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The Incarceration of Women for Drug Offenses

The Research Consortium on Drugs and the Law (CEDD)
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About this publication

The CEDD research consortium brings together researchers from nine Latin American countries with the goal of analyzing the impact of criminal law and legal practice surrounding illicit drugs at the national and regional level. Currently, a fourth research project is being carried out on the situation of people deprived of their liberty for drug offenses in the countries under study. This investigation seeks to give an update on the situation of people incarcerated for drug crimes and also aims to propose alternatives to incarceration.

The Research Consortium on Drugs and the Law (CEDD), 2015

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Summary: This brief demonstrates the impact of public policies on the incarceration of women in the Americas —the majority of whom are in prison for the crimes of small— scale dealing or transporting drugs. The consequences of the use of prisons can be seen not only in terms of how these women’s lives are affected, but also in the impact on their families, children and dependents, who are left without social or economic protections.

"When men go to prison, women step up. But when women go to prison, men do not step up in the same way to care for the family, for the children."
Esther Best

The first study carried out by the Research Consortium on Drugs and the Law (CEDD) demonstrated the impact of drug policies on the increase in Latin America in the incarceration of women, who are generally imprisoned for the nonviolent offenses of small-scale dealing or transporting drugs. Although the total number of women in prison is still far below the male population, the overall percentage of incarcerated women increased considerably in nearly all of the countries under study, with the exception of Bolivia.¹

These women share a similar socio-demographic profile: They are young, poor, single mothers and heads of household, with responsibility of caring for their children and other family members. They often have low levels of education, and frequently belong to ethnic minorities.

The majority of women incarcerated for drug offenses in Latin America are charged with low-level dealing or transporting drugs.

¹ According to Kathryn Ledebur, whom we thank for her review of the situation in Bolivia, it is not yet possible to pinpoint the reasons why there has been a decline in the female incarceration rate in Bolivia. In recent years, there have been significant increases in the minimum wage, while at the same

time benefits were expanded for pregnant women and mothers, and the economy improved overall. The four pardon initiatives to date have benefitted many women, especially since they tend to be for lesser crimes.

Women in Prison – Overview

	Total population of women in prison	% Women versus the total number of inmates	Rate of women incarcerated per 100,000 inhab. (national population) - ICPS	Increase in the female incarceration rate for every 100,000 women - ICPS	Increase in the overall incarceration rate per 100,000 inhabitants - ICPS
ARG	2,839 (2013)	4.42% (2013)	6.8 (2013)	6.4 - 6.8 (2003/2013)	152-161 (2002/2012)
BOL	1,195 (2015)	8.66% (2015)	12.9 (2011)	16.2 - 12.9 (2000/2011)	95-135 (2000/2012)
BRA	35,218 (2013)	6.3% (2013)	17.5 (2013)	5.8 - 17.5 (2000/2013)	133-300.96 (2000/2013)
COL	8,379 (2014)	7% (2015)	16.5 (2015)	7.8-16.5 (2000/2015)	128-231 (2000/2014)
CR	2,346 (2014)	7.15% (2014)	20.4 (2014)	10.8-20.4 (2003/2014)	193 - 303 (2000/2012)
ECU	1,636 (2015)	6.7% (2015)	12.5 (2014)	5.2-12.5 (2002/2014)	70-165 (1989/2014)
EEUU	205,400 (2013)	9.3% (2013)	64.6 (2013)	55.6 - 64.6 (2001/2013)	683-731 (2000/2010)
MEX	13,395 (2015)	5.2% (2015)	21.6 (2015)	7.1-21.6 (2001/2015)	156-212 (2000/2015)
PER	4,396 (2015)	6.0% (2015)	14.1 (2015)	7.8-14.1 (2001/2015)	107-193 (2000/2012)
URU	645 (2013)	6.6% (2013)	17.5 (2014)	7.3-17.5 (1999/2014)	209-278.4 (2003/2012)
VEN	2,942 (2014)	5.7% (2014)	9.5 (2014)	3.7-9.5 (2001-2014)	58-150 (2000-2012)

Sources:

Argentina: National System of Statistics for the Enforcement of Sentences (SNEEP) (2013).

Bolivia: International Center for Prison Studies (ICPS) and the Bolivian government.

Brazil: National Prison Department (DEPEN).

Colombia: National Penitentiary and Prison Institute (INPEC).

Costa Rica: Ministry of Justice and Peace – General Directorate of Social Adaptation (2014).

Ecuador: Ministry of Justice.

Mexico: Secretariat of the Interior (2015) and National Population Council's *Population Projections*.

