up to five-year imprisonment. It should be noted that some jurisdictions may define medical and recreational uses differently. Recently, it was reported that a person caught with cannabis-extract oil for his arthritis pain relief was sentenced for 15-year incarceration in Indonesia. Also, the death penalty remains in use for cannabis traffickers arrested in Indonesia, Malaysia, and Singapore, regardless of purposes (Paddock, 2018).

Depenalisation-based and Decriminalisation-based Policies

Decriminalisation refers to reduced criminal liability, punishment, and drug control. By contrast, depenalisation denotes only the elimination of penal sanction, especially custodial measures, for personal use and small-amount selling but such activities remain criminal offences. However, both concepts are considered as a moderate approach between absolute prohibition and legalisation. Drug decriminalisation supports the use of alternative measures or other punishments rather than custodial sentencing. In accordance with the definition provided by the European Monitoring Centre for Drugs and Drug Addiction, decriminalisation involves medical and rehabilitative treatment as well as administrative measures, for example suspension from work, revocation of professional licences, home detention, and community services. In this respect, the principle of harm reduction is the essence of decriminalisation (Blickman & Jelsma, 2009).

Alternative development is one of the key achievements of Southeast Asia in supply control and enabling a sizeable reduction in opium poppy cultivation. Instead of focussing on the incarceration of opium poppy cultivators, alternative development emphasises sustainable solutions to the drivers of cultivation including rural poverty and citizenship deficits. Thailand is acknowledged as a successful model in opium replacement through alternative development projects (Pardo, Kilmer, & Huang, 2019). From the mid-1960s to 2000s, Thailand removed 18,000 hectares of opium crops from the country (UNODC, 2015a). At the same time, average annual GDP growth was 6% (1965–2013). Farmers and villagers in marginalised, mountainous districts in the North of Thailand were trained to cultivate legal profitable crops such as coffee, tea, cabbage, lettuce, strawberries, and macadamia. Royal Projects under the leadership of the late King Bhumibol and the late Princess Srinagarindra benefitted poppy cultivating hill tribes by providing alternative sources of income, in turn increasing the trust of community members in the state and the possibilities provided by the legal economy (UNODC, 2015a).

Myanmar and Lao PDR also employed decriminalisation and alternative development concepts to eradicate illicit crop cultivation for many decades. In Myanmar, the Department for the Progress of Border Areas and other government agencies have adopted the alternative development approach as part of their national border and development strategies (UNODC, 2015b). In Lao PDR, alternative development is incorporated into the National Growth and Poverty Reduction Plan and framework of governmental offices. Many international organisations support development programmes in the northern area of Lao PDR where the majority of opium poppy is planted (UNODC, 2015b).

Despite the success in illicit crop reduction in Thailand, the widespread use of methamphetamine in the 2000s has posed new challenges for government agencies and policymakers. Following the failure of the war on drugs and the continued expansion of methamphetamine, Thailand has started to shift its drug policy towards decriminalisation. In 2017, the government amended the Narcotics Act and reduced criminal punishment for the possession, import/export and production for distribution of drugs (Articles 65 and 67). The mandatory death penalty for the offence of selling drugs has also been removed from the drug law. The amended legislation was enacted in January 2017 with aspirations for a better criminal justice system and improved standards of treatment for incarcerated people especially female inmates who are *de facto* victims of misguided drug policy.

Women Offenders in Southeast Asia: Their Populations, Pathways and Life in Prisons

Female Prison Populations

Punitive drug laws and policies in Southeast Asia have disproportionately impacted women and contributed to the rise in the number and proportion of women in most prison systems in the region. While women and girls accounted

for 6.9% of the global prison population, in Laos, Thailand, and Myanmar the figures were 18.3%, 13.3%, and 12.3%, respectively (Walmsley, 2017).

