

# POVERTY AND MARGINALISATION IN CRIMINAL JUSTICE SYSTEMS– THE PROBLEMS AND EFFECTIVE RESPONSES

TRÍONA LENIHAN, 1 DEC 2022  
WEBINAR: CRIMINAL JUSTICE REFORM

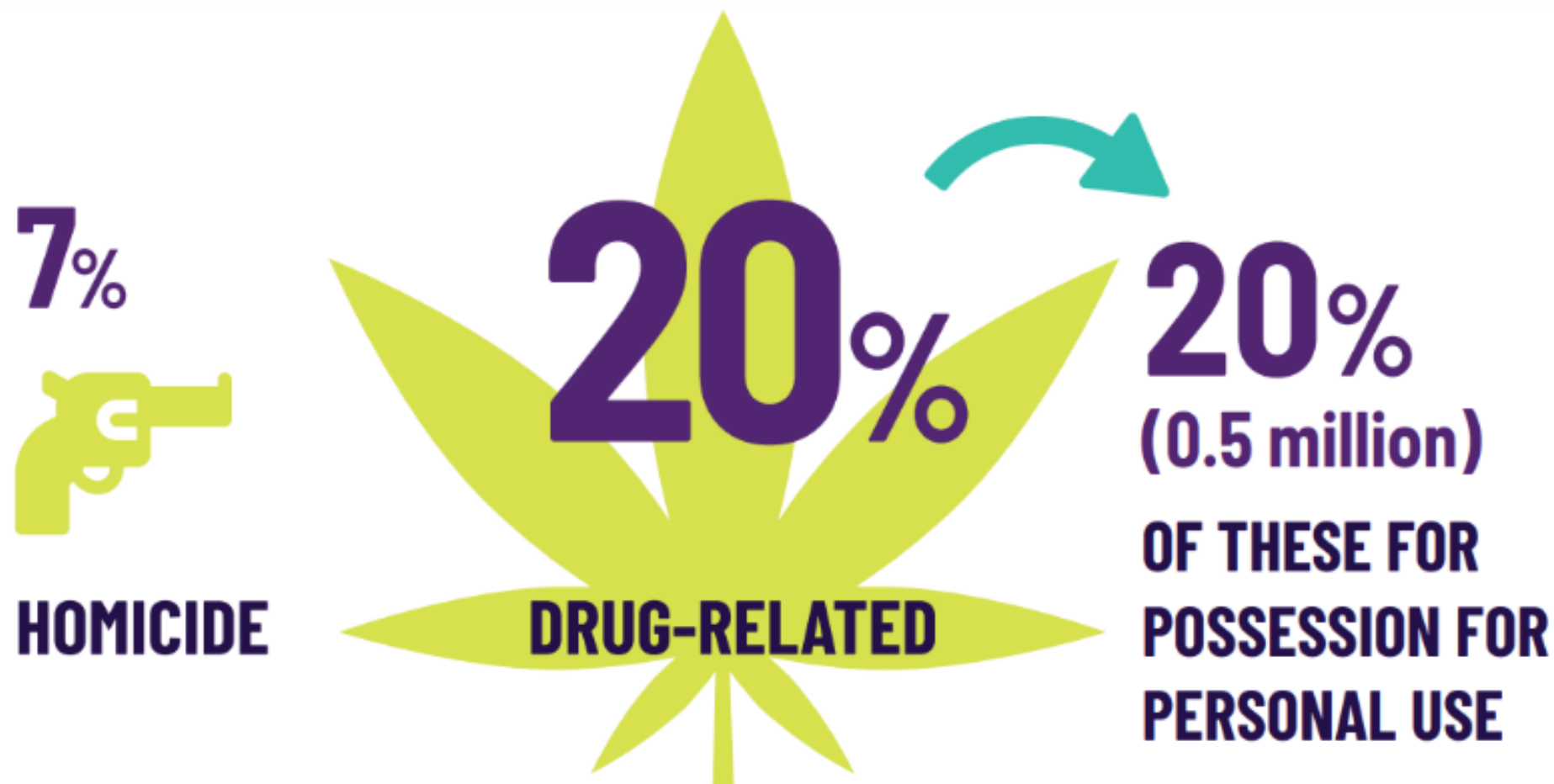
# DRIVERS OF IMPRISONMENT ARE LARGELY UNADDRESSED



**2022**

**#GlobalPrisonTrends**

# PUNITIVE