

## IDPC Briefing Paper

# Women, drug offenses and penitentiary systems in Latin America

Corina Giacomello<sup>1</sup>

October 2013

## Introduction

The number of women in prison for drug-related offenses has increased since the 1980s, rising sharply since the 1990s. This has occurred worldwide, and Latin America is no exception. Women increasingly enter drug-trafficking circuits as consumers, low-level dealers and local (including in prison), national and international transporters.<sup>2</sup> In various countries around the world, the female penitentiary population has grown faster than the male, although women are still the minority.<sup>3</sup>

This paper analyzes the roles played by women in criminal networks in Latin America and the means by which they become involved, highlighting the ways in which gender relations and socio-economic factors shape the configuration of international drug trafficking networks and women's participation. It also critically examines the main characteristics of the region's penitentiary systems from a gender standpoint. Finally, it offers a series of conclusions and proposals aimed at promoting a review and reform of drug and penitentiary policies. The analysis is based on secondary literature, analysis of quantitative data from various Latin American countries and the author's empirical research in Mexico. Because of the differing amounts of information available, there may be more data and evidence from some countries than others.

This report focuses on activities related to low-level dealing and trafficking, because the available data about women in prison for drug offenses show that most are accused of those activities. We also have not found specific studies of women's

participation in cultivation and their prosecution and punishment by the state. There is a need for more research on this topic, to shed light on the extent of the criminalization of small farming communities and the specific effects this has on women. Finally, we chose not to address consumption *per se*, as it would require a separate study with a gender and public health approach, which is not within the scope of this paper.

It should be emphasized that the purpose of this report is to describe a situation shared by a specific group – women in Latin American prisons for offenses related to psychoactive substances. The analysis, conclusions and proposals therefore refer to “women.” This is not meant to negate men's experience or draw a comparison. Nor do we mean to exhaust the multiple experiences and nuances of the group studied. Rather, our goal is to gather the available information, analyze it from the combined standpoint of gender relations, drug trafficking and prison, and offer a starting point for new studies and public policy proposals.

## Key findings

One initial observation is that the increase in the number of women in prison for drug offenses may indicate more than increased involvement in trafficking. It is also a result of an approach based on criminal prosecution. That is, women may not only be participating more actively in the small-scale sale and transportation of drugs, but there is also more prosecution of those activities.<sup>4</sup> A decrease in the prosecution of drug-related activities or the

implementation of non-custodial measures – in cases of small-scale trafficking, for example – would imply a decrease in the prison population.

Throughout this paper, we see that women are on the lowest rungs of the crime ladder. They work mainly as growers, collectors, low-level dealers or couriers (known as “mules” or “burriers,” among other terms), and they transport drugs into prisons. With few exceptions, therefore, they serve as expendable and easily replaced labor for transnational criminal networks.

In Latin America, socio-economic circumstances are the main reason why women “choose” to commit a punishable act. The region has the world’s highest rate of economic inequality, and a large percentage of the population living in poverty and indigence in the region is female.<sup>5</sup> This is known as the feminization of poverty, and it is seen in urban and rural areas. It is important to note the increase in single-parent households headed by women.<sup>6</sup> Women often have sole caretaking responsibility for their children and work two or three jobs to support them, while trying not to neglect their responsibilities as mothers or grandmothers. The weight of caring for children and elderly persons falls entirely on women’s shoulders, sometimes pushing them into selling drugs as a way of fulfilling their multiple obligations. This is reflected in the profile of women incarcerated for drug offenses in Latin America: many are single mothers who got into the drug business only so they could feed their children.<sup>7</sup>

Gender relations<sup>8</sup> are another causative factor related to how and why women commit drug-related offenses, as they tend to become involved in those illicit activities through family or romantic relationships, as girlfriends, wives, mothers or daughters, fulfilling the roles assigned by gender relations marked by asymmetry between men and women.<sup>9</sup>

Most of these women come from marginalized and excluded social strata and lack the economic means, legal knowledge or social capital to mount an adequate defense in court. In addition, after their arrest, women in prison tend to be abandoned to their fate and left completely defenseless. That situation is exacerbated in the case of foreign or indigenous women or those whose families lack the means to help them or do not even know that their relative has been arrested.<sup>10</sup>

Far from responding to these circumstances with an equitable judicial approach, most Latin American countries have drug laws that establish pre-trial detention and disproportionate prison sentences without the right to participate in pre-release programs.<sup>11</sup>

In their contact with the criminal justice and penitentiary system, women tend to be subjected to specific forms of violence. The fact that they are a minority in all the penitentiary systems in the world underlies their lack of visibility and the subsequent discrimination the experience in the prison system.<sup>12</sup> Various studies of this topic mention factors such as the lack of separate centers for women; rape and sexual abuse by prison staff; the existence of trafficking networks between men’s and women’s sections; the lack of attention to mental health problems, which are more prevalent among women than men in prison; the harm done to the children of women in prison, both those who live with their mothers and those outside; and the lack of educational, job and training opportunities, among other things.<sup>13</sup>

### **Policy recommendations**

Policy proposals are divided into four main areas of intervention: compiling information, prevention, penitentiary system reform, and drug policies. Gender and human rights should be cross-cutting issues in each area, and stakeholders from civil society, various branches of government, international bodies and the academic sector should participate in developing such proposals. Below is a summary of policy recommendations, which will be revisited and complemented in the appropriate section at the end of the document.

One recurring problem with this type of research is obtaining reliable, current data that are broken down in a useful way. There is a need to create a system for compiling uniform data and indicators for all Latin American countries and making them publicly available. Examples of the information needed, thinking specifically of the topic of this study, are the number of people in prison; the female penitentiary population; the population accused of drug offenses broken down by sex, legal status, type of offenses and sentences; the number of penitentiaries; the number of children who live with their mothers (or fathers) in prison; the number of people who receive

visits and the frequency; the distance between detention centers and the inmates' homes; health indicators; data about problem use of psychoactive substances and access to treatment and harm-reduction services in prison, etc. Of course, these examples do not exhaust the type of information that should be compiled. All information should be broken down by gender.

The compilation of data is important in itself, because it is a transparent source of public information. But the information must also be used, along with qualitative analysis, as a platform for identifying specific and structural problems and designing and implementing appropriate public policies.

There is also a need for a quantitative and qualitative assessment in every Latin American country of the scope and characteristics of the phenomenon that is the topic of this report. In this area, it is important to mention the work done by the Inter-American Commission of Women (CIM) of the Organization of American States (OAS). In June 2013, the commission held a roundtable, "Women and Drugs in the Americas: a Working Analysis," with experts

on the subject. This roundtable was the only side event organized during the OAS General Assembly held in Antigua, Guatemala.<sup>14</sup> The CIM is in the process of launching a regional study of women's participation in international drug trafficking in Latin America and its impact on the penitentiary system, but it does not yet have funds available.

In the area of prevention, programs are needed that specifically target women who could be ensnared by trafficking networks because of their economic vulnerability and gender. There is also a need for programs for men, and especially boys and adolescents, that focus on masculinity and the social imaginaries surrounding its many expressions, since for both men and women, participation in drug offenses can begin with fulfillment of gender roles.

With regard to penitentiaries, important references include the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as the Bangkok Rules,<sup>15</sup> approved in 2010 by the United Nations General Assembly.

### **Box 1. The Bangkok Rules**

The Bangkok Rules were approved in December 2010 by the United Nations General Assembly. The text contains 70 points (rules) that specifically address the problems and needs of women in prison. The rules repeatedly insist that non-custodial measures be adopted, especially for mothers, since they usually are responsible for caring for their children. The rules highlight the need to foster the maintenance of family relationships and house women in prisons close to their homes. They propose tools for providing comprehensive assistance to women in prison, taking into account their history, the circumstances of the offense, and mental health problems that could stem from prior situations of abuse, exacerbated by incarceration. The rules include:

#### **Rule 2**

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time [...].
2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

#### **Rule 13**

Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.

#### **Rule 18**

Preventive health care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community.

### **Rule 41**

The gender-sensitive risk assessment and classification of prisoners shall:

- a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women prisoners;
- b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other care-taking responsibilities, to be taken into account in the allocation and sentence planning process;
- c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;
- d) Ensure that those with mental health care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.

### **Rule 64**

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

The Bangkok Rules raise the visibility of matters specifically affecting women in prison, which could serve as a starting point for Latin American countries to review how their penitentiary systems operate. Points include women's right to attention to their gender-specific health needs, the responsibility of authorities to maintain and foster the women's bonds with their families, especially their children, and the importance of non-custodial measures, especially for women who are mothers. This paper will refer to other Bangkok Rules in specific sections.

It should be noted that "gender blindness" – making women invisible and ignoring their experiences and viewpoints – often begins with the laws that regulate the penitentiary system.<sup>16</sup> A review should therefore include an analysis of legislation and the development of inclusive, gender-sensitive legal measures, along with specific and structural changes.

In the area of drug policy, this report refers to the disproportionate nature of sentences in Latin American countries, some examples of reform initiatives and mechanisms for suspending prison sentences. Measures such as pardons, sentence reduction and non-custodial options could reduce overcrowding, relieve pressure on the penitentiary system and improve the situation of people who are being held in pre-trial detention or serving

prison sentences. For example, in August 2013, the government of Costa Rica approved sentence reduction for women who transport drugs into prisons.<sup>17</sup> Those measures, however, should be part of a broader change that coincides with a comprehensive rethinking of drug policies and their basic goals. When budget funds are allocated for implementation of drug-related policies, emphasis should also be shifted from repressive components that focus on criminal prosecution and more funds should be allocated to policies for public health, prevention and assistance to dependent users of psychoactive substances.

## **Women's involvement in international drug trafficking**

### **Background**

Although international drug trafficking has been widely studied and addressed with a series of policies ranging from global to local, the gender aspect has gone virtually unnoticed. Drug trafficking, like the policies adopted to combat it, tends to be analyzed – and policies implemented – with no consideration of the various gender-determined processes of socialization of men and women in the criminal world.

