



REGIONAL STUDY

Childhood that matters

THE IMPACT OF DRUG POLICY ON CHILDREN OF INCARCERATED
PARENTS IN LATIN AMERICA AND THE CARIBBEAN

Original title: "Niñez que cuenta: el impacto de las políticas de drogas sobre niñas, niños
y adolescentes con madres y padres encarcelados en América Latina y el Caribe"



Research Team

Lead Researcher

- Corina Giacomello, Instituto de Investigaciones Jurídicas de la Universidad Autónoma de Chiapas, México.

National researchers and teams

- Luis Alberto Muñoz and Briseida Echaury, Mexico
- Demalú Amighetti, Adriana Rodríguez, Grettel Sanabria and Priscilla Alvarado, members of Grupo de investigación Asociación Costarricense para el Estudio e Intervención en Drogas (ACEID), Costa Rica
- Kenya Romero, Dominican Republic
- Astrid Karine Torres, associate researcher for Observatorio Sobre Infancia, Universidad Nacional de Colombia, Colombia
- Lorena Rivera and Paula Margotta, researchers for the Centro de Estudios Primera Infancia (CEPI) and Javiera Roa, member of Enmarcha, Chile
- Ana Paula Galdeano, researcher for the Centro Brasileiro de Análise e Planejamento (CEBRAP), Brazil
- Emilia Pérez, Florencia Lemos and the team at Gurises Unidos, Uruguay
- Eugenia Rodríguez, researcher for the Centro de Investigaciones de la Facultad de Humanidades, Universidad de Panamá and Francisca Hidalgo, Executive Director and Founder of Enmarcha (Chile), Panama.

Quantitative data collection and analysis

Briseida Echaury / Juan Martín Rival

Editor

Briseida Echaury

Technical revisions

Coletta Youngers (Washington Office on Latin America - WOLA) / Martín Coria (Church World Service)

Technical collaboration on Children's Rights perspective and revisions

Gonzalo Salles / Lía Fernandez (Gurises Unidos)

Design

Moquo | moquodesign.com

Photography and Video Production

Marisa Montes

English translation

Anna Rimoch / Laura Curkendall (CWS)

General Project coordination

Luciano A. Cadoni (Church World Service)

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Giacomello Corina.

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Prologue

By Jorge Cardona and Luis Pedernera

Members of the Committee on the Rights of the Child of the United Nations

As has been repeatedly mentioned during the course of the last thirty years, the Convention on the Rights of the Child of 1989 represented a paradigm shift at the end of the twentieth century regarding the Law's perception of the child. Children stopped being objects to be protected, and instead became subjects entitled to rights and who must be empowered by these rights.

The Convention did not decree new rights for children; children have the same rights as other people. Instead, the Convention focuses on the State's obligation to guarantee that children can exercise these rights, and that these are respected by both the State and society.

In order to attain this goal, and as central axis of the paradigm shift, the Convention includes two principles (also considered rights) that revolutionize the child's previous status: the principle of the *child's best interest* and the principle that imposes the obligation of *listening to the child in all decisions that affect him or her*. Mentioned respectively in Article 3 and Article 12 of the Convention, they should be read in conjunction and are at the foundation of children's status as subjects of rights.

According to Article 3.1 of the Convention, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." A primary consideration that, in certain situations, the Convention states should be the *only* consideration, for example in matters related to adoption,¹ or when deciding whether to separate a child from his or her parents.²

Article 12.1 of the Convention affirms: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." In other words, the child should not only be *heard*, but he or she should be *listened to*. This means that his or her opinion must be considered and supported at the moment where decisions are made, so that it can influence the resolutions surrounding his or her case. If, on the contrary, someone decides to distance him or herself from the child's opinion, he or she must justify this choice.

These two principles establish the child as a subject of rights. They define a new rapport between children and adults, which brings with it a democratic relationship. Children do not *belong* to anyone, not even their parents. Children belong to themselves and are subjects of rights. Their interests have to be considered in all decisions that pertain to them, and their opinions must be listened to before determining the path that this best interest will take.

¹ Article 21: "States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration."

² Article 9.1: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."

Article 9.3: "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."

Still, it is one thing to affirm that the child's best interest must be the primary consideration in all measures that pertain to him or her, and quite another to know what this statement means.

From the first sessions of the Committee on the Rights of the Child, it became clear that different versions of this principle existed in each State. To cite only two examples: certain States decided to outlaw corporal punishment "except if in the child's best interest;" others allowed child marriages for girls (at age 14, for example) and added "except if, in the child's best interest, a judge authorizes marriage at an earlier age."

How can it be in the *child's best interest* to inflict corporal punishment? How can it be in a *girl's best interest* to submit her to marriage when she is 12 or 13 years old? We've asked the States that made these decisions, and honestly, their answers were more disappointing than we could have imagined. For them, a child's best interest meant whatever they judged to be best for the child, independently of the child's rights. They stripped this principle of its basis, which is the child as a subject of rights, to transform the child once more into an object, and a property. It is not uncommon for some States, when asked how they guarantee this principle, to say that they do everything with the child's best interest in mind. However, they offer no further justification than to say that they have adopted it because they believe that it is good for children. In other words, no objective justification, and, naturally, no reference to children's rights. Thus, they forget the frequent statements by the Committee that "An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."³

These examples, which are not unique, were at the root of the Committee's decision to compose a General Observation regarding how to measure and determine the child's or youth's best interest in specific situations, outlining the criteria that must govern any decision and the procedures to follow. This is in compliance with the purpose assigned to it by the Convention, which includes helping the States clarify the meaning of all provisions. It therefore undertook the arduous task of creating General Observation no. 14 on the right of the child to have his or her best interests taken as a primary consideration, a task that took several years and finally materialized and was approved in February 2013.⁴

Naturally, General Observation 14 does not propose to dictate what the best interest of the child is at any given moment or in any concrete situation. The best interest of the child must be a dynamic concept that encompasses various constantly evolving issues. The General comment simply provides a framework for assessing and determining the child's best interest.⁵ In other words, a general framework of the State's obligation to respect the child's right to his or her best interest being a primordial consideration in all decisions pertaining to him or her.

Let us pause at this last phrase. As the reader will have appreciated, up to now we've intentionally avoided referring to measures addressed to children. Article 3.1 does not require that the recipient of a given measure be the child, but that the measure concern one or several children. Therefore, the child's best interest must be understood as a primordial consideration in all measures and decisions directly related to a child, a group of children, or children in general. As well, it must be a primordial consideration regarding other measures that, although not directed toward children, affect children indirectly along with other groups, such as issues relating to the environment, housing, or transportation, among others.⁶

³ General comment no.13 (2011) regarding the right of the child to freedom from all forms of violence. (CRC/C/GC/13) paragraph 61.

⁴ CRC/C/GC/14 (from now on GO 14)

⁵ OG. 14, paragraph 11

⁶ GO 14, paragraph 19

This does not imply that each measure the State takes must foresee a full and formal process assessing and determining the child's best interest. However, when a decision has significant consequences on one or several children, it is important that an adequate level of protection and that detailed proceedings be adopted, in order to consider their best interest. To cite an example: in the context of financial measures taken in moments of crisis, the privatization of a public automobile company, although possibly affecting the children of employees in an indirect way, does not seem to be a measure that concerns children. However, the privatization or termination of a service, such as a school or the spaces where divorced parents can see their children, are measures that, without a doubt, concern children. Regarding these, the child's best interest should be evaluated and understood beforehand, in order to respect their right to their interest being a primary consideration in any resolution.

In relation to measures that do not directly refer to a child or children, the expression "concerning" should be defined according to the circumstances of each case, in order to evaluate their effects on children.⁷ This involves assessing the impact on children of any measures established by the State.

The study we are contributing to moves in this direction. It gathers knowledge that will help us more profoundly understand the consequences on childhood of having a primary caretaker imprisoned. It also builds on the work begun in *Invisible No More*⁸ in order to explore processes of criminalization in Latin America and the Caribbean and its impact on children's rights. For this investigation, the focus is on the criminalization of drug micro-trafficking. The study, however, does not stop at examining the situation, but also lays the foundations for useful tools to build awareness.

The title in Spanish contains a double meaning. The phrase *Niñez que cuenta* immediately brings to mind two things: the voice of youth telling its own story, and childhood being placed at the center of public policy and strategy. The word "cuenta" can be interpreted in both ways, and thus becomes a powerful concept. Both meanings lay bare the main problems for youth in the region: their voices are still not heard, and this specific group is not considered a priority in the development of public policy. The scandalous estimate of almost two million girls and boys with an incarcerated parent illustrates the problem.

This study clearly shows that the criminal persecution of micro-trafficking is unsustainable; it causes more harm than good, and its impact on minors is unmistakable. In the vast majority of cases, the incarceration of a guardian negatively affects the development of a child. The testimonies and the ample evidence provided here are conclusive. Children suffer from many forms of harm when their parents are imprisoned, including the psychological effects of separation, the risk of severing relationships or the difficulty faced when attempting to preserve them, exposure to neglect and the financial hardships that place children in positions of greater vulnerability in the face of abuse, among others.

For children to live in prison with their mothers is, in many cases, the best decision. However, last year we visited a prison in a Central American country and met several mothers with young children. We were told that this detention center was the best in the country. Yet the place had terrible infrastructure and was overpopulated. Almost 20 mothers lived in a small space that they had divided using towels and shawls in order to create a little privacy. Food was not provided for the children due to budget concerns, and therefore the mother's ration had to be shared with her children. We met a ten-day old baby with spina bifida who would go to his first doctor's

⁷ GO 14, paragraph 20

⁸ Church World Service and Gurises Unidos. 2013. "Invisibles: ¿hasta cuándo? Una primera aproximación a la vida y derechos de niñas, niños y adolescentes con referentes adultos encarcelados en América Latina y el Caribe. Estudio de caso: Brasil, República Dominicana, Nicaragua y Uruguay." <http://nnapes.org/docs/Invisible-no-more.pdf>

appointment at the age of two months. Not to mention violent episodes and security searches conducted by the prison police, where women and children were forced to remain in the prison courtyard for hours, exposed to the cold night.

These heartbreaking scenes should bring us all to reflection and action. No child should grow up in these conditions. This document is therefore an instrument that will help build awareness and influence policy, alerting us to the kind of spaces we are providing for children in the region. The work that named these children "collateral convicts"⁹ gathers force here. As long as there are no integral solutions to the problem, excessive criminalization is causing major damage, and the trend toward more punitive laws and more prisons is miles away from a focus based on children's rights.

We are not saying that drug micro-trafficking or any other offense should necessarily go unpunished. But other alternatives and approaches to social conflict exist. There are less violent and more healing solutions than this constant cycle of incarceration for caretakers, and they would surely cause less harm to children's rights.

In the *State versus M* of 2007, the Constitutional Court of South Africa appealed to the importance of the child's best interest. The case provides a good example of how the concept can be applied in instances where a child's primary caretaker is sentenced. If, the Court states, the incarceration of a parent affects his or her children, the Court must consider non-custodial measures, while the gravity of the offense would only be an additional factor when determining the sentence.

The States in the region should adopt this best practice. The following document underlines the problem's urgency.

⁹ Oliver Robertson, *Collateral Convicts: Children of Incarcerated Parents. Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011* (Geneva: Quaker United Nations Office, 2012), http://www.quono.org/sites/default/files/resources/ENGLISH_Collateral%20Convicts_Recommendations%20and%20good%20practice.pdf

Executive Summary

This study places itself at a rarely-examined crossroads: drug policy, incarceration and the rights of children and youth. Its focus is the specific toll that having a parent in prison for a minor, nonviolent drug offense has on children and youth. The research is both qualitative and quantitative and comes from across Latin America and the Caribbean. The research for this study was conducted in eight countries: Mexico, Colombia, Chile, Costa Rica, the Dominican Republic, Brazil, Uruguay and Panama. Each study involved relevant experts on drug policy, the penal system and policies directed towards children. Some of the questions that guide this study are: How does drug policy affect children and youth when their guardians are in prison? What do children think of drug crimes and the authorities' response to them? What are these children's feelings, worries and experiences? In what way are international policies and agreements taken into account when designing, applying and monitoring public policies specifically oriented toward children and youth? In what way should public policies regarding children, drugs and incarceration inform and transform each other in order to ensure the most important factor, the child's ultimate wellbeing?

Through the voices of 70 girls and boys with incarcerated parents, as well as those of their caretakers, we offer answers to these questions. We also offer tools that may be useful for organizations working with children, attempting to influence drug policy in the region and creating or implementing public policies related to the rights of children, incarceration and drug legislation.

The predecessor of this report was the study *Invisible No More: Children of Incarcerated Parents in Latin America and the Caribbean. Case Study: Brazil, the Dominican Republic, Nicaragua and Uruguay*. As the title indicates, *Invisible No More* was an exploratory study on the impact that a parent or relative's incarceration has on children and youth. It also reached a preliminary estimate of how many Children of Incarcerated Parents, or COIP, exist in Latin America and the Caribbean. It found the number at that moment to be between **1,500,651** and **1,868,214**.

This study updates the estimate and finds that between **1,710,980** and **2,307,048** children in the 25 countries in the region have at least one parent in prison. Of these children, between **359,305** and **484,480** have parents incarcerated specifically for drug crimes – a trend that, without profound and timely changes, will continue to increase.

In general terms, drug laws in the eight countries in this study share certain traits: the application of mandatory minimum sentences, the disproportionate use of criminal law and a preference for incarceration over other alternatives. There is also a tendency toward increased sentencing and, as a result, increased levels of incarceration.

This study summarizes and compares the information contained in the eight country reports. In each of these, we analyzed policies on children's rights and how these link to the Convention on the Rights of the Child. Despite any legislative progress, the problems identified in the region relate to the implementation of current provisions related to children. As well, we identified a lack of coordination between the agencies responsible for safeguarding children's rights. Another important problem is the inadequacy of quantitative data. There is a dearth of public information related to the numbers of children with incarcerated parents in all these countries.

The COIP testimonies are the heart of this study. These are organized into several key topics:

a) **Violence.** COIP are surrounded by multiple forms of violence. In general terms, children and youth report that arrests and raids are profoundly violent experiences. They witness their spaces and possessions being destroyed and their mothers or fathers manhandled. Sometimes they themselves may be victims of beatings and threats. In addition to this violence from authorities, the children can experience violence in their neighborhoods stemming from rival criminal groups jostling for control of the drug market.

b) **Impacts of incarceration on the daily lives of children and youth.** In regard to the roles and arrangements of caring for children, the detention of a guardian impacts the whole family. It affects the incarcerated person, his or her children and the people (usually women) who will now care for the children. The prison sentence is, ultimately, a sentence that transcends families. Both in cases where detention comes as a surprise, and in those where crimes and incarceration are routine experiences, COIP report feeling a certain hopelessness and resignation. They are faced with something out of their control but that they must helplessly suffer the impacts of.

c) **Stigma versus support.** A child's feelings of loss, abandonment, sadness and rebellion can either be amplified by stigma or mitigated by support from his or her family, community and/or school.

e) **Prison visits and security searches.** Children often have mixed feelings about prison visits. On the one hand, if the COIP has a good relationship with his or her imprisoned parent, the child will want to see and spend time with him or her. On the other hand, the time and costs that the visit entails, as well as the treatment of visitors – especially during examinations – discourages them from wanting to visit.

e) **Perception of drug-related crimes.** Children and youth perceive drug crimes as a way to face poverty in a context of social exclusion. There is also criticism; selling drugs is seen as an activity that damages others and negatively affects the sons and daughters of the sellers. COIP also mention the normalization of this activity in certain places, and how it can increase a person's status within the neighborhood. They express ambivalent feelings, just as they do in most other categories of this analysis, that combine affection with anger for what their parents have done.

f) **Perception of state authorities.** In regard to the authorities, the COIP mostly refer to the police and to raids. They perceive the police as a source of violence and corruption, where police officers detain only the minor players in the drug trade or even "plant" drugs to frame their victims, while drug trafficking leaders can act with impunity through corruption.

Key Findings and Recommendations

The study reaches the following findings:

- a) **Many COIP are exposed to multiple forms of violence, as well as to situations of social exclusion that are reinforced with the incarceration of a caretaker.**
- b) **COIP are made invisible by drug policy, and their rights are not taken into account either by the judiciary system or by public policies.**
- c) **The implementation of punitive drug policy directly impacts the increasing number of children with incarcerated parents in general. It particularly affects the children we refer to as “transnational COIP” – children who live in a different country than the one in which their caretaker is detained, or those who are born and/or grow up in the country where their parent (usually their mother) is detained instead of the country where their extended family lives.**
- d) **The community and school should be places where COIP experience support and find opportunities for development. These should not be places where the stigma and discrimination associated with drug cases are reproduced.**
- e) **COIP express their desire for change; however, without comprehensive public policies focused on the children, they may find themselves repeating their caretakers' stories and reliving their circumstances.**
- f) **Gender perspective must urgently be incorporated into research on incarceration and its impacts.**

The study makes 23 recommendations that are divided into the following topics:

- a) **Comprehensive policies directed toward children**
- b) **Generation of information**
- c) **COIP and the criminal justice system**

All our recommendations seek to present a child-centric and responsible focus and can be found in their entirety in the regional study. Some of the proposals include:

- a) **Involve children and youth, including COIPs, in all discussions on public policies, legislation and decisions that affect them either directly or indirectly. Additionally, ensure the participation of children and youth in the design, implementation and evaluation of these policies. This must be achieved through processes of genuine listening, where the children's differences in gender, age, maturity and development are taken into account and where the voices of the children and youth are not manipulated, denigrated or used as mere rhetorical devices.**
- b) **Guarantee that the sons and daughters of foreigners who live in the country where their parent is incarcerated do not lose their legal status, and that they aren't discriminated against due to their caregiver's situation.**

- c) In educational institutions, include teams of psychologists, social workers and intermediaries with state institutions, who are trained accordingly, and can provide care for children and their families.
- d) Create listening spaces for children and youth with incarcerated caretakers, based on trust and peer collaboration.
- e) Implement participative social integration programs focused on childhood and gender where COIP are included.
- f) In planning campaigns and programs, as well as in implementing advocacy initiatives, ensure the active participation of affected communities — in this case, COIP and their families — not as mere case studies or through testimonials, but as protagonists with full knowledge of the situation, participating in the creation of proposals.
- g) Consider the impacts of drug policy on COIP in discussions and meetings of international and regional drug-control bodies, thus ensuring the visibility of the children of incarcerated parents.
- h) Develop and disseminate quantitative data about children and youth with incarcerated caregivers, broken down by gender. Make this information public and accessible, setting out the facts of the case.
- i) Ensure that the least damaging sentences or cautionary measures be applied, for the wellbeing of the children of the accused, adopting a case-by-case methodology and favoring alternative measures to incarceration.
- j) Ensure that the caretaker is held in the prison closest to where his or her children live, according to Article 9 and Article 3 of the Convention on the Rights of the Child.



Introduction

"My dad is great."

What's his name?

"Bernardo."

Tell me a bit about him. What did you like to do together?

"I liked to play. Sometimes he would let me go out to the street [in the neighborhood], or with my mom, or he would play with me."

Why don't you play with Bernardo anymore?

"Because he's in prison."¹⁰

Horacio is eight years old and lives in one of the São Paulo favelas in Brazil with his mother, Esther, who is twenty-seven.¹¹ Horacio's biological father was imprisoned for a drug-related offense. Yet, for Horacio, his real father is Bernardo, his mother's second husband. At the time that Esther was interviewed,¹² Bernardo was in prison for the second time, also for a drug-related charge. The first sentence was for five years, and the current one is for six. Esther admits that Bernardo is a dependent user of psychoactive substances; but, he was accused of drug trafficking. "He's always been a good father and an excellent husband," Esther affirms. Horacio, Bernardo and Esther¹³ are cogs in a machine that exists throughout the world: drug policy,¹⁴ and the impact on children and youth caused by its implementation, as well as one of its consequences—the massive incarceration of men and (increasingly) women for minor non-violent drug offenses, including for the use of psychoactive substances. This study places itself at the crossroads of children's rights and drug policy, and offers information and recommendations focused on this combination of elements rarely explored in conjunction until now. Some of the questions that guide this study are: how does drug policy affect children and youth when the adults responsible for them are in prison? What do children think of drug offenses and the authority's response to them? What are their feelings, worries and experiences? How are international policies and agreements taken into account when designing, applying and monitoring the public policies oriented toward these groups—children and youth? How should public policies about children, drugs and incarceration inform each other and transform each other to ensure the most important factor, the child's best interest? Through the voices of 70 children of incarcerated parents (referred to as COIP from now on),¹⁵ we offer answers to these questions. We also offer tools that may be useful for organizations working with children, attempting to influence drug policy in the region and creating or implementing public policies related to the rights of children, incarceration and drug legislation.

¹⁰ Horacio, 8 years old, Brazil.

¹¹ Data from the year of the interview, 2018.

¹² The interviews were conducted by Ana Paula Galdeano, consultant and author of the report on Brazil for this study.

¹³ The names of all the persons in this study and in the country reports have been altered.

¹⁴ With these terms we refer to the actions, laws, rules and public policies focused on preventing the use of psychoactive substances, on treating dependency from a public health platform, and on reducing or eliminating the manufacture, traffic and sale of drugs on global, national and local levels through criminal law enforcement.

¹⁵ We've decided to use the initials COIP (Children of Incarcerated Parents), as this is the most used acronym for this particular group of children and youth. In this instance, the acronym also refers to children who have other adult referents (uncles, grandparents, or older siblings) in prison. But, the intention is in no way to dehumanize or stereotype a child with characteristics, a life and voice that is unique to him or her. For this reason, the use of these initials will alternate with the terms girls and boys, children, sons and daughters, childhood and youth, or, when testimonies are used, with the fictitious name of the girl, boy or youth.

It is important to point out that the COIP group includes several smaller sub-groups, including: a) children and youth (children and youth) who live outside the prison and visit ; b) children and youth who live outside the prison and do not visit; c) children who live within the prison, generally with their mothers; d) children who move out of prison; e) COIP with mothers and fathers in institutionalized isolation; f) transnational COIP; g) COIP with caretakers under alternative measures to incarceration; and h) COIP with underage caretakers within the penal system. Still, each girl, boy and youth has a unique individual story that must be recognized and respected. The use of categories is useful for analysis, but in no way aims to homogenize or generalize the experiences, voices, stories or feelings of each girl or boy.