Peru: National Penitentiary Institute (2015).

Uruguay: Presidency of Uruguay, Planning and Budget Office (OPP), Area of Management and Evaluation (AGEV and the Ministry of Social Development [MIDES]).

US: International Center for Prison Studies (ICPS).

Venezuela: International Center for Prison Studies (ICPS).

These women share a similar socio-demographic profile: They are young, poor, single mothers and heads of household, with responsibility of caring for their children and other family members. They often have low levels of education, and frequently belong to ethnic minorities (including Afro descendant,

Latina and indigenous). In Brazil, for example, about 55% of incarcerated women are of African descent, and in Mexico, a significant number of indigenous women are

in prison for drug-related offenses.² This underscores the fact that drug law implementation is always selective; generally it is those who are the poorest and weakest

who are punished, and women in situations of social exclusion and/or vulnerability are disproportionately affected.

Women in Prison for Drug Offenses

	Number of people incarcerated for drugs (men and women)	% Incarcerated for drugs versus the total population	% Increase in the population in prison for drug offenses	Number of women incarcerated for drug offenses	% Women incarcerated for drugs versus the total female prison population	% Increase in the female prison population for drugs*
ARG	6,979 (2013)	10.88%	113.35% (2002/2013)	790 (dec/2012)	65% (dec/2012)	271% (1989/2008)
BOL	3,939 (2013)	27.32%	- 17% (2000/2013)	827	48%	114.38% (2003-2013)
BRA	146,276 (jun/2013)	25.94% (jun/2013)	344.87% (2005/2013)	16,489 (jun/2013)	60.63% (jun/2013)	290% (2005/2013)
COL	23,141 (2014)	21% (2014)	-	3,830 (2014)	45% (2014)	211% (2000-2014)
CR	4,645 (dec.2011)	26.4% (dec.2011)	225.52% (2006-2011)	944 (dec.2011)	75.46% (dec.2011)	189.18% (2006-2011)
ECU	4,156 (2015)	17% (2015)		709	43%	
MEX	26,098 (2013)	10% (2013)	19% (2011-2013)	Federales 528 (2014) Locales 1,547 (2013)	44.8% (ago/2014) 14.2% (mayo 2013)	ND 2.3% (2011-2013)
PER	19,329 (jul/ 2014)	27% (jul/2014)	50% (2008/2014)	2,679 (jul/2014)	60.6% (jul/ 2014)	35% (2008/2014)
URU	1,265 (2013)	12.9% (2013)		205	24% (2013)	
VEN	12,482 (2014)	24.35% (2014)				

* The increase is calculated based on the absolute number of incarcerated women

Sources:

Argentina: National System of Statistics for the Enforcement of Sentences (SNEEP) (2013). These figures refer to federal prisons.

Bolivia: National Institute of Statistics (2011) and OAS (2013, p.22).

Brazil: National Prison Department (DEPEN).

Colombia: National Penitentiary and Prison Institute (INPEC).

Costa Rica: Calculation made on the basis of figures from the Justice and Peace Ministry's Violence Observatory (2011).

Ecuador: Ministry of Justice.

Mexico: Secretariat of the Interior (2015) and National Population Council's *Population Projections*.

Peru: National Penitentiary Institute (2014).

Uruguay: Legislative Branch, Parliamentary Commissioner's Reports on the Practices and Evaluation of the National Penitentiary System.

US: International Center for Prison Studies (ICPS).

Venezuela: Venezuelan Penitentiary Service. The calculation of the percentage of women incarcerated for drugs versus the total was done on the basis of figures from the International Center for Prison Studies (ICPS) and from the Penitentiary Service.

² "In the case of indigenous women, who represent 5 percent of all incarcerated women, 43 percent are in prison for drug-related offenses" (Hernández, 2011: 70-71).

From a gender perspective, the collateral effects of incarceration are clear. The consequences of the use of prisons can be seen not only in terms of how these women's lives are affected but also in the impact on their families, children and dependents, who are left unprotected socially and economically. In Colombia, of all the women held in prison for drug offenses between 2010 and 2014, 93% had children, while the percentage of men with children was 76% of the total. A study by the Costa Rican Public Defender's Office shows that of the 120 women convicted for bringing drugs into prisons (15% of the total), 50% were responsible for 3 or more children (Muñoz, 2012). This means that the incarceration of women for drug offenses has a bigger impact on the destruction of family ties and greater implications for children's best interests, while also affecting the women themselves (beyond their role as mothers).