The role of women in drug trafficking has become somewhat more visible thanks to feminist criminology. Two of the main researchers in that field in Latin America are Rosa Del Olmo and Carmen Antony.<sup>18</sup> In their work on women in prison, they have shown how most women who are victims of criminalization are from poor, disintegrated households with little or no access to opportunities and with life stories marked by multiple forms of abuse and violence.<sup>19</sup>

Other similar studies have suggested that drug offenses are increasingly “gender offenses,” because some of them give women access to a higher income than they could receive in the formal economy or the legal informal economy, while allowing them to fulfill their traditional gender roles (mainly caring for children and the household).<sup>20</sup>

Economic need is generally recognized as the main reason for involvement in trafficking. In many cases, the women are mothers from a situation characterized by marginalization.<sup>21</sup>

In other cases, drug-related illicit activities are among the survival strategies of the entire family or community, especially in rural areas dedicated to cultivation. In the family, activities are distributed by age and gender. The involvement/recruitment of women (as well as children and elderly persons) is therefore related to economic and cultural factors.

In the life stories of women in prison who figure in various qualitative studies used as background for this report, male partners play a key role in recruitment. Networks of traffickers are structures characterized by chauvinistic values and male leadership.<sup>22</sup> Although there have been cases of women with power,<sup>23</sup> they are a minority. Most women play secondary roles and are highly expendable.

### Sale

Small-scale dealing in its various forms (in public places, home delivery and at *ad hoc* points of sale) constitutes the broadest band of the market for psychoactive substances and involves a series of very heterogeneous actors.

Once again, economic need appears to be the main reason why women become involved in small-scale illicit drug markets.

This may also occur within the family. In his study of small-scale trafficking in Mexico City, Carlos Zamudio describes the case of the “Perico Family” (*Familia Perico*), an extended family group dedicated to selling drugs.<sup>24</sup> The author shows how the various tasks (fetching the drugs, storing them, preparing the dose, selling, dealing with customers, etc.) were divided up among family members along generational and gender lines. The grandmother, for example, was responsible, among other things, for fetching the merchandise, because an elderly woman would not raise suspicions. Moreover, if the police did approach her, the people in the community would come to her defense. Her gender and age, therefore, made her the person best able to transport drugs and go unnoticed.

In other cases, some women initially became involved to help their partners and later made their own “decision” to continue selling.<sup>25</sup>

Finally, it should be noted that selling drugs can be related to consumption – a way to support the dependent use of a psychoactive substance.<sup>26</sup> In that sense, it can be combined with other activities aimed at supporting dependence. Mariana, a woman interviewed in the Santa Marta women’s prison (Mexico City) – dependent on crack since she was 11 years old, and who had lived in the street since she was 9 because she had been raped by her father – supported herself by washing windshields at traffic lights and by prostitution. Mariana was arrested while using drugs with a male friend and was finally tried and sentenced to 10 years in prison for dealing. Her friend, meanwhile, was set free, even though both were found with drugs in their possession and they accused each other.<sup>27</sup>

Prostitution combined with dependent use of drugs in situations of high vulnerability should be cause for alarm and public interest, as it creates serious risks for the health of dependent users, besides exposing them to being revictimized by human trafficking networks or criminalized and incarcerated by the state. According to a report by the International Drug Policy Consortium (IDPC), “women are more likely to provide sex in exchange for lodging, protection, drugs and/or support. They also tend to experience violence from their sex partners more frequently and they may find it difficult to get their male sex partners to use condoms, which makes them more vulnerable to HIV and other sexually transmitted



illnesses (STIs).<sup>28</sup> Meanwhile, the state's response tends to be inadequate and often discriminatory, because women drug users tend to be considered "the lowest of the low."<sup>29</sup>

### Transporters of drugs into prisons

Women who transport drugs into prisons are a group that has received little attention, even in specialized studies.

In Mexico City, they are called "*aguacateras*," because the drugs are wrapped in packing tape, forming a package called an *aguacate* (Spanish for avocado), because it is the size and shape of that fruit.<sup>30</sup> They use all kinds of hiding places, including the vagina.

This group includes both women who are trying to survive by transporting drugs in exchange for a generally small amount of money and women who carry drugs to an incarcerated relative.

Those who see this as a "job" are the weakest and worst-paid link in a lucrative criminal network consisting of inmates, prison staff and guards, and traffickers who operate outside the prisons.

Lucy, one of the women interviewed in the prison mentioned above, said that before she opted for the "job" of transporting drugs into prison, she had been a domestic worker, had guarded empty lots of land and had even migrated illegally to the United States. A single mother of three children, Lucy said that when a neighbor (who served as the recruiter) offered her 500 Mexican pesos (about US\$37) for every time she took drugs into a men's prison, she saw it as an opportunity to earn in just a few hours what would take weeks to earn as a domestic worker, and which would give her more time to care for her children. Lucy was "recruited" by a neighbor who detected her extreme economic need.

It is interesting to note how other women can act as recruiters. In Lucy's case, the business was controlled by inmates in a men's prison and by an outside agent, who coordinated the *aguacateras*. Lucy's immediate contact, however, was another woman. She gave Lucy the "avocados" and also worked as an *aguacatera*. Although this is a hypothesis that would have to be tested with more in-depth study, it would seem that, in the transportation of drugs into prisons,

men manage the business and act as intermediaries, while women handle the micro-level contact with the drugs, although there are hierarchies among them.

It is important to remember that the drugs that enter prisons are mainly introduced by prison staff and guards, who generally go unpunished.

### International transportation and trafficking

The transportation of drugs through a territory or country, and international trafficking – the introduction or extraction of drugs to or from another country by human couriers – includes a wide variety of people, motives, means of concealment, substances, earnings, forms of involvement and "professional careers." The group known as "mules" includes women from very diverse cultural and socio-economic backgrounds, from those with less than a primary education to those with university studies, and from those in extreme poverty to those in the middle class. It is also a more heterogeneous group in terms of nationality, and it constitutes the majority of foreign female prison inmates. In transshipment countries (Argentina, Ecuador, and Mexico, for example) and destination countries (England and Spain, among others), most of the female inmates from Latin American countries have been charged with international drug trafficking.<sup>31</sup>

The most common forms of transportation are packets of drugs concealed in luggage or fastened to the body – generally around the abdomen and buttocks – or capsules of cocaine or heroin that are swallowed and carried in the stomach. The latter is a serious health hazard, because the capsules could burst and cause intestinal obstruction and death.<sup>32</sup>

Payment for transporting the merchandise depends mainly on the destination, the mule's sex (men are paid more) and the drug transported; other factors that affect the fee are the mule's experience and whether the person is transporting his or her own drugs.<sup>33</sup> The people who earn the most – thousands of dollars – transport their own drugs; they generally begin working for an organization as mules, and once they have established contact with the people who receive the drugs in the destination country, they use their income to buy more drugs and establish their own micro-networks, contracting other human couriers.<sup>34</sup> Aside from these cases, which are probably a minority,<sup>35</sup> most mules are occasional

and expendable employees. Organizations tend to send several people on the same flight, as some may be “sacrificed” – through anonymous tips to authorities – to allow the others to get through.<sup>36</sup>

In the stories of women who participate in international trafficking, the vector for involvement is often a boyfriend, husband or some other male figure with whom there is a pre-existing bond of trust, friendship or love. The involvement may be conscious – the woman may know she is going to transport drugs in exchange for economic remuneration – or the result of deceit or force.

María Dorado describes cases of Colombian women in Spanish prisons.<sup>37</sup> The author states that most became involved for economic reasons; the reasons mentioned most frequently were payment of a debt or medical treatment for a relative, unemployment and the need to support children. The interviews show that women are recruited by a person known to them, who has already made successful trips, or by a recent acquaintance who involves them by wooing them. Once they are in a romantic relationship, their boyfriends or seducers either deceive them by “planting” drugs in their luggage before an international trip or convince them to travel, assuring them that nothing will happen to them and promising that they will solve their economic problems.

A series of videos produced by the Transnational Institute (TNI)<sup>38</sup> and the Washington Office on Latin America (WOLA)<sup>39</sup> as part of the study, “Systems Overload,”<sup>40</sup> which focuses on the disproportionate nature of drug offense penalties in Latin America, includes stories of women drug mules that show how relationships of trust and deceit often underlie the how and why of women’s participation – consciously or unconsciously – in drug offenses.<sup>41</sup>

The concepts of trust and deceit must be understood as being connected with the idea of “romantic love” and the power relationships deriving from it. In her thesis about women drug mules in Ecuador, Isabel Torres Angarita explains how “romantic love” is a social construct and a power relationship, which “even permeates the dynamics of drug trafficking and influences the decisions and actions of women who become involved in it.”<sup>42</sup> It operates as “a relationship of power between men and women, in which women tend to be at a disadvantage, which

leads them to commit desperate acts or ‘sacrifices’ in the name of the loved one.”

Women are taught to trust the word of the man they love, who acts as their protector. In many of the stories of the female inmates I interviewed, one phrase spoken by a man to a woman was constantly repeated: “Everything will be all right.” With this simple formula, which expresses authority and control over circumstances, many women have been convinced that transporting drugs implied no risk and that, if they should be arrested, their male partner would take care of resolving the situation.

## Discussion

The dynamics of international drug trafficking mirror the social relationships that predominate in Latin America.

As indicated in various documents by the Economic Commission for Latin America and the Caribbean (ECLAC),<sup>43</sup> the combination of structural conditions, greater social and labor discrimination, and the idea that childcare is women’s work means that women have a double or triple work day under conditions of greater vulnerability and precariousness than men. Quoting Rosa del Olmo:<sup>44</sup>

“In our continent, women are the majority in nearly all categories of unemployed and underemployed, a figure that is steadily increasing in most countries, even though one out of every three households in the world is headed by a women. Given this situation, it is not odd, for example, that women in Latin America find themselves facing the possibility of including, within the margin of adaptations they make to survive, that of choosing a type of work that is currently considered criminal, which is their participation in the drug business.”

The socio-economic dynamics of international drug-trafficking circuits are also affected by gender variables. As in the political, judicial, government and business spheres, positions of power in criminal networks are mainly held by men, while women are the majority at the lower levels. For that reason, they are highly expendable and easily replaced, which often makes them victims of betrayal by criminal networks or even by the partner who got

them involved. In prisons, there are many stories of women who accompanied their husbands to make a delivery and, when they were detained by police, the men accused the women of being the owners of the drugs.

This is not meant to imply that women are “victims” of men or unable to stand up for themselves. Although there are cases of coercion and deceit, in many cases the women transport or sell drugs consciously, because of an economic emergency, to supplement other sources of income, or even as part of their own development in the criminal world.