Contents of this study

The following pages outline the background, objectives and method behind this study. The first chapter describes the methods of our approach, where we deal with: i) the conceptual and normative frameworks of international drug policy; ii) the effects of punitive drug policy implementation on incarceration levels in Latin America and the Caribbean; and iii) the impacts of these on girls and boys. This last section presents data of persons imprisoned for drug offenses, and the numbers of children and youth with parents incarcerated both for all offenses, and for drug offenses in particular. We also address the international frameworks on children's rights, with an emphasis on the Committee on the Rights of the Child (CRC).

The second chapter examines the legal frameworks of drug policy, of the prison system and of children's rights from a regional perspective, with an emphasis on unusual experiences, or those that can point to best practices, or, but, to particularly problematic cases. The third chapter presents the experiences of girls, boys and youth. Their voices are organized according to the following subjects: i) violence; ii) changes in the roles of family members within the home, caretaking arrangements and financial challenges; iii) emotional impact; iv) relationship with the incarcerated caregiver, feelings and behavior associated with the loss of the caregiver; v) stigma versus support within the school or community; vi) visits to the prison and security searches; vii) perception of drug-related offenses; viii) perception of state authorities. The study concludes with a chapter on findings and recommendations.

Background

Day of General Discussion on Children of Incarcerated Parents

This study began under specific circumstances, which frame its construction and objectives. The first is the Day of General Discussion on Children of Incarcerated Mothers and Fathers, held by the Committee on the Rights of the Child of the United Nations, on the thirtieth of September 2011. This was the first time that the topic was addressed by the Committee, and it established the foundations for further research and action.

During the Day of General Discussion, through the participation of experts, different aspects that mark the lives of COIP were highlighted; these are revisited in this study (Committee on the Rights of the Child 2011). Among them are:

- 1) The right of the child to family and to be cared for by his or her parents (as long as it is in the best interest of the child).
- 2) The right to information about his or her parents' situation in prison.
- 3) The consensus around the advantages of non-custodial sentences and of reducing the use of institutionalization for children of incarcerated parents.

- 4) About children who live with their incarcerated parent, the conclusion reached was that it is not recommended that a maximum legal age for children to live in prisons be stipulated; instead, a case-by-case methodology should be adopted, which considers the bond of the child with the mother, as well as the caretaking options or lack thereof that exist outside prison, and in this way determine what is best for the child.
- 5) Detentions, as the testimonies in this study show, do not usually take into account the presence of girls and boys. As well as usually being carried out in ways that are physically, emotionally and psychologically violent for children—and even more so in cases of suspected drug offenses—no protocols exist that outline the measures of contention that should be adopted, or how the detention should happen, when children are present. As well, it is important to allow for the correct conditions so that the adult caretakers can make all necessary arrangements for their children's care immediately, not only those present at that time, but also any children and youth at school or etc.
- 6) The stigma suffered by COIP in their schools and communities.
- 7) The lack of quantitative and qualitative data about COIP and about the effects of the imprisonment of their guardians on their lives.

As a result of these and other aspects, the Committee released a series of recommendations grouped as follows: *a) alternatives to detention; b) effects of incarceration of parents on children; c) children's right to development and non-discrimination; d) right to privacy; e) family issues; f) respect for the views of the child; g) alternative care; h) finances; i) information sharing; j) alternative means of communication; k) training of professionals.*

In the following section, some of the specific recommendations (in italics) are discussed in relation to drug policy.

- *Alternatives to detention should be made available and applied on a case-by-case basis.* Although it might represent a better option for children and other persons in the care of the incarcerated guardian, alternatives to detention are not usually applied in drug-crime related cases, either due to direct legal impediments or to court decisions.
- *Identify best practices for arrest procedures.* Police raids and detentions are often scenes of violence, and include the use of firearms—even in view of the children and youth or directed against them—as well as the destruction of the child's belonging, the parent's humiliation in front of his or her children, etc. There are even reports of torture and rape in the presence of the children of the incarcerated parents.
- *Respect the rights of the child to be heard and to have his/her view taken into account.* This should not be done because it is a standard procedure, that in fact, victimizes the child even more. This should be a real exercise of inclusion, recognition and restitution of rights. COIP should be right holders and not "collateral victims" of the justice system. Identifying public defenders, psychologists and social workers who can support these children if they want to express their voices can become a good first step in this direction.
- *The right of the children and youth to a relationship with his/her parents and to direct contact.* For the families of people that are in prison for drug-related offenses, visiting their relatives can be more difficult than to other families. This can be due to lack of financial resources, distance to detention centers, visiting days/hours, absence of a caretaker to go with the child, among others. Also, these kinds of offenses can entail, depending on each country's practices and laws, a) incarceration in prisons that are far away from home, for example in federal or maximum security facilities; b) the use of pre-trial detention and long sentences, as well as a lack of access to alternatives to incarceration, which lengthens the period of separation—another effect of drug policy; c) the trans-border separation of children and their caregivers, due to the nature of the production, transportation and marketing circuits for illicit drugs. The latter can result in the father or mother being incarcerated in a different place than the country

of origin and/or where their children live. It can also result in the mother or father (or both,) smuggle drugs to other countries accompanied by their children or while pregnant, and due to the parents' incarceration, the children are either placed in institutions in a country other than their own, or they live with their mothers in prison.

- *State parties should collect and maintain records of the number of children of incarcerated parents, both those accompanying parents into detention and children who remain on the outside during a parent's detention.*
- Information is essential to the development of public policies. Without information on the number of COIP, on where they are, what legal custody they are under and in what conditions of care (with one parent who is outside the prison system, with extended family, in a public or private institution, in a foster or adoptive family, etc.), it is impossible to design and implement public policies in education, health, social environment, or prison environment that guarantee their full rights. There is also a risk that governments lose all trace of COIP, thus placing them in particularly vulnerable positions, and fracturing the family unit irreversibly.

These are some of the recommendations derived from the Day of General Debate; the document can also be consulted in its entirety¹⁶ (Committee on the Rights of the Child 2011).

Invisible No More

The immediate predecessor of *Childhood that Matters* is *Invisible No More: Children of Incarcerated Parents in Latin American and the Caribbean. Case Study: Brazil, Dominican Republic, Nicaragua and Uruguay*[1]. This was an exploratory study of the impact of incarceration on children and youth produced in line with the above mentioned recommendations. It was conceived as "a first approach into the situation of the children and youth whose families face the incarceration of one of their caretakers..." (Church World Service and Gurises Unidos 2013, 13). The report places the children and youth at its center; through their testimonies and it explores the different impacts that incarceration have in their lives. The study reaches the following main conclusions:

- 1) "For the majority of children and youth interviewed, the violation on their rights existed before the incarceration of the caretaker. This is best explained by the condition of social exclusion that exists in the communities where these children live. Yet, this violation of their rights is exacerbated with the incarceration of a caretaker, alongside certain institutional structures that replicate the state of social exclusion" (Church World Service and Gurises Unidos 2013, 72). This study was an exploratory study of the impact of incarceration on children and youth produced in line with the above mentioned recommendations.
- 2) From the moment of a caretaker's incarceration, families face greater financial difficulties which, in turn, can lead to changes in the roles of caretakers and providers. Thus, usually children and youth must assume new responsibilities which can affect their development (education, play and leisure, health, among others).
- 3) One important, recurring factor is the stigma that COIP endure in their schools and communities. This factor is revisited in this study, showing how both these spaces can become places of support and accompaniment, or of discrimination and exclusion.
- 4) There is a normalization of illegal activities from the children and youth perspective. This is something that came up both in *Invisible No More* and in this study although in

¹⁶ These recommendations were adapted by Plataforma NNAPes based on the document 2011CRCDGDRReport created by the Committee on the Rights of the Child after the DGD of 2011.

contradictory ways. Their reactions shift between a normalization of these offenses as acceptable family and community practices, acknowledgement of the higher status that drug crimes can bring, awareness of the financial gains that can derive from them—and of the poverty that leads to them—but also feelings of rejection and a need to disassociate themselves from their caregivers. So, while they don't want to follow in their caretakers' footsteps, they are afraid and angry at the idea that their parents could be incarcerated for drug offenses again. This is explored in depth in the second chapter of this study.

- 5) The study also highlights, on one side, the lack of data about these children in general, and on the other, the poor communication and articulation between children's rights and criminal justice system authorities. In this regard, we can confirm that no systematic body of information on the amount or situation of children of incarcerated persons exists.. This information is fundamental in the effort to find solutions that ensure that the COIP are guaranteed the exercise of their rights. Similarly, through this study, we can attest to the fragmentation that exists between the authorities in charge of protecting the rights of children and the criminal justice administration system (Church World Service and Gurises Unidos 2013, 73).

Proposals that touch on the following topics emerge from these and other findings: a) production of information; b) training for social and institutional agents; c) investing in childhood and adolescence; d) building awareness and outreach; e) guidance, support and protection for the rights of children and youth with incarcerated parents; f) community and civil society. The latter set of recommendations is transcribed below:

In regard to state programs and actions

- 6) Strengthen communication between the different systems that intervene in the process.
- 7) Family law judicial bodies and Children rights authorities should coordinate effort so, when a court decision entails the incarceration of a parent, they can ensure that any measures taken do not infringe on the rights of the children and youth involved.
- 8) Build solid ties between the criminal justice system and the organisms charged with guaranteeing the rights of childhood, so that the best interests of the child can be accounted for.
- 9) In instances where the incarceration of a caretaker damages the possibility of access to services that cover the children and youth basic needs, provide the material and financial means to restore their situation of vulnerability. (Church World Service and Gurises Unidos 2013, 76).

Invisible No More was the first regional effort that drew attention about this issue and laid the foundation for the present study, informing its aims and methodology, which are presented in the next section.

The creation of *Plataforma NNAPes* (COIP platform)

After the publication of *Invisible No More* and the positive results of the advocacy actions that were carried out, the *Plataforma NNAPes* began to take shape and civil society organizations from Argentina, Chile, Mexico, Guatemala and Panama joined the group of organizations that were part of *Invisible No More*. The platform is a "strategic alliance of civil society organizations in Latin America and the Caribbean working for and with children of incarcerated parents and caretakers,

in the defense and advancement of their rights, within the framework of the Committee on the Rights of the Child and other international instruments and standards."¹⁷

One of the first advocacy actions carried out by some of the Platform representatives was the presentation of a hearing around this topic before the Inter American Commission on Human Rights (IACHR). This took place during the 156th regular session of the Commission, in October 2015. It marked the first session ever presented before the Commission on the topic of the children with incarcerated parents. The following is an extract of the CIDH report on this session:

The petitioners described the challenges that children and youth face when one of their parents is incarcerated, and the position of extreme vulnerability that they live in, due to stigmatization, discrimination, abuse and violence, because a family member is in prison. Due to the absence of a parent and the loss of one source of income, the child must contribute to the family finance, resulting in an increase of child labor among this group. As well, their access to health services, education, nutrition and recreation become limited when they are forced to assume the roles of an adult within the family, and when there is a financial barrier that hinders the use of these services. These situations, along with the trauma associated with their limited contact with their caretaker and with the visiting conditions in prison, induce very negative effects in the overall development of the child. Challenges in protecting them were also noted when children live with their mothers in prison. The petitioners emphasized the problem's lack of visibility, the dearth of official information and studies on the reality that these children face. These would allow the creation of public policies to be integrated into the judicial and prison systems and in the agencies that ensure childhood protection, taking into account the best interest of the child. They signaled the marked increase in the number of incarcerated persons in the region, and that there are approximately two million children with a parent deprived of his or her liberty in the region (Inter-American Commission on Human Rights 2015, 17).

Following this, at the end of the year 2015, the CIDH published the report “Violence, Children and Organized Crime” (Inter-American Commission on Human Rights 2015 a) where the incremental impact of drug policy on children and youth in the region was brought to light:

99. As a result of the aforementioned policies with a predominantly repressive approach, the number of people in the Hemisphere currently incarcerated for drug-related crimes is vast and constantly growing.⁸¹ This growth stems from the recently expanded criminalization of a wide range of forms of behavior, accompanied by increasingly severe penalties for these kinds of crime, including prison sentences for users and the possession of small amounts and microtrafficking.

¹⁷ Actions, member organizations and other information on the Platform can be consulted at www.nnapes.org.

100. According to information and figures at the Commission's disposal, there are adolescents and a growing number of women (many of them mothers looking after children) serving sentences for violating drug laws, usually for drug use, for possessing small amounts of drugs or for micro-trafficking.⁸² In the Commission's opinion, and as demonstrated later in this report, a review of the motives and consequences of this state of affairs points to underlying vulnerabilities and human rights violations that need to be analyzed in greater depth and adequately considered in public policies on drugs. (Inter-American Commission on Human Rights 2015 a, 47).

Finally, this report, which mentions *Invisible No More*, argues:

482. A recent study in Latin America shows evidence of how the children of inmates endure stigmatization and discrimination by society, have fewer opportunities for self-fulfillment, suffer more infringements of their rights, and, as a result, if they do not receive the necessary support, are more likely to commit crimes themselves.⁵⁹⁵ Another study revealed that: "the children in families affected by incarceration exhibit a lower life expectancy than other children and are six to seven times more likely than other children to end up in prison themselves."⁵⁹⁶ Given the large numbers of women in prison for micro-trafficking and the consequences that has on the way their children grow up and develop, there are countries in the region that are looking into the introduction of measures to allow house arrest for women convicted of micro-trafficking offenses who have children to look after. (Inter-American Commission on Human Rights 2015 a, 189).

In the report *Towards the Effective Fulfillment of Children's Rights: National Protection Systems of 2017* (*Garantía de derechos. Niñas, niños y adolescents*), the IACHR specifically indicates the precarious situation of COIP and the impacts of incarceration for minor non-violent drug offenses:

For example, the **children of persons deprived of their liberty** suffer serious checks on the enjoyment of their rights as a result of their parents being incarcerated; this has an impact on their overall development, well-being, and access to opportunities on equal terms with other children even though children of incarcerated parents have the same rights as all other children and should not be treated as though they themselves were in trouble with the law because of the actions of their parents. This is a growing problem because of the high number of persons deprived of liberty in the region, especially in connection with the **excessive use of pretrial detention and the use of imprisonment for non-violent drug offenses like micro-trafficking** [emphasis added] (Inter-American Commission on Human Rights 2017 a, 11).

As we can see in this brief exploration, concern about the impacts of incarceration in the lives of the children of incarcerated persons has grown in recent years. In parallel, the efforts to communicate the negative effects of the implementation of drug policy in the region, and its consequences on children, have also multiplied.

This study seeks to link these two issues since the criminalization and incarceration of people for drug offenses is one of the main reasons for the increase in the amount of COIP in Latin America and the Caribbean. The following chapter shows this in greater detail.

Aims

The aim of the study is to generate knowledge about the specific impact that incarceration has on the lives of children and youth with incarcerated parents for minor drug offenses in Latin America and the Caribbean.

This is achieved by analysing the situation and the specific challenges faced by these children and youth. In second place, by collecting and compiling quantitative data to update the total estimated number of COIP in the region and get a preliminary estimate of the number of COIP whose parents are in prison for minor drug offenses.



Photo: Marisa Montes

The goal is to lay the foundations to help build awareness on the topic. The idea that this information will be of use for civil society organizations and alliances that lobby for fairer and more humane drug policies and for those in charge of creating and implementing public policies focused on the protection and promotion of children's rights.

The findings of this study seek to highlight the impact that drug policy has on the lives of hundreds of thousands of children and youth. We hope that the contents, findings and recommendations of this study will inform policies and programs aimed at: improving the quality of life, reducing the stigma and supporting the development of this particular group of children and youth.

Methodology

This study is based on the contents of eight country reports produced in: Mexico, Costa Rica, Chile, Colombia, Dominican Republic, Brazil, Uruguay

and Panama.¹⁸ Researchers, with experience in the study's topics (children and youth policies, penal system and drug policy) conducted the field work in each country.¹⁹

¹⁸ The reports are available at www.cwslac.org/nnapes-pdd.

¹⁹ Luis Alberto Muñoz and Briseida Echaury, Mexico; Demaluí Amighetti, Adriana Rodríguez, Grettel Sanabria and Priscilla Alvarado, members of Grupo de investigación Asociación Costarricense para el Estudio e Intervención en Drogas (ACEID), Costa Rica; Kenya Romero, Dominican Republic; Astrid Karine Torres, associate researcher of the Observatorio Sobre Infancia, Universidad Nacional de

In Mexico, Colombia, Dominican Republic, Costa Rica and Brazil, the process was led by one or two researchers, who had the support of civil society organizations²⁰ These organizations especially assisted in reaching out to COIP as this was the most challenging part of the project. In Uruguay, Chile, Mexico, Dominican Republic, Brazil and Panama, the researchers worked alongside with the children's rights organizations that are members of Plataforma NNAPES and who facilitated the access to the children and youth and their families.

In each country, standard questionnaires were used to interview: a) children and youth with a mother or father in jail; b) caretakers; and c) incarcerated persons or former detainees. These were initially written by the study's Coordinator and reviewed by the personnel of Gurises Unidos and Church World Service. The consultants in the first five countries where fieldwork took place (Mexico, Colombia, Chile, Dominican Republic and Costa Rica) also commented on and approved the questionnaires.

The country reports follow the same structure. An overview of national normative frameworks about children and youth, drug policy and penal system highlighting the elements that have the greatest impact on the children of incarcerated parents. This is followed by a section with quantitative data on incarcerated persons for drug offenses, as well as estimates on the number of COIP. It is worth noting that the amount and reliability of the information gathered differs from country to country. Lastly, the effects of incarceration for drug offenses on COIP are analyzed based on their testimonies.

The number of COIP interviewed also varies from country to country. In this regard, each country report details the conditions for fieldwork and the conditions of accessibility to children and youth. As a whole, the eight reports bring to light dozens of voices: of girls, boys and youth but also of their caretakers and their incarcerated or formerly detained mothers and fathers.

Various products have emerged from the country reports: a) this regional study, which summarizes and compares information from all them; b) a series of infographics highlighting the main conclusions and recommendations, and; c) videos that portray some of the testimonies of the children and caretakers who, with full knowledge of the project, took part in this project.²¹

Colombia, Colombia; Lorena Rivera and Paula Margotta, researchers at the Centro de Estudios Primera Infancia (CEPI) and Javiera Roa, member of ENMARCHA, Chile; Ana Paula Galdeano, researcher at the Centro Brasileiro de Análise e Planejamento (Cebap), Brazil; Emilia Pérez, Florencia Lemos and Gurises Unidos, Uruguay; Eugenia Rodríguez, researcher at the Centro de Investigaciones de la Facultad de Humanidades, Universidad de Panamá and Francisca Hidalgo, Executive Director and Founder of ENMARCHA, Panama.

²⁰ Red por los Derechos de la Infancia and Centro Interdisciplinario para el Desarrollo Social, Mexico; ACEID, Costa Rica; Caminante Proyecto Educativo, Dominican Republic; Observatorio sobre Infancia, National University of Colombia, Colombia; Centro de Estudios Primera Infancia and ENMARCHA, Chile; Centro de Defesa dos Direitos da Criança e do Adolescente (CEDECA) Sapopemba and Projeto Meninos e Meninas de Brasil; Gurises Unidos, Uruguay; ENMARCHA and the Red de Niñez y Adolescencia de Panamá, Panama.

²¹ This material was produced by Marisa Montes, Argentina, and is available at www.cwslac.org/nnapes-pdd

Drug policy, childhood and incarceration

The following pages present the conceptual, normative and rhetorical framework of drug policy at international level.

There is also an analysis on the levels of incarceration in Latin America and the Caribbean and updated estimates on the number of children with incarcerated parents in the region. Subsequently, the impacts of incarceration on these children are explored, as well as the international normative frameworks relating to children rights. The segment concludes with a critical reflection about children's rights and drug policy, revealing how, until now, COIP have not been part of the discussion on the topic at any level and how their rights have been violated.

1.1 Drug policy and its impacts

The term "drug policy" and the debates that surround it have become common in recent years, making it necessary to define the term in a way that outlines its scope. The World Health Organization provides two definitions for the term "drug policy," (WHO 1994) quoted below:

Drug Policy:

(1) In the context of **psychoactive drugs**, the aggregate of policies designed to affect the supply and/or the demand for **illicit drugs**, locally or nationally, including education, treatment, control and other programmes and policies. In this context, "drug policy" often does not include **pharmaceutical policy** (except with regard to diversion to **non-medical use**), or tobacco or alcohol policy.

(2) In the context of WHO's Action Programme on Essential Drugs, "national drug policy" refers to a national **pharmaceutical policy**²² concerning the marketing, availability and therapeutic use of medicines. WHO recommends that every country should have such a policy, formulated in the context of a national health policy. The WHO list of Essential Drugs is an effort to assist developing countries to develop a pharmaceutical policy attuned to allocating scarce funds for pharmaceuticals on the basis of health needs rather than marketing considerations (WHO 1994, 35).

The first definition dominates in current debates on drug policy and in United Nations (UN) and Organization of American States (OAS) reports, resolutions and declarations. It is therefore the definition of "drug policy" most used here. However, the non-inclusive bias of this concept, along with the consequences of this, must be pointed out. The first item to discuss is the meaning of the word drugs that underlies this definition: as the *World Drug Report* released by the United

²² The Lexicon of Alcohol and Drug Terms, (WHO 1994) defines pharmaceutical policy as: "The system of regulations intended to affect the availability of and demand for pharmaceutical drugs. Synonymous with drug policy (definition 2) in the context of WHO's Action Programme on Essential Drugs; termed "medicines policy" in Scandinavian countries. Policy on psychoactive drugs is normally an important component, reflecting the large proportion of all prescriptions which are for such drugs."

Nations Office on Drugs and Crime (UNODC) states, "All uses of the word "drug" in the World Drug Report refer to substances under the control of the international drug control conventions" (United Nations Office on Drugs and Crime 2017, 7).

This definition is reductive in comparison with the WHO definition:

A term of varied usage. In medicine, it refers to any substance with the potential to prevent or cure disease or enhance physical and mental welfare, and in pharmacology to any chemical agent that alters the biochemical or physiological processes of tissues and organisms. Hence, a drug is a substance that is, or could be, listed in a pharmacopoeia. In common usage, the term often refers specifically to **psychoactive drugs**, and often, even more specifically, to **illicit drugs**, of which there is a **non-medical use** in addition to any medical use. Professional formulations (e.g. "alcohol and other drugs") often seek to make the point that **caffeine**, tobacco, **alcohol** and other substances in common non-medical use are also drugs in the sense of being taken at least in part for their psychoactive effects (WHO 1994, 34).

