

WOMEN, DRUG POLICIES, AND INCARCERATION

A Guide for Policy Reform in Colombia

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Executive Summary

In recent decades, the dominant model for responding to the drug problem has been the “war on drugs,” which relies on penal law to criminalize, prohibit, and penalize conduct associated with all stages of the drug trade. Academics, scientists, governments, United Nations agencies, and human rights defenders are largely united in the perspective that this punitive model has been a failure. Although prisons are packed with drug offenders, drug use has not decreased—to the contrary, trafficking and microtrafficking networks have grown stronger, drug lords continue to reap profits, and drug-related violence remains rampant.

Through its punitive approach, the war on drugs has focused on criminalizing and imprisoning the lowest-ranking members of the drug trade—in other words, those with a marginal relationship with the business, as they lack direct knowledge of its operating structure, and who participate in drug-related crimes largely out of economic necessity. The systematic imprisonment of these low-ranking members has failed to solve the drug problem, given that they are easily replaced and their incarceration does little to dismantle trafficking networks’ operating structures.

Recent studies have shown that women are increasingly being imprisoned for their participation as low-ranking members of the drug trade. These women tend to fit a specific profile: low-income heads of households responsible for the care and

well-being of others. In Colombia, the number of women prisoners has increased more than fivefold since 1991, and nearly five of every ten are behind bars for drug-related offenses. Of those, 93% are mothers and 52% are heads of household. These women, in search of the means and resources to care for their family members, enter the drug trade by performing low-ranking, high-risk tasks that do little to bring them wealth, allowing them simply to scrape by.

Calling for the application of a gender focus in the analysis of Colombia's drug policy, this report explores the different ways that imprisonment for drug-related crimes affects men and women, as well as how these impacts fall disproportionately on women caregivers who enter the trade out of economic necessity. It also offers public policy recommendations aimed at mitigating incarceration's disproportionate effects on these women, with an eye toward preventing such effects in the future. In a joint effort at the beginning of 2016, Dejusticia, the Washington Office on Latin America, the International Drug Policy Consortium, and the Inter-American Commission of Women of the Organization of American States developed a guide aimed at reducing the incarceration of women for nonviolent drug crimes in Latin America and the Caribbean. This report is a continuation of that effort, this time focused on the case of Colombia.

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Finally, we wish to thank the women from Colombia's El Buen Pastor prison who allowed us to hear their stories and step closer to their reality. We hope this guide lends visibility to their situation and brings the country toward a more humane drug policy that incorporates their voices.

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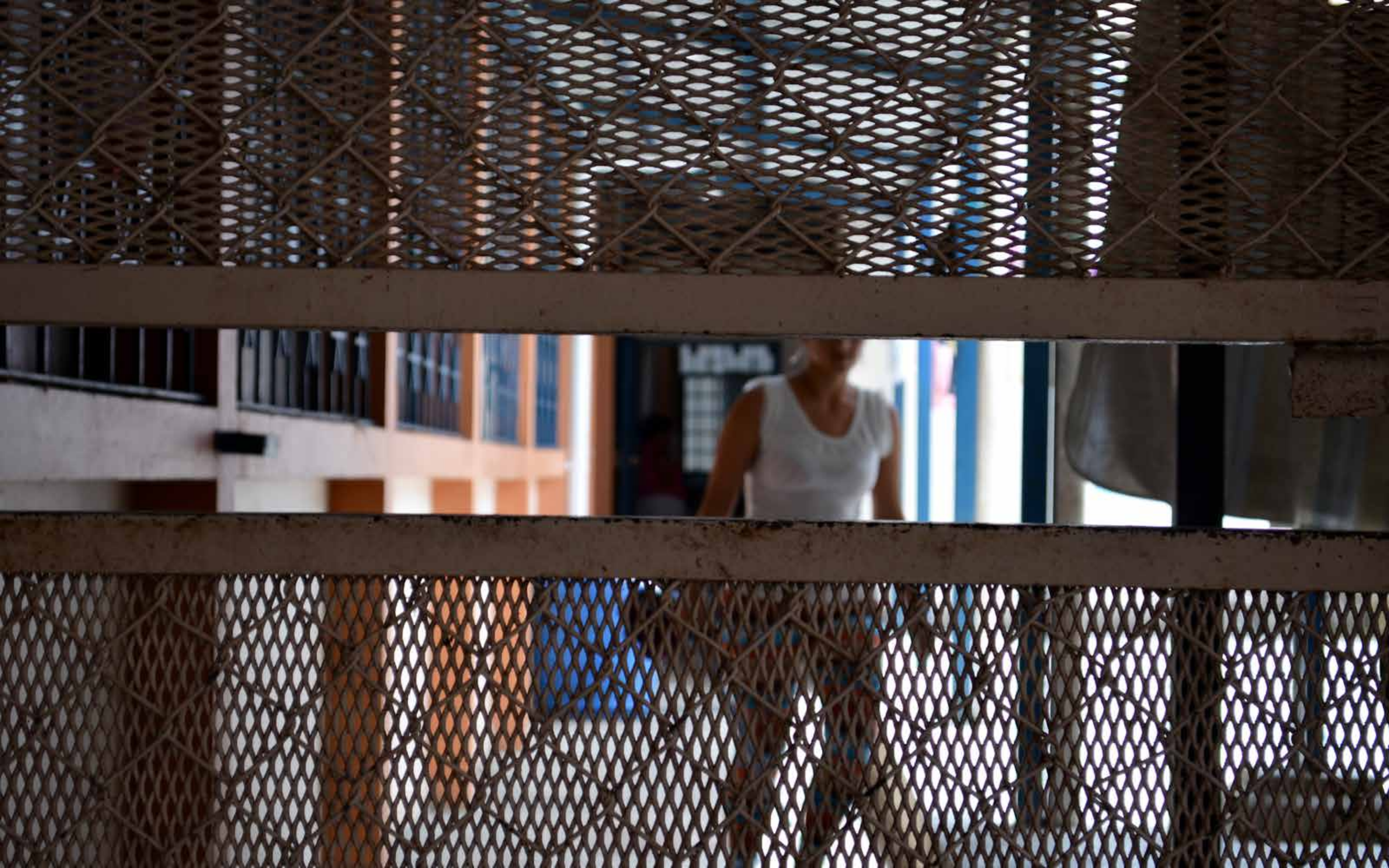
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Introduction

In recent decades, the dominant model for responding to the drug problem has been the “war on drugs,” in which “both prohibitionism and ... criminal law [are used] as a key tool to fight all stages of the business (cultivation, production, distribution, and trafficking) and, in some cases, even consumption” (Uprimny, Guzmán, and Parra, 2013: 30). Indeed, the systematic use of criminal law to prohibit and suppress drug-market-related behavior has become the defining characteristic of drug policies worldwide. In 1971, former US president Richard Nixon maintained that illegal drugs were “humanity’s biggest enemy” (“Drogas: La guerra que nadie ganó,” 2016). In this context, the criminal approach seemed appropriate: by putting more people behind bars for drug-related crimes, the war on drugs seemed to be working. But the reality was that while prisons were filling up with drug offenders, the drug problem was being resolved less and less: drug use was not decreasing, trafficking and microtrafficking networks were growing stronger, and powerful drug lords continued reaping profits through illegal and violent behavior.

Drug policies’ fundamental reliance on incarceration fulfills “an essentially symbolic purpose: the government feels obligated to legislate in order to show the public that it is responding sternly to the challenges posed by the illegal drug business” (Uprimny, Guzmán, and Parra, 2013: 39). In practice, those imprisoned for drug-related crimes tend to be men and women whose pressing economic needs lead them to join the trade, where they carry out the lowest-ranking but highest-risk positions, with little actual knowledge of how trafficking networks function, without



clear or direct links to the heads of criminal organizations, and, by and large, without involvement in violent crimes. This status makes these individuals more susceptible to prosecution and imprisonment, as they are the ones working in clear view of law enforcement authorities. Under this punitive model, the drug lords remain unaffected: while the criminal system focuses on prosecuting the lowest-level offenders, those who truly profit from the trade are systematically untouched. Therefore, although the statistics appear to show an efficient increase in the number of people imprisoned for drug crimes, in reality the drug trade's operating structure remains intact.

In light of this panorama, literature in the field has criticized the war on drugs as embracing a model of disproportionality. According to the principles of criminal justice, a punishment is considered proportionate when it fulfills three conditions: first, when the sanction is commensurate with the conduct being punished; second, when the costs of punishment are proportionate to the benefits being offered; and, third, when the restriction of fundamental rights is justified to ensure peaceful coexistence and the satisfaction of other fundamental rights (Uprimny, Guzmán, and Parra, 2013: 24–25). The war on drugs is disproportionate because it fails to satisfy these conditions, instead focusing on incarcerating the lowest-level offenders, and because the damages caused to society by the illegal drug trade remain unaffected. In other words, the costs are extremely high compared to the few reported benefits.

Recently, civil society organizations, United Nations agencies, the scientific and academic community, and governments from around the world have posed some fundamental questions in opposition to the war on drugs. The basic premise of their critique is that incarceration has been an ill-suited response to the illegal drug trade; a more appropriate approach would be one that abandons a strictly criminal and punitive focus and instead examines the causes, damages, and operating structure of the drug trade, as well as the manner in which these elements are profoundly entrenched in the dynamics of social inequality. This panorama has become even more complex in recent years in light of statistics and studies from around the world that reveal the different ways in which women and men become involved in the drug trade. Such studies show that the impacts of imprisonment on low-level drug offenders tend to be disproportionately harsh for women.

For this reason, new approaches to drug policies have emphasized the importance of a gender perspective in evaluating the response to drug trafficking—in other words, a perspective that examines the different roles assumed by men and women in drug-related crimes and the ways in which they lead to disproportionately negative effects for women. Joan Scott identifies gender as a critical analytical category for understanding the way in which our social world is organized. While men and women are biologically different by virtue of their *sex*, differences in *gender* refer to socially and historically constructed roles that embody expectations regarding how men and women should be and behave. These roles are neither biological nor natural; rather, they are created and practiced in concrete social contexts, and they become unequal or violent as soon as “masculinity” or “femininity” are assigned roles that place men or women in positions of submission or vulnerability (Scott, 1986). In the case of the drug trade, women have tended to assume roles and expectations that make them vulnerable by turning them into targets of the criminal system and by forcing them to disproportionately bear the system's impacts.

The incarceration of women for drug-related offenses has increased significantly in recent years, as has the length of their sentences.

As pointed out in a report on women prisoners, “In recent decades, the sustained and accelerated increase in the female prison population has constituted a common phenomenon in Latin America” (CELS, Ministerio Público de la Defensa de la Nación, and Procuración Penitenciaria de la Nación, 2011: 21). Increasingly, prison sentences for drug-related crimes are being carried out by women who fit a specific profile: low-income heads of households who enter the drug trade in order to satisfy their daily economic needs for themselves and those under their care. Although many men also fit this profile, women are largely the ones who assume the tasks of caring and providing for their families, in light of socially determined gender roles.

Like many other policies around the world, Colombia's drug policy adopts a punitive focus that disproportionately affects vulnerable populations, particularly women who are the providers and caregivers for their families. As a result, the incarceration of women for drug-related offenses has increased significantly in recent years, as has the length of their sentences. Since 1991, the number of women prisoners in Colombia has increased more than fivefold, while that of male prisoners has increased just threefold. Furthermore, nearly five out of every ten women prisoners are serving sentences for drug-related crimes; of these, only one has committed a

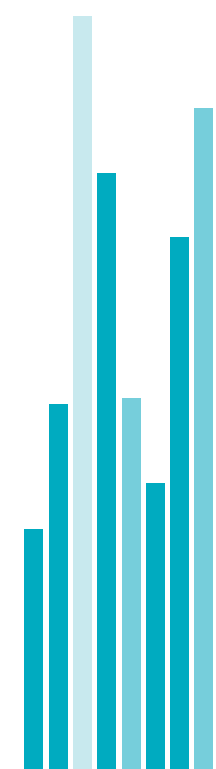
violent crime or been a member of a criminal enterprise. Of the women incarcerated for drug crimes, 93% are mothers and 52% are mothers who are heads of household (INPEC, 2015).

The aim of this report is twofold. First, using a gender lens, it analyzes Colombia's drug policy. Second, it offers a set of recommendations for government agencies working in this area. The report builds on an earlier guide published in 2016 by Dejusticia, the Washington Office on Latin America, the International Drug Policy Consortium, and the Inter-American Commission of Women of the Organization of American States that offers public policy recommendations for reducing the incarceration of women for nonviolent drug crimes in Latin America and the Caribbean. Focusing on the case of Colombia, this report reveals a panorama in which the criminal justice system's efforts in the war on drugs are directed largely toward women caregivers and providers who do not represent a threat to society, as they lack direct links with the drug trade and have not committed violent crimes. Placing these women behind bars puts them and their families in a position of even greater vulnerability, since those under their care are left unprotected and in want of the necessary resources to satisfy their basic needs. As a result, these families' poverty increases, along with the probability that drug trafficking will continue to be seen as an option for survival.

In light of this situation, the Colombian government has begun to be more receptive to proposals for the structural reform of its drug policy. Indeed, in 2012, the presidents of Colombia, Guatemala, and Mexico called for a special session of the United Nations General Assembly aimed at discussing drug policies around the world. President Juan Manuel Santos, Colombia's representative at the assembly, noted that the punitive focus of the country's drug policy demonstrates its ostensible failure; the persistence of violence, corruption, and mass incarceration of the lowest-level offenders shows that the war on drugs has led only to more damage instead of solutions. At the same time, Santos affirmed Colombia's commitment to reforming its drug policy. He suggested that criminal prosecution is not the solution, since the systematic imprisonment of low-level offenders simultaneously fails to solve the drug problem while exacerbating these individuals' often precarious living conditions.