DRUG LAWS DRIVE IMPRISONMENT AND OVERCROWDING

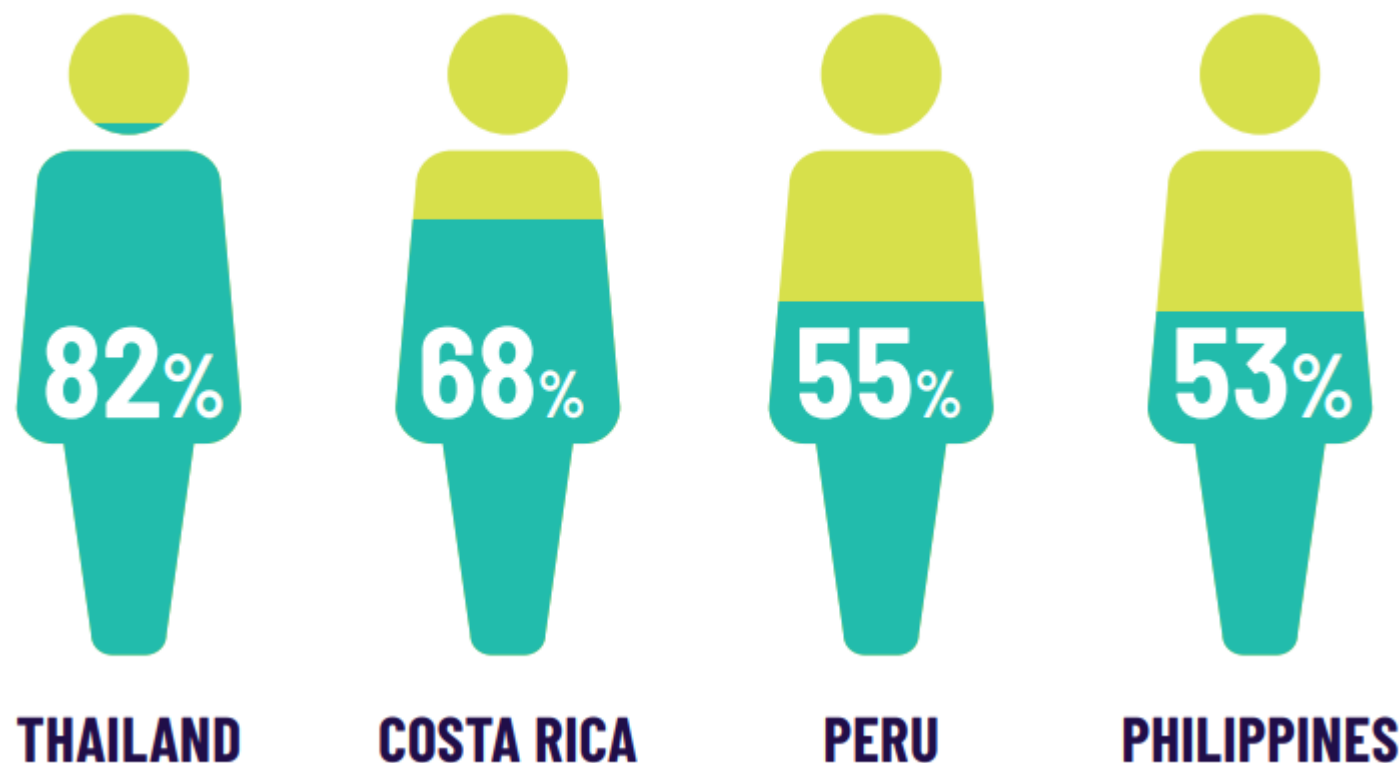


# WOMEN ARE DISPROPORTIONATELY AFFECTED BY DRUG-RELATED OFFENCES



Source: United Nations, *World Drug Report 2018, Booklet 5: Women and drugs: Drug use, drug supply and their consequences*, June 2018.

