

Generating and Collecting Data on Women Incarcerated for Drug Offenses

by Luciana Pol¹

A. Transparency, Compilation, and Availability of Data

One of the largest obstacles to formulating an effective policy that is consistent with a gender perspective and human rights is the lack of information and knowledge of women's participation in drug-related activities and their situation once behind bars.

The weaknesses in the production and reliability of public data and access to such data are not unique to Latin America, but in the case of women in prison for drug offenses, we face a series of additional restrictions.

1. The first is the opacity that characterizes prison spaces and the dynamics of life in prison. Information systems on the prison situation are generally incomplete, minimally reliable, and in many countries they are not unified across all jurisdictions; this stands in the way of performing national analyses. The difficulty is greater when attempts are made to compile data from the whole region.
2. The second restriction is the lack of a gender perspective in prison data, which is a constant throughout the region. There are no information systems with a gender focus, despite the fact that the situation in practice merits such data. Among those unique factors are, for example, the presence of pregnant women in prison, children who live in women's prisons, and the necessity for health services related to the sexual and reproductive rights of women. In recent years, there have been developments such as the Bangkok Rules,² approved in 2010 by the United Nations General Assembly, which set forth an integral perspective for addressing the situation of women in prison. The definition of specific situations of women who should be taken into account in a prison system provides a very good basis for conceiving of and structuring the information system that would be needed to monitor the specific aspects of this situation.
3. Third, in several countries we find the difficulty of the one-dimensionality of drug laws, which do not generally differentiate the types of offenses in the penal codes, but simply record them as *drug law infractions*. Nor is the scale of the offense committed distinguished; small-scale trafficking is reflected in the same category—narcotics trafficking—as the large-scale transport of narcotics. The fact that such different situations are recorded in crime and prison statistics under a single category stands in the way of a proper description of the population deprived of

liberty for drug offenses and hinders the analysis of the workings of the criminal justice system. Fragmentary data from some countries in the region show that the criminal justice system maintains a strong focus on prosecuting cases of small-scale consumption, home sales, or micro-trafficking.ⁱ Most cases involving women as defendants are in this group. Yet at present the recording of crime statistics continues to be the criterion established by the drug laws, blindly grouping together very different offenses.

Data production is important to expand knowledge and to provide valuable information that monitors the actions of the state. In addition, the production of statistical data and qualitative studies should be the basis for designing and framing public policies that begin by identifying structural problems in the system and also identifying opportunities, if any should exist.³ For this reason, when a social problem is identified, such as the increase in the imprisonment of women for drug offenses and the major social impacts, producing information to describe and analyze the issue is a fundamental part of the process of seeking timely and appropriate solutions.

Given the challenge of framing policies with alternative approaches, the priority is to create indicators that make it possible to conceptualize the various aspects of the issue and the impact of state responses, so as to give way to new strategies.

B. Developing New Indicators

Government agencies should compile sufficient and necessary information on the characteristics of arrests and sentences for drug offenses. Creating a reliable database that unifies the information from Latin America related to this issue is urgently needed. In her work, Corina Giacomello, a researcher specializing in these issues, identifies a list of indicators that should be compiled⁴:

- Number of persons in prison,
- Female prison population,
- Population accused of drug offenses disaggregated by sex,
- Legal situation,
- Types of offenses and sentences,
- Number of prisons,
- Number of children who live with their mothers (or fathers) in prison,
- Number of children of incarcerated women and men who live outside the prison, and information about their whereabouts, guardianship and custody regime,
- Number of persons who receive visits and frequency of visits,
- The distance between the prisons and the inmates' domiciles,

i. In the case of Colombia, approximately 2 percent of the total number of prisoners for drug offenses are mid-level and high-level operatives. In other words, the remaining 98 percent are persons who likely did not have – or in respect of whom it was not possible to prove – major participation in the drug-trafficking networks. In Mexico a study by the Center for Research and Teaching in Economics (*Centro de Investigación y Docencia Económicas*, CIDE) shows that 75 percent of persons detained for drug offenses had been arrested with a minimal amount of merchandise.

- Health indicators,
- Data on problematic use of psychoactive substances and access to treatment and to harm reduction services in prison, and
- Indicators on conditions or poverty and experience of domestic violence before entering prison.

Some of these data are produced in some countries, but others are not included in the usual body of prison statistics. Yet together with the information that needs to begin to be produced, it is also necessary to use available data to develop *new indicators* that cast light on the problem of the incarceration of women for drug offenses.

In some cases this can be achieved demanding that the public authorities crosscheck already-existing information that bureaucratic routines keep compartmentalized. Some examples of this would be combining data on arrests with data on the quantity of substances seized, and/or the form of transportation. Qualitative studies show the prevalence of the offense of micro-trafficking—in particular by ingesting capsules filled with cocaine—in the female prison population in the region. They also show the frequent association of the cooptation of women for drug trafficking with situations of human trafficking and the juxtaposition of criminal networks. Nonetheless, the dramatic reality of micro-trafficking is hidden today in the production of official information.