With an eye toward Colombia's commitment to reforming its drug policy, this guide offers a gender-responsive diagnosis of those incarcerated for drug-related crimes in Colombia and proposes a series of recommendations for mitigating the damage produced by the war on drugs. The first part of the report explains the importance of a gender focus, performs a social profile of the women serving time

for drug crimes, and analyzes the impacts that incarceration has on the lives of these women, who are often caregivers and providers for others. The second part offers policy recommendations based on the premise that prison is neither a functional nor an adequate tool for tackling the drug problem; for this reason, the Colombian government must consider alternatives to imprisonment for low-level offenders and seek to reduce the impacts that imprisonment has had on those convicted for their involvement in the drug trade.





Prison from a Gender Perspective: Incarceration's Effects on Women Convicted of Drug Crimes

Women and men become involved in the drug trade in different ways, and their experiences behind bars are unique. What this often means in reality is that women imprisoned for drug-related crimes bear a number of burdens and inequalities that have a disproportionate effect on their lives and those of their family members. This section begins by explaining why it is important to view prison from a gender perspective—that is, a vision that differentiates between the experiences of men and women. It then explores women's experiences in the drug trade and in prison; specifically, it offers a general profile of the women who become involved in the drug trade, demonstrating that they tend to be poor heads of household who, in an attempt to provide for their families, end up performing low-ranking but high-risk jobs in trafficking networks, which ultimately places them and their loved ones in positions of increased vulnerability.

This vulnerability is exacerbated when women are sentenced to time in prison. This is the object of reflection for the last part of this section, which explores three different levels of impact that incarceration has on women: impacts on women and men who are convicted of drug crimes; impacts that generally affect women but that can sometimes also affect some men; and, finally, impacts that affect women alone.

Drug Policies and Gender: An Overdue Analysis

Throughout history, societies have assigned specific roles and tasks to men and women that become adopted as fundamental aspects of social organization. For example, in some communities, women are seen as the caregivers of children in the private sphere of the home, while men are assigned tasks in the public sphere, such as working to provide for their families or participating in politics. By contrast, other societies are structured in such a way that women are the ones who represent their communities in the public sphere. The category of gender has been used to study the diverse ways that societies have organized and defined the sexual differences between men and women. Biologically, men and women are different by virtue of their sex. However, the roles, practices, and ideas regarding what women should be and what men should be are socially constructed and can vary from context to context. This is why gender takes as a starting point the idea that the roles assigned to men and women are socially and historically constructed and are thus susceptible to change—and in fact have been transformed at different moments in history (Scott, 1986).

The category of gender is also useful for shedding light on the violence and inequality that stems from the traditional distribution of roles to men and women. For example, the fact that some societies have confined women to the private sphere means that women's opinions on public affairs are undervalued and that women are often economically dependent on their husbands or partners, thus limiting their possibilities for social mobility and autonomy. A gender lens helps bring these unequal and sometimes violent social relationships into focus. But above all, it empowers us to change these unfair social arrangements by ensuring that the roles assigned to men and women are constructed from more equitable and nonviolent experiences (Lamas, 1996).

Women and men have different experiences in the illegal drug trade and in the criminal justice solutions that are meant to respond to it. Importantly, these differences translate into disproportionate burdens and impacts on women drug offenders, which, in turn, places them in positions of even greater vulnerability. The prison system's disproportionate impact on women can be explained by the roles,

Women who become involved in drug trafficking tend to have specific profiles that, from the outset, place them in a position of vulnerability that is further exacerbated when they are behind bars.

tasks, and positions that have been assigned to women both in the drug trade and in society in general. The discussion below identifies the specific roles that women have assumed in the drug business and in prison, as well as the manner in which these roles have resulted in greater vulnerability and violence.

The Profile of Women Imprisoned for Drug Crimes in Colombia

Women who become involved in drug trafficking tend to have specific profiles that, from the outset, place them in a position of vulnerability that is further exacerbated when they are behind bars. First, these women are generally poor heads of household who enter the drug trade by virtue of the role that has traditionally been assigned to them as women: that of family caregiver. In addition, in light of their dire economic situations, these women must also assume the position of breadwinner in order to provide their children and other dependents with basic necessities.

Second, these women enjoy few opportunities in the labor market. Given their lack of education, they have access only to the most undesirable jobs and face increasing difficulty in securing employment. And third, drug trafficking organizations capitalize on the aforementioned vulnerabilities, convincing these women to perform poorly paid and highly risky activities where they can be easily replaced by others if captured, while the heads of these networks remain untouched (UN Women, 2014: 2). The elements that drive women to participate in the drug trade become exacerbated while they are in prison, leading to disproportionate impacts on their lives.

These women become involved in the illegal drug trade in a variety of ways:

- As human couriers—known as *mulas* (mules)—for domestic or international trafficking. Many women claim that traffickers use them as bait to distract authorities' attention and ensure that others are able to successfully carry drugs to their final destination. As explained in the Colombian daily *El Tiempo*, "Drug trafficking networks have identified Asian countries as a destination for cocaine; and to ensure the drug's arrival, they use *mulas*, or 'human couriers.' According to official reports, each month three people are caught in China with drugs on them, the majority of whom are from the Eje Cafetero and the Valle" ("Hay 144 colombianos condenados a muerte o cadena perpetua en el mundo," 2015).

- As low-level dealers in an activity commonly referred to as *narcomenudeo*, or microtrafficking.
- As human couriers who smuggle drugs into prisons (usually men's prisons).
- As cultivators of plants used for illegal drug production, or as workers who perform small-scale processing, packing, transporting, or trafficking activities.
- As performers of other low-ranking, high-risk duties, such as receiving and storing merchandise, serving as intermediaries, or serving as messengers within drug networks.
- As drug users who are criminalized *de facto*, despite the fact that possession for personal use is not criminally sanctioned. Within this group are particularly vulnerable populations, such as transsexual women and sex workers, upon whom criminal prosecution is selectively exercised.
- Women from ethnic minorities, such as indigenous and Afro-Colombian women, are usually involved in activities relating to production and processing, which are on the lowest rung in the drug trade: for example, the cultivation and harvesting of plants, the provision of domestic services and food preparation, and the transportation of small amounts of drugs.

The women who perform these activities tend to be assigned a specific task within a complex web that they never fully understand, and about which they are better off not asking. Many of them work in a state of permanent ignorance regarding who controls the trade, who is earning the money, and how the business truly functions. Most of these women are incarcerated for nonviolent minor offenses: 84.16% of Colombia's women prisoners were convicted or accused exclusively of a drug offense (compared to 78% of the general prison population) (INPEC, 2015). This means that the criminal system did not hold them responsible for other crimes, nor for membership in a criminal organization, nor for the carriage of weapons, nor for committing a violent act. These women, who are replaceable cogs in the wheel of the drug trade, are not the ones who truly profit from drug trafficking and do not represent a danger to society.

Furthermore, given that many countries establish their criminal sanctions according to the quantity and type of drugs being carried, and given that *mulas* are obligated to transport greater quantities of drugs than are self-employed leaders, the women who work as couriers often suffer much harsher legal consequences than their leaders. In addition, drug kingpins are usually able to afford good lawyers and to obtain other judicial benefits through their power and influence, while the women are forced to rely solely on the public defense system, whose shortcomings only lead to more drastic criminal sanctions.



Women's Voices from Prison:

When Women Are Used as “Bait” for International Trafficking

The story of Eleonor, a Mexican woman who was brought to Colombia so she could take cocaine back to the city of Guadalajara, reveals the many ploys that criminal organizations use to permeate the lives of women and pressure them to “take the easy way instead of the hard way” to perform certain tasks in the drug trade. According to Eleonor, these organizations “creep into your life through friendships or through a partner, and they find out where you live, who your family is—they investigate everything before offering you work.” When Eleonor changed her mind and wanted to pull out of the arrangement, she was coerced and intimidated. They told her, “If you don’t do this work, you have to send a family member to replace you.” In the end, she decided to make the trip, since it would pay the equivalent of a year’s wages. Eleonor has a son and works as a “tequila aide” in various restaurants in her home city in Mexico. She explained that her economic situation was not dire and that she “ended up becoming involved because of bad friends.”

Eleonor was captured in Colombia’s El Dorado Airport. She didn’t know what she was carrying: “I didn’t know what substance the police found when they drilled a hole in my suitcase.” She explained that when the officers verified that it was cocaine, “they told me I was under arrest” and “hailed me around the airport and took me to the authorities.” The authorities violated Eleonor’s right to remain silent without the presence of an attorney who could verify compliance with her right against self-incrimination, as they asked her insistently to confess which cartel she worked for. Finally, as a joke, she said that she “worked for Chapo Guzmán,” hoping it would put an end to the harassment. Eleonor wonders why they arrested her in the airport—if they had followed her to Guadalajara instead, they would have been able to capture the trafficking gang, “which is very easy to identify, because you meet them in a certain part where you hand over [the suitcase]. They could have caught them then.” Her proposal is clear: police should follow the individuals who transport the drugs to the point of actual delivery, so that they can capture the criminal organization; otherwise, “only one person falls and [the organization] continues ruining people’s lives.” Eleonor believes that the airport police arrested her to let other drug couriers pass through, and that they already knew she was carrying drugs.

For four days, Eleonor was held in the Emergency Response Unit of the Office of the Prosecutor General, where she was surrounded by men and forced to endure unsanitary conditions. Recalling what she went through, she told us, “I cried a lot” because “I felt alone and far away from my country.” Her story shows how fear is created by the mere act of arrest—the mere “thought of stepping into a prison, when I had never been in one before.”

Data from INPEC, Colombia’s national prison authority, reveal the few educational and employment opportunities enjoyed by women who end up joining the illegal drug trade, as well as the large role that caregiving and providing plays in their lives. For example, 74% of women prisoners in Colombia do not have a high school diploma (INPEC, 2016b). Furthermore, 93.4% of all women who entered prison for drug crimes between 2010 and 2014 had children, compared to only 76.2% of their male counterparts. But even more importantly, for 52.81% of the women (whether divorced, separated, single, or widows) who were imprisoned for these crimes, incarceration occurred under circumstances where they did not have the support of a partner in caring for their children; for men, this occurred in just 27.24% of all cases. With respect to women heads of household, 86.4% were detained solely for minor, nonviolent drug crimes, and 91.5% of those convicted were convicted for a drug crime alone, without the commission of any other crime (Uprimny, Chaparro, and Cruz, 2016).

This high percentage of women heads of household convicted for a single drug offense reveals the close relationship between, on the one hand, women who must care for their families but lack the resources to do so and, on the other, the opportunities presented by the illegal drug trade in meeting that need. At the same time, the fact that these women are convicted for a solitary and nonviolent crime, together with the fact that it is impossible to prove any direct links with criminal organizations, reveals their low status in the trade. This leads one to conclude that drug trafficking—rather than offering these women a solution to their economic problems—is a palliative that fails to lift them out of poverty and can even end up exacerbating it, especially once they are in prison.

Women's Voices from Prison:

Marginal Links to Criminal Organizations

The stories of Sandra, Piedad, Esther, Eleonor, Daniela, and Carolina reveal the different profiles and circumstances of women who become involved in drug trafficking, and the prices they pay after being deprived of their liberty. These six women entered the trade through friends and family members who, recognizing the women’s dire economic situation, proposed that they earn money by transporting drugs, selling drugs, or smuggling them into prisons. While some of the women were reluctant to perform this kind of work, others came from households where the use

and sale of drugs was commonplace—but in the end, all were captured because of their marginal relationship with the business as opposed to their holding positions of power within the trade.

Sandra's path to prison began when her husband died. She was unemployed and started asking friends for loans to buy food for her three children. One day, someone told her, "Take this package to this address, they'll pay you for it." In exchange for that "favor," Sandra was paid 30,000 pesos (approximately US\$10) and continued to take "things" from one place to another in her city. For six years, she worked "running errands," until she was captured with "17,000 pesos [about US\$6] in my pocket" and not an ounce of any illegal substance. Like Sandra, Daniela became involved in the trade because of money problems, deciding to transport drugs at the suggestion of a childhood friend who proposed that she smuggle drugs into a maximum-security prison. Daniela has always been a good worker, but after separating from her husband, she had to look after her son and daughter: "my children cost me my life," while for her husband, the house was more important "because it had cost him lots of work." She preferred "to be left without the house, but with the children." Daniela began working as a shop owner, but the rent was expensive and she did not earn enough to cover her overhead. This influenced her decision to listen to a "friend who called from prison," who then became her boyfriend and proposed that she "carry drugs into the prison, for 300,000 pesos [approximately US\$100]."

But adverse economic conditions are not the only reason that many women end up entangled in these complex situations. Family histories create connections that allow women like Piedad to have a more natural contact with the sale and consumption of drugs. Piedad's father has been using for fourteen years, and various family members sell bazuco (a cocaine derivative) on the streets of Bogotá; in fact, one of her aunts is also in the same prison due to a conviction under Colombia's National Narcotics Statute (Law 30). The husband of one of Piedad's cousins was the one who hired her to sell bazuco near a school.

Mexican sociologist Marcela Lagarde explains that many Latin American women are driven to the drug trade because of their needs, their conscience, and their culturally constructed duty to love their children—a love that is expressed in a woman's surrender and renunciation of herself (Lagarde, 2005: 165). Women's most frequent motive for accepting involvement in such a risky and socially illegitimate activity is to ensure the well-being of their children, such as being able to buy them "shoes" or "to give them money for their school snacks."

This panorama is even more complex with regard to rural women, who suffer a double discrimination: on the one hand, because of their rurality and, on the other, because of their gender. Many are victims of violence (United Nations Development Programme, 2011), and the stigma associated with coca and opium crops often prevents them from accessing public benefits. Moreover, the fact that the rural areas in which they live are characterized by the absence of state institutions has led to governance by illegal armed groups, which has translated into greater violence and in increased barriers to the social and economic mobility that would permit these women to lead dignified lives (Torres, 2011).