# PROPORTION OF WOMEN IN PRISON FOR A DRUG OFFENCE:



Source: Washington Office on Latin America, *Women Behind Bars for Drug Offences in Latin America: What the Numbers Make Clear*, November 2020.



# IMPACT OF POVERTY AND MARGINALISATION



*When **poverty** and insufficient access to social, health and legal aid services for the disadvantaged are combined with policies aimed at being “**tough on crime**” and **systemic forms of discrimination** (e.g., based on race, ethnicity, sex or gender), the result is the **overrepresentation of minority and marginalized groups among prisoners**, many of whom are charged with petty and nonviolent offences. The time spent in prison is likely to aggravate unemployment, homelessness and poverty, thereby feeding **a vicious cycle of deprivation and exclusion.**”*

United Nations System Common Position on Incarceration, April 2021

# IMPACT OF POVERTY AND MARGINALISATION



- Laws in many countries around the world criminalise acts associated with **poverty/homelessness**, e.g.:
  - Loitering, begging, sleeping in public spaces, shoplifting, informal trading, inability to pay fines, etc.
- These laws disproportionately affect people who experience **discrimination and social exclusion**, e.g.:
  - Based on race, ethnicity, gender, socio-economic status, people who use drugs, members of the LGBTQ+ community, etc.
- This creates a **two-tier justice system**

A photograph of a busy street in a developing country. In the foreground, the back of a man in a blue t-shirt and white pants is visible. To his left, a woman in a white shirt and brown bag is walking. In the background, there are other pedestrians, a white van, and a black car. The scene is set on a paved street with buildings and trees in the distance.

## MOVES TOWARDS REFORM:

- Civil society mobilisation
- National law reform
- Multilateral action



# ACTION: CIVIL SOCIETY MOBILISATION



- **Research** to expose issues, raise awareness
- **Advocacy** for law reform (national, regional, international)
- **Strategic litigation** to challenge laws

# ACTION: TOWARDS LAW REFORM SUCCESSSES



- African Court on Human and Peoples' Rights
  - On 4 December 2020, issued a unanimous Advisory Opinion finding **vagrancy-related laws and by-laws are incompatible** with the African Charter, the African Charter on the Rights and Welfare of the Child and the Maputo Protocol on the Rights of Women
- African Commission on Human and People's Rights (ACHPR)
  - **Principles for the Decriminalisation and Declassification of Petty Offences** (2017) which call on states to decriminalise laws criminalising conduct in broad, vague and ambiguous terms/ criminalise the status of a person or their appearance, in particular, laws that criminalise life-sustaining activities in public places.

# ACTION: TOWARDS LAW REFORM SUCCESSSES



- Litigation:
  - [Malawi High Court Declares Mass Arrests \(Sweeping Exercises\) Unconstitutional](#)
  - [South Africa's Constitutional Court rules children caught using cannabis will no longer be criminally prosecuted](#)
  - [Court case filed against Sierra Leone to overturn discriminatory loitering laws](#)
- Decriminalisation of drug possession for personal use:
  - 50 jurisdictions in 30 countries (as of May 2022)

# ACTION: TOWARDS LAW REFORM SUCCESSSES



- **Malawi:** the Southern African Litigation Center and the Center for Human Rights Education, Advise and Assistance released **research** highlighting that ‘rogue and vagabond’ and ‘idle and disorderly’ offences were being enforced in an arbitrary and discriminatory manner.
  - >> The findings led to an expert consultation with the Malawi Justice Department, Police Department and Judiciary which produced the **Directives for Prosecutors on the Prosecution of Minor Offences.**
- **Kenya:** in June 2017, the Chief Justice of Kenya gazetted the formation of a National Steering Committee to review the criminal justice system and specifically petty offences.
  - >> In May 2019 the **Director of Public Prosecutions (DPP) in Kenya issued practice directions on handling the offence of touting.**



# ACTION: MULTILATERAL MECHANISMS



- Increasing recognition from international bodies, e.g.:
  - UN Common Position on Incarceration
  - Action at UN Crime Commission
  - Human Rights Council mechanisms / Special procedures
- Increasing moves away from 'war on drugs' rhetoric

A photograph of a prison corridor with a purple overlay on the left side containing text.

# THANK YOU

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