The female prison populations in Southeast Asia are ranked high in the global context – with Thailand ranked 5th, the Philippines ranked 7th, Vietnam ranked 8th, Indonesia ranked 9th and Myanmar ranked 11th (Walmsley, 2017). Moreover, female prisoners in Indonesia and the Philippines have sharply increased in number. From 2015 to 2017, the number of women prisoners in Indonesia increased by 32%. In November 2017, there were 12,643 women prisoners accounting for 5.5% of the total prison population (Ministry of Justice and Human Rights, 2017 as cited in UNODC, 2019b, p. 13). The average length of prison sentence served by women convicted of a drug offence is between 12 months and 7 years (Alvarez, 2018a, p. 8).

Thailand has the second highest female incarceration rate (60.7 per 100,000 population) in the world and the highest female prison population (47,328) in Southeast Asia. While there has been substantial growth in male and female prisoner numbers since the 1990s, from 2003 to 2013, a much higher proportions of women were incarcerated for drug offences (72.1%–89.5%) compared to men (45.4%–65.4%) (Jeffries & Chuenurah, 2016, p. 96). In November 2019, 86% of convicted female prisoners in Thailand were incarcerated due to drug-related crimes (compared to 79% of male prisoners) and almost half of convicted women prisoners serve prison sentences of between 1 and 5 years (Department of Corrections of Thailand, 2019a).

Drug ‘wars’ under President Rodrigo Duterte have significantly impacted women in the Philippines. The Bureau of Corrections records that in 2017, 60% of female prisoners are incarcerated for offences related to opium and other prohibited drugs (1,712 out of 2,854) compared to 15% of male prisoners (5,888 out of 38,990) (Alvarez, 2018b).

Among the Southeast Asian countries, Singapore is the only country that has experienced a significant decrease in the incarceration rate. From 2010 to 2017, the national incarceration rate per 100,000 population fell from 268 to 193. In 2017, the country incarcerated 8,988 convicted prisoners nationwide, of which 834 were women (Singapore Prison Services, 2019).

Characteristics of Women Prisoners

In Southeast Asian countries for which data are available, the majority of women in prison have a low level of education, familial caring responsibilities and some history of victimisation. According to a pilot study conducted in Singapore, 5% of women prisoners had no education, 30% had completed primary school and 54.4% completed secondary school (Mien, 2013, p 165). In the Philippines, data from one correctional institute show that about 2% of women were illiterate, 20% had only attended elementary school, 40% had reached high school and 30% had attended college (Danish Institute Against Torture, 2014). In Thailand, a survey of 533 women prisoners indicated that 9% had no education, 34% had completed primary school, and 32% had completed secondary school. The majority (82%) of women prisoners in Thailand are mothers and half work to support their family and children (Thailand Institute of Justice (TIJ), 2014, pp. 131–132).

With regard to victimisation, a study in Singapore indicates that 45% of the women prisoners reported a history of physical, emotional or verbal abuse, and 42% had experienced emotional distress (Mien, 2013). As a result, women in many cases (36%) had turned to substance abuse to help them cope with stress. A relationship between victimisation and substance dependence among female drug users has also been found in other countries including Indonesia and Malaysia. It was noted that at least 60% of Indonesian women who inject drugs were victims of some form of intimate partner violence, Malaysian women who use drugs are more likely to be drawn into abusive relationships (Stone & Shirley-Beavan, 2018).

Pathways to Prison

Research in Thailand found that some women were involved in a drug crime as a result of unwittingly associating with others who were actively engaged in the illicit drug trade while some were deceived into committing the offence. In the case of large-scale, drug-related organised crime, women are likely to be involved in drug business through their family or husband (Chitsawang, 2017; Havanon, Jeradechakul, Wathanotai, Paungsawad, & Sintunava, 2012). In the Philippines, some women prisoners convicted for the distribution of methamphetamine claimed that they were incarcerated due to unjust police practices and inefficient/a lack of legal representation. Other women described their involvement in drug-related offences as a matter of economic necessity and familiar caring responsibility (Alvarez, 2018b).