Colombia's Prison Crisis and Its Impact on Women

In this section, we will demonstrate how prison affects women in unique and disproportionate ways. We will classify prison's impacts according to three levels: impacts on women and men charged with drug crimes; impacts that generally affect women but that can sometimes also affect some men; and, finally, impacts that affect women alone.

Colombia's Prisons: An Unconstitutional State of Affairs for the Entire Prison Population

Colombia's prison crisis is so extreme that, on several occasions, the Constitutional Court has acknowledged massive and general rights violations of the prison population, declaring the existence of an "unconstitutional state of affairs" in the country's prisons.¹ In essence, individuals incarcerated for drug-related crimes

¹ According to the court, "The current penitentiary and prison system violates, among others, the rights to life, to personal integrity (physical and psychological), to human dignity, to be free from cruel, inhuman, and degrading treatment, to personal security, to equality, to nondiscrimination, to intimacy, to family, to liberty (in general and especially sexual and reproductive liberty and the freedom to choose one's profession), to health, to social reintegration, of subjects of special constitutional protection (children, ethnic and cultural minorities, persons with disabilities, women, the elderly, youth, people in situations of displacement, people of sexually diverse orientations or identities, and those in relationships of subjection, to mention the main subjects), to education, to work, to recreation and sport, to freedom of expression, to information, of petition, and to due process and access to justice—again, to mention just a few of the main constitutional rights violated or threatened" (Sentence T-388 of 2013, para. 7.2.1).

face a series of violations throughout the entire criminal process, and not just when they enter prison. Their limited agency during legal proceedings, during the wait for the conviction to be defined, and during their time in prison are perhaps the most significant factors that increase their vulnerability.

The Trial Stage: Silence and Misunderstanding

Our interviews revealed that various facets of the right to counsel are violated or unfairly restricted for individuals deprived of liberty due to drug-related crimes. Their lawyers—often due to a reliance on technical legal language or a lack of communication with clients—end up being perceived as working against defendants’ interests. This can be seen in disagreements over the probabilities of success during key procedural milestones—for example, when deciding whether to accept charges or regarding the advisability of filing an appeal. Further, in spite of defendants’ right to speak privately with their lawyers, the possibilities of such communication are restricted, especially once the defendant is in prison.

Defendants’ silence, rather than being exercised strategically as a right, tends to be a stance adopted in light of their unfamiliarity with legal language and what is happening during the process. In addition, some public defenders’ lack of knowledge of the utility of technical evidence violates defendants’ right against self-incrimination. Sometimes, these lawyers do not ask judges to consider defendants’ situations of vulnerability or the possibility of alternatives to imprisonment. In addition, some judges, when issuing their rulings, fail to provide adequate reasoning for decisions that deeply affect the defendants, such as the imposition of custodial measures or a declaration of the unlawfulness of the conduct, which prevents them from adequately exercising their right to counsel. Finally, in some cases, defendants’ right to be present at trial has not been guaranteed in light of the fact that, at the moment of their arrest, they had existing arrest warrants that they had been unaware of.

The likelihood that such guarantees will be respected for people who live in remote rural areas is even less, given the problems inherent in local public defense and judicial systems. These systems currently lack the necessary adaptations—such as interpreters—to guarantee the right to counsel for members of ethnic minorities or other vulnerable groups.

Women’s Voices from Prison: When Criminal Defense Works against Defendants

In the hours directly following an arrest, it is essential that women have the support of someone who can ensure the protection of their interests in procedural decisions, particularly in the process of accepting charges, which occurs during the hearing to bring charges—which, in turn, is usually held immediately after the preliminary hearing to formalize the arrest.

The women we interviewed expressed the perception that their public defenders sometimes failed to look out for their interests, given that the women accepted charges without understanding the law or procedures and without understanding the consequences of pleading guilty.

This raises a red flag for the National Public Defense System, which is tasked with ensuring that public defenders have the appropriate training and knowledge—and a reasonable workload—and are thus equipped to provide adequate counsel to vulnerable populations, particularly women arrested for minor drug crimes. Several of our interviewees noted that their public defenders pressured them to plead guilty. Sandra, for example, said that “everything [the prosecutors] read was a lie,” which prompted her lawyer to suggest that she accept charges in order to avoid going to trial. She said, “I thought I would die if I went to trial, and there everything would end for me”; her lawyer’s only response was, “We’ll see.”

Similarly, the behavior of many judicial officials reflects a lack of awareness of and sensitivity toward the life conditions of women who appear in courtrooms for drug-related offenses. As Eleonor explained, “You’re a criminal from the very first moment, as if you’ve always worked in the trade”; in her case, the judge deemed her a danger to society and ordered her to be placed in preventive detention. In addition, the prosecutor treated her “as if I were the most wanted drug lord,” saying that Eleonor was a “killer” who “damages the ozone layer” and was thus “the worst of criminals.” Moreover, the structure of preliminary hearings does not allow defendants to speak or to explain the conditions and circumstances under which they committed the crime; their only opportunity to talk is in response to the question, How do you plead—guilty or not guilty? Eleonor recalls thinking, “I’m not guilty, I just wanted to carry a kilo” and “save myself from that gang.”

Awaiting a Decision: Preventive Detention

Preventive detention is often used for those who are being accused of drug-related crimes. According to Colombia's Code of Criminal Procedure, issued by Law 906 of 2004, the use of preventive detention is justified in three circumstances: (i) when there is "an imminent risk of the defendant hiding, fleeing, or being absent from the place where the investigation is taking place"; (ii) when there is "a likelihood of tampering with evidence"; and (iii) when there is "a danger to the safety of the community or of the victim to the extent that if the arrest is not made, the suspect may commit punishable behavior against them" (Law 906 of 2004, art. 300). As of December 2015, 1,128 of the 3,871 women incarcerated for drug crimes—that is, 29.1%—were being held in preventive detention (INPEC, 2015). Many of them have been in such detention for years, due to an inefficient system characterized by chronic congestion, postponed hearings, and neglect of defendants' cases. As a look at several of their case files reveals, these women's liberty was neither an obstacle to their appearance at court proceedings nor an impediment to preserving evidence—and much less a threat to the community.

Women's Voices from Prison: The Accused Cannot Reduce Their Sentences

The accused cannot reduce their prison sentences until they have been convicted, even if they have already pleaded guilty. One recommendation that emerged from our interviews with women prisoners from El Buen Pastor is that if a woman pleads guilty, she should be able to reduce her sentence through work as soon as she enters prison. Currently, a final ruling is required before a prisoner can work, which is why Daniela criticized the lawyer whom her brother hired for her sentencing hearing. She spent two years in prison without this possibility given that the lawyer appealed the conviction handed down by the judge but never substantiated the application before the second instance court, which meant that the conviction was not only confirmed but that it was communicated nearly two years after the initial hearing. Daniela said that more than one of her hearings was delayed: when they took her to the sentencing hearing, she had already spent a great deal of time in prison, doing nothing.

Life behind Bars: An Unconstitutional State of Affairs

The Constitutional Court has identified an unconstitutional state of affairs within the country's prisons. The court's first pronouncement in this respect was in Sentence T-153 of 1998, when the problem of overcrowding was much less severe than it is today. In the face of the prison system's noncompliance with repeated orders from the court to correct this situation, the court declared a new state of unconstitutionality in Sentence T-815 of 2013. As of March 2016, Colombia's prison system—which has a total capacity of 78,181 prisoners—was home to 122,020 prisoners. In penitentiaries such as that of Riohacha, overcrowding is as high as 479% (INPEC, 2016b).

Nonetheless, as the Constitutional Court has acknowledged, the prison crisis is hardly a new phenomenon; rather, it seems to be a permanent trait. Historically, there is evidence to show that prison has been deliberately portrayed as a horror-inducing site, in such a way that it is preferable to have insecure employment, but in freedom. Today, it would seem that Colombian prisons are deliberately allowed to be what they are, so that the best off among prisoners are in worse conditions than the worst off among the homeless. (Sentence T-388 of 2013, para. 7.4.2.2). According to the court, "What is new in prison is not the crisis but the recognition of dignity and fundamental human rights, the acquisition of the undeniable duty to respect all human life, even that of those who did not respect the lives of others" (ibid.).

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Prison is a place where men and women suffer a vicious cycle of harm, to the extent that many prisoners commit suicide or die under strange circumstances. The suicide rate in prison is between four and ten times greater than in the outside world (Rubio et al., 2014). Moreover, of the fifty-three disciplinary investigations that Colombia reported to the United Nations regarding prisoner deaths resulting from alleged negligence as of 2013, only three resulted in sanctions—the others were either under inquiry or had been dismissed (Committee against Torture, 2014). If there is a place where the protection of human rights and the Constitution is neglected, it is prison. Take, for example, the right to life: the prevalence of HIV, tuberculosis, and other fatal diseases is up to twenty times greater behind bars, according to studies by the University of Antioquia (Rueda, 2014). Another example is the right to health: only 73 of Colombia's 138 prisons have in-house medical personnel ("Hay 144 colombianos condenados a muerte o cadena perpetua en el mundo," 2015).

Considering current prison conditions and the various barriers that defendants must face within the criminal system, prison is a place for nobody. The Constitutional Court, in addition to issuing orders concerning specific cases, has called for an in-depth rethinking of the country's criminal and penitentiary policies. In addition, the Civil Society Commission on Follow-Up to Sentence T-388 of 2013 has been created to monitor the government's compliance with the court's orders (Comisión de Seguimiento de la Sociedad Civil, 2015). In addition, the United Nations Committee against Torture has called on Colombia to explore alternatives to incarceration in order to reduce overcrowding (Committee against Torture, 2015). These are important precedents for change.

Women's Voices from Prison: What Are Living Conditions Like in Prison?

Life in prison is difficult not only because of overcrowding—El Buen Pastor, for example, has an overcrowding rate of nearly 50%—but also because of inadequate health care and poor living conditions. The most dramatic case of failing health among the women we interviewed is that of Sandra, who, at 67, is one of El Buen Pastor's oldest prisoners. Seventeen months after entering El Buen Pastor, she was transferred to the medium-security prison known as Jamundí, located in Valle del Cauca, as part of the prison system's decision to “roll out that prison, taking everyone they wanted without considering how far away they'd be from their families.” During her three years there, Sandra began to suffer from gastritis and skin problems due to the sun, heat, and water. She also currently suffers from osteoporosis, noting that health-care services have been “average.” She told us that the only medication she receives for her gastritis is omeprazole, and that she gets calcium “once in a while” for her osteoporosis. One day, as she was leaving her cell and “trying to avoid stepping on a cellmate who sleeps on the floor,” Sandra fell and fractured her right arm. She said, “They took me to the hospital, where I was treated.” But after that, she did not receive any therapy to recovery mobility in her arm, having to resort to “doing therapy myself, moving my arm back and forth.”

It is unreasonable that Sandra, a woman with osteoporosis who suffered a fall, has access only to emergency care and not to any type of rehabilitative therapy: this is the price that one must pay in health when placed behind bars. For many women prisoners, visiting the doctor is difficult, since prisoners must first obtain “a referral, which takes three or four days.” In the meantime, they are forced to self-

medicate in order to manage their pain, which often means that when they finally go to their appointment, there is no motive for the consultation and they do not receive medical attention—because, according to the medical personnel, “they don't need it.”

Women prisoners face two other important health issues: problems with their mental health, which suffers greatly during incarceration, and the consumption of narcotic substances as a way to manage “the pressure of being inside.” According to some of the women we interviewed, depression stemming from uncertainty about legal proceedings, their prison sentences, daily worries, and the well-being of their children lead women to “cope with the hardship” through drugs. One distinctive trait of women's imprisonment is that their relationship with the outside world is reduced to a minimum. Many do not receive visitors because their families lack the resources to make the trip, or because they blame the women for having become involved in the drug trade. Esther told us that her father chastised her for “selling drugs, because everyone knew that my family was hardworking and honest,” and that he did not visit her while she was in prison. Many women explained that these types of circumstances turned them into regular cocaine and marijuana users, noting that it “is good for us because it relaxes us.”

Lack of Participation: Prisoners' Voices Fall on Deaf Ears

Another problem with Colombia's drug policy and its effects on men and women is the fact that, until recently, the policy was crafted at a high level under a shroud of secrecy and impenetrability—and, as a result, without civil society participation. Although the Political Declaration and Plan of Action on International Cooperation Towards an Integrated and Balanced Strategy to Counter the World Drug Problem, adopted by the United Nations Commission on Narcotic Drugs in 2009,² acknowledges the importance of civil society participation in the crafting of drug policies, the international community is still defining specific mechanisms for ensuring that such processes are truly participatory (Barret, 2012).

² According to paragraph 9 of the declaration, “[We hereby] acknowledge the important contribution made by women in curbing the world drug problem, commit ourselves to ensuring that drug control policies, measures and interventions take into account the specific needs and circumstances that women face with regard to drug problems, and decide to undertake effective measures to ensure that women, as well as men, have access to, and benefit equally and without discrimination from, drug control policies and strategies by involving them actively in all stages of programme and policy development and implementation” (Commission on Narcotic Drugs, 2009).

Recently, Colombia has begun to develop tools for civil society participation in the country's drug policy, in accordance with Resolution 54/11 of the United Nations Commission on Narcotic Drugs (2011). In addition to creating the Advisory Commission on Drug Policy—an advisory body comprising independent experts from civil society—Colombia has organized several regional-level gatherings with specific sectors of civil society, including students, journalists, academics, and judicial officials. With regard to the commission, three of its nine commissioners are women; with regard to the broader participatory spaces, it is important that the government find ways to more actively involve the women most affected by the drug policy. The voices of people who are or have been incarcerated, as well as those of their families, should be heard; in addition, the government should take care to include the perspectives of indigenous people, rural citizens, Afro-Colombians, foreigners, and women with diverse sexual orientations. Thus, although important advances have been made, much remains to be done to ensure that the country's drug policy is designed and implemented in a way that incorporates the perspective of those living behind bars.