Amid this variety of functions and motivations, however, there is a series of elements that tend to be invisible and that should be considered in the design and implementation of public policies for prevention and in a critical analysis of drug policies currently in effect in Latin American countries:

- The process of women's involvement is distorted by asymmetrical relationships between women and men.
- Although the illegality of certain substances and the behaviors related to them is difficult to ignore nowadays, there can be cases of ambiguity. For example, in countries such as Mexico, where the separation between possession for personal use (decriminalized) and offenses related to small-scale trafficking (criminally punished) is marked only by very low quantity thresholds, a consumer can easily become trapped by the criminal justice system. The effects of “romantic love” described above can reduce the perception of risk of the effects of a criminal sanction.
- Most women who become involved in drug offenses are secondary players in a transnational business. Regardless of their degree of responsibility, knowledge of the crime, participation (active or through deceit, persuasion or violence stemming from patriarchal cultural processes) and the economic income received (which is always small), they do not represent a risk to the security of the state or to public health.

Even so, as with the men who are the lowest rungs of the trafficking ladder, they are the main targets of the punitive system organized to combat a transnational illegal business that produces huge revenues and that continues to operate efficiently even when its employees are apprehended and incarcerated.

## Women in prison for drug offenses in Latin America

Worldwide, women represent about 5 percent of the total prison population, with regional and local variations.<sup>45</sup> Although women inmates are still a minority, their numbers are increasing, and drug offenses play a notable role in that trend. The *Handbook for Prison Managers and Policymakers on Women and Imprisonment* by the United Nations Office on Drugs and Crime (UNODC) provides some examples of countries in which the number of women in prison has grown more than that of men, including the United States, England and Wales, and states:<sup>46</sup>

“Between 1984 and 2003, in Australia there was a 75 per cent increase in the imprisonment of men whereas women's imprisonment soared by 209 per cent. A similar trend was noted in Mexico, Bolivia, Colombia, Kenya, New Zealand, Kyrgyzstan between 1994 and 2004, and in a number of countries in Europe, such as Cyprus, Estonia, Finland, Greece and the Netherlands in the same years.”

According to a purely quantitative study by Harm Reduction International,<sup>47</sup> about 28 percent of women incarcerated in European countries are in prison for drug offenses. The highest percentages are in Tajikistan (70 percent) and Latvia (68 percent), and the lowest is in Poland (3.1 percent).

One European Union study of women in prison in six countries<sup>48</sup> (England and Wales, Italy, France, Germany, Spain and Romania) shows how the social characteristics of the women prisoners coincide in all the countries studied: a high percentage of the women had no economic security before their arrest, and had never worked or had worked in low-paying jobs with no social security; they lacked secure housing, and in general had a low level of formal



education, were of foreign origin or from an ethnic minority, and had been victims of physical and/or sexual violence by male relatives or strangers. It is also notable that, in several cases, the women were induced to commit the crime by the men who had committed violence against them.

Latin America has also seen an increase in the number of women in prison. This trend began in the late 1980s and became more pronounced in the 1990s, with the gradual increase in the harshness of drug laws and the increase in prosecution of those offenses.<sup>49</sup>

A factsheet by the Open Society Justice Initiative,<sup>50</sup> *Women and pretrial detention: Individuals presumed innocent suffering punishment and abuse*, indicates that between 2006 and 2011, the female prison population in Latin America nearly doubled, from 40,000 to more than 74,000.

In Central America, women represent, on average, 5 percent of the prison population. In Costa Rica, the percentage is 7.4 percent, while the country with the lowest rate is Belize (2.4 percent). The countries with the most female prisoners, in absolute terms, are Mexico (more than 10,000) and El Salvador (about 2,000).<sup>51</sup> In most Caribbean countries, there are fewer than 50 women in prison, except in the Dominican Republic, Haiti, Jamaica, Puerto Rico, and Trinidad and Tobago.<sup>52</sup> In South America, women represent about 6 percent of the prison population. Bolivia and Ecuador have the highest proportions, 13.4 percent and 10.7 percent, respectively.<sup>53</sup> The vast majority of these women are accused of drug offenses, although they are hardly the main players in trafficking.<sup>54</sup>

The following are data from various countries in the region.

In 2003-2004, women in prison for drug offenses represented 26 percent of the total prison population in Guatemala, 46 percent in El Salvador, 59 percent in Honduras, 89 percent in Nicaragua and 72 percent in Panama.<sup>55</sup> In Costa Rica, about 64 percent of women in prison are accused of drug offenses.<sup>56</sup> In Venezuela, more than 70 percent of women incarcerated since the 1990s have been imprisoned for drug offenses.<sup>57</sup>

In Ecuador, in 1982, 18.5 percent of female prisoners were incarcerated for drug offenses, a figure that has risen to 75 percent to 80 percent today.<sup>58</sup>

A study of women in prison by Brazil's federal government shows that, on average, 60 percent are accused of trafficking and 4 percent of international trafficking.<sup>59</sup>

Alejandro Corda, an analyst for the Argentinean civil society organization Intercambios, shows the increase in the number of women imprisoned for drug offenses in that country, where the figure is now about 70 percent.<sup>60</sup> A study of women in prison by the Center for Legal and Social Studies (*Centro de Estudios Sociales y Legales*, CELS), Argentina's Ministry of Public Defenders (Ministerio Público de la Defensa) and the Prison Ombudsman's Office (*Procuración Penitenciaria de la Nación*) indicates that for foreign women, the percentage rises to 90 percent – in other words, nine out of every 10 foreign women in Argentinean prisons are accused of drug offenses. Most are from other Latin American countries.<sup>61</sup>

In Mexico, between 30 percent and 60 percent of women in prison are accused of drug-related offenses.<sup>62</sup> In federal prisons and those in the northern border states, the proportion increases to 75 percent to 80 percent.<sup>63</sup> The most vulnerable people are those of indigenous origin. According to Ana Paula Hernández, indigenous women represent 5 percent of the total female prison population, but 43 percent of the female population incarcerated for drug offenses.<sup>64</sup> Figure 1 illustrates these figures.

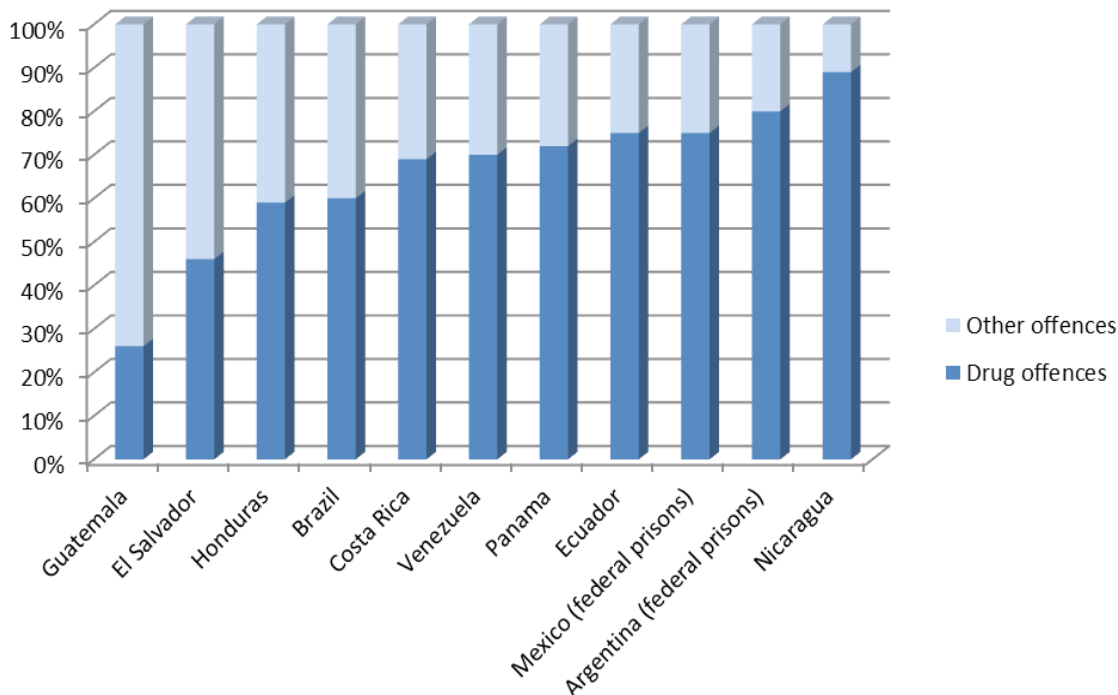
## Prison sentences, alternatives and reforms

### The use of pre-trial detention

Although there are differences between countries, in general in Latin America, drug-related activities are punished with long prison terms. Some countries – including Mexico, Ecuador, Brazil, Bolivia and Peru – also establish mandatory pre-trial detention for drug offenses, which means that the person who is accused must await the resolution of the case in prison. This contributes to prison overcrowding, as these processes can take months or years.<sup>65</sup>

At the regional level, an average of four out of every 10 people are in pre-trial detention, although in some countries that figure is higher. Bolivia is one

**Figure 1. Proportion of women in prison for drug offenses in Latin America**



of the most dramatic cases. According to a study by the Center for Justice and International Law (CEJIL), that country has one of the most advanced penitentiary laws in the region with regard to gender and the rights of people in prison.<sup>66</sup>

In fact, however, the reality is very different: women represent more than 13 percent of the total prison population, one of the highest levels in the world, and 80 percent are awaiting sentencing.<sup>67</sup> More than 2,000 children live in prison with their fathers or mothers. There are cases in which, because of their extreme poverty, the entire family goes to live in the prison. Overcrowding and the abuse of pre-trial detention are the main problems in Bolivia's penitentiary system. For example, the Palmasola prison, the country's largest, was built for 600 prisoners, but currently houses nearly 5,000.<sup>68</sup>

There were uprisings in that prison in August 2013, and in September, President Evo Morales signed a pardon and amnesty law that would benefit people who had been sentenced to less than eight years in prison or charged with offenses punishable by sentences of less than four years.<sup>69</sup> According to Kathryn Ledebur, director of the Andean Information Network,<sup>70</sup> that decree marked the first time benefits were granted to people who were still awaiting sentencing. People

accused of drug trafficking, however, are excluded from the measure, because the "Law on the regime applicable to coca and controlled substances"<sup>71</sup> (known as Law 1008) establishes a minimum sentence of 10 years for that offense.