The exclusion of alcohol and tobacco from the category commonly understood as "drugs" in debates, in the construction of truths, and in the popular imagination around drugs, including its uses and effects, have contributed to a double cultural fiction: on the one hand, the notion that tobacco and alcohol as substances are not *that* harmful to health; on the contrary, their use is normalized and even promoted within the family from childhood. According to WHO:

Alcohol is a psychoactive substance with dependence-producing properties that has been widely used in many cultures for centuries. The harmful use of alcohol causes a large disease, social and economic burden in societies.

Alcohol affects persons and society in different ways, and its effects are determined by the total volume of alcohol consumed, the pattern of drinking, and, on rare occasions, also the quality of alcohol consumed. In 2012, some **3.3 million deaths**, or 5.9% of global deaths, could be attributed to alcohol²³ (WHO 1994 a).

In turn, "**Tobacco kills more than 7 million people each year**. More than 6 million of those deaths are the result of direct tobacco use while around 890 000 are the result of non-smokers being exposed to second-hand smoke"²⁴ (WHO 2018 a). On the other hand, according to WHO's most recent estimates from 2015, "more than **450,000 deaths each year** can be attributed to **psychoactive drug use**" (WHO 2016, 1).

According to an article published in the prestigious medical magazine *The Lancet* (Nutt et al. 2010), alcohol is the most harmful drug of all if we consider the damages done to users and to others. Tobacco holds the sixth position, after heroine, crack, methamphetamines and cocaine. Therefore alcohol and tobacco should be considered in drug control policies, especially in terms of debate, awareness and regulation aimed at promoting cultural change.

The initial definition of "Drug policy" is based on three treaties of the United Nations: a) The Single Convention on Narcotic Drugs of 1961, amended by the protocol of 1972; b) The Convention on Psychotropic Substances (1971); and c) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

²³ Information available at <https://www.who.int/news-room/fact-sheets/detail/alcohol>

²⁴ Information available at <https://www.who.int/es/news-room/fact-sheets/detail/tobacco>

The preamble to the Single Convention of 1961 clarifies the intentions that underlie said epistemological, political and institutional architecture:

The Parties,

Concerned with the health and welfare of mankind,

Recognizing that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes,

Recognizing that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind,

Conscious of their duty to prevent and combat this evil [...]

Despite the health rhetoric that this drug policy seems to support (guaranteeing access to medication in order to prevent dependent use of psychoactive substances), the implementation of these policies has been, mainly, of a repressive character; traditionally the focus on controlling the supply (crop destruction, drug seizures, the arrest of millions of individuals) has overwhelmingly surpassed any efforts to control the demand for drugs (prevention and treatment). Some of the negative effects of the control of psychoactive substances by the conventions have been identified by UNODC and were included in the analysis of the timeline on drug control in the *World Drug Report 2008*:

The first unintended consequence is the creation of a criminal black market. There is no shortage of criminals interested in competing in a market in which hundred-fold increases in price from production to retail are not uncommon.

The second unintended consequence is what one might call “policy displacement”. The expanding criminal black market demands a commensurate law enforcement response, requiring more resources. But resources are finite. Public health, which is the driving concern behind drug control, also needs resources, and may have been forced to take the back seat in the past.

The third unintended consequence is geographical displacement. It is often called the balloon effect because squeezing (by tighter controls) in one place produces a swelling (namely, an increase) in another place, though the net effect may be an overall reduction [...]

The fourth unintended consequence is what one might call substance displacement. If the use of one drug was controlled, by reducing either supply or demand, suppliers and users moved on to another drug with similar psychoactive effects, but less stringent controls.

The fifth unintended consequence is the way the authorities perceive and deal with the users of illicit drugs. A system appears to have been created in which

those who fall into the web of addiction find themselves excluded and marginalized from the social mainstream, tainted with a moral stigma, and often unable to find treatment even when motivated to seek it. (United Nations Office on Drugs and Crime 2008, 216).

In spite of the acknowledgement of these negative effects, UNODC doesn't include an analysis of the costs of drug policy in its reports or indicators. Therefore, in 2018, the International Drug Policy Consortium (IDPC) published the shadow report *Taking stock: A decade of drug policy—A civil society shadow report*, (International Drug Policy Consortium 2018) which evaluates the impacts of drug policy in the last decade, especially "assessing the progress made, or lack thereof, against the objectives set in the 2009 Political Declaration and Plan of Action" (International Drug Policy Consortium 2018, 7). The report concludes that the aims of drug policy—related to the reduction or elimination of coca leaf, cannabis and poppy plantations, of the demand for psychoactive substances, of the manufacture and distribution of these, as well as of money laundering—not only haven't been reached, but that the measures taken have had counterproductive consequences in terms of human rights. Among other aspects, the report mentions the increase in the incarceration of persons accused of drug offenses, particularly women (although in absolute terms men remain the large majority of those deprived of their freedom, as the following section demonstrates, the proportion of women has increased). It also mentions the violations to the right to life, the right to health, the right to due process, and to not being tortured, among others. Drug policy implementation also entails risks for the environment and for development, as well as causing the forced displacement of communities, especially of indigenous peoples.

In this study, by focusing on the impact of the implementation of drug policy on the children of incarcerated significant caregivers²⁵ in jail for minor non-violent drug offenses,²⁶ we explore another aspect of the problem, so that subsequent debates and approaches in drug policy and its effects, as well as proposals for improvement, will include additional facets of the issue.

Finally, it is important to point out that drug policy, as a group of actions on national and international levels to reduce or eliminate the use of certain psychoactive substances, is linked to a combative rhetoric under the expression "the war on drugs." This began as a kind of modern-day crusade launched by Richard Nixon, in which constructs within the popular imagination play a key role and affect the COIP. The book *Children of the Drug War*, edited by Damon Barrett (2011),

²⁵ The terms significant caregiver, caretaker and guardian are used as synonyms in this study, given that in most cases the girls and boys interviewed have an adult caretaker in prison (generally a father or mother.) We are aware that incarcerated youth can also be parents, which leads to an analysis of the state's actions in the face of two youth groups that are interrelated. We believe that a study of that type should be conducted; however, due to time, resources and space considerations, it was impossible to include this population in our study. Still, there are cases of youth deprived of their freedom who were interviewed for this study, and whose testimonies are also cited. As well, many COIP have several caregivers in prison, for example siblings, or else the biological mother or father are not the primary (incarcerated) caregivers. One example is Horacio, the Brazilian boy quoted at the beginning of this document: although both his biological father and the father that raised him are in prison, the significant caregiver is the second, not the first.

²⁶ With the term "minor non-violent drug offenses" we refer to crimes of the international drug trade committed on a local level (usually in an urban context), often referred to as "micro-trafficking," "retail drug dealing" or "small-scale drug trade." In other words, the sale, marketing and/or possession of controlled substances for personal or small-scale commercial use (depending on each country's legal framework,) etc. However, cases of international drug trafficking or national transport, by so-called "mules," are also included. Although international movement is often considered a major offense in international legislation, here we include it within minor drug offenses when conducted by persons without positions of leadership in criminal networks, and who are involved mainly due to financial reasons and find themselves in positions of vulnerability. Drawing attention to this sector of the international drug trade allows us to speak of children deprived of their liberty alongside their mothers, or in institutions in foreign countries, or who live in another country than their primary or only caretaker (see especially the reports on Mexico, Panama, and Dominican Republic, for example.) The team agreed to exclude offenses committed with violence or the "crime" of consuming or possessing with intent to consume drugs, in order not to include a much wider debate that would surpass the aims of this study, in other words, the approach to the topic of drugs as a health issue, its criminalization, or, on the contrary, experiences of decriminalization and deregulation. Still, in some cases the country reports refer to related testimonies of the use of drugs, or, in the case of Uruguay, of the legal regulation of cannabis.

identifies how the rhetoric of childhood, i.e. "the protection of our children," has been used as a tool to justify the war on drugs from the moment that Nixon launched it in 1971:

Narcotics addiction is a problem which afflicts both the body and the soul of America... It comes quietly into homes and **destroys children**, it moves into neighborhoods and breaks the fiber of community which makes neighbors... [emphasis added] (Richard Nixon, quoted in Barrett 2011, VII).

More than thirty years later, Felipe Calderón, president of Mexico from 2006 to 2012, used the same rhetoric with the slogan "para que las drogas no lleguen a tus hijos" ("so that drugs don't reach your children") (Redacción AN 2012) to launch his offensive against drug trafficking and to militarize security policies, leaving in its wake thousands of dead, disappeared or displaced persons.

When we listen to Horacio, Jess, Chantal, Manuel, Joseph and the other children who participated in this project, we can see that they are not "invisible victims" of incarceration, but *subjects that have been made invisible*. Their childhood experience is the result of a specific combination of adult-centric policies, abuses of criminal law, social exclusion and the segregating rhetoric of the war on drugs operation. So that "the children" of some can be protected from drugs, millions of others must live the impacts of violence, incarceration, and stigma.

1.2 Incarceration in Latin America and the Caribbean for drug offenses

As it has already been mentioned, one of the effects of the implementation of drug policies has been the use of prison sentences as a first alternative, and consequently there has been an increase of imprisonments of secondary players in illegal networks, principally users and small-scale sellers. This is particularly apparent in Latin America. According to the World Prison Population List (Walmsley 2016), the average world prison population rate is 144 persons per one hundred thousand inhabitants. In South America, this average jumps to 242 and in Central America to 347 per one hundred thousand inhabitants. Between the years 2000 and 2015, the global prison population has increased more than the general population, which have seen rises of 20% and 18% respectively. In Latin America, for that same period, the increase in prison populations has been 145%, and in Central America 80%.

These numbers intensify in the case of women. On a global level, between the years 2000 and 2016, the number of women in prison has increased by 53% (Walmsley 2017). The tendency also appears in cases of pre-trial incarceration: in 59% of countries worldwide, the pre-trial/remand detention rate fluctuates between 10% and 40% of the total prison population (Walmsley 2017 a, 2). Latin America is once more the exception to the rule. Some examples: according to *World Pre-trial/Remand Imprisonment List* (Walmsley 2017 a), in Panama the prison population awaiting sentencing is 62.6%, in the Dominican Republic it is 60.2%, in Argentina 50.9% and in Uruguay 69.4%; while the global average is 33 persons in pre-trial incarceration per 100,000 inhabitants, in the Americas the number is 95.

What do these numbers indicate? That there is an increase in incarcerations, and especially of women. Drug policy is the main reason for this tendency (Chaparro et al. 2017). For example, between 2000 and 2015 in Colombia, the population incarcerated for drug offenses has increased by 142%. In Brazil, while the population has increased by 8% between 2006 and 2014, the population deprived of their freedom has increased by 55%, and the population incarcerated for drug offenses in particular by 267%. In Uruguay, between 2009 and 2013 the trends are,

respectively, an increase in 1% of the population, 15% in prison populations, and 39% of persons accused of drug offenses (Chaparro et al. 2017, 25, table 2).

Regarding women, recent years have seen a proliferation of studies, reports, resolutions and impact and awareness campaigns that show how drug offenses are the first or second cause of incarceration among women (Inter-American Commission on Human Rights 2013 and 2017; Washington Office on Latin America et al. 2016). In Latin America and the Caribbean, this tendency is not new; it has been rising steadily since the 1980s (Giacomello 2013). Women are involved at the lowest levels of criminal networks and are more exposed to being captured and incarcerated. They transport drugs across borders, hidden inside their bodies or in suitcases or other containers, they introduce drugs into prisons, they guard substances in their homes or at other sales points, they go with their male partners and are detained with them, or sometimes, in their place. Drug offenses have a very marked gender and class façade, as they allow women to carry out a double or triple work shift and in that way make the necessary profit to allow for their survival and that of their children. This occurs in a context where they are often the primary or only caregiver of children and youth and of other dependent persons (Inter-American Commission of Women 2014; Giacomello 2013 a and 2017).

International, regional and national civil society organizations in Latin America have managed, after decades of research, to build awareness, impact policies and open a debate around drug policy, rethinking its focus. Regarding the intersection between gender and the impact of incarceration for drug offenses, it is worth mentioning *Women, Drug Policy, and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean* (Washington Office on Latin America et al. 2016). This important contribution to the development of drug policy integrates gender perspectives in the broad sense of the term, that is to say, attuned to discussions and policies geared toward tackling structural inequalities and addressing the negative consequences of the current prohibitionist framework. The report emphasizes the female role of caretaker, stating:

In criminal trials or in sentencing, special consideration must also be given to the rights of persons dependent on women. This issue is more urgent today, as data confirms that increasing numbers of women are being incarcerated in the Americas, especially for drug-related offenses. (Washington Office on Latin America et al. 2016, 6).

1.3 Children of parents currently incarcerated for drug offenses

In 2013 the, previously quoted, *Invisible No More* study was published. This was a first regional effort to build awareness about COIP and bring up their voices. It also included quantitative estimates on the number of COIP in Latin America and the Caribbean. In the absence of official data on parents in jail, *Invisible No More* provided a high estimate and a low estimate based on a methodology described in the study, which yielded the following result: there were, at that point, between 1,500,651 and 1,868,214 COIP in the region.

The current study endeavors to update that estimate, and to shine a spotlight on the cumulative damages of drug policy. Drawing from the experiences of *Invisible No More*, different findings were analyzed and compiled, in order to show how additional burdens are added to the general impact of incarceration, and existing conditions worsen, due to the implementation of highly punitive, violent and stigmatizing drug policies. The findings are based on the acknowledgement that generalizations are undesirable, as no one "type" of COIP exists; each child and his or her family are unique, and the way they experience the incarceration of a caregiver and how it affects or will affect the children and youth varies. Along with updating the *Invisible No More* estimate, updated statistical information from seventeen countries in the region was gathered for the current

study.²⁷ The following table presents an update of the data set forth in *Invisible No More*, followed by the information of the seventeen countries where more detailed information could be gathered.

Table 1. Total population of children and youth with incarcerated mothers and fathers in Latin America and the Caribbean (based on the table included in Invisible No More on page 20).

| No. | Country | Incarcerated Persons | | | Estimate 1: Total children and youth with at least one incarcerated parent (calculation based on a study from Uruguay) ²⁸ | Estimate 2: Total children and youth with at least one incarcerated parent (calculation based on studies from Mexico and Guatemala) ²⁹ | Total children and youth with at least one incarcerated parent |
|-----|---------------|----------------------|--------|-----------|--|---|--|
| | | Men | Women | Total | | | |
| 1 | ARGENTINA | 72,915 | 3,181 | 76,261 | 86,595 | 109,011 | 118,259* ³⁰ |
| 2 | BELIZE | 1,252 | 45 | 1,297 | 1,472 | 1,855 | 1,855 |
| 3 | BOLIVIA | 16,474 | 1,472 | 17,946 | 20,732 | 25,925 | 25,925 |
| 4 | BRAZIL | 542,401 | 37,380 | 607,731 | 665,428 | 834,503 | 850,834* |
| 5 | CHILE | 37,387 | 3,506 | 40,893 | 47,308 | 59,120 | 59,921* |
| 6 | COLOMBIA | 107,794 | 7,602 | 115,396 | 132,512 | 166,143 | 166,143 |
| 7 | COSTA RICA | 18,188 | 1,038 | 19,226 | 21,980 | 27,612 | 27,612 |
| 8 | CUBA | 53,633 | 3,704 | 57,337 | 65,810 | 82,530 | 82,530 |
| 9 | ECUADOR | 34,572 | 2,925 | 37,497 | 43,254 | 54,123 | 54,123 |
| 10 | EL SALVADOR | 35,165 | 3,606 | 38,771 | 44,974 | 56,137 | 53,261* |
| 11 | GUATEMALA | 19,854 | 3,504 | 23,358 | 27,668 | 34,219 | 34,219 |
| 12 | HAITI | 10,144 | 368 | 10,512 | 11,932 | 15,037 | 15,037 |
| 13 | HONDURAS | 18,135 | 815 | 18,950 | 21,574 | 27,153 | 27,153 |
| 14 | MEXICO | 200,273 | 10,718 | 210,991 | 240,919 | 302,823 | 384,737* |
| 15 | NICARAGUA | 16,267 | 929 | 17,196 | 19,659 | 24,697 | 24,697 |
| 16 | PANAMA | 15,313 | 870 | 16,183 | 18,499 | 23,241 | 23,241 |
| 17 | PARAGUAY | 12,723 | 884 | 13,607 | 15,620 | 19,587 | 19,587 |
| 18 | PERU | 83,018 | 4,977 | 87,995 | 100,695 | 126,446 | 181,461* |
| 19 | DOM.REPUBLIC | 25,750 | 742 | 26,492 | 29,990 | 37,841 | 37,841 |
| 20 | URUGUAY | 10,555 | 594 | 11,149 | 12,742 | 16,010 | 16,010 |
| 21 | VENEZUELA | 54,070 | 3,026 | 57,096 | 65,249 | 81,984 | 81,984 |
| 22 | PUERTO RICO | 10,098 | 377 | 10,475 | 11,894 | 14,988 | 14,988 |
| 23 | FRENCH GUIANA | 655 | 72 | 727 | 845 | 1,054 | 1,054 |
| 24 | SURINAME | 972 | 28 | 1,000 | 1,132 | 1,428 | 1,428 |
| 25 | GUYANA | 2,123 | 77 | 2,200 | 2,497 | 3,147 | 3,147 |
| | TOTAL | - | - | 1,520,286 | 1,710,980 | 2,146,615 | 2,307,048 |

Source: prepared by the authors.

²⁷ The data matches updated official information published online, or in the absence of it, the numbers have been estimated from figures or percentages in academic research and official reports published previously and/or that had a limited scope, which necessarily implies a recognition of the significant bias that this entails and the limited reaches of the current exercise, namely: contributing useful elements to assess the problem under scrutiny. As well, it is important to emphasize that the studies and reports that we used were selected among the most recent publications, and as close to the dates of the official information included here as possible, which is the basis for all estimates. Therefore, all information previous to 2010 was discarded, and the data from 2014 to 2017 was prioritized. Along with favoring current and official information, we selected data that was broken down by gender, and that had a national scope.

²⁸ Calculation of children of incarcerated parents based on data in the document created by the Servicio de Paz y Justicia del Uruguay (Serpaj) in 2010.

²⁹ Calculation of children of incarcerated parents based on information in the investigation from Mexico titled "Perfiles de la población penitenciaria I: frecuencias y descriptivos" (Vilalta y Fondevila-cide 2012, 35) and on the "Informe de monitoreo de las problemáticas que enfrentan las mujeres privadas de libertad y sus hijas e hijos en Guatemala según las reglas de Bangkok" (Colectivo Artesana 2013, 110-113).

³⁰ Unlike the others, these six numbers were reached based on information provided by the Centro de Estudios de Inseguridad y Violencia (CELIV) of the Tres de Febrero University (UNTREF) in Argentina. They emerge from the investigation conducted among condemned prisoners in the designated countries between 2009 and 2015.

As the table shows, there is currently a range of between **1,710,980** and **2,307,048** girls, boys and youth with at least one incarcerated parent, of which around **359,305** and **484,480** have a parent imprisoned specifically for drug offenses; a trend that, without profound and timely changes, will continue to increase.

In the countries studied in more detail,³¹ the estimate yielded somewhere between **1,583,062** and **1,970,699** girls, boys and youth with an imprisoned mother or father. Of these children and youth, around 21% are children of persons incarcerated for drug offenses, or between **346,571** and **423,409**. The following estimates, for the number of children with a mother or father deprived of their liberty for drug offenses, were obtained following the same methodology as that used for *Invisible No More* (Church World Service and Gurises Unidos 2013, 19-20).

Table 2. Total population of children and youth with mothers and fathers deprived of their freedom in the 17 countries in Latin America that participated in this study.

| children and youth | Estimate 1 | Estimate 2 |
|---|--------------------------|--------------------------|
| children and youth with an incarcerated mother or father | 100% 1,583,062 | 100% 1,970,699 |
| children and youth with a mother or father incarcerated for drug offenses | 21.9% 346,571 | 21.5% 423,409 |

Source: prepared by the authors.

In the region, the war on drugs and the mass incarceration phenomenon have had a significant gender impact. Figures show that the percentage of children and youth that have their mother in prison for drug offenses is more than double than the total percentage of children of incarcerated women for all offenses.

Table 3. Children and youth with a mother or father deprived of their freedom in 17 countries in Latin America (population broken down by the gender of the incarcerated caretaker).

| children and youth | Estimate 1 | | | Estimate 2 | | |
|---|--------------------------|--|--|--------------------------|--|--|
| | Total children and youth | Total children and youth with an incarcerated father | Total children and youth with an incarcerated mother | Total children and youth | Total children and youth with an incarcerated father | Total children and youth with an incarcerated mother |
| children and youth with an incarcerated mother or father | 100% 1,583,062 | 91.7% 1,451,367 | 8.3% 131,696 | 100% 1,970,699 | 93.4% 1,840,125 | 6.6% 130,574 |
| children and youth with a mother or father incarcerated for drug offenses | 100% 346,571 | 82.8% 286,855 | 17.2% 59,716 | 100% 423,409 | 85.9% 363,693 | 14.1% 59,716 |

Source: prepared by the authors.

³¹ These are: Panama, Costa Rica, Brazil, Paraguay, Peru, Ecuador, Chile, Argentina, Bolivia, Uruguay, El Salvador, Colombia, Dominican Republic, Honduras, Venezuela, Mexico and Guatemala.