The Discrimination, Exclusion, and Barriers Faced Largely by Women Prisoners

In this section, we will identify and characterize the impacts that incarceration has on people whose roles in society involve caring and providing for others. Although some men fit this profile, women are generally the ones who assume these two roles when faced with economic necessity, which can be explained by the traditional societal values assigned to the care and protection of children. An examination of the experiences of women caregivers and providers who are incarcerated allows us to evaluate prison policies from a gender perspective and understand the differentiated effects that these policies have on men and women.

Impacts of Prison on Women Who Are Caregivers and Providers

As mentioned earlier, a large percentage of women who enter prison for drug-related crimes are mothers who are heads of household, which ultimately means that they are the caregivers and providers who enable those under their care to live in dignity. Although this phenomenon can affect both men and women, it generally affects women in light of the roles traditionally associated with femininity. Historically, women have been assigned tasks related to the care of others (Lamas, 2005: 156),

including raising children, caring for disabled individuals, and looking after the elderly. This caregiving role tends to place women in a position of vulnerability because, on the one hand, this role often falls exclusively on women when husbands or fathers are absent and, on the other, when this function is connected with poverty, women must also become providers but often lack the necessary conditions to fulfill both roles. These two situations are aggravated when women are imprisoned.

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Criminal penalties have differentiated impacts on women and frequently lead to negative consequences for their children and families, for many women, in addition to caring for dependents, are also single mothers who lose the support of family members when they go to prison. In spite of this reality, prison sentences usually fail to consider women's responsibilities in caregiving and providing, which can lead to the weakening and destruction of family ties (United Nations Development Programme, 2015: 9). Although each detention center has its own policy—with some allowing newborns to remain with their mothers in prison—

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women's sentences represent an enormous obstacle for maintaining custody of their children, or at least for being able to see them on occasion (Malinowska-Sempruch and Rychkova, 2016:110–11). In this sense, the lack of a gender perspective in Colombia's drug policy has led to practices that are insensitive to the differentiated impacts that prison has on men and women. Criminal policies and the criminal justice system have failed to consider the relationship between individuals who are imprisoned for drug-related offenses and the caregiving and providing roles that these individuals play in society and which is

deeply affected by their incarceration.

This problem is also present when women's partners or spouses are incarcerated. Here, and also by virtue of women's societal role as caregivers, women must assume additional responsibilities, converting their loved one's sentence into a punishment not against individuals but against families—particularly the mothers, daughters, and wives of the prisoners (Pérez-Correa, 2014). Women are the ones who provide for their spouses or partners, visit them regularly, and connect them with the

outside world. In addition to taking on the costs of their legal defense, women are the ones who, in corrupt prison systems, pay bribes to allow their partners to access the basic goods that make their lives behind bars more bearable. In such contexts, everything—even life itself—has a price, and women pay this price dearly with their work, time, and patience. The stigma generated by the incarceration of a husband or partner also means that women’s relationships within the community, at work, and in other arenas is affected; indeed, many women leave their jobs, stop seeing family members or friends, or end up suffering health problems (Pérez-Correa, 2015). This situation is fundamentally different when women are the ones behind bars, for many end up being abandoned by their families and—far from receiving understanding and support—suffer increased pressures and rebuke due to the fact that they can no longer fulfill their caregiving responsibilities and must try to fulfill these roles from inside prison.

Women’s Voices from Prison: The Erosion and Weakening of Family Ties

Our interview with Piedad suggested that many women prisoners feel “abandoned” and that “nobody visits them because they’re estranged from their families.” Daniela told us that many husbands abandon their wives when the wives enter prison: “To tell the truth, for a woman it’s easier to wait for her husband who’s in prison, to come visit him, to not abandon him”—something that the men do only “for a little while.” She said that she did everything to ensure that her boyfriend got out of prison “clean,” but that as soon as he left, he returned to his wife, while Daniela remains in El Buen Pastor, “waiting for the day I can see my children.”

Women’s worries center on their children. Piedad explained that despite “struggling so much to raise my children,” today “I don’t have them, I can’t enjoy being with them.” She added that she didn’t know whether her “daughter, three years old, knows if I am her mother.” Piedad has been unable to see her daughter while in prison, and she fears that when she leaves, the young girl will not “accept me as her mother.”

One of the greatest impacts on caregivers who are incarcerated is at the emotional level. The testimonies of the women we spoke with demonstrate an intense preoccupation with the abandonment of their children while the women carry out

their sentences. Similarly, the fact that women’s caregiving role is often a fundamental part of women’s lives means that their identity is directly affected by their role as mothers and the protectors of others (Lamas, 2005). In this way, women’s inability to fulfill the tasks associated with caregiving generates frustration, in addition to chipping away at family ties and roles (Saavedra, Lappado, Bango, and Mello, 2014). This occurs, for example, when children are obligated to take on the responsibility of maintaining the household or income, or when these tasks are assigned to another family member who is not prepared to take them on. On top of this, nearly one-third of mothers who entered prison during the last five years are located in detention centers outside their department of residence, which has an even greater impact on their family ties and on their caregiving relationship with their children (Uprimny, Chaparro, and Cruz, 2016).

Women’s Voices from Prison: Long-Distance Mother-Child Relationships

Eloísa explained to us, “My long-distance relationship with my children has made me suffer. I have endured all of this, I have gotten sick, I have suffered a lot, but most of all I have suffered because of their absence.” What worries her most is the fact that, without her being home, her children seem to have gone adrift and are faced with the responsibility of daily survival: “One time, [my son] was hit by a car while riding his motorcycle, and the oldest got drunk and got into a fight. My oldest daughter’s daughter also has problems, so this hurts me even more. Now when they come here, they say, ‘Mom, what should I do, outside [the prison when I came to visit you] I had to hire someone to store my things, and now I have to pay them.’ They tell me they don’t have money, that they were fired from work or haven’t been paid. All of this is very painful for me.”

The women also regret not being able to watch their children grow. Johana, for example, said that she does not want to sell drugs again: “I’m losing a lot of time with my children, because although I’ve been very involved in their lives—now I see them every month—you start to think. You realize that you’re losing their childhood, the chance to be with them, to help them with their homework. And picking them up [from school], because there’s nothing like picking them up yourself and looking out for them.” Similarly, Sandra stated, “I think the hardest thing about being a prisoner is being separated from your children. You sacrificed so much to raise them—and now, knowing that you don’t have them, that you can’t enjoy being with them—even if you have no food to eat, at least they’re by your side.”

Finally, a recurring concern among the women we interviewed is the abandonment of their children when the women go to prison. Since these women are caregivers, their absence at home can sometimes mean leaving their children to their own devices or in the hands of uninterested fathers or partners. Such is the case of Yaneth, who complained that the father of her children “doesn’t have time for them. He spends his time working, and when he’s not working, he’s playing tejo or pool. Or he goes and stays with the woman he’s seeing. My kids have raised themselves alone, they’ve had to do everything by themselves. One day he came home and hit my daughter. We had a problem there and I never spoke to him again.”

Social Inclusion Programs and Their Impact on Women

According to data from INPEC (2016a: 39), as of February 2016, 76.1% of the country’s prison population was participating in at least one of the three options for social inclusion offered by prisons: work (including jobs in industrial, handicraft, agricultural, and administrative areas within the prisons), education, and teaching. Of the population that participated in these programs, 48.8% benefitted from work opportunities, 49.2% from educational opportunities, and 2% from teaching opportunities in which they served as instructors for other prisoners. When disaggregated by gender, this panorama shows the limited presence of women in the prison system’s social inclusion programs. For example, of the 45,085 individuals benefitting from employment opportunities, just 3,627—or 8%—of them were women. With regard to education, only 3,230 participants of 45,380 were women, representing just 7.11% of the group. Finally, with regard to teaching opportunities, only 163 of the 1,846 participants were women—that is, 8.82%. In all, 92,311 prisoners signed up for social inclusion programs, of which only 7,020—a mere 7.6%—were women.

These statistics reveal an imbalance in men’s and women’s involvement in social inclusion programs in prisons. And if women’s access to these programs is limited, one can reasonably conclude that their possibilities for social mobility inside prison are equally restricted. According to a report by the United Nations Development Fund for Women (UNIFEM) on the situation of women prisoners in Colombia, the main characteristic of study programs offered to women is their lack of resources and continuity. On the one hand, “nonformal education, cultural activities,

and sporting activities are not carried out on a permanent basis, regularly, or with planned schedules” (UNIFEM, 2006: 52). The limited funding allocated to such initiatives translates into instability and a lack of continuity among teachers, as well as weak results. On the other hand, the report indicates, with regard to formal education, only 35% of women prisoners participate in formal educational programs, and most participants tend to drop out “when faced with an employment opportunity, such as in cleaning, which offers them a greater possibility of reducing their sentence than that offered by education, in addition to offering economic remuneration, which helps them pay for basic necessities” (ibid.).

With regard to employment, a report by the Ombudsman’s Office expresses concern over “the dramatic lack of training programs in activities that prepare women for their life in freedom and that ensure their economic independence” (cited by UNIFEM, 2006: 53). Moreover, the Ombudsman’s Office calls attention to prison officials’ disinclination to evaluate the profile of each woman prisoner and propose relevant career tracks. But the most worrying facet of this situation is the fact that “the type of work offered to women is that ‘traditionally’ considered feminine: the production of handicrafts, flowers, or stuffed animals, or activities related to cooking and cleaning” (UNIFEM, 2006: 53). This reinforces the same gender roles that, in principle, placed these women in positions of economic vulnerability, leading to the conclusion that as soon as women leave prison, their opportunities for social mobility will be similar to those at the outset and they will be likely to join the drug trade once again to sustain their families.

Furthermore, gender stereotypes around employment affect women who belong to the LGBTI community. A document published by the Ombudsman’s Office on the situation of the LGBTI community in Colombian prisons confirms the existence of barriers that prevent members of this social group from accessing educational and employment opportunities inside prison. For example, prison officials charged with managing these opportunities often claim that lesbian and transsexual women disrupt workshops and trainings because they are prone to find a romantic partner or because they face discrimination by other prisoners. Many officials also require

In all, 92,311 prisoners signed up for social inclusion programs, of which only 7,020—a mere 7.6%—were women.

lesbian and transsexual women to dress and behave in accordance with traditional feminine norms and to perform jobs that correspond to those norms (Defensoría del Pueblo, 2009: 38). This situation reveals the prison system's insensitivity toward gender and the barriers faced by women when they enter the job market and try to succeed within it.

Women's Voices from Prison: Life After Prison and the Possibility of Relapse 1

The women we spoke with expressed fears about the future and about what awaits them when they join the outside world. Sandra, for example, had already been in prison once for drug crimes. She explained what her life was like after leaving prison the first time, noting that she went back to school with the hope of landing a job. However, she soon realized that her romantic partner was using drugs: "He came into my life like the world's best 'frog prince.' I fell in love. He behaved very well, and I went to live with him. But after we began living together, I realized that the guy liked to use bazuco, and, well, I was so in love with the guy, I said, 'Look, I'm going to help you get clean.' And that was how I started to get involved again with this kind of crime."

The daily fight for survival is difficult for these women, and this reality often overpowers any hopes or dreams they might have about living on the outside. That is how Esther described it. She explained that she hopes to "create a nonprofit that helps these girls" once she gets out of prison and that she plans to work hard to earn the money needed for this endeavor. She wants to first "open a restaurant and then the foundation." But Esther also knows that "there's more than one person waiting outside for me with [drugs], waiting for me to get involved again." Thus, she accepts the possibility that she might fall back on microtrafficking: "The more you deny it, the more quickly it arrives, so what I need to do is pray to god that another door is opened for me." As Daniela explained to us, "The streets are tougher than prison," since "at least here you have food and a place to sleep," while "outside you have to pay rent, bills, and all that."

The Differentiated Impacts of Prison on Women Incarcerated for Drug Crimes

In Sentence T-815 of 2013, the Constitutional Court ruled that women prisoners are the subjects of special constitutional protection, thus confirming the fact that imprisonment has specific effects on their lives and calling for these effects to be addressed as part of a diagnosis and resolution of the country's prison crisis. In its ruling, the court pointed to the need to adopt a differentiated approach in the analysis and construction of the country's criminal and penitentiary policy, as well as the importance of this approach for overcoming the current unconstitutional state of affairs. In the words of the court:

*As demonstrated by studies and reports on the situation of women in the penitentiary and prison system not only in Colombia but throughout Latin America, society's gender discrimination and exclusion is being reproduced inside prisons. In particular, insofar as the system is oriented primarily toward men, the needs and fundamental rights of women pass unnoticed on many occasions ... **The penitentiary and prison policy must adopt a gender perspective that allows it to avoid—or remove, as the case may be—the barriers and obstacles that women face in the effective enjoyment of their fundamental rights.** (Sentence T-815 of 2013; emphasis added)*

The most revealing aspect of this ruling is the court's conclusion that prison is neither conceived of nor constructed to address the specific needs of women. This reality has had concrete impacts on women prisoners, particularly on their health and the health of those under their care—a situation made all the more urgent considering that drug crimes are becoming increasingly "feminized," with greater numbers of women being imprisoned for drug offenses. In this section, we will first describe the feminization of drug crimes and will then demonstrate the impacts of incarceration that are unique to women who have committed these crimes.

The Feminization of Drug Offenses

The growth rate of the female prison population has been much higher than that of the male population, and the growth rate of women imprisoned for drug crimes has been higher than that of the female prison population in general.³ While the female prison population grew by 268% between 2000 and 2015 (compared to 240% growth among the male population), the population of women incarcerated for drug crimes grew by at least 314%. This means that, currently, at least 45% of women prisoners are behind bars for drug offenses. It also means that women represent 16.2% of all individuals imprisoned for drug crimes, while they represent only 7% of the overall prison population.

Maintaining custody of their children, separating from a partner who abuses them, enduring a partner's illness or loss of employment, and being unable to pay a debt are situations that place serious economic pressure on women.