### Non-custodial measures and their application to drug offenses

In some of the region's countries, pre-trial detention or a sentence can be suspended under certain circumstances.

Paraguay, for example, limits pre-trial detention for women during the last months of pregnancy and for nursing mothers. A prison sentence can also be suspended if the woman is pregnant or has a child under 6 months old at the time of sentencing.<sup>72</sup>

According to Article 314 of Colombia's Criminal Procedures Code, "Pre-trial detention in a prison can be replaced with house arrest in the following cases: [...] 3. When the accused is in the last two (2) months of pregnancy, she shall have the same right during the six (6) months following the date of birth. [...] 5. When the accused is a female head of a household with a minor or permanently disabled child, as long as the child has been under her care.

If the mother is not present, the father in the same situation will have the same benefit.<sup>73</sup>

In Venezuela, the Organic Criminal Procedures Code states that women cannot be subject to pre-trial detention in the last three months of pregnancy or while they are breastfeeding, until six months after the date of birth.<sup>74</sup>

This is an effort to reconcile punitive power with the rights of children and mothers. In the case of drug offenses, however, the benefits granted by law are limited. Rodrigo Uprimny and Diana Guzmán explain that in Colombia, the benefit of an electronic monitoring system as a non-custodial measure does not apply to drug offenses.<sup>75</sup>

The same is true in Argentina. As Corda notes,<sup>76</sup> although house arrest for pregnant women, those with children under age 5 and those caring for persons with disabilities was introduced in 2009, there are still many pregnant women and women with small children in prison. One argument used by judges to deny the right to house arrest in the case of women accused of small-scale dealing is that, if granted, they would return to the same place where they were selling drugs.

In Peru, people accused of drug offenses<sup>77</sup> also lack access to sentence-reduction benefits.

In Mexico, denial of the right to the benefit of parole is found in Article 85 of the Federal Criminal Code:<sup>78</sup>

“Parole will not be granted to:

- I. Those sentenced for any of the following offenses covered by this Code: [...]
- b) Against health, as specified in Article 194, except in the case of individuals who suffer obvious cultural backwardness, social isolation and extreme economic need; and for the category of transportation, if they meet the requirements established in Articles 84 and 90, Part I, section c), for which they must be first-time offenders, despite not fulfilling the three assumptions indicated in the general exception to this section [...]

The people with “cultural backwardness” to whom the Code refers are those from indigenous communities, which is a strong indication of how they are perceived by the criminal justice system.

### Legislative initiatives and reforms

In recent years, various initiatives and legislative reforms have emerged with regard to people in prison for drug offenses.

In 2008, the government of Ecuador announced a pardon that would benefit about 1,500 “drug-trafficking mules” who were victims of the disproportionate legislation in effect in the country.<sup>79</sup> The Narcotic or Psychotropic Substances Law, or Law 108,<sup>80</sup> established undifferentiated sentences of 12 to 16 years for mules, small-scale dealers and large-scale traffickers. In 2010, Ecuador began a review of its drug laws as part of a broader judicial reform.<sup>81</sup> At this writing, Law 108 is still in effect.

In 2009, Mexico published the “Decree to reform, add and repeal various provisions of the General Health Law, the Federal Criminal Code and the Federal Criminal Procedures Code,”<sup>82</sup> known in the media as the “Small-Scale Drug Dealing Law.” This decree decriminalizes consumption through a system of thresholds for possession and reduces sentences for some types of crimes against health. In the case of the *aguacateras*, for example, the minimum sentence before the reform was 15 years without the right to benefits. Now, if the amount is below a certain threshold (for example, maximum kilos of marijuana or 500 grams of cocaine), the minimum sentence is six years.

In Costa Rica, the reform mentioned in the introduction, which was approved in August 2013, provides for sentence reduction (from a sentence of a minimum of eight years and maximum of 20 to a minimum of three years and a maximum of eight) for women who carry drugs into prisons when they meet the following criteria:<sup>83</sup>

- a) They live in poverty
- b) They are heads of households living in situations of vulnerability
- c) They care for minor children, senior citizens or persons with any type of disability that makes them dependent on their caregiver
- d) They are senior citizens living in situations of vulnerability.

If one of those conditions is met, the judge hearing the case or the judge enforcing the sentence can order that the sentence be served out under house arrest, on probation, in an alternative detention

center, with restricted freedom using a non-stigmatizing electronic device or any type of non-custodial measure.

Finally, it is important to note that in the case of drug-offense sentences, some European countries have also reacted to the increase in the number of foreign drug mules in their prisons by reducing sentences, given that most are women who are first-time offenders responsible for a non-violent offense and vulnerable mothers who are usually the sole caretakers of and providers for their families. In England, for example, after a consultation period, new Sentencing Council guidelines for drug offenses were announced. They consider a combination of factors that are strictly related to trafficking (the type of offense and type and quantity of the substance), criminological (the degree of leadership, for example, distinguishing among a leading role, important role and lesser role) and sociological (if the person is the sole or main source of support for others, if the person's vulnerability was exploited, if the person is cooperative and repentant, etc.).<sup>84</sup>

These measures provide for a reduction of sentences imposed for transporting drugs into the country. In fact, one of the documents in the research that led to the development of the guidelines consisted of 12 interviews with women accused of transporting drugs into the country.<sup>85</sup> The purpose of the study was to discuss with the interviewees the background and circumstances that led them to commit the offense, their reaction to the sentences and the impact of the sentences on their lives and those of their families. The women's life stories were taken into account in the design of sentences more appropriate to the circumstances of the offense and the profile of the people who commit it.

This could be a relevant reference point for Latin American countries that decide to review and modify their drug policies, as it takes into account the life experiences of the people involved, showing the human impact of punitive drug laws, that can lead to changes in policy. Sentence reduction, the expansion of rights to non-custodial measures, recognition of the rights of children of parents who are in prison and specific measures, such as pardons, can improve the situation in prisons and the individual experience of persons deprived of liberty who benefit from these changes.

In Latin America, however, the approach to the drug problem remains eminently focused on criminal punishment of people who become involved, for different reasons, with illicit drug markets. The design and implementation of changes in public policies requires an approach based on human rights, on people and their circumstances, and on prevention, more than punishment.

## A triple sentence

Latin America's penitentiary systems have a series of overall problems that affect the entire population, including overcrowding, sub-standard conditions, violence, use of torture, excessive use of pre-trial detention, corruption and a lack of job-training and educational programs.<sup>86</sup> Meanwhile, besides the discrimination and violence that affect all inmates, there are other problems that specifically affect certain groups. Women are one of those affected groups. Other groups that are victims of discrimination are senior citizens and persons with disabilities, those who suffer from certain health conditions (such as HIV/AIDS), dependent users of psychoactive substances, foreigners or people from ethnic or racial groups different from the dominant group, and the gay, bisexual, transsexual, transvestite, transgender and intersexual population.

In its report on access to justice for women who are victims of violence, the Inter-American Commission on Human Rights said that in the region, "violence and discrimination against women are still condoned in American societies."<sup>87</sup> The perpetuation of cultural patterns that discriminate against women aggravates this group's vulnerability and their lack of defense against both organized crime groups and the state, as well as the reproduction of violent patterns by prosecutors and the judicial system and inside prisons.

Women in prison for drug offenses are affected by three levels of exclusion that translate, in prison, into a triple sentence. The first consists of discriminatory factors that begin outside the prison walls and which are related to ongoing discriminatory practices and asymmetrical relationships of power between men and women in the public and private spheres.

Second, like men who participate in drug offenses, they are subjected to disproportionate sentences.

And third, they suffer from specific forms of discrimination in prison.

All sources agree on the profile of women in Latin American prisons: most are first-time offenders, presumed innocent or guilty of a non-violent offense, usually heads of single-parent households, with two or more children, from marginalized households and with life histories marked by various forms of violence and, in many cases, sexual abuse. Most are the sole supporters of their children and, often, of other people. They have a low level of formal education (in most cases primary complete or incomplete or secondary incomplete) and little or no stable employment before their incarceration.<sup>88</sup> The main labor activities in which they engaged before their arrest include informal commerce, domestic labor and prostitution.<sup>89</sup>

As the CELS study mentioned above notes: “penal selectivity falls on the shoulders of women who are socially and economically disadvantaged”:

“The vast majority of women in prison were heads of single-family households. Of the women interviewed, 60.1 percent said they were not living with a spouse or partner at the time of their arrest, and 63.5 percent were the main source of economic support for their household, a figure that was 70.4 percent in the case of foreign women. Four out of every 10 women said that even after their arrest, they continued to provide economic support to their households. This latter figure underscores the pressing economic needs of their families, especially considering the scant income that women prisoners receive from the labor activities in which they engage.”<sup>90</sup>

Feminist research has helped unmask the gender blindness that permeates the penitentiary system. That system is not only “based on stereotypes about law-breaking women,” but it is also “designed by males, [and] thus lacking consideration for issues specific to women.”<sup>91</sup>

This is generally justified with the argument that the number of women in prison is far lower than

the number of men. That numerical inferiority affects the way women are treated in prison.<sup>92</sup> The following are aspects that tend to emerge when we look at prisons for women or the women’s sections of prisons that house both sexes. Because there are significant differences among countries, regions and states, and even from one prison to another, we offer a general overview based on the studies consulted and the author’s empirical experience.

There is less overcrowding among women than in men’s prisons or sections. Other forms of violence, abuse and discrimination exist, however. One factor is the lack of prisons exclusively for women, which has a cascade of effects.<sup>93</sup> One consequence is that women are housed in prisons far from their homes, which affects their family ties, relationships with their children and access to adequate legal defense.

Another consequence of the lack of women’s prisons is that women may be housed in annexes, sections or cellblocks in men’s prisons. Combined men’s and women’s prisons may ensure that the women are closer to their homes. Internal prison dynamics, however, may become a disadvantage for women inmates. With regard to access to basic services, women suffer from fewer opportunities for work, job training or education, recreation and health care. That is because priority is placed on the men’s section, which receives most of the available funds, although, as noted above, labor and educational conditions are also inadequate for men in prison.