Table 4. Children and youth with parents deprived of their freedom in 17 countries in Latin America (population broken down by gender and country).

| Country | Incarcerated persons | | children and youth with an incarcerated parent | | | | | |
|----------------------|----------------------|---------------|--|--|--|--------------------------|--|--|
| | Men | Women | Estimate 1 | | | Estimate 2 | | |
| | | | Total children and youth | Total children and youth with an incarcerated father | Total children and youth with an incarcerated mother | Total children and youth | Total children and youth with an incarcerated father | Total children and youth with an incarcerated mother |
| Argentina (2015) | 72,915 | 3,181 | 86,595 | 81,665 | 4,931 | 108,470 | 103,539 | 4,931 |
| Brazil (2014) | 542,401 | 37,380 | 665,428 | 607,489 | 57,939 | 828,148 | 770,209 | 57,939 |
| Bolivia (2016) | 13,441 | 1,157 | 16,847 | 15,054 | 1,793 | 20,880 | 19,086 | 1,793 |
| Chile (2018) | 37,387 | 3,506 | 47,308 | 41,873 | 5,434 | 58,524 | 53,090 | 5,434 |
| Colombia (2018) | 108,202 | 7,659 | 133,058 | 121,186 | 11,871 | 165,518 | 153,647 | 11,871 |
| Costa Rica (2017) | 13,139 | 541 | 15,554 | 14,716 | 839 | 19,496 | 18,657 | 839 |
| Ecuador (2017) | 33,027 | 2,782 | 41,302 | 36,990 | 4,312 | 51,210 | 46,898 | 4,312 |
| El Salvador (2016) | 38,248 | 3,557 | 48,351 | 42,838 | 5,513 | 59,826 | 54,312 | 5,513 |
| Guatemala (2018) | 21,559 | 2,632 | 28,226 | 24,146 | 4,080 | 34,693 | 30,614 | 4,080 |
| Honduras (2016) | 16,805 | 907 | 20,227 | 18,822 | 1,406 | 27,944 | 23,863 | 4,081 |
| Mexico (2016) | 200,273 | 10,718 | 240,919 | 224,306 | 16,613 | 301,001 | 284,388 | 16,613 |
| Panama (2018) | 15,313 | 870 | 18,499 | 17,151 | 1,349 | 23,093 | 21,744 | 1,349 |
| Paraguay (2016) | 12,022 | 834 | 14,757 | 13,465 | 1,293 | 18,364 | 17,071 | 1,293 |
| Peru (2018) | 80,841 | 4,886 | 98,115 | 90,542 | 7,573 | 122,368 | 114,794 | 7,573 |
| Dominican Rep (2017) | 26,065 | 717 | 30,304 | 29,193 | 1,111 | 38,124 | 37,012 | 1,111 |
| Uruguay (2017) | 10,555 | 594 | 12,742 | 11,822 | 921 | 15,909 | 14,988 | 921 |
| Venezuela (2017) | 53,670 | 3,044 | 64,829 | 60,110 | 4,718 | 77,133 | 76,211 | 922 |
| Total | 1,295,863 | 84,965 | 1,583,062 | 1,451,367 | 131,696 | 1,970,699 | 1,840,125 | 130,574 |

Source: prepared by the authors.

The following section goes beyond the numbers to explore some of the repercussions that incarceration produces in children and youth. Later on in the document, we delved deeply into this analysis.

1.4 Youth in the face of the incarceration of a primary caretaker in Latin America and the Caribbean

Can you tell me what you don't like about your mother being away from you?

"She can't take care of me in the morning, she can't take me to school, she doesn't go to my meetings, or speak with the teachers. Almost everything. She doesn't comb my hair, she doesn't take care of me, she doesn't hug me"

—Les, 9 years old, Mexico.

Les lives in Mexico City, with her sister Jes, who is ten years old, and their older siblings, Ana and Pedro, who were respectively twenty and twenty-two at the time the interviews for the study from Mexico were conducted. Their mother, Kenya, was detained for transporting drugs within Mexico City. Her eldest children, who were fourteen and sixteen at the time, had to leave school and go to work to support their sisters:

"I left school when I was around fifteen years old, I was almost fifteen, and I started to work at that age in jobs in cleaning, taking care of kids, anything I could do to help."

—Ana, 20 years old, Mexico.

"I had to curtail everything, I had to leave school to start working, in my personal life I left the girlfriend I had at the time, I had to make a lot of changes in my life."

—Pedro, 22 years old, Mexico.

This family's situation is common. The incarceration of a primary caretaker disrupts all aspects of the lives of his or her children. Finances, roles within the home, the relationship with other family members and with the community and school, the emotional and psychological aspects, as well as the life project of the individual and of the nuclear family. A review of more than forty studies that involved over seven thousand girls, boys and youth with incarcerated parents (Murray et al. 2012) points out that an unprecedented number of children are experiencing the incarceration of a parent worldwide. The families of people incarcerated can suffer from multiple hardships because of this situation. Some of these are: traumatic separation, reduced incomes, the loss or change of their homes, difficulties at school, a move to another town or country, etc. The incarceration as a unique or recurrent episode of one or more members of the nuclear family entails stigma, secrecy, financial challenges and the breakdown of the family unit (Jones and Woźna 2012, 33). Furthermore, the incarceration of a primary guardian can negatively affect a child's education (causing desertion or poor performance), along with bringing emotional and psychological problems, affecting their social relations to their peers and to their families and communities, causing drug problems, mental health issues, and antisocial behavior (Murray and Farrington 2008).

Several factors influence the impact of incarceration on children: the first is the strength of the family relationships before incarceration: the stronger the bond, the deeper the sense of loss will be. However, when the incarcerated person is a source of violence and disruption in the home, their removal can be experienced as positive. Sofía, an Uruguayan youth interviewed for this study, comments in relation to her brother's detainment:

"It was peace, it was happiness. No one wanted him at home, because he's so violent and when he reaches bottom he would also hit Father. When he goes crazy he hits Father, everything."

Incarceration also has a different impact according to gender, both the adult caretaker's gender and the child's. With an incarcerated father, COIP are more likely to stay with their mother, who becomes the primary caretaker and assumes all burdens of emotional and material support. This does not diminish the impact of incarceration, as the family can experience greater financial adversity and the children suffer from the loss of their father and miss him except when, as mentioned above, the relationship before incarceration was negative (Jones and Woźna 2012). When the mother is incarcerated, the risk of sibling separation increases—the children either end up in different homes within the extended family, or with friends, or in institutions—and the risks of financial vulnerability and lack of care also increase, since fathers are less likely to take on the full care of their children, assuming they weren't already absent.

The following testimony is from a Haitian girl institutionalized in the Dominican Republic. Both her parents are incarcerated due to drug offenses:

“My sister and I have lived here since we were little. They treat us well, they scold us when we aren't good or don't do our homework, but they don't hit us, they just tell us to be good... I don't know where my mother is, or my father, the psychologist says that they came from Haiti and they lived here, but they had problems and didn't come back.”

—Jenny, 9 years old, institutionalized, of Haitian parents, Dominican Republic.

Girls and boys are also subject to different socialization processes and different processes of self-construction and hetero-identity construction, which influence their experience and their ways of expressing the impact of incarceration. For example, in a study in six European countries, (United Kingdom, Germany, Sweden, Romania, France and Switzerland) girls showed greater emotional difficulties than boys, while boys had greater problems relating to their peers and more behavioral issues (Jones and Woźna 2012, 280). This is not an effect of incarceration, but of how it interacts with gender perspectives and with the processes of internalizing and externalizing emotions that arise from the temporary loss of the primary caretaker. Age also affects how children and youth experience incarceration: a months-old baby is not the same as a child of five or six, and a teenager of twelve or thirteen than one of sixteen. Age groups, as well as the stage of each child's development, partly determine their reactions to the experience.

Other aspects that influence how the child lives through the loss of a primary caretaker are:

- 1) The kind of offense committed and the social imaginary or meaning that it holds: if it is a crime that causes shame or not, if it brings stigma or increased status (by the fact of being son or daughter of, or in the same family as...) As we can see in the testimonies presented in the third chapter, drug offenses entail both situations. Even within communities where the sale of drugs has become normal, COIP and the people they are surrounded by perceive drugs as "harmful," and therefore ascribe a negative image to those who sell substances. However, certain testimonies also associate drug dealers with positions of power and status.
- 2) If family members or caretakers share information about the incarcerated person, explaining why he/she is gone, or if they fall back on excuses (for example, that the person is working elsewhere).
- 3) The mode (telephone, letter, temporary release, video calls, etc.) and quality of contact with the incarcerated caregiver.
- 4) Support versus stigma in the neighborhood, community and school. Generally, children and their families experience both:

"The neighbors would help us, when we didn't have money we'd ask for bread on account and they would give it to us, and the next day we'd pay them. We got to know our neighbors a lot."

—Gary, 18 years old, Chile.

"They sometimes shout at me, from far away, that I'm a drug trafficker's daughter, because not only has my mom been a trafficker, but my whole family. And I feel rage when they say this, because it's nothing to do with me. I'm not the one who is a trafficker!"

—Luz, 14 years old, Chile.

- 5) Another aspect that affects the impact of the experience is the normalization of certain criminal conducts, and the incarceration of other responsible adults or family members (siblings, uncles and aunts, neighbors,) as well as the experience of former incarcerations of the same primary caregiver or of more than one caretaker at a time, this being relatively common in the cases presented in this study and a characteristic of incarceration for drug offenses. These two testimonies from Uruguay provide an example:

"It's the way to make easy dough. You're at home, you've got dough, you don't work, you don't do anything. You're at home and the only thing you have to do is sell and that's it, you've got money. It's easy dough."

—Sofía, 16 years old, Uruguay.

"My life is the same. It's obvious that they're going to fall, all of them sell... It was an everyday thing. If he was going to fall, he'd fall. My uncles fall all the time, always."

—Agustín, 16 years old, Uruguay.

- 6) The presence of factors of resilience on individual, family or community levels have a major role in contention. The previously cited study of the European context (Jones and Woźna 2012) shows that resilience in children of incarcerated parents is associated with powers of communication and expression, and being able to discuss their experiences.

These are some of the aspects that influence how incarceration relates to the experiences of boys and girls. We can define them as "endogenous," in other words, associated especially with characteristics and contexts relative to the child and his or her primary caretakers in the realms of family and community. To these, however, we must add other factors, where the personal or familiar comes into contact with the structural, that is to say, with the exogenous. This combination of factors is related with the child's situation before incarceration: generally, while acknowledging that there are exceptions and special situations, persons deprived of their freedom come from the poorest, most marginalized and stigmatized segments of the population. As *Invisible No More* points out, the communities where children with incarcerated parents live "are highly vulnerable communities, with severe levels of violence, structural poverty and social exclusion:"

With their similarities and differences, these are communities in which the exercise of individual, family or collective rights is a daily struggle. From the right to food, to proper work, to health, to decent housing and to quality education, to the right to a healthy environment, to participate in the community and to live free of all forms of violence, the communities that are part of this study have suffered from a violation of their rights and are bisected by problems that endanger their social integration and the full exercise of their citizenship: deficient early childhood development, extremely high levels of school failure, weakening of family and community life, lack of opportunities, and unemployment (Church World Service and Gurises Unidos 2013, 15).

Criminalization processes in the region are undoubtedly associated with the processes of criminalization of poverty, race, ethnicity and skin color. It is no coincidence that theft and minor non-violent drug-related offenses are the primary causes of incarceration. Policing policies focus on the weakest links in the drug trade and persons who, principally due to their contexts of social exclusion and lack of opportunities, are accused of committing crimes against property law. Due to this, children of incarcerated parents usually live in an environment of violation of rights, diminished opportunities for their development, and stigmatization even before the incarceration occurs. This stigmatization increases with incarceration, however it isn't necessarily caused by it; both processes intersect and are magnified through the direct action of the state.

In this action, or combination of actions, the other factors affecting the COIP converge, those termed "exogenous" and that relate to:

- 1) Criminalization processes, or: what is considered a crime, and how it is prosecuted and judged. As we've mentioned, legislative systems relating to drug offenses tend to be highly and disproportionally punitive, causing major repercussions.
- 2) How processes of persecution and detention take place; in drug crime cases, the testimonies in this study show over and over that state operatives are violent, thus combining a state that is absent in social policy with a violent, intimidating state that infringes on human rights at the moment of implementing justice, as the following testimony shows:

"They came to destroy an area near where I live, they destroyed it, and then they came by my house, and though they didn't plan to come to my house, they broke and stole everything [...] and also in the same house I'm living in now, they hit my mother. I was two years old, or maybe more, and they beat up my mom. I saw how they hit her, and I'll never be able to get that out of my head."

—Luz, 14 years old, Chile.

- 3) The structure of the prison system: infrastructure, conditions, treatment toward inmates and their visits, internal regulations, distance from the home, flexibility of visiting days and hours adapted to the needs of children and their caretakers, etc.

"Visiting my dad was a sacrifice for me, and I would only go because I wanted to see him and I looked forward to it. But it was very far, five hours to get to the town where he's detained, and then that disgusting inspection, they want us to lower our pants or lift our skirt. They don't search my little brothers like that, they treat them better, but for us teenagers, they want to touch even though the agent is a woman. It's humiliating and disgusting, I feel dirty and looked at. For me that was the worst, and in jail there are a lot of perverts who, while one walks toward the dorm area, say things, dirty things, even to very young girls."

—Chanel, 17 years old, Dominican Republic.

Added to the above, to the legislative phase of prosecution of crimes and execution of pre-trial prison or sentencing, there is another important stage that goes beyond the scope of this study: the actions of the authorities that administer justice: the judges, the tribunals, and the defense. A quick review of sentencing leaves no doubt as to the generalized invisibility of children with incarcerated parents in the decision-making process of the courts. Discussed in a later section are examples from South Africa and Argentina where, by contrast, the best interest of the children accused of committing a crime were taken into account in the process of determining and

issuing a sentence, as this affects them as well, and the state cannot be blind to the consequences of its own decisions.

This brief tally of the factors labeled as "endogenous" and "exogenous" of the relation between children and youth and the impacts of the incarceration of a primary caregiver do not attempt to be exhaustive. This distinction is analytical since the personal processes of each of these children with incarcerated parents are always influenced by the interaction with their families, communities and the structural dimension of the state and its punitive side. In other words, the exogenous and endogenous are interconnected, and the former affects the later, even before the incarceration of a caregiver.

The children of incarcerated parents must stop being "forgotten victims" (Murray et al. 2012, 175) of the criminal justice system, or "orphans of justice," (Shaw in Tomkin 2009, 9) and become subjects with rights that are recognized when the law deliberates on the fate of their primary caretakers. In the following section we present some tools that can be useful in this transformation.

1.5 The Convention on the Rights of the Child and the visibility of children of incarcerated parents

2019 marks the 30th anniversary of the adoption of the Convention on the Rights of the Child (CRC from now on). The Convention did not appear out of nowhere, but from a historic evolution related to how children and their rights are perceived, consistent with the consolidation of the human rights project arising after World War II (Verhellen in Vandenhoe et al. 2015). This tool was a milestone in children's rights, but also changed the way *human* rights are understood. The Convention guarantees the child the rights of provision, (for example, of adequate standards of living) protection, (against violence) and participation (for example, of expressing their opinions freely,) also known as the three P's (Verhellen 2015, 49). As well, the CRC is the first treaty that conjoins civil, political, financial, social and cultural rights, thus affirming the interdependence and indivisibility of the human rights of girls and boys as full subjects of human rights (Reynaert et al. in Vandenhoe et al. 2015, 5).

Through the years, four general principles that guide the Convention, and that are key to the exercise of all other rights, have been identified. These are: a) the right to non-discrimination (article 2); b) the adherence to the best interests of the child (article 3); c) the right to life, survival and development (article 6); and d) the right to respect for the views of the child (article 12). Along with these principles, certain other articles should be emphasized in relation to COIP, while maintaining that all the rights posed by the Convention are relevant in that they involve any child or youth below eighteen years of age. Article 9, "Separation from parents," is the only one that explicitly mentions the children of incarcerated parents. It recognizes the rights of girls and boys to remain with their parents, and if a separation occurs due to a State decision, to maintain a bond with them, and to be informed and considered in all decisions that bring about the separation. The best interest of the child must prevail as guiding principle to determine if a separation is convenient for the child. The above is linked with the definition of the family as the fundamental element of society, and to the rights of children to special protection due to their underage condition.³² In the specific case of children with an incarcerated primary caregiver, the

³² Articles 17 and 19 of the American Convention on Human Rights; article 10 of the International Covenant on Economic, Social and Cultural Rights; articles 23 and 24 of the International Covenant on Civil and Political Rights; article 16, section 3 of the Universal Declaration of Human Rights.

article implies that imprisonment should be in an institution close to the family, and urges the application of alternative measures.

To that effect, paragraph 69 of General Observation (GO) 14 of 2013 states:

When the parents or guardians have committed a crime, case-by-case alternatives to incarceration should be offered, taking the effects of the different sentences and the best interest of the affected child into full consideration [emphasis added] (UNICEF and Sistema Nacional para el Desarrollo Integral de la Familia 2014, 271).

The *Guidelines for the Alternative Care of Children* (United Nations General Assembly 2010) reiterates the point:

48. When the child's sole or main carer may be the subject of deprivation of liberty as a result of preventive detention or sentencing decisions, non-custodial remand measures and sentences should be taken in appropriate cases wherever possible, the best interests of the child being given due consideration. States should take into account the best interests of the child when deciding whether to remove children born in prison and children living in prison with a parent. The removal of such children should be treated in the same way as other instances where separation is considered. **Best efforts should be made to ensure that children remaining in custody with their parent benefit from adequate care and protection, while guaranteeing their own status as free individuals and access to activities in the community** [emphasis added].

As well, article 18 of the CRC recognizes the responsibility of the child's parents or guardians in their development and upbringing. However, this does not exempt the State's obligations; on the contrary, the second paragraph expresses the state's responsibility in ensuring adequate conditions for the caretakers to carry out their duties. These conditions must be met at the moment of imposing a sentence that deprives a guardian of his or her liberty, ensuring the protection of children who do not have a caretaker present, as well as that of those whose charge they are in. The former is also linked to article 27 relating to quality of life, which details in the third paragraph:

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (OHCHR 1990).

Articles 7 (registration, name, nationality, care); 10 (family reunification); 16 (right to privacy); 18 (parental responsibilities; state assistance); 20 (children deprived of family environment); 21 (adoption); 24 and 25 (health and health services); 26 (social security); 28 and 29 (right to education); 31 (leisure, play and culture); 32 (child labor); 33 (drug abuse); and 37 (detention and punishment) contain provisions relevant to this group.

As has been mentioned, due to the limits of this study it is impossible to delve further into the aspects of the Convention and its connection with the topic under discussion. However, before explaining the methodology and structure of the study, we present summarized examples of how the best interest of the child has been applied in relation to COIP.

1.5.1 Examples of court decisions that include the perspective of children of incarcerated parents

1.5.1.1 South Africa

A court sentence in South Africa marked a milestone in criminal law and its application in relation to the children of persons sentenced for committing a crime. The Case is S v M (Constitutional Court of South Africa 2007). M³³ is the mother of three aged sixteen, twelve and eight, and at the moment these events took place she was their primary and sole caretaker. Between 1999 and 2002 she was condemned on three occasions for fraud, and was given respective sentences of: a) a fine and five years suspended sentence; b) a brief prison sentence and bail; and, finally, c) four years of prison. M applied to appeal the prison sentence before the Supreme Court of Appeal and was denied, without explanations. Simultaneously, the solicitant appealed before the Constitutional Court. In the sentence, Judge Sachs, minister in charge of the project and a historic figure in the country, resolved to retroactively take into account the sentence already served, suspend the rest of the sentence so that M did not have to return to prison, and apply a correctional supervision order. The sentence asserts:

"Specific and well-informed attention will always have to be given to ensuring that the form of punishment imposed is the one that is least damaging to the interests of the children, given the legitimate range of choices in the circumstances available to the sentencing court" (Constitutional Court of South Africa 2007, 21).

This resolution breaks with the triad derived from the case known as *Zinn*, which consists of: i) the crime; ii) the offender; and iii) the interests of society. These three components make up the traditional paradigm that underlies judicial criteria for issuing a guilty verdict; it doesn't consider the impact of the sentence on COIP.

The sentence of the S v M case became a precedent in the country, and requires that all South African courts analyze the impact of sentencing on the children of the primary caretaker, and that they find the least damaging options for the rights of the child. If incarceration could negatively affect a boy or girl, then the scales must tip in favor of a non-custodial measure, unless this would be inappropriate due to the severity of the case (Skelton 2011).

1.5.1.2 Argentina

In September 2017 an alternative to incarceration (electronic monitoring) was applied to a woman who had been deprived of her freedom, mother of an eleven-year old girl. The child had been living with her grandmother in extremely vulnerable conditions. The public prosecutor shared the arguments for the defense, for the child protection advisor, and other experts, stating:

³³ The Constitutional Court of South Africa ordered that the case be cited as "The State versus M" in order to protect the identities of the applicant's three children.

"If things remain as they are (a mother who is poor, incarcerated and distanced) there is only one thing we can be sure of: N's level of vulnerability will worsen, affecting her emotional development, her potential, her integration in the formal education system, and her physical and mental wellbeing; without a doubt, we are faced with a girl in the first stages of her life who is suffering the consequences of her mother's incarceration" (Ministerio Público Fiscal 2017).

As well, he affirmed that, in deliberations between the serving of a sentence and the child's best interest, the later should prevail.

The cases presented are only two examples—they could be considered exceptional—of how the best interest of the child can and should be incorporated in legal arguments, since the children of sentenced individuals are directly affected by the penalty. The importance of considering the relevance of the sentence and of precautionary measures on the family of the accused has been explored by a group of organizations, under the leadership of Justice Strategies,³⁴ before the Sentencing Commission³⁵ in the United States. They posit the need for an investigation on the possible effects on the children of the accused person before a sentence is issued. They have also petitioned that the impact of incarceration on children and youth become a priority for the commission's policies for the 2018-2019 period.

Although the commission did not undertake said study, it recognized the importance of the issue and the impact that incarceration has on families.³⁶

1.6 An unresolved debate

Article 33 of the CRC deals with the protection of children from the use of illicit drugs and the prevention of child labor in drug manufacture and trafficking. Although it would be difficult to oppose such measures, it is important to consider that drug policies that are applied in the punitive arena often have the secondary effect of placing children at risk; namely, COIP. Barrett (2017) analyzes how, although most countries do not have recourse to the death penalty in drug offenses, those who do, justify it—among other arguments—by citing the CRC.

The Committee on the Rights of the Child recently issued declarations on the link between drug policy and its repercussions on human rights, including objections to the death penalty. Still, to date there has yet to appear a document that clearly articulates a denunciation of dominant drug policies from the point of view of the impact these have on COIP. In 2016, the Committee signed an open letter with the Working Group on Arbitrary Detention and the Special Rapporteurs on extrajudicial, summary or arbitrary executions; torture and other cruel, inhuman or degrading treatment or punishment; the right of everyone to the highest attainable standard of mental and physical health (Heyns et al. 2016) in relation to the final document of the United Nations General Assembly (2016) Special Session on Drugs, which took place in New York in April 2016.

The letter points out that the UNGASS's final resolution fails to clearly articulate the binding nature of human rights treaties in the context of international drug control and qualifies the concept of a "Drug Free World" as harmful. It also refers to the application of the death penalty,

³⁴ For more information on Justice Strategies, go to <https://www.justicestrategies.org>

³⁵ For more information on Sentencing Commission, go to: <https://www.ussc.gov/>

³⁶ The Commission's reply can be consulted at: <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20180823/remarks.pdf>

extrajudicial executions, and the violence generated by the control framework in drugs as measures that infringe on human rights. As well, the letter points out that prison overcrowding derives from the criminalization of drug users. As a whole, the text presents a solid critique of the impacts of punitive drug policy on human rights, especially in criminal matters and in the violence associated not only with the illicit market, but also with the authority's actions. The letter includes a section on the rights of the child:

One of the arguments used in support of the “war against drugs” and zero-tolerance approaches is the protection of children. However, history and evidence have shown that the negative impact of repressive drug policies on children’s health and their healthy development often outweighs the protective element behind such policies, and children who use drugs are criminalised, do not have access to harm reduction or adequate drug treatment, and are placed in compulsory drug rehabilitation centres (Heyns et al. 2016, 8).

The text acknowledges UNGASS's recognition of the need for prevention programs oriented toward children; however, it fails to address the special needs of children who live on the streets, of those who are detained, are involved in the drug trade, live in families with dependent users, or children who use drugs but have no access to treatment.

The letter demonstrates the increasing visibility and urgency of including children in the debate around drug policy and its impacts, and confirms that the use of rhetoric around children to justify repressive drug policies is clearly at odds with human rights perspectives. Furthermore, it is important to point out that the children of parents incarcerated for drug offenses have neither been considered, nor included, in the debate. This study seeks to contribute to that pending issue. In the following chapter, girls, boys and youth clearly show how the incarceration for minor drug offenses of their relations puts their rights at risk, and places them in a space of stigmatization and vulnerability.

Drugs, childhood and incarceration: a comparative perspective

This chapter condenses the findings of the eight country reports in relation to normative frameworks related to drugs, children's rights and the correctional system, endeavoring to highlight the most significant experiences: those that take the pulse of both where the Latin American region places itself within the issue and what the prospects are, and of what narrative examples point toward change.

2.1 Drug legislation and its application

In general terms, drug legislation in the countries in this study share certain traits; particularly, the application of mandatory minimum sentences, the disproportionate use of criminal law, and a preference for incarceration over other alternatives. Additionally, there is a tendency toward increased sentences and, as a result, increased levels of incarceration. In **Brazil**, for example, the minimum sentence for a drug offense (which includes importing, exporting, selling, possession, etc., or almost all conducts not related to immediate and personal consumption) increased from three years under the 1976 law, to five years after an amendment in 2006. In **Mexico**, drug offenses are labeled "crimes against health," and are considered federal offences, although under certain criteria of substance types, categories and quantities, they can be processed by local authorities. On a constitutional level as well as under procedural law (Codigo Nacional de Procedimientos Penales), obligatory pre-trial prison is applied in drug cases. One positive development is that the law that regulates the prison system, the Ley Nacional de Ejecución Penal approved in 2016, allows the application of sentencing alternatives for persons accused of drug offenses, thus eliminating a barrier that had held sway for years. In **Colombia**, on the other hand, the law dictates that house arrest as an incarceration alternative should not be applied in offenses related to the traffic of narcotic drugs and other offences.³⁷

Panama and the **Dominican Republic** also have strict drug policies. In the case of the former, there has been a progressive increase in sentencing, and alternatives to incarceration are not permitted. In the **Dominican Republic**, the country report affirms that although the law differentiates between the consumer, the micro-trafficker and the trafficker, in practice these distinctions are ignored. **Chile** has considered the application of alternative measures for drug offenses in the judicial and sentencing phases; however, these are not normally implemented in drug-crime cases. Chilean drug law includes the offense of micro-trafficking, an ambiguous category that merits analysis: although this offense can imply a reduction of sentences for certain subjects in the drug trade, it can also lead to the process of "net widening," when the legal system captures more people—usually users accused of selling drugs. In **Mexico**, retail drug sales are known as "narcomenudeo" and their definition essentially depends on the amount and type of substances, as well as on the conduct—possession, transportation, sale, etc. The law foresees aggravating factors, but no extenuating ones. As well, the quantities permitted for possession for personal use are so low that simple users are often accused of "narcomenudeo."

³⁷ Article 32 that amends Article 38A of Law 599 of 2000.

Uruguay and **Costa Rica** are interesting cases in the legal field. The first due to its process of regulating cannabis, along with the toughening of sentences for micro-trafficking base paste. The road to legal regulation instead of strict prohibition has been a double-edged sword. On the one hand, it has led to the legal marketing of marijuana and access to the legitimate market for adult users. On the other hand, it has led to a rise in the number of people incarcerated in relation to base paste; after an amendment in 2012, the offenses related to this drug have become non-bailable offences. In line with the character of prohibition, control of a specific substance brings with it the criminalization of certain sectors of the population, particularly the poor and marginalized.

All reports point to the global phenomenon that the introduction of this study mentions: the growing criminalization of women for drug offenses. Only in **Costa Rica**, however, has this problem been addressed in drug legislation, where a policy of sentence reduction has been adopted amidst a regional tendency toward increased punitive sentencing. Whereas sentences used to be from eight to twenty years, Article 77 bis of the Ley de Psicotrópicos allows them to be reduced to three to eight years—the general length of all drug offenses, except personal use, which is not punished—as long as the woman meets some of the following criteria:

- She lives in impoverished conditions.
- She is the head of a household in a vulnerable position.
- She has underage or elderly persons in her care, or persons with disabilities that entail dependence.
- She is an elderly person in vulnerable conditions.

As the introduction points out, the primary cause of the increase in incarceration levels, especially among women, is the application of drug legislation. The following table, composed with data from the 17 countries studied for the quantitative section of this project, shows how, excepting a very few countries, the percentage of women incarcerated for drug offenses exceeds the percentage for men. This increases the risks for the offspring of incarcerated parents, as women tend to be their children's primary caretaker.



Photo: Marisa Montes

Table 5. Persons deprived of their freedom by gender, legal status and drug offenses³⁸

| Country | Incarcerated Men | | | Men incarcerated for drug offenses | | | Incarcerated Women | | | Women incarcerated for drug offenses | | |
|------------------------------|------------------|-------------------|-----------------|------------------------------------|-------------------|-----------------|--------------------|-------------------|-----------------|--------------------------------------|-------------------|----------------|
| | Total population | Convicted persons | Processed | Total population | Convicted persons | Processed | Total population | Convicted persons | Processed | Total population | Convicted persons | Processed |
| Argentina (2016) | 100% 72,915 | 52,2% 38,036 | 47.2% 34,410 | 11,8% 8,620 | 4.5% 3,253 | 7.3% 5,347 | 100% 3,181 | 39,7% 1,264 | 59.4% 1,890 | 40% 1,272 | 12.8% 407 | 27.1% 863 |
| Brazil (2014) | 100% 542,401 | 59% 320,017 | 41% 222,384 | 25% 135,600 | 14.8% 80,004 | 10.2% 55,596 | 100% 37,380 | 69.9% 26,111 | 30.1% 11,269 | 63% 23,549 | 44% 16,461 | 19% 7,088 |
| Bolivia (2016) | 100% 13,441 | 31% 4,167 | 69% 9,274 | 18.1% 2,432 | 5.6% 754 | 12.5% 1,678 | 100% 1,157 | 31% 359 | 69% 798 | 38.2% 443 | 11.8% 137 | 26.4% 306 |
| Chile (2018) | 100% 37,387 | 67% 25,031 | 33% 12,356 | 22.7% 8,487 | 15.2% 5,686 | 7.5% 2,801 | 100% 3,506 | 54.6% 1,914 | 45.4% 1,592 | 45% 1,578 | 24.6% 862 | 20.4% 716 |
| Colombia (2018) | 100% 108,202 | 69.2% 74,850 | 30.3% 32,765 | 12.4% 13,440 | 8.6% 9,269 | 3.8% 4,171 | 100% 7,659 | 66.7% 5,110 | 32.9% 2,516 | 28.7% 2,201 | 19.7% 1,506 | 9% 695 |
| Costa Rica (2017) | 100% 13,139 | 78.9% 10,368 | 21.1% 2,771 | 22.2% 2,917 | 17.5% 2,302 | 4.7% 615 | 100% 541 | 48.6% 263 | 51.4% 278 | 68.6% 371 | 33.3% 180 | 35.3% 191 |
| Ecuador (2017) | 100% 33,027 | 64% 21,137 | 36% 11,890 | 26.2% 8,665 | 16.8% 5,546 | 9.4% 3,119 | 100% 2,782 | 64% 1,780 | 36% 1,002 | 51.7% 1,438 | 33.1% 920 | 18.6% 518 |
| El Salvador (2016) | 100% 38,248 | 70.6% 26,995 | 29.4% 11,253 | 17% 6,511 | 10.7% 4,102 | 6.3% 2,409 | 100% 3,557 | 70.6% 2,511 | 29.4% 1,046 | 28.9% 1,029 | 18.2% 648 | 10.7% 381 |
| Guatemala (2018) | 100% 21,559 | 48.9% 10,538 | 51.1% 11,021 | 5% 1,078 | 2.4% 527 | 2.6% 551 | 100% 2,632 | 44.3% 1,165 | 55.7% 1,467 | 5% 132 | 2.2% 58 | 2.8% 74 |
| Honduras (2016) | 100% 16,805 | 48.2% 8,099 | 51.8% 8,706 | 10.4% 1,748 | 5% 843 | 5.4% 905 | 100% 907 | 31.1% 282 | 68.9% 625 | 10.4% 94 | 3.2% 29 | 7.2% 65 |
| Mexico (2016) | 100% 200,273 | 70.7% 141,635 | 29% 58,016 | 11.8% 23,671 | 6.8% 13,537 | 5% 10,134 | 100% 10,718 | 57.7% 6,179 | 41.9% 4,495 | 14.1% 1,513 | 7.7% 828 | 6.4% 685 |
| Panama (2018) | 100% 15,313 | 47.1% 7,212 | 52.9% 8,101 | 31% 4,747 | 14.6% 2,236 | 16.4% 2,511 | 100% 870 | 44.5% 387 | 55.5% 483 | 70% 609 | 31.1% 271 | 38.9% 338 |
| Paraguay (2016) | 100% 12,022 | 23.2% 2,794 | 76.8% 9,228 | 18.6% 2,236 | 0.8% 96 | 17.8% 2,140 | 100% 834 | 44.4% 370 | 55.6% 464 | 58.5% 488 | 26% 217 | 32.5% 271 |
| Peru (2018) | 100% 80,841 | 60% 48,522 | 40% 32,319 | 21% 16,985 | 12.3% 9,963 | 8.7% 7,022 | 100% 4,886 | 60% 2,914 | 40% 1,972 | 56% 2,738 | 33.6% 1,643 | 22.4% 1,095 |
| Dominican Rep. (2017) | 100% 26,065 | 36.3% 9,462 | 63.7% 16,603 | 21.1% 5,500 | 7.7% 1,996 | 13.4% 3,504 | 100% 717 | 36.3% 260 | 63.7% 457 | 18.9% 136 | 6.8% 49 | 12.1% 87 |
| Uruguay (2017) | 100% 10,555 | 30.7% 3,240 | 69.3% 7,315 | 8.8% 925 | 2.7% 284 | 6.1% 641 | 100% 594 | 30.6% 182 | 69.4% 412 | 37.3% 222 | 11.4% 68 | 25.9% 154 |
| Venezuela (2017) | 100% 53,670 | 31.4% 16,852 | 68.6% 36,818 | 23.4% 12,559 | 7.3% 3,944 | 16.1% 8,615 | 100% 3,044 | 31.4% 956 | 68.6% 2,088 | 23.4% 712 | 7.3% 224 | 16.1% 488 |

³⁸ The sources for the data in this table can be found in the statistical annex, available at www.cwslac.org/nnapes-pdd.

2.2 Public policies aimed at children of incarcerated parents

All related reports interpret the main policies regarding children and how these have developed, in general terms, under the framework of the CRC. This section explores examples relevant to the subject of the study. The case of **Chile** merits attention: beginning in 2017, the Department of Justice and Human Rights includes an Integration Policy, with an accentuated focus on gender and rights. The policy recognizes the role of women as primary financial providers and caretakers of their homes, particularly of their children, thus outlining the negative consequences of their incarceration for the entire family. The right of children and youth to a bond with their incarcerated primary caretaker—male or female—is also stressed, as long as it does not interfere with their best interest. Chile has two publicly funded programs directed toward the children of incarcerated parents, *Creciendo juntos* and *Abriendo caminos*. As the country report states, the first:

[...] is implemented in 15 of the 16 regions of Chile, encompasses 35 prison centers, and has a yearly budget for 2018 of around \$1,173,000,000.00 pesos.³⁹ It includes two components: the first involves providing attention and intervention for pregnant women or mothers of children under two years of age who live with them in prison, no matter the mother's legal status (accused or convicted). The second component entails workshops for parents, directed at convicted men and women who have children under the age of 12 who visit their parents in detention, and includes evaluations through the "Escala de Parentalidad Positiva (E2P⁴⁰)" (Margota, Rivera and Roa 2019, 7).

The second program began in 2008. Quoting the country report:

A professional team of social workers, psychologists and teachers follows each family. They carry out a comprehensive diagnosis and provide accompaniment in the family's psychosocial and socio-occupational development. This process lasts 24 months, and the intention is that incarceration not affect the primary caretaker in his or her development and wellbeing, in areas such as health, education, protection of rights, family relations, work and access to networks.

Some of the benefits for the children and youth who participate are tutorials suited to their needs (psychological support, educational support, personal development, emotional support, etc.) as well as workshops, museum and library visits, art classes, sports, cultural and community activities, and the personalized professional support of a tutor in their home, providing assistance that respects their rights, opinions, interests and potential (Margota, Rivera and Roa 2019, 7).

³⁹ Approximately \$1,709,640 USD using the exchange rate for the 26th of August 2018.

⁴⁰ The object of this study is to identify the parenting skills that adults use when they relate to the children in their care. It includes three areas or facets: training, protection and reflection.

In **Uruguay** the Committee on the Rights of the Child has been integrated into national legislation: the Código de la Niñez, for example, among its other provisions recognizes (in Article 12) the right of the child to not be separated from his or her parents, as long as the bond is in his or her best interest. Legislation in the **Dominican Republic** also recognizes the importance of the best interest of the child, and the state's obligation in providing resources, allowing participation and ensuring protection for youth. Beyond the fact that no actions geared toward COIP stand out, it is worth mentioning the 2018 *Mesa Técnica* for COIP (resolution 6 - 2018) in the context of the *Hoja de Ruta Nacional 2015-2018 para la Prevención y Eliminación de la Violencia contra los Niños, Niñas y Adolescentes en República Dominicana*. The proposal was promoted by Caminante Proyecto Educativo that, as a part of the Directorio Nacional del Consejo Nacional para la Niñez y la Adolescencia (CONANI), advocated for its inclusion in the target groups of the Sistema de Protección.

The country report on **Panama** points out that this country, along with **Chile**, are the only ones in Latin America that do not possess a Comprehensive Law for the Protection of Children. This places girls, boys and youth at a disadvantage when attempting to find adequate, articulate and effective responses to violations of their rights. The Family Code, however, establishes a series of guiding principles on the rights of children and youth, though title I: "Minors in especially difficult situations," does not mention COIP.

Colombia's country report refers to the Instituto Colombiano de Bienestar Familiar (ICBF), which released a document in 2016 entitled *Ruta de actuaciones para el restablecimiento de derechos*. It contains an annex on the care of children who are part of the internal prison population. These include criteria for the process of restoration of the rights of children and youth, along with certain recommendations for the administrative authorities in regard to two distinct situations involving risk, non-compliance or the violation of rights: i) minors under three years old who live with their mothers in prison, and ii) children and youth who, on the outside, suffer from any kind of threat. The guidelines compel the administrative authority to consider the following when determining recovery measures: the prison's context, the offense for which the person was convicted, and it urges the incarcerated persons to participate in the process. It also points out that the admission motive should be "*children of parents incarcerated by judicial order*," in order to identify how many persons are in this situation and what measures are being taken. However, despite stating in the guidelines that in the framework of the protection process this motive for admission should be indicated, the ICBF does not provide further information, so that it is impossible to know if this has been implemented in the process of following-up with the children and youth. In conclusion, beyond the regulatory improvements, the problems detected in each country are principally in the implementation and articulation of current provisions on youth, as well as in adequate coordination between the accountable authorities.

2.3 Legislation and regulation in prisons and sentencing, and its implementation in regard to children of incarcerated parents

This section explores national experiences in penal legislation and the incorporation, or lack thereof, of the rights of children of incarcerated persons. In general terms, the rights related to COIP that are recognized by criminal law can be divided into four categories: i) the incarcerated person's right to be imprisoned near his or her home and to receive visits; ii) the rights of mothers and fathers (predominantly the former) to live in prison with their daughters and sons until a certain maximum legal age (the term can be extended in specific cases, such as if the child has a disability). This right is linked to the child's right to a bond with her or his caretaker, and the ultimate interest of the child must be paramount in the decision making process pertaining to

the adequacy of living within the prison system; iii) the right of children living with their mothers (or fathers) in prison to health, medical attention, education and leisure activities, etc.; and iv) the rights of girls, boys and youth who visit incarcerated parents.

With the exception of **Chile**, which has already been mentioned in the section on policies directed toward youth, the other countries do not have programs focused on COIP within the prison system. On the other hand, children who live with their mothers in prison are acknowledged on a legislative level. In regard to **Mexico**, the country report states that the National Criminal Enforcement Law establishes various prerogatives regarding children with incarcerated parents. These prerogatives can be divided into two large categories: girls and boys who live with their parent in prison, and children who live outside the prison system.

We note the following regarding the children who live with their primary caretaker in prison:

- 1) The right is exclusive to mothers.
- 2) The children are only allowed in the detention center until the age of three (unless they have a disability, in which case they can extend their residency according to their best interest).
- 3) The detention center must provide the child with health services, education, food, clothes and the general conditions for his or her development (including suitable spaces for recreation and play).
- 4) The detention center must keep a register of the children who live there with their mothers.
- 5) The children have the right to periodically travel outside the detention center to visit family, and any decision made should take into account their best interest.

Regarding the children and youth who live outside the prison, the law states:

- 1) Mothers must be granted the ability to manage their children's care.
- 2) Children should be allowed to visit their mothers in prison. When the children are under 10 years of age, the visits should not be restricted in terms of quantity or physical intimacy. It is important to mention that article 23 of the General Law on the rights of Girls, Boys and Youth (SEGOB 2013) establishes the visiting rights of children to any family member, and not just to a mother.
- 3) The children have the right to visits in adequate surroundings, and to suitable treatment by personnel.
- 4) The detainment center should be proactive in encouraging the children's visits to the incarcerated caretaker.

The National Criminal Enforcement Law establishes the possibility that, when an incarcerated person is the sole or primary caretaker of children under the age of 12, or older but with a disability, she can have access to alternatives to incarceration (article 144). On the one hand, legislation reinforces the stereotype of the incarcerated mother as caretaker and, on the other, ignores the children who do not live within the prison system. Although the law requires it, in practice prisons are not properly equipped, and the children who live there are subjected to deprivation and the violation of their human rights. As well, in drug crime cases, detainment in the only female federal prison in the country entails considerable distances between the mother and her children, as well as the application of a maximum security system that affects both the

children who live inside the prison, and those who, braving the hardships that this implies for them and their families, manage to visit.

In **Panama**, although no legal provisions exist that recognize the children of incarcerated parents, there have been important steps thanks to the *Diagnóstico de la Situación de las Mujeres Privadas de Libertad desde un enfoque de Género y Derechos* of the United Nations Office on Drugs and Crime (2015). The country report specifies:

[...] the *Red Nacional de Apoyo a la Niñez y Adolescencia en Panamá* (REDNANIAP) and the NGO ENMARCHA in Chile have developed, beginning in August 2018, a collaborative agreement that will spread over three periods and aims toward contributing on a technical level to the definition, design, and any adjustments to the *Modelo para la Atención de la Convivencia familiar de hijos e hijas de mujeres privadas de libertad*, so that it will include the vision of civil society in dealing with this topic (Hidalgo and Rodríguez 2019, 16).

Regarding the girls and boys of incarcerated mothers, international treaties signed by Panama, as well as national criminal legislation, recognizes the rights of incarcerated mothers and the need to sustain the familial bond for women in these conditions. Legislation on the topic establishes:

5. Female correctional centers will have an area adapted as a maternal home, with a day care center attached to the prison clinic, separate from the rest of the center's units [...]
6. If the child arrives at a correctional center that does not have a maternal home, he will be immediately transferred with his mother to a correctional center that does (Panama 2005, article 26 numbers 5 and 6).

However, "the country's female correctional centers do not have adequate or sufficient facilities for the comprehensive care of the health of pregnant women, maternal homes, assistance programs for the resident children of inmates, and others" (United Nations Office on Drugs and Crime 2015, 12). Therefore, girls and boys (under the age of three) with incarcerated mothers are not inside the prison with them, because there are no maternal homes in the correctional facilities to allow for it.

The **Dominican Republic** presents an interesting case, due to the program known as the "new model of prison management." The country report indicates that this model has been applied in 22 of the 41 correctional centers in the country and focuses on rights, health, education, work and the elimination of overcrowding, along with better living conditions, including for the prison personnel. The report also mentions that despite the fact that this model, like its predecessor, does not mention protocols for the visits of children and youth to their caretakers, the visits have still improved in terms of environment, partly because of the decrease in overcrowding and the improvements to infrastructure. In terms of the traditional model, the researcher in charge of Dominican Republic specifies:

In the traditional prison model, visits are only allowed twice a month. The correctional centers do not have specific areas to receive children and youth; therefore, they must interact with their caretakers in the area assigned to each incarcerated person, with the health and safety risks that this entails, due to the overcrowded conditions already mentioned. As well, while in other countries the need for documentation and credentials proving the relationship often limit access to the caregiver, here the children and youth can enter the institution through a simple, minimal verification mechanism: they must be accompanied by an adult and have their birth certificate. This mechanism does not include registering the visitor or any protective measures to make sure, through an identification process, that the child is indeed the son or daughter of the person they are visiting. This lack of controls can clearly put COIP at risk, exposing them to, among other dangers, that of witnessing sexual scenes between incarcerated persons or in conjugal visits in the overcrowded spaces already mentioned, but, especially, the risk of being victims of abuse, or, as happened in the case of a young woman, victims of femicide (Romero 2019, 24).

Finally, an experience from **Brazil** merits attention. In 2017, the country approved a *Habeas Corpus* for incarcerated women, stating that women in pre-trial detention who were pregnant or had children under the age of 12 should be placed under house arrest instead of imprisoned. Under the current criminal code, judges can approve house arrest under those circumstances; however, with the court's decision the policy becomes obligatory. The *Habeas Corpus* was promoted by several organizations: CADHu (Coletivo de Advogados em Direitos Humanos), Instituto Alana, IBCCRIM (Instituto Brasileiro de Ciências Criminais), Pastoral Carcerária, ITTC (Instituto Terra Trabalho e Cidadania), along with the public defenders of several federal entities. The country report mentions that the *Habeas Corpus* is the fruit of previous labors, among them the study “Dar à Luz na Sombra – condições atuais e possibilidades futuras para o exercício da maternidade por mulheres em situação de prisão” (2015) created by Ana Gabriela Mendes Braga and Bruna Angotti, which specifically mentions COIP.

2.4 Observations

This brief overview of situations in the studied countries, regarding the visibility of children of incarcerated parents and their connection to drug laws, reinforces what the first chapter expresses: drug policy is characterized by a punitive quality that finds its reflection in the correctional system, and that therefore impacts girls, boys and other dependents of incarcerated persons. The children who live in prison have greater visibility in legal terms, although this does not necessarily manifest in the quality of prison conditions.

It is therefore evident that, in most countries and with the sole exception of Chile, no policies directed toward COIP exist, either for the period during incarceration or after it. On the contrary: as *Invisible No More* also demonstrates, the incarceration of an adult caretaker can entail a loss of rights for COIP, instead of reinforced protection. In the case of **Mexico**, the writer was familiar with the case of a woman from Peru detained for organized crime, whose children automatically lost their legal status within the country.

The country reports emphasize the lack of coordination between bodies responsible for youth and the prison system. This has particularly serious repercussions for institutionalized children, as, among other things, the contact with the primary caretaker is interrupted. In this regard, the role that religious and civil society organizations play in linking families to incarcerated members, and often as a support system for the former, deserves to be noted. For example in the case of **Colombia**, where there are no assistance programs for the families of incarcerated persons or for COIP, civil society—and especially Prison Pastoral Care—fulfills this role.

Another notable aspect is the aforementioned increase in the incarceration of women for drug offenses, and how this has contributed to heightened international attention on the impacts of incarceration of mothers on their children, especially when they are the sole caretakers and providers. This rising visibility has led to important reforms, such as the examples cited for Costa Rica and Brazil. Still, it is important not to fixate on the triad of drugs-women-children as the only or main dimension of the problem of drug policy-incarceration-COIP, as this could also have adverse effects, such as: a) the essentialization of women as mothers and caretakers, which not only reproduces stereotypes—often substantiated by the empirical reality of imprisoned women—but also excludes all other incarcerated women; b) the invisibility of incarcerated fathers, which reproduces the stereotype of the absent father, and is at odds with the experiences of many incarcerated men who love their children and whose children miss them. The sum of both these aspects inevitably leads to c) the invisibility of most COIP who are, as the numbers show, children of parents deprived of their freedom and who, for the most part, do not live in prison themselves, but in neighborhoods and communities.

Lastly, the problem of access to quantitative information must be mentioned. All these countries betray a dearth of public information related to the numbers of children and youth with incarcerated parents, so that the estimates in each report have been made possible only thanks to the work of the national researchers. The tables in the first chapter of this study are the fruit of tireless research efforts and data processing by the team responsible for this division.⁴¹ This absence of data has been mentioned by the Committee on the Rights of the Child of 2011, and reiterated in *Invisible No More* but, as this study confirms, the inadequacy of information has yet to be addressed.

⁴¹ Briseida Echaury and Juan Martín Rival. The complete statistical report can be consulted at www.cwslac.org/nnapes-pdd.

Children's testimonies

"Tell them not to feel sad or ashamed" ⁴²

The following pages share the voices of children and youth, with the aim of understanding their perceptions and experiences around the criminalization processes that touch their lives and how they impact on their stories, their daily life, their present and future. This study is not representative from a quantitative point of view and doesn't intend to compare the eight countries. Instead, through the contributions of each country report, it tries to construct an experience-based narrative that helps make visible what the children and youth say, feel and think: What happens to them during police raids? What do they feel when they lose their primary caretaker? How are "drug crimes" experienced in their neighborhoods? What do they think of the authorities? What do they feel when they visit the prison, or when they don't? What are their feelings about the neighborhood's opinion of them? Which are their spaces of contention, and where do they feel stigmatized? What messages do they have for their peers and caregivers? This exercise hopes to give a voice to subjects of rights who have been kept in the shadows, but who are greatly affected by drug policy and policies regarding children.

The chapter is divided into the following topics: a) violence; b) changes in the roles of family members at home, caretaking arrangements and financial challenges; c) emotional impact; d) relationship with the incarcerated caregiver, feelings and behavior associated with the loss of the caregiver; e) stigma versus or support within the school or community; f) visits to the prison and security searches; g) perception of drug-related offenses; and h) perception of state authorities.

3.1 Violence

"The police came in and pointed a gun at me."

—Mario, 11 years old, Panama.

The children and youth who participated in this study live surrounded by multiple types of violence: a) intra family violence, which may or may not be related to drug use; b) institutional state violence, expressed particularly in detentions and police raids, and sometimes in prison visits; c) neighborhood violence, linked to the confrontations between rival drug gangs who compete for control over the illicit drug market; and d) state violence exercised against the persons accused of violating drug laws.

"When they arrived, we were getting ready for school. They started to search the house, they brought dogs in, and they wouldn't let us get dressed for school, because they started to search everything we had in our rooms."

—Group interview, no age specified, Chile.

⁴² Alejandro, 8 years old, Costa Rica.

"I was thirteen or fourteen... I was getting ready for school when I heard "Operative", something like that. I went out and there were some young men there pointing guns at my head, and at my mom and everyone. A young man told me to sit down and I said no, I wanted to stand, and I was very calm. And one of them, I remember he pressed his gun into my forehead and told me to sit and sat me down, and I stood up and I don't know what rage took over me, and so he grabbed me and we started fighting, and he threw me against the couch and I told him I was choking, and choking, and he wouldn't let go until he saw me, like [makes suffocating noises] and he let me go..."

—Felipe, 16 years old, Costa Rica.

Did they point a gun at you?

"Yes, lots of times."

Do you remember how old you were the first time?

"The first time there was a raid in my house, I was ten years old, and they started coming in, and I saw how they beat up my brothers because they asked them things and my brothers didn't answer, and I saw how they locked my mother in the bathroom and the women touched her to search for drugs inside, and all those things, and I didn't like it."

—Sofía, 16 years old, Uruguay.

"They had already come other times, but the second time I cried, because they threw my little brother on the floor and he smashed his mouth, and I was going to get some water because he was crying and a policeman kicked me... and the third time they took him [her father] away."

—María, 9 years old, Panama.

"I was in the room when the police entered and pointed a gun at me; I was in bed."

—Mario, 11 years old, Panama.

*"I watched from the window when they took my dad,
and I threw myself on the floor and cried."*

—Miriam, 9 years old, Panama.

Were you with her [her daughter Marcela] when the police arrested her for the first time?

"She was inside the house. She was in front, in her house [a room in the same lot as the grandmother's house]. They came in, started to bully her, to hit her, they told her she was a drug trafficker. 'Where are the drugs?' A policeman threw the drugs at her [he planted them]. A lot of drugs. What she had with the traffickers was marihuana, nothing else. But they said it was a lot of drugs. And they took from her breast the baby that was only eleven days old. They dragged her off, beating her and pulling her by her hair..."

And were the children present?

"She [granddaughter Mónica, 14 years old, daughter of Marcela] was. I had gone to close the door because it had only been eleven days [postpartum]. I saw four vehicles surrounding the house. And I told them, 'She's convalescing, it's been eleven days.' [Doña Clara starts to cry.] She doesn't deserve what she's going through, or her children. But it's like that. It's difficult. What I do is take care of the children."

—Doña Clara, caretaker, Brazil.

"It was tough, because they close the whole place up, the whole block, or the street, and there are people from the PDI⁴³ or things like that. Once we saw a person with a bazooka, with a bazooka! [...] People from the PDI with a bazooka, and I was in shock, I had never seen something like this, with machine guns, as well as guns, totally armed, and people have told me that it's tough because they don't respect any children present, they get there and they throw them on the floor, and all the kid can do is cry, and cry. One because they don't know what's happening, and two because they are hitting their parents or forcing them, and anyone who's with them, to watch how they beat them. It's their classic act, in shock. So it's tough, and sometimes the kids are traumatized, it's like a trauma, and the kids need support and psychological help to overcome it. It's tough, and the gunshots sometimes fly around and no one is safe from being hit. It's dangerous to live in these parts."

—Antonia, 17 years old, caretaker and COIP, Chile.

In general terms, children narrate detentions and raids as experiences of profound violence, where their possessions may be destroyed, their fathers or mothers manhandled, and who may themselves be victims of blows and threats. It is also important to note that this is armed violence, which is particularly traumatic due to the risks that it entails for the COIP lives and for that of their loved ones. The violence of police raids is not exclusive to drug offenses; however, it is related to the specific dynamics of local markets and criminalization processes: the drugs can be kept at home or even sold from there, which means that state operatives go directly to the COIP homes. As well, the criminalization of users and their transformation into sellers, often through the planting of drugs by the police, is also reinforced by the judicial authorization of violent and excessive police intervention in private homes. COIP can experience raids on more than one occasion, either at home or in the surrounding area, and must live in a state of constant alert.

Neighborhood violence, on the other hand, is related to the conflicts between rival criminal groups who compete for domination of the drug market.

Is there a lot of violence?

"In the corners,⁴⁴ more than anything."

Are the kids present in these conflicts?

"Yes, and if there's a stray bullet or something..."

Have you been in this kind of situation?

"Yes, but not the bullets, they've just come close."

—Agustín, 16 years old, Uruguay.

What is the presence of weapons in the neighborhood like?

"It's very common, yes, super common. [...] And there are people in the corners and you go, you go and tell them, "What's up." I go everywhere and ask "what's up," and I see they have guns, they always have guns in the neighborhood, and there are a lot of shootings, compared to other neighborhoods, so they always have to have a gun."

—Sofía, 16 years old, Uruguay.

⁴³ PDI: Policía de Investigación.

⁴⁴ Drug sales points.

"It's super fucked up, they don't steal but they're always shooting, every day, and it's a danger for little kids. A stray bullet and you're done, dude."

But why do they shoot, are they gangs?

"They're at war and all, because they killed a dude and they killed him bad and they're at war. The dude's mates want revenge and every day they shoot at each other over there."

—Diego, youth, Uruguay.

Violence amongst criminal groups entails risks for the lives and the physical and emotional security of children and youth. It also translates into a repetitive experience that is difficult to put a stop to. The COIP, as *Invisible No More* also points out, are immersed in neighborhood dynamics where the patterns of exclusion are repeated generation after generation, given the lack of opportunities for inclusion.

3.2 Impacts of incarceration on the daily lives of youth

3.2.1 Changes in the roles of family members at home, and caretaking arrangements

"I was a girl, a teenager, but I became a woman very young."

—Gabriela, 19 years old, caretaker and COIP, Panama.

The detention of a guardian brings with it changes in the roles of the three subjects: the incarcerated person, those who remain and take care of the COIP (usually women) and, obviously, for the children and youth. Older siblings are faced with the responsibility of taking on the role of adults, while younger ones face the loss of their caretaker, linked, frequently, to financial hardships, a move to a different home, or transitions that shuttle them from home to home or even to private or public institutions, and thus to the loss of other significant relationships, particularly brothers and sisters. The prison sentence is, ultimately, a sentence that transcends families.

As the introduction points out, while there is a gender bias in the prison population with a majority of incarcerated men, the flip side is the overwhelming presence of women in the roles of caretaker and supporter of the prisoner and their family. The mother, the aunts, the sisters and the grandmothers must restructure their positions, assuming the financial burden while they also keep or reinforce their role as caregivers in the emotional and domestic spheres. Families are forced to adapt, which can be described as "prison externalization" (Giacomello 2007): the incarceration of one person does not remain within the prison walls, but extends out to his or her family and permeates their lives. These testimonies make it possible to appreciate how girls and boys must abandon activities that, according to their development by age group, they would normally be engaged in: play, school, being "taken care of" by others. Instead they must embark into the world "of adults" through child labor and caretaking tasks, and may even resolve to marry and move away in order to ease the burden on their families.

"He was the one who took care of everything. My mother was a housewife, we studied and lived from waste picking, and he was the one who went out every morning in his car and would come home late. And he was the one who would pick apart the things we'd found, sell them, and bring food."

—Mariana, 21 years old, caretaker and COIP, Uruguay.

"My family has been destroyed because of my dad's incarceration. My mother and the rest of us have had to work so hard, so much that we had to move from the town we lived in, because my mom couldn't support us, to this town of Boca Chica, because some relatives of hers live here and they could help us. I wouldn't have gotten married as a teenager if it weren't because I didn't want my mom to be burdened by my brothers and me. Although my partner treats me well, I know that that's why I left. I couldn't bear to see my mother with so much pressure and without any money."

—Chanel, 17 years old, Dominican Republic.

"I had to give up all my plans to focus on taking care of my sisters. Honestly, I left school, I left my friends, basically I left the life of a teenager to focus on the life of a mother."

How old were you when it happened?

"I had just turned fourteen."

And did you leave school?

"Not at the beginning, because they didn't tell me about my mom's situation until later; and when I found out, it was very difficult to pay the school fees and the household expenses, my grandmother and my brother began to take on the responsibility of all our finances, and it became very tough because we couldn't take all of it on. My aunts took my sisters, and my brother and I stayed with my grandmother, and this made me fall into a depression, the fact that I couldn't help because no one would hire me, at my age, and seeing that my brother and grandmother were doing everything upset me more."

At what age did you leave school and start to work?

"I left school when I was around fifteen years old, I was almost fifteen, and I started to work at that age in jobs in cleaning, taking care of kids, anything I could do to help."

—Ana, 20 years old, caretaker and COIP, Mexico.

"I had to curtail everything, I had to leave school to start working, in my personal life I left the girlfriend I had at the time, I had to make a lot of changes in my life."

How old were you when this happened?

"I think I was fifteen or sixteen."

—Pedro, 22 years old, caretaker and COIP, Mexico.

Pedro and Ana (Mexico) were minors when their mother was detained. Along with facing the emotional impacts and the changes in their lives that incarceration entails, they had to restructure their lives around the care of their younger sister and brother.

"There were a lot of changes. At first, when my mom left, they separated the four of us, and us two older children went with my grandmother and the two younger ones with my aunts. But after a while, my aunts found it hard to take care of them and they started to mistreat them, and my grandmother was elderly and dealing with the expenses became very complicated, so we moved in with my grandfather. They sold the house to try to help my mom, my grandmother went to live elsewhere, my brother and I went somewhere else, we tried to stay close to our sisters, but they still lived in one place and I lived in another. The Infonavit⁴⁵ houses are small and my grandfather has three kids with his partner, and we were four, all of us in a single house, and we didn't fit. One of the girls was still with my aunt and the other went with my

⁴⁵ The Instituto del Fondo Nacional de la Vivienda para los Trabajadores (National Housing Fund Institute for Workers) is a job benefit for those who receive salaries from private institutions.

grandfather, along with my brother and me, until my grandmother said she didn't like the situation, especially because of the way they treated the girls, so she decided that, one way or another, the four of us would move in together and we'd figure out how to pay the bills. That's when we were sort of ok, because the four of us were together, and our financial situation began to get better. We were ok, within reason, and that's when my grandmother had an accident and we went under again, because along with my brother she was the one who helped us with everything, and when she passed away, my aunts kicked us out of the house we were living in, we had to move, and now it's my brother and I who pay all the bills."

—Ana, 20 years old, caretaker and COIP, Mexico.

"Everything, help them with their homework, buy their shoes, clothes, school utensils, anything they might need."

We could say that financially supporting your sisters is your responsibility.

"Yes."

—Pedro, 22 years old, caretaker and COIP, Mexico.

The situation is reflected in the following testimonies.

"I was a girl, a teenager, and I became a woman very quickly. My older sister worked and I had time to take care of the baby, so she had to sleep with me. I would get up at dawn to change her diaper, to give her milk, and to give my brothers baths and take them to school. [...] I was in charge of my brothers so that they would study hard, and I still do it today."

—Gabriela, 19 years old, caretaker and COIP, Panama.

"I went from studying to having to work for my sisters, because if I didn't do it, they would have nothing to eat. Sometimes I would have to try to get money from my godmother or my other grandmother, with one of them before going to buy merchandise to sell and so they could eat, because otherwise I couldn't do anything. My mother was the provider in our house and we really felt her absence, and then, I don't know, I was... that's what my life was like then, studying, working, studying, working, studying, working..."

—Antonia, 17 years old, caretaker and COIP, Chile.

"I get up by myself and then I wake up my little brother, we have breakfast together and then we go to school, the three of us, with my sister."

—Jenny, 13 years old, Chile.

"Like a mother, [laughter] I have to take care of them, feed them, do the household chores, when they're sick take them to the doctor, watch out for them, help them with their homework, wash the dishes; all the work of a housewife, but I also have to work."

—Ana, 20 years old, caretaker and COIP, Mexico.

"When my dad was detained my mother was sick with breast cancer, and she couldn't do a lot of things because she could barely move her arm because of the pain, so that. I put on my backpack, this was in 2013, and I couldn't graduate because I had an unfinished subject, and so I would go out to the street with a neighbor, my mother would stay at home, and Bruno kept on studying."

—Mariana, 21 years old, caretaker and COIP, Uruguay.

The following are testimonies from institutionalized COIP.

My sister and I have lived here since we were little. They treat us well, they scold us when we aren't good or don't do our homework, but they don't hit us, they just tell us to be good... I don't know where my mother is, or my father, the psychologist says that they came from Haiti and they lived here, but they had problems and didn't come back.

—Jenny, 9 years old, Dominican Republic.

"I lived with my aunt for a year. At thirteen I went to a home, then my aunt took me out, then I went with my father, then my aunt got me out again, and then I went back to the home and they haven't come to get me."

—Agustín, 16 years old, Uruguay.

3.2.2 Financial situation and drug trafficking

"When my dad was gone, I got poor."

—Miriam, 10 years old, Panama.

In the following testimonies, children and youth connect minor non-violent drug offenses to the financial need that led to them, but also to the financial changes that arise from the loss of income from drug trafficking due to incarceration.

The reports describe three main scenarios: a) retail drug sales (micro trafficking) as an activity that caregivers try to hide from their children, although they seem to perceive the illicit activity anyway; b) micro trafficking as an accepted, normal activity within the family circle and the community, which can even entail the active involvement of COIP; c) criminalization due to participation in international drug traffic circuits, what is known as the "mules" of the drug trade. In the first instance the narrative of children and youth revolves around two key points: a) financial need in the context of social exclusion, and therefore the sale of drugs as the only recourse for the generation of income; and b) the sale of drugs as an easy occupation, which requires no effort and that can be conducted from home. In the case of the "mules", the experiences reported here are from institutionalized children, and there is no narrative of the incarcerated mother. Still, although in the universe of the mules of the drug trade there exist several situations in terms of nationality, class and motivation (Fleetwood 2014), by observing implicated women from South and Central America and the Caribbean, we can safely affirm that poverty is the main reason for their involvement in this activity (Giacomello 2017).

In line with the stories presented below, drug offenses allow families to live above the subsistence line, or even have access to specialized consumer goods.

"It's the way to make easy dough. You're at home, you've got dough, you don't work, you don't do anything. You're at home and the only thing you have to do is sell and that's it, you've got money. It's easy dough."

—Sofía, 16 years old, Uruguay.

"It's complicated because some people do it out of insolence and others out of need [...] There's no work, it's difficult [...] A mother can't let her children die of hunger [...] At first I was angry at my mom, like annoyed because she'd left me and I thought it was her, and then I started to see that it wasn't that, that it was destiny. I would say 'why did she leave me? Why now, when I need her most? Why did they have to take her away from me?' I would get angry when I got to my grandmother's place... knowing she fell there, but then one realizes that it wasn't her fault, that these were things that had to happen."

—Karla, 17 years old, Costa Rica.

"My mom did it because my dad died, and my stepfather didn't want to work, and my mom had to do that so that we could survive and have enough to eat."

—María, 9 years old, Panama.

"We used to live well, with my dad, my mom and my brothers. Everything was going well until the police arrived and took him, and then they took everything from us, the car... And because everyone found out, we didn't want to go to school anymore because everyone would say that my dad sold drugs and they would bully us at school, and my mom didn't work and we had to move and leave everything: friends, our house, everything."

—Marjorie, 13 years old, Dominican Republic.

"I used to be happy, joyful, I would give food to children who didn't have any, but since my dad left, I changed. I don't give the other children food anymore, because my dad used to give me money when I told him I'd given my lunch to the other kids, and not anymore."

—Girl, 9 years old, Panama.

Either due to poverty or to expediency (easy money), or due to a combination of both, COIP understand the function of these crimes in the family and neighborhood finances. They also suffer from the financial loss that incarceration brings with the lack of a former income, especially in contexts where the figure of the sole financial provider prevails, or if more than one caregiver is detained. Having an incarcerated family member also entails numerous expenses: lawyer fees, bringing food and other materials to prison, and visiting.

3.2.3 Emotional Impact

"What upsets me the most is not having her here with me. Not having her motherly affection."

—Luis, 15 years old, Colombia.

As the introduction points out, the emotional impact on children and youth of the incarceration of a guardian depends, among other factors, on the relationship with the guardian before incarceration, on the acceptance of the crimes, and on the number of incarcerated guardians, as well as on the personal, family and community resources that the COIP can count on once the incarceration takes place. All of these are part of the endogenous factors that shape both the negative impact of incarceration as well as the capacity for resilience. These effects and adjustments are dynamic and change with time and other factors, such as age, maturity level, family arrangements, the stages of the judicial process, and the execution of sentences, among others. This section shares testimonies that narrate: i) the degree of knowledge of the incidents; ii) the relationship with the caretaker or caretakers; iii) their feelings around the incarceration; iv) behavior linked with the temporal loss of the primary caretaker; and v) messages that children and youth have for their peers and caregivers: this combination of voices reflects how they feel about their experience.

3.2.3.1 Causes for detention and normalization of experiences

"My tata couldn't stand much more, and he took me to the house of a friend of his, so that they could show me a news story on the computer, and I never thought... he said that it was my mom. So I got to that house and he showed me that news story and suddenly, I see that there's the figure of a woman hiding her face with a sweater, and the shoes; I recognized the shoes because she loves shoes with air in them, I recognized the shoes and the sweater, and my mom has a physical appearance... she's tall, and large, and I recognized her and I said: 'It's my mom.' And it said: 'They impounded two kilos of cocaine...' If I'm not mistaken, and marihuana and I don't know what else, and my mom is there. I thought: why does my mom do that? Why didn't she ever tell me? I'm her eldest daughter. Why didn't they tell me before?"

—Antonia, 17 years old, caretaker and COIP, Chile.

"I know it's because she went with a young man and started to sell drug to minors from home. Dad told us,"

—Felipe, 16 years old, Costa Rica.

The children and youth may know the cause of detention because a family member has told them, or they may have already been aware of the illicit activities of their guardians.

"My mother explained that if the police came we had to get out of the house, sit on the patio and not say anything... we shouldn't say anything, that we didn't know anything."

—Gabriela, 19 years old, caretaker and COIP, Panama.

"My life is the same. It's obvious that they're going to fall, all of them sell... It was an everyday thing. If he was going to fall, he'd fall. My uncles fall all the time, always."

—Agustín, 16 years old, Uruguay.

"They would go out and leave everything to me, everything, even the business. They would leave me everything and tell me, 'If someone comes, sell,' and things like that, but they would come and I wouldn't sell, because I didn't want to sell that stuff, because the police could come and catch me, and take me, and no one else would be home."

—Luz, 14 years old, Chile.

The knowledge and involvement of COIP in drug trafficking varies according to family dynamics and their age; however, in all countries we noticed that in many cases, even when the family tries to keep the information from them, children clearly know what is happening. Both in instances where detention comes as a surprise, as in those where crimes and incarceration are routine experiences, a certain hopelessness and resignation can be perceived in the COIP when faced with something out of their control, but that they must helplessly suffer the impacts of.

3.2.3.2 Relationship with the incarcerated caregiver; feelings and behavior associated with the loss

"What I like the least is that my mom is in jail."

—Gabriela, 9 years old, Costa Rica.

The relationship with the guardian will set the tone for how the loss is experienced. In the following testimonials, incarceration is perceived as a "positive" outcome. Violence in the home and the banalization of detentions, often derived from the normalization of crime within the family circle and perceived by children and youth as routine oversights on the part of their guardians, provoke a certain detachment in the face of the guardian's loss, as the relationship may have been distant since before the incarceration, or it may be affected by abuse. Violence is also related to drug use.

"It was peace, it was happiness. No one wanted him at home, because he was violent and when he reached bottom he would also hit father, when he goes crazy he hits father."

—Sofía, 16 years old, Uruguay.

"And of course, later when he's imprisoned, he calls and says he misses you, all that. But I'm old enough now, I got wise a long time ago."

—Diego, youth, Uruguay.

"I didn't live with her at that point, because I sued my mom because she was abusive, so I sued her and I had to go with my sister, and later with my godmother. But first I went with my sister and there, when they went to tell her that they were beating up my mom, we came running, or I came running and they took the car."

—Luz, 14 years old, Chile.

"She came to look for me at home, with two men I didn't know. She started to treat me bad, one of the men hit me, and when we got to her house she hit me, and so did my dad. Then I called my sister, and when I got home I was unconscious. For around four hours I was unconscious, and then I left."

—Luz, 14 years old, Chile.

"My mom started doing drugs much earlier. I didn't want to live there anymore, I was tired of it all, and also my mom would beat me up a lot when she didn't have drugs, so I would leave."

—Sofía, 16 years old, Uruguay.

"She always had good behavior. The problem was at night, when the time to go drug herself came."

—Silvia, family relation, Uruguay.

"I can't remember how many times he was in jail, but I think it was three."

And what were the reasons for his being in jail?

"Two were for stealing and I think one was for trafficking. The first was short. I can't remember his first jail. He was a user and also trafficked."

Do you remember problems due to drug use? What was it like?

"I remember the day that he got there at dawn making a racket. He was saying a lot of things to my mom. She talked to him for a while. I also talked too much. Then, when he woke up, he asked us to forgive him and spoke about some business with me. I would say, 'Dad, stay still.' He wouldn't say anything. When I could I would go out, I would go to my grandmother's house to fly my kite. I would leave, I wouldn't stay at home. I would go out to fly my kite."

And was your dad violent when he used?

"No. My dad only ever hit me once, when I skipped school."

—Rian, 16 years old, Brazil.



Photo: Marisa Montes

In cases where care and affection existed, the loss brings sadness, depression and "rebellious" conduct. Age and gender influence the kind of experience that the COIP live through.

"All I did was sleep. If I wasn't sleeping, I was crying. Sleeping, crying, that's what my days were like."

—Antonia, 17 years old, caretaker and COIP, Chile.

"I felt terrible. I would hear my mother mentioned and I would cry. But now I feel less sad because I've gotten used to living with my grandmother, and I'm ok here."

—Aura, 12 years old, Colombia.

And how did you feel when he was arrested?

"Sad."

Did you cry?

"Hm hm."

And who told you he has imprisoned?

"No one. I knew."

How did you know?

"I just knew."

And how did you find out he had been arrested?

"I knew because they woke my mother, and told her Bernardo was imprisoned."

And have you been to prison to see your father? To see Bernardo?

"No."

Would you like to see him?

"Hm hm."

And how do you imagine the place where he is?

"It's very boring."

Why do you think it's boring?

"Because they give them rotten food, cold food."

—Horacio, 8 years old, Brazil.

"Since my mother wasn't there, I could do whatever I wanted, right?"

—Marcos, 14 years old, Brazil.

"They would tell me, 'you have to study,' but I didn't want to hear about studying, I didn't want to hear about anything at all; leave me to my life, the street, and that's it. That's what I was like, I would get high all day on the street, all night on the street, smoking joints, drinking alcohol, I would go to the avenue, I would go everywhere, with links to drugs, marihuana, but always with connections."

—Sofía, 16 years old, Uruguay.

"When my brother fell, when I was a kid, my world fell apart for me, because I thought he would be in there forever. But then I started to grow up and I started to understand. I was small, I was at school; I must have been around eight."

—Daniel, 17 years old, Uruguay.

"When my mom was gone, the one hit the hardest was my brother, who was very close to her. He became rebellious, didn't want to go to school, didn't study, got into fights, would become grumpy and cry."

—Gabriela, 19 years old, caretaker and COIP, Panama.

Can you tell me what you don't like about your mother being away from you?

"She can't take care of me in the morning, she can't take me to school, she doesn't go to the meetings, or speak with the teachers. Almost everything. She doesn't comb my hair, she doesn't take care of me, she doesn't hug me or give me affection."

Would you like to tell your mother's boss something, to the one who employs her?

"Yes, why won't he let her leave? She's been gone so long; she's been gone more than five years."

Is there something else you want to say? Whatever you want.

"I want to ask if they can let her go, that it's been more than three birthdays that she's not with me."

Do you have any questions for me?

"If it's possible that they let my mother free just this month."

Do you want me to say something to your mom?

"That I love her very much and miss her, because she's been over there so long [crying]."

Something else I can do?

"Why won't they let her leave? Why has she been there so long? Why won't they let her leave?"
—Les, 9 years old, Mexico.

"It's horrible to go see her there, and one misses her. The love of an aunt or a grandmother isn't the same as the love of a mother."

—Nelson, 14 years old, Costa Rica.

"I cry at night because I miss her... I feel sad and bad because my mom isn't here."

—Alejandro, 8 years old, Costa Rica.

3.2.3.3 Messages to other children of incarcerated parents and to their guardians

"Don't sell drugs."

—Alejandro, 8 years old, Costa Rica.

In their reflections and in messages to their peers, children and youth share their sadness, but also a positive outlook toward the future. Their thoughts, which often show an incredible level of maturity and resilience, are focused on not reliving or repeating their parent's stories in their own lives.

If you knew that there are other kids like you, who don't have their mother, what would you like to tell them?

"That it's not nice to be like this, without your mom."

—Jes, 10 years old, Mexico.

"Tell them not to feel sad or ashamed."

—Alejandro, 8 years old, Costa Rica.

"Tell them to go on because life doesn't end, at one point one's mother will come out."

—Lucía, 13 years old, Costa Rica.

"They don't have to follow their example. Learn to appreciate mom or dad."

—Nelson, 14 years old, Costa Rica.

"That they should find some other way to support themselves.

That this won't bring anything good."

—Felipe, 16 years old, Costa Rica.

*"Most times it's better to take a humble job than to get involved
in doing this; they'll always end up in jail."*

—Nelson, 14 years old, Costa Rica.

For their part, the messages to caretakers reveal affection, anger, and the fear of going through the same experience again.

"My mom tells me not to fall into her bad ways, and I tell her not to fall into the same things."

—Luis, 11 years old, Panama.

"I'm worried that my mom will fall into this again, because

I don't want to go back to the same thing."

—Luis, 11 years old, Panama.

And what do you think of your father having worked selling drugs?

"I don't think it's good. I called him and asked him if he would go on with that life. He said no; he said when he came out, he'd have a talk with me and my mom."

—Janaina, 9 years old, Brazil.

3.3 Stigma versus support

"They had taken my dad to prison and everyone at school made fun of me."

—Elenis, 9 years old, Panama.

The factors that can amplify or, on the other hand, mitigate the feelings of loss, abandonment, sadness and rebellion are either stigma, or containment and support within the family, the community or the school. Secrecy about the incarceration is a tool to lessen the exposure to attacks from others, as often the incarceration of a caregiver produces shame. On the other hand, in certain communities, selling drugs is so common that everyone knows who is involved. Here, the connection to an incarcerated person can be considered completely normal, or even bring prestige. Stigma, support, normalization, shame, and pride are not situations or feelings that exist independently; they often coexist in a person's experience, just as in the previous section, anger, sadness and rebellious feelings often juxtapose. The following testimonies depict these diverse life experiences within the COIP's families, communities and schools.

"I wouldn't talk about it to anyone. Not at the time. Only when I went to the therapist, because, well, he already knew, but nothing else. It was just at home and with the psychologist, I wouldn't tell anyone else, nothing."

—Bruno, 18 years old, Uruguay.

"It's a very personal thing that I only talk about when there is trust."

—Diana, 9 years old, Colombia.

"Whenever they talked about parents and such, I would cry, and no one knew why I was crying, and maybe it was boring, everyone saying my mom does this, my mom works, my mom buys everything, and I couldn't say that about my mom. What could I say? My mom is imprisoned."

And why is she imprisoned? Drugs."

—Antonia, 17 years old, caretaker and COIP, Chile.

"They say he's a criminal, that he was doing something bad. To the staff here [in the institution] my aunt, who is very religious said: 'He was arrested because he was doing bad things.' I just stared at her and said nothing."

Do you know other kids with mothers or fathers detained for drugs?

"Some."

How many? Can you count them with one hand?

"With one hand? Goodness! I can't count them with just one hand, I know tons!"

And if you also use the other hand, is that enough to count them?

"Let me see... yes, there are nine."

—Rian, 16 years old, Brazil.

"Some of them, [my classmates] know about my mom and they mention it so that I'll feel bad... My classmates mention that they know my mom isn't here and they ask me where my mom is, they mention my mom all the time... [I tell them] that she's with me, that it's one thing that they don't see her and something else that she is with me."

What have these years without your mom been like?

"It's been ugly because there are also kids who bully me saying that my mom isn't here, that she's dead, that she doesn't exist."

Just school friends, or others as well?

"My cousins also."

—Les, 9 years old, Mexico.

"Because they sometimes shout at me, from far away, that I'm a drug trafficker's daughter, because not only has my mom been a trafficker, but my whole family. And I feel rage when they say this, because it's nothing to do with me. I'm not the one who is a trafficker."

—Luz, 14 years old, Chile.

"Before, one could go with a sweater with designs on it, but then things changed and they all had to be plain, and there we were, all the same. There's a street next to [the prison] where cars go by, and they stare as if they were saying, 'There they go, visiting.'"

—Gabriela, 19 years old, caretaker and COIP, Panama.

"The neighbors would help us, when we didn't have money we'd ask for bread on account and they would give it to us, and the next day we'd pay them. We got to know the neighbors lots."

—Gary, 18 years old, Chile.

"Aaaall my grades went down, and I didn't want to go to class, because a really fussy boy said things about me at school."

—Antonia, 9 years old, Panama.

"That happened a lot at school. I would react like... don't talk to me about that, I'm not to blame for what my mom does... and once I was going to fight with a girl at school, she said that my mom sold drugs and I said I wasn't to blame for what my mom did. I didn't send her out to sell drugs! And I got very rough and I wanted to hit her, and they took us to the principal and scolded us... and I didn't have friends because of that."

—Gabriela, 19 years old, caretaker and COIP, Panama.

How do the people in your neighborhood perceive the drug issue?

"They look at us funny, they look down on us. They're prejudiced."

—Marcos, 14 years old, Brazil.

"I don't care, I don't even talk about my uncles. Sometimes when we're walking in the city center, the troopers stop us and ask our last name, and they say, look: a Perez. 'Boy, I hope you're not like your dad or your uncles.' No, no, that's why

I train and play football, I tell them, to have a future."

—Agustín, 16 years old, Uruguay.

The possibilities of development, recognition, and exercise of their rights exist for children and youth in their families, schools and communities. These places define the social impact of the incarceration of a guardian, and it is here that they encounter the possibilities of overcoming and of resilience, or of exclusion and cumulative discrimination. The acceptance of the COIP may happen through solidarity and support, or through the assimilation of a criminal rhetoric where being related to an incarcerated person implies a certain standing. On the other hand, discrimination may increase when the offenses are related to drugs, as the imaginary of drugs as something harmful, and of people who consume or sell drugs as persons who do harm to society, often exacerbate intolerance. Girls, boys and youth clearly suffer from their parents' destiny, as they must endure the labels that accompany and define them.

3.4 Visits to the prison and security searches

"I had to take my clothes off and kneel three times."

—Rian, 16 years old, Brazil.

The rapport with the prison itself is also ambivalent. On the one hand, if the child has a good relationship with his or her imprisoned parent, the child will want to see and spend time with him or her. On the other hand, the time and costs that the visit entails, as well as the treatment that visitors receive from the prison guards—especially during examinations—discourages them from wanting to visit. This ambivalence also appears in the testimonies of caretakers and of the incarcerated people, who express worries in relation to their children's lives and want to see

them, but don't want them to be subject to searches or to having to travel to centers where the conditions are degrading.

"It was bad. When I went with my mom or grandmother, we would wait an eternity. Sometimes we would go very early in the morning, at 4:00 in the morning. We would have to wait by the door. It was very bad. I would stand in line, then they would stamp my papers and I would go through security, and they would check the food my mom brought, I would have to take my clothes off and kneel three times. Inside it was very ugly. A bunch of gates and separate cells. A field with a bunch of cells all around. The first time, I cried. Then I got used to it and would go straight in with my mom. Sometimes I would cry when I left, they would sound the signal and everyone had to go. Sometimes I would look back and look at the people when they closed the gates. It was very bad. And at that time my dad was great. He would spend an hour in the field with me!"

Tell me about your dad.

"He would walk with me, spend an hour alone with me. He was the one who taught me to fly a kite. I was small. He would take me to the field. Once, after they called roll, I understood that he was imprisoned."

—Rian, 16 years old, Brazil.

"Visiting my dad was a sacrifice for me, and I would only go because I wanted to see him and I looked forward to it. But it was very far, five hours to get to the town where he's detained, and then that disgusting inspection, they want us to lower our pants or lift our skirt. They don't search my little brothers like that, they treat them better, but for us teenagers, they want to touch even though the agent is a woman. It's humiliating and disgusting, I feel dirty and looked at. For me that was the worst, and in jail there are a lot of perverts who, while one walks toward the dorm area, say things, dirty things, even to very young girls."

—Chanel, 17 years old, Dominican Republic.

"Sometimes they made me show my private parts, and because I was underage I didn't like that at all. I also said it in an earlier interview, that I didn't like it when they did that, because I wasn't yet eighteen years old, or older, to be showing my body, that's why I didn't like it. But then there was a sort of change and they never did it to me again, and to this day they haven't, so I feel that maybe it was because of other people or things. There's a change in visits, and sometimes it's good for the children, I think."

—Antonia, 17 years old, caretaker and COIP, Chile.

"I don't like the way they search me, because they might touch me in places that I don't like."

—María, 9 years old, Panama.

"We went into a room with a lot of people, there was a lot of noise, everyone would talk at the same time, people fighting. Once they were fighting because others were stealing their eggs."

—Silvia, 10 years old, Panama.

"When they had just caught her and they had her in the Chorrera, we would go every day, because the baby was a newborn [20 days old] and my mom would breastfeed her. I was a minor, so I would have to go with my older sister to take our younger sister. We had to be there at four, we would go after school. We would get there and they would have her handcuffed and

she would give the baby milk, and then we would have to go, that was all. But when they moved her to the female center we couldn't go as much."

—Gabriela, 19 years old, caretaker and COIP, Panama.

"I would like to see her because I miss her, but I'd rather not because I won't want to leave, I'll feel an emptiness."

—Felipe, 16 years old, Costa Rica.

"I like to go see her, but I'd like to see her more. They only take us sometimes, like once a month."

—Edith, 8 years old, Mexico.

"It's fun because she tells me what she's doing, sometimes she gives me things, she teaches me to do stuff she does, she takes me to places in her job, she buys me things... it's also tiring because you have to wait, get the luggage up, wait more, the bus takes forever and sometimes my sister throws up."

—Les, 9 years old, Mexico.

"I don't go to jail, I don't like it. I went once but they search everything and I don't like it. I went when I was younger. He's been inside for five months. But all of them were imprisoned, we're seven brothers and four were in jail. I didn't go this time, but I went the last times."

You didn't like the searches?

"No, I don't like it. There was no scanner, and we had to wait for hours."

—Rafael, 17 years old, Uruguay.

"Visiting is very hard. They pull your pants down, they turn the cameras on and the police see you. Once, on the first family visit I went to, they took my sweater off, my pants, my shoes, and they told me to kneel."

—Elenis, 9 years old, Panama.

"Visits... I feel happy to be able to see them, but at the same time I feel sad to see them there... I think they're ok, but I imagine they must be unhappy not to be here with us."

—Sergio, 14 years old, Colombia.

"The first day I went to visit my mother, I felt awful, and when I saw the policemen saying bad things to her [about her grandmother], I got angry because I didn't like what they said. Then they would search me, they would take my shoes off and search me, they would lower my mom's pants and search her, and I also didn't like it and I'd get aggressive, and they'd search my sister too, the youngest one."

—Luis, 11 years old, Panama.

In the face of this situation, communication by other means is a fundamental tool to maintain the link between children and parents.

And are you in contact with him?

"I get whatsapps from him."

Do you talk often?

"Every morning."

—Agustín, 16 years old, Uruguay.

"We talk and chat [whatsapp] every day. From the cell phone or computer, I talk to him."

—José, 17 years, Panama.

"I talk to my dad every morning before going to school and at night... he tells me to have a good day at school, to study and not get bad grades, and at night he says: 'how did you get to school?' 'How did it go?' 'I love you,' and 'take care.' He talks to all of us [her siblings] every day, but there are days when the signal is bad and he doesn't call."

—Elenis, 9 years old, Panama.

In these testimonies, the State once more appears as a subject that violates the rights of these children by hindering the contact between COIP and their primary caregivers through prison conditions and the behavior of some of its agents. The dignity of the children and youth that visit becomes threatened in physical, emotional and psychological terms, and includes acts of sexual violence that primarily affect adolescent girls. In some cases, and as has already been mentioned, the relationship before incarceration wasn't strong, and therefore COIP have no interest in visiting, while in others, the contact with the incarcerated parent is positive and desired. The factors that stand in the way of the relationship between parents and children are: a) the financial costs of visiting and of supporting a person in prison, since in most cases the State does not fulfill its obligation of providing basic, quality nutrition in dignified conditions for the prisoners; b) the fact that children need to be accompanied by an adult and this involves a family network that they don't always have, added to the difficulty for the current caretaker of interrupting his or her work day; c) the terrible conditions in which the visits take place, and d) the exposure to different types of violence, among them sexual violence during the security searches.

3.5 Perception of drug-related offenses

"They fuck up their own lives, and their children's too."

—Luz, 14 years old, Chile.

The next pages depict some of the perspectives of children and youth regarding drug offenses. They refer to these as a way to face poverty in a context of social exclusion but there is also criticism; selling drugs is seen as an activity that damages others and negatively affects the children of the sellers. They also mention the normalization of this activity in certain places, and how it can increase a person's status within the neighborhood. In most cases the COIP express ambivalent feelings, just as they do in most other categories of this analysis, combining affection with anger for what their parents have done. A desire to take another path permeates their discourse, and they wish to distance themselves from the drug trade and its implications:

mainly violence, jail and harm to oneself and to others. The following testimonies portray this mosaic of attitudes and feelings.



Photo: Marisa Montes

"My mom did it because she couldn't read and she didn't have a job. Who would hire her like that? I promised her I would teach her to read so that she could get out of that."

—Gabriela, 19 years old, caretaker and COIP, Panama.

"Some people do it out of need, but it's true that others do it to have more cash."

—Nelson, 14 years old, Costa Rica.

"[They do it] for money, they need the money for the children, their kids."

—Alejandro, 8 years old, Costa Rica.

"My mom, she talked to us, she wanted to help us buy things."

—Fiorella, 13 years old, Colombia.

"Almost all my sister's friends are from here, from San Luis 4 or San Luis 5, so it's more than obvious that the parents do those things, that they deal drugs, or steal."

—Antonia, 17 years old, caretaker and COIP, Chile.

"I don't know; they should get rid of it. It brings so much trouble, it makes people fight, all for drugs."

—Diego, youth, Uruguay.

"I think drugs ruin you, they're filth."

—Rafael, 17 years old, Uruguay.

"There are people who ruin the lives of other families with that. I don't tell that to my mom when she gets home with easy money, because she's ruining other people's lives. All of that gets sold at the cost of a person who might be the provider in their family, and if they fall into that vice it might provoke the same thing. And not because the parents do it should they do it too, but they won't find a solution to problems, if they take the path of drugs."

—Antonia, 17 years old, caretaker COIP, Chile.

"They fuck up their own lives, and their children's too, if they have any. Because then the children have to go visit them on their own, or find a person they can trust who will accompany them on visits, all that."

—Luz, 14 years old, Chile.

"Nothing good in drugs, they bring bad things, sickness and the cemetery. Some sell them out of need, because they don't have jobs, and others because they think they're so cool."

—Felipe, 16 years old, Costa Rica.

3.6 Perception of state authorities

"There are policemen who don't do their job well, they tell lies and beat people up."

—Rian, 16 years old, Brazil.

In regard to the authorities, the COIP mostly mentioned the police force and raids. They perceive the police as a source of violence and corruption. They believe police officers detain only the minor players in the drug trade or plant drugs, while drug trafficking leaders can act with impunity through corruption. Although they acknowledge that the people who sell drugs must pay a penalty, in some cases the proportionality of the punishment is questioned.

"There are policemen who don't do their job well, they tell lies and beat people up. I got stopped by a policeman, he grabbed me by the throat and gave me a kick in the leg. He came because there was a guy smoking a joint next to me. But I wasn't smoking. I was just walking down the street when they stopped me and asked, 'Why are you with him?'... I knew that boy, that's why I shook his hand, and he went away... Then the policeman said that I smoked, and I said I didn't. He said 'You'll see, if I catch you smoking, I'll kill you. Do you see this gun right here? I'm gonna put it in your mouth.' He said: 'Are you looking? Do you think there are two stupid policemen in the car? Do you want me to stop? I'm going to detain you.' I said: 'you don't have to do that, why would you detain me?' I've seen policemen beating boys up tons of times. I've seen my friend eating marihuana while a policeman shouted 'eat!' He ate it because he was scared they'd arrest him. This happens a lot. One we were with the CEDECA book, it's a book on rights and police conduct. The policeman took both books, he ripped them up, he threw them into the bushes, and told us 'you're learning to fight against the police, aren't you?'"

—Rian, 16 years old, Brazil.

"This was constant: they would come, and there'd already be that fear and terror that the police were coming. They didn't come in almost three or four months, and then they fell on us like a hoard, huge. What a racket of cars and guards, they wouldn't let anyone in. That day it was big and they already knew what they were coming for..."

They would come once every three months."

—Gabriela, 19 years old, caretaker and COIP, Panama.

"And it's not easy, they come, they raid places, as I've seen at a friend's house. They raid the house, they find drugs, and they're given money and they leave the drugs, and that's it. And they leave and they found nothing. Even when they stop you, with 4,000⁴⁶ pesos you can fix it. And they don't take you, they go on their way, don't even take your information. They leave... That's their gig to make easy money."

—Sofía, 16 years old, Uruguay.

"They don't even touch [the drug lords]. Why does that happen? At least before, when I lived in the settlement, the patrol cars would do their rounds in the morning, they would take their money and they hadn't seen anything. Every day. And a couple of days before they would do a raid, the person who sold would leave. So they would never find them."

And those they catch?

"They're the ones who sold for those people."

And you say they also arrest users. Why?

"So that the raid will look good."

—Bruno, 18 years old, Uruguay.

"She's there for something she didn't do. They have no proof and they have her there."

—Felipe, 16 years old, Costa Rica.

And what do you think of the way that drug crimes are punished by the state?

"Five years in prison."

And do you think it's alright?

"No, but if they like to sell, then they have to pay the penalty."

—Agustín, 16 years old, Uruguay.

Marcos, from Brazil, states that if he had the state and police authorities before him, he would:

"Ask for a more just law, not everything they say is true."

"Don't hurt them so much. They shout at and beat up prisoners. They should have better attitudes because they cause more aggression."

—Lucía, 13 years old, Costa Rica.

"That they stop taking advantage of the power they have, and they should respect. There should be mutual respect."

—Karla, 17 years old, Costa Rica.

3.7 Final Remarks

The issues included in this third chapter presents the thoughts, feelings and experiences of children and youth related to the incarceration of one or more primary caregiver. Their experiences revolve around certain dominant frameworks: the relationship with the caretaker prior to the detention, the presence or absence of affection from other sources, such as siblings

⁴⁶ Approximately 120 US dollars as of October 2018.

and extended family, the financial changes and alterations in caretaking roles, and the contact with the prison. In all areas the COIP express ambivalent and complex feelings, where pain, anger, relief, support, stigma, contention or even indifference can coexist and alternate. In *Invisible No More*, children and youth expressed themselves in similar ways, but here they also share their opinions on drug offenses and on the policies related to the fight against drugs. Drug offenses are seen as a consequence of an array of situations: financial vulnerability, or as the consequence of using drugs, resulting in their parents' lack of accountability or their neglect. Drug offenses are also a source of domestic, neighborhood and State violence, a cause of harm to the family, as well as to the children of users and sellers, along with bringing, in certain cases, "easy money."

In the following chapter the main findings of this study and its recommendations are included. What seems clear is that we cannot keep applying one-size-fits-all responses in any of the areas that this study explores. The adoption of a case-by-case methodology and of an approach that listens to and considers the best interest of the child or youth is the only path to avoid cumulative discrimination, and to stop adding to the deprivations that the majority of these families already live through. As Judge Sachs in the South Africa sentence, previously mentioned in the second chapter, states:

Every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them (Constitutional Court of South Africa 2007, 11).

The testimonies demonstrate that the COIP's general ambivalence about other situations only dissolves in the face of one issue: the state's response in its prosecution of criminal offenses. Even when it seems correct as a natural response to criminal conduct, it is always conducted with unnecessary violence and in a scale out of proportion to the offense itself. Judge Sachs uses the word "drown," just as Felipe uses "choke" to describe the effects of violence during a police raid.

The rights included in the Convention on the Rights of the Child are violated over and over in these testimonies. COIP move in a context of constant danger and complete vulnerability. Human rights rhetoric that assumes the child's best interest as a right, a principle and a procedural rule is at odds with the systematic invisibility of COIP and with the constant infringement to their basic rights. The words that the children and youth who participated in this study share with such generosity and courage should reach decision makers and society in general. No one who really listens can remain unmoved in the face of the paradigm shift that this leads to, or should lead to.

Key findings and y recommendations

*I was two years old, or maybe more, and they beat up my mom.
I saw how they hit her, and **I will never be able to get that out of my head.***
—Luz, 14 years old, Chile.

Luz's testimony describes the police raid she experienced at home. The moment when a suspect is arrested is often violent, chaotic and includes the use of firearms. Like the aftermath of a hurricane, it leaves behind damage, confusion and loss: in this case, the loss of one or more primary guardians. Many of the testimonies in this study show how traumatizing police raids can be, and even more so in the context of the "War on Drugs," since with this policy, and in the supposed persecution of illegal substances, people are apprehended in their homes and neighborhoods.

The impacts of incarceration on children and youth described here echo the debates held during the 2011 Day of General Discussion of the Committee on the Rights of the Child as well as the findings in *Invisible No More* and other studies on this issue. Children and youth share the impact of incarceration, enduring its effects in their daily lives, in caretaking arrangements and the responsibilities they must assume. Their reactions combine sadness, yearning, rebellion and a plethora of other emotions where personal and family elements merge: the previous relationship with the caretaker, the reactions of those that surround them, the trivialization of offenses and of incarceration, their access to the correctional center, the separation of other caretakers such as siblings, and factors relating to censure or resilience.

These and other elements, experienced in a unique way by each child, intersect with drug policy and the specific ways in which it criminalizes those involved. This section outlines the main findings, with the purpose of revisiting and enriching the conclusions reached in *Invisible No More* from the viewpoint of drug policy. The findings are based on the evidence yielded in the country reports and in the voices of the COIP; however, as the recommendations show, other areas of research must be explored in order to broaden our awareness of the impact of drug policy on youth.

1. Findings

a) Many COIP are exposed to multiple forms of violence, as well as to situations of social exclusion that are reinforced with the incarceration of a caretaker.

Children and youth with incarcerated caregivers belong, in most cases, to groups that suffer from economic and social exclusion, which reduces their chances of development and of exercising their rights. To this precarious context are added further risks within their environment, from various sources of violence and in various forms:

- 1) Violence in various spaces arising from the implementation of drug policy and repressive security policies, specifically in neighborhoods, homes and correctional centers. The actions of police in detentions and raids are portrayed in the testimonies as extremely violent and invasive. As the third chapter outlines, this is not exclusive to drug crime cases, but the impact on children and youth becomes exacerbated in these instances. This is as a result of a) the structure of possession and sale, which often happens from home; b) the planting of

evidence and c) the repetitive intervention of police forces in pre-selected neighborhoods and communities.

- 2) The symbolic violence and perceptions: youth protected from the "War on Drugs" versus youth that have been ignored, discriminated against and marginalized, which includes COIP.
- 3) The violence of criminal groups, encouraged by the corruption or active participation of certain State agents and through extrajudicial executions.
- 4) State violence exercised against those accused of violating drug laws.

In many cases, COIP identify state violence and criminal violence as repetitive experiences.

b) Drug policy makes COIP invisible, and their rights are not considered either by the judiciary system or by public policies.

As the first and second chapters reveal, COIP are not presented either as subjects with rights or with specific needs in either the quantitative information or the legal frameworks of the countries analyzed for this study. This invisibility relates to three reasons:

First, the impact of drug policy, which the previous point also alludes to. This is the rhetoric of international drug treaties that has been fueled in practice. As a result there are two categories: the "children who count"—the children who must be protected from the "damage of drugs" and the "evil traffickers"—and "dispensable children." To this second group belong the children and youth who are criminalized and incarcerated for minor drug offenses, who are recruited by organized crime, those who use drugs or have parents who are users, children and youth who live on the streets or in public or private institutions, along with those enslaved or forced into labor. And, of course, COIP. International drug control authorities still haven't focused on children with incarcerated primary caregivers, and only sometimes are the children of incarcerated women mentioned. Even here, drug rhetoric does not allow them their own space, but includes them as extensions of their mothers when evaluating the option of alternative measures to incarceration. As well, and although the Committee on the Rights of the Child has made emphatic declarations around COIP and drug policy, it seems that the international institution still needs to emphasize the connection between the two.

In second place, and although national legislation in Latin America and the Caribbean has enshrined the best interest of the child and incorporated the principles of the Convention on the Rights of the Child, there is a profound gap between the established rights and the reality in which millions of children and youth in the region live (Inter-American Commission on Human Rights 2017, 11). Finally, a recurring problem—already addressed in the Day of General Discussion of the Committee on the Rights of the Child, in *Invisible No More* and in this study—is the lack of reliable, updated, public information that would allow an understanding of how many COIP exist in the region, what conditions they live in, what their caretaking arrangements are, etc.

1.3 The implementation of punitive drug policy directly impacts the increase in COIP.

As has been extensively demonstrated in this and other studies, the implementation of drug policy by repressive means and focused mainly on controlling supply is the primary cause of the rise in prison populations, and therefore, of the increase of COIP.

This study demonstrates that of all estimated COIP in 25 countries in the region—between **1,710,980** and **2,307,048**—more than one in four—between **359,305** and **484,480**—are in their situation as a consequence of the implementation of drug policies that entail: a) selective

criminalization processes; b) the use of pretrial detainment; c) disproportionate sentences; and d) a lack of alternative measures to imprisonment in minor, non-violent drug offenses.

1.3.1 An issue of concern: “transnational” COIP

One of the effects of global drug trafficking networks is a specific group of COIP, we denominate “transnational” COIP in this study; namely, those who live in a different country than the one where their caretakers are incarcerated, or those who are born and/or grow up in the country where the mother or father are detained (in most cases the mother), but far away from their country and family of origin. These children may grow up in an institution in a country linguistically and culturally different than their country of birth; or they might grow up in their native country, but in the care of extended family and with little or no contact with their incarcerated parent in a foreign country. When a COIP is also a foreigner, this can lead to a greater need to protect his or her rights, particularly in the areas of migration, education, health, abuse, child labor and of non-separation from his or her parents. This study presents certain cases, but it is clear that the situation of transnational COIP requires its own specific investigation; although they are not numerous, they are exposed to specific risks and a higher degree of invisibility.

1.4 The community and school should be places where COIP experience support and find opportunities for development. These should not be places where the stigma and discrimination associated with drug cases are reproduced.

Invisible No More and other studies on the children of incarcerated parents provide ample proof of the stigma associated with the incarceration of a guardian. What emerges from this study is the added stigma of incarceration due to drug offenses, given that the COIP, their families and their communities consider that illegal drugs are harmful, so that the people who traffic with drugs or use them are discriminated against. Children and youth become targets of prejudice at school and in their neighborhoods, and both become spaces for diverging scenarios: either places of prejudice or of support.

1.5 COIP express their desire for change; however, without comprehensive public policies focused on youth, they may find themselves repeating their caretakers' stories and circumstances.

In the COIP' testimonies sadness, hopelessness, resignation and a desire to overcome their conditions and to avoid their parents' choices mingle. They hope their parents will stop selling drugs, even when they understand that poverty has led them to crime. They wish to help and accompany them in this process, in exchange for not reliving the same experiences: abrupt detentions, separations, moving from one place to another, being separated from their siblings, and the neglect or abuse from extended family or in institutions, among others. Their yearning to rise above their circumstances is inspiring, but unrealistic without structural changes, mechanisms and institutions to support them. Lacking this shift, their prospects for development are limited to the circumstances in which they have been immersed since childhood.

1.6 Gender perspective must urgently be incorporated into research on incarceration and its impacts.

The intersection of drug policy, gender and incarceration has received attention on an international level, influencing national legislative reforms and public policies, such as in the case of Costa Rica. Nevertheless, the debates around this triad are currently limited to a specific phenomenon, reiterated in this study: the increase in the incarceration of women for non-violent minor drug offenses. This is a phenomenon that relates as well with the reproduction of traditional roles and patterns. Most of them are women with stories marked by violence, of emotional dependence on a partner, of involvement in crime due to affection or poverty, or related to merely fulfill the role of a caretaking mother or wife. The interpretations of this phenomenon and its uses to promote reform in drug policy, however, often end up reproducing the image of women as caretakers and victims, while ignoring their personal agency (Giacomello 2017). Additionally, the focus is mainly on mothers, which also leads to a reductionist gender approach. The gender dimension in drug policy is more complex and must be fully explored. First, gender relations and constructs also cut across men's involvement in drug offenses, as these operate as identity and power structures for everyone, and not just for women. Second, incarceration impacts male prisoners in similar ways, as they also love and miss their children, each in his own way. Their children miss them, too, and these fathers want to exercise their fatherhood in a close physical and emotional relationship. Third, COIP themselves present a gender dimension that merits study, as gender influences the ways in which they live through and express their loss, and in the roles they must assume as part of the adjustments to incarceration. Finally, the largest quantitative and qualitative gender aspect is probably that which affects women who remain to take care of COIP, as family members and/or partners of the incarcerated person. As this study confirms, there is an army of women invisible to the state; through drug policy they have been forced to become the caregivers of the incarcerated as well as of their children. They form a vast, external prison population.

These are only some of the relevant findings of this study; numerous other issues related to the situation have yet to be explored, and projects and proposals focused on the different groups of COIP mentioned in the introduction must be developed. These groups are: a) children and youth who live outside the prison and visit regularly; b) children and youth who live outside the prison and do not visit; c) girls and boys who live within the prison, generally with their mothers; d) children who move out of prison; e) COIP with mothers and fathers in institutionalized isolation; f) transnational COIP; g) COIP with caretakers under alternative measures to incarceration; and h) COIP with underage caretakers within the penal system.

2. Recommendations

The following recommendations are addressed to the national authorities of the region's countries and, when specified, to organisms and civil society on national, regional and international levels. Some recommendations reiterate those already stipulated in the Committee on the Rights of the Child of 2011 or in the *Invisible No More* report of 2013; we decided to revisit them either because they have not been achieved, or because they serve as the basis for new recommendations. All seek to present a child-centric and responsible focus. Those who have participated in this study have approached girls and boys from a place of listening and have placed the children at the center of the investigation, as subjects with rights and with experiences that must serve as a guide for the creation of comprehensive public policies that benefit, above all else, childhood in the full sense of the word, in all its diversity and nuance. The proposals that follow have been developed in this same spirit. As with the findings, these recommendations have been organized by topic.

2.1 Comprehensive policies directed toward children

- 1) Involve children and youth, including COIP, in all discussions on public policies, legislation and decisions that affect them either directly or indirectly. Additionally, ensure the participation of children and youth in the design, implementation and evaluation of these policies. This must be achieved through processes of genuine listening, where the children's differences in gender, age, maturity and development are taken into account, and where the voices of the children and youth are not manipulated, denigrated or used as mere rhetorical devices.
- 2) Work with the three branches of government and with the media to build awareness around the impacts of drug policy and incarceration on children and youth.
- 3) Include the option of "house arrest" for criminal authorities that do not already mention it in their registers, and as a cause for intervention. Train personnel in the specific issues involved.
- 4) Ensure that all legal, administrative, judicial or public policy act or proceeding takes into account the child's best interest at every moment, as: a) a right, b) a rule of procedure, and c) a principle.
- 5) Ensure that children and youth do not lose their access to social programs due to the incarcerated condition of their guardians; instead, as a protected group, guarantee access to economic, occupational, educational and psychological programs for them and their current caretakers.
- 6) Overhaul the frameworks guiding drug policy, in order to: i) ensure that sentences are in proportion to the offense; ii) eliminate mandatory minimum sentencing; iii) offer alternatives to incarceration in association with programs in psychological support, education, job training, employability support, and for those who want it, parenting counseling; and iv) include extenuating circumstances in the application of sentences, taking into account elements such as the leadership level of the accused within the drug trade, situations of special vulnerability, and whether they have dependent persons in their care.
- 7) Guarantee that the sons and daughters of foreigners that live in the country where their parents are incarcerated do not lose their legal status, and that they aren't discriminated against due to their situation.

In the school setting

- 8) Encourage training and awareness building around drugs and the impact of the incarceration of a family member in COIP among school staff.
- 9) In educational institutions, include teams of psychologists, social workers and intermediaries with state institutions, who are trained accordingly, and can provide care for children and their families.
- 10) Create awareness workshops with parents and community members, in conjunction with civil society organizations that work in the community, to reduce the stigma toward children and youth with mothers and fathers incarcerated for drug offenses and their families.
- 11) Create listening spaces for children and youth with incarcerated caretakers, based on trust and peer collaboration.

In the community

- 12) Implement participative social integration programs focused on childhood and gender where COIP are included.
- 13) Champion programs focused on preventing and reducing violence.
- 14) Strengthen local mental health services where COIP and their families, along with the imprisoned person once he or she has been released, can get treatment.
- 15) In civil society
- 16) In the planning of actions and programs, as well as in the implementation of advocacy initiatives, ensure the active participation of affected communities—in this case, COIP and their families—not as mere case studies or through testimonials, but as protagonists with full knowledge of the situation, partaking in the creation of proposals.
- 17) Spread awareness of COIP affected by drug policy without manipulating information.
- 18) Build and strengthen bridges with other organizations, such as feminist associations, human rights organizations or groups that defend incarcerated persons, among others.

To the organizations and agencies that work at inter-American and international level

- 19) Although the Nelson Mandela and Bangkok rules include some provisions for the children of persons deprived of their liberty, these are based on the perspective of imprisonment and of the incarcerated persons (though admittedly the child's best interest is taken into account). Based on this, we suggest the creation of specific guidelines for the treatment of children and youth in the face of the correctional system, which includes the essential issues of children who live with mothers or fathers in prison, as well as those who live outside.
- 20) Review success indicators related to drug policy and develop new goals and indicators aligned with the objectives of the Sustainable Development Agenda and the recommendations in the final UNGASS document. Instead of measuring the number of detentions and the tons of drugs seized, etc., measure the effects of drug policy on human rights and on the wellbeing of the community and of the individual.
- 21) Consider the impacts of drug policy on COIP in discussions and meetings of international and regional drug-control bodies, thus ensuring the visibility of the children of incarcerated parents.

2.2 Generation of information

- 22) Develop and disseminate quantitative data about children and youth with incarcerated caregivers, broken down by gender. Make this information public and accessible, setting out the facts of the case.
- 23) Develop qualitative studies to deepen our understanding of the different facets arising from the main problem, such as: a) transnational COIP—children whose parents have been incarcerated in a country other than that of their origin or residence; b) COIP whose parents or underage caregivers are in conflict with the authorities (incarcerated or under alternative measures to incarceration); c) COIP with guardians under alternative measures to incarceration; d) COIP when their caretakers are in the process of reintegration after incarceration.

3. COIP and the criminal justice system

Given the negative treatment that COIP are exposed to at every step of their contact with the justice system, we recommend:

To the heads of the criminal police

- 24) Conduct detentions within the home only after having carried out an investigation that considers the presence of children or youth at the moment of intervention and takes the necessary precautions.
- 25) Create protocols regarding their behavior in the presence of girls, boys and youth to the units charged with detaining suspects and conducting raids, in order to reduce or avoid trauma.
- 26) When the presence of children or youth is detected before a raid, security forces must be accompanied by trained personnel to offer containment and support during and after the event. These can be from child protection agencies, human rights organizations, etc.
- 27) Provide the detainees with enough time and means to make decisions regarding any dependents, particularly children and youth. These decisions may later be reevaluated and modified, and they should be transmitted to the agencies charged with protecting children, or whoever fulfills that role.
- 28) Inform children and youth who are not present at the moment of detention of their parents' situation in a timely and accurate manner, if the person or persons designated as their caretakers agree.
- 29) Report, investigate, penalize and compensate all disappearances, violent acts or any harm suffered by girls, boys and youth on account of the violations, misconduct or neglect of federal agents.

On a judicial level

- 30) Ensure that, in the criminal proceedings that involve their caretakers, evidence is gathered as to the effects of the preventive measures or sentences imposed on the children and youth affected, and that this evidence be taken into account by judicial organs and in legal arguments.
- 31) Ensure that the least injurious sentence or cautionary measure be applied, for the best interest of the children of the accused person, adopting a case by case methodology and favoring alternative measures to incarceration.

- 32) Encourage repatriation instead of prosecution of the so-called "mules" of the drug trade, especially in the case of pregnant women or mothers travelling with underage children, or that are the primary or only caretakers—financially and emotionally—of dependent girls and boys in their home country.

On a prison systems level

- 33) Collect as much information as possible on the number, age and gender of the children of incarcerated persons.
- 34) Along with improving the visiting process and the spaces in the prison where it takes place, encourage communication between girls, boys and youth and their caretakers through various means, including internet and video calls.
- 35) Ensure that the caretaker is held in the prison closest to where his or her children live, according to Article 9 and Article 3 of the Convention on the Rights of the Child.
- 36) Provide flexible visiting days and hours, in order to reduce the obstacles that children, as well as their current caretakers, face when visiting the incarcerated family member.
- 37) Have adequately conditioned visiting spaces for children and youth where they can engage in play and educational activities with their parents and peers, in a clean and secure space, preferably outdoors.
- 38) Make sure that the security staff in prisons avoid wearing uniforms or carrying visible weapons when in the presence of children and youth during visits.
- 39) Offer free transportation and subsidies in order to cover the expenses that visiting entails.

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Contact information

Church World Service · Regional
Office for Latin America and the
Caribbean

cwslac.org

[cwslac](#)

[cwslac](#)

+54 11 2109 5277

info@cwsglobal.org

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