This phenomenon has two principal explanations: first, the context described above shows how drug trafficking is becoming an increasingly viable option for caregivers and providers to satisfy their families' economic needs; and second, there is evidence that the criminal system is more selective and "efficient" when it comes to punishing women who participate in drug-related crimes.

³ Due to a change in statistical tools, INPEC's data on prisoners' criminal behavior for the period 2000–2009 includes just one crime per prisoner, whereas for the period 2010–2014 it refers to all criminal acts registered in the system (in other words, each type of criminal behavior is counted separately for each prisoner). This means that the two sets of INPEC's data on people incarcerated for drug crimes are not strictly comparable. To correct this problem, for the period 2010 onward, we considered the number of people imprisoned for drug crimes to include only those in prison for the crimes of trafficking, carriage, or manufacture; this avoids double counting prisoners who committed more than one drug-related crime. As a result, we may have underestimated the number of people imprisoned for drug crimes. For that reason, when making comparisons about people imprisoned for drug crimes in relation to the total number of prisoners from 2010 onward, we use the expression "at least."

Women's Voices from Prison: Life After Prison and the Possibility of Relapse 2

Nonviolent, minor offenses with excessive punishment

On August 18, 2011, at 4:45 p.m., police officers who were conducting background checks on passers-by on the corner of Carrera 16 and Calle 10 of Bogotá asked to perform a search on Zury, a young woman aged twenty-four. Before they began the search, Zury, very nervous, voluntarily handed over four transparent baggies containing 80.6 grams of marijuana. She was arrested and brought to the Office of the Prosecutor General. Zury pleaded not guilty in her hearing. Although she claimed that she was carrying only for personal use, the judge from the First Criminal Court of the Paloquemado Circuit ruled otherwise, stating that the defendant "had to present evidence to demonstrate this, which she did not do, as soon as she made her statements regarding this possible condition." Zury was sentenced to sixty-four months in prison and ordered to pay a fine of two minimum legal monthly wages. She was granted neither probation nor house arrest because the sentence exceeded five years. Zury remains in prison today and will finish serving her sentence in August 2016.

Similarly, while in 2000 twelve out of every one hundred prisoners were behind bars for drug crimes, in 2015 at least twenty out of every one hundred were there for such crimes. Among male prisoners, in 2001 ten out of every one hundred were there for drug crimes, while fifteen years later this number increased to at least eighteen. And for women, what was once forty out of every one hundred at the beginning of the century grew, fifteen years later, to at least forty-six out of one hundred (INPEC, 2016b).

This increasing proportion of drug crimes among all criminal conduct committed by women can be understood, then, as the result of decisions or situations that end up being particularly costly for women within the context of unequal power relations that exist in a patriarchal society such as that of Colombia. Maintaining custody of their children, separating from a partner who abuses them, enduring a partner's illness or loss of employment, and being unable to pay a debt are situations that place serious economic pressure on women within an environment that fails to offer them sufficient opportunities. For many women, their involvement in the drug trade can be explained by the pressure generated by some of these borderline situations.

Drug Crimes: The Criminal Justice System's Selectivity against Women

Although drug-related arrests as a proportion of all arrests constitute a lower percentage for women than for men, this percentage for women has increased over time, growing from 18.3% of all arrests in 2005 to 27.3% in 2014 (Uprimny, Chaparro, and Cruz, 2016). In addition, if one analyzes the events that unfold following a drug-related arrest, the criminal justice system's selectivity against women comes to light.

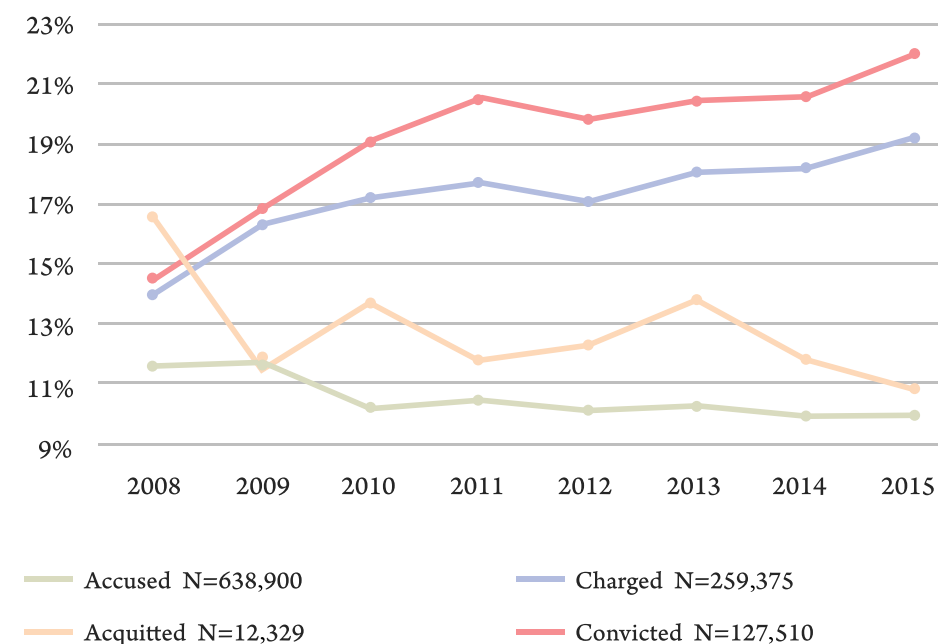
In general, the rates of indictments,⁴ convictions,⁵ and overall effectiveness of criminal prosecution⁶ are greater for drug crimes than for homicides (García Villegas, Espinosa, and Jiménez Ángel, 2013: 52). But prosecution is even more efficient when it is against women: while women accounted for just 10% of arrests for drug crimes in 2015, they accounted for 22% of the guilty verdicts, indicating that the criminal system affects women more severely than men. Occasionally, this disproportionality is aggravated on account of the punitive populism that has characterized Colombian legislation on criminal issues, which is underpinned by media outlets' calls for more drastic punishments for drug crimes. As illustrated by the graphic below, although the proportion of women among those accused of drug crimes is low and is decreasing over time, the proportion of women among the total charges filed is much larger and continues to grow. A similar phenomenon occurs during court proceedings: the proportion of convictions against women compared to the total number of convictions for drug crimes is on the rise and is relatively much greater than the number of charges filed against women. Meanwhile, the proportion of acquittals for women compared to the total number of acquittals is significantly lower than that of convictions, and is decreasing.

4 This first indicator measures the efficiency of justice during the investigation phase by comparing (i) the number of formal charges brought against individuals against (ii) the number of arrests.

5 This second indicator measures the system's efficiency during the trial phase by comparing (i) the number of convictions against (ii) the total number of charges filed.

6 This third indicator measures the overall efficiency of criminal prosecution by comparing (i) the number of convictions against (ii) the total number of arrests.

Proportion of women among the accused, charged, convicted, and acquitted for drug-related offenses, 2008–2015



Source: Office of the Prosecutor General, SPOA database (2015)

In other words, despite the fact that the Office of the Prosecutor General receives relatively few cases of possible drug-related crimes committed by women (in 2015, 10% of such cases were committed by women, compared to 90% by men), the criminal system is not only more efficient but also more severe in investigating these crimes—and even more so in handing out punishments—when it comes to women. This tendency is on the rise, suggesting that the incarceration of women for drug crimes is a phenomenon that, due to the criminal system's gender bias, seems to be aggravated over time.

Pregnant Women and Sexual and Reproductive Health in Prison

The Ombudsman's Office has shed light on a particular facet of imprisonment that affects only women: pregnancy-related health care. Incarcerated women do not receive adequate medical care during pregnancy, childbirth, or the postpartum period. The prison system also has severe shortcomings with regard to child health care. Moreover, women prisoners lack access to health services for illnesses related to their biology as women, such as breast cancer and cervical cancer. Nor do women prisoners enjoy easy access to family planning methods or to sexual and reproductive health care (Defensoría del Pueblo, 2004). These conditions lead to even more vulnerability among women prisoners, which again confirms the country's prison crisis in general and its negative and differentiated impacts on women in particular.

Pregnant women face numerous barriers in accessing adequate health services in prison. According to a 2014 study, as a result of the stigma that women prisoners face, prison staff tasked with attending to pregnant women constantly reproduce stereotypes that censure these prisoners as “bad mothers” (Mejía, 2014). Similarly, access to health services in general is very poor. According to a report by the Colombian Lawyers' Collective, health services categorized as levels I and II (low and intermediate complexity) have very low coverage and quality, as there are insufficient medical staff, and visits are kept extremely short. There is also a shortage of health-care professionals for women's sexual and reproductive health needs, as well as for children's health (Colectivo de Abogados, 2009). In other words, prison conditions for pregnant women are extremely poor, considering that these women require frequent medical care and oversight; many pregnant prisoners resort to *tutelas* (writs of protection) to demand compliance with their right to health, though this legal mechanism is not always effective (Mejía, 2014).

Certain mechanisms, such as child-care facilities, have been installed in prisons so that children can spend time with their mothers once they are born and so that their mothers enjoy the possibility of rearing their children while in prison. Nonetheless, as demonstrated by UNIFEM, these facilities have not produced the hoped-for results; mothers have only limited access to these facilities, do not have

As a result of the stigma that women prisoners face, prison staff tasked with attending to pregnant women constantly reproduce stereotypes that censure these prisoners as “bad mothers.”

prior knowledge of the conditions in which their children will be housed, and are unable to become actively involved in child rearing. Further, when their children turn three, they must be sent to live with a family member or an external institution that can care for them. This rupture generates emotional trauma that is left largely unaddressed by the prison system (UNIFEM, 2006: 44).

According to a 2012 report published by the Advisory Commission on Criminal Policy:

One of the environments where the adoption of a gender perspective is necessary is the prison system. In this regard, it is important to recall that, statistically, the number of women in prison is less than that of men, of which one of the main consequences is that prisons have not been designed with gender differences in mind, or with an eye toward the particularities of women in terms of conjugal visits, the situation of children who need to live in prison with their mothers, or women's health needs, especially concerning their reproductive health, to cite a few issues (Comisión Asesora de Política Criminal, 2012: 163).

This situation affects pregnant women in particular, who suffer from a lack of equipment, infrastructure, and personnel to meet their specific needs. Ultimately, prison is not designed for women; it fails to respond to their biological needs, thus endangering their bodies, lives, and children.

The effects of incarceration on mother-child relationships disproportionately affects mothers and their children. Children who are born in prison and who must live the first days of their lives under conditions of detention have also been recognized as specially protected subjects by the Constitutional Court. However, as the court has observed, these children are sometimes treated as if they too were prisoners. In this regard, a report by the Ombudsman's Office titled *The Human Rights of Women Prisoners in Colombia* (Defensoría del Pueblo, 2004) outlines the undesired consequences for children under three whose mothers are behind bars: “Women cannot take their children with them and are instead forced to leave them in the hands of relatives, friends, or the Colombian Family Welfare Institute,” creating a feeling of uprootedness and family disintegration.



Public Policy Recommendations: The Need for More Human and Effective Measures



As the above analysis reveals, there is a pressing need for Colombia to overhaul its drug policy in light of the fact that it addresses only the symptoms, and not the structural causes, of the drug problem, leading to severe—yet preventable—social damage. First, the policy should be reevaluated in a way that acknowledges the causes of the problem and attacks the structures and individuals who truly profit from the drug trade, instead of focusing on the easily replaceable low-ranking members. Second, it should abandon its punitive focus on nonviolent drug crimes in favor of a more comprehensive vision of public health and human development that aims to improve the population's well-being and reduce drug-related violence—objectives that should embrace strategies centered on reducing the supply and demand for illegal narcotics. Third, care should be taken to ensure that the implementation of the drug policy does not cause more damage and problems than it actually cures. For example, in the case of women incarcerated for nonviolent drug crimes, handing down disproportionate sentences does not help reduce the size of the illegal drug trade, but it does lead to unnecessary impacts on these women and their families.

Using these basic tenets as a starting point, the policy should embrace a combination of strategies that link policies on social and productive inclusion, public health, the provision of judicial services and citizen security, the provision of goods and services for economic growth, and criminal justice. In rural areas, these strategies

should be implemented under a participatory development framework that offers citizens licit livelihoods and helps dismantle criminal structures by combatting the local and institutional conditions that foster the growth of these illegal networks.

In this spirit, the second half of this report will propose a series of public policy recommendations that can contribute to (i) understanding the drug problem in all its proportions; (ii) offering alternatives to the traditional punitive approach; and (iii) identifying strategies to minimize the current imbalance that disproportionately affects specific social groups, such as women who are caregivers and providers for their families.

Understanding the Human Side of the Drug Problem

Prejudice against certain social groups, the perception of drug use as moral decline, and the use of force to impose models of virtue have been the pillars of the state's response to the drug problem for more than forty years. Colombia's current drug policy stems from a misinformed diagnosis that excuses the state from addressing the structural societal problems that facilitate the production, trafficking, and consumption of narcotics. The war on drugs privileges criminal law and the use of force while simultaneously generating lucrative markets, violence, corruption, an increased prison population, and the stigmatization of users, among other unfair damages. Such negative effects could be avoided if other approaches—such as those based on sustainable agricultural development, human rights, and health—were embraced. In sum, in order for the state to be able to transform its response to the drug problem, it must first transform its vision on drugs so that it can redirect its efforts toward the resolution of problems such as social exclusion and poverty, and cease unsuccessfully attacking the symptoms by incarcerating the lowest-ranking members of the drug trade.

Current drug policy stems from a misinformed diagnosis that excuses the state from addressing the structural societal problems that facilitate the production, trafficking, and consumption of narcotics.