Women lack their own medical facilities, which means that they are often attended in the men’s section, after the men; they are thus exposed to risks and are always a less important and often neglected appendage.<sup>94</sup>

As noted in the guide on women in detention published by Penal Reform International, the Association for the Prevention of Torture, the European Union and UK Aid,<sup>95</sup> prisons tend to have inadequate hygienic and gender-specific sexual and reproductive health services. Women generally are not provided with sanitary napkins, and they often have no access to preventive health care or attention that focuses on gender-specific needs (such as cervical or breast cancer or menopause). This also holds true for pregnant and nursing women. Women who live in prison with their children often have no access to appropriate medical attention before and



after delivery or to pediatric health care, special diets, milk or diapers.

Rule 5 of the Bangkok Rules states:

“The accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.”

Labor activities available for women tend to be scarce and do not provide them with skills that will enable them to enter the formal economy once they leave prison. Women are generally involved in handcrafts such as embroidery, sewing and making stuffed animals, cooking, beautician work, food preparation or informal activities in the prison, such as washing and ironing clothes.<sup>96</sup> Industrial units and shoemaking, carpentry, baking and other workshops are generally located in men’s prisons or sections.

Another point that stands out in studies of women in prison is the different handling of family and conjugal visits. Women are restricted or prohibited from exercising their sexual rights, because women’s prisons or women’s sections of combined men’s and women’s prisons apply stricter criteria for granting the right to conjugal visits.<sup>97</sup> This gave rise to Rule 27 of the Bangkok Rules:

“Where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men.”

Studies show<sup>98</sup> that women in prison receive fewer visits than men, because of several factors. One is the distance between the prison and the family home. Transportation costs can be an obstacle to visits, because the prisoner is often part of a nuclear family that has few resources.

The most important factors in the gradual abandonment of incarcerated women by their families and friends, however, are beliefs about a woman’s appropriate role and her responsibilities. Transgression of moral law through transgression of criminal law – the transition from “woman-mother”

to “woman-criminal” – carries the social penalty of abandonment. That explains why men in prison, in contrast, receive more visits from their mothers, wives, girlfriends, lovers, children, etc.<sup>99</sup>

*Women in Detention: a Guide to Gender-Sensitive Monitoring* and other sources<sup>100</sup> also note the following points:

- Women may be victims of various forms of sexual abuse and rape by police and prison guards. This can happen during transfers and searches, for example.<sup>101</sup>
- Although the Minimum Rules for the Treatment of Prisoners,<sup>102</sup> in effect since 1955, note the importance of ensuring that female prison guards be in charge of female prisoners, that is not the case in many countries, and male guards have access to women’s sleeping quarters. That leads to a series of abuses, from guards who spy on women when they are in their living areas, in the shower or in other situations of privacy or nudity, to rape or requests for sexual favors in exchange for services.<sup>103</sup> Such practices have been reported in El Inca, Ecuador’s largest prison.<sup>104</sup>

Finally, there is the sensitive issue of mothers in prison, which has two dimensions. First, the fact that inmates live with their children in prison has several implications for the prisons where they are housed: there is a need for appropriate medical facilities to handle the women’s reproductive health needs and issues related to their children’s health, nutrition, education and hygiene; childcare centers and areas for nursing mothers; legislative regulations regarding the birth of a child, his or her registration and the age to which children can stay with their mothers (or fathers) in prison. Labor rights associated with motherhood must also be considered, as well as the availability of paid work in prison, since the women often have sole responsibility for supporting their children.<sup>105</sup>

Besides issues related to life in prison, it is important to consider measures aimed at maintaining and strengthening bonds with children who live outside the prison with relatives or other people, in institutions or on their own.

Separation from their children has serious implications for women’s mental health and

contributes to the breakdown of families and often to the institutionalization of children.<sup>106</sup>

The Bangkok Rules place a great deal of emphasis on the responsibility of prison authorities to make the efforts necessary to maintain those bonds.

For example, Rule 4 establishes that “Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman’s preference and the availability of appropriate programmes and services.” Rules 22 and 23 prohibit close confinement or disciplinary segregation for pregnant women, women with children and breastfeeding mothers and establish that punishments for female prisoners will not include prohibition of contact with family members, especially their children.

Indigenous and foreign women suffer other forms of isolation because of linguistic and cultural barriers that separate them from the general population, and which can be a source of discrimination.<sup>107</sup> From the time they enter prison, indigenous and foreign women should have access to people who speak their language. Foreign women must also be guaranteed access to consular services and assistance in making telephone calls to home countries.

Indigenous people may suffer ethnic and racial discrimination. Prison authorities are responsible for ensuring that staff and other inmates do not engage in patterns of discrimination and exclusion, and that indigenous women have access to available services and can exercise their rights under conditions of equality.

## Conclusions

Since the late 1980s, women have become increasingly involved in drug offenses. The growing field of feminist criminology in Latin America has shed light on this phenomenon. In the past two decades, the number of studies of this matter has increased, providing a better understanding of the relationship among gender relations, socio-economic conditions in Latin America, the

development of drug trafficking and the punitive approach reflected in drug policies.

This report has attempted to provide a gender-sensitive review and summary of the main quantitative and qualitative trends in women’s participation in drug trafficking, showing how socially constructed beliefs about the roles of “men” and “women” also influence the formation of criminal networks.

The mosaic of people who participate in drug offenses is extremely varied. Nevertheless, a series of conditions tends to be repeated. One is the background of social exclusion of most women (and men) on the lowest – and most expendable – rungs of the ladder in criminal networks.

The life stories of women in prison for drug offenses reflect repeated patterns that make them vulnerable: marginalization, low levels of formal education, family stories marked by various forms of violence, working from the time they were children, mainly in the informal economy, adolescent pregnancy and a lack of protective mechanisms and state guarantees of respect for their human rights. The increasing feminization of poverty and the increase in single-parent homes headed by women are factors that push women into trafficking networks.

Social exclusion leads to greater vulnerability not only to criminal organizations, but also with regard to the state. Lack of knowledge of the law and of their rights and lack of access to defense, economic resources and solid social capital places these people at a disadvantage and makes them powerless against a punitive state. Women are also victims of specific forms of socially condoned gender violence that are reproduced within judicial institutions.

Disproportionate sentences and gender blindness must be addressed and corrected by Latin American states: they cause enormous and unnecessary harm, and there is little evidence that they are dissuasive<sup>108</sup> – meaning that long sentences may not effectively reduce crime – or that they decrease the amount of illicit drugs available.

Meanwhile, the prevailing prison conditions in Latin American countries, often in detention centers that are far from the inmate’s home and are plagued

with irregularities and structural deficiencies, lead to systematic revictimization.

As the Inter-American Commission on Human Rights states clearly, “the prison practices must be in accord with a basic principle: no suffering should be added to the deprivation of liberty than what it already represents.”<sup>109</sup>

Instead, women and men in Latin American prisons have no guarantee of respect for their rights to a life with dignity or to programs that will ensure that they can re-enter society.

The following is a series of proposals that could help strengthen the introduction of a gender-sensitive approach in various public policy areas in an effort to address the forms of discrimination that particularly affect women because of their gender.

## Recommendations

The introduction referred to policy proposals in four areas.

### 1. Development of quantitative and qualitative data

- We recommend gathering detailed information about the situation of prisoners in Latin America. This information should be generated by each country and available to the public. The OAS, particularly the Inter-American Commission of Women (CIM) and the Inter-American Drug Abuse Control Commission (CICAD), could provide technical and institutional support.
- Besides general information broken down by sex (number of people in prison, percentage in pre-trial detention, rates of overcrowding, number of prisons, etc.), the data should include specific information about offenses (broken down by type of offense and sentences, for example), specific groups (foreigners, indigenous people, people with sexually transmitted illnesses, homosexual or transgender persons, etc.), mental health problems and type of care (cases of suicide and suicide attempts, access

to psychiatric care, quantity and types of medications provided), ties with the outside world (frequency of family visits, access to conjugal visits), problematic use of psychoactive substances and access to treatment and harm-reduction services, number and type of transfers, etc.

- This information should ideally form part of a national (in each Latin American country) and regional strategy for the development of national and hemispheric drug policies and public policies that address areas related to prevention, crime and prisons.
- Quantitative information should be broken down by sex.
- Up-to-date, public information is needed that addresses the various quantitative and qualitative aspects of women’s participation in international drug trafficking.
- Qualitative research should be gender sensitive. This should be a tool for studying the role of women and men in trafficking, examining them as specific groups and looking at their mutual relationships.
- Besides sex and gender, other variables should be considered, such as ethnic and racial differences and nationality.
- Latin American governments, civil society, private enterprise and the appropriate international organizations should support the regional study proposed by the CIM.
- More research is also needed on areas of cultivation, the role of women, children and senior citizens, and the criminalization of communities.

### 2. Prevention

- Prevention programs are needed that specifically target groups that could become involved in drug offenses; these programs should take into account the socio-cultural processes that influence the development of concepts of the masculine and feminine,

without falling into reductionism. Gender-sensitive prevention policies could make the fabric of society less vulnerable to penetration by criminal networks and the values that characterize them.

- Prevention programs should be designed and implemented with the participation of the targeted community, taking advantage of the experience of civil society organizations that exist there.
- These programs should be supported by CICAD and CIM.
- More international cooperation on prevention is needed among countries in the region, with the participation of civil society and development agencies.
- Sufficient resources must be allocated to prevention programs based on scientific evidence, participation, transparency, human rights and a gender-sensitive approach.

### 3. Penitentiary system

- First, each country in the region should undertake a meticulous review of its legislation (national and local, where both exist) and regulations on prison issues. This review should involve open, public and transparent consultation, with guidance from academics and members of civil society who have expertise in the issue, as well as appropriate local, national and international institutions.
- Non-custodial measures for pre-trial detention and for serving sentences should be expanded and fully implemented and should not exclude people accused of drug offenses.
- The Bangkok Rules can serve as a platform for the design and implementation of a penitentiary system sensitive to the specific needs and situations of women prisoners, and should therefore be incorporated into the penitentiary systems in all Latin American countries.