The studies by CEDD also reveal that a significant number of incarcerated women had never been in prison before and a sizeable proportion of them are foreigners. The women who act as "couriers" or transporters are detained with drugs hidden in their baggage or inside their bodies. Many of them have been deceived, threatened or

intimidated into transporting drugs. In Argentina, 9 of every 10 foreign-born women incarcerated for drug crimes in federal prisons were detained for acting as "couriers"; of that group, 96% are first-time offenders and nearly all of them are on the lowest rungs of the drug trafficking ladder (CELS, 2011). This means that their detention does not have any impact on the drug trade, which is booming in the region. The traffickers' recruitment of women suffering from extreme poverty criminalizes those who are most vulnerable and who are attracted to the drug trafficking business because of their situation of socioeconomic vulnerability.



Photo Credit: Jessamine Bartley-Matthews

Rosa Del Olmo (1996) contends that women are "also objects of discrimination on the part of men" and that they "will not occupy managerial or even intermediate positions but rather their participation will be limited to secondary roles: working to transport small quantities of drugs, many times inside their

bodies, which is commonly known as the work of 'couriers,' in exchange for a sum of money that is insignificant if one takes into account the vast profits made in this business."

Furthermore, in the majority of countries in the region—with the exception of Ecuador and Costa Rica, which recently reformed their drug laws—legislation does not distinguish between the different degrees of participation and involvement of women in the offense, and as a result they face very long prison sentences (Metaal and Youngers, 2011). Recognizing this gender issue, Costa Rica passed a law to shorten sentences for women who bring drugs into prisons, recognizing that many of them live in conditions of vulnerability that are largely associated with gender.³ Another example is Bolivia, which very recently issued a Supreme Decree (DS 2437) that allows pardons for women who are more than 24 weeks pregnant.⁴

Studies show that the growth in the number of women detained for drug-related offenses in the region, which is even greater than that of men, goes hand-in-hand with the

progressive toughening of drug laws (CEDD, 2012; Giacomello, 2013). The increase in the female prison population for these crimes reflects a global trend, and the damage is felt especially keenly in Latin American countries due to the region's complex sociopolitical conditions. This harm is seen mainly among women who enter into the process of feminization of poverty and are affected by the gender inequalities prevalent in Latin America. For this reason, the feminist criminologist Chesney-Lind (2003: 84) states that "the war on drugs is a war on women."

Recommendations

- a) Expand access to prison data on gender, which can serve as the basis for designing effective public policies.
- b) Significantly reduce the levels of incarceration of women by applying the principle of proportionality in sentencing and adopting alternatives to incarceration, both in the case of pretrial detention and the serving of sentences.
- c) Reform drug laws to distinguish between small, medium and large-scale drug offenses, between degrees of leadership

³ This is the reform known as "77 bis" (in reference to a subparagraph to Article 77 of Costa Rica's drug law), which reduced penalties for women who introduce drugs into prisons. See: <http://idpc.net/blog/2013/08/drug-law-reform-in-costa-rica-benefits-vulnerable-women-and-their-families>,

http://www.sia.eurosocial-ii.eu/files/docs/1422442750-PROTOCOLO%20COSTA%20RICA_completo.pdf

⁴ <http://www.eldeber.com.bo/papa/aprueban-amnistia-visita-del-papa.html>

in criminal networks, between violent and nonviolent crimes, as well as according to the type of drugs involved.

- d) Ensure that judges have the flexibility to take into account factors of vulnerability and whether the accused woman has dependents.
- e) Pregnant women and mothers of minors who are convicted of drug offenses should not be incarcerated; alternatives to incarceration should be contemplated for them.
- f) If mothers of minors are incarcerated, mechanisms must be created to safeguard their children and the protection of the children's best interests must take precedence over any other consideration.
- g) Promote processes for social integration—including educational programs, technical training or jobs—as alternatives to incarceration, and both within prisons and outside them for women who are granted parole or early release, or have finished serving their sentence.
- h) Guarantee and expand women's participation in the debate on drug policy, especially those women who have been the most affected, such as users of

illicit drugs, incarcerated women, and the mothers, wives or partners of incarcerated men.

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About CEDD

The Research Consortium on Drugs and the Law (Colectivo de Estudios Drogas y Derecho CEDD) brings together researchers —most of them lawyers— from nine Latin American countries: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Mexico, Peru and Uruguay. Launched as an initiative of WOLA and TNI, CEDD's main objective is to analyze the impact of criminal law and legal practice related to drugs, seeking to provide information on the characteristics and social and economic costs of drug policies in Latin America and thereby foster an informed debate about the effectiveness of current policies and recommend alternative approaches that are fairer and more effective.

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