Women Prisoners' Participation in the Creation of Drug Policies

- Promote gender parity in gatherings and other debates and meetings on drug policy that are held both within and outside detention centers and are financed by local and national governments, as well as international bodies.
- Within the framework of compliance with Sentence T-815 of 2013, which calls for the creation of human rights committees within women's prisons, INPEC should strengthen and create such committees with the aim of empowering incarcerated women to act as spokespersons in various spaces, such as public hearings, that address the formation and evaluation of drug policies.
- The National Narcotics Council, the High Council on Criminal Policy, the Advisory Commission on Drug Policy, and other bodies related to evaluating and shaping the country's drug policy should ensure that their reports incorporate the perspectives of women prisoners, organizations representing families of the incarcerated, women who have served time in prison, and civil society organizations that adopt a gender focus in their work.
- The Ombudsman's Office, the Office of the Attorney General, the Office of the Presidential Advisor for Human Rights, and civil society organizations that monitor the prison situation should take into account the perspectives of women prisoners who are members of the human rights committees that operate within prisons and should establish adequate mechanisms for understanding firsthand the violations of prisoners' rights. In addition, INPEC should publish, on a periodic basis, reports that compile the complaints received by these human rights committees. Finally, INPEC should report on prisoners' access to these human rights mechanisms and the institutional actions undertaken to respond to their complaints.
- With regard to the design of the country's drug policy, the High Council on Criminal Policy should strengthen the participation of entities that work on gender issues, such as the Office of the Presidential Advisor for Women's Equality, Secretariats for Women's Affairs, and civil society organizations.

Policies on Awareness Raising and Training

Citizen Awareness

- The Ministry of Health should implement a program aimed at ensuring that persons deprived of liberty understand and exercise their rights within the health system.
- With regard to educational and social inclusion programs for incarcerated women, INPEC should incorporate policies that are adapted to these women's skills and abilities, to their period of confinement, and to labor market conditions. Moreover, it should ensure that these policies do not reproduce gender stereotypes but instead incentivize learning, technical training, and work within and outside prison. These efforts should be undertaken with the aim of reducing women's time behind bars and facilitating their effective reinsertion into the labor market (WOLA, IDPC, Dejusticia, and CIM, 2016: 33).
- The National Police and the Ministry of Justice should conduct prevention campaigns whose focus is more informational than punitive. In other words, it is not enough to simply provide warnings about the criminal consequences of drug trafficking since, as an isolated measure, this not only fails to address the needs that lead women to seek survival within this market but also stigmatizes these women when they are captured. Thus, these entities should move from a model focused on warning or threatening people about the punitive consequences of committing drug crimes to one that provides information on the ways that women in vulnerable situations can take the necessary measures to avoid being pressured or coerced into joining the trade, as well as economic alternatives for their livelihoods.

Institutional Awareness

- The National Police should reassess its compliance with the quotas set in “required minimum action tables” by directing the work of police officers toward the seizure of large quantities of drugs being trafficked by criminal organizations, and away from the capture of legal doses for personal use (Uprimny, Guzmán, and Parra, 2016: 141).
- The National Police should train police officers on the definitions of doses for personal use and doses for distribution, in conformity with case law from the high courts. In this way, police officers will avoid taking to the Office of the Prosecutor General individuals who are carrying for personal use only (*ibid.*).

- The Rodrigo Lara Bonilla Judicial Academy and the Office of the Prosecutor General should train judicial officials on the concept of the “provisioning dose” (*dosis de aprovisionamiento*) and on Supreme Court jurisprudence establishing that the quantity of drugs being carried is simply one of the many factors that must be considered when deciding whether to criminalize someone caught carrying drugs.
- The Ministry of Justice, the Office of the Prosecutor General, and the National Police, within the framework of their functions, should design a protocol for addressing cases that involve drug users and should establish effective sanction mechanisms for abuses and acts of corruption committed against these individuals.
- The Ministry of Justice, together with the Office of the Prosecutor General, should design and disseminate among prosecutors an evidence handbook for cases of drug trafficking, production, and transport. This handbook should identify the various evidentiary methods that prosecutors can use to prove the purpose of drug trafficking or sale, so that these officials are not guided solely by the quantity of the drug seized (*ibid.*).
- The Ministry of Justice and the National Police should conduct campaigns on the need to acknowledge that individuals involved in minor drug-related crimes require support in integrating into society and the labor market, rather than punishment. These campaigns should feature—with the individuals' permission—individuals' life stories, their circumstances in prison, and the impacts on their families.
- The Office of the Prosecutor General, the Rodrigo Lara Bonilla Judicial Academy, and the Superior Judicial Council should carry out an educational process between judges and prosecuting attorneys on the exceptional character of preventive detention and the new requirements included under Law 1760 of 2015 for ordering such detention. Effective and swift sanction mechanisms should also be established for those who fail to comply with these requirements.
- INPEC should design and implement training programs for prison staff (including medical personnel) with the aim of decreasing the discrimination, violence, and stigmatization suffered by women imprisoned for drug crimes. Special emphasis should be placed on eliminating the stigma faced by pregnant women, which can lead to severe emotional trauma and impede their access to essential health services.
- The National Police and the Office of the Prosecutor General should create investigation handbooks for drug-related crimes that allow them to identify the modus operandi of drug organizations and not just of low-ranking members of the trade.

Data Collection

Recently, there has been a considerable effort to base Colombia's drug policy on available evidence and to gather new information on the issue. Through Resolution 0006 of April 8, 2005, the National Narcotics Council established the Colombian Drug Observatory as the "source of official information on narcotics." The observatory responds to the need to consolidate information produced by all entities involved in tackling the drug problem in order to facilitate the shaping of policies, plans, and intervention strategies. Specifically, it is a knowledge center that aims to foster a greater understanding of the various manifestations of the drug problem while contributing to the formulation of policies, plans, and programs that respond to this problem in a comprehensive way. Although the observatory has made progress in incorporating a

gender perspective, particularly through the presentation of disaggregated data, much remains to be done to achieve an integrated, publicly available, and easily consultable system that guarantees transparency and accountability in terms of the drug policy and its gender impacts.

The use of such alternatives is wholly compatible with international drug control conventions and would help remedy the human rights violations stemming from prison overcrowding.

In addition, it is essential for the government to reconsider the indicators currently used to evaluate the drug policy. Instead of evaluating the policy's effectiveness based on the number of arrests, people imprisoned, hectares cultivated, seizures, and other classic indicators focused on reducing supply and demand—which can create perverse incentives—the policy should be evaluated on the basis of indicators that measure impacts on people's lives and on the basis of the policy's alignment with other development objectives (LSE Ideas, 2016). Such indicators should look at access to treatment, rehabilitation, and damage-reduction services; the reduction of deaths by overdose; the decrease in the number of families whose income depends on the drug trade; and the decrease in recidivism (Pérez-Correa, 2014).

With the aim of further strengthening the incorporation of a gender focus into information about women's realities in prison, we offer the following recommendations:

- INPEC, the Ministry of Justice, and the Ministry of Health should perform a census to determine the magnitude of narcotic use in women's prisons and develop a health-care strategy that responds to existing needs. The strategy

should aim to eliminate all forms of discrimination that women prisoners currently face in accessing these services. The health services provided should be adequate and gender sensitive.

- The National Police, the Office of the Prosecutor General, the Superior Judicial Council, the Ombudsman's Office, the Ministry of Justice, and INPEC should ensure that citizens have free and easy access to all information systems that contain data on the various phases of the criminalization process and the situation of individuals in each of these phases (arrests, entries and exits within the judicial and prison systems, status of proceedings, and situations within the prison system). This information should be appropriately disaggregated and should exclude only information that is legally privileged.
- The Ministry of Justice's Drug Observatory should publish periodic bulletins containing key indicators on the individuals who are detained, suspected, charged, acquitted, sentenced, and punished (via the various detention mechanisms) for drug crimes. These indicators should be disaggregated by sex and gender identity, legal situation, ethnic identity, age, crime, educational attainment, and family situation (e.g., marital status, dependents), among others.
- Within the framework of compliance with Sentence T-388 of 2013, the High Council on Criminal Policy should implement and make publicly available a comprehensive set of indicators on the effective enjoyment of human rights among people deprived of liberty, with all of the aforementioned disaggregations, that allows for an identification of each prison's situation in terms of overcrowding, access to basic services, and human rights violations (including violations reported and the status of procedures to address these them).
- The Ministry of Labor, in coordination with the Office of the Presidential Advisor for Women's Equality, the Ministry of Justice, and INPEC, should compile and make publicly available up-to-date nationwide information on programs for the risk management, training, employment, and reintegration of women prisoners, with appropriate monitoring of results. This will ensure that such programs enjoy the designs and funding they need to be successful (WOLA, IDPC, Dejusticia, and CIM, 2016: 39–40).
- The Ministry of Justice should produce publicly available statistics, disaggregated by sex and gender identity, on the annual number of people who submit applications for alternatives to imprisonment, who benefit from these alternatives, and whose applications were denied (including the reasons for denial) (WOLA, IDPC, Dejusticia, and CIM, 2016: 40).

— The National Police, the Superior Judicial Council, and the Office of the Prosecutor General should produce and publish more detailed information on arrests, court rulings, and prison entry and exit forms than what is currently available regarding drug crimes. This information should include, among other things, the place of capture; quantity and type of substance seized; circumstances of the arrest (violent, resistant, possession of arms); family situation of the defendant; the normative provision known as *verbo rector*, which indicates the particular behavior carried out to commit the crime (for example, carrying illegal substances or planning to sell or distribute these substances); health situation; visits; access to goods and services within prison; drug use and drug markets within prisons; health services; recidivism; and the situation of incarcerated women whose children live with them in prison.

Changing Criminal Sanctions

The war on drugs has caused distorted consequences for criminal proceedings—not only in terms of disproportionate sentences but also in terms of the exclusion of alternatives to imprisonment for people prosecuted or sentenced for drug crimes, even nonviolent minor ones.

The Organization of American States (2013), the Inter-American Drug Abuse Control Commission (2013), the Inter-American Commission on Human Rights (2011: 177), the United Nations Committee against Torture (2015), and Colombia's Advisory Commission on Drug Policy (Comisión Asesora para la Política de Drogas, 2015), to cite just a few sources, have called on Colombia to implement alternatives to imprisonment for these and other crimes. The use of such alternatives is wholly compatible with international drug control conventions and would help remedy the human rights violations stemming from prison overcrowding. Moreover, international studies have shown that alternatives to imprisonment are more effective and less costly than prison (McVay, Schiraldi, and Ziedenberg, 2004; Carter and Ojukw, 2006; Sullivan, 2014). In addition, studies have shown better results in terms of cost-effectiveness when alternatives to imprisonment have been offered to women (Keough, 2013).

Alternatives to imprisonment can be classified according to the stage in which they occur: (i) pre-trial alternatives, which are applied before criminal proceedings begin and are focused on redirecting a case to another authority outside the criminal system (such as commissions for the dissuasion of drug abuse or police

diversion mechanisms); (ii) procedural alternatives, which are applied during criminal proceedings and are focused on either avoiding imprisonment, subject to certain conditions, or achieving other objectives, such as treatment for drug dependence (as in the case of drug treatment courts); and (iii) post-sentencing alternatives, which are focused on reducing the prison population through the early release of those carrying out sentences or in preventive detention, accompanied by strategies for social integration (such as pardons and substitute penalties) (Inter-American Drug Abuse Control Commission, 2013). These measures can also be classified according to the population they benefit (women, youth, people in situations of vulnerability, growers, couriers, or people with substance abuse problems, among others) and according to the level at which they are implemented (national or local). Finally, they can be classified according to their strategic focus, such as the following:

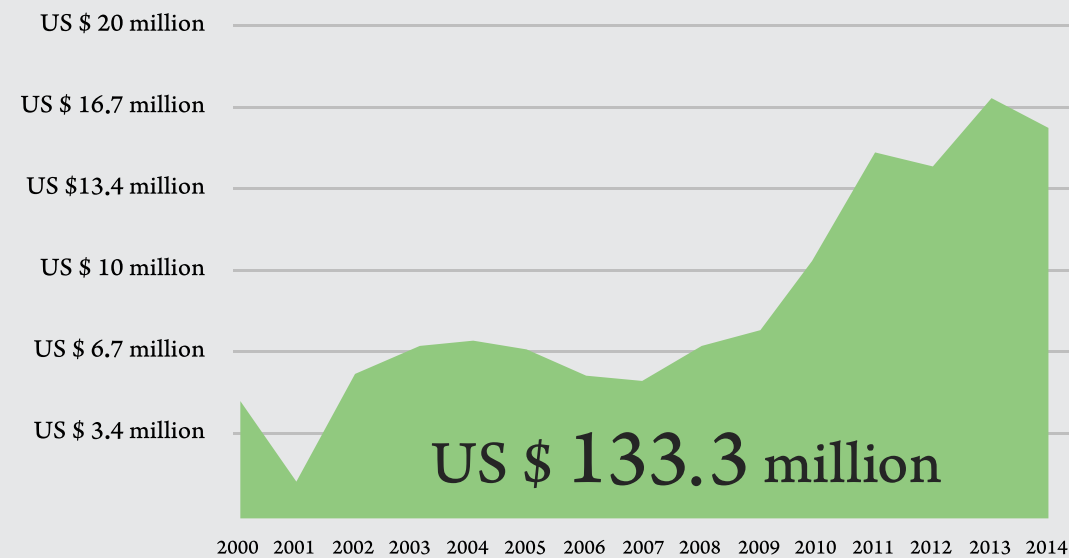
- The decriminalization or elimination of a certain conduct or activity from the sphere of criminal law, despite the fact that the activity may continue to be prohibited or sanctioned through other means; and the decriminalization, elimination, or modification of the term of imprisonment, despite the fact that the conduct may remain criminal.
- The nonprosecution of the crime, which consists of the case's exit from the criminal system before sentencing, or of programs that divert the case to other authorities before it enters the judicial system.
- Freeing from prison, which occurs when a punishment has already been issued. Oriented toward eliminating, reducing, or substituting the prison sentence, this can take the form of pardons, referrals to treatment, or sentence reductions (WOLA, IDPC, Dejusticia, and CIM, 2016: 24).