- Children in prison should be a prime concern of Latin American countries. Countries must monitor – in a meticulous, ongoing manner that respects the rights of children and their mothers (and fathers, in the case of children living with them in prison) – the number of children in each prison, the state of their health, their development, and the provision of hygiene, educational and recreational services, nutrition, areas without bars, educational and recreational material, etc. Prison authorities should ensure that this information is transparent and readily available.
- The UNODC could provide the necessary technical and institutional support.
- Avoiding any harm that children could suffer because of a parent's incarceration should be a priority for governments. Appropriate measures should be taken to ensure that they are not subject to discrimination and that they can attend recreational activities, school and health centers outside the prison. Governments should seek assistance from public agencies responsible for children's affairs and from civil society.
- A combined regime should be established to allow inmates to participate in work and educational activities outside prison walls.
- The design and implementation of measures for daytime, weekly or weekend temporary release should particularly consider people who live with their children in prison or who have children outside.
- The Bangkok Rules related to housing of women in prisons near their homes and the importance of maintaining and strengthening their bonds with those outside the prison, especially their families, should be taken into account.
- The Judiciary should pay special attention to those cases and analyze them from the standpoint of gender and the child's best interest.

- Adequate measures related to female inmates' access to health services for gender-specific health needs should be implemented immediately.
- Human trafficking networks that operate inside prisons should be investigated and officials involved should be punished.
- Latin American penitentiary systems should ensure that women in prison are attended by female personnel.
- Women prisoners should have access to safe, swift, confidential and effective mechanisms for reporting abuse, touching, rape or any other inhumane and degrading treatment by authorities, and due punishment in such cases should be prompt.
- The reinsertion phase is crucial. Both inside and outside prisons, it is important to strengthen job training and employment programs that break down gender stereotypes while responding to real employment possibilities for women released from prison.
- Resources should be dedicated to programs that facilitate reinsertion into society for people leaving prison; these include halfway houses, psychological support, and assistance in solving practical problems that can be difficult for someone who gets out of prison, particularly given the stigma of having a criminal record (for example, finding housing, opening a bank account, getting a job, health insurance, etc.).
- It is important to involve the private sector in programs for reinserting inmates and people released from prison into the job market.
- CICAD should promote awareness of the human rights of people involved in drug offenses, taking the profile of those people into account; its strategic plan should take a preventive approach that helps address the many forms of discrimination and social exclusion suffered by people who become involved in drug offenses. This approach should target not only those who show dependent use of psychoactive substances, as is currently the case, but all people who participate in drug-related activities and who could be subject to revictimization or disproportionate punishment.
- In designing drug policies, Latin American governments should seek support from civil society and representatives of affected groups – in this case, women.
- Drug policies are needed that focus on the person and are based on scientific evidence and on prevention more than punishment.
- Budget allocations are necessary for programs for prevention and treatment of the use of psychoactive substances, as well as the creation, strengthening and official establishment of harm-reduction programs inside and outside prisons.
- It is especially important to consider that most women arrested for drug offenses are first-time offenders who have committed non-violent offenses and are not connected with organized crime. In such cases, suspended prison terms, sentence reduction or any mechanism that can reduce the negative impact of a prison sentence is recommended.
- Countries should eliminate impediments (such as defining drug offenses as “serious”) to non-custodial measures and sentence reduction or suspension.
- In cases where national legislation classifies drug offenses as serious and ineligible for procedural benefits, Bangkok Rule 64 should be taken into account: “Non-custodial sentences for pregnant women

#### 4. Drug policies

- Latin American countries should comply with the provisions of the Declaration of Antigua signed at the OAS General Assembly session in June 2013. The declaration states that public drug policies must be designed and implemented with gender awareness, when appropriate.<sup>110</sup>



and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children”.

- Sentences for drug offenses should be reviewed to address the problem of disproportionate punishment.
- Mandatory pre-trial detention should be eliminated in the case of non-violent offenses committed by first-time offenders and those in situations of vulnerability.
- Drug use and possession for personal use should be completely decriminalized.
- A reduction in prosecution of drug-related activities, such as those related to small-scale dealing, would lead to a decrease in the prison population.
- Foreign inmates should be allowed to serve their sentences in their own countries, if they agree. Policies could also be adopted to replace criminal prosecution with repatriation and confiscation of the drugs at the time of arrest.
- Any reform of drug policies should be comprehensive and based on scientific evidence and the most successful international experiences. Information about it should also be made public, so all citizens are aware of it.
- Regional guidelines on sentencing and implementation of penalties in cases of women accused of drug offenses should be drafted, discussed and implemented. These penalties should consider social, economic and gender factors that influence women’s involvement in drug trafficking. They should also be based on recognition that women are often victims of organized crime networks and that they play a

secondary role. Finally, when sentences are established, special attention should be paid to women who are the caretakers of their children.

- Gender and human rights considerations should permeate the entire international drug control regime.

## Acknowledgements

Translation by Barbara Fraser.

The author would like to thank those who read and commented on this text:

- Carlos Alberto Zamudio Angles; Collective for a Comprehensive Drug Policy (*Colectivo por una política integral hacia las drogas*), Mexico.
- Coletta Youngers; Washington Office on Latin America and International Drug Policy Consortium, United States.
- Diana Esther Guzmán Rodríguez; Dejusticia (*Centro de Estudios de Derecho, Justicia y Sociedad*), Colombia
- Marie Nougier; International Drug Policy Consortium, United Kingdom.
- Nischa Pieris; Inter-American Commission of Women, Organization of American States.
- Raúl Alejandro Corda; University of Buenos Aires; *Intercambios Asociación Civil*, Argentina.

## Endnotes

- 1 Juridical Research Center (*Centro de Investigaciones Jurídicas*) of the Autonomous University of Chiapas, Mexico
- 2 Elizabeth Almeda, *Corregir y castigar; el ayer y hoy de las cárceles de mujeres*, Barcelona: Ediciones Bellaterra, 2002; Carmen Antony García, *Estudio sobre violencia de género: mujeres transgresoras*, Panama: University of Panama, Instituto de la Mujer, 2005; Elena Azaola and Cristina J. Yacamán, *Las mujeres olvidadas*, Mexico City: CNDH, El Colegio de México, 1994; Marcela Briseño López, *Garantizando los derechos humanos de las mujeres en reclusión*, Mexico City: Inmujeres, UNDP, 2006; Alejandro Corda, *Encarcelamiento por delitos relacionado con estupefacientes en Argentina*, Buenos Aires: Intercambios Asociación Civil, University of Buenos Aires, 2011; Rosa Del Olmo (coord.), *Criminalidad y criminalización de la mujer en la región andina*, Caracas: Editorial Nueva Sociedad, 1998; Jennifer Fleetwood, "Five kilos. Penalties and Practice in the International Cocaine Trade," *British Journal of Criminology*, Vol. 51, 2011, 375-393
- 3 UNODC, *Handbook for prison managers and policymakers on Women and imprisonment*, 2008, <http://www.unodc.org>
- 4 "Drug Crime," in European Institute for Crime Prevention and Control and UNODC, "International Statistics on Crime and Justice," 2010, <http://www.unodc.org>
- 5 Gender Equality Observatory of Latin America and the Caribbean, *Annual Report 2012. A look at grants support and burden for women*, 2013, <http://www.cepal.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/5/50235/P50235.xml&xsl=/tpl-i/p9f.xsl&base=/oig/tpl-i/top-bottom.xslt>
- 6 ECLAC, *Social Panorama of Latin America 2012*, 2013, [http://www.cepal.org/publicaciones/xml/8/49398/2012-960-PSI\\_WEB.pdf](http://www.cepal.org/publicaciones/xml/8/49398/2012-960-PSI_WEB.pdf)
- 7 Pien Metaal and Coletta Youngers (eds.), *Systems Overload. Drug Laws and Prisons in Latin America*, Transnational Institute, Washington Office on Latin America, 2011, <http://www.tni.org/report/systems-overload-drug-laws-and-prisons-latin-america>
- 8 Gender refers to the socio-cultural construction of the sexual difference between men and women and the subordination of the latter. Gender roles, like attributes and beliefs about what is "appropriate" for each gender, vary historically and geographically; they are not homogeneous within the same society, and they intertwine with other aspects of identity, such as class, ethnic origin, sexual preferences, legal status, etc
- 9 Corina Giacomello, *Género, drogas y prisión. Experiencias de mujeres privadas de su libertad en México*, Mexico City: Tirant lo Blanch, 2013
- 10 *Ibid*; Rosalva Aída Hernández Castillo (coord.), *Bajo la sombra del Guamúchil. Historias de vida de mujeres indígenas y campesinas en prisión*, Mexico City: CIESAS, IWGIA, Ore-media, 2010
- 11 Metaal and Youngers (2011). See the Web site of the Research Consortium on Drugs and the Law, especially the section on "Proportionality of drug crimes," <http://drogasyderecho.org/proportionality-of-drug-crimes.html>
- 12 Penal Reform International (*et. al.*), *Women in detention: a guide to gender-sensitive monitoring*, 2013, [http://www.penalreform.org/wp-content/uploads/2013/06/Women-in-Detention-a-guide-to-gender-sensitive-monitoring-English\\_0.pdf](http://www.penalreform.org/wp-content/uploads/2013/06/Women-in-Detention-a-guide-to-gender-sensitive-monitoring-English_0.pdf)
- 13 Almeda (2002); CEJIL, *Women in prison – regional report: Argentina, Bolivia, Chile, Paraguay, Uruguay*, 2007, [http://cejil.org/sites/default/files/women\\_in\\_prison.pdf](http://cejil.org/sites/default/files/women_in_prison.pdf); CELS, *Mujeres en prisión. Los alcances del castigo*, Buenos Aires: Siglo XXI Editores, 2011; CNDH, *Informe especial de la comisión nacional de los derechos humanos sobre el estado que guardan los derechos humanos de las mujeres internas en centros de reclusión de la república mexicana*, 2013, [http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/informeEspecial\\_CentrosReclusion\\_0.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/informeEspecial_CentrosReclusion_0.pdf); Elena Margarita Espinosa Morales and Corina Giacomello, *Discriminación a personas reclusas y exreclusas con perspectiva de género*, 2006, [http://www.conapred.org.mx/index.php?contenido=documento&id=22&id\\_opcion=148&op=215](http://www.conapred.org.mx/index.php?contenido=documento&id=22&id_opcion=148&op=215); Inmujeres, *Niños y niñas invisibles: hijos e hijas de mujeres reclusas*, Mexico City: Inmujeres, 2002
- 14 The report on the roundtable can be found at: <http://www.oas.org/en/cim/>.
- 15 United Nations, "United Nations Rules for Women Prisoners and Non-Custodial Measures for Women Offenders," 2010, [https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/65\\_229\\_Spanish.pdf](https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/65_229_Spanish.pdf)
- 16 CEJIL (2007)
- 17 IDPC, "Reforma en la ley de drogas de Costa Rica beneficia a mujeres en condiciones de vulnerabilidad y sus familias," 20 August 2013, <http://idpc.net/es/blog/2013/08/reforma-en-la-ley-de-drogas-de-costa-rica-beneficia-a-mujeres-en-condiciones-de-vulnerabilidad-y-sus-familias>
- 18 See Carmen Antony (2005) and "Mujeres invisibles: las cárceles femeninas en América Latina." *Revista Nueva Sociedad*, No. 208, March-April 2007, <http://bdigital.binal.ac.pa/bdp/artpma/mujeres%20delincuentes.pdf>; Rosa Del Olmo (1998) and *Reclusión de mujeres por delitos de drogas. Reflexiones Iniciales*, 1996, [http://www.cicad.oas.org/reduccion\\_demanda/esp/Mujer/venezuel.pdf](http://www.cicad.oas.org/reduccion_demanda/esp/Mujer/venezuel.pdf)
- 19 The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") defines "violence against women" as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere," including "physical, sexual and psychological violence (...)". The full text of the Convention is available at: <http://www.oas.org/juridico/english/treaties/a-61.html>
- 20 Azaola and Yacamán (1994); Inmujeres (2002); Natalia Ribas Mateos and Alexandra Martínez, "Mujeres extranjeras en las cárceles españolas," *Revista Sociedad y Economía*, No. 5, October 2003, 65-88
- 21 Giacomello (2013); Florizelle O' Connor, *Administración de justicia. Estado de derecho y democracia*, 2004, <http://www.unifem.org.mx>; Claudia Palma Campos, "Delito y sobrevivencia: las mujeres que ingresan a la cárcel El Buen Pastor en Costa Rica por tráfico de drogas," *Anuario de Estudios Centroamericanos*, University of Costa Rica, 37: 245-270, 2011; Andreina Isabel Torres Angarita, *Drogas y*

