

## Chapter 11

# Women Incarcerated for Drug-related Offences: A Latin American Perspective

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### Introduction

Sara, from San José, Costa Rica, fled her family at age 13 to escape sexual abuse at the hands of her uncle. With no education or opportunities, she became drug dependent and worked in the sex trade. At age 50, she had been in and out of prison and was serving a sentence of about 7 years for selling small quantities of crack to support her own consumption and attempting to bribe the police officer arresting her with the equivalent of US\$3.75 (Washington Office on Latin America (WOLA), n.d.-a).

Like so many women behind bars in Latin America, Sara's crimes were linked to sexual violence, her own drug use, marginalisation and poverty. Had she been provided more opportunities in life, she most likely would not have landed in prison. In Latin America, drug offences are the first or second cause of female incarceration. The excessive use of pretrial detention, mandatory minimum sentences, and disproportionate penalties characterise the region's drug policies.

This chapter analyses women's incarceration for drug offences in Latin America from a quantitative and qualitative perspective, showing how the 'war on drugs' is the underlying cause for the further exclusion of women who already come from the most disadvantaged sectors of society. The chapter is divided into three parts: the first presents data on women's incarceration for drug offences, the second provides analysis on women's involvement and participation in illicit drug trafficking, and that is followed by a third section of conclusions and recommendations.

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## Alarming Trends in Women's Incarceration in Latin America

Across Latin America, prisons are bursting at the seams with women like Sara. While it is true that more men are incarcerated than women, women's incarceration is growing at an alarming rate. According to the Institute for Criminal Policy Research, between 2000 and 2017, the female incarceration rate worldwide increased by 53.3%, whereas the male incarceration rate increased by only 19.6%. During that time, the world population increased by less than 20%. Over a third of incarcerated women at that time were in the Americas (including the United States). Even excluding the United States, Latin America has among the highest female prison population rate in the world, relative to the national population (Walmsley, 2017).

Guatemala, El Salvador, Brazil and Colombia are among the countries with particularly sharp increases in female incarceration. Table 1 shows the increase in female prison population since around the early 2000s to the most recent year with available data for Latin American countries. Interestingly, the decrease in Bolivia – the only country in the region to see a reduction in its female prison population – is likely due to a series of presidential pardons that began in 2012, which particularly benefited women caregivers (Ledebur & Youngers, 2018).

The increase in the Latin American female prison population cannot be explained by female population growth, or by a growth in the total number of prisoners. The driving force behind this trend is, rather, the adoption of punitive drug laws that disproportionately affect women.

Under pressure to show results in the US-backed 'war on drugs', Latin American countries adopted harsh drug laws that have fuelled the prison-overcrowding crisis in that region. These laws are characterised by disproportionate sentencing policies, the use of mandatory minimums, the steady increase in the number of what are considered to be drug offences, and the exclusion of alternatives to incarceration, early release or other benefits (Chaparro, Perez Correa, & Youngers, 2017).

While laws vary from country to country, the maximum sentences for drug offences may range from 12 to 40 years, sometimes more than sentences for what are considered more heinous crimes. According to one study, *Addicted to Punishment*, penalties for drug-related crimes tend to be equal to or more severe than the penalties established for the crimes of murder, rape and aggravated robbery. For instance, in Bolivia, the maximum penalty for drug trafficking is 25 years, while for murder it is 20 years. Similarly, in Colombia, the maximum penalty for trafficking is 30 years, while for rape it is 20 years (Uprimny Yepes, Guzmán, & Parra Norato, 2013).

The overuse of pretrial detention for drug offences is also driving women's incarceration. In many Latin American countries, the majority of women in pretrial detention are accused of drug-related offences and they can languish in prison for months or even years before going to trial. Moreover, in certain countries, women accused of having committed drug-related offences are much more likely to be held in pretrial detention than are men accused of those offences.

Table 1. Increase in Female Prison Population in Latin America.

Country	Base Number	Most Recent Number	Percentage Increase in Female Prison Population
El Salvador	371 (2000)	2,761 (2018)	644.20%
Guatemala	433 (2001)	2,445 (2018)	464.70%
Brazil	10,112 (2000)	44,700 approx. (2016)	342.10%
Ecuador	682 (2002)	2,927 (2018)	329.20%
Paraguay	207 (1999)	834 (2015)	302.90%
Venezuela	936 (2001)	3,044 (2017)	225.20%
Colombia	3,141 (2000)	7,806 (2018)	148.50%
Uruguay	240 approx. (1999)	585 (2017)	143.80%
Nicaragua	238 approx. (1999)	575 (2014)	141.60%
Peru	2,054 (2001)	4,886 (2018)	137.90%
Costa Rica	454 (2003)	1,034 (2017)	127.80%
Chile	1,907 (1999)	3,534 (2018)	85.30%
Mexico	6,813 (2000)	10,591 (2018)	55.50%
Panama	654 (2000)	870 (2018)	33.00%
Argentina	2,402 (2002)	3,184 (2016)	32.60%
Honduras	614 (2002)	627 (2014)	2.10%
Bolivia	1,393 (2000)	1,157 (2016)	-16.90%

*Note:* Increase calculated based on data provided in The World Prison Brief (Walmsley, 2017).

In addition to contributing to prison overcrowding, the excessive use of pretrial detention undermines the principle of innocence and subjects those detained to ill-treatment, violence and unsanitary conditions (García Castro, 2019).

With regards to the total female prison population, drug-related offences are now the main cause of female incarceration in most Latin American countries. Available data show that in Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru and Venezuela drug-related offences are the most common or second most common offence for female prisoners. Moreover, the percentage of women imprisoned for drug offences is higher than the percentage of men. For example, in Brazil in 2016, 62% of the total female prison population was incarcerated for drug-related offences; in contrast, this was the case with only 26% of the male prison population (Levantamento Nacional de informações Penitenciária, 2016). Similarly, in Peru, 55.1% of the female prison population and only 17.1% of the male prison population is incarcerated for drug offences (Informe Estadístico Penitenciario Octubre, Primer Censo Nacional Penitenciario, 2018).

The data also illustrate the increasing rate of women's incarceration for drug-related offences in Latin America. In Mexico, for instance, the number of women in federal prisons for drug-related offences more than doubled in only two years, from 2013 to 2015 (Censo Nacional de Gobierno, Seguridad Pública y Sistema Penitenciario Estatales, 2016). In Brazil, between 2005 and 2013, that percentage increased by a whopping 290% (Boiteux, 2015). And in Colombia, between 2000 and 2014, the percentage increased by 211% (Boiteux, 2015). These trends are similar for women being detained by police on suspicion of drug-related activity. For example, in Uruguay, the number of women detained for drug-related offences more than quadrupled between 2003 and 2009, increasing by 341.3% (Garibotto, 2011).

Finally, another recent trend is increased drug use by women in Latin America. Historically, far more men than women use drugs; however, the *Report on Drug Use in the Americas 2019* (CICAD, 2019) shows increased rates of female drug use for non-medical use of prescription drugs, synthetic drugs and opioids and notes that the prevalence of tranquiliser use is higher among women than men in most countries where such data is available. Of course, not all drug use is problematic. But increased use means that women are more exposed to potentially dangerous criminal markets and can be subject to exploitation and abuse due to their drug dependency, as described in greater detail below.

## **Involvement and Participation of Incarcerated Women in Drug Offences**

Women are present at all phases and levels of international drug trafficking. They participate in the cultivation and processing of marihuana, coca and poppy. They consume, sell and store drugs, carry them *in* and *on* their bodies as well as hidden in all sorts of containers across countries, through borders and into – mainly male – prisons (Giacomello, 2013, 2017; Giacomello, Erreguerena, & Blas, 2017; Ledebur & Youngers, 2018; Washington Office on Latin America (WOLA), the International Drug Policy Consortium, Dejusticia, and the OAS Inter-American Commission on Women, 2016).

In drug-producing countries, such as Peru, Mexico, Colombia and Bolivia, women work in the fields, participating in the cultivation and collection of poppy and coca leaves, and may also be involved in its processing into heroin, cocaine and other illicit substances (Dejusticia, 2018; United Nations Office on Drugs and Crime (UNODC) and Ministerio de Justicia y del Derecho, 2019). In doing so, they combine traditional domestic labour (such as housework and preparing food for the labourers) with activities related to the illicit drug trade.

Women who introduce drugs into prisons also have a double or triple daily work burden (Giacomello, 2013). Therefore, earning money from carrying drugs allows them to make more than what they would with the unskilled labour they usually are employed for, such as cleaning houses, while having more time available to take care of their children.

The vast majority of people in prison in Latin America for drug offences are accused of or have been convicted of low-level, non-violent crimes. Indeed,

most women (and men) in prison for drug offences are drug users accused of possession or possession with intent to sell. Drug users are often extorted, detained and incarcerated for carrying quantities of drugs that are considered above what is needed for personal use. Some users also sell drugs in order to sustain their habit. And others may be selling or transporting drugs out of economic necessity, as described in greater detail below (Chaparro et al., 2017). The incarceration of these individuals makes no dent in the drug trade, but it allows local law enforcement officials to ‘show results’, both at home and abroad.

Drug mules represent a minority of women in prison but are, nonetheless, the most visible facet of international drug trafficking. In this group, there is more variability in terms of motivations, socio-economic background and nationalities (Fleetwood, 2014). As is the case with other branches of the drug business, with only some exceptions, men are the main recruiters of these women and often seek out women in situations of vulnerability. They are also the main leaders of trafficking organisations, and reap most of the profits, but are rarely caught.

Women, on the contrary, lie at the bottom of criminal networks and are exploited by them, receiving little income, while taking high risks. They are, generally speaking, an unskilled workforce, which means they are disposable and easily replaced. Because they have more direct contact with the drugs, they are more likely to be detected, accused of drug offences and found guilty having been caught *en flagrante*. Their detention represents an insignificant loss to trafficking organisations and an easy gain for law enforcement.

As shown in the case of Sara, at the beginning of this chapter, women in prison for drug offences usually come from the most disadvantaged sectors of society. They come from situations of poverty or extreme poverty, have little or no schooling and are economically active in the informal sector, which implies low income and little or no access to social benefits. Latin America is not only among the most unequal regions of the world in terms of economic distribution, but also one where the feminisation of poverty is growing (United Nations Economic Commission for Latin America and the Caribbean, 2019).

In addition, most women behind bars for drug offences are mothers and often are the sole or primary caregivers of small children and other dependent people. According to a 2018 study commissioned by the Inter-American Development Bank, 87% of women incarcerated have children, while 78% of men do (Safranoff & Tiravassi, 2018). Studies in various Latin American countries show that the majority of incarcerated women are single mothers. Selling or transporting drugs may be a way to combine their caregiving responsibilities with the necessity of putting food on the table for their kids or elderly parents.

Drug offences thus become an option within a context of underdevelopment and limited choices. Incarcerated women’s narratives reflect their proximity to drug markets; the drug trade is usually a close and available option which fills the gaps left by the State in terms of education and job opportunities in the formal economy. Involvement in the drug trade is described as a way to obtain ‘quick gains’; women usually refer to an economic emergency or openly talk about ‘profit’ when providing an explanation for their involvement in drug offences.

Drug money is defined as quick or easy, and drug trafficking is perceived of as an accessible opportunity that carries 'little risk'. Most of these women are aware of the severe penal consequences, though that fails to serve as a deterrent, and those who smuggle drugs into prison will actually end up secluded in their former 'workplace'. However, factors that contribute to women's risk-taking behaviour include: (i) police corruption – and the sense of impunity that this fosters; (ii) the normalisation of drug trafficking in some contexts; and (iii) witnessing other people's or one's own successful engagement in the drug trade. Yet, as stated above, women usually are employed in the least profitable functions of drug trafficking. The 'profits' they make from drugs, therefore, represent a minuscule crumb of illicit revenues from drug trafficking and simply provide them and their children with the means to pay for food and clothing.

When talking about their involvement in drug offences, women not only refer to economic need and the accessibility of drug markets but also, and perhaps primarily, to violence experienced during childhood and, subsequently, in sentimental relationships. Violence against children and gender-based violence, including sexual violence, are intimately related to women's relationships with the drug trade. Incarcerated women mostly become involved in drug use and drug trafficking through their male partners, who usually operate as the link to the drug trade and induce women to become part of it. Induction can take many forms, but a primary one is the thin line between consent and coercion created under the umbrella of 'romantic love' (Torres Angarita, 2007). Women are often inserted in relationships which are inscribed in gender beliefs of women's inferiority to men and male domination, which can translate into different behaviours: carrying, producing, or selling drugs; using them; and becoming involved in or being forced into sex work, among others.

Violence against women is further reproduced or increased in prison facilities (Penal Reform International, 2017). When talking about their arrest, women describe the specific forms of violence they are often victims of, including torture, psychological violence and also sexual violence (Giacomello et al., 2017). In the case of drug users, women are not exempt from double discrimination and violence as both drug users and women (Benoit & Jauffret-Roustide, 2016). Settings in which women and girls are institutionalised, such as drug treatment centres, juvenile detention centres and prisons can further exacerbate women's experience of violence (Penal Reform International, 2017). Women in prison and female drug users tend to suffer from mental health problems which are not addressed and that can increase due to incarceration (United Nations Office on Drugs and Crime, 2018a), especially given the poor prison conditions that prevail in Latin America and the accumulated discrimination suffered by women in prison (Inter-American Commission on Human Rights, 2017).

The incarceration of women has consequences for their children as well. As shown in the report *Childhood that Matters* (Giacomello, 2019a), which analyses the impact of drug policy on children with incarcerated parents in Latin American and the Caribbean, there are more than two million children in the region whose father or mother are deprived of their liberty. Of these, more than 20% are affected by drug policy. The report underlies that most children have their

father in prison, given that men make up about 95% of the prison population. However, the impact can be even more profound when the mother is incarcerated, due to the gender arrangements in the family and women frequently being the sole or primary caregivers of children and other dependent people. When men are incarcerated, the children usually remain with their mothers, who undertake the task of providing emotionally and economically for the incarcerated person and for the children at the same time, or with the men's own mothers or sisters. In contrast, women who are incarcerated for drug offences are often rejected by their families and communities, who perceive them as subverting their traditional roles in society. Hence, women's incarceration can leave their children unprotected and they can end up living in unsafe environments, inadequate government facilities or even on the street.

The following cases, which are part of the authors' advocacy work, illustrate women's participation in drug trafficking. They are only two examples of the tens of thousands of women imprisoned in Latin America for drug offences. Their stories, which they generously shared with us, are, of course, unique. However, they convey some of the common elements that we can find in other women's narratives and that conform the horizon of experience of women incarcerated for drug offences.

## **Angela**

Angela, from Colombia, is a mother of three. She had her children when she was 13, 16 and 18 years old, with men much older than her. During her life, she experienced violence as a child and gender-based violence, perpetrated both by her mother and her mother's partner.

She was arrested in 2011 for attempting to introduce drugs into a male prison and was given a six-year prison sentence. When she relates her story, she explains that she was convinced to smuggle drugs into the prison by her partner, who at the time was incarcerated for armed robbery. She felt compelled to do it because he told her that, otherwise, other inmates would kill him.

In her interview, she shares that in prison she experienced racism for being Afro-Colombian. Angela asserts that she is not a criminal since she carried drugs out of love for her partner (WOLA, n.d.-b).

## **Orfa**

Orfa would be defined as 'a drug mule', that is, 'a drug courier who is paid, coerced or tricked into transporting drugs across an international border but who has no further commercial interest in the drugs' (European Monitoring Centre for Drugs and Drug Addiction, 2012). She is originally from Guatemala and became involved in international cocaine trafficking through her husband, who first started carrying drugs over the Mexican border in order to pay back a debt. They travelled by bus and she always brought her youngest son, who was about two years old, with her. She would hide the drugs under her skirt, carefully attached to her legs, until one day they got caught. She received a five-year prison sentence in Mexico for the federal crime of possession.

Her husband, on the contrary, was released and was able to go back to Guatemala with their son. When we met her in July 2017, she was in the female prison of Tanivet, in the Mexican state of Oaxaca. She had not seen her husband or her children since her arrest (WOLA, n.d.-c).

## **Conclusions and Recommendations**

Sara, Angela and Orfa are, like many women in Latin America, caught between multiple inequalities and forms of violence. Their agency in drug offences is shaped by the prevailing gender arrangements in the region, which still subordinate women to men and demand that women put their bodies, their lives and their self-care to the service of other people's care and decisions. As Orfa said, 'I was taught that women must obey their husbands'. Gender relationships in the region are not only unequal but can be extremely violent. Most of the women we have interviewed, if not all of them, experienced violence since childhood. The violence that they were victims of was never denounced nor repaired. Neither was the context of inequality and social exclusion in which they grew up.

Latin American countries are known around the world as primary producers and traffickers of drugs declared to be illicit in the international drug control treaties. Criminal organisations can proliferate due to weak institutions and high levels of corruption that exist in the region, as well as the lack of state presence in both urban and rural areas. The combination of absent, corrupt, and at the same time, punitive states, with criminal organisations, lack of economic opportunities and gender subordination sets the conditions for women to first become involved in drug offences and then be incarcerated. Women are the primary victims of the international drug control system and its implementation at the national and local level.

As previously explained, the incarceration of these women does not make any dent in the drug trade, impact criminal organisations' power or illicit earnings, or enhance citizen security. It does, however, have a devastating impact on and further marginalise these women, their families and communities. Structural reforms oriented at promoting socio-economic justice and gender equality are needed in order to address the underlying causes of women's involvement in drug trafficking. However, meaningful steps can also be taken in terms of drug policy reform. Some steps forward include the following (Washington Office on Latin America (WOLA) et. al., 2016).

Across the region, drug policies should be rooted in human rights and public health and incorporate a gender perspective. That means that drug laws and policies must take into account the conditions of greater vulnerability of indigenous and Afro-descendent women, the LGBTQI+ community, mothers and women who are pregnant, and those facing poverty and socio-economic exclusion.

Along those lines, women who use drugs and desire treatment should have access to affordable and easily accessible gender-based harm reduction services. Governments and communities should work to end the discrimination against and stigmatisation of women who use drugs and those incarcerated for drug offences. Moreover, governments and communities should work to end the

criminalisation of women for drug offences. That means reviewing and reforming drug laws to ensure more proportionate sentencing policies, including eliminating mandatory minimums, using pretrial detention as the exception rather than the rule, and providing alternatives to incarceration – or remove from the criminal justice system altogether – for those who have committed non-violent, low-level offences. No woman responsible for children who are minors, elderly parents or disabled relatives or friends should be sent to prison.

Perhaps most importantly, women directly impacted by incarceration and punitive drug policies should not only participate in, but also drive, the development of drug policies and programmes, and they should be actively engaged in their implementation, evaluation and monitoring. This includes women who are or have been in prison; mothers, wives or partners and family members of people who are incarcerated; and members of communities that have been impacted. For too long, women from affected communities have been excluded from the debate; they not only deserve a seat at the table, but also to take the lead in constructing more humane and effective drug policies in Latin America.