Responding to the drug problem with a model other than prohibition—as is the case of regulated markets in countries such as Uruguay and in some parts of the United States for the case of marijuana—would imply decriminalizing, under certain parameters, all activities within the drug chain, from production to sale. This approach, combined with prosecution focused on combatting organized crime, would allow for a reduction in the size of the illegal drug trade and would seriously hinder drug trafficking organizations. It would also reduce the damages that the prohibitionist policy has unleashed on the drug trade's lowest-ranking members. Good regulations, combined with an ambitious public health policy, could minimize the risk of increased drug consumption.

What would happen if alternatives to imprisonment were implemented for women convicted of minor drug offenses?

The cost of maintaining women imprisoned for drug crimes is enormous. Incarceration—in addition to wreaking havoc on these women’s lives and those of their families—is extremely costly in economic terms. According to data provided by INPEC on the annual cost of maintaining a person in prison, Colombia spent 400,000 million inflation-adjusted pesos (approximately US\$133 million) between 2000 and 2014 to keep these women behind bars—an amount equivalent to the Ministry of Culture’s 2014 budget. And as shown in the graph below, the resources needed to keep these women behind bars are increasing over time.

The cost of incarcerating women for drug-related crimes in Colombia



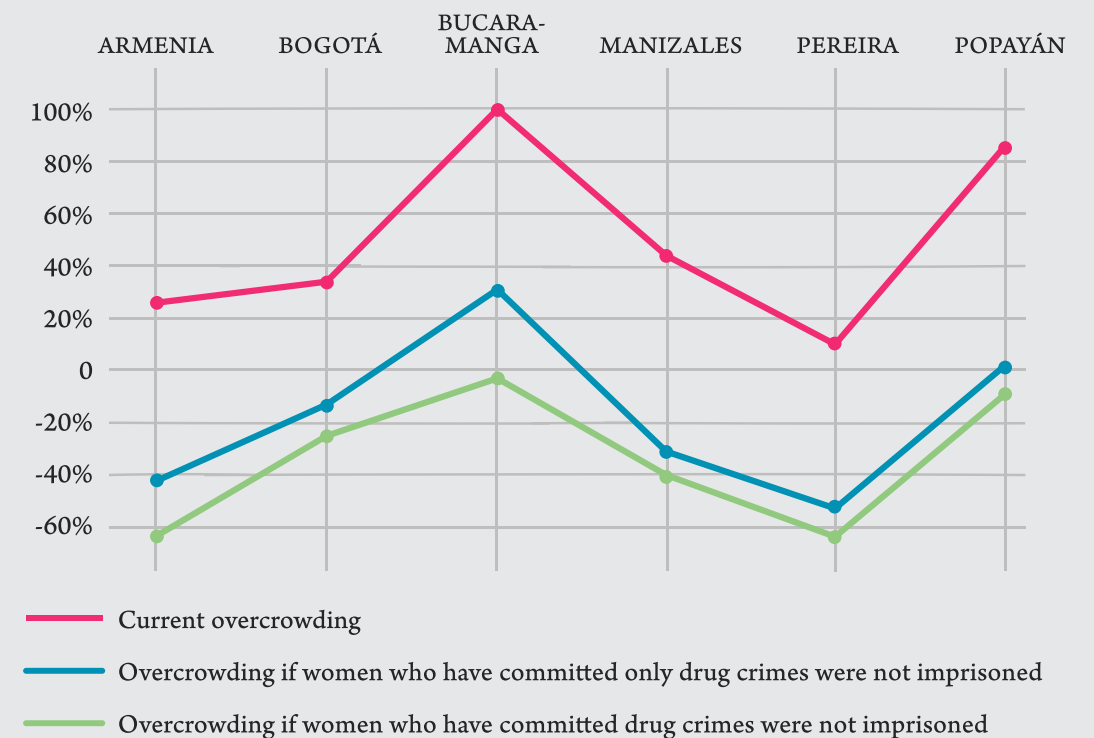
Source: Authors’ calculation based on data from INPEC (2015)⁷

⁷ In response to an information request submitted by Dejusticia, INPEC provided information on the average annual cost (in current prices), between 2000 and 2014, of incarcerating a person in Colombia. For 2014, this cost rose to 12.4 million pesos (approximately US\$4,100). Based on this data, using constant 2014 prices, we calculated the total cost of maintaining women imprisoned for drug-related crimes during this time period.

Incarceration means that these women must interrupt their productive activities, which represents losses for the country’s economy.

The increase in women prisoners convicted of drug crimes has not been accompanied by a corresponding increase in spending within the prison system. As a result, overcrowding in women’s detention centers has worsened, reaching 48% in 2014. If alternatives to imprisonment were implemented for women who commit drug offenses alone (without engaging in other crimes, without committing violent acts, and without belonging to a criminal organization), overcrowding in these prisons would disappear, freeing up 18% of the prison system’s current capacity. The graph below illustrates how such alternatives would change the overcrowding situation in each of Colombia’s prisons for women.

A look at how alternatives to imprisonment for women who have committed only drug crimes would affect overcrowding (December 2014)



Regardless, if Colombia chooses not to disallow imprisonment for nonviolent, minor drug crimes, it should undertake the following reforms with regard to its criminal laws, which would increase noncustodial alternatives, the quality of legal representation for defendants, and coordination among institutions regarding the formulation of more humane policies.

Smarter and More Humane Criminal Laws

- Congress and the national government, with the guidance of entities specializing in criminal policy, should undertake regulatory reforms and implement the necessary programs to ensure that people who commit minor, nonviolent drug offenses are not sent to prison but rather to a public support network aimed at the comprehensive prevention of recidivism through attention to the socioeconomic factors that led these individuals to commit these crimes. For the case of women, the factors explored should include gender-based vulnerabilities, such as domestic violence, women’s responsibility in the care economy, discrimination in the labor market, and pressure or coercion by criminal organizations or by partners, friends, or family members who belong to such organizations. To the extent possible, the government should use diversion programs in which cases exit the criminal justice system before a sentence is handed down, thus ensuring that law enforcement and judicial resources are directed toward the prosecution of serious cases that represent a true threat to citizen security (Uprimny et al., 2015).
- The High Council on Criminal Policy and the Advisory Commission on Drug Policy should submit a bill before Congress that seeks, through a systematic revision of the Penal Code, to ensure that sentences are proportional to the gravity of the crime and to the damages incurred. To streamline the use of criminal law in Colombia with regard to drug-related crimes, this reform should more clearly distinguish among different types of conduct in terms of nature and severity, eliminate preventive detention for people who participate as low-ranking members of the drug trade (particularly those who have dependents under their care), reduce sentences for minor offenses, eliminate minimum penalties, relax the exclusion of penal benefits for crimes *in flagrante delicto*, and allow sentencing to consider the defendant’s level of participation within criminal structures as a criterion for responsibility and vulnerability.

- Congress should promote the elimination of all existing regulatory constraints and refrain from approving new ones so that people who commit minor, nonviolent drug offenses may be considered for any of the eleven custodial and noncustodial measures provided for in the Code of Criminal Procedure other than detention in a prison.
- The Ministry of Justice, the High Council on Criminal Policy, and the Advisory Commission on Drug Policy should promote the application of alternatives to preventive detention for minor drug offenses, especially if committed by individuals who are providers and caregivers of children and people with disabilities.
- The Office of the Prosecutor General should improve management systems for investigating and evaluating the performance of the office’s various divisions within the framework of its prioritization policy. This should be done with the aim of focusing on investigating organizations dedicated to drug trafficking that contribute to greater violence and endanger citizen security (Perdomo, 2015). Further, the office should establish effective coordination mechanisms and internal policies for its divisions involved in criminal policy in order to prioritize the prosecution of these criminal organizations.
- The High Council on Criminal Policy and the Advisory Commission on Drug Policy, together with the national government, should promote the reform of the grounds for applying the opportunity principle so that minor drug offenses can be exempt from criminal prosecution when committed by low-ranking members of the drug trade who experience specific conditions of vulnerability.⁸

⁸ According to article 324(1) of Law 906 of 2004, the opportunity principle shall be applied in cases of drug trafficking and other infractions mentioned in title XIII, chapter two of the Penal Code; terrorism; the financing of terrorism; and the administration of resources associated with terrorist activities, whenever the fifth or sixth grounds of the present article are met, provided that these crimes are not committed by the bosses, ringleaders, organizers, or directors of criminal organizations. Under the fifth grounds, the defendant, prior to the start of the judgment hearing, collaborates effectively to prevent the crime from continuing or to prevent others from carrying it out, or provides adequate information for dismantling an organized criminal gang. Under the sixth grounds, the defendant, prior to the start of the judgment hearing, agrees to serve as a witness for the prosecution against the other defendants, in exchange for partial or total immunity. In this case, the application of the opportunity principle shall be held in abeyance until the witness complies with the commitment to testify. If the hearing concludes and the witness has not testified, the benefit shall be revoked. As explained throughout this guide, people who participate marginally in criminal organizations are not privy to information that could dismantle the organization for which they work—in most cases, they are tasked simply with carrying packages from one place to another, without any additional information. They are also unable to serve as witnesses against other defendants, for, in most cases, these individuals are not familiar with the structures of the criminal organization. For this reason, it is usually impossible to apply the opportunity principle for the low-ranking members of the drug trade, such as the women described in this report.

- INPEC and the Ministry of Justice, together with the Superior Judicial Council, should create a “certificate of prison availability,” according to which a judge cannot order someone’s incarceration—much less for nonviolent, minor crimes—unless a dignified prison space is available (Comisión Asesora de Política Criminal, 2012: 68).
- Instead of being deprived of liberty, individuals who commit minor offenses (such as theft or personal injury as a result of substance abuse or addiction) should have the option of enrolling in detox, treatment, and rehabilitation programs that are public, voluntary, and of high quality. There are three possibilities for doing this: (i) with the application of a security measure (provided for in articles 70–72 of the Penal Code); (ii) with the application of treatment under judicial supervision; and (iii) with treatment referral without the need for judicial supervision through a reform that permits such a situation. Among these possibilities, the last one would be the most appropriate insofar as the offer of treatment is incorporated into the country’s general health system (via the Obligatory Health Plan) in order to ensure its financial sustainability and avoid having to use resources from the judicial system for its supervision.
- Congress should repeal the exclusion of substitute penalties in the case of drug crimes, which is currently established in article 68A of the Penal Code, introduced by Law 1709 of 2014.
- Judges and the national government should offer women opportunities for social and labor integration within the framework of substitute penalties.
- In the case of nonviolent drug offenses, judges should offer the possibility of house arrest with permission to work, especially for individuals who are both caregivers and providers.
- Congress, judges, the Ministry of Justice, and INPEC should adopt the necessary legal and administrative measures that allow individuals arrested for nonviolent drug crimes who plead guilty to begin reducing their sentences through work as soon as they enter prison.
- The national government and the Office of the Prosecutor General should use funds from assets seized from members of organized drug networks to finance prevention programs aimed at steering individuals away from drug trafficking (WOLA, IDPC, Dejusticia, and CIM, 2016: 32). In addition, these funds should be used for productive projects that promote women’s economic independence after prison.

- The Ministry of Justice should promote a bill that eliminates the phrase “on their person” from article 376 of the Penal Code, with the aim of decriminalizing the mere possession of drugs, as this provision creates ambiguity that causes drug users to continue being the object of criminal prosecution, even when it cannot be proven that they are carrying for purposes other than personal consumption.
- The National Police and the Office of the Prosecutor General should abandon evaluation criteria that place weight on the results of prosecutors and the police, so that little or no weight is given to the judicial processing of “easy” cases in which, for example, users are punished for the possession of small quantities of drugs.

Policies Aimed at Improving the Public Defense of Individuals Incarcerated for Drug Crimes

- The Ombudsman’s Office, based on assessments of the current demand for criminal defense services, should strengthen the public defense system by assigning sufficient resources for the system’s adequate functioning; appropriately distributing workloads; establishing relevant protocols for evaluating, incentivizing, and sanctioning public defenders who fail to comply with their duties; making adjustments for addressing vulnerable populations; and properly attending to the needs of individuals who are prosecuted. All of this should be undertaken with the aim of guaranteeing equality during legal proceedings vis-à-vis the capacities of the Office of the Prosecutor General throughout the national territory (Bernal, 2015).
- The Office of the Prosecutor General and judges should establish mechanisms for verifying compliance with the right to have defense counsel present, as well as other rights of those who are arrested, accused, and charged.
- Law schools and the public defense system, which are the institutions charged with providing defenders with the necessary elements for defining defense strategies, should carry out special trainings in universities on the defense of women prosecuted for drug crimes, analyzing the patterns in the way these women enter the trade, their socioeconomic status, and the events surrounding their capture, among other factors.
- The National Public Defense System should implement strategies for empowering defendants to become knowledgeable about their cases by

disseminating materials in simple language that explain the various stages of the criminal process, the enforceable components and standards of their right to defense, and relevant laws, among other things.

Policies Aimed at Promoting Greater Congruity and Coordination Among State Institutions

- The government should request that entities working on gender issues—such as the Office of the Presidential Advisor for Women’s Equality and municipal and departmental secretariats and offices on women’s affairs—participate in the reformulation, implementation, and monitoring of drug policies, with the aim of ensuring a gender focus.
- The Ministry of Health, the National Superintendent of Health, and the departmental Secretariats of Health should closely monitor the health promotion companies (*empresas promotoras de salud*) to which women prisoners will be affiliated in the wake of Caprecom’s dissolution,⁹ in order to ensure that these companies offer a comprehensive package of health services for prisoners with problems related to drug use or dependence.
- The Ministry of Labor, the Ministry of Commerce, and the Office of the Presidential Advisor for Women’s Equality should link the country’s criminal policy to policies on social and productive integration, with a gender focus, so that people who perform low-level tasks within the drug trade are able to access opportunities for training and employment in licit occupations and to disassociate themselves from criminal networks, under the condition of not re-offending and of cooperating with authorities.
- Within the framework of compliance with Sentence T-388 of 2013, Congress should refrain from approving criminal legislative reforms that hinder compliance with the “decreasing equilibrium” in prisons ordered by the Constitutional Court (in other words, while the prison overcrowding situation is being addressed, detention centers must not receive more weekly prisoners than are being released on a weekly basis).