- criminalidad femenina en Ecuador. El amor en la experiencia de las mulas*, Quito: FLACSO Ecuador, 2007
- 22 Lilian Paola Ovalle, *Entre la indiferencia y la satanización. Representaciones del narcotráfico desde la perspectiva de los jóvenes universitarios de Tijuana*, Mexicali: Autonomous University of Baja California, 2007
- 23 For example, notorious cases in Mexico include those of Sandra Ávila Beltrán, known as the Queen of the Pacific, and Delia Patricia Buendía, alias Ma Baker. In the book, *Drogas sin fronteras*, Luis Astorga (Luis Astorga, *Drogas sin fronteras*, Mexico City: Grijalbo, 2003) reports the activities of a practically mythical woman in Mexico's drug-trafficking history: Ignacia Jasso viuda de González, alias La Nacha, "the most famous and powerful trafficker in Ciudad Juárez" and the first person whose extradition was sought by the United States for drug-related offenses. La Nacha engaged in local and international drug trafficking from the 1930s until the late 1960s. She lived in Ciudad Juárez (although she sometimes had to move to avoid prosecution) and sold drugs not at her home, but through Alfonso Estrada, who distributed them to local dealers. La Nacha's life fluctuated among business, prison and bribery; she was the leader in her commercial activity and continued operating even from prison and in old age, through her children and grandchildren
- 24 Carlos Alberto Zamudio Angles, *Las redes del narcomenudeo*, Mexico City: CEAPAC Ediciones, 2012
- 25 Giacomello (2013)
- 26 Margaret S. Malloch, *Women, drugs and custody. The experiences of women drug users in prison*, Winchester, United Kingdom: Waterside Press, 2000
- 27 Giacomello (2013)
- 28 Julia Kensy, Camille Stengel, Marie Nougier and Ruth Birgin, "Políticas de drogas y mujeres: abordando las consecuencias del control perjudicial de drogas," November 2012, <http://idpc.net/es/publications/2012/11/documento-informativo-del-idpc-politicas-de-drogas-y-mujeres-abordando-las-consecuencias-del-control-perjudicial-de-drogas>, 7
- 29 *Ibid.*, 11; Malloch (2000)
- 30 Giacomello (2013)
- 31 Almeda (2002); Corda (2011); Metaal and Youngers (2011); Ribas Mateos and Martínez (2003); O'Connor (2004); Torres Angarita (2007)
- 32 Fleetwood (2011)
- 33 DNE (*et. al.*), *Las mulas del eje cafetero*, 2002, <http://www.descentralizadrogas.gov.co/LinkClick.aspx?fileticket=40BHx2Eoa04%3D&tabid=160>
- 34 Direzione Centrale per i Servizi Antidroga (DCSA), *Annuale 2009*, Roma: DCSA, 2010
- 35 A study by the National Narcotics Office (*Dirección Nacional de Estupefacientes*, DNE) and the United Nations Office on Drugs and Crime (UNODC) calculates that such cases account for 10 percent. DNE (*et. al.*) (2002)
- 36 Angarita (2007); CELS (*et. al.*) (2011)
- 37 María Cristina Dorado, "Mujeres latinoamericanas detenidas en Europa: el caso de Colombia," in Del Olmo (1998), 75-101
- 38 Page [www.tni.org](http://www.tni.org)
- 39 Page [www.wola.org](http://www.wola.org)
- 40 Metaal and Youngers (2011)
- 41 See "Drogas y cárceles en Argentina," <http://www.druglawreform.info/es/informacion-por-pais/argentina/item/890-drogas-y-carceles-en-argentina>; "Leyes de drogas y cárceles en México," <http://www.druglawreform.info/es/publicaciones/el-rostro-humano/item/361-leyes-de-drogas-y-carceles-en-mexico>; "Drogas y cárceles en Ecuador," <http://www.druglawreform.info/es/publicaciones/el-rostro-humano/item/362-leyes-de-drogas-y-carceles-en-ecuador>
- 42 Torres Angarita (2007), 6
- 43 ECLAC, *Economic survey of Latin America and the Caribbean*, 2013, [http://www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/3/50483/P50483.xml&xsl=/tpl-i/p9f.xsl&base=/publicaciones/top\\_publicaciones.xslt#](http://www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/3/50483/P50483.xml&xsl=/tpl-i/p9f.xsl&base=/publicaciones/top_publicaciones.xslt#); *Statistical Yearbook for Latin America and the Caribbean*, 2012, <http://www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/4/48864/P48864.xml&xsl=/tpl-i/p9f.xsl&base=/tpl-i/top-bottom.xslt>; *Social Panorama of Latin America 2010*, 2010, <http://www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/1/41801/P41801.xml&xsl=/dds/tpl/p9f.xsl&base=/dds/tpl/top-bottom.xsl>
- 44 Del Olmo (1996), 16-17
- 45 According to the list of women prisoners prepared by the International Centre for Prison Studies for 2012, worldwide women account for an average of 4.45 percent of the total prison population. In 80 percent of the penitentiary systems, women make up between 2 percent and 9 percent of the total prison population, with the following variations by continent: in African countries, women make up 3.1 percent of the total; in the Americas, they constitute 5.16 percent; and in Asia, 5.95 percent. In Europe, women represent 4.9 percent of the total prison population, and in Oceania, they make up 3.9 percent. See Roy Walmsley, *World Female Imprisonment List (second edition)*, 2012, [http://www.prisonstudies.org/images/news\\_events/wfil2ndedition.pdf](http://www.prisonstudies.org/images/news_events/wfil2ndedition.pdf)
- 46 UNODC (2008), 3
- 47 Eka Iakobishvili, *Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform*, 2012, <http://www.ihra.net/contents/1188>
- 48 European Commission, *Women, integration and prison. An analysis of the processes of sociolabour integration of women prisoners in Europe*, 2005, [http://ec.europa.eu/research/social-sciences/pdf/mip\\_en.pdf](http://ec.europa.eu/research/social-sciences/pdf/mip_en.pdf)
- 49 Rosa Del Olmo, *¿Prohibir o domesticar? Políticas de drogas en América Latina*, Caracas: Editorial Nueva Sociedad, 1992
- 50 Global Campaign for Pretrial Justice-Latin America Region, "Mujeres y prisión preventiva: presuntas inocentes sufriendo castigos anticipados y abusos," 2013, [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEkQFjAE&url=http%3A%2F%2Fredjusticiaprevia.com%2Fportal%2Fimagenes%2Fstories%2Fred\\_mujeres\\_](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEkQFjAE&url=http%3A%2F%2Fredjusticiaprevia.com%2Fportal%2Fimagenes%2Fstories%2Fred_mujeres_)