A recent qualitative gender-comparative studies of women's and men's journeys to drug offending in Thailand has found that adverse childhood experiences, peer-group association, economic motivation and deception/exploitation are the key themes shaping men's and women's pathways to prison (Jeffries et al., 2019). However, the study described that women experience these factors differently, and in some cases more acutely, than men. For instance, some women in the adverse childhood experiences pathway described accumulative victimisation/trauma, including domestic violence, which continued into adulthood. Such experience then leads to drug use and distribution. Women were also more likely than men to use and sell drugs within the context of a romantic relationship. On the other hand, masculinity appeared to underpin some aspects of men's motivations and closely tied to peer-group status.

While most women in prison are often convicted of or charged with small-scale drug distribution or possession, only a small proportion of them are incarcerated due to drug trafficking offences. In the context of Thailand, the number of female drug traffickers accounts for only 2% of the female drug prisoners in Thailand. Yet, the punishment is exceptionally severe across the region. Studies suggest that women's involvement in cross-border international drug trafficking was due to women being unaware of what they were carrying or they were otherwise exploited and pressured. Once in the criminal justice system, women faced several difficulties including unjust and inappropriate police practices and a lack of competent legal representation (Chuenurah & Jeffries, 2019).

Treatment of Women Prisoners

The availability of drug treatment for women prisoners in Southeast Asia is very limited. The information in this section relies on available administrative information, national prison reports and the authors' observation through their work in the region.

It is widely recognised that most prisons around the world are designed and operated on the basis of the needs of the majority male prison population. This is reflected in the architecture, security procedures, healthcare and rehabilitation programmes of prisons. Nevertheless, in the past decade, the international community has achieved significant progress in addressing this gender blindness with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the Bangkok Rules) in December 2010. The Bangkok Rules address the specific needs of women in the criminal justice system, urging member states to consider women's background, characteristics and offending pathways when sentencing and to promote gender-sensitive prison administration.

Bangkok Rule 4 sets out that women should be allocated to a prison close to their home in order to promote social reintegration prospects. However, in Southeast Asia, women prisoners are often allocated to correctional facilities far from home for several reasons. In Singapore, there is only one women's prison in the country resulting in a lower possibility for women prisoners to be close to home. On the other hand, despite the high number of prisons that hold women prisoners in Thailand, many women have to spend a significant proportion of their sentence at a distance from home due to an allocation system based on the length of sentence and the place where the offence was committed (TIJ, 2014). In Indonesia, women can be detained far from home as the Indonesian Code of Criminal Procedure (KUHAP) states in Article 84 that the district court to which most witnesses belong shall hear the case.

Since most women prisoners are mothers/carers, being incarcerated far away from their families limits their chance to maintain contact with their children and family members. To counterbalance this situation, a few countries have expanded visiting rights (frequency and length) especially for women prisoners and utilise teleconferencing to facilitate women's family contact. However, such initiatives do not offset the negative impacts on the wellbeing of women prisoners in some countries, because they rely on their families to provide them with basic necessities and extra food.

Many women involved in drug-related offences are drug users requiring therapeutic responses to their dependence. Bangkok Rule 15 stipulates that prison should provide specialised treatment programmes designed for women substance abusers, considering prior victimisation and the special needs of pregnant women and women with children. In practice, prison-based drug rehabilitation programme in Southeast Asian prisons vary depending on programme design and available resources.

In Malaysia, the Integrated Human Development Programme was introduced in 2003 as a framework for the rehabilitation process for all prisoners. It includes

a psycho-education module for drug dependence called 'HUNT', which has been implemented since 2017. This evaluates an offender's readiness to change and the severity of their addiction, with the aim of equipping them with fundamental skills such as decision making and self-efficacy evaluation. Offenders who pass this process will then participate in the therapeutic community programme or methadone treatment. Besides prison-based programmes, there is also the Cure and Care Programme that is designated specifically for parolees (Mutalib, 2018; Wahab, 2018). In Thailand, the Therapeutic Communities (TC), which is based on the Day Top Programme (the United States) and the Comunita Incontro Programme (Italy), has been implemented in several prisons. It emphasises peer support and covers a wide range of activities such as physical exercise, education and work, and short-term vocational training for the duration of 375 hours (Department of Corrections, 2019b). However, due to acute overcrowding, the degree to which TC Programme is being implemented appears to differ from one facility to another.

Despite the availability of drug rehabilitation programmes, it is unclear whether these have been designed and implemented in a gender-sensitive manner. Most appear to be neither gender-neutral nor male-focussed and some place emphasis on physical exercises and self-discipline. Furthermore, women's access to drug rehabilitation programmes remains limited. A study in Indonesia reported that although the majority (69%) of women incarcerated for drug offences had a history of drug use, no drug rehabilitation programme or health care intervention was provided for them (Alvarez, 2018b).

Women prisoners also face challenges related to the general administration of prisons. According to international standards, women prisoners should be supervised only by female staff. In practice, it has been observed that although women staff are responsible for the supervision of women prisoners in a few countries, most staffing is generally mixed gender and in some prison systems, most of the staff are male. This increases the vulnerability of women prisoners to intimidation and violence by male staff. Furthermore, most prisons were managed in an authoritarian manner with a highly disciplined prison regime with security, not rehabilitation regarded as the primary focus of prison administration. This situation can perhaps be explained by acute overcrowding in most countries and the ingrained attitudes among staff. Finally, the issue of women prisoners' mental health has been little discussed and studied. It has been observed that most prison systems in the region lack psychologists and healthcare staff as well as gender-specific programmes to address mental health issues.

Despite the challenges, several positive changes have been found at a prison and national level. In February 2017, Thailand amended its 1936 Penitentiary Act which, for the first time, incorporated the principles of the Bangkok Rules and added specific clauses on female prisoners with children and on pregnant prisoners. Moreover, there have been increasing collaborative efforts to promote the implementation of the Bangkok Rules in the region. This includes collaboration between the UNODC and the Directorate General of Corrections of Indonesia in 2018 on a national mapping of women's health in prisons based on the Bangkok Rules, and collaboration between the Thailand Institute of Justice (TIJ) and

Department of Corrections of Thailand since 2015 on a 'Model Prison' project to promote the use of a checklist to assess Bangkok Rules implementation. The checklist has been adopted and used by the prison authority as a national tool for prison performance evaluation. In addition, the Directorate General of Prisons in Cambodia, in collaboration with TIJ, has initiated a pilot project in 2019 to promote gender-sensitive prison management at the Correction Centre 2, the largest women's prison in the country. The project emphasises staff's capacity building and rehabilitation programme for women prisoners.

The Way Forward

Research and statistics have shown that penalisation-led policies against drug problems in Southeast Asia have heavily and disproportionality impacted women in the region. Women's pathways to prison are different from men, and imprisonment impacts women and men differently. Therefore, the backgrounds of women offenders and their gender-specific needs should be taken into account when developing and implementing crime prevention strategies, sentencing guidelines and rehabilitation programmes.

The Bangkok Rules call on governments to increase the use of alternatives to pre-trial detention and imprisonment in the case of women prisoners; to consider mitigating factors when sentencing women offenders, and to make available resources to devise suitable alternatives for women offenders to address the most common problems that lead to their contact with the criminal justice system (Rules 57 to 63). While the use of non-custodial measures for drug offenders are generally limited and vary across the region, maximum efforts should be made to apply these guidelines, particularly in the case of drug-related offences including drug trafficking committed by women, in order to minimise the harmful effects of drug policies and to ensure gender-sensitive criminal justice systems in the region.

Among Southeast Asian countries for which data and access are available, it can be said that a gender-sensitive management style does not yet underpin the administration of the majority of prisons where women are held. During the past few years, there has been an increase in research focussing on the circumstances leading to women's offending and their experience during imprisonment. Research findings should be used to reform laws, develop policies and training programmes to ensure gender-sensitive management of women prisoners. In addition, with current overcrowding situations and limited resources in most prison systems, a strategy to develop and implement a gender-sensitive rehabilitation and social reintegration programme for women prisoners requires a multi-agency approach involving a range of professionals, NGOs, community groups to work together and support prison authorities in order to achieve a better outcome.