⁹ Until 2016, Caprecom was the health promotion company hired by the government to provide health care to prisoners. The company was dissolved by Colombia’s Ministry of Health in light of the poor quality of its services.

- The Ministry of Justice and the Superior Judicial Council should establish a concerted plan for ensuring compliance with maximum time limits for preventive detention (one year or, in exceptional cases, two years) and the intervals between procedural measures provided by Law 1760 of 2015.
- The Ministry of Labor, Secretariats of Social Integration, and the Ministry of Justice should remove regulatory and practical obstacles so that local government entities can implement measures aimed at people involved in or at risk of becoming involved in drug-related crimes. These measures include subsidies conditioned on prior evaluation of the individual or on the individual’s involvement in licit employment, access to credit for entrepreneurship, programs for restorative justice, community services, and cultural programs. Resources should be channeled from the national budget and international donors to co-finance these alternative programs, subject to evaluations of their results. In areas with high crime rates, the use of royalties should be authorized to implement these types of programs.
- The Ministry of Labor, the Ministry of Commerce, Industry and Tourism, and the Ministry of Agriculture and Rural Development should promote productive rural projects aimed at women’s development and economic independence, particularly in areas where the cultivation of illegal substances is prevalent.
- The Ministry of Labor should reduce barriers to social reintegration, limiting restrictions on the hiring of people with criminal records by the government and private employers. During the job interview process, employers should ask about a candidate’s criminal history only if a prior conviction could have a direct effect on the person’s ability to fulfill the job duties. These questions should be asked only at the end of the hiring process. If an applicant is rejected due to his or her criminal record, the employer should provide a clear explanation as to why such a record would negatively affect the candidate’s ability to do the job. The applicant should have the opportunity to appeal to an independent third party (WOLA, IDPC, Dejusticia, and CIM, 2016: 34).
- The government should develop a public policy on poverty eradication, particularly for the most vulnerable women who are imprisoned for drug crimes.

Understanding and Minimizing Prison's Differentiated and Disproportionate Effects on Women

Prison affects men and women in different ways. As indicated in the report of the Advisory Commission on Criminal Policy, Colombian prisons are designed for men, which means that they fail to account for the roles, tasks, and social positions assigned to women, as well as the concrete needs that only women have. Ultimately, prison triggers inequality, discrimination, and injustice insofar as it exacerbates the very conditions of vulnerability that women experience prior to entering prison. As a result, in addition to improving prison conditions in Colombia, it is also crucial to explore alternatives to imprisonment, with the aim of eradicating the vicious cycle of vulnerability and poverty that entraps women who commit nonviolent drug crimes.

The fundamental question is, What is the best way to address and mitigate this disproportion? Below, we suggest a series of recommendations that are classified according to two types of policies: policies aimed at people, largely women, who are providers and caregivers, and policies aimed at improving sexual and reproductive health care for women. Many of our recommendations are based on the guidelines provided in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (known as the Bangkok Rules).

Policies Aimed at Women Providers and Caregivers

- The government should establish the legal obligation to substitute imprisonment with other measures for women who have committed drug crimes and who are pregnant or have children who are minors.
- To ease women's transition from prison to liberty, prisons should gradually deinstitutionalize women by giving them the opportunity for restricted leave. Unpaid domestic work should also be considered as qualifying them for such leave. In addition, women should be able to speak regularly with their families. Finally, homes, temporary living centers, and halfway houses should be made available to these women and their children once they leave prison (WOLA, IDPC, Dejusticia, and CIM, 2016: 33).

- Judges and INPEC should ensure that incarcerated women are placed in facilities near their homes and that they have access to transportation subsidies to facilitate visits from family members, thus mitigating the impacts of family separation.
- Prosecutors and judges should provide mothers and women caregivers with the necessary time to organize the care of their children and other dependents before they enter prison. In addition, judges should take special care to verify that this right is fulfilled for defendants.
- INPEC should implement mechanisms that allow women to maintain regular contact with their children and other dependents, with the aim of mitigating the destruction of family ties.
- INPEC should ensure that family visits to prison meet the appropriate conditions—for example, by preventing children from having to wait in long lines and by ensuring that women prisoners are able to enjoy quality time with their children who are visiting.
- For foreign women who have been arrested, are being prosecuted, or are carrying out sentences, prosecutors, judges, and INPEC should provide an appropriate method of communication that allows them to be in contact with their family members abroad free of charge.
- Before women with children under their care enter prison, judges, prosecutors, and INPEC should allow them to make arrangements for these children, including by allowing the women to suspend their detention for a reasonable period, in the best interest of their children (Bangkok).
- At the time of a mother's admission to prison, INPEC should record the number and personal details of her children. At a minimum, and without violating the woman's rights, the record should include each child's name, age, and—if not accompanying the mother—location and custody or guardianship status (Bangkok).
- INPEC should do everything within its means to ensure that women prisoners are sent to facilities close to their home or place of social rehabilitation, keeping in mind their caregiving responsibilities, in addition to their preferences and the availability of appropriate programs and services (Bangkok).
- If a women prisoner is accompanied by a child, INPEC and the Ministry of Health should ensure that her child receives a medical exam, performed by

a pediatrician, to determine any medical or treatment needs. Suitable health care—at least equivalent to that available within the community—should be provided (Bangkok).

- Prison health services should administer or facilitate specialized treatment programs for drug users, taking into account the individual’s possible prior victimization, the special needs of pregnant women and women with children, and the individual’s cultural background (Bangkok).
- Prison staff should demonstrate competence, professionalism, and respect when searching children who live in prison with their mothers and when searching children who are visiting (Bangkok).
- INPEC should encourage and facilitate, by all reasonable means, women prisoners’ contact with their families, including their children and their children’s guardians and legal representatives. When possible, measures should be adopted to reduce the disadvantages faced by women located in prisons far from their homes (Bangkok).
- INPEC should ensure that visits involving children take place in a friendly environment, including with respect to the attitudes of prison staff, and that mothers are able to enjoy open contact with their children. When possible, prolonged visits with their children should be encouraged (Bangkok).
- When children are permitted to live in prison with their mothers, INPEC should sensitize prison staff about child development needs and provide basic training on children’s health care, enabling them to react appropriately in cases of emergencies (Bangkok).
- INPEC should ensure that all decisions to allow children to live in prison with their mothers are based on the best interests of the children. Children who stay with their mothers should never be treated as prisoners (Bangkok).
- INPEC should guarantee that children who live with their mothers in prison have access to ongoing health care and that their development is monitored by specialists, in collaboration with community health services (Bangkok).
- INPEC should ensure that decisions about when a child is to be separated from his or her mother are made on a case-by-case basis and with the child’s best interests in mind, within the scope of relevant national laws (Bangkok).

- When children are separated from their mothers and placed under the care of family members, other persons, or other care facilities, INPEC should offer mothers the maximum possible opportunity and facilities to meet with their children, provided that such meetings are in the best interests of the children and do not jeopardize public safety (Bangkok).

- The Office of the Prosecutor General should inform the Ministry of Foreign Affairs of the prosecution of any non-resident foreign-national woman so that the ministry can allow (bilateral or multilateral agreements permitting) the woman’s transfer to her home country, particularly if she has children there, following the woman’s application for such a transfer or her informed consent (Bangkok).

- When a child living with a non-resident foreign-national woman prisoner is to be removed from prison, INPEC, the Colombian Family Welfare Institute, and the Ombudsman’s Office should consult with the Ministry of Foreign Affairs about the possibility of relocating the child to its home country, taking into account the child’s best interests and in consultation with the mother (Bangkok).

Policies That Address Women Prisoners’ Sexual and Reproductive Health

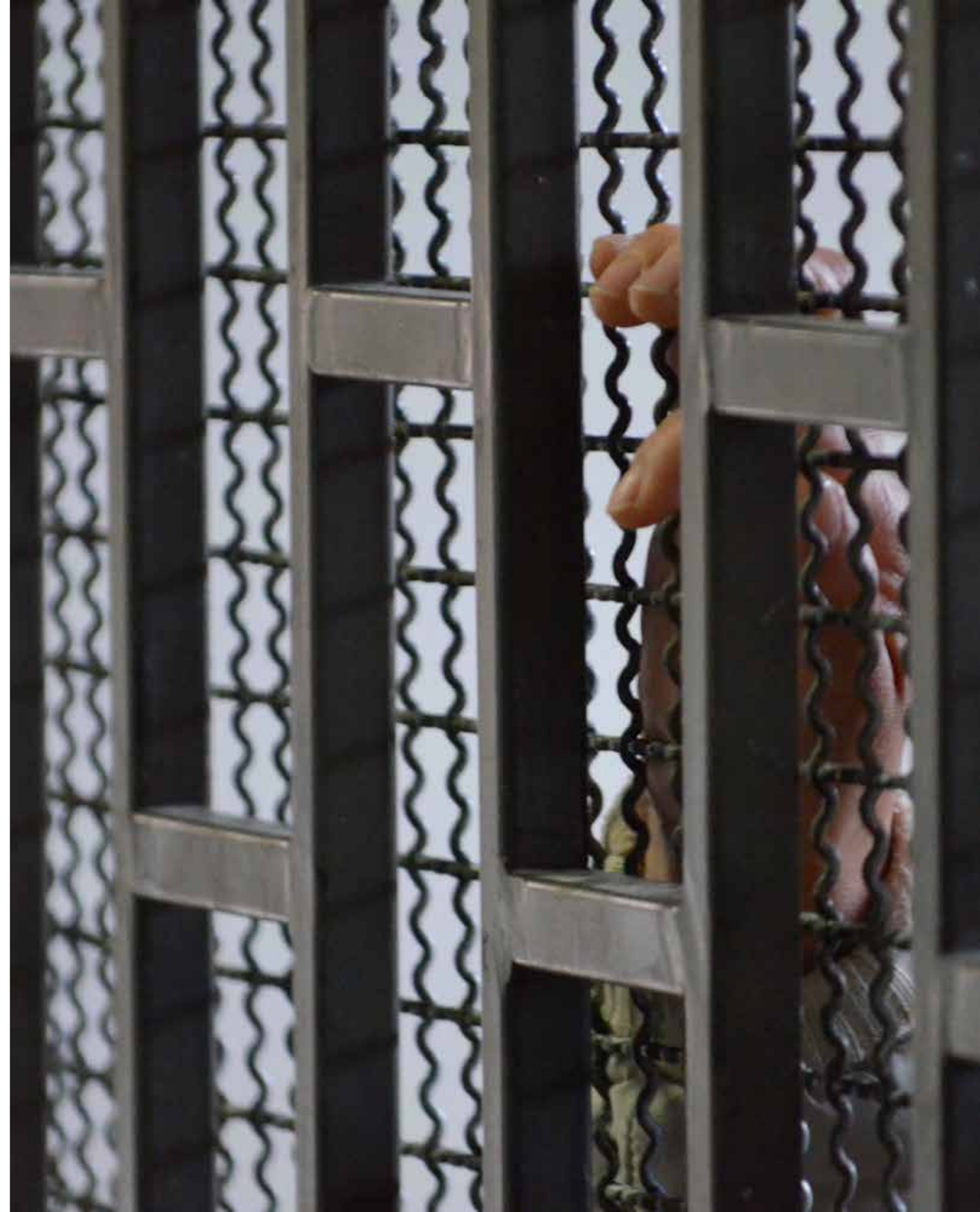
- INPEC should ensure the existence of sufficient prison staff, including medical personnel, to attend to the health needs of pregnant women and to provide the necessary postpartum care.

- INPEC should ensure that the accommodations of women prisoners have the necessary equipment and materials to satisfy women’s specific hygienic needs, including free sanitary pads and a regular water supply, particularly for women who cook, pregnant women, and women who are breastfeeding or menstruating (Bangkok).

- INPEC should ensure that women prisoners’ reproductive health histories are recorded, including possible current pregnancies, previous pregnancies, prior births, and all related aspects (Bangkok).

- INPEC should guarantee that women prisoners receive education and information on preventive health care measures, including in relation to HIV, sexually transmitted infections, blood-borne diseases, and gender-specific health conditions (Bangkok).

- INPEC should ensure that women prisoners have the same access as other women of their age to gender-specific preventive health care interventions, such as Pap smears and screening for breast and gynecological cancer (Bangkok).
- INPEC should guarantee that confinement and other types of disciplinary segregation are not applied to pregnant women, women with children, or mothers who are breastfeeding (Bangkok).
- INPEC should ensure that physical restraints are not used on during labor, childbirth, or immediately after birth (Bangkok).
- INPEC, together with the Ministry of Health, should provide health and nutrition counseling to pregnant and breastfeeding prisoners under a program designed and supervised by a health professional. It should also provide, free of charge, adequate and timely food, a healthy environment, and regular opportunities for exercise to pregnant women, infants, children, and mothers who are breastfeeding (Bangkok).
- INPEC should ensure that treatment programs take into account the medical and nutritional needs of women prisoners who have recently given birth but whose infants are not with them (Bangkok).



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By and large, the “war on drugs” has been a failure: although prisons are packed with drug offenders, drug use has not decreased, trafficking networks continue to reap profits, and drug-related violence remains rampant. Colombia’s drug policy has focused on prosecuting and imprisoning the lowest-ranking members of the drug trade—people who are generally poor and in positions of vulnerability within society. In particular, there is an increasing tendency for women who are low-income heads of household and who lack the resources to study or obtain formal employment to become involved in illegal drug trafficking, and then end up in prison after performing low-paying, high-risk jobs. This guide diagnoses this phenomenon and the impact that imprisonment has on the lives of women and their families. It also offers public policy recommendations aimed at mitigating incarceration’s disproportionate impacts on women, with an eye toward preventing such effects in the future.