- [prision\\_ingles\\_060513.pdf&ei=yAqVUp6NK4HJsQTS\\_4HoDg&usg=AFQjCNGeHZwDp4e2GxpVM2kTwwsWsAWkNg&bvm=bv.57155469,d.cWc](#)
- [http://www.presunciondeinocencia.org.mx/images/stories/hoja\\_campania\\_global\\_mujer\\_prision\\_abril2012.pdf](http://www.presunciondeinocencia.org.mx/images/stories/hoja_campania_global_mujer_prision_abril2012.pdf)
- 51 Walsmsley (2012)
  - 52 *Ibid*
  - 53 *Ibid*
  - 54 Global Campaign for Pretrial Justice-Latin America Region (2013)
  - 55 CELS (*et. al.*) (2011)
  - 56 Palma Campos (2011)
  - 57 María Noel Rodríguez, "Mujer y cárcel en América Latina," in CDHDF (*et. al.*), *Violencia contra las mujeres privadas de la libertad en América Latina*, 2004, [http://www.catedradh.unesco.unam.mx/SeminarioCETis/Documentos/Doc\\_basicos/5\\_biblioteca\\_virtual/7\\_violencia/19.pdf](http://www.catedradh.unesco.unam.mx/SeminarioCETis/Documentos/Doc_basicos/5_biblioteca_virtual/7_violencia/19.pdf), 57-74
  - 58 Torres Angarita (2007)
  - 59 República Federativa do Brasil (*et. al.*), *Mulheres presas. Dados gerais*, 2011, <http://portal.mj.gov.br/services/DocumentManagement/FileDownload.EZTSvc.asp?DocumentID=%7B4B3271E4-7474-41A7-8E4A-494B08701E31%7D&ServiceInstUID=%7B4AB01622-7C49-420B-9F76-15A4137F1CCD%7D>
  - 60 Corda (2011)
  - 61 CELS (*et. al.*) (2011)
  - 62 Azaola and Yacamán (1994); Briseño (2006); Giacomello (2013)
  - 63 CIDE, *Primera Encuesta a Población en Reclusión del Sistema Penitenciario Federal*, 2013, [http://www.miguelcarbonell.com/docencia/Primera\\_Encuesta\\_a\\_Poblacion\\_en\\_Reclusion.shtml](http://www.miguelcarbonell.com/docencia/Primera_Encuesta_a_Poblacion_en_Reclusion.shtml)
  - 64 Ana Paula Hernández, "Drug legislation and prison situation in Mexico," in Metaal and Youngers (2011), 60-70.
  - 65 Metaal and Youngers (2011)
  - 66 The study notes that penitentiary law in Bolivia "establishes that mothers or fathers deprived of their liberty can be the guardian for a child under 6 years old and can live with their child in the penitentiary establishment. The mother has priority only while she is breastfeeding. According to the law, medical attention services must, among other things, 'offer specialized medical assistance, attending to the particularities of gender and age,' and 'offer classes about sexual education and reproductive health.' At the same time, the chapter that refers to disciplinary problems classifies sexual harassment as 'very serious' and indicates that pregnant women or mothers with children who are breastfeeding can never be ordered to solitary confinement. Additionally, the law allows for women who are six or more months pregnant to serve their sentence under house arrest until 90 days after birth," CEJIL (2007), 16
  - 67 *Ibid.*; Walsmsley (2012)
  - 68 Andean Information Network, "Bolivian Prison Deaths highlight Flaws in Judicial and Penitentiary Systems," 12 September 2013, <http://hosted.verticalresponse.com/1113479/7291f56a2a/520392651/73c220ccef/>
  - 69 Godofredo Reinicke Borda, "Indulto y amnistía: Pequeño 'gran paso' en Bolivia – Alternativas a la retardación de justicia, una pesadilla que deja insomne," Puente Investigación y Enlace, 23 September 2013, <http://www.piebolivia.org.bo/index.php/2013-08-25-00-16-04/articulos/102-indulto-y-amnistia-pequeno-gran-paso-en-bolivia-alternativas-a-la-retardacion-de-justicia-una-pesadilla-que-deja-insomne>; Univisión, "Congreso de Bolivia aprueba decreto de indulto a reos propuesto por Morales," 19 September 2013, <http://feeds.univision.com/feeds/article/2013-09-16/congreso-de-bolivia-aprueba-decreto>
  - 70 Ledebur was consulted by the author by electronic mail. The Network's Web site is: <http://ain-bolivia.org/>
  - 71 The text of the law is available at: [http://www.aipe.org.bo/public/lst\\_politicas\\_publicas\\_nac/LST\\_POLITICAS\\_PUBLICAS\\_NAC\\_ley\\_1008\\_es.pdf](http://www.aipe.org.bo/public/lst_politicas_publicas_nac/LST_POLITICAS_PUBLICAS_NAC_ley_1008_es.pdf)
  - 72 CEJIL (2007)
  - 73 See: [http://www.secretariasenado.gov.co/senado/basedoc/ley/2007/ley\\_1142\\_2007.html](http://www.secretariasenado.gov.co/senado/basedoc/ley/2007/ley_1142_2007.html)[http://www.congresoson.gob.mx/docs\\_biblio/docBiblio\\_236.pdf](http://www.congresoson.gob.mx/docs_biblio/docBiblio_236.pdf)
  - 74 Organic Criminal Procedures Code (*Código Orgánico Procesal Penal*) of Venezuela, [http://www.congresoson.gob.mx/docs\\_biblio/docBiblio\\_281.pdf](http://www.congresoson.gob.mx/docs_biblio/docBiblio_281.pdf)
  - 75 Rodrigo Uprimny Yepes and Diana Esther Guzmán, "Drug policy and the prison situation in Colombia," in Metaal and Youngers (2011), 39-49
  - 76 Corda (2011)
  - 77 Metaal and Youngers (2011)
  - 78 <http://www.diputados.gob.mx/LeyesBiblio/pdf/9.pdf>
  - 79 Pien Metaal, "Indulto de *mulas* en Ecuador, una propuesta sensata," February 2009, <http://www.druglawreform.info/images/stories/documents/dlr1s.pdf>
  - 80 <http://www.druglawreform.info/images/stories/documents/ley108ec.pdf>
  - 81 Sandra G. Edwards and Coletta Youngers, "Reforma sobre legislación de drogas en Ecuador: generando impulso para un enfoque más efectivo, balanceado y realista," May 2010, <http://www.druglawreform.info/images/stories/documents/ecuador-memo-s.pdf>
  - 82 Diario Oficial de la Federación (20 August 2009), "Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley General de Salud, del Código Penal Federal y del Código Federal de Procedimientos Penales," [www.dof.gob.mx](http://www.dof.gob.mx)
  - 83 IDPC (2013)
  - 84 Sentencing Council, "Drug Offences Definitive Guideline," 2012, [http://sentencingcouncil.judiciary.gov.uk/docs/Drug\\_Offences\\_Definitive\\_Guideline\\_final\\_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Drug_Offences_Definitive_Guideline_final_(web).pdf)

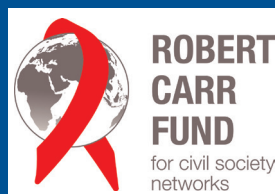
- 85 Sentencing Council, "Drug "mules": twelve case studies," 2011, [http://sentencingcouncil.judiciary.gov.uk/docs/Drug\\_mules\\_bulletin.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Drug_mules_bulletin.pdf)
- 86 IACHR, *Report on the human rights of persons deprived of liberty in the Americas*, 2011, <https://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>
- 87 IACHR, *Access to justice for women victims of violence in the Americas*, 2007, <http://www.cidh.org/women/Access07/tocaccess.htm>, X
- 88 CDHDF (*et. al.*) (2004); CEJIL (2007); Giacomello (2013); República Federativa do Brasil (*et. al.*) (2011)
- 89 For example, the profile of women in prison in Mexico is as follows: the are predominantly young, between ages 18 and 35, from low or very low socio-economic levels and from violent and disintegrated households whose members, in 30 percent of cases, have criminal records; 51.2 percent of the women have suffered sexual abuse, and 40 percent have spent part of their lives on the street and entered the informal labor market very young, between ages 8 and 14, suffering exploitation as children. In general, they have self-esteem problems, difficulty with emotional bonds, left home at a young age, have violent partners or have problems with dependent use of alcohol and/or other drugs, labor and sexual exploitation, and adolescent pregnancy. In fact, 86 percent of women in prison are mothers
- 90 CELS (*et al.*) (2011), 35-36
- 91 CEJIL (2007), 12
- 92 Almeda (2002); European Commission (2005); Noel Rodríguez (2004); UNODC (2008)
- 93 WHO Regional Office for Europe and UNODC, *Women's health in prison. Correcting gender inequity in prison health*, 2009, [http://www.unodc.org/documents/commissions/CND-Session51/Declaration\\_Kyiv\\_Women\\_60s\\_health\\_in\\_Prison.pdf](http://www.unodc.org/documents/commissions/CND-Session51/Declaration_Kyiv_Women_60s_health_in_Prison.pdf)
- 94 CEJIL (2006); CELS (*et al.*) (2011); CDHDF (*et. al.*) (2004); CNDH (2013)
- 95 Penal Reform International (*et. al.*) (2013)
- 96 Carmen Antony García, "Mujer y cárcel: el rol genérico en la ejecución de la pena," in Del Olmo (1998), 63-73; Briseño (2006); CEJIL (2007), European Commission (2005); Giacomello (2013)
- 97 Briseño (2006); CELS (*et al.*) (2011); Hernández Castillo (2010)
- 98 UNODC (2008)
- 99 CELS (*et al.*) (2011); Azaola and Yacamán (1994); Giacomello (2013)
- 100 CEJIL (2007); CNDH (2013); European Commission (2005); Inmujeres (2002); WHO Regional Office for Europe and UNODC (2009)
- 101 Penal Reform International (*et. al.*) (2013)
- 102 <http://www2.ohchr.org/spanish/law/reclusos.htm>
- 103 Penal Reform International (*et. al.*) (2013)
- 104 Kensy, Stengel, Nougier and Birgin (2012)
- 105 CELS (*et al.*) (2011); CEJIL (2007); CNDH (2013); Inmujeres (2002); United Nations (2010); UNODC (2008)
- 106 Elena Azaola and Marcelo Bergman, *Delincuencia, marginalidad y desempeño institucional. Resultados de la tercera encuesta a población en reclusión en el Distrito Federal y el Estado de México*, Mexico City: CIDE, 2009; Ernest Drucker, *A plague of prisons. The epidemiology of mass incarceration in America*, New York: The New Press, 2011; WHO Regional Office for Europe and UNODC (2009)
- 107 Corda (2011); CELS (*et. al.*) (2011); CNDH (2013); Torres Angarita (2007)
- 108 Fleetwood (2011)
- 109 IACHR (2011), 26
- 110 See: <http://www.cancilleria.gov.co/newsroom/news/declaracion-antigua-guatemala-politica-integral-frente-al-problema-mundial-las-drogas>



The International Drug Policy Consortium (IDPC) is a global network of NGOs and professional networks that promotes objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harms. IDPC members have a wide range of experience and expertise in the analysis of drug problems and policies, and contribute to national and international policy debates.

For decades, Latin American governments largely followed the drug control policies and programs of Washington's so-called war on drugs. Yet, Latin America has recently emerged at the vanguard of efforts to promote debate on drug policy reform. After analyzing the regional debate, national level reforms and impediments to those reforms, this report concludes with concrete policy recommendations that should be undertaken to maintain the momentum and advance drug policy debates and reforms in the region.

Supported by grants from:



International Drug Policy Consortium  
Fifth floor, 124–128 City Road, London  
EC1V 2NJ, United Kingdom

telephone: +44 (0)20 7324 2975  
email: [contact@idpc.net](mailto:contact@idpc.net)  
website: [www.idpc.net](http://www.idpc.net)

Copyright (C) 2013 International Drug Policy Consortium All rights reserved