

## **Presentation on Women, Drug Policies, and Incarceration at the 2015 Women and Justice Conference**

**Sponsored by the Avon Global Center for Women and Justice at the Cornell University Law School, the Avon Foundation for Women, Seneca Women and the Virtue Foundation**

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### **Presentation by Corina Giacomello**

First of all, I would like to thank the Avon Global Center for Women and Justice and particularly Elizabeth Brundige for the invitation to this event. It is an honour to share the panel with my colleagues here and to speak before such an audience. I would also like to thank Seneca Point Global.

In recent decades, feminist criminologists and sociologists, as well as NGOs, have been pointing to the specific and multiple forms of discrimination that impact women in prison. They have shed light on how the law and its implementation are not neutral, but gender-biased, and how the prison system is organized around patriarchal values and conceptualizations, thus making women in prison invisible and discriminated against in multiple ways. Among them are lack of prisons for women; sexual harassment and violence in prison, including the existence of human trafficking nets for sexual purposes; lack of proper medical facilities; and an insufficient implementation of alternatives to incarceration that take into account gender-specific responsibilities, mainly related to women's role as primary caretakers for their children or other people.

“Women in prison” is a collective subject created by the intersection of different elements: 1) women's universal discrimination under patriarchal systems, that is, the situation of women *per se* in a given culture and society, which also shapes how women get involved in illegal acts; 2) what is defined as a crime in a given society and how it is persecuted and punished; 3) the organization of the prison system.

Differences among countries' penal systems, economic possibilities, levels of gender equality, types of offenses and density of crime are important in order to examine the situation of women in prison and the development of judicial standards and public policies. However, some generalizations can be made and actually underlie the elaboration of minimum standards in the treatment of women in prison.

Quantitative and qualitative studies from different parts of the world show common tendencies:

- Women in prison are mainly incarcerated for petty crimes, such as theft, or drug offenses, usually involving small quantities of drugs.
- Their background is characterised by social exclusion; violence in multiple forms, including sexual violence; a history of unemployment or employment in the informal economy; minimal education; and often the problematic use of psychoactive substances.
- Between 60 and 90 percent of women in prison are mothers, often they are the primary or sole caregiver for their children and also of other people in their family.

Therefore, the experiences of women prior to imprisonment plays a role in which crimes they commit, how, and why.

The second point mentioned earlier referred to what crimes are prosecuted and how and in which ways they are punished. Here drug policies come to play a prominent role.

The relationship between gender, drug policy, and the prison system has been gaining increasing attention, especially in recent years and in relation to the increasing criticism towards the current system of drug control.

Some of the existing evidence shows how drug policies impact proportionately more women—and their children—than men. Let's mention some examples.

- Women increasingly enter drug-trafficking circuits. According to the Open Society Foundations' pre-trial detention program, the female prison population in the Americas has [doubled](#) between 2006 and 2011. Drug offenses are the main reason for the increase. The report of the Inter-American Commission on Human Rights on pre-trial detention shows that drug offenses are the first or second cause for incarceration of women and the third or fourth in the case of men. The Church World Service report on children with an incarcerated parent states that the war on drugs is the main cause for the increase in the number of such children. They are among the most invisible victims of the war on drugs; a war that, in reality, would declare as one of its main targets the protection of childhood. However not all children seem to matter equally.
- Women who are imprisoned for drug offenses mainly participate as secondary, disposable players in the drug trafficking arena. They often use their bodies to carry drugs, either in their stomach or vagina, functioning as human containers.
- They are often placed in situations where they are points of contact with police forces, such as in airports, borders, prisons and streets. Therefore, they are easily captured by the penal system. Women's detention and prosecution drive up the numbers of the "successes" of the war on drugs, providing results that can be easily achieved with little effort by security forces and thus justify increasing funds dedicated to the war on drugs.

- Depending on the harshness of each country's penal system, drug laws tend to establish disproportionate sentences, apply prison as the most common response, and often encourage the use of pre-trial detention.
- Drug laws often describe drug offenses as particularly serious, thus reducing the possibility for alternatives to imprisonment. Even when alternatives are established in the law, they are not necessarily implemented in practice and that has to do to the following point.

### **Drug crimes are punished *because of drugs*.**

The system of prohibition framed by the three UN Conventions and a given society's system of values contains a high level of morality and judgments and prioritizes drugs over people. That does not apply necessarily to other drugs such as alcohol or tobacco. When we order a drink in a bar and the waiter handles it to us, we don't think the waiter is trying to ruin our life, turn us into alcoholics and destroy our future and our families. We know that alcohol consumption is an act of individual responsibility and we have enough medical information to decide what to do about alcohol consumption. Plus, it is socially acceptable to drink and even to have an alcohol problem. Alcohol consumption is framed in a context of legality, health, regulation and personal responsibility.

Something similar happens with tobacco. When I used to be a smoker, and I was quite a heavy smoker, and went to buy cigarettes I never thought of the seller as a ruthless person who wanted to poison me and my loved ones. I knew he or she was making money out of my habit but saw it as a fair market transaction and nothing else. I also knew I was assuming health risks and in the last decades we have learned that it's a duty of tobacco companies to inform us about them. If I develop a health problem related to consumption, it's not the seller's fault. It's not the waiter's fault.

However, when we think of drug dealers, people who make profit selling drugs—same as the cigarettes seller—we can hardly detach that image from someone troublesome, with issues that somehow must be punished and socially disapproved.

Drug control policy can influence the way in which a person is sentenced independently of the circumstances of that person. The standard combination of type of drug, quantity, and type of offense doubly objectifies women and their bodies.

In this respect and to conclude this presentation I would like to mention the example of England and Wales as an interesting and innovative case of sentences determination.

In 2012, the Sentencing Council, issued guidelines on how to punish cases of drug-related crimes. The crimes are divided into seven categories. To determine the penalty, four criteria are defined through a system of tables: type of substance, quantity, offense, and degree of leadership of the accused person (leading, significant, or lesser role). Once the level of sanction is established, a series of mitigating and

aggravating factors is considered. This makes it possible to combine classic elements for determining a penalty—those related to the substance—with others linked to the degree of responsibility and the circumstances of the person apprehended, allowing for the application of more a proportional punishment. Sentencing Council data for 2012 show that about 50 percent of the people accused of importing or exporting were considered to have played a “lesser role” and were sentenced, on average, to up to four years in prison (before the guidelines, the average sentence was seven years). In other words, with the implementation of these guidelines, sentences for drug mules who have been victims of organized criminal networks have decreased notably. The guidelines are not mandatory for the judicial system and do not substitute the Misuse of Drugs Act. However, a review by the Sentencing Council shows that judges used the guidelines to determine a sentence in 100 percent of cases.