In other words, in addition to producing new information it is necessary to introduce a *new perspective* for analyzing the already-existing data so as to cast light on this specific problem and make it possible to design and implement adequate responses.

C. Research studies on drug policy and on implementing alternative approaches

Implementing drug policies should be based on the empirical evidence available on their effectiveness and impacts, and on the aim of implementing mechanisms for monitoring and follow-up that make it possible to identify their results periodically and to establish the relevant adjustments based on these evaluations. The creation of drug observatories in many countries of the region is a first step to begin to refine the production of information in this area. Yet these observatories should be extended in their coverage, their systems for producing and analyzing data should be developed, and the access to information should be improved. In addition, the interrelationship and intersection with data from other areas such as health, socioeconomic data, and criminal justice policy should be improved.

Yet the absence of a gender perspective and the multiplicity of specific situations that affect women also suggest the need to create data banks with gender breakdowns to further research studies and draw up more appropriate policies.ⁱⁱ This specific context should facilitate the development of projects involving collaboration with academic researchers in the areas of gender, criminal justice, and health, among others.

ii. In Brazil consideration was given to establishing "Infopen Mulher," which would be the same general prison data system, but with all information presented with a breakdown by gender. Yet this differentiated system was never established.

There is a gap in the investigation that needs to be corrected to give impetus to and improve the implementation of alternatives to incarceration. Among the priority issues are: specific impacts, with both quantitative and qualitative information, of incarceration on women imprisoned for drug offenses; imposition of discriminatory penalties and differential conditions of confinement as between sexes and among population groups within the sexes; legal and practical obstacles that women face when it comes to benefiting from the possibility of a lighter sentence or alternatives to incarceration; shortcomings of public defender systems that may aggravate the amount and enforcement of the penalty against women; and evaluations, specific or in comparative perspective, on the implementation of existing alternatives to incarceration.

Accordingly, it is recommended that:

- The governments or competent entities of the judicial systems of each country should produce statistical information on an annual basis, disaggregated by sex, on the situation of the prison population. The information should specify characteristics such as educational level, age, health, conditions of confinement, ethnic or racial identity, sexual orientation and gender identity, the specific offenses for which they are in prison, the persons under their charge, their situation in prison, and rates of overcrowding in women's prisons so as to make it possible for society at large to keep track of the situation of women in the prison system. In addition, statistics should be produced for public consultation, disaggregated by sex, on the number of persons who request the application of existing alternatives to incarceration, their characteristics, the number of persons benefited, and the number of applications rejected, specifying the reasons they were turned down.
- The alternatives implemented should be evaluated periodically using methodologies that incorporate a gender approach and cost-benefit criteria that measure the impact on the wellbeing of women and their families. The changes in the implementation of the alternatives should be based on available evidence.
- To close the knowledge gap regarding women and drug policy, priority needs to be assigned to detailed information on the situation of women in prison in Latin America. This information should be generated by each national state and should be accessible to any type of user, professionals working in this area, and the general public to promote transparency.
- Adequate criteria should be developed for gauging the success of drug policies bearing in mind that their objective should be the wellbeing of the individual, women, and their families. Most of the indicators used at present in this field are process indicators, not results indicators. One usually measures the number of police arrests, the drugs seized, and the persons taken prisoner. Yet this doesn't tell you anything about the size of the markets for the production, sale, and consumption of drugs. Nor does it reveal anything about the health or wellbeing of the populations impacted, including the women residents of the areas where prohibited substances are grown or trafficked.
- It would be valuable to categorize the conduct related to the production, distribution, supply, sale, and consumption, and the place women occupy in each of these, so as to be able to make differentiated analyses. The scale of these activities requires

anthropological studies that examine the gender dynamics and provide knowledge and empirical bases for designing prevention policies, especially bearing in mind the failure of a large number of *alternative development* initiatives.

- In addition, objective, reliable, and comparable information should be developed about the prevalence of the consumption of psychoactive substances and the associated risks in women in prison. This information is essential for planning health services and their continuous improvement, working with a gender perspective and a human rights-based approach.
- Qualitative research studies should be carried out that can bring professionals closer to women deprived of liberty, prioritizing listening and promoting joint actions between social science professionals working in prisons and women with problematic consumption. The harm reduction approaches that have proven effective in men should be reproduced for women taking into account the gender perspective.

If the information indicated above is compiled adequately, it is necessary for the research to be translated into action so as to be able to have an effective impact on the lives of women in prison for drug offenses and not just stay on an academic level or be confined to judicial yearbooks. It is essential to understand how to make effective use of the information in decision-making, and to understand the realities and introduce changes in the activities of